4-26-2017

Globalization, Inequality & International Economic Law

Frank J. Garcia
Boston College Law School, garciafr@bc.edu

religions

MDPI

Article

Globalization, Inequality & International Economic Law

Frank J. Garcia

Boston College Law school, Boston College, 885 Centre Street, Newton Centre, MA 02459, USA; frank.garcia@bc.edu

Academic Editors: Kate Ward and Kenneth Himes
Received: 7 February 2017; Accepted: 4 April 2017; Published: 26 April 2017

Abstract: International law in general, and international economic law in particular, to the extent that either has focused on the issue of inequality, has done so in terms of inequality between states. Largely overlooked has been the topic of inequality within states and how international law has influenced that reality. From the perspective of international economic law, the inequality issue is closely entwined with the topics of colonialism and post-colonialism, the proper meaning of development, and globalization. While international economic law has undoubtedly contributed to the rise of inequality, it is now vital that the subject of international economic law be examined for how it may contribute to the lessening of inequality. To do so will require a shift in the way that we think, in order to address inequality as a problem of an emerging global market society, and how best to regulate that society and its institutions.

Keywords: international economic law; globalization; international trade; global market society; John Rawls; global inequality

1. Introduction

International Economic Law (IEL) is the branch of international law that includes trade law, investment law, global banking and finance law, development lending and crisis lending and international commercial law. Given its subject matter, it is not surprising that the problem of inequality is central to IEL, and vice versa. While the field has, to some extent, addressed inequality between states, inequality within states has largely been ignored; only recently has the field struggled to take into account the extent to which inequalities within states are influenced by laws and policies set at the inter-state level[1]. This essay, part of a larger interdisciplinary working group on inequality, seeks to introduce the reader to the way inequality questions present themselves in international economic law, to some of the current thinking within the field on how to address inequality, and what international economic law can contribute to the larger inquiry into inequality and its drivers, and to broader societal efforts at remediation.

In the field of IEL, the question of inequality is shadowed by three inter-related concerns: the history and legacies of colonialism and post-colonialism (Chimni 2007); the related notion of "development," itself a fraught term (Boas and Bull 2010; Garcia 2016b)[2]; and now by the transformative effects of globalization (Carmody et al. 2012). How much should our efforts to address pernicious

[1] See, e.g., (Garcia 2006), "Trade, Justice and Security" explores impact of trade law on domestic inequality, and impact of trade-related inequalities on security and other policy concerns.

[2] See (Boas and Bull 2010), "The main lesson from the first 60 or so years of development theory as a field of study is that any sweeping, general argument about processes as complex and involving as many facets of human life as development will be refuted at one point or the other."

inequalities focus on rectifying past injustice (i.e. reparations, corrective justice etc.), and how much on re-setting the current terms of engagement (institutional reform, distributive justice etc.)? (UN General Assembly 1974) How should development be defined, measured, and most importantly, supported by the IEL system? (Rolland 2012) And how do we best let such questions reframe themselves in view of the fundamental transformations globalization is bringing about in terms of the economy, governance, and society? (Garcia 2013a)

For IEL as for many disciplines, a crucial question is whether engagement with the global economy as currently regulated increases or reduces national, international and global inequalities. If it is increasing inequality in any dimension, where does the fault lie: in the laws and policies of global economic regulation, in domestic economic laws and policies, in the quality of domestic political institutions generally, or all three? These are complex, fundamental questions.

Whether the domain is a domestic, international or "global" space, IEL must also try to understand which inequalities matter and why. This is of course part of a larger set of questions not unique to IEL, but it has unique wrinkles here. For example, comparative advantage in trade depends upon there being "inequalities" in the distribution of factor endowments between economies ("good" or "natural" inequalities?), yet the global justice debate is fueled by concerns over inequalities in the distribution of social resources such as market access, investment capital, intellectual property etc. ("bad" or "social" inequalities?). How can we be sure we are facilitating or remediating the appropriate inequalities?

Much of this boils down to ensuring the right balance of equal and unequal treatment under the law. When should states be treated equally, and when unequally? For example, if we are concerned about "development", in which cases should developing countries be treated equally under the law, and in which cases unequally? For example, with respect to treaty obligations, should developing countries shoulder reciprocal treaty obligations (i.e. equal treatment), or should they be allowed non-reciprocal concessions, the cornerstone of what we call Special & Differential Treatment, the key trade policy for developing countries? (Garcia 2003) To take another example, the Doha Development Round of World Trade Organization (WTO) trade negotiations was founded to address inequality (i.e. WTO rules are not "fair" to developing countries, i.e. the trading rules are not equal and unequal in the right ways), but has foundered on the problem of inequality as well: are states like India or China as "unequal" as they claim to be when it comes to the treatment they claim they need/deserve, and who decides? To frame it a different way, what happens when special treatment claimed by one state on behalf of its least advantaged citizens, negatively impacts the least advantaged (or politically sensitive) citizens in another state?[3]

IEL is thus at the center of our efforts to address inequality, even as many argue it has contributed to the problem through its policies and institutions. In the same way, globalization both intensifies inequality, and suggests new avenues for response. This means that any inquiry into the relationship between IEL and inequality raises more issues and questions than can be answered by any one author in any one submission, and this essay does not try. Instead, this essay will focus on the intersection of IEL and globalization, and argue, first, that questions of inequality must be addressed within the context of a shared global space. Within that frame, the essay will outline a normative view of the problem of global inequality and its relationship to globalization and international economic law. In the author's view, the most fundamental response needed within IEL to the problem of inequality is not so much specific legal and policy reforms—although those matter a great deal—but a fundamental paradigm shift concerning how we understand the regulatory space within which IEL and domestic inequality policies operate: a global space which requires an integrated global approach at both global and national institutional levels.

[3] See, e.g., (Jones 2010) "While the United States and EU blamed primarily each other for the collapse, it was clear that India, in particular, was also unwilling to negotiate further without major cuts in U.S. farm subsidies."

2. The Global Context for Addressing Inequality

Because of globalization, inequality is a problem happening within a shared space. Globalization is transforming human relationships in ways that affect our interconnectedness, the basis for solidarity, and the effective reach of our awareness, understanding and actions with respect to others. In essence, globalization is contributing to the emergence of global social bonds—perhaps even a global community or elements of one, but certainly a global market society—built around a range of institutional practices and common challenges (Garcia 2013a; Garcia 2013b; Garcia 2016a).

First, globalization is building communities of risk—David Held calls them communities of fate—around the shared challenges characteristic of global life today: the natural environment, poverty and inequality, security etc. The intensification of global social and economic interaction—in areas as diverse as global finance, refugee crises, terrorism, climate change—create common interests and can contribute to the subjective awareness of a shared fate. This builds on what can be called a community of knowledge, created by the global social media and information revolutions so characteristic of our everyday experience of globalization. Thanks to these infrastructures, we know so much—more than ever before—about how we collectively experience these and other risks, 24/7, around the globe, instantaneously. Finally, and perhaps most importantly, globalization is building a set of shared understandings and practices around how we respond to such risks, and to globalization's opportunities as well (Garcia 2013a). We see this in areas such as the use of markets and the regulation of markets through law and institutions (about which I will have more to say below), as well as in new and emerging regimes around challenges as diverse as climate change and global tax avoidance. (OECD 2013a; Harvey 2015)

Together this represents a fundamental shift in social organization on the planet.[4] One of the surprising features of this new global social space is how it resembles what we used to call "domestic" space, which also consists of regions of wealth, urbanization and industrialization, and regions of agrarianism, poverty and underdevelopment, all linked by an overarching framework of economic, legal, political and social networks of causality, influence and responsibility. We are in the habit of associating this "domestic" space with an identifiable community structured by a set of shared social norms and governance institutions. Because of globalization, we can no longer easily oppose this "domestic" space to the "international" space "between" communities, and insist the latter lacks shared understandings and institutions. What we see emerging through globalization may in fact be a global community, or elements of it, within which global norms and global institutions permeate and interweave with persistent (and valued) local spaces, communities and norms. It is all simultaneously local and global (Sassen 2008).

This trend is nowhere clearer than in the economy, which is of course central to both IEL and the global inequality problem. Contemporary data suggests the emergence of a global economy characterized by diminishing geographic segregation, decreasing discrimination according to source and increasingly integrated global production processes (Lloyd 2010). The magnitude of global economic integration can be gauged by both institutions and outcomes (Prakash and Hart 2000). Removal of institutional impediments is a necessary condition for cross-border integration and, in this respect, institutions (and through them, states) have largely demonstrated a commitment to global economic integration (Prakash and Hart 2000, p. 95). Since at least 1991, states have liberalized the market for capital, with 85% of new investment policy measures in 2015 being favorable to investors ((United Nations Conference on Trade and Development(UNCTAD) 2016)). The market for goods has long been the focus of global economic integration through the GATT/WTO system, which has dramatically reduced tariffs and border measures and effectively addressed beyond-the-border

4 See, e.g., (Buber 2004). Perhaps, if not a world of "us," at least a world of "I and Thou"? See, e.g., (Messner 2001).

discrimination of goods through the principle of national treatment (Lloyd 2010, pp. 78, 80)[5]. While the market for labor has remained stubbornly restrictive (Lloyd 2010, p. 81; Prakash and Hart 2000, p. 104), taken as a whole states and institutions have actively worked to facilitate an integrated global economy.

While institutions facilitate and encourage integration through policy-based efforts, ultimately key state and private actors must assess and respond to them, and for this reason it is significant that outcomes also demonstrate a deepening global economy (Prakash and Hart 2000, p. 97). Trade as a percentage of global gross domestic product rose from 27% in 1970 to 43% by 1995, and then to 59% by 2014 (The World Bank 2017c). Foreign direct investment (FDI) has risen from approximately $10 billion in 1970 to $320 billion by 1995, and then to $1.56 trillion by 2014 (The World Bank 2017b).[6] This surge in FDI has in turn facilitated the development of global value chains, within which nearly half of world trade in goods and services takes place (World Trade Organization 2015).[7] Therefore both in absolute and relative terms, and over time and to the present day, outcome-based indicators also illustrate the deep connections characteristic of a global economy.

One way to characterize the social relationships emerging from all of this is as a global market society. Markets and how we regulate them are central to our 21st-century social reality: at this point in world history, it is possible to say that virtually all people live in some form of organized market economy.[8] Globalization has been both a facilitator and accelerator of this trend, and not without significant controversy, due both to the nature of market society versus traditional societies,[9] and to the dominant market ideology in globalization today.[10]

While globalization is extending and deepening the worldwide reliance on markets as a tool for organizing economic life, this in itself is no guarantee of a shared economic culture (Slater and Tonkiss 2013).[11] This brings me to my second point, namely, the regulation of the market through institutions as a shared practice. Market society—or the set of social practices within which markets are embedded—has certain attributes—the need for bureaucratic regulation, recognition of private property, and functioning civil courts, to name a few—which by virtue of their significant spill-over effects, both challenge traditional social bonds and contribute to the formation of important new shared interests among participants.[12] Societies relying on markets also develop, even minimally, some set of social practices or domestic institutions capable of supplementing and mitigating the rigors of capitalism, for example by compensating the "losers" through some form of wealth transfer. We can

---

5 The principle of national treatment prohibits discrimination in taxation or regulation between domestically produced and imported goods. There are several factors that undermine the unconditional commitment by WTO members to the principle of national treatment for goods, including regional trade agreements, and exceptions for subsidies and government purchases (Lloyd 2010, pp. 80–81). Further, the market for services, which is within the WTO's purview, is not as completely integrated as the market for goods (Lloyd 2010, pp. 78–79). However, the WTO's virtually universal membership is itself a testament to states' commitment to global economic integration. See generally (Allee and Scalera 2012).

6 Between 1970 and 2014, FDI as a percentage of global GDP has risen continuously, from 0.5% in 1970 to 2% in 2014 (The World Bank 2017a).

7 Global value chains allow firms to "do" the part of the process they are best at, using intermediate goods and services from elsewhere without having to develop a whole industry (OECD 2013b).

8 This point is acknowledged across a range of perspectives towards markets. See, e.g., (Simmons et al. 2008; Herman 1999).

9 One way to view globalization is as the world-wide extension of the transition to market society that European culture went through in the 17th to 19th centuries. See (Giddens 2000) (citing globalization as the global spread of modernity, with all of its characteristic features and complications).

10 Global market society could be seen as a regressive development if confused with current neoliberal market ideology, but I think this is a mistake. This complaint is more a normative judgment about the global spread of under-regulated capitalism than a judgment on the global economy per se. (Hopkins 2003) (dangers posed by weakened regulatory power over capitalist system). For our purposes here, it is the ubiquity of the market itself that is significant from the perspective of shared understandings and practices, not its shifting regulatory ideologies.

11 Warning that transnational economic activity can also thin out economic ties and the cultural embeddedness of economic activity.

12 See, e.g., (Slater and Tonkiss 2013, pp. 92–116) (surveying the range of institutions which markets require and/or are embedded in).

see this at the global level—what is truly distinctive about the emerging global economy is the shared recognition of the need for institutions regulating the market at a trans-national level.[13]

The emergence of a global market society thus has profound consequences for how we approach transnational problems of politics, economics and law such as inequality.[14] In particularly, these trends suggest that our response to the problem of inequality must be global in nature, and operate within a shared global market society. *Put simply, we need to address inequality as a problem of global market society.* But what is inequality like at the global level? In particular—and this is one of the most urgent challenges of globalization today—what *kind* of global economy are we creating? There are reasons for concern.

3. The Global Inequality Problem

The problem of inequality is not new, yet globalization has intensified the nature of inequality today to worrisome proportions. The forces of inequality are global in nature and intensity. We should be concerned about global inequality for the same reasons we are concerned about national inequality, as well as some new ones.

On the face of it, the outlook for equality is not encouraging (Keeley 2015). To attempt to summarize some very contentious statistics, overall we see a disturbing reversal of the 20th-century trend towards growth with lower inequality (Piketty 2014; Garcia 2015). The OECD has forecasted that by 2060, and without a change in policy approaches, inequality in the average OECD country will match that found today in the most unequal countries (Piketty 2014). Most importantly, global inequality (inequality between people, across countries) greatly exceeds national inequality (inequality within countries).[15] While it may be that inequality *between* countries (international inequality) is decreasing (thanks largely to the gains by China and India), inequality *within* countries is increasing, at least partially offsetting any reductions in global inequality.[16] Moreover, digging behind national aggregates reveals huge differences in income and wealth at the individual and household levels (Oxfam International 2016). The most disturbing conclusion of them all is that, depending how one reads the data, it could be that domestic inequality entirely offsets reductions in international inequality—it could even be that overall global inequality has increased despite the gains between states and the gains in poverty reduction.[17]

Everything about globalization is having an impact on inequality and our responses to it. At a macro/systemic level, for example, globalization's territorial effects raise very basic questions central to inequality policy: who is "inside" or "outside" a bounded space? Whose inequality counts and for what? These are related to globalization's governance effects: where are rules made and by whom and for whose benefit? Globalization's social and subjective effects also complicate our responses to inequality: how do we construct identity (and stigma) in a global space? Who do we consider our "neighbor"? How do we feel about what we have versus what others have? Where does our

---

13 This does not mean, of course, that there is agreement on the nature of such institutions or on what ideology should guide their market regulation. See, e.g., (James 2012).

14 For one thing, it shifts the frame through which we try to understand relations between advanced market societies and societies still transitioning from traditional to market principles, such as most Middle Eastern societies.

15 Global inequality stands at 70 Gini versus 40s for US, 20s and 30s for Europe (Bourguignon 2016).

16 The top 1% of global wealth holders started the millennium owning 48.9% of all household wealth but have ended up owning half of all household assets in the world as of 2015 (Credit Suisse 2015). Data on global income shares show that interpersonal income inequality is extremely high and that between 1988 and 2011, 46% of overall income growth accrued to the top 10 percent of the world population (Oxfam International 2016).

17 (Lakner and Milanovich 2013), correcting for underreporting of high income levels across national data sets leads to significantly higher levels of global inequality (76 as measured by national Gini coefficients); see also (Bourguignon 2016), noting this possibility.

responsibility end? How much inequality are we prepared to accept? Are we motivated or paralyzed by seeing so much about how other people live and suffer around the world?[18]

More specific to the subject of this essay, we can see that key elements of the international economic law system favor the intensification of inequality at national and global levels. First, at the level of trade and investment flows, while trade has grown within this framework, and *may* decrease inequality in developing countries, such decreases come in part by *flattening* wages in the middle class; moreover, trade may be *increasing* inequality in developed countries by decreasing wages and shifting jobs at the bottom (Dabla-Norris et al. 2015; Keeley 2015, pp. 33–50). Similarly, foreign investment increases inequality in home and host countries, outbound by facilitating transfer of low-skill jobs from developed countries, increasing returns to capital; and inbound in developing countries by increasing the skill premium (a good thing in certain respects, but also un-equalizing, promoting new elites) (Dabla-Norris et al. 2015; The World Bank 2016; Keeley 2015, p. 42). Thus, while trade openness is generally associated with lower inequality (though at some cost to absolute income levels), greater financial openness is associated with rising income inequality (Dabla-Norris et al. 2015, p. 23).

Technological change also has a well-understood effect on inequality, which is magnified through trade and investment channels. New technologies intensify inequality within countries by increasing skill premiums, substituting automation for human labor, and promoting non-traditional work. The effect of new technologies is particularly acute in developed economies, themselves ironically also the lead innovators, where new technologies have contributed to the destruction or offshoring of old jobs in traditional areas of employment.[19] As older, less-skilled work is destroyed or moved offshore, a premium is attached to higher-skilled labor. Technology thus helps deliver a larger share of income gains to the owners of capital, and a smaller share to the people who work for them through a reduction in human labor.[20]

Third, social regulation is often both more complex and less effective on a global level, and national regulation is under great pressure. To take just one example, the global structure for income taxation facilitates tax avoidance, which in turn depresses national budgets when states can least afford lost revenues in confronting inequality problems, among others (OECD 2015; Ault et al. 2014). At the ideological level, the dominant global regulatory ideology, neoliberalism, depresses national social welfare systems in both dominant and client states by labeling them either protectionist or unsustainable and then dismantling them, thereby exacerbating inequality and limiting the range of domestic policy tools through which to ameliorate it.[21]

Finally, global inequality is having domestic political effects, intensifying the reactivity of domestic politics and further complicating our policies towards inequality and political reform.[22] One can see this in everything from the Euro crisis to Brexit to the reactionary nationalism of U.S., French, Hungarian, Polish and Austrian politics, to list only a few examples.[23] Global inequality thus creates unique political problems for domestic societies, when socio-economic resentments and migration pressures stoke nativism, xenophobia and reactive domestic politics.

---

18 These questions have prompted theological as well as legal and philosophical reflection, and are if anything even more complicated when one includes the varying theological interpretations of the meaning and causes of inequality. See e.g., (Rieger 2013).

19 See (Keeley 2015, pp. 42, 50). The growing importance of skill-biased technological progress for growth and rising demand for higher skills will lead to continued polarization of the wage distribution.

20 See (Keeley 2015). The labor share has declined in nearly all OECD countries over the past 30 years and in two-thirds of low-and middle-income countries between 1995 and 2007. (Oxfam International 2016, p. 12) A declining labor share reflects the fact that improvements in productivity and growth in output do not translate into a proportional rise in earnings for workers, thereby severing the link between productivity and prosperity.

21 See (Kotz and McDonough 2010), documenting the hollowing out of the modern welfare state under neoliberalism.

22 See generally (Schlozman et al. 2016), on file with author.

23 (Aisch et al. 2016), graphically demonstrating the rise of nationalistic politics across Europe.

Even if such inequality trends were not themselves a problem (and there are many good reasons to consider them a problem, and a serious one),[24] the pattern of allocations generated by the international institutions regulating the global economy raise serious distributive concerns, in areas as diverse as taxation, access to capital, control over natural resources and the social costs of investment, to name a few (Pogge 2010). Wealthy states bear some corrective and distributive responsibilities due to the legacy of colonialism, their dominant influence in shaping the institutions that manage globalization today, and the flawed structural incentives (resource and borrowing privileges) inherent in the international legal system (Pogge 2008; Chimni 2007).

Together, these trends raise a host of compelling social, political, legal and normative issues for international economic law—as the regulatory framework of the global economy, all of these issues land in its lap, so to speak. There is much work to be done to ensure that the global economy works fairly for everyone.

4. A Paradigm Shift for Addressing Inequality

Globalization is not simply intensifying the inequality problem—it is transforming our understanding both of the problem and how to approach it. Effectively addressing inequality today requires a paradigm shift in how we approach both inequality and the larger questions of development and fairness it is a part of: *we must now approach them as global problems within a global market society.* Given that the transnational space now resembles more closely what we think of as domestic space than it does our traditional accounts of the international context for inequality policy, the kinds of things we do in Western social welfare democracies at the local community level to ameliorate inequality and promote opportunity for everyone are closer to the heart of post-global "development" than to traditional international law and policy solutions, such as large multilateral structural adjustments and "development" policies.

In developed Western societies, efforts to reduce poverty, promote opportunity and address inequality—in short, the domestic equivalent of development (which has gone by many terms, most recently in the U.S. as "community development")—have entailed a sustained effort to make sure everyone gets the fullest possible benefits of that society, i.e., that we respect and support each member's aspirations for the best life possible within that society. This has involved a process of identifying and removing obstacles to both resources and social mobility, determining responsibilities and obligations, and building capacity (Opportunity Nation 2014; Chetty et al. 2014). It also means ensuring equal opportunity (meaning opportunities are not blocked by discrimination or other barriers considered unfair by that society) in both access to social resources, and participation in social institutions such as politics and the markets for labor, goods and services (Sen 1999).[25] In short, fulfilling the promise of development in local communities has meant ensuring *opportunity* and *fairness* for all in the context of a market society.

Insofar as globalization has collapsed the boundaries between the local and the global, then reimagining development in a post-national environment (and, with it, inequality policy) means reconstructing our paradigm so that artificial distinctions between opportunity and fairness for "Us", and what passes as "opportunity" and "fairness" for "Them," are eliminated. It means rejecting the view that national boundaries justify distinguishing pejoratively between "Our" aspirations and "Theirs", and foregoing facile excuses for failing to support aspirations transnationally in ways we expect our aspirations to be respected at home.

---

[24] See (UN Department of Economic and Social Affairs 2013), UN inequality poses serious threats to wellbeing of people at all levels of the income distribution; (The World Bank 2015), inequality one of three top challenges to development today. See generally (Piketty 2014; Stiglitz 2015; Anderson 1999).

[25] See (Bourguignon 2016, pp. 11, 15), citing the importance of eliminating all forms of discrimination for effectively addressing inequality problem; See also (Opportunity Nation 2014).

When viewed from this perspective, global inequality policy—and development policies generally—are incoherent. For example, we recognize in domestic community development that "place" is important to one's life prospects, so enabling both geographic and social mobility are important goals for local development (Opportunity Nation 2014). However, at the global level, we instead maintain tight restrictions on geographic and hence social mobility, hoping instead that if we send over trade and investment, others will develop "over there".[26] Regarding education, we acknowledge domestically that access to quality education, whether through geographical mobility or school reform, is critical to opportunity (Duncan and Murnane 2014). However, at the global level, International Monetary Fund (IMF) client states have traditionally been forced to reduce social spending on education in order to reach public budgetary targets (Rowden 2011). In domestic "development" we have seen a resurgence of interest in the diversity and importance of the "local", in the effectiveness of multiple smaller-scale, community-based development incentives and programs (Mander and Goldsmith 2000). Yet at the global level we have favored multilateral economic policies that reduce policy space for domestic variations and experiments in development policy, a clear case of the global overriding the local.[27] The bottom line is that "pre-global" distinctions between national and international social relations have allowed us to pursue inconsistent macro-level policies that enable growing inequality and result in neither development nor justice.

What should be done? What "global" policies can reduce domestic inequality and global inequality? What *truly* can be done globally? This depends on very complex causality issues, but at heart it is about comprehensively ensuring opportunity and fairness for all in a global market society. For IEL this means focusing first on institutions.

John Rawls has written famously that justice is the first virtue of institutions (Rawls 1971). By this he means that the fundamental question for institutional arrangements is whether or not they are just, i.e. whether the inequalities they create are justified (Rawls 1971).[28] However, for Rawls and for many others, while investigating the justice of institutional frameworks, or what Rawls calls the "basic structure," is a key task for political theory, it has been conceived of as a *domestic* inquiry.[29] Globalization has rendered such binary structures and assumptions unsustainable. By "institutions" we now must include both domestic institutions, such as public and private law, the political process and socioeconomic structures such as the market, which are well-understood to impact inequality as well as their international correlates, such as international law and international organizations, together with the global market and its international and domestic regulatory bodies—in short, all of the institutions and regulatory structures which affect inequality and its remediation at all levels.[30]

The paradigm shift this essay urges means that in order to address inequality effectively we should continue to work on global and local institutional reform, but in a new, coordinated fashion, recognizing that IEL institutions operate in a single global social and economic space.

For IEL this means first ensuring that the global economy itself promotes opportunity and fairness. We need to reform international economic rules and institutions where they exacerbate inequality, in areas such as trade and investment,[31] tax law (Benshalom 2009; Repetti 2008), IMF and World Bank lending (Garcia 2008), global finance (Buckley et al. 2016), resource and borrowing privileges

---

26 See, e.g., (Stiglitz 2007), discussing the anomalies created by liberalizing capital flows while resisting freer movement by labor, especially unskilled labor.

27 ((United Nations Conference on Trade and Development(UNCTAD) 2014)), hereinafter UNCTAD; (Gallagher 2011), WTO and US trade and investment regulation leave little room for policy space.

28 The justifiability (or not) of inequality is also central to theological reflection on the problem of inequality (see footnote 18), for example within Catholic social thought. See, e.g., (Christiansen 1984) (surveying post-Vatican II Catholic social thought on inequality on the 20th anniversary of the Papal Encylical *Pacem in terris*).

29 For Rawls, beyond national boundaries, different fairness norms apply. See (Rawls 2002; Maffetone 2011).

30 In global justice theory these are referred to collectively as the "global basic structure." See (Garcia 2013a, p. 174) and sources cited therein; (Føllesdal 2008).

31 See, e.g., (Garcia et al. 2015), discussing reform of investment treaty framework.

(Pogge 2010; Wenar 2008), and policies favoring multinational corporate immunity.[32] We also need to reform the rules by which global institutions operate through unequal governance structures, to enhance the voice of the members most burdened by development and inequality challenges and most affected by institutional policies (Torres 2010).

Going beyond this, we also need to ensure that IEL is reformed to support efforts to realize opportunity and fairness through our domestic institutions and policies. In IEL terms, this means protecting policy space for local measures aimed at ameliorating inequality.[33] IEL institutions should incorporate as a policy something like the principle of subsidiarity pioneered at the institutional level by the EU: if there are successful local policies, how can we protect their policy space, support similar policies and policy experimentation in other "locales", and scale them up for transnational or global application as appropriate? Some countries *have* been able to buck the trend of rising inequality, suggesting that domestic social and economic policies can play a crucial role in determining inequality trends (UN Department of Economic and Social Affairs 2013, p. 99). IEL institutions must ensure, at a minimum, that their policies support successful local efforts, so the multilateral level can work as partner, not overseer.[34]

5. Conclusions

Inequality problems raise a host of issues that have long been studied by a variety of disciplines, and addressed through a range of institutions, laws and policy strategies at local, international and now "global" levels. One common denominator has been that institutions matter, both global institutions (for their own policy efforts and for their impact on national policy efforts) and domestic institutions themselves. We are in danger of reaching levels of inequality not seen since before World War II, with serious consequences for all levels of society. Addressing inequality effectively today means a new understanding of how our efforts to work through global and domestic institutions, and in particular international economic law, are part of an integrated and comprehensive approach to promoting opportunity and fairness in a global market society.

Conflicts of Interest: The author declares no conflict of interest.

References

Aisch, Gregor, Adam Pearce, and Bryant Rousseau. 2016. How Far Is Europe Swinging to the Right? *The New York Times*, July 5. Available online: http://www.nytimes.com/interactive/2016/05/22/world/europe/europe-right-wing-austria-hungary.html (accessed on 15 April 2017).

Allee, Todd L., and Jamie E. Scalera. 2012. The Divergent Effects of Joining International Organizations: Trade Gains and the Rigors of WTO Accession. *International Organization* 66: 243–45. [CrossRef]

Anderson, Elizabeth. 1999. What is the Point of Equality? *Ethics* 109: 287–337. [CrossRef]

Ault, Hugh J., Wolfgang Schoen, and Stephen E. Shay. 2014. Base Erosion and Profit Shifting: A Roadmap for Reform. *Bulletin for International Taxation* 68: 275–79.

Benshalom, Ilan. 2009. The New Poor at Our Gates: Global Justice Implications for International Trade and Tax Law. *New York University Law Review* 85: 1–82.

Boas, Morten, and Benedicte Bull. 2010. *International Development*. Thousand Oaks: SAGE Publications Ltd.

[32] See, e.g., (Waddock 2008), surveying the emerging institutional infrastructure for ensuring responsible corporate activity in the face of formal regulatory gaps.

[33] See footnote 35.

[34] For example, the IMF has recently begun recommending that client governments implement policies to facilitate better access to education, improved health outcomes, stronger labor laws and redistributive social welfare policies to help raise the income share of the poor and the middle class irrespective of the economic development of a country. See (Dabla-Norris et al. 2015, p. 27; UN Department of Economic and Social Affairs 2013, pp. 103–5). However, it is important for the IMF to avoid past mistakes and recognize that such policies should be implemented in a manner cognizant of local needs and conditions, not as one-size-fits-all programming. See (Dabla-Norris et al. 2015, p. 28).

Bourguignon, Francois. 2016. Inequality and Globalization: How the Rich Get Richer as the Poor Catch up. *Foreign Affairs* 95: 11–15.

Buber, Martin. 2004. *I and Thou*. Translated by Ronald Gregor Smith. New York: Continuum.

Buckley, Ross P., Emilios Avgouleas, and Douglas W. Arner. 2016. *Reconceptualising Global Finance and Its Regulation*. New York: Cambridge University Press.

Carmody, Chi, Frank J. Garcia, and John Linarelli. 2012. *Global Justice and International Economic Law: Opportunities and Prospects*. New York: Cambridge University Press.

Chetty, Raj, Nathaniel Hendren, Patrick Kline, and Emmanuel Saez. 2014. Where Is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States. Working Paper No. 19843, National Bureau of Economic Research Cambridge, MA, USA.

Chimni, B. S. 2007. The Past, Present and Future of International Law: A Critical Third World Approach. *Melbourne Journal of International Law* 8: 499–515.

Christiansen, Drew S. J. 1984. On Relative Equality: Catholic Egalitarianism After Vatican II. *Theological Studies* 45: 651–75. [CrossRef]

Credit Suisse. 2015. *Global Wealth Report 2015*. Zürich: Credit Suisse, pp. 15–21.

Duncan, Greg J., and Richard J. Murnane. 2014. *Restoring Opportunity: The Crisis of Inequality and the Challenge for American Education*. Cambridge: Harvard Education Press.

Dabla-Norris, Era, Kalpana Kochhar, Nujin Suphaphiphat, Frantisek Ricka, and Evridiki Tsounta. 2015. *Causes and Consequences of Income Inequality: A Global Perspective*. Washington: International Monetary Fund.

Føllesdal, Andreas. 2008. When Common Interests Are Not Common: Why the Global Basic Structure Should Be Democratic. *Indiana Journal of Global Legal Studies* 16: 585–604. [CrossRef]

Gallagher, Kevin P. 2011. Losing Control: Policy Space to Prevent and Mitigate Financial Crises in Trade and Investment Agreements. *Development Policy Review* 29: 387–413. [CrossRef]

Garcia, Frank J. 2003. *Trade, Inequality and Justice: Toward a Liberal Theory of Just Trade*. New York: Brill-Nijhoff.

Garcia, Frank J. 2006. Trade, Justice and Security. In *Trade as Guarantor of Peace, Liberty and Security? Critical, Empirical and Historical Perspectives*. Edited by Colin Picker, Constance Z. Wagner and Padideh Ala'i. Washington: The American Society of International Law.

Garcia, Frank J. 2008. Global Justice and the Bretton Woods Institutions. In *The Future of International Economic Law*. Edited by John Jackson and William J. Davey. New York: Oxford University Press.

Garcia, Frank J. 2013a. Between Cosmopolis and Community: Globalization and the Emerging Basis for Global Justice. *NYU Journal of International Law & Politics* 46: 1–53.

Garcia, Frank J. 2013b. *Global Justice and International Economic Law: Three Takes*. Cambridge: Cambridge University Press.

Garcia, Frank J. 2015. Capital in the Twenty-First Century. *Journal of International Law* 18: 188–97.

Garcia, Frank J. 2016a. Convergences: A Prospectus for Justice in a Global Market Society. *Manchester Journal of International Economic Law, Forthcoming* 13: 128–51.

Garcia, Frank J. 2016b. Development. In *Encyclopedia of International Economic Law, Forthcoming*. Edited by Krista Nadakavukaren Schefer and Thomas Cottier. Cheltenham: Edward Elgar Publishing.

Garcia, Frank J., Lindita Ciko, Apurv Gaurav, and Kirrin Hough. 2015. Reforming the International Investment Regime: Lessons from International Trade Law. *Journal of International Economic Law* 18: 861–92. [CrossRef]

Giddens, Anthony. 2000. The Globalizing of Modernity. In *The Global Transformation Reader*. Edited by Daniel Held and Anthony G. Mcgrew. Malden: Blackwell Publishing Inc.

Harvey, Fiona. 2015. Paris Climate Change Agreement: The world's Greatest Diplomatic Success. *The Guardian*, December 14. Available online: https://www.theguardian.com/environment/2015/dec/13/paris-climate-deal-cop-diplomacy-developing-united-nations (accessed on 15 April 2017).

Herman, Edward S. 1999. *The Triumph of the Market: Essays on Economics, Politics and the Media*. Boston: South End Press.

Hopkins, Anthony G. *Globalization in World History*. New York: W.W. Norton & Company.

James, Deborah. 2012. Who Should Run the Global Economy? *Al Jazeera*, April 23. Available online: http://www.aljazeera.com/indepth/opinion/2012/04/2012422104847102233.html (accessed on 15 April 2017).

Jones, Kent. 2010. *The Doha Blues: Institutional Crisis and Reform in the WTO*. Oxford: Oxford University Press, p. 45.

Keeley, Brian. 2015. *OECD Insights, Income Inequality: The Gap between Rich and Poor*. Paris: OECD Publishing, p. 103.

Kotz, David M., and Terrence McDonough. 2010. Global neoliberalism and the contemporary social structure of accumulation. In *Contemporary Capitalism and its Crises: Social Structure of Accumulation Theory for the 21st Century*. Edited by Terrence McDonough, Michael Reich and David M. Kotz. New York: Cambridge University Press.

Lakner, Christoph, and Branko Milanovich. 2013. Global Income Distribution: From the Fall of the Berlin Wall to the Great Recession. World Bank Policy Research Working Paper WPS6719, the World Bank, Washington, DC, USA.

Lloyd, Peter. 2010. Global economic integration. *Pacific Economic Review* 15: 71–86. [CrossRef]

Maffetone, Pietro. 2011. The Law of Peoples: Beyond Incoherence and Apology. *Journal of International Political Theory* 7: 190–211. [CrossRef]

Mander, Jerry, and Edward Goldsmith. 2000. *The Case against the Economy, and for a Turn toward the Local*, 2nd ed. New York: Earthscan.

Messner, Dirk. 2001. World Society—Structures and Trends. In *Global Trends and Global Governance*. Edited by Paul Kennedy, Dirk Messner and Franz Nuscheler. London: Pluto Press.

OECD. 2013a. *Base Erosion and Profit Shifting (BEPS)*. Paris: OECD.

OECD. 2013b. *Interconnected Economies: Benefitting From Global Value Chains*. Paris: OECD.

OECD. 2015. *OECD/G20 Base Erosion and Profit Shifting Project*. Paris: OECD.

Opportunity Nation. 2014. *Opportunity since 1970: A Historical Report*. Boston: Opportunity Nation. Available online: https://opportunitynation.org/history-of-opportunity/ (accessed on 15 April 2017).

Oxfam International. 2016. An Economy for the 1%: How Privilege and Power in the Economy Drive Extreme Inequality and How This Can Be Stopped. Available online: https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp210-economy-one-percent-tax-havens-180116-en_0.pdf (accessed on 15 April 2017).

Piketty, Thomas. 2014. *Capital in the Twenty-First Century*. Translated by Arthur Goldhammer. Cambridge: Belknap Press.

Pogge, Thomas. 2008. *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*, 2nd ed. Malden: Polity Press.

Pogge, Thomas. 2010. *Politics as Usual: What Lies Behind the Pro-Poor Rhetoric*. Cambridge: Belknap Press.

Prakash, Aseem, and Jeffrey A. Hart. 2000. Indicators of Economic Integration. *Global Governance* 6: 95–114.

Rawls, John. 1971. *A Theory of Justice*. Cambridge: Belknap Press, p. 3.

Rawls, John. 2002. *The Law of Peoples: With "The Idea of Public Reason Revisited"*, 4th ed. Cambridge: Harvard University Press.

Repetti, James R. 2008. Democracy and Opportunity: A New Paradigm in Tax Equity. *Vanderbilt Law Review* 61: 1129–86.

Rieger, Joerg. 2013. The Ethics of Wealth in a World of Economic Inequality: A Christian Perspective in a Buddhist-Christian Dialogue. *Buddhist-Christian Studies* 33: 153–62. [CrossRef]

Rolland, Sonia E. 2012. *Development at the WTO*. Oxford: Oxford University Press.

Rowden, Rick. 2011. *Impacts of IMF Policies on National Education Budgets and Teachers*. Brussels: Education International Research Institute.

Sassen, Saskia. 2008. *Territory, Authority, Rights: From Medieval to Global Assemblages*. Princeton: Princeton University Press.

Schlozman, Kay Lehman, Henry E. Brady, and Sidney Verba. 2016. Citizen Voice in the New Gilded Age: Megaphones for a Few-Whispers for the Rest. Unpublished manuscript. Microsoft Word file.

Sen, Amartya. 1999. *Development as Freedom*. New York: Random House, Inc., p. 9.

Beth A. Simmons, Frank Dobbin, and Geoffrey Garrett, eds. 2008. *The Global Diffusion of Markets and Democracy*. Cambridge: Cambridge University Press.

Slater, Don, and Fran Tonkiss. 2013. *Market Society: Market and Modern Social Theory*. Malden: Blackwell Publishers Inc.

Stiglitz, Joseph E. 2007. *Making Globalization Work*. New York: WW Norton & Company, pp. 88–90.

Stiglitz, Joseph E. 2015. The Great Divide: Unequal Societies and What We Can Do about Them. *International Labour Review* 154: 415–16.

The World Bank. 2015. *Development Goals in an Era of Demographic Change*. Washington: The World Bank.

The World Bank. 2016. *World Development Report 2016: Digital Dividends*. Washington: The World Bank.

The World Bank. 2017a. Foreign direct investment, net flows (% of GDP). Available online: http://data.worldbank.org/indicator/BX.KLT.DINV.WD.GD.ZS?end=2014&start=1970 (accessed on 15 July 2016).

The World Bank. 2017b. Foreign Direct Investment, Net Inflows (BoP, Current US$). Available online: http://data.worldbank.org/indicator/BX.KLT.DINV.CD.WD?end=2014&start=1970 (accessed on 15 July 2016).

The World Bank. 2017c. Trade (% of GDP). Available online: http://data.worldbank.org/indicator/NE.TRD.GNFS.ZS?start=1970 (accessed on 15 July 2016).

Torres, Hector. 2010. Reforming the International Monetary Fund—Why its Legitimacy is at Stake. *Journal of International Economic Law* 10: 443–60. [CrossRef]

United Nations Conference on Trade and Development (UNCTAD). 2014. *World Investment Report 2014*. Genève: United Nations Conference on Trade and Development (UNCTAD).

United Nations Conference on Trade and Development (UNCTAD). 2016. *World Investment Report 2016*. Genève: United Nations Conference on Trade and Development (UNCTAD).

UN Department of Economic and Social Affairs. 2013. *Inequality Matters: Report on the World Social Situation 2013*. New York: United Nations. Available online: http://www.un.org/esa/socdev/documents/reports/InequalityMatters.pdf (accessed 15 April 2017).

UN General Assembly. 1974. Resolution adopted by the General Assembly 3201 (S-VI): Declaration on the Establishment of a New International Economic Order. Available online: http://www.un-documents.net/s6r3201.htm (accessed on 15 April 2017).

Waddock, Sandra. 2008. Building a New Institutional Infrastructure for Corporate Responsibility. *The Academy of Management Perspectives* 22: 87–108. [CrossRef]

Wenar, Leif. 2008. Property Rights and the Resource Curse. *Philosophy & Public Affairs* 36: 2–32.

World Trade Organization. 2015. International Trade Statistics. Available online: https://www.wto.org/english/res_e/statis_e/its2015_e/its2015_e.pdf (accessed on 15 April 2017).