

# **How Public Goods Can Complement Human Rights in Addressing Inequalities**

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## ***Abstract***

In light of the recent revival of the concept of *global public goods* in the international policy-making arena with respect to the COVID-19 crisis, this research investigates the potential of the public goods framework to complement the well-established human rights one in understanding and addressing inequalities on a global scale. By reconciling insights from global ethics and political economy, I argue that the public goods framework enhances our comprehension of inequalities relative to three dimensions: exclusion, competition over resources, and provision. These claims are substantiated through the case of the COVID-19 vaccine, demonstrating how the human rights framework remains silent to important determinants of inequalities, which are better explained by the public goods framework.

## ***Introduction***

### **Problem Statement**

On the occasion of the 102nd birth anniversary of Nelson Mandela, the UN Secretary General Antonio Guterres delivered a stinging critique of the present world order (Guterres 2020). Widespread injustices and disparities pose a threat to the project of an inclusive and sustainable future which is at the heart of global governance. In Guterres' words, the premise of the United Nations' work for social justice is that "food, healthcare, water and sanitation, education, decent work and social security are not commodities for sale to those who can afford them, but basic human rights to which we are all entitled" (ibid).

It is clear that the achievement of this vision becomes highly problematic in a global context which is "defined by inequality" (ibid). In fact, according to the *World Social Report 2020* the world's richest one percent of the population captured 27 percent of the total cumulative income growth between 1980 and 2016 (UNDESA 2020). The phenomenon is emblematically illustrated by the figure that the world's 26 richest persons own as much wealth as half the global population (ibid). This trend is even more pronounced if we look at high income countries. For example, between 1993 and 2010 over half of the increment in US national income went to households in the top 1 percent of the income distribution (Ford 2015). Nonetheless, income and wealth are not the only measures of inequality. People's life chances are highly dependent on their family and ethnic background, race, gender, whether or not they have a disability, where they are born (not only in the world, but also within countries and even neighborhoods)(Davis 2015). Multiple inequalities intersect and reinforce each other, delimiting expectations and opportunities of people, to the extent that they sometimes become "a direct assault on human rights" (Guterres 2020). From this perspective, inequalities are not merely defined in terms of income and wealth, but also include immaterial elements determining one's life prospects, like social recognition and status. This broader definition helps to holistically capture aspects of social standing and power relations.

The COVID-19 pandemic is further exposing many of the fragilities of our societies. In his speech, Guterres notes that the coronavirus pandemic has shed light on the dark failings of global inequality and injustice, exacerbating them. Entire regions like Sub-Saharan Africa, that were making progress on eradicating poverty and narrowing inequality, have been set back years. According to the most recent UN report on the goal of ending poverty, the COVID-19 pandemic is pushing an estimated 40 to 60 million people back into extreme poverty, signaling

the first increase in global poverty in more than two decades (UN 2020a). The impact of the pandemic on the poor has been particularly harsh, hitting informal workers, small businesses, women and migrants disproportionately (ibid), hinting again at the fact that inequalities tend to be reinforced across certain societal groups, to which people belong often simultaneously (Meyers 2000).

Guterres argued that this crisis has revealed several delusions. Most importantly, the misconception that free markets can deliver healthcare for everyone and the myth that we are all in the same boat because “while we are all floating on the same sea, it’s clear that some of us are in superyachts while others are clinging to the floating debris” (Guterres 2020).

What is interesting in Guterres’ speech, aside from the lucid analysis of the challenges of our time and the proposals for change that follow, is how he defines the substance of what would make for a just and equal world<sup>1</sup>.

Initially he refers to them as a basic human right, with the result that when existing inequalities impede their fulfillment, people’s rights are violated. Guterres employs the concept in a context where addressing inequality serves the purpose of redressing injustices and ensuring respect for the dignity of every human being. It is important to point this out, since the concept of human rights has a wide range of interpretations and justifications. It sparks debates over its appropriate scope and practical implications<sup>2</sup>. Guterres’ use of the concept of human rights is consistent with the custom of framing issues of social justice in terms of right claims that legally and ethically underpin broad projects of development (Crewe and Axelby 2013). The 2030 Agenda for Sustainable Development itself (in which reducing inequalities is one of the prime goals) is “grounded in the Universal Declaration of Human Rights and international human rights treaties” (UN 2015, para.10). The existing body of legal documents on human rights offers the basis for – and legitimization of – development efforts of major intergovernmental agencies. This is unsurprisingly so, since the human rights agenda holds the potential to empower disadvantaged and discriminated people (Crewe and Axelby 2013).

Towards the end of the speech, however, when talking about a broad project of restructuring of the global political and economic system, Guterres (2020) argues that the global community “is not delivering on critical global public goods”, mentioning public health,

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<sup>1</sup> In a list taken from the same speech (Guterres 2020): food, healthcare, water and sanitation, education, decent work and social security.

<sup>2</sup> For example, in the doctrine of the Responsibility to Protect, where human rights violations justify foreign intervention in a country’s internal affairs (Deng 2010).

sustainable development, climate action and peace. In this case, the employment of the concept of *global public goods* is an instrument to capture the challenge in the global order to work on amending the “tragic disconnect between self-interest and the common interest, and the huge gaps in governance structures and ethical frameworks” (2020). Guterres still envisions the same ultimate goal of well-being and prosperity for all that he hints at when denouncing inequalities and human rights violations. However, by mentioning global public goods as a means to achieve it, he appeals to a very different framework from that of human rights. By origin “public goods” is an economic concept, theorised to explain instances where the market fails and government intervention is needed to ensure provision (Samuelson 1954).

Although the human rights framework is much more established in the discourse of global governance and development projects, lately the concept of global public goods has been increasingly employed when dealing with current global challenges. For example, the idea of global public goods has been picked up by international politicians and policy-makers when talking about the vaccine against COVID-19, in an attempt to encourage equal distribution and solidarity among states for the provision of the vaccine, of which the WHO-sponsored COVAX facility is an example (UN 2020b). Global public goods are not a completely new concept in academic literature either. At the turn of the 21st century, Kaul, Grunberg and Stern (1999) developed it in a volume sponsored by the UNDP, which explored the concept in relation to a variety of case studies, ranging from environment, health and peace, to financial stability and market efficiency. Nonetheless, the concept failed to gain considerable traction both in academic research and policy-making, shadowed by the more popular framework of empowerment embodied in projects like the Millennium Development Goals first (Langford 2009) and the Sustainable Development Goals currently.

The fact that the issue of the COVID-19 vaccine has not been framed as an appeal to a universal right to health for individuals of all countries, but rather in terms of being a global public good is a sign of how the public goods framework deserves renewed attention in academic research. In fact, if the academic engagement with the concept of human rights is extensive and dates back various decades, sparking heated debates among different approaches and justifications, the literature on public goods is still relatively thin (Kohn 2020).

At a first read, Gutierrez’ employment of the two concepts in the speech seems agreeable, as both human rights and global public goods are prime sources of inquiry for broad projects of global justice. Their appeal lies in their purported capacity to transcend the nation-state, which is increasingly found wanting in governing the world. In this light, they can be an attempt to redress the imbalance between the transnational impacts of economic globalization

and state-based forms of legal and political rule (Augenstein 2016; Walker 2016). However, what are the exact peculiarities of the two frameworks and how can they relate to each other? Their combination has been investigated with respect to global legal and political morality, by probing their grounds for political authority (Augenstein 2016; Walker 2016). However, the question of whether and how they can provide the basis for a project of social justice that tackles inequalities is left open. When dealing with global inequality, is there an added benefit to employing the public goods framework in conjunction to the well-established human rights discourse?

## **Research Plan**

In order to explore this question, this thesis reconstructs the most influential approaches to human rights and public goods, analyzing their respective potential from a social justice perspective. A consensus is far from being achieved in either fields, and differences are often marked. This means that supporting a specific conception of either has decisive implications for one's worldview. The guiding puzzle of the theoretical reconstruction is to what extent each approach to human rights and public goods can help in understanding and addressing inequalities, with the purpose of achieving more just and equal societies.

The theoretical reconstructions of human rights and public goods take place in chapter 1) and 2). The overview of the academic debate is organised along schools of thought distilled from the work of several authors, including close readings from the most eminent ones. Specifically for human rights, after delineating the most salient feature of the accounts and engaging critically with them, I conclude each section with an assessment of how the approach fares in making sense of inequalities. For public goods, the same assessment is carried out in chapter 3), leading to a list of features that can complement the human rights' diagnosis of (and response to) inequalities, further elucidated by applying it to the case of the COVID-19 vaccine.

The choice of the theoretical frameworks adopted gives away the interdisciplinarity of the project. The human rights (HR) literature pertains to the realm of political philosophy, while the public goods (PG) one finds its roots in classical economic theory. Therefore, this thesis engages with a large variety of philosophical and economic sources. However, it must be noted that these disciplinary boundaries are not as neat as they are sometimes portrayed. For one, the presence of the concept of public goods in the philosophical debate points at the high degree of interdisciplinarity inherent to the discussion. Insights from the two disciplines are integrated organically, though the disciplinary origin of standpoints and ideas is reported to avoid

ambiguity. Therefore, this thesis discusses two main concepts at the core of global ethics, whose different disciplinary origins highlight the added value of conducting interdisciplinary research.

This study situates itself in in the broader global justice debate. Nowadays, the debate over global justice revolves around two main questions. First, “equality of what?” concerning discussions about claims of socio-economic redistribution and legal-cultural recognition. Second, “equality among who?” (i.e., Who are the relevant subjects entitled to a just distribution and reciprocal recognition?) (Fraser 2008). However, while engaging with social justice, this research does not aim to contribute to the already burgeoning literature on global ethics. Conversely, the aim is to investigate the potential of the PG and HR frameworks in relation to the overarching question of social justice.

A significant contribution to the global justice debate is the book *Scales of Justice* by Nancy Fraser (2008). Her basic argument is that since injustices happen at the intersection of multiple scales (local, national, international), questions of justice cannot be dealt with exclusively in the confinement of the Westphalian state (a problem she calls *misframing* questions of justice). The growing interdependence of globalization put into question the justice framework of the single state, which “partitions political space in ways that block many who are poor and despised from challenging the forces that oppress them” (ibid, pp.20). In developing countries, for example, by channeling their claims into the domestic political space of relatively powerless states, this frame insulates offshore powers from critique and control.

This reflection contributes to illuminate the gaps left by current conceptions of justice declined in the field of human rights. A global political economy perspective invites a broader reflection of the agents involved in the system that reproduces and sustains inequalities. It helps pointing at agents like foreign investors, international currency speculators, and transnational corporations contributing to injustices, which tend to be insulated from investigation given the established practice of dealing with social justice within the nation-state. Putting emphasis on global public goods may be conducive to a more comprehensive analysis of the actors and mechanisms involved in the generation and reproduction of inequalities.

In a paper investigating the responsibilities for human rights of transnational pharmaceutical corporation, Wu (2012) emblematically argues:

“To highlight the acute need for international assistance and cooperation, [...] in addition to the state's human rights obligations to respect, protect, and fulfill the right to health, scholars have manifested increasingly visible alarm over the



activities and enormous power of transnational pharmaceutical corporations (TNPCs). It is because of the complex, at times mystifying, forces of the new global economy as well as the (re)emergence of these transnational corporations that have challenged the traditional understanding and functioning of human rights laws pertaining to health care” (pp.80-81).

Therefore, though its starting point is rather theoretical and normative, this research aims to bridge abstract global ethics discourses with current global political economy developments. The PG framework serves as a means of shifting perspective from the pure domain of global ethics and morality to the intricacies of the political economy. To do so, in the conclusion, I test a list of promising public goods features on the case of the provision of the vaccine to COVID-19, to emphasize its potential for making sense of injustices. As a final task, in light of the analysis conducted in chapter 1) and 2) and the discussion of the case of the vaccine in chapter 3), I explore the theoretical connection between the HR and PG framework. I advance a few hypotheses on the nature of their relations, and explain why they may be fruitful for understanding and capturing the challenges posed by inequality.

## ***Chapter 1: Approaches to Human Rights***

Recently the human rights discourse has been omnipresent in global governance, giving shape to transnational institutions like the International Criminal Court and legitimizing international interventions to stop genocide (Benhabib 2008). However, despite being widely employed in the practice, there is far-reaching theoretical disagreement among political philosophers and legal experts about the nature and scope of human rights (Buchanan 2010). Therefore, this chapter consists in a critical survey of prominent recent debates on the foundations of human rights.

The academic interest in human rights in political philosophy has experienced a surge since the publication of Rawls' revisionist work *The Law of Peoples* in 1999. It marked a caesura with the previous approaches to the topic, which used to focus primarily on individual agents and on finding normative grounds for their right-claims – the humanistic approach (ibid). Rawls' work moved away from this approach to focus on the institutionalization and practice of human rights, marking the beginning of a new approach (the functional approach), picked up consequently by other major theorists like Charles Beitz (2009). The humanistic and the functional approach are the ones discussed first, being the most established models both in terms of longevity and resonance.

Nonetheless, amid this debate, new approaches have recently emerged, trying to reconcile the two camps. The work of Rainer Forst (2010) and Seyla Benhabib (2013) explicitly tries to show how the opposition of these two views is false and simplistic, and proposes a third way of conceiving human rights called “discourse theoretic model”.

### **1.1 The Humanistic Approach**

The humanistic view on human rights finds its roots in political thought of the 19th century, which found expression in the US Bill of Rights and the French Declaration of the Rights of Man and Citizen (Buchanan 2010). It is debtor, inter alia, to the Lockian idea of natural rights to “life, liberty and property”, but also the Kantian recognition of the inherent dignity of human beings.

A right is natural if the reasons for our entitlement make no reference to contingent social conventions or institutions. This means that human rights are different from positive rights (i.e., rights enacted in law in a society), as they have a special moral character and grounding that can be fully discerned without reference to their embodiment in any public

setting or practice (Beitz 2009). If rights are possessed by people regardless of specific aspects of its political structure and culture, what are they founded on? According to the humanistic approach, they are possessed by all human beings (across time and space) “in virtue of their humanity”, as famously phrased by John Simmons (2001, pp.185).

While being declined in various forms by scholars, this approach particularly insists on locating the source of value in the individual. Humanistic accounts focus on the extent to which people possess certain capacities or characteristics that grant the status of human rights holder. In this sense, human rights are pre-institutional in a logical (rather than historical) way: their content is conceivable independently of references to actual institutions. Therefore, they operate as comprehensive constraints on human action in any context this action might happen - in interpersonal relations, in national and international settings. The distinctive human feature that is most frequently taken as the basis for justification is agency, for being an unavoidable assumption of all practical prescriptions (prudential, moral or political) (Claassen and Düwell 2013).

Gewirth defines agency in terms of voluntariness and purposiveness, assuming that an agent is able to act in a voluntary and goal-directed way. To be a purposive agent, a person needs to fulfill two necessary conditions, identified by Gewirth as freedom and well-being. Freedom because it is the defining feature of agential behavior and well-being as the general requirement for achieving the purposes of action (Gewirth 1978, pp.52–62). Because they are necessary to agents in order to act prospectively, freedom and well-being are protected by generic rights. This concept of generic rights is pivotal to the Principle of Generic Consistency, which prescribes: “Act in accord with the generic rights of your recipients as well as of yourself” (ibid, p.35). Human rights are a formulation of these generic rights: A has a right to X against B by virtue of Y (Gewirth 1984, pp.1). Spelled out, this means that all human agents equally (A) have a right to freedom and well-being (X) against all other human agents (B) by virtue of their agency (Y).

Gewirth’s argument proceeds with a method he calls dialectically necessary because it departs from a first-person perspective. A person who makes a dialectically necessary statement cannot deny it without denying the necessary precondition of being able to make that statement. Therefore, Gewirth employs this method to demonstrate that there are some statements an agent cannot deny by virtue of being an agent, in pain of denying his own agency. This entails two steps: (1) if I think of myself as a purposive agent, logically I must accept I need freedom and well-being as necessary preconditions to action, from which follows (2) that I also have a right to freedom and well-being. This is because if I assert I don’t have rights to

freedom and well-being I incur in a contradiction: being necessary conditions for action, I cannot logically accept that I don't have freedom and well-being.

These statements are necessary only because of my agency, and it is therefore logically necessary for me to think that all other agents have the same right to the necessary preconditions of freedom and well-being. Subsequently, I have to accept that all agents have my same rights, as I cannot think of others without the same rights as me without implying that I also don't have those rights. In short, all agents are obliged to respect the generic rights of all agents (i.e., the Principle of Generic Consistency).

This justification of human rights invites several objections. First, putting emphasis on agency without much articulation, Gewirth doesn't consider that human beings may present this capacity to a greater or lesser extent. What to think of obvious cases like children, or mentally disabled people? Or even more controversial cases of vulnerable groups like the poor or migrant workers, whose agency might be curtailed to a significant extent. It is often the case that those categories with the least agency are those that need the recognition and protection of their rights the most (Susienka 2019).

Second, even granted that some conditions are necessary for human action, why should we think of them as rights? And why do these practical necessities for action become moral imperatives for other people to respect? It is in fact not clear why it follows from the premise that some conditions are necessary for me to exercise my rational agency, that you should acknowledge such conditions as my entitlements.

Third, even when one accepts the justifications this approach gives to human rights bearers, which could be considered to be on the 'demand-side' of human rights, it still doesn't articulate significantly what ought to happen on the 'supply-side'. In fact, human rights are solely understood as protections to our agency, a status which is considered in isolation from society and its structures.<sup>3</sup>

With regards to inequalities, this approach has been criticized on similar terms. In fact, the first-person perspective of the humanistic approach focuses on providing a moral justification of the existence of human rights, giving rise to claims to achieve minimal conditions of well-being to enable individual agency. However, addressing inequality requires

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<sup>3</sup> This criticism is particularly advanced by exponents of the functional approach to human rights, like Charles Beitz (2009), who find that framing the matter in terms of the beneficiaries deflect the attention from more difficult questions of remedial action in case of human rights violations, and in general the selection of those who have the responsibility to uphold these rights.

more than achieving biologically acceptable levels of food, clothing and shelter. It requires that these needs be met in way that is compatible with societal standards of decency (Buchanan 2010). The humanistic approach lacks this social-comparative perspective, overlooking that an adequate standard of living is not only understood in terms of distribution of resources, but also in terms of relational status (i.e., how the individual stands with respect to others in society).

Moreover, by thinking of agents in isolation from the context in which they operate (and in line with the functional critique about the lack of contextual considerations), this approach does not provide any insight on crucial structural factors determining inequalities. It provides arguments for claims to basic standards of living, but it doesn't provide tools to grasp the origins or causes of the unequal state of affairs, which can potentially continue to reproducing itself. The result is that human rights as conceived, without further discussion of the context in which claims are raised, risk to "sweep the systemic basis of inequality under the carpet" (Marks 2013, pp.235).

## ***1.2 The Functional Approach***

The functional approach, rather than focusing on the individual and his agency, sees human rights as demarcating the limits of state sovereignty. Human rights are framed as protection of individuals from the abuses of their governments. From this standpoint, philosophers aim to account for the changing status of human rights in the world order, instead of considering them as static moral claims grounded in the value of human nature. Therefore, this view presupposes a system of states in which human rights are distinctively of 'international' concern.

John Rawls is considered to be the first developing this view in *The Laws of Peoples* (1993). In his words "[Human rights] are part of a reasonable law of peoples and specify limits on the domestic institutions required of all peoples by that law" (ibid, pp.59). Rawls presents human rights as part of a broader conception of public reason formulated for an international society of liberal and "decent" peoples, arranged politically in states. "Decent" peoples have a conception of justice that involves an idea of the common good and a democratic procedure of consultation. They make up the *Society of Peoples* regulated by the *Law of Peoples*, which gives shape to the society's public reason and grounds international political action. The concept of public reason is crucial and it refers to shared principles and norms of a society, of which human rights are a subset. The shared norms of the Law of Peoples ensure peace and

willingness to cooperate in the international arena. It follows that the list of human rights according to Rawls is quite minimal (rights to life, personal liberty, personal property, and equal treatment under law). The primary responsibility to protect these rights belongs to the singular governments, as legitimate political organizations of the peoples.

Charles Beitz develops this position further in *The Idea of Human Rights* (2009). A central criticism he raises against the humanistic approach is that it understands human rights law as an embodiment of moral ideas that can be discovered independently of the international realm and its normative discourse (ibid, pp.102). On the contrary, Beitz argues that human rights have a functional role in international law and practice, which constrains their conception from the start. He therefore calls for a practical approach where the aim is “to grasp the concept of a human right as it occurs within an existing practice”, taking the doctrine and practice of human rights “as the source materials for constructing a conception of human rights” (ibid, pp.103).

Human rights then embody the protection of “urgent individual interests” against “standard threats to which they are vulnerable” (ibid pp.110). Beitz explains his idea in a two-level model which involves that responsibility for rights protection is shared between states and the international community (ibid pp.106-113). The primary role of states is to protect the human rights of its citizens. Whenever states fail to do so, the international community assumes this responsibility on behalf of the state. Human rights have an essential international character, and placing states as their primary protector is merely a practical choice in terms of both legitimacy and resource administration to make sure that they will be defended.

Beitz’s functional approach invites the following objection. Observing the international practice of human rights, he identifies regularities in behaviors and beliefs. In these observations:

“We might find that members of some group tend to perform some action A in circumstances C. We might find, moreover, that these agents perform A in C because they believe there is a norm that agents in C should A. These agents may also believe that someone who finds himself in C but fails to A is vulnerable to criticism for behaving improperly unless he can bring forward some other reason that plausibly defeats the reason he has to A in C” (ibid pp.104).

This scenario becomes problematic because it potentially undermines the normativity of human rights, and its capacity to provide reasons for action, reducing statements about human rights

to complicated sociological facts. To say that there is a right to X becomes “simply a shorthand for a complex description of regularities in behavior and belief among the members of some group” (ibid, pp.104). But this formulation invites the objection that when asked for why a right to X provides reasons for action, it cannot be enough to answer that members of some group believe that there is such a human right to X and effectively take this belief to be the source of the reason to action. The answer would simply beg the question, as “we see this by recalling that people can be wrong in their beliefs about how they should behave” (ibid, pp.104).

Beitz's response to this challenge is that it does not directly relate to the question he is asking. In his defense, he explains that the objection raised relates to the question *why do human rights provide reasons for action?*, while he investigates the practice of human rights because he is interested in understanding how human rights operate in the normative discourse of global governance, in the way participants of this practice draw practical conclusions from the abstract affirmations about human rights. He claims that “whether we should accept claims about human rights as sources of reasons for action for us is a further question” (ibid. pp.105). His answer seems to be dodging the question, as it remains unclear why he decides not to engage with the matter. In fact, the question goes to the core of the inquiry of human rights, interrogating its normative grounds and consequent content articulation.

His response can be interpreted as an attempt to remain neutral to the large range of social and cultural norms that different societies might want to endorse (Kadambi 2010), but his method can still be criticized for being normatively weak, and avoiding to engage with difficult problems. In fact, it renews questions about the content and scope of human rights, which become contingent upon their self-evolution within society (ibid). This is because there are no independent principles or values to rely on that can internally drive the practice. In fact, the practice of human rights itself is not disputed and the practical implications of his conceptualization are not explored<sup>4</sup>. Benhabib makes a similar critique, arguing that the

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<sup>4</sup> For example, this becomes quite clear when one recognizes the similarities between his formulation of human rights and the concepts of sovereignty as responsibility and responsibility to protect (R2P). State-sovereignty, even though commonly associated with protection from outside interference, can also entail positive responsibilities towards one's own population's welfare, and to assist other countries in preventing human rights violations (Deng 2010). During the 2005 World Summit heads of state “stressed the need for the UN General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity” (UN 2005). The R2P justifies the interference of international institutions in domestic affairs under certain circumstances. Without going too much into the details of this doctrine, it is intuitively clear that Beitz' two-level model and the R2P share considerable ideas, and quite unsurprisingly so, given Beitz's functional approach to the international regime. However, it is interesting to note that the principle is not mentioned once in Beitz's book. In light of his (non)answer to the question *why do human rights provide reasons for action?*, it is ambiguous whether this comes as a lack of awareness of these

weakness of the functional approach is that its institutional realism advances “all-too-quickly and without much articulation of legitimation problems in international law from human rights violations to humanitarian interventions” (2013, pp.47).

In terms of inequality, this approach seems to be focusing primarily on inequality that results from the specific relations between governments and citizens. For example, were a government to persecute dissidents or exponents of the opposition for raising their voice, it would violate their human rights. Therefore, the focus is on instances of discrimination or unequal treatment by the government, since rights are primarily conceived as protections from state’s interference in people’s lives. However, this doesn’t only apply to civil rights cases. Discrimination might be built in economic institutions that systematically favor one ethnic group over another. In this way, the functional approach accounts for inequalities in treatment and status that the humanistic approach was not able to capture. At the same time, though, the focus being primarily on discriminatory action by government, it has little to say in terms of socio-economic inequalities<sup>5</sup>.

### **1.3 The Discourse Theoretic Approach**

This approach is founded on the conviction that all justifications of human rights presuppose some assumption about human agency and the nature of the socio-political world (Benhabib 2013; Forst 2010)<sup>6</sup>. It develops from the perspective of Habermas's discourse ethics and has been independently conceptualized by Seyla Benhabib and Rainer Forst (Baynes 2009).

Benhabib seeks to provide a rational justification of human rights that, although starting from assumptions about the communicative freedom of the agent, takes into account the contexts of communication and interaction in which individuals are embedded (Benhabib 2013). In this way, she separates herself from the humanistic approach, which conceptualizes human rights from the perspective of the individual as universal moral claims, which can be specified in absence of collective decision-making.

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developments or as a way of avoiding engagement with the thorny territory of military humanitarian interventions. For instance, why do human rights abuses call for protection? And of what kind?

<sup>5</sup> An illustration being the well-documented discrimination between black and white workers in the US labor market (Borowczyk-Martins et al. 2017). Borowczyk-Martins and his colleagues found that employer prejudice towards black workers in the US labor market is strong and widespread. While there are also important skill gaps between black and white workers, their model concludes that discrimination resulting from employer prejudice is quantitatively more significant than skill variations to give reasons for wage and employment gaps.

<sup>6</sup> There are differences in their accounts. However, for the purpose of this reconstruction I focus on their common traits.



The basic presupposition is that “all human beings who are potential or actual speakers of a natural language are capable of communicative freedom, that is, of saying ‘yes’ or ‘no’ to an utterance whose validity claims they comprehend and according to which they can act” (ibid, pp.39). In this context, human dignity entails respecting an individual as an agent with communicative freedom who has a right to justification. In fact, as Forst argues, “moral norms need to be justified by moral reasons in a moral discourse (devoid of delusion or coercion) and [that] laws and social structures have to be compatible with these moral norms” (Forst 2010, pp.734). What follows is that right-claims are norms that should be accepted by all concerned in the context of a discourse: “I can justify to you with good reasons that you and I should respect each other’s reciprocal claim to act in certain ways and not to act in others, and to enjoy certain resources and services” (Benhabib 2013, pp.38). These justificatory and reciprocal practices provide a response to why we should respect the rights of others, which is something the humanistic approach doesn’t provide.

Therefore, the right-bearing status is closely linked to the capacity of providing reasons to convince the other agent of the validity of one’s claims. These justificatory processes are founded on the reciprocal recognition of the “capacity to agree or disagree on the basis of reasons, the validity of which you accept or reject” (ibid, pp.39). But to respect this capacity to accept or reject reasons means to respect the other person’s capacity for communicative freedom. Therefore, human rights are conceived as protections to the exercise of the communicative freedom of each agent, which require embodiment in the law (ibid).

Similarly, Forst argues that individuals should be respected as “worthy of being given adequate reasons for actions or norms that affect him or her in a relevant way” (2010, pp.734). And this respect requires considering others as “autonomous sources of normative claims within a justificatory practice” (ibid 2010, pp. 734; Benhabib 2011, 62). Human rights “protect against an array of social harms the infliction of which no one can justify to others who are moral equals, thus presupposing the basic right to justification. But above that, they protect against the harm of not being part of the political determination of what counts as such harms” (Forst 2010, pp.737). This is a reinterpretation of the Arendtian concept of the right to have rights. An expansion from a right to political belonging to a right “to be recognized as a member of an organized human community in which your words and your acts situate you within a social space of interaction and communication” (Benhabib 2013, pp.40).

There is a distinction between this fundamental right (universal moral respect shared by all humans) and the list of specific rights which must be articulated within the political community of the sovereign state. According to Benhabib (2004, pp.74), endorsing a

cosmopolitan view of human rights does not entail the imposition of a specific schedule of rights to everyone. The specification should happen through democratic iterations (in the global public sphere), where reconciliation is sought between commitments to universal human rights and the right to self-government. Democratic iterations are “complex processes of public argument, deliberation, and exchange through which universalist rights claims are contested and contextualized, invoked and revoked, posited and positioned throughout legal and political institutions, as well as in the associations of civil society” (Benhabib 2011, pp.129). Consequently, it is thanks to democratic iterations that the content of human rights is defined<sup>7</sup>.

This analysis of human rights is perceptive and ambitious, as it seeks to combine the valuable insights of the preceding approaches while trying to close their gaps. However, a possible objection relating to equality can be raised against this approach. In fact, its formulations are dependent on some prior understanding of what constitutes good reasons in discourses (i.e., reasons to be agreed upon by the people involved, forming the basis for the schedule of rights). Otherwise “either such shared understandings are hardly uncontroversial or your justification strategy is mired in circularity” (Benhabib 2013, pp.41). Or, in line with de Jongh’s reasoning (2019, pp.17), Benhabib and Forst might be raising our expectations excessively high when claiming that disputes can simply be settled through the exchange of reasons in processes of reciprocal justification.

To respond, Benhabib starts by explaining how discourses are different from situations of bargaining or manipulation since they require the fulfillment of three conditions: equality (in initiating and partaking in the justificatory process), symmetry in the entitlements to speech acts, and reciprocity of communicative roles<sup>8</sup>. Critics might then argue that her argument is presupposing the conditions that only a full realization of human rights can bring about. In other words, why would we need human rights in the first place, if people acted in discourses that were already equal, have symmetrical power and be reciprocal in their relationships? Benhabib fends off this criticism of circularity by arguing that it is necessary to presuppose some understanding of equality, symmetry and reciprocity in discourses, but that “these normative terms are then open to reflexive justification or recursive validation within the discourse itself” (Benhabib 2013, pp.41).

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<sup>7</sup> The state remains the main addressee of right-claims: it is the duty of the state to secure human rights, even though it is not the only agent who can violate them. It is the task of a state to protect citizens from rights violations by private actors such as corporations, for example (Benhabib 2013).

<sup>8</sup> In practice, individuals have the power to question and answer, to bring up new matters and dispute the rules of the democratic iteration itself.

Even if we accept Benhabib's defense because her argument operates on the level of ideal theory, its implications seem to be problematic at the level of non-ideal theory. In the real world, we confront the emergence of human rights regimes against a background of abundant social injustices and inequalities (Bieber 2021). In fact, the effectiveness of implementing the discourse approach to reality presupposes conditions of equality that are unrealistic, and especially so in circumstances where individuals or groups need to raise complaints over their rights violation, where we are very likely to incur in situations of domination or at least power imbalances. Even when a clear perpetrator is not identifiable, there are still impediments at the level of norms and values that can disempower one's speech acts in a discourse. Gadeke (2021) has recently identified this disempowerment to be a form of systematic domination which highlights the systematic disempowerment the dominated suffer over and beyond their relation to a particular dominator. To illustrate this, she provides the compelling example of a woman trying to denounce an instance of domination by a man in a culture that underplays sexual harassment:

“A woman who complains about unwanted advances by men will be taken to play the game of flirting; her ‘no’ is interpreted as a move that is supposed to arouse even more interest in her male counterpart. Even if rape is outlawed, women who press charges against their tormentor will be reminded that rape is, ultimately, their fault, since they aroused men by rejecting their advances—after all, this is what flirting is all about. These salient sexist norms are not legally entrenched. Yet they put men and women in asymmetrical positions of power to one another” (ibid, pp.205-206).

Beyond the specific discussion over domination and gender, what is interesting here is highlighting how the act of denouncing the violation, which we take to be happening in a discourse, is downplayed at the start by the existence of informal social norm and practices that systematically empower the accounts provided by a category of individuals, while systematically disempowering others, which is exactly what Benhabib's preconditions for discourse wouldn't allow.

In absence of the perfect preconditions for a discourse, leaving the specification of the schedule of human rights totally up to the outcome of democratic iterations might have the tendency to produce more conservative results than normatively desirable for the party who is disempowered. In all fairness, Benhabib does concede that the normative preconditions are

“open to reflexive justification or recursive validation within the discourse itself” (Benhabib 2013, pp.41). Unfortunately, though, she doesn’t clarify how these reflexive justification and recursive validations would play out in an actual discourse, and how they would make up for inequalities between interlocutors. Providing an account of how this might play out would be a significant reinforcement to her theory<sup>9</sup>.

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<sup>9</sup> As a conclusive note, both Benhabib and Forst provide a theory of human rights founded on a relational concept of human dignity, as its concrete articulation in human rights can be determined only by way of discursive justification with other individuals. In fact, people should be recognized as moral equals. In concrete terms, however, their preoccupation lies primarily, if not exclusively, in the recognition of equal political status, rather than a more comprehensive view that encompasses economic and social status (a criticism already pointed out by Buchanan 2010, pp.688). If political status is of concern for the universal recognition of *the right to have rights*, the destiny of the economic and social status seems to be left to the outcome of the deliberations of democratic iterations.

## ***Chapter 2: Approaches to Public Goods***

This chapter now turns to explore the major approaches in the public goods debate. It starts by retracing the economic origins of the concept. This first approach tries to identify and describe in a neutral way what are public goods, and explain instances where government intervention is needed to compensate for their underprovision in unfettered markets. It therefore employs concepts like scarcity and externalities, and assumptions about self-interested rational agents. In this regard, it distances itself from the normative perspective of the previous chapter on human rights. Nevertheless, its purported neutral approach has been criticized for downplaying normative considerations and political processes resulting in whether certain goods are classified as ‘public’ or not (and consequently whether they require public provision).

After analyzing this approach, I then turn to briefly review the main responses found in the literature of political philosophy to the normative question of why states should provide public goods, with which the economic approach engages only peripherally. The subsequent sections – regarding the basic needs, democratic, and social justice approach – provide different normative justifications for state intervention.

### **2.1 The Economic Approach**

#### *The Mainstream Economics Approach*

The first formalized definition – in mathematical terms – of a “public good”, and the conditions for its Pareto optimal provision appeared in a paper by the influential economist Samuelson (1954) to identify those goods that are not generally provided by the market due to their non-excludable and non-rival characteristics. This indicates that people cannot be excluded from their consumption (non-excludable) and that one individual’s enjoyment does not diminish the availability for the rest (non-rival). Classical examples are goods such as lighthouses, traffic rules and public information (Moons et al. 2017). Given these characteristics of non-excludability and non-rivalry, these goods are usually underprovisioned in markets relative to the societal optimum (ibid).

In a perfectly functioning market, an equilibrium for private goods happens when a consumer is supplied with an additional unit of a good until his willingness to pay for the extra unit exceeds its marginal cost of production (Smith 2017). This implies that it is profitable for competing producers to provide the goods in the demanded quantities. With 'n' individuals, goods are supplied to the extent that the price consumers are willing to pay for an extra unit equals the marginal cost of production:  $p_1 = p_2 = \dots = p_n = MC$  (ibid). For public goods, however, because all consumers can potentially benefit, the optimal point of provision is found at the point where the sum of all individuals' willingness to pay is equal to the marginal cost:  $p_1 + p_2 + \dots + p_n = MC$ . The fundamental barrier to determining and paying for the optimal supply of a public good is that private actors are not incentivised to produce them because, once available, anyone can benefit from them free of charge and profit is impossible to capture (Moons et al. 2017). In fact, if private suppliers attempted to charge individualized prices, they would face the problem that every consumer has an incentive to underreport their true valuation of the good and behave as a free rider (Smith 2017). Since, by definition, no one can be excluded from the use of public goods, everyone has an incentive to contribute as little as possible (Bieber 2021).

If the goods were to be made excludable, a market solution could be introduced by excluding those who are not willing to pay. However, since the cost of supplying a non-rivalrous good to an additional person is zero, exclusion is not socially optimal. In addition, the process of making the good excludable might be possible in principle but too high to be effectively carried out (Smith 2017). Therefore, since market solutions cannot deliver optimal results, it is customary that governments supply numerous public goods, which may be financed through taxation or enforced by regulations, such as intellectual property laws (ibid). From this perspective, government provision becomes a technical solution to the market failure to ensure the most efficient provision of such goods.

According to classical welfare economics, the characteristics of non-excludability and non-rivalry are intrinsic to certain goods and it is what sets them apart from private goods. As such, they also function as the determining factors for distinguishing among two other main categories of goods, club goods and common goods (see *Table 1*). Club goods are non-rival in consumption but excludable (Buchanan 1965). And common pool resources are mostly non-excludable but rivalrous in consumption (Ostrom 1997). Focusing on the totality of these distinctions is important because there are very few public goods that adhere perfectly to the classification (i.e. pure public goods that are perfectly non-excludable and non-rival). In fact

these are strict theoretical divisions which often clash with the fuzzier reality of things (most of them are impure public goods).

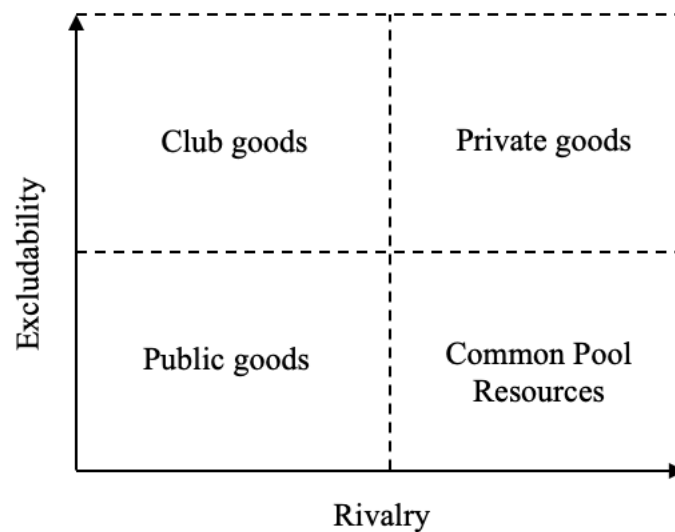
<i>Table 1: Taxonomy of Goods</i>	Rival	Non-rival
Excludable	Private Goods	Club Goods
Non-excludable	Common Pool Resources	Public Goods

As Andersen and Lindsnæs (2007) point out, elementary schooling is an example of a good which in most countries is considered to be a pure public good. Nonetheless, it is also an illustration of a good that in reality exists in four versions: (1) as a pure public good (non-excludable and non-rival), if all children have free and equal access to public schools; (2) in a form which resembles common pool resources, if state' capabilities are limited and there is no sufficient capacity in schools to admit all potential students; (3) as club good, if certain criteria have to be met for kids to have access to schools<sup>10</sup>; finally (4) as a private, exclusive and rival good, if only pupils with specific qualifications may attend by paying a fee.

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<sup>10</sup> For example, if students must wear school uniforms or purchase their own books, or if schools are so far away that it impedes them to attend.

These different versions show exactly how the characteristics of excludability and competition can be found in different degrees. Therefore, a more nuanced representation of the variation across cases can be visualized in the form of *Figure 1*, where excludability and rivalry are set on a xy axis, emphasizing the varying degrees. The taxonomy in *Table 1* does not provide rigid boxes within which goods can be categorised, but it rather provides the conceptual tools to look at reality from a critical perspective. A perspective that - as developed in Chapter 3) - has the potential to uncover patterns of exclusion and discrimination.



*Figure 1*: Revised illustration of goods classification  
 Source: Adapted from Burnazoglu (2020)

Global public goods are a special category of public goods, whose impact goes beyond countries' borders (Kaul et al. 1999). Public goods may be inherently global in nature, such as knowledge and information, or being global because of the growing interconnectedness of our current globalised economies, like financial stability. This growing degree of interdependence has arguably increased the demand for public goods in response to global social needs (Moons et al. 2017).

In the international realm, dealing with public goods becomes even more complicated than at the national level because in absence of a superior coercive authority, states – which are the solution to free riding on the national scale – become the free riders themselves. Therefore public goods necessitate the concerted intervention of the international community



to ensure their optimal provision (Kaul et al. 1999). Most of the academic literature on global public goods then is interdisciplinary in its dual focus on economic and political aspects. It centers specifically on the diagnosis of problems and policy recommendations on how to foster productive cooperation among states and international actors<sup>11</sup>.

Nonetheless, there is still a nuanced distinction in the conception of global public goods: a positivist approach and a constructivist one, which both develop from Inge Kaul's work (Langford 2009). The former focuses on identifying public goods whose preservation is in the global self-interest. It stresses the 'global' in global public goods. For example, climate change is a clear example of a global public 'evil', which suffers from the free rider problem and inadequate international coordination. The destruction of the Brazilian Amazon forest or the increase in carbon emissions in the USA have global consequences for climate change, despite the fact that the burdens are unevenly distributed and some countries might on balance gain from climate change (ibid). The constructivist approach focuses on the 'public' of global public goods. It claims that 'public goods' is the subject of social contestation and construction and that we require a more equitable process for defining and distributing public goods (ibid).

The constructivist approach to public goods is close to the philosophical critique of neoclassical economics on public goods. In particular, de Jongh (2019) articulates a critique of the economic classification of goods based on its essentialist presuppositions regarding the properties of non-rivalry and non-exclusivity. He argues that public goods are inherently political, and they cannot be assumed to exist independently and prior to legal and political contestation practices. They are the result of institutional affairs which make them available by the use of compulsion and coordination by the government, through institutional instruments such as legal enforcement or taxation. Designating certain goods as private, public, club or common is the result of a political process in which the features of non-rivalry and excludability are advanced to be the criteria for discernment. In his view, the burden of justification of public goods, entailing compulsion through taxation for example, cannot be satisfied by mere appeal to the inherent nature of the goods, which is neither necessary nor sufficient to make a certain good public (as for example they may be public for being the object of a human right).

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<sup>11</sup> This represented by emblematic titles such as "Why do global public goods matter today?" Or "How to improve the provision of global public goods" (Kaul et al. 2003). See also the more recent "Global public goods: a concept for framing the post-2015 agenda?" (Kaul 2013) and "Providing global public goods: what role for the multilateral development banks" (Kaul 2017).

In de Jongh's view (ibid), the essentialist economic definition presents two issues. First, it restricts the possibilities of government provision and consumption, since although the features of non-rivalry and non-exclusivity are rarely found in empirical goods (such as in education as illustrated previously), many of them are nonetheless established as public goods as the result of a political process. Second, since the economic explanation finds government provision to have a merely complementary (or remedial) status with respect to the market failure of public goods underprovision, it cannot account for the ways in which markets need the state's institutional infrastructure to function (for example, for upholding the rule of law, protecting property rights etc.).

### *The Stratification Economics Approach*

The classical categorisation of public goods is criticised also within economics. From the perspective of stratification economics, Davis (2019) argues that the distinction between club and common goods reflects the way in which social processes determine market ones, rather than being dependent on the nature of certain goods. He focuses on the idea of exclusion, as access to certain club goods is the result of membership rules extended only to a bounded number of individuals. In a society stratified by social groups<sup>12</sup>, where some are economically and socially advantaged while others disadvantaged, "advantaged social groups enjoy membership in exclusive club-like social arrangements that allow higher levels of consumption (and real income), while disadvantaged social groups are restricted from being members in those social arrangements, and accordingly are left with lower levels of consumption (and real income)" (ibid pp.13). The concept of club goods (and exclusion in general) can therefore be employed to explain discrimination in social terms, since discrimination is crucial to restricting access for some social groups.

All the while, competition over common resources equally reflects social processes. Davis argues that, for example, in poor urban neighborhoods, the competition of disadvantaged social groups over access to limited common pool resources "undermines their precarious resource base. Schools, public safety, food stores, transportation, etc. are shared resources in

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<sup>12</sup> Social stratification occurs when individuals are ranked in a hierarchical manner, not reflecting individual differences but with regards to their social group membership (Burnazoglu 2020). A poignant example found in Davis' work (2019) is the wage differential between black and white people in the US, which is the result of persistent discriminatory practices and structures, rather than occasional manifestations of how markets function.

limited supply and thus subject to over-use that further erodes them” (ibid, pp.14). He goes on to argue that common pool resource problems often affect disadvantaged communities, but that classical economics rarely acknowledges these differences in community types. In fact, resource quality systematically changes across communities (or neighborhoods), hence showing that communities can be distinguished hierarchically by advantage and disadvantage, which reinforces the core assumption in stratification economics that market outcomes are determined to a large extent by social processes (ibid).

The main criticism of stratification economics on the classical classification of goods, then, is its assumption that the economy can be fully explained in terms of market transactions alone. In theory, government provision of public goods and private property rights involve all individuals in a society. Therefore, a classical economic focus on the clear-cut distinction between private and public goods turns the attention away from processes that entrench differential group status and inequality<sup>13</sup>.

## **2.2 The Normative Approach**

### *The Basic Needs Approach*

This approach justifies state provision when it comes to delivering primary goods (Kohn 2020). The basic assumption of this approach is that individual autonomy and well-being are the basic conditions of a decent life, which is fundamentally what everyone aspires to, regardless of their substantive vision of the good life (Fabre 2000). The role of the government is then to provide people with the basic goods to achieve this decent life, such as food, sanitation, shelter, health, and security (Kohn 2020). It is interesting to note how this approach closely relates to the idea of minimum conditions for a decent life that are at the core of the humanistic approach to human rights. Not by chance, when reviewing the literature on public goods as responding to people’s basic needs, Kohn (2020) mentions Shue’s work on basic rights<sup>14</sup>. For Shue, basic rights are the minimum claims each person can raise against the rest of humankind, or “the line beneath which no one is allowed to sink” (Frey 2017). These basic rights include personal security and subsistence, emphasizing the moral equivalent of negative rights of freedom from oppression with positive ones of physical wellbeing that results from adequate food, clean

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<sup>13</sup> Inequality specifically seen in terms of limited access and exclusion.

<sup>14</sup> Kohn (2020) advances the solidarist approach treated in the next subsection.

water, and basic health care (ibid). Therefore, in this view public goods materialize and fulfill the demands of human rights<sup>15</sup>.

### *The Democratic Approach*

Kallhoff's response to why the government should provide public goods is based on their distinctive value in sustaining a well-ordered society (2014). She shifts the focus away from the market failure correlated to public goods to highlight the positive spillover effects that their public provision can produce. She argues that public goods contribute to support democratic societies by increasing social inclusion and strengthening a shared sense of citizenship. They can contribute to a shared feeling of purpose, thereby strengthening "a sense of solidarity" (ibid, pp.641). She names some public goods "solidarity goods", which are suited to support social justice because they are socially constructed to be implemented in terms of non-discriminatory access and of non-competition<sup>16</sup>. Examples that illustrate this aspect well are instances in which an exclusive good is transformed into a public good through a political process<sup>17</sup>. Among these goods she includes arrangements like public health care or education that, by being available to all citizens and not only to a selected group, strengthen social inclusion and a sense of solidarity (ibid). These beneficial effects of public goods are appreciated only when all individuals have equal access and the burden of provision is distributed fairly.

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<sup>15</sup> As further reflection it is interesting to note that while Kohn (2020) reviews this approach to public goods, she never mentions explicitly the concept of human rights (even though she cites authors whose work pertains to the human rights debate, like Shue (1996) and Fabre (2000)). It seems that Kohn uses "basic needs" as interchangeable with "human rights". However, she doesn't consider the link between the concepts of public goods and human rights explicitly. Is this to avoid confusion and/or getting involved in a parallel debate? It is certainly a further sign of how the two concepts are closely related but their connection assumed to be obvious and not deserving further unpacking. All the while, Kohn problematizes the idea of private property rights in relation to urban settings, arguing for a "right to the city" in *The death and the life of the urban commonwealth* (2016). She advocates for greater access to the advantages of urban life produced from the cumulative investments of urban society (Zeemering 2021).

<sup>16</sup> This specification of public goods is similar to what Bieber (2021) calls *contingently public goods* (i.e., goods that can be provided as club goods – excluding certain groups of people – but that are nonetheless deliberately made available to all).

<sup>17</sup> Here Kallhoff (2014) mentions the de-segregation of public transport in the United States as a clear example of a transition from an exclusionary good to an inclusive one.

### *The Social Justice Approach*

Kohn's approach (2020), reviving the tradition of French solidarism, sees government provision of public goods a way of making up for social injustices produced by the macroeconomic-structural developments of modern society (i.e., industrialization and urbanization) where, in face of a growing societal interdependence, the benefits and burdens generated are not shared fairly<sup>18</sup>.

This approach is particularly useful in understanding inequality. It is based on compensatory justice, where the main idea is to demonstrate the connection between the benefits and harms of social cooperation, which should be shared fairly. This “helps us focus on the concrete choices about public goods within societies like our own where the degree of inequality is significant and rising” (ibid, pp.2).

Solidarism spread as a critique to classical liberalism in the late 19th century, which took the market as the default method for allocating goods and legitimized extreme inequalities among individuals. To counter this, they criticized the untenable emphasis on individualism, pointing at how social, political, cultural and technological infrastructures were part of a common property inherited from the past. Kohn argues that urbanization and industrialization have transformed the world positively and negatively, but what ultimately matters is whether the social product is distributed unfairly, reflecting the power of elites and capital. Therefore, the wealthy carry a social ‘debt’ towards those who have not “gained access to an adequate share of the social product” (ibid, pp.5), because of the circumstances and social group in which they were born. Kohn identifies public goods as a way to remedy for this social debt: “Collective enjoyment of shared things is a way to redistribute social property that has been unjustly appropriated, but it does so while also building social ties among citizens and fostering identification with the idea of the common good, even if the common good is subject to dispute” (ibid, pp.10).

When dealing with public goods, Kohn’s approach holds the merit of taking into account the economy, society and government as a whole, while challenging the assumption of the primacy of the market, which aligns itself with Davis’ approach (2019) on stratification economics and the idea that economic stratification of social groups is reflected in differential access to public goods, for example in urban areas.

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<sup>18</sup> For example, this is illustrated by modern metropolises, where the benefits of economic growth are largely captured by a small group of its inhabitants.

Kohn's historical argument on the socio-economic interdependence generated by industrialization and urbanization as a source of compensatory action could be comparably extended to include the consequences generated by globalization nowadays. Globalization is creating increasing levels of interdependence among different parts of the world, producing winners and losers, just as the processes of industrialization and urbanization. "It is an interconnected world, but not a smoothly and seamlessly integrated one. Rights, duties, opportunities and constraints continue to be unevenly distributed" (Eriksen 2017, pp.470). Kohn specifically focuses on the nation-state and deals with social justice from this perspective. Compensatory action is meant to redress injustice and inequality at the state level, rather than encompassing the whole globe. While this may be a deliberate choice, it nonetheless confirms the tendency highlighted by Fraser (2008) in the social justice literature, where the choice of assuming the Westphalian frame of investigation excludes from the rectification process important transnational agents, like "powerful predator states and transnational private powers" (ibid, pp.20). This also extends to the governance structures of the global economy, which set "exploitative terms of interaction and then exempt them from democratic control" (ibid, pp.20).

Another feature of Kohn's approach that becomes important when dealing with existing inequalities is how her compensatory view is inherently non-ideal, as it founds on an appraisal of historical political and economic processes. This non-ideal standpoint is shared by Friedemann Biebler, another scholar connecting the idea of public goods with social justice. Bieber (2021) contends that there is a useful distinction to be made between *inherently public goods*, which conform to the economist's description of public goods as non-excludable and non-rival (e.g., national security), and *contingently public goods* which are non-rivalrous and in principle excludable, but are provided in a non-exclusionary form as the result of a democratic process (e.g., parks). He further argues that providing public goods can be a preferable alternative to transfer payments in addressing injustices that are the result of economic inequality in two ways: (1) by creating a shared realm of interaction and (2) by undermining exclusionary club goods. Because contingently public goods could have been provided as club goods, and thus in a more exclusionary form, they contribute to the shared, inclusive realm of social interaction. This supports an organized society directly - by being accessible to everyone - and indirectly - by undermining the importance of club goods.

These considerations reveal how the provision of public goods is a means to reduce the relevance of inequalities in income and wealth for opportunity and status. In fact, "societies can be set up in ways that render the possession of private material resources more or less

important. One important factor for the importance of ownership of private resources is the extent to which a society provides public goods, and in particular contingently public goods” (ibid, pp.15). In short, contingently public goods are exceptional in two regards. On one hand they reflect a deliberate democratic decision to provide goods in an inclusive way, thereby suggesting everyone’s equal status. On the other hand, this provision also undermines the relevance of exclusionary club goods.

His analysis and argument are convincing, though it still could be argued that even the provision of inherently public goods by the government is the result of a political process, echoing de Jongh’s critique of the classical economic classification of goods solely based on their inherent characteristics (2019). In his distinction, Bieber seems to be taking for granted the essentialist standpoint of the economic framework<sup>19</sup>.

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<sup>19</sup> A pure public good according to the classical economic definition (what he calls inherently public good) still requires a political process (and normative justification) to be provided and funded publicly (i.e., free of charge and accessible to all).

### ***Chapter 3: The Added Benefits of Public Goods***

The previous two chapters reconstructed the most influential interpretations of human rights and public goods, and engaged critically with them. However, the aim of this research is not to settle existing debates on the nature of the concepts, but rather to assess whether the PG framework may complement empirically and normatively the function of HR in dealing with inequality.

In concluding the analysis of the different approaches to human rights, I have already engaged each approach with inequalities. In this chapter I point to the ways in which public goods can further illuminate our understanding of inequalities, and therefore answer my research question. In particular, I argue that analyzing inequalities in the context of global justice through the theoretical lense of the public goods can make a contribution thanks to three distinct features: exclusion, competition, and provision. After briefly outlining them, I use the COVID-19 vaccine case to illustrate this.

#### *Exclusion*

Hinging on the notion of exclusion, the economic conceptualisation of goods serves as a metric to evaluate the inclusiveness of public institutions and goods provision. Exclusion is synonymous to unequal access, which is visibly a main source of inequality. By focusing on the way in which political and economic processes at the global level bring about institutional and societal outcomes, the PG framework goes deeper into understanding the determinants of inequalities, while the HR approach stops at providing normative reasons for why the exclusion is unjust and shouldn't take place, remaining silent on its underlying causes.

#### *Competition*

The notion of competition arises whenever there is conflict over a limited set of resources. By definition of non-rivalrousness, public goods should be exonerated by considerations of this type. However, as discussed previously, there exist very few goods that are purely non-rival<sup>20</sup>.

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<sup>20</sup> Even breathable air, theoretically considered non-rival, in a world where availability of oxygen might be depleted, it can become a scarce resource - and unfortunately given the dire perspectives of climate change and environmental degradation, this might be more than a Sci-Fi scenario.



Most goods are in fact scarce, an economic term used to refer to a gap between availability of finite resources and peoples' need or preferences for such resources. Consequently, decision-making under scarcity tries to most efficiently allocate resources so that most of people's needs and wants can be met (Bowles et al. 2017).

The important insight of public goods with respect to human rights is therefore this reflection on the limitations set by the natural boundaries of the planet and by the producing capacities of our economies. The consequent negotiations and bargaining over their allocation have consequences for inequalities and ways to address them. The economic insights of public goods on the notions of finitude and competition address the gap left by the human rights framework between its aspirational values and the reality of the political economy.

### *Provision*

A further benefit of the public goods approach is its focus on provision. This deserves deeper unpacking than the two quite straightforward features already treated. If the HR framework focuses on the question of what should be provided, the PG framework provides answers to who should be the provider, and under which modalities. In a certain way, public goods reflect on the normatively and economically most appropriate ways for materialising the demands of human rights. Considerations of provision are important not only in terms of the actual production and distribution of goods (in case of material ones, otherwise of their cultivation for non-material ones like the rule of law (Bieber 2021)), thereby addressing questions of distributive equality.

What is interesting is how the dimension of equal treatment and status can also be apprehended. As de Jongh argues, "different types of goods postulate [...] different types of human relationships and activities in which they are provided and enjoyed" (de Jongh 2019, pp.18). And these specific relationships (institutionalised or not) carry meanings and expectations that have repercussions over one's relative standing with respect to others in society (Schemmel 2011). Drawing on the work of Clarissa Hayward (2000) and Dorothea Gadeke (2021) - already discussed at pp.19 - I argue that at the basis of entrenched inequalities, there is a power structure sustained by durable norms, values and expectations. These structures make some actions, if not impossible, vastly improbable, and others, if not inevitable, extremely likely (Hayward and Lukes 2008). These social structures generating systematic disempowerment shape people's behavior, which tends to follow a detectable pattern, given the range of actions that seem to be compatible with one's social standing (Hayward 2000;

Gadeke 2021). Since institutions themselves convey normative evaluations and meanings (Schemmel 2011), they are partly responsible for perpetuating the same beliefs that erect the power structures sustaining inequalities (Hayward 2000).

Having said that these structures of meaning and disempowerment are durable doesn't mean that they are immutable. This is precisely why a focus on the methods of provision of public goods (both in their practical terms and normative meanings and implications) can enable progress towards a fairer society.

This view is not only applicable to individuals and groups in society. Linking the discussion back to Fraser's critique of the nation-state framework for conceptualizing justice (2008), we can similarly argue that existing structures of global governance reproduce disadvantageous conditions for historically subordinated countries, entrenching inequalities in the global order<sup>21</sup>. A focus on this type of systematic disempowerment is able to "problematize both substance and procedure. [...] It can expose both the unjust background conditions that skew putatively democratic decision-making and the undemocratic procedures that generate substantively unequal outcomes" (ibid, pp.29).

### **3.1 The COVID-19 Vaccine as a Global Public Good**

Besides being a prime example of a problem that affects the whole world and can therefore capture the dimension of global justice, this case is particularly illuminating because - as mentioned in the introduction - it is with respect to this vaccine that the concept of global public good has started to be (re)popularised.

Appeals to consider the COVID-19 vaccine a global public good have been raised by multiple institutions and civil society agents, from the UN Secretariat, WHO, UNESCO<sup>22</sup> to initiatives like the European Citizens' Initiative No Profit on Pandemic and The People's Vaccine<sup>23</sup>. Their specific advocacy is more or less ambitious, but their positions can be generalised over three points: (1) guaranteeing global sharing of COVID-19 data, technology and knowledge; (2) planning an equitable production and distribution plan for the vaccine which ensures transparent prices; (3) ensuring that COVID-19 tests, treatments and vaccines

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<sup>21</sup> This argument is further unpacked in the COVID-19 case, pp.37-38.

<sup>22</sup> United Nations Secretariat (UN 2020b); WHO (2021a); UNESCO (2021).

<sup>23</sup> No Profit on Pandemic (2021) and The People's Vaccine (2021).

are provided free of charge worldwide, prioritising the most vulnerable groups and countries having the least capacity to treat people and save lives (UNAIDS 2020).

First it is important to situate vaccines within the classical economic categorisation of goods. The eradication of a vaccine-preventable disease, such as smallpox, qualifies as a public good since (1) everyone benefits from it, whether or not they contributed to the eradication effort (Gavi 2020) and (2) the benefit of a person not being infected does not increase the chances of someone else to do so. It also qualifies as a global public good because its benefits are not confined within state borders, as in an interconnected world such as ours, the stop of the spread of an infectious disease benefits the collectivity. Immunisation against a communicable disease is a private good for the person who is immunised, while for the community immunization is a public good (Smith 2017). In addition, the situation becomes even more complex when looking at specific health products (Gavi 2020). By nature, medicines and vaccines are both rivalrous and excludable. The exclusionary degree of the vaccine itself (depending for example on whether prices are set so high that low and middle-income countries cannot afford to buy them, or if the supplies are limited) influences the overall success of the immunisation process, which can assume exclusionary characteristics too (ibid).

Therefore, since vaccines themselves are rivalrous and excludable, the fact of being considered a global public good has nothing to do with the nature of the good itself. Calling it a global public good displays a certain political and normative choice of desiring the vaccine to be accessible and affordable to all, and in doing so, equating the intermediate good (the vaccine) with the final global public good itself (the immunisation from the disease). In line with Davis (2019) and de Jongh (2019) this mechanism shows how the nature of a public good is neither necessary nor sufficient to qualify a public good as such. As Moon et al. (2017) point out, “the degree to which a good is made more or less ‘excludable’ is frequently the result of social and political choices” (ibid, pp.200). For instance, researchers could publish their papers in a journal that has a paywall or one that has open-access. Similarly, one could decide to patent a health technology and impede others to use it or produce it, or make it free to use (ibid). They therefore argue that “new public financing streams could cover the costs of making a club good non-excludable, such as paying the fees charged to authors to publish in open access journals or buying-out patents on new medicines so they may be put into the public domain and immediately produced as generics” (ibid, pp.200).

These numerous appeals, however, as the recent events about the unequal distribution of the vaccine for the coronavirus testify (United Nations 2021), have mostly fallen on deaf ears. Tedros Ghebreyesu, director-general of the WHO, has stated that “vaccine equity is the

challenge of our time, and we are failing” (ibid). Data speaks loudly: by mid-April 2021, with over 800 million administered doses, only 0.2 percent has gone to low-income countries. In high-income countries, 1 in 4 people received a vaccine, against the average of 1 in 500 of poorer countries (ibid). In light of the competition over the supply of the vaccine and the hoarding behavior displayed by the most powerful and rich countries in the world<sup>24</sup>, it can be argued that countries are acting in exclusionary ways like clubs<sup>25</sup>.

As far as provision is concerned, it is important to highlight how of health-related public goods - like disease prevention - need sustained planning and financing, as well as coordination at the global level to ensure fair outcome. As mentioned earlier, choices on provision reflect specific meanings on relations (be it between social groups or institutions in the international governance arena). For the vaccine case, entailing transforming a private good into a public one (making it free of charge and accessible to all), requires some reflection with respect to public-private partnerships. From a perspective of social justice, public-private partnerships for the research and production of vaccines in the middle of a pandemic should be geared towards the largest benefit of the people, rather than represent profit-making occasions for transnational pharmaceutical companies (Moon et al. 2017).

This position aligns itself with the new approach to economics envisioned by Mazzucato in *Mission Economy* (2021). Mazzucato laments that discussions on how to tackle inequality are rarely combined with those about innovation and value creation. The former usually involves state reforms aimed at social inclusion, while the latter tends to relate to productivity and entrepreneurship of the private sector (ibid). She argues that these two dimensions should be brought together in the perspective of collective value creation, asking “if wealth is created socially, what are the tools to make sure wealth is also distributed socially – both for considerations of equity but also for fairness in effort?” (ibid, pp.213).

In her view, the public sector, as a crucial investor and player in developing health technologies (like vaccines) should regulate drug innovation like a market shaper: “steering innovation, getting fair prices, ensuring that patents and competition work as intended and safeguarding medicine supply” (ibid, pp.193).

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<sup>24</sup> Despite the efforts of COVAX as part of the Access to COVID-19 Tools Accelerator (ACT-Accelerator) to ensure an equitable distribution of the vaccine around the globe (WHO 2021b).

<sup>25</sup> The observation of this type of behavior by states has been employed by Kolb (2008) in the context of migration, where states are seen as competing for skilled migrants, by reserving the capacity to grant (or not) membership status to the community. The same behavior can be identified here as states compete for access to vaccine doses and act as clubs, where members (i.e., citizens) can have access to the vaccine, while all others are excluded from its enjoyment.

Unfortunately, in today's economy, pharmaceutical companies have the incentive to set high prices on their products and deliver short-term results to shareholders (ibid). This is vividly illustrated by the COVID-19 vaccine example. Oxfam (2021) reported the annual payouts of the major pharmaceutical companies, calculating that Pfizer, Johnson & Johnson and AstraZeneca have paid out \$26 billion in dividends and stock buybacks to their shareholders in the past 12 months. An amount that would be enough to pay to vaccinate at least 1.3 billion people, the equivalent of the population of Africa (ibid)<sup>26</sup>.

Although Mazzucato's position relates to Kohn's solidarist argument for the use of public goods as a means to address inequalities in the distribution of the benefits and burdens generated by modern society, it differs from it in the sense that it aims at predistribution. Instead of focusing on decreasing inequality ex post via compensatory action, it aims at preventing inequality ex ante. This doesn't take away the relevance of compensatory justice, though it highlights the importance of creating structures in the political economy that lead to fairer outcomes (such as contracts that "ensure that the private and public sectors share the risks and rewards of value creation" (Mazzucato 2021, pp.242).

A revision of the relation between governments and transnational pharmaceutical corporations as agents participating in the creation of societal value would also tackle the problem of overlooking important actors in the equation of social justice, which Fraser (2008) identifies as a fatal flaw of current attempts to redress inequality.

Finally, recent developments see the US Administration recently supporting an initiative of the WTO to waive patents on the COVID-19 vaccine, justified by the extraordinary circumstances of the pandemic. In the official statement on May 05, the Administration's aim is "to get as many safe and effective vaccines to as many people as fast as possible. As our vaccine supply for the American people is secured, the Administration will continue to ramp up its efforts [...] to expand vaccine manufacturing and distribution" (USA Press Release 2021).

Interestingly enough, South Africa and India had already called for the WTO to suspend intellectual property rights on COVID-19 at the end of 2020 (Usher 2020). This to ensure that not only the wealthiest countries would be able to afford vaccines and other technologies needed to curb the pandemic. A large number of middle-income and low-income countries supported the initiative (ibid). However, high-income countries (including USA, Canada, EU and UK) have dismissed it, arguing that the patent system is required to incentivise new

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<sup>26</sup> This argument borders on the debate over corporate social responsibility (CSR), at the core of business ethics.

research and denying that they constitute a barrier to access<sup>27</sup>. India's remarks at the November 20, 2020 TRIPS Council meeting recited: "On one hand, these countries are buying up as much of the limited supply as they can, leaving no vaccines in the pie for developing and least-developed countries. On the other hand, and very strangely, these are the same countries who are arguing against the need for the waiver that can help increase the global manufacturing and supply to achieve not just equitable, but also timely and affordable access to such vaccines for all countries." (Usher 2020, pp.1791).

Despite acknowledging the benevolent intentions of the recent change of heart of the United States<sup>28</sup>, it is possible to reflect on how this sequence of events highlights reproducing mechanisms of empowerment and disempowerment in the discursive arena of global governance. In light of the fact that the initiative to waiver patents brought up by South Africa and India in the WTO has been rejected by high-income countries, and the discussion subsequently reopened once the USA changed its position, shows that existing power imbalances reflect on how the structures of the political economy (here in terms of intellectual property rights) are upheld or revised. This links the discussion to more abstract considerations of systematic disempowerment brought up by Gädeke (2021) and the limitations of the effectiveness and fairness of real-world discursive arenas (in Benhabib's terms).

Therefore, although the vaccine is supposed to be for all the people, and the right to health is enshrined in various human rights declarations, in times of crisis, its scarcity makes it a rival and exclusionary good that incites competition between states for their supply. As states have to rely on partnerships with private companies, in the international arena, those that manage to secure the most doses are unsurprisingly the richest and most powerful.

The PG framework can analytically provide us with insights on why these problems of distribution happen and provide arguments for why it should be otherwise. This need not to exclude the relevance and value of the HR discourse. However, it shows its lack of means to explain exclusionary components, competition over the scarcity of resources, and modes of provision, which are so crucial in making sense of cases like the COVID-19 vaccine. A final discussion on the connection between the HR and PG frameworks follows in the conclusion.

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<sup>27</sup> High-income countries argued that equitable access could still be reached via technology transfers, voluntary licensing, and donor-funded institutions like COVAX (Usher 2020).

<sup>28</sup> Whether the nature of this change of position by the United States is moved by solidarity or strategic behavior is not up for discussion here. Though by including in the statement "as our vaccine supply for the American people is secured" might lend itself to less charitable interpretations.

## *Conclusion*

In light of the recent revival of the concept of global public goods in the international policy-making arena with respect to the COVID-19 crisis, this research has investigated the potential of the PG framework to complement the well-established HR one in understanding and addressing inequalities on a global scale. After engaging critically with the most prominent approaches of both frameworks (in chapter 1 & 2), it has highlighted the heuristic function of the PG framework, which complements the HR one (in chapter 3). With the aim of achieving social justice, seeing inequality through the lens of public goods illuminates crucial areas that are outside the normative and analytical realm of human rights. I identified these to be related to dimensions of exclusion (from the enjoyment of certain services and goods), competition (over scarce resources) and provision (reflecting on the modes of supply in pragmatic terms and for its implications on equality of status). The HR framework simply remains silent on these aspects.

One way of conceiving public goods is that they concretely embody the abstract moral and legal requirements of human rights. In other words, they represent the empirical materialization of the abstract moral aspirations of human rights. An example is how the abstract entitlement to healthcare sanctioned in international legal documents<sup>29</sup> may find its physical manifestation in the form of a vaccine, or of an institution that monitors and prevents the spread of diseases<sup>30</sup>.

The normative justification of the existence of individual rights claims advanced by the humanistic approach can be enriched by the analysis advanced by the insights from the PG perspective, both relating to the barriers to access crucial goods<sup>31</sup>, and power struggles over the distribution of scarce resources. Similarly, the focus on the mechanisms involved in the planning and provision of certain public goods can illuminate vicious dynamics reproducing unequal outcomes that may arise in discursive arenas (i.e., the democratic iterations envisioned

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<sup>29</sup> Like the *Universal Declaration of Human Rights*, article 25 (UDHR 1948), or the *International Covenant on Economic Social and Cultural Rights*, article 12 (ICESCR 1976).

<sup>30</sup> The most straightforward interpretation of this idea is the basic needs approach to public goods, where public goods are necessary for the goal of ensuring a minimally dignified life. This means that the justification for the existence of public goods lies in the function they carry out to secure everyone with the most basic material conditions for life (such as adequate food, health and shelter). This doesn't mean that public goods are normatively justified exclusively when explicitly fulfilling human rights requirements. In fact, there may be other normatively valid reasons for public provision. For example, for fostering solidarity, as argued by Khalloff (2014), or social justice, as argued by Kohn (2020) and Bieber (2021).

<sup>31</sup> These barriers can both apply to social groups or entire countries, as in the example of the COVID-19 vaccine, where many states have been significantly excluded from the supply of doses.

by Benhabib (2011) in the discourse theoretic approach)<sup>32</sup>. Moreover, by focusing on the entirety of political economy, the PG framework (enhanced by Fraser's (2008) considerations on issues of misframing justice) complements the narrow focus of the functional approach to human rights, which, despite departing from a non-ideal standpoint, assumes too much of the Westphalian political order to be able to fully grasp mechanisms of inequality reproduction involving transnational agents like multinational corporations<sup>33</sup>.

The economic insights coming from the PG framework can also reveal how existing societies are faring in the progress towards achieving the goals set by specific human rights. In fact, even when agreed upon by the whole international community, human rights presupposing the provision of certain material goods –like the right to health – require a long process of restructuring of existing modes of production and provision that need to be addressed in discursive arenas within a context of finite resources and competing priorities<sup>34</sup>. In many cases, if not lack of political will or consensus, the problem might also be that there are no clear practical strategies to adopt to achieve the desired result. Rather, it might entail a trial-and-error process, in which the insights from the PG approach are useful in deciphering areas of further improvements, for example by engaging with the concept of exclusion and competition and management of scarce resources (i.e., how to best provide them in order to prevent and/or tackle inequalities).

This complementary view of the HR and PG frameworks results from the integration of philosophical and economic insights, attesting the value of approaching the chosen issue at the intersection of ethics and political economy. The contribution of this paper consists in advancing and promoting an interdisciplinary debate on global justice that aims at making sense of inequalities at the global level. The arguments advanced invite further discussions over the significance of the two frameworks for broad projects of social justice, while making a case for why engaging with the public goods framework is indeed fruitful. By faring the concept of public goods against human rights, it has investigated the potential underlying the recent trend of advocating for the COVID-19 vaccine as a global public good. In doing so, it has bridged abstract academic discussions on global ethics with real-world challenges.

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<sup>32</sup> Identified, for instance, in the WTO discussions over the waiver of the COVID-19 vaccine between low & middle-income countries and high-income ones.

<sup>33</sup> The identification of these mechanisms is not only crucial to the understanding of inequalities in a remedial sense (justifying the type compensatory action Kohn (2020) envisions), but also to point at ways in which partnerships between the public and private sectors could be reimagined to prevent inequalities from arising in the first place (relating to Mazzucato's (2020) argument about social capital).

<sup>34</sup> This concerns less rights that whose enactment only requires changes in legislation, like the recognition of same sex marriage.



The HR and PG frameworks appear to be in a dynamic and complementary relationship. Nonetheless, this paper hasn't aimed at making stark or definitive categorical claims about how the two frameworks relate – or should relate – to each other. A more detailed study that theoretically dissects the relationship between the two concepts could rather constitute a further venue of research, building on the preliminary interdisciplinary insights presented by this paper.

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