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Human Rights and Political Economy: Addressing the Legal Construction of Poverty and Rights Deprivation

Abstract:
There has been a recent resurgence in scholarly work concerned with the economics of human rights. This article builds on this work to develop a conceptual framework of human rights and political economy. It provides a theoretical basis for the turn to human rights and economics, rooted in the increasing micro-management of the economy by liberal states that can constitute the state planning of material distribution within the state. It demonstrates that human rights principles do apply to economic questions and elaborates methods and practices to realize the potential of rights in this arena. The article applies these methods and conceptualizations to state obligations and business responsibilities to excavate current limits and potentials of rights and contextualizes the project within left critiques of rights and "claim right" perspectives.

Keywords: human rights; political economy; International Covenant on Economic, Social, and Cultural Rights; UN Guiding Principles on Business and Human Rights; privatization; commodification

I. Introduction

This article builds on recent scholarship connecting human rights and economics to develop a conceptual framework of human rights and political economy (HR-PE). HR-PE builds on international human rights law (IHRL), business and human rights (BHR), and critical approaches to human rights. It emerges from the application of human rights principles to an age in which law and legally constituted business practices create rising inequality, poverty, and concomitant rights retrogression. For example, a record 17.4 percent of working households are in poverty in the UK, the Trussell Trust distributed 2.1 million emergency food parcels from 2021-22, 81 percent higher than five years ago, and over 1 million workers are on precarious contracts, up from 190,000 ten years ago (IPPR 2022; Trussell Trust 2022; Hickson 2022).

The article provides an original foundation for HR-PE, drawn from law and political economy (LPE), that current work is lacking. States increasingly micromanage their economies through legal ordering. A key shift over the last forty years has been from a social democratic ordering to what is often termed a neoliberal ordering. This legal ordering creates extreme wealth and poverty and new forms of control and oppression, which are most visible in labor-related and democratic issues (Britton-Purdy et al.

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2020, 1786-9; Birchall 2021a). Human rights obligations apply to these outcomes because they are the result of legal ordering, and human rights principles provide both for critical avenues and progressive alternatives. Business responsibilities toward human rights are equally relevant because laws that create poverty often do so through favoring specific business forms and practices. HR-PE draws attention to how law constitutes human rights harm, rather than prioritizing accountability for legal breaches.

A secondary basis of HR-PE is the long-evolving turn within human rights away from prioritization of justiciable rights, and towards using the full gamut of IHRL and BHR obligations to critique practices and to realize rights. This represents an attempt to realize the human rights project, making socioeconomic rights and structural approaches to rights meaningful, as embedded in the International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 2.1, wherein law must be used to realize, and not to retrogress, access to rights. Judicial enforcement of the conceptualizations herein is neither desirable nor feasible, and the turn toward human rights and economics attempts to envisage human rights as part of a political challenge to adverse economic legal orderings. This article hopes to assist this project by providing these economic and rights-based foundations for HR-PE, and by addressing methodological, conceptual, and critical challenges.

This article focuses on the ICESCR and UN Guiding Principles on Business and Human Rights (UNGPs). As such, it does not address civil and political rights, although these are also deeply affected by contemporary economic norms. While HR-PE can cover any region, law, or business practice, this article focuses on the UK, highlighting company law and housing as examples of legal constructions that harm human rights. The specific form of legal ordering addressed herein is the contemporary trend towards privatization, and pro-business and pro-investment regulatory governance particularly common in the UK and the US, and to differing degrees in other liberal states. The article proceeds by introducing the LPE basis of HR-PE. It then turns to the human rights basis of HR-PE, also addressing critiques of an HR-PE approach. Part IV addresses IHRL and BHR principles and explores how they apply to political economy questions. Part V summarizes the argument and concludes.

II. The LPE Basis of Human Rights and Political Economy

The article identifies two major forms of HR-PE work so far. First, policy work designed to influence governments by redefining obligations for the era of "market fundamentalism." Three United Nations Special Rapporteurs (UNSRs) in particular helped to initiate a political economy conversation at the UN: Magdalena Sepúlveda Carmona, on extreme poverty and human rights, Raquel Rolnik, on the right to housing, and Olivier De Schutter, on the right to food. In addition, Juan Pablo Bohoslavsky, UN Independent Expert on Debt and Human Rights, drafted the "Guiding Principles on Human Rights Impact Assessments for Economic Reform Policies" (ERP) in 2018. Second, academic work has identified how human rights are impacted by contemporary market forms and how human rights principles apply. Work has been undertaken on human rights and economic inequality, economic policy, privatization, finance, and many other areas (Balakrishnan, Heintz, and Elson 2016; Kinley 2018; Dehm 2019; Corkery and Isaacs 2020; MacNaughton, Frey, and Porter 2021).

Two important interveners are ex-UNSRs Philip Alston (poverty) and Leilani Farha (housing), who each located economic rules and practices at the heart of their human rights critiques. Alston made headlines when describing poverty in the UK as a "political choice" (OHCHR 2018). Farha reported on the financialization of housing (HRC 2017), and in 2022 released "The Shift Directives" (Shift

2022) a set of principles to assist states in moving "from financialized to human rights-based housing." Their brief, evidence-based reports point to a useful form of human rights practice. Alston and Farha each favored political impact over technical discussion of the limits of rights, elaborating how poverty and housing crises were caused by contingent policy choices and providing human rights-based alternatives. They gave attention not only to the immediate and most grave issues (UNGA 2014), but also to structural economy of their mandate, such as privatization (UNGA 2018). In so doing, their vision of human rights breaks from legalistic "claim right" norms—the notion that human rights are primarily or solely legal claims to be protected judicially—and neoliberal norms to become the bedrock for political contestation.

These approaches share the belief that human rights obligations apply to state economic law and policy and, through the UNGPs, to the business practices generated by that policy. From an IHRL perspective this rationale is straightforward—state obligations apply to all areas of state activity, including privatization and housing markets. This is doctrinally correct, yet this approach remains marginal within human rights. One reason for this is that these obligations are outside the scope of judicial enforcement, and therefore outside the traditional core of human rights. However, the realization and denial of rights increasingly depends on economic (legal) organization, making this area of significant practical importance to rights. It is important to identify a coherent basis for this statement, and for the concomitant turn to the economics of human rights. The following section attempts to provide this basis.

A. The Planned Economy

This section provides the underlying framework for the HR-PE approach. Economic thought premised on "efficient" market design has engendered state micro-management of economic activity, creating winners and losers. Examples of company law and the housing market within the context of "rentier capitalism" (Christophers 2020) are used to demonstrate this. Both are legal forms that favor asset owners (shareholders and homeowners) over others, primarily workers and tenants. Human rights obligations apply to such state policies. Finally, this reality is occluded by popular narratives that the economy largely is, and largely should be, an area of negative freedom, with the state a neutral facilitator of private enterprise. In essence, we are led to believe that we are working toward an economically liberal utopia, while living under an increasingly centrally planned system of "upward redistribution" (Baker 2020, 48).

The economy has always been planned to some extent. The Speenhamland system of rural income guarantees for laborers in the UK, implemented in 1795, was designed, in part, to prevent rural migration and labor market competition and thereby protect landowner incomes (Block and Somers 2003). With the rise of industrial capitalism this system was replaced by urban workhouses. Impoverished persons were given shelter and low-paid work, in part as a means of creating the cheap urban labor force necessary for this new stage of development. Legal Realists in the US elaborated how laissez-faire relied on legal construction (Britton-Purdy et al. 2020, 1792), as did Polanyi ([1944] 2001). But there has been (1) a consistent acceleration in the extent to which the economy is micro-managed by the state, and (2) since the crises of the 1970s, this micromanagement has been directed in ways that significantly benefit the wealthy at the expense of majorities.

Key neoliberal thinkers such as Milton Friedman defined the purpose of the Mont Pelerin society as "to promote a classical liberal philosophy, that is, a free economy, a free society, socially, civilly, and

in human rights" (Whyte 2019, 18). Similarly, Friedrich von Hayek's moral objective was to ensure that "coercion of some by others is reduced as much as is possible" (Hayek [1960] 2020, 11). For neoliberals such as Hayek, the purpose of law "is to limit coercion by the power of the state to instances where it is explicitly required by general abstract rules which have been announced beforehand and which [are] applied equally to all people" (Miller 2010, 122). Learning from the failures of laissez-faire, and from the ordoliberal approaches each was aware that liberty, including economic liberty, required a guiding hand from the state (Kolev 2010, 122).

Slobodian (2018, 87) argues that neoliberals "saw the intellectual project as finding the right state and the right law to serve the market order." This includes rule-of-law property and contract protections, but also includes "planning for competition" and statist organizing of "efficient" competitive markets (Hammersley 2021, 1471). This introduces a possible tension where planning for competition may become "planning for outcomes," because different market constructions will create different outcomes. Two forms of tension are possible. First, the possibility that state planning will create an anti-democratic administrative state counter to rule-of-law norms. Second, the possibility that state planning will start to favor certain groups, even if remaining technically within a rule-of-law frame.

The first problem was Hayek's fear for the UK when in 1956 he criticized the "benign despotism" of the UK's Labour government for developing a beneficent administrative state against rule-of-law norms (Hayek [1944] 1956, xlii). The second problem underlies Hayek's critique of company law: "the tendency of corporations to develop into self-willed and possibly irresponsible empires, aggregates of enormous and largely uncontrollable power, is not a fact which we must accept as inevitable, but largely the result of special conditions which the law has created and the law can change" (Hayek [1960] 2020, 306). Hayek here is discussing corporate-owned shares. Hayek argues that shares owned by corporations should not confer voting rights because of the power it grants to corporate managers. Even for Hayek, formal rule-of-law fairness, treating natural persons and legal persons identically in this case, could be a problem because of the outcomes of that fairness.

The concept of "rentier capitalism" is useful in understanding the extent of legal ordering today and how it dictates outcomes of wealth and poverty, and in questioning whether Hayek's fears are realized today. The term is designed to capture the idea that today capitalism is structured to maximize rentier returns to asset owners (for example, shares and land) at the expense of non-asset owners (for example, workers and tenants). This lowers wages and raises asset prices, thereby causing poverty. Rentier capitalism is an economic model based on "having rather than doing" (Christophers 2020, 3). The rentier has been understood as an economic problem since Adam Smith and David Ricardo. Smith opposed joint-stock companies (JSCs) to protect against rentier investors feeding off productive workers (Ireland 2018). John Maynard Keynes shared this view, and it informed the postwar consensus, where the UK economy was structured to circumscribe the potential for rentier returns. Following the advance of neoliberal thought, including agency theory, constructed markets, and the loosening of the chains on finance, the economy shifted to favor asset owners. The next sections depict the shifts within company law and the housing market.

B. Rentier Capitalism's Legal Construction: Company Law and Housing

Company law exemplifies both the quantitative and qualitative shift in legal ordering. For most of history, company law was relatively skeletal. There was no right to start a company, and few had the benefits of incorporation. Only in 1844 did incorporation become a right in the UK, and only in 1854

was limited liability added (and then it was removed and added back in 1862). Until the late nineteenth century, most businesses were organized as partnerships without the benefits of incorporation (Talbot 2016, 525). Evolutions then occurred gradually, primarily through case law, which determined over time that shareholders did not own the company, *Bligh v. Brent* [1837] 160 Eng. Rep. 397, and that directors owed duties to the company, not shareholders. *Percival v. Wright* [1902], 2 EWHC (Ch) 421 (Eng.).

Well-fitting Hayek's warning, it was after World War II that UK company law, and related fields, moved towards micromanagement for specific purposes.[1] The initial change was micromanagement to ensure relatively egalitarian business, including restrictions on shareholder empowerment, prohibitions on share buybacks, and high taxes on dividends (Talbot 2016, 524). From the 1980s this started to shift, through reductions in dividend tax and the legalization of share buybacks, until the 2005 Companies Act embedded "enlightened shareholder value," supported by greater shareholder empowerment over directors (for example, giving shareholders the power to remove directors and to influence their compensation structure) and greater legal restrictions upon directors (for example, limiting their power to prevent takeovers). The result today is that directors are legally coerced and incentivized to work in the interests of shareholders. The practical outcome of this is that, to keep their jobs and to maximize their bonuses, directors use "value extractive" practices to channel money from workers to shareholders through extreme use of share buybacks and dividends (Leaver et al. 2021).[2] This legal design mandates that most corporate profits go straight to shareholders, including that extra profit be generated through extraction from workers and reduced investment. This is law mandating distribution. Stout defines shareholder primacy as "top-down 'intelligent design' by a small cadre of academics and policy entrepreneurs," and a form of "central planning" (Stout 2013, 2023). The details and effects are discussed in more detail below in relation to state obligations.

The second example is the UK housing market. In the 1970s, over fifty percent of the total housing stock was state-owned social housing. A succession of legal changes from the 1980s—the right to buy one's council house, the introduction of buy-to-let mortgages, and most recently the introduction of Real Estate Investment Trusts (REITs), which allow tax breaks for large-scale landlords that distribute most of their profit directly to shareholders, have transformed a socialized housing system, by degrees, first, into one of private ownership, then into one of small-scale landlords, finally today into one increasingly favorable to large-scale corporate landlords. These revisions succeeded in their aim of creating a wealth-generating property market. A necessary outcome of a wealth-generating property market is rising prices, making home ownership less affordable. Today this trend is accelerated by corporate landlords outcompeting would-be homeowners in the competition to purchase homes. The result is a generation trapped in expensive and often inadequate rental accommodation, awaiting a retirement without assets (Hearne 2020).

Both cases represent corrupted versions of Hayekian ideals. For company law, the prioritization of shareholder interests has led to extraction from companies in order to pass wealth directly to shareholders. In housing, the law has created an affordability crisis, while REITs, offering tax relief only to large-scale landlords, seem to embed an unfair form of competition, favoring the richest quite overtly. I will not address here whether these laws generally follow neoliberal prescriptions or not.

[1] Company law is defined by precedent and statute, rather than the administrative state, but its complexity creates a lack of transparency fitting to "despotism."

[2] Companies making up the American S&P 500 index distributed an average of eighty-seven percent of their net income as dividends and buybacks between 2009 and September 2019 (Leaver et al. 2021, 6).

What is important is that these laws have created certain practices and methods, leading to identifiable outcomes for different groups, primarily transfers from poor to rich. They are legally constructed economic distributions. IHRL, as a field that addresses governments and the laws they create, should be well-placed to condemn such rules. The right to housing necessitates "regulat[ing] the real estate market and the financial actors operating on that market so as to ensure access to affordable and adequate housing for all" (CESCR 2017, ¶18). The state is denying this right to millions through policies that overtly favor the richest, and today these are often investment firms and their managers and wealthy investors.

The neoliberal era has seen an evolution in the extent of law, and in the purpose of law. Business was legally coerced into relative egalitarianism after World War II, and now it is legally coerced to distribute profits to shareholders with dramatic effects on wealth and poverty (Ireland 2005). The housing market is overtly planned to maximize "shareholder value," even though this must shut younger generations out. This planning of the economy, channelling wealth to certain groups and away from others through legal design, and creating poverty and a lack of access to rights in the process, is the root of HR-PE.

C. The Occlusion of the Planned Economy in Popular Thought

If this micromanagement defines the contemporary economy, perhaps the greatest achievement of "neoliberalism" has been to embed the idea that the contemporary economy aspires to be the exact opposite of this, a place of rule-of-law-based negative freedom. Within this paradigm, some rules, such as those protecting private property and contractual rights, are necessary to realize this freedom. Economic planning is dedicated only to neutral "efficiency" and therefore cannot be critiqued on its human rights, or any other, outcomes (Britton-Purdy 2020, 1790). The impositions on this freedom come through taxation and limits on business, such as environmental laws, to provide public goods and reduce externalities.

The success of this idea is best seen in the way that popular economic debates today focus on these impositions to ostensible negative freedom, particularly around the limits of tax, spending, and regulation. Mainstream debates appear to accept that the original position of the economy is that of negative freedom. The debate between "conservatives" and "progressives" centers on how far to impinge on this freedom through tax and spending. This places the locus of economic-related human rights activism on a limited and often unpopular area of activity, opening space for the common argument that "progressives" want to tax and regulate businesses out of existence.

That the economy is not simply a free market is a basic LPE insight that human rights experts should embrace as the foundation of human rights responsibility towards economic outcomes. Were the rosiest depictions of free market capitalism true—free individuals freely exchanging labor and services without governmental interference—human rights arguments would struggle for foundation. It is precisely the role of the state in purposefully constructing an economy that grounds state responsibility therein.

III. The Human Rights Basis

A secondary basis for HR-PE emerges from the gradual evolution within human rights thought away from prioritization of legal breaches and towards focus on realization. This evolution, however, meets

critique from liberal-legal claim rights, and from the left critics of the rights project. These are addressed below, and the theoretical basis of HR-PE from within human rights elaborated.

A. Beyond Claims: Realizing the Potential of Human Rights

Human rights are usually predicated on liberal-legal claim rights. These are individual rights necessitating individual claims enforced by courts. HR-PE is predicated differently, using instead the comprehensive scope of IHRL and BHR that is rooted more in informing democratic debate through rights and obligations. The argument herein is that claim rights have a useful role in preventing individual violations of rights, but this is far from the full scope of rights and obligations.

A moral claim right incurs a correlative duty upon another party (Wenar 2013). A legal claim right incurs a legally binding duty upon another party. Failure to fulfill this duty incurs legal penalty. This claim right is therefore protected by law. This version of rights applies clearly to contractual rights, where one party, upon making a promise to another, has taken on a legally binding duty to fulfill that promise. It applies also to those human rights that are protected by domestic and regional constitutional or human rights law, with a heavy emphasis on civil and political rights. Some constitutional courts recognize socioeconomic rights, but none recognize substantive obligations to fulfil beyond basic minimums (Tasioulas 2019, 1200). Such obligations are matters of public policy invoking legislative choices because courts should not dictate government spending.

For some, this is the limit of true human rights, drawing a line between claim rights and public policy (Campbell 2011, 43-44). A true right is one that, if violated by a duty-bearer, leads to a direct claim for legal remedy specific to that victim. The non-realization of socioeconomic rights does not create such claims because it lacks clarity between victim, violation, and violator (Roth 2004). For Hayek, socio-economic rights were "meaningless, as no declaration of rights could actually guarantee anyone a certain standard of material welfare" (Whyte 2019, 75-76). A more popular view today is that socioeconomic rights are rights, but only along certain justiciable axes such as non-infringement and non-discrimination (Chapman 1996). Some contest their broader non-justiciability, including on cost-dependence, the imprecise nature of incurrent obligations, and the difficulty for courts in balancing objectives (Nolan, Porter, and Langford 2009, 10-11, 16-17).

Hayek's view could be characterized as claim rights fundamentalism. For Hayek, rights are only legal claims held against the state and enforced by courts. This view excludes political economy considerations from rights debates. Like the twentieth-century synthesis (Britton-Purdy et al. 2020), this silos rights from economics, depicting them as entirely separate. Viewing rights as only individual claims creates a practical problem because such a method cannot address structures. This creates the paradox often highlighted by left critiques of human rights, that human rights permit the underlying conditions that generate, for example, modern slavery, but once someone is compelled into modern slavery by economic need they can then make a legal claim against their condition. Hayek also argues that socioeconomic rights are meaningless because they cannot create material welfare. This however ignores that law and policy allocate welfare to a significant degree, and human rights-based approaches to law and policy can improve this allocation (Sen 2005). There is no IHRL obligation to provide the impossible, but there is the obligation to ensure access to all rights so far as possible. Claim right fundamentalism marginalizes that remedies exist beyond individual judicial enforcement, such as public policy enactment of a minimum wage law. This separation of rights and economics leads to economic decisions being made with scant attention to rights, thereby allowing retrogressive economic

policy to embed. One may agree that claim rights represent an important, delineable, category of human rights, while also agreeing that rights must be protected in broader ways.

This problem is evident in the longstanding debate between human rights and development, encapsulated in the "Asian Values" debate in the 1990s. The "Asian Thesis" championed by the likes of Singaporean Prime Minister Lee Kuan Yew was that developmentally oriented socioeconomic rights were more relevant to the needs and cultural norms of Asia than legally protected civil and political rights (Davis 1998). This was challenged, reasonably, on grounds ranging from inseparability of rights, the self-interested cynicism of marginalizing civil rights, and the utility of claim rights in ensuring development (Freeman 1996). The debate focused heavily on challenging or confirming the Asian Thesis. As such, it obfuscated the implicit critique of Western rights coming from the Asian Thesis, that Western human rights ignored socioeconomic issues *because* of the focus on civil and political claim rights. This is broadly evident empirically: while less wealthy East Asian states have built extensive social housing and high-speed rail networks, eradicating hunger and vastly improving access to healthcare (Sik Kim 2000; Phang 2001; Diao 2018), Western counterparts were reducing access to affordable housing, degrading healthcare and job security, and failing to make social improvements, all the while extolling their human rights credentials (European Commission 2012). Western states (particularly the more (neo)liberal states most defensive of claim rights), having first prioritized human rights and second defined human rights in claim right terms, managed to paint relative social regression as a virtue. This debate occurred mainly in the 1990s, when liberalism was in its "end of history" ascendancy, and the risks of neoliberalism were not yet fully realized. The Western claim rights perspective at least provided moral cover for policies that were seriously harmful to majoritarian access to rights. The failure to see the Asian Values debate as a critique of Western rights, implying an "Orientalist" problem, set back the human rights project, robbing it of holism and practicality.

IHRL presents a far more comprehensive set of obligations than claim rights fundamentalism, grounded in the core objective of the respect and realization of all rights. Under IHRL, and elaborated further below, rights are "interdependent," "interrelated," and realization is as important as non-violation (Vienna Declaration 1993). Rights-based law and policy is central to the ICESCR, while the UNGPs (Principles 3 and 6) include oversight of corporate law and public procurement. The view of IHRL is straightforward. Some rights and forms of violation are best protected judicially. Others are best protected through public policy, welfare, or possibly market design. The only demand of IHRL is that rights are respected and realized. There are no technical limits placed on how this should be achieved. Within this context, as explored further in the next section, human rights obligations become more relevant where law, rather than the physical absence of material essentials, is creating non-realization. Such laws are clear and direct breaches of IHRL. The legal construction of poverty and rights retrogression should therefore be a central target of human rights critique.

B. Beyond Left Critiques: Rights Addressing Legal Constructions

Longstanding critiques of human rights exist on the left. Two critiques are the most fundamental. First, the claim that rights are the foundation of capitalist order, and of neoliberal capitalism. Second, the claim that socioeconomic rights are minimalistic and provide for no more than a welfare safety net against capitalist deprivation.

The first critique originates in Marx's conceptualization of "bourgeois rights." "Not one of the so-called rights of man goes beyond egoistic man, man as a member of civil society, namely an individual

withdrawn into himself, his private interest and his private desires and separated from the community" (Marx 1844). The French Revolution's Declaration of the Rights of Man in 1789 established rights to property and non-interference in the private realm by the state. It established formal but not substantive equality, permitted poverty, and may prevent the state from adequately addressing poverty. The formal equality critique is also central to Whyte's work on the human rights foundations of neoliberalism. Whyte shows how Hayek and others used human rights to establish private freedoms and pro-market policies, and how human rights' foundation of non-interference by the state provided the perfect ally for neoliberal economics.

However, the LPE basis of HR-PE approach may allow us to reconsider this view. If we lived in a world of non-interference backed by hard rights standards, other human rights arguments could not adequately intervene. If the housing market had developed only through negative freedom, then a reorientation based on "social justice" principles would be offensive to the underlying moral theory of the time, deemed not just inefficient but "totalitarian" (Hayek [1944] 1956, 6). But we do not live in a world of non-interference, at least regarding economic policy. When the state enacts laws that select for outcomes, non-interference becomes only an exculpatory discourse. It is this interference by the state that sets up a conflict-of-rights framework that makes majoritarian access to housing a powerful lens to critique a legally constructed lack of housing.

Here, left critiques miss the reality that some capitalistic rights have moved beyond rule-of-law formal equality into overt favoritism of the wealthy. Rights underlie capitalism, but in a specific way, following specific rules. There is a right to property protection, but no human right to favorable treatment. A great many rights of capital today do not meet rule-of-law standards, nor do they meet Hayekian standards of equity. On the latter point, left critics might reply that these opportunities still embed formal equality and negative freedom, following Marx's critique. This is debatable on housing, where some advantages are only available to large-scale investors, and in company law, where law enforces that directors distribute wealth to shareholders. Even ignoring this, a rule set that seeks outcomes on which society has not been consulted and whose mechanisms and goals are hidden goes against the fundamental principles of neoliberal theory (Hayek [1960] 2020, 194-5). This applies at least to shareholder primacy, where the general public has not agreed to, or been informed of, the rule set that incentivizes directors to extract value from the firm to distribute to shareholders, harming workers and innovation. We should always recall the theoretical purpose of rights under neoliberalism and the conflict of rights invoked by socioeconomic rights realization. This entails identifying aspects of planning beyond rule-of-law norms that conform to neither Hayekian principles nor majoritarian access to rights. At a minimum, this perspective opens space for a discussion on the purpose of rights within contemporary economics.

Moyn (2015a, n.p.) characterizes the minimalist critique as the claim that rights cannot challenge economic inequality because of the "individualistic, and often antistatist, basis that human rights do indeed share with their market-fundamentalist Doppelgänger." Moyn claims a "disjuncture" between socioeconomic rights and egalitarianism "since the [ICESCR] strives for a minimum floor of protection . . . rather than a fuller bodied egalitarianism" (Moyn, 2015b, 161-2). But this is only one, specifically minimal and immediate, component, rather than the outer edge of the ICESCR, which also calls for realization, spending, and, as explored below, obligates egalitarianism insofar as it is necessary to realize rights. More fundamentally, socioeconomic rights and obligations applied to businesses, suggest a different approach to the rights project. They do not so naturally veer into egoism. Socioeconomic rights are communal, majoritarian, and material—they obligate the state to act, not recoil.

This is not to say, however, that these critiques are wrong. Rights scholars should be sympathetic to Marxist and minimalist critiques, and indeed it is likely that sympathy to these critiques is one root of the economic turn in human rights. But left critics should recognize that the equality and interdependency of all rights serves to invoke a conflict of rights in these circumstances, and that socioeconomic rights and business responsibilities, particularly, are a useful critical lens on the extreme protection afforded to capital's rights today.

C. Methods, Critiques and Radicalism: Human Rights as Egalitarian Tools

This section discusses three methods that underpin HR-PE. The first is to make full use of IHRL principles. In previous work, I have laid out how IHRL and BHR principles can be interpreted along ambitious, egalitarian lines, including state obligations to protect and to fulfill human rights, on the right to housing, and the corporate responsibility to respect human rights under the UNGPs (Birchall 2019c; 2021b; 2022). This type of work can suffer from the pitfalls of legalism and academic conservatism. It is easier and more legitimate to argue for a slight refinement to current norms than for radical revision, although the terminology of obligations (discussed below) suggests scope for debate beyond economically liberal lines. Opening up this debate is central to realizing rights today, for example to focus less on spending and trade-offs, and more on how to improve the level of "maximum available resources," with a focus on wealth as well as poverty (CESR 2020).

The final two methods flow from opening this field of debate. For the second method, I propose a critical one designed to understand economic structures, their effects on rights, and how obligations apply, which I attempt briefly regarding shareholder primacy below. This approach follows a three-stage methodology. It starts by observing a lack of access to a right within a jurisdiction, for example homelessness or housing-related poverty. It then traces back to identify the causes of this lack of access, most likely laws, policies, and/or business practices. This should not stop at welfare limitations, but instead it must look at market constructions and business incentives (Marks 2012; Birchall 2021b). Third, it identifies the elements of these laws and practices that cause harm or reduce realization, thereby breaching human rights standards, and proposes alternatives based on realizing rights.

Finally, both human rights research and practical realization would benefit from a radically egalitarian wing, a wing that looked beyond human rights as law, particularly beyond judicial enforcement, to focus more on what rights realization actually requires. Starting from the basic perspective that pay should be decent, homes affordable, healthcare accessible, and democracy a practical reality, this variant of rights thinking demands that states place the conditions for human flourishing in each of these areas at the center of their policy plans. Such arguments, while not being grounded in judicial standards, will be congruent with the international demands. This radically egalitarian reorientation also requires rethinking fundamental norms around the meaning and utility of rights today, such as the role of "the right to work" in modern economies and the purpose of work itself (Bueno 2019). Central to this reorientation is a strategic turn to popular discourse, building popular support for rights-based governance to challenge recalcitrant governments. Such a turn entails presenting root causes of harm and their radical alternatives in public and challenging neutral media depictions of serious human rights issues.

IV. Applying the Framework

A. Human Rights Principles

This section covers how human rights principles apply to political economy questions. HR-PE advances a structural form of human rights grounded in the idea that the economy is a legal construct to which human rights obligations apply, and that business responsibilities apply to fundamental business structures, incentives, and methods. To begin, it is worth clarifying the legal and practical status of the ICESCR and the UNGPs. The ICESCR is a binding legal covenant establishing obligations, covering, among other things, rights to work, to housing, to health, and to education. The ICESCR is binding on State Parties but only weakly enforceable. The Optional Protocol allows individuals to bring claims and the CESCR, the treaty body, reviews state performance periodically. The former is limited to individual claims and unable to address structural questions. The latter cannot compel changes. Ultimately a State Party can largely ignore its treaty obligations. Relatedly, the language of the ICESCR does not lend itself to clear obligations. Obligations to "take steps . . . to realize rights" mean that anything could be argued to meet that criterion, including privatizing health care on the grounds of efficiency or an extreme school exclusion program on the grounds of safety. The UNGPs do not create new law and instead introduce voluntary responsibilities for business. While some components are being made into hard law, notably human rights due diligence (HRDD), most responsibilities therein are unenforceable.

This lack of hard enforcement is often seen as a problem to be overcome, but it is also a foundation of HR-PE. It would not be desirable to have an international body enforce a specific housing system on states. Rather, human rights (can) provide normatively forceful and precise standards through which policy should be evaluated, and to inform democratic debate. Principle 3 of the ERP states that "The burden of proof is on the government and its economic partners to demonstrate that the proposed economic reform measures will help realize and not undermine the human rights of the state's population." Such a standard operates as a useful policy tool—the impact on rights should be analyzed according to IHRL standards and processes—and as a critical weapon where an economic policy appears to harm rights. Bernie Sanders and Jeremy Corbyn each used human rights framings to address health, housing, labor, and democratic issues, invoking the normative power of human rights to demand social change.

To begin the task of how human rights principles apply to the political economy, the article first develops the terms "economic violations" and "economic obligations." Economic violations of human rights are those acts, by states or businesses, that breach relevant doctrines through economic practices that adversely affect access to rights. An economic obligation (responsibility in the business sense) is an obligation to change an economic practice. These are not additions to IHRL—economic violations are violations like any other—but they capture an emphasis on the marginalized economics of human rights doctrines.

"Economic practices" are defined as practices related to, or stemming from, production, trade, income, and spending. At the state level these include government spending, taxation, business regulation, and trade-related laws, particularly though not exclusively as related to rights-relevant markets. Within this area the political economy approach prioritizes those elements related to the underlying political-economic structure of the right. For example, while the state failing to provide food to hungry children fits an economic violation, the surrounding political-economic structure of

food may be more relevant to identifying meaningful policy changes. We may find economic violations that cause food poverty in the laws that create working poverty, welfare conditionality, and in trade, tax, and food regulations that make affording healthy food difficult for low-income families (Downing, Kennedy, and Fell 2014).[3] For business responsibility it relates most directly to legally permitted but harmful profit-seeking, as opposed to legal breaches and egregious violations. HR-PE may study how agribusiness controls access to food, how global finance affects poverty, and how evolving employment practices affect access to decent work. There is no way to perfectly delineate "economic practices" from more paradigmatic violations in relation to business, and it is best to think of a spectrum rather than silos. The fundamental element is a focus on causative formations rather than disastrous outcomes.

B. Human Rights Standards

HR-PE utilizes core doctrinal principles of international human rights standards. The ICESCR obligates State Parties to progressively realize Covenant rights with a conterminous prohibition on "'deliberately retrogressive measures" (Warwick 2016). Article 2.1 states:

> Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

State Parties must seek to use material resources and legislation to progressively realize Covenant rights. Each right has delineated content and contextual contours; for example, the right to housing contains seven criteria to be met, including affordability and habitability (CESCR 1991). States are prohibited from implementing deliberately retrogressive measures, covering both reducing legal protection of a right (for example, reducing tenant protections) and from allowing a quantitative retrogression of access to a right within their jurisdiction (for example, allowing rising homelessness), unless necessary to protect the totality of Covenant rights, such as during an economic crisis (Nolan et al. 2014, 123-4). Contemporary economic norms feature a swath of legal retrogressive measures often designed to boost "competitiveness" or to "encourage" individuals back into the labor market, such as, in the UK, the punitive sanctions regime of welfare conditionality under Universal Credit. Regarding housing, materially one could cite the dramatic fall in government expenditure on social housing and patently inadequate solutions to rising homelessness, such as unsafe converted buildings. Legislatively, one could cite the encouragement of corporate landlords through REITs and the failure to implement rent control despite rising homelessness and housing-related poverty (Birchall 2019a).

State obligations are divided into obligations to respect (to avoid harm or breach), protect (to prevent third parties from causing harm), and to fulfill (to realize access to rights). Economic violations by states may breach respect, protect, or fulfill obligations but are most relevant to "protect" and "fulfill" obligations. States may breach their obligation to protect through economic violations by failing to prevent business practices that reduce or restrict access to rights. This duty entails that states monitor

[3] Downing, Kennedy, and Fell (2014, 1) cite the following as possible causes: "the abolition of the Social Fund and the introduction of local welfare provision, the reassessment of incapacity benefit claimants, measures to control Housing Benefit expenditure and the introduction of a new benefits 'conditionality and sanctions' regime." Evidence of causal links are provided (Downing, Kennedy, and Fell 2014, 22-23).

and proactively regulate relevant business practices. This is a response to the key problem under marketization, that profit may be increased by restricting access to rights (Birchall 2019b; 2022). The onus on market supply of essential resources means that the obligation to fulfill entails regulating markets "so as to ensure access" to relevant rights (CESCR 2017, ¶ 18; Nolan 2018). This entails a focus on macro-level outcomes and the regulation of markets to ensure progressive realization. State obligations thereby entail both that specific business practices be regulated to prevent harm, and that markets work to quantitatively fulfill access to rights.

Economic violations by businesses are determined by the UNGPs and defined as an economic decision that causes, contributes, or is linked to, an "adverse human rights impact." Principle 13 specifies that the responsibility of businesses is to "[a]void causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur." "Adverse human rights impacts" are defined as occurring "when an action removes or reduces the ability of an individual to enjoy his or her human rights" (OHCHR 2012, 5). Any business act (including an omission) that removes or reduces rights enjoyment constitutes an adverse impact. Although this responsibility is restricted to the avoidance of harm, it takes an inclusive view of harm beyond paradigmatic human rights violations. Any "action" that "removes or reduces" rights enjoyment is covered (Birchall 2019c). Therefore, economic decisions, such as to a decision to increase profit by reducing access to affordable healthcare or housing, or to decent work, are prima facie breaches of these standards. In practice the UNGPs are rarely applied to such situations, with more focus on egregious and overt violations. Utilizing the full scope of such rules is key to HR-PE.

The ICESCR is neutral on questions of economic ideology, and the UNGPs are neutral on business organization. The ICESCR, for obvious reasons, did not start from an anti-capitalist, or anti-communist basis. But this neutrality only stretches as far as human rights outcomes. Economic ordering must work to realize rights, and business organization must not harm access to rights. This provides for apolitical critique of contemporary economic forms. Even rampant inequality is permitted where progressive realization of rights is still occurring, and that inequality is not harming democratic or other rights. Rising inequality, and particularly value extractive causes of this inequality, are a human rights issue because, or insofar as, they reduce access to rights (HRC 2015, ¶¶ 19-20). This is the form of human rights neutrality. Any system is permitted so long as it works to realize rights. Any aspect of a system that fails to realize rights or causes retrogression is a potential breach of obligations. It means that to any state or business structure we can ask: Is this reducing access to rights or is it realizing rights? If the former, human rights provide a basis for change.

C. State Obligations

This section sketches the application of the principles above through the doctrines of international human rights law to state practice. States are obligated to devote the maximum available resources to realizing rights including to social security, decent work, and housing. Sub-elements within these include reducing precarious work and ensuring housing is affordable. Some common policies may be labeled prima facie economic violations of human rights that should be prohibited under the ICESCR. These include minimum wage being set too low, excluding some groups, or being otherwise avoidable by employers (CESCR 2016a, ¶¶ 19-59); punitive benefit cuts for lateness or missing meetings (CESCR 2008, ¶¶ 45-6); permitting private health care providers to charge hidden fees (CESCR 2016b, ¶ 43); failure to regulate conditions in private detention centers or nursing homes (CESCR 2000, ¶

12(b)); permitting land hoarding by developers where lack of access to housing is an issue; and a housing costs-income ratio above 40 percent (Birchall 2021b).[4]

Some of the above, such as minimum wage rules, are definitive human rights obligations that stem directly from a Covenant right and have been confirmed by the CESCR. Others, such as the housing costs-income ratio, are a natural component of a Covenant right but have not been confirmed as an obligation by the CESCR, despite affordability being a core component of the right to housing. Issues such as land hoarding potentially structure unaffordable housing without directly breaching any individual's right to housing. Insofar as this occurs, permitting land hoarding breaches state obligations. Following the critical method outlined above, I have previously identified eight such governmental violations specific to housing affordability in Hong Kong, including permitting land hoarding, government land sales rules, the failure to regulate private landlords, and an outdated legal commitment to funding public works that generates "white elephant" projects in breach of the obligation to devote the maximum of available resources to realizing rights (Birchall forthcoming). It was argued that when reviewing Hong Kong's compliance the CESCR should cite such specific causes of housing unaffordability and posit pro tanto obligations (obligations that are binding but can be overridden by other serious requirements) toward their redesign, at least requiring that the government to explain how these policies are commensurate with obligations under the right to housing.

There is need for deeper structural critique. Chadwick (2020, 19) juxtaposes the mandate of the UNSR on Extreme Poverty and Human Rights "to identify approaches for removing all obstacles, including institutional ones, to the full enjoyment of human rights for people living in extreme poverty" with Pistor's argument (2020) that the legal code protects capital to entrench wealth, poverty, and the non-realization of socioeconomic rights. One example is shareholder primacy. Shareholder primacy is a legal construct embodied in Section 172 of the Companies Act of 2006 in the UK and more deeply embedded by a range of shareholder oversight rules, including directors' three-year terms, annual shareholder votes on removal of directors, and shareholder rights to influence director pay, leading to payment in shares and bonuses for raising the share price. The methods of producing shareholder value today are primarily dividends and share buybacks, both of which benefit from legal changes in various jurisdictions, including the UK (reduced taxation on dividends, down to 32.5 percent from a high point of 98 percent in the 1970s, and the legalization of share buybacks). This has resulted in a corporate governance system overseen by shareholders and dedicated to creating shareholder value above all.

Is shareholder primacy an "institutional obstacle" to "the full enjoyment of human rights," or, in the ICESCR's terms, does it adversely affect the goal of "achieving progressively the full realization of the rights" or otherwise constitute a "retrogressive measure?" One angle is to look at how shareholder value is created, involving the who, why, and how of shareholder primacy. Shareholders own shares which are freely transferable assets. Most shares are owned by asset managers and other professional traders. Their job is to maximize the value of these shares. They do this by trading frequently, always moving to the shares most likely to rise.[5] With this group empowered to oversee and remove directors, directors must appeal to these short-term instincts, by finding the quickest way to create shareholder value. This is achieved by avoiding long-term investments and extracting from the company to fund dividends and buybacks. Common tactics include reducing pay and conditions include downsizing,

[4] This is the highest generally recognized allowed figure, from the Organization for Economic Cooperation and Development. It is lower (a more stringent standard) in, for example, the US and Canada (Birchall 2021b).
[5] On average, in 2011 shares were held for 22 seconds (Mazzucato 2018, 174-5).

and, particularly in private equity, sale-and-leaseback of company-owned property and dividend recapitalizations (borrowing to fund a dividend) (Applebaum and Batt 2014). These tactics allow otherwise impossible bonus targets—for example, a 100 percent rise in the share price within three years—to be met. The ideal of shareholder primacy, rooted in agency theory, is that shareholders "own" the company and will value its long-term health (Jensen and Meckling 1976, 309-10). But rapid trading of shares, coupled with opportunities as presented by the legalization of share buybacks and reduced dividend tax, makes this untrue. Rather than creating long-term "stewards," shareholder value necessitates extraction and labor impoverishment to fund direct rentier returns to shareholders so that managers get their bonuses.

Lazonick (2014) found that from 2004–2012, S&P 500 companies spent about 91 percent of their profits on buybacks and dividends. A more recent UK FTSE 350 study found that "[t]he top 20% of highest distributing firms paid out 178 per cent of their net income attributable to shareholders between 2009-19. The next quintile distributed 88 per cent of their earnings, on average. These two quintiles represented between them 60 percent of the market value of the sample of 182 companies" (Haslam et al. 2021). This only occurs because of legal changes implementing shareholder primacy, shareholder oversight, and tax and legal changes that encourage these methods of creating shareholder value.

These shareholder-centric practices cause significant effects. The start of the shareholder primacy era tracks the moment when economic inequality and the severing of labor income from productivity took off. While these outcomes have multiple causes, a significant direct cause is that directors began to, and over time refined ways to, create shareholder value by transferring profits that would have been spent on wage increases to shareholders instead (Lazonick and O'Sullivan 2000). As shareholder primacy and its methods have become entrenched, reduced labor income increasingly becomes working poverty. When over 100 percent of earnings go to shareholders, workers, service users, and society suffers. It causes the long degradation of wage stagnation that eventually leads to mass use of food banks and working and child poverty, all evincing major human rights concerns. Shareholders of train companies in the UK received £800 million in dividends in 2021, the managers that paid these dividends received £5 million, while the railways union, the RMT, led a strike over significant real-term pay cuts and worsening conditions for low paid workers. BT Group, also facing strike action among low-paid workers, made profits of over £1.3 billion in 2021 and paying out over £700 million to shareholders.

Shareholder primacy embeds an economic incentive structure towards reducing investment in workers and innovation to fund returns to shareholders. This is large-scale value extraction. In Lazonick's study around $4 trillion was distributed by 449 companies over nine years. This is $4 trillion that did not go to pay rises and productive investment. When contextualized with falling real wage growth and rising working poverty, causal links seem obvious. Because shareholder primacy and the methods of creating value are legal constructs, these legal constructs fit the definition of a deliberately retrogressive measure. But this example also evidences the contemporary limits of human rights practice, drawn from the individualism of claim right approaches. Shareholder primacy rules do not directly, provably harm any specific individuals in the way that a cut to housing benefits may create direct victims. This is the paradox of human rights today. New barriers to realization have emerged, but human rights norms work against addressing these barriers.

This is the bridge that human rights need to cross. Following the above approach, the first step is to link working poverty to, for example, dividends and share buybacks. There are different ways to

approach the issue politically. We could start by asking why train companies paid out £800 million in dividends in a year while workers were using food banks. Focusing on interference by the state and positive legal construction, we could highlight taxation changes on dividends and shareholder oversight that leads to bonuses linked to maximizing shareholder returns. This establishes that upward redistribution is not natural but is the result of recent legal changes that clearly could be reversed or amended. Grounding arguments in fundamental rights obligations, we could cite from IHRL that, for example, the state is obligated to use "the maximum of its available resources, with a view to achieving progressively the full realization of the rights . . . including particularly the adoption of legislative measures." This includes economic management to ensure adequate funding for social security, and business regulation to ensure adequate pay (CESCR 2016a). At a minimum, we could demand from the state a positive rationale for current norms following ERP Article 3 that can then be evaluated on human rights grounds, and cite the human rights benefits of alternatives, perhaps drawn from corporate purpose, or more radical debates (Mayer 2018; Akbar 2020). This would help turn human rights into the most fundamental problems within rights realization, not through judicial mandate but through democratic power.

A simple human rights approach to corporate distribution would be to require that corporations must ensure respect for human rights prior to distributing wealth to shareholders through buybacks and dividends. Corporations must ensure living wages and secure contracts using the obligations under "the right to just and favorable conditions of work," as well as obligating environmental improvements under the right to a healthy environment, and whatever else is relevant to human rights at a specific company. This approach can also apply to prices in relevant sectors. In housing, it should include that rental costs must be affordable prior to funds being distributed to shareholders by a company that owns rental housing. Many other types of spending many be interrogated as well, but the essence would be that the company must do its human rights duty prior to shareholder (re)distribution. This is not mandating living wages or environmental expenditure. It is mandating only that funding respect for human rights takes precedence over shareholder distribution. This would help establish stakeholder principles and corporate purpose principles in more meaningful law, banning upward redistribution until a set of defined standards are met. If these standards are set high enough, it would mean that the £700 million distributed to shareholders by BT Group would have first had to be spent on wages, environment, possibly access to internet or price cuts benefiting consumer-stakeholders, and so on. This change in spending, every year, for almost every large company, would be transformative. This approach applies IHRL principles, particularly that states must use law and policy to realize rights and must "protect" rights-holders from harm by business by ensuring that businesses respect rights. Because of the scale of corporate activity in the UK, harnessing this wealth in the interests of rights is a necessary component of making rights meaningful in the contemporary economy.

D. Business Responsibilities

The application of human rights standards to business immediately turns human rights to economic actors. Businesses can clearly cause enormous harm through their economic choices and by following economic incentives, of which the business role in the global food crisis is perhaps most notable (McMichael 2009). As noted above, the UNGPs can apply to economic actions, but, like wider human rights, there is a strong tendency to focus on direct violations of individuals' rights. To move beyond direct violations and to challenge businesses on their regressive practices through human rights, a more structuralist framing of BHR is needed. Two ways to begin this project are first by focusing on

profit models and business incentives, and second by recapitulating the view of the corporation within the field.

Private equity provides an example of a harmful profit, or investor value, model. Private equity firms purchase companies and manage them with the sole of aim of maximizing investor returns. They represent a more extreme form of shareholder primacy because a fund created by a private equity firm typically owns many companies at one time, managing them all for the benefit of the fund. This encourages outsized risks with individual companies, increasing the risk of bankruptcy, extreme downsizing, and value extraction. Common methods of delivering value include leveraged buyouts, the debt-funded purchase of a company, dividend recapitalizations, borrowing money to fund dividends, and sale-and-leaseback, where property is sold to fund a dividend, which is then leased back. Private equity firms have long been seen as a risk to workers (Applebaum and Batt 2014), cutting jobs and conditions to fund investor returns, and recently they have increased their positions in healthcare and housing, cutting staff, safety, and increasing prices (Gupta et al. 2021). To address these human rights outcomes requires addressing the economic model that incentives them. A traditional human rights approach based on only addressing the specific violations will at best reduce or shift the violations, because the economic model requires excessive value extraction. For BHR to realize its aim of creating rights respecting businesses requires attention to economic models that act as root causes of violations.

From a more theoretical perspective, to address economic models may require rethinking the position of the corporation in BHR. The UNGPs start from the premise that corporations should respect human rights. That corporations hold no duty to realize rights is a long-held view. Corporations lack a delineated jurisdiction and authority, and therefore "how" and "for whom" they should realize rights is a difficult question. Donaldson argues that businesses hold moral obligations to avoid depriving individuals of access to rights, but no duties to aid the deprived. For Donaldson (1989, 84), the corporation is "ill-suited to the broader task of distributing society's goods in accordance with a conception of general welfare." This view, while fair in many ways, ignores the fact that corporations currently do control access to resources, from the large-scale, such as global agribusiness and oil companies, to smaller-scale control in housing and work. It is too simplistic to posit a duty to realize rights, but corporations must be understood as actors with comprehensive power to reshape global rights possibilities. This entails moving beyond Donaldson's individual moral rights framework into a much more structural view. If we see corporations as conterminous to individuals, able to commit wrongs that must be regulated, but of no structural relevance to rights, then the structure of business law is itself not relevant, and businesses require only delimited prohibitions on, for example, using modern slavery. If we see corporations as structurally important to rights, then the structure of businesses themselves become relevant to any attempt to enforce meaningful responsibility.

Finally, this comprehensive view would generate a comprehensive understanding of business impacts and of regulations such as human rights due diligence (HRDD). HRDD is a process designed to understand and prevent human rights risks, defined as potential human rights impacts. This raises a question of scope. Do we understand "risks" only directly, as poor safety practices, for example, or do we include the systemic causes of risks? Taking the latter approach is reasonable if the aim is to truly reduce human rights risks. It is important to remain evidence-based, to seek causal links between practices and eventual adverse human rights impacts. A good starting point may be those business practices that profit exclusively from reducing access to rights, or the severe risk of such a reduction. The housing investor Blackstone has a business model based on finding "undervalued" homes and maximizing their value, eroding those niches in wealthy housing markets where the poor can still

afford to live (HRC 2017, ¶¶ 24-25), increasing evictions and harming affordability. Does this breach the UNGPs? As UNSR Farha notes, "very little attention has been paid" to such issues within BHR (HRC 2017, ¶ 64). A transformative approach to business regulation is one that understands that investors like Blackstone have the power to structure rights regressions, not merely to overtly violate rights, that Blackstone's economic model often necessitates such regressions, and that this model is the product of legal and economic incentives and opportunities.

V. Conclusion

This article has established the rationale for, and basic form of, a political economy approach to human rights. The fundamental basis for HR-PE is that legal ordering today constructs wealth and poverty. IHRL and BHR standards, along with contemporary approaches to human rights such as the ERP and the Shift Directives, provide avenues for critique and policy ideas. It is argued that a political economy approach is necessary to understand and address the causes of key human rights problems today because the realization of rights depends on the organization of political economy. HR-PE moves beyond claim right approaches to embrace the full scope of IHRL as informed democratic demands to make economies work to realize rights. It invokes conflicts between rights, using this full scope to challenge neoliberal interpretations of rights. There remains a major gap in the practical efficacy of human rights in addressing the political economy, despite its fundamental role in creating poverty and thereby rights retrogression. It is hoped that this article will inspire others to consider political economy within their human rights research, expanding the range of human rights treaties and contexts.

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