

ECONOMIC INEQUALITY IN THE AGE OF HUMAN RIGHTS

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ABSTRACT

The monstrous pendulum of inequality in the twenty-first century swings sideways amid welfare economics and egalitarianism. Horizontal inequalities embodied by pro-poor policy on grounds such as gender, race, and disability, have long been core international human rights concerns. Yet, gross inequalities in economic status, nationally and globally, are still poorly conceptualized by legal scholars, policymakers, and practitioners.

In search of a policy lever, this article argues that as far as economic theory goes, neither theoretical nor empirical economic research adequately correlates economic inequalities and growth. That is, beyond horizontal inequalities concerning the extreme poor. As economic research remains inept in offering efficiency policy justifications, international human rights law (IHRL), as the primary legal alternative for poverty-related social justice, could fill the gap.

In the backdrop of neoliberal welfare economic policy confines, vertical inequalities between societal groups and global inequalities between countries substantively add to a novel realization of human rights and the achievement of UN-led sustainable development.

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INTRODUCTION

Should international human rights law (IHRL) address the gap between rich and poor? Or are human rights concerned solely with raising people out of poverty? That is, without regard to the significant wealth accumulation by the few and overriding the extreme economic gaps across the board?

Human rights instruments are replete with equality provisions. Drawing on these provisions, the human rights community has concentrated much of its efforts over the past forty years on abolishing status-based groups' discrimination modeled as horizontal inequality (to be later defined). But does the prohibition of discrimination against people in certain status-based groups capture the full extent of the meaning of the right to equality in IHRL?

Setting a goal for inequality is conceptually complex since there are diverse perspectives on inequality as a social problem. While most people would agree that absolute poverty is intrinsically bad, the same cannot be said for inequality. Some inequality is to be expected in any society as a reflection of different talents and efforts of individuals. Still, it is difficult to agree on the ideal level of inequality. Also, while contemporary social debates protest the rise of 'extreme inequality', how is that level defined?¹

As a factual matter, the post-war neoliberal sway has witnessed the rise of economic inequalities in most countries worldwide.² The World Inequality Report 2022 finds that the wealthiest

10% of the global population presently takes 52% of global income, while the poorest half of the population grosses 8.5% of it. On average, an individual from the top 10% of the global income distribution earns USD 122,100 per year, while

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¹ See Sakiko Fukuda-Parr, *Keeping Out Extreme Inequality from the SDG Agenda – The Politics of Indicators*, 10 GLOB. POLY. 61, 63 (2019).

² See FACUNDO ALVARO ET AL., *WORLD INEQUALITY REPORT 2018 13-14*; DAVID HERVEY, *A BRIEF HISTORY AND NEOLIBERALISM* (2005).

an individual from the poorest half of the worldwide income distribution makes USD 3,920 per year.”³

Comparatively, Thomas Piketty et al. observed a complete collapse of the bottom 50 percent income share in the United States between 1978 and 2015, from 20 percent to 12 percent of total income. That is while the top 1 percent income share rose from 11 percent to 20 percent.⁴

Global wealth inequalities are even more distinct than income inequalities. The poorest half of the worldwide population hardly has any wealth, retaining just 2% of the total. In contrast, the wealthiest 10% of the global population own 76% of all fortune. “On average, the poorest half of the population owns PPP USD 4,100 per adult, and the top 10% own USD 771,300.”⁵ Focusing on the developed countries, Thomas Piketty, in his seminal 2014 book, *Capital in the Twenty-First Century*, describes the historical trends of wealth concentration and shows that, following the same pattern of overall inequality, wealth concentration in developed countries has steadily increased since the later decades of the 20th century, after declining between the 1930s and 1960s.⁶ Oxfam’s 2023 report indicated that around two thirds of all new wealth went to the top 1% while extreme poverty increased globally.⁷

From a policy standpoint, economic inequality alleviation belies a trade-off between welfare economics and fairness policy.⁸ This policy choice is commonly simplified as favoring welfare economics market liberalizing policies funneled by corrective tax and social

³ LUCAS CHANCEL ET AL., WORLD INEQUALITY REPORT 2022, 10 & Fig. 1 [hereinafter WORLD INEQUALITY REPORT 2022] (internal currency conversions omitted).

⁴ See Facundo Alvaredo et al., *Global Inequality Dynamics: New Findings from WID.world*, 107 THE AM. ECON. REV. 404, 405-06 (2017). In contrast, and in spite of a similar qualitative trend, the bottom 50 percent share remains higher than the top 1 percent share in 2015 in China, and even above France. *Id.*

⁵ WORLD INEQUALITY REPORT 2022, *supra* note **Error! Bookmark not defined.**, at 10 & Fig. 1 (internal currency conversions omitted).

⁶ THOMAS PIKETTY, CAPITAL IN THE TWENTY-FIRST CENTURY (2014).

⁷ Oxfam, *Survival of the Richest: How We Must Tax the Super-Rich Now to Fight Inequality*, 16 & Fig. 6, (Jan. 16, 2023).

⁸ Cf. Riccardo Crescenzi et al., *The Geography of Innovation: Local Hotspots and Global Innovation Networks* 24-28 (World Intellectual Property Organization. Economic Research Working Paper No. 57, 2019). (discussing that economic and technological innovation are primarily urban-center driven, which threatens to exacerbate economic inequality within and among countries. This trend may create path dependencies where areas that are “left behind” may not be able to catch up. Addressing this disparity would require some form of industrial redistribution.).

transfer policies.⁹ Given national inequality, the three main legal regimes commonly perceived efficient in alleviating inequality are antitrust and public utility law, corporate governance, and labor law.¹⁰

In the case of global inequality, welfare economics focuses on how to equalize the distribution of primary assets transnationally – primarily given the North-South divide, including human capital, financial capital, and Global South’s bargaining power.¹¹ That is, rather than merely expanding national inequality’s ex-post redistribution of taxes and transfers across countries.¹²

Overall, welfare economic policy allows market forces to generate as many economic agglomerations as possible subject to

⁹ Cf. Alice H. Amsden, *Why Isn’t the Whole World Experimenting with the East Asian Model to Develop?: Review of the East Asian miracle*, 22 *WORLD DEV.* 627, 627-29 (1994). (discussing how market oriented policies can obfuscate other means of countering economic inequality that may be more efficacious, and that East Asian governments’ intervention in their economies was not merely a vestige of pre-industrial thinking, but rather a key component in the region’s rapid development) Other welfare economics inequality alleviation policies include distributive justice policies. See, e.g., ANTHONY B. ATKINSON, *INEQUALITY: WHAT CAN BE DONE?* 217 (2015). These also include antitrust enforcement and case prioritization. See, e.g., Ariel Ezrachi, Amit Zac & Christopher Decker, *The effects of Competition Law on Inequality – An Incidental By-Product or a Path for Societal Change?*, 11 *J. ANTITRUST ENF’T* 51 (2023).

¹⁰ See Eric A. Posner & Cass R. Sunstein, *Antitrust and Inequality*, 2 *AM. J. L. AND EQUAL.* 190 (2022); Jonathan B. Baker & Steven C Salop, *Antitrust, Competition Policy, and Inequality*, 104 *GEO. L. J.* 1 (2015); Glenn Ellison et al., *What Causes Industry Agglomeration? Evidence from Co-Agglomeration Patterns*, 100 *AM. ECON. REV.* 1195 (2010); WORLD BANK, *WORLD DEVELOPMENT REPORT, RESHAPING ECONOMIC GEOGRAPHY* 15-16 (2009).

¹¹ Social capital and income capital are two distinct forms of capital that have been found to be related to economic inequality. Social capital, which has been substantively less studied in relation to economic inequality, refers to the norms and networks that facilitate coordination and cooperation among individuals, while income capital refers to an individual’s financial resources, such as their income and wealth. See Robert D. Putnam, *Bowling Alone: America’s Declining Social Capital*, 6 *J. DEM.* 65 (1995); see also, Luigi Guiso et al., *The Role of Social Capital in Financial Development*, 94 *AM. ECON. REV.* 526 (2004); Luigi Guiso, Paola Sapienza & Luigi Zingales, *Social Capital as Good Culture*, 6 *J. EUR. ECON. ASS’N.* 295 (2008). Social capital’s role in reducing economic inequality has mostly narrowed to opportunity and access policies. These include improving access to resources, job opportunities, and social services. See *id.*; Michael Woolcock, *Social Capital and Economic Development: Toward a Theoretical Synthesis and Policy Framework*, 27 *THEORY SOC.* 151 (1998). Social capital has also been found effective in promoting economic development by providing access to credit, increasing foreign investment, and reducing corruption. See Sanjeev Goyal, *Connections*, *J. ECON. LIT.* 39 (2001).

¹² See Alvaredo et al., *supra* note **Error! Bookmark not defined.**, at 406; Thomas Piketty et al., *Optimal Taxation of Top Labor Incomes: A Tale of Three Elasticities*, 6 *DEEP AM. ECON. J. ECON. POL’Y.* 230 (2014).

market corrections. In such a way, circumstantial regional advantages in productivity are said to trigger divergent geographical concentration paths. Mainstream economic geography theories, fittingly, predict that processes of inter-regional labor mobility, knowledge diffusion, and trickle-down effects would occur, and income convergence would follow. Regulatory intervention to favor disadvantaged areas, therefore, is presumed primarily unnecessary.¹³

Equity or fairness policy over inequality, for its part, may call for more significant intervention to achieve some redistribution directly.¹⁴ Egalitarianism would have it that the question is not just whether economic dynamic gains exceed the static losses but whether this difference is large enough to offset whatever equitably undesirable impact a given policy has on inequality. That is even at the expense of damaging national champions and overall economic growth.¹⁵ In the U.S., to illustrate, given the lack of growth in wages at the bottom of the distribution, government programs associated with poverty alleviation, rather than earnings, have been responsible for much of the decline in poverty.¹⁶

¹³ See PAUL KRUGMAN, *GEOGRAPHY AND TRADE* (1991); Paul Krugman, *On the Relationship Between Trade Theory and Location Theory*, 1 REV. INT'L ECON. 110 (1993); Michael E. Porter, *Location, Competition and Economic Development: Local Clusters in a Global Economy*, 14 ECON. AND DEV. Q. 15 (2000); MICHAEL E. PORTER, *ON COMPETITION* 197 (1998); MICHAEL SORPER, *THE REGIONAL WORLD: TERRITORIAL DEV. GLOB. ECON.* (1997); MICHAEL J. PIORE & CHARLES F. SABEL, *THE SECOND INDUSTRIAL DIVIDE* (1984).

¹⁴ Surely, the fairness approach to inequality does not always take the form of top-bottom regulation. It also constitutes bottom-up frameworks for social justice movement. For the context of the Human Rights-Based Approaches, see Varun Gauri & Siri Gloppen, *Human Rights-Based Approaches to Development: Concepts, Evidence, and Policy, Polity*, 44 DEEPENING DEMOCRACY 485, 494 (2012) (referring to Marie-Benedicte Dembour, *Human Rights Talk and Anthropological Ambivalence*, in *INSIDE AND OUTSIDE THE LAW: ANTHROPOLOGICAL STUDIES OF AUTHORITY AND AMBIGUITY* 19 (Olivia Harris ed., 1996)).

¹⁵ Given the North-South divide, two underlying welfare economic theories exist with different practical policy setups. The first is spatially blind regulation ensuring market efficiency without accounting for space and the local context. This approach is associated with developed countries. The second approach is spatially targeted preferring policies highly contingent on context and largely deterring growth based on industry agglomeration. Spatially targeted efficiency regulation is rooted in the specific local stakeholders and community in developing countries. See Fabrizio Barca, Philip McCann & Andrés Rodríguez-Pose, *The Case for Regional Development Intervention: Place-Based Versus Place-Neutral Approaches*, 52 J. OF REG'L SCI. 134 (2012).

¹⁶ Meyer and Sullivan cite Social Security and tax changes, such as the Earned Income Tax Credit, for reductions in poverty during the 1990. Bruce D. Meyer & James X. Sullivan, *Identifying the Disadvantaged: Official Poverty, Consumption*

This article argues that as far as welfare economic policy goes, neither theoretical nor empirical economic research adequately correlates the three types of economic inequalities (discussed subsequently) and growth, primarily beyond *horizontal inequalities* concerning the extreme poor. The economic theory thus bypasses *vertical inequalities* across society, given the concentration of wealth and power among the elite and *global inequalities* between countries.

It is plausible that there are circumstances whereby well-designed policy reforms, particularly in education and human capital investment, can achieve higher economic growth while reducing economic inequality. However, as shall be argued, the claim that there is a mechanical relationship between inequality and growth has no proven economic basis. It most likely cannot be a reliable guideline for economic efficiency-led policy.

This article critically considers the three types of economic inequalities amid welfare economic policy and IHRL. At the start, horizontal inequalities refer to inequalities between social, ethnic, linguistic, or other population groups.¹⁷ Horizontal inequalities include, for example, economic inequalities based on gender, race, ethnicity, language, religion, disability, or sexuality. Horizontal inequalities raise concerns about excluding disadvantaged or marginalized populations from political, economic, and social opportunities.¹⁸

Alleviating horizontal inequality typically involves policies and programs aimed at promoting equality of opportunity and access to resources, such as affirmative action programs, anti-discrimination

Poverty, and the New Supplemental Poverty Measure, 26 J. ECON. PERSPECTIVES 111, 111-15 (2012).

¹⁷ Gillian MacNaughton, *Vertical Inequalities: Are the SDGs and Human Rights up to the Challenges?*, 21 THE INT'L J. HUM. RTS. 1051 (2017) (referring to Zeid Ra'ad Al Hussein, An Agenda for Equality, Statement of the United Nations High Commissioner for Human Rights at the Summit for Adoption of the Post-2015 Development Agenda (UN Headquarters, New York, 25 September 2015)). Radhika Balakrishnan & James Heintz, *How Inequality Threatens All Rights*, OPEN GLOB. RTS. (Oct. 29, 2015), <https://www.openglobalrights.org/how-inequality-threatens-all-humans-rights/> [<https://perma.cc/WA5M-S87L>] (describing horizontal inequalities based on gender, race, caste, religion or sexuality as those "between culturally defined or socially constructed groups"); Radhika Balakrishnan & James Heintz, *Human Rights in an Unequal World: Structural Inequalities and the Imperative for Global Cooperation*, 10 HUMAN. 395, 396 (2019); MacNaughton, *supra* note 17, at 37.

¹⁸ Fukuda-Parr, *supra* note **Error! Bookmark not defined.**, at 63; see MacNaughton, *supra* note 17, at 1051.

laws, or targeted investments in education and infrastructure in disadvantaged communities.¹⁹

The second type is vertical inequality.²⁰ These inequalities refer to disparities between the top and bottom quintiles of income, wealth, or social outcome. Significantly, vertical economic inequalities correlate closely to vertical social disparities, such as outcomes in health and education.²¹ Notably, beyond the core concerns for health and education, they extend also to inequalities in political power or housing, such as between individuals or households.²²

Alleviating vertical inequality, on the other hand, typically requires policies and programs aimed at reducing income and wealth disparities, such as progressive tax systems,²³ minimum wage laws,²⁴ or transfer programs like social security,²⁵ or unemployment insurance.²⁶

¹⁹ See, e.g., Emanuel Saez, *Using Elasticities to Derive Optimal Income Tax Rates*, 68 REV. ECON. STUD. 205 (2001); Arindrajit Dube et al., *Minimum Wage Effects Across State Borders: Estimates Using Contiguous Counties*, 92 REV. ECON. AND STAT. 945 (2010).

²⁰ For human rights scholars acknowledging the need to expand human rights law accordingly, see MacNaughton, *Vertical inequalities*, *supra* note 17, at 1052, referring to Ignacio Saiz & Gaby Oré Aguilar, *Introducing the Debate on Economic Inequality: Can Human Rights Make a Difference?*, OPEN GLOB. RTS. (Oct. 27, 2015) <https://www.opendemocracy.net/en/openglobalrights-openpage/introducing-debate-on-economic-inequality-can-human-ri/> [<https://perma.cc/H7UA-NL9S>]; Balakrishnan & Heintz, *supra* note 17; Fukuda-Parr, *infra* note 121.

²¹ World Health Organization (WHO), *Closing the Gap in a Generation: Health Equity Through Action on the Social Determinants of Health : Commission on Social Determinants of Health Final Report* (2008), at 39; U.N. Department of Economic and Social Affairs (UNDESA), *The Millennium Development Goals Report 2015*, at 26 (2015).

²² MacNaughton, *supra* note 17, at 1051 (referring to Zeid Ra'ad Al Hussein (U.N. High Commissioner for Human Rights), *An Agenda for Equality*, ¶ 6, (Sept. 25 2015)); Balakrishnan & Heintz, *supra* note 17, at 396; see MacNaughton, *Emerging Human Rights Norms and Standards on Vertical Inequalities from Part I - Conceptualizing and Measuring Human Rights and Economic Inequalities*, in HUMAN RIGHTS AND ECONOMIC INEQUALITY 33, 38 (Gillian MacNaughton et al. eds., 2021) [hereinafter MacNaughton, *Emerging Human Rights*].

²³ See, e.g., Emanuel Saez, *Using Elasticities to Derive Optimal Income Tax Rates*, 68 REV. ECON. STUD. 205 (2001).

²⁴ Arindrajit Dube et al., *Minimum Wage Effects Across State Borders: Estimates Using Contiguous Counties*, 92 THE REV. ECON. AND STAT. 945 (2010).

²⁵ U.S. SOCIAL SECURITY ADMINISTRATION, *SOCIAL SECURITY PROGRAMS THROUGHOUT THE WORLD* 15 (2018)

²⁶ U.S. House of Representatives, Committee on Ways and Means, *Unemployment Insurance: An Overview of the Challenges and Strengths of Today's System*, 114th Cong., 2nd sess., 2016-09-07, available at

The third type is global inequality.²⁷ It is to be found between countries.²⁸ Global inequality is characterized as inequality between all world inhabitants, converging between wealthy and impoverished people in North Africa and Asia or Europe. As this issue draws little awareness, it offers a rather intricate blend of inequality between countries and inequality within countries.

Relatedly, IHRL developed historically without explicitly addressing vertical and global inequalities while limiting themselves to horizontal ones proxied by the pro-poor policy. As economic research remains inept in offering efficiency policy justification, IHRL could fill the gap jurisprudentially and by following policy modifications.

For IHRL, one cannot escape the reflection by political philosophers Will Kymlicka or Amartya Sen about how normative theory is eventually bound to confinement by the egalitarian corral, such as the case for inequality jurisprudence suggests.²⁹ The considerations in support of this result are discussed hereafter. IHRL may fill the following policy gap. Arguably, vertical inequalities between groups in society, as well as global inequalities between countries, may have a substantial impact on the realization of human rights. Inequality alleviation through IHRL could also achieve UN-led sustainable development. Alas, inequality alleviation through IHRL, thus far, has been largely overlooked by policymakers, scholars, and practitioners.

Moreover, while the human rights community conventionally focused on horizontal inequalities, economists have been concerned

<https://www.govinfo.gov/content/pkg/CHRG-114hhrg22104/pdf/CHRG-114hhrg22104.pdf> [<https://perma.cc/UBE9-B2Y5>] (last visited Dec. 10, 2023).

²⁷ See, e.g., Branko Milanovic, *True World Income Distribution, 1988 and 1993: First Calculation Based on Household Surveys Alone*, 112 *ECON. J.* 51 (2002) [hereinafter Milanovic, *True World Income Distribution*]; Sudhir Anand & Paul Segal, *What Do We Know About Global Income Inequality?*, 46 *J. ECON. LIT.* 57 (2008); Albert Berry, François Bourguignon & Christian Morrisson, *Global Economic Inequality and Its Trends Since 1950*, in *ECONOMIC INEQUALITY AND POVERTY* (Lars Osberg ed., 1991).

²⁸ Milanovic, *supra* note 27; Anand & Segal, *supra* note 27; Berry et al., *supra* note 27.

²⁹ See WILL KYMLICKA, *CONTEMPORARY POLITICAL PHILOSOPHY: AN INTRODUCTION* 53-96 (2d ed. 2002) (regarding the destiny of most political theory to yield to egalitarianism); AMARTYA SEN, *INEQ. REEXAMINED* 12 (1992) (“[E]very normative theory of social arrangement that has at all stood the test of time seems to demand equality of *something*.”).

with vertical inequalities.³⁰ In the inequality crossway of human rights and economics, scholars, policymakers, and practitioners rarely interact.³¹ Given the growing concern over global and vertical inequalities, legal reform is needed. One that underlies this article's scholarly contribution whereby IHRL is presently better suited than economic growth theory. That is to serve as inequality's unified policy lever. The argument's structure is dualistic. Following an Introduction, Part I critically assesses the limits of economic theory as a welfare economics inequality alleviation policy lever. Part II shifts to IHRL, offering a superior novel egalitarian regulatory framework.

I. INEQUALITY AND ECONOMIC POLICY BOUNDS

a. Inequality and Economic Growth

From a welfare economic policy standpoint, theoretical and empirical approaches equally offer indistinct results on the sign and size of the impact of inequality on economic growth.³² The debate still seems open, and no consensus has emerged so far.

At the outset, Thomas Piketty's central thesis is that capital accumulation exacerbates inequality.³³ That is, as capital accumulation generates a greater return on investment \otimes than economic growth (g), leading to a concentration of wealth in the hands of a few creating inequality.³⁴ He concludes that excess

³⁰ See MacNaughton, *Emerging Human Rights*, *supra* note 22, at 38 (referring to Frances Stewart, *The Root Causes of Conflict: Some Conclusions* (Queen Elizabeth House (QEH), Working Paper No. 16, 1998)).

³¹ Gillian MacNaughton et al., *Introduction to HUMAN RIGHTS AND ECONOMIC INEQUALITY* 1, 14 (Gillian MacNaughton, Diane Frey & Catherine Porter eds., 2021) (referring to Nikki Reisch, *Taxation and Human Rights: Mapping the Landscape*, in *TAX, INEQUALITY, AND HUMAN RIGHTS* 33, 36 (Philip Alston & Nikki Reisch eds., 2019)); U.N. GAOR, 29th Sess., at 3, U.N. Doc. A/HRC/29/31 (May 27, 2015).

³² See generally Paul M. Romer, *Increasing Returns and Long-Run Growth*, 94 J. POL. ECON. 1002 (1986); Robert M. Solow, *A Contribution to the Theory of Economic Growth*, 70 Q. J. ECON. 65 (1956); Nicholas Kaldor, *Alternative Theories of Distribution* 23 REV. ECON. STUD. 83 (1956). Economic growth theory examines factors driving long-term economic expansion while welfare economics studies distribution of resources and well-being. The two are related as economic growth affects resources and well-being.

³³ See Piketty, *supra* note 6.

³⁴ See *id.*

savings from the return on wealth over the output growth rate are unsustainable. This unequal distribution of wealth causes social and economic instability. From an economic growth perspective, Piketty's finding did not suggest that inequality would lead to a decline in dynamic long-term economic growth, but merely projected a lower growth rate compared to wealth growth.

In a later research, Piketty further relaxed his prognosis concerning economic growth, stating that he does not consider the relationship between the rate of return on capital and the rate of economic growth as the only or primary tool for considering changes in income and wealth inequality.³⁵

Dynamic growth critics of Piketty continuously question his views on economic growth as failing to account for the potential for dynamic growth in a capitalist system and as overly pessimistic. Critics argue that Piketty's focus on inequality ignores the positive effects of economic growth, such as increased productivity and innovation including favoring more skilled workers even though this is a driving force behind inequality.³⁶ The dynamic growth critique withstands different inferences arrived at the numerous studies depending on the econometric methods employed, the countries considered in the analysis, and the measures used for income inequality.³⁷

Even if inequality is not entirely correlated with economic growth, it still holds some measurable effects on growth. On the positive end, to illustrate, inequality possibly influences growth positively by raising savings and investment when rich people save

³⁵ See Thomas Piketty, *About Capital in the Twenty-Firstst Century*, 105 AM. ECON. REV. 48 (2015). Piketty further noted that $r > g$ is not a useful tool for the discussion of rising inequality of labor income.

³⁶ See, e.g., HOWARD R. GOLD, *How Piketty Is Wrong – and Right*, CHI. BOOTH REV. (Mar. 12, 2015), <https://www.chicagobooth.edu/review/how-piketty-is-wrong-and-right> [<https://perma.cc/3AP7-TXH9>] (last visited Dec. 10, 2023); Dani Rodrik, *Piketty and the Zeitgeist*, PROJECT SYNDICATE (May 13, 2014), <https://www.project-syndicate.org/commentary/dani-rodrik-explains-why-capital-in-the-twenty-first-century-has-become-so-successful-in-the-us?barrier=accesspaylog> [<https://perma.cc/3CCM-RKQH>] (last visited Dec. 10, 2023).

³⁷ For a comprehensive discussion on inequality measuring methods, see Frank A. Cowell & Stephen P. Jenkins, *How Much Inequality Can We Explain? A Methodology and an Application to the United States*, 105 ECON. J. 421 (1995). For a summary of economists' critique of Picketty, see e.g., Mark Warshawsky, *Review and Critique of Piketty's Capital in the Twenty-First Century*, MERCATUS CENTER (June 16, 2016) (arguing that Piketty's underlying assumptions are faulty and ignores key economic factors such as inflation's impact on rates of return).

a higher fraction of their income.³⁸ Inequality can also influence growth positively by providing incentives for innovation and entrepreneurship.³⁹ In poor countries, a positive relationship exists when at least a few individuals accumulate the minimum needed to start businesses and get a decent education.⁴⁰

Economic theory also acknowledges some harmful effects of inequality on growth. Harm can be caused as inequality generates political and economic instability that reduces investment.⁴¹ Harmful growth effects can further occur when inequality deprives the poor of the ability to accumulate human capital while staying healthy.⁴² Inequality is similarly said to impede the social consensus required to adjust to shocks and sustain growth.⁴³ Given these limited effects, the economic theory still lacks a comprehensive explanation of the inequality-economic growth nexus.⁴⁴

There are two central aspects to the ongoing discussion. One, enjoying a relative degree of scholarly unanimity, considers how inequality affects economic growth's impact on extreme poverty reduction. The second topic, polemic by nature, considers the relationship between inequality and cumulative economic growth. That is while counting extreme poverty among numerous economic and top income inequalities, nationally and globally.

Conceptually, *vertical inequalities* offer even more controversy about economic distribution across society. Namely, the concentration of wealth and power among the elite.⁴⁵ Vertical inequalities, in that sense, differ from *horizontal inequalities*, which

³⁸ Nicholas Kaldor, *A Model of Economic Growth*, 67 *ECON. J.* 591, 608 figs. 3 & 4 (1957).

³⁹ Edward P. Lazear & Sherwin Rosen, *Rank-Order Tournaments as Optimum Labor Contracts*, 89 *J. POL. ECON.* 841, 841-43 (1981).

⁴⁰ Robert J. Barro, *Inequality and Growth in a Panel of Countries*, 5 *J. ECON. GROWTH* 5, 18-19 (2000).

⁴¹ Alberto Alesina & Roberto Perotti, *Income Distribution, Political Instability, and Investment*, 40 *EURO. ECON. REV.* 1203, 1221-22 (1996).

⁴² Oded Galor & Omer Moav, *From Physical to Human Capital Accumulation: Inequality and the Process of Development*, 71 *REV. ECON. STUD.* 1001, 1011 (2004); Philippe Aghion, Eve Caroli & Cecilia Garcia-Penalosa, *Inequality and Economic Growth: The Perspective of the New Growth Theories*, 37 *J. ECON. LITERATURE* 1615, 1619 (1999); Roberto Perotti, *Growth, Income Distribution, and Democracy: What the Data Say*, 1 *J. ECON. GROWTH* 149, 169 (1996).

⁴³ Dani Rodrik, *Where Did All the Growth Go? External Shocks, Social Conflict, and Growth Collapses*, 4 *J. ECON. GROWTH* 385, 395 (1999).

⁴⁴ See ANTHONY B. ATKINSON, *INEQUALITY: WHAT CAN BE DONE?* 82-110 (2015) (reviewing the economic theory of inequality).

⁴⁵ Fukuda-Parr, *supra* note **Error! Bookmark not defined.** at 63.

raise more consensual concerns about marginalized poor groups. Although both topics remain partly interrelated, vertical inequality alleviation underlies much legal ambiguity that casts a shadow on economic theory's aptitude to model inequality reduction based primarily on economic efficiency.

Welfare economic policies designed to alleviate vertical inequality underlies numerous regulatory obstacles. Arguably, the magnitude of the regulatory limitations these underlie justify a shift toward international human rights policy. First, vertical inequality remains profoundly vulnerable to inadequate data. Especially given the interplay between its alleviation and subsequent economic growth. Accurate and up-to-date data on income and wealth distributions is critically lacking, making it difficult to design and evaluate the impact of vertical inequality reduction economic policies.⁴⁶ Equally, the trade-offs with economic efficiency offer another serious obstacle.⁴⁷ The reduction of vertical inequalities based on welfare economic policies further underlie implementation challenges. Thus, effective implementation of welfare policies, such as ensuring the reach of transfer programs or the accuracy of tax systems, can be difficult and require significant resources and infrastructure.⁴⁸ Lastly, welfare economic policies bring to the fore political feasibility concerns. Implementing policies aimed at reducing inequality may face opposition from those with higher incomes or wealth, making it difficult to pass and implement such policies.⁴⁹

Let's explain why. At a start, economic theory offers several studies that have empirically examined the magnitude of the growth elasticity of poverty.⁵⁰ Startling poverty levels in the late 1990s

⁴⁶ See U.N. Develop. Programme (UNDP), Human Development Report 2010: The Real Wealth of Nations: Pathways to Human Development (2010); WORLD BANK, WORLD DEVELOPMENT INDICATORS 2015 (2015)

⁴⁷ See Caterina Ruggeri Laderchi et al., *Does it Matter that We Do Not Agree on the Definition of Poverty? A Comparison of Four Approaches*, 3 OXFORD DEV. STUD. 243 (2003); JOSEPH E. STIGLITZ, *THE PRICE OF INEQUALITY: HOW TODAY'S DIVIDED SOCIETY ENDANGERS OUR FUTURE* (2012).

⁴⁸ See Bruce Meyer & James Sullivan, *The Effects of Welfare and Tax Reform: The Material Well-Being of Single Mothers in the 1980s and 1990s* (Nat'l Bureau of Econ. Resch., Working Paper No. 8298, 2001); MICHAEL HILL, PETER L. HUPE, *IMPLEMENTING PUBLIC POLICY: GOVERNANCE IN THEORY AND IN PRACTICE* (2010).

⁴⁹ See MARTIN GILENS, *AFFLUENCE AND INFLUENCE: ECONOMIC INEQUALITY AND POLITICAL POWER IN AMERICA* (2012); Alberto Alesina & Dani Rodrik, *Distributive Politics and Economic Growth*, 109 Q. J. ECON. 465 (1994).

⁵⁰ For a large body of interdisciplinary work on economic and social rights which overlaps considerably with the literature on poverty, see Florent Bresson, *On*

pushed the income inequality debate to refocus on poverty reduction. Pro-poor growth advances crossed the regulatory threshold, as growth and equity (by income redistribution) were perceived as distinct policy mechanisms, each adept at addressing poverty. From a policy standpoint, much interest lies in the percentage point reduction by inquiring, "By how much percentage points do the poverty headcount change in response to a 1% increase in growth?"⁵¹ The central concern was to raise the incomes of poor households. By the early 2000s, it was clear that growth and inequality were not detachable, and the preceding decade's attention on extreme poverty was seen as falling short. Indeed, there was headway in extreme poverty. Nonetheless, income inequalities were growing in many developing countries.⁵²

Economists nowadays generally agree that growth leads to absolute poverty reduction.⁵³ Using cross-country data, David Dollar and Aart Kraay famously give evidence that, on average, the poorest quintile's income rises equiproportionately with the mean income. They further show this finding to be robust even when incorporating policies believed to benefit the poor, thus concluding that growth is good for the poor.⁵⁴ Detailed studies by Martin Ravallion and World Bank colleagues added that as inequality rose in poor countries, the poverty-reducing impacts of economic growth

the Estimation of Growth and Inequality Elasticities of Poverty with Grouped Data, 55 REV. INCOME AND WEALTH 266 (2009); David Dollar & Aart Kraay, *Growth is Good for the Poor*, 7 J. ECON. GROWTH 195 (2002); CORE OBLIGATIONS: BUILDING A FRAMEWORK FOR ECONOMIC, SOCIAL AND CULTURAL RIGHTS (Audrey Chapman, & Russell Sage eds., 2002); ECONOMIC RIGHTS IN CANADA AND THE UNITED STATES (Rhoda E. Howard-Hassmann & Claude E. Welch, Jr. eds., 2006); ECONOMIC RIGHTS: CONCEPTUAL, MEASUREMENT, AND POLICY ISSUES (Shareen Hertel & Lanse Minkler eds., 2007).

⁵¹ See, e.g., Stephan Klasen & Mark Misselhorn, *Determinants of the Growth Semi-Elasticity of Poverty Reduction* (Econstor, IAI Discussion Papers, No. 176, 2008) (extending on François Bourguignon's work by using absolute poverty measures); François Bourguignon, *The Growth Elasticity of Poverty Reduction: Explaining Heterogeneity Across Countries and Time Periods*, in INEQUALITY & GROWTH 3 (T. Eicher & S. Turnovski eds., 2003).

⁵² *Report of the Development Strategy and Policy Analysis Unit Development Policy and Analysis Division Department of Economic and Social Affairs*, CONCEPTS OF INEQUALITY, Development Issues No. 1, 1 (2015); UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP), HUMANITY DIVIDED: CONFRONTING INEQUALITY IN DEVELOPING COUNTRIES 1 (2013).

⁵³ Bresson, *supra* note 50, at 294; David Dollar & Aart Kraay, *Growth is Good for the Poor*, 7 J. ECON. GROWTH 195 (2002).

⁵⁴ David Dollar & Aart Kraay, *supra* note 53, at 219.

declined.⁵⁵ Moreover, to the extent that economies are periodically subject to shocks of various kinds that undermine growth, greater inequality creates a more significant proportion of the population susceptible to poverty.⁵⁶ Subsequent work revealed how rising inequality also slowed down rates of improvement in human development indicators. To conclude, economists commonly subscribe to pro-poor growth to the degree that inequality correlates with extreme poverty.

To recall, the relationship between inequality and growth underlies a second concern—focusing on top incomes and inequality across the board beyond the exceptionally deprived. The empirical question is whether expansion is correlated to rising or falling inequality cumulatively beyond extreme poverty.

The discussion flows naturally from the Kuznets Curve. The hypothesis suggested in 1955 by Nobel laureate Simon Kuznets that, during the development process, inequality first rises and then falls within an inverse-U hypothesis. Simon Kuznets markedly used twentieth-century U.S. tax returns to couple income as measured by GDP per capita with income inequality. The resulting inverted U-shaped curve showed that as per capita income increases, inequality at first rises, but eventually, it declines.⁵⁷

Kuznets considered the shape of the curve positively and hypothesized that as economic development increases per capita income, more people are put in a situation to cash in on the prospects obtainable. Kuznets suggested several mechanisms for such a connection. An important one is a structural change. Developing countries are characterized by a large agricultural sector, a small industrial sector, and a service sector focusing on low-productivity and often informal services.⁵⁸ In the development process, industrialization takes place, increasing the size of the industrial sector with much higher productivity. This then leads to rising inequality (and a 'dualistic' structure of the economy) between the people in the impoverished agricultural sector and the much richer

⁵⁵ See Martin Ravallion, *Inequality is Bad for the Poor*, 6 (World Bank Pol'y Rsch., Working Paper No. 3677, 2005).

⁵⁶ See *id.*

⁵⁷ Simon Kuznets, *Economic Growth and Income Inequality*, 45 AM. ECON. REV. 1, 3-4 (1955). See also Emmanuel Saez & Gabriel Zucman, *Wealth Inequality in the United States Since 1913: Evidence from Capitalized Income Tax Data*, 131 Q. J. ECON. 519, 528 (2016).

⁵⁸ See Kuznets, *supra* note 57 at 8.

workers in the industrial sector.⁵⁹ As a structural change proceeds, more people shift to the industrial sector, and productivity in agriculture and the service sector increases, so the income differentials between the sectors fall again.

As sufficient income distribution data became, notably since the mid-1990s, several studies have challenged these assertions. Research followed Alesina and Rodrik,⁶⁰ Persson and Tabellini,⁶¹ Clarke,⁶² and Deininger and Squire.⁶³ Correspondingly, IMF studies found that income inequality negatively affects growth and sustainability.⁶⁴ These studies are based on the estimation of cross-country growth regressions in which a measure of inequality is added to a rich set of explanatory variables.

This finding typically used panel data that traced inequality development over the growth process.⁶⁵ In other cases, even those who strongly advocate for minimum living standards and social protection have argued that there is no need to restrict top incomes. The argument suggests that allowing rewards for more challenging work and higher risk-taking will encourage productivity and thus stimulate the growth of the whole economy.⁶⁶

⁵⁹ *Id.* at 12-14.

⁶⁰ Alberto Alesina & Dani Rodrik, *Distributive Politics and Economic Growth*, 109 Q. J. ECON 465 (1994) (showing evidence that inequality in land and income ownership is negatively correlated with subsequent economic growth).

⁶¹ Torsten Persson & Guido Tabellini, *Is Inequality Harmful for Growth?*, 84 AM. ECON. REV. 600 (1994) (using historic and post-war data concerning democratic countries authors show that inequality correlates negatively to economic growth).

⁶² George R. G. Clarke, *More Evidence on Income Distribution and Growth*, 47 DEV. ECON. J. 403 (1995) (concluding similarly for both democracies and non-democracies).

⁶³ Klaus Deininger & Lyn Squire, *New Ways of Looking at Old Issues: Inequality and Growth*, 57 J. DEV. ECON. 259 (1998) (providing longitudinal data showing little support for the Kuznets hypothesis; instead, the authors show that inequality reduces income growth for the poor, but not for the rich).

⁶⁴ Jonathan D. Ostry et al., *Redistribution, Inequality, and Growth*, IMF STAFF DISCUSSION NOTE 14/02, INTERNATIONAL MONETARY FUND (2014); Andrew Berg & Jonathan D. Ostry, *Inequality and Unsustainable Growth: Two Sides of the Same Coin?*, IMF STAFF DISCUSSION NOTE 11/08, INTERNATIONAL MONETARY FUND (2011).

⁶⁵ Deininger & Squire, *supra* note 63, at 275; *see also* Carola Grün & Stephan Klasen, *Growth, Inequality, and Well-Being: Intertemporal and Global Comparisons* (IAI Discussion Papers, No. 95, 2003).

⁶⁶ John E. Roemer & Alain Trannoy, *Equality of Opportunity*, in HANDBOOK OF INCOME DISTRIBUTION 217 (Antony Atkinson & François Bourgignon eds., 2015); Francisco H. G. Ferreira & Vito Peragine, *Individual Responsibility and Equality of Opportunity*, in THE OXFORD HANDBOOK OF WELL-BEING AND PUBLIC POLICY 747, 767 (Matthew Adler & Mark Fleurbaey eds., 2016) (favoring the concept of equality of opportunity rather than equality of outcomes accordingly).

Yet, more recently, the original cross-country evidence has been questioned. The availability of data on the income dispersal for a larger sample of countries and a more extended period has permitted researchers to explore the issue using more refined econometric techniques. Notably, in sharp contrast to the negative relationship between inequality and growth advocated by Alesina & Rodrik and by Persson & Tabellini, Barro find no evidence of an overall effect of inequality on growth.⁶⁷ Li and Zou,⁶⁸ Forbes,⁶⁹ and CastellÓ,⁷⁰ comparably, find support for a positive effect of inequality on growth.

And so, although a substantial part of the literature still considers inequality detrimental to growth, recent studies have once again challenged this relation and found a positive effect of inequality on growth. Findings have been invariable that changes in income and inequality are questionable or possibly unrelated.⁷¹ Supporting findings were found by Ravallion,⁷² and Easterly,⁷³ who detail the income-growth irregularity across countries.

In reflection, Pedro Cunha Neves et al.⁷⁴ reviewed 28 studies published over the last two decades examining the relationship between inequality and growth, running a meta-analysis.

⁶⁷ Robert J. Barro, *Inequality and Growth in a Panel of Countries*, 5 J. ECON. GROWTH 5 (2000) (adding that for growth, higher inequality tends to retard growth in poor countries and encourage growth in richer places).

⁶⁸ Hongyi Li & Heng-fu Zou, *Income Inequality is Not Harmful for Growth*, 2 THEORY & EVIDENCE 318, 332 (1998) (showing that income inequality is positively, and most of the time significantly, associated with economic growth).

⁶⁹ Kristin J. Forbes, *A Reassessment of the Relationship between Inequality and Growth*, 90 AM. ECON. REV. 869, 871 (2000) (suggesting that in the short and medium term, an increase in a country's level of income inequality has a significant positive relationship with subsequent economic growth).

⁷⁰ Amparo Castelló-Climent, *A Reassessment of the Relationship Between Inequality and Growth: What Human Capital Inequality Data Say?*, (Instituto Valenciano de Investigaciones Económicas, S.A., Working Papers Serie EC 2004-15, 2005).

⁷¹ See Aghion et al., *supra* note 42; Roland Benabou, *Inequality and Growth*, 11 NBER MACROECONOMICS ANN. 1450 (1996) (providing a theoretical literature review).

⁷² Martin Ravallion, *Inequality is Bad for the Poor* 6 (World Bank Pol'y Rsch., Working Paper No. 3677, 2005).

⁷³ Easterly reaches this conclusion with a wide panel dataset of 81 indicators covering up to 4 time periods (1960, 1970, 1980, and 1990). See William Easterly, *Life During Growth*, 4 J. ECON. GROWTH 239, 268 (1999) (showing that the changes in quality of life as income grows are surprisingly uneven).

⁷⁴ Pedro Cunha Neves, Óscar Afonso & Sandra Tavares Silva, *A Meta-Analytic Reassessment of the Effects of Inequality on Growth*, 78 WORLD DEV. 386 (2016).

Researchers covered studies published in scientific journals during 1994–2014 that surveyed the impact on the growth of inequality in income, land, and human capital distribution. Their results confirm an estimated coefficient of inequality's effect on growth between -0.14 and $+0.16$. Thus, there are studies documenting a negative correlation between inequality and growth and others finding positive signs.⁷⁵

To conclude, while it is generally acknowledged that pro-poor growth depends on inequality reduction, it is unclear how economic inequality, including vertical inequality, and growth correlate in the aggregate beyond extreme poverty. Of course, this is assuming one agrees on which inequality type to regulate.

b. Inequality of What?

Just as discussions on poverty reduction expanded from a debate limited to income, the discussion gradually covered many other dimensions of deprivation. These vary and include health, education and even environment-related inequalities.⁷⁶ To date, undoubtedly, a consensus over the multidimensional aspects of inequality is still absent, and researchers continuously rely on distinct group measures of inequality.⁷⁷ Inequality by income, gender, class, ethnicity, and household may construct different effects on growth as they function on macroeconomic outcomes via substitute paths. Further, even within groups, the impact of inequality on growth depends on the measure used.

In a convenient mirror image of egalitarian dialectics, economics Nobel laureate Amartya Sen in his Tanner Lecture of 1979,

⁷⁵ *Id.* at 390.

⁷⁶ See Michael W. Doyle & Joseph E. Stiglitz, *Eliminating Extreme Inequality: A Sustainable Development Goal, 2015–2030*, 28 ETHICS & INT'L AFFS. 5 (2014).

⁷⁷ Indicators suitable for ordinal and categorical data are rarely in use in the economics literature. See, e.g., Frank A. Cowell & Emmanuel Flachaire, *Inequality with Ordinal Data* (London Sch. of Econ. and Pol. Sci. (LSE), Discussion Paper No. DARP 16, 2014); David Madden, *Ordinal and Cardinal Measures of Health Inequality*, 19 HEALTH ECON. 243, 247 (2010) (comparing health inequality rankings showing considerable sensitivity to the choice between ordinal data and cardinal data indices). This adds to the fact that there is very little methodological discussion about multidimensional aspects of inequality. See Stephan Klasen et al., *Inequality – Worldwide Trends and Current Debates* 7 (Courant Rsch. Centre: Poverty, Equity and Growth Discussion Papers, No. 209, 2016).

advocated that the question amounts to “Equality of what?”⁷⁸ Amartya Sen asked what metric egalitarians should use to ascertain the extent to which their model is realized in a given society. Trying to answer the question from a philosophical standpoint, political philosopher G. A. Cohen asks, “What aspect(s) of a person’s condition should count in a fundamental way for egalitarians, and not merely as cause of or evidence of or proxy for what they regard as fundamental?”⁷⁹ In which aspect of a particular dimension does one want to increase equality and thus measure it accordingly?

Sen’s most crucial distinction probably concerns the discrepancy between the two types of inequalities. On the one hand is equality in opportunities attributed to differences in circumstances outside the individual’s influence, such as gender, ethnicity, location of birth, or family background.⁸⁰ Conversely, equality in outcomes is measured by income, wealth, or expenditure.⁸¹ Sen contends that such features are not only theoretically distinct but demanding equality in one aspect will inevitably imply inequality in another.⁸² Put differently, inequality of outcomes is expected to result from an inequality of opportunities in many instances.⁸³ To illustrate, if a talented person does not have the financial means to get an adequate education (inequality of opportunities), this will very likely translate into her having lower earnings later on, thereby causing inequality in outcomes as well. But at the same time, if two people have the same opportunities, their heterogeneity in preferences, values, efforts, and pure chance will ensure that their outcomes will not be identical.⁸⁴ In this spirit, one is further reminded by the inclination

⁷⁸ Amartya Sen, *Equality of What?*, in 1 TANNER LECTURES ON HUM. VALUES 195, 197 (Sterling M. McMurrin ed., 1979).

⁷⁹ Gerald Allan Cohen, *On the Currency of Egalitarian Justice*, 99 ETHICS 906, 906 (1989).

⁸⁰ See generally ERA DABLA-NORRIS ET AL., CAUSES AND CONSEQUENCES OF INCOME INEQUALITY: A GLOBAL PERSPECTIVE 9-18 (2015) (describing the interplay between inequality of outcomes and opportunities).

⁸¹ See, e.g., Miles Corak, *Income Inequality, Equality of Opportunity, and Intergenerational Mobility*, 27 J. ECON. PERSP. 79 (2013) (describing the relation between inequality and opportunity); Alan B. Krueger, *Land of Hope and Dreams: Rock and Roll, Economics, and Rebuilding the Middle Class*, WHITE HOUSE (June 12, 2013), <https://obamawhitehouse.archives.gov/blog/2013/06/12/rock-and-roll-economics-and-rebuilding-middle-class> [<https://perma.cc/J3VU-UD39>].

⁸² Sen, *supra* note 78, at 202.

⁸³ See Klasen & Misselhorn, *supra* note 51, at 2 (noting that insights on the impact of growth and distributional change on poverty reduction “could be used to assess prospects for poverty reduction”).

⁸⁴ *Id.*

of Rawls to favor the inconclusive observation whereby the distribution of opportunities and outcomes should be perceived as equally informative and essential to combat inequality.⁸⁵

The regulatory challenge, seen from a fairness standpoint, is not confined solely to inequalities in opportunities and outcomes. One should also consider inequalities in capabilities such as health or education status. Surely, the two measurements may operate differently on growth than inequality in wages and income. Most monetary variables are measured continuously, and all available inequality measures can be applied to such data.⁸⁶ The problem lies, though, in data that cannot be ordered along a cardinal scale. For such scaled data, the distance between the different categories has a consistent meaning throughout the distribution. This nevertheless means that meaningful results often remain deficient for most of the traditionally used inequality measures.

In the example of the inequalities in capabilities measuring education, one way to measure educational achievements is to use years of schooling. These are measured on a cardinal scale. One implicitly assumes that one more year of education has the same effect between the first and the second year as between the tenth and the eleventh year. However, if one wishes to consider educational degrees earned, those cannot be interpreted cardinally. Although having a Bachelor's degree is superior to obtaining a university entrance certificate, this distance is not necessarily the same as earning a Bachelor's and a Master's degrees. This also implies that it is impossible to calculate a mean for such data, which means most commonly used inequality indicators disqualify. The fact that these inequality measurements are associated implies that concentrating on one dimension at a time may underrate the accurate scale of societal inequalities and provide an inadequate foundation for policy.⁸⁷ The logic is clear. Economic inequality relates to social inequalities, whereas the latter is often incalculable.

Another illustration of the economic and regulatory challenge applies. One that tackles the frequent measurement of the inequality of income. At first, life expectancy correlates closely to income level.

⁸⁵ JOHN RAWLS, A THEORY OF JUSTICE 121 (1971).

⁸⁶ AMARTYA SEN, INEQUALITY REEXAMINED 2 (1992).

⁸⁷ See Doyle & Stiglitz, *supra* note 76 ("That these dimensions of inequality are related suggests that focusing on one dimension at a time may underestimate the true magnitude of societal inequalities and provide an inadequate basis for policy.").

This is known as the social gradient in health.⁸⁸ In the United States, the difference in life expectancy between men in the top 1 percent and the bottom 1 percent of the income distribution is fifteen years, and for women is ten years.⁸⁹ Yet, remarkably, comparable figures hold in Norway, a country with a universal health care system and much more significant economic equality, where the difference in life expectancy of men in the top 1 percent compared to the bottom 1 percent of the income distribution are 13.8 years, and for women is 8.4 years.⁹⁰

Lastly, the logic applies also when measuring inequality in the knowledge economy and intellectual property policy. Think of gender inequality accounting for the gender gap between female and male patentees. If gender differences are not carefully accounted for, patenting rate discrepancies between the sexes would sometimes barely make it an account of the political theory notion of outcome inequality instead of untainted gender inequality. This makes it a survey of the political theory of outcome inequality instead of strictly gender (but even opportunity, or else, access) inequality.⁹¹ Given gender discrepancies, one should consider relating the two notions of outcome and opportunity inequality. Namely, as outcome equality should be broadened to include occupations, activities, or distribution of income and wealth - equality of opportunity would remain a delusion. That is if it has not generated equality of outcome in these fields.⁹²

One should further consider the intricate corollary between inequality and discrimination. Indeed, numerous factors other than discrimination contribute to inequality. These may include social,

⁸⁸ Jonas Minet Kinge et al., *Association of Household Income with Life Expectancy and Cause-Specific Mortality in Norway, 2005–2015*, 321 J. AM. MED. ASS'N 1916, 1923 (2019).

⁸⁹ Raj Chetty et al., *The Association between Income and Life Expectancy in the United States, 2001–2014*, 315 J. AM. MED. ASS'N 1750, 1762 (2016).

⁹⁰ Kinge et al., *supra* note 88, at 1919.

⁹¹ See, e.g., Anne Phillips, *Defending Equality of Outcome*, 12 J. POL. PHIL. 1, 1-19 (2004).

⁹² *Id.* at 8 (“[T]he critique of ‘masculine models’ of employment or rationality has generated an argument for convergence. Both sexes should be able to strike a new balance between work life and family; or both sexes should be able to moderate the strictness of impartial justice with the compassion of care. In such arguments, equality is understood very much in outcome terms, though with outcome significantly broadened to include occupations, activities, and responsibilities as well as the distribution of income and wealth. The crucial move is the claim that equality of opportunity is a chimera if it has not generated equality of outcome in these fields.”).

cultural, and even gender differences, which may account for the mentioned patenting gender gap. There is plentiful evidence on that account, stretching from the United States Census analysis to sociological female entrepreneurship findings.⁹³ Lastly, seen from the much-overlooked development economics perspective, when thinking of patenting inequality across the north-south divide, it is also the case that most studies focus on U.S. data, United States Patent and Trademark Office (USPTO)'s, the U.S. Copyright Office, etc., and with minor exceptions, especially outside of OECD countries.⁹⁴

Lately, the COVID-19 pandemic illustrates the subject matter of regulatory perplexity. The pandemic undoubtedly widened economic, racial, and gender divides.⁹⁵ Feeding a “frightening rise in inequalities,” as the UN High Commissioner for Human Rights recently put it, COVID-19 nevertheless has had policy defiant inequality effects.⁹⁶ On the one hand, it highlighted persistent group discrimination modeled as horizontal inequalities. As the World Economic Forum reported, rich and poor people have widely disparate access to health care.⁹⁷ Considering inequality within

⁹³ See generally Christian Kiedaisch, *Growth and Welfare Effects of Intellectual Property Rights When Consumers Differ in Income* (Univ. of Zurich, Dep't of Econ., Working Paper No. 221, 2017) (introducing inequality by assuming that affluent consumers and poor consumers have distinct preferences overriding discrimination or crude inequality dialectics).

⁹⁴ As a result, the contribution of South-South intellectual property (IP) and trade to global inequality remains largely unaccounted for. Researchers, truth be told, often do not even remember to fence off south-south IP & trade-in their findings.

⁹⁵ See *Covid-19 and Inequality*, INEQUALITY, <https://inequality.org/facts/inequality-and-covid-19/> [https://perma.cc/J4]8-E6XC] (last visited Oct. 22, 2023) (providing data and tables demonstrating how the pandemic exacerbates inequality).

⁹⁶ Michelle Bachelete, *Equality Is at the Heart of Human Rights*, OHCHR (Dec. 9, 2021), <https://www.ohchr.org/en/2022/01/equality-heart-human-rights> [https://perma.cc/D68B-VE3E] (“Inequalities have fuelled the pandemic, and continue to do so. In turn, the pandemic has fed a frightening rise in inequalities, leading to disproportionate transmission and death rates in the most marginalized communities, as well as contributing to soaring poverty levels, increased hunger, and plummeting living standards.”).

⁹⁷ Joe Myers, *5 Things COVID-19 Has Taught Us About Inequality*, WORLD ECON. F. (Aug. 18, 2020), www.weforum.org/agenda/2020/08/5-things-covid-19-has-taught-us-about-inequality/ [https://perma.cc/ZE88-UYFV] (“Research in Europe has shown that, even in comparatively well-developed healthcare systems, inequality in access to health services persists. A 2018 report by the European Commission (PDF) says: ‘the lowest income quintiles are among the most disadvantaged groups in terms of effective access to healthcare.’”).

countries, the COVID-19 mortality among Brazil's indigenous population, to illustrate, has been nearly double the rate of Brazil's population as a whole, and the United States Navajo Nation has had an infection rate five times higher than the United States population.⁹⁸ More generally, World Bank researchers estimated that the pandemic would push between 143 million and 163 million people globally into extreme poverty between 2019 and 2021.⁹⁹ The World Bank further hypothesized that intra-country income inequality is likely to worsen as the pandemic disproportionately impacts vulnerable groups' incomes, such as "women, migrant workers, [and] those employed in lower-skilled professions or informal sectors."¹⁰⁰

On the other hand, the pandemic's mortality effects are distributed oppositely when considering it across countries or globally. In such a way, it harms more rich countries than poorer

⁹⁸ John Letzing, *This Is How COVID-19 Is Affecting Indigenous People*, WORLD ECON. F. (June 5, 2020), www.weforum.org/agenda/2020/06/covid-19-presents-an-inordinate-threat-to-indigenous-people/ [<https://perma.cc/Y2HX-JT7G>] ("Brazil is just one of the countries in the World Health Organization's Americas region with significant and remote indigenous populations deemed vulnerable to the pandemic. The WHO said the region recently accounted for half of the 10 countries in the world reporting the highest new number of cases over a 24-hour span."); *id.* ("That brought the total number of reported cases in the designated home of the Navajo people to 5,533, as the number of known deaths reached 252. For an area with an estimated population of 172,875, that translates into an infection rate more than five times that of the US as a whole.").

⁹⁹ See Daniel G. Mahler et al., *Updated Estimates of the Impact of COVID-19 on Global Poverty: Looking Back at 2020 and the Outlook for 2021*, WORLD BANK BLOGS (June 24, 2021), <https://blogs.worldbank.org/opendata/updated-estimates-impact-covid-19-global-poverty-looking-back-2020-and-outlook-2021> [<https://perma.cc/K3TJ-FPML>] ("In January 2021, we estimated that the pandemic will push between 119 and 124 million people into extreme poverty around the globe in 2020."); see also Press Release, World Bank, COVID-19 to Add as Many as 150 Million Extreme Poor by 2021 (Oct. 7, 2020), <https://www.worldbank.org/en/news/press-release/2020/10/07/covid-19-to-add-as-many-as-150-million-extreme-poor-by-2021> [<https://perma.cc/2BCJ-P2SK>] ("The COVID-19 pandemic is estimated to push an additional 88 million to 115 million people into extreme poverty this year, with the total rising to as many as 150 million by 2021, depending on the severity of the economic contraction.").

¹⁰⁰ WORLD BANK, GLOBAL ECONOMIC PROSPECTS 24 (2021); see Abi Adams-Prassl et al., *Inequality in the Impact of the Coronavirus Shock: Evidence from Real Time Surveys*, 189 J. PUB. ECON. 1 (2020) (presenting "real time survey evidence from the UK, US and Germany showing that the immediate labor market impacts of Covid-19 differ considerably across countries"); see also Badar Nadeem Ashraf, *Socioeconomic Conditions, Government Interventions and Health Outcomes During COVID-19*, 37 CEPR 141, 152 (2020) (showing the impact of socioeconomic conditions on health outcomes during the COVID-19 pandemic with data from 80 countries from January to May 2020).

ones, surprisingly. Francisco Ferreira et al. found that by “[u]sing the concept of life years lost to the disease . . . the mortality burden of the pandemic is positively correlated with national income per capita, despite the superior health and public prevention systems in rich countries.”¹⁰¹ Complicating counter inequality welfare economic policy further, these findings also reflect the older age structure of the population in more affluent countries, as opposed to poorer ones, and the pandemic’s high age-selectivity.¹⁰²

c. Equality, Redistribution, and Growth

Inequality alleviation redistribution policy offers a remaining welfare economics concern. It underlies the notion that even if one fathoms inequality’s social loss, its redistributive remedy may be uneconomical. At the outset, the underlying redistribution-economic growth nexus seems appealing. That is because redistribution generally appears benign regarding its impact on economic growth. Economic theory broadly recognizes that redistribution need not be inherently detrimental to growth. That is, to the degree that redistribution includes decreasing tax expenditures or loopholes that profit the rich or as part of broader tax reforms like in the case of higher inheritance taxes to counterbalance lower taxes on labor income.¹⁰³

Moreover, growth-enhancing redistribution is long-established when social insurance spending enhances the welfare of the poor

¹⁰¹ Francisco Ferreira et al., *Death and Destitution: The Global Distribution of Welfare Losses from the COVID-19 Pandemic*, 1 LSE PUB. POL’Y REV. 2, 5-6 (2021) (showing the relationship between the number of years of life lost to the pandemic per 100,000 inhabitants and GDP per capita for 145 countries).

¹⁰² Francisco Ferreira, *Inequality in the Time of Covid-19*, 58 FIN. & DEV. 20, 21 (2021) (“Richer countries suffer greater losses of life years per capita than poorer countries. Measurement error is likely substantial, with a number of poor countries, such as Burundi and Tanzania, clearly underreporting deaths, but the association is so strong that it is unlikely to be spurious. Among other things, it reflects the older age structure of the population in richer countries and an illness whose lethality is highly age-selective. Higher life expectancies, greater urbanization, and the pandemic’s spread along major trade routes also likely have played a role.”).

¹⁰³ See PETER H. LINDERT, *GROWING PUBLIC SOCIAL SPENDING AND ECONOMIC GROWTH SINCE THE EIGHTEENTH CENTURY* 227-45 (2004) (showing evidence that in some categories of redistributive public spending there is no adverse effect on growth, such as tax-financed infrastructure spending or spending on health and education).

and risk-taking.¹⁰⁴ Redistribution can similarly transpire when progressive taxes finance public investment or when higher health and education spending benefits the poor, helping to offset labor and capital market imperfections.¹⁰⁵

In such cases, redistributive policies can potentially increase growth and inequality alleviation. One would assume that the combined direct and indirect effects of redistribution – including the growth effects of the resulting lower inequality – are, on average, pro-growth.¹⁰⁶

The economic literature, nonetheless, counters inequality policymakers with a fragmentary challenge. This is as both theory and empirics still have much to account for the overall effects of redistribution. These are both redistribution's direct effects and as it acts through inequality. Regrettably, very little research looked at both inequality and redistribution simultaneously.¹⁰⁷

Then comes politics. On the relationship between national-level inequality and redistribution, Meltzer and Richard,¹⁰⁸ hypothesize that higher inequality will create public opinion pressures for redistribution. The notion is that, at least in democracies, political power is more evenly distributed than economic power so that a majority of voters will have the ability and incentive to vote for redistribution. However, as pointed out by Benabou,¹⁰⁹ and emphasized by Stiglitz,¹¹⁰ and Piketty,¹¹¹ this need not be the case if the rich have more political influence than the poor. Such political

¹⁰⁴ See Roland Bénabou, *Unequal Societies: Income Distribution and the Social Contract*, 90 AM. ECON. REV. 96, 114 (2000) (finding that state-funded public schools “essentially equalize expenditures across pupils”).

¹⁰⁵ Gilles Saint-Paul & Thierry Verdier, *Education, Democracy and Growth*, 42 J. DEV. ECON. 399, 406 (1993); Gilles Saint-Paul & Thierry Verdier, *Power, Distributive Conflicts, and Multiple Growth Paths*, 2 J. ECON. GROWTH 155, 156 (1997).

¹⁰⁶ Ostry et al., *supra* note 64, at 7.

¹⁰⁷ See *id.* (noting that “[t]he data are possibly scarce and unreliable for redistribution, even more so than for inequality”).

¹⁰⁸ Allan H. Meltzer & Scott F. Richard, *A Rational Theory of the Size of Government*, 89 J. POL. ECON. 914 (1981), at 924-25 (1981).

¹⁰⁹ Benabou, *supra* note 71.

¹¹⁰ See Doyle & Stiglitz, *supra* note 76. (Stressing the role of political- economy factors (especially the influence of the rich) in allowing financial excess to balloon ahead of the crisis).

¹¹¹ PIKETTY, *supra* note 6, at 27 (adding that “[t]he history of the distribution of wealth has always been deeply political”).

constraints could include electoral rules,¹¹² government partisanship,¹¹³ racial and ethnic diversity,¹¹⁴ religiosity,¹¹⁵ etc.¹¹⁶ In short, given inequality alleviation, it seems complicated to override the formative conclusions of IMF researchers, Tanzi and Zee, indicating that the relationship between growth and the level of total taxes (or income taxes, per income inequality) is feasibly negative.¹¹⁷ Still, upon its redistributive ramifications, this relationship is not robust and is sensitive to welfare economics inequality policy specification.¹¹⁸

II. INEQUALITY ALLEVIATION AS HUMAN RIGHTS

IHRL is a central legal policy lever for poverty-related social justice. Upendra Baxi relatedly tags our time as the “Age of Human Rights.”¹¹⁹ More so, in the past two decades, development policy has been increasingly framed in the language of human rights and

¹¹² See generally Torsten Persson et al., *Electoral Rules and Government Spending in Parliamentary Democracies*, 2 Q. J. POL. SCI. 1 (2007); TORSTEN PERSSON & GUIDO TABELLINI, *THE ECONOMIC EFFECTS OF CONSTITUTIONS* (2003)

¹¹³ See generally David Bradley et al., *Distribution and Redistribution in Postindustrial Democracies*, 55 WORLD POL. 193 (2003); TORSTEN TORBEN IVERSEN, *CAPITALISM, DEMOCRACY, AND WELFARE* (2005).

¹¹⁴ ALBERTO ALESINA & EDWARD L. GLAESER, *FIGHTING POVERTY IN THE U.S. AND EUROPE: A WORLD OF DIFFERENCE* 146 (2004).

¹¹⁵ See generally Kenneth Scheve & David Stasavage, *Religion and Preferences for Social Insurance*, 1 Q. J. POL. SCI. 255 (2006).

¹¹⁶ See e.g., Torben Iversen & David Soskice, *An Asset Theory of Social Policy Preferences*, 95 AM. POL. SCI. REV. 875 (2001) (arguing that “individuals who have made risky investment in skills will demand insurance against the possible future loss of income from those investment”); Torben Iversen & David Soskice, *Electoral Institutions and the Politics of Coalitions: Why Some Democracies Redistribute More Than Others*, 100 AM. POL. SCI. REV. 165 (2006) (arguing that the electoral system plays a key role in redistribution).

¹¹⁷ See Vito Tanzi & Howell Zee, *Fiscal Policy and Long-Run Growth*, 44 IMF STAFF PAPERS 179, 200 (1997) (discussing, at the conclusion of a metanalysis, the negative effects of distortive taxes, progressive taxes and other taxes on public investment and saving).

¹¹⁸ Cf. *id.* at 200 (“what remains unclear is the precise channels through which this impact operates”). See also, Ostry et al., *supra* note 64, at 26 (on the uncertainty caused by the scarcity of redistribution reliable data).

¹¹⁹ UPENDRA BAXI, *THE FUTURE OF HUMAN RIGHTS*. 1 (2008); see Gauri & Gloppen, *supra* note 14, at 485 (arguing that “[h]uman rights are probably the dominant normative conception in the contemporary globalized world”).

related concepts.¹²⁰ Human Rights principles, thus, emphasize the equality of rights upon the intrinsic value of equality. Accordingly, equality is a valued social norm rooted in human rights principles, as inequality remains an issue of social injustice.¹²¹ Trailing equality dialectics, societies, as regulation-takers, potentially differ on their part concerning the level of inequality that would be acceptable, or aversion to, or tolerance of inequality.¹²²

Yet, since the adoption of the Universal Declaration of Human Rights (UDHR) seventy-four years ago, through the first decade of the 2000s, the IHRL policy seems to have discounted the soaring economic inequality. Instead, as shall be explained, IHRL focused on reducing poverty. This emphasis was primarily reflected in the United Nations Millennium Development Goals (MDGs), enshrined as MDG 1 to eradicate extreme poverty.¹²³ Although there has been a rising awareness of the extreme and growing economic inequalities in the past decade, policymakers complemented poverty with an equality goal. In 2015, the United Nations General Assembly notably adopted the 2030 Agenda, including seventeen Sustainable Development Goals (SDGs).¹²⁴ SDG 10, particularly, calls for reducing inequality within and between countries.¹²⁵

¹²⁰ See Gauri & Gloppen, *supra* note 14, at 486 (noting that human rights dialectics has been used in the post-War era primarily in the terms of economic output from about 1950-1970, and poverty concerns between 1970-1990).

¹²¹ Sakiko Fukuda-Parr, *It's About Values: Human Rights Norms and Tolerance for Inequality*, OPENDEMOCRACY (Dec. 22, 2015), <https://www.opendemocracy.net/en/openglobalrights-openpage/it-s-about-values-human-rights-norms-and-tolerance-for-inequalit/> [https://perma.cc/VX38-FBAZ].

¹²² Malte Lübker, *Inequality and the Demand for Redistribution: Are the Assumptions of the New Growth Theory Valid?*, 4 SOCIO-ECON. REV. 117, 141 (2006); see also Fukuda-Parr, *supra* note **Error! Bookmark not defined.**, at 63.

¹²³ U.N. Secretary-General, *Road Map Towards the Implementation of the United Nations Millennium Declaration*, 56, U.N. Doc. A/ 56/326. (Sept. 2001).

¹²⁴ The SDGs were formally adopted in a United Nations General Assembly (UNGA) Resolution named the '2030 Agenda.' See G.A. Res. 70/1 (Oct. 21, 2015). On July 6, 2017, a UNGA resolution turned the SDGs "actionable" by identifying specific targets for each goal and providing indicators to measure progress. See G.A. Res. 71/313 (Jul. 6, 2017).

¹²⁵ G.A. Res. 70/1, at 14 (Oct. 21, 2015). Other U.N. agencies have published supporting reports on economic inequalities. See U.N. Dep't of Econ. and Soc. Affs. (UNDESA), *Inequality in a Rapidly Changing World: World Social Report (2020)*; U.N. Dev. Program (UNDP), *Beyond Income, Beyond Averages, Beyond Today: Inequalities in Human Development in the 21st Century*, Human Development Report 2019 (2019); IMF, *Fiscal Monitor: Tackling Inequality* (Oct. 2017); Int'l Lab. Org. (ILO), *Global Wage Report 2016/2017: Wage Inequality in the Workplace* (2016); World Bank Group, *Poverty and Shared Prosperity 2016: Taking on Inequality*

Before the revelation of the 2015 SDGs, any significant conventional debate regarding inequality and its reduction was rejected for a generation or more. International institutions and governing elites would hardly concede it as relevant to development. They often dismissed inequality-focused academics and activists as hard-leftists.¹²⁶ Thus, the inclusion of SDG 10, which calls explicitly for “reduced inequalities,” is a potential game-changer and indicates a paradigm shift in how the international community sees and advances development.¹²⁷ The SDG’s Goal 10 targets reflect efforts to address other inequalities, discussed subsequently, including vertical income inequality, socioeconomic and political exclusion; horizontal inequality; and disparities between countries in international economic arrangements.¹²⁸

Even if one favors this strand of thought, present-day international human rights law (IHRL) advocacy still does not fully capture inequality reduction.¹²⁹ Much conceptual reasoning is still needed. Samuel Moyn has challenged human rights advocates “to extricate themselves from their neoliberal companionship, even as others mark their limitations, in order to restore the dream of equality to its importance in both theory and practice.”¹³⁰ Phillip Alston further laments the general ignorance by the IHRL community of the consequences of extreme inequality and that

(2016); U.N. Educ., Sci. and Cultural Org. (UNESCO), *World Social Science Report: Challenging Inequalities: Pathways to a Just World* (2016); U.N. Dep’t of Econ. and Soc. Affs. (UNDESA), *Inequality Matters: Report of the World Social Situation* (2013); U.N. Dev. Program (UNDP), *Humanity Divided: Confronting Inequality in Developing Countries* (2013).

¹²⁶ See David Hulme, *Inequality and the Sustainable Development Goals*, UNIV. MANCHESTER, <https://www.manchester.ac.uk/research/beacons/features/global-inequalities/inequality-sustainable-development/> [https://perma.cc/4ZK8-MBR7].

¹²⁷ *Id.*

¹²⁸ See MacNaughton, *supra* note 17, at 1066 (reviewing the targets and concluding that they mostly vaguely worded, and lack actionable quantitative commitments).

¹²⁹ See Philip Alston (Special Rapporteur on Extreme Poverty and Human Rights) *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, 3, U.N. Doc. A/HRC/29/31 (May 17, 2015) (concluding that “[t]he international human rights community has largely reciprocated the economists’ neglect [of human rights] by ignoring the consequences of extreme inequality in the vast majority of its advocacy and analytical work.”).

¹³⁰ SAMUEL MOYN, *NOT ENOUGH: HUMAN RIGHTS IN AN UNEQUAL WORLD* 11 (2018).

“much of the work of the treaty bodies seems unduly confined to focus on specific violations of non-discrimination.”¹³¹

This uninviting observation further withstands conflicting key declaratory avowal. This argument surely begs careful conceptual consideration. At the outset, the UN resolution *Transforming Our World* declares that the UN’s 2030 Development Agenda is grounded in IHRL.¹³² A consolidated evaluation of the matter from the prism of sustainable development proposes triple modeling of inequalities which IHRL could carefully model henceforth.¹³³ These are national inequalities, including *horizontal inequality* between population groups and *vertical inequality* between the top and bottom quintiles of income, wealth, or social outcome. Thirdly, lays also *global inequality* between countries. In the natural flow of the argument, IHRL largely discounts the latter two, which we offer to remedy.

a. The Value of Human Rights Measurement

‘Better regulation’ is almost invariably conceived nowadays in seeking the most quantifiable impact for the minimal imposition of regulatory burden. Public policy initiatives that promote regulatory reform consecutively focus on forms of cost-benefit analysis or variations thereof.¹³⁴ Yet, while economic inequality remains insufficiently correlated with economic growth, inequality’s social effects are gradually being detected. In *The Spirit Level: Why More Equal Societies Almost Always Do Better*, Richard Wilkinson and Kate

¹³¹ MacNaughton, *Emerging Human Rights*, *supra* note 22, at 14.

¹³² See G.A. Res 70/1, ¶ 10, *Transforming Our World: The 2030 Agenda for Sustainable Development* (Sept. 25, 2015) [hereinafter UNGA, *Transforming Our World*].

¹³³ See generally U.N. High Commissioner for Human Rights, *Remarks at the Summit for Adoption of the Post-2015 Development Agenda* (Sept. 25, 2015), <https://www.ohchr.org/en/2015/09/agenda-equality-zeid-raad-al-hussein-united-nations-high-commissioner-human-rights>. [https://perma.cc/SQS5-FEMA]

¹³⁴ See Eve Darian-Smith & Colin Scott, *Regulation and Human Rights in Socio-Legal Scholarship*, 31 L. & POL’Y 271, 272 (2009); see generally BARAK MEDINA & EYAL ZAMIR, *LAW, ECONOMICS, AND MORALITY* (2010) (combining economic methodology and deontological morality into economic models); BRONWEN MORGAN, *SOCIAL CITIZENSHIP IN THE SHADOW OF COMPETITION: THE BUREAUCRATIC POLITICS OF REGULATORY JUSTIFICATION* (2003) (presenting qualitative findings of over 1,700 pieces of legislation describing how social welfare regulation is justified in the language imposed by economic theory).

Pickett presented compelling evidence that more economically equal societies have better social outcomes among high-income countries (as well as among states in the United States) than less similar societies.¹³⁵ These social effects attest that less equal societies have higher rates of homicides and imprisonment. They also show lower life expectancy, higher child mortality rates, more teenage births, drug and alcohol addiction, more obesity, and more downward social mobility, among other adverse social outcomes.¹³⁶ Given that welfare economics remains an inadequate policy lever for inequality-related economic growth, could international human rights law (IHRL) offer a viable alternative? Possibly yes.

Outside of the economic growth, social effects arguably offer little policy leverage for welfare-economics based thinking. IHRL could fill this regulatory gap twofold. Firstly, IHRL's fairness jurisprudence is better suited as an inequality alleviation policy lever due to its numerous regulation theoretical advantages. At a start, IHRL's fairness advantages include its non-consequentialist nature, given the empirical and theoretical uncertainty that the consequentialist economic threshold demands. That is, in comparison with the welfare economics alternative.

IHRL's fairness advantages further include its responsive regulatory nature in contrast to the inclusive top-bottom welfare economics approach. IHRL is also advantageous because human rights are more susceptible to collaborative regulation based on networked governance than welfare economics. IHRL is beneficial in alleviating inequality due to its instrumental rhetorical quality. IHRL contributes toward forming rights consciousness on the part of those whose rights are violated. These concerns are discussed below.

Additionally, IHRL could fill the regulatory gap left by economic theory from a development policy standpoint. Namely, by utilizing the human rights-based approach (HRBA). The latter, indeed, is the United Nations-led conceptual framework for the process of human development that is normatively based on international human

¹³⁵ RICHARD WILKINSON & KATE PICKETT, *THE SPIRIT LEVEL: WHY MORE EQUAL SOCIETIES ALMOST ALWAYS DO BETTER* (2009); *see also* CTR. FOR ECON. AND SOC. RTS. (CESR), *FROM DISPARITY TO DIGNITY: TACKLING ECONOMIC INEQUALITY THROUGH THE SUSTAINABLE DEVELOPMENT GOALS 12* (2016) (noting that economic inequality perpetuates poverty and creates stark disparities in access to civil and political rights, including access to justice and political participation).

¹³⁶ *See* WILKINSON & PICKETT, *supra* note 135, at 19.

rights standards and operationally directed to endorsing and protecting human rights.¹³⁷

The question remains: given IHRL's loose coverage of inequality alleviation by category, why bid for it? The answer is undoubtedly comparative, underscoring the twofold of the welfare economics' policy lever alternative. That is, considering the irregular inequality-economic growth empirical nexus discussed in the previous Part and the completing jurisprudential advantages IHRL fairness dialectics offer over the economic theory's efficiency.

In reply, IHRL regulatory advantages are intimately associated with fairness dialectics on four accounts. Firstly, IHRL's fairness jurisprudence is non-consequentialist by design.¹³⁸ In such a way, inequality alleviation could still be promoted even in the shadow of economic growth or other pre-assured measurements. Indeed, it is hard to measure economic, social, and cultural human rights since their progressive realization relies on the fiscal capacity of the state, for which little or no comparable measures are available.¹³⁹ Measuring human rights is thus tricky and may lead to moral relativism.¹⁴⁰ Moreover, raw numbers of violations are continuous without an upper limit, which can make them intractable for

¹³⁷ See generally U.N. Sustainable Development Group (UNSDG), Human Rights-Based Approach, <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach> [https://perma.cc/B72F-SZDL] (summarizing the U.N. human rights-based approach); see also, UNSDG, THE HUMAN RIGHTS BASED APPROACH TO DEVELOPMENT COOPERATION TOWARDS A COMMON UNDERSTANDING AMONG UN AGENCIES, https://unsdg.un.org/sites/default/files/The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf [https://perma.cc/7BFL-KBDV].

¹³⁸ Cf. Louis Kaplow & Steven Shavell, *Fairness Versus Welfare*, 114 HARV. L. REV. 961, 969 n.8 (2001) (discussing that most conceptions of fairness are nonconsequentialist whereas much of welfare economic is consequentialist); see also HENRY SIDGWICK, *THE METHODS OF ETHICS* 96 (7th ed. 1907); see also A COMPANION TO ETHICS 205 (Peter Singer ed. 1993) (surveying and criticizing deontological theories of contemporary philosophers).

¹³⁹ See JOE FOWERAKER & TODD LANDMAN, *CITIZENSHIP RIGHTS AND SOCIAL MOVEMENTS: A COMPARATIVE AND STATISTICAL ANALYSIS* 46-69 (2000); see also Linda C. Keith, *The United Nations International Covenant on Civil and Political Rights: Does it Make a Difference in Human Rights Behavior?*, 36 J. PEACE RSCH. 95, 97 (1999).

¹⁴⁰ See Todd Landman, *Measuring Human Rights: Principle, Practice, and Policy*, 26 HUM. RTS. Q. 906, 910 (2004) ("It is often difficult to judge the relative weight of one type of violation over another, thereby committing some form of moral relativism.").

comparative purposes,¹⁴¹ while the level of available information on violations can vary.¹⁴² Consequently, international Government Organizations (IGOs) and NGOs often refuse to rank countries concerning their human rights practices for fear of recrimination and loss of credibility. To illustrate, the United Nations Development Programme (UNDP) came under solid political criticism for its 1991 *Human Development Report*, which used a measure of human rights that ranked all UN member states according to categories derived from the UN Declaration.¹⁴³ Therefore, those measuring human rights in practice must recognize the limits of their data.¹⁴⁴

Given IHRL's non-consequentialist nature, it could adopt a rule for a class of inequality, be it national or global, based directly on what is deemed relevant characteristics of the unfairness in question. IHRL could emphasize the importance of inclusive economic growth, which aims to ensure that the benefits of economic development are shared by all, including the poorest and most marginalized.¹⁴⁵ This can help to reduce inequality by promoting equitable access to resources, opportunities, and services.¹⁴⁶

¹⁴¹ See Herbert F. Spierer, *Violations of Human Rights? How Many? The Statistical Problems of Measuring Such Infractions Are Tough, But Statistical Science Is Equal To It?*, 49 AM. J. ECON. & SOC. 199, 201 (1990).

¹⁴² See Landman, *supra* note 140, at 910 referring to Kenneth A. Bollen, *Political Rights and Political Liberties in Nations: An Evaluation of Rights Measures, 1950 to 1984*, in HUMAN RIGHTS AND STATISTICS: GETTING THE RECORD STRAIGHT 188, 198 (Richard P. Claude & Thomas B. Jabine eds., 1992) (noting that current human rights indicators are often impressionistic, which impairs comparison across countries).

¹⁴³ See Landman, *supra* note 140, at 910 referring to Russel L. Barsh, *Measuring Human Rights: Problems of Methodology and Purpose*, 15 HUM. RTS. Q. 87, 87-90 (1993) (discussing the outcry at the United Nations Development Program's use of the "Human Freedom Index" because of the highly subjective and culture specific nature of the concept of "freedom").

¹⁴⁴ See Landman, *supra* note 140, at 924 referring to Alasdair C MacIntyre, *AGAINST THE SELF-IMAGES OF THE AGE: ESSAYS ON IDEOLOGY AND PHILOSOPHY* 260-279 (1971) (discussing the difficulties of establishing a workable framework of comparative political science). On the other hand, there are those who argue that cross-cultural measurement of human rights is possible since there are "homeomorphic equivalents" of rights that can be probed using social scientific methods. See ALISON DUNDES RENTELN, *INTERNATIONAL HUMAN RIGHTS: UNIVERSALISM VERSUS RELATIVISM* 11 (1990) (discussing a "cross-cultural approach for validating human rights").

¹⁴⁵ See WORLD BANK, *DATA BANK: WORLD DEVELOPMENT INDICATORS* (2015), <https://databank.worldbank.org/source/world-development-indicators> [<https://perma.cc/387L-BENW>].

¹⁴⁶ *Id.*

Welfare economic regulation, by contrast, is consequentialist.¹⁴⁷ That is because welfare economic assessments of legal rules depend on the effects of the rules on economic growth and its redistributive solutions.¹⁴⁸

Further, IHRL's fairness advantages include its responsive judicial nature. That is in contrast to the largely inclusive approach of welfare economics. Welfare economics takes into account any effect of a legal rule that is pertinent to anyone's well-being.¹⁴⁹ Therefore, ex-ante behavior, all of its conceivable outcomes, and the likely effects of legal rules are central features examined under welfare economic analysis. In contrast, responsive regulation is valuable in achieving normative goals, such as human rights.¹⁵⁰ The idea of responsive regulation—first developed in the context of business regulation—is built on pyramids of supports and pyramids of sanctions.¹⁵¹ Responsive regulation should be responsive to industry structure in that different structures will be conducive to different degrees and forms of regulation.¹⁵² The idea is to start by identifying the strengths of a particular system or actor and then expand them through building capacity.¹⁵³ The responsive rationale applies throughout IHRL. It should equally apply when catering to inequality alleviation.

¹⁴⁷ See Kaplow & Shavell, *supra* note 138, at 969 n.8 (“Welfare economics . . . is a particular species of consequentialism, for it is based (exclusively) on a particular set of consequences, namely, those that bear on individuals’ well-being.”); see also SIDGWICK, *supra* note 138, at 98; see also MEDINA & ZAMIR, *supra* note 134, at 11-40 (discussing the nonconsequentialist nature of economic analysis).

¹⁴⁸ Our analysis denounces the distinct form of welfarism known as *utilitarianism*. As distributive judgements are only based on the sum of individuals’ well-being maximization principle. See generally Kaplow & Shavell, *supra* note 138. Surely, faced with economic growth, inequality may well withstand utilitarianism to the poor’s demise.

¹⁴⁹ See *id.* at 1007.

¹⁵⁰ See generally IAN AYRES & JOHN BRAITHWAITE, *RESPONSIVE REGULATION: TRANSCENDING THE DEREGULATION DEBATE* 4-19 (1992) (noting that responsive regulation is adaptive both in what triggers regulation and its response to account for differing behaviors and contexts to maximize both the benefits of the market system while also giving governments options to respond to market failures); see also John Braithwaite, *The Essence of Responsive Regulation*, 44 U. BRIT. COLUM. L. REV. 475, 480-83 (2011) (discussing a pyramidal responsive regulatory regime of ever escalating supports and sanctions as actors continue to defy the regulator’s requests).

¹⁵¹ See AYRES & BRAITHWAITE, *supra* note 150, at 4-19; see also Braithwaite, *supra* note 150, at 480-83.

¹⁵² See AYRES & BRAITHWAITE, *supra* note 150, at 4.

¹⁵³ *Id.*

Responsive regulation in IHRL highlights the value of persuasion, education, and capacity building as the first steps to achieving compliance with human rights norms.¹⁵⁴

IHRL accordingly provides guidance and standards for governments in shaping their policies and programs to address inequality. This includes the obligation to undertake non-discriminatory policies, address the root causes of inequality, and prioritize the needs of marginalized and disadvantaged groups.¹⁵⁵

At IHRL's base are dialogue-based sanctions.¹⁵⁶ These notably include education and persuasion. Increasingly harsh measures apply moving up the sanctions pyramid, such as shaming, sanctions, and, finally, in extreme conditions, even ejection from the IHRL institutional system.¹⁵⁷ Escalating the severity of penalties takes place only when the previous step has manifestly failed.¹⁵⁸ The main principles of IHRL responsive regulation include flexibility, giving voice to stakeholders, and engaging resisters with a fairness orientation which inequality alleviation policy underlie. Given that inequality alleviation through IHRL is national transnational or global, scholars such as John Braithwaite and Peter Drahos, make a similar argument regarding the potential of its responsive regulatory value for developing countries, which also lack the institutional infrastructure and capacity for top-down regulation.¹⁵⁹

Thirdly, IHRL's is advantageous in alleviating inequality as human rights are highly susceptible to collaborative regulation. So much so based on networked governance in comparison with welfare economics' inequality-related policies especially with tax and social transfers.

¹⁵⁴ Braithwaite, *supra* note 150, at 482; *see also* Hilary Charlesworth, *A Regulatory Perspective on the International Human Rights System*, in *REGULATORY THEORY: FOUNDATIONS AND APPLICATIONS* 357, 369 (Peter Drahos ed., 2017) (discussing the mechanisms of Braithwaite's pyramid of responsive regulation).

¹⁵⁵ *See* G.A. Res. 2200A (XXI) at 1-2 (Dec. 16, 1966).

¹⁵⁶ *See* Braithwaite, *supra* note 150, at 480-83; Charlesworth, *supra* note 154, at 368.

¹⁵⁷ Braithwaite, *supra* note 150, at 482.

¹⁵⁸ *See* Braithwaite, *supra* note 150, at 482; Charlesworth, *supra* note 154, at 368-69.

¹⁵⁹ John Braithwaite, *Responsive Regulation and Developing Economies*, 34 *WORLD DEV.* 884, 891-94 (2006); *see also* JOHN BRAITHWAITE & PETER DRAHOS, *GLOBAL BUSINESS REGULATION* 31-32 (2000) (discussing that attempts of developing countries to create independent epistemes have failed and proposing means of helping these developing countries counter business interests).

IHRL fosters cooperation and coordination between states, international organizations, and civil society in promoting and protecting human rights, including reducing inequality. This cooperation and coordination can lead to the development of best practices, knowledge sharing, and the mobilization of resources to address inequality.¹⁶⁰

With regulatory collaboration, such as within IHRL, intergovernmental organizations (IGOs) promote business self-regulation by its responsive regulation nature.¹⁶¹ IHRL IGOs engage directly with industry and other target groups, promoting and supporting self-regulation and steering self-regulation toward more effective and legitimate forms through ideational influences and material inducements.¹⁶² IHRL's responsive regulation focuses not solely on treaty texts, their formal methods of implementation, or their impact on states who are parties to them. Instead, IHRL focuses on how norms, as expressed in the treaties, can be mobilized by non-state actors to regulate states' and others' behavior.¹⁶³ Many examples apply. Such as the incorporation of intellectual property concerns into public health and access to medicines movement,¹⁶⁴ or the influence of national and international disability coalitions in the drafting of the 2006 *Convention of the Rights of Persons with Disabilities*.¹⁶⁵

Finally, IHRL is advantageous in alleviating inequality due to its renowned, albeit often modulated, instrumental rhetorical quality. In such a way, IHRL contributes toward forming rights consciousness on the part of those whose rights are violated nationally and globally.¹⁶⁶ Human rights might also raise citizens'

¹⁶⁰ See THE WORLD BANK, SOCIAL PROTECTION AND LABOR AT THE WORLD BANK 2000-2008 4-5 (Robert Holzman ed., 2008).

¹⁶¹ See Kenneth W. Abbott & Duncan Snidal, *Taking Responsive Regulation Transnational: Strategies for International Organizations*, 7 *REGUL. & GOVERNANCE* 95, 95 (2013); Eve Darian-Smith & Colin Scott, *Regulation and Human Rights in Socio-Legal Scholarship*, 31 *L. & POL'Y* 271, 273 (2009).

¹⁶² See Abbott & Snidal, *supra* note 161, at 97.

¹⁶³ See Charlesworth, *supra* note 154, at 368.

¹⁶⁴ See *id.* (citing Susan Sell, *PRIVATE POWER, PUBLIC LAW: THE GLOBALIZATION OF INTELLECTUAL PROPERTY* 142-62 (2003) (for intellectual property in pharmaceuticals, shifting it to public health from an issue of corporate property rights)).

¹⁶⁵ See *id.* (citing HUMAN RIGHTS AND DISABILITY ADVOCACY (Maya Sabatello, & Marianne Schulze eds., 2013)) (for the context of disabilities law).

¹⁶⁶ See Gauri & Gloppen, *supra* note 14, at 494 (for the broader context of the Human Rights-based approaches (HRBA)); ORG. FOR ECON. COOP. AND DEVELOP.

expectations regarding their rights.¹⁶⁷ Human rights scholars repeatedly emphasize that as human rights do not address economic inequality directly, at least presently, instrumentalism and rhetoric are essential to realizing human rights objectives.¹⁶⁸ The underlying notion is that even though there is no explicitly stated right to equality under IHRL, the negative externalities economic inequalities inflict on a range of civil, political, economic, social, and cultural rights transforms economic inequality into a human rights issue that IHRL cannot ignore.¹⁶⁹ In a realm of imperfect alternatives, IHRL remains, at least presently, a better suited tool for economic inequality alleviation. Especially, horizontal inequality concerning the extreme poor, vertical inequality across society and among the elite, and global inequality between countries.

b. National Inequality

i. Horizontal Inequality: Beyond Extreme Poverty

Horizontal inequality between social, ethnic, linguistic, or other population groups raises concerns about excluding disadvantaged or marginalized populations from political, economic, and social opportunities.¹⁷⁰ It is often the result of discrimination and historical disadvantage. Undoubtedly, numerous factors other than discrimination contribute to inequality.¹⁷¹ Plentiful literature stretching from the United States Census data analysis to the

(OECD), *INTEGRATING HUMAN RIGHTS INTO DEVELOPMENT: DONOR APPROACHES, EXPERIENCES AND CHALLENGES* 28-29 (2006).

¹⁶⁷ See Gauri & Gloppen, *supra* note 14, at 494-95 (discussing the seminal research by Sally Engle-Merry, Sally Falk More, Stuart Scheingold, and Michel McCann on the creation of rights consciousness).

¹⁶⁸ See Reisch, *supra* note 31, at 36; Balakrishnan & Heintz, *supra* note 17, at 402; RADHIKA BALAKRISHNAN, JAMES HEINTZ & DIANE ELSON, *RETHINKING ECONOMIC POLICY FOR SOCIAL JUSTICE* 1-12 (2016); Juan Pablo Bohoslavsky, *Economic Inequality, Debt Crisis and Human Rights*, 41 *YALE J. INT'L L.* 177, 183 (2016); see also Rodrigo Uprimny Yepes & Sergio Chaparro Hernández, *Inequality, Human Rights, and Social Rights: Tensions and Complementarities*, 10 *HUMAN. 376* (2019) (discussing the relationship between economic inequality and human rights).

¹⁶⁹ See, e.g., Balakrishnan & Heintz, *supra* note 17, at 400-02; Alston, *supra* note 129, at 34.

¹⁷⁰ Fukuda-Parr, *supra* note 1, at 63; see MacNaughton, *supra* note 17, at 37.

¹⁷¹ See, e.g., Gillian MacNaughton, *Untangling Equality and Non-Discrimination to Promote the Right to Health Care for All*, 11 *HEALTH AND HUM. RTS. J.* 2 (2009).

sociological literature on female entrepreneurship draws a complex plethora of considerations beyond discriminative dialectics.¹⁷² Overriding discrimination contentions (crudely modeled as horizontal inequality), Christian Kiedaisch, for instance, describes inequality by assuming that affluent consumers and poor consumers have distinct preferences.¹⁷³ One might contemplate cautious attention to inequality accordingly.

Horizontal inequalities have long been the core concern of IHRL.¹⁷⁴ Treaty bodies tend to consider questions of economic inequality through a nondiscrimination lens, addressing it primarily as horizontal inequality.¹⁷⁵ In 1945, the UN Charter established the promotion and protection of human rights as one of the four purposes of the organization, and it specified only one human right – nondiscrimination (Article 1(3)). IHRL treaty law addressed horizontal inequalities shortly after.¹⁷⁶ That is in the *International Convention on the Elimination of Discrimination against Women* (CEDAW 1979) and the *Convention on the Elimination of Racial Discrimination* (CERD).¹⁷⁷ Nondiscrimination provisions are further set forth in the constituting Article 2 of both the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).¹⁷⁸ Other core human rights treaties focus entirely on nondiscrimination, such as the *Convention on the Rights of Persons with Disabilities* (CRPD

¹⁷² See, e.g., Christian Kiedaisch, *Growth and Welfare Effects of Intellectual Property Rights When Consumers Differ in Income* (2017).

¹⁷³ *Id.*

¹⁷⁴ See MacNaughton, *Emerging Human Rights*, *supra* note 22, at 38.

¹⁷⁵ Rhoda E. Howard-Hassmann, *Constraints on Economic Inequality: Comparing Canada and the United States*, in HUMAN RIGHTS AND ECONOMIC INEQUALITY 63, 104, tbl.4.4 (Gillian MacNaughton, Diane Frey & Catherine Porter eds., 2021) (entitled Social or other groups identified by the treaty bodies in the COBs addressing economic inequality).

¹⁷⁶ *Id.*

¹⁷⁷ Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, (Dec. 18, 1979); International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. Res. 2200A (XXI), (Dec. 16, 1966); International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), (Dec. 21, 1965).

¹⁷⁸ International Covenant on Civil and Political Rights (ICCPR), G.A. Res. 2200A (XXI), (Dec. 16, 1966) (“These prohibit discrimination that has the ‘purpose or effect’ of preventing the equal enjoyment of human rights by people on the basis of ‘race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’”).

2006).¹⁷⁹ National laws also add abundant non-discrimination provisions globally.¹⁸⁰ Ultimately, the constitutional legitimacy of the entire United Nations system promotes respect for human rights regardless of race, sex, language, or religion.¹⁸¹

Yet, as far as international human rights law goes, the buck stops here. IHRL law does not adequately address the two other forms of inequalities: vertical and global. More principally, IHRL does not explicitly address such disparities between countries. Alas, IHRL generally addresses intra-state issues with a narrow focus on horizontal inequalities. Arguably, inequalities between countries may substantially impact the realization of human rights and the achievement of UN-led sustainable development. From a development standpoint, the plight of the worst-off is indeed nation-based.¹⁸² Yet, it can also be measured regardless of which countries the poor live in. The latter approach assumes a standard absolute metric of identifying the worst-off, such as using per capita income, income poverty (such as the \$1.90 a day poverty line), or multidimensional poverty, such as the Global Multidimensional Poverty Index (MPI) published by UNDP.¹⁸³ Such a borderless focus

¹⁷⁹ See MacNaughton, *Emerging Human Rights*, *supra* note 22, at 39.

¹⁸⁰ International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), (Dec. 21, 1965); Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, (Dec. 18, 1979); International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. Res. 2200A (XXI), (Dec. 16, 1966); International Covenant on Civil and Political Rights (ICCPR), G.A. Res. 2200A (XXI), (Dec. 16, 1966); *see also* HUMAN RIGHTS AND DISABILITY ADVOCACY (Maya Sabatello, & Marianne Schulze eds., 2013).

¹⁸¹ *See* U.N. Charter art. 1, ¶ 3; U.N. Charter arts. 55-56 (members commit to taking action to advance human rights for all without distinction).

¹⁸² On nation-based inequality, *see, e.g.*, Shaohua Chen & Martin Ravallion, *China's Uneven Progress in Poverty Reduction*, 82 J. DEVELOP. ECON. 1 (2007) (discussing China's inequality alleviation efforts); Guanghua Wan, Ming Lu & Zhao Chen, *Globalization and Regional Inequality in China*, 53 REV. OF INCOME AND WEALTH 35 (2007) (also discussing China's inequality alleviation efforts); Thomas Weisskopf, *Why Worry About Inequality in the Booming Indian Economy?* 46 ECON. & POL. WEEKLY 41 (2011) (discussing India's attempts to alleviate income inequality); Gaurav Datt & Martin Ravallion, *Has India's Economic Growth Become More Pro-Poor in the Wake of Economic Reforms?* (World Bank Pol'y Rsch., Working Paper No. 5103, 2009) (also discussing India's income inequality alleviation programs); Arden Finn & Murray Leibbrandt, *MOBILITY AND INEQUALITY IN THE FIRST THREE WAVES OF NIDS, SALDRU* (Working Paper No. 120, 2014) (discussing South Africa's inequality alleviation efforts); GIOVANNI ANDREA CORNIA, *FALLING INEQUALITY IN LATIN AMERICA: POLICY CHANGES AND LESSONS* (2014) (discussing Latin American countries' efforts to reduce income inequality).

¹⁸³ U.N. Develop. Programme (UNDP), *Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience*, Human Development Report (2014).

on the worst-off should be closely related to cosmopolitan social justice views.

If IHRL law is to integrate inequality policy relating to sustainable development, preceding institutional blunders ought to be evaded. The historical discussion over the introduction of a stand-alone inequality policy offers imperative insight. Negotiating the UN Millennium Development Goals (MDGs) concerns with inequality captures a fundamental missing principle from the MDGs.¹⁸⁴ The decision to exclude inequality and human rights in the 18 Goals of the MDGs were due to achieving political consensus.¹⁸⁵

The good news, therefore, is that this political choice was not the result of a disregard for inequality. Inequality was introduced as one of the leading policy preferences in relevant UN venues. Consultations organized in the United Nations Sustainable Development Group (UNDG)'s Global Public Consultations over the *A Million Voices: The World We Want* report notably depicted inequality as a human rights matter. The information equally portrayed inequality as a social drawback that can impair social cohesion (and harm economic prosperity). MDG negotiators essentially pleaded for the necessity to go beyond extending social prospects and handle the core reasons for inequality, including via fiscal and other macroeconomic guidelines.¹⁸⁶ The United Nations Children's Fund adopted a comparably favorable stand (UNICEF) as did the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women).¹⁸⁷ All reflected a clear need

¹⁸⁴ U.N. Develop. Grp. (UNDG), *A Million Voices: The World We Want, A Sustainable Future with Dignity for All*, 21 (2013); see, U.N. Sys. Task Team on the Post-2015 U.N. Development Agenda, *Review of the contributions of the MDG Agenda to foster development: Lessons for the Post-2015 UN Development Agenda: Discussion Note*, 6 & Table 1 (Mar. 2012).

¹⁸⁵ U.N. Sys. Task Team on the Post-2015 U.N. Development Agenda, *supra* note 184, at 7-8; see also, Jan Vandemoortele & Enrique Delamonica, *Taking the MDGs Beyond 2015: Hasten Slowly*, 41 *IDS BULL.* 60 (2010); Jan Vandemoortele, *The MDG Conundrum: Meeting the Targets Without Missing the Point*, 27 *DEVELOP. POL'Y REV.* 355, 364 (2009).

¹⁸⁶ U.N. Develop. Grp. (UNDG), *A Million Voices: The World We Want, A sustainable future with dignity for all*, *supra* note 184, at 21.

¹⁸⁷ UNICEF and UN Women, *Addressing Inequalities: Synthesis Report of Global Public Consultation* (Mar. 13, 2013), <http://genderandenvironment.org/resource/addressing-inequalities-synthesis-report-of-global-public-consultation-the-global-thematic-consultation-on-addressing-inequalities-on-the-post-2015-development-agenda/>. [https://perma.cc/BRE5-Q28D].

for a focus on inequality that would feasibly comprise all brands of inequalities. Horizontal inequalities and global inequalities between countries were finally addressed, albeit narrowly, in specified and relatively narrow Millennium Development Goals (MDGs). These included MDG 3 – promoting gender equality and empower women, and MDG 8 – developing a global partnership for development.¹⁸⁸ Vertical and global inequalities were left out, regrettably.

In the backdrop of this constricted inequality alleviation approach, the core constraint in modeling inequality narrowed to a subsidiary of extreme poverty eradication. The UN Department of Economic and Social Affairs (UNDESA) reports advocate that the higher the level of inequality, the more difficult it is to reduce poverty.¹⁸⁹ Ultimately, much of the argument against a stand-alone Goal reflected the perspective of inequality as social exclusion and measurement of extreme poverty. A reduction in inequality is assuredly indispensable to reaching the deriving UN's 2015 Sustainable Development Goal (SDG) 1 – End poverty in all its forms.¹⁹⁰ Similarly, a reduction in inequality caters to numerous other SDGs by 2030.¹⁹¹ Inequality was subsequently modeled as part of poverty in the UN's metadata of indicators.¹⁹²

Extreme poverty reduction, not inequality alleviation per se, triumphed as the initial concern that donor countries led. This, however, can and should be revised. To recall, the Post-2015 process was about continuing the MDG agenda, which was a poverty agenda, subject to modification. This was a donor-driven agenda to set priorities for international aid efforts for marginalized groups.¹⁹³ Inequality thus sustained a 'getting to zero' policy in achieving the

¹⁸⁸ U.N. Dep't of Econ. and Soc. Affairs (UN DESA), Statistics Division, SDG Indicators Metadata Repository, <https://unstats.un.org/sdgs/news/> [<https://perma.cc/SS8A-AHR7>].

¹⁸⁹ UNESCO, *supra* note 125, at 9.

¹⁹⁰ World Bank Group, *supra* note 125 at 69.

¹⁹¹ MacNaughton, *supra* note 17, at 1054.

¹⁹² See, The UN Statistical Office (UNSD), *SDG Indicators Metadata Repository*, <http://unstats.un.org/sdgs/metadata/> [<https://perma.cc/44SM-X4LL>] (last visited October 2023); see Fukuda-Parr, *supra* note **Error! Bookmark not defined.**, at 67 (citing the United Nations Statistics Division's indication that "[s]hared prosperity recognizes that while growth is necessary for improving economic welfare in a society, progress is measured by how those gains are shared with its poorest members") (internal citation omitted).

¹⁹³ See Fukuda-Parr, *supra* note **Error! Bookmark not defined.**, at 63; see also Fukuda-Parr, *MILLENNIUM DEVELOPMENT GOALS: IDEAS, INTERESTS, INFLUENCE* (2017).

critical poverty goals—education, health, water, sanitation, etc.¹⁹⁴ To achieve this objective, a particular effort was needed to end the discrimination against marginalized and vulnerable groups, including children, the elderly, the disabled, and ethnic minorities.¹⁹⁵ Thus, the Western block, led by the United States and joined by Canada, and Israel, offered a leading position against a stand-alone inequality section. Their joint statement to the 10th session of the Open Working Group (OWG) ON Sustainable Development Goals represents the case:¹⁹⁶

We are less convinced by a standalone goal on inequality. This could lead us to a sterile debate that economists have been having for generations and that we are unlikely to resolve here. We see much greater practical potential and concrete impact in addressing inequality through goals and targets related to poverty eradication . . . [w]e see substantial potential for common ground around target areas like eradicating extreme poverty and reducing the percentage of people in each country living below their country's national poverty line. The latter would be a powerful way to operationalize our commitment to reducing inequalities and lifting the floor for the most vulnerable.¹⁹⁷

Other members of the OWG, mostly donor countries such as Australia, the Netherlands, and the United Kingdom, proposed wording targeting reducing social groups' inequalities.¹⁹⁸ Statements of many delegations and civil society groups emphasized the importance of inequality but similarly referred most often to gender equality and vulnerable groups accordingly.¹⁹⁹ The

¹⁹⁴ See Fukuda-Parr, *supra* note **Error! Bookmark not defined.**, at 64.

¹⁹⁵ *Id.*

¹⁹⁶ Elizabeth Cousens, *Remarks by Ambassador Elizabeth Cousens, U.S. Representative to ECOSOC, for the US/Canada/Israel Team, 10th Session of the SDG Open Working Group, on Methodology and Consolidation of Focus Areas: Poverty Eradication and Promoting Equality*, 3-4 (2014), <https://sustainabledevelopment.un.org/content/documents/8457us.pdf> [<https://perma.cc/KP9S-HYWL>].

¹⁹⁷ *Id.*

¹⁹⁸ Australia, The Netherlands and The United Kingdom, Statement to Sustainable Development Goals Open Working Group 10, Cluster 1: Poverty Eradication, Promote Equality, Open Working Group on Sustainable Development Goals (Mar. 31, 2013), <http://sustainabledevelopment.un.org/owg.html>. [<https://perma.cc/V2K7-PTKF>].

¹⁹⁹ See, Fukuda-Parr, *supra* note **Error! Bookmark not defined.**, at 65.

losing case for a stand-alone inequality Goal was introduced by the G-77 and China. This was part of the Rio+20 agenda that the G-77 and China aimed to carry into the SDG framework.²⁰⁰ The Global South ineffectively bargained for a more expansive, holistic vision for a fairer world. The donor countries unsurprisingly won the day. Settling the long period of negotiation that led to SDGs' 2030 Agenda, the major donors in the North ultimately enacted a kind of Millennium Development Goals-plus set of goals, still closely focused on MDG-like extreme poverty objectives, particularly given Least-Developed Countries (LDCs). As pointed out by Stiglitz,²⁰¹ Piketty,²⁰² and others,²⁰³ inequality alleviation is doomed to rely on political will. Designing a stand-alone inequality policy beyond extreme poverty to cover vertical and global inequalities arguably remains a political choice, not an inevitability.

ii. *Vertical Inequality and Top Incomes*

Vertical inequality is a second type of inequality that IHRL mistreats.²⁰⁴ Such inequality, as mentioned, refers to disparities between the top and bottom quintiles of income, wealth, or social outcome. From a human rights standpoint, vertical inequality of income and wealth undoubtedly impacts a wide range of economic, social, cultural, civil, and political rights destructively.²⁰⁵

Yet, IHRL addresses vertical inequality merely under standard equality provisions. Consequently, IHRL generally does not consider excessive or extreme inequality.²⁰⁶ In contrast to horizontal

²⁰⁰ *Id.*

²⁰¹ Doyle & Stiglitz, *supra* note 76 (stressing the role of political- economy factors (especially the influence of the rich) in allowing financial excess to balloon ahead of the crisis).

²⁰² See Piketty, *supra* note 6, at 27. (suggesting that “[t]he history of the distribution of wealth has always been deeply political”).

²⁰³ WORLD INEQUALITY REPORT 2022, *supra* note 3.

²⁰⁴ For human rights scholars acknowledging the need to expand human rights law accordingly, see MacNaughton, *supra* note 17, at 1051, referring to Ignacio Saiz & Gaby Oré Aguilar, *Introducing the Debate on Economic Inequality: Can Human Rights Make a Difference?*, OPEN GLOB. RTS. (Oct. 27, 2015) <https://www.opendemocracy.net/en/openglobalrights-openpage/introducing-debate-on-economic-inequality-can-human-ri/> [<https://perma.cc/H7UA-NL9S>]; Balakrishnan & Heintz, *supra* note 17; Fukuda-Parr, *supra* note 1.

²⁰⁵ MacNaughton, *supra* note 17, at 1055.

²⁰⁶ Such as Article 26 of the ICCPR considering all persons as “equal before the law” entitled to “equal protection of the law,” as well as under substantive

inequalities, which raise concerns about marginalized groups, vertical inequalities raise concerns about economic distribution across society and, in particular, the concentration of wealth and power among the elite.²⁰⁷

Human rights scholars differ on whether vertical economic inequality is or ought to be a human rights concern. Focusing on vertical inequality, Gillian MacNaughton identifies four different human rights positions offering a convenient opening. At one end of the spectrum, scholars argue that human rights have been complicit with neoliberalism and market policies that have facilitated the gross economic inequalities that exist today.²⁰⁸ Concentrating on the appropriation of human rights by governments and multinationals, Upendra Baxi goes on to argue that “the paradigm of the Universal Declaration of Human Rights (UDHR) is being steadily, but surely, supplanted by that of trade-related, market-friendly human rights.”²⁰⁹ Be that as it may, unless directly linked to poverty or discrimination, distributional equity has not featured as a human rights policy.²¹⁰ It begs the question why this view is still not perceived conclusive. Samuel Moyn is generally thought to offer a second opposing interpretation. In his seminal book, *Not Enough: Human Rights in an Unequal World*, he argues that human rights have nothing to say about economic

provisions guaranteeing specific economic and social rights. Cf. Gillian MacNaughton, *Untangling Equality and Nondiscrimination to Promote the Right to Health Care for All*, 11 HEALTH & HUM. RTS. J. 47, 51 (2009) (discussing using the International Bill of Human Rights to alleviate inequality and how it may be used to advance human rights).

²⁰⁷ See, Fukuda-Parr, *supra* note **Error! Bookmark not defined**.63.

²⁰⁸ Jessica Whyte, *Powerless Companions or Fellow Travellers? Human Rights and the Neoliberal Assault on Post-Colonial Economic Justice*, RADICAL PHILOSOPHY, 2, 13, 26 (2018); Wendy Brown, ‘The Most We Can Hope For . . .’: *Human Rights and the Politics of Fatalism*, 103 S. ATL. Q. 451, 461 (2004); OHCHR, REALIZING THE RIGHT TO DEVELOPMENT: ESSAYS IN COMMEMORATION OF 25 YEARS OF THE UNITED NATIONS DECLARATION ON THE RIGHT TO DEVELOPMENT (Stephen Marks ed., 2013).

²⁰⁹ UPENDRA BAXI, THE FUTURE OF HUMAN RIGHTS 234 (2008).

²¹⁰ Anja Rudiger, *A Framework for Fiscal Justice: How Human Rights Can Change Public Finance*, in HUMAN RIGHTS AND ECONOMIC INEQUALITY 143, 147 (Gillian MacNaughton et al. eds., 2021). For works addressing poverty and human rights, see UNESCO’s four-volume series, FREEDOM FROM POVERTY AS A HUMAN RIGHT: WHO OWES WHAT TO THE VERY POOR? (Thomas Pogge ed., 2007). See also David Bilchitz, *Poverty and Fundamental Rights: The Justification and Enforcement of Socio-Economic Rights* (2008); IRENE KHAN, THE UNHEARD TRUTH: POVERTY AND HUM. RTS. (2009); TOOMAS KOTKAS ET AL., SPECIFYING AND SECURING A SOCIAL MINIMUM IN THE BATTLE AGAINST POVERTY (2019); Simon Kuznets, *Economic Growth and Income Inequality*, 45 AM. ECON. REV. 1 (1955); Polly Vizard, POVERTY AND HUM. RTS. (Lucie E. White & Jeremy Perelman eds., 2010).

inequality as they are not intrinsically or normatively related.²¹¹ Human rights, according to Moyn, do not impose any ceiling on economic inequality but merely establish a floor of protection, ensuring the sufficiency of human rights regardless of economic equality.²¹² The human rights field foregrounds primary sectoral outcomes, and it is possible to achieve such results in a context of inequity. IHRL would accordingly entail a floor of universal fundamental rights given extreme poverty, not a ceiling of wealth or consumption.²¹³ That is as long as everyone can access fundamental rights.²¹⁴ Human rights, accordingly, are inherently compatible only with radical vertical economic inequalities.²¹⁵ Offering a more empirical account, Moyn concludes that IHRL is thus not well-equipped to treat core vertical inequalities.

Both these polarized views, however, are primarily perceived as potentially marginal and overly principled. Among them, thus, lies a third instrumental position, which seemingly underlies a present scholarly consensus, conceivable for our IHRL policy leveraging reasoning. Those who share this position hold, like Moyn, that human rights do not address economic inequality directly, or at least have not to date. Equally, this position recognizes that economic inequalities damage human rights and that greater economic equality is instrumentally crucial to realizing human rights.²¹⁶ The underlying notion is that even though there is no explicitly stated right to equality under IHRL, the negative externalities economic inequalities inflict on a range of civil, political, economic, social, and

²¹¹ See MOYN, *supra* note 130, at 11; Samuel Moyn, *A Powerless Companion: Human Rights in the Age of Neoliberalism*, 77 L. & CONTEMP. PROBS. 147 (2014); see e.g., Julia Dehm, *Pragmatic Compromise Between the Ideal and the Realistic': Debates over Human Rights, Global Distributive Justice and Minimum Core Obligations in the 1980s*, in HISTORIES OF GLOBAL INEQUALITY 157 (Christian Olaf Christiansen & Steven L. B. Jensen eds., 2019) (providing a historical account of vertical inequality and development policy during the 1960s-1980s coinciding with the human rights movement of the 1970s).

²¹² See MOYN, *supra* note 130, at 11

²¹³ See Balakrishnan & Heintz, *supra* note 17; Bohoslavsky, *supra* note 168, at 48; Rudiger, *supra* note 210, at 146.

²¹⁴ Balakrishnan & Heintz, *supra* note 17; see Rudiger *supra* note 210, at 146 (discussing that human rights "entail a floor of universal basic rights, not a ceiling of wealth or consumption.").

²¹⁵ See also MARTHA NUSSBAUM, *WOMEN AND HUMAN DEVELOPMENT: THE CAPABILITIES APPROACH* (2000); Yepes & Hernández, *supra* note 168, at 380.

²¹⁶ Alston, *supra* note 129, at 34; BALAKRISHNAN, HEINTZ & ELSON, *supra* note 168; Yepes & Hernández, *supra* note 163.

cultural rights effectively transform economic inequality into a human rights issue that IHRL cannot ignore realistically.²¹⁷

A fourth more conceptual position is that equality is a central principle of human rights, and therefore, human rights should tackle economic inequalities directly. Gillian MacNaughton argues that the principle of equality in IHRL is the main to the holistic human rights framework and must apply to economic and social inequalities beyond civil and political ones.²¹⁸ Silva applies a right to vertical equality with respect to the right to housing, proposing myriad policies,²¹⁹ etc.²²⁰ Indeed, as economic inequality is not always directly linked to poverty or discrimination, distributional equity is still not featured as a human right.²²¹ While drafting the *International Bill of Human Rights*, there was minimal debate concerning vertical inequality.²²² Instead, there was an assumption that economic development would lead to a reduction in economic inequality between countries funneled by a progressive realization of economic and social rights.²²³

Against this backdrop, the review of North/South inequality was primarily articulated as a critique of colonialism.²²⁴ Vertical inequality, consequently, has been sidelined and mostly ignored by the UN General Assembly and the UN human rights system. There is no human rights treaty addressing economic inequality comprehensively, no human rights provisions explicitly recognizing any right to economic or social equality, and no consensus that human rights should or could address vertical or global inequalities.²²⁵

²¹⁷ See, e.g., BALAKRISHNAN, HEINTZ & ELSON, *supra* note 168, at 48; Alston, *supra* note 129, ¶ 54.

²¹⁸ Gillian MacNaughton, *Equality Rights Beyond Neoliberal Constraints*, in *ECONOMIC AND SOCIAL RIGHTS IN A NEOLIBERAL WORLD* 103 (Gillian MacNaughton & Diane F. Frey eds., 2018); MacNaughton, *supra* note 17; Gillian MacNaughton, *Beyond a Minimum Threshold: The Right to Social Equality*, in *THE STATE OF ECONOMIC AND SOCIAL HUMAN RIGHTS: A GLOBAL OVERVIEW* 271 (Lanise Minkler ed., 2013).

²¹⁹ Vicente Silva, *The Potential Impact of the Right to Housing to Address Vertical Inequalities*, in *HUMAN RIGHTS AND ECONOMIC INEQUALITY* 364 (Gillian MacNaughton et al. eds., 2021).

²²⁰ See e.g., Fukuda-Parr, *supra* note 1, at 63 (suggesting that human rights theorists recognize the intrinsic, not merely instrumental, value of equality).

²²¹ Rudiger, *supra* note 210, at 147.

²²² Julia Dehm, *Righting Inequality: Human Rights Responses to Economic Inequality in the United Nations*, 10 *HUMAN*. 443, 444 (2019).

²²³ *Id.* at 445.

²²⁴ *Id.* at 444.

²²⁵ See MacNaughton, *Emerging Human Rights*, *supra* note 22, at 39-40.

The 'basic needs' approach was sidelined during the 1990s, given the rise of the World Bank's neoliberal sway towards development policy.²²⁶ It could nevertheless be said to draw insight from development policy as part of policy reform.

Initially, the developmental challenge remains as vertical equality is still not directly targeted even in the 2030 Development Agenda.²²⁷ In March 2020, a new SDG 10 indicator – 10.4.2 – was adopted to measure the “redistributive impact of fiscal policy” based on the Gini coefficient indicator commonly used to measure economic inequality.²²⁸ The UN 2030 Agenda appears to contain a strong, albeit vaguely targeted, the norm for reducing income inequality. SDG 10: “Reduce income inequality within and among countries,” became central to the 2030 Agenda and deeply connected to achieving most, if not all, of the other SDGs.²²⁹ The SDGs include several universal or zero-based targets, including ending hunger and ending extreme poverty, which ultimately requires the elimination of inequalities in these social outcomes for everyone.²³⁰ The SDGs further place considerable importance on disaggregation of data by income, disability, ethnicity, rural/urban location, gender, age, and other relevant categories.²³¹

Yet, the SDG Goal 10 does not include a minimum target for reducing vertical inequalities, even nationally. This was among the main reasons for initiating SDG 10.²³² To date, the targets and indicators focus on including marginalized groups for

²²⁶ See Dehm, *supra* note 211, at 166.

²²⁷ See MacNaughton, *Emerging Human Rights*, *supra* note 22, at 50. Catherine Porter nevertheless upholds that governments should monitor vertical inequalities based on a combined read of SDG target 16.6 to build effective, accountable and inclusive institutions, and target 16.7 to ensure inclusive and participatory decision making. See Catherine Porter, *How Can Economists Help Human Rights Practitioners to Measure Changes in Economic Inequalities?*, in HUMAN RIGHTS AND ECONOMIC INEQUALITY 115, 117 (Gillian MacNaughton et al. eds., 2021).

²²⁸ UNDESA, *SDG Indicators: Data collection Information & Focal points* (2023).

²²⁹ MacNaughton, *supra* note 17, at 1054.

²³⁰ *Id.* at 1066 (referring to Faiza Shaheen, *Inequality Within and Among Countries*, in INTERNATIONAL NORMS, NORMATIVE CHANGE, AND THE UN SUSTAINABLE DEVELOPMENT GOALS ¶ 6.42 (Noha Shawki ed., 2016); Edward Anderson, *Equality as a Global Goal*, 30 ETHICS & INT'L AFFAIRS 189, 189 (2016)).

²³¹ MacNaughton, *supra* note 17, at 1066 (referring to Report of the Inter-Agency and Expert Group on Sustainable Development Goal Indicators, at 2, U.N. Doc. E/CN.3/2016/2/Rev.1, Annex IV (Mar. 2016)).

²³² MacNaughton, *supra* note 17, at 1066 (“The MDGs did not address vertical inequalities of income, wealth or social outcome. In this respect, the SDGs are a substantial improvement.”).

socioeconomic and political opportunities to escape poverty.²³³ They neglect, however, issues of extreme inequality and the concentration of income and wealth at the top. Consequently, no designated target would oblige countries to vertically reduce the unequal distribution of income and wealth within and between countries.²³⁴ Lastly, most SDG 10 Targets and 11 indicators, including ending hunger and ending extreme poverty, remain vague and do not offer a benchmark for achieving them. They also provide no deadline to realize them.²³⁵

Beyond the weak wording on most targets, a critical flaw is the omission of a target to reduce inequalities in income and wealth within and between countries. The lead target in this framework is Target 10.1 on vertical economic disparities seeks to, “[b]y 2030, progressively achieve and sustain income growth of the bottom 40 per cent of the population at a rate higher than the national average.”²³⁶ This is arguably an ambitious target to achieve a more even income distribution within a country and creates incentives to adopt policies for pro-poor growth.

Yet, it is not an outcome measure of inequality or distribution of income and wealth. It responds directly to a goal of reducing poverty rather than conventional vertical inequality.²³⁷ That is,

²³³ Anderson, *supra* note 230, at 190-91 (noting that some metrics require goals be achieved for every subpopulation and not just at the nation-level); Fukuda-Parr, *supra* note **Error! Bookmark not defined.**, at 65; MacNaughton, *supra* note 17, at 1050 (“The article concludes that interpretations of international human rights to date also fall short in terms of addressing income, wealth and social inequalities.”); UNGA, Transforming Our World, *supra* note 132, at 21.

²³⁴ Anderson, *supra* note 230, at 197 (“The lack of a specific target for reducing international (or global) income inequality is perhaps a surprise, given that around two-thirds of income inequality at the global level is due to inequality between countries, as opposed to inequality within countries.”); Ignacio Saiz & Kate Donald, *Tackling Inequality Through Sustainable Development Goals: Inequality in Practice*, 21 INT’L J. HUM. RTS. 1029, 1032 (2017) (“Addressing economic inequality through Goal 10 is therefore a central human rights concern. However, the Goal’s approach is somewhat oblique.”); MacNaughton, *supra* note 17, at 1050 (“The article concludes that interpretations of international human rights to date also fall short in terms of addressing income, wealth and social inequalities.”).

²³⁵ MacNaughton, *supra* note 17, at 1066 (“[M]ost of the SDG 10 targets are vague, not measurable and provide no deadline to achieve them.”).

²³⁶ UNGA, Transforming Our World, *supra* note 132, at 21.

²³⁷ See, Fukuda-Parr, *supra* note **Error! Bookmark not defined.**, at 65 (“The lead target in this framework is one of the Target 10.1 on vertical economic inequality: ‘achieve and sustain income growth of the bottom 40 per cent of the population that is higher than the national average’. This is arguably an ambitious target as a means to achieving a more even distribution of income within a country, and creates incentives to adopt policies for pro-poor growth. But it is not an

Target 10.1 addresses the bottom 40% of the population and says nothing about the inequality between the bottom 40% as equal to the top 10% or the top 1%.²³⁸

Possibly, Target 10.1 does not address overall income inequality at all. To meet this target, the income of the bottom 40% might rise faster than the national average, while the inequality between the bottom 40% and the top 10%, and indeed the top 1%, continues to grow. Moreover, Target 10.1 does not require any decrease in inequality lest there is income growth nationally.²³⁹ The bottom 40% will be entitled to nothing if the national average does not increase.²⁴⁰ Similarly, when the national average income increases only slightly, which is a common scenario in many developed nations, the lowest 40% of earners are consequently limited to gains marginally above this modest rate.²⁴¹

As the myth of tax cuts — whereby tax cuts for the rich “trickle down” to the poorer classes — is busted²⁴² As of 2022, the World Inequality Report, led by Piketty, notably used four years of data and research to show that the top half holds about 98% of the world’s wealth, with even higher concentrations the further up you rise in tax brackets — the top 10% alone has 76% of the world’s wealth. That leaves the bottom half with 2% of the world’s wealth.²⁴³

To be sure, there is no shortage of policy initiatives countering vertical inequalities beyond extreme poverty. The challenge

outcome measure of inequality or distribution of income and wealth. It responds directly to a goal for reducing poverty rather than inequality. It does not respond to concerns for extreme inequality.”).

²³⁸ *Id.* at 66.

²³⁹ MacNaughton, *supra* note 17, at 1058 (“If the national average does not grow, the bottom 40% would be entitled to nothing . . .”).

²⁴⁰ *Id.*

²⁴¹ *Id.* (“[I]f the national average grows at an incredibly low rate, as is the case in many developed countries, the bottom 40% is entitled to little more than this low rate.”); see, also Thomas Pogge & Mitu Sengupta, *The Sustainable Development Goals (SDGs) As Drafted: Nice Idea, Poor Execution*, 24 WASH. INT’L L. J. 571, 583 (concluding that SDG 10 is lost in target 10.1, which links any reduction in inequalities to economic growth).

²⁴² See, e.g., WORLD INEQUALITY REPORT 2022, *supra* note 3, at 170 (“The lack of clear linkages between tax cuts for the wealthy and positive effects on growth and employment has also been demonstrated in recent theoretical and empirical studies carried out in many countries.”).

²⁴³ See *id.* at 10 (depicting chart of global income and wealth inequality). (Per capita income growth was 2.2% a year in the U.S. between 1950 and 1990. But when the number of billionaires exploded in the 1990s and 2000s — growing from about 100 in 1990 to around 600 today — per capita income growth fell to 1.1%).

continuously remains the lack of political will.²⁴⁴ The administration under President Biden has introduced a plan named the “Billionaire Minimum Income Tax.” This plan focuses on individuals with assets exceeding \$100 million, enforcing a 20% tax floor that would also apply to “unrealized gains” – a move away from traditional income to taxing wealth growth directly. This is because the wealth of the ultra-rich typically accrues from investments rather than salaries, leading to their lower relative tax rates compared to the average working American.²⁴⁵

Similarly, a French Socialist presidential candidate proposed a 75 percent tax rate on top incomes, and the U.K.’s Conservative-Liberal Democrat coalition government has floated the idea of a “mansion tax” to bring the maximum income tax rate down.²⁴⁶ These proposals still run into fierce hardline conservative neoliberal opposition advocating free trade, less public spending, and lower taxes. Vertical inequality alleviation remains our generation’s IHRL challenge.

c. Global inequality

i. Regulatory Lunacy?

The third type of inequality that IHRL discounts is global inequality found between countries.²⁴⁷ From a policy standpoint,

²⁴⁴ See Juliana Kaplan, *Biden’s Billionaires Tax is ‘Better Than Nothing,’ Says Leading Wealth Inequality Researcher Thomas Piketty*, BUSINESS INSIDER (Apr. 4, 2022), <https://www.businessinsider.com/bidens-billionaires-tax-is-better-than-nothing-thomas-piketty-2022-4> [<https://perma.cc/K5TH-MGKJ>] (stating that a billionaire’s tax is publicly supported, but that it falls on Congress to enact legislation).

²⁴⁵ OXFAM, PROFITING FROM PAIN: THE URGENCY OF TAXING THE RICH AMID A SURGE IN BILLIONAIRE WEALTH AND A GLOBAL COST-OF-LIVING CRISIS 3 (May 23, 2022), <https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/2022-05/Oxfam%20Media%20Brief%20-%20EN%20-%20Profiting%20From%20Pain%2C%20Davos%202022%20Part%202.pdf> [<https://perma.cc/J7XF-S2JE>] (discussing increasing poverty while “a new billionaire has been minted on average every 30 hours during the pandemic”).

²⁴⁶ Christopher Caldwell, *Mister 75 Per Cent Opts for the Risky, Theatrical Gesture*, FINANCIAL TIMES (Mar. 2, 2012), <https://www.ft.com/content/1d3e16b0-639c-11e1-b85b-00144feabdc0> [<https://perma.cc/NTR7-VD2H>].

²⁴⁷ See, e.g., Milanovic, *True World Income Distribution*, *supra* note 27, at 88 (finding global inequalities in income or expenditure distribution based on household surveys); Anand & Segal, *supra* note 27; Albert Berry et al., *supra* note 27 (“For the world as a whole, we can conjecture . . . that there has been little overall

global inequality underlies two core propositions. First, global inequality is more detrimental than national inequalities. That is, global inequality is essentially higher than the inequality we see on average at the national level because global inequality integrates inequalities among citizens of the same country with discrepancies in average income between countries.²⁴⁸ Should global inequality be alleviated through a distinct policy scheme, it ought by design focus on how to equalize the distribution of primary assets transnationally – primarily given the North-South divide, including human capital, financial capital, and Global South's bargaining power. That is, rather than merely expanding national inequality's ex-post redistribution of taxes and transfers across countries.²⁴⁹

A second global inequality policy proposition follows. It relates to how global inequality has ripened and is, in fact, the intersection of two distinct movements. These disparities manifest as socioeconomic divides within nations, such as those observed between the affluent and the impoverished in countries, and as economic imbalances between nations, exemplified by the contrasting living standards of the typical individual in rich countries compared to their counterparts in poor countries.²⁵⁰ These directions can occasionally offset each other and periodically fortify each other.²⁵¹ These imbalances of power due to global inequalities are replicated through inter-governmental organizations emphasizing the economic triangle of the UN system through the World Bank, the World Trade Organization, and the International

change in the standard inequality indicators, a result of some gains for the bottom half and for the top decile or so, with losses for the intermediate group.”).

²⁴⁸ FRANÇOIS BOURGUIGNON, *THE GLOBALIZATION OF INEQUALITY* 9-10 (2015) (“[G]lobal inequality is considerably higher than the inequality we see on average at the national level, given that it combines inequalities among citizens of the same country with disparities in average income between countries.”).

²⁴⁹ See Alvaredo et al., *supra* note **Error! Bookmark not defined.**, at 406 (“In light of the massive fall of the bottom 50 percent pretax incomes in the United States, our findings also suggest that policy discussions about rising global inequality should focus on how to equalize the distribution of primary assets, including human capital, financial capital, and bargaining power, rather than merely discussing the ex post redistribution through taxes and transfers.”); Piketty et al., *supra* note 12.

²⁵⁰ BOURGUIGNON, *supra* note 249, at 9-10 (“[T]he way that global inequality has evolved over time is in fact the conjunction of two different trends, that of inequality within countries between poor and rich in, for example, France or in Nigeria; and that of inequality between countries, that is to say, between the average person in France and the average person in Nigeria.”).

²⁵¹ *Id.* (“These trends can sometimes balance each other out and sometimes reinforce each other.”)

Monetary Fund. A little comfort is presently found in nongovernmental organizations which long focus on poverty, such as Oxfam and the Center for Economic and Social Rights, and incorporate economic inequality into their research and policy campaigns.²⁵²

If IHRL is to integrate global inequality carefully, one has to consider global inequality's differing subsidiary concepts separately. One helpful distinction is offered by economist Branko Milanovic who defines three perceptions of global inequality distinguished by income and population unit to which they refer.²⁵³ At a start, global inequality treats countries the same, irrespective of their size.²⁵⁴ In Milanovic's view, countries are the population unit, and the income concept is the mean national income per capita. In this, all countries have equal weights without considering the country's population. This method shows that there is drastic global inequality, which is only increasing in small countries.²⁵⁵

A second global inequality concept underlies population units whereby the individual and the income concept is again the mean national income per capita.²⁵⁶ Under this concept, larger countries are weighted more than smaller countries.²⁵⁷ A third global inequality concept follows. Indeed, it is only with the third following concept that IHRL may apply. Here, the population unit is the individual, not the country, and the income concept is the per capita income of the household to which the individual belongs.²⁵⁸ This can

²⁵² See DEBORAH HARDOON, *AN ECONOMY FOR THE 99%* (2017) (discussing a more inclusive economy that accounts for present inequalities); CENTER FOR ECONOMIC AND SOCIAL RIGHTS, *FROM DISPARITY TO DIGNITY: INEQUALITY AND THE SDGs* (2016) (recommending how to reduce inequalities between and within countries).

²⁵³ Branko Milanovic, *Global Income Inequality: What It Is and Why It Matters 2* (World Bank, Working Paper No. 3865, 2006) [hereinafter Milanovic, *Global Income Inequality*] ("We need to distinguish between inequality among countries' mean incomes (inter-country inequality or Concept 1 inequality as dubbed by Milanovic, 2005), inequality among countries' mean incomes weighted by countries' populations (Concept 2 inequality), and inequality between world individuals (global or Concept 3 inequality).").

²⁵⁴ Klasen & Misselhorn, *supra* note 51, at 28.

²⁵⁵ *Id.*

²⁵⁶ *Id.*, at 29.

²⁵⁷ *Id.*

²⁵⁸ For studies estimating global income or consumption inequality based on Concept 3, see e.g., Sudhir Anand & Paul Segal, *The Global Distribution of Income*, in 2 HANDBOOK OF INCOME DISTRIBUTION 937, 941 (Anthony B. Atkinson & François Bourguignon eds., 2015).

be likened to intra-nation inequality but applied to the entire world.²⁵⁹ Borrowing from moral philosopher Peter Singer, in his book *One World: The Ethics of Globalization*, Milanovic argues that national and global “distributional justice, within a nation and in the world as a whole are, from an ethical perspective, the same thing.”²⁶⁰ Globalization, in this sense, is no different from the process which led to the creation of modern nation-states considering the individual level.²⁶¹

How is IHRL suitable for reducing global inequality? At first glance, the grim account of Jagdish Bhagwati, in his seminal book *In Defense of Globalization*, might seem appealing. Bhagwati, a renowned development economist, portrays the measurement of global inequality as simply “lunacy.” He argues that, from a policy standpoint, there is no addressee or joint concept of civil society or global polity to whom inequality matters globally.²⁶²

²⁵⁹ *Id.* at 943 (“Concept 2 inequality tells us what concept 3 inequality would be if there were no inequality within countries and each person in a country received the national (household) income per capita of that country. For decomposable measures of inequality, concept 3 inequality will then be equal to concept 2 inequality plus a weighted average of inequality within countries (the within-country component of concept 3 inequality).”).

²⁶⁰ Milanovic, *Global Income Inequality*, *supra* note 254, at 25 (citing Peter Singer, *ONE WORLD: THE ETHICS OF GLOBALIZATION* (2002), at Ch. 5 and Thomas W. Pogge & Sanjay Reddy, *Unknown: The Extent, Distribution, and Trend of Global Income Poverty*, 41 *ECON. AND POL. WKLY.* 2241 (2002)).

²⁶¹ Milanovic, *Global Income Inequality*, *supra* note 254, at 26 (“Globalization in that sense is no different from the process which led to the creation of modern nation states out of isolated, and often mutually estranged, hamlets.”). Milanovic adds a caveat whereby large income differences between countries evolve mostly from large differences in countries’ mean incomes underlying a primary need to reduce extreme poverty therein. *Id.* at 27 (“If so, then we need to develop some rules for global redistribution. A caveat is in order here. Large income differences in the world are due, as we have seen, mostly to the large differences in countries’ mean incomes.”)

²⁶² JAGDISH BHAGWATI, *IN DEFENSE OF GLOBALIZATION* 67 (2004) (“What sense does it make to put a household in Mongolia alongside a household in Chile, one in Bangladesh, another in the United States, and still another in Congo? These households do not belong to a ‘society’ . . .”).

True, SDGs' Targets 10.5,²⁶³ and 10.6,²⁶⁴ are intended to reduce inequalities between countries.²⁶⁵ Yet, Target 10.5 has no designated indicator.²⁶⁶ Target 10.6's indicator is the "[p]roportion of members and voting rights of developing countries in international organizations."²⁶⁷ This is the same indicator used to measure progress toward Target 16.8 which suggest that countries: "[b]roaden and strengthen the participation of developing countries in the institutions of global governance."²⁶⁸ However, MacNaughton suggests that "'within country' targets are the responsibility of national governments, the 'among countries' targets do not have an obvious actor responsible for achieving them."²⁶⁹ The following section argues that should global inequality be considered within the UN's sustainable development framework, a legal cooperation construction Bhagwati discounted could be of use to IHRL.

ii. Human Rights and Development Cooperation

As Francesca Thornberry and Adrian Hassler note, "[h]uman rights and global development cooperation funneled through the 2030 Agenda for Sustainable Development are inextricably linked."²⁷⁰ Given the inequality alleviation policy, "[t]he pledge to

²⁶³ UNGA, Transforming Our World, *supra* note 132 at 21 (Target 10.5 aims to: "[i]mprove the regulation and monitoring of global financial markets and institutions and strengthen the implementation of such regulations.").

²⁶⁴ UNGA, Transforming Our World, *supra* note 132 at 21 (Target 10.6 concerns institutional participation by developing countries without a benchmark or deadline. They provide: "Ensure enhanced representation and voice for developing countries in decision-making in global international economic and financial institutions in order to deliver more effective, credible, accountable and legitimate institutions.").

²⁶⁵ MacNaughton, *supra* note 17, at 1060.

²⁶⁶ See, INTERNATIONAL COUNCIL FOR SCIENCE (ICSU) & INTERNATIONAL SOCIAL SCIENCE COUNCIL (ISSC), REVIEW OF THE SUSTAINABLE DEVELOPMENT GOALS: THE SCIENCE PERSPECTIVE, 54, (2015), (describing the data to be collected under target 10.5 as "accurate data on tax avoidance and evasion").

²⁶⁷ Report of the Inter-Agency and Expert Group on Sustainable Development Goal Indicators, UN Doc. E/CN.3/2016/2/Rev.1, Annex IV (Mar. 2016), *supra* note 231, at 58.

²⁶⁸ *Id.* at 35.

²⁶⁹ MacNaughton, *supra* note 17, at 1060.

²⁷⁰ See Francesca Thornberry & Adrian Hassler, *Integrated Review and Reporting on SDGs and Human Rights: A Key to Effective, Efficient and Accountable Implementation*, THE DANISH INST. FOR HUM. RTS., 2019, at 3; MacNaughton, *supra* note 17; *The Human Rights Guide to the Sustainable Development Goals*, THE DANISH

leave no one behind echoes the essential human rights values of non-discrimination and equality.”²⁷¹ In essence, over 90% of the targets for the 17 Sustainable Development Goals (SDGs) directly correspond to principles of international human rights and “seek to realize the human rights of all.”²⁷²

Human rights, conceivably fueled by donor countries’ economic incentives, should primarily engage donors in inequality alleviation. Human rights can analyze related power relations and state capacity issues overriding the often-concealed lack of political will to alleviate global inequality. In this way, IHRL may offer an entry point for dialogue based on international, rather than bilateral, inequality alleviation egalitarianism. The recent *UN World Summit Outcome* document is helpful here: it reaffirms the universality of human rights. It commits member states “ . . . to integrate the promotion and protection of human rights into national policies.”²⁷³

This part discusses special human rights procedures that can be used for fact-finding and guiding an international response. When the political environment permits, IHRL can support social change processes to demand more effective and accountable states or focus on the core equality-related rights required for change. Specifically, human rights norms and standards could be part of the ‘mutual accountability’ of the UN-led development framework, aligning donor states and aid recipients mutually. The principle of mutual accountability holds that all parties, including governments, businesses, and international organizations, have a shared responsibility to respect and protect human rights.²⁷⁴

INST. FOR HUM. RTS., <https://sdg.humanrights.dk/> [<https://perma.cc/F2UZ-8UJM>] (last visited Jan. 9, 2024); *SDG - Human Rights Data Explorer*, DANISH INST. FOR HUM. RTS. <https://sdgdata.humanrights.dk/> [<https://perma.cc/UH5P-CGB9>] (last visited Jan. 6, 2024) (identifying links between more than 150,000 recommendations and observations by international human rights mechanisms, and the 169 SDG targets).

²⁷¹ Francesca Thornberry & Adrian Hassler, *Integrated Review and Reporting on SDGs and Human Rights: A Key to Effective, Efficient and Accountable Implementation*, THE DANISH INST. FOR HUM. RTS., 2019, at 3.

²⁷² *Id.*

²⁷³ G.A. Res. 60/1, at 28 (Oct. 24, 2005); see OECD, *supra* note 166, at 22.

²⁷⁴ Both the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) provide the foundation for the mutual accountability principle and serve as a reminder of the shared responsibility of all actors, including governments, businesses, and international organizations, to respect and protect human rights. See G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948); G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights (Dec. 16, 1966).

Partner governments must show that they are making progress in their human rights commitments as a way of holding each other accountable.²⁷⁵ “These mutual accountability principles, are fully compatible with the human rights principles of accountability and transparency, which require access to information and participation in decision-making.”²⁷⁶ The added accountability of donor states put forth mutually is also compatible with the UN-led human rights-based approach (HRBA).²⁷⁷ “While there’s no unanimous procedure for a human rights-based approach, United Nations agencies have, however, agreed on several crucial attributes in the 2003 *Common Understanding on HRBA to Development Cooperation*, which indicates [among other principles] that... [d]evelopment cooperation contributes to the development of the capacities of ‘duty-bearers’ to meet their obligations and/or of ‘rights-holders’ to claim their rights.”²⁷⁸ Assuredly, harnessing donors into mutual accountability globally complies with UN-level development policy. The latter could include inequality alleviation globally.

At the outset, following the 2005 *Paris Declaration on Aid Effectiveness*,²⁷⁹ the 2008 *Accra Agenda for Action* particularly defines ‘mutual accountability’ in the mutual use of development resources as a key principle.²⁸⁰ The Accra Agenda is designed to increase the aid’s impact in reducing poverty and inequality.²⁸¹ The Agenda’s commitment to poverty and inequality alleviation could now be

²⁷⁵ OECD, *supra* note 166, at 85, (“This requires not only that partner governments demonstrate progress in implementing their human rights commitments but also that donors be held accountable for their contribution to the realisation of human rights in partner countries.”).

²⁷⁶ *Id.* at 84-85

²⁷⁷ See UNSDG, *supra* note 132, at 2, (“HRBA requires human rights principles (universality, indivisibility, equality and non-discrimination, participation, accountability) to guide United Nations development cooperation, and focus on developing the capacities of both ‘duty-bearers’ to meet their obligations and ‘rights-holders’ to claim their rights.”).

²⁷⁸ *Id.* at 2;

²⁷⁹ OECD, THE PARIS DECLARATION ON AID EFFECTIVENESS (2005) [hereinafter Paris Declaration].

²⁸⁰ OECD, ACCRA AGENDA FOR ACTION (2008) art. 2 [hereinafter Accra Agenda]

²⁸¹ Paris Declaration, *supra* note 280, art. 2. The joint commitment to alleviate poverty and reduce inequality through foreign aid is upheld previously at the High-Level Forum on Harmonization in Rome (February 2003) and the core principles put forward at the Marrakech Roundtable on Managing for Development Results (February 2004).

used to improve aid effectiveness given SDG's Goal 10.²⁸² As state donors' self-interest remains challenging, the Agenda already encourages international interest alignment among donors and recipients.²⁸³

Why focus IHRL egalitarian policy on donor states? At a start, donor states are incentivized by self-interests. A growing body of empirical research on the macroeconomic impact of official aid inflows on poverty reduction suggests that aid appears to be effective as per capita economic growth would have been lower in its absence.²⁸⁴ This is the clear, unambiguous finding of practically all empirical studies conducted over the last decade. That decade represents a remarkable turnaround in the literature on aid effectiveness, which provided somewhat inconclusive, often contradictory findings for. This leaves SDG proponents concerned over the motivations of aid donors regarding poverty and inequality alleviation.

Then, the motivation for bilateral foreign aid, or Official Development Assistance (ODA), surely, has long been debated.²⁸⁵

²⁸² Cf. Paris Declaration, *supra* note 280, art. 1 (“[W]e recognize that while the volumes of aid and other development resources must increase to achieve these goals, aid effectiveness must increase significantly as well . . .”).

²⁸³ *Id.* at 9 (Indicator 3); *id.* arts. 16, 3.v. (“Reforming and simplifying donor policies and procedures to encourage collaborative behavior and progressive alignment with partner countries’ priorities, systems and procedures.”).

²⁸⁴ See generally ROBERT CASSEN AND ASSOCIATES, DOES AID WORK? (1994) for an excellent discussion of the results of earlier studies. The turning point in the literature is defined by two, very well-known studies. The first is Craig Burnside & David Dollar, *Aid, Policies, and Growth*, 90 AM. ECON. REV. 847 (2000). The second is WORLD BANK, ASSESSING AID: WHAT WORKS, WHAT DOESN'T AND WHY (1998).

²⁸⁵ See generally Leonard Dudley & Claude Montmarquette, *A Model of the Supply of Bilateral Foreign Aid*, 66 AM. ECON. REV. 132 (1976) (discussing foreign aid as a good produced in donor countries in response to demand in those donor countries); Robert D. McKinlay & Richard Little, *The U.S. Aid Relationship: A Test of the Recipient Need and the Donor Interest Models*, 27 POL. STUD. 236 (1979) (finding that giving aid is a tool of the realist school of foreign politics); Alfred Maizels & Machiko K. Nissanke, *Motivations for Aid to Developing Countries*, 12 WORLD DEV. 879 (1984) (discussing that aid can be used to make up for recipient deficiencies in resource while donors use aid for their own purposes); William N. Trumbull & Howard J. Wall, *Estimating Aid-Allocation Criteria with Panel Data*, 104 ECON. J. 876 (1994) (noting that donor countries assume other donor countries will also contribute to international aid and include that as part of their analysis); Javed Younas, *Motivation for Bilateral Aid Allocation: Altruism or Trade Benefits*, 24 EUR. J. POL. ECON. 661 (2008) (finding that donor countries give more aid to those countries that import goods from the donor country); Alberto Chong & Mark Gradstein, *What Determines Foreign Aid? The Donors' Perspective*, 87 J. OF DEV. ECON. 1 (2008) (suggesting that donor countries are more willing to give aid to countries that have efficient governments and means of distributing aid).

Many argue that ODA is ultimately motivated by self-interest.²⁸⁶ This view is also prevalent in political science literature.²⁸⁷ Others argue that the motivations vary significantly across countries and that while ODA from most countries is motivated by self-interest, other countries appear altruistic. A notable exception is the Scandinavian countries, which the Center for Global Development (CGD) ranks as highly committed to development.²⁸⁸ Possibly except for some Scandinavian countries, the research so far has found that donors' political and economic interests outweigh the recipients' developmental needs. Perhaps the best-known of these aid allocation studies is by Alberto Alesina and David Dollar.²⁸⁹ They suggest that bilateral donors care more about strategic and historical factors than the developmental needs of aid recipients.

²⁸⁶ See generally Alberto Alesina & David Dollar, *Who Gives Foreign Aid to Whom and Why?*, 5 J. ECON. GROWTH 33 (2000) (finding the politics, strategic considerations, and colonial history are all major factors in determining who gives aid to whom); Jean-Claude Berthélemy & Ariane Tichit, *Bilateral Donors' Aid Allocation Decisions – A Three-Dimensional Panel Analysis*, 13 INT'L REV. ECON. & FIN. 253 (2004) (noting that the end of the Cold War deemphasized colonial links and prioritized trade links, with more aid going to countries with favorable economic results); Jean-Claude Berthélemy, *Bilateral Donors' Interest vs. Recipients' Development Motives in Aid Allocation: Do All Donors Behave the Same?*, 10 REV. DEV. ECON. 179 (2006) (finding different degrees of altruism and "egoism" among donor countries); Axel Dreher et al., *Does US Aid Buy UN General Assembly Votes? A Disaggregated Analysis*, 136 PUB. CHOICE 139 (2008) (finding that United States aid results in favorable votes for the United States in the U.N. General Assembly.); Javed Younas, *Motivation for Bilateral Aid Allocation: Altruism or Trade Benefits*, 24 EUR. J. POL. ECON. 661 (2008) (finding that donor countries give more aid to those countries that import goods from the donor country).

²⁸⁷ See generally Robert A. Packenham, *Foreign Aid and the National Interest*, 10 MIDWEST J. POL. SCI. 214 (1966) (finding that many United States AID officials cited national interest as the primary motivation for giving aid); Peter J. Schraeder et al., *Clarifying the Foreign Aid Puzzle: A Comparison of American, Japanese, French, and Swedish Aid Flows*, 50 WORLD POL. 294 (1998) (finding that, despite outward expressions of altruism in giving aid, many grants are to some degree self-serving for the donors); Bruce Bueno de Mesquita & Alastair Smith, *Foreign Aid and Policy Concessions*, 51 J. CONFLICT RESOL. 251 (2007) (finding that giving aid to more democratic countries will improve the lives of citizens there, whereas giving aid to more autocratic countries will have little if any benefit for citizens there. However, any desired political changes should precede the grant of aid.); David H. Bearce & Daniel C. Tirone, *Foreign Aid Effectiveness and the Strategic Goals of Donor Governments*, 72 J. POL. 837 (2010) (finding that the enforcement of conditions for aid and threats to reduce aid by donor countries rose significantly after the Cold War because the strategic benefits to donor countries were diminished).

²⁸⁸ See CTR. FOR GLOB. DEVELOP., THE COMMITMENT TO DEVELOPMENT INDEX 2023, <http://www.cgdev.org/initiative/commitment-development-index/index> [<https://perma.cc/4MDW-G739>].

²⁸⁹ See Alesina & Dollar, *supra* note 288.

What is striking about inequality-related donors' self-interest is that these self-interests are comparable with those of the worse-off in many middle-income countries leading the Global South. This actuality now offers the much-needed regulatory leverage. Let us explain how. Most adults in the bottom 50% of global wealth distribution are in India and Africa.²⁹⁰ North America has the least adults in this group.²⁹¹ However, those adults with little wealth are distributed more evenly across world regions, including North America.²⁹² Economic inequality runs rampant in the U.S., thus, offers a comparable insight, especially with emerging economies. Dubbed the *poverty paradox*, findings indicate that most of the world's extreme poor (by both \$1.25 and \$2 poverty lines) no longer live in the world's poorest countries.²⁹³ Thus, the self-interest of donor countries in alleviating global inequality might also comport with that of emerging economies, given that half of the world's poor live mainly in India, but also in China, both of which show unprecedented concern with global inequality.²⁹⁴ A quarter of the world's poor lives in lower-middle-income countries such as Pakistan, Nigeria, and Indonesia.²⁹⁵ In that sense, the SDGs can be

²⁹⁰ CREDIT SUISSE RSCH. INST., GLOBAL WEALTH REPORT 2016 (2016), at 30.

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ Andy Sumner, *Where Do the World's Poor Live? A New Update 21* (Inst. Dev. Stud. Working Paper No. 393, 2012).

²⁹⁴ India and China work with donor countries to alleviate inequality through the provision of aid, technical assistance, and other forms of cooperation. Donor states, such as the United States, the European Union, and Japan, provide financial and technical support to India and China in order to help address inequality and promote sustainable development. See U.S. AGENCY INT'L DEV., CHINA, <https://www.usaid.gov/china> [<https://perma.cc/FRE7-MPKK>]; EUROPEAN COMM'N, EU - CHINA REGIONAL AND URBAN POLICY COOPERATION, https://ec.europa.eu/regional_policy/policy/cooperation/international/china_en [<https://perma.cc/5AZU-CX8D>] (last visited Jan. 6, 2024); JAPAN INT'L COOP. AGENCY, INDIA, <https://www.jica.go.jp/english/overseas/india/index.html> [<https://perma.cc/5CP6-D7BA>] (last visited Jan. 6, 2024); EUROPEAN COMM'N, INDIA: POLICY BACKGROUND, BILATERAL SCIENCE AND TECHNOLOGY AGREEMENTS, FUNDING, PROJECTS AND CONTACT, https://research-and-innovation.ec.europa.eu/strategy/strategy-2020-2024/europe-world/international-cooperation/bilateral-cooperation-science-and-technology-agreements-non-eu-countries/india_en [<https://perma.cc/TRW8-HJHL>] (last visited Jan. 6, 2024).

²⁹⁵ Sumner, *supra* note 295, at 7-8.

seen as a global agenda focusing on deprivation, at least moderately, across borders.²⁹⁶

Finally, the argument is that the expansion of the aid donor countries with that of recipients may ultimately enhance donor states' public support in the Global South's preference to alleviate economic inequality through an IHRL platform that applies to inequality transnationally or globally. Numerous examples already bear witness to the use of IHRL as global inequality alleviation. For the case of aid suspension due to human rights violations, the Memorandum of Understanding (MoU) between Rwanda with the UK, the Netherlands, Sweden, and Switzerland is a recent reference point for a mutual accountability IHRL-related framework.²⁹⁷

IHRL, moreover, could boost inequality alleviation globally in a second fashion. The association of inequality-related foreign aid with IHRL would also assist in curtailing Global South aid fragmentation. Presently, bilateral ODA allocation is decided by providing countries individually. As a result, global aid allocations are characterized by the existence of 'donor darlings' and 'aid orphans' and aid fragmentation.²⁹⁸ That is given an accumulation of donors in some countries - so called "darlings" - and gaps in aid provision in others - commonly known as "orphans."²⁹⁹ Aid fragmentation has been part of the development agenda since 2008.³⁰⁰ The OECD-DAC has called for increased transparency and predictability of providers' forward intentions to mitigate aid fragmentation. Should foreign aid be associated with IHRL, poverty and inequality alleviation should be growingly inclusive and excessively global.

There is a third way in which IHRL may help inequality alleviation globally. That is by generally incentivizing an increase in foreign aid rates for sustainable development. Recent signals from some donor countries on future aid levels add further cause for concern.³⁰¹ Recent figures show that most DAC donor countries fail

²⁹⁶ See U.N. DEP'T OF ECON. & SOC. AFFAIRS, COMM. FOR DEVELOP. POL'Y, LEAVING NO ONE BEHIND: SOME CONCEPTUAL AND EMPIRICAL ISSUES, at 3 n.3, U.N. Doc. ST/ESA/2018/CDP/44 (2018).

²⁹⁷ OECD, *supra* note 166, at 85 fig.4.12.

²⁹⁸ OECD, AID FRAGMENTATION AND AID ORPHANS, <http://www.oecd.org/dac/aid-architecture/fragmentation-orphans.htm> [https://perma.cc/8F8Y-KN4T].

²⁹⁹ *Id.*

³⁰⁰ Accra Agenda, *supra* note 282, art. 17.

³⁰¹ See OECD & FIN. FOR DEV. OFF., U.N. DEP'T OF ECON. & SOC. AFFAIRS, ISSUE BRIEF SERIES: OFFICIAL DEVELOPMENT ASSISTANCE, AT 3 (2016) [hereinafter ODA -

to meet the United Nations target to keep ODA at or above 0.7% of GNI.³⁰² Out of its twenty-eight members, only six countries reach the necessary criteria.³⁰³ Consequently, the average ODA from the 28 countries in the DAC averaged 0.30 percent of gross national income, the equivalent level in 2014.³⁰⁴ African countries such as Ghana, Mozambique, Côte d'Ivoire, Senegal, and the Democratic Republic of the Congo are among those that now receive less aid than they did in 2010.³⁰⁵ As discussed above, IHRL could solidify the call for social justice globally with poverty alongside national inequality. That is primarily as the pace of change is decelerating, and the COVID-19 crisis risks reversing decades of progress in the fight against poverty. This would be the first time that poverty has increased globally in thirty years, since 1990.³⁰⁶

Should global inequality reduction become closely affiliated with IHRL, donor countries ought to share the social justice interests of the Global South based on the former self-interested incentives. The uphill battle against economic inequality might offer an opportunity to alleviate inequality accordingly.

UNDESA] ("In 2014, ODA to LDCs decreased by 9.3 per cent in real terms compared to 2013, and aid to other priority groups fell as well."); *see also* OECD, DEVELOPMENT AID RISES AGAIN IN 2016 BUT FLOWS TO POOREST COUNTRIES DIP (2017), <https://www.oecd.org/dac/development-aid-rises-again-in-2016-but-flows-to-poorest-countries-dip.htm> [<https://perma.cc/64RS-LLXN>] (discussing that although the overall amount of aid given by donor countries increased, less of that aid went to the poorest countries).

³⁰² *See* ODA - UNDESA, *supra* note 303, at 1 (noting that the Monterrey Consensus and the Doha Declaration on Financing for Development, reaffirmed by the Addis Agenda, include the official commitment on official development assistance (ODA) by many developed countries to achieve the target of 0.7 per cent of ODA/GNI and 0.15-0.2 per cent of ODA/GNI to the least developed countries).

³⁰³ *Id.* at 2. These countries were Denmark, Luxembourg, Norway, Sweden and the United Kingdom, and Germany. The Scandinavian countries have achieved their ODA goals for decades.

³⁰⁴ *Id.*

³⁰⁵ *See, e.g.,* Willem Fourie, *Why the World's Poorest Countries Don't Always Get the Foreign Aid They Need*, CONVERSATION (Apr. 12, 2018), <https://theconversation.com/why-the-worlds-poorest-countries-dont-always-get-the-foreign-aid-they-need-94371> [<https://perma.cc/7PWL-5E7B>].

³⁰⁶ *See* Andy Sumner et al., *Estimates of the Impact of COVID-19 on Global Poverty* 5 tbl.1 (U.N. Univ. World Inst. For Dev. Econ. Rsch. Working Paper No. 2020/43, 2020). UN research now warns that the economic fallout from the global pandemic may even expand global poverty by as much as half a billion people, or 8% of the total human population.

III. CONCLUSION

Regarding welfare economic policy, neither theoretical nor empirical economic research adequately correlates economic growth and inequalities beyond horizontal ones concerning the extreme poor. Thus, welfare economics still impasses vertical inequalities across society, given the concentration of wealth and power among the elite, alongside global inequalities between countries. It is plausible that there are circumstances whereby well-designed policy reforms, particularly in education and human capital investment, can achieve higher economic growth while reducing economic inequality. However, the claim that there is a relationship between inequality and growth has insufficient economic basis, and it most likely cannot be a standalone guideline for a cohesive corrective economic policy. Relatedly, international human rights developed historically without explicitly addressing vertical and global inequalities as IHRL reduced itself to horizontal inequalities proxied by the pro-poor policy.

As economic research remains ineffective in offering efficiency policy justification, IHRL could presently fill the gap given its comparative regulatory advantages. Arguably, vertical inequalities between groups in society and global inequalities between countries should substantially impact the realization of human rights and the achievement of UN-led sustainable development.