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– Poverty, Inequality and the Potential of
International Human Rights Law

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Why Should it Matter that Others Have More? –
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Human Rights Law

Margot E. Salomon*

Abstract: A concern with ensuring minimum standards of dignity for all and a doctrine based on the need to secure for everyone basic levels of rights have traditionally shaped the way in which international human rights law addresses poverty. Whether this minimalist, non-relational approach befits international law objectives in the area of *world* poverty begs consideration. This paper offers three justifications as to why global material inequality – and not just poverty – should matter to international human rights law. The paper then situates requirements regarding the improvement of living conditions, a system of equitable distribution in the case of hunger, and in particular obligations of international cooperation, within the post-1945 international effort at people-centred development. The contextual consideration of relevant tenets serves to demonstrate that positive international human rights law can be applied beyond efforts at poverty alleviation to accommodate a doctrine of fair global distribution.

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This work is dedicated to the life and memory of Professor Peter Townsend (1928–2009), an irreplaceable colleague, friend and co-conspirator, and an indefatigable advocate of the rights of the poor. His outstanding legacy offers some comfort, but he is missed terribly.

INTRODUCTION

Poverty blights the lives of almost half the world population. Four point eight billion people live in developing countries of which 2.7 billion, or 43 per cent of the world population, live on less than USD two a day.¹ One in four people (1.4 billion) in the developing world live in extreme poverty attempting to survive below the international poverty line of USD 1.25 a day.² If we take China out of the picture in order to get a sense of the generalised trend, the number of people globally living in extreme poverty has increased in the past three decades.³ Moreover, recent findings challenge the oft-advanced conclusion that world poverty has fallen substantially since the early 1990s due to a decrease in poverty in China and India.⁴ So world poverty may be down, but if so it is largely due to poverty reduction figures in a very small number of populous countries. Then again world poverty may not be falling at all.

International human rights law is undoubtedly alive to the poverty that continues to plague this half of humanity.⁵ Socio-economic rights are concerned with ensuring minimum subsistence requirements and standards of basic dignity.⁶ Given its preoccupation with people who are left out, discriminated against, and marginalised, it is perhaps not surprising that human rights concerns around poverty are approached with a focus on the poor, not on the affluent, and not on the gap between them.⁷

The overall pattern of distribution for the world at present is more unequal than for any country except Namibia. Measured by the Gini coefficient on a scale

¹ World Health Organization, 'Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property: Annex' (61st World Health Assembly, 2008), para 2.

² World Bank at www.worldbank.org (Poverty Net). The World Bank uses reference lines set at USD 1.25 and USD two a day 2005 purchasing power parity terms.

³ Among other sources, R.H. Wade, 'Globalization, Growth, Poverty, Inequality, Resentment, and Imperialism' in J. Ravenhill (ed), *Global Political Economy* (Oxford: Oxford University Press, 2nd ed, 2008), 382, 387. Wade's conclusion is for the period 1981-2001.

⁴ S.G. Reddy and C. Minoiu, 'Has World Poverty Really Fallen?' (2007) 3 *Review of Income and Wealth* 484.

⁵ While extreme poverty represents the more urgent concern, for the purposes of this paper, no sharp lines need be drawn between the two types of poverty. Where it can be said to have taken place, reduction has been dramatically inadequate for both categories of persons. Moreover, the international poverty lines are not rigidly relied on for the purposes of applying international law in this area, with a low-income and a multidimensional approach prevalent.

⁶ This paper uses the terms 'economic, social and cultural rights' and 'socio-economic rights' interchangeably.

⁷ Milanovic has analysed global inequalities in terms of three concepts: inequality between states, inequality between countries weighted by population, and income distribution between individuals (or households) in the world, termed 'true world inequality'. B. Milanovic, 'Global Income Inequality' in D. Ehrenpreis (ed), *The Challenge of Inequality* (Brasilia: UNDP International Poverty Centre, 2007), 6. Summarising the findings subsequently provided above, inequality between states is widening rapidly; inequality between countries weighted by population has shrunk since 1980, however, this is due to the fast growth in China and India; and as Wade concludes, inequality among households is probably increasing. Wolf concludes that there has been a decline in world-wide inequality among households, but the chief explanation is the fast growth of China and to a lesser extent, of India. R. Wade and M. Wolf [debate], 'Are Global Poverty and Inequality Getting Worse?' in D. Held and A. McGrew (eds), *The Global Transformations Reader* (Cambridge: Polity Press, 2nd ed, 2003), 440-441. Milanovic remarks that there is general agreement about the size of inequality between individuals in the world, but general disagreement about its recent direction. *ibid.*

where zero is complete equality and 100 is complete inequality, the Gini coefficient for the world is roughly 67.⁸ The following figures offer a clearer way to communicate the extent of global income inequality: five per cent of individuals in the world receive about one-third of total world income, with the top 10 per cent receiving one-half. The ratio between the average income received by the richest five per cent and the poorest five per cent of the world is 165:1.⁹ The gap between the world's richest country and the world's poorest increased from 3:1 in 1820 to 70:1 in 2000,¹⁰ and is widening rapidly.¹¹ If we compare the average incomes for each country and weight each one by its population, income inequality has become more equal since 1980; however this result depends on the figures from one country. The generalised tendency of the world system over this same period that saw the rolling out of neoliberalism globally is greater inequality, with falling income inequality between countries since the early 1980s purely a function of China's fast growth.¹²

Does the attention of human rights law on world poverty but not on inequality in income distribution and on living standards globally ill-serve the subject of its concern – the world's poor? In response to this question this paper inquires into the focus given to the central human rights doctrine relied on to determine the occurrence of a violation of a socio-economic right: whether the minimum level of a given right has been met. International human rights law articulates the principal ethical discourse of our time, with poverty and human rights today recognised as intertwined phenomena.¹³ This relatively recent focus on *world* poverty as a human rights issue has exposed the existence of only inchoate theories that inform international legal developments in this area. In an effort to scrutinise this doctrinal presupposition before it becomes reflexively applied to considerations of world poverty, this article will explore in the first instance whether the global *gap* between rich and poor should matter under international human rights law. That is, while human rights law is concerned with poverty, should it also be concerned with the fact that the poor are poorer *than others*? For a code premised on meeting universal minimum standards and levels of rights, why should it matter that others have more?

⁸ United Nations Development Programme (UNDP), *Human Development Report 2005: International Cooperation at a Crossroads: Aid, Trade and Security in an Unequal World* (New York: UNDP, 2005), 38. Milanovic's findings regarding global income distribution among the world's people indicate a similar Gini value of between 63 and 68. Milanovic, n 7 above, 6.

⁹ *ibid.* Global wealth is even more unevenly distributed than income. The richest 10 per cent of adults in the world own 85 per cent of global household wealth; the bottom half collectively owns barely one per cent. J. Davies, S. Sandström, A. Shorrocks, and E. Wolff, 'The Global Distribution of Household Wealth' in Ehrenpreis, n 7 above, 3. The results are from a recent UNU-WIDER study.

¹⁰ R. Jolly, 'Global Inequalities' in D.A. Clark (ed), *The Elgar Companion to Development Studies* (Cheltenham: Edward Elgar, 2006), 197 (inequality between states).

¹¹ Wade and Wolf, n 7 above, 440.

¹² *ibid.*, Wade, n 3 above, 387.

¹³ See CESCR, 'Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights' (25th session, 2001) UN Doc E/C12/2001/10.

**SOCIO-ECONOMIC RIGHTS:
MINIMUM STANDARDS, IMMEDIATE AND PROGRESSIVE
REALISATION, AND INTERNATIONAL COOPERATION**

In the area of socio-economic rights international human rights law judges an obligation to have been discharged if the minimum conditions necessary for people to live, and to live with dignity, have been or are in the process of being secured.¹⁴ The notion of minimum standards has been consistently adhered to despite the varied terminology found in the provisions of the main international treaty on the subject, the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹⁵ The article that recognises the rights of everyone as regards living standards, food, clothing and housing is framed in terms of meeting ‘adequate’ standards,¹⁶ and also refers to the right of everyone to the ‘continuous’ improvement of living conditions.¹⁷ The right of everyone to physical and mental health is framed in terms of meeting the ‘highest’ attainable standard.¹⁸

While the human rights doctrine articulates a general theory of universal minimums, for the purposes of enforcement this requirement has been bifurcated, initially compelling the urgent fulfilment of bare minimum human needs. According to the UN Committee on Economic, Social and Cultural Rights (CESCR),¹⁹ a ‘minimum *core* obligation to ensure the satisfaction of, at the very least, minimum *essential levels* of each of the rights is incumbent upon every State party’.²⁰ Exceptionally, the objective of achieving these minimum levels imposes immediate obligations on state parties to this treaty that otherwise allows for the progressive realisation of rights in anticipation of the resource implications often required to give socio-economic rights effect.²¹ Where people lack essential foodstuffs, primary health care, basic shelter, housing, and education, ie

¹⁴ While the concept of human dignity has not, it seems, given rise to one detailed universal legal interpretation, it nonetheless provided an articulation of the basis upon which human rights could be said to exist and continues to play a role in the judicial interpretation of human rights, including as regards socio-economic rights. C. McCrudden, ‘Human Dignity and Judicial Interpretation of Human Rights’ (2008) 19(4) *European Journal of International Law* 655.

¹⁵ International Covenant on Economic, Social and Cultural Rights (1966) entered into force 3 January 1976, GA res. 2200A (XXI).

¹⁶ *ibid.*, art 11(1). I am concerned in this paper generally with what philosophers would distinguish as ‘equality and sufficiency’ approaches, but what is also referred to by others as the difference between ‘equity and adequacy’ frameworks. Quantitative research might refer to ‘relative and absolute deprivation’. While they all share the characteristic of distinguishing between whether having enough should provide the appropriate metric or whether equality should, herein I will use the terms ‘equality and minimum or threshold’ to avoid importing into this work the particular definitions that accompany a given discipline and school of thought.

¹⁷ *ibid.* See also Convention on the Rights of the Child (1989) entered into force 2 September 1990, GA res. 44/25, preambular para 13: ‘Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in developing countries’.

¹⁸ *n* 15 above, art 12(1).

¹⁹ The independent body mandated to interpret the treaty.

²⁰ CESCR, ‘The Nature of States Parties’ Obligations (art 2(1))’ General Comment No 3 (5th session, 1990) UN Doc E/1991/23 (1990), annex III, para 10. *Emphasis added.*

²¹ See for example CESCR, ‘The Right to Water (arts 11 and 12)’ General Comment No 15 (29th session, 2002) UN Doc E/C12/2002/11, para 37.

satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the ICESCR, a state party is *prima facie* failing to discharge its obligations under the Covenant.²² By way of example, CESCR indicates that meeting core obligations with regard to the right to water would include ensuring: access to the minimum essential amount of safe water for personal and domestic uses; physical access to water facilities or services; access to facilities and services on a non-discriminatory basis; and access to adequate sanitation.²³ Once a state party has ensured the core obligations of economic, social and cultural rights, ‘it continues to have an obligation to move as expeditiously and effectively as possible towards the full realization of all the rights in the Covenant’.²⁴ While the principle of progressive realisation might be said to offer within its terms and logic more than a minimalist doctrine aimed merely at dignity, as it is set instead at a decency standard, to date this interpretation has not been meaningfully developed at the international level.²⁵ The ‘full realization’ of all socio-economic rights still only provides the universally agreed floor below which no one should fall.²⁶

Significantly, socio-economic rights give rise to obligations of international cooperation for states other than the right-holder’s own.²⁷ The nature of state parties’ obligations include those of ‘international assistance and cooperation’

²² CESCR, n 20 above, para 10. As Fredman points out, the shift beyond formal equality to a recognition of substantive equality in human rights law – that equal consideration for all might require unequal treatment in favour of the disadvantaged – recognises the place of positive duties within the discipline. When applied to the grounds of socio-economic status, prohibiting differentiation would give rise to redistributive requirements on the part of the state. As she further indicates, however (in the domestic context), ‘in the case of substantive equality, neither the aims nor the means have been conclusively articulated’, and when it comes to the contested human rights notion of a right to welfare, it is suggested that the consensus is merely to accept that ‘the State has a basic responsibility to provide the existential minimum’. For our purposes, recognition of a requirement of just distribution to fulfil human rights, such as access to and the allocation of resources to redress socio-economic inequalities, might still be aimed merely at meeting the most basic standards of well-being. The existence of (domestic) redistributive human rights duties and the objective of fulfilling only a minimum levels of rights can (and do) co-exist. Indeed, the shaping of post-Second World War socio-economic rights are premised on a negotiated settlement that rested on both the notion of minimum standards and (Latin American) socialism. On the former points, S. Fredman, *Human Rights Transformed: Positive Rights and Positive Duties* (Oxford: Oxford University Press, 2008), 176-180, 226.

²³ CESCR, n 21 above, para 37. The right to water has been read into the Covenant as indispensable to the right to an adequate standard of living and the right to health.

²⁴ CESCR, n 13 above, paras 17-18.

²⁵ I thank Philip Alston for raising this important point. At the level of human rights theory and judicial decision-making, the distinction (if any) between a dignity standard and a decency standard warrants fuller scholarly consideration.

²⁶ See for example CESCR’s guidance on the nature of obligations pertaining to the right to adequate food: ‘The principal obligation is to take steps to achieve *progressively* the *full realization* of the right to adequate food. This imposes an obligation to move as expeditiously as possible towards that goal. Every State is obliged to ensure for everyone under its jurisdiction access to the *minimum essential* food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger’. Latter emphasis added. CESCR, ‘The Right to Adequate Food (art 11)’ General Comment No 12 (20th session, 1999) UN Doc E/C.12/1999/5 (1999), para 14.

²⁷ For a consideration of the content and scope of these obligations see, M.E. Salomon, *Global Responsibility for Human Rights: World Poverty and the Development of International Law* (Oxford: Oxford University Press, 2007); ‘Legal Cosmopolitanism and the Normative Contribution of the Right to Development’ in S.P. Marks (ed), *Implementing the Right to Development: The Role of International Law* (Geneva: Harvard School of Public Health/Friedrich Ebert Stiftung, 2008), 17.

under ICESCR article 2(1) which, under the terms of the treaty, is an obligation aimed at achieving progressively the full realisation of the rights recognised in the Covenant,²⁸ and has been subsequently interpreted to include obligations of international cooperation in order to achieve immediately the most urgent aspects of each right, as described above with regard to the right to water. When it comes to poverty specifically, the Committee concludes that when grouped together ‘core obligations give rise to national responsibilities for all States and international responsibilities for developed States, as well as others that are in a “position to assist”. [...] If a national or international anti-poverty strategy does not reflect this minimum threshold, it is inconsistent with the legally binding obligations of the State party’.²⁹

Beyond its general application in ICESCR, the obligation of international cooperation is reaffirmed in the treaty in the particular context of ‘the fundamental right of everyone to be free from hunger’,³⁰ requiring ‘the equitable distribution of world food supplies in relation to need’.³¹ In this regard, the Committee underscores that the world food crisis of 2008 represents a failure to meet the obligations that would ensure the fair distribution of food supplies, just as it signifies a failure of national and international policies to ensure physical and economic access to food for all.³² Measures for the implementation of the economic, social and cultural rights recognised in the Convention on the Rights of the Child (CRC) are also to be undertaken where needed within the framework of international cooperation with a view to the progressive realisation of the relevant rights. In order to see them achieved, ‘particular account is to be taken of the needs of developing countries’.³³

Returning to our example of the right to water, CESCR notes that the relevant Covenant articles require that state parties ‘recognize the essential role of international cooperation and assistance and take joint and separate action to achieve the full realization of the right to water’.³⁴ This would entail: respecting the enjoyment of the right in other countries; refraining from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries; and, ensuring that activities undertaken within the state party’s jurisdiction do not deprive another country of the ability to realise the right to water for persons in its jurisdiction.³⁵ Depending on the availability of resources, states should also

²⁸ n 15 above, art 2(1): ‘Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.’

²⁹ CESCR, n 13 above, paras 16-17 (although the ‘others’, ie non-state actors, are not formally the bearers of obligations under international human rights law).

³⁰ n 15 above, art 11(2).

³¹ *ibid*, art 11(2)(b).

³² CESCR, ‘Statement on the World Food Crisis’ (40th session, 2008) UN Doc E/C.12/2008/1, para 9.

³³ n 17 above, arts 4, 23(4), 24(4), 28(3).

³⁴ CESCR, n 21 above, para 30.

³⁵ *ibid*, para 31. See further paras 32-36.

facilitate the realisation of the right to water in other countries;³⁶ state parties should ensure that the right to water is given due attention in international agreements;³⁷ and that their actions as members of international organisations, such as the World Bank and IMF, take due account of the right to water.³⁸ Thus the scope of the obligation that implicates external states would seem to include: cooperation in the achievement of the minimum essential levels of the Covenant rights; and requirements regarding the progressive realisation of the broader aspects, or ‘full realization’ of each of the codified rights (that still only define minimum standards of a dignified life) including through a system of equitable distribution when it comes to food supplies for the hungry. The obligation would also entail requirements to see realised the full range of rights, including what might be termed non-basic rights (eg: the right to periodic holiday with pay). The central conclusions to be drawn then are first, there exist legal obligations of developed states to people outside of their territory; second, that the socio-economic rights of people in developing countries are of particular concern in light of the fact that other states are often deeply implicated in their ability to exercise their rights; and third, that this obligation is not limited to contributing to the immediate realisation of minimum levels of socio-economic rights, but applies also to that which is required for the improvement of a range of rights over time.

Notably, the Committee has highlighted that ‘[s]ome of the structural obstacles confronting developing States’ anti-poverty strategies lie beyond their control in the contemporary international order. In its view, it is imperative that measures be urgently taken to remove these impediments, such as unsustainable foreign debt, the widening gap between rich and poor, and the absence of an equitable multilateral trade, investment and financial system.³⁹ In this regard the Committee draws particular attention to article 28 of the Universal Declaration of Human Rights,⁴⁰ and article 3(3) of the Declaration on the Right to Development (DRD),⁴¹ both of which address the need for an international order conducive to the exercise of human rights and people-centred development.

These tentative admonitions by the Committee introduce egalitarian concerns: that it is unjust and unfair for some people (and countries) to be worse off than others through no fault of their own;⁴² that it is equally important that people’s lives go well, and to this end everyone should have equality of life prospects and life circumstances;⁴³ that global income inequality matters; and that

³⁶ *ibid*, para 34.

³⁷ *ibid*, para 35.

³⁸ *ibid*, para 36.

³⁹ CESCR, n 13 above, para 21. See also CESCR, n 32 above, paras 12-13.

⁴⁰ Universal Declaration of Human Rights, GA res. 217A (III), 10 Dec. 1948, UN GAOR, 3rd Session Resolutions, pt 1, UN Doc A/810 (1948), 71.

⁴¹ Declaration on the Right to Development, GA res A/RES/41/128, December 4, 1986, UN GAOR Supplement. (No 53) 186, UN Doc A/RES/41/53 (1986), annex 41.

⁴² See L.S. Temkin, ‘Egalitarianism Defended’ (2003) 113 *Ethics* 764, 767. Of course, this statement should not be understood to relieve developing countries of their respective human rights obligations.

⁴³ See S. Gosepath, ‘Equality’, *Stanford Encyclopedia of Philosophy* (2007), 24 at <http://plato.stanford.edu/entries/equality/>.

crushing foreign debt and a partial international economic and financial system are a hindrance to equality of opportunity.

Its pronouncements on asymmetries in political and economic arrangements notwithstanding, the Committee has not transitioned from a focus on poverty and the idea of universal basic rights to one more sensitive to demands of global equality: the prevailing doctrine that provides the basis for determining compliance is that of an international minimum threshold, reinforcing the premise that a marginally tolerable life nonetheless passes the human rights test. By relying on the threshold measure, a non-relational standard guides the approach to protecting and promoting socio-economic rights and confronting poverty. Despite recognition by the Committee of the existence of global income inequality that precludes the exercise of rights, and of obligations that require parties cooperate in addressing its structural causes at the international level, this seems not to influence CESCR's consideration as to whether the relevant rights have been satisfied. On the threshold model, whether rights have been fulfilled can be ascertained merely by looking at the circumstances of any one person without needing to refer to the situation of anyone else.⁴⁴

'Minimum' then is the threshold that pertains to the downtrodden, to the deprived, to the victims of human rights violations. However, by focussing our attention on what is minimally required, the doctrine overlooks the significance of appraising the wider implications of having a minority of people continue to secure a 'maximum' level of rights. Given the shared dependencies created by globalisation, should not concern be with those who possess not only less than the minimum, but far more than the minimum, in so far as those two conditions are relational? In order to address the 'massive and systemic breach' of international human rights law that poverty represents,⁴⁵ it would seem that international law in this area should be concerned not purely with the absolute position of the worse-off members of our global society, but also with the inequality that characterises our contemporary world order. Below will be explored various grounds for greater egalitarian consideration in this area of international law: poverty as an issue of unequal distribution of resources and not of scarcity; global equality as an instrumental good; and global equality as an intrinsic good.

⁴⁴ C.R. Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009), 161. As Beitz subsequently points out, a threshold measure is compatible with a range of distributive justice conceptions (here he is referring to the domestic level) provided that they result in the threshold being met. *ibid.*, 162.

⁴⁵ CESCR, n 13 above, para 4.

WORLD POVERTY AND INEQUALITY

WHY SHOULD IT MATTER THAT OTHERS HAVE MORE? – POVERTY IN (MODERN) TIMES OF PLENTY

One reason why reducing economic inequality matters, and not just reducing poverty, is because poverty is not only unfair, it is needlessly unfair. Roughly 43 per cent of the world population (2,735 million) lives below a World Bank poverty line of USD two a day, yet consumes only 1.3 per cent of the global product, while high-income countries, with far less people (955 million citizens), together consume 81 per cent of the global product.⁴⁶ World Bank figures indicate that high-income countries that already receive 81 per cent of the global product could give up a modest degree of their wealth – 0.7 per cent gross national income, which is enough to eradicate poverty – without sacrificing anything of comparable value.⁴⁷ In fact one could assume that they would be going some way to fulfilling their treaty obligations by undertaking measures within the ‘framework of international cooperation’ to the ‘maximum extent of their available resources’ towards the realisation of these rights.⁴⁸ The cost of ending extreme poverty – the amount needed to lift one billion people (according to UNDP figures) above the (then) USD one a day poverty line – is equivalent to less than two per cent of the income of the richest 10 per cent of the world population.⁴⁹ Simply put, hordes of people are dying of starvation not only because they are poor, but because there are rich people who will not share. Under these conditions the relational global state of affairs matters.

Of course the notion of ‘sharing’ misrepresents many of the reasons for the unequal access globally to goods. First, the poor have had what is rightfully theirs – access to essential goods, opportunity under fair conditions, benefits derived of (their) natural resources – *taken from them* for the enrichment of the powerful (largely powerful states and their industries, but also corrupt elites in developing countries).⁵⁰ So their poverty is, in important ways, a result of being dispossessed of what belongs to them and if ‘returned’ would redress their dire state.⁵¹ Put

⁴⁶ T. Pogge, ‘World Poverty and Human Rights’ (2005) 19(1) *Ethics and International Affairs* 1, 1. Pogge draws his figures from the *World Bank’s World Development Report 2003*. See further Milanovic, n 7 above, 6-7.

⁴⁷ *ibid*, 1; see P. Singer, ‘Famine, Affluence and Morality’ (1972) 3(1) *Philosophy and Public Affairs* 229.

⁴⁸ Convention on the Rights of the Child, n 17 above, art 4; International Covenant on Economic, Social and Cultural Rights, n 15 above, art 2(1).

⁴⁹ Measured in 2000 purchasing power parity terms. UNDP, n 8 above, 38.

⁵⁰ On the contribution of international law and policy to global dispossession and vice versa, see A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2004); A.C. Cutler, ‘Toward a Radical Political Economy Critique of Transnational Economic Law’ in S. Marks (ed), *International Law on the Left: Re-examining Marxist Legacies* (Cambridge: Cambridge University Press, 2008), 199; M.E. Salomon, ‘Poverty, Privilege and International Law: The Millennium Development Goals and the Guise of Humanitarianism’, Special Issue on Poverty as a Challenge to International Law’ (2008) 51 *German Yearbook of International Law* 39.

⁵¹ On international trade as a system of legalised theft, see L. Wenar, ‘Property Rights and the Resource Curse’ (2008) 36 *Philosophy and Public Affairs* 1, 2.

another way, why should it matter that others have more? Because much of what they have belongs to other people, and moreover, those people do not have enough. Second, as noted above, financial resources necessary to eradicate poverty exist alongside the persistence of mass deprivation. This establishes that the problem of world poverty is not one of scarcity but of unequal distribution.⁵²

The failure to secure the socio-economic rights of so many people is largely a consequence of a global system that structurally disadvantages half the world population.⁵³ The contemporary global institutional order – a creation of powerful states – has provided conditions under which extraordinary deprivation continues to be the plight of many, and inequality has been able to flourish. The inequality we know today did not come about under a scheme of equal opportunity and mutual advantage; inequality is not the result of some accidental deviation from neo-liberal capitalism, but rather a deliberate product of the international political economy.⁵⁴ Under these terms, we are required to see poverty ‘not simply as an occurrence but as a policy option and practical project. It is something that certain groups of people do to others’.⁵⁵ We are thus led to the logical conclusion, as Marks points out, that ‘poverty is not just a condition, but a relationship’.⁵⁶

Both examples provided – the ‘theft’ of that which belongs to the poor, and the lack of access to available resources – indicate that the abundance enjoyed by the global minority is erected upon the very same bounty denied to others. Under globalised conditions the principal problem of the poor is not their poverty but rather the wealth of others, and the mechanics through which their dispossession is made possible.

⁵² M. Craven, ‘The Violence of Dispossession: Extraterritoriality and Economic, Social and Cultural Rights’ in M.A. Baderin and R. McCorquodale (eds), *Economic, Social and Cultural Rights in Action* (Oxford: Oxford University Press, 2007), 86; M.E. Salomon, ‘International Human Rights Obligations in Context: Structural Obstacles and the Demands of Global Justice’ in B.A. Andreassen and S.P. Marks (eds), *Development as a Human Right: Legal, Political and Economic Dimensions* (Cambridge: Harvard University Press, 2006), 113-114: ‘Hunger concentrated in developing countries is not a result of there being not enough food to eat but rather of certain people just not having enough to eat — this raises serious questions of distribution, access, and accountability.’ This is also a reason given to justify the idea that poverty is a ‘violation’ of human rights, ie: because it is *possible* for the world to be free of poverty, yet it is not done. See among others S. Chauvier, ‘The Right to Basic Resources’ in Thomas Pogge (ed) *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor?* (Oxford: UNESCO/Oxford University Press, 2007), 306.

⁵³ See M.E. Salomon, ‘International Human Rights Obligations in Context: Structural Obstacles and the Demands of Global Justice’ in B.A. Andreassen and S.P. Marks (eds) *Development as a Human Right: Legal, Political and Economic Dimensions* (Antwerp: Intersentia, 2nd ed, 2010), 121; *Global Responsibility for Human Rights*, n 27 above; S. Marks, ‘Human Rights and the Bottom Billion’ (2009) 1 *European Human Rights Law Review* 37.

⁵⁴ See S. Marks, ‘Exploitation as an International Legal Concept’ in Marks, n 50 above, 281.

⁵⁵ Marks, n 53 above, 48.

⁵⁶ *ibid.*

WHY SHOULD IT MATTER THAT OTHERS HAVE MORE? – GLOBAL EQUALITY AS AN INSTRUMENTAL GOOD

Equality can be an instrumental good in so far as it provides a means to the desired end.⁵⁷ It may be valuable, for example, if it expedites poverty alleviation and human rights fulfilment or renders advances more sustainable. But it might also have value even if it does not stimulate growth or reduce poverty as quickly as inequality does.

Free-market advocates traditionally argue that income inequality, a hallmark of trade liberalisation, provides incentives for effort and risk-taking entrepreneurship and thereby spurs efficiency and productivity, the gains from which will trickle down and are helpful for the living standards of the poor over time. While a system that encourages individual productivity may well have its wider benefits, existing inequalities in the distribution of goods cannot be justified on utilitarian grounds since they clearly ‘give the few far more reward than is necessary to encourage productivity, while denying the vast majority of the [global] population the essentials (health care and educational opportunity, for example) necessary for them to develop their full capacity for productivity’.⁵⁸ Second, there are no definitive conclusions as to whether a rising level of income inequality causes faster growth, as Wade concludes ‘even if strong relationships between inequality and subsequent growth were found, the causality is questionable’,⁵⁹ and as Stiglitz and others point out, ‘the evidence against trickle-down economics is now overwhelming’.⁶⁰

On a human rights account, the argument that the poor will *ultimately* benefit, that is that they benefit ‘over time’, is difficult to defend. Human rights are not to be postponed for pronounced greater objectives, for example, an increase in national or global wealth or for benefits anticipated at some indeterminate time in the future. From the perspective of human rights theory, the argument made for sacrificing distributional equity in favour of rapid accumulation is rejected.⁶¹ At the

⁵⁷ Drawing on Raz, and Clayton and Williams, White remarks that its ‘instrumental value is derived from the way in which it serves to promote some other value’. S. White, *Equality* (Cambridge: Polity Press, 2007), 14.

⁵⁸ T.M. Franck, *Fairness in International Law and Institutions* (Oxford: Clarendon Press, 1995), 20.

⁵⁹ Wade, n 3 above, 401.

⁶⁰ ‘The evidence against trickle-down economics is now overwhelming, at least in the sense that an increase in average incomes is not sufficient to raise the incomes of the poor for prolonged periods.’ J.E. Stiglitz, ‘Is there a Post-Washington Consensus?’ in N. Serra and J.E. Stiglitz (eds), *The Washington Consensus Reconsidered: Towards a New Global Governance* (Oxford: Oxford University Press, 2008), 47; ‘It used to be claimed at one time that the benefits of a rapid expansion of GDP would automatically “trickle down” to the poor, so that a high growth rate of GDP could very legitimately be looked upon as the *summum bonum* of the development effort. This claim however has been so obviously discredited that few would make it now.’ P. Patnaik, ‘A Left Approach to Development’ (July 2010) XLV *Economic and Political Weekly* 30, 33.

⁶¹ Donnelly refers to this as the ‘equity trade-off’. J. Donnelly, ‘Human Rights, Democracy and Development’ (1999) 21(3) *Human Rights Quarterly* 608, 626-627. Uvin points out though that since the evidence indicates that poverty and inequality always increase in the absence of economic growth, and with that the enjoyment of human rights decline for many, if not most, poor people, ‘all things being

level of international law (rather than theory), socio-economic rights that are met over time might be consistent with the principle of progressive realisation if they meet certain criteria (the obligation to move as expeditiously as possible towards the goal;⁶² steps taken that are deliberate, concrete and targeted,⁶³ and are consistent with the principle of non-retrogression),⁶⁴ but would not comply with the *immediate* obligation to secure the minimum essential level of rights for people suffering from extreme poverty. Nor would it seem to reflect a commitment to protecting and promoting human rights as ‘the first responsibility of Governments’.⁶⁵

But the main issue for the purposes of this paper is whether we got the trade-offs right. What price has been paid for the allegedly beneficial inequality, and who has had to pay it? Is average income an appropriate measure of successful development domestically or a suitable measure of well-being globally, or might the preference be for a society in which the vast majority of people are doing better, where there is a role for distribution and not only efficiency and growth, even if a countries’ total gross domestic product or the global economy as a whole grow more slowly as a result?⁶⁶ Equality might be upheld as one value among others, and economic performance and the reduction of poverty may be included with equality in a ‘pluralistic ethics’.⁶⁷ There are a good number of things that

equal, if trade-offs or setting priorities among human rights are required, those choices that do not (or least) retard economic growth should be privileged’. P. Uvin, *Human Rights and Development* (Bloomfield: Kumarian Press, 2004), 191.

⁶² See for example CESCR, n 26 above, para 14.

⁶³ CESCR, n 20 above, para 2.

⁶⁴ See further Salomon, *Global Responsibility for Human Rights*, n 27 above, 124.

⁶⁵ UN World Conference on Human Rights, Vienna Declaration and Programme of Action (1993), UN Doc A/CONF 157/23 Pt I, art 1.

⁶⁶ See Stiglitz, n 60 above, 46-47. Patnaik outlines a ‘left alternative development strategy’ focussed on a stream of measures eg: land reforms, the promotion and protection of peasant agriculture and petty production, activation of the public sector including to counter corporate aggrandisement, strategies for the rapid elimination of unemployment, a massive spate of welfare measures, and where governments invite private investment, they do so retaining a ‘level of concessions which they will not exceed in entertaining private project proposals’. He acknowledges that such a strategy ‘may not achieve growth rates as high as the bourgeois strategy does *over certain periods*’, but it has the ‘advantage of directly addressing the aim of development which is to improve the living conditions of the people’. He goes on to remark: ‘Instead of GDP growth rate becoming the main focus, under the chimerical assumption that it will bring about development, this strategy directly addresses the problem of development; the growth that occurs is a fallout of it. And in the worst-case scenario, even if no growth occurs, addressing the question of development directly is still preferable on grounds that John Stuart Mill had made famous, when he had declared his unconcern over the “stationarity” of a “stationary state” as long as the workers were better off in it.’ Patnaik, n 60 above, 34-35. Notably, Wilkinson and Pickett in their acclaimed study on the importance of equality (in developed countries) for the realisation of a whole host of benefits, highlight more generally that: ‘it is worth remembering that the argument for greater equality is not necessarily an argument for big government. Given that there are many different ways of diminishing inequality, what matters is creating the necessary political will to pursue any of them’. R. Wilkinson and K. Pickett, *The Spirit Level: Why Equality is Better for Everyone* (London: Penguin Books, 2010), 247.

⁶⁷ R. Arneson, ‘Egalitarianism’ (2002) *Stanford Encyclopedia of Philosophy*, 10 at <http://plato.stanford.edu/entries/egalitarianism/>.

might be deemed valuable, but has an acceptable compromise been found for when these values conflict in practice?⁶⁸

There should also be greater concern for global income inequality and not only the poverty of the worst off because that inequality is matched by vast differentials in political power. Greater material equality and thus the increased opportunity to participate meaningfully in international decision-making is a 'positional good': its possession relative to one's peers – be it countries or individuals – matters significantly.⁶⁹ Unequal relations entrench the advantages of the powerful given their superior negotiating leverage, wealth and influence. The world economy at present also has 40 per cent of the population living on income so low as to preclude fully participating in wealth creation.⁷⁰ The ability of the poor to participate in the shared life of a global society is made very difficult due to their absolute position of poverty, but exacerbated by the exclusion caused by their relational poverty. It is not only that they cannot afford to participate, but they are unable to participate as others do. As Fleurbaey remarks, [i]t is inequality in wealth, and not poverty as such, that generates a comparative advantage between the rich and poor [...].⁷¹ This state of affairs may well amount to indirect discrimination, a point to which we will return. It also indicates that a certain degree of equality is instrumental to the participation of the poor in global life.

Approaches based on equality of opportunity place greater emphasis on procedure than on outcome. Each person should have an equal chance of living the life of her choice (subject to limitations given the same rights of others). Individual advantage should be independent from circumstances over which persons have no control, such as, her sex, family background or place of birth.⁷² As such, inequalities due to factors beyond the individual's responsibility are inequitable.⁷³ Gosepath explains that '[e]quality of opportunity is meant to equalise outcomes, insofar as they are the consequences of causes beyond a person's control (ie beyond circumstances or endowment), but to allow differential outcomes insofar as they result from autonomous choice or ambition'.⁷⁴ The

⁶⁸ *ibid.* Sagoff eloquently reminds us that it is legitimate also to prioritise other values over efficiency; he writes: 'Economists as a rule do recognize one other value, namely justice or equality, and they speak, therefore, of a "trade-off" between efficiency and equality. They do not speak, as they should, however, about the trade-off between efficiency and our aesthetic and moral values. What about the trade-off between efficiency and self-respect, efficiency and the magnificence of our natural heritage, efficiency and quality of life?' M. Sagoff, 'Economic Theory and Environmental Law' (1980-1981) 79 *Michigan Law Review* 1393, 1417.

⁶⁹ W.S. Koski and R. Reich, 'When "Adequate" Isn't: The Retreat from Equity in Educational Law and Policy and Why it Matters' (2006) 56(3) *Emory Law Journal* 545, 595 et seq. The authors use the term 'positional good' as derived from the work of F. Hirsch, *Social Limits to Growth* (1976).

⁷⁰ UNDP, n 8 above, 38. The Report further remarks that it is also hardly good for shared prosperity and growth and as such is 'damaging to the public interest', including political stability. *ibid.*

⁷¹ M. Fleurbaey, 'Poverty as a Form of Oppression' in T. Pogge, n 52 above, 145.

⁷² Ferreira drawing on the economist John Roemer in F.H.G. Ferreira, 'Inequality as Cholesterol' in Ehrenpreis, n 7 above, 20. For a consideration of the views among political philosophers on equality of opportunity, see W. Kymlicka, *Contemporary Political Philosophy* (Oxford: Oxford University Press, 2nd ed, 2002), 57-60.

⁷³ And inequalities in opportunity are intrinsically objectionable.

⁷⁴ Gosepath, n 43 above, 21.

concentration of poverty in certain parts of the world today has come about, in large part, due to inequality of opportunity globally. This advantage is reflected in many of the institutions and rules that shape the global economy: a system from which certain states (and people) have disproportionately benefited. Is it judicious to evaluate efforts at eradicating poverty based only on whether minimum standards are being met, while ignoring pivotal sources of the inequality that may engender that poverty? Investigating the terms under which the rich countries have been able to acquire their dominance exposes an absence of equality of opportunity globally – a factor that is overlooked if the focus is limited to meeting minimum standards.

The gap between rich and poor might also create problems for the process of development itself given that it is accompanied by enormous disparities in technological capability, human capital and investment resources,⁷⁵ and the unsustainable use of natural resources by the North (that drove its own economic development). Inequality might affect other matters of public international importance, including: political legitimacy (the global ‘democratic deficit’), conflict, forced migration, and the erosion of the goodwill necessary for action against threats that require international cooperation, such as climate change.⁷⁶ In light of the collateral damage that global inequality is found to produce, it would seem that serious consideration as to how greater equality might serve a range of benefits is merited.

WHY SHOULD IT MATTER THAT OTHERS HAVE MORE? – GLOBAL EQUALITY AS AN INTRINSIC GOOD

Although it can be convincingly argued that some equalities have an intrinsic value, it cannot be that even such equalities are the only value. To appreciate why this is the case Amartya Sen offers an example of the ‘levelling-down’ objection. Sen highlights the seeming absurdity of defending the notion of intrinsic equality of life expectancy between women and men by imagining the proposal that healthcare to women is cut because they possess greater longevity than men so by reducing their access to healthcare we would thereby encourage equality in life expectancy between the sexes.⁷⁷ On the face of it Sen’s example of limiting healthcare to women would make it difficult to defend that life expectancy equality is a good in and of itself, but this tentative conclusion warrants further challenge.

⁷⁵ See T. Lines, *Making Poverty: A History* (London: Zed Books, 2008), 16; UNDP, n 8 above, 38.

⁷⁶ As Beitz highlights in his work on the subject, one can care about global inequality without the ‘prior adoption of a particular theoretical view about the moral character of the global community or of an egalitarian social ideal [...]’. He distinguishes ‘directly egalitarian’ (ie: intrinsic) reasons for objecting to inequality that are premised on ‘an ideal of society as an association of equals’, from ‘derivative’ (non-egalitarian and instrumental) reasons as to why global economic and political inequalities matter, such as, the impacts of global inequalities on poverty, agency and fairness in political decision-making. C.R. Beitz, ‘Does Global Inequality Matter?’ in T.W. Pogge (ed), *Global Justice* (Oxford: Blackwell Publishers, 2001), 106 et seq.

⁷⁷ A. Sen, ‘The Idea of Justice’ (London School of Economics (27 July 2009, at www.lse.ac.uk/collections/LSEPublicLecturesAndEvents/).

Suggesting that parity may not matter most is different from suggesting that it does not matter at all.⁷⁸ As Temkin explains: “The anti-egalitarian will incredulously ask, do I really think there is some respect in which a world where only some are blind is worse than one where all are? Yes. Does this mean I think it would be better if we blinded everyone? No. Equality is not all that matters. But it matters some.”⁷⁹ Thus, would we prefer to see everyone in the world try to eek out an existence on USD 1.25 a day in order to establish global income equality? No. But that does not demonstrate that equality has no intrinsic value.⁸⁰ Second and related, as Swift points out, merely because equality does not resolve all our concerns does not lead to the conclusion that we cannot find something intrinsically wrong, or unfair if some people are worse off than others, all the more so if the inequalities are due to circumstances beyond their control.⁸¹

Third, living in conditions of equality benefit people due to their ‘experiences of equality’;⁸² to live in a community in which equality prevails would seem to have intrinsic value. The value of this experience would apply also when reflective of one’s place within the global community, perhaps more so than within the smaller social environment. Since modern technology increases awareness of other people’s income and opportunities, these conditions are said to heighten the perception (or experience) of inequality. In this regard Milanovic remarks that

⁷⁸ H. Steiner, ‘How Equality Matters’ (2002) 19(1) *Social Philosophy and Policy Foundation* 342, 346. The ‘levelling-down’ objection merely leads to the conclusion that equality cannot be the only or the supreme value. See generally White, n 57 above, 21.

⁷⁹ Temkin as cited in White, *ibid*.

⁸⁰ Casal convincingly argues that: ‘Under any reasonable reading, egalitarians are committed to distributing rather than destroying benefits and to doing so in a manner that that satisfies each individual’s equal claim to be benefited [...]’ P. Casal, ‘Why Sufficiency is not Enough’ (2007) 117(2) *Ethics* 296, 307. Similarly, ‘[i]t should be noted that the value human rights law puts on equality is not entirely neutral. Everyone being treated equally badly is not a human rights concept. It is not sufficient to ensure that no-one is being discriminated against if the consequence is that all groups are treated with an equal lack of respect or lack of opportunity to participate in social and civic life. [...] [Citing Lord Walker] “In the field of human rights, discrimination is regarded as particularly objectionable because it disregards fundamental notions of human dignity and equality before the law.” [...] As such, under the human rights vision of equality any difference in treatment should generally involve a levelling up and not a levelling down’. F. Klug and H. Wildbore, ‘Equality, Dignity and Discrimination under Human Rights Law: Selected Cases’ (2005), 2 at www.lse.ac.uk/human-rights. Furthermore, ‘equalizing down’ can produce just results (results that redress a human rights violation). In the case of *Waldman v Canada* (694/96), one option available to Canada when found in violation of article 26 on non-discrimination under the International Covenant on Civil and Political Rights was to cease exclusively funding Roman Catholic private schools as it had been doing since 1867 when there were reasonable and objective criteria for doing so, in order both to ensure that other religious denominations without private funding were not discriminated against and so that the resources could be put into the public school system, to which people of all denominations had access. The term ‘equalizing down’ is from A. Lester and S. Joseph, ‘Obligations of Non-Discrimination’ in D. Harris and S. Joseph (eds), *The International Covenant on Civil and Political Rights and United Kingdom Law* (Gloucestershire: Clarendon Press, 1995), 594.

⁸¹ ‘Even if equality does not fulfil all our needs for justice, we don’t have to abandon our intuition that there is something wrong about inequalities due to circumstances beyond people’s control. [...] [A] situation that, though better overall, [can be] worse in the particular respect that it is unfair.’ A. Swift, *Political Philosophy* (Cambridge: Polity Press, 2001), 123-124. See also Temkin, n 42 above, 764.

⁸² J. Raz, ‘On the Value of Distributional Equality’ (University of Oxford, Legal Research Papers Series, No 41/2008, October 2008), 14.

‘[e]ven if globalisation were to raise everybody’s real income, it could exacerbate, rather than moderate, feelings of despondency and deprivation among the poor’.⁸³

Fourth, the situation in which the global poor find themselves might be understood as discriminatory. The rules that regulate the global economy, and their application, may not set out to exclude them from accessing goods that others with sufficient resources can secure, such as an adequate standard of living, food, clothing and housing, but they do. This ‘negative externality’ of a global system set up to create profit rather than alleviate poverty,⁸⁴ might constitute indirect discrimination if it creates a distinction based on economic and social situations – which has the *effect* of impairing the exercise of rights, by all persons, on an equal footing.⁸⁵ Discrimination of this sort is problematic instrumentally, for example by limiting access to resources and to effective participation in decision-making, but suffering discrimination is also a condition that is intrinsically bad.

On this non-instrumental account it would seem that global equality matters. It is not all that matters, as the levelling-down example has shown egalitarians (generally) recognise other values besides equality. It may not even be the ideal that matters most; but to believe in the idea of ‘comparative fairness’ for its own sake suggests that equality has an independent normative significance.⁸⁶

MINIMUM STANDARDS OR FAIR DISTRIBUTION UNDER INTERNATIONAL HUMAN RIGHTS LAW?

So far this study has sought to demonstrate that global economic inequality should matter to international human rights law, in addition to the existing doctrinal focuses on meeting minimum (essential) thresholds and universal minimum standards. A subsequent matter for this article to consider is whether positive international human rights law accommodates a doctrine of fair global distribution. It began by demonstrating that minimalist approaches inform this area of international law, even if CESCR deduces for example that the existing gross inequalities between the health status of people in developed and developing countries is ‘unacceptable’, and therefore an issue of ‘common concern to all

⁸³ Milanovic, n 7 above, 7. The lived experiences of the poor are chronicled in a three-volume study carried out by the World Bank in which their awareness of international inequalities and disadvantage is recorded. See D. Narayan, R. Chambers, M.K. Shah, and P. Petesch, *Voices of the Poor: Crying Out for Change* (New York: World Bank/Oxford University Press, 2000).

⁸⁴ Chauvier, n 52 above, 308-309.

⁸⁵ Under international human rights law discrimination is any distinction based on the prohibited grounds – grounds that include economic and social situations – which has the purpose or *effect* of nullifying and impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms in the political, economic, social, cultural or any other field. Indirect discrimination refers to laws, policies or practices which appear neutral, but have a disproportionate impact on the exercise of rights by particular groups. See, CESCR, ‘Non-Discrimination in Economic, Social and Cultural Rights (art 2(2))’, General Comment No 20 (42nd session, 2009) UN Doc E/C.12/GC/20.

⁸⁶ Temkin, n 42 above, 768-769.

countries'.⁸⁷ What remains to be explored is how this unease with global inequality as guardedly voiced by the Committee might be reconciled with what on the face of it appears to be a 'thin theory' of human rights devoted merely to meeting people's basic rights.

The intermittent treaty references to the 'continuous improvement' of living conditions and a system of 'equitable distribution' in the case of hunger should not be read in isolation but rather as part of a much larger post-1945 international effort to situate the eradication of material deprivation within a process of human-centred development. Even before the full magnitude of the transnational socio-economic interconnection we know today became manifest, international cooperation was always understood within the modern human rights period as essential to the realisation of certain rights.⁸⁸ The Declaration on the Right to Development, the central human rights instrument that focuses on duties at the international level and not only, or primarily, at the national level, substantiates this view.

Through an elaboration of duties of international cooperation the Declaration advances a normative agenda in support of claims against the public international order. It confronts the failure of our international arrangements to allow for an environment conducive to the realisation of human rights for all. Accordingly, developing states have the right (ie: the prerogative) as against the international community of states to formulate development policies 'that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom'.⁸⁹ Developed states for their part 'have the duty to co-operate with each other in ensuring development and eliminating obstacles to development';⁹⁰ and 'the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development'.⁹¹ Effective international cooperation is nothing short of 'essential' as a complement to the efforts of developing countries,⁹² if people are going to be able to claim their entitlement 'to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized'.⁹³

The language of duties that characterises this Declaration reinforces the idea that this right to development is less about establishing a new substantive right, and more about framing a system of duties – in particular international duties –

⁸⁷ CESCR, 'The Right to the Highest Attainable Standard of Physical and Mental Health (art 12)' General Comment No 14 (22nd session, 2000) UN Doc E/C12/2000/4, para 38.

⁸⁸ See generally Salomon, *Global Responsibility for Human Rights*, n 27 above.

⁸⁹ n 41 above, art 2(3).

⁹⁰ *ibid*, art 3(3). This article reiterates the claims of developing countries from the 1970s for a 'new international economic order'.

⁹¹ *ibid*, art 4(1).

⁹² *ibid*, art 4(2).

⁹³ *ibid*, art 1(1).

that might give better effect to existing rights.⁹⁴ The DRD places the claims of developing countries suffering from poverty *and* underdevelopment at the centre of the international political economy, where their calls for an environment favourable to the fulfillment of human rights might be heeded. It demands not merely cooperation for the achievement of human rights central to addressing deprivations and facilitating human flourishing, but also changes to the system of structural disadvantage that defines the current international order.⁹⁵ As CESCR emphasised in the initial years of its work when outlining the nature of obligations under the Covenant, socio-economic rights will be met throughout the world only by international endeavor, and this specific treaty obligation is rooted in the modern ‘international law of cooperation’ of the 20th and 21st centuries.⁹⁶ As Craven has rightly highlighted, this emphasis on the *international* environment shifts the focus of the problem from one of scarcity, and places greater importance instead on the question of distribution.⁹⁷ As such, the terms of the Declaration serve to bolster the Committee’s intuitions that compliance with the Covenant surely requires more than securing an existence on the brink.

The Declaration’s centre of attention on norms of distributive justice for development objectives moves human rights beyond its more narrow concerns of fulfilling basic needs to the greater project of reducing material inequality, but it also seeks to confront the fact that economic inequality is so readily bound up with inequalities of power. The DRD’s requirement that states take responsibility, *inter alia*, for the ‘creation of international *conditions* favourable to the realization of the right to development’⁹⁸ indicates an awareness that the ills of which it speaks are mediated by the institutions that have fashioned the global environment that is home not to some of us but to us all.⁹⁹ As a comprehensive challenge to this biased arrangement, equality of opportunity for development under the

⁹⁴ Salomon, *Global Responsibility for Human Rights*, n 27 above, 7.

⁹⁵ *ibid*, 6.

⁹⁶ ‘The Committee wishes to emphasize that in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard. The Committee notes in particular the importance of the Declaration on the Right to Development adopted by the General Assembly in its resolution 41/128 of 4 December 1986 and the need for States parties to take full account of all of the principles recognized therein. It emphasizes that, in the absence of an active programme of international assistance and cooperation on the part of all those States that are in a position to undertake one, the full realization of economic, social and cultural rights will remain an unfulfilled aspiration in many countries.’ n 20 above, para 14. The contemporary ‘international law of cooperation’ is distinguished from the outdated ‘international law of coexistence’ of the 17th and 18th centuries. W. Friedmann, *The Changing Structure of International Law* (New York: Columbia University Press, 1964).

⁹⁷ Craven, n 52 above, 86.

⁹⁸ n 41 above, art 3(1). Emphasis added.

⁹⁹ On the general point of inequalities being mediated by organisations see D. Moellendorf, ‘Human Dignity, Respect, and Global Inequality’ (3rd International Global Ethics Association Conference, Bristol, July 2010) (on file with author).

Declaration is framed as a ‘prerogative both of nations and of individuals who make up nations’.¹⁰⁰

Our concern with inequality speaks to material inequality and the need for fairer distribution of income, land and other goods, but importantly, it also includes the structures that in many ways generate the disparities. What is also to be evaluated is the system of rules and institutions – the economic order,¹⁰¹ introducing an imperative to modify the international rules, including the means by which they are determined and interpreted.¹⁰² As commentators have pointed out, the move towards equality in this context is not limited to the distribution of goods, but includes the establishment of just institutional procedural principles,¹⁰³ and a system of rules that distribute the consequential effects of the law fairly.¹⁰⁴ The right to development with its focus on fair global arrangements underscores this emphasis on process over outcome, on conduct over result.¹⁰⁵ On this account, we can see how obligations requiring international cooperation bring us beyond a thin theory of human rights as minimums to somewhere else entirely.

CONCLUSION

The commitment to reducing poverty will certainly be motivated by the desire to eliminate the grave harms that it causes. But this cardinal objective should not preclude a concurrent drive to narrow the global gap between rich and poor because greater equality may be instrumental to human development objectives and in undoing the injurious concentration of wealth and power, and because inequality offers the poor individual a negative experience within the global

¹⁰⁰ n 41 above, preamble. Article 8(1) of the Declaration calls for equality of opportunity domestically: ‘States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, *inter alia*, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices.’

¹⁰¹ Zanetti, drawing on the work of Thomas Pogge in V. Zanetti, ‘Egalitarian Global Distributive Justice or Minimal Standard? Pogge’s Position’ in A. Follesdal and T. Pogge (eds), *Real World Justice: Grounds, Principles, Human Rights, and Social Institutions* (Dordrecht: Springer, 2005), 208.

¹⁰² The work of Robert Howse emphasises the positive impact that would come to bear on poverty through changing the interpretative practices and culture surrounding the existing rules (especially integrating existing positive international human rights law into the interpretation of economic rules), over changes to the formal rules themselves. R. Howse, ‘Accountability Issues in International Economic Governance’ (Conference on the Accountability for Human Rights Violations by International Organizations, International Law Association Belgian Branch, Brussels, March 2007) (on file with author); R. Howse, *Mainstreaming the Right to Development into International Trade Law and Policy at the World Trade Organization*, UN Doc E/CN.4/Sub.2/2004/17; R. Howse and R. Teitel, ‘Global Justice, Poverty, and the International Economic Order’ in S. Besson and J. Tasioulas (eds), *The Philosophy of International Law* (Oxford: Oxford University Press, 2010), 447.

¹⁰³ Zanetti, n 101 above, 208; and see Franck, n 58 above.

¹⁰⁴ Franck, *ibid.*, 8.

¹⁰⁵ For coverage of this issue, see Salomon, *Global Responsibility for Human Rights*, n 27 above, 132-143 (Obligations of Conduct at the International Level).

community setting. The focus on the international environment provided for in human rights instruments seeks to redress unevenly apportioned costs and benefits of globalisation and, as such, invites a deeper consideration of the place of global economic inequality and fair distribution in the doctrines that have guided the discipline. Under global structures that have, on a generous appraisal, failed to address adequately the extent and concentration of material deprivation we know today, it is time to look anew not only at requirements to distribute goods fairly, but also at the just allotment of influence over the shape (and now future) of the global economy. The wrong that international human rights law need confront is not only that of poverty but also of unequal resource distribution, and, in particular, international mechanisms and arrangements that preclude equal distribution.

Its tenets hold the possibility for an interpretation that better accommodates this collective venture of distributive justice; there is nothing inherent in its theoretical underpinnings on the nature of rights or obligations that limit the human rights project to sanctioning merely the bare bones of what it means to be human. To the contrary, those who defend the minimalist human rights doctrine might be called on to explain how their commitment to equal dignity and the sanctity of each human life leads them to defend the requirement of meeting the threshold test but does not also necessitate that we aim for human equality.¹⁰⁶ If poverty alleviation is to become the sole *raison d'être* of international human rights law in this area, we will forfeit the greater claim of the poor to dwell in possibility and abandon them 'to die without leaving any trace, without having contributed anything to a common world'.¹⁰⁷ In the fitting words of Hannah Arendt, they will come to know that '[...] the abstract nakedness of being nothing but human was their greatest danger'.¹⁰⁸

To be sure, poverty points up a critically important non-comparative element; deprivation is a dire scourge and needs to be addressed immediately regardless of who else has what or how it has been obtained. But this more narrow reading focused on poverty reduction does not render the relative deprivation of the poor irrelevant; these are not mutually exclusive characterisations. Poverty matters, but so does the fact – on a range of grounds – that others have more, and importantly, that the international system allows for wide-scale material deprivation just as it does inequitable economic and political gains which then spur a range of (dis)advantages.

Whether our concern should be with reducing global inequality and not only poverty will remain a matter of ongoing debate for a number of disciplines, yet there are enough reasons to conclude that inequality is not a neutral or indeed a constructive force in the world. In the absence of overwhelming evidence reflecting the advantages of gross inequality to the fulfilment of socio-economic

¹⁰⁶ See L. Wenar, 'Human Rights and Equality in the Work of David Miller' (2008) 11(4) *Critical Review of International Social and Political Philosophy* 401, 404-405.

¹⁰⁷ H. Arendt, *The Origins of Totalitarianism* (New York: Schocken Books, 1948), 381.

¹⁰⁸ *ibid*, 380.

and developmental rights in low-income countries, the burden of proof should shift to those governments, policy-makers and international institutions that allow for the global inequalities we know today to demonstrate that they are consistent with the full demands of human rights. International judicial bodies that interpret the law and hold to account those actors might see the merit in turning their attention beyond poverty to confront also the inequalities that engender such widespread malaise and are anathema to the post-war human rights and development project. A failure to meet the minimum threshold may tell us when a violation has occurred, but not when an obligation has been fulfilled. Meeting basic socio-economic rights is of critical importance, but it may not – indeed cannot, given the features of the contemporary international political economy – exhaust the scope of obligations in this area.