

“International Cooperation without Just Distributions? Beginning to Map the Role of Rising Economic Inequality in the Production of and Adherence to International Law”

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**International Cooperation without Just Distributions?
Beginning to Map the Role of Rising Economic Inequality in the
Production of and Adherence to International Law**

Alexander Beyleveld*

The aim of this paper is mainly to show some ways in which rising economic inequality within nations since the 1980s, particularly developed nations such as the United States (which is the developed nation this paper predominantly focuses on), has led to problems of distributive justice that have hindered effective international cooperation and has impacted how international law is made and the extent to which it is adhered to. This discussion leads me to conclude that an effective international law of the future — one that addresses the problems of its time, which require more international cooperation, not less — is far more likely to be achieved under conditions of distributive justice, which in turn requires a reduction in economic inequality within nations. Happily, this solution will also assist in sustaining faster — and more evenly distributed — economic development around the world. The hope here is to make the case that economic distributions within nations is something that should be at the top of the agenda when it comes to devising the laws between them because this will on balance assist in creating a more peaceful and prosperous world; in the absence of persuading readers of this proposition, it is hoped that this paper will at least spur some discussion on the extent to which domestic economic inequality should feature in discussions on the production of and adherence to international law.

Keywords: Economic Inequality, Globalization, Distributive Justice, International Cooperation, International Law, Economic Development

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1. Introduction

In the nineteenth and early twentieth century, wealth inequality in the United Kingdom (the “UK”) was staggering: the top 1% of owners of wealth often held 70% or more of total personal wealth.¹ The top 10% of owners often held in excess of 90% of total personal wealth.² While the concentration of wealth was not quite so excessive in France, inequality remained incredibly high: the top 1% often held more than 50% of total personal wealth, whereas the top 10% held as much as 86.7%.³ Wealth inequality in Germany was similarly high: the top 1% often held in excess of 45% of total personal wealth, with the top 10% holding as much as 80%.⁴ Income was also distributed in highly inegalitarian ways: evidence suggests that the top 1% share of income in the UK often exceeded 20%;⁵ the same is true for France,⁶ as well as for Germany.⁷ In hindsight, then, it is easy to see how this situation — incredibly high wealth and income inequality within three of the world’s most powerful countries — affected international relations and consequently shaped international law.

High levels of economic inequality in these developed nations resulted in a surplus of production that could not be consumed by their own populations.⁸ This resulted in a situation where the wealthy (predominantly the top 1% in each country, but also to a lesser extent the remainder of the top 10%) in these three countries had lots of excess money to invest during a time when investing domestically did not offer attractive returns because the “workers” (i.e. the remaining 90% of the population) did not possess the necessary purchasing power to buy the excess goods produced.⁹ An implication of this state of affairs, as Klein and Pettis put it, is that if “the distribution of income had been less unequal, workers would have had more spending power and been able to afford to buy everything they produced, while the rich would have had an easier time generating

¹ See F. Alvaredo, A.B. Atkinson and S. Morelli, *Top Wealth Shares in the UK Over More Than a Century*, 162 *Journal of Public Economics* (2018), 26-47 at 27.

² *Ibid.*, p. 29.

³ See B. Garbinti, J. Goupille-Lebret and T. Piketty, *Accounting for Wealth-Inequality Dynamics: Methods, Estimates, and Simulations for France*, *Journal of the European Economic Association* [2020], 1-45 and the online data replication produced for the publication of this paper.

⁴ See T. N. H. Albers, C. Bartels and M. Schularick, *The Distribution of Wealth in Germany, 1895-2018* (ECONtribute Study, draft paper as at 8 March 2020), available at <https://selten.institute/wp-content/uploads/2020/03/ECONtribute_The_Distribution_of_Wealth_eng_study.pdf>, accessed 12 June 2020, at 3, 67.

⁵ See A.B. Atkinson, “The Distribution of Top Incomes in the United Kingdom 1908–2000” in A.B. Atkinson and T. Piketty (eds.), *Top Incomes Over the Twentieth Century: A Contrast Between Continental European and English-Speaking Countries* (New York: Oxford University Press, 2007), pp. 94-5.

⁶ See B. Garbinti, J. Goupille-Lebret and T. Piketty, *Income inequality in France, 1900–2014: Evidence from Distributional National Accounts (DINA)*, 162 *Journal of Public Economics* (2018), 63-77 at 72.

⁷ On German income inequality, see C. Bartels, *Top Incomes in Germany, 1871–2014*, 79 *The Journal of Economic History*, no. 3 (2018), 669-707 at 678. Despite significant increases in inequality in all three countries since the 1980s, income has never since been as concentrated at the top of their respective income spectrums since the beginning of the nineteenth century.

⁸ See M.C. Klein and M. Pettis, *Trade Wars Are Class Wars: How Rising Inequality Distorts the Global Economy and Threatens International Peace* (New Haven: Yale University Press, 2020), pp. 5-8.

⁹ *Ibid.*

their desired returns on investment”.¹⁰ This, of course, is not what happened. Klein and Pettis explain what actually happened as follows:

The elites of the time rejected this option, but they also wanted to prevent unemployment from rising to the point that it could encourage revolutions. Their solution was to shift their excess output to captive markets abroad. Foreigners in imperial possessions and quasi-independent states would buy the goods locals could not afford, and they would pay for those goods by borrowing at relatively high interest rates guaranteed by occupying armies and gunboats. British, French, Dutch, and German investors financed projects in Australia, Latin America, Canada, Africa, India, China, and Southeast Asia. They also built railroads and exported everything from machinery to military hardware to luxury goods. Violent conquest was a logical consequence of the macroeconomic distortions created by extreme inequality.¹¹

Excess output was shifted to *captive* markets abroad because of ever-escalating trade protectionism among the powerful nations of the time.¹² The UK could not export to the growth markets of time — predominantly those of the United States (the “US”) and Germany — because these markets — which, being guarded by powerful nations, could not simply be held captive by the UK — applied tariffs to keep British goods out.¹³ Under-consumption in the UK and the inaccessibility of large foreign markets was accordingly countered by exporting to British colonies; initially those in Australia, Canada, New Zealand, parts of southern Africa, the Indian subcontinent, Hong Kong, Malaya, and certain parts of the Western Hemisphere, but later to those in larger parts of Africa and Asia, as well as parts of the Middle East.¹⁴ The colonies would not subject British goods to high tariffs and the UK would also be able to secure their supply of raw material imports.¹⁵ This strategy was soon followed by other powerful nations, including France, Germany, Japan and Russia.¹⁶ This caused the UK to expand further into Asia

¹⁰ *Ibid.*, p. 5.

¹¹ *Ibid.*, pp. 5-6. It should be noted that economic inequality in the Netherlands was similarly high in the nineteenth and early twentieth centuries. See, for example, W. Salverda and A.B. Atkinson, “Top Incomes in the Netherlands over the Twentieth Century” in A.B. Atkinson and T. Piketty (eds.), *Top Incomes Over the Twentieth Century: A Contrast Between Continental European and English-Speaking Countries* (New York: Oxford University Press, 2007), p. 442. Dutch hegemony, however, had ceased by this point and the Netherlands had essentially stopped being the economically powerful nation it had once been in the seventeenth and eighteenth centuries. As such, it was not capable of exhibiting the same imperialistic tendencies as the UK, France and Germany in the nineteenth and early twentieth centuries. For an empirical illustration of the decline in Dutch hegemony, see R. Kwon, *Hegemonies in the World-System: An Empirical Assessment of Hegemonic Sequences from the 16th to 20th Century*, 54 *Sociological Perspectives*, no. 4 (2011), 593-617, particularly at 602-6.

¹² See Klein and Pettis, *supra* note 8, pp. 16-9.

¹³ *Ibid.*, pp. 16-7.

¹⁴ *Ibid.*, p. 17.

¹⁵ *Ibid.*

¹⁶ Economic inequality in Japan and Russia during the nineteenth and early twentieth centuries were also high, thus explaining, at least in part, their own imperialist tendencies. On economic inequality in Japan, see for example C. Moriguchi and E. Saez, *The Evolution of Income Concentration in Japan, 1886–2005: Evidence from Income Tax Statistics*, 90 *The Review of Economics and Statistics*, no. 4 (2008), 713-34 at 720. On economic inequality in Russia, see for example F. Novokmet, T. Piketty and G. Zucman, *From Soviets to Oligarchs: Inequality and Property in Russia 1905-2016*, 16 *Journal of Economic Inequality*, no. 4 (2008), 189-223 at 213.

and Africa, supposedly to secure its conquest of India.¹⁷ Ultimately, this resulted in imperial powers squaring off with one another for foreign territories and markets.¹⁸

It has since been argued by a number of prominent thinkers that economic inequality — through causing imperialist expansion by powerful developed nations and the imperialistic competition between them that followed — may have contributed to causing World War I (“WWI”). According to most authors, these arguments stem from a hypothesis offered by John A. Hobson in his 1902 work *Imperialism: A Study*.¹⁹ As it turns out, there is a solid empirical basis for this claim.²⁰ As already mentioned above, the most powerful nations at the time — which became the protagonists of WWI — were at historical levels of economic inequality in the nineteenth and early twentieth centuries prior to WWI.²¹ This resulted in the holdings of net foreign assets expanding in these countries in both absolute and relative terms (with these foreign assets being held almost entirely by the wealthy).²² In keeping with Hobson’s point on domestic under-consumption, foreign assets bore higher average returns than similar classes of domestic assets, even when adjusting for risk.²³ Interestingly, there is also evidence that the nations that owned more foreign assets kept larger armies.²⁴ All of these factors lead Hauner, Milanovic and Naidu to conclude that “all the ingredients [as per Hobson’s and others’ postulations] for a war were present”.²⁵

Regardless of whether and to what extent economic inequality in powerful countries in the nineteenth and early twentieth century contributed to WWI, economic inequality within these nations clearly explains, at least in part, their imperialist expansion during this period. Economic inequality within developed nations thus has a clear connection to the relationship between those nations, as well as between those nations and less developed, less powerful nations. These relationships, driven in large part by economic inequality within the powerful developed nations, in turn explain the state of international

¹⁷ See Klein and Pettis, *supra* note 8, p. 17.

¹⁸ The United States proved to be, at least to a degree, an exception in this regard. As Klein and Pettis point out, “[a]lthough it annexed the kingdom of Hawaii and took Cuba, the Philippines, and Puerto Rico from the Spanish in 1898, the United States was less focused on acquiring colonial dependencies than the Europeans and more interested in encouraging internal migration to the West, often by violently displacing the indigenous population. America’s imperialist tendencies were focused on expanding its own national borders—and its protected domestic market—through the project of Manifest Destiny”. See *ibid.*, p. 18. See further *id.*, pp. 18-9.

¹⁹ See generally J.A. Hobson, *Imperialism: A Study* (New York: James Pott & Co., 1902). See T. Hauner, B. Milanovic and S. Naidu, *Inequality, Foreign Investment, and Imperialism Prior to World War I* (MPRA Working Paper, draft as at 5 February 2020), available at <<https://stonecenter.gc.cuny.edu/files/2017/11/milanovic-inequality-foreign-investment-and-imperialism-2020.pdf>>, accessed 16 October 2020, at 3-4 for a summary of Hobson’s thesis. Hauner, Milanovic and Naidu also point out that there were other thinkers — such as Paul Bairoch — that shared Hobson’s views. See *id.*, at 2.

²⁰ See *ibid.*, particularly at 38-9.

²¹ See also *ibid.*, at 1, 13-9.

²² See *ibid.*, at 1, 19-24.

²³ See *ibid.*, at 1, 24-31.

²⁴ See *ibid.*, at 1, 31-8.

²⁵ *Ibid.*, p. 38. The authors also caution that “[t]his does not mean that the war had to break out in 1914” and that “it could have broken out at a different date, or a different place, or perhaps not at all”; ultimately, they “simply argue that all prerequisites for a war were there, and had clear economic rationales”. See *id.*

law at the time: in terms of what drove its formation, how it operated and the extent to which it was complied with.

For example, as pointed out by John Gallagher and Ronald Robinson in their seminal paper, *The Imperialism of Free Trade*, published in 1953, “perhaps the most common political technique of British expansion was the treaty of free trade and friendship made with or imposed upon a weaker state”.²⁶ Gallagher and Robinson continue to list “[t]he treaties with Persia of 1836 and 1857, the Turkish treaties of 1838 and 1861, the Japanese treaty of 1858, the favours extracted from Zanzibar, Siam and Morocco, the hundreds of anti-slavery treaties signed with crosses by African chiefs” and conclude that “all these treaties enabled the British government to carry forward trade with these regions”.²⁷

A more well-known example is the conclusion of the Treaty of Nanking of 1842 after the First Opium War, which “opened the ports of Amoy, Foochow, Ningpo, and Shanghai to trade, and ceded the island of Hong Kong to Britain”.²⁸ This led to British merchant houses establishing their headquarters in Hong Kong by 1844, “which became the centre for the opium business which flourished during the 1840s and 1850s” — “Indian opium was sent to Hong Kong, and then shipped to Chinese ports, ships carrying the proceeds back with them”.²⁹ The Treaty of Nanking also required that “fair and regular” tariffs be established for British goods.³⁰ This explains why the UK and British India accounted for the bulk of Chinese imports (and also exports) during the rest of the nineteenth century.³¹

There exists a vast array of additional examples of how the UK’s ‘need’ to export excess production and its ‘need’ for cheap imports resulted in the conclusion of ‘unequal treaties’ (as they have been called by most contemporary commentators);³² i.e., how economic-inequality-driven underconsumption within the UK led to the UK forcefully expanding into foreign markets and how this shaped what was then, in essence,

²⁶ J. Gallagher and R. Robinson, *The Imperialism of Free Trade*, 6 *The Economic History Review*, no. 1 (1953), 1-15 at 11.

²⁷ *Ibid.*, at 11.

²⁸ G Jones, *Merchants to Multinationals: British Trading Companies in the Nineteenth and Twentieth Centuries* (New York: Oxford University Press, 2000), p. 32.

²⁹ *Ibid.*

³⁰ A. Anghie, *Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law*, 40 *Harvard International Law Journal*, no. 1 (1999), 1-80, at 40-1.

³¹ On China’s foreign trade during the nineteenth century (and beyond), see generally W. Keller, B. Li and C. H. Shiue, *China’s Foreign Trade: Perspectives from the Past 150 Years*, 34 *The World Economy*, no. 6, 853-92.

³² See particularly P.J. Cain, *Economic Foundations of British Overseas Expansion 1815-1914* (London: The Macmillan Press, 1980), pp. 11-42. See also, generally, Anghie, *supra* note 30 and D. Alessandrini, “Global Free Trade, Imperialism and International Trade Law” in I. Ness and Z. Cope (eds.), *The Palgrave Encyclopedia of Imperialism and Anti-Imperialism* (2nd ed., Cham: Palgrave Macmillan).

contemporary international economic law. The French engaged in the same practices,³³ as did the Germans, albeit a bit more reluctantly.³⁴

The list of consequences of competitive imperial expansion into foreign markets, of course, does not end with the conclusion of unequal economic treaties. For example, it also led to distinctions between different categories of nations for the purposes of forming and applying rules relating to the use of force.³⁵ As von Bernstorff puts it, European and American international lawyers at the time “differentiated between violence and war, first, between the ‘great powers’ (core); second, between themselves and other sovereign states in their respective strategic and economic zones of influence (semiperiphery) and, third, between violence and war vis-à-vis peoples living in territories that they did not recognize as independent sovereign states but, rather, as ‘uncivilized’ nations (periphery)”.³⁶ These consequences persisted well after WWI had come to an end.

Meanwhile, while WWI had a levelling effect insofar as economic inequality was concerned,³⁷ particularly in the main belligerent countries,³⁸ it did not reduce economic

³³ For example, France established a customs union with Indochina in 1892, over which it assumed control after its victory in the Sino-French War of 1884-5. As explained by Andrew Hardy, this was “in line with the dominant colonial economic theory of the day”; i.e., “what Marseille has called pessimistic mercantilism”: “This theory assumes that industrialized countries produce more than their markets are able to absorb, and assigns to the colonies the twin role of producer of raw materials and market for manufactured goods. The colony is locked into a trade economy in which industry plays a minimal part.” See A. Hardy, *The Economics of French Rule in Indochina: A Biography of Paul Bernard (1892-1960)*, 32 *Modern Asian Studies*, no. 4 (1998), 807-48, at 809-10.

³⁴ Otto von Bismarck, chancellor of the German Empire from 1871-1890, was initially against the idea of colonial expansion on the basis that “the costs of colonial expansion by the state very often outweighed its usefulness, that the ‘advantages were very largely illusory’, and that colonies were a political burden”. See H-U Wehler, *Bismarck’s Imperialism 1862-1890*, 48 *Past & Present* (1970), 119-55, at 128. However reluctant Bismarck initially was, however, he came under increasing pressure to initiate a colonial policy “as the need for increased exports as a remedy for overproduction, and for those social tensions which arose from economic crises, came to be ever more widely accepted” and “[i]mperialist policy ... became ‘the alternative to the stagnation of economic life as a whole, which would have entailed severe class conflict’... [—] [i]mperialism was intended to flatten the extreme fluctuations of the business cycle; to stabilize the national income, and create ‘a mechanism whereby the critical problems’ caused by the uneven growth of the capitalist economy ‘could be surmounted’”. See *id.*, at 137 (footnotes omitted). As a response to these pressures, Bismarck did eventually engage in colonial expansion, predominantly on the African continent after the Berlin Conference of 1884. For a comprehensive overview of the events leading up to German colonial expansion, see generally *id.*

³⁵ A good overview of this distinction is provided by Jochen von Bernstorff. See J. von Bernstorff, *The Use of Force in International Law before World War I: On Imperial Ordering and the Ontology of the Nation-State*, 29 *European Journal of International Law*, no. 1 (2018), 233-60.

³⁶ *Ibid.*, at 237. On the importance of the civilised/uncivilised distinction, see Anghie, *supra* note 30, at 41-9. For a more in depth understanding on this topic, see generally G.W. Gong, *The Standard of ‘Civilization’ in International Society* (New York: Oxford University Press, 1984).

³⁷ See generally W. Scheidel, *The Great Leveler: Violence and the History of Inequality from the Stone Age to the Twenty-First Century* (Princeton: Princeton University Press, 2018), pp. 130-73.

³⁸ In respect of the UK, see for example Alvaredo, Atkinson and Morelli, *supra* note 1; in respect of France, see for example Garbinti, Goupille-Lebret and Piketty, *supra* note 3; and in respect of Germany, see for example Albers, Bartels and Schularick, *supra* note 4.

inequality in Japan over the medium to long term.³⁹ This meant that economic inequality in Japan continued to rise after WWI and essentially peaked right before the onset of World War II (“WWII”) at a time when approximately *a third* of total Japanese income accrued to the top 5% .⁴⁰ Unsurprisingly, particularly given the disproportionate havoc WWI had wrecked in the UK, France and Germany, this also meant that Japan, newly recognised as a great power, expanded its own imperial ambitions.⁴¹ This, of course, played an important role in the build up to World War II (“WWII”). This time it also played an important role after the war; as Scheidel explains, during the American occupation of Japan in the wake of WWII:

Interventions in the economy explicitly pursued [levelling] as a means to achieve the desired outcomes. The ‘Basic Directive’ for the American occupation authorities entitled ‘Democratization of Japanese Economic Institutions’ urged the promotion of a ‘wide distribution of income and of the ownership of the means of production and trade.’ Aiming for the creation of a social welfare state, occupation policy goals were closely associated with those of the New Deal. In 1943 and 1945, American researchers assessed that the low distribution of wealth to Japanese industrial workers and farmers had stunted domestic consumption and driven overseas economic expansionism. This was now to be addressed by [labour] reorganization with higher wages that would promote domestic consumption and facilitate demilitarization. Economic democratization and [levelling] were not ends in themselves: the underlying policy goal was to combat militarism by restructuring features of the economy that might be conducive to overseas aggression.⁴²

The point of this article thus far has simply been to show that economic distributions within nations, particularly high and rising inequality, have long influenced interactions between them, including in relation to the formation of and compliance with international law. Economic-inequality-driven interactions, moreover, have led to undesirable interactions and laws: high and/or growing economic inequality has contributed to large-scale wars, such as WWI, and to an international law that is rooted in civility-based distinctions among the peoples of the world. While it is difficult to speculate how the world may have turned out differently had there been more equal economic distributions within nations in the long nineteenth century, it appears clear that at least some of the more egregious events in international history could have been avoided had economic inequality been addressed differently. It is with this idea in mind that the article turns to the present.

2020 marks the end of essentially four decades of rising economic inequality in most nations around the world (the preceding three to four decades had seen persistently declining economic inequality leading to most nations in the world experiencing historic lows in this regard). Given the US’ status as the global hegemon of the last century or so, it is perhaps apt to start by describing its story: at 11.2% of total income, the share of income accruing to the top 1% in the US in 1980 was essentially at a historic low.⁴³ Since

³⁹ See generally Moriguchi and Saez, *supra* note 16.

⁴⁰ *Ibid.*

⁴¹ On Japanese imperial expansion, see generally W.G. Beasley, *Japanese Imperialism 1894-1945* (New York: Oxford University Press, 1987).

⁴² Scheidel, *supra* note 37, pp. 124-5.

⁴³ See T. Piketty, E. Saez and G. Zucman, *Distributional National Accounts: Methods and Estimates for the United States* 133 *Quarterly Journal of Economics*, no. 2, 553-609, at 587.

then, the top 1% has rapidly risen, reaching above 20% in recent years and closing in on its pre-Great Depression peak of approximately 21.5%.⁴⁴ The story for the bottom 50% of Americans has been the exact opposite: over the same period, their share of total income has fallen from a comparatively healthy rate of approximately 20% to below 13%, which is lower than at any other time since the introduction of income taxation in the US in 1913.⁴⁵ The story of wealth concentration in the US since 1980 is similar: the wealth share of the top 1% in the US rose from its historic low of approximately 21% in 1978 to approximately 36% in recent years.⁴⁶ The wealth share of the bottom 90% during the same period dropped from approximately 35% to as low as 27% in recent years.⁴⁷

Economic inequality has risen significantly in other developed nations too. Consider, for example, Germany: the income share of the bottom 50% has fallen from around 24% in 1980 to approximately 18.5% in 2017; the top 10% share has simultaneously grown from approximately 29% to close to 37%.⁴⁸ The distribution of wealth in Germany has also become significantly more concentrated at the top of the spectrum over the same period.⁴⁹ Economic inequality has also grown rather significantly in emerging power nations, such as China.⁵⁰ In 1980, the income share of the bottom 90% in China was approximately 73% —i.e., China exhibited very low economic inequality comparatively speaking.⁵¹ By 2015, that figure had dropped below 60%, with the top 10% share rising

⁴⁴ See *ibid.*

⁴⁵ See *ibid.* See also the United States page of the World Inequality Database, available at <<https://wid.world/country/usa/>>, accessed 21 October 2020. To round out the income situation in the US: The so-called middle 40% of the population’s share has dropped from approximately 45% in 1980 to approximately 40% in 2019. The share of the top 10%, which includes the top 1% already referred to, has risen from what was essentially an all-time low in 1980 of just under 35% to what was close to an all-time high of about 47% in recent years. Putting all of this together, this means that over the last 40 years or so the share of the top 10% rose from 35% to 47% while the share of the bottom 90% fell from approximately 65% to approximately 53%. See *id.*

⁴⁶ See E. Saez and G. Zucman, *Wealth Inequality in The United States Since 1913: Evidence from Capitalized Income Tax Data*, 131 *Quarterly Journal of Economics*, no. 2, 519-78 and E. Saez and G. Zucman, *Trends in US Income and Wealth Inequality: Revising After the Revisionists*, NBER Working Paper Series, Working Paper 27921, available at <<https://www.nber.org/papers/w27921>>, accessed 22 October 2020.

⁴⁷ See Saez and Zucman, *supra* note 46. The wealth share of the bottom 50% has at times dropped below zero in recent years, which means that there have been times when the entire bottom half of the US’ cumulative wealth is negative. See the United States page of the World Inequality Database, available at <<https://wid.world/country/usa/>>, accessed 21 October 2020.

⁴⁸ See Bartels, *supra* note 7 and the Germany page of the World Inequality Database, available at <<https://wid.world/country/germany/>>, accessed 21 October 2020.

⁴⁹ See Albers, *supra* note 4.

⁵⁰ See T. Piketty, L. Yang and G. Zucman, *Capital Accumulation, Private Property, and Rising Inequality in China*, 109 *American Economic Review*, no. 7, 2469-96 and the China page of the World Inequality Database, available at <<https://wid.world/country/china/>>, accessed 21 October 2020.

⁵¹ This is roughly similar to levels of income inequality in Denmark at the time (Denmark is often used as a yardstick for low levels of economic inequality). On income inequality in Denmark, see A.B. Atkinson and J.E. Søjgaard, *The Long-Run History of Income Inequality in Denmark*, 118 *Scandinavian Journal of Economics*, no. 2, 264-91 and the Denmark page of the World Inequality Database, available at <<https://wid.world/country/denmark/>>, accessed 21 October 2020.

from approximately 27% to over 41% during the same period.⁵² Wealth inequality in China has also sky-rocketed. The share of wealth belonging to the top 1% nearly doubled from approximately 16% in 1980 to approximately 30% in 2015.⁵³ During the same period the share of the bottom 50% dropped by more than half from approximately 16% to a bit more than 6%.⁵⁴

Within this context, the aim of this paper is mainly to show some of the ways in which rising economic inequality within nations since the 1980s, particularly developed nations (this paper focuses on the situation in the United States as it is still the most powerful nation in the world), has led again to problems of distributive justice (albeit slightly different problems) that have hindered effective international cooperation and has impacted how international law is made and the extent to which it is adhered to. This leads me to conclude that an effective international law of the future — one that addresses the problems of its time, which require more international cooperation than ever before — is far more likely to be achieved under conditions of distributive justice, which it turn requires a reduction in economic inequality within nations. Happily, this solution will also assist in sustaining faster — and more evenly distributed — economic development around the world.

2. Economic Inequality, Distributive Justice and International Law

Prior to dealing with the domestic — within-nations — components of this discussion, it is first necessary to acknowledge the between-nation story and the role that it plays. Regardless of how one looks at it, there has been a significant reduction in economic inequality between many (albeit not all) developing nations and developed nations since the 1980s. This trend is well captured in the *World Inequality Report 2018*.⁵⁵ The most pertinent of these findings are as follows: (i) Western Europe’s share of the global aggregate of national income dropped from 28% to 24%; (ii) the US and Canada’s collective share rose from 20% to 27%; (iii) Asia’s share rose even more, from 27% to 37%; and (iv) China’s share rose from 3% to an incredible 15%.⁵⁶ These findings appear even more stark when phrased in terms of national income growth: (i) Western Europe’s aggregate national income grew by 79% between 1980 and 2016; (ii) in the US and Canada, national income grew by a seemingly impressive 164% in the same period; (iii) Asia’s national income, however, grew by 527%; and (iv) China’s national income grew

⁵² See Piketty, Yang and Zucman, *supra* note 50 and the China page of the World Inequality Database, available at <<https://wid.world/country/china/>>, accessed 21 October 2020. In 2015 the income share of the bottom 90% in Denmark — where inequality had also grown quite significantly — was about 68%, which gives one a sense of just how quickly Chinese inequality has grown. See the Denmark page of the World Inequality Database, available at <<https://wid.world/country/denmark/>>, accessed 21 October 2020

⁵³ See Piketty, Yang and Zucman, *supra* note 50 and the China page of the World Inequality Database, available at <<https://wid.world/country/china/>>, accessed 21 October 2020.

⁵⁴ *Ibid.*

⁵⁵ F. Alvaredo, L. Chancel and T. Piketty *et al*, *World Inequality Report 2018* (Cambridge, MA: Harvard University Press 2018). The full report is also electronically available on the website of the World Inequality Database at <<https://wir2018.wid.world/files/download/wir2018-full-report-english.pdf>>, accessed 25 October 2020.

⁵⁶ *Ibid.*, pp. 62-3.

by a monumental 1864%, i.e. almost 24 times faster than in Western Europe and more than 11 times faster than in the US and Canada.⁵⁷

This situation is overwhelmingly a good thing viewed from the perspective of overall human welfare. In China alone there were more than 752 000 000 living in poverty by international standards as recently as 1990.⁵⁸ By 2016, this number had dropped to 7 200 000, i.e. the poverty rate in China stood at 66.2% in 1990 and at 0.5% in 2016.⁵⁹ But there are many other stories that are similarly positive: in Viet Nam, for example, using the international poverty line, 37 500 000 people (i.e. 51.9% of the population) lived in poverty in 1992, whereas by 2018 that number had fallen to 1 800 000 people (i.e. 1.9% of the population).⁶⁰

These sorts of reductions in poverty were largely unnecessary in the developed world in the same period: economic inequality was relatively low in the 1980s and average incomes far exceeded those in the developing world.⁶¹ The latter point remains true in contemporary times. Even though the average national income per adult in China per annum rose from €1 500 (2016 PPP) in 1980 to €8 300 (2016 PPP) in 2016, i.e. by more than fivefold, €8 300 per annum remains low compared to even the global average of national income per adult *in 1980*, which then already stood at €10 500 (2016 PPP), let alone to the average national income per adult *in 1980* Western Europe, US and Canada, which stood at €20 000 (2016 PPP) or higher.⁶² Average national income per adult in Western Europe, the US and Canada *in 2016*, moreover, had risen to approximately €30 000 (2016 PPP).⁶³ In other words, poor parts of the world became significantly less poor *on average* and the rich parts of the world remained rich *on average*.

This is where the within-country story becomes far more important. It is difficult to see why a person earning an average income in a developed country would, at least in the abstract, begrudge human beings in other less developed parts of the world for pulling themselves out of poverty, particularly if that person accepts that economic development is not a zero-sum game. However, when the structure of that person’s own economy changes significantly to their detriment *because* other human beings are pulling themselves out of poverty, or at least it is perceived this way, it becomes far easier for such a person to begin to think that this is a zero-sum game. As alluded to above, moreover, there are certain facts about the state of the world economy over the past

⁵⁷ See *ibid.*, p. 64. The additional calculations are my own. These phenomena are also well captured by the so-called “Elephant curve”, i.e. a curve charting the cumulative growth rate of percentiles of the global income distribution. See C. Lakner and B. Milanovic, *Global Income Distribution: From the Fall of the Berlin Wall to the Great Recession*, 30 *World Bank Economic Review*, no. 2 (2016), 203-32 and F. Alvaredo, L. Chancel and T. Piketty *et al.*, *The Elephant Curve of Global Inequality and Growth*, 108 *AEA Papers and Proceedings* (2018), 103-8.

⁵⁸ See China’s poverty trends on the World Bank Poverty & Equity Data Portal page for China, available at <<http://povertydata.worldbank.org/poverty/country/CHN>>, accessed 25 October 2020.

⁵⁹ *Ibid.* Even if one uses the far higher “Upper Middle Income Poverty Line”, the story remains remarkable: China’s poverty rate by this measure fell from 98.3% in 1990 to 24% in 2016. See *id.*

⁶⁰ See Viet Nam’s poverty trends on the World Bank Poverty & Equity Data Portal page for Viet Nam, available at <<http://povertydata.worldbank.org/poverty/country/VNM>>, accessed 25 October 2020.

⁶¹ See generally Alvaredo, Chancel and Piketty *et al.*, *supra* note 55.

⁶² *Ibid.*, pp. 62-3.

⁶³ *Ibid.*, p. 62.

40 years in which one could plausibly ground such a belief.⁶⁴ Economic globalization is often painted as a villain in this context and, in certain ways, it is; but it is often misunderstood *why* it is the villain it is, so it is worthwhile unpacking the concept a bit more carefully.⁶⁵

First of all, it should be pointed out that ‘economic globalization’ as used here does not refer to a single-faceted concept. Scholars too often see economic globalization as something which is distinct from technological change;⁶⁶ they also too often distinguish globalization in an international trade sense from financial globalization or from the international tax avoidance and evasion strategies of multinational enterprises. But these are not things which can so easily be separated out: economic globalization is *all* of these things and a fair deal more.⁶⁷

Technological advances, particularly in information and communication technologies, *enabled* the ability for enterprises to expand abroad in the ways that they did since the 1980s.⁶⁸ This led, formally — legally — to deeper economic integration between the nations of the world, particularly between developed and developing nations.⁶⁹ This in turn led to higher levels of international trade globally, with developing nations increasing their share of exports quite dramatically.⁷⁰ This cannot be separated from the subsequent explosion in cross-border financial flows, i.e. the rise of global

⁶⁴ Attention is again drawn to Lakner and Milanovic, *supra* note 57 and Alvaredo, Chancel and Piketty *et al*, *supra* note 57.

⁶⁵ This statement should not be in a simplistic binary way: unlike in typical superhero movies, in the real world it is perfectly conceivable for someone to be both a hero *and* a villain at the same time. This is the case with economic globalization. It has been decidedly good for some and decidedly bad for others: it is a hero *and* a villain, which is what makes it such a difficult phenomenon to deal with.

⁶⁶ See, for example, F. Jaumotte, S. Lall and C. Papageorgiou, *Rising Income Inequality: Technology, or Trade and Financial Globalization?*, 61 IMF Economic Review, no. 2, 271-309.

⁶⁷ Dani Rodrik asserts as follows in the context of explaining the so-called populist backlash to economic globalization: “More importantly, the backlash was perfectly predictable. I will focus in this paper on the economic roots of populism, in particular the role of economic globalization. I do not claim that globalization was the only force at play – nor necessarily even the most important one. Changes in technology, rise of winner-take-all markets, erosion of labor-market protections, and decline of norms restricting pay differentials all have played their part. These developments *are not entirely independent from globalization, insofar as they both fostered globalization and were reinforced by it*. But neither can they be reduced to it.” See D. Rodrik, *Populism and the Economics of Globalization*, 1 Journal of International Business Policy (2018), 12-33, at 13. Emphasis added. The view expressed here takes this argument a bit further: “these developments” referred to by Rodrik, from my perspective, are not entirely *dependent* on economic globalization, but the main reason that they have manifested in the precise way they have *is* economic globalization.

⁶⁸ See generally R. Baldwin, *The Great Convergence: Information Technology and the New Globalization* (Cambridge, MA: Harvard University Press, 2016).

⁶⁹ Prime examples of the types of formal/legal integration of the kind being referred to include the establishment of the World Trade Organization (“WTO”) in 1995, the establishment of free trade agreements such as the North American Free Trade Agreement (NAFTA), China’s accession to the WTO in 2001 and so forth.

⁷⁰ The quintessential example in this regard, of course, is China. China increased its share of total global exports from approximately 2.12% in 1988 to approximately 14.57% in 2018. See the World Integrated Trade Solution database page for trading partners of the world as a whole, available at <<https://wits.worldbank.org/CountryProfile/en/Country/WLD/Year/2018/TradeFlow/Import/Partner/by-country>>, accessed 25 October 2020.

finance or financial globalization.⁷¹ The higher levels of inter-nation competition that ensued also further drove technological progress as nations battled one another to be at the technological frontier.⁷² This also opened up more possibilities for tax avoidance and evasion by multinational enterprises.⁷³

Seen this way, economic globalization has been one of *the* driving forces behind rising economic inequality within nations and declining economic inequality between them.⁷⁴ Technology,⁷⁵ trade globalization,⁷⁶ financial globalization,⁷⁷ tax avoidance and evasion,⁷⁸ tax competition,⁷⁹ and rising market concentration and power,⁸⁰ amongst other factors,⁸¹ have all contributed, often in overlapping ways,⁸² to the economic globalization that has unfolded since the 1980s and all these factors have tended, to varying degrees, to exacerbate economic inequality.⁸³ Within this context, it is critically important to

⁷¹ See Klein and Pettis, *supra* note 8, pp. 39-63.

⁷² For an example of how this plays out in practice, see G. R. Fong, *Follower at the Frontier: International Competition and Japanese Industrial Policy*, 42 *International Studies Quarterly*, 339-66.

⁷³ On this phenomenon, see, for example, Klein and Pettis, *supra* note 8, pp. 29-38.

⁷⁴ Again, it should be recalled that economic globalization has not only been a villain, but *also* a hero: it has helped the developing world grow and raise living standards and has made the developed world better off on average as well.

⁷⁵ See, for example, D.H. Autor and D. Dorn, *The Growth of Low-Skill Service Jobs and the Polarization of the US Labor Market*, 103 *American Economic Review*, no. 5 (2013), 1553-97.

⁷⁶ See, for example, D.H. Autor, D. Dorn and G.H. Hanson, *The China Syndrome: Local Labor Market Effects of Import Competition in the United States*, 103 *American Economic Review*, no. 6 (2013), 2121-68 (in a developed country context) and E. Verhoogen, *Trade, Quality Upgrading, and Wage Inequality in the Mexican Manufacturing Sector*, 123 *Quarterly Journal of Economics*, no. 2 (2008), 489-530 (in a developing country context).

⁷⁷ See, for example, D. Furceri, P. Loungani and J.D. Ostry, *The Aggregate and Distributional Effects of Financial Globalization: Evidence from Macro and Sectoral Data*, 51 *Journal of Money, Credit and Banking*, no. 1 (2019), 163-98.

⁷⁸ See, for example, P.H. Egger, S. Nigai and N.M. Strecker, *The Taxing Deed of Globalization*, 109 *American Economic Review*, no.2 (2019), 353-90.

⁷⁹ See, for example, T. Rixen, *Tax Competition and Inequality: The Case for Global Tax Governance*, 17 *Global Governance*, no. 4 (2011), 447-67.

⁸⁰ See, for example, S.F. Ennis, P. Gonzaga and C. Pike, *Inequality: A Hidden Cost of Market Power*, 35 *Oxford Review of Economic Policy*, no.3 (2019), 518-49 and J. Gans, A. Leigh, M. Schmalz *et al*, *Inequality and Market Concentration, When Shareholding is More Skewed Than Consumption*, 35 *Oxford Review of Economic Policy*, no.3 (2019), 550-63.

⁸¹ For example, the decline of unions, which is also related to economic globalization. On this phenomenon, see B. Western and J. Rosenfeld, *Unions, Norms, and the Rise in U.S. Wage Inequality*, 76 *American Sociological Review*, no. 4 (2011), 513-37.

⁸² See, for example, D. Acemoglu, G. Gancia and F. Zilibotti, *Offshoring and Directed Technical Change*, 7 *American Economics Journal: Macroeconomics*, no. 3 (2015), 84-122 and N. Bloom, M. Draca and J. Van Reenen, *Trade Induced Technical Change? The Impact of Chinese Imports on Innovation, IT and Productivity*, 83 *Review of Economics Studies* (2016), 87-117.

⁸³ Some of these factors have also made it more difficult to even properly estimate the full extent of economic inequality. For example, the rise of tax havens — which was driven by economic globalization — leads to economic inequality being underestimated because wealthier individuals tend to avoid and or evade more taxes through the deployment of strategies that rely on tax havens. See in this regard A.

understand that *the* economic globalization the world has adopted is *an* economic globalization that was chosen, whether deliberately or not, and which was and continues to be massively beneficial from an economic standpoint for the richer segments of developed nation populations.⁸⁴ This brings us to the issue of distributive justice.

Economic inequality may not in and of itself translate into distributive injustice, although it is conceivable that high enough levels of inequality could be considered unjust without more. Consider, for example, a scenario where a very small group of persons hold all or virtually all economic resources and a very large group of persons hold none or virtually none. It could be argued that such a situation is distributively unjust regardless of the reasons for the incredibly vast inequality. Usually, however, the justifications for a certain level of inequality is what determines whether distributive justice is being attained. If the very small group of persons control all the economic resources because they have enslaved or colonised the very large group of persons that control none of them, the economic distribution is unjust because slavery and colonisation are morally unjustifiable or grotesquely unfair.

Scholars have for thousands of years attempted to theorise when a particular economic distribution can be called just. At the broadest level, theories of distributive justice can be divided into Aristotelian and Rawlsian (admittedly from a Western perspective).⁸⁵ Aristotle posited that distributive justice hinges on merit. Albino Barrera helpfully summarises Aristotle’s position as follows: “[t]he term ‘distributive justice’ comes from Aristotle who defines it in the fifth book of his *Nicomachean Ethics* as the geometric, proportionate allocation of wealth, [honours], or whatever else is divided within the community *according to merit*’.⁸⁶ In other words, for Aristotle any level of economic inequality could be justified provided that resources were distributed according to merit.⁸⁷ For John Rawls, like Adam Smith before him, economic inequalities are “acceptable *if and only if* the worst-off people under a system of inequality are better off than they would be under an egalitarian distribution of goods”.⁸⁸ In short, the

Alstadsæter, N. Johannesen and G. Zucman, *Tax Evasion and Inequality*, 109 *American Economic Review*, no. 6 (2019), 2073-103.

⁸⁴ In most developed nations, it has been the top 10% of both the income and wealth spectra that have done increasingly well, whereas the share of both income and wealth of the bottom 90% in these nations have fallen rather precipitously on balance. It should be noted, of course, that there is substantial variation across developed nations in respect of how much the top 10% (and the top 1%, top 0.1%, top 0.001% etc.) have benefitted compared to the bottom 90% (and the bottom 50%, bottom 20% and bottom 10% etc.).

⁸⁵ See S. Fleischacker, *A Short History of Distributive Justice* (Cambridge, MA: Harvard University Press, 2004), pp. 1-16.

⁸⁶ A. Barrera, *Globalization and Economic Ethics: Distributive Justice in the Knowledge Economy* (New York: Palgrave Macmillan, 2007), p. 5 (emphasis added, footnote omitted). For a more in depth look at Aristotelian distributive justice, see D. McKerlie, *Aristotle’s Theory of Justice*, 39 *Southern Journal of Philosophy*, no. 1 (2001), 119-41.

⁸⁷ As Dennis McKerlie points out, the rationale behind this conception is not that distribution according to merit is useful “for its own sake”, but rather “because it would best enable the citizens to live well”. See McKerlie, *supra* note 86, at 120.

⁸⁸ Fleischacker, *supra* note 85, p. 39 (emphasis added). For a fuller picture, see J. Rawls, “Distributive Justice” in S. Freeman (ed.), *John Rawls: Collected Papers* (Cambridge, MA: Harvard University Press, 1999), pp. 130-53.

justifications of economic inequality, from a moral philosophy perspective, are central to whether distributive justice exists.

It is also important to view distributive justice dynamically. It is at its most useful when understood as something which both evolves and has an impact over time. With this in mind, the argument in this article is essentially this: *rising* economic inequality within nations over time in and of itself leads to distributive injustice eventually (this can be over a period of years or decades or even longer). As inequality *rises*, the causes for the *rising* inequality — regardless of what they actually are — are then increasingly framed as issues of fairness, especially by political and economic elites (whose status are also dependent on the extent of the inequality); the *justification* for the rising inequality is brought into question. As the inequality *continues to rise*, outcomes are then perceived — by people by and large, not moral philosophers — as more and more unfair in the event that the causes of the inequality are not addressed: if the causes of *rising* inequality are continually not properly justified, distributive injustice compounds over time.

In other words, the argument here is that in a practical sense rising economic inequality itself leads to distributive injustice over time from the perspective of moral philosophy (regardless of the justification for the economic inequality), but also, more importantly, from the perspective of large portions or majorities of the inhabitants of states. This is where international law — which remains the law that regulates the relationships inter-nations, i.e. between *states* — comes in. If the legal infrastructure that regulates the relationship *between* states enables or encourages behaviour that leads to rising economic inequality *within* states, then, over time this leads to a situation of distributive injustice within those states and with the inhabitants of those states blaming the behaviour enabled or encouraged by the international legal infrastructure for that distributive injustice, which compounds over time and increases the salience of distributive injustice in political discourse and the demands of inhabitants. One way in which this all manifests is through disdain for international institutions and the laws in which they are grounded. The remainder of this section seeks to justify this argument, with particular reference to the US.⁸⁹

First, let us deal with the moral philosophy aspects of the argument. Aristotelian distributive justice is essentially an argument for a sort of meritocracy where any inequality that exists is justified because it is on balance better for a given society. The term ‘meritocracy’ is a contested one.⁹⁰ The vagueness and inherent malleability of the concept of ‘merit’, of course, makes it difficult to assess.⁹¹ Since Michael Young’s

⁸⁹ The US is still the global hegemon (despite coming under increasing pressure from China in this regard). It is for this reason — aside from the present need for brevity — that the focus in this paper is on the US. A similar case, however, could be made out in respect of a number of other powerful developed countries, including the UK and Germany, amongst others. The case for developing countries is different as globalization has disproportionately benefitted developing countries from an aggregate economic perspective, despite causing rising economic inequalities in these countries as well. This is a worthwhile discussion but is not taken any further here.

⁹⁰ See, for example, the discussion in A. Liu, *Unraveling the Myth of Meritocracy Within the Context of US Higher Education*, 62 *Higher Education* (2011), 383-97, at 385-6.

⁹¹ This is perhaps why, as Thomas Piketty points out, “elites in all times and places have always relied in one way or another to justify their dominance” and that “over time ... it has become increasingly common to blame the poor for their poverty”. See T. Piketty, *Capital and Ideology* (Cambridge, MA: Harvard University Press, 2020), p. 710.

pioneering work on ‘meritocracy’ in 1958,⁹² however, Amy Liu comments that the merit has “most often generally ... [become] associated with talent, skill, intelligence, ability, and effort”.⁹³ Viewed from this perspective, regardless of how generous a meaning is ascribed to the concept, meritocracy is well and truly something which is destroyed by rising economic inequality.

Strong empirical evidence exists to support this position. Consider, for example, the extent to which median family income and wealth is correlated to education level in the US: families where no person has completed high school had a median income of USD 22 320 and a median wealth of USD 37 766 in 2013; where the highest level of educational attainment is a high school diploma, these figures rise to USD 41 190 and USD 95 072 respectively; when the highest level of educational attainment is a two- or four-year degree, these figures rise further to USD 76 293 and USD 273 488; and when the highest level of educational attainment is an advanced degree, these figure rise further still to USD 116 265 and USD 689 100.⁹⁴ This does not in and of itself, however, illustrate that this is not a nation with economic outcomes that are based on merit.

What does, however, illustrate this, is the finding by Raj Chetty and his colleagues that there is an incredibly strong correlation between college attendance and income rank.⁹⁵ The likelihood of one attending college between the age of 19 and 22, — a strong predictor of future income and income rank — is approximately 32% if one is born into the bottom end of the income spectrum whereas it is 95% if one is born into the top end of the income spectrum.⁹⁶ This is a profound finding because it shows that college attendance — and therefore income — mostly hinges not on merit, but on luck, i.e. on whether or not one is born into a high- or low-income family. What makes this finding even more profound is that income is tied to other pertinent outcomes that measure welfare.

For example, income is closely related to life expectancy. Therefore, as Raj Chetty and other colleagues show, as income inequality increases, so does the gap in life expectancies between those at the top of the income spectrum and those at the bottom.⁹⁷ This is not a meritocratic society. This leads to Raj Chetty and yet other colleagues to title one of their papers *The Fading American Dream*.⁹⁸ Their finding is equally bleak: “absolute income mobility”— the fraction of children who earn more than their parents — has fallen from approximately 90% for children born in 1940 to 50% for children born

⁹² M. Young, *The Rise of Meritocracy* (London: Thames and Hudson, 1958).

⁹³ See Liu, *supra* note 90, at 385 (footnote omitted).

⁹⁴ S.A. Wolla and J.A. Sullivan, *Education, Income and Wealth* (Page One Economics contribution, Federal Reserve Bank of St Louis), available at <<https://research.stlouisfed.org/publications/page1-econ/2017/01/03/education-income-and-wealth/>>, accessed 31 October 2020.

⁹⁵ See R. Chetty, J.N. Friedman and E. Saez *et al*, *Income Segregation and Intergenerational Mobility Across Colleges in the United States*, 135 *Quarterly Journal of Economics*, no. 3 (2020), 1567-1633. See also M. Jackson and B. Holzman, *A Century of Educational Inequality in the United States*, 117 *PNAS*, no. 32 (2020), 19108-15.

⁹⁶ See *ibid.*, particularly at 1585-8.

⁹⁷ R. Chetty, M. Stepner and S. Abraham, *The Association Between Income and Life Expectancy in the United States, 2001-2014*, 315 *JAMA*, no. 16, 1750-66.

⁹⁸ R. Chetty, D. Grusky and M. Hell *et al*, *The Fading American Dream: Trends in Absolute Income Mobility Since 1940*, 356 *Science* (2017), 398-406.

in the 1980s.⁹⁹ The reason for this, unsurprisingly, is the maldistribution of income growth.¹⁰⁰ In other words, the dubious nature of the concept of merit aside, rising economic inequality *is in and of itself* harmful to meritocracy and therefore to the attainment of Aristotelian distributive justice.¹⁰¹

As for the Rawlsian perspective, it is even easier to see how rising economic inequality upends distributive justice. As mentioned above, the income and wealth shares of the bottom 50% in the US have collapsed (as they have in most of the rest of the world), which in and of itself suggests that over time the US has moved to being a place that is increasingly further away from attaining distributive justice.¹⁰² However, this would only be true if the worst-off people in the US are worse off than they *would have been* under an egalitarian economic distribution. In other words, skyrocketing inequality in the US could be justified from a Rawlsian perspective if, instead of the systems that have been in place over the last 40 years, a system leading to an egalitarian distribution of economic resources *would have led* to the worst-off being worse off than they are today.

Again, strong empirical evidence suggests that the worst-off in the US would have been *better off* under a more egalitarian distribution of income. For example, in their *Fading American Dream* article referred to above, Raj Chetty and colleagues show that had economic growth been distributed in a more egalitarian fashion, absolute income mobility would have been higher.¹⁰³ In other words, the probability of being better off than one’s parents — which probability rises with income, i.e. it becomes less likely that you will be better off than your parents if you are lower down the income spectrum — would have been higher under conditions of lower economic inequality.

This leaves economic growth. Arguments persist that economic inequality is good for aggregate economic growth or that a trade-off exists between more economic equality and more growth.¹⁰⁴ In other words, it could conceivably be argued that Rawlsian distributive justice has been attained in the US and other developed countries because more egalitarian economic distributions would have led to less growth, including for the worst-off. In light of increasing amounts of empirical evidence, however, this argument is becoming unsustainable: the evidence suggests that, at best for proponents of this argument, only under circumstances of relatively low inequality does economic

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*, at 405.

¹⁰¹ A far more powerful case in support of this assertion can certainly be made, but for current purposes the crude case provided will have to suffice. For a more cogent explanation of how economic inequality in detrimental to meritocracy, see S.J. McNamee and R.K. Miller, Jr., *The Meritocracy Myth* (Plymouth: Rowman and Littlefield Publishers, 3rd ed., 2014). Cogent arguments, of course, also exist for the proposition that the pursuit of meritocracy itself leads to higher economic inequality. See, for example, D. Markovits, *The Meritocracy Trap: How America’s Foundational Myth Feeds Inequality, Dismantles the Middle Class, and Devours the Elite* (New York: Penguin Press, 2019).

¹⁰² On the income and wealth shares of the bottom 50% of each distribution, see Piketty, Saez and Zucman, *supra* note 43 and Saez and Zucman, *supra* note 46.

¹⁰³ See Chetty, Grusky and Hell *et al*, *supra* note 98.

¹⁰⁴ This trade-off is most often attributed to the work of Arthur Okun. See A.M. Okun, *Equality and Efficiency, the Big Tradeoff* (Washington, DC: Brookings Institution, 1975).

inequality matter for growth.¹⁰⁵ US inequality, however, has *never* been this low.¹⁰⁶ Moreover, once economic inequality reaches a certain point it is actually a *drag* on growth, the size of the negative impact of inequality on growth rising as does the level of inequality.¹⁰⁷ In other words, there is absolutely no doubt that the worst-off in the US would have been better off under a more egalitarian economic distribution: they would have been the beneficiaries of higher aggregate growth since the 1980s *and* they would have taken a greater share of that higher growth. In other words, rising economic inequality is *in and of itself* harmful to the interests of the worst-off in society and to the attainment of Rawlsian distributive justice.¹⁰⁸

Turning to the perspective of US inhabitants, it is helpful to have regard to public surveys. According to 2020 Pew Research Center data, 61% of Americans say that there is too much economic inequality in the US.¹⁰⁹ According to 42% of Americans, reducing economic is a top policy priority while an additional 37% of Americans think that it is an important issue (but not a top priority).¹¹⁰ In other words, approximately 80% of Americans think that it is important or even a top priority to reduce economic inequality. When asked to choose among a long list of factors that contribute “a great deal to economic inequality” in the US, the top response was “[t]he outsourcing of jobs to other countries”.¹¹¹ This against the backdrop of widespread fear among Americans about a rising China: 62% think that China’s power and influence are a major threat.¹¹²

Public opinion, however, is only one part of this multi-faceted story. Another part is how politicians in the US react to rising economic inequality. First, it should be noted that rising economic inequality lays the groundwork for *populism* in a very literal way. ‘Populism’, of course, is an essentially (and heavily) contested concept.¹¹³ For current

¹⁰⁵ See F. Grigoli and A. Robles, *Inequality Overhang* (IMF Working Paper, WP/17/76), available at <<https://www.imf.org/en/Publications/WP/Issues/2017/03/28/Inequality-Overhang-44774>>, accessed 31 October 2020. As Francesco Grigoli and Adrian Robles explain, the relationship between income inequality and economic development switches from positive to negative at a net Gini of about 27 percent.

¹⁰⁶ At least not since the introduction of the income tax in 1913. According to OECD data, the lowest recorded net Gini measured for US income was that of 30.7% in 1980. See US data on income inequality at OECD.Stat, available at <<https://stats.oecd.org/>>, accessed 31 October 2020.

¹⁰⁷ See Grigoli and Robles, *supra* note 105.

¹⁰⁸ Again, a far more powerful case in support of this assertion can certainly be made, but for current purposes the crude case provided will have to suffice.

¹⁰⁹ J.M. Horowitz, R. Igielnik and R. Kochhar, *Most Americans Say There is Too Much Economic Inequality in the U.S., but Fewer Than Half Call it a Top Priority* (Pew Research Center Report, January 2020), available at <<https://www.pewsocialtrends.org/2020/01/09/most-americans-say-there-is-too-much-economic-inequality-in-the-u-s-but-fewer-than-half-call-it-a-top-priority/>>, accessed 2 November 2020.

¹¹⁰ *Ibid.*, p. 4.

¹¹¹ *Ibid.*, p. 30.

¹¹² This is a historical high. See K. Devlin, L. Silver and C. Huang, *U.S. Views of China Increasingly Negative Amid Coronavirus Outbreak* (Pew Research Center Report, April 2020), available at <<https://www.pewresearch.org/global/2020/04/21/u-s-views-of-china-increasingly-negative-amid-coronavirus-outbreak/>>, accessed 3 November 2020.

¹¹³ See, for example, N. Gidron and B. Bonikowski, *Varieties of Populism: Literature Review and Research Agenda* (2013 Weatherhead Center for International Affairs Working Paper Series, working paper

purposes, a minimal definition such as the one proposed by Cas Mudde and Rovira Kaltwasser suffices to illustrate the point.¹¹⁴ They define populism “a [thin-centred] ideology that considers society to be ultimately separated into two homogenous and antagonistic camps, ‘the pure people’ and ‘the corrupt elite’, and which argues that politics should be an expression of the *volonté générale* (general will) of the people”.¹¹⁵ As such, they explain, “[p]opulism has three core concepts: the people, the elite, and the general will” and that “[w]hile the concepts of ‘the people’ and ‘the elite’ function like empty vessels that can be filled in various ways (that is, different manifestations of populism have different views regarding who does belong and does not belong to both the people and the elite), the notion of ‘the general will’ alludes to the very idea that all individuals as a whole unify their wills and are able to identify a common interest”.¹¹⁶

Seen from an economic standpoint, rising inequality quite literally divides a population into increasingly disparate groups. This assists populist politicians because it clearly supports the thesis that there is a growing divide between ‘the people’ and ‘the elite’. When the top 10% income and wealth shares rise significantly over a period of time (as they have since the 1980s) and the top 90% share falls precipitously during that same period (which they have), it becomes easier to justify that there truly is an economic ‘elite’ and that everyone else simply forms part of the rest of ‘the people’.

This is a big part of how Bernie Sanders has become so popular in the US. In essence, his politics is that of the ‘oligarchy’ versus the ‘working-class people’. As he put it in a 2019 speech: “[o]n one hand, there is a growing movement towards oligarchy and authoritarianism in which a small number of incredibly wealthy and powerful billionaires own and control a significant part of the economy and exert enormous influence over the political life of our country” and “[o]n the other hand, in opposition to oligarchy, there is a movement of working people and young people who, in ever increasing numbers, are fighting for justice”.¹¹⁷

On the other end of the spectrum, is President Donald Trump. His response to economic inequality has been a different one: he has, in essence, resorted to what Frederick Solt calls ‘diversionary nationalism’.¹¹⁸ As Solt explains, “[t]he diversionary theory of nationalism maintains that states generate nationalist sentiments to respond to the threat of unrest posed by high levels of economic inequality”.¹¹⁹ The diversionary

13-0004), available at <https://scholar.harvard.edu/files/gidron_bonikowski_populismlitreview_2013.pdf>, accessed 3 November 2020. See also C. Mudde and R. Kaltwasser, “Populism and Political Leadership” in R.A.W. Rhodes and P. Hart, *Oxford Handbook of Political Leadership* (Published online: Oxford University Press, 2014), available at <10.1093/oxfordhb/9780199653881.013.016>, accessed 3 November 2020.

¹¹⁴ *Id.*, at para 2.

¹¹⁵ *Ibid.* Reference omitted.

¹¹⁶ *Ibid.* Reference omitted.

¹¹⁷ See T. Golshan, “Read: Bernie Sanders defines his vision for democratic socialism in the United States” (transcript of a speech given by Senator Sanders published by Vox on 12 June 2019), available at <<https://www.vox.com/2019/6/12/18663217/bernie-sanders-democratic-socialism-speech-transcript>>, accessed 3 November 2020.

¹¹⁸ See F. Solt, *Diversionary Nationalism: Economic Inequality and the Formation of National Pride*, 73 *Journal of Politics*, no. 3 (2011), 821-30.

¹¹⁹ *Ibid.*, at 822.

theory of nationalism, moreover, “contends that states generate nationalism in their citizens to defuse the ticking bomb of economic inequality. Nationalism conceals unequal conditions, pre-empts calls for redistribution, and thereby prevents the development of unrest, so states should be expected to inculcate more nationalism in their populations when economic inequality is greater”.¹²⁰ Whether deliberately or not to obscure economic inequality, Trump has taken advantage of rising inequality by stoking nationalist sentiments in a populist fashion (thereby diverting some attention from economic inequality, whether deliberately or not): he has done this, amongst other ways, by demonising immigrants and people of the Islamic faith, as well as by blaming US economic woes on the economic practices of other countries — predominantly China, Mexico and Germany (and, on occasion, Viet Nam) — and on the unequal burden placed on the US in ensuring global peace and stability.

A good example of how these responses to rising economic inequality can spill over into the realm of international law is the 2016 elections in the US and the issue of what was then known as the Trans-Pacific Partnership (the TPP), i.e. the proposed trade agreement between Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Viet Nam and the US negotiated by the Obama administration and signed by the parties to the agreement on 4 February 2016. The TPP became an election issue, with both Trump and Sanders declaring their staunch opposition to the TPP.¹²¹ This eventually led to Democratic presidential nominee Hillary Clinton, who had once referred to the TPP as the “gold standard in trade agreements to open free, transparent, fair trade, the kind of environment that has the rule of law and a level playing field”,¹²² to stating in a campaign speech in Ohio that she “will stop any trade deal that kills jobs or holds down wages — including the Trans-Pacific Partnership” and that she “oppose[s] it now, [will] oppose it after the election, and [will] oppose it as president”.¹²³

One of the first things Trump did having taken office after the 2016 election, of course, was to withdraw the US from the TPP. Had the elections gone the other way, however,

¹²⁰ *Ibid.*

¹²¹ Trump said of the TPP, for example, in typical populist language that “[t]he Trans-Pacific Partnership is another disaster done and pushed by special interests who want to rape our country, just a continuing rape of our country”. See C. Lima, “Trump calls trade deal ‘a rape of our country’” (Politico report, 28 June 2016), available at <<https://www.politico.com/story/2016/06/donald-trump-trans-pacific-partnership-224916>>, accessed 8 November 2020. Sanders also supported Trump’s withdrawal from the TPP after Trump became president, stating that he was “glad the Trans-Pacific Partnership is dead and gone” and that “[f]or the last 30 years, we have had a series of trade deals — including the North American Free Trade Agreement, permanent normal trade relations with China and others — which have cost us millions of decent-paying jobs and caused a ‘race to the bottom’ which has lowered wages for American workers”. As such, he called for the development of “a new trade policy that helps working families, not just multinational corporations” and stated that “[i]f President Trump is serious about a new policy to help American workers, then I would be delighted to work with him.” See D. Weigel, “Sanders, joined by Rust Belt Democrats, praises Trump for nixing TPP” (Washington Post report, 23 January 2017), available at <<https://www.washingtonpost.com/news/powerpost/wp/2017/01/23/sanders-praises-trump-for-nixing-tpp-delighted-to-work-with-him-on-pro-worker-policies/>>, accessed 8 November 2020.

¹²² See M.A. Memoli, “Hillary Clinton once called TPP the ‘gold standard.’ Here’s why, and what she says about the trade deal now” (LA Times report, 26 September 2016), available at <<https://www.latimes.com/politics/la-na-pol-trade-tpp-20160926-snap-story.html>>, accessed 8 November 2020.

¹²³ *Ibid.*

Clinton had essentially committed to do the same, in part because of Sanders’ opposition to the TPP and because he ran a competitive campaign which shifted Clinton and the Democratic Party ‘leftwards’ on economic issues.¹²⁴ Trump’s antagonism to trade agreements, however, did not stop there. During the election campaign he had also taken aim at what was then known as the Northern American Free Trade Agreement (NAFTA).¹²⁵ Sanders had a history of opposing NAFTA, which he touted during the course of the campaign.¹²⁶ Clinton, who had previously championed NAFTA, both as first lady and as a senator, maintained that she had for more than a decade advocated NAFTA’s renegotiation.¹²⁷ NAFTA was ultimately renegotiated by the Trump administration, leading to the conclusion of the United States-Mexico-Canada Agreement (USMCA).¹²⁸ It is noteworthy, however, that a renegotiation could plausibly have taken place just as easily under a Sanders administration, and even under a Clinton administration.

Aside from the TPP and NAFTA,¹²⁹ Trump has also taken issue with the World Trade Organization (the WTO). In particular, the Trump administration has taken aim at the WTO’s apex judicial organ, the Appellate Body (the AB).¹³⁰ Through withholding its consent in respect of appointing new Appellate Body Members, the US has effectively rendered the WTO dispute settlement system entirely ineffective, albeit, possibly, on a

¹²⁴ See J Stein, “The Democratic Party has moved left after Bernie Sanders’s run. The platform is proof.” (Vox report, 11 July 2016), available at <<https://www.vox.com/2016/7/11/12139852/the-democratic-party-left-bernie-sanders>>, accessed 8 November 2020.

¹²⁵ Trump said of NAFTA at the time during a debate with Clinton: “NAFTA is the worst trade deal maybe ever signed anywhere, but certainly ever signed in this country”. See P. Gillespie, “Trump hammers America’s ‘worst trade deal’” (CNN Business report, 27 September 2016), available at <<https://money.cnn.com/2016/09/27/news/economy/donald-trump-nafta-hillary-clinton-debate/>>, accessed 8 November 2020. He had also previously stated that, if he became president, “[he was] going tell [the US] NAFTA partners that [he] intend to immediately renegotiate the terms of that agreement to get a better deal for [US] workers” and that “America intends to withdraw from the deal” in the event that such a renegotiation does not take place immediately. See E. Stephenson and A. Becker, “Trump vows to reopen, or toss, NAFTA pact with Canada and Mexico” (Reuters report, 28 June 2016), available at <<https://www.reuters.com/article/us-usa-election-idUSKCN0ZE0Z0>>, accessed 8 November 2020.

¹²⁶ In a debate with Clinton, Sanders pointed out that “[he] was on a picket line in the early 1990s against Nafta, because you didn’t need a Ph.D. in economics to understand that American workers should not be forced to compete against people in Mexico making 25 cents an hour.” See A. Chozick and P. Healy, “In Democratic Debate, Bernie Sanders Pushes Hillary Clinton on Trade and Jobs” (New York Times report, 6 March 2016), available at <<https://www.nytimes.com/2016/03/07/us/politics/democratic-debate.html>>, accessed 8 November 2020.

¹²⁷ See S. Donnan, “Hillary Clinton’s awkward history on trade policy” (FT report, 29 September 2016), available at <<https://www.ft.com/content/c2d1c2ca-85e3-11e6-8897-2359a58ac7a5>>, accessed 8 November 2020.

¹²⁸ During the 2020 race to be the Democratic presidential candidate, Sanders noted his strong opposition to USMCA and called on Trump abandon the new deal he had struck. See, for example, S. Kapur, “Bernie Sanders Calls on Trump to Abandon New Nafta Agreement” (Bloomberg report, 14 April 2019), available at <<https://www.bloomberg.com/news/articles/2019-04-14/bernie-sanders-calls-on-trump-to-abandon-new-nafta-agreement>>, accessed 8 November 2020.

¹²⁹ The Trump administration also renegotiated the US’ trade deal with South Korea.

¹³⁰ It should, of course, be noted that there had already been much dissatisfaction on the part of the US about the AB prior to Trump’s election. It would be wrong, however, to think that Trump was merely continuing along a path that the US had already taken.

temporary basis.¹³¹ While WTO dispute settlement has been criticised by policymakers in the US since well before Trump was elected,¹³² the Trump administration has initiated an unprecedented assault on the system: in February 2020, the Office of the United States Trade Representative (the USTR) issued a 174-page report on its qualms with the AB.¹³³ In this report, the USTR criticises the AB for everything from failing to meet mandatory deadlines for deciding appeals to the AB purportedly insisting that WTO panels treat prior AB interpretations as binding precedent to the AB allegedly overstepping the authority given to it by WTO members.¹³⁴

Aside from the AB being effectively neutered by the US, and perhaps as a result of it, the US has rather flagrantly violated WTO rules since Trump became president, particularly vis-à-vis China. Premised on the notions that issues of economic security are issues of national security,¹³⁵ trade deficits are deleterious to US interests,¹³⁶ and that

¹³¹ On what exactly the AB not having sufficient ABMs to hear appeals means for WTO dispute settlement, see J. Pauwelyn, *WTO Dispute Settlement Post 2019: What to Expect?*, 22 *Journal of International Economic Law*, no. 3 (2019), 297-321.

¹³² Senator Bob Dole, for example, who himself ran for president in 1996, has in the past proposed a so-called three-strikes test for WTO dispute settlement whereby a panel of US judges would essentially review each decision emanating from the WTO dispute settlement system and, in the event that three ‘bad’ decisions were made within a five-year period, this would allow Congress to withdraw from the WTO. For a defence of his position in this regard, see B. Dole, “3-Strikes Test for The WTO” (Washington Post, opinion, 8 May 2000), available at <<https://www.washingtonpost.com/archive/opinions/2000/05/08/3-strikes-test-for-the-wto/cfd7d0ab-3b70-4caa-9207-b6cebb860865/>>, accessed 8 November 2020.

¹³³ Office of the USTR, *Report on the Appellate Body of the World Trade Organization*, available at <https://ustr.gov/sites/default/files/Report_on_the_Appellate_Body_of_the_World_Trade_Organization.pdf>, accessed 8 November 2020.

¹³⁴ See *ibid.* As Chad Bown and Soumaya Keynes point out, the US’s main gripe is really that the AB had on a number of occasions ruled against it in respect of how it applied trade remedies, i.e. safeguards, anti-dumping duties and countervailing duties. See C. Bown and S. Keynes, *Why Trump Shot the Sheriffs: The End of WTO Dispute Settlement 1.0* (Peterson Institute for International Economics Working Paper Series, WP 2020-4, March 2020), available at <<https://www.piie.com/publications/working-papers/why-trump-shot-sheriffs-end-wto-dispute-settlement-10>>, accessed 8 November 2020.

¹³⁵ On the basis that various types of steel and aluminium products were being imported “in such quantities and under such circumstances as to threaten to impair the national security of the United States”, Trump by proclamation imposed tariffs on these products in excess of the US’ WTO bound rates for these products. For an explanation of these measures, see G.A.G. Duque, *Interpreting WTO Rules in Times of Contestation (Part 1): Trump Tariffs on Imported Steel and Aluminium in the Light of the GATT 1994*, 13 *Global Trade and Customs Journal*, no. 10, 420-34. These duties were subsequently further increased by proclamation for a number of products and countries on 24 January 2020. See “Proclamation on Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles into the United States” (Presidential Proclamation issued by President Trump on 24 January 2020), available at <<https://www.whitehouse.gov/presidential-actions/proclamation-adjusting-imports-derivative-aluminum-articles-derivative-steel-articles-united-states/>>, accessed 9 November 2020.

¹³⁶ This view has been expressed by Trump himself, but also by one of his foremost advisers on trade issues, Peter Navarro. In a book co-authored by Gregy Autry, Navarro decries the “blood-sucking” trade deficit the US runs with China because, in his view, “[w]hen America runs a chronic trade deficit with China, this shaves critical points off our economic growth rate” and “[t]his slower growth rate, in turn, thereby reduces the number of jobs America creates”. See G. Autry and P. Navarro, *Death by China: Confronting the Dragon — A Call to Action for the Western World* (Upper Saddle River, NJ: Prentice Hall, 2011), pp. 68 and 73.

China steals US technology,¹³⁷ the Trump administration has imposed hundreds of billions of dollars in tariffs on various goods, particularly those produced in China, since Trump became president after the 2016 elections.¹³⁸ Many of these tariffs have subsequently been challenged, with some of them have been found to be inconsistent with WTO law,¹³⁹ and with other disputes still pending.¹⁴⁰ This has been accompanied by a shift away from multilateralism on the part of the US, with an apparent reversion to a bilateralism of times past. The prime example of this has been the US’ negotiations with China and the conclusion between the nations of the so-called Phase One Deal under which China agrees to purchase an additional USD 200 billion worth of US exports.¹⁴¹

The Trump administration’s turn against international law, moreover, has not been limited to the world of international economic law and institutions. On 1 June 2017, Trump gave a speech announcing that the US would no longer be participating in the Paris Agreement concluded in 2016 under the auspices of the United Nations Framework Convention on Climate Change (the Paris Agreement).¹⁴² As it had to wait three years from the date that the Agreement entered into force in the US before officially withdrawing,¹⁴³ the Trump administration only formally notified the United Nations on 4 November 2019 that it would withdraw from the Paris Agreement, which withdrawal

¹³⁷ This was the predominant focus of the USTR’s section 301 report of 22 March 2018 “[i]nto China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation” which lead to an initial round of tariffs being applied to approximately USD 50-60 billion of Chinese goods. See Office of the USTR, *Findings of the Investigation Into China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation Under Section 301 Of The Trade Act Of 1974*, available at <<https://ustr.gov/sites/default/files/Section%20301%20FINAL.PDF>>, accessed 9 November 2020 (the Section 301 Report).

¹³⁸ For a comprehensive timeline summarising what protection was imposed in respect of which goods from which countries, see C. Bown and M. Kolb, “Trump’s Trade War Timeline: An Up-to-Date Guide” (Peterson Institute for International Economics Trade and Investment Policy Watch Blog, 28 September 2020), available at <<https://www.piie.com/sites/default/files/documents/trump-trade-war-timeline.pdf>>, accessed 9 November 2020.

¹³⁹ The most prominent example of this, perhaps, is the finding by the WTO Panel in its *US — Tariff Measures* report (WT/DS543/R) that the imposition of tariffs imposed pursuant to the Section 301 Report were inconsistent with the US’ WTO obligations under the General Agreement on Tariffs and Trade, 1994 (GATT 1994). As such, the Panel recommended that the US bring its measures into conformity with the GATT 1994.

¹⁴⁰ For example, the host of disputes brought in response to the steel and aluminium tariffs referred to in *supra* note 135. On the number and nature of these disputes, see further Duque, *supra* note 135.

¹⁴¹ For a sense of what the deal entails and how it has unfolded over time, see C. Bown, “Trump’s phase one trade deal with China and the US election” (Peterson Institute for International Economics Trade and Investment Policy Watch Blog, 27 October 2020), available at <<https://www.piie.com/blogs/trade-and-investment-policy-watch/trumps-phase-one-trade-deal-china-and-us-election>>, accessed 9 November 2020.

¹⁴² For the full text of the speech, see WhiteHouse.gov, “Statement by President Trump on the Paris Climate Accord” (1 June 2017), available at <<https://www.whitehouse.gov/briefings-statements/statement-president-trump-paris-climate-accord/>>, accessed 10 November 2020.

¹⁴³ See Article 28 of the Paris Agreement, available at <https://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf>, accessed 10 November 2020.

took effect one year later on 4 November 2020.¹⁴⁴ In another display (whether intentionally or otherwise) of diversionary nationalism, Trump’s withdrawal was premised on the idea, amongst others, that “[t]he Paris Climate Accord is simply the latest example of Washington entering into an agreement that disadvantages the United States to the exclusive benefit of other countries, leaving American workers — who I love — and taxpayers to absorb the cost in terms of lost jobs, lower wages, shuttered factories, and vastly diminished economic production”.¹⁴⁵ While it is difficult to assess the exact extent to which this will impact the world’s attempts to properly address climate change, the US withdrawal from the Paris Agreement is generally seen as being deleterious to such efforts.¹⁴⁶

There are literally dozens of other examples of how the Trump administration has altered international law and/or violated it: its “travel ban” directed predominantly at nations with large Muslim populations, for example, has been argued to violate international human rights law and US duties under the 1951 Convention Relating to the Status of Refugees.¹⁴⁷ Trump has also pulled the US out of a broad range of international treaties and organisations, including the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Universal Postal Union, the Optional Protocol to the Vienna Convention on Diplomatic Relations Concerning the Compulsory Settlement of Disputes (which means that the US will no longer recognise the jurisdiction of the International Court of Justice reflected in this Protocol), the Joint Comprehensive Plan of Action (colloquially known as the “Iran nuclear deal”) and the World Health Organization (WHO), amongst a significant number of others.¹⁴⁸

3. Conclusion: Towards Distributive Justice and Sustainable, Evenly Distributed Economic Development

The aim of this paper has not been to provide an exhaustive account of how rising economic inequality and sustained and growing distributive injustice affects international law. This paper has simply provided a brief (and partial) account of how rising economic inequality in the US in particular and growing distributive injustice in that country has the propensity to drive both the production of international law and to affect the extent to which it is adhered to, particularly in light of declining economic inequality between nations and the rise of China as an economic power. There are many channels other than

¹⁴⁴ See L. Friedman, “Trump Serves Notice to Quit Paris Climate Agreement” (New York Times report, 4 November 2020), available at <<https://www.nytimes.com/2019/11/04/climate/trump-paris-agreement-climate.html>>, accessed 10 November 2020. See also Article 28:2 of the Paris Agreement, *supra* note 143 which provides that withdrawal shall take effect one year after notification of withdrawal.

¹⁴⁵ See WhiteHouse.gov, *supra* note 142.

¹⁴⁶ For an assessment of the impacts of the withdrawal, see, for example, C. Arlota, *Does the United States’ Withdrawal from the Paris Agreement on Climate Change Pass the Cost-Benefit Analysis Test?*, 41 Pennsylvania Journal of International Law, no. 4 (2020), 881-938.

¹⁴⁷ See in this regard, for example, E. Lee, *Non-Discrimination in Refugee and Asylum Law (Against Travel Ban 1.0 and 2.0)*, 31 Georgetown International Law Journal, no. 3 (2017), 459-524.

¹⁴⁸ Most of these examples are drawn from S. Talmon, *The United States under President Trump: Gravedigger of International Law*, 18 Chinese Journal of International Law, no. 3 (2019), 645-68. See also T.G. Weiss, *The UN and Multilateralism under Siege in the “Age of Trump”*, 4 Global Summitry, no. 1 (2018), 1-17.

those introduced in this paper, however, through which rising economic inequality within nations (including nations that are not the US) is capable of affecting the law as between them.

For example, rising economic inequality has been shown to contribute to rising political polarization within nations.¹⁴⁹ Political polarization leads to ever more extreme positions being taken, whether along nationalist, authoritarian, cultural or traditional left-right economic spectra. This has clear implications for international law, especially with regards to certainty: over the course of time, different political parties will come to power in democracies; if these parties drift further and further apart on political, cultural and economic issues — the division being driven, at least in part, by rising economic inequality and distributive injustice — then each time a new party comes into power the manner in which that party interacts with the world is likely to be vastly different from the administration that preceded it.

For example, at the time of writing this paper, Joe Biden, a Democrat, has become the President-elect in the US. While it is unclear exactly how a Biden administration will alter US international relations and international law, it has indicated that it will take a different approach to the outgoing Trump administration. On the campaign trail, for example, Joe Biden made a number of commitments that illustrate this. For example, he has pledged to re-join the Paris Agreement on the first day of his presidency and pledged to cut US emissions to net zero by 2050.¹⁵⁰ Joe Biden has also pledged to “end the Muslim ban on day one”,¹⁵¹ re-join the WHO on his first day as president,¹⁵² and return to the Joint Comprehensive Plan of Action.¹⁵³

When the pendulum swings back in a Republican direction, however, current trends would suggest that there would be a reversion to a more inward-looking US. If Donald Trump were to be re-elected in 2024, for example — or if a different Trumpian figure were to be elected instead — the US would likely again take a very different course to international relations and international law. This makes it very difficult to craft laws that require sustainable long-term plans to be put into action in order to solve the problems of our time. The example of climate change makes this incredibly clear. Climate change is a long term problem that requires a clear long term plan that will be executed meticulously by the nations of the world if we are to make meaningful progress in halting

¹⁴⁹ See for example in this regard J. Voorheis, N. McCarty and B. Shor, *Unequal Incomes, Ideology and Gridlock: How Rising Inequality Increases Political Polarization* (draft paper as at 16 March 2016), available at <http://www.law.nyu.edu/sites/default/files/upload_documents/Nolan%20McCarty%20Paper%20Polarization_draft_shared%20031616.pdf>, accessed 14 November 2020.

¹⁵⁰ See L. Hook, “Biden shift on climate change welcomed by world leaders” (FT report, 8 November 2020), available at <<https://www.ft.com/content/5ce99af6-e776-43af-9c74-593d49dc5125>>, accessed 12 November 2020.

¹⁵¹ See C. Wilkie, “Biden pledges to end Trump’s ‘Muslim ban’ on his first day in office” (CNBC report, 20 July 2020), available at <<https://www.cnbc.com/2020/07/20/biden-pledges-to-end-trumps-muslim-ban-on-his-first-day-in-office.html>>, accessed 14 November 2020.

¹⁵² See J. Belluz, “Trump abandoned the WHO. Biden will rejoin the agency on day one in office” (Vox report, 9 November 2020), available at <<https://www.vox.com/2020/11/9/21556172/trump-biden-transition-team-covid-19-who-join>>, accessed 14 November 2020.

¹⁵³ K. Manson and M. Peel, “Biden team considers options on Iran nuclear deal” (FT report, 10 November 2020), available at <<https://www.ft.com/content/c6a3136d-804b-477a-953f-442645935ba2>>, accessed 14 November 2020.

the deleterious impact that rising temperatures are having and will only continue to have on the planet and its people. Even if a President Biden re-joins the Paris Agreement and does his utmost to cooperate in order to rein in the adverse effects of climate change, this will be of little use for such a long-term problem if the next president of the US reverses these efforts immediately upon taking office.

There are also other areas in which the Trump administration’s actions are likely to leave a more lasting legacy and where political polarization is less prevalent. These are mostly in the economic realm. On trade, for example, it is difficult to see the future Biden administration re-joining the TPP or entirely backing down from the Trump administration’s stances towards China and the WTO. Rising economic inequality, the lack of distributive justice within the US and the continuing shift towards a multipolar world order will continue to affect how the US engages with the world and, therefore, with how it views and responds to existing international economic law and institutions in particular. The US will continue to push for changes under a Biden administration, albeit in slightly different ways. This much is clear from the Biden campaign’s “Plan to Ensure the Future is ‘Made in All of America’ by all of America’s Workers”, which includes a “Pro-American-Worker Tax And Trade Strategy”, which, although rhetorically slightly different and anti-Trump administration policies, essentially shares the stated goals and intentions of the Trump administration.¹⁵⁴

With all this said, the first point of this paper is to call for further research by international lawyers and scholars in other fields mapping how rising economic inequality and distributive injustice within nations affects the production of and adherence to laws between them. The other points of this paper, however, are more normative in nature and explain why further research of this kind is necessary: first, on the issue of economic globalization, the stance taken here is that, as a phenomenon, *the* globalization that we have had since 1980 has in a utilitarian sense been almost unambiguously a good thing: it has led to literally *billions* of people being lifted out of poverty in the developing world. In having this discussion, it must not be forgotten that more than *one third* of the global population live in China and India *alone*.¹⁵⁵ Many other developing countries have benefitted from economic globalization as well, with hundreds of millions being lifted out of poverty *outside* of China and India. The role of international cooperation — and therefore the international law that such cooperation was grounded in — should not be underestimated.

Secondly, however, it should be noted that *the* economic globalization that has been practiced since 1980 could have been *an* entirely different economic globalization. From a utilitarian perspective, economic globalization could have delivered far better results for far more people if it had been practiced in a way that was more alive to economic distributions and distributive justice. In other words, a globalization that led to better and more just distributional outcomes for the bottom 90% (and especially the bottom 50%) of *all* nations, i.e. developed and developing, would have been much better than what we got instead. As illustrated above, it would also likely have been a more *sustainable*

¹⁵⁴ See joebiden.com, “Plan to Ensure the Future is ‘Made in All of America’ by all of America’s Workers”, available at <<https://joebiden.com/made-in-america/#>>, accessed 14 November 2020.

¹⁵⁵ Calculations based on data from United Nations Population Division, *World Population Prospects: 2019 Revision*, available at <<https://population.un.org/wpp/Download/Standard/Population/>>, accessed 8 November 2020.

economic globalization with less international imbalances and tensions.¹⁵⁶ As things stand, however, *the* economic globalization we got is increasingly under attack — including the international cooperation and laws that have hitherto kept it together.

Third, while there is not much that can be done about the past 40 years, we have been at a crossroads for some time now: either we must choose *a* different economic globalization or *the* economic globalization we have will continue to break down. The decisions we make are important because, despite having brought much benefit, the work of economic globalization is far from complete. Living standards still remain very low in large parts of the world, particularly on the African continent and in large parts of Latin America, but also in many parts of Asia, this despite Asia having been the largest beneficiary of economic globalization on balance. Other problems, such as climate change, cannot be solved in isolation and must of necessity be addressed through cooperation. A better globalization would thus be preferable to the developed world turning inwards. It is also true simultaneously that without a better globalization the majority of people in the developed world would perhaps be justified in calling for such an inward turn.¹⁵⁷

The type of globalization envisioned here will be difficult to achieve as it will require cooperation that restores the distributional autonomy that states have lost *because of the* globalization that has been practiced since 1980.¹⁵⁸ It will also simultaneously require concerted efforts within states to reduce economic inequality within their own borders. All of this becomes more difficult as inequality within states continues to rise (especially as inequality between them is set to continue declining, causing further and more salient international tensions), making addressing rising economic inequality within states an urgent priority because the longer it goes unaddressed the more difficult it becomes to address and the more harmful it becomes.

Finally, coming back to international cooperation and law: an attempt has been made in this paper to show that rising economic inequality of necessity leads to distributive injustice, which becomes more salient of an issue if it is sustained and increases over time. This, in turn, results in a break down in international cooperation and law. Such a break down is important because international law holds up a global economic system which has been good, at least in a utilitarian sense, for the welfare of the world’s inhabitants (and could be far better if the system is improved). It is also, however,

¹⁵⁶ On these imbalances and tensions, see generally Pettis and Klein, *supra* note 8. Pettis and Klein make the argument that economic inequality should also be reduced elsewhere, especially in places like China and Germany. This would lead to less imbalances, particularly vis-à-vis the US, which would in turn lead to less international tensions. This is an opportune moment, then, to point out that while this paper has focused on the US, reducing economic inequality elsewhere is also of great importance. The reduction of economic inequality is a goal that the nations of the world already share to some extent, at least superficially. This is clear from Sustainable Development Goal 10, the aims of which include to reduce inequality within countries. Far more commitment at a global level is not only desirable but essential. Economic inequality should be reduced in the US, but it should also be reduced in China, Germany and virtually everywhere else in the world. This can only be achieved by greater cooperation, not less.

¹⁵⁷ Cogent cases for turning inward have been made out. See, for example, Rodrik, *supra* note 67.

¹⁵⁸ On the concept of distributional autonomy and the loss thereof, see M. Schrepfer, *A Rawlsian Case for Economic Nationalism: Globalisation and Distributional Autonomy in the Law of Peoples*, 36 *Journal of Applied Philosophy*, no. 1 (2019), 153-63. See also A. Buchanan, *Rawls’ Law of Peoples: Rules for a Vanished Westphalian World*, 110 *Ethics*, no. 4 (2000), 697–721.

important for more existential reasons: international law underpins how as a world we deal with existential issues such as a climate change and the use of violence between nations. It does not necessarily follow that anything catastrophic will happen in a high inequality world: the argument here is simply that it is far less likely for something of this nature to occur in a world with less economic inequality and more just distributions.