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International Law and the Spectre of Inequality

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Publication date

2019

Document Version

Final published version

[Link to publication](#)

Citation for published version (APA):

Venzke, I. (2019). *International Law and the Spectre of Inequality*. (Inaugural lecture; No. 607). Universiteit van Amsterdam.

http://cf.bc.uva.nl/download/oraties/oraties_2019/Venzke_Ingo.pdf

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International Law and the Spectre of Inequality

International Law and the Spectre of Inequality

Rede

in verkorte vorm uitgesproken
bij de openbare aanvaarding van het ambt van
hoogleraar *International Law and Social Justice*
aan de Universiteit van Amsterdam
op donderdag 16 mei 2019

door

prof. dr. mr. Ingo Venzke

This is inaugural lecture 607, published in this series of the University of Amsterdam.

Lay-out: JAPES, Amsterdam

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*Dear Rector Magnificus,
Dear Dean,
Dear Colleagues, Students,
Family and Friends,*

Introduction

A physician called Charles Turner Thackrah stood at Oxford Road, Manchester, in the 1830s and observed the workers as they left the mills:

The children were almost universally ill-looking, small, sickly, barefoot, and ill-clad. Many appeared to be no older than seven. The men ... were almost as pallid and thin as the children. ... Here I saw ... men and women that were not to be aged, children that were never to be healthy adults. It was a mournful spectacle.¹

Ever since the Industrial Revolution, poverty has existed in the midst of plenty.² Inequality within and between countries started to soar. The conditions in the colonies were still worse than those in Manchester, slavery was entirely normal and widely believed to be just. Gradually, however, the mournful spectacles became rare in the Global North and increasingly common in the Global South as part of a new international division of labour. These spectacles now mostly play in sweatshops in South East Asia, in South American farming, or in Chinese assembly lines.

Today, opportunities in life depend mostly on where somebody is born, whether it is Niger at the very bottom of the Human Development Index, or Norway at the very top. The average Norwegian lives for 82 years, goes to school for 13 years and has an annual income of 68,000 USD. The average Nigerian lives for 60 years, goes to school for two and has an annual income of just 900 USD.³ Within countries, inequality declined in most of the 20th century, but has in recent decades again reached levels unknown since the days of the Industrial Revolution.⁴ Brexit and the *gilets jaunes* have pushed the issue of inequality to the fore: stories have been reported such as those of Joel Decoux in France, who collects wood for heating because he cannot af-

ford the gas bill, or of Florian Dou, who, like others, is desperate when the money runs out around the 20th of each month. He wonders which meal to skip.⁵ Developments across countries are perhaps most remarkable, showing how the global top 1% have captured 27% of the income growth since 1980 and now hold close to half of the world's wealth.⁶ Those developments have also shown that, next to the bottom billion, the middle class in the West has hardly benefited from globalization and the growth it created.⁷ Current levels of inequality evoke a sense of injustice that is at the root of many current protests.⁸ That sense is paralleled by a feeling of alienation from the world – a feeling of impotence in the face of apparently inhuman forces that tie the present to a future that seems rather bleak.⁹

My argument today is about a spectre that is haunting international law – the spectre of inequality.¹⁰ I will develop my argument in three acts: First, the presence of a spectre means that something is rotten in the international legal order. Both by design and by failure, international law has contributed to high levels of inequality. Second, the spectre is animated by a spirit, the spirit of social justice.¹¹ As such, it points to forsaken paths and lost memories, for haunting is always historical.¹² The spectre conjures up past possibilities that were not realized. Third, the spectre does not go away unless we give in, work with it, and follow the logic of the ghost. It foregrounds something we still need to deal with, and it even helps us to do that.

This structure maps on to the appearance of the most famous ghost who ever entered the stage, that of the late King Hamlet. The moment the spectre enters, it is clear that '[s]omething is rotten'. The ghost eventually reveals the crime of the late King's death. But he does so only after Horatio ('By heaven, I charge thee, speak!') and then Hamlet himself urge him to speak: 'Where will thou lead me? speak; I'll go no further'.¹³ The spectre of inequality, I will argue, asks us to stop and reconsider the present state of affairs. It takes us back to the past and towards contradictions within international law – that body of law which is part of the problem of inequality as much as it may be part of responses to it.

I. Something is Rotten

A. *Distributing Value*

International law is haunted by the spectre of inequality because at present, the law neglects its distributive impact or, in any event, abdicates responsibility for distributive consequences. That is expressed most clearly in a recent

report published jointly by the International Monetary Fund (IMF), the World Bank (WB) and the World Trade Organization (WTO). The report is titled: *Making Trade an Engine of Growth for All: The Case for Trade and for Policies to Facilitate Adjustment*.¹⁴ International law and institutions take care of growth, especially by reducing barriers to trade. Domestic law and institutions facilitate adjustment, especially by supporting 'worker mobility across firms, industries and regions'.¹⁵ The report acknowledges the downsides to economic liberalization and notes that '[w]ith the right policies, countries can ... lift up those who have been left behind.'¹⁶ International law and its institutions assume the responsibility for increasing the size of the pie, but abdicate responsibility for the distribution of the pieces to the national level of governance.¹⁷

The argument that trade is an engine for growth leans on the magic of the comparative advantage. In his *Wealth of Nations*, Adam Smith taught back in 1776 that '[t]he tailor does not attempt to make his own shoes, but buys them of the shoemaker.'¹⁸ David Ricardo refined the thought in his *Principles of Political Economy and Taxation* of 1817:

It is quite as important to the happiness of mankind that our enjoyments should be increased by the better distribution of labour. ... Under a system of perfectly free commerce, each country naturally devotes its capital and labour to such employments as are most beneficial to each. This pursuit of individual advantage is admirably connected with the universal good of the whole. . . . It is this principle which determines that wine shall be made in France and Portugal, that corn shall be grown in America and Poland, and that hardware and other goods shall be manufactured in England.¹⁹

Ricardo strongly opposed Great Britain's famous Corn Laws, which imposed high tariffs on imports of corn, so that domestic farmers were protected against cheaper foreign competition.²⁰ In economic terms, those tariffs amounted to a rent – they did not create but transferred profit (from the consumer of corn to its producer).²¹ On a widely prevailing account, it eventually became the main function of international trade law to prevent precisely such rent-seeking by domestic pressure-groups like farmers. Among other things, international law caps tariffs and prohibits discrimination on the basis of origin, be it between different foreign producers or between foreign and domestic producers.²² As such, it is immediately at odds with social policy and economic planning, which is premised on discriminating some over others.

There are a series of well-established critiques of growth through trade, which may not only favour some countries more than others – read the stronger over the weaker – but may even render some of them *worse* off. In the 1950s, Raul Prebisch and Hans Singer already exposed the plight of producers of primary products (such as coffee, cacao, or copper) and developed their argument about deteriorating terms of trade for developing countries that are locked into an unfavourable division of labour.²³ Other well-received critiques remind us that the current division of labour has been legally structured and shaped in a way that continues to follow from patterns of colonial domination and exploitation.²⁴ It is not a coincidence that David Ricardo and others advocated trade liberalization and an international division of labour at a time in which Britain could become the ‘Workshop of the World,’ the centre of valuable production. Members of the British Parliament clearly saw the appeal of free trade so that ‘foreign nations would become Colonies to us, without imposing on us the responsibility of governing them.’²⁵

My point is this: Rather than being an engine for growth, the effect of international law and its institutions may in fact not primarily be in increasing the size of the pie, but rather in redistributing the pieces. International law has always played that dual role of increasing the size *and* distributing the pieces, but emphasis has shifted towards distribution.²⁶

A prime example is the emphasis on intellectual property protection – i.e. the protection of copyrights and patents. Like tariffs, copyright and patents are a form of rent as they fend off competition and distribute value from the consumer, who pays a higher price, to the producer, who can charge more.²⁷ The standard justification is that such a *temporary* monopoly for the producer is a necessary incentive for costly research, development and innovation.²⁸ Yet, under industry influence, the timeframe of protection has gradually expanded.²⁹ There is now a growing consensus across disciplines that such protection has gone too far, stifling rather than sparking innovation, and transferring rather than creating value. In stark contrast to the conventional view of understanding international economic law as a solution to the problem of rent-seeking, the law itself provides rents, and it does so for the haves rather than the have-nots.³⁰ The main problem for producers of primary commodities and for developing countries more generally is precisely their incapacity to extract rents created by law.³¹

B. *Minimal Protection*

International law and its institutions abdicate responsibility for the causes of inequality, especially in international trade law. At the same time, they are

weak in remedying inequality, as is the case for international human rights law. That body of law has in fact placed emphasis on basic needs and minimum standards – on poverty rather than inequality.³² It did not have to be that way, but that is how it was.³³ Soon after Robert McNamara became the President of the World Bank in 1968, he actually identified inequality as the major problem of the times.³⁴ He noted the yawning gap between the ‘highly privileged’ and the ‘desperately poor.’³⁵ McNamara drastically changed course a couple of years into his term of office. Speaking to the World Bank’s Board of Governors in Nairobi, he argued:

If we look objectively at the world today, we must agree that it is characterized by a massive degree of inequality. The difference in living standards between the rich nations and the poor nations is a gap of gigantic proportions. The industrial base of the wealthy nations is so great, their technological capacity so advanced, and their consequent advantages so immense that it is unrealistic to expect that the gap will narrow by the end of the century. Every indication is that it will continue to grow. Nothing we can do is likely to prevent this. But what we can do is begin to move now to insure [sic] that absolute poverty – utter degradation – is ended.³⁶

This shift in policy is exemplary for the human rights discourse, which has focused on poverty rather than inequality, minimal protection rather than progressive distribution, basic needs rather than social justice.³⁷ In short, it has focused on symptoms rather than causes.³⁸ The shift in policy has gone hand in hand with an emphasis – in the World Bank and elsewhere – on good governance, civil and political rights, strong private property and access to justice.³⁹ The picture does not change if we consider socio-economic rights on equal footing. They have also settled for core obligations and minimal sufficiency – for sufficient food, sufficient water, sufficient housing.⁴⁰ Nor does it change if we consider the right to development⁴¹, obligations that human rights should be ‘progressively realized’⁴², or the requirement of international assistance and cooperation.⁴³

The turn to basic needs has been justified with arguments of political opportunity.⁴⁴ But it remains profoundly problematic and, in fact, lets go of any aspiration towards social justice. It does not only lose sight of the fact that poverty exists in the midst of plenty, but also skips the crucial question of why somebody is poor or struggles to meet basic needs.⁴⁵ A victim of a natural disaster formulates demands of assistance in reaction to anonymous bad luck. A victim of domination and exploitation, in contrast, struggles to overcome forms of domination and exploitation. As Rainer Forst pointed

out, '[i]njustice is one thing, fate and fortune another. ... One owes it to victims of domination not to treat them as "weak" and miserable human being in need of "help."' ⁴⁶

The emphasis on minimal protection and basic needs that runs through human rights law and its institutions skips over the reasons for unjust distribution, is not concerned with privilege or relationships of domination, and immediately focuses on the mournful spectacle that follows. That is not enough, is categorically wrong and politically flawed. Not only the minimalist conception of human rights, but also the emphasis on creating rather than distributing wealth in international trade law can however draw on a strong intellectual tradition.

C. *Hayek's Dream*

Friedrich von Hayek grew up in the Austro-Hungarian Empire while it was falling apart. He received his first doctorate in law and his second in economics from the University of Vienna and, in 1931, moved to the London School of Economics. In 1938, he refused to return to Austria and assumed British nationality. On the brink of the Second World War, Hayek published the remarkable article on the 'Economic Conditions of Interstate Federalism.'⁴⁷ He dreamed of a new world marked by lasting peace and justice, a world in which nationalist rivalry would belong to the past and economic efficiency would work to the progress of all. Non-discrimination and minimal protection were the two key pillars. It was a noble dream.

Hayek had seen how economic frontiers and nationalist rivalries went hand in hand. They create a context in which conflicts of interest become conflicts between communities rather than individuals, thus bearing a greater destructive potential.⁴⁸ His response was a drastic individualism with cosmopolitan reach where economic frontiers and nations would be undone so that groups would be 'of constantly varying composition'. Individuals would 'find[] themselves arrayed, sometimes with one group against another, and at other times on other issues with the second group against the first.'⁴⁹ As a result, deadly conflicts that rely on the mobilization of nationalism would become impossible. There should be no discrimination between insiders and outsiders – between those who belong to a nation and those who do not.⁵⁰

Hayek pushed forward the thought that it is not only inefficient but also unjust to subsidize the corn farmer next door and make everyone else worse off, including the farmer across the border.⁵¹ Social bonds of neighbourhood – or 'the myth of nationality',⁵² as he put it – would lead to policies that favour somebody's kin, contradict each individual's enlightened self-interest,

and make everyone worse off. If liberalization leads to inequality, so be it. Stronger still, in his view, economic gains are impossible without inequality: 'If on an international scale even major inequalities may be of great assistance to the progress of all, can there be much doubt that the same is also true of such inequalities within a nation?'⁵³

Social justice was as a concept 'wholly devoid of meaning or content' for Hayek, a 'mirage.'⁵⁴ If social justice was pursued all the same, then it would lead down the road of serfdom towards arbitrary and oppressive policies.⁵⁵ It would nourish precisely those social ties that, like nationalism, bear the greatest peril.

The interstate federation that Hayek imagined would then be strong enough to perform the functions of the liberal state – that is safeguarding lives, liberty and prosperity.⁵⁶ It would guarantee individual liberty. The Mont Pèlerin Society, which Hayek established in 1947, dedicated itself precisely to the 'essential conditions of human dignity and freedom', the 'position of the individual' and the 'most precious possession of Western Man, freedom of thought and expression.'⁵⁷ The interstate federation would at the same time be too weak to regulate economic life.⁵⁸ It could not possibly aim at social freedom since there would be no majority for the regulation of economic life – any interference with the market in the name of social justice was not only unnecessary, but structurally impossible.

In 1974, Hayek received the Nobel Prize in economics and dedicated his acceptance speech to 'The Pretence of Knowledge', attacking the methodological foundations of interventions into the market: How could we know the effects of those interventions down the line?⁵⁹ By trying to know better than the market, Hayek argued, economists have in fact 'made a mess of things.'⁶⁰ He rejected his discipline's attraction to the allures of the hard sciences and, during his dinner toast on the eve before his Nobel lecture, he said: '[H]ad I been consulted whether to establish a Nobel Prize in economics, I should have decidedly advised against it.'⁶¹ There is no certainty in economic planning, so it is better to level the playing field by enforcing non-discrimination and protecting individual liberty.

Hayek's dream turned foul for large parts of the world, as it just did not happen that economic growth would lift all boats. High levels of inequality have not been conducive to efficiency but have left large parts of the world simply out of global production. It included other parts only to leave them on the edge of survival.⁶² The world of international law is not shaped in Hayek's image, but it comes remarkably close.⁶³ International economic law ensures non-discrimination and human rights law has settled for the protection of the minimum.

II. Possibilities in the Past

A. *The Spirit of Social Justice*

The Industrial Revolution was part of the background for arguments to liberalize trade in an effort to make Britain the ‘Workshop of the World.’ It triggered the first significant increase in levels of inequality, both globally and locally, produced mournful spectacles such as the one observed by Charles Turner Thackrah on Oxford Road in Manchester, and sparked labour movements pushing for social justice. Those were local movements of the working middle-class with an increasing international orientation. Like all history, the history of domestic social legislation and international collaboration reflects the confluence of both power and ideas – the power of labour in relation to capital, and ideas of social as opposed to individual freedom.

Otto von Bismarck would not have enacted the first social legislation in the 1880s, nor would the International Labour Organization (ILO) have been set up with the Treaty of Versailles in 1919 had it not been for a plausible fear of communist revolution.⁶⁴ When the Treaty of Versailles claimed that it ‘reflect [s] the belief that universal and lasting peace can be accomplished only if it is based on social justice,’⁶⁵ it expressed a belief that was shaped by the First World War just as well as the Russian Revolution.⁶⁶ The same applies to the preamble of the ILO’s Constitution, which notes that ‘conditions of labour exist, involving such injustice, hardship and privation to a large number of people so as to produce unrest so great that the peace and harmony of the world is imperiled.’⁶⁷ The spirit of social justice and the power of labour lives on in these documents.

The United States eventually joined the ILO in 1934, after the Great Depression and in the context of Franklin D. Roosevelt’s New Deal.⁶⁸ At the time, it was notably a rather common view in the U.S. and elsewhere that labour standards should be promoted globally so as to ultimately *equalize* costs of production and to *erase* sources of comparative advantage.⁶⁹ The motivation was genuinely two-fold, to benefit local and global conditions. Already in 1935, Roosevelt supported social legislation with the argument that ‘necessitous men are not free men’⁷⁰ – a thought that then found its crisp expression in the idea of ‘freedom from want ... everywhere in the world’.⁷¹ The importance of the ILO has all too easily been glossed over in attempts at making sense of the international order after the Second World War. Among other things, it helped to enshrine the spirit of social justice within the UN Charter, whose preamble, it should not be forgotten, affirms the aim of ‘promot[ing] social progress and better standards of life *in larger freedom*.’⁷² The

ILO's 1944 Declaration of Philadelphia speaks of the 'war against want', assumes the language of human rights, and took aim at the global economy.⁷³ At the same time, the ILO was too weak to take on the modes of economic production and ended up spearheading the focus on basic needs by the early 1970s.⁷⁴ It has since then settled for a minimum. In 1975, the ILO moved to a new building and left its premises on the lake of Geneva to the Secretariat of the General Agreement on Tariffs and Trade (which developed into the WTO in 1995). The place that once proclaimed that 'labour is not a commodity'⁷⁵ now houses the organization that facilitates the global division of labour.⁷⁶ The spirit of social justice is left wandering in some despair.

B. Structural Transformation

The spirit of social justice animated different, material conceptions of sovereignty and freedom. For a short period in the 1940s, the spirit could place its hope on the World Trade Charter and the International Trade Organization (ITO), which reflected a distinct concern for economic development.⁷⁷ But against expectations, the Charter ended in the dustbins of history and the ITO was never set up.

The spirit still lingered on and came to the fore in the push towards the New International Economic Order in the 1960s and 70s.⁷⁸ Former colonies typically found themselves tied to a legal order that recognized their formal independence and cemented their material dependence.⁷⁹ They were held to past commitments they did not choose, took on debts they did not incur, and entered a legal order in whose making they did not have a voice. Mohammed Bedjaoui wrote at the time that

international law has helped to make independence a completely superficial phenomenon, beneath the surface of which the old forms of domination survive and the economic empires of the multinational corporations, and the powers that protect them, prosper.⁸⁰

Bedjaoui wrote of phantom sovereignty, of relations of independence as a mirage against an oligarchical system based on the exploitation of the greatest possible number of peoples.⁸¹

The New International Economic Order (NIEO) in turn pursued a series of changes in the international legal order that would have empowered weaker states: given them knowledge to diversify their production, barrier-free market entry to sell their products, and access to new forms of finance.⁸² It also aimed at a Code of Conduct on Transnational Corporations, which would

have created binding obligations on corporations, as opposed to the patchwork of now around 3,000 bilateral investment treaties which grant foreign corporations rights without duties.⁸³ After decades of ill-fated voluntary standards and self-certification we are just now back at negotiating a Treaty on Business and Human Rights. At present, even the most far-reaching proposals still pale in comparison to the Code of the 1970s.

It conveniently helped the Global North in countering the programme of a New International Economic Order that many governments in the Global South had a poor record in improving the lot of their people – a record in which the North was at least occasionally complicit.⁸⁴ Many leaders from the Global South governed by dictatorial means and to the benefit of a small elite of allies. Against that background, governments in the Global North could now reject demands for international redistribution and put good governance first, in their own national foreign policies and in the work of the international organizations that they controlled.⁸⁵ This brings me back, once more, to human rights and basic needs.

There has been a competing vision of human rights that focused not on poverty but on unjustified privilege, that understood rights as relational rather than self-reliant and that placed emphasis not on safeguarding minimum standards, but human rights as allies in political transformation. Over the past couple of years, great research has been carried out on the history of human rights, especially on the developments of the discourse in the 1970s.⁸⁶ It is the case that the international human rights discourse lost its structural vision and adopted a politically rather tame focus on civil and political rights. Institutionally it placed its hopes on the judiciary for social transformation. All of this fitted all too well with a neoliberal agenda, much more so than with socio-political transformation.⁸⁷

This was, by the way, quite the same in the related discourses on rights in domestic contexts. The progressive movements of 1968 somewhat tragically thought that the intrusive state was the main enemy of individual liberty. Those movements never resolved the tensions between that liberty and demands for social justice. Their legacy has clearly placed emphasis on the former. In his *L'arrogance du présent*, Jean Claude Milner observed how the spirit of '68 lived on in the cities while the impoverished youth did not know what to do with it.⁸⁸ The *gilets jaunes* do not speak the language of human rights, which tend to look like the privileges of the other.

C. Myrdal's Gloom

The Swedish economist Gunnar Myrdal was one of those who struggled to keep the spirit of social justice alive. Like Friedrich Hayek, Myrdal first studied law and then turned to economics. In 1974, the two of them grudgingly shared the Nobel Prize for Economics, both aged 75 at the time. Their views could hardly have been more different.⁸⁹

Both Nobel laureates argued against the background experience of the welfare state and how it developed in the decades after the Second World War. For Hayek, its excesses in economic planning stood in the way of efficiency gains through increased liberalization. For Myrdal, the welfare state was a role model for global economic governance for intrinsic as well as instrumental reasons. For him, inequality within and between nations was an essentially moral concern, and it hindered growth as '[w]isely planned social reforms' had in fact 'assur[ed] more steady and rapid growth.'⁹⁰ This stands in strong opposition to Hayek, for whom inequality was not a concern and anyway impossible to avoid in pursuit of growth.

Myrdal made his breakthrough with his influential 1944 book *An American Dilemma* in which he analysed class relations in the United States. In the decades that followed, he increasingly turned to the global context. He titled his Nobel acceptance speech 'The Equality Issue in World Development'. He argued that the most egregious forms of inequality were shielded from international scrutiny for as long as large parts of the world continued to be colonized. But decolonization had now exposed 'the huge income gap between the poor majority of mankind and the rich minority'. In his view, decolonization had broken through the 'isolating wall of inattention [and] ignorance'.⁹¹ That was certainly a bit too optimistic and underestimated the reluctance of those in the Global North to give up 'the peace and quiet that injustice can and does offer'.⁹² The global division of labour continues to hide misery and pollution just enough in the peripheries so that ignorance and hypocrisy can continue to prevail in the centres.⁹³

Myrdal's main point of criticism was then directed against the aid policies of developed countries, which he found not only entirely insufficient and wholly opportunistic but, more importantly, ill conceived. He sided with the core direction of the NIEO and the demands of 'underdeveloped countries,' which were at the time 'proclaiming the necessity of not only increased aid but fundamental changes of international economic relations.'⁹⁴ Myrdal's view of justice in economic relations, both locally and globally, was thoroughly relational. He argued about gains from privilege and domination, not about profit in some fair competition.⁹⁵

Moreover, Myrdal argued that the uncritical emphasis on growth has painfully limited the horizon of economic policy-making. He confronted his audience in Stockholm with the ‘blunt truth,’ as he put it, ‘that without rather radical changes in the consumption patterns in the rich countries, any pious talk about a new world economic order is humbug.’⁹⁶ *Avant la lettre*, he tied his argument on equality in world development to issues of sustainability.⁹⁷ To Hayek’s outspoken dismay, Myrdal’s lecture fell on fertile grounds and, among other things, created ripples in the Club of Rome, which published its report on ‘Reshaping the International Order’ two years later, under Jan Tinbergen’s leadership.⁹⁸

Myrdal’s acceptance speech can be read as the opposite of Hayek’s views throughout. In closing, Myrdal challenged his co-laureate’s stance on economic science head on: ‘Even though my world-view must be gloomy,’ Myrdal concluded, ‘I am hopeful about the development of our science. ... We are free to expand and perfect our knowledge about the world, only restricted by the number of scientists working and ... their openness to fresh approaches.’⁹⁹

Myrdal emphasized inequality in domestic and international relations and never adopted the language of human rights as it gradually settled on individual rights and basic needs.¹⁰⁰ Inequality was a thoroughly relational issue for him, solved by political means and by changes in the institutional structures of governance, neither by aid, nor by minimal protection. Myrdal’s understanding of freedom was not the negative one of individual liberty, but a social one that, as Marx had already put it, lets every human see that their freedom is not constrained by, but conditioned on the freedom of others.¹⁰¹

III. Working with the Spectre

A. *The Logic of the Ghost*

The presence of a spectre marks that something is foul and foregrounds an alternative past. It marks an unresolved problem, and does so in a particular logic. The spectre of inequality starts out by pointing towards the gap between normative aspiration, on the one hand, and a recalcitrant reality, on the other. In response, we might react by trying harder. But that, it turns out, is not the best strategy and is doomed to failure, as it has continuously failed in the past. The spectre knows that all too well.

A lot of attention currently centres on the United Nations Sustainable Development Goals (SDGs). They followed up on the Millennium Development

Goals (MDGs) in 2015 and, among other things, now claim head-on to ‘reduce inequality within and among countries’ (goal 10). It is in the nature of these goals that they spell out concrete targets in ever-greater detail. The so-called annual progress reports then collect the facts and figures that testify to movement in the direction of those aims, even when those facts and figures are hard to find.¹⁰² The path is clear, the direction set, we just need to get our act together and get there.

That is clearly not the logic of the ghost. The spectre knows that we won’t get there, not this way. It knows because it has its eyes fixed on the mournful spectacles around the world – the spectre, it looks! And it sees that the problem does not so much, not even primarily, lie in the yawning gap between normative aspirations – the goals – and a recalcitrant reality – persistent inequality. The spectre inspects what has been going on all along. It sees contradictions, once more not between aspirations and reality, but between different parts of those aspirations and that reality. It sees those contradictions with the knowledge of the past. More specifically, the spectre of inequality points to the most classic of all contradictions: that between autonomy and dependence, between formal rights and material conditions, between the negative freedom of individual liberty and social freedom.¹⁰³

Through the spectre, we see contradictions that are lost in repetitive contemporary practices, which are bound to remain wanting. History does have a tendency to repeat itself, first as tragedy, then as farce.¹⁰⁴ Such repetitions include attributing responsibility for growth to international law and its institutions while assigning redistributive responsibilities to domestic policies.¹⁰⁵ They extend to the worn emphasis on increasing voice and representation, which have not lead to shifts in power or policy. Where the SDGs do speak on material international redistribution directly, it should proceed entirely within the current framework of international economic law, that same law that has favoured the haves over the have-nots and contributed to inequality in the first place.¹⁰⁶ Sub-goal 10.b. encourages in the same breath ‘official development assistance and financial flows, including foreign direct investment,’ entirely glossing over the categorical differences between aid, on the one hand, and demands for justice, on the other. Through the spectre we see the contradictions between Hayek’s dream and Myrdal’s gloom. We might wish that they will go away, but closing our eyes will not do the trick. All the better, because those contradictions are indeed our hope.¹⁰⁷

B. *Emancipatory Politics*

Some present analyses follow the ghost half-way and take on underlying contradictions, but then rush towards resolving them all too quickly. That is the case for many arguments that follow the classically critical view that formal recognition of individuals' liberty or states' sovereignty above all masks actual dependence and domination.¹⁰⁸ This line of thought typically takes issue with rights as such, not only with an excessive emphasis on civil and political over social and economic rights. The critique was put forward by Marx when he famously argued that rights abstract from concrete conditions of inequality in a way that not only leaves those conditions entirely intact, but even entrenches and justifies them.¹⁰⁹ The argument there as elsewhere has been that a society built on rights – on formal equality and independence – releases its members into conditions of material inequality and dependence while, at the same time, legitimizing that constellation.¹¹⁰

While this line of thought has been powerful, the experience of concrete struggles for justice at both individual and collective levels rather suggests that rights do provide conditions and resources for emancipatory politics that can then also aim at socio-political transformation.¹¹¹ For Bedjaoui, 'international law has long concealed flagrant economic inequalities between States under the cover of sovereign equality'.¹¹² But at no point would he want to give up hard-fought sovereignty, which was instead a core asset in the further struggle towards real emancipation.¹¹³

There is, however, a related prong to the critique that takes aim at particular conceptions of rights and equality. It takes aim at false universals. That line has been developed with particular strength in feminist scholarship and Third World approaches, which have compellingly questioned the baseline for what is universal, and thereby normal, and what is not. Feminist scholars have for instance shown how rights have contributed to maintaining a division of the private and public sphere that is aligned with male privilege.¹¹⁴ Methodologically, they have critiqued ill-guided universals and called for situated, concrete analysis, given that the abstract point of view has so often turned out to be that of the presumably rational white man.¹¹⁵ Third World scholars have likewise shown how international law has developed in the image of that presumably rational white man and along the lines of particular conceptions of statehood.¹¹⁶ Reconsidering the emphasis on non-discrimination in international economic law, it is then fairly easy to see how it makes the policy preferences of developed countries the norm while it delegitimizes policies that developing countries might find useful. Intellectual property, like

all property, is after all discriminatory in all but name. The principle of non-discrimination turns out to be a false universal.

There is a productive, dynamic tension between general claims to universality and their particular expressions. That tension may well be one of the main drivers towards greater freedom, which is the point of emancipation.¹¹⁷ It should not be undone on either side: neither by failing to account for the particular context in claims of universality, nor by giving up an aspiration towards universality.¹¹⁸

Another related prong of critique does not take issue with rights as such either, but with the relationship between them and, in its turn, again risks resolving productive contradictions too quickly. In her analysis of international law for a fair society, Emanuelle Toume-Jouannet has for instance argued for a priority for that part of the law which is aimed at economic conditions, the 'law of development', over the 'law of recognition,' which is concerned with equal dignity and specific identity. In a moment of tangible disillusionment, she comes close to dismissing the law of recognition as symbolic, as distracting, and as glossing over underlying economic reasons for persisting injustice.¹¹⁹ Recognition may be cheap and sometimes ineffectual, but redistribution does not happen without it.¹²⁰ Recognition is necessary to break through 'durable inequality' that persists due to beliefs in inferiority and superiority, be it in matters of gender, race, or otherwise.¹²¹ The tension between both is necessary to possibly move towards greater freedom. It is also true, as my colleague Yvonne Donders reminds us, that different sets of rights stand in a symbiotic relationship: You cannot fully enjoy your political rights on an empty stomach, and a lack of such rights will probably keep your stomach empty for longer. But neither prioritising nor synergizing distinct parts of the law satisfies the spectre, whose nature is impossible to capture in a single take: It is ideal and material, imagined and real, present and not present.¹²² As such, it resists being resolved into either one or the other. Instead, it asks us to work with productive contradictions towards political emancipation – that is greater freedom in a world that is our own.

C. *Futures Past*

Do we live in a world that is ours? Authoritarian populism is not only fuelled by inequalities of income, wealth and opportunities, but also by a feeling of alienation – of impotence in face of seemingly inhuman forces.¹²³ The spectre helps us once more in breaking with the present path that seems to only lead in the direction of greater levels of inequality in the future. The spectre intervenes and prompts us to stop. Hamlet: '[s]peak; I'll go no further.'¹²⁴ The

spectre invites us to rectify a problem in the past in order to change the future for the better. It asks us to do what my colleague Janne Nijman asked us to do in her recent inaugural address: seek change by doing history.¹²⁵ But what are the possibilities to stop and to break with that path on which we are set at present? The unequal distribution of income, wealth and opportunities takes an ever-greater hold of legal-political processes, which then reinforce that same distribution.

In order to muster force and change course, I suggest that it is best to imagine the future that would most likely ensue on the present path. If anything, it then appears to be rather utopian to think that we can continue as we do – given the implusive potential of high levels of inequality and the finite capacity of the planet to sustain our wrecking way of living. If we project ourselves into the future, we can then think backwards to probe what we would have had to do now in order to prevent the next catastrophe from happening.¹²⁶ The scope of possibilities thereby widens. As Slavoj Žižek put it, ‘at its most radical, freedom is the freedom to change one’s Destiny.’¹²⁷ We should confront the seemingly unavoidable by ‘projecting ourselves into it, adopting its standpoint, [and then] we should retroactively insert into its past (the past of the future) counterfactual possibilities’.¹²⁸ Every quest for justice in fact must rest on the idea that humans are not confronted with anonymous destiny.¹²⁹ Working against the appearance of the present state of affairs as natural, necessary, and even as just, is an essential first step towards any political emancipation and for any struggle of justice.¹³⁰

Here, another critique of law should come in, namely precisely its contribution to rendering the world more natural, necessary and even just.¹³¹ Rousseau was a loveable though hopeless romantic when he critiqued the rule of law in his 1775 ‘Discourse Upon the Origin and the Foundation of the Inequality among Mankind’.¹³² Three lessons stand out for the present constellation of inequality and international law. First is Rousseau’s strong argument against the negative freedom of individual liberty – we need each other to be free: ‘Of what service can beauty be, where there is no love?’¹³³ Appreciating the social conditions of freedom offers a gateway into the structures of the global economy and towards empathy within it. Wealth here depends on poverty there.¹³⁴

Second, Rousseau famously wrote of

[t]he first man, who, after enclosing a piece of ground, took it into his head to say, ‘This is mine,’ and found people simple enough to *believe* him ... How many crimes, how many wars, how many murders, how many misfortunes and horrors, would that man have saved the human species,

who pulling up the stakes or filling up the ditches should have cried to his fellows: Be sure not to listen to this imposter; you are lost, if you forget that the fruits of the earth belong equally to us all, and the earth itself to nobody!¹³⁵

I am most interested in that element of belief and the ambivalent role that law plays in naturalizing the current state of affairs. In a series of social psychological experiments, I have started to tease out the social effect that the law – and the way we teach and do law – has in that regard. We tend to rationalize what has happened, with an overall inclination to present the law as a product of coherent policies and principles.¹³⁶ The effect that I have seen is that rationalizing judicial decisions not only increases their perceived likelihood, but even makes them look more just. Thinking counterfactually about alternative outcomes, on the other hand, makes them look less likely and less just. A lot remains to be done in studying social beliefs about the law to refine understandings of the role that law plays in society and in social transformations.

The third, closely related lesson that stands out, is that Rousseau wants to go back, rather than forward. He wants to proceed by ‘discovering and following the lost and forgotten tracks.’¹³⁷ The romantic that he is, he is nostalgic for what there was. The spectre of inequality also carries with it a longing to return to the past, but just for a moment, not to dwell there. The spectre is not at all nostalgic. It ultimately helps us to be unstuck in the moment – in an ever-moving present that seems to leave no choice. It helps us to get out of the present by turning to the past and by working with contradictions. There is hope not only in those contradictions, but also in the fact that things typically turn out differently from what we thought.¹³⁸ We are insecure in predicting what will happen tomorrow. But we tend to forget that insecurity when we think of what has become history, which then presents itself with apparent necessity.¹³⁹ We should give the open future back to the past, the past of the present and of the future.¹⁴⁰ History will have been open. We *can* follow the spectre of inequality and engage with it. That is less daunting than what might otherwise become.

Coda

Nothing spoils a good act like too much closure. Nor is closure what is needed most in the present moment of liberal crises across different contexts. Rather, it is ever more important that teaching and researching law resists the temptation of skipping over the law as part of the problem. There are several

sources for such a temptation, including a certain methodological anxiety on the part of us lawyers that makes us reluctant to engage in those kinds of analyses that lean on other disciplines and take us out of our comfort zone.

Understanding law as part of the problem does not turn lawyers into social scientists. Nor should we leave that part of the law to other disciplines alone, not the least because we can appreciate more than others that the law is malleable, it is not just one thing, it is always also the other. In fact, lawyers' work in exposing how the law structures the global economy, how it creates the conditions and commodities for interaction, counteracts a tendency in other disciplines to simply take those legally produced conditions and commodities as a given.¹⁴¹

Teaching and researching international law should thus avoid reaching for certainty instead of working with contradictions. It should then also keep a keen eye for what gets lost in developments towards ever-greater specialization, especially in law. For specialization that follows sub-disciplines, to be sure, is another way of escaping contradictions in the vain hope for calm certainty. The aim for teaching in particular should then be to offer orientation, not direction.

Gratitude

Let me end my lecture on notes of gratitude: I thank the Executive Board of the University and the Dean of the Faculty of Law for the appointment to the Chair of 'International Law and Social Justice.' I am truly grateful for the trust and support that I have received from both André Nollkaemper and Yvonne Donders. Thank you.

I owe the largest share of my academic formation to my doctoral supervisor Armin von Bogdandy and my colleagues at the Max Planck Institute in Heidelberg. One of the many things I have learned from Armin is the value of curiosity and the virtue of doubt. Jochen von Bernstorff was my daily supervisor, if not in name, then in spirit. Isabel Feichtner and Matthias Goldmann have been comrades in arms. I am lucky to have continued to work with all of them. Stephan Schill even joined the University of Amsterdam (UvA) a couple of years after I did. I don't feel haunted by that past, to be sure, only fortunate for the opportunities for continuous exchange.

At the UvA and the Amsterdam Center for International Law (ACIL), I have found a new group of outstanding, inspiring colleagues. I was particularly fortunate to become part of the group of so-called Architects under the leadership of Deirdre Curtin, Martijn Hesselink and André – I did not know

how very valuable that group would be. I am now lucky to embark on a similar trajectory together with Marija Bartl and Christina Eckes in the lead. Together with Janne Nijman, I share an interest in legal history as well as a dynamic cooperation between the ACIL and the Asser Institute in The Hague. Thank you all for the rewarding exchanges.

I am immensely grateful to Pieter Jan Kuijper, whose toga I am so honoured to take over.

Dear students, dare to doubt, dare to dream. Think how the world could have been and how it can still be, don't leave it to anyone else.

Dear friends, thank you for disagreeing with me and for not agreeing to disagree, which is all too easy. Thank you also for teaching me what social freedom means; without you, I would not be free.

Liebe Jürgen und Elisabeth, Eure unbedingte Unterstützung von früh an hat mich gestärkt und beflügelt. Eure Hilfe ist sondergleichen und Eure Nachsicht für meine Eskapaden ein Wunder.

Seline, your compassion strikes me as limitless, your understanding as boundless, and your resolve keeps me, keeps everything for me, in balance. We are reluctant to work together in fear that our working arrangements would implode. But without us, I would not work.

Liebe Nora, Du bringst hervor, was im Leben wirklich wichtig ist. Du bist unwiderstehlich. Bitte bleibe realistisch und verlange das Unmögliche.

Ik heb gezegd.

Notes

1. Quoted in Baines, 1835, p. 462. Cf. Simmons Jr, 2007, p. 20; Friedrich, 1841. Classically, Thompson, 1963, esp. p. 329. See also Griffin, 2013, who cautions against excessive nostalgia for conditions of life in Britain before the Industrial Revolution.
2. On the importance of the Industrial Revolution, especially on inequality between countries, see Milanovic, 2016 p. 119.
3. Human Development Index (HDI), 2018 Statistical Update, available at <http://hdr.undp.org/en/2018-update> (last accessed 12 March 2019). The adjustment for purchasing power is not without its flaws, especially when it comes to lower income levels, see Kaplinsky, 2005, p. 28-29.
4. See generally Piketty, 2014.
5. “‘Yellow Vests’ Riot in Paris, but Their Anger Is Rooted Deep in France’, *New York Times*, 4 December 2018, available at <https://www.nytimes.com/2018/12/02/world/europe/france-yellow-vest-protests.html> (last accessed 12 March 2019).
6. Credit Swiss, *Global Wealth Data Book*, 2018, putting the top 1%’s share at 45% of the world’s wealth. Cf. <https://inequality.org/facts/global-inequality/> (last accessed 6 March 2019); *World Inequality Report 2018*, available at <https://wir2018.wid.world> (last accessed 12 March 2019).
7. Milanovic, 2016, p. 31-32.
8. ‘Yellow Vests: “Inequality of Opportunity” Key to Understanding Wealth Disparity’, *France 24 English*, available at <https://www.youtube.com/watch?v=YZ3GfL9fBbE> (last accessed 12 March 2019).
9. On the feeling of alienation as a main source of authoritarian populism, see Zürn, 2019; Venzke, 2018b. See Jaeggi, 2005, on the core concept of alienation; Marks, 2009, on the distribution of who may deem what contingent and malleable.
10. Compare the opening sentence of the ‘Manifesto of the Communist Party’, Marx and Engels, 1969, p. 14: ‘A spectre is haunting Europe – the spectre of communism.’
11. Derrida, 1994, p. 109.
12. Derrida, 1994, p. 4, on the spectre being animated by a spirit.
13. Derrida, 1994 p. 10.
14. IMF, WB and WTO, 2017.
15. IMF, WB and WTO, 2017, p. 4; Also see Lamp, 2018, p. 30; Grant Cohen, 2018, developing a very similar critique against the division of labour between international and domestic levels of governance.
16. IMF, WB and WTO, 2017, p. 4.
17. This view prevails in the policy discourse in Europe, see e.g. the statements by Commission President Jean-Claude Juncker in Press Release, ‘EU-Japan trade agreement enters into force’, 31 January 2019, available at http://europa.eu/rapid/press-release_IP-19-785_en.htm (last accessed 10 March 2019) and the speech by Trade Commissioner Cecilia Malmström at Sciences Po, Paris, 22 January 2018, available at http://trade.ec.europa.eu/doclib/docs/2018/january/tradoc_156551.pdf

- (last accessed 10 March 2019). For the Netherlands, see Minister Sigrid Kaag in the House of Representatives (Tweede Kamer): ‘Het opvangen van negatieve effecten is vooral een kwestie van nationaal beleid, ook in ontwikkelingslanden’, 28 November 2018, TK 29-14, p. 4.
18. Smith, 1993, p. 457: ‘If a foreign country can supply us with a commodity cheaper than we ourselves can make it, better buy it of them with some part of the produce of our own industry, employed in a way in which we have some advantage.’
 19. Ricardo, 1821, p. 136.
 20. The Corn Laws allowed for prices of such heights that they led to the Great Famine in Ireland (then in Union with Great Britain) and they are pivotal in the important shift from mercantilism to classic liberalism. See Semmel, 1970, p. 203-229; Kennedy, 2016, p.180; Orford, 2016; Mazzucato, 2018, p. 39, 44-45.
 21. See Krueger, 1974; Kaplinsky, 2005, p. 62-65. The notion of rent refers to a transfer of profit that stems from limitations in the supply of a scarce resource. Import tariffs are Krueger’s prime example. Ricardo notably offered an extensive account of rents with the example of landowners who could gain a profit simply because they had a monopoly of a scarce asset, much to his dismay. Ricardo also keenly saw that rents essentially worked due to legal titles and arrangements. He gets into such a rage about landowner’s rent-seeking that he comes close to presenting claims to property as the original sin. See Ricardo, 1821, ch. 2; also see Kennedy, 2016, p. 11, 177-188.
 22. Petersmann, 1997, p. 10: ‘While liberal trade rules benefit all consumers, import protection benefits only a few import-competing producers at the expense of other citizens. The democratic legitimacy of this indirect income redistribution is often doubtful, especially if it is implemented through administrative fiat without parliamentary control so as to accommodate ‘rent-seeking’ interest groups.’ Also see Abbott, 1985; Krajewski, 2001; Raustiala, 2003, p. 843: ‘enduring problems of collective action and rent-seeking, and sees international economic institutions as a corrective to the manifestation of these problems at both the international and the domestic levels.’
 23. See in detail, Toye and Toye, 2004, p. 110-137. When David Ricardo argued that ‘corn shall be grown in America and Poland, and that hardware and other goods shall be manufactured in England’, he clearly argued for a division of labour in England’s favour. It continues to be the case that valuable, profitable production is located in the centre and less productive activity in the periphery. See Wallerstein, 1983; generally, Dicken, 2015.
 24. See already Klein, 2000, p. 204.
 25. Semmel, 1970, p. 8, quoting a Whig in the House of Commons with reference to the Parliamentary Debates, 3rd Series, LXXXIII of 23 February 1846, p. 1399-1400. For a nuanced discussion of the confluence between interest and principled argument in these debates, see *ibid.*, p. 206-210.
 26. Rodrik, 2018, p. 82-89.
 27. Kaplinsky, 2005, p. 79-81, who clearly appreciates that these rents are products of the law.
 28. Cf. Sinjela, 2014, especially p. 336, arguing that next to the traditional aim of incentivizing creativity, intellectual property law can also be a tool for economic,

- social, cultural and technological development as well as a facilitator for knowledge transfer and licensing. There has always been a tension between these aims and others, such as access to medicine; see already Hestermeyer, 2007.
29. Drahos, 1996, p. 15-17, drawing attention to the elites driving this process. Cf. McGonagle and Donders, 2015.
 30. Also see Rodick, 2018, p. 75-6, concluding that ‘trade agreements are shaped largely by rent-seeking, self-interested behaviour [and] produce welfare-reducing, or purely redistributive outcomes under the guise of free trade’; Bernstorff, 2015.
 31. See already Kaplinsky, 2005 p. 61; more recently on the allocation of value through rents in global production, Davis, Kaplinsky and Morris 2018, p. 55-57.
 32. Also see Daniel Zamora, 2019, p. 3.
 33. Cf. Moyn, 2018; Borstelmann, 2012.
 34. Here I follow Dehm, 2018.
 35. For him there was ‘no rational alternative to moving towards policies of greater social equity’. See Dehm, 2018, p. 877.
 36. Quoted in Dehm, 2018, p. 877, with reference to McNamara, ‘Address to the Board of Governors’, Nairobi, Kenya, 24 September 1973.
 37. See in detail, Moyn, 2018, p. 9.
 38. Marks, 2011; Zamora, 2019.
 39. Pahuja, 2011, p. 193-204.
 40. Salomon, 2011, p. 2140.
 41. Declaration on the Right to Development, UN GA-Res. 41/128, 4 December 1986. Francophone practice and scholarship has been particular influential in the conception of this right. See, e.g. Virally 1965; Bennouna 1983.
 42. Salomon, 2011, p. 2141.
 43. International Covenant on Economic, Social and Cultural Rights (ICESCR), UN GA-Res. 2200A (XXI), 16 December 1966, entry into force 3 January 1976.
 44. E.g. Shue, 1980; cf. Moyn, 2018, p. 152-71.
 45. Forst, 2018, p. 18.
 46. Forst, 2018, p. 18-19. Also see Marks, 2011.
 47. Hayek, 1948, p. 255-272.
 48. Hayek, 1948, p. 257: ‘conflicts of interests tend to become conflicts between the same groups of people’.
 49. Hayek, 1948, p. 257.
 50. In contrast to current practices, Hayek notably placed emphasis on the free movement not only of goods and capital, but also of ‘men’. It is not entirely clear, however, how far his cosmopolitanism reached then, at a time at which large parts of the globe were still colonized, or how far it would reach now. His federation was thought to be one of democratic states and his examples mentioned Europeans, North Americans, and South Africans, Hayek, 1948, p. 262-263.
 51. Hayek, 1948, p. 261-262; on that cosmopolitan trait also see Somek, 2011, p. 14.
 52. Hayek, 1948, p. 264.
 53. Hayek, 1960, p. 101. See more generally on the arguably necessary link between growth and poverty, Beckett, 2016.
 54. Hayek, 1976, p. 96; For a perceptive discussion see Lukes, 1997.
 55. Hayek, 1948.

56. Hayek, 1948.
57. Mazower 2012, ch. 12.
58. Hayek, 1948, p. 265-266.
59. See already Hayek, 1948, p. 269, arguing that it is practically impossible to foresee the effects of certain interventions into the market.
60. Hayek, 1974.
61. Caldwell, 2016, p. 6.
62. Doyle and Stiglitz, 2014.
63. Slobodian, 2018; Moyn, 2018, p. 191; with reference to Petersmann, 2002, p. 629, arguing that economic liberalization best serves the promotion of international human rights.
64. Peters, 2017, p. 2-3; Shotwell, 1933.
65. Treaty of Versailles, 1919, available at: <https://www.loc.gov/rr/program/bib/our-docs/versailles.html> (last accessed 9 March 2019).
66. Tosstorff, 2005; Van Daele, 2005. Also see Peters, 2017, p. 2, noting that 'The Russian revolution was the main motive for the foundation of the International Labour Organisation and its linkage to the peace process after World War I.'
67. Preamble, para. 2. The Constitution of the ILO was Part XIII of the Treaty of Versailles.
68. One domestically oriented motivation was to overcome the Supreme Court's opposition to national labour standards. See Sinclair, 2017, p. 31, with reference to Lorenz, 2000, p. 569-603.
69. See Lamp, 2018, p. 12.
70. Roosevelt, F.D., 'Second Bill of Rights', *State of the Union Address*, 11 January, 1944, available at <http://rooseveltinstitute.org/fdrs-second-bill-rights-necessitous-men-are-not-free-men/> (last accessed 9 March 2019). Cf. Harvey, 2005, p. 183.
71. 'The third is freedom from want—which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants—everywhere in the world.' Available at <http://www.let.rug.nl/usa/presidents/franklin-delano-roosevelt/state-of-the-union-1941.php> (last accessed 8 March 2019). With increasing U.S. support, the ILO engaged in technical assistance for domestic labour legislation, first in Europe and then globally, and aimed at shaping the world in the European image. Sinclair, 2017; cf. Moyn, 2018, p. 70.
72. Charter of the United Nations, Preamble, 24 October 1945, 1 UNTS XVI.
73. 'Declaration concerning the aims and purposes of the International Labour Organisation' (Declaration of Philadelphia, 1944); available at (last accessed 26 March 2019). On the economic dimensions, see especially Art. IV.
74. International Labour Organization, 1976; International Labour Organization, 1977. On the focus on 'basic needs', see Dehm, 2018, p. 878; on the limitations of the ILO, see Moyn, 2018, p. 96.
75. Declaration of Philadelphia, *supra* note 73.
76. See on the process of commodification, Polanyi, 2001, p. 71-80.
77. This was not the least due to the influence of developing countries. For a glimpse into the debates, see in particular the contributions by the Indian delegate P.S. Lokanathan at the meeting of the Preparatory Committee of the International

- Conference on Trade and Employment, 14 November 1946, Summary Record of the Meetings, E/PC/T/C.I/PV/2, p. 17-18, p. 51-53. Cf. Lang, 2011.
78. See in detail Venzke 2018a; Öszu, 2017; Anghie, 2015; Gilman, 2015.
 79. Cf. Bedjaoui, 1979, p. 41.
 80. Bedjaoui, 1979, p. 81.
 81. Bedjaoui, 1979, p. 78, 81.
 82. Hudson, 1977, p. 165-216; Toye, 2014, p. 1762. Also see Sacerdoti, 2011.
 83. But see Sauvart, 2015, p. 11-87; Bair, 2015, p. 159-71.
 84. On this reason see Pogge, 2005, especially p. 735.
 85. See Rajagopal, 2003; Pahuja, 2011.
 86. Borstelmann, 2012.
 87. Moyn, 2018, p. 196; Harvey 2005. Also see Derrida, 1994, p. 85 arguing that the 'discourse on human rights ... remain inadequate, sometimes hypocritical, and in any case formalistic and inconsistent with itself as long as the law of the market, ... and economic development maintain an effective inequality as monstrous as that which prevails today'.
 88. Milner, 2009, p. 233; also quoted in Žižek, 2009, p. 60.
 89. Caldwell, 2016. Also see New York Times, 'Myrdal and von Hayek Share a Nobel', 10 October 1974, p. 97, available at <https://www.nytimes.com/1974/10/10/archives/myrdal-and-von-hayek-share-a-nobel-myrdal-winner-with-von-hayek.html> (last accessed 9 March 2019).
 90. Myrdal, 1973, p. 45; Myrdal, 1975; Cf. Moyn 2018, p. 105, arguing that according to Myrdal 'the defining challenge of the age [was] scaling up the welfare state to the world stage.'
 91. Myrdal, 1975, p. 3. Also note how core decision-making has moved towards ever greater distance from sites of possible confrontation, for international trade law-making in particular compare Kuijper, 2015.
 92. Shklar, 1990, p. 45.
 93. Wallerstein, 1983.
 94. Myrdal, 1975, p. 14.
 95. Myrdal, 1975, p. 14.
 96. Myrdal, 1975, p. 20.
 97. For this close connection see more recently, Klein, 2014.
 98. See Caldwell, 2016. Many of the concerns about what would today be called sustainability then focused on population growth, not always free of racial undertones, see Ranganathan, 2016.
 99. Myrdal, 1975, p. 34.
 100. Moyn, 2018, p. 106-8.
 101. Marx, 2006, p. 365: critiques the human right of private property because it leads to a society that lets 'jeden Menschen im anderen Menschen nicht die *Verwirklichung*, sondern vielmehr die *Schranke* seiner Freiheit finden.' On the notion of social freedom, see Honneth, 2011.
 102. See <https://sustainabledevelopment.un.org/sdg10> (last accessed 3 April 2019).
 103. Hegel, 1991; Marx, 2006.
 104. Marx, 2009, p. 115: 'Hegel bemerkte irgendwo, daß alle großen weltgeschichtlichen Tatsachen und Personen sich sozusagen zweimal ereignen. Er hat vergessen,

- hinzuzufügen: das eine Mal als Tragödie, das andere Mal als Farce.’ For a discussion, see Žižek, 2009.
105. The first set of concrete policies that sub-goal 10.4 mentions are notably those of individual countries, ‘especially fiscal, wage and social protection policies, and progressively achieve greater equality’.
 106. See sub-goal 10.a. Cf. more generally Linarelli, Salomon and Sornarajah, 2018.
 107. ‘Widersprüche sind die Hoffnungen.’ That is how Berthold Brecht opened the lawsuit over turning his *Beggar’s Opera* into a movie. A 2018 movie centres on how Brecht’s original movie was never made, now enacting parts of the original script.
 108. Marx, 2006; Miéville, 2005; Chimni, 1993.
 109. Marx, 2006.
 110. With more nuance but in essence along those lines, Brown, 1995, p. 110: ‘rights emblemize the ghostly sovereignty of the unemancipated individual in modernity’.
 111. Marcuse, 1969; Žižek, 2009, p. 49; also see Shklar, 1990.
 112. Bedjaoui, 1979.
 113. Bedjaoui, 1979, p. 90, 95, 244. For a related discussion of law’s transformative potential see Knox, 2009, p. 429-32.
 114. MacKinnon, 1991, p. 1286. For the critique of the (international) rule of law, see Miéville, 2005.
 115. Benhabib and Cornell, 1987, p. 77; cf. Schmalz, 2019.
 116. Seminally, Anghie, 2005.
 117. Honneth, 1994; on freedom as the point of emancipation, also see Forst, 2015, p. 37-81; and already Habermas 1966: ‘The knowledge interests of all critical scholarship is *emancipatory*, it frees the subject from dependence on hypostatized forces.’
 118. Forst, 2018, p. 2.
 119. Toume-Jouannet, 2013, p. 204.
 120. Therborn, 2013, presenting recognition as a cheap panacea. See more generally, Honneth and Fraser, 2003.
 121. Seminally, Tilly, 1998.
 122. Derrida, 1994, p. 63, who notes that the spectre exceeds the binary, which differs from my more dialectical interpretation of the spectre. In fact, I bring it close to ideas of immanent critique that start from establishing contradictions, cf. Venzke, 2019. In greater detail, Jaeggi, 2013; Stahl 2013.
 123. See *supra* note 9.
 124. There are of course strong resonances with Walter Benjamin’s angel of history and the desire to stop. See Benjamin, 1991, p. 697-698; cf. Tomlins 2012. Also see Bayart, 2004, p. 405-436.
 125. Nijman, 2018.
 126. Zizek, 2009, p. 151.
 127. Zizek, 2009, p. 151.
 128. Zizek, 2009, p. 151.
 129. Forst, 2012, p. 200: ‘For the idea of justice lives on the notion that humans are not confronted in their actions with an anonymous destiny in the face of which they are powerless.’

130. Marx, 1972, p. 193. See more generally *supra* note 117.
131. See Kennedy, 1997, p. 241.
132. Rousseau, 1755.
133. Rousseau, 1755, p. 17.
134. Cf. Beckett, 2018.
135. Rousseau, 1755, p. 18 (italics added).
136. Unger, 1996, p. 36; cf. Venzke 2018c.
137. Rousseau, 1755, p. 33.
138. Koselleck, 2010, p. 18.
139. Venzke, 2018c. Generally see Rose and Vohs, 2012.
140. Seminally, Koselleck, 2004. Also see Koskenniemi, 2013.
141. Feichtner, 2016; Kennedy, 2016; cf. Venzke 2016.

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