

Concluding Remarks

It is, as we assert, necessary in a State which is to avoid that greatest of plagues, which is better termed disruption than dissension [or class discord], that none of its citizens should be in a condition of either painful poverty or wealth, since both these conditions produce both these results; consequently the lawgiver must now declare a limit for both these conditions.

PLATO (428–348 BCE), *Laws*¹



As we approach the start of decade five of a virtually global trend towards greater inequalities of income and wealth within the world's countries, the main question driving this monograph has been how we can do a better job in respect of handling one of humanity's oldest preoccupations: that of the distribution of economic resources within societies. More specifically, I have been thinking about better ways of addressing long term changes in economic distributions *within* different states, thereby mitigating against or, from an aspirational standpoint, avoiding entirely, the deleterious impacts of such changes; this from the perspective of international law—that is, the rules of engagement as *between* states.

My hope has been to initiate a conversation which apparently seemed unnecessary for international lawyers and other actors to have during the decades immediately following the Second World War, but which I argue should have been taken up to a greater extent; definitely then but especially—and more earnestly—since the mid-1980s. One of the main motivations underpinning this monograph has simply been that, as far as I could tell, this conversation had still not been taken up in any meaningful way when I started my research in the latter half of 2015.

¹ Plato, *Laws, Volume I: Books 1–6* (William Heinemann Ltd., London 1926), translated from the original Greek by RG Bury, 378–81. The insertion is Plato's—see 379, note 2.

While there were myriad ways in which this endeavour might have been undertaken, I initially had trouble finding a home for my proposed research. The success of certain works such as Thomas Piketty's *Capital in the Twenty-First Century* had begun to mainstream the study of economic inequality to a degree that had not been observed since Simon Kuznets had essentially declared it a non-issue in the 1950s, and economic inequality had begun to pique the interests of scholars outside of the field of economics, including some lawyers. International lawyers, however, appeared to be immune to Professor Piketty's charm.

Professor Cottier founded the project under whose auspices I have written this monograph in order to study in detail the 'Doctrine of Common Concern of Humankind', a theory he had been developing over the course of several years. The Doctrine draws on the recognition of 'common concerns of humankind', particularly in the fields of international climate change and biodiversity law, in order to propose a new framework for international cooperation that is fit for the purpose of solving those contemporary problems shared by all of humankind. With much of the theory and practice surrounding the concept of common concern of humankind having been studied before, the focus of my thesis has been on the recognition of new common concerns of humankind by contemplating the potential form and utility of recognising economic distributions within states and the adverse effects that follow as these distributions change over time as a common concern of humankind. Such recognition would then trigger the application of the Doctrine as proposed by Professor Cottier.

The starting point for this monograph was the central issue when recognising common concerns: the idea of what it means to be a state that has sovereignty. I have argued that the recognition of a particular problem as a common concern of humankind acts as a definitional instantiation of particular aspects of sovereignty such that certain global challenges may be overcome. With respect to the case in point, I have argued that sovereigns can only retain their own distributive autonomy through engaging in collective action together with other sovereigns. Without cooperation between states, the ability of each state to effect distributional change within its sovereign space is severely constrained. The retention of this ability not only does not run contrary to the notion of sovereignty but is manifestly necessary for the continued existence of states properly so called. Seen this way, the need for the legal reconstitution of sovereignty in light of particular factual changes over time is an obvious—and often overlooked—constitutive element of any common concern of humankind.

The set of changed facts contemplated in my thesis are the shifts in economic globalization that began in the late 1980s when the world experienced

major advances in information and communications technology (ICT) which are often described as having had—and continuing to have—a ‘revolutionary’ or ‘transformative’ impact on the global economy. Most of the states in the world have also seen income and wealth within their respective territories become increasingly unequally distributed. The large majority of this trend has occurred alongside the described shifts in technological change and economic globalization. With this factual context sketched, the main thrust of the arguments presented in my thesis is that sovereignty-based objections to the recognition of the adverse effects stemming from the distribution of income and wealth as a common concern of humankind are premised on an inappropriate understanding of contemporary sovereignty.²

Once sovereignty objections are cast aside, the only valid objections that remain to the potential recognition of a distributional common concern of humankind revolve around the perceived severity—or lack thereof—of a substantial loss of distributive autonomy. Objections of this nature, in turn, are becoming increasingly difficult to sustain as our understanding of the empirical effects of distributional changes improve with time. As a result, sovereignty not only does not constitute an impediment to the recognition of a potential distributional common concern of humankind, it becomes one of the chief arguments in favour of its recognition. The utility of recognising a distributional common concern of humankind, at least in large part, would be in its rebalancing of sovereignty—as practiced—in a manner that would place greater emphasis on effectively ensuring the welfare of the human-beings that live within states, something which can be better—or perhaps only—accomplished through international coordination and cooperation, actions which in and of themselves are less likely to occur under conditions of growing economic inequality within states.

Having made the case for the recognition of a distributional common concern as a general matter, I subsequently turned my focus to more specific details of the circumstance under which recognition could be useful. First, I thought about the fact that common concerns as conceptual category, and especially the proposed distributional common concern, do not contemplate issues where states are the most direct contributors to the global problems at hand. Rather, as the most significant direct participants in global commerce, multinational enterprises (multinationals) are the actors that most considerably contribute to the problems the common concern concept seeks

² I have thus found a potential home for economic distributions within states in international law, something which is clearly necessary given the highly significant implications economic distributions within states have for the future of international law. I return to this issue below.

to address. For example, multinationals are by far the largest contributors to the common concern of climate change. Therefore, while states are the ones that most directly take on obligations in respect of common concerns, obligations undertaken pursuant to the recognition of climate change and its adverse effects as a common concern can only be meaningfully implemented if appropriate mechanisms are devised to parse state obligations into direct actions taken by multinationals. The same is true of the recognition of a distributional common concern. For this reason, the utility of such recognition requires a theory of corporate responsibility in relation to the common concern.

From a conceptual perspective, I understand multinationals in a manner proposed by John Ruggie.³ The theory of corporate responsibility I thus adopted in relation to the recognition of a distributional common concern is accordingly developed around reconciling the differences between the legal and economic understandings of multinationals so as to enable states, acting in cooperation with one another, to address the shared problem of regulating multinationals in a manner that allows for economic distributions that are viewed as just. Against this backdrop, I proceeded to suggest that recognising a distributional common concern in the area of corporate taxation could be useful for enhancing the sovereignty of individual states through cooperation and for developing a system of law that is actually geared towards reducing economic inequality.

With the work of this monograph done, there remain a large number of questions that I intend on addressing in future. The first set of these, which I hope to turn my attention to in the near future, revolve around democracy. What was clear to scholars at the time of the early democracies millennia ago should not only be instructive in contemporary times but should by now be accepted as obvious: democracies have not been designed to operate under conditions of unacceptable economic inequality.

Instead, they must guard fervently against the concentration of economic resources and power. While exact tipping points are difficult to locate, there exists a level of inequality within each democracy that, if surpassed, has the capacity to render it unworthy of being designated a 'democracy'. Too much economic inequality *breaks* democracies. As such, it is incumbent upon democratic states to fight against highly skewed distributions within their own borders, not only because it is the just thing to do, but also because self-preservation demands it. While I have already quoted him in an earlier

3 See John Gerard Ruggie, 'Multinationals as Global Institution: Power, Authority and Relative Autonomy' (2018) 12 *Regulation & Governance* 317.

chapter, the words of Jean-Jacques remain most apposite in this context and worth repeating here. In his book, *The Social Contract*, Rousseau writes as follows:

[A]s for equality, the word must not be taken to mean that the degrees of power and wealth should be exactly the same, but that, as regards personal power, it should not be so great as to make violence possible, and should be exercised only in accordance with social position and the law; and as regards wealth, that no citizen should be rich enough to be able to buy another, and none so poor that he has to sell himself ... Equality, it is said, is a theorists' vision, which cannot exist in practice. But if an abuse is inevitable, does it follow that it should not at least be controlled? It is precisely because the force of things always tends to destroy equality that the force of law should tend always to conserve it.⁴

The same is true of *international law*.

Beyond threatening their stability and even their existence in extreme cases, the failure of democracies to curb unacceptable distributions from being reached has various consequences worth considering. In a world where rapid technological change is the norm, the agility of a state is one of its most important features. When inequality fractures democracy, other forms of government, which tend to be more agile precisely because they are *not* democratic, become increasingly appealing. There are two immediate reasons for this: first, states that are not currently democracies are far less incentivised to transition, or even to begin to transition, towards democracy. Secondly, democratic states lose legitimacy internally because the will of their people—the *demos*—becomes frustrated.

Non-democratic states arguably function better in times of high inequality, at least in an economic sense. In recent times, the more successful economies—at least from a growth perspective—have tended not to be democratic.⁵ This

4 Jean-Jacques Rousseau, *The Social Contract* (OUP, New York 1994), translated from the original French by Christopher Betts, 87. Footnote omitted.

5 China (a non-democratic state) to India (a democratic state) serves as a helpful comparison: both have very large populations of a similar size (they are the two largest economies in the world by population), both countries started with economies of a similar size in 1960 and both countries have undergone substantial economic transformations since the 1980s. Since the advent of globalization's second unbundling—a period during which the global economy has not only changed substantially but during which the pace of economic change has arguably been unprecedented—India's economic success, while substantial, has been significantly dwarfed by the success of the Chinese economy. On 'globalization's second

is because non-democratic governance structures are usually at a comparative advantage during such times. This likely comes as a result of democracies not functioning as intended and non-democracies being inherently more agile in the implementation of their objectives. Not only do non-democratic states not have to pay as much attention to high and/or rising inequality within their borders, they are also better equipped to do something about inequality should they elect to do so because internal polarisation, whether political, economic or otherwise, does not hinder the pace or the efficacy of concerted action.

It should be accepted, particularly by believers in the ideal, that democracy does not have a good track record when it comes to peacefully reducing economic inequality. This does not mean that the requisite tools for improvement in this regard do not exist or that the task at hand need be approached with a high level of cynicism. States have many policy options at their disposal which need not be taken in coordination with or impose unnecessary distributional externalities on other states, and which are realistically capable of making a material difference to economic inequality within their own borders. It is, however, incumbent on states, especially democracies, to make use of these options as much as is realistically possible and thereby improve democracy's track record and legitimacy. The argument that democracy is the best form of government cannot rest on the assumption that democracies result in greater equality if that assumption is for the most part a theoretical one.

unbundling', see Chapter 3 above in this monograph. On the size of India's economy vis-à-vis China's, see World Bank, 'GDP (constant 2010 \$US)', World Bank and OECD national accounts data <<https://data.worldbank.org/indicator/NY.GDP.MKTP.KD?locations=CN-IN>> accessed 30 September 2021.