1. Introduction

Economic inequality, in particular inequality in income and wealth within countries in a global context,\(^1\) has been growing considerably in recent decades. The wide dissemination of empirical data confirming this trend has contributed to a ‘rediscovery’ of economic inequality as an object of study.\(^2\) The studies that followed have given a better understanding of the far-reaching economic, political, and social consequences of inequality.\(^3\) As awareness of these consequences has grown, their potential effects on human rights have led to a rise of scholarly and institutional interventions.\(^4\) These interventions form

\(^{1}\) On the growth of economic inequality generally, see Chancel et al (eds), *World Inequality Report 2022* (2022).


\(^{3}\) A substantial body of scholarship argues that extreme inequality impedes e.g. economic growth, poverty eradication, and social cohesion. For a critical overview, see Ferreira, Gisselquist and Tarp, ‘On the Impact of Inequality on Growth, Human Development, and Governance’ (2022) 24(1) *International Studies Review.* For how these studies are mobilized in the HREI discourse, see Section 3(a).

an emerging and polarized human rights and economic inequality discourse (HREI). Central to this discourse is the question: do human rights have something to say about economic inequality?

This paper makes two key contributions to the emerging HREI discourse. First, it introduces a simplified ‘mainstream’ and ‘critical’ dyad to map, identify, and address issues with the current disparate interventions in this discourse. Using this dyad, the paper draws upon institutional and scholarly sources to highlight with more salience the underlying dividing lines and issues in this discourse. The mainstream and critical strands of this discourse stand at opposing ends of the desirability of ‘human rights mainstreaming’ in the context of economic inequality. On the one hand, the mainstream HREI discourse argues that economic inequality is a human rights issue, either as a result of its adverse consequences on the enjoyment of human rights, or because inequality is intrinsically incompatible with them. On the other hand, the critical HREI discourse posits that human rights, either due to their internal limitations or their complicity with market-driven ideologies such as neoliberalism, have nothing to say about economic inequality. That being said, there is no unified ‘mainstream’ or ‘critical’ understanding of human rights and economic inequality. Rather, certain parts of the human rights discourse have coalesced and are mobilized by actors in such a way that they simply have become more dominant than others.

Both strands are part of a growing body of work at the intersection of human rights and economics. But they also draw on various disciplines, including economics, history, law, and politics, to bolster their arguments. The mainstream and the critical discourse are each associated with a figure with significant symbolic capital in the field of human rights, sharing affinities with the methodological proclivities of their champions. These interventions, and their reading of human rights and its past and future


5 Thinking in terms of dyads can be a useful tool, popularized by certain strands of critical scholarship, to ‘construct our legal world, to deconstruct it and then, ultimately, to explain the reason for its existence, and arguably of its success,’ see Bianchi, ‘The Unbearable Lightness of International Law’ (2018) 6(3) London Review of International Law 335 at 336.

6 Similar two or three-part boundaries are drawn in scholarship, see e.g. Brinks, Dehm and Engle, supra n 4.; MacNaughton, Frey and Porter, ‘Introduction’ in MacNaughton, Frey and Porter (eds), Human Rights and Economic Inequalities (2021) 1 at 12.


8 See e.g. MacNaughton, Frey and Porter, supra n 4.

9 See e.g. Moyn, Not Enough, supra n 4.


12 Philip Alston for the mainstream and Samuel Moyn for the critical discourse.
possibilities for economic inequality, are invariably shaped by the contemporary renewal of interest for economic inequality, what this paper calls the ‘post-Piketty moment’.13

Second, this paper identifies a significant gap in the HREI discourse: the overlooked role of business. Firms are one of the principal institutions through which value is created and distributed in society. Yet as this paper shows, the HREI discourse has predominantly focused on the state and its role in remedying distributive problems. In the process, it has overlooked a critical component of the contemporary story of economic inequality—the distributive role of businesses across global value chains. The result is minimum identification or engagement with the significant distributive practices of business. It also leads to the perpetuation of a law and economics orthodoxy that sees the consequences and mitigation of inequality externalized to the state, in a context where governance gaps around some of the key drivers of inequality, e.g. tax avoidance, see them largely powerless to act. Although international financial institutions and other non-state actors also play an important role in this context,14 the focus of this paper is on multinational corporations (MNCs)15 and their outsized distributive influence.

By highlighting the absence of businesses, this paper aims to provide a practical and ‘positive agenda’16 that responds to some of the unresolved issues and critiques of the HREI discourse.17 Thus, the absence of businesses is offered as an important factor as to why human rights have had little to say about economic inequality in recent years—neglecting what is essentially the proverbial elephant in the room. By bringing businesses in the HREI discourse, this paper argues for a more pluralistic distribution of responsibility for addressing economic inequality, an approach that would benefit from recent normative developments that emphasize the responsibility of businesses to respect human rights.18

13 In the human rights community, ‘Piketty and populism finally prompted a rude awakening’ around national inequality, see Moyn, Not Enough, supra n 4 at 210.
14 For the need to engage with non-state actors such as the IMF or the World Bank, see Nolan, ‘Not Fit for Purpose? Human Rights in Times of Financial and Economic Crises’ (2015) 4 European Human Rights Law Review.
15 Understood broadly as companies that conduct business in more than one country. For a discussion of the problems defining multinational corporations, see Muchlinski, Multinational Enterprises and the Law (Third edition, 2021) at 5.
16 See Purdy et al, ‘Building a Law and Political Economy Framework: Beyond the Twentieth Century Synthesis’ (2020) 129 Yale Law Journal 1786 at 1834. (Explaining that ‘[i]t is to succeed, law and political economy will also require something beyond mere critique. It will require a positive agenda’).
17 In order to avoid how ‘[t]he critique is often presented and received as just that—a critique—rather than as a robust practical prescription about what, if the critique is correct, we ought to do in response’, see Song, ‘Human Rights and Inequality’ (2019) 47(4) Philosophy & Public Affairs 347 at 349.
This paper unfolds in four parts. It begins by tracing the contours of the term ‘economic inequality’ from the perspective of economics and the HREI discourse, clarifying how it differs from various other issues within the field of human rights (Section II). It continues with a critical review of the mainstream HREI discourse, examining three of the key arguments that link human rights to economic inequality, while also highlighting their limitations (Section III). In the subsequent section, it delves into the critical HREI discourse, assessing its predominantly historical claims that human rights have little to say about economic inequality and identifying challenges inherent to these claims (Section IV). In conclusion, the paper posits a path forward: to give human rights a greater voice on economic inequality, the HREI discourse must integrate corporate actors. This approach, not without its challenges, aligns with significant normative and practical shifts in the field of business and human rights (Section V).

2. Defining Economic Inequality

Given the broad scope of economic inequality, before delving into the paper’s central arguments, it is important to clarify several key terms and concepts. The HREI discourse features an important degree of terminological slippage when discussing economic inequality. Reference is made across various contributions, often interchangeably, to ‘material inequality’,19 ‘distributive justice’,20 ‘extreme inequality’,21 ‘global inequality’,22 ‘socioeconomic inequality’,23 ‘social equality’,24 or just ‘inequality’ tout court. Efforts to define the use of these different terms are scarce. This terminological slippage reflects in part the mobilization of different intellectual traditions and their vocabularies in this discourse, from moral philosophy, political science, sociology to economics. Disentangling all of this confusion is beyond the scope of this paper.

Rather, the focus of this paper is on an intellectual tradition that permeates the HREI discourse: economics. Any engagement with the intersection between human rights and economic inequality requires a level of engagement with the field of economics and its thinking. Economics has long set the

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19 In Not Enough, Moyn leaves the notion of material equality indeterminate, jumping between equal outcomes to shrinking the margin between the rich and the poor, although he largely focuses on the latter.
20 See e.g. Moyn, Not Enough, supra n 4 at 2.
23 See e.g. Song, supra n 17 at 348.
terms of the debate. The discipline underpins the widely disseminated empirical evidence about the
growth of economic inequality and its consequences, and is largely the reason for the resurgence of
interest in inequality as an object of study. Yet the field of human rights and economics are structured
around ‘two communities of scholars and practitioners that rarely interact.’ These communities have
largely been talking past each other, as discussions about the reform of economic policy have only
recently emerged as an important concern of human rights. This has led to suggestions that ‘the human
rights community could improve its economic literacy so as to increase the impact and credibility of its
economics-related work.’ By focusing on the HREI discourse, this paper inevitably builds on efforts
at engagement with economics. It does so not only to engage with economics, but also to provide a
possible means to ‘embed’ the economy in society. Indeed, the adoption and reframing of a concept
deeply rooted in economics into human rights language challenges the monopoly of economics and its
disciplinary routines in matters of economic inequality. It creates room for a different normative and

244. Adam Smith was already said to lament about economic inequality, see Dennis C. Rasmussen, “Adam Smith on
What Is Wrong with Economic Inequality,” 110 American Political Science Review 342 (2016).
26 That is not to say of course that there are not different competing understanding of economic inequality in the
discipline. For an overview, see Blanchard and Rodrik (eds), Combating Inequality: Rethinking Government’s Role
(2021).
27 See Gilian MacNaughton, Diane F. Frey, and Catherine Porter, ‘Introduction’ in Human Rights and Economic
205.; Edward Anderson, ‘Economics and Human Rights’ in Research Methods in Human Rights (Elgar 2017); Dan
Seymour and Jonathan Pincus, ‘Human Rights and Economics: The Conceptual Basis for their Complementarity’
28 Alston, ‘Extreme inequality as the antithesis of human rights’ (2015) Open democracy <
(‘It is telling that, when economic and financial issues are raised in the Human Rights Council, someone invariably
makes the argument that it is not the appropriate forum and these matters should be dealt with elsewhere. And when
efforts are made to raise human rights in the economic forums, the same governments insist that these issues be
addressed in the Human Rights Council. They seek, in other words, to silo off issues that are deeply intertwined.’)
29 See e.g. David Bilton, Poverty and Fundamental Rights: The Justification and Enforcement of Socio-Economic
Rights (OUP 2008); Irene Khan, The Unheard Truth: Poverty and Human Rights (W. W. Norton and Company 2009);
Toomas Kotkas, Ingrid Leijten, and Frans Pennings, Specifying and Securing a Social Minimum in the Battle Against
Poverty (Hart Publishing 2019); Lucie White and Jeremy Perelman (eds), Stones of Hope: How African Activists
Reclaim Human Rights to Challenge Global Poverty (Stanford University Press 2010); Aoife Nolan, Rory O’Connell,
and Colin Harvey (eds), Human Rights and Public Finance: Budgets and the Promotion of Economic and Social
Rights (Hart Publishing 2013); Aoife Nolan (ed), Economic and Social Rights after the Global Financial Crisis (CUP
International Journal of Human Rights; Balakrishnan, Radhika, James Heintz, and Diane Elson, Rethinking Economic
30 Dommen, supra n 27 at 236. See also Reddy, ‘Economics and Human Rights: A Non-conversation’ (2011) 12(1)
Journal of Human Development and Capabilities 63.
31 On this idea of embeddedness, see Karl Polanyi, The Great Transformation: The Political and Economic Origins
of Our Time (1944). See also Fred Block and Margaret R. Somers, The Power of Market Fundamentalism: Karl
Polanyi’s Critique (Harvard University Press 2014) (analyzing Polanyi’s ideas and extending them to contemporary
economic debates).
evaluative perspective that prioritizes a wider array of goals beyond the limited focus on macroeconomic indicators or notions such as efficiency.\textsuperscript{32}

To that end, this paper takes the terms of economics and the HREI discourse by considering specifically the reduction and limit of vertical economic inequality. This concept refers to material (income and wealth) inequalities of outcome, between individuals or households.\textsuperscript{33} A narrower concept of inequality privileges traceability, making it easier to bridge the distance between individual action—whether by states or companies—and its effects on economic inequality. This concept of inequality can be distinguished from a more sociological approach that would consider the multi-faceted antecedents of inequality,\textsuperscript{34} or philosophical notions such as fair equality of opportunity\textsuperscript{35} or capabilities.\textsuperscript{36} Rather, the notion of vertical economic inequality begins with economic considerations and how they affect non-economic considerations, thereby linking to notions such as equality of opportunity and other social outcomes.

Much of the HREI discourse can be said to agree on setting a limit to inequality of outcome while adhering to some form of equality of opportunity as a basis for meritocracy. Thus, the overall aim is to reduce inequality, not to achieve absolute egalitarianism, at least if inequality ‘reflects differences in effort and talent and is instrumental in achieving greater welfare for society as a whole’.\textsuperscript{37} Put simply, not all inequalities are objectionable or important. Although ‘there are limits of some sort to’ inequality,\textsuperscript{38} how this limit should be measured, between say the Gini coefficient or Palma ratio,\textsuperscript{39} and what percentage of reduction should be set, remains ‘highly indeterminate’\textsuperscript{40} and little discussed.\textsuperscript{41}

\textsuperscript{33} This definition does not have the ambition of fully grasping the unjust causes of inequality and its consequences for political power, for this critique see Pitts, ‘Book Review: \textit{Not Enough: Human Rights in an Unequal World}, by Samuel Moyn’ (2019) 47(2) \textit{Political Theory} 267.
\textsuperscript{34} See Stilwell, ‘The Political Economy of Inequality: Research to Deepen Understanding’ in Dunn (ed), \textit{A Research Agenda for Critical Political Economy} (2020) at 20. (‘While sociologists have typically stressed the multi-dimensional characteristics of inequalities, the political economists’ primary focus has usually been more directly on income and wealth’).
\textsuperscript{35} See Rawls, \textit{A Theory of Justice} (Rev. ed, 1999) at 265.
\textsuperscript{37} Alston, ‘Report of the Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston’, supra n 7 at 12.
\textsuperscript{38} Ibid at 17.
\textsuperscript{39} On how the choice of these measurements reflect a political choice, see Fukuda-Parr, ‘Keeping Out Extreme Inequality from the SDG Agenda – The Politics of Indicators’ (2019) 10(S1) \textit{Global Policy} 61.
\textsuperscript{40} Yepes and Hernández, supra n 24 at 382.
\textsuperscript{41} For a discussion on the challenges of setting such limits, see Chin and Culotta, ‘What the Numbers Tell Us’ (2014) 344(6186) \textit{Science} 818. For an attempt to set such a limit, see Robeyns et al, ‘How Rich Is Too Rich? Measuring the Riches Line’ (2021) 154(1) \textit{Social Indicators Research} 115.
All of these terms, together with the umbrella term of economic inequality, serve to manage scope, affirm new expertise at the intersection of human rights and economic inequality, and draw boundaries with other well-developed discourses in the human rights regime. Accordingly, to focus on vertical inequality entails an examination of the distribution of resources across all of society absent group-based distinctions. This approach does not focus on status-based discrimination, known as horizontal inequality and its objective of status equality. Unlike horizontal inequalities, which are ‘strongly incorporated within human rights norms’, international human rights bodies have not yet widely ‘recognized specific norms or established standards for vertical inequalities in international human rights law.’ Nevertheless, vertical and horizontal inequality largely intersect. For instance, marginalized groups are frequently situated in lower income and wealth brackets since entrenched and deepening vertical (material) inequality consolidates and amplifies the salience of status-based (horizontal) inequality. Similarly, because access to opportunities often depends on economic resources, vertical inequality, which focuses on outcomes, intersects with horizontal inequality, which emphasizes opportunity. In that sense, ‘some inequalities of outcomes for parents may simply constitutes inequalities of opportunity for their children.’

To focus on vertical inequality rather than horizontal inequality also decenters the discourse on the right to freedom from poverty, and its language of social exclusion and poverty. While the right to freedom from poverty is undeniably important, it tends to focus on whether those at the bottom of the distribution have enough to meet their basic needs, rather than exploring the vertical, relative differences between the top and bottom ends of the economic spectrum. In that sense, economic inequality and its consequences can still be present even where poverty is in decline or controlled.

42 Arguably, in this discourse, an expertise built on a technical largely economic idiom that takes or reacts to the language of Thomas Piketty and others, see Section III(b) for the argument that the HREI discourse is situated in a post-Piketty moment. For the argument that human rights must adopt a technical idiom when engaging in the administration of scarce resources, see Koskenniemi, ‘Human Rights Mainstreaming as a Strategy for Institutional Power’ (2010) 1 Humanity: An International Journal of Human Rights, Humanitarianism, and Development 47.
44 Yepes and Hernández, supra n 24 at 377. They have successfully been used as ‘international tools for status equalization’, Moyn, Not Enough, supra n 4 at 176.
The limited focus on inequality within states, the principal source of growth in economic inequality in recent decades,\textsuperscript{49} minimizes references to some contentious debates. This includes debates such as the extraterritorial application of international human rights law and the ‘right to development’,\textsuperscript{50} along with related norms such as the fair distribution of inter-state income.\textsuperscript{51} These third-generation rights were used as a vehicle for equitable development,\textsuperscript{52} but they are largely concerned with inequality between states rather than within them.\textsuperscript{53}

The dominant Western-centric HREI discourse is largely framed within the context of international human rights law. Therefore, in similar terms, this papers considers the intersection of international human rights law with economic inequality, rather than with localized interpretations of human rights. Some interventions in the HREI discourse have already been critiqued for this focus, notably for overlooking localized engagement by domestic courts.\textsuperscript{54} As will be discussed later, beyond its adoption by the HREI discourse, the international human rights regime offers an approach to address the governance gaps behind some of the global practices at the root of growing economic inequality.

3. Mainstreaming Human Rights as a Frame for Economic Inequality

The mainstream HREI discourse coalesces around the view that human rights have something to say about economic inequality. However, the largely doctrinal and legalist foundations of this view, that is its focus on the study of individual cases, statutes, rules, and the sources of law,\textsuperscript{55} is fragile. Based on

\textsuperscript{49} See Chancel et al, supra n 1.

\textsuperscript{50} For such a focus, see e.g. Dehm, ‘Righting Inequality: Human Rights Responses to Economic Inequality in the United Nations’ (2019) 10(3) Humanity: An International Journal of Human Rights, Humanitarianism, and Development 443. See also Marks, ‘The Human Rights to Development: Between Rhetoric and Reality’ 17 Harvard Human Rights Journal 137. For the broader debate on whether the right to development is even a human right, see e.g. Alston, ‘Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals’ 27(3) Human Rights Quarterly 755.

\textsuperscript{51} See Declaration on the Right to Development, GA Res 41/128, 4 December 1986, A/RES/41/128, Article 8. Similarly marking this boundary, see Alston, ‘The Populist Challenge to Human Rights’, p. 9 (it is when ‘rights are conflated or confused with development, or poverty alleviation’ that the alleviation of economic inequality appears ‘huge and overwhelming’).

\textsuperscript{52} For the argument that human rights played a significant role to remedy global inequality once the New International Economic Order (NIEO) faltered, see Anghiie, supra n 22. See also Whelan, “‘Under the Aegis of Man’: The Right to Development and the Origins of the New International Economic Order’ (2015) 6(1) Humanity: An International Journal of Human Rights, Humanitarianism, and Development 93.


\textsuperscript{54} For a critique of Samuel Moyn’s intervention along these lines and examples of localized engagement with economic inequality by domestic courts, see Versteeg, ‘Can Rights Combat Economic Inequality?’ 133(6) Harvard Law Review 2017.

\textsuperscript{55} These methodological preferences are rarely openly addressed in scholarship, however. On the absence of explicit method talk in human rights research, see e.g. Andreassen, Sano and Mcinerney-Lankford (eds), Research Methods in Human Rights: A Handbook (2017).
these materials, most of its proponents concede that the relationship between human rights and economic inequality is underdeveloped or even inadequate,\textsuperscript{56} potentially necessitating a treaty.\textsuperscript{57} To build the normative contours of this relationship, and with a perspective internal to human rights practice, progressive interpretations have been put forward to clarify the place of economic inequality within the existing international human rights regime.

Three progressive interpretations are advanced in the HREI discourse to substantiate the relationship between economic inequality and human rights. In essence, growing economic inequality can be viewed as: (a) an impediment to the enjoyment of human rights; (b) in negative correlation with the principles of non-discrimination and the maximum use of available resources; or (c) a violation of human rights itself. Each interpretation will be examined in turn.

The first two interpretations are consequential or instrumental, focusing on how economic inequality impacts human rights or other values such as health or democracy. The third interpretation is intrinsic or direct, asserting that a certain degree of economic inequality constitutes a violation of human rights in itself. However, once the relationship between human rights and economic inequality is established, the mainstream HREI discourse only cursorily addresses the appropriate measures for tackling economic inequality. These measures remain primarily state-centric, revolving around resource mobilization and redistribution, mainly through progressive taxation and fiscal policy review.

\textit{a. Economic Inequality Interferes with the Enjoyment of Human Rights}

The predominant view, championed by actors with significant capital in the field such as UN human rights treaty bodies and special procedures, posits that specific levels of economic inequality have a detrimental impact on the enjoyment of human rights. Over the past decade, UN treaty bodies\textsuperscript{58}—especially the Committee on Economic, Social and Cultural Rights (CESCR)—have increasingly cited

\textsuperscript{56}See Alston, ‘The Populist Challenge to Human Rights’ (2017) 9(1) \textit{Journal of Human Rights Practice} 1 at 6. (‘mainstream human rights advocacy addresses economic and social rights issues in a tokenistic manner at best, and the issue of inequality almost not at all.’)


\textsuperscript{58}Although human rights treaty bodies do not generally distinguish between observations that interpret the state’s legal obligations from those that are mostly policy recommendation, their interventions remain highly influential, see Ulfstein, ‘Law-Making by Human Rights Treaty Bodies’ in \textit{International Law-Making: Essays in Honour of Jan Klabbers} (2014).
the link between certain levels of economic inequality and the enjoyment of human rights in the
Concluding Observations (COBs) of their state party reports.\footnote{For a review of these interventions, see Aubry et al, ‘What the UN Human Rights Treaty Bodies Tell Us about Economic Inequalities and Human Rights: An Empirical Analysis of Twenty Years of Practice’ in MacNaughton, Frey and Porter (eds), Human Rights and Economic Inequalities (2021) 85.; Ragnarsson, ‘Humanising Not Transformative? The UN Committee on Economic, Social and Cultural Rights and Economic Inequality in OECD Countries 2008-19’ (2021) 8(2) London Review of International Law 261.} Furthermore, CESCR’s periodic
reporting system now mandates that states provide information on how income and wealth inequality
affects the enjoyment of economic, social and cultural rights.\footnote{CESCR, ‘The Pledge to Leave No One Behind: The International Covenant on Economic, Social and Cultural Rights and the 2030 Agenda for Sustainable Development’, Statement by the Committee on Economic, Social and Cultural Rights (5 April 2019) UN Doc. E/C.12/2019/1, para. 5.} This view has gained significant traction in both scholarship\footnote{See e.g. Yepes and Hernández, supra n 24.} and civil society.\footnote{Center for Economic and Social Rights, ‘From Disparity to Dignity: Tacking Economic Inequality through the Sustainable Development Goals’ (2016) <https://cesr.org/sites/default/files/disparity_to_dignity_SDG10.pdf>. See also Deborah Hardoon, ‘An Economy for the 99%’ (2017) Oxfam, <www-cdn.oxfam.org/s3fs_public/file_attachments/bp-economy-for-99-percent-160117-en.pdf>.} Together with its authoritative spokespersons,\footnote{Although conferred with authority, these ‘human rights institutions are empowered to fill [the human rights subject] that empty vessel with content’, see Urueña, No Citizens Here: Global Subjects and Participation in International Law (2012) at 93.} calls have been made to label this approach the ‘emerging consensus’.\footnote{See MacNaughton, Frey and Porter, supra n 6 at 12.}

Interventions by UN special procedures have largely adopted this approach. Notable mention should be made of the appointment in 1995 of a Special Rapporteur on ‘the relationship between the enjoyment of human rights, in particular economic, social, and cultural rights, and income distribution’.\footnote{See U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, ‘Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its 46th Session’ (1994) U.N. Doc. E/CN.4/Sub.2/1994/56. See for a significant early intervention, the report by UN Special Rapporteur on the Realization of Economic, Social and Cultural Rights by Danilo Türk, ‘The Realization of Economic, Social and Cultural Rights: Final Report Submitted by Mr. Danilo Türk, Special Rapporteur’, UN Doc. E/CN.4/Sub.2/1992/16 (3 July 1992), paras 76–84, in particular para. 80: ‘The politically sensitive aspect of redistributing income must be overcome in the interests of fully complying with existing legal obligations of States to recognize, respect, protect and fulfil economic, social and cultural rights.’} However, it was the recent work of former Special Rapporteur on extreme poverty, Philip Alston, that has most effectively mainstreamed this perspective. Building on the unprecedented attention given to economic inequality following the 2014 English publication of Thomas Piketty’s \textit{Capital in the Twenty-}
First Century, Alston released a landmark report in 2015 specifically addressing human rights and economic inequality, advancing amongst others a consequentialist view.

The argument that a certain level of economic inequality interferes with the enjoyment of human rights relies on drawing a link between growing economic inequality and human rights outcomes. In effect, economic inequality is seen as one of the ‘root causes’ of individual human rights violations. This approach emphasizes the underlying structural causes—here economic inequality—that lead to these violations, rather than focusing solely on the individual violations themselves, which are viewed as consequences. Thus the claim that ‘strong and undeniable empirical connections exist between high levels of inequality and human rights deprivations’. Imbedded in methodological interdisciplinarity, this approach relies on social sciences, especially economics, to empirically illustrate the relationship between economic inequality and human rights outcomes. These outcomes are explained in a two-step process: first, by identifying the consequences of economic inequality—such as lower social mobility or economic growth, underfunding of social services, political capture by powerful
groups or financial instability, and second, by correlating these consequences with specific impacted rights, particularly the right to an adequate standard of living, education, health, or housing.

This interpretation faces two significant challenges, among others. First, it relies heavily on a limited series of sources that discuss the consequences of economic inequality. Authors like Joseph Stiglitz, Thomas Piketty, as well as organizations like the UNDP, and particularly Richard Wilkinson and Kate Pickett, are frequently cited. Some accounts even treat the consequences of economic inequality as a foregone conclusion. This leaves unexplored a rich and nuanced debate on the consequences of economic inequality, notably its detrimental impact on growth, that exists in addition to these oft-cited works. Similarly, discussions around the difficulty of substantiating causal relationships between economic inequality and specific political and social outcomes are also largely unaddressed. The HREI discourse rarely engages with these various accounts, which could provide a better and more granular picture of the effects of economic inequality on human rights, and thus lead to more targeted interventions. In the absence of such engagement, the language of the discourse tends to be ambiguous and its prescriptions to reduce inequality vague.

spending declines as the disparity between the middle class and the top 10 percent increases, see Schwabish, Smeeding and Osberg, ‘Income Distribution and Social Expenditures’ in Papadimitriou (ed), The Distributional Effects of Government Spending and Taxation (2006) 247.


According to a review of COBs, the right to an adequate standard of living is mentioned most frequently in relation to economic inequality, see Aubry et al, supra n 60. See also MacNaughton, ‘Emerging Human Rights Norms and Standards on Vertical Inequalities’ in MacNaughton, Frey and Porter (eds), Human Rights and Economic Inequalities (2021) 33.


See Piketty, supra n 67.

In particular United Nations Development Programme, Humanity Divided: Confronting Inequality in Developing Countries (2013).


See e.g. Falk, supra n 58 at 407.

For a critical overview, see Ferreira, Gisselquist and Tarp, supra n 3.


For a discussion of these limits, see Davis, ‘How Institutions Create Income Inequality’ in Greenwood et al (eds), The SAGE Handbook of Organizational Institutionalism (2017).

See however e.g. Heinz Balakrishnan, and Elson, Rethinking Economic Policy and Social Justice: The Radical Potential of Human Rights, Chapter 3; Yepes and Hernández, supra n 24.
Second, the HREI discourse has yet to engage in a substantive discussion on the complexities of establishing causal links between state actions, economic inequality, and the enjoyment of specific human rights to build accountability. These links are context-dependent and vary based on the interests requiring protection. As a systemic harm, economic inequality is one among multiple factors that impede the enjoyment of human rights, and state action one among several contributors to economic inequality. This raises particular challenges in terms of causal attribution concerning the effects of economic inequality that remain underdeveloped and warrant further exploration. Similar discussions are well-advanced in the context of climate change, another well-known systemic harm. Therefore, focusing solely on the contribution of states, without considering the contribution of private actors, may yield only limited improvements in human rights enjoyment. While similar discussions have progressed notably in the context of climate change, a detailed examination of the nature of state and private sector obligations and causal attributions concerning the effects of economic inequality remain underdeveloped and warrant further exploration.

**b. Economic Inequality Affects Non-discrimination and Maximum Available Resources**

The second interpretation that links human rights with economic inequality draws on two key principles of international human rights law: nondiscrimination and the maximization of available resources. Rather than viewing these principles as traditional limitations on economic and social rights, this interpretation sees them as avenues to enhance these rights.

First, vertical economic inequality is associated with a suspect category. According to Article 2(2) ICESCR, states are obligated to ensure non-discrimination in the exercise of economic, social, and cultural rights. Discrimination is generally understood to occur when there is unequal treatment based on a suspect classification—such as the listed and well-developed prohibitions based on race, nationality, religion, or gender—without reasonable and objective justification. However, the CESCR has recently broadened its scope to indirectly include vertical economic inequality as a suspect category. This expansion interprets the ‘other status’ criterion under Article 2(2) ICESCR to encompass

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88 See e.g. Mayer, ‘Climate Change Mitigation as an Obligation Under Human Rights Treaties?’ (2021) 115(3) American Journal of International Law 409.
89 See e.g. Ibid.
91 See Article 2(2) ICESCR which obli ges each state party ‘to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’
economic status. The Committee has stated that ‘[i]ndividuals and groups of individuals must not be arbitrarily treated on account of belonging to a certain economic or social group or strata within society,’ emphasizing that economic status can ‘result in pervasive discrimination, stigmatization and negative stereotyping which can lead to the refusal of, or unequal access to, the same quality of education and health care as others.’ Several COBs by UN human rights treaty bodies have adopted language that categorizes groups in terms of their economic situation, using terms like ‘low-income’, ‘economically disadvantaged’, ‘poor’, ‘underprivileged’, and ‘unemployed’. In this interpretation, discrimination is related to one’s relative economic situation, with growing disparities in economic status leading to unequal treatment in areas such as education and healthcare.

However, non-discrimination based on economic status remains conceptually underdeveloped and is seldom implemented in practice, especially in the context of economic inequality. When this form of discrimination is addressed, the focus tends to be on exclusion rather than on more equitable distribution. In other words, the emphasis is on minimums, often framed in terms of ‘economically disadvantaged’ or ‘poor’ individuals. These minimum standards are rarely juxtaposed with the ‘high-income,’ ‘economically advantaged,’ or ‘privileged’ segments of society, nor are they generally connected to a broader understanding of inequality as distribution across society as a whole. As highlighted in Section 4, this focus on minimum standards is an important critique levied by the critical HREI discourse. These critics argue that such a narrow focus fails to address the full spectrum of inequality, neglecting the top end of economic distribution.

Secondly, the principle of ‘maximum available resources’ offers another avenue for examining economic inequality through the lens of human rights. According to Article 2(1) ICESCR, states are obligated ‘to take steps ... to the maximum of available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant.’ Traditionally, the

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92 It is included as an ‘other status’ ground of discrimination in Article 2(2) ICESCR, which the CESCR noted should be approached in a ‘flexible’ manner since ‘discrimination varies according to context and evolves over time.’ See CESCR, ‘General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)’, para. 27.
93 General Comment No. 20, Non-discrimination in economic, social and cultural rights, E/C.12/GC/20, para. 35.
94 Ibid.
95 For a review, see Aubry et al, supra n 60 at 104.
96 See e.g. Heintz, supra n 73 at 38.
98 Ragnarsson, supra n 60.
99 ‘The human rights principle of nondiscrimination guides us to start out inquiries from the standpoint of the poorest and most vulnerable segments of society.’ See Dommen, supra n 27 at 223.
concept of ‘maximum available resources’ has been associated with recognition of resource constraints to the fulfillment of many human rights.\textsuperscript{101} It has been understood as a mandate for states to efficiently manage and allocate their existing resources to avoid retrogression in human rights protection.\textsuperscript{102} But focus has recently shifted ‘from human rights-compliant spending of existing resources to maximizing the availability of such resources.’\textsuperscript{103} This broader focus not only provides a more nuanced understanding of how public finances operate but also initiates discussions on the necessity for increased revenue and redistribution, usually through fiscal policy, as prerequisites for the realization of human rights.\textsuperscript{104}

In the context of economic inequality, the CESCR has evaluated both the spending and raising of resources to assess whether state parties to the ICESCR have indeed devoted the ‘maximum available resources’ for the progressive realization of economic and social rights. When discussing economic inequality, the Committee’s recommendations often revolve around fiscal policies, advocating for progressive taxation\textsuperscript{105} and measures to curb tax avoidance.\textsuperscript{106} It is important to note however that the effectiveness of these fiscal policies, particularly where tax avoidance is concerned, is largely shaped by global processes as individuals and companies readily move in staggering numbers to other countries to escape taxation.\textsuperscript{107} They thus require international cooperation to achieve their intended outcomes.

An interpretation built on the principle of ‘maximum available resources’ presents several challenges. As previously mentioned, the focus has generally been on generating resources rather than on how they are distributed through progressive taxation or other means. While an increase in available resources

\textsuperscript{101} See e.g. Robertson, ‘Measuring State Compliance with the Obligation to Devote the “Maximum Available Resources” to Realizing Economic, Social, and Cultural Rights’ (1994) 16(4) \textit{Human Rights Quarterly} 693.

\textsuperscript{102} See e.g. Saiz, ‘Rights in Recession? Challenges for Economic and Social Rights Enforcement in Times of Crisis’ (2009) 1(2) \textit{Journal of Human Rights Practice} 277 at 283.


\textsuperscript{105} See e.g. CESCR, ‘Concluding Observations: Ecuador’ (2019) UN Doc. E/C.12/EDU/CO/4 (‘recommends that the State party adopt a progressive tax policy in order to reduce inequality and ensure greater enjoyment of the Covenant rights, using the maximum available resources’); CESCR, ‘Concluding Observations: Switzerland’ (2019) UN Doc. E/C/CH/CO/4 (‘recommends that the State party take strict measures to combat tax evasion, in particular by corporations and high-net worth individuals, and intensify its efforts to address global tax abuse’). See also Ragnarsson, supra n 60.

\textsuperscript{106} See generally Alston and Reisch, supra n 4.

could potentially improve universal access to rights, it does little to address the distributive arrangements that result in unequal access in the first place.\textsuperscript{108} Moreover, the emphasis on resource generation often aligns with development models centered on economic growth.\textsuperscript{109} These models not only largely neglect issues of distribution but also are aligned with increasingly discredited tenants of neoclassical economics. Such tenets posit that economic growth and profit generation are the most effective ways to improve overall well-being, often summarized by the phrase ‘lift all boats’ and ‘trickle down’ economics.\textsuperscript{110} In this context, generating resources—particularly through more progressive taxation schemes—could be used to fund social safety nets (sufficiency). But this approach may also serve merely to ‘secure social cohesion in an inherently exploitative economic system’.\textsuperscript{111} In addition, within this approach, not only is there no ceiling on inequality, as the generation of resources is entirely compatible with increased wealth concentration at the top-end of the distribution, but the role of business also remains elusive. Initiatives by businesses that could contribute to a more equitable distribution at the production stage—rather than relying solely on state-led redistribution such as progressive taxation—remain largely unexamined.\textsuperscript{112}

c. Economic Inequality Itself is a Violation of Human Rights

A less commonly advanced argument posits that economic inequality itself should be considered a violation of human rights. This more direct, or intrinsic, interpretation mainly hinges on extending the principle of equality embedded in international human rights law to encompass economic and social rights.\textsuperscript{113} Advocates of this view argue that since the principle of equality is a fundamental tenet of human rights, then not just poverty but also extreme versions of economic inequality should be treated as human rights violations.\textsuperscript{114} This interpretation draws extensively on the expansive notion of equality articulated in the Universal Declaration of Human Rights (UDHR),\textsuperscript{115} a concept some argue has been

\textsuperscript{108} Rudiger, supra n 101 at 151.
\textsuperscript{109} Brinks, Dehm and Engle, supra n 4.
\textsuperscript{110} For a primer on neoclassical economics in the context of inequality and human rights, see Heintz, supra n 69.
\textsuperscript{111} Rudiger, supra n 101 at 151.
\textsuperscript{112} Ragnarsson, supra n 60 at 281–282.
\textsuperscript{113} This argument is principally championed by Gillian MacNaughton, see e.g. MacNaughton, ‘Is Economic Inequality a Violation of Human Rights?’ in Davis, Kjaerum and Lyons (eds), Research Handbook on Human Rights and Poverty (2021); MacNaughton, ‘Vertical Inequalities’, supra n 98.; MacNaughton, ‘Beyond a Minimum Threshold: The Right to Social Equality’ in Minkler (ed), The State of Economic and Social Human Rights (2013) 271.; MacNaughton, ‘Healthcare Systems and Equality Rights’ (2011) The Equal Rights Review.
\textsuperscript{114} See e.g. MacNaughton, ‘Is Economic Inequality a Violation of Human Rights?’; MacNaughton, ‘Beyond a Minimum Threshold: The Right to Social Equality’; Alston, ‘Report of the Special Rapporteur on Extreme Poverty and Human Rights’, para. 54.
\textsuperscript{115} Article 1 of the UDHR provides that ‘All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.’
neglected in the later part of the twentieth century and is in need of revitalization. According to this perspective, if income inequality undermines the principle of equality in dignity and rights, then addressing income inequality becomes an imperative under Article 1 of the UDHR. In essence, this is an attempt to carve out a distinct norm of substantive economic equality which would be applicable to vertical economic inequality.

The ramifications of this interpretation are wide-ranging. If a comprehensive right to equality is recognized, human rights bodies could establish explicit legal mandates to address extreme forms of vertical inequality, such as setting specific limitations on economic and social disparities. This could also introduce a distributive perspective to the discourse on equal access to economic and social rights, as well as to the processes adopted for realizing these rights, providing room to develop a norm of distributive equality. Furthermore, this approach could pave the way for treaty bodies to recommend more structural interventions. Rather than solely focusing on redistributive measures like taxation, that is intervention after the fact, they could suggest reforms that reshape markets in critical sectors like housing, or impose additional regulations on problematic industries like the financial sector.

But this argument presents a host of challenges. Not only is it not well developed, which raises important questions about what responsibilities should be borne by states, but little help is to be expected from the travaux préparatoires, as vertical equality received little attention during the drafting of the UDHR and the ICESCR. Additionally, it is unclear why other, more indirect or consequentialist approaches could not already set limitations on inequality or tackle unequal access to

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116 See Moyn, Not Enough, supra n 4 at 141.
118 See e.g. MacNaughton, ‘Beyond a Minimum Threshold’, supra n 114.; Rudiger, supra n 101 at 157. (‘[t]o revive the emancipatory relevance of human rights in current struggles, and to activate human rights as a signifier uniting a counter-hegemonic force, rights have to champion economic equity as a goal and end in itself’).
119 See MacNaughton, ‘Vertical Inequalities’, supra n 98 at 1065.
120 MacNaughton, ‘Equality Rights beyond Neoliberal Constraints’ in MacNaughton and Frey (eds), Economic and Social Rights in a Neoliberal World (1st edn, 2018) 103.
121 See Balakrishnan, Heintz and Elson, supra n 73 at 33.
123 See Ragnarsson, supra n 71 at 281.
124 See Alston, ‘Report of the Special Rapporteur on Extreme Poverty and Human Rights’, para. 55; Rudiger, supra n 101 at 146.
125 Dehm, supra n 51 at 444.
rights due to economic status. Finally, this approach is also particularly susceptible to longstanding criticisms of human rights inflation and proliferation—essentially, concerns that an expansion of what is considered a human right, made to stand for whatever preference, would dilute the value of existing rights. Such criticism should be scrutinized closely, however, especially in the context of economic inequality. Indeed, objections to the proliferation of human rights may simply reveal an underlying bias: rights that do not challenge the principles of commodification or market freedom are often seen as ‘real’ human rights. Meanwhile, welfare rights and other transformative claims are more likely to draw accusations of ‘inflation,’ questioning their legitimacy.

4. Criticizing Human Rights as a Frame for Economic Inequality

The mainstream HREI discourse endorses the use of human rights as a framework for addressing economic inequality. However, the relationship between human rights and economic inequality is also an important terrain of critique. According to the critical HREI discourse, human rights offer little to no solutions for economic inequality. The reasons for this purported failure are debated, largely substantiated not by doctrinal and legalist inquiries, but politics and the historical contextualist moves familiar to the critical project.

Though often grouped together, the different arguments within this critical discourse have significant distinctions. In this paper, two specific critiques are identified: the instrumental critique, which focuses on the co-optation of human rights under neoliberal governance, and the essentialist critique, which questions the inherent limitations of human rights as a tool for addressing economic inequality. The following section delves into each of these critiques.

a. Human Rights are Affiliated with Neoliberalism and Market Fundamentalism

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131 For an excellent effort to delineate the ‘inequality critique’ into its different iterations, see Song, supra n 17 at 347.
132 This dichotomy is discussed in Moyn, Not Enough, supra n 4.
In its most unyielding form, the critical HREI discourse argues that human rights have varying degrees of affinity with neoliberalism, and by extension its consequences, namely the growth of economic inequality. This instrumental critique posits that individualistic human rights are easily co-opted by neoliberal market logic, serving to ‘humanize’ a hegemonic agenda. Consequently, concepts like trade and markets are reframed in human rights terminology, with the powers and interests in neoliberalism finding a ‘moral language’ to advance their self-interest. This transformation into a neoliberal rights discourse of ‘marketized’ rights has allegedly expedited the decline of the welfare state and legitimized market fundamentalism, ‘creating or reinforcing the legal and economic structures generating radical socioeconomic inequalities.’ Contrary to the ‘neutrality doctrine,’ which bars the questioning of an economic model (e.g. capitalist, socialist, laissez-faire) from a human rights perspective, this critique argues that human rights are not neutral; rather, they are ‘part of the problem.’

This claim of appropriation and the conditions under which ‘a narrow, neoliberal, and anti-redistributive understanding of human rights’ has been consolidated is largely substantiated through historical analysis. A temporal overlap between the rise of human rights and the rise of neoliberalism is highlighted, thereby suggesting either complicity or a causal relationship between the two. This shared historical trajectory between human rights and neoliberalism begs the question: are they ‘mere

133 Neoliberalism is of course a contested term, one view is that it refers to an economic theory that places emphasis on deregulation, economic liberalisation, and market reforms. These will be understood as constituting fundamental elements of neoliberalism for the purposes of this article. For a critical account of its history, see generally Harvey, A Brief History of Neoliberalism (2005).
136 Baxi, supra n 135 at 273.
137 See Dehm, supra n 51.; Slobodian, Globalists: The End of Empire and the Birth of Neoliberalism (2018) at 121–145.; Whyte, supra n 10.
138 Bonadiman and Soirila, supra n 135.
140 For an argument against the neutrality doctrine and advocating a socialist theory of economic and social rights as best placed to protect these rights, see Manfredi, ‘Against “ideological neutrality”: on the limits of liberal and neoliberal economic and social human rights’ at 311.
142 Dehm, Golder and Whyte, supra n 4.
143 See e.g. Marks, ‘Four Human Rights Myths’, supra n 71.
historical coincidence or is there a more causal relationship between these two trends?' Causality or complicity is often the privileged interpretation. Jessica Whyte's influential analysis, for instance, argues that human rights were not passive entities but ‘active, enthusiastic and influential fellow travelers’ in the journey of neoliberalism’s rise.

Nonetheless, there is ongoing debate about the timing and nature of the relationship between the emergence of human rights and neoliberalism, as well as its consequences, the growth of economic inequality. Samuel Moyn, a key voice in the critical HREI discourse, offers a detailed rebuke to the idea of a historical complicity between the two. According to Moyn, the failure of human rights was ‘not so much abetting the romance of market freedom as failing to cry foul about its likely effects when the time was ripe to do so.’ Put simply, human rights underestimated the adverse effects of neoliberalism. Moyn also cautions that it is premature to firmly establish the relationship between human rights and neoliberalism, drawing a distinction between historical ‘coincidence’, ‘chronological simultaneity’ or ‘companionship’ and actual ‘causality and complicity.’

This perspective is further supported by Song, who argues that mere temporal overlap should not by itself lead to inferences about the strength of a connection. Kathryn Sikking takes this argument a step further, asserting that critics who claim an affinity between human rights and neoliberalism often conflate the term ‘human rights’ with the policies of specific governments, like those of the U.S. or U.K., or the activities of a few U.S.-based NGOs. Therefore, while the marketization of human rights may have occurred within a specific time frame and setting, it should not be seen as defining the future possibilities of human rights as an arena of struggle against economic inequality. This resonates with the view that human rights serves as a form of oppositional language, flexible enough to be appropriated by a wide range of movements and ideologies. In this context, Whyte’s work does provide a compelling analysis of how pro-market rights were emboldened and globally enforced. However, and

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144 Brinks, Dehm and Engle, supra n 4 at 364.
146 See Moyn, Not Enough, supra n 4. Chapter 7.
147 Ibid at 187.
149 Song, supra n 17 at 359.
151 Evoking the future possibilities of human rights, see Baxi, supra n 135 at 132–166.
as Whyte herself acknowledges, her focus is on ‘a “hegemonic” form of human rights practice and ideology, with the analysis mainly covering the 1940s-1970s.’

Claims about the neoliberal appropriation of human rights as observed via its effects on economic inequality also warrant closer scrutiny. The ‘hidden causal statements’ within these claims and the periods they refer to have yet to be substantiated through ‘empirical research investigating it as a historical thesis.’ In fact, whatever empirical studies exist, although concerned with broader historical periods, often refute the claim of neoliberal appropriation and its result, the growth of inequality. For example, one such study found ‘little evidence that countries that sign many human rights agreements have systematically greater inequality ([measured by] higher Gini coefficients).’ Another study suggests that a state’s ratification of the ICESCR is associated with reduced domestic income inequality.

These empirical findings raise questions on some of the unexamined relationships that underly this critique. First, these findings cast doubt, as do Moyn and others, on the neoliberal appropriation of human rights, at least if the growth of economic inequality is used as proxy for this appropriation. Second, and perhaps more troubling, if the thesis of neoliberal appropriation is to be accepted, then these findings also challenge the entirely unexamined ‘well-accepted fact’ that neoliberal principles like market fundamentalism are directly responsible for economic inequality.

b. Human Rights Are Inadequate as a Framework for Economic Inequality

Rather than dwelling on possible affinities with neoliberalism, another strand of the critical HREI discourse, prominently represented by Samuel Moyn, posits that human rights are a ‘powerless companion’ to the rise of neoliberalism as a result of their internal contemporary deficiencies rather
than any external affinities. In effect, Moyn contends that human rights are not capable of adequately addressing the consequences of neoliberalism, that is economic inequality. This is arguably the stronger critique as it goes to the essence of human rights possibilities rather than their external instrumental appropriation or misuse by certain actors. The primary contemporary internal deficiency identified in this critique relates to the human rights regime's focus on minimums, and how it delimits the possibilities of human rights. Other perceived shortcomings—such as the regime’s individualism, anti-statism, court-centrism, and elitism—will be touched upon briefly where relevant.

The most prominent criticism in this discourse centers on the notion that human rights, at least as they are understood today, focus primarily on achieving minimum standards or ‘sufficiency.’ To understand how this internal deficiency became part of human rights, Moyn traces the historical shift from a commitment to material equality to one of sufficiency, arguing that current human rights practices only aim to eliminate ‘the shame of material insufficiency while turning a blind eye to galloping material inequality.’ This critique introduces a relational perspective, contrasting the needs of the disadvantaged (sufficiency) with the excesses enjoyed by the privileged. In essence, with their focus on sufficiency, human rights are relegated to a ‘defensive minor role,’ falling short of adequately addressing rampant inequality. The result is a troubling paradox for Moyn: in a society that is sufficiently affluent, the realization of human rights can coexist with extreme levels of inequality.

This deficiency results from a process that started in the late 1970s where ‘human rights law lacked the norms and human rights movements the will to advocate for “material equality”’. This reflects the way human rights emerged as a powerful language of opposition by situating itself beyond the limits of political or economic ideological narratives, which allowed for various movements to align with human rights ideas. Echoing the pushback on the neoliberal appropriation critique, this explains why ‘the invocation of economic and social rights was paired with a (real or feigned) agnosticism in relation

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162 Moyn, Not Enough, supra n 4 at 176.
163 For similar relation readings, see Marks, ‘Human Rights and the Bottom Billion’ (2009) European Human Rights Review; Salomon, supra n 162.
164 Moyn, Not Enough, supra n 4 at 176.
165 See Ibid at 6.
166 Ibid at 176.
167 Eckel and Moyn, supra n 153.
to grand programs of social and economic change—even as one such program, neo-liberalism, was sweeping the globe." But this agnosticism also means that human rights lack a programmatic repertoire that would make it effective at dealing with structural causes such as economic inequality and their consequences, read by reinvigorating a strong redistributive state.

However, Moyn’s argument attributing a focus on ‘sufficiency’ to the entire human rights regime has been met with several challenges. Critics have taken issue with his excessive focus on US and UK governments and NGOs, that is, on ‘elite institutional actors and large global north NGOs such as Amnesty and Human Rights Watch’ while excluding ‘the social movements and grassroots activism as well as civil society diversity that underpins much human rights advocacy.’ Additionally, Moyn has been criticized for overlooking the efforts of various UN human rights mechanisms, as well as regional and national courts, in using human rights frameworks to address economic inequality.

Much of the mainstream HREI discourse—particularly in recent interventions—now readily acknowledges that the international human rights regime has had few things to say about economic inequality, especially in relational terms. As noted earlier, it is widely accepted that the legal framework of various international human rights treaties have largely focused in the past on setting minimums (that is sufficiency) standards for different dimensions of well-being. Concepts like ‘minimums of existence’ or ‘minimum core’ of economic and social rights ‘to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights’ are well entrenched. This does not take away

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170 Moyn, Not Enough, supra n 4 at 219.
171 See Sikkink, supra n 151 at 38–41.
175 See Alston, ‘The Populist Challenge to Human Rights’, supra n 57 at 9.; De Schutter, The Rights-Based Welfare State: Public Budgets and Economic and Social Rights p. 21 (“[h]uman rights law pays particular attention to the situation of the worse off in society, but it also ought to pay attention to the gaps between the worse off and the better off, even in situations where all individuals have attained a certain level of enjoyment of the right concerned”); Brinks, Dehm and Engle, supra n 4 at 363.; Saiz and Donald, ‘Tackling Inequality through the Sustainable Development Goals: Human Rights in Practice’ (2017) 21(8) The International Journal of Human Rights 1029 at 1030.
176 See e.g. Saiz, supra n 103 at 282.
from Moyn’s critique and that of others, but it demonstrates a growing recognition of the negative impact of inequality on human rights and a collective desire to move beyond mere ‘sufficiency.’ The past decade has had few blind eyes about economic inequality, and here perhaps lies the most compelling response to Moyn.

The critical HREI discourse offers a nuanced historical account even as it endeavors to make a normative prognosis about future human rights possibilities. It is highly compelling at showing historical contingency but less so when it is used to delimit the possibilities of human rights. The historical method has been an important part of the HREI discourse, and dominant within its critical strand. It is part of a larger interrogation of the historiography of human rights, with the method also playing a significant role in international law’s engagement with political economy, reflecting a broader historical turn that has gripped the field of international law since the early 2000s. In the critical HREI discourse, history is deployed to illustrate how human rights have been tools of politics, used in particular moments of history by particular interests. As Nehal Bhuta aptly summarizes, ‘Moyn’s fundamental claim is not that economic and social rights are always and at all times demands for sufficiency. Rather, it is that social and economic rights are janus-faced and chameleon-like concepts, the concrete content of which depends on the wider political and economic ecology of the given moment in history that surrounds them.’

Yet central to this historical approach is the belief about the potential of history to open possible futures, showing that past events and decisions were not inevitable but contingent, but this is not the approach adopted by most in the critical HREI discourse. The historical approach serves to open competing visions and possibilities for human rights by recasting the past to mobilize projects in the present.


178 Ibid.
179 Much of the contributions to both symposiums on the topic of human rights and economic inequality are dominated by historical interventions, see Dehm, Golder and Whyte, supra n 4.; Brinks, Dehm and Engle, supra n 4.
180 Most accounts critical of human rights as a frame for economic inequality adopt the historical approach. The best-known example is surely Whyte, supra n 10.
182 See for recent prominent interventions, Tzouvala, Capitalism As Civilisation: A History of International Law (2020); Bernstorff and Dann (eds), The Battle for International Law: South-North Perspectives on the Decolonization Era (2019).
184 Pointing to this contribution in the context of this discourse, see Salomon and Scheinin, supra n 175.
185 Bhuta, supra n 169 at 18–19.
This is what Julia Dehm describes as the potential for the past to ‘enrich and potentially radicalize contemporary discussions about the relationship between human rights and economic inequality.’

But most accounts within the critical HREI discourse tend to employ history either to dismiss the human rights regime *in toto*, on the basis of its historical failings, or to measure its failures – not only past but also future – largely referring to contemporary understandings of economic inequality. This approach works well at critically assessing the past, showing where there could have been room for tackling inequality. It is problematic, however, when this contemporary economic ecology is not turned to an examination of the future, but rather used to foreclose the possibilities for the human rights regime to take a different path moving forward.

Contemporary prognoses about the potential for human rights to address economic inequality are rooted in the political economy of their time. They are part of a political and economic ecology that is attuned to economic inequality. If anything, the existence of an HREI discourse is testament to this fact. Yet while interventions in the critical HREI discourse reflect on the political and economic context of the historical periods they are investigating, they rarely extend the same contextual consideration to the environment in which their scholarly work is being undertaken. The construction of the past is, after all, ‘informed by present concerns.’

In essence, what does it mean to be writing about economic inequality in the present, and what does that say about the capacity of human rights to adopt a programmatic language around economic inequality?

The renewed focus on economic inequality in a historical retelling of human rights—evident in the writings of Moyn and other scholars within the critical HREI discourse—is largely a product of the post-2008 Global Financial Crisis (GFC) ‘rediscovery’ of economic inequality. Following the GFC, discussions of economic inequality together with the language of political economy more broadly have been mainstreamed on the global agenda. Numerous studies have emerged, offering stark empirical insights into the increasing levels of economic inequality, its origins, consequences, and possible

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187 Dehm, supra n 51.
188 Dunn, ‘What makes critical research in political economy’ in *A Research Agenda for Critical Political Economy* (2020), p. 2 (‘political economy is not a “neutral” academic endeavour, divorced from the object it studies. How we see the world, and what we say about the world, is inseparable from our position within it.’)
190 See Grewal and Purdy, supra n 2.
191 Culminating in the inclusion of inequality in mainstream frameworks such as the Sustainable Development Goals (SDGs), see Goal 10 on inequality. Needless to say, the SDG approach to inequality has limits, see Fukuda-Parr, ‘Keeping Out Extreme Inequality from the SDG Agenda – The Politics of Indicators’ (2019) 10 Global Policy Volume 61.
remedies. This surge of interest was catalyzed by the publication of Thomas Piketty’s seminal work, *Capital in the Twenty-First Century*, opening what could be described as the ‘floodgates of inequality economics’. Moyn acknowledges how ‘Piketty and populism finally prompted a rude awakening’ to inequality. He notes their influence on scholars like Alston, but curiously does not discuss their impact on his own work.

In this context, Moyn’s work is not just a historical of ‘events as seen through the eyes of social and material justice’; it is also an inquiry as seen through the eyes of the post-GFC mainstreaming of economy inequality. This is particularly evident when Moyn examines the place of inequality within states. From this perspective, it is not difficult to agree that recent ‘scepticism about human rights is informed by an interpretation of the limitations of the post-Cold War political context.’ To evaluate the international human rights regime in the aftermath of the GFC, as Moyn does, is to acknowledge that the issue of economic inequality has been long ill-defined, especially when viewed through the lens of contemporary political economy. Moyn benefits from hindsight and a decade of extensive research on economic inequality to evaluate the international human rights regime and to examine its future possibilities.

There is nothing wrong *per se* with this new knowledge about economic inequality being used to evaluate and shed new light on the past. However, it begs the question of whether that same knowledge should be used to invalidate the future possibilities of human rights, without discussing whether that knowledge might not provide a sufficient program of economic change to redefine the current state of international human rights. As noted earlier, ‘[a]ny account of the redistributive possibilities of rights needs to be attentive to the historical, political and economic conditions in which rights frameworks

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195 Ibid.
196 Yet he has overtly considered how legal scholars can contribute to the conversation started by Piketty, see Moyn, ‘Thomas Piketty and the Future of Legal Scholarship: There is no such thing as capitalism’ (2014) *Harvard Law Review*.
198 See Manfredi, supra n 159 at 291.
199 For a critical account of the distinction between normative theorizing in human rights and human rights history, see Besson and Zysset, ‘Human Rights Theory and Human Rights History: A Tale of Two Odd Bedfellows’ (2012) 7 204.
function.'200 This attentiveness should apply equally to how an inquiry into the past contextualizes the mobilization of rights during a given period, but also to how contemporaneous historical, political and economic conditions shape a scholar’s pursuit of that inquiry and provide him with emancipatory tools.201 Julia Dehm articulates this well, noting ‘the extent to which human rights frameworks at specific moments critically engaged with the problem of inequality is reflective of their historical context and the extent to which a broader critique of the inequalities of the global political economy was being advanced.’202 Moyn himself acknowledges that it may be ‘unfair to expect [human rights] to succeed at a goal they almost never tried to adopt.’203 Does the post-GFC moment not create an opportunity for such a goal?

Recent trends suggest that the present political and economic context has been effective at mobilizing the human rights community to confront the issue of economic inequality—as it did with Moyn in the post-Piketty moment.204 The lingering question, therefore, is how to reshape our understanding of human rights to effectively tackle economic inequality in the context of today's political economy and new knowledge about economic inequality.

5. Putting Businesses on the Map of the Human Rights and Economic Inequality Discourse

How can we develop an analysis around economic inequality that is rooted in the present, considering the issues with the HREI discourse raised previously, and using our current economic ecology and knowledge to point towards its future evolution? This section offers one approach: putting businesses on the map of the HREI discourse. To that end, this section initially delves into the reasons behind the absence of these non-state actors from the HREI discourse. It then explores the implications of this absence and the potential ramifications of their integration. In doing so, this section also aims to addresses some of the key challenges and issues identified within both the mainstream and critical strands of the HREI discourse.

200 See Dehm, Golder and Whyte, supra n 4 at 228.
202 Dehm, supra n 51 at 443.
203 Moyn, Not Enough, supra n 4 at 202.
204 Finding that more significant references to economic inequality by the CESCR begin in 2014, the year Piketty’s volume was published, see Ragnarsson, supra n 60 at 271–277.
a. Some Explanations for Business as Uncharted Territory

The HREI discourse firmly emulates the human rights regime’s traditional state-centrism. In both the mainstream and critical strands of this discourse, the state is centred and portrayed as the principal actor to remedy distributive problems—be it as a result of the critical HREI’s deference to historical state-led initiatives or the mainstream’s emphasis on redistribution. This usually involves lamenting the retreat of the state and advocating for a rights-fulfilling welfare state.\(^{205}\) However, conspicuously absent from this discourse is any substantial discussion of business, and its role in exacerbating or reducing economic inequality.\(^{206}\) As a result, important contemporary contributors to economic inequality such as tax avoidance by multinational corporations or excessive executive remuneration and wage gaps across global value chains find little space in the HREI discourse.\(^{207}\)

Leading figures in the discourse, such as Alston and Moyn, offer only cursory remarks on the contribution and role of business. Alston openly expresses skepticism about setting expectations for businesses,\(^{208}\) while Moyn briefly acknowledges the failure to make corporations accountable to global norms promoting sufficiency in a single page of his book.\(^{209}\) This omission creates a paradox: the powerful transnational economic organizations that play a significant role in shaping annual income and wealth distribution, are largely absent from discussions of economic inequality. This gap might be a further reason why the HREI discourse may have had few things to say about economic inequality.

The state-centric approach within the HREI discourse can be attributed to various factors. Most obviously, it reflects a well-known background assumption of traditional international human rights law, which places legal obligations to protect human rights on states alone.\(^{210}\) Indeed, Moyn has convincingly shown how a history of economic and social rights would not be distinct from a history of the welfare state itself.\(^{211}\) But this state-centric approach also results from how large parts of the

\(^{205}\) See e.g. Moyn, *Not Enough*, supra n 4 at 219. (‘Global welfare would require the same emotional commitment to governmental capacity, scaled all the way up from its avatar in national welfare to the world state’).

\(^{206}\) For an important exception, see however the discussion on how business affects inequality and how this has not been the focus of the business and human rights community in Ragnarsson, supra n 60 at 268–270.

\(^{207}\) For an overview of some of these contributors, see Atkinson, supra n 193 at 82. On executive remuneration specifically see, Piketty, supra n 2 at 397–405.

\(^{208}\) See Alston, ‘The Populist Challenge to Human Rights’, supra n 57 at 11. (‘I have always retained a fundamental scepticism about the proposition that businesses are going to be persuaded to act as great proponents of human rights’).

\(^{209}\) Moyn, *Not Enough* at 194.

\(^{210}\) On the state-centric nature of the human rights framework as a reason for the failure of human rights to act in economic crises, see Nolan, supra n 14. For an articulation of the statist assumptions in international human rights law, see Buchanan, *The Heart of Human Rights* (2013).

HREI discourse advocate for a strong state and progressive economics as a counterpoint to market fundamentalism, longing for a return to the ‘golden age’ of capitalism with its high taxes and large government redistribution. In this portrayal, the state emerges as an ally, and the market as an adversary. In this narrative, the ‘long-standing free-market orthodoxies of deregulation, liberalization, and privatization, far from delivering on their stated goal of promoting human welfare and economic development, have entrenched global poverty and exacerbated inequalities between and within countries.’ Therefore, to ascribe more public responsibilities to business—read addressing their distributive effects—amounts to further cementing market appropriation, and potentially undermining efforts to build ‘state capacity’ with governments held to account for their role in redistributing resources. This view is also reflected in the emerging Law and Political Economy (LPE) movement, echoing the movement’s focus on state power and its ‘aspiration to govern and to engage in ambitious, centralized, encompassing institutional designs [that] could deliver on aspirations of equality.’

Moreover, state-centrism can also be rooted in the critical HREI discourse’s turn to history. A turn that has resulted in reliance on the past and its state-led projects. In its most prominent accounts, the HREI’s historical interventions tend to admiringly depict the UDHR as a ‘charter for national welfare states’, envisioned to provide a blueprint for how states could structure economies to realize socioeconomic rights. Cold War-era developments, with narratives about Third World demands in the 1970s for a New International Economic Order (NIEO), are also given prominence. The NIEO was a highly significant initiative. The more structural approach to human rights adopted during this period, one focused on structural violations rather than individual remedies, provides inspiration for the

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212 See e.g. Saiz, supra n 103. For an overview of the interaction between progressive economists and critical international lawyers, see Haskell, ‘Modern Money Theory and International Law’.


214 Saiz, supra n 103 at 286.


218 See e.g. Whyte, supra n 10.; Moyn, *Not Enough*, supra n 4.; Dehm, Golder and Whyte, supra n 4.


220 See the discussion in Bhuta, supra n 169 at 26–31.

221 See two of the most prominent contributors in the HREI discourse: Moyn, *Not Enough*; Dehm, ‘Highlighting Inequalities in the Histories of Human Rights: Contestations over Justice, Needs and Rights in the 1970s’ (2018) 31(4) Leiden Journal of International Law 871. See also Bernstorff and Dann (eds), *The Battle for International Law: South-North Perspectives on the Decolonization Era* (2019) 3 (For the argument that ‘The underlying aspirations, strategies, and failures of this battle thus are of vital importance for any future project aiming to address and alter the relationship between international law and fundamental inequalities in this world.)
challenge that is mobilizing human rights to alleviate economic inequality within countries. But much of the critical HREI discourse seeks to renew with these earlier initiatives, dreaming of greater equality around the idea of strong globalized welfare states that arose in the context of the NIEO.

It is essential to recognize, however, that the NIEO was primarily a state-led initiative designed to address economic disparities between states, rather than within them. The NIEO emerged in a specific historical context—the second half of the 20th century—which was characterized by growing economic disparities between rich and poor states. It was a period defined by a particular political-economic context which saw rights align with the ‘mid-century global embrace of the state as an interventionist agent of economic management.’ Furthermore, this period predates the full advent of economic globalization and the rise of multinational corporations and their role in the global distribution of resources. In that sense, the NIEO was a campaign by states to reform the international system, underpinned by the belief that states were the agents to bring about change to the economic order, and directed at inequalities between states of the Global North and the South, rather than on intra-state inequalities.

In contrast, the contemporary HREI discourse has largely emerged in a context where inter-state inequalities have been on the decline since the 2000s, while intra-state inequalities, as highlighted by Piketty, have become increasingly urgent concerns. As Anthony Anghie observes, while ‘the NIEO had campaigned for global redistribution it was hard to overlook the glaring inequalities in wealth that were evident in the post-colonial state itself.’ This is even more true today. Furthermore, the

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222 For such an exercise, see Dehm, supra n 222.
223 See e.g. Moyn, Not Enough, 278. For the argument, however, that ‘had the NIEO been successful, it would in any case have served to reinforce the neoliberal world economy that Moyn’s book contests’, see Salomon and Scheinin, supra n 175 at 610.
225 Bhuta, supra n 169 at 19.
226 See Moyn, Not Enough (‘The movement for global equality, before the New International Economic Order died, was a governmental rather than a non-governmental one’).
227 This focus is clear from Article 1 of the Declaration on the Establishment of a New Economic Order states: ‘The gap between the developed and developing countries continues to widen in a system which was established at a time when most of the developing countries did not even exist as independent States and which perpetuates inequality.’ See Declaration on the Establishment of a New International Economic Order, Gen. Ass Res. 3201 (S-VI), May 1, 1974. See also Bedjaoui, “Towards a New International Economic Order,” UNESCO (Holmes and Meir Publishers, 1979). For a more recent elaboration of the views of the NIEO on inequality, see e.g. Ibid. Chapter 6; Thomas Bostelmann, The 1970s: A New Global History from Civil Rights to Economic Inequality (Princeton University Press 2013).
228 See Milanović, supra n 225.
229 See generally Chancel et al, supra n 1.
230 Anghie, supra n 22 at 433. The failure of the NIEO to address within country redistribution was noted by Upendra Baxi, who recognizes the NIEO as a necessary but insufficient precondition for the realization of human rights, see
HREI discourse also arises in a transformed global political economy, where the role of the state has been significantly constrained. Branco Milanovic points out that the period of reduced inequality following WWII relied on the state enabling ‘strong trade unions, mass education, high taxes, and large government transfers’.\(^{231}\) However, in today’s globalized world with its limited interventionist capacity of states, these measures ‘will not do the job for the twenty-first century.’\(^{232}\) Consequently, there is a risk that historical perspectives in the HREI discourse, if not appropriately contextualized in the present, remain ‘confined to the very terms, categories, and vocabularies of the histories whose creation they have been discoursing and theorising.’\(^{233}\) In doing so, they may direct energy towards the usual welfarist state-based solutions, limiting room for the exploration of different possibles.

### b. The Need to Chart Multinational Corporations

The limited attention given to business in the HREI discourse has several implications. This oversight means that a range of public-private or hybrid normative frameworks that might bring some measure of responsibility and accountability for economic inequality, as epitomized by the field of business and human rights (‘BHR’), are largely absent in debates about economic inequality.\(^{234}\) International human rights scholarship has long advocated for the extension of obligations to privates actors,\(^{235}\) with a growing trend toward the legalization of corporate human rights responsibilities.\(^{236}\) International human rights norms are increasingly becoming a standard for acceptable conduct in global economic life, both for private and public actors. This is reflected in the proliferation of transnational and domestic norms, both ‘hard’ law and ‘soft’ law, that provide corporate human rights responsibilities across global value chains.\(^{237}\) These norms centre business and human rights BHR as a field and discourse.\(^{238}\) They are also

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Ibid.


234 See however Litwin, ‘Business Impacts on Economic Inequality: An Agenda for Defining Related Human Rights Impacts and Economic Inequality Due Diligence’ (2023) Business and Human Rights Journal. Business ethicists have been far more vocal, for a poignant intervention, see Enderle, Corporate Responsibility for Wealth Creation and Human Rights (2021).


beginning to penetrate the world of finance. With the rise of ESG (environment, social, governance) factors in sustainable investing, human rights norms are increasingly prevalent in sustainable finance legislation that regulates financial market participants.239

Absent a global welfare state capable of regulating the distributive impact of multinational corporations across their global value chains, these normative developments offer an opportunity to introduce meaningful transnational corporate responsibility along global value chains. Under a mainstream consequentialist view of human rights and economic inequality, where economic inequality interferes with the enjoyment of human rights, businesses would thus be called to prevent or remedy their actual or potential adverse inequality-related human rights impacts. Such an approach could be built, for example, around the business and human rights notion of ‘adverse human rights impacts’240 by emphasizing inequality as a root cause or contribution to such impacts. This approach has already been widely adopted in the context of another root cause, climate change,241 and its extension could be envisaged to economic inequality.

Furthermore, drawing boundaries between the public and private in the context of economic inequality has important distributive economic consequences. When businesses are left unaccountable for their distributive role and contributions to economic inequality, it is the state that is ultimately left to manage the negative externalities of these contributions on society largely after the fact via redistribution. This view reflects a certain law and economics orthodoxy that advocates a ‘grow first, distribute later’ model.242 According to this perspective, the private market and its constituents are most efficient at allocating resources to maximize aggregate wealth production, and the distributive consequences of their actions are most efficiently dealt with by the state through taxation.243 But this approach has been shown to have important limits: if political or practical barriers abound, it might be more effective to seek better distribution as an initial matter using an internal mechanism prior to redistribution by state organs using tax and welfare law.244

241 Much of the climate change litigation is based on what could be called a root cause analysis of human rights impacts. For an critical overview, see Mayer, supra n 89.
242 For a classic account of this idea, see Kaplow and Shavell, ‘Why the Legal System is Less Efficient than the Income Tax in Redistributing Income’ (1994) Journal of Legal Studies.
243 For an overview and critique of this view, see e.g. Fennel and McAdams, ‘The Distributive Deficit in Law and Economics’ (2016) 100 Minnesota Law Review 1052.
These limits are most evident in how the state's ability to effectively intervene and redistribute wealth, particularly in the form of welfare spending, is increasingly constrained by the pressures and lack of governance of economic globalization. In particular, multinational corporations register a large portion of their earnings in tax havens where they are subjected to low effective tax rates. In other words, value chains, by leveraging varying institutional and legal frameworks, can seek to avoid accountability in the process of wealth creation. In reaction to the growing ability of profits to move across borders, governments are aggressively reducing corporate tax rates in a competitive downward spiral. These trends are leading to the decline of effective taxation on company profits, with significant impacts on the redistributive capacity of states and thus inequality. Similarly, leading inequality scholars like Anthony Atkinson and Thomas Piketty attribute the rise in intra-state income inequality across the world, and particularly in the U.S., to excessive executive compensation and the erosion of pay norms that once kept such salaries in check. Wage disparities are largest when accounting for a business’ entire global value chain, that is its network of subsidiaries and suppliers. In this context, absent governance of global value chains or ‘global inequality chains’, the value that is created by multinational corporates in one state largely benefits members of other state as low-wages in one state are used to finance high executive wages in other states. Accordingly, the consequences of inequality resulting from the operations of multinational corporations across global value chains are externalized to a state whose ‘old tools of redistribution are likely to be overwhelmed’ in the twenty-first century. In other words, These ‘externalities’ arising from global production are not encompassed by current regulatory structures.

In addition, neglecting to explicitly address the role of business risks abating a key concern of the critical HREI discourse: the potential for the market to co-opt human rights language for its own ends. Indeed, the private sector has been increasingly proactive in defining its roles and responsibilities

249 Milanović, supra n 232 at 46.
concerning economic inequality. Accordingly, the guidance so far released has omitted any mention of a ceiling on inequality, focusing rather on sufficiency based arguments. If the role of business remains unaddressed in academic or institutional discourse, interpretive authority to define these standards risks being entirely left in the hands of the private sector.

Instead of reinforcing the divide between public obligations and private rights, incorporating businesses into the conversation could help shift the mainstream HREI discourse from a focus solely on state-led redistribution to also include better distribution as an initial matter, also known as predistribution. Predistribution focuses on the ‘importance of measures to render less unequal the incomes people receive before government taxes and transfers.’ As noted earlier, the mainstream HREI discourse largely revolves around state-led redistribution and progressive taxation. Such a focus overlooks other modes of intervention, such as those aimed at shaping the initial allocation of resources by entities like businesses before any government intervention takes place. Acknowledging the role of predistribution can enhance the application of human rights principles in distributive decisions at a more structural level at the point of value creation and redistribution. It can also more directly challenge business models themselves. This would enable a more complete understanding of predistributive and redistributive outcomes in today’s global economy. While it is clear that ‘[a]ll forms of distribution interventions are less than ideal’, it is increasingly evident that the most effective strategy to tackle inequality involves treating predistribution and redistribution as complementary tools, rather than alternatives.

254 Atkinson, supra n 193 at 113.
255 See Alston and Reisch, supra n 4. See the focus of the symposium Dehm, Golder and Whyte, supra n 4. Noting the CESCR’s focus on redistributive fiscal policy and progressive taxation, see Ragnarsson, supra n 60 at 277–278.
256 Dommen, supra n 27 at 20.
257 For example, Thomas Piketty and his colleagues have recently argued that the differences in pre-tax income inequality, rather than state-led redistribution, explain why France has less inequality than the United States, see Piketty et al, Pre-Distribution versus Redistribution: Evidence from France and the US (2020), available at: https://cepr.org/voxeu/columns/pre-distribution-versus-redistribution-evidence-france-and-us.
258 Atkinson, supra n 193 at 127.
In that sense, economic and social rights can represent the emanation of a contemporary political economy that does not only rest on tackling inequality via a strong state with grand redistributive ambitions as in times past, but recognizes the need for internalization of inequality and structural reforms to the capitalism machinery via its most powerful agents: corporations. That is not to say that these reforms should not be led by states, but rather that a focus on state measures alone risks limiting the identification and consideration of inequality-producing business models and practices.

In effect, centering business in the HREI discourse and seriously engaging and mobilizing learnings of the post-Piketty moment might lead to the concrete identification of the root causes to significant adverse inequality-related impacts and their effects on human rights. This means looking at causes that lie beyond individual conduct too and affect firms as a whole. Such an approach moves away from what are often broadly worded laments about a broken economic systemic, rapid suggestions of system change or more state power. It would first involve more granular engagement with the some of the well-recognized drivers of economic inequality, their link to business practices, and effects on human rights. Focus could be placed for example on living wages and limits on executive remuneration or on tax avoidance strategies. In that way, it is possible to actually determine the potential of human rights and related due diligence processes can actually begin unmasking (rather than masking) and seriously tackling some of the structural problems behind our current economic order.

The intent here is not to veer into an iteration of neoliberal orthodoxy that advocates for the free market and its constituents as the sole solution to economic inequality, nor is it to offer a blanket critique of state intervention. Instead, the aim is to acknowledge that frameworks built around the collaboration between … private business point to basic questions regarding justice, inequality, and distribution … more directly than approaches that remain seemingly more attached to an analysis of geopolitical state agency.” One constructive way forward might be to ‘think about corporations not as the “private” other to the “public” nation-state, but rather as legal institutions performing public regulatory function with public welfare effects not unlike-nation states.’ This creates opportunities for a more pluralistic approach to tackling economic inequality and more distributive aware regulation of corporations.

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262 Danielsen, ‘Corporate Power and Global Order’ in International Law and its Others (2006) at 86.