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Utilizing International Law to Move the Jeffersons On Up to the East Side--Exploring the Potential of International Law to Support Domestic Social Mobility

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ARTICLE

UTILIZING INTERNATIONAL LAW TO MOVE THE JEFFERSONS ON UP TO THE EAST SIDE—EXPLORING THE POTENTIAL OF INTERNATIONAL LAW TO SUPPORT DOMESTIC SOCIAL MOBILITY

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I. INTRODUCTION

Scholars and policy makers usually consider social mobility as an exclusively domestic matter and study and explore it as such. Recognizing the relevancy of this approach as each society has its own unique social, economic, and political circumstances, this paper suggests exploring international law to support domestic social mobility, a thus far understudied and underutilized approach.

This paper begins by proposing a common definition of social mobility that can be globally understood. As the paper offers a platform intended to facilitate further studies, the definition chosen is of a general nature, i.e., social mobility as an advance in economic or social stature of an individual in society, including in the intergenerational sense. This approach presents the recurring view throughout the paper that social mobility should be read broadly rather than in the narrower traditional sense.

Based on this definitional setting, this paper's second section examines social mobility, emphasizing that insufficient social mobility transcends borders impacting all nations in a world of growing domestic inequality. This section argues that there could be a cosmopolitan value in the form of the need to address insufficient social mobility, deriving from global justice concepts. These concepts cover corrective, restorative, and distributive jus-

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tice, even absent consensus on the need for equal societies. The argument is based on acceptance of the definition, offered by scholars such as David Held, of cosmopolitan values as pertaining to the “moral realm of all humanity.”¹

Next, the third section addresses international economic law, reflected in bilateral and multilateral cross-border trade frameworks, which is a conduit to social mobility. Free trade agreements and global trade arrangements can suppress social mobility and increase inequality, but this does not have to be the case. In some circumstances, states can use these platforms to incentivize social mobility and equality in trade counterparts, including through economic incentives and bilateral cooperation.

This paper’s fourth section discusses international human rights law (IHRL), which includes the right to equality. Traditionally, IHRL applies between a sovereign and its subjects, but this does not preclude the possibility for international non-state (intergovernmental) actors to use IHRL to encourage domestic social mobility and monitor relevant progress. This can be done through the use of reputational tools or by facilitating commitments on improving social mobility rates in a fixed period. The upcoming decade presents an opportune moment to follow this course, as social mobility corresponds with the UN 2030 Sustainable Development Goals.

This paper’s final section identifies challenges for scholars and policy makers due to the shift from domestic to global realms to address insufficient social mobility. Drawing upon successes and failures of turning to international law to resolve other domestic social issues and law and society theories, this section offers ideas to mitigate identified challenges to maximize the potential of the suggested international law approaches.

Social mobility attracted much scholarly and policy attention in past decades. The impact of the economic crisis associated with the COVID-19 global pandemic is likely to increase the need for facilitating social mobility domestically and globally.² Domestic measures, resulting from significant study, have led to some improvement. At the same time, there is great potential in exploring the uncharted international law waters for ensuring that every “Jefferson,” wherever in the world he or she may be, will move on up to the east side at some point or in some generation to come.

1. David Held, *Principals of Cosmopolitanism Order*, 39 ANALES DE LA CÁTEDRA FRANCISCO SUÁREZ, 153, 154–55 (2005) (elaborating that cosmopolitan values can include: “1. equal worth and dignity; 2. active agency; 3. personal responsibility and accountability; 4. consent; 5. collective decision-making about public matters through voting procedures; 6. inclusiveness and subsidiarity; 7. avoidance of serious harm; and 8. sustainability.”).

2. Lee Elliot Major & Stephen Machin, COVID 19 AND SOCIAL MOBILITY, CENTER FOR ECONOMIC PERFORMANCE (LSE) (May 2020), <https://cep.lse.ac.uk/pubs/download/cepcovid-19-004.pdf>.

II. DEFINING SOCIAL MOBILITY FOR INTERNATIONAL LEGAL REGULATION

The first step in any discussion of utilizing social mobility to enhance equality is to define the term social mobility. Such a definition is important if the aim is to achieve an efficient deliberative process to facilitate finding resolutions for promoting social equity. The definition should be based on scholarship addressing contemporary social mobility in order to understand how it is perceived. For the purposes of our discussion, we should also bear in mind the international setting of the discussion suggested and the tools to be later proposed.

An international normative setting does not always necessitate applying a different definitional approach. There could be instances where international definitions aim to reflect domestic notions and understandings.³ However, international law does offer room for some constructive ambiguity,⁴ reflecting the need to achieve consensus amongst various actors from different social settings and distinct legal systems.

The question to be asked is what is meant when using the term “social mobility.” Textbook traditional definitions consider social mobility an intergenerational economic progress, when individuals, over specific periods of time, improve their economic situation, in the context of a specific domestic society.⁵

Scholarship and the use of the term social mobility in policy discourse identify several types of social mobility phenomena. “Absolute social mobility” reflects overall changes of equality in a specific society, i.e., changes in absolute numerical gaps between high-income and low-income figures.⁶ “Relative social mobility” describes specific changes in the income levels of individuals in society in a given societal class, rather than movement between social and economic levels in society.⁷ Absolute and relative social mobility are sometimes correlated—positively when relative and absolute mobility levels rise together. They can also correlate negatively when levels are opposite each other in cases where individuals change their place in society, but gaps remain and there is no true progress towards equality.⁸

3. RECUEIL DES COURS: COLLECTED COURSES OF THE HAGUE ACADEMY OF INTERNATIONAL LAW 353 (1985).

4. For an example in relation to peace agreements, see Christine Bell, *Peace Agreements: Their Nature and Legal Status*, 100 AM. J. INT’L L. 373, 398 (2006).

5. For an example of the classical definition of “social mobility,” see Charles F. Westoff et al., *The Concept of Social Mobility: An Empirical Inquiry*, 25 AM. SOCIO. REV. 375, 376 (1960).

6. For a discussion between the different outcomes in assessing mobility utilizing both concepts, see FLORIAN R. HERTEL, SOCIAL MOBILITY IN THE 20TH CENTURY: CLASS MOBILITY AND OCCUPATIONAL CHANGE IN THE UNITED STATES AND GERMANY 40–41 (2015).

7. *Id.*

8. This can occur in cases where social inequalities are so much inherent to a specific society that they limit the likelihood for intergenerational mobility. See Florian R. Hertela & Olaf Groh-Samberg, *The Relation Between Inequality and Intergenerational Class Mobility in 39 Countries*, 84(6) AM. SOCIO. REV. 1099, 1125 (2019).

The two directions can diversify into various elements, versions, and approaches, and there is abundant academic debate about their classification.⁹ These directions are interesting; and pinpointing detailed specifics on social mobility can be relevant for the international norm discussion. Nevertheless, more interesting are the recent calls towards a more holistic and systematic concept of social mobility. Advocates of this approach see social mobility as something much more than increase in income or educational numeric levels and considers social mobility to include access to higher education, environmental resources, information technology infrastructure, etc. Under this concept, social mobility should refer to multiple verifiable social progress indicators.¹⁰ This in comparison to the limited approach which focuses on multigenerational changes in socioeconomic status as a sole, or key, indicator for social mobility.¹¹

Today in many cases, designing international norms, whether in bilateral or multilateral arenas, can be characterized as a meeting of the minds between diplomats and experts.¹² This is especially the case when the issues at the core of the norm, which stakeholders are considering are not of a purely political or realist nature but rather of concepts of a technical nature but at the same time viewed by states as politically and socially important.¹³ In such cases, negotiations can be conducted by disaggregated state actors, ranging from government officials from various governmental departments, and not necessarily from foreign ministries (or “White House” type offices) to academics and representatives of the private sector or civil society.¹⁴

Comparing the two approaches described earlier, the approach that considers social mobility as a more flexible concept seems more appropriate for the international setting. Admittedly, opting for a more flexible approach might result in an imprecise definition of social mobility that may be

9. For an overview of approaches on multigenerational mobility, see Fabian T. Pfeffer, *Multigenerational Approaches to Social Mobility. A Multifaceted Research Agenda*, 35 RSCH. SOC. STRATIFICATION & MOBILITY, 1–12, Mar. 1, 2014. For discourse on indicators for correlation between absolute and relative social mobility, see Richard Breen, *A Framework for Comparative Analysis of Social Mobility*, 19(1) SOCIOLOGY 93 (1985); Raj Chetty et al., Nathaniel Hendren, Patrick Kline, and Emmanuel Saez, *Where is the Land of Opportunity: The Geography of Intergenerational Mobility in the United States*, 129(4) Q.J. ECON. 1553 (2014); Martin Nybom, Int'l Lab. Org. [ILO], *Intergenerational Mobility: A Dream Deferred?*, ILO FUTURE OF WORK RESEARCH PAPER SERIES 7 (2018); Franz Bushca & Patrick Sturgis, *Declining Social Mobility? Evidence from Five Linked Censuses in England and Wales 1971–2011*, 69(2) BRIT. J. SOC. 154 (2018).

10. Pfeffer, *supra* note 9, at 1–12.

11. *Id.* at 4.

12. For an illustration of this process in respect of the review mechanism of implementation of the 2005 United Nations Convention Against Corruption, see Matti Joutsen & Adam Graycar, *When Experts and Diplomats Agree: Negotiating Peer Review of the UN Convention Against Corruption*, 18(4) GLOB. GOVERNANCE 425 (2012).

13. *Id.*

14. ANTHEA ROBERTS ET AL., *COMPARATIVE INTERNATIONAL LAW* 25 (2018).

understood differently among different individuals or cultures, thereby creating regulation issues for the party states.

At the same time, at least in the international setting, it would not be unusual to “settle” for this type of ambiguity in design of international norms.¹⁵ This might be a worthwhile price to pay for elevating the concept of social mobility from the domestic realm to the international one. Moreover, international settings, particularly those of a bilateral trade and economic related nature, often include binding dispute resolution mechanisms.¹⁶ These mechanisms tend to refer to disputes in interpretation of norms and concepts that norm makers include in the agreed regulatory frameworks.¹⁷ Accordingly, any disputes concerning the interpretation and application of social mobility can be addressed through alternative dispute resolution (ADR). ADR usually includes a preliminary phase of time-limited diplomatic consultations followed by arbitration in case the dispute is not resolved.¹⁸

For the purposes of this paper, we can define social mobility as the increase in opportunities afforded to individuals in society who lacked access to them in the past.¹⁹ While such opportunities would not necessarily be reflected in numeric values, indicators include access to financial resources for housing and health care, as well as various other elements relating to daily life. At the end of the day, the implementation of the concept of social mobility on international or cross-border realms is dependent on what indicators and procedural elements would be used to measure it.²⁰

III. SOCIAL MOBILITY AS A COSMOPOLITAN GLOBAL JUSTICE BASED VALUE

Based on the above definition of social mobility, the next step is asking on what basis international norms should consider the conceptual framework suggested and, more importantly, why such norms should address social mobility at all. Noting the existence of various other ideas and concepts that can be associated with a social need, and that these are not enshrined in any transnational norms, the question becomes what is the

15. Bell, *supra* note 4.

16. This has been a feature of such arrangements since the early days of international trade law. For an extensive analysis, see Christopher Vajda, *The EU and Beyond: Dispute Resolution in International Economic Agreements*, 29 EUR. J. INT'L L. 205, 205–24 (2018).

17. James R. Holbein & Gary Carpentier, *Trade Agreements and Dispute Settlement Mechanisms in the Western Hemisphere*, 25 CASE W. RSCH. J. INT'L L. 531 (1993).

18. See, e.g., The United States-Mexico-Canada Agreement (USMCA), U.S.-Mex.-Can., Nov. 30, 2018.

19. For the use of this definition in respect of China, see Li Chunling, *Migrant Workers and Social Mobility*, in CHINESE SOCIETY: CHANGE AND TRANSFORMATION 217, 240 (2012).

20. In the international norm context, the role of indicators is gaining increasing traction for the decision-making process by international institutions. See Rene Uruena, *Indicators and the Law: The Rule of Law Index*, in THE QUIET POWER OF INDICATORS: MEASURING GOVERNANCE, CORRUPTION, AND RULE OF LAW 75, 92 (Sally Engle Merry et al. eds., 2015).

unique nature, if any, of social mobility. Until now, there has been little global regulation of social mobility, perhaps indicating that this topic is not susceptible to such global ordering.

This paper suggests two main avenues of exploring the feasibility of justifying the creation of a transnational mechanism to facilitate increased social mobility: (1) the cosmopolitan value approach²¹ and (2) the global justice approach.²² The aim is to offer a combined theoretical justification that supports social mobility as a cross-border value worthy of regulation and support. This justification could then serve as an adequate response to those who might cast doubt on the viability of social mobility as an international concept amenable to international legal framework support rather than a concept limited only to the domestic realm.

A. *Social Mobility as a Cosmopolitan Value*

In the past, international law was premised purely on the realism “every state fends for itself.” Under “the foreign office model,” international law prefers a “state centered mode” of international law and regulation.²³ Under this modality, the values and interests of states are at the core of the development of international relations, and international law can be seen as conflicting with global ideals.²⁴ While the international community recognized individual human rights, these were generally subjected to state interests. The overarching goal of international law was to preserve the interests of states of survival in the global political system and pursuit of a relative advantage.²⁵

Today, while for some security related matters this “foreign office” realism-based modality remains the prevailing theory,²⁶ or as one commen-

21. Such cosmopolitan values could be relevant not only in the context of creating international law but could also have significance regarding the implementation of international law. Mark D. Walters, *The Common Law Constitution and Legal Cosmopolitanism*, in *THE UNITY OF PUBLIC LAW* 431, 452 (David Dyzenhaus ed., 2004).

22. For a discussion on the potential linkages between international law and global justice, see Laura Valentini & Tiziana Torresi, *Introduction—International Law and Global Justice: A Happy Marriage*, 37(5) *REV. INT’L STUD.* 2035 (2011).

23. Itai Apter, *Yes, Global Minister: Towards Modernization of EU-Global Public Administration*, 2016 *ROCZNIK ADMINISTRACJI PUBLICZNEJ* 209, 215 (2016).

24. One way to elevate this conflict is to pursue state-centered liberal theories supporting moral regulation of powers. Leif Wenar, *States, Individuals and Equality*, in *BETWEEN COSMOPOLITAN IDEALS AND STATE SOVEREIGNTY: STUDIES IN GLOBAL JUSTICE* 25, 34 (Ronald Tinnevelt & Gert Verschraegen eds., 2006).

25. This is the reason that the foreign office model, at least in the past, was closely associated with the regulation of the use of force in the international arena. For a discussion of various developments in this respect in the past few decades, see Benedict Kingsbury, *Unit 7: The Use of Force*, INSTITUTE FOR INTERNATIONAL LAW AND JUSTICE, NEW YORK UNIVERSITY SCHOOL OF LAW (International Law Course User’s Guide), <https://www.iilj.org/wp-content/uploads/2016/08/Unit-7-Reading-Guide.pdf> (last updated May 2, 2008).

26. Benedict Kingsbury & Anna Cavnar, *Overview: Military, Markets, Morals*, INSTITUTE FOR INTERNATIONAL LAW AND JUSTICE, NEW YORK UNIVERSITY SCHOOL OF LAW, <https://iilj.org/>

tator puts it “realism may not in fact be quite dead yet,”²⁷ the state of affairs has somewhat shifted for others. This is particularly relevant for international legal regimes based on human rights concepts, most prominently international human rights law (IHRL).²⁸

The competing mode to the “foreign office” model is the global governance approach.²⁹ Under this modality, states are no longer primarily fending for themselves but are considered an integral part of the international global system.³⁰ Consequently, states can be said to be acting not solely in accordance with national and domestic values but also in correspondence with transnational values, which we can define as prominently cosmopolitan or at best, regional.³¹

Contemplating morals from an international law perspective can be associated with the aim of achieving justice.³² In an international system based on political cosmopolitanism, the role of state actors are diminished in order to emphasize an international legal order.³³ However, some argue that states’ only obligation should be to provide justice to their own citizens.³⁴ At the same time, even that obligation can stem from global norms, as exemplified by IHRL.³⁵ If international norms are a manifestation of the idea that justice is universal,³⁶ then global governance where state actors

wp-content/uploads/2016/08/Cavnar-Military-Markets-Morals-2008.pdf (last modified Jan. 14, 2008).

27. FRANK J. GARCIA, *GLOBAL JUSTICE AND INTERNATIONAL ECONOMIC LAW: THREE TAKES* 5 (2013).

28. For a discussion of the relationship between sovereignty, global governance, and IHRL, see Daniel Albahary, *International Human Rights and Global Governance: The End of National Sovereignty and the Emergence of a Suzerain World Polity?*, 18 MICH. ST. J. INT’L L. 511 (2010).

29. One practical outcome is that the state (or diplomats) no longer has exclusive rein on global agenda setting, and society (or the traditional or social media) is increasingly becoming an equal actor in that regard. WILLIAM MALEY, *GLOBAL GOVERNANCE AND DIPLOMACY: WORLDS APART?* 20 (2008).

30. This system now can be considered to include, *inter alia*, such actors as civil society, businesses, and municipal governments. CHADWICK F. ALGER, *THE UN SYSTEM AND CITIES IN GLOBAL GOVERNANCE* 133 (2014).

31. In some cases, only state actors can institutionalize cosmopolitan values, making their role imperative in the context of global governance. See ANNA HALAFOFF, *THE MULTIFAITH MOVEMENT: GLOBAL RISKS AND COSMOPOLITAN SOLUTIONS* 21 (2013).

32. Kingsbury & Cavnar, *supra* note 26, at 1.

33. *Id.* at 3. For the linkages between political cosmopolitanism, global governance, and principles of justice, see Garrett W. Brown & David Held, *Editors’ Introduction to THE COSMOPOLITAN READER* (Garrett W. Brown & David Held eds., 2010).

34. Kingsbury & Cavnar, *supra* note 26, at 4. Some perceive that “universalism” of justice poses a danger that state actors will pursue this notion in order to avoid acting upon the obligations towards their nationals. See, e.g., H. PATRICK GLENN, *THE COSMOPOLITAN STATE* 174 (2013).

35. The IHRL regime has transformed states’ domestic human rights obligations beyond merely “matters internal to the state,” to obligations on the international realm. TODD LANDMAN & EDZIA CARVALHO, *MEASURING HUMAN RIGHTS* 12 (2010).

36. HEATHER M. ROFF, *GLOBAL JUSTICE, KANT AND THE RESPONSIBILITY TO PROTECT: A PROVISIONAL DUTY* 1 (2013).

still play a significant role might be an important factor in achieving justice beyond the purely domestic context.

The concept of social mobility can be placed within the global governance morals framework. Equality in society, global or domestic, can be a highly controversial goal to strive for.³⁷ This is because of differing views about whether there is a need to ensure equality between states or between individuals.³⁸

Conversely, “flexible” social mobility might be less controversial and problematic. Presumably, all actors in the international community share the wish that individuals improve their situation from generation to generation and that the overall situation, circumstances or prosperity in a specific society will be better.³⁹ Admittedly, some regimes might prefer that societal gaps remain and that class structures be preserved. Because such a preference would not be publicly declared, that regime’s global effectiveness in resistance to promotion of social mobility as a global cosmopolitan normative value is limited.

It is likely that while the dichotomy between Western and Eastern values can sometimes characterize debates on international law and values with respect to socialism and capitalism,⁴⁰ there could be little disagreement that states should make their citizens’ lives better and “move” them from poverty to prosperity. Even if some states do not explicitly develop policies towards achieving this goal,⁴¹ we can at least consider social mobility as a goal that all states can be assumed to support, even if only from a declaratory perspective.

From a perspective of cosmopolitan value-based development of international norms, the declaratory element may serve as motivation for future adherence to norms which support social mobility. Such adherence has value potential in itself, even if it is not based or followed by development

37. One of the reasons for this state of affairs is that equality between states in contemporary times is unrealistic. See BART LANDHEER, *ON THE SOCIOLOGY OF INTERNATIONAL LAW AND INTERNATIONAL SOCIETY* 28 (1966).

38. It is important to note that while equality between states is considered a mainstay of international law, it usually refers to the independence of one state from others, rather than to equality on economic terms. See Ulrich K. Preuss, *Equality of States—Its Meaning in a Constitutionalized Global Order*, 9 *CHI. J. INT’L L.* 17, 42 (2008).

39. This is evidenced, for example, by the fact that “end poverty” was defined as the first 2030 Sustainable Development Goal (SDG) promulgated by the UN General Assembly in 2015. G.A. Res. 70/01, *Transforming Our World: The 2030 Agenda for Sustainable Development*, at 14, 15 (Sept. 25, 2015). The tenth SDG also aspires to achieve income growth for low-income earners to reduce inequality. *Id.* at 21. For the linkage between reduced poverty and social mobility, see PwC, *SDG 10: REDUCED INEQUALITIES: REDUCE INEQUALITY WITHIN AND AMONG COUNTRIES* (2016), <https://dm.pwc.com/SDGSelector/Resources/10.pdf>.

40. For an example of an analysis of these tensions, see B.S. Chimni, *Capitalism, Imperialism, and International Law in the Twenty-First Century*, 14 *OR. R. INT’L L.* 17 (2012).

41. This outcome is related, in some instances, to domestic, economic, and social restraints. See DARON ACEMOGLU & JAMES A. ROBINSON, *WHY NATIONS FAIL: THE ORIGINS OF POWER, PROSPERITY, AND POVERTY* 446 (2012).

of comprehensive domestic policy on social mobility. The United Nations Convention Against Corruption, with over 185 member states,⁴² demonstrated the advantages in creating vehicles for states to attain reputational benefits. At the very least, a cosmopolitan value of social mobility fleshed out in cross-border normative regulation, to which states commit to in a legally binding contract (or similar), could elevate social mobility in global policy maker agendas and make it more difficult for states to openly oppose it or neglect it. Moreover, branding social mobility as a value with cosmopolitan features would facilitate linking it with global initiatives, for example the 2030 Sustainable Development Goals,⁴³ which can highly contribute to its prominence on the global stage.

B. *Social Mobility and Global Justice*

Alternatively, we can consider social mobility in global justice theory implementation frameworks. If we can define social mobility as manifesting global justice theories, this can provide an additional important justification for pursuing its regulation on the cross-border level.

Global justice encompasses a more utopian drive for a wide variety of concepts that ranges from calls for inclusive human rights to all to global economic equality and eradication of world poverty and starvation.⁴⁴

Global justice advocates use the term in multiple senses. For example, every individual is entitled to the same rights and should be treated the same,⁴⁵ although there could be questions as to the content of those rights and who should determine it.⁴⁶ Alternatively, there is a minimum standard of rights that states can supplement if they wish to do so.⁴⁷ Finally, only nation states operating internally can achieve global justice ideals, as absent

42. *United Nations Convention Against Corruption*, UNITED NATIONS OFFICE ON DRUGS AND CRIME, <https://www.unodc.org/unodc/en/corruption/uncac.html> (last visited June 13, 2020).

43. For an example of such linkage to various SDG goals, see *Sustainable Development Outlook 2019: Gathering Storms and Silver Linings*, UNITED NATIONS DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS (2019), https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/SDO2019_Preview_Booklet_Web.pdf.

44. For an example of the linkage between global justice and poverty eradication, democratization, and modernization, see HUW L. WILLIAMS & CARL DEATH, *GLOBAL JUSTICE: THE BASICS* 125 (2016).

45. Erin K. Wilson, *Beyond Dualism: Expanded Understandings of Religion and Global Justice*, in *THE ASHGATE RESEARCH COMPANION TO MODERN THEORY, MODERN POWER, WORLD POLITICS—CRITICAL INVESTIGATIONS* 313, 320 (Nevzat Soguk & Scott G. Nelson eds., 2016).

46. One traditional idea is that the content of principles of justice (or rights) should be determined by an integrated “reflective equilibrium” of substantive arguments based on the “national” principles of justice, which can potentially apply globally. See MATHIAS RISSE, *ON GLOBAL JUSTICE* 39–40 (2012).

47. This concept is termed by some “global sufficientarianism,” which places on states the discretion on how to complement it domestically and globally. For an analysis and critique of this approach, see Nils Holtug, *The Cosmopolitan Strikes Back: A Critical Discussion of Miller on Nationality and Global Equality*, 4 *ETHICS & GLOB. POL.* 147, 158–61 (2011).

a global sovereign, identical cross-border rights “do not merit the full name of justice.”⁴⁸

Today there are diverging views of what global justice should focus on; should the focus be individuals in themselves, or should efforts be focused on finding equality between nation states?⁴⁹ Alongside these more traditional approaches, there are also attempts at finding a middle ground or a different approach such as Risse’s idea of a “common ownership of the earth” where states and individuals have rights and obligations in facilitating global justice.⁵⁰

Advocates of global justice, such as Rawls, view it is an important measure to ensure the well-being of individuals, based on a duty of cooperation between states (albeit not unlimited).⁵¹

Recognizing this notion as a common base line for global justice, further elaboration is controversial. Rawls was reluctant to view such a duty as linked to the promotion of liberal values.⁵² Nevertheless, there are those who see it as a framework to facilitate development of specific norms like democratic values to enhance legitimacy based on principles of shared common global responsibility inspired by cosmopolitan values.⁵³ This kind of approach might be one to strive for, but it attracts criticisms from those who view it as an unattainable utopian goal in a “realist” world of struggle for power between states, individuals, and international actors.⁵⁴

This view of global justice in the framework of an eternal and inherent power struggle between competing values and interests of states and other stakeholders in international norm-making necessitates consensus on the viability of social mobility as an overriding value that is worthy of global attention.

48. Thomas Nagel, *The Problem of Global Justice*, 33 PHIL. & PUB. AFFS. 113, 121–22 (2005).

49. These concepts can be linked as a possible argument, which some claim to be “too optimistic,” that equality between states will necessarily be followed by equality between individuals. KOK-CHOR TAN, JUSTICE WITHOUT BORDERS: COSMOPOLITANISM, NATIONALISM, AND PATRIOTISM 36 (2004).

50. RISSE, *supra* note 46, at 11.

51. JOHN RAWLS, THE LAW OF PEOPLES: WITH THE IDEA OF PUBLIC REASON REVISITED 84–85 (1999) (explaining that such a duty is not mandatory and it is up to states to consider how, and whether, to fulfill it to elevate the burdens of individuals living under less favorable conditions).

52. *Id.* at 85.

53. For a discussion of the linkage between cosmopolitan values and global justice in the political context, see Avia Pasternak, *Cosmopolitan Justice and Global Democracies*, in GLOBAL POLITICAL JUSTICE 129, 134 (2014).

54. Even under this “realistic” view, states and individuals still have a moral responsibility for “global injustice.” Pablo De Greiff & Ciaran Cronin, *Introduction: Normative Responses to Current Challenges of Global Governance*, in GLOBAL JUSTICE AND TRANSNATIONAL POLITICS: ESSAYS ON THE MORAL AND POLITICAL CHALLENGES OF GLOBALIZATION 1, 1–3 (Pablo De Greiff & Ciaran Cronin eds., 2006).

Ayelet Shachar's theory on "birthright lottery" argues that birthright citizenship is an important element in the question of justice on the global scale.⁵⁵ According to Shachar, the idea that a person who is born in one richer country and not in another poorer country gains the citizenship of the former perpetuates global inequality.⁵⁶ Based on this approach, we should not view social mobility as a matter solely dependent on "luck" or the place of birth of an individual. Consequently, creating international norms to elevate some of this inequality can be a worthwhile endeavor.

Scholars often think about global justice as an overriding and overarching conceptual framework which can be compartmentalized into various types of global versions of the different kinds of justice theories including corrective, restorative, and distributive justice. It could be useful to understand how these theories can relate to the suggested social mobility global cosmopolitan value.

1. *Corrective Justice*

Aristotle offered that the fundamentals of corrective justice were aiming to describe mechanisms pertaining to compensation and remedies for individuals who suffer harm.⁵⁷

An important element in the corrective justice concept is equality between parties to a transaction and the Kantian idea of individual rights.⁵⁸ Accordingly, when two parties are correlatively situated (due to a contract, property, or tort law relationship), there is an obligation to recognize Party A's autonomy towards Party B. If Party A breached a contractual, property, or tort based duty, deriving from legal proximity, to Party B, Party A must make amends and undo the injustice resulting from the breach. Ernest Weinrib terms this form of compensation based on corrective justice as "Restitutionary Damages."⁵⁹

Seemingly, corrective justice in this pure form is somewhat irrelevant to social mobility as discussed so far, as it will be difficult to establish wrongs between state actors directly relevant to oppression of social mobility. While this might ultimately be the case, corrective justice offers an

55. Shachar is considered a groundbreaking leading global academic on issues pertaining to immigration, political science, and international relations. For an example of her approach to the relationship between birthright citizenship and global justice, see AYELET SHACHAR, *THE BIRTHRIGHT LOTTERY—CITIZENSHIP AND GLOBAL EQUALITY* 22 (2009).

56. Ayelet Shachar, *The Worth of Citizenship in an Unequal World*, 8 *THEORETICAL INQUIRIES L.* 367, 369 (2007).

57. JOYCELYN M. POLLOCK, *ETHICAL DILEMMAS AND DECISIONS IN CRIMINAL JUSTICE* 56 (9th ed. 2017).

58. IZHAK ENGLARD, *CORRECTIVE AND DISTRIBUTIVE JUSTICE: FROM ARISTOTLE TO MODERN TIMES* 192 (2009).

59. Ernest J. Weinrib is a recognized leading scholar focusing his work on tort law and the theory of private law. For his views on restitution and corrective justice, see Ernest J. Weinrib, *Restitutionary Damages as Corrective Justice*, 1 *THEORETICAL INQUIRIES L.* 1 (2000).

important remedial element to correct past wrongs, whether by monetary restitution or any other means.⁶⁰ The international community can adopt this idea, with some adjustments and alignments, to support the need for action to remedy gaps and deficiencies in social mobility.⁶¹ However, placing responsibility on the wrongdoer, as it is likely to be the nation state, may stifle implementing the core principles of corrective justice to the global social mobility value.⁶² Instead, the international community as a whole could be said to be at fault for the lack of domestic social mobility.⁶³ At the same time, such an argument seems quite far-fetched, as unlike in the context of, for example, environmental issues, it would be challenging to present a convincing argument in support of collective global responsibility for lack of social mobility in a domestic setting.

2. Restorative Justice

Restorative justice focuses on measures to repair harm caused by criminal behaviors, aiming to address the needs of all relevant stakeholders, particularly offenders and victims.⁶⁴ Although scholars usually think of restorative justice as mainly related to internal circumstances⁶⁵ and rehabilitation of domestic societies, there are also those who see value in applying it in the international cross-border level.⁶⁶

Recognizing the difficulties with linking global restorative justice with social mobility, there could still be connections between the two conceptual notions, as some consider restorative justice as one of the factors which

60. For a discussion of possible linkages between corrective justice and remedying past historical wrongs, see Katrina M. Wyman, *Is There a Moral Justification for Redressing Historical Injustices?*, 61 VAND. L. REV. 127 (2008).

61. One example is taking measures to promote affirmative action policies and equal opportunities for social groups that faced disadvantages in the past. See Tomiko Brown-Nagin, *Rethinking Diversity and Proxies for Economic Disadvantage in Higher Education: A First Generation Students' Project*, 2014 U. CHI. LEGAL F. 433, 437–39 (2014).

62. Richard A. Posner, *The Concept of Corrective Justice in Recent Theories of Tort Law*, 10 J. LEGAL STUD. 187, 194 (1981).

63. Such an argument can be seen as part of the overall failures, in some cases, of the international community to provide the necessary means to achieve declared policy goals. See INST. FOR STATE EFFECTIVENESS, RECENT EXPERIENCES IN LINKING DIPLOMATIC PEACEMAKING WITH DEVELOPMENT EFFORTS 14 (2008), https://www.regjeringen.no/globalassets/upload/ud/vedlegg/fn/multidimensional-and-integrated/linking-diplomacy-and-development-draft-jan-24_4_.pdf.

64. Hadar Dancig-Rosenberg & Tali Gal, *Criminal Law Multitasking*, 8 LEWIS & CLARK L. REV. 893, 920 (2014).

65. Sometimes restorative justice is perceived as mainly relevant to the domestic criminal system, as can be ascertained from the provisions of the United Nations Basic Principles on the Use of Restorative Justice Programs in Criminal Matters. Economic and Social Council Res. 2000/14, U.N. Doc. E/2000/INF/2/Add.2, at 35 (2000).

66. This can arguably be the case even if enforcement, which might be critical for the success of restorative justice, can be inherently ineffective on the international level (and the only result that can be attained is to strengthen compliance with international criminal law standards). See M. Cherif Bassiouni, *The New Wars and the Crisis of Compliance with the Law of Armed Conflict by Non-State Actors*, 98 J. CRIM. L. & CRIMINOLOGY 711, 799 (2008).

facilitate social mobility.⁶⁷ This could occur in cases where overall restorative justice approaches are linked to societal transformation. Nevertheless, it is difficult to claim that one state should be responsible for applying restorative justice reforms in another, which usually includes various domestic elements linked to domestic criminal justice systems.⁶⁸ Accordingly, it seems that like corrective justice, restorative justice in itself is not sufficiently linked to social mobility concepts in order to serve as justification for the development of international norms to facilitate it.

3. *Distributive Justice*

The basic formula of distributive justice is the idea that policy makers should distribute benefits and burdens amongst society in accordance with justice-based criteria.⁶⁹ In acting under the moral guidance of this theory, distribution should arguably be made in accordance with “just” criteria, whatever these criteria may be.⁷⁰

Under this framework, Aristotle describes the main difference between corrective justice and distributive justice to be the applicable standard to allocation of resources. In the case of corrective justice, the basis is the harm caused and subsequent punishment (i.e., the need to make amends), while distributive justice can be based on a subjective criteria of merit as the basis for distribution.⁷¹

Shachar’s criticism of birthright citizenship is informative when addressing the question of distributive justice on the global scale. Shachar states that birthright citizenship perpetuates global inequality and infringes upon distributive justice because a person who is born in one richer country and not in another poorer country gains the citizenship of the former.⁷² Following this approach, enhanced social mobility on both domestic and global scales can serve an important role in remedying at least some of this inherent injustice. As there are no norms mandating global equal distribution of wealth, it is arguable that international law and distributive justice are not closely linked.⁷³ According to Rawls, imposing principles of equal distribu-

67. GERRY JOHNSTONE, *RESTORATIVE JUSTICE: IDEAS, VALUES, DEBATES* 50 (2002).

68. For various elements that could be included, see the United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters. Economic and Social Council Res. 2002/12, U.N. Doc. E/RES/2002/12, at 35 (2002).

69. Julian Lamont & Christi Favor, *Distributive Justice*, *STANFORD ENCYCLOPEDIA OF JUSTICE*, <https://plato.stanford.edu/entries/justice-distributive> (last visited Feb. 3, 2018).

70. It should be noted that there is controversy about both what should be the relevant criteria and whether they should indeed be “just.” See COLLEEN MURPHY, *THE CONCEPTUAL FOUNDATIONS OF TRANSITIONAL JUSTICE* 105 (2017).

71. SAMUEL FLEISCHACKER, *A SHORT HISTORY OF DISTRIBUTIVE JUSTICE* 19 (2004).

72. Shachar, *supra* note 56.

73. This means that even if the principles of distributive justice are global, they are not international or cross-border. See Terry Nardin, *International Ethics*, in *THE OXFORD HANDBOOK OF INTERNATIONAL RELATIONS* 594, 604 (Christian Reus-Smit & Duncan Snidal eds., 2008).

tion between states is not only completely unnecessary but could interfere with sovereign prerogatives of social distribution.⁷⁴

Some criticize Rawls's ideas as lacking in understanding of the implications of global circumstances to the internal functions of a state. In contemporary times many states are not self-sufficient but are rather dependent on others, due to the global basic economic structure (and not solely due to governance failure).⁷⁵ The lack of self-sufficiency and basic means can profoundly implicate the ability of states to develop distributive-justice based policies. While international institutional frameworks have been developed to remedy global disparities, many of these institutions are inherently controlled by the few economic and political superpowers (disparate political agents), sometimes exacerbating the lack of global distributive justice rather than rectifying it.⁷⁶

Translating theory to practice, advocates of a close linkage between distributive justice and international law claim that the theory can serve as a basis for establishing common international governance regimes, addressing the lack of an enforcing institutional capacity is not a determinative factor.⁷⁷ If global economic disparities violate human rights, a lack of global distributive justice can be considered a violation of international law, if not at letter, then at least in spirit.⁷⁸

One major counterargument to this assertion is made by Buchanan. According to him, while distributive justice is relevant in the global context, it is unrealistic to expect global order to be based on an equal merit-based distribution of goods due to the lack of institutional capacity to enforce such an order. Ultimately, Buchanan concludes, similarly to Rawls, that states (and not the international community) are the primary arbiters and agents of distributive justice.⁷⁹ Shachar is not deterred by this lack of institutional mechanism in finding remedies for inequalities deriving from birthright citizenship. She suggests each individual in a "richer" country pay a levy for their privilege. Due to the impracticality of this idea, she suggests international institutional designs to achieve the same result.⁸⁰

Shachar's ideas highlight the significant potential which lies in utilizing distributive justice in its global justice contours has great potential to

74. *Id.*

75. ALLEN BUCHANAN, JUSTICE, LEGITIMACY, AND SELF-DETERMINATION: MORAL FOUNDATIONS FOR INTERNATIONAL LAW 209–10 (Will Kymlicka et al. eds., 2004).

76. OISIN SUTTLE, DISTRIBUTIVE JUSTICE AND WORLD TRADE LAW: A POLITICAL THEORY OF INTERNATIONAL TRADE REGULATION 132 (2018).

77. EDWIN EGEDE & PETER SUTCH, *The Law of the Sea: Justice and the Common Heritage of Mankind*, in THE POLITICS OF INTERNATIONAL LAW AND INTERNATIONAL JUSTICE 306, 336–37 (2013).

78. ARIE M. KACOWICZ, GLOBALIZATION AND THE DISTRIBUTION OF WEALTH: THE LATIN AMERICAN EXPERIENCE 1982–2008 41 (2013).

79. BUCHANAN, *supra* note 75, at 193.

80. SHACHAR, *supra* note 55, 101–08.

advance the cause of creating international normative frameworks to support social mobility. If we agree that the need for economic development for future generations is inherently linked to distributive justice,⁸¹ this combination between the international and national linkages can support the argument that distributive justice justifies creating an intentional legal platform to promote it in the form of an international normative framework.

As the analysis in this section demonstrated, there could be various ways to justify providing prominence for the value of social mobility. Rather than offering a decisive theoretical justification, the aim of this section was to serve as an illustration of how general theoretical approaches can provide social mobility with a platform to facilitate its implementation in practice on the transnational normative realm.

IV. INTERNATIONAL ECONOMIC LAW AND SOCIAL MOBILITY

International economic law is manifested in three main types of regimes: multilateral agreements with an almost universal character, such as WTO related agreements or their regional formations,⁸² bilateral or tripartite agreements of a similar nature mainly pertaining to free trade agreements,⁸³ and soft law standards designed by inter-governmental organizations such as the Organization for Economic Co-operation and Development (OECD).⁸⁴

The framework of universal/regional duty and subsidies related agreements may include social mobility elements. At face value, these agreements are aimed at an opposite end of the domestic state's efforts to promote social mobility.⁸⁵ They often prohibit providing government subsidies or mandate allowing fair terms for foreign competitors to domestic actors.⁸⁶ Such agreements can even go so far as to hold that actions by governments to give advantages to domestic actors (including steps which

81. Gail E. Henderson, *Rawls & Sustainable Development*, 7 MCGILL INT'L J. SUSTAINABLE DEV. L. AND POL'Y 1, 4 (2011).

82. *See, e.g.*, General Agreement on Tariffs and Trade 1994, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 [hereinafter GATT]; Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154 [hereinafter Marrakesh Agreement]; ASEAN Free Trade Agreements (AFTA), Jan. 28, 1992, 31 I.L.M. 513.

83. One recent example is the United-States-Mexico-Canada Agreement (USMCA), which went into force on July 1, 2020. *See* Agreement Between the United States of America, the United Mexican States, and Canada, Pub. L. No. 116-113, 134 Stat. 11 (July 1, 2020).

84. *See, e.g.*, Org. for Econ. Coop. & Dev. [OECD], *OECD Declaration on International Investment and Multinational Enterprises* (May 24, 2011), <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0144>.

85. For an example of the lack of support in Germany (associated with such concerns) for The Transatlantic Trade and Investment Partnership (TTIP) negotiations between the EU and the US, which ultimately failed, see Christian Bluth, *A Surplus of Anxiety: TTIP and Germany*, NEWPOLITIK (2016), http://www.astrid-online.it/static/upload/bluth/bluth_newpolitik_german_policy_translated_10_2016-5.pdf.

86. In the context of the WTO, see GURWINDER SINGH, SUBSIDIES IN THE CONTEXT OF THE WTO'S FREE TRADE SYSTEM: A LEGAL AND ECONOMIC ANALYSIS 85 (2017).

can likely contribute to social mobility) can result in exposure to legal proceedings and sanctions.⁸⁷ This challenges utilizing these types of agreements to promote social mobility. Allowing states to enact such measures unilaterally might render the universal or regional framework irrelevant.

At the same time, the problem of undermining the general legal order which serves as the basis for the universal or regional mechanisms might be less of a challenge when similar arrangements are made on the bilateral realm,⁸⁸ or in cases where free trade agreements are concluded between limited numbers of actors. Under these circumstances, including exceptions to the underlying obligations might be more amenable or workable.⁸⁹ One relevant scenario is an agreement between states that are parties to a free-trade agreement (FTA) that they will consider measures specifically intended at promoting social mobility goals as lawful exceptions to, for example, prohibitions on measures limiting the rights of foreign investors.⁹⁰ Noting the ambiguous nature of an internationally defined concept of social mobility earlier discussed, these types of exceptions have the risk of being abused. Nevertheless, as the states parties can permit such exceptions on a reciprocal basis (i.e., both states can apply them),⁹¹ this type of concern might be of a relatively limited scope. Moreover, FTAs usually include dispute resolution mechanisms applicable to inter-state and investor-state disputes. Such mechanisms can also be utilized for resolving disputes on the applicability of the social mobility exceptions. This is because specific dispute settlement mechanisms could also be created to specifically address

87. For a discussion of the WTO sanctioning mechanism, see Tarcisio Gazzini, *The Legal Nature of WTO Obligations and the Consequences of Their Violation*, 17 EUR. J. INT'L L. 723 (2006).

88. At the same time, if bilateral agreements differ from principles set out by the WTO framework, they can lead to further fragmentation of the international trade legal order. See Stephan W. Schill, *Authority, Legitimacy and Fragmentation in the (Envisaged) Dispute Settlement Mechanisms in Mega-Regionals*, in MEGA-REGIONAL TRADE AGREEMENTS: CETA, TTIP, AND TISA: NEW ORIENTATIONS FOR EU EXTERNAL ECONOMIC RELATIONS 111, 113 (Stefan Grillier et al. eds., 2017).

89. In this sense, creating allowances for states to divert from applicable prohibitions can also be part of mega multilateral frameworks, as demonstrated in the case of allowances for prudential regulation of the finance sector under the WTO system. For an extensive discussion, see Andrew D. Mitchell et al., *Dear Prudence: Allowances Under International Trade and Investment Law for Prudential Regulation in the Financial Services Sector*, 19 J. INT'L ECON. L. 787 (2016).

90. The most common exceptions in this respect pertain to national security or public order. See U.N. Conference on Trade and Development, *Investment Provisions in Economic Integration Agreements*, 69, UNCTAD/ITE/IIT/2005/10 (2006). However, states can bilaterally agree on exceptions of a different nature.

91. See, e.g., Canada-Chile Free Trade Agreement, Can.-Chile, art. Kbis-16, (Feb. 5, 2019), 36 I.L.M. 1067 ("Nothing in this Chapter shall be construed to prevent a Party from taking any action . . . which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.").

controversies over how these exceptions were applied by the contracting states.⁹²

In the context of FTAs, states can develop other elements to elevate social mobility. As in many cases there is disparity between the “nature” of the states which are parties to the FTAs, these can include incentive mechanisms for the “weaker” states to promote internal social mobility.⁹³ Such mechanisms can be manifested in actual funds, or more likely, in relaxing obligations under FTA and wider openings for the investors of one state party in the other state party or providing them with leverage on domestic actors. Some might see these types of incentives as controversial, conflicting with domestic interests as well as a breach of the delicate balance contained in an FTA.⁹⁴ At the same time, if social mobility is a cosmopolitan value and states parties to an FTA will mutually consider its promotion as a shared interest conducive to economic stability, both notions can serve as platform for policy makers to publicly justify including “social mobility incentives” in FTAs.

Alongside the FTAs, the second available tool for international economic law to support social mobility lies in the soft law realm. Recognizing that FTAs are subject to an agreement between states and could inherently apply only under certain circumstances, soft law can allow a workable alternative to facilitate international cooperation where consensus on legal obligations is not attainable.⁹⁵

In the case of social mobility, international economic organization can collect information about how state actors are addressing the issue and working to promote it in their domestic setting. One such example is the work done by the OECD on the issue, providing overview and comparisons

92. See, e.g., European Union-Singapore Free Trade Agreement, art. 14.1 (Nov. 21, 2019), <https://trade.ec.europa.eu/doclib/press/index.cfm?id=961> (“The objective of this [dispute settlement] Chapter is to avoid and settle any difference between the Parties concerning the interpretation and application of this Agreement with a view to arrive at, where possible, a mutually acceptable solution.”).

93. Disparities between “stronger” and “weaker” parties to a trade agreement can play a significant role in the design of the agreement, usually to benefit the stronger partner. At the same time, the weaker partner might perceive the interests of the counterpart as its own, and there could be convergence (which might also include the concept of social mobility in the weaker state if the lack thereof negatively impacts the stronger partner). See Michael Sampson, *The Evolution of China’s Regional Trade Agreements: Power Dynamics and the Future of the Asia-Pacific*, 34 PAC. REV. 259, 280–81 (2019).

94. At the same time, including such “positive” incentives in trade agreements can serve as an adequate response to those who view these agreements, in their contemporary form, as a platform to increase global inequality and open to abuse by various actors wishing to increase their global influence and financial gains. For an example of such a criticism, see Dani Rodrik, *What Do Trade Agreements Really Do?*, 32 J. ECON. PERSPS. 73, 88–89 (2018).

95. Itai Apter, *The New International Law Frontier: The Legal Profession and the Challenges of New “International Law” in the New Member State*, 10 CROATIAN Y.B. EUR. L. & POL’Y 215 (2014); C.M. Hinkin, *The Challenge of Soft Law: Development of International Law*, 38 INT’L & COMPAR. L.Q. 850, 866 (1989).

between social mobility levels in its member states.⁹⁶ The practical value of such reports can be varied, ranging from the reputational to the legal, depending on their nature and format. Bearing in mind that global reputation in itself cannot bind a state to act or fail to act, it can play an important role in the domestic decision-making process. This is more likely when international organizations take steps which can significantly impact targeted states, including counter measures by other states to induce compliance by the targeted state.⁹⁷

Sometimes, soft law, reputational based, standards or reports can include rankings, facilitating reputational strength.⁹⁸ At first blush, “social mobility rankings” can be useful for promoting related domestic policies: they can serve as criteria for distributing foreign aid and investments;⁹⁹ follow up on improvements is easier, based on comparisons between rankings from one year to the next, to gauge progress or lack thereof;¹⁰⁰ and even if it might be difficult, or even impossible, to arrive at scientifically accurate results,¹⁰¹ rankings can serve as important signs for success or failure.

On the other hand, legitimacy of ranking based systems is based on its methodology. If stakeholders, including states, consider the way rankings are compiled to be faulty than it is likely to be inefficient and potentially counterproductive.¹⁰² Therefore, if international intergovernmental organizations would adopt this measure for promoting social mobility, any rankings or assessments of social mobility indicators would necessarily have to be largely based on information provided by states.¹⁰³ One alternative to

96. OECD, *A Broken Social Elevator? How to Promote Social Mobility—Overview and Main Findings* (2018), <https://www.oecd.org/social/soc/Social-mobility-2018-Overview-MainFindings.pdf>.

97. In the context of norms against money laundering and financing of terrorism and actions taken by the FATF (Financial Action Task Force), see Isobel Roele, *Sidelining Subsidiarity: United Nations Security Council “Legislation” and Its Infra-Law*, 79 L. & CONTEMP. PROBS. 189, 211–14 (2016).

98. The use of rankings (or indicators) is increasingly common in various aspects of soft law forms of international law, although there are subject matters in which its usage is controversial, for example in the context of compliance with human rights regimes. See Sally Engle Merry, *Firming Up Soft Law: The Impact of Indicators on Transnational Human Rights Legal Orders*, in TRANSNATIONAL LEGAL ORDERS 375 (Terence C. Halliday & Gregory Shaffer eds., 2015).

99. Nikhil K. Dutta, *Accountability in the Generation of Governance Indicators*, 22 FLA. J. INT’L L. 401, 409–12 (2010).

100. Craig P. Ehrlich & Dae Seob Kang, *Independence and Corruption in Korea*, 16 COLUM. J. ASIAN L. 12 (2002).

101. Nehal Bhuta, *Governmentalizing Sovereignty: Indexes of State Fragility and the Calculability of Political Order*, in GOVERNANCE BY INDICATORS: GLOBAL POWER THROUGH CLASSIFICATION AND RANKINGS 156 (Kevin E. Davis et al. eds., 2012).

102. One example of faulty methodology can be the lack of opportunity for all actors concerned to participate in production of the standards or indicators. See ANTONIO SEGURA SERRANO, *Reforming the Trading and Financial System*, in THE REFORM OF INTERNATIONAL ECONOMIC GOVERNANCE 3, 12–13 (Antonio Segura Serrano ed., 2016).

103. This can be achieved, for example, by information provided by states through self-assessment questionnaires. See *The Comprehensive Self-Assessment Checklist on the Implementation of*

such a ranking system, which states might reject,¹⁰⁴ could be that any assessments of social mobility level would produce only reports highlighting best practices and observations compiled during the assessment process.¹⁰⁵ Considering contemporary practices, experts representing member states can carry out the assessment (peer review) or independent experts can be appointed to perform this task.¹⁰⁶

International economic law and the work of international intergovernmental organizations has potential to create hard or soft transnational norms and standards to promote domestic social mobility. Recognizing that the interests of the international community would not necessarily correspond with the aims of domestic social mobility, the alternative normative route might lie within IHRL, discussed in the next section.

V. DEVELOPING INTERNATIONAL HUMAN RIGHTS LAW NORMS TO PROMOTE SOCIAL MOBILITY

Compared to international economic law, social mobility, which is often perceived as an issue closely related to individual rights and welfare,¹⁰⁷ seems to be more naturally linked to IHRL. First and foremost, the path to developing IHRL norms to support development of infrastructure to promote global social mobility is through the application of the right to equality (of opportunity) under the relevant instruments.¹⁰⁸ The argument could be that assuming that social mobility includes core elements of the right to equality in IHRL, then state actors are under a normative obligation to promote it.¹⁰⁹ Considering the viability of this argument, the first chal-

the United Nations Convention Against Corruption, U.N. OFF. ON DRUGS & CRIME, <https://www.unodc.org/unodc/en/corruption/self-assessment.html> (last visited July 3, 2020).

104. In the UNCAC context, states explicitly rejected a mechanism that would include a ranking system. See *Mechanism for the Review of Implementation of the United Nations Convention Against Corruption—Basic Documents*, UNITED NATIONS OFFICE ON DRUGS AND CRIME, art. 3(b) (2011), https://www.unodc.org/documents/treaties/UNCAC/Publications/ReviewMechanism-BasicDocuments/Mechanism_for_the_Review_of_Implementation_-_Basic_Documents_-_E.pdf.

105. *Id.* at art. 33.

106. For a comprehensive review of compliance monitoring mechanisms for international treaties, see Sean D. Murphy (Special Rapporteur), Int'l Law Comm'n, Third Rep. on Crimes Against Humanity, U.N. Doc. A/CN.4/704, at 100–12 (Jan. 23, 2017).

107. For an approach that disputes the correlativity between upward mobility and social welfare, see Tak Wing Chan, *Social Mobility and the Well-Being of Individuals*, 69 BRIT. J. SOCIO. 183, 200 (2018).

108. For an extensive discussion on the linkages between social mobility and equalities of opportunities, see OECD, *The Issues Note: The Only Way Is Up? Social Mobility and Equal Opportunities* (May 4, 2017), <https://www.oecd.org/inclusive-growth/inequality-and-opportunity/The-Issues-Note-Social-Mobility-and-Equal-Opportunities-May-4-2017.pdf>.

109. One core element in this respect could be the linkage between discrimination and the lack of capacity of certain social groups to enjoy economic progress and growth. See TAMMIE O'NEIL & LAURE-HÉLÈNE PRON, OVERSEAS DEV. INST., RIGHTS-BASED APPROACHES TO TACKLING DISCRIMINATION AND HORIZONTAL INEQUALITY 12 (2003), <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/4555.pdf>.

lenge arising is the need for establishing a right to equality under IHRL.¹¹⁰ Noting the various international treaties and instruments, with almost universal adherence, explicitly referring to the right to equality albeit for specific circumstances,¹¹¹ this might not constitute a significant challenge. This is because on aggregate it could be quite difficult to deny that the international community does not recognize a basic right to equality under international law.¹¹²

The second challenge to consider is whether the implementation of the right to equality by state actors, including social mobility, is in fact implemented under current IHRL regimes, through IHRL monitoring mechanisms.¹¹³ Such mechanisms primarily focus on expert assessments of IHRL implementation by states, mainly by the various treaty bodies of the Human Rights Council (HRC).¹¹⁴ At the end of the review processes, the relevant bodies issue recommendations for states to follow.¹¹⁵ This kind of monitoring process, based on universal standards, also contributes to the implementation of the right to equality under IHRL.¹¹⁶ If the monitoring process includes an emphasis on social mobility, this could mandate states to act and remedy social inequalities.

Attractive as these presumptions might be, in reality the IHRL review processes are inherently flawed. Not only do some states consider their outcomes, which can be in the form of HRC resolutions, to not be objective,¹¹⁷ but there also is no true way to ensure that state actors follow up recommendations issued by the treaty bodies.¹¹⁸ Moreover, determinations made by experts acting in their personal capacity, mostly non-government offi-

110. Daniel Moeckli, *Equality and Non-Discrimination*, in INTERNATIONAL HUMAN RIGHTS LAW 189, 193 (Daniel Moeckli et al. eds., 2010).

111. See, e.g., International Convention on Civil and Political Rights (ICCPR) art. 14(1), (Dec. 16, 1966), 999 U.N.T.S. 171 (referring to the right of equality before the courts); International Convention on Economic, Social and Cultural Rights (ICESCR) art. 3 (Dec. 19, 1966) 993 U.N.T.S. 3 (referring to economic, social, and cultural rights).

112. See G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 1 (Dec. 10, 1948) (“All human beings are born free and equal in dignity and rights.”).

113. Social mobility can be considered as one of the main social indicators related to living conditions and social and economic conditions. U.N. OFF. OF THE HIGH COMM’R FOR HUM. RTS. [OHCHR], HUMAN RIGHTS INDICATORS: A GUIDE TO MEASUREMENT AND IMPLEMENTATION, at 57, U.N. Doc. HR/PUB/12/5, U.N. Sales No. 13.XIV.2 (2012).

114. *Monitoring the Core International Human Rights Treaties*, OHCHR, <https://www.ohchr.org/EN/HRBodies/Pages/Overview.aspx> (last visited July 3, 2020).

115. *Id.*

116. Alongside the monitoring process, the treaty bodies also issue general comments on the implementation of the Covenants. In the context of the right to equality, see U.N., Econ. & Soc. Council, Comm. on Econ., Soc. and Cultural Rights, GEN. COMMENT N. 16 ON ART. 3 OF THE Int’l Covenant on Econ., Soc. and Cultural Rights, U.N. Doc. E/C.12/2005/3 (2005).

117. For views expressed on the work of the HRC during a discussion in the U.N. General Assembly, for example, see Meetings Coverage, Delegates Argue over Objectivity, Double Standards in Human Rights Council, as General Assembly Considers Annual Report, at 2, U.N. Doc. GA/12087 (Nov. 2, 2018), <https://www.un.org/press/en/2018/ga12087.doc.htm>.

118. Follow-up procedures for some aspects of the outcomes monitoring process are in place, but reviews of state actors’ rate of compliance with such outcomes indicate a relatively low com-

cial, could raise significant legitimacy issues for domestic policy makers.¹¹⁹ This can be especially problematic for social mobility, a notion inherently linked to specific and unique circumstances of each domestic society.¹²⁰ Consequently, even if monitoring of the right to equality includes a focus on social mobility, or even if a new right to social mobility is created, an extremely challenging feat on its own,¹²¹ going down this IHRL venue seems to have little potential for true success.

The difficulties identified above bring to light the need to consider the alternative route of providing a mechanism for states to encourage promotion of social mobility in each other, similar to the approach discussed in the previous section. Following this route would first necessitate overcoming the notion that IHRL only applies between sovereigns and their subjects, regulating the exercise of governmental authority.¹²² Beyond this prism, the question of IHRL applicability is complex, gaining the attention of much scholarship that focuses on its application in times of conflict¹²³ or extraterritorially.¹²⁴

The terms and conditions for extraterritorial application of IHRL are complicated.¹²⁵ For the purposes of this paper, the notion of extraterritoriality is used to highlight that the international community does not rule out the idea that states can have some overall obligation, even if states can derogate from it, to promote IHRL values beyond their borders.¹²⁶ Global promotion of social mobility in the IHRL context can also be associated with the Responsibility to Protect (R2P), if for example we can link social

pliance rate. Machiko Kanetake, *UN Human Rights Treaty Monitoring Bodies Before Domestic Courts*, 67 INT'L & COMPAR. L.Q. 201, 206–07 (2018).

119. On the other hand, the use of such independent experts is considered an important feature of the IHRL monitoring process aimed at guaranteeing promotion of human rights and freedoms. Navi Pillay, *The International Human Rights Treaty System: Impact at the Domestic and International Levels*, 21 HUM. RTS. BRIEF 1 (2014).

120. Westoff et al., *supra* note 5.

121. Establishing a new international human right, or recognizing it, can be very challenging, even in cases where there is arguably global consensus. In the context of the right to a clean and healthy environment, see the call by the HRC Special Rapporteur for the UN and the HRC to adopt a decision to this effect. Hum. Rts. Council, Right to a Healthy Environment: Good Practices, ¶ 115, U.N. Doc. A/HRC/43/53 (Dec. 30, 2019).

122. Orna Ben-Naftali & Yuval Shany, *Living in Denial: The Application of Human Rights in the Occupied Territories*, 37 ISR. L. REV. 17, 32 (2003).

123. See, e.g., William A. Schabas, *Parallel Applicability of International Humanitarian Law and International Human Rights Law: Lex Specialis? Belt and Suspenders? The Parallel Operation of Human Rights Law and the Law of Armed Conflict, and the Conundrum of Jus ad Bellum*, 40 ISR. L. REV. (SPECIAL ISSUE) 592 (2007).

124. The significant question is what the standard for such extraterritorial application is. See Yuval Shany, *Transnational Armed Conflict: The Law Applicable to Non-Occupied Gaza: A Comment on Bassiouni v. The Prime Minister of Israel*, 42 ISR. L. REV. (SYMP. ISSUE) 101, 113 (2009).

125. See, e.g., Ralph Wilde, *The Extraterritorial Application of International Human Rights Law on Civil and Political Rights*, in *Routledge Handbook of International Human Rights* 635 (2013).

126. See *id.* at 658.

mobility with human security (an idea which can be developed with further study).¹²⁷

Ruling out the utility of using current IHRL monitoring mechanisms to mandate, or encourage, states to promote social mobility (and suggesting the application of a global and “extraterritorial” notion of IHRL application), a potential direction to explore is an IHRL social mobility right linked to the Sustainable Development Goals 2030 (SDG). The SDGs include a set of seventeen detailed goals (including 167 specific aims) for the international community to achieve by the year 2030 and were adopted by 170 world leaders in 2015.¹²⁸ These goals relate to a variety of issues which are “grounded” in IHRL and have been characterized as offering “critical opportunities to further advance the realization of human rights for all people everywhere, without discrimination.”¹²⁹

Taking a broad view of social mobility can probably link each one of the SDGs to the concept of social mobility (or inherent inequality which can be considered as a subset of social mobility) as all have to do with promoting global and individual welfare in many relevant societal spheres.¹³⁰ At the same time, the SDGs also include SDG 10 titled “reducing inequality within and among countries.”¹³¹ Even if we stick to traditional notions of the concept, equality within countries cannot be achieved without intergenerational mobility.¹³²

From a legal perspective, the SDGs are embodied in a UN General Assembly (GA) resolution.¹³³ This can provide some formalization to the commitments of the international community to realization of the goals, as GA resolutions have some role to play in identification of international law,¹³⁴ and customary international law.¹³⁵ Nevertheless, GA resolutions

127. For an example of this idea in the context of human security and R2P obligations, see HANNES PELTONEN, *INTERNATIONAL RESPONSIBILITY AND GRAVE HUMANITARIAN CRISES: COLLECTIVE PROVISION FOR HUMAN SECURITY* 73 (2013).

128. G.A. Res. 70/1, *Transforming Our World: The 2030 Agenda for Sustainable Development* (Sept. 25, 2015).

129. *Sustainable Development Goals: Human Rights and the 2030 Agenda for Sustainable Development*, OHCHR, <https://www.ohchr.org/en/issues/SDGS/pages/the2030agenda.aspx> (last visited July 17, 2020).

130. For an extensive discussion of the linkages between inequalities and the SDG 2030, see U.N. Econ. & Soc. Comm’n. for Asia & the Pac., *A Guide to Inequality and the SDGs*, U.N. Doc. ST/ESCAP/2842 (2019).

131. *Goals: 10: Reduce Inequality Within and Among Countries*, U.N. DIV. FOR SUSTAINABLE DEV. GOALS, <https://sdgs.un.org/goals/goal10> (last visited July 17, 2020).

132. This is because inequality can set up a significant barrier to intergenerational mobility. See Miles Corak, *Income Inequality, Equality of Opportunity, and Intergenerational Mobility*, 27 J. ECON. PERSP. 79, 97–98 (2013).

133. See, e.g., G.A. Res 70/1, *supra* note 128.

134. For other aspects of the interaction between international law and the SDGs, see Dario Piselli, *The Sustainable Development Goals and International Law*, SENSE & SENSIBILITY (Apr. 8, 2016), <https://www.senseandsustainability.net/2016/04/08/the-sustainable-development-goals-and-international-law>.

are not legally binding.¹³⁶ Because the SDG 10 is not binding, using IHRL to support SDG 10 can be useful in the transnational discourse on global social mobility and in its domestic manifestations. From a practical perspective, the combination of IHRL and SDG-related social mobility is relevant in designing development assistance and foreign aid. Basing development assistance on compliance with IHRL is nothing new, and states who provide such assistance to the developing world can utilize the proposed linkages between IHRL and SDG to create incentives for social mobility policies.¹³⁷

Following this approach will echo the sentiment offered by the previous section regarding indicators which can “signal” to the international community that a certain state is promoting social mobility. It can also signal that improvements in social mobility should be rewarded either by receiving increased development assistance or by removal of trade barriers.

Utilizing IHRL norms to promote social mobility across the globe might likely be quite challenging as compliance with IHRL is still significantly lacking.¹³⁸ It is also the case that creating a new “right to social mobility” might not garner support,¹³⁹ although this does not preclude further consideration and study of this possible route in the context of a broader discussion of the outreach of IHRL and its limitations.¹⁴⁰

These conclusions notwithstanding, there is merit and potential in placing social mobility high on the agenda of IHRL implementation, enhanced by the SDGs in general and SDG 10 in particular. States adopting this approach in bilateral and multilateral settings can both contribute and benefit from framing social mobility as an IHRL issue to enhance domestic and global equality.

135. Int’l Law Comm’n, Draft Conclusions on the Identification of Customary International Law, U.N. Doc. A/73/10, at 147, Conclusion 12, Comment 2 (2018).

136. This represents the common view, although in the past there were calls for a different interpretation of General Assembly resolutions under some circumstances. See Oscar M. Garibaldi, *The Legal Status of General Assembly Resolutions: Some Conceptual Observations*, 73 PROC. ANN. MEETING (AM. SOC’Y INT’L L.) 324, 324–27 (1979).

137. The linkage between the pursuit of human rights and economic objectives by the recipient state and providing aid is defined as “conditionality.” See HILDE SELBERVIK, *AID AND CONDITIONALITY: THE ROLE OF THE BILATERAL DONOR: A CASE STUDY OF NORWEGIAN-TANZANIAN AID RELATIONSHIP* 13 (1999).

138. Ingrid Weurth, *Does International Law Have a “Broken Windows” Problem?*, LAWFARE (Apr. 10, 2017, 8:26 AM), <https://www.lawfareblog.com/does-international-law-have-broken-windows-problem>.

139. Such objections might be associated with the general criticism against the usefulness of IHRL in the larger context. See Eric Posner, *The Case Against Human Rights*, THE GUARDIAN (Dec. 4, 2014), <https://www.theguardian.com/news/2014/dec/04/sp-case-against-human-rights>.

140. Such an approach could be associated with the view that a right of social mobility is essential to ensure social inclusion. See U.N. DEP’T OF ECON. & SOC. AFFAIRS, *LEAVING NO ONE BEHIND—THE IMPERATIVE OF INCLUSIVE DEVELOPMENT, REPORT ON THE WORLD SOCIAL SITUATION 2016*, at 84, U.N. Doc. ST/ESA/362, U.N. Sales No. E.16.IV.1 (2016).

VI. CHALLENGES FOR POLICY MAKERS AND DIRECTIONS FOR A WAY FORWARD

Analysis presented in the previous sections demonstrated the significant potential for bilateral and transnational norms to promote social mobility. As suggested, these norms can provide important vehicles for transforming the way social mobility is considered and regulated on a global scale.

From a theoretical perspective, these suggested routes of utilizing international economic law bilateral or multilateral frameworks or IHRL norms (based on global justice and cosmopolitan values) provide a platform for state actors to consider by placing social mobility high on the agenda while conducting international relations. In the age of globalization, such a shift in thinking might not be self-evident, but if social mobility is indeed a cosmopolitan value as previously discussed, it should overcome any barriers related to sovereignty. Persuasive as this line of argument may seem, there are several key challenges for policy makers wishing to adopt the suggested approach.

First, and foremost, in recent years, globalization previously accepted as par for the course by the international community is facing significant challenges in the form of a turn back to traditional sovereignty notions. This is evident by historical events such as Brexit and policies enacted by states, like the US in the past, which signify a boomerang reaction to globalization and implementation of inward policies including transnational norms on trade and climate.¹⁴¹ The inward turn can pose extremely complicated obstacles, as discourse on trade is today sometimes portrayed as a competition between states,¹⁴² and not as a means to promote global prosperity as was the case in the past,¹⁴³ or as ensuring global equality.¹⁴⁴

141. These events can be considered as part of a wider anti-globalization trend with significant implications. In the context of global health, see Isabelle Macgregor-Bowles & Devin C. Bowles, *Trump, Brexit, Right-wing Anti-globalisation, and an Uncertain Future for Public Health*, 4 AIMS PUB. HEALTH 139, 139–48 (2017). This might change under the new U.S. administration, but it is hard to tell whether the actions undertaken by the previous administration will have a lingering impact.

142. For an argument that this framing is a matter of myth and that the true competition is between states, see Yuwa Hedrick-Wong, *Competition in International Trade: Separating Fact from Fiction*, FORBES (Oct. 18, 2018), <https://www.forbes.com/sites/yuwahedrickwong/2018/10/18/competition-in-international-trade-separating-fact-from-fiction>.

143. In this context, organizations like the U.N. called for states to avoid imposing trade restrictions that do not correspond with trade multilateralism. See, for example, in the context of COVID-19-related trade restrictions, Kingsley Jeremiah, *UN Warns Against Lopsided Trade Rules, Climate Change, Others*, GUARDIAN (July 22, 2020, 4:13 AM), <https://guardian.ng/business-services/un-warns-against-lopsided-trade-rules-climate-change-others>.

144. See Press Release, U.N. Deputy Secretary-General, Multilateralism Key to Global Prosperity, Sustainability, Deputy Secretary-General Tells Symposium, Warning Trade Restrictions Could Erode Confidence, Derail Growth, U.N. Press Release DSG/SM/1171-DEV/3327-ECO/282 (Apr. 27, 2018).

This is a very difficult challenge for policy makers aiming for a global framework for promoting social mobility on a global scale. One way to mitigate this difficulty is to present a narrative of social mobility that is disconnected from the trade discourse.¹⁴⁵ In creating international norms, domestic narrative can play an important role.¹⁴⁶ Policy makers should identify the publicly sensitive issues that can arise in order to neutralize them and minimize objections to establishing the transnational normative frameworks. Alternatively, policy makers can present bilateral and multilateral norms supporting social mobility as geared towards benefiting all state actors involved. This could be done, for example, by highlighting the fact that if social mobility is increased in one country this could result in less migration to the other—a hot button issue of concern for developed countries across the world.¹⁴⁷

Second, scholars and policymakers engaging in work on social mobility usually narrowly perceive it as related to domestic circumstances and policies.¹⁴⁸ Accordingly, when studies and policies are developed these heavily focus on domestic agendas and data.¹⁴⁹ International perspectives, if any, are considered as a part of a comparative analysis, reinforcing the notion that social mobility is a domestic issue.¹⁵⁰

This narrow perception can also be addressed by a change in narrative¹⁵¹ using globalization-based transnational networks.¹⁵² Such networks, whether composed of policy makers or scholars and technical experts, can

145. For an analysis pointing out the mixed results of international trade for global equality, see Shujiro Urata & Dionisius A. Narjoko, Asian Dev. Bank Inst. [ADB], *International Trade and Inequality*, at 1, 18–19 (ADBI Working Paper Series, No. 675, Feb. 2017), <https://www.adb.org/sites/default/files/publication/230591/adbi-wp675.pdf>.

146. For the potential of transforming narratives for enhancing upward social mobility, see AI-JEN POO & ELДАР SHAFIR, U.S. P'SHIP ON MOBILITY FROM POVERTY, CHANGING THE NARRATIVE 1, 12 (2018).

147. This concern is especially associated with lower-income individuals that can arguably be exposed to economic harm, and reduced social mobility, resulting from immigration. For an example with respect to Norway, see MARIA F. HOEN ET AL., RAGNAR FRISCH CTR. FOR ECON. RSCH., IMMIGRATION AND SOCIAL MOBILITY 41 (2019), https://www.frisch.uio.no/publikasjoner/pdf/2019/immigration_and_social_mobility_revised_version.pdf.

148. In the U.S. context, see, for example, Xi Songa et al., *Long-term Decline in Intergenerational Mobility in the United States Since the 1850s*, 117 Proc. Nat'l Acad. Scis. U.S. Am. 251, 251–58 (2020).

149. See, e.g., Kate Hopkins & Bernard Baker, *Social Mobility: The Potential of a Genealogical Approach*, 45 BRIT. EDUC. RSCH. J. 238, 249–50 (2019) (providing policy recommendations derived from interviews with forty-two students enrolled in one school in the U.K.).

150. For one such study, see OECD, *A Family Affair: Intergenerational Social Mobility Across OECD Countries*, in ECONOMIC POLICY REFORMS GOING FOR GROWTH 183–200 (2010).

151. Contemporary studies of social mobility sometimes address transnationalism, but these studies are mostly concerned with the study of social mobility in the context of transnational families and immigration, rather than with the impacts of transnational trade or IHRL on social mobility. See, e.g., KAROLINA BARGLOWSKI, THE SYMBOLIC MEANING OF MOBILITY IN TRANSNATIONAL FAMILIES (Goethe-Universität Frankfurt Am Main, Institut für Soziologie, Working Paper Series “Gender, Diversity and Migration” No. 7, 2015), https://www.fb03.uni-frankfurt.de/58343458/Working_Paper_7.pdf.

play an essential role in creating transnational norms to address global challenges.¹⁵³ The elevation of domestic issues to a transnational level has often benefited from such networks, including, *inter alia*, with regard to regulation of international commerce (United Nations Commission on International Trade Law (UNCITRAL)),¹⁵⁴ and corruption.¹⁵⁵ Creating transnational networks to support social mobility also bodes well with the globalization-inspired concept of a disaggregated state, where state and non-state actors of a varied nature take leading roles in the design of transnational norms with counterparts from other states.

Third, transform the inherent perception that globalization, related to trade or transnational norms, is an anathema to social mobility. This kind of perception is often based on scholarship and studies or economic data¹⁵⁶ and can constitute almost a deathblow to any efforts to internationalize social mobility values. This ingrained traditionally held view can be detrimental to any attempt to shift the normative placement of social mobility from the domestic to the global, even if narratives change and supporting transnational networks are established. Out of the challenges presented herein, this might be the most formidable and likely to pose the most difficult hurdle to overcome. Based on past experiences, an efficient and constructive way to transform this notion is to build upon the wide definition of social mobility, offered in the paper's first section, and to promote buy in by leading international organizations.¹⁵⁷ In January 2020, the World Economic Forum (WEF), taking a global lead on the issue, created the social mobility index, articulating an index ranking-based system¹⁵⁸ that echoes the dis-

152. See Laura Oso & Laura Suárez-Grimalt, *Migration and Intergenerational Strategies for Social Mobility: Theoretical and Methodological Challenges*, 42 MIGRACIONES 19, 19–41 (2017).

153. In the context of the review mechanism of the UNCAC, see, for example, Matti Joutsen & Adam Graycar, *When Experts Meet Diplomats*, 18 GLOB. GOVERNANCE 425 (2012).

154. See *About UNCITRAL*, U.N. COMM'N ON INT'L TRADE L., <https://uncitral.un.org/en/about> (last visited July 18, 2020).

155. See, e.g., *Implementation Review Group*, U.N. OFF. ON DRUGS & CRIME, <https://www.unodc.org/unodc/en/corruption/IRG/implementation-review-group.html> (last visited May 1, 2021). The Implementation Review Group is a network of officials from UNCAC member states (over 185 in number) responsible for any issues relating to UNCAC implementation.

156. The common argument seems to be that “[g]lobalization . . . [has] exacerbated inequalities.” Parnjal Sharma, *Davos 2020: Poor Social Mobility and Inequality Recognised as a Crisis*, BUS. STANDARD (Jan. 21, 2020), https://www.business-standard.com/article/international/davos-2020-poor-social-mobility-and-inequality-recognised-as-a-crisis-120012101477_1.html.

157. This shift could occur if international organizations would consider the issue of social mobility from a transnational perspective. In that context, one example is the focus of the International Organization for Migration (IOM) on the impacts of income derived by immigrants working abroad to social mobility in source countries such as the Philippines, which coincided with the agenda of the government to utilize migrant work for domestic advantages. See Jorge V. Tigno, “Home Improvement?” *Migration, Social Mobility, and Development in the Philippines*, in *SOCIAL MOBILITY: EXPERIENCES AND LESSONS FROM ASIA* 89, 90 (Taejong Kim & Anthea Mulakala eds., 2014).

158. *Global Social Mobility Index 2020: Why Economies Benefit from Fixing Inequality*, WORLD ECON. F. (Jan. 19, 2020), <https://www.weforum.org/reports/global-social-mobility-index-2020-why-economies-benefit-from-fixing-inequality>.

course on raking presented earlier in this paper. While it is difficult to accurately foresee the impact of this index, its message is clear that social mobility is a key factor in creating prosperous societies and economic growth.¹⁵⁹

Noting that in some instances domestic change is triggered by creating international norms and corresponding incentives, policy makers and scholars alike, should utilize international platforms, as offered by the example of the WEF,¹⁶⁰ to change domestic policy making and highlight the global focus on social mobility. Such a global focus, based on the practice of international organizations can support a shift from viewing social mobility as purely domestic to approaching it as inherently linked to global norms and in a positive rather than a negative stance.

Finally, if international organizations, driven by domestic stakeholders, whether policy makers, private sector actors, scholars, or civil society, will place social mobility as a high priority issue, subject to indexing and standardization, this might result in the utilization of indices for the purpose of making direct foreign investment decisions and policies.¹⁶¹ If this became the case, the resulting benefits might constitute an important trade-off with the drawbacks associated with deploying transnational incentives for promoting social mobility.

Despite the viability of the solutions offered in this section, the challenges posed can be too difficult to overcome, at least for some states and some state actors. Nevertheless, considering the potential domestic and global benefits, including for the increase in trade and the potential for new thinking and innovative approaches for promoting social mobility, there could be great value for any stakeholder interested in social mobility, globalization, or trade to engage on social mobility from the international, rather than the solely domestic realm.

VII. CONCLUSION

This paper offers two main routes to ensure that the “Jeffersons” of the world are provided an equal opportunity to “move on up to the east side,” and to increase social mobility on the global scale despite inherent tensions with globalized trade frameworks. One route focuses on bilateral and multi-lateral normative international economic law based frameworks, and another focuses on IHRL combined with the SDGs.

As this paper’s final section highlighted, stakeholders wishing to pursue either route might face inherent hurdles. Notwithstanding the solutions

159. See Karen Gilchrist, *Where You’re Born Determines the Opportunities You Get in Life*, *Says the World Economic Forum*, CNBC (Jan. 21, 2020), <https://www.cnbc.com/2020/01/21/wef-where-youre-born-determines-the-opportunities-you-get-in-life.html>.

160. See *Global Social Mobility Index 2020*, *supra* note 158.

161. See SELBERVIK, *supra* note 137.

proposed by the paper, such hurdles can be detrimental to any attempt to “internationalize” any discourse of social mobility. Recognizing this difficulty, even if analysis offered only results in persuading stakeholders of the importance and potential of an international framing of social mobility, the paper’s goal would have been achieved. This is because it would unearth a so far mostly very narrowly debated positive linkage between globalization, trade, and social mobility that can facilitate enhanced equality amongst and within states, as envisioned in SDG 10, particularly necessary in light of the impact of the COVID-19 pandemic on global inequality.¹⁶²

162. Joseph Stiglitz, *Conquering the Great Divide*, FIN. & DEV., (Sept. 2020), at 17, 17–19, <https://www.imf.org/external/pubs/ft/fandd/2020/09/pdf/COVID19-and-global-inequality-joseph-stiglitz.pdf>.