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The Core Value of Public Policy Should be Equality

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ABSTRACT

Research in biology and anthropology shows that humans evolved in largely egalitarian small groups; occasional selfishness was punished. Aversion to inequality is thus an inherited human characteristic. In unequal societies, humans experience stress, leading to many social pathologies, as shown by extensive literature in epidemiology. Well-being can be increased by reducing inequality, independent of increases in GDP. This is obscured by current economic theories, which use unrealistic assumptions and an empirically completely unsupported "equity-efficiency tradeoff" to justify ignoring distribution. Finally, we show that public policy can have an enormous impact on income inequality and has done so in the past.

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Contents

The evolutionary history of humans has left most of us with a moral compass. We will show that a vast array of evidence from biology, anthropology, philosophy, political theory, psychology, and economic history points to equality as being at the core of that compass, with individual autonomy and control of free riders also being important. While equality precisely *of what* is a partially-unsettled, yet important, issue, there is ample evidence that policies that result in greater equality of income improve social welfare. These observations make equality the most defensible primary goal for public policy.

Because of the close relationship of equality and basic human values, and because more equal societies exhibit higher levels of human welfare, public policy based on equality can garner widespread support. However, such egalitarian policies will threaten the wealthy, who are the beneficiaries of social inequality, and so egalitarian policies have built-in oppositional constituencies. These constituencies applaud attempts to ground public policy not in egalitarian goals but in other goals such as greater output or greater GNP per capita or greater Real National Income per capita or greater "abundance." These arguments are often based on the myth that there is a tradeoff between equality and efficiency, but there is no empirical evidence for that claim: to the contrary, more equal societies experience equal or greater economic performance. Alternatively, these arguments may be based on assuming that the benefits of output trickle down to the rest of the population; but that assumption is rarely acknowledged and cannot be supported by convincing empirical evidence. Or these arguments may assume that distribution does not matter; but this paper shows that it very much does. Or these arguments may rely on a defeatist assumption that it is impossible to change the distribution of income or wealth within our existing capitalist framework, because such distributions are dictated by economic laws that public policies are incapable of affecting. But we show, quite to the contrary, that such distributions have been strongly influenced, in both directions, by public policy. Finally, these arguments may assume that future growth of output will automatically be distributed more evenly than output has been distributed in recent decades. But we argue to the contrary, that this will not happen without policy changes on the order of what Franklin Roosevelt enacted. Moreover, we maintain that if such policy changes were enacted, output growth would be largely unnecessary in the U.S. to increase well-being, because redistribution would be able to increase well-being even in the absence of output growth.

I. The Case for Equality

A. The Evolutionary Basis for Equality

Any core policy value must align with our basic human instincts that have been shaped by natural selection. Natural selection favored proliferation of genes that led to greater procreation and human survival. Economists have adopted a model of human motivation based exclusively on self-interest, but that is only a minor aspect of what evolution has instilled in our species. Humans are also cooperative, and to foster cooperation, evolution has imprinted upon our

species a moral template. To successfully win political support and to favorably influence social welfare, public policy must be aligned with these biologically determined values. But the basic modern neoclassical microeconomic theory of consumer preferences was developed before any of these ideas were developed and can be properly viewed as outdated.

1. The Evolution of the Human Psyche

What we know from biologists is that the human brain is a product of evolution over the last nearly two million years during the Pleistocene epoch. Until the advent of agriculture approximately 12,000 years ago, humans lived in nomadic groups that exhibited high in-group cooperation. Most anthropologists and archaeologists believe that these societies were also egalitarian.[1] As we describe below, the survival of human groups in this ancient ecosystem required that they become cooperative with other group members, and this cooperation hardwired basic moral instincts that include egalitarian values. It is true that, as Richard Dawkins taught us, humans are cooperative while genes are selfish;[2] but a remarkable amount of work by biologists has reconciled this biology with pro-social behavior. Hamilton showed that kin altruism was possible because evolution favored inclusive fitness; that is, what counts is the reproduction of both one's own genes as well as reproduction by relatives that share these genes.[3] Robert Trivers initiated research demonstrating that a type of altruism could result from reciprocity.[4] This was followed by work by Robert Axelrod that showed that Trivers' insights were an evolutionary stable equilibrium.[5] More recent research in Human Biology finds that "inequality-aversion plays an important role in guiding human social decision-making and appears to be ubiquitous across human populations."[6]

"Strong reciprocity" is, according to Gintis, Bowles, Boyd and Fehr:

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[1] Eric Alden Smith, Jennifer E. Smith and Brian F. Codding, "Towards an Evolutionary Ecology of (in)equality," 378 Phil. Tans. R. Soc. B. 3 (2023).

[2] Richard Dawkins, THE SELFISH GENE (Oxford, 1996).

[3] William Hamilton, "The Genetical Evolution of Social Behavior I & II", 7 J. of Theoretical Biology, 1, 17 (1964).

[4] Robert Trivers, "The Evolution of Reciprocal Altruism," 46 Q. J. of Biology 35 (1971).

[5] Robert Axelrod, THE EVOLUTION OF COOPERATION, (Basic Books 1984).

[6] Katherine Jane McAuliffe, THE EVOLUTION AND DEVELOPMENT OF INEQUITY AVERSION, Ph.D. dissertation in Human Biology, Harvard University, 2013, at iii. Available at https://dash.harvard.edu/bitstream/handle/1/11156679/McAuliffe_gsas.harvard_0084L_10757.pdf?sequence=3&isAllowed=y. Note that of the two closest relatives of humans, one, the chimpanzees, live in strongly hierarchical groups, and humans do have a genetic capability, not expressed in many humans but definitely expressed in a few, for behaving in a hierarchical, domineering and selfish way. This has made it necessary, in order to sustain non-hierarchical societies, for many humans to exhibit willingness to punish free-riders. The other close relatives of humans, the bonobos, live in groups that are very strongly egalitarian, and there do not exist any potentially free-riding bonobos that other bonobos would need to deter. See Jose Yong, "Bonobos and chimps: what our closest relatives tell us about humans," The Conversation (2023). https://theconversation.com/bonobos-and-chimps-what-our-closest-relatives-tell-us-about-humans-202265

> … a predisposition to cooperate with others, and to punish (at personal cost, if necessary) those who violate the norms of cooperation, even when it is implausible to expect that these costs will be recovered at a later date.[7]

Bowles and Gintis showed that humans developed strong reciprocity, where humans cooperate within a group even if the level of genetic relatedness is low and reciprocity cannot be tracked.[8] The evolution of strong reciprocity is partly a consequence of the competition between human groups. Groups composed of individuals that displayed in-group solidarity and cooperation were more successful and spread their genes. This broad account of the evolution of human cooperation is now accepted by many scientists.[9]

The emergence of strong reciprocity created instinctual notions of morality in humans. In his book "A Natural History of Human Morality," Michael Tomasello explains how early humans developed an egalitarian ethic.[10] The basic ethic of equality, punishment of cheaters, and political autonomy began when early humans started to forage together. Partners needed to extend mutual respect to each other to successfully collaborate in the acquisition of food. Equal food sharing was the rule. Other uniquely human characteristics also contributed to the success of altruistic and cooperative instincts. According to Tomasello, "cooperative childcare evolved in tandem with collaborative foraging, as a division of labor to maximize food

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[7] Herbert Gintis, Samuel Bowles, Robert Boyd, and Ernst Fehr, MORAL SENTIMENTS AND MATERIAL INTERESTS: THE FOUNDATIONS OF COOPERATION IN ECONOMIC LIFE, MIT (2005) at 8.

[8] Samuel Bowles and Herbert Gintis, "The Evolution of Strong Reciprocity: Cooperation in Heterogeneous Populations," 65 Theoretical Population Biology 17 (2004).

[9] Peter Singer, THE EXPANDING CIRCLE: ETHICS, EVOLUTION AND MORAL PROGRESS, Princeton (1981).

[10] Michael Tomasello, A NATURAL HISTORY OF HUMAN MORALITY, Harvard (2016). See also another piece co-authored by Tomasello: Michael Tomasello, Alicia P. Melis, Claudio Tennie, Emily Wyman, and Esther Herrmann, "Two Key Steps in the Evolution of Human Cooperation: The Interdependence Hypothesis," 53 Current Anthropology 673 (2012) at 673. Available at https://www.journals.uchicago.edu/doi/10.1086/668207. Its abstract is a useful summary:

> "Modern theories of the evolution of human cooperation focus mainly on altruism. In contrast, we propose that humans' species-unique forms of cooperation—as well as their species-unique forms of cognition, communication, and social life—all derive from mutualistic collaboration (with social selection against cheaters). In a first step, humans became obligate collaborative foragers such that individuals were interdependent with one another and so had a direct interest in the well-being of their partners. In this context, they evolved new skills and motivations for collaboration not possessed by other great apes (joint intentionality), and they helped their potential partners (and avoided cheaters). In a second step, these new collaborative skills and motivations were scaled up to group life in general, as modern humans faced competition from other groups. As part of this new group-mindedness, they created cultural conventions, norms, and institutions (all characterized by collective intentionality), with knowledge of a specific set of these marking individuals as members of a particular cultural group. Human cognition and sociality thus became ever more collaborative and altruistic as human individuals became ever more interdependent."

production, assuming that the gatherer would share her bounty with the caregivers."[11] At some point in human history, the ecology changed and humans began hunting large game collaboratively and systematically. Food sharing was mandatory and those that violated fair standards, such as free riders, faced sanctions. According to Tomasello, early humans developed shared goals and valued cooperation. At some point, inter-group competition led to a merger of instincts favoring in-group loyalty and out-group prejudice. The in-group's common culture, language, rules, and customs identified those owed loyalty and respect.[12]

In Christopher Boehm's "Hierarchy in the Forest: The Evolution of Egalitarian Behavior," the author reported on his study of forty-eight existing hunter-gatherer societies. He found these societies were all "politically egalitarian" and were largely "materially egalitarian" as well. "Those who have more are expected to share when scarcity exists."[13] According to Boehm, "[f]oragers are not intent on true and absolute equality, but on a kind of mutual respect that leaves individual autonomy intact."[14] Boehm also found a strong aversion to authoritarian leadership, and that any attempt at establishing a hierarchy was suppressed by the tribe. Overly dominant individuals were quickly cut down to size by others. Leaders were considered the first among equals, and required to justify their decisions. Boehm's study is important because it helps confirm what anthropologists posit about our evolutionary history.

In sum, biologists and evolutionary psychologists as well as other social scientists have traced certain human moral characteristics, such as fairness and mutual respect for all group members, punishment of free riders, aversion to authoritarian leaders, and in-group favoritism to our evolutionary past. These values are enforced by basic emotions such as guilt, shame, envy, and resentment, which also emerged from our evolutionary history.[15] As Graham et al. state, "[n]obody in psychology today argues that the human mind is truly a blank slate at birth.…" Marc Hauser and Norm Chomsky propose that morality is much like language:[16] there is a "universal moral grammar" that allows humans to learn moral principles at an early age. The structure of these parameters is innate, but the specific content, such as the size of the in-group, is shaped by culture and institutions.

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[11] Id. (2016) at 43.
[12] Id. at 93.
[13] Christopher Boehm, HIERARCHY IN THE FOREST; THE EVOLUTION OF EGALITARIAN BEHAVIOR.
[14] Id. at 68.
[15] On the other emotions, see Robert Frank, PASSIONS WITHIN REASON: THE STRATEGIC ROLE OF THE EMOTIONS, Norton (1988).
[16] John Mikhail, "Chomsky and Moral Philosophy," chapter 11 in James McGilvray, J. (ed.) (2017), THE CAMBRIDGE COMPANION TO CHOMSKY (2nd ed.), Cambridge: Cambridge University Press; Marc Hauser, MORAL MINDS: HOW NATURE DESIGNED OUR UNIVERSAL SENSE OF RIGHT AND WRONG, HarperCollins (2006); John Mikhail, "Universal Moral Grammar: Theory, Evidence and the Future," 11 Trends in Cognitive Sciences 143; Vincent J. Carchidi, "The Nature of Morals: How Universal Moral Grammar Provides the Conceptual Basis for the Universal Declaration of Human Rights," 21 Human Rights Review 65–92.

2. Is the Desire for Fairness Engrained or Learned?

But are the characteristics identified by Tomasello and Boehm really hardwired parameters? Graham et al. discuss the kinds of evidence needed to support such a contention. First, is there evidence that infants who have yet to receive significant cultural inculcation exhibit these values? Second, do economic and psychological experiments across many cultures display the characteristic? Third, is the human response displaying the value automatic and without conscious deliberation? Fourth, is there neurological support for a hardwired value? In his book "Just Babies, the Origins of Good and Evil," Yale psychologist Paul Bloom reviews the studies of morality in infants. He finds that for young infants, "the equality bias is strong." Whether effort is equal or collective, infants favor equal rewards.[17] But when there is unequal effort, children can sometimes override their focus on equality.[18] Moreover, when faced with situations where awards can't be distributed equally, children will favor their siblings, and will favor friends over strangers.[19] As children age, the factors that can justify inequality start to include "luck, effort, and skill."[20] As Bloom summarizes:

> What we do see at all ages, though, is an overall bias toward equality. Children expect equality, prefer those who divide resources equally, and are strongly biased to divide resources equally themselves. This fits well with a certain picture of human nature, which is that we are born with some sort of fairness instinct: we are natural-born egalitarians."[21]

As for the second requirement, evidence from different cultures, Bowles and Gintis review the experimental economic evidence of altruistic cooperation in Chapter 3 of their book "A Cooperative Species: Human Reciprocity and its Evolution."[22] They find that in a variety of experiments using different designs and across many cultures, "we commonly observe that people sacrifice their own payoffs in order to cooperate with others, to reward the cooperation of others, and to punish free-riding, even when they cannot expect to gain from acting this way."[23] However, Bowles and Gintis also find some cultural differences between experimental outcomes. They conclude their review of studies from across the world, including fifteen societies of hunter-gatherers, herders, or low technology farmers as follows:

> Analysis of the experiments led us to the following conclusions: behaviors are highly variable across groups, not a single group approximated the behaviors

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[17] Paul Bloom, JUST BABIES: THE ORIGINS OF GOOD AND EVIL, Broadway Books, (2013) at 64.
[18] Id. at 63
[19] Id. at 64
[20] Id.
[21] Id. at 64-65.
[22] Samuel Bowles and Herbert Gintis, A COOPERATIVE SPECIES: HUMAN RECIPROCITY AND ITS EVOLUTION, Princeton (2011).
[23] Id. at 20.

> implied by the self-interest axiom, and between-group differences in behavior seemed to reflect differences in the kinds of social interaction experienced in the everyday life of the social group in question.[24]

Bowles and Gintis conclude that, much like language, evolution has equipped us with a set of parameters for building moral systems. The specific content of the resulting morality is informed by culture and institutions, but the basic parameters constrain the variation that is possible.

Empirical evidence similarly supports the third and fourth requirements—whether the human response displaying the value is automatic and without conscious deliberation, and whether there is neurological support for a hardwired value. Evidence of immediate non-reflective moral decisions and fMRI studies support the notion that there is an inherent human moral cognitive structure. Marc Hauser reports that in a series of moral dilemmas, subjects expressed immediate intuitive knowledge or belief of the right behavior; yet, they were unable to explain the reasons for the decision. As he states, "the intuitive knowledge underlying our moral judgments is like the intuitive knowledge of language." The source of our knowledge is unconscious and inaccessible to us in many cases.[25] Graham et al., working in the Moral Foundations Theory field in psychology, "posit that there are a variety of rapid, automatic reactions to patterns in the social world."[26] People immediately can recognize when a behavior is "unfair" or "cruel" or a "betrayal." As the authors state: "If a moral reaction can be elicited quickly and easily, with a variety of images, bumper-stickers, or one-sentence stories, that is a point in favor of its foundationhood."[27]

Graham et al. also describe a series of fMRI studies of economic games showing that fair offers activate neural reward centers, while accepting unfair offers triggers self-control circuitry. Bowles and Gintis report that Ultimatum Game[28] responders who reject low offers exhibit activation of areas of the brain associated with negative emotions such as anger and disgust.

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[24] Id. at 34.

[25] Marc Hauser, *supra* note 16 at 125.

[26] Jesse Graham, Jonathan Haidt, Sena Koleva, Matt Motyl, Ravi Iyer, Sean Wojcik, and Peter Ditto, "Moral Foundations Theory: The Pragmatic Validity of Moral Pluralism," 47 Advances in Experimental Social Psychology 55 (2013) at 109-110.

[26] Id.

[28] The Ultimatum Game is an interaction between a Proposer and a Responder. The Experimenter will give the Proposer $1 if and only if two conditions are satisfied: (1) the Proposer makes an offer to the Responder to divide the $1 between the two of them in a particular way suggested by the Proposer; and (2) the Responder accepts the offer. Thus, if the Responder rejects the Proposer's offer, neither Proposer nor Responder receives any of this $1 from the Experimenter.

They concur with the conclusion of another neurological researcher that "it is irresistible to speculate that the insula is a neural locus for the distaste for inequality and unfair treatment."[29]

Thus, taken as a whole, there is an expanding base of evidence from biology and the social sciences that evolution has imparted to the human species a basic set of moral parameters that include: (1) a strong sense of fairness that includes egalitarian motives; (2) a sense of just deserts for effort and a desire to punish free riders; (3) a distaste for authoritarian leadership; and (4) a preference for cooperation among the cultural ingroup. While there is no doubt that humans are motivated by self-interest, the economist's narrow notion of human nature ignores the significance of our evolved desire to be generous to strangers, contribute to public goods, cooperate for the collective good, to feel anger toward free riders, and to be willing to punish free riders even at the expense of self-interest.

Beyond the scientific evidence, there is also overwhelming casual empirical evidence that humans are not purely self-interested. We vote in elections where our vote is highly unlikely to matter, we give blood, we return lost wallets, we tip when we are out of town, we give to charity, we act selflessly with our families, and we risk our lives for our country. Economists avoid this evidence by making broad unrealistic assumptions, such as perfect markets and complete contracts, in which all contingencies are accounted for and all contract stipulations are effectively enforced. But in the real world, our cooperative nature and our morality is a necessary component for the effective operation of markets. Agents on both sides of a transaction typically cannot rely on the legal system for enforcement of every violation or exercise of opportunism. Instead, business partners rely on reciprocity and fairness. The economist's false assumptions have consequences. As Sam Bowles argues in his book "The Moral Economy: Why Good Incentives are no Substitute for Good Citizens," public policy that relies on incentives based only on pure, individualistic self-interest can crowd out cooperative motives and lead to inferior outcomes.[30] There is no need for economists to abandon utility maximization, but they should abandon individualistic utility maximization.

As we discuss below, an effective public policy must align with our moral instincts for two reasons. First, to garner public support, policy must appeal to our moral values. Second, social welfare is advanced when people believe the society is fair, believe that they can trust others, and believe that, among a host of other dimensions, society is arranged in a way that is consistent with our inherent moral architecture.

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[29] Samuel Bowles and Herbert Gintis, A COOPERATIVE SPECIES: HUMAN RECIPROCITY AND ITS EVOLUTION, Princeton (2011) at 38, citing Colin Camerer, George Loewenstein, and Drazen Prelec, "Neuroeconomics: How Neuroscience can inform Economics," 43 J. of Econ. Persp. 47 (1999).

[30] Samuel Bowles, THE MORAL ECONOMY: WHY GOOD INCENTIVES ARE NO SUBSTITUTE FOR GOOD CITIZENS, Yale (2016).

B. Equality as a Foundational Principle of Moral and Political Philosophy

1. Notions of Fairness are Context Specific

As demonstrated above, humans have a universal moral grammar that is innate. These instincts generate automatic and quick judgments about what is morally permissible or forbidden in most situations. But these reactions can be context-specific, can lack clear first principles, and can sometimes conflict. In his 1971 book "A Theory of Justice," John Rawls described our moral intuitions ("intuitionist theories") as:

> first, … consist[ing] of a plurality of first principles which may conflict to give contrary directives in particular types of cases; and second, … includ[ing] no explicit method or priority rules, for weighing these principles against one another….[31]

How context-specific our moral intuitions are is exemplified by typical responses to the Trolley Problem. The Trolley Problem posits a bystander on a footbridge overlooking the trolley tracks. The bystander observes that the conductor on the trolley has lost consciousness. On the track, are five people, and the trolley can't be slowed in time to prevent their death. But the bystander can switch the track so that the trolley can avoid the five people and kill only one person on the alternative track. Most people immediately conclude that the bystander should turn the switch. But now, change the facts slightly so that rather than an alternative track, there is a big man standing next to the bystander. The bystander can still save five people and kill only one person by pushing the man on to the track to stop the train. Most people conclude that pushing the man on to the track is morally impermissible. Why the difference? Marc Hauser concludes that the difference is that humans have evolved to condemn unprivileged bodily contact that causes physical harm.[32] So, even though the death-toll outcomes of the two interventionist behaviors are the same, one is acceptable and one is not. There are many examples like this. Failure to render aid is legal in most U.S. states, even when death can be prevented but, by contrast, a volitional affirmative action that leads to a death is considered a criminal offense. Even in jurisdictions where failure to render aid is illegal (the "duty to rescue" aspect of many civil law systems), such failure is punished less than a volitional affirmative action that causes harm.

Moral and political philosophers apply reason to our moral instincts in an attempt to derive consistent principles that reconcile our moral intuitions for most situations. Rawls refers to this method as reflective equilibrium. As Rawls describes, the philosopher derives principles and then tests the principles against examples applying our intuition. As anomalies arise, the

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[31] John Rawls, A THEORY OF JUSTICE, Oxford, (1971) at 34, quoted in Will Kymlicka, CONTEMPORARY POLITICAL PHILOSOPHY, Oxford (2002) at 53–54.

[32] Marc Hauser, *supra* note 16 at 128–130.

philosopher then adjusts the principles, and so on until an equilibrium of sorts is established. Peter Singer, in his book "The Expanding Circle: Ethics, Evolution and Moral Progress," describes a similar process of philosophers applying "reason" to the "existing tendencies in human nature" to arrive at more consistent "principles of ethics."[33] But we (the authors) are economists, not moral philosophers. Thus, for us, while there are many open questions and wide-ranging debates in moral and political philosophy, what is significant for economists trying to measure (and hopefully maximize) human welfare is that, despite differences, most moral philosophers have settled on the principle of equality between humans, or equal respect for all humans, as a basic principle that lies at the heart of our innate morality and, consequently, our sense of satisfaction.

Ronald Dworkin, James Griffin, Will Kymlicka, Amartya Sen, Thomas Scanlon, and Peter Singer, all significant figures in moral and political philosophy, uniformly begin their analyses with the fundamental principle of equal respect for all humans.[34] (In Welfare Economics, this is called the "anonymity" or "symmetry" property.) Peter Singer states the basic principle as "a decision must give equal weight to the interests of all affected by it."[35] One can observe the power of Singer's principle by the fact that people rarely, if ever, openly argue for policy on the basis of self-interest. Regardless of the narrow sectarian nature of a policy change, the argument for the claim by its advocates is always that it will benefit everyone, or at least the majority.

Nobel Laurate economist Amartya Sen, in his book "Inequality Reexamined," makes the case that all moral theories can be classified by what specifically the theory claims is being equalized between people, whether it be income, or welfare, or opportunities, or freedom, or self-respect, or rights, etc. Moreover, the argument advanced by each theory's proponents against the other theories is typically based on a violation of equality in terms of the variable stressed by the alternative theory. For example, libertarians focus on equal freedom from coercion of others. Thus, they oppose equality of income because it requires redistribution, and this, for libertarians, requires that some are being coerced by others, while the others are not coerced by anyone. As Sen explains it:

> It is convenient to begin with the observation that the major ethical theories of social arrangements all share an endorsement of equality in terms of some focal variable, even though the variables that are selected are frequently very different between one theory and another. It can be shown that even those theories that are widely taken to be "against equality" (and are often described as such by the authors themselves) turn out to be egalitarian in terms of some other focus. The

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[33] Peter Singer, THE EXPANDING CIRCLE: ETHICS, EVOLUTION, AND MORAL PROGRESS, Princeton (1981).

[34] Daniel Hausman, Michael McPherson, and Debra Satz, ECONOMIC ANALYSIS, MORAL PHILOSOPHY AND PUBLIC POLICY, 3rd ed. Cambridge, 2017, at page 196.

[35] *Supra* note 33 (Singer's EXPANDING CIRCLE) at 100.

> rejection of equality in such a theory in terms of some focal variable goes hand in hand with the endorsement of equality in terms of another focus.[36]

2. Equality and Utilitarianism

Economics traces its lineage back to utilitarian ethics, and utilitarianism remains a major theoretical force in moral philosophy. Utilitarianism is a family of theories that share four basic characteristics. First, what matters are outcomes, not processes. Thus, utilitarianism is a "consequentialist" theory as opposed to a "deontological" theory where ethics are based on following moral rules of behavior. Second, for utilitarians, "welfare" is the outcome that matters. Third, the welfare of all individuals counts equally. Finally, the value of an outcome depends on the sum of the individual welfares. As Sen suggests, utilitarianism values equality in two important respects. All people are treated equally because each individual's welfare counts equally in the sum. Moreover, because the value being equalized is welfare, utilitarians point out that utilitarian policy should result in an equal distribution of income if, as is usually assumed, people do not differ in their ability to transform income into welfare, and if, as is also usually assumed, there is a declining marginal utility of income (meaning that an additional dollar to a poor person increases welfare more than an additional dollar to a rich person). Accordingly, it follows that the greatest welfare would require equality of incomes. This was the view of many of the founders of neoclassical economics including Bentham, Edgeworth, and Pigou.

However, there are also non-egalitarian aspects of utilitarianism. Two aspects stand out. First, utilitarianism can result in massive inequalities in welfare if, contrary to one of the assumptions in the previous paragraph, people *do* differ in their ability to transform income into welfare. For example, suppose a society is composed of two people, one of whom turns money into utility according to the function $\sqrt{x_1}$ where x_1 is the amount of money they receive, and the other of whom turns money into utility according to the function $2\sqrt{x_2}$ where x_2 is the amount of money they receive. A utilitarian maximizing the sum of utilities $\sqrt{x_1} + 2\sqrt{x_2}$, if constrained by a total amount of money available for distribution given by *M*, would set $x_1 = M/5$ and $x_2 = 4M/5$, so that x_2 is four times larger than x_1. (In the philosophy literature, the second person is called a "utility monster.") This problem has given rise to "prioritarianism," in which the welfare of the poor is weighted more heavily than the welfare of higher income individuals in the welfare summation process. The Pigou-Dalton principle states that the transfer from a better-off person to a worse-off person, with everything else unaffected including the total amount of goods, is considered an improvement.[37] Thus, prioritarianism satisfies the Pigou-Dalton principle but utilitarianism does not. Prioritarianism condemns "leveling down" redistributions, which are redistributions that achieve greater equality but also lower the total

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[36] Amartya Sen, INEQUALITY REEXAMINED, Harvard (1992).

[37] Matthew Adler, MEASURING SOCIAL WELFARE: AN INTRODUCTION, Oxford (2019) at 95.

amount of goods. In some cases, prioritarianism may sacrifice greater equality to avoid a reduction in the total amount of goods. Supporters of even more egalitarian principles than prioritarianism criticize the latter for not assigning a value to greater equality itself, and they also believe prioritarians exaggerate the leveling down problem because that problem only exists if there is an equality/efficiency tradeoff, which is doubtful (as we address in Section I.D below).

The other problem with utilitarianism concerns how to handle other-regarding preferences. Utilitarians consider only the sum of utility (welfare) when determining what is the most ethical choice. Early utilitarians defined utility as a measure of happiness. But most utilitarians today define utility as a measure of the satisfaction of individual preferences. Preferences can be self-regarding, what I desire for myself, or other-regarding, goods and services and opportunities I care about others having. As Will Kymlicka points out, inclusion of other-regarding preferences poses a problem. because such preferences may be founded in racial prejudice or other anti-social animus. For example, suppose that a majority of individuals prefer that a certain minority receive an unequal, and lower, allocation of resources. When utilities are summed, this could result in utilitarianism endorsing an unequal outcome where some individuals are not accorded equal respect and concern.[38] Economists have not yet come to grips with this issue.

3. The Economists' Purge of their Egalitarian Roots

The original neoclassical economists, William Jevons, Léon Walras and Carl Menger, built microeconomics on utilitarianism. But as microeconomics advanced, economists jettisoned its two primary egalitarian aspects. First, in 1890 Alfred Marshall adopted as a goal of economics the satisfaction of a preference conception of utility, and he supposed that an individual's willingness to pay for a good—a better description of Marshall's concept is an individual's willingness *and ability* to pay for a good—was an approximate measure of the utility obtained. He defined economic surplus as the willingness to pay, less the actual amount paid, of each good and service. This difference was called economic surplus, and it constituted for Marshall the proper measure of welfare. However, since willingness to pay is (for normal goods) an increasing function of income, the "sum of the consumer-surplus" notion of welfare no longer incorporated the fact that the marginal welfare from income is higher at lower income levels. In fact, it did the opposite: it weighted higher income people's preferences more because they have a higher ability to pay. Thus, one of the most important egalitarian aspects of utilitarianism was lost. Second, Marshall applied economic welfare to single markets rather than all affected agents. This also narrowed the egalitarianism embedded in utilitarianism.

Economists were originally critical of Marshall's approach. In particular, economists came to believe that welfare among individuals could not be additive because only the order of

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[38] Will Kymlicka, CONTEMPORARY POLITICAL PHILOSOHY: An Introduction, Oxford (2002) at 38.

preferences is observable (that is, "A" can be assessed by a person to be better than "B," but there is no answer to the question of "by how much" A is better than B). They also came to believe that the utilities of different people could not be compared to each other.[39] As a result, the profession abandoned Marshall's utilitarianism and embraced Pareto Optimality as the dominant measure of welfare. According to Pareto Optimality, welfare can unambiguously be said to have improved only when there is at least one individual that benefits from the change and no individuals that are made worse off. The problem that the profession then faced with this "new" welfare standard was that very few, if any, public policy decisions involve situations where no one is worse off (i.e., there are no losers) and unanimous consent prevails. To avoid having the consumer welfare model cast into irrelevance, in the 1930s Kaldor and Hicks revived the surplus approach, but explicitly retained its anti-egalitarian nature. Their basic welfare approach was to endorse policies that generated more total surplus, because a proviso fully compensating the losers by taking from the winners could be added to such policies and still leave the winners better off than their original position. In other words, Kaldor and Hicks endorsed policies that generated more total surplus because, when total surplus rises, it is theoretically possible to add an additional policy which, together with the surplus-increasing policy, would be Pareto Optimal. Curiously, however, Kaldor and Hicks endorsed policies that generated more total surplus even if the additional, loser-compensating policy were not adopted, i.e., even if the final result is not Pareto Optimal. The fact that the Kaldor and Hicks criteria, which are called the Potential Pareto Criterion, endorses policies that hurt some people is problematic.[40] The fact that it is based on willingness and ability to pay means it usually hurts poorer people rather than more wealthy people; making it even worse from a social policy perspective.[41] (While we will discuss this further in Section III.A.3, our point here is that economists stripped from utilitarianism the very aspects that made it morally defensible.[42])

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[39] This followed Lionel Robbins, AN ESSAY ON THE NATURE AND SIGNIFICANCE OF ECONOMIC SCIENCE, Macmillan, London (1932).

[40] This was explicitly pointed out and criticized in Princeton economist Uwe E. Reinhardt's "Reflection on the Meaning of Efficiency: Can Efficiency be Separated from Equity?", 10 Yale Law & Policy Review 302 (1992), 312–313, where Reinhardt explains why he calls Potential Pareto "*the unrequited-punch-in-the-nose* criterion of *social welfare*." Hicks, late in life, abandoned not only the Kaldor and Hicks criteria, but even Pareto Optimality, as good measures of welfare; see Mark Glick, Gabriel A. Lozada and Darren Bush, "Antitrust's Normative Economic Theory Needs a Reboot, 54 Int. J. of Pol. Econ 1, 29–31 (2025), 33.

[41] This is discussed in detail in Section III of Mark Glick, Gabriel A. Lozada, and Darren Bush, "Why Economists Should Support Populist Antitrust Goals,'" Utah Law Review, vol. 23 no. 4, 2023, 769–812, https://doi.org/10.26054/0d-st5p-pam7.

[42] We leave aside here the numerous other unrealistic assumptions that are required including complete rationality and being fully informed. See Mark Glick, Gabriel A. Lozada and Darren Bush, *supra* note 40.

4. More Modern Views on Equality

The publication of John Rawls' book "A Theory of Justice" in 1971 was a defining moment in moral philosophy.[43] Up until that time, utilitarianism dominated moral philosophy. Rawls found utilitarianism defective in two aspects. First, he objected to the aggregation of individual welfares, not on the technical grounds identified by economists, but because there was no justification for the lack of equality of distribution of welfare, for example when there are utility monsters.[44] Second, Rawls objected to welfare as the value to be equalized. Instead, he preferred a focus on equalization of what he called "primary goods."[45] Primary goods for Rawls included natural goods such as health and intelligence, and social primary goods such as rights and freedoms, and income and wealth. Only social primary goods are subject to redistribution for Rawls. Rawls believed that justice required two principles of equality: (1) people have an equal right to the most extensive liberty compatible with a similar liberty for others, and (2) any inequalities are justified only if they benefit the least advantaged individuals (the difference principle), and there is equal opportunity to all offices and positions. Rawls claimed these principles are what humans would choose for society in an original state where they do not know what position they will occupy.[46] For him, these principles are most consistent with our moral instincts, because self-interest is removed from the equation by no advance knowledge of one's own position. Rawls' theory had an enormous influence on philosophy, as evidenced by the fact that subsequent moral developments typically begin by how they contrast with Rawls.

Amartya Sen (the 1998 Nobel Prize recipient in economics) achieved the next major development in moral philosophy in his 1979 Tanner Lecture "Equality of What?",[47] followed two years later by Ronald Dworkin's two-part article "What is Equality."[48] Both Sen and Dworkin agree with Rawls that welfare, or "utility," is not the right value to focus on, but they differ from Rawls in that they spend more time exploring under exactly what conditions welfare should not be equalized. For example, Dworkin noted the conundrum that strict equalization of welfare would recommend that those with acquired expensive tastes, "who need more income simply to achieve the same level of welfare as those with less expensive tastes, should have more income on that account."[49] This struck Dworkin as being unfair, and it

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[43] John Rawls, A THEORY OF JUSTICE, (Revised Ed.) Harvard (1999).
[44] Id. at 23.
[45] Id. at 79.
[46] Experiments have confirmed that under a veil of ignorance most people tend to choose an egalitarian social structure. See Keith Payne, THE BROKEN LADDER: HOW INEQUALITY AFFECTS THE WAY WE THINK, LIVE, AND DIE, Weidenfeld & Nicolson (2017) at 24–27.
[47] Amartya Sen, *Equality of What?*, The Tanner Lecture on Human Values, delivered at Stanford University, May 22, 1979. 214–5. https://ophi.org.uk/sites/default/files/Sen-1979_Equality-of-What.pdf
[48] Ronald Dworkin, "What is Equality Part I & II," 10 Phil. & Public Affairs 185 (1981).
[49] Id. at 228.

strikes our moral intuition as unfair as well. Sen agreed, believing that society should target objective factors that provide people "capabilities," rather than targeting utility, because society should not give "more income to people who are hard to please and who have to be deluged in champagne and buried in caviar to bring them to a normal level of utility, which you and I get from a sandwich and beer."[50] Another reason Dworkin believed equalization's target should not be welfare/utility is that equalizing welfare could result in poor or handicapped individuals who are happy by nature (e.g., Tiny Tim in Charles Dickens' novel "A Christmas Carol") being denied the extra resources necessary to achieve other goals (e.g., use of a wheelchair).[51] Again, Sen agrees, not wanting to disadvantage impoverished people who adapt their preferences to their situation and report being happy despite being objectively deprived. Sen wrote:[52]

> "…there may be good ethical grounds for not concentrating too much on mental-state comparisons - whether of pleasures or of desires. Utilities may sometimes be very malleable in response to persistent deprivation. A hopeless destitute with much poverty, or a downtrodden laborer living under exploitative economic arrangements, or a subjugated housewife in a society with entrenched gender inequality, or a tyrannized citizen under brutal authoritarianism, may come to terms with her deprivation. She may take whatever pleasure she can from small achievements, and adjust her desires to take note of feasibility (thereby helping the fulfilment of her adjusted desires). But her success in such adjustment would not make her deprivation go away. The metric of pleasure or desire may sometimes be quite inadequate in reflecting the extent of a person's substantive deprivation."

Sen's answer to these problems with equalizing utility was to introduce the "capability approach." Under the capability approach, what matters for our intuition of morality is not equality of welfare or resources, but equality of human capabilities—which is somewhat

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[50] Amartya Sen, *supra* note 47.

[51] Id. at 241.

[52] Amartya Sen, *The Possibility of Social Choice: Nobel Lecture*, December 8, 1998. https://www.nobelprize.org/uploads/2018/06/sen-lecture.pdf, p. 191:

> "…there may be good ethical grounds for not concentrating too much on mental-state comparisons - whether of pleasures or of desires. Utilities may sometimes be very malleable in response to persistent deprivation. A hopeless destitute with much poverty, or a downtrodden laborer living under exploitative economic arrangements, or a subjugated housewife in a society with entrenched gender inequality, or a tyrannized citizen under brutal authoritarianism, may come to terms with her deprivation. She may take whatever pleasure she can from small achievements, and adjust her desires to take note of feasibility (thereby helping the fulfilment of her adjusted desires). But her success in such adjustment would not make her deprivation go away. The metric of pleasure or desire may sometimes be quite inadequate in reflecting the extent of a person's substantive deprivation."

different than Rawls's equality of primary goods. According to Sen, "[c]apability is, thus, a set of vectors of functionings, reflecting the person's freedom to lead one type of life or another."[53] Put another way, what is important is not resources but what people can accomplish with resources to create opportunities to accomplish their goals. In this respect, the capability approach stresses equality of opportunity, and the focus on opportunity allows the theory to be sensitive to ambition. Because of the diversity of human preferences and situations, resources required for different people to achieve goals will differ. For example, the handicapped or less talented may require more aid or more education to acquire an opportunity to become a doctor or lawyer. In a report sponsored by the French Government, Sen, along with Jean-Paul Fitoussi and Nobel laureate Joseph Stiglitz, listed eight factors they believed are most important for measuring social welfare: material living standards, health, education, work, democracy, social connections, the environment, and personal security.[54]

The capabilities approach, like Rawls's primary goods focus, is not aimed purely at welfare because of the latter's problems with handling agents with expensive tastes or agents like Tiny Tim, the poor and disadvantaged who "may not appear to be quite so badly off in terms of the mental metric of desire or its fulfilment."[55] But Sen makes the point that the choice of what matters must be established by democratic means. In contrast to utilitarianism, Sen is not purely a consequentialist: for Sen, the political process matters. It matters not only whether people have an equal opportunity to achieve, but also how that equal opportunity is achieved. At bottom, Sen views the capability approach as essentially an expansion of human freedom to operate and succeed in the world in ways that achieve individual or democratically established goals.[56] We find Sen's approach to be promising. Sen accounts for three critical innate moral instincts: equality, opportunity and aversion to free riders, and human autonomy and freedom.

Dworkin's answer to the problems with equalizing utility has strong similarities with Sen's. Dworkin says a criterion should be "ambition-sensitive" but "endowment-insensitive."[57] The second means that inequalities in a person's endowments, which are factors outside the person's control, should be compensated in a way that brings about equality. The first means that inequalities that arise due to a person's deliberate decisions are not unfair and should be not be compensated for. Dworkin suggests that endowment insensitivity is satisfied where distribution meets the "no envy" test; i.e., where no one prefers someone else's endowment to their own. This is supplemented by an insurance scheme to account for natural inequalities of talent and

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[53] Amartya Sen, INEQUALITY REEXAMINED, Harvard (1992) at 40.

[54] Joseph Stiglitz, Amartya Sen, and Jean-Paul Fitoussi, REPORT BY THE COMMISSION ON THE MEASURING OF ECONOMIC PERFORMANCE AND SOCIAL PROGRESS, (2008), 14–15.

[55] *Supra* note 48 (Dworkin) at 7.

[56] Id. at 42, 152–156.

[57] Id. at 311-312.

temperament, which were ignored by Rawls.[58] We find Dworkin's two aims—to be "ambition-sensitive" and "endowment-insensitive"—to be appealing, because these principles align with how biologists describe our basic innate human instincts acquired by evolution. Humans have a basic bias in favor of equal shares, but we also punish those who free ride or do not contribute. However, as economists, we worry about how to implement Dworkin's aims: how can we ever know what differences are due to effort and what results are due to talent or lack thereof (that is, are due to what Dworkin calls brute luck)?

Dworkin's and Sen's examples of those with expensive tastes being rewarded by utilitarianism, and their discussion of the "Tiny Tim" problem of poor people who adjust to deprivation and report that they are not unhappy, show that fairness dictates some concern for resource distribution beyond opportunity for welfare. This is accepted by G.A. Cohen in his essay "On the Currency of Egalitarian Justice."[59] Incorporating the analyses of Sen and Dworkin, Cohen lands on a principle of equal "access to advantage" as most consistent with our moral intuitions.[60] Cohen was influenced by Sen's capability approach and Cohen acknowledged that his egalitarianism is consistent with Sen's. However, Cohen did not reject considerations of utility quite as completely as did Dworkin and Sen, who only care about resources. As explained by Robeyns,[61] Cohen thought "someone who is able to move but only by being in deep pain when doing so" had a legitimate claim on a very expensive pain killer. In this sense, Cohen believed that Rawls, Dworkin, and Sen were not egalitarian enough.

Rawls, Sen, Dworkin, and Cohen all believed that what one might call equality of opportunity was a fundamental prerequisite for social justice, even though they came to slightly different conclusions about when inequality might be morally justified. They rejected equality of results. In addition, there is a concern that policies that equalize opportunity, such as policies that limit high income and wealth, might reduce incentives to produce and thus might reduce growth and productivity. This was the thinking behind Rawls's difference principle: if inequality benefits the least well off through greater growth, then such inequalities are just. Cohen, Sen, and Dworkin were also concerned about dampening efficiency by egalitarian measures limiting high incomes.[62] In a provocative essay, Daniel Hausman reasoned that:

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[58] See description in Kasper Lippert-Rasmussen, LUCK EGALITARIANISM, Bloomsbury (2016) at 11–19; Will Kymlicka, CONTEMPORARY POLITICAL PHILOSOHY: An Introduction, Oxford (2002) at 75-87.
[59] G.A. Cohen, ON THE CURRENCY OF EGALITARIAN JUSTICE AND OTHER ESSAYS IN POLITICAL PHILOSOPHY, Princeton (2011) at 13.
[60] Id. at 18.
[61] Ingrid Robeyns, "On G. A. Cohen's 'On the Currency of Egalitarian Justice,'" 125 Ethics 1132 (2015) at 1133.
[62] G.A. Cohen, "The Incentives Argument," Chapter 1 of G.A. Cohen, RESCUING JUSTICE AND EQUALITY, Harvard (2008) at 27.

> The trick for egalitarians who do not want to shoot themselves in the foot and who also seek political success, is to espouse egalitarian reforms that will increase productivity.[63]

Indeed, the only serious argument against egalitarian policies prescriptions is the claim that there is a tradeoff between equality and efficiency. However, this claim is massively overstated by economists, as we demonstrate in Section I.D. Moreover, the next section, I.C, makes the case that increased equality of results, often in the form of lower Gini coefficients of income, increases social welfare. Hence in Section I.E we will have to return to the question of what is important, equality of opportunity or equality of results.

C. The Empirical Case for Equality

1. The Case based on Objective Well-Being

An enormous amount of research has focused on the determinants of well-being. Large-scale analyses by international organizations, including the EU, the United Nations, the World Bank, the OECD, and many governments, have assembled similar sets of indicators that materially affect well-being either positively or negatively.[64] For example, the EUROSTAT expert group converged on nine critical well-being factors:[65] (1) material living conditions (income), (2) productive activity (unemployment and quality of work), (3) health, (4) education, (5) leisure and social interactions, (6) economic security and personal safety (poverty and crime), (7) governance and basic rights (democracy and good government), (8) natural and living environment (pollution), and (9) overall life experience. Economics Nobel laureates Stiglitz and Sen, working with Fitoussi, formulated similar factors, as did the World Happiness Report.[66] Psychologists similarly report results consistent with the economic studies (Argle 1999).

In modern welfare economists Fleurbaey and Blanchet's (2013) book *Beyond GDP: Measuring Welfare and Assessing Sustainability,* a list of the components of welfare, like the ones

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[63] Daniel Hausman, "Problems with Supply-side Egalitarianism," in Samuel Bowles and Herbert Gintis, RECASTING EGALITARIANISM: NEW RULES FOR COMMUNITIES, STATES AND MARKETS, Verso (1998).

[64] Eurostat, Final Report of The Expert Group on Quality of Life Indicators (2017); United Nations, World Happiness Report (2023); World Bank, The Changing Wealth of Nations: Measuring Sustainable Development in the New Millenium (2011); OECD, Guidelines on Measuring Subjective Well-Being (2013).

[65] These factors are multidimensional. We added in parentheses illustrative examples.

[66] Stiglitz, Sen, and Fitoussi list eight factors: material living standards, health, education, personal activities including work, political voice and governance, social connections and relationships, the environment, and insecurity. The UN World Happiness Report lists physical and mental health; human relationships; income and employment; character virtues, including pro-sociality and trust; social support; personal freedom; lack of corruption; and effective government.

described in the previous paragraph, is called a welfare "dashboard."[67] Indeed, there is broad agreement among modern welfare economists that many of the components of these dashboards are important for welfare. Not surprisingly, many of these components of welfare are influenced by inequality; but, since that is an empirical claim, we now turn to the empirical evidence backing it up.

Empirical research linking inequality to various factors influencing welfare have been studied not only by social scientists (sociologists, psychologists, political scientists, and some economists), but also by epidemiologists and specialists in public health. This research has been masterfully summarized in two books by epidemiology professors Richard Wilkinson and Kate Pickett ("W&P"). Both books were written before the sharp fall in U.S. happiness between 2018 and 2022. Near the beginning of their first book,[68] W&P aggregated into an "index of health and social problems" (the "Index") measurements of: social trust; mental illness; life expectancy; obesity; educational performance; teenage births; homicide rates; imprisonment rates; and social mobility, for 23 rich countries[69] and for the 50 U.S. states. The "welfare-improving" measures were then reverse-coded so that the Index is indeed an index of *problems*. W&P first show that "health and social problems are closely related to inequality among rich countries:"[70]

[67] Marc Fleurbaey and Didier Blanchet, BEYOND GDP: MEASURING WELFARE AND ASSESSING SUSTAINABILITY (2013).

[68] Richard Wilkinson and Kate Pickett, THE SPIRIT LEVEL: WHY GREATER EQUALITY MAKES SOCIETIES STRONGER, Bloomsbury, (2011) at 19–22.

[69] The countries are Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Israel, Italy, Japan, the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, the United Kingdom, and the U.S.A. W&P explain this list in ibid. at 301.

[70] Id. at 20.

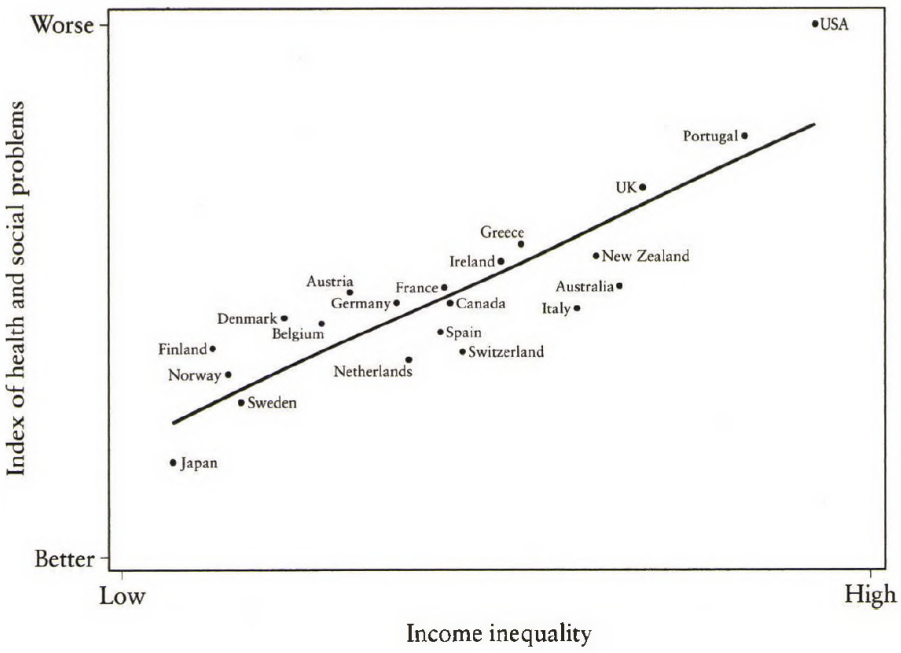


Figure 2.2 *Health and social problems are closely related to inequality among rich countries.*

In contrast, they next show that "health and social problems are only weakly related to national average income among rich countries":

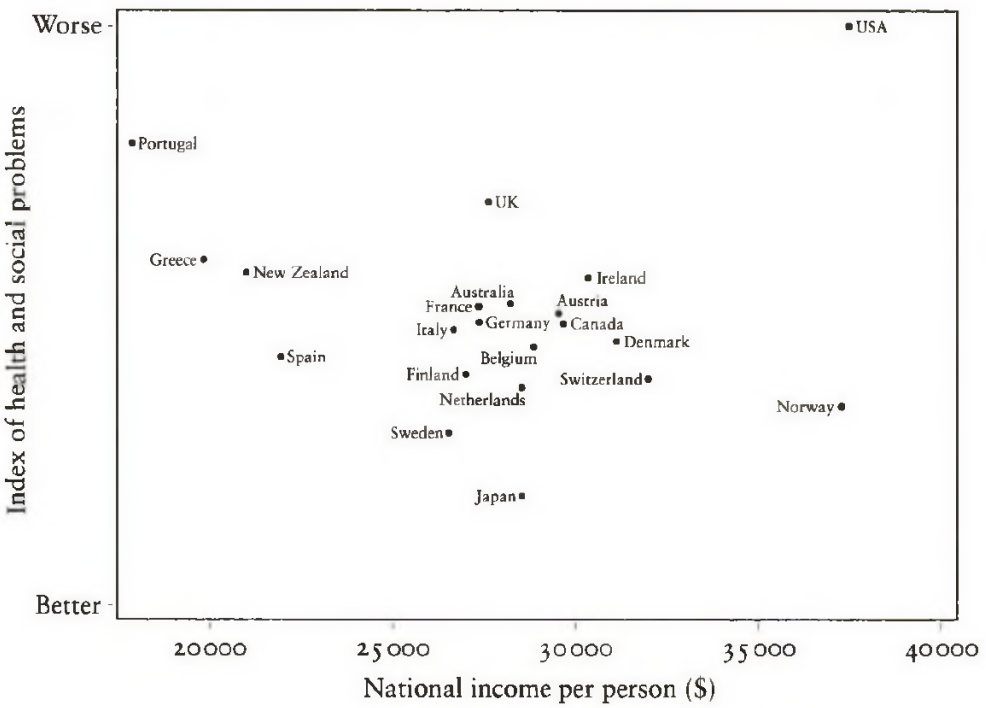


Figure 2.3 *Health and social problems are only weakly related to national average income among rich countries.*

W&P then show that similar results hold for U.S. states. "Health and social problems are related to inequality in U.S. states," but "health and social problems are only weakly related to average income in U.S. states".[71]

[71] Id. at 22. These charts were also adopted from W&P by Keith Payne in The Broken Ladder: How Inequality Affects the Way We Think, Live and Die, Weidenfeld & Nicolson, (2017) at 50–51.

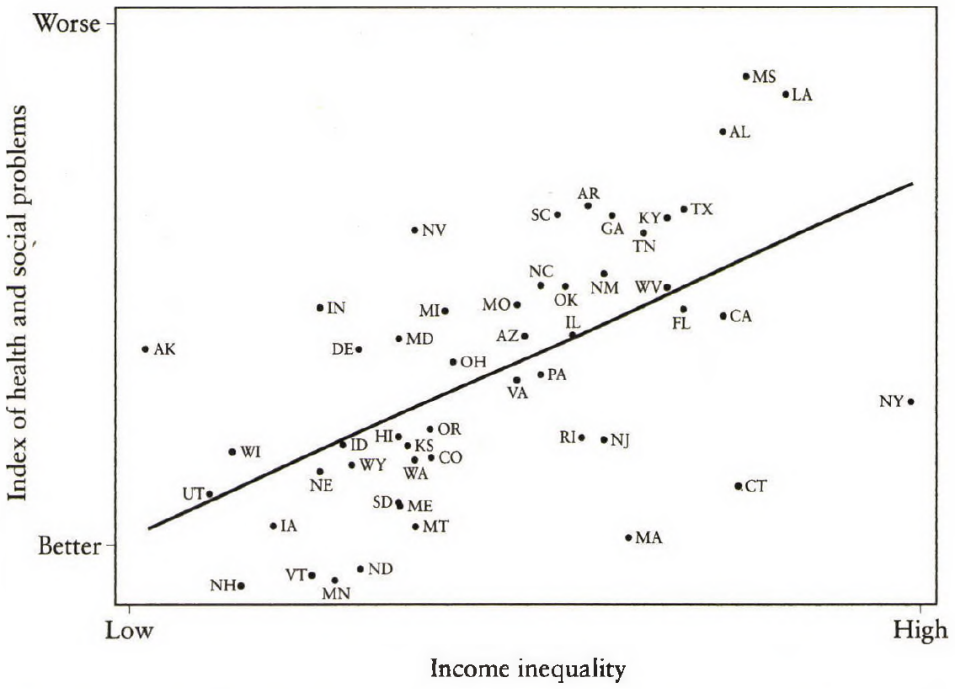


Figure 2.4 *Health and social problems are related to inequality in US states.*

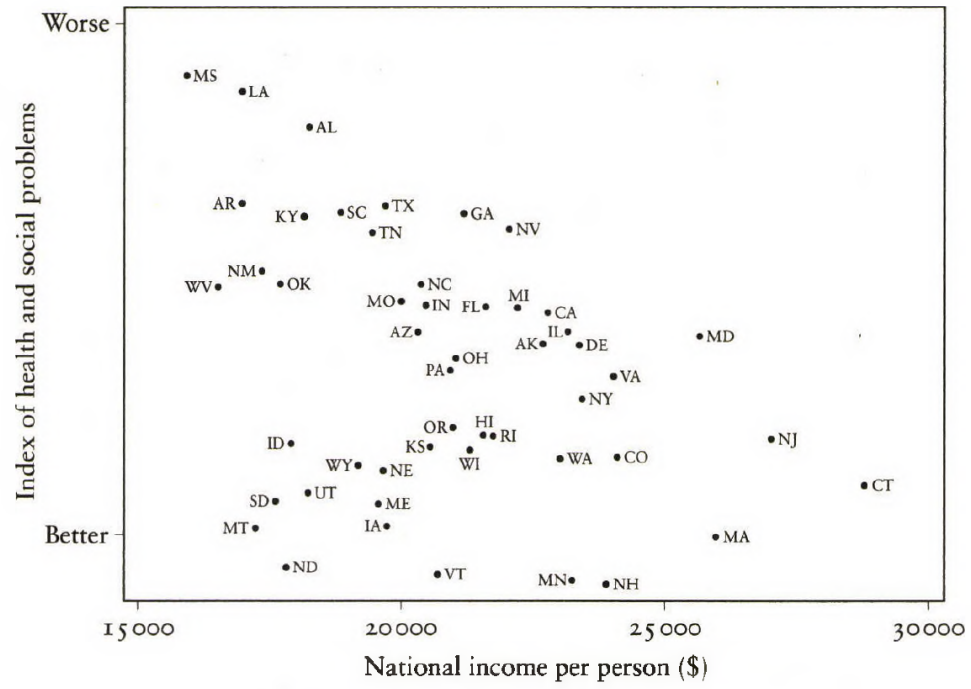
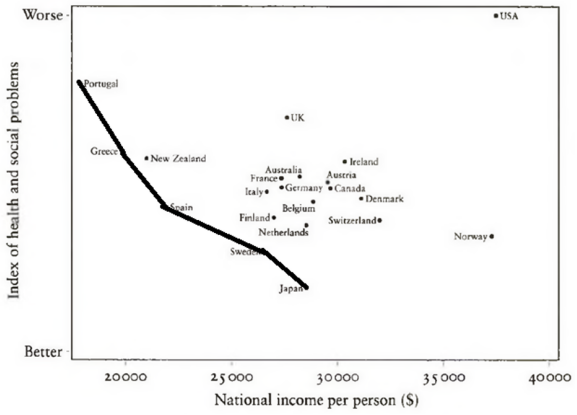


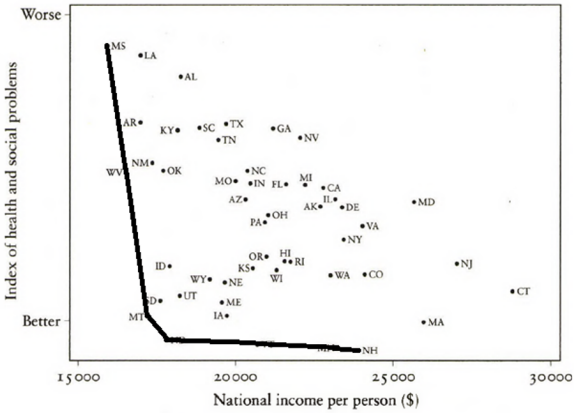
Figure 2.5 *Health and social problems are only weakly related to average income in US states.*

According to W&P, inequality increases social and status differences, weakens community life, reduces social trust, and increases violence all of which impact health and longevity.

The graphs further suggest that countries like the U.K. and the U.S., and states like Nevada and Georgia, are inefficient producers of well-being (where by "efficient" we mean "on the frontier of the 'income-problem index' production possibility set," rather than any of the several other meanings of the word "efficient"). For example, one can draw an efficient frontier on W&P's Figure 2.3 like this,



and one can draw an efficient frontier on their Figure 2.5 like this:



These frontiers show that, among the rich nations, Portugal, Greece, Spain, Sweden, and Japan are efficient producers of well-being, and, among U.S. states, the efficient ones are Mississippi, West Virginia, Montana, North Dakota, Vermont, Minnesota, and New Hampshire. Interpreting this data further suggests that, for example, the U.K. (in the first graph) and Nevada (in the second graph), with no change in GDP/National Income per capita, could have many fewer health and social problems than they do now. From the alternative direction, much of their GDP is wasted, in the sense that there are other jurisdictions with fewer health and social problems and a lower GDP per capita.

Indexes, like W&P's index of health and social problems, can be suggestive, but they can also be criticized because there is no perfect way of aggregating the individual problems to construct such an index. Furthermore, up to this point W&P presented no statistical investigations of the relationships they present. However, using this index is only the

beginning of W&P's work. Disaggregating over the course of their book, W&P present empirical evidence across countries and across U.S. states that, for example:

(1) Increased income inequality reduces social trust as measured by survey evidence.[72]

(2) Increased income inequality is associated with higher homicide rates.[73]

(3) Increased income inequality is associated with lower rates of social mobility.[74]

(4) Increased income inequality is associated with lower math and literacy scores for children.[75]

(5) Increased income inequality is associated with higher adult and childhood obesity levels.[76]

(6) Increased income inequality is associated with greater mental illness and greater drug use.[77]

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[72] Supra note 68 (*The Spirit Level*) at 52–53, 56; Andre Albertazzi, Patrick Lown, and Friederike Mengel, "Income Inequality and Social Trust," 257 Econ. Letters 112675 (2025).

[73] Id. at 148-149; H. Krahn, R. F. Hartnagel, and J.W. Gartrell, "Income Inequality and Homicide Rates: Cross National Data and Criminological Theories," 24 Criminology 269 (1986).

[74] Id. at 160-161. See also Raj Chetty, Nathaniel Hendren, Patrick Kline, Emmanuel Saez, and Nicholas Turner, "Is the United States Still a Land of Opportunity? Recent Trends in Intergenerational Mobility," 104 American Economic Review 141; and see Abigail Begashaw, "Income Inequity and the Erosion of Social Mobility," Kennesaw State Univ. Working Paper (2025).

[75] Id. at 106–107; Joseph Workman, "Inequality Begets Inequality: Income Inequality and Socioeconomic Achievement Gradients across the United States," 107 Soc. Sci. Res. 102744 (2022).

[76] Id. at 92–94; Hossein Zare, Khushbu Balsara, Nicholas S. Meyerson, Paul Delgado, Benjo Delarmente, Rachael McCleary, Roland J. Thorpe Jr., and Darrell J. Gaskin, "Exploring the Association Between Minimum Wage Policy, Income Inequality and Obesity Rates in U.S. Counties," 12 J. of Racial and Ethnic Health Disparities 4173 (2025).

[77] Id. at 67, 69, 71; Wagner Riberto, et al, "Income Inequality and Mental Illness-Related Morbidity and Resilience: A Systematic Review and Meta-Analysis," The Lancet: Psychiatry (2017). For a similar point of view see Lynn Parramore, "Why American Life Expectancy is Falling Behind Globally, Falling Apart by State," available at https://www.ineteconomics.org/perspectives/blog/why-american-life-expectancy-is-falling-behind-globally-falling-apart-by-state (interviewing Steven Woolf), and its second part, "America's Real Health Crisis? Economics—and a Generation Pays," available at https://www.ineteconomics.org/perspectives/blog/americas-real-health-crisis-economics-and-a-generation-pays (also interviewing Steven Woolf). In the first part, Woolf points out that "If you were born in Albania today, you'd have a longer life expectancy than if you were born in the United States" (which shows that the U.S.'s higher per capita GNP did not lead to higher life expectancy). In the second part, Woolf says that "If I could do just one thing, it would be to change economic policy to support the middle class and lower-income Americans—promote growth for them and let corporate America ease up a bit on profit-making so families can regain their footing. How do we get wages up so that people can earn a livable wage and not have to have multiple jobs in order to pay their bills?" In other words, Woolf believes the cause of the problems in the U.S. is U.S. inequality.

(7) Increased income inequality is associated with lower life expectancy and higher infant mortality.[78]

A complete list of their statistical results is given below, and is supported by over 400 citations, mostly to scholarly literature.[79]

Pearson Correlation Coefficients (r) and Statistical Significance (p-*value*) for Associations with Income Inequality.

Indicator	International data		US data	
	r	*p-value*	*r*	*p-value*
Trust	−0.66	<0.01	−0.70	<0.01
Life expectancy	−0.44	0.04	−0.45	<0.01
Infant mortality	0.42	0.04	0.43	<0.01
Obesity	0.57	<0.01	0.47	<0.01
Mental illness	0.73	<0.01	0.18	0.12
Education score	−0.45	0.04	−0.47	.01
Teenage birth rate	0.73	<0.01	0.46	<0.01
Homicides	0.47	0.02	0.42	<0.01
Imprisonment	0.75	<0.01	0.48	<0.01
Social mobility	0.93	<0.01	–	–
Index	**0.87**	**<0.01**	**0.59**	**<0.01**
Overweight children	0.59	0.01	0.57	<0.01
Drugs index	0.63	<0.01		
Calorie intake	0.46	0.03		
Public expenditure on health care	−0.54	0.01		
Child well-being	−0.71	<0.01	−0.51	<0.01
Triple education score	−0.44	0.04		

[78] Id. at 82–83; Eric Neumayer and Thomas Plumper, "Inequalities of Income and Inequalities of Longevity: A Cross County Study," 106 Am. J. Pub. Health 160 (2016).
[79] Id. at 310–311.

Child conflict	0.62	<0.01		
Spending on foreign aid	−0.61	<0.01		
Recycling	−0.82	<0.01		
Peace index	−0.51	0.01		
Paid maternity leave	−0.55	0.01		
Advertising	0.73	<0.01		
Police	0.52	0.04		
Social expenditure	−0.45	0.04		
Women's status	−0.44	0.04	−0.30	0.03
Patents per capita	−0.49	0.02		
Juvenile homicides			0.29	<0.05
High school drop-outs			0.79	<0.01
Child mental illness			0.36	0.01
Pugnacity			0.47	<0.01

In their second book, W&P extend these results to show that increased income inequality is correlated with higher levels of status anxiety, mental illness among adults, depression among adults, schizophrenia, self-enhancement bias, Narcissistic Personality Inventory scores, aggressive driving, gambling addiction, spending on advertising, household debt, child bullying, and a wider gap in educational attainment among adults; and that increased income inequality is also correlated with lower levels of civic participation, child well-being, math and literacy scores, social mobility, popularity of museums and art galleries, propensity of business leaders to comply with international environmental agreements, and trade union strength.[80] Their conclusions are supported by more than 500 citations.

W&P not only present these results but also propose explanations for them. It would be foolhardy to claim to summarize W&P's hundreds of pages of explanations in a few sentences here, but their basic point is that the more unequal the society, the more its members suffer from status anxiety and insecurity,[81] which leads to a greater average level of social

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[80] Richard Wilkinson and Kate Pickett, THE INNER LEVEL: HOW MORE EQUAL SOCIETIES REDUCE STRESS, RESTORE SANITY AND IMPROVE EVERYONE'S WELL-BEING, Penguin (2018) at 277-279.

[81] This is explicitly supported by Nicholas R. Buttrick, Samantha J. Heitzelman, and Shigehiro Oishi, "Inequality and Well-Being," Current Opinion in 18 Psychology 15, 16:

> "The pursuit of status and the admiration and respect of others seem to be human universals, fundamentally related to well-being [35]. Feeling respected and admired by others matters more for well-being than does individual income [36], or the degree to which a person brings high-class, respected [37] or low-class, disrespected identities into their self-concept [38,39]. One way income inequality may affect happiness is by making status more salient. In more unequal societies, people are more likely to know how they are doing relative to others, as inequality leads to increased self-identification of the poor as lower-class [40] or as a 'have-nots' [41]. One theorized mechanism for the economic fact that people work harder in more unequal societies is that they want to use the increased income to signal that they are of a higher class [42].

pathologies.[82] In contrast, the more equal the society, the less status anxiety and insecurity its members feel, leading to not only less stress but also to more cooperative behavior.

W&P's work is not without its detractors, however. It is to those criticisms that we now turn.

2. Responses to Criticisms

There are three critiques of the studies used by W&P. The first is that they show correlation but not causation. The second is that they should be trying to explain utility, that is, overall human happiness, rather than the "dashboard" factors that contribute to utility. The third is that per-capita GDP is an omitted variable in their statistical analyses, and when it is included, inequality loses statistical significance. We take up each critique in turn.

Concerning causality, W&P give specific justifications for their position that inequality is causal, pointing to the findings of controlled experiments.[83] They also give detailed theoretical

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> "Comparisons with others are especially powerful for determining well-being. Recent research has found that the feeling of outperforming other similar people predicts well-being above and beyond objective socioeconomic status [43,44]. Income inequality encourages social contrasts and amplifies the relationship of peer comparisons with well-being. People living in more unequal societies are more likely to stress the importance of being successful, respected, and admired [45], and are more likely to fear being looked down upon by others [46]. This fear is negatively associated with individual well-being [14]. For example, in a study of 1.7 million Americans, wellbeing was tied more strongly to the income of neighbors in counties where overall inequality was higher [47]."

[82] Again, this is explicitly supported by Buttrick et al., id. at 17:

> "Inequality fragments societies. People living in more unequal societies have fewer ties to each other, especially across income lines [55]. Inequality encourages higher levels of class identification [40], and voluminous survey evidence shows that residents of states or countries with higher levels of inequality are less likely to trust each other, less likely to belong to social organizations, and are less likely to participate in civic life [56–58]. For example, in recent survey work across 26 countries, those who are doing less well than their referent group (measured by median county income, controlling for objective income) are less likely to trust others or to have confidence in the institutions that control their economic fate, such as government, the courts, and business [59].
>
> "This mistrust can have direct consequences for individual well-being. Oishi et al. [60] showed, using the 1972–2008 US General Social Survey, that increased interpersonal mistrust explains the negative effects of inequality on individual well-being, a finding echoed in other cross-national surveys [11,14]. In addition to its direct effect on well-being, decreases in trust and social capital spurred on by inequality have been implicated in the relationship between increased inequality and increases in mortality [61,62], homicide rates [63], sociopolitical instability [64], corruption [65], and weaker governing institutions [66], all of which certainly affect the well-being of residents for the worse."

[83] *Supra* note 68 (*Spirit Level*), 55, 192–3. This is also explicitly supported by Buttrick et al., *supra* note 81, 17: "Nishi and colleagues [67] demonstrated experimentally how mistrust may develop in the context of inequality.

explanations for each of the empirical findings they report, and these explanations have inequality as the cause rather than the effect. Retelling those reasons would take too long, so consider just one example, obesity[84]: higher income inequality increases stress, which affects the hormone cortisol, which affects the level of abdominal fat. Also, higher stress increases food intake (an effect also found in animals), in a "comfort eating" pattern. Also, higher income inequality increases status anxiety, as "a 17-year-old in New Jersey described how being able to buy fast food proves your financial status, shows that you have money in your pocket and are not having to wait for the welfare cheque at the end of the month." Thus, there are three good reasons why higher income inequality leads to higher obesity. In contrast, the only reason why high obesity could lead to high income inequality would be through illness and disability, but then what caused the high obesity? (We know what causes high income inequality: see Section III.A.2.)

The second critique is that W&P should be trying to explain utility, or happiness, rather than the factors that contribute to happiness. Our first response is to agree with Sen, Dworkin, and Cohen that society should target objective factors that provide people "capabilities," rather than targeting utility, as discussed in Section I.B above. Our second response is that self-reported happiness levels may be inaccurate, because, for example, a 45-year-old person might report no increase in happiness when the life expectancy of his society increases from 80 to 90 years, because such an increase will only be salient to this person when they are older.[85] Our third response is that self-reported happiness levels, particularly in unequal societies, may be untruthful in the direction of unhappy people reporting themselves to be happier than they really are. Indeed, W&P report that increased income inequality is negatively correlated with objective measures of health but is *not* negatively correlated with self-reported health. "Average levels of self-reported health are actually higher in countries where life expectancy is lower."[86]

Their experiment used a public goods game, in which a group of players individually make repeated choices to either prosocially pay into a fund which benefits their community, or selfishly to do nothing and free-ride off the contributions of others. After every trial, players were allowed to retain, replace or reject a fraction of their gameplay partners (i.e. members of their social community). In one instantiation, the players were publicly given unequal funds to start with. In early trials, the 'rich' were less likely to pay into the community. Subsequently, the 'poor,' tended to respond by choosing not to invest in the community either, so as not to further enrich the free-riding wealthy. Consequently, with selfish choices proliferating throughout, players increasingly rejected each other, leading to a disintegration of social ties and a disappearance of trust. Overall, everyone was left worse off than when they started, both financially and socially. Similar, if not quite so dramatic, relationships between inequality and perceived unfairness, mistrust, and envy, have been found in other paradigms that experimentally manipulate inequality [68,69]."

[84] *Supra* note 68 (*Spirit Level)*, 95–97.

[85] This example is from Robert Frank, "The Easterlin Paradox Revisited," 12 Emotion 1188, 1189 (2012).

[86] *Supra* note 80 (*Inner Level)* 69–70.

Happiness might be much the same, and, as W&P explain,[87] the reason is that when inequality is high, so is status anxiety, and that prompts some people to protect themselves by engaging in self-promotion and narcissistic behaviors. Accordingly, studies that show income inequality not statistically significantly correlated with self-reported happiness, do not necessarily undermine W&P's arguments. While we respect the major contribution which Richard Easterlin's pioneering studies of happiness and GDP made in engendering skepticism about the usefulness of continued growth of GDP,[88] we recommend that objective rather than subjective measures of well-being be used going forward.[89] Other papers which, unfortunately in our view, study happiness rather than objective measures of well-being include Alesina et al.[90], Sacks et al.[91], Oishi et al.[92], and Oishi and Kesebir.[93]

The third critique concerns the second of W&P's two claims—that (1) inequality adversely affects well-being; and (2) in rich countries, increasing GDP per capita (which is the roughly the same as income per capita) does not increase well-being—and contends that the second claim is not well-supported. W&P support their second claim using their Figures 2.3 and 2.5, reproduced above, which show very weak correlation between per capita national income and W&P's index of problems. W&P also argue the point using their Figures 1.1, "Only in its early stages does economic development boost life expectancy," and Figure 1.2, "Happiness and average incomes," both of which compare different countries. This third critique has some validity in our view as these four graphs generate markedly weaker support for W&P's second

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[87] Id. Chapter 3; see also supra note 68 (*Spirit Level)* 36–45.

[88] See for example Richard Easterlin, "Does Economic Growth Improve the Human Lot? Some Empirical Evidence," in Paul A. David and M.W. Reder, eds., Nations and Households in Economic Growth: Essays in Honour of Moses Abramovitz. London: Academic Press, 1974, pp. 98–125.

[89] Buttrick et al. have noted: "There are even some ways inequality is perceived that can be associated with increased well-being. In many developing societies, especially those transitioning from more equal planned economies to more unequal free-market regimes, an increase in inequality is interpretable as an opportunity to climb the social ladder — as hope that the future will be better than the past…. When inequality loses its association with hope and instead becomes interpreted as a signal of a rigged society, higher inequality relates to lower well-being" [quoted citations omitted]. However, neither they nor we think this is a frequent situation. *Supra* note 81, 16.

[90] Alberto Alesina, Rafael Di Tella, and Robert MacCulloch, "Inequality and happiness: are Europeans and Americans different?", Journal of Public Economics 88 (2004). The authors report numerous failed attempts to find a statistically significant correlation between inequality and happiness in U.S. data (id. footnote 12), and their one successful attempt loses 5% statistical significance if unemployment is added as an explanatory variable (id. 2019, 2021).

[91] Daniel W. Sacks, Betsey Stevenson, and Justin Wolfers, "The New Stylized Facts About Income and Subjective Well-Being," 12 Emotion 1181 (2012).

[92] Shigehiro Oishi, Selin Kesebir, and Ed Diener, "Income Inequality and Happiness," 22 Psychological Sci. 1095 (2011), 1097.

[93] Shigehiro Oishi and Selin Kesebir, "Income Inequality Explains Why Economic Growth Does Not Always Translate to an Increase in Happiness," 26 Psychological Science 1630.

claim than the overwhelming evidence they present in support of their first claim. But that is not to say that W&P's second claim is unsupportable.

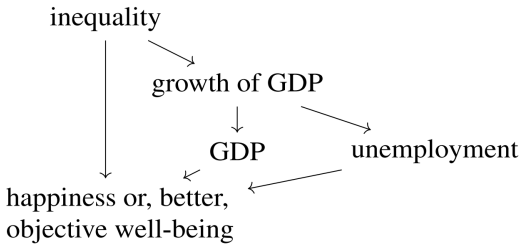
The ideal statistical procedure for assessing W&P's two claims is to test both of them together, using multiple regression analysis where a measure of income level, such as GDP per capita, is included as an explanatory variable, together of course with inequality. W&P do not do this and many other studies do not do it either. Alesina et al. do not include GDP per capita as an explanatory variable. Sacks et al. do not include inequality as an explanatory variable (so they cannot directly reveal anything about inequality's relationship to happiness, a point also made by Frank).[94] Oishi and Kesebir, however, do include both inequality and per capita GDP in their regression, so their approach is worth discussing in detail. They model subjective life satisfaction *LS* of a nation *j* in year *i* by[95]

$$LS = \gamma_{00} + \gamma_{10} * GDP_{ij} + \gamma_{20} * Gini_{ij} + \gamma_{30} * (GDP * Gini)_{ij} + u_{0j} + r_{ij} .$$

Their conclusion was that, for rich countries,[96]

> "A simple-slopes analysis showed that when income inequality was small (1 SD below the mean), an increase of 1 standard deviation in GDP per capita was associated with a 0.0286 increase in life satisfaction. In contrast, when income inequality was large (1 SD above the mean), an increase in GDP per capita was virtually unrelated to life satisfaction (an increase of 1 standard deviation in GDP per capita was associated with a 0.0002 increase in life satisfaction)."

This broadly agrees with W&P's conclusions, although it is about happiness not about objective well-being; and even Oishi and Kesebir's formulation is not quite right. Its flaw is that since, as we will argue in Sections I.D and III.A.1, inequality hampers GDP growth, the causal links plausibly look as follows:



(Here, an increase in inequality reduces "growth of GDP," which reduces GDP in future periods, which in turn reduces happiness; and the reduction in "growth of GDP" increases unemployment, which similarly reduces happiness.) In such a situation, suppose one regressed

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[94] *Supra* note 85 (Robert Frank) at 1191.

[95] Supra note 93 (Oishi & Kesebir) at 1632. In their equation, "GDP" is standardized (*z*-scored) log-transformed GDP per capita and "Gini" is the *z*-scored Gini coefficient, both standardized around each nation's mean.

[96] Id. at 1633–4.

happiness on inequality, GDP per capita, and unemployment, and suppose the regression coefficients on GDP and on unemployment were statistically significant but the regression coefficient on inequality was insignificant. Clearly, in such a circumstance, it would be fallacious to conclude that inequality did not influence happiness: indeed, the opposite would be true, through inequality's effects on GDP and unemployment.

There are three proper statistical procedures. The ideal one would be to model the entire potential causal chain as part of a single econometric estimation (perhaps including nonlinearities such as the useful interaction term of Oishi and Kesebir). This would not be trivial. Second best would be to model the entire causal chain in a succession of regressions. This technique is used by Oishi et al., though not in relation to GDP, as shown in one of their diagrams:[97]

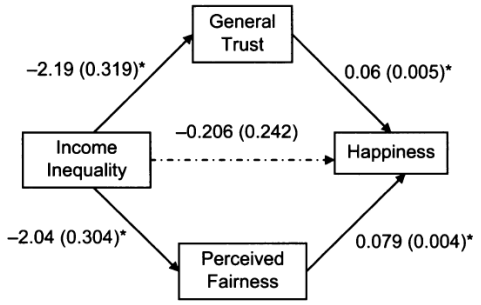

Fig. 3. Mediation model showing the relation between income inequality and happiness as mediated by perceived fairness and general trust. Unstandardized regression coefficients are shown, and standard errors are given in parentheses. Asterisks indicate significant coefficients ($p < .01$).

This technique enabled Oishi et al. to come to the correct conclusion that income inequality affects happiness, even though their direct relationship between income inequality and happiness was statistically insignificant. The third best statistical technique is what W&P and most of their sources used, following "a fundamental methodological principle of epidemiological analysis that you should not control for factors which form part of the causal chain—in this case explaining *how* inequality causes a particular problem."[98] This technique does a good job of investigating the ultimate effect of inequality on objective well-being, but does not shed light on whether per capita GDP affects well-being, either independently of inequality or as a transmission mechanism from inequality to well-being (as shown in our diagram above). Accordingly, in sum, W&P's case for increased inequality adversely affecting objective well-being rests on overwhelming evidence that can hardly be questioned, while their

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[97] *Supra* note 92 (Oishi, Kesebir & Diener) at 1097.

[98] *Supra* note 68 (Spirit Level) at 285.

One could in addition question what level of significance is appropriate when studying this question. Using a traditional 5% level of significance, if one were only 94% sure that inequality caused a bad outcome, one would conclude that there was no statistical support for a policy to reduce inequality. This biases all statistical analyses strongly in favor of the status quo; but why should the status quo be favored in this way? Should not such bias at least be asked to justify itself?

case for increasing per capita GDP not improving objective or subjective well-being rests on only four graphs, leaving it open to attacks such as that by Sacks et al. Even if W&P's second claim were not to be accepted, however, barring political interference by the wealthy, it is far easier to increase objective average well-being by redistributing current income than by increasing GDP.

Having presented the case for equality serving as the primary goal for public policy, we next turn to a critique of alternative candidates for that role. But first, we examine the principal criticism of equality-focused economic policy—that it inherently results in lower productivity (the so-called "equity-efficiency tradeoff"). As it turns out, empirical data demonstrate that there is no such tradeoff.

D. The Myth of the Equity-Efficiency Tradeoff

1. Okun's Leaky Bucket

In his 1975 book "Equality and Efficiency: The Big Trade Off," Arthur Okun (Yale economics professor and Chairman of President Johnson's Council of Economic Advisers) argued that there is a fundamental tradeoff between equality and economic growth.[99] He claimed that higher taxes to achieve greater equality reduce incentives to save and invest thereby reducing growth. In addition, he maintained that aid to the poor reduces incentives to work and acquire skills.[100] In making these claims, however, Okun relied primarily on assumption and anecdotes, not data. Nonetheless, the existence of an equity-efficiency tradeoff is one of the most widely-taught "facts" in elementary economics courses, and it is certainly not regularly disavowed in later courses. Here is an example from the "Advanced Placement ("AP") Microeconomics video lectures by Jon Gruber, who is currently chair of the MIT Economics Department; note that AP Economics is taken by approximately 190,000 high school students annually, though most are not assigned to watch this particular video:[101]

> … [M]any would argue for a need to redistribute from the wealthier society to the poor…. But… when the government intervenes to redistribute income, either through taxing or spending, it can move the market away from its equilibrium and this can create deadweight loss, making societies as a whole, less efficient…. The government faces an equity-efficiency tradeoff…. The economist Arthur Okun had a great way of thinking about it. Okun said, suppose that we have a general agreement that we as a society should redistribute from

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[99] Arthur Okun, EQUALITY AND EFFICIENCY: THE BIG TRADE OFF, Brookings (1975).

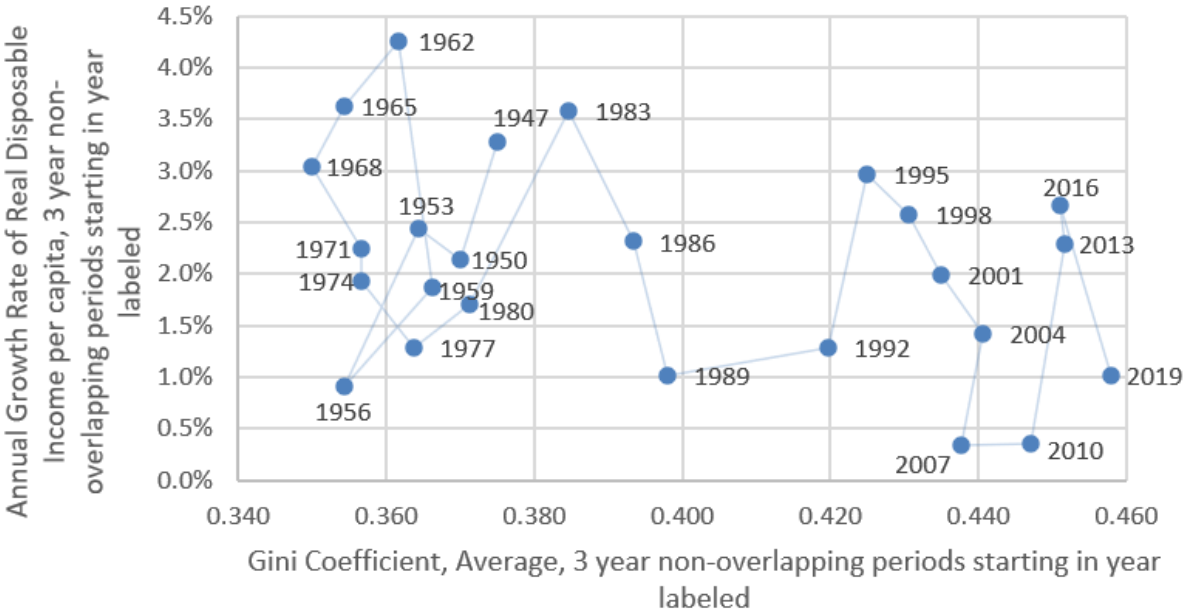
[100] Id. at 92–104.

[101] Jon Gruber, "6.2 Redistribution and Deadweight Loss," AP Microeconomics with MIT Professor Jon Gruber, https://www.youtube.com/watch?v=xuzXwVIv4iw (Jan. 18, 2018). The description of the video series says, "The online edX course these videos come from was recently named one of the top 100 MOOCs [Massively Open Online Class] of all time by Class Central" and it lists more than 450,000 views as of January 2026.

> the rich to the poor at least to some degree. He then asked us to imagine the way we redistribute is to have the rich literally put some of their money in a bucket which then gets carried to the poor. But he also asked us to imagine that there are holes in the bucket, and some of that money leaked out along the way. This was his way of visualizing the inefficiency of government intervention. Okun's question was, how much leakage do we find acceptable?... If we could take a dollar from the richest guy in society and give the whole dollar to a poor family about to lose their home, most would agree that's a good thing for society. But what if we took the dollar from the rich guy, and by the time we reach the poor family there's only ninety cents left, or fifty cents, or ten cents? At what point will we no longer want to take it from the rich guy in the first place?

2. Does the Bucket Really Leak?

To test the underlying premise for the notion that there is an equity-efficiency tradeoff, here is a simple scatter plot of data taken in three-year non-overlapping periods beginning with 1947–1949 and ending with 2022–2024 (which is the most recent data available) for "annual growth rate of real disposable income per capita" in the U.S., versus the average U.S. Gini coefficient for income:[102]



Even without doing any statistical analysis, it is plain to see that the claim that there is a tradeoff between equality and efficiency was unsupported by any empirical data in 1975 (the

[102] Gini coefficients from https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-income-families.html. For the source of real disposable income per capita see *infra* note 131.

date of Okun's book), and it is definitively refuted when the data is expanded to include recent years. Greater inequality (i.e., higher Gini coefficients) has been associated with a lower growth rate, and the data is clearly divided into two eras, an earlier one with low inequality and high growth, and a more recent one with high inequality and low growth, with 1986–1991, the end of the Reagan Administration and most of the George H.W. Bush Administration, being the transition period. Note that using these three-year periods, which operates to smooth the data, inequality increased or stayed constant from the period starting in 1968 to the period starting in 2004 and every period in between. (As we show in Section III.A.2, these changes in the level of inequality were not aleatory, they were caused by conscious policy choices.)

Many observers who have bothered to look have noticed this same pattern; indeed, they have shown that it holds in other countries as well. For example, in a recent OECD survey of both OECD and non-OECD countries, Federico Cingano finds that "inequality has a negative impact on economic growth."[103] Moreover, the author finds that "[t]he impact of inequality on growth turns out to be sizeable…lowering inequality by 1 Gini point would translate in an increase in cumulative growth of .8 percentage points in the following 5 years (or .15 points per year)."[104] Similarly, Jonathan Ostry, Andrew Berg, and Charalambos Tsangarides of the International Monetary Fund conducted a large cross-country study and found that "lower net inequality seems to drive faster and more durable growth for a given level of redistribution."[105] In addition, there is a complementary economic literature that asserts that inequality causes growth instability through reductions in demand and increases in consumer debt.[106] Results can differ depending on the countries chosen and the variables studied, but in general, there is a complementarity between equity and efficiency, not the tradeoff that economists widely accept.

3. How Efforts to Reduce Inequality Stimulate Growth

Although unacknowledged by Okun, there is a long tradition in economics recognizing that higher wages create strong incentives for innovation and growth. This argument was made by economists as diverse as John Hicks and Karl Marx.[107] Economic historians, for example, have argued that high wages in England were the determining factor why the first industrial

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[103] Federico Cingano, "Trends in Income Inequality and its Impact on Economic Growth," OECD working paper No. 163 (2014).
[104] Id. at 17.
[105] Jonathan Ostry, Andrew Berg, and Charalambos Tsangarides, "Redistribution, Inequality and Growth," IMF Staff Discussion Note, (2014) at 6.
[106] See Barry Cynamon and Steven Fazzari, "Rising Inequality and Stagnation in the U.S. Economy," 12 European J. of Econ. and Econ. Policies: Intervention 170 (2015).
[107] John Hicks, THE THEORY OF WAGES, Macmillan (1932) at 124–125; Karl Marx, CAPITAL Vol I, Progress Publishers (1971) Ch. 15.

revolution occurred in England rather than on the Continent.[108] Robert Gordon has made this argument for innovation in the United States, as have Lance Taylor and Özlem Ömer.[109] There is also recent empirical evidence confirming that higher wages, particularly at the low end of the wage scale, induces increased automation. For example, David Hémous and his co-authors studied wage levels and patent filings. They found that "higher wages induce increased automation. In particular, raising the minimum wage increases automation innovation."[110] Amrita Nain and Yan Wang also found that higher minimum wages are associated with more patent applications; they state that "larger minimum wage increases in a state are associated with a more positive change in automation patent applications by firms headquartered in that state."[111]

Indeed, in addition to induced technological change, there are many reasons why economic equality can have a positive impact on growth and productivity. Jeffrey Sachs, alluding to Okun's analogy, writes,[112] "[t]here is, in short, no leaky bucket for the most important transfers that a society can and should make: universal provision of quality health care, childcare, pre-kindergarten schooling, and high-quality education from primary school through vocational or tertiary education." Nobel laureate economist Joseph Stiglitz, in his book "The Price of Inequality," makes the same case from the opposite perspective—noting the growth-killing effects of inequality. He argues that high incomes encourage rent seeking and political influence that can result in reduced government investment in innovation. The rich prevent regulation that can overcome market failures, and curtail other critical social investments such as education and health. Inequality reduces social trust and cooperation, factors that are also

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[108] H. J. Habakkuk, American and British Technology in the Nineteenth Century: The Search for Labour-Saving Inventions, Cambridge (1962); R.C. Allen, "Why was the Industrial Revolution British," 4 Oxonomics 50 (2009).

[109] Robert Gordon, The Rise and Fall of American Growth: The U.S. Standard of Living Since the Civil War, Princeton (2016) at 563; Lance Taylor & Özlem Ömer, "Race to the Bottom: Low Productivity, Market Power and Lagging Wages," INET Working Paper (Aug. 8, 2018). See also Gerard Duménil and Dominique Lévy, "Competing Factors in Inducement of Technical Progress," CEPREMAP Working Paper, (1989).

[110] David Hémous, Morten Olsen, Carlo Zanella, and Antoine Dechezleprêtre, "Induced Automation Innovation: Evidence from Firm-Level Patent Data," 133 J. of Pol. Econ. 1975 (2025).

[111] Amrita Nain and Yan Wang, "The Minimum Wage and Labor-Saving Innovation," Univ. of Iowa (June 2023), available at https://www.biz.uiowa.edu/faculty/anain/Working%20papers/NainWang_June2023.pdf. Similarly, "the anemic growth of productivity may be partly due to the trend toward massive use of cheap labor" according to Claudia Fontanari and Antonella Palumbo, "Permanent Scars: The Effects of Wages on Productivity," Metroeconomica (2022), 351. The same argument was made in a past era of greater equality by Sumner Slichter: "A generation or so most unions were weak; today unions are the most powerful organizations in the community…. The strong upward pressure of unions on wages has been an important influence stimulating technological change and rising real wages—though other influences have been even more important." Sumner H. Slichter, Economic Growth in the United States: Its History, Problems and Prospects, LSU Press (1961), 170–171.

[112] Jeffrey D. Sachs, "The Efficiency-Equity Tradeoff," in B.S. Frey and D. Iselin (eds.), Economic Ideas You Should Forget, Springer 2017, 111–113.

fundamental to effective markets. At the level of the firm, inequality in wages can harm teamwork and efficiency. At the household level, low-income families invest less in potentially talented young people because of a lack of resources.[113]

4. The Fallacy of Okun's Assumptions: Tax Cuts Do Not Stimulate Economic Growth

Okun focused on the impact of progressive taxes to illustrate the equity-efficiency tradeoff. "From a macroeconomic perspective, Okun's point was grounded in the claim that high-income households save a larger fraction of their income than low-income households, and as a result, greater inequality would translate into more savings, more capital accumulation, and thus a higher level of output."[114] Again, the data do not bear this out. Indeed, a few decades before Okun, John Maynard Keynes exposed the fallacy in this theory: increased desire to save actually leads to a fall in the aggregate demand (since demand for consumption falls), decreasing the demand for investment—the so-called "Paradox of Thrift." "From a microeconomic perspective, [Okun argued that] any attempts to reduce inequality would inevitably result in distortions and would blunt the incentives that inequality creates for greater education, investment, and entrepreneurship."[115] No empirical evidence supports Okun's assertion, however. In a comprehensive study of tax cuts in United States from 1945 to 2012 (all the tax cuts since WWII except for the Trump tax cuts), the Congressional Research Service found that:

> The results of the analysis in this report suggest that changes over the past 65 years in the top marginal tax rate and the top capital gains tax rate do not appear correlated with economic growth. The reduction in the top statutory tax rates appear to be uncorrelated with savings, investment, and productivity growth. The top tax rates appear to have little or no relation to the size of the economic pie.[116]

Jason Furman, Chair of the Council of Economic Advisors under President Obama, agreed, saying in 2016 that "Okun's 'leaky bucket' should not be the dominant metaphor for understanding the relationship between equality and efficiency…. In many cases, there exist policy tools that can help ensure that instead of leaking while in transit, the bucket *fills even*

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[113] Joseph E. Stiglitz, THE PRICE OF INEQUALITY: HOW TODAY'S DIVIDED SOCIETY ENDANGERS OUR FUTURE. W.W. Norton (2012). Rent seeking and the rich curtailing public investments: 95–98. Reduced social trust: 121. Harming teamwork: 113. The poor invest less in talented young people: 94.

[114] Jason Furman, "Equality and Efficiency: A Global Perspective," World Bank Group Macroeconomics and Fiscal Management Global Practice Annual Forum, May 2, 2016 at 1. https://obamawhitehouse.archives.gov/sites/default/files/page/files/20160502_wb_mfm_forum_cea.pdf.

[115] Id.

[116] Thomas Hungerford, "Taxes and the Economic: An Economic Analysis of the Top Tax Rates Since 1945," Congressional Research Service (2012).

further."[117] A more recent Brookings report from 2024 studied the 2017 tax cut that was enacted after the CRS study. It found, "based on evidence through 2019,… that the TCJA [Tax Cuts and Jobs Act] clearly raised federal debt and increased after-tax incomes, disproportionately increasing incomes for the most affluent. Its effects on GDP and median wages seem moderate at best, although clear counterfactuals are difficult to identify."[118]

David Hope and Julian Limberg studied the effects of all major tax cuts on the rich across 18 OECD countries from 1965 to 2015. They found that these tax cuts unambiguously increased the share of income of the top 1% of the respective populations. However, as they conclude: "The results suggest that tax reforms do not lead to higher economic growth. The effect size of major tax cuts for the rich on real GDP per capital is close to zero and statistically insignificant. Major tax cuts for the rich do not lead to higher growth in either the short or medium run."[119]

5. Tax Cuts Do Not Increase Welfare (Not Even Among the Rich)

Not only do tax cuts fail to increase growth, but they may also fail to increase welfare, even among the rich. Robert Frank observes that much of the consumption by the rich is positional in nature. The size of one's mansion, the schools their children attend, the parties they host, the influence they have in politics, their place on the Forbes list, and other visible consumption goods depend on one's comparative position. Frank argues that preferences often depend on relative rank, and that this concern for relative position is part of our evolutionary endowment.[120] Frank's conclusion is that rising incomes at the top of the income distribution lead to wasteful spending cascades where attempts by everyone to raise their position results in little or no additional welfare. According to Frank:

> In short, the effects of a decline in any one person's after-tax income are dramatically different from those of an across-the-board decline. If you alone experience an income decline, you're less able to buy what you want. But when everyone's income declines simultaneously, relative purchasing power is unaffected. And it is relative purchasing power that determines who gets things that are in short supply.[121]

Frank's argument is that the beneficiaries of the tax reduction do not experience a welfare increase even though the spending cascade increases consumption; meanwhile, the spending

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[117] *Supra* note 114 (Furman) at 13.
[118] William Gale, Jeffrey Hoopes, and Kyle Powerleau, "Sweeping Changes and an Uncertain Legacy: The Tax Cuts and Jobs Act of 2017," TPC Brookings (July 2024).
[119] David Hope and Julian Limbery, "The Economic Consequences of Major Tax Cuts for the Rich," 20 Socio-Economic Review 539, 550 (2022).
[120] Robert Frank, HOW RISING INEQUALITY HARMS THE MIDDLE CLASS, Univ. of Cal., (2007) at 56–57; Robert Frank, THE DARWIN ECONOMY: LIBERTY, COMPETITION, AND THE COMMON GOOD, Princeton, (2011) at 24–25; Robert Frank, SUCCESS AND LUCK: GOOD FORTUNE AND THE MYTH OF MERITOCRACY, Princeton (2017) at 91.
[121] Id. at 92.

cascade does not increase investment. However, there are negative external effects on everyone. The middle class view their position as diminished and they strive to restore it, bidding up property in prime neighborhoods, working longer hours, accepting longer commutes, and sacrificing time with family and sacrificing leisure. Spending by the rich creates external effects on the non-rich. If you live in an area where there are many large expensive cars, it is dangerous to drive a small car. According to Frank, larger mansions create pressure for others to buy larger homes. In addition, larger homes are often in neighborhoods with better schools. The quality of education is another positional good. As Frank summarizes:

> A family can choose how much of its own money to spend, but it cannot choose how much others spend. Buying a smaller-than-average vehicle means a greater risk of dying in an accident. Spending less on an interview suit means a greater risk of not landing the best job. Spending less than others on a house means a greater risk of sending your children to inferior schools. Yet when all spend more on heavier cars, more finely tailored suits, and larger houses, the results tend to be mutually offsetting, just as when all nations spend more on missiles and bombs.[122]

In addition, tax cuts for the rich channel funds from potential government investment to consumption. Because the government is starved of tax dollars, there is lower social expenditure on infrastructure, health, education, and other services, which further decreases the welfare of all citizens, including the wealthy. Frank believes that reducing sky-high incomes by taxation would increase the welfare of both the rich and the poor. He argues that resistance by the rich to taxes is due to a second cognitive error: successful people underestimate the importance of luck in their own lives. As a result, they "view mandatory taxation as unjustified confiscation of what's rightfully theirs," confiscation of the fruits of their own labor alone, unaided by public investment or by others.[123]

There is also a more fundamental conceptual problem with the idea of an equity-efficiency tradeoff. Students are taught to think of choices about "equity" being like choices on how to

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[122] Robert Frank, "How the Middle Class is Injured by Gains at the Top," in James Lardner and David Smith, INEQUALITY MATTERS: THE GROWING ECONOMIC DIVIDE IN AMERICA AND ITS POISONOUS CONSEQUENCES, New Press (2005) at 148. Frank's point is based on the "relative income hypothesis." See discussion in Bruno Frey, HAPPINESS: A REVOLUTION IN ECONOMICS, MIT Press (2008) at 31 ("Wealthier people impose a negative external effect on poorer people, but not vice versa."). Even if striving to buy heavier cars led to economies of scale in heavy car production, and even if those economies of scale trickled down to less wealthy people, the latter would not benefit in a relative sense—which is the important sense here—because another, pricier good would need to replace heavy cars as a status symbol.

[123] Id. at 106. Among other economists who wrote about "positional goods" (the term is due to Fred Hirsch) were Thorstein Veblen ("conspicuous consumption"), John Maynard Keynes (relative needs are those we feel "only if their satisfaction lifts us above, makes us feel superior to, our fellows," from *Economic Possibilities for our Grandchildren*), and James Duesenberry (the "relative income hypothesis").

divide a pie, and to think about "efficiency" like the size of that pie. But the size of the economic pie is GDP, which is calculated by multiplying the prices of goods by their quantities; and the prices of goods are partially determined by the demand for them; and that demand depends on the distribution of income, that is, on the division of the pie. Thus efficiency is inextricably entangled with equity: the way efficiency is measured is determined by the distribution of income.[124]

E. Equality of Opportunity or of Results?

As noted at the end of Section I.B.4, the moral philosophers endorsed equality of opportunity but not equality of results, concerned that policies that equalize results might reduce incentives to work hard, and thus reduce growth and productivity. Philosophically, equality of opportunity, the more equal the better, seems necessary for justice.

However, the empirical equality measures underlying our arguments in Section I.C are Gini coefficients of income, which measure inequality of results, not of opportunities. Section I.A's prehistoric evidence is also about equality of results. On the other hand, Section I.C only shows that low Gini coefficients are socially beneficial down to Gini coefficients of income in the range of roughly 0.25 to 0.30. We have no evidence that even more equality of results than that would be good —"the more equal the better" may not apply. Equality of opportunity is intrinsically good; equality of results is good only for instrumental reasons.

Some policies target equality of opportunity, and other policies target equality of results. For example, more progressive personal income taxes target enhanced equality of results, not equality of opportunity. After all, a universal basic income surely targets equality of results, and a universal basic income is merely a negative tax, so positive taxes are "equality of results" policies. Should society adopt policies targeting equality of opportunity, as suggested by Section I.B, or equality of results, as suggested by Section I.C?

Answering this question is not easy because there is, empirically, a positive correlation between inequality of results (as shown by the Gini coefficient) and inequality of opportunity (as shown by intergenerational earnings immobility). This empirical relationship is known as the "Great Gatsby Curve"[125]:

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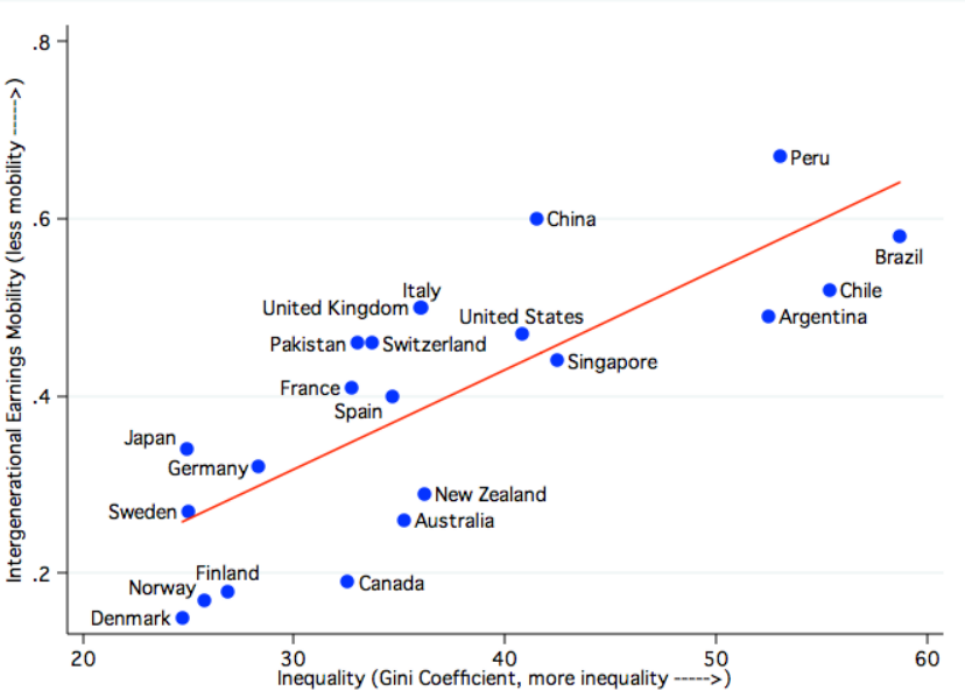
[124] See also Mark Glick, Gabriel A. Lozada, and Darren Bush, "Law and Economics Fallacies: What Modern Economics really says about the Definition of Efficiency and the Measurement of Welfare," Houston Business and Tax Law Journal, vol. XXIV, 2024, 1–116, Section III.G.c pages 30–32. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4923471.

[125] The horizontal axis is the Gini Coefficient multiplied by 100. The Great Gatsby Curve refutes those who think low income equality is unimportant because there is high equality of opportunity: where there is low income equality, empirically there is also low equality of opportunity. Source: Steven N. Durlauf, Andros Kourtellos, and Chih Ming Tan, "The Great Gatsby Curve." NBER Working Paper w29761 (2025) Figure 1. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4039480. Figure originally from Miles Corak, "Inequality



This means that there is a complementarity between the beneficial effects of equality of opportunity (Section I.B) and the beneficial effects of equality of results (Section I.C). In turn, this raises several possibilities. First, the correlation may be a coincidence. Second, equality of opportunity might cause equality of results, so that Section I.C's empirical correlations are actually caused by equality of opportunity, not by the equality of results variable (the Gini coefficient) that those studies mistakenly took to be the ultimate causal variable (the causation could still run from equality of opportunity through equality of results to social ills). Third, equality of results might cause equality of opportunity: the reasoning might be that when everyone has similar income, children's opportunity for education is equal, but if there is income segregation, educational opportunities are not equal either.[126] Fourth, there might be not just one causation but multiple causations, some perhaps running in opposite ways than

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from Generation to Generation: The United States in Comparison," in Robert Rycroft (editor), THE ECONOMICS OF INEQUALITY, POVERTY, AND DISCRIMINATION IN THE 21ST CENTURY, ABC-CLIO (2013). https://milescorak.com/2012/01/12/here-is-the-source-for-the-great-gatsby-curve-in-the-alan-krueger-speech-at-the-center-for-american-progress/.

[126] This is broadly the reasoning in Steven N. Durlauf and Ananth Seshadri, "Understanding the Great Gatsby Curve," 32 NBER Macroeconomics Annual (2018), 333. They write that "mechanisms run from inequality to mobility" (page 334), that is, from equality of results to equality of opportunity; they also refer to "mechanisms" rather than to one mechanism. In Durlauf et al., *supra* note 125, other possible mechanisms are mentioned, including the psychic stress of poverty, credit being constrained in poverty, peer influences, differences in aspirations, and complicated general equilibrium effects.

others, after “equality of opportunity” and “equality of results” are disaggregated into the many different kinds of opportunities and results that exist.

In the first case, we would advocate both policies targeting equality of opportunity and policies targeting equality of results. The first without the second would be no guarantee of a narrow distribution of income, and therefore, no guarantee of increased social welfare based on the evidence described in Section I.C. The second without the first would lead to unjust consequences.

In the second case, we would advocate policies targeting equality of opportunity; they would cause equality of results to follow, and that would lead to the beneficial outcomes of Section I.C.

In the third case, we would advocate policies targeting equality of results; they would cause equality of opportunity to follow.

In the fourth case, we would advocate different kinds of policies depending on which part of the overall situation as being addressed. For example, it might be the case that equality of opportunity is caused both by equality of results and by other factors, and if so, we would approve of policies targeting equality of results and approve of policies targeting the other factors.

Figuring out which case we are in, that is, what the causal links actually are between equality of opportunity and equality of results, is an active area of research by some economists, Steven Durlauf in particular. We applaud that research, and note that it has concentrated on our third case, equality of results causing equality of opportunity.

However, there is a way to improve social welfare before we definitively determine which case we are in, and that is to simply copy the policies of the countries that are in the lower-left corner of the Great Gatsby curve, or copy the policies of the U.S. in the 1930’s through the 1970’s when it would have been in (or close to) that corner of the curve. We detail those U.S. policies in Section III.A.1. (Obviously we would not want to copy the racist and sexist policies of the U.S. in that era.) Copying policies that have worked in other times or places may not be the optimal approach, but it is likely good enough, since those policies are well understood and historically proven. They are likely to be a mix of policies targeting equality of opportunity, policies (such as income tax policies) targeting equality of results, and other policies influencing equality, such as antitrust enforcement.

Our argument in favor of equality as the primary public policy goal (at least in rich countries) is completely at odds with the position taken in essentially all undergraduate textbooks in economics, so we next have to explain why their positions are incorrect.

II. The Case Against Other Goals

In this part of the paper we first consider the pitfalls of using GDP, a measurement of the output produced by an economy, as the index of social welfare and the primary goal for public policy. GDP is the target of most neoclassical macroeconomics, and is advocated as a target in some legal scholarship as well.[127] Closely related to GDP is "abundance," which we treat in Section II.B. In Section II.C we consider the most common goal of applied microeconomics, which is consumer surplus or its related concepts.

A. Social Welfare Based on Output

1. Subjective Well-being ("Happiness") and Output: The Empirical Easterlin Paradox

Using survey data, economist Richard Easterlin was the first to show that happiness in the United States had a basically a flat trend since 1946, while GDP per capita was growing quickly.[128] This is known as the "Easterlin Paradox." Ed Diener and co-authors extended Easterlin's analysis, studying happiness and after-tax disposable income growth from 1946 to 1989, and again found that, while income was growing during this period, happiness was not.[129] Two economists with the Federal Reserve Bank of St. Louis did a study using data from the 1972–2008 period and came to the same conclusion.[130] In the figure below we extend their time period to 2024.[131]

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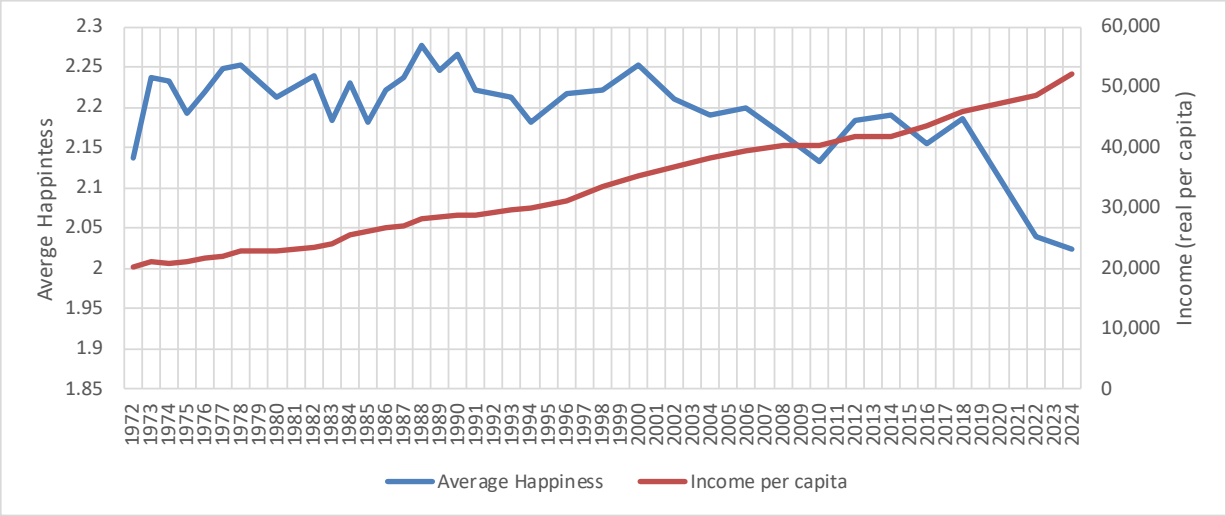
[127] Herbert Hovenkamp, "Antitrust Harm and Causation," 99 Washington University Law Review 787, at 788 ("The best criterion for assessing harm is likely or reasonably anticipated market output effects").

[128] Richard Easterlin, "Does Economic Growth Improve the Human Lot? Some Empirical Evidence," in Paul A. David and M.W. Reder, eds., Nations and Households in Economic Growth: Essays in Honour of Moses Abramovitz, Academic Press (1974). Easterlin quotes Abramovitz, who wrote "we must be highly skeptical of the view that long term changes in the rate of growth of welfare can be gauged even roughly from changes in the rate of growth of output."

[129] Ed Diener, Eunkook Suh, Richard Lucas, and Heidi Smith, "Subjective Well-being: Three Decades of Progress," 125 Psychological Bulletin 276 (1999) at 288.

[130] Ruben Hernández-Murillo & Christopher Martinek, "The Dismal Science Tackles Happiness Data," The Regional Economist, St. Louis Federal Reserve (Jan. 2010) 14–15.

[131] As Hernández-Murillo and Martinek did, we also code "not too happy" as 1, "pretty happy" as 2, and "very happy" as 3. Happiness data from the General Social Survey, https://gssdataexplorer.norc.org/trends?category=Gender%20%26%20Marriage&measure=happy&Measure%20Category=Very%20happy&Breakdown%20Label=Total. Economic data from U.S. Bureau of Economic Analysis, Real Disposable Personal Income: Per Capita [A229RX0A048NBEA], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/A229RX0A048NBEA, January 28, 2026. The following years are missing: 1979, 1981, 1992, and all odd years after 1993. The year 2020 is also missing.



In the 2018 survey, average happiness was 2.19, then in the next survey, 2022, it plunged to 2.04, well below any other year in the study time period; it fell further in 2024, even though by then the Covid epidemic which began in the US in 2020 had mostly abated.[132] Meanwhile, income per capita rose in those three observations at a compound annual rate of 2.1%, which is higher than its 1.8% rate for the entire period. Never has the Easterlin Paradox been as stark as in the very recent past. It is possible that the whiplash in the U.S. Gini coefficient measure of income inequality, between 2019 and 2022 had something to do with the fall in happiness. In 2019, the U.S. Gini coefficient for income was at its highest level (indicating greatest inequality) since the data series we used began in 1963.[133] Between 2019 and 2021, the Gini for income took its steepest plunge ever in the data, reaching its lowest level of inequality since 1992 (presumably due to government policies related to the COVID-19 pandemic). But the next year the Gini rose sharply, almost reattaining its 2019 level, and the Gini was little changed in 2023, the last year for which we have data. On the other hand, the Gini coefficient for *wealth* did not plunge, going from 0.85 in 2019 to 0.83 in 2022 (the last year in our data), which was higher than its 0.82 level of 2007.[134]

While the study of self-reported happiness has come under criticisms, some of which we have some sympathy with (hence Section I.C.1 argued on the basis of objective measures of well-being), Nobel laureate Daniel Kahneman and colleagues have provided an axiomatic defense

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[132] U.S. "Deaths Attributed to COVID-19 on Death Certificates": 2020 were 385,676; 2021 were 463,267; 2022 were 247,186; 2023 were 76,053; 2024 were 47,539; and 2025 were 20,623. U.S. Centers for Disease Control and Prevention, https://www.cdc.gov/nchs/nvss/vsrr/covid19/index.htm.

[133] World Bank, GINI Index for the United States [SIPOVGINIUSA], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/SIPOVGINIUSA, January 28, 2026.

[134] Moritz Kuhn and José-Victor Ríos-Rull, "Income and Wealth Inequality in the United States: An Update Including the 2022 Wave," Collaborative Research Center Transregio 224 Discussion Paper No. 708, Table 20 (page 51). https://www.crctr224.de/research/discussion-papers/archive/dp708/@@download/file/CRCTR224_2025_708.pdf .

for use of empirical happiness studies,[135] and economist Bruno Frey reports that happiness studies have been performed in eighty countries, comprising over 80% of the world's population, at various periods of time.[136]

Expressed mathematically, the Easterlin Paradox is that the derivative of happiness with respect to real per capita income is less than or equal to zero. Two articles, one using data ending in 2015[137] and the other using data ending in 2012[138] (so both before the recent sharp fall in U.S. average happiness), contend that happiness does not reach a satiation level for most people, and instead, happiness approximately follows the logarithm of income plus a constant. If happiness is *H* and per capita real income is *I,* these articles posit (in the simple case and for most people) that $H = \alpha + \beta * \log_a I$ where α and β and a are constants. With this formulation, the derivative of happiness with respect to income is $(\beta/\ln a) * (1/I)$. This is positive, contrary to the Easterlin Paradox, but note that in the limit as income goes to infinity, this derivative goes to zero, which is consistent with the Easterlin Paradox. The term $1/I$ is 4 at the left edge (lowest income) of Figure 1 of Stevenson and Wolfers' paper; it is 0.25 near the middle of that graph; and it is $1/64 \approx 0.0156$ at the right edge (highest income) of that graph. While 0.0156 is not zero, for the purpose of public policy it may be practically equivalent to zero. Also, be aware that graphs that plot the logarithm of income, rather than plotting income, on the horizontal axis give a visually exaggerated impression of the sensitivity of happiness to income at large levels of income. Finally, there is a causation difficulty with observing that "at sufficiently high income, there are few to no unhappy people," and drawing the conclusion that "high income causes happiness": the observation might instead reflect unhappiness causing low income (we suspect that very few unhappy people are great workers who can earn a great deal of money). Overall, then, we still agree with Easterlin's observation that in rich countries, increases in output cause very little increase in happiness.

2. Output and Economic Theory

In graduate and professional work in neoclassical microeconomics, output is never taken to be a measure of value; the measure of value is either consumer surplus (or social surplus), or the more complicated (but no less problematic) concepts of compensating and equivalent variation, measures which we critique in Section II.C. The microeconomists who study the field of social well-being, welfare economists, almost uniformly reject output as a measure of welfare: after

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[135] Daniel Kahneman, Peter P. Wakker, and Rakesh Sarin, "Back to Bentham? Explorations of Experienced Utility," 112 Q. J. Econ. 375 (1997).

[136] Bruno Frey, HAPPINESS: A REVOLUTION IN ECONOMICS, MIT (2010) at 20.

[137] Matthew A. Killingsworth, Daniel Kahneman, and Barbara Mellers, "Income and Emotional Well-Being: A Conflict Resolved," 120 Proceedings of the National Academy of Sciences U.S.A., e2208661120 (2023).

[138] Betsey Stevenson and Justin Wolfers, "Subjective Well-Being and Income: Is There Any Evidence of Satiation?", 103(3) American Economic Review (American Economic Association Papers and Proceedings) (2013), 598604.

all, the title of Fleurbaey and Blanchet's book is literally "Beyond GDP."[139] The reason is simple: any particular output increase could accrue to a single wealthy individual. That would not increase well-being, it would likely decrease it. Greater output would be associated with higher societal welfare only if there were some distributional mechanism to ensure that output is distributed to the population broadly, but no such mechanism exists.

In addition, output need not replace equality as a social goal because there is no equality/efficiency tradeoff (as demonstrated in Section I.D).

Inequality manifests itself partially as material deprivation of the poor. The solution may not always involve simply giving the poor more material possessions, but sometimes it does. In both cases, however, a necessary concomitant effect for any increase of well-being is a decrease in inequality; that is, on the means-ends spectrum, an increase in output can sometimes be the means, but it should never be the end.

In the next section we argue for related reasons that "abundance" does not provide a workable measure for welfare.

B. Social Welfare Based on "Abundance"

The "abundance" movement, advocated Ezra Klein and Derek Thompson among others, argues for example that if there is inadequate housing supply in politically liberal parts of the U.S., that a growth in housing supply is the solution, and that loosening government regulation of the housing sector of the economy would facilitate that solution.[140] We have no quarrel with this argument, but it provides no criticism of (and therefore no alternative to) using equality as the primary goal of public policy. Quite to the contrary, what it suggests is that some U.S. political liberals may have been pursuing a completely antiegalitarian housing policy since perhaps the 1970s, using a supposed concern for the natural environment as a fig leaf to justify keeping lower-income households far away from the homes of the political liberal elite and others of

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[139] *Supra* note 67.

[140] Ezra Klein and Derek Thompson, ABUNDANCE, Avid Reader Press (2025). For additional sources, using the midpoint of several estimates results in the U.S. housing shortage, as a percent of housing units, for the states with the most severe shortages, being: 17.9% in Hawaii, 14.9% in California, 11.1% in New York, 8.8% in Washington D.C. (which is not a state), 7.4% in Washington, 6.9% in Colorado, 6.7% in Oregon, and 6.3% in Massachusetts. American Enterprise Institute Housing Center, "U.S. Housing Shortage by State, County, and City assuming a Nationwide Shortage of About 6 Million Homes," https://heat.aeihousingcenter.org/toolkit/housing_shortage (accessed 3/31/2026). In studying this problem, "shortage" does not mean that quantity demanded is greater than quantity supplied, because price does equilibrate demand and supply. Instead, Freddie Mac and the Brookings Institution compute by comparing the current housing stock to a desired stock based on the number of households, the number of households that would have formed in the absence of high prices using historical data, and a target vacancy rate; and Zillow computes it by comparing "the number of vacant homes available for rent or sale with the number of families sharing their homes with unrelated people." Katie Jones and Lida R. Weinstock, "Estimates of a 'Housing Shortage,'" Congressional Research Service (2025), https://www.congress.gov/crs-product/IN12628.

their class. It was certainly useful for Klein and Thompson to show that members of a supposedly progressive political party have supported policies that are completely antiegalitarian. Beyond that, however, their evidence does not contradict ours. Concretely, both we, with our goal of inequality alleviation, and Klein and Thompson, with their goal of abundance, would solve the housing crisis in cities like San Francisco in exactly the same way, by making those cities much denser, more like, say, Paris, France. That increase in output might not decrease the well-being of density opponents (they may find a more Parisian lifestyle unexpectedly copacetic), but if it did decrease their well-being, we would argue for it anyway, because it would increase housing equality, and thereby increase well-being overall; whereas it is not at all clear that Klein and Thompson support policies that unequivocally hurt wealthy people. Moreover, another type of increase in abundance—an increase in the size of every household's home, with no increase in the number of households that could live in San Francisco—would be an increase in abundance that would worsen inequality and well-being, not increase it. That example shows that mere abundance is not a reliable measuring stick for social welfare. The reasons are the same as the reasons for why output is not a good measure of social welfare (Section II.A above), because abundance is output (especially of infrastructure). Since abundance ignores distribution—abundance *advocates* may not ignore distribution, but the *concept* of abundance does—and since less abundance (for example, less GDP) but more equality empirically leads to generally higher social welfare in rich countries, inequality alleviation and not abundance should guide policy.[141]

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[141] A contrary argument, that zoning policy is not responsible for the high cost of housing in cities like San Francisco, is given in Schuyler Louie, John Mondragon, and Johannes Wieland, "Supply Constraints Do Not Explain House Price and Quantity Growth Across U.S. Cities," Federal Reserve Bank of San Francisco Working Paper 2025-06 (2025), https://doi.org/10.24148/wp2025-06. We agree with Salim Furth that Louie et al. mis-measure housing demand: Salim Furth, "Response to 'Supply Constraints do not Explain House Price and Quantity Growth Across U.S. Cities' by Louie, Mondragon, and Wieland" (2025), 6–7, https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=5227968 ("The slow population growth of expensive coastal metros is a direct outcome of their slow housing stock growth. If Boston had built more homes, more people would live there. Using that constrained population growth (plus the small variation in average income) as a measure of demand will understate demand growth and leave the observed price changes unexplained.") Another contrary argument is given in Maximilian Buchholz et al., "Inequality, not regulation, drives America's housing affordability crisis," London School of Economics International Inequalities Institute Working Paper 159, https://researchonline.lse.ac.uk/id/eprint/131070/. We agree with at least two of the criticisms of this paper by Michael Lewyn, "Supply Skepticism Lite," https://marketurbanism.com/2026/02/16/supply-skepticism-lite/:

> "…what the authors really mean: the number of households didn't grow as much as San Francisco as in Austin, therefore supply must have been consistent with demand rather than lagging behind demand. This would make sense if demand for San Francisco was limited to people who stayed there. But as a matter of common sense, demand for San Francisco should include people priced out of San Francisco. Thus, the number of households in San Francisco is not an appropriate measure of demand. […]

We now turn from output (and related concepts), which is used in macroeconomics, to the concepts of microeconomics.

C. Social Welfare Based on Consumer Surplus

1. The Neoclassical Theory of the Consumer

The notion of consumer surplus finds its foundation in the standard neoclassical theory of the consumer. This theory posits well-being (or "utility," "*u*") being a function only of the consumer's own consumption vector "**x**". This $u(\mathbf{x})$ formulation is almost universal in both undergraduate and graduate pedagogy and in all subfields of economics other than welfare economics and experimental economics. This conception of consumer psychology dates back to the 1880's, and perhaps it was a good first approximation at that time, before the fields of psychology, anthropology, and sociology existed. Now, however, as we have seen in Section I, it is obvious that the utility a human being obtains from a given **x** is largely determined by how **x** compares with the consumption of other people. Robert Frank illustrates this clearly:

> Long ago, as a Peace Corps volunteer teaching in a village high school in Nepal, I lived in a two-room house with no plumbing or electricity. Any teacher who lived in such a house in an American city would feel ashamed of the fact, and his children would not want their friends to know where they lived. Yet at no time during the 2 years I lived in Nepal did that house seem in any way inadequate. On the contrary, it was a nicer house than the ones most of my colleagues lived in, and I was always proud to entertain guests there.
>
> If my friends from Nepal could see my house in Ithaca, New York, they would think that I had taken leave of my senses. "Why would anyone need such a grand

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> "More broadly, they treat income as something that goes up and down independently of housing costs. But I doubt that this is the case: if lower- and moderate-income residents shun or leave city X because of high housing costs, this means that high housing costs cause high regional incomes, as well as vice versa. To put it another way: government uses zoning to increase housing costs, causing less affluent people to move to cheaper cities, causing regional income to rise, causing academics to believe that rising regional income causes housing costs to rise."

Lewyn's first point is similar to Furth's point: the demand shift out for San Francisco is larger than that measured by Louie et al. and Buchholz et al.; and with the observed small increase in quantity supplied in San Francisco, that means the San Francisco supply curve is steeper than Louie et al. and Buchholz et al. believed. In reference to Buchholz et al.'s title, we think that inequality, *through the means of* (zoning) regulation, drives America's housing affordability crisis.

The highest cost U.S. housing is concentrated in a few, mostly coastal cities. However, housing costs nationwide would probably be lower if not for the trends examined in Laurel Kilgour, "Capital Crunch: How the Fall of Local Finance and the Rise of Shareholder Primacy Warped Single-Family Homebuilding in America—and What to Do About It," American Economic Liberties Project (2025), https://www.economicliberties.us/our-work/capital-crunch/.

> house?" they would wonder. But middle-income Americans would have no such reaction.
>
> Someone committed to the belief that relative income does not matter—that is, someone committed to the belief that context has no effect on evaluation—would find these reactions impossible to explain.

For a mathematical description of utility depending on relative income, use u_i and $\mathbf{x}_i$ to denote the utility and consumption of person *i*, and y_i and y_j to denote the income or wealth of person *i* and of some other person *j*. One possible parsimonious description of such preferences of person *i* would be $u_i(\mathbf{x}_i, \sum_j (y_i - y_j))$, where the sum is taken over all other persons *j*. For example, if person *i* has an income of $100 and there are three other people in the society, and they have incomes of $50, $60, and $110, then

$$\sum_j (y_i - y_j) = (100 - 50) + (100 - 60) + (100 - 110) = 80\,,$$

showing that person *i*'s income is higher than the average income (because 80 is positive). If instead person *i* has the same $100 income, but his neighbors have incomes of $90, $95, and $101, so that the society is more egalitarian, then

$$\sum_j (y_i - y_j) = (100 - 90) + (100 - 95) + (100 - 101) = 14\,,$$

the smaller positive number indicating that, while person *i*'s income is still higher than average, and person *i* still has the same rank as before, their income is closer to that of their neighbors than it was before, as a result of the more equal distribution of income.[142] Knowing what we know now about human beings, if it is necessary (say for pedagogical reasons) to simplify the utility function, then instead of simplifying $u_i(\mathbf{x}_i, \sum_j (y_i - y_j))$ to $u_i(\mathbf{x}_i)$ by dropping the $\sum_j (y_i - y_j)$ part, it would probably be better to simplify it to $u_i(\sum_j (y_i - y_j))$ by dropping the $\mathbf{x}_i$ part. After all, in Frank's example, his relative standard of living $\sum_j (y_i - y_j)$ would be much more informative about his utility than his absolute standard of living $\mathbf{x}_i$. However, this would completely upend neoclassical consumer theory, putting distribution, rather than shopping behavior, at its center, and the entire field would have to be reconstructed from the ground up. Antitrust economics would need to study the effects of monopolization and mergers not only on people as shoppers ("consumers"), but also on people as workers (which

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[142] This is not *necessarily* a result of the more equal distribution of income, however. If person *i*'s income is $78 and their neighbors' incomes remain at $50, $60, and $100, then $\sum_j (y_i - y_j)$ is again equal to 14, but the distribution of income is not meaningfully more equal than when $\sum_j (y_i - y_j)$ was 80. Better than $\sum_j (y_i - y_j)$ would be to incorporate two measures, one a measure of income inequality (such as the Gini Coefficient), and the other a measure of person *i*'s rank in the distribution; but that would go beyond the scope of this paper.

economists actually ought to be doing even under neoclassical principles, by studying the element of social surplus known as economic rent), and also study the effects on people as members of a society ranked by income and sensitive to their place in that income distribution. If the sole result of a merger would be to increase shareholder and upper management wealth, perhaps that merger would cause a net decrease in social welfare because of its detrimental effect on the income distribution.[143]

2. Consumer Surplus

Since neoclassical consumer theory is almost entirely based on the flawed $u_i(\mathbf{x}_i)$ framework, its welfare measures are inconsistent with the modern understanding of human behavior. This foundational flaw infects the whole concept of consumer surplus, the most commonly used (and taught) neoclassical measure of welfare. Consumer surplus, speaking non-rigorously, is the excess of "what a consumer is willing and able to pay for quantity q of commodity a" over "what the consumer has to pay for quantity q of commodity a." We have written a series of papers in which we have meticulously explained why consumer surplus is a dreadful measure of welfare even from a strictly neoclassical point of view, because of non-uniqueness problems, reversal paradoxes, the Broadway Paradox, the Paradox of the Non-Neutral Numéraire, the requirement and unreality of quasilinear utility, and other issues we will not revisit here—and those papers also exhaustively explain the problems of using compensating variation and equivalent variation, which are sometimes used instead of consumer surplus.[144] Suffice it to say that beyond those problems, from the point of view of humans as social creatures who care about relative consumption, consumer surplus (or compensating variation or equivalent

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[143] See generally E. Saez and G. Zucman (2020, October), "The rise of income and wealth inequality in America: Evidence from distributional macroeconomic accounts" (Working Paper No. 27922). National Bureau of Economic Research, https://www.nber.org/papers/w27922 (noting that between "1978 and 2018, the share of pre-tax income earned by the top 1% rose from 10% to about 19% and the share of wealth owned by the top 0.1% rose from 7% to about 18%"). See also Thomas Blanchet, Emmanuel Saez and Gabriel Zucman (2022), "Real-time inequality" (Working Paper No. 30229). National Bureau of Economic Research. https://www.nber.org/papers/w30229.

[144] The discussions pertain to using not only consumer surplus but also social surplus, equivalent or compensating variation, or the Kaldor and Hicks criteria as welfare measures. Two additional problems are taken up elsewhere in this paper: ethical problems with Kaldor-Hicks (see text concerning *supra* note 40), and the assumption of a pre-existing optimal distribution of income (see text concerning *infra* note 224). The relevant papers of ours are the following. Mark Glick, Gabriel A. Lozada, and Darren Bush, *supra* note 40, *supra* note 41, and *supra* note 124. Gabriel A. Lozada, Robert H. Lande, Mark Glick, and Darren Bush, "The Merger Efficiency Defense: No Legal Basis and a Bad Idea," The Antitrust Bulletin, 2025, http://dx.doi.org/10.1177/0003603X241309353. Darren Bush, Mark Glick, and Gabriel A. Lozada, "Antitrust's Right Turn in the Late 1970s," Journal of Law and Political Economy, vol. 5 no. 1, 2025, 136–155, https://doi.org/10.5070/LP65164818. Mark Glick, Gabriel A. Lozada, Pavitra Govindan, and Darren Bush, "The Horizontal Merger Efficiency Fallacy," Temple Law Review, vol. 96 no. 4, 2024, 571–627. Gabriel A. Lozada, "A Critique of Antitrust Econometrics: Aggregation, the Representative Consumer, and the Broader Concerns of the New Brandeis School," The Antitrust Bulletin, vol. 67 issue 1, March 2022, 69–99, https://doi.org/10.1177/0003603X211067829.

variation) as a welfare measure fails the primary requirement of being sensitive to relative consumption, and thus becomes completely useless. This defect carries over to every area where consumer surplus is applied, including antitrust, trade theory, and environmental economics, as we now detail.

3. Consumer Surplus and Antitrust's "Consumer Welfare Standard"

The "consumer welfare standard" of antitrust is another name for maximizing consumer surplus. In Robert Bork's The Antitrust Paradox, consumer welfare was illustrated with this diagram, which Bork claimed "can be used to illustrate all antitrust problems."[145]

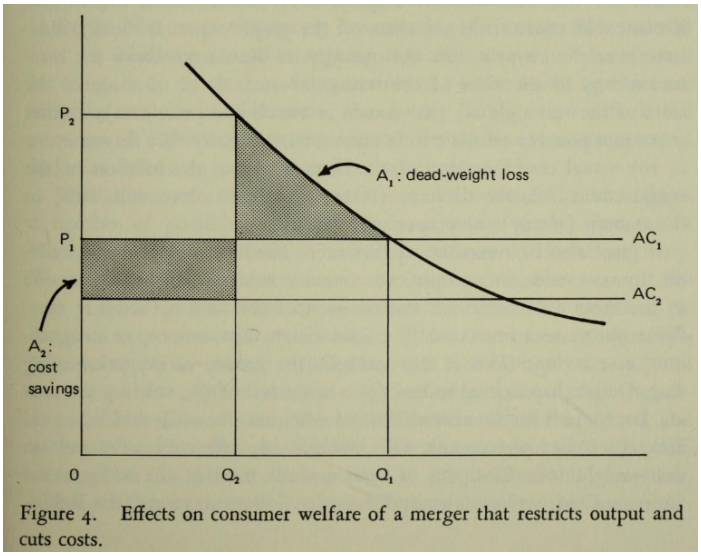

Figure 4. Effects on consumer welfare of a merger that restricts output and cuts costs.

In this diagram, the downward-sloping curve is the demand curve, the vertical axis is price, the horizontal axis is quantity, the initial equilibrium is where AC_1 intersects the demand curve, and the final equilibrium is at (Q_2, P_2). Bork wrote:[146]

> If the reader will look once more at Figure 4 he will see that at the competitive price, P_1, there is a large area under the demand curve that lies above the market price. This area represents the amount above the actual price that consumer would be willing to pay rather than go without the product; it is generally called "consumer's surplus"…

The initial consumer surplus is the area below the demand curve and above the price line P_1; the final consumer surplus is the area below the demand curve and above the price line P_2. The loss in consumer surplus is the area to the left of the demand curve between P_1 and P_2. The portion of this area to the left of Q_2 is not lost to society because it is captured by the firm, but the portion to the right, namely A_1, is lost to society. The other element of social surplus

[145] Robert Bork, The Antitrust Paradox: A Policy at War with Itself, Basic Books, 1978, at 107.
[146] Id. at 110.

change is the reduction in firm costs, which is A_2. The change in consumer surplus plus the change in firm costs (producer surplus) is the change in social surplus, which is the welfare criterion. The fallacy in this analysis is the same as that just discussed in Section II.C.2.

4. Consumer Surplus in Trade Theory

Consumer surplus also underlies the neoclassical arguments in favor of free trade. Here is the "economic cost of a tariff" diagram from Samuelson and Nordhaus:[147]

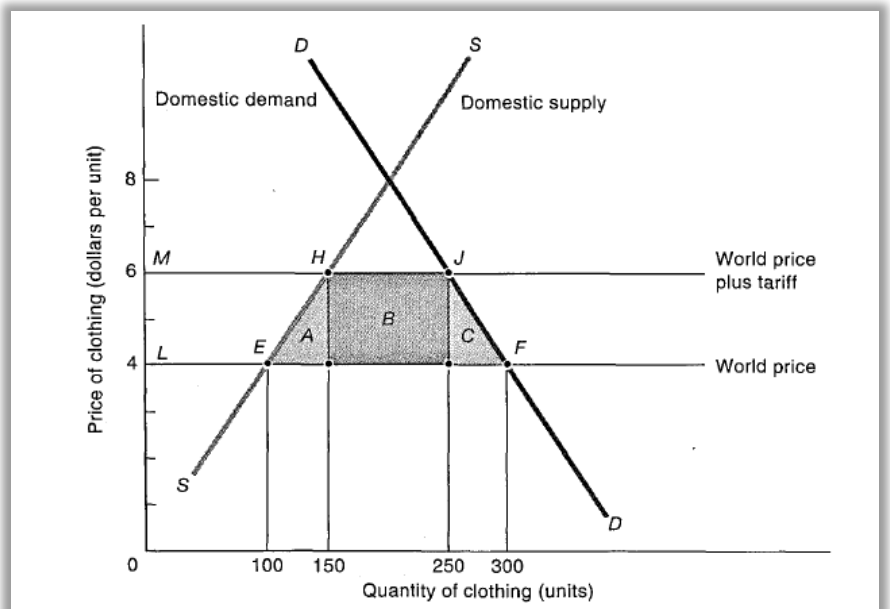

FIGURE 18-9. Economic Cost of a Tariff

Imposing a tariff raises revenues and leads to inefficiency. We see the impact of the tariff as three effects. Rectangle *B* is the tariff revenue gained by the government. Triangle *A* is the excess cost of production by firms producing under the umbrella of the tariff. Triangle *C* is the net loss in consumer surplus from the inefficiently high price. Areas *A* and *C* are the irreducible inefficiencies caused by the tariff.

As with the prior section, the entire argument concerns the change in consumer surplus and is no longer valid if consumer surplus is not a good measure of commodity value.

5. Consumer Surplus in Environmental Economics

Neoclassical environmental economics, which underlies the economic analysis of climate change policies, depends fundamentally on the valuation of commodities and environmental amenities. The only impediment to increased environmental protection, in this framework, is the resulting decrease in commodity production. The value of that decrease is measured by, as

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[147] Paul A. Samuelson and William D. Nordhaus (2010), Economics. New York: McGraw-Hill Irwin. 354. Diagram reproduced from Mark Glick and Gabriel A. Lozada, "The Flawed Welfare Foundations of Pro-Free Trade Arguments," INET Working Paper 239 (September 2025), https://www.ineteconomics.org/uploads/papers/WP-239-Glick-Lozada-Free-Trade.pdf.

the reader by now probably anticipates, consumer surplus. So, for example, Chapman's textbook teaches that "social value is equal to consumer value for a product," consumer value is "the value to consumers of using a product," and consumer surplus is "the excess of consumer value above the cost paid by consumers for a product."[148]

If, as we have argued, inequality and relative consumption are fundamental determinants of the value of commodity consumption, then neoclassical environmental valuation techniques are wrong. Moreover, increased natural resource extraction and pollution generation, undertaken to increase commodity production, may actually bring no social benefits that could justify their social costs, as argued in Section I.C.1—completely invalidating the case for limiting environmental protections, at least at the margin. W&P noticed this, and accordingly devoted the fifteenth chapter of their first book to "Equality and Sustainability."

We have made the case for equality as the guiding North Star for public policy and critiqued competing candidates. Can a society implement and achieve equality?

III. How to Achieve Equality and How to Lose It

It is sometimes felt that the level of equality in a society is the product of inexorable free-market forces, and that, conditional on maintaining a largely capitalist economy, there is nothing that can be done to change the level of equality. This is incorrect. In this Section, we first show that public policy affects equality. Using the example of the U.S., we show that public policies greatly increased equality in the mid-20th century, while other public policies greatly decreased it in the late 20th century. The different levels of equality resulted from different public policy choices and was not dictated by the requirements of the free market. We next discuss the role of the economics profession in the loss of equality in the United States over this period. Finally, we look to other countries for guidance on how equality can come to serve as a guiding principle for public policy. Specifically, we discuss the cultural attitudes that support the very egalitarian structure of Nordic countries, which has resulted in high levels of well-being there.

Our point is that public policy changes can achieve equality, and we are not inquiring about what brought on those public policy changes. Thus we need take no position on Walter Scheidel's "The Great Leveler: Violence and the History of Inequality from the Stone Age to the Twenty-First Century," which describes "how only violence and catastrophes have consistently reduced inequality throughout world history."[149] If Scheidel is correct, then a

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[148] Duane Chapman, Environmental Economics: Theory, Application, and Policy. Addison-Wesley, 1999. 19, 21.
[149] Walter Scheidel, The Great Leveler: Violence and the History of Inequality from the Stone Age to the Twenty-First Century. Princeton: Princeton University Press (2025). For the description see https://press.princeton.edu/books/paperback/9780691271842/the-great-leveler. Among Nordic countries, Denmark, Norway and Finland were invaded and fully or partially occupied during WWII, but Sweden was not.

catastrophe such as the Great Depression or World War II would be a prerequisite for adopting equality-enhancing public policy changes.

A. Public Policy and Equality in the United States

1. Policies that Fostered Equality

In his book "Capital in the Twenty-First Century," Thomas Piketty presents the following picture of long-run income distribution in the United States:

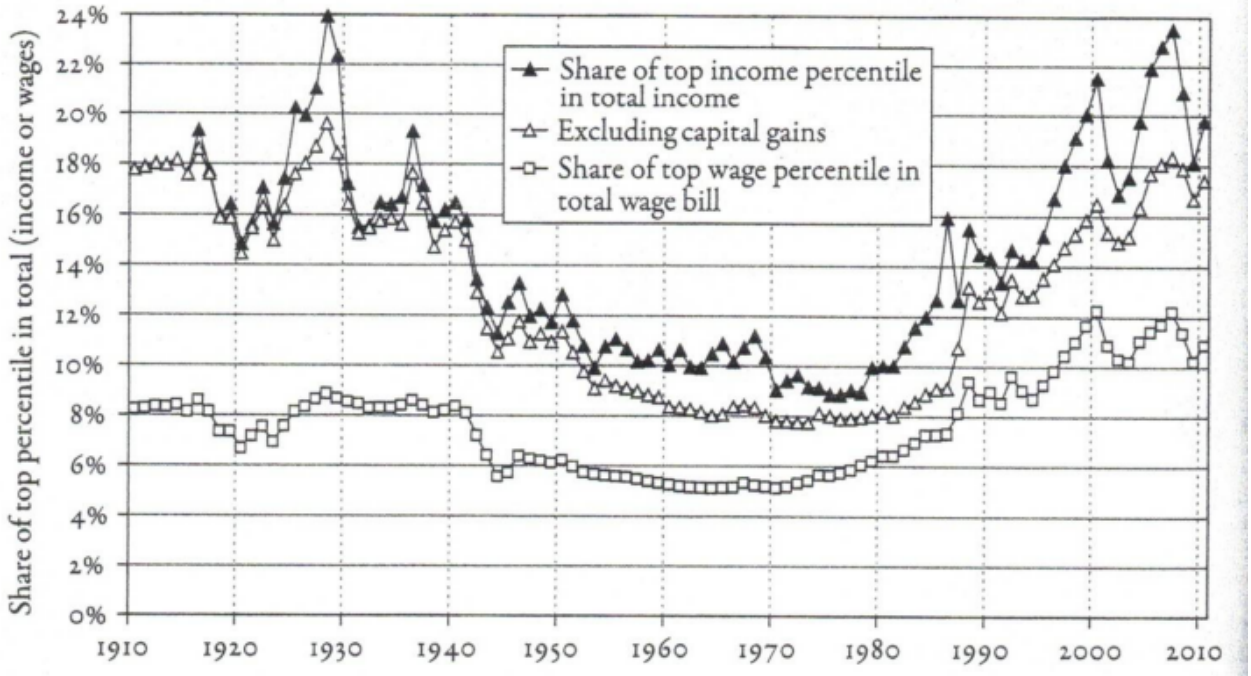

FIGURE 8.8. The transformation of the top 1 percent in the United States

Piketty's figure shows that the share of total income of the top 1% in the United States was high in the 1920s. After the Great Depression began and then the New Deal was implemented, it began to decline. It continued to decline until the late 1970s, then it began to increase again, and it continued to increase until the end of the data series.

Piketty explains these movements through a few basic relationships in a capitalist economy, the relationship between growth rates, profit rates, and the saving rate and how the relationship among those rates determine distribution.[150] We take a different approach because, while we applaud Piketty for showing what happened, in our view Piketty did not show why it happened, and that is what we attempt to do. We maintain that this evolution of U.S. distribution was the

[150] Jérérmie Cohen-Setton, "The Piketty Theory Controversy." Post on the "bruegel" blog (14 April 2015). https://www.bruegel.org/blog-post/piketty-theory-controversy

result of institutional and legal changes that occurred in the New Deal, which were then reversed after 1979 in the era we refer to as the period of neoliberalism.

The institutional and legal changes we focus on cannot be simply categorized as either favoring or opposing free markets. In fact, there are no such things as "free" markets. All markets are embedded in legal structures that influence their outcomes. For example, few contracts would ever be signed if the State took no role in contract enforcement. For another example, where output is produced by corporations, the legal relationships between the shareholders, managers, and other stakeholders influence potential and actual corporate decisions, and these stakeholder relationships are governed by corporate law. The role of finance is determined by securities law and financial regulations. The influence of workers is affected in important ways by labor law. In addition, the market is embedded in an entire superstructure that is strongly influenced by numerous other laws, regulations, and norms. These conditions are instrumental to how income is distributed. Bernard Harcourt adopts a similar point of view in his book "The Illusion of Free Markets: Punishment and the Myth of Natural Order," although he does not address the period we are analyzing here. As he describes:

> Truth is, our contemporary markets are shot through with layers of overlapping governmental supervision, of exchange rules and regulations, of federal and state criminal oversight, of policing and self-policing, and self-regulatory mechanisms ….[151]

To set the stage, consider that, in 1904, the top four percent of American companies produced 57 percent of the total industrial output.[152] The early merger movement that led to much of this concentration also initiated a process of financialization in the economy. The bankers who had facilitated the merger process at the beginning of the century took board seats and sought to "obtain substantial, if not total, managerial control."[153] The Morgan partners alone held 167 directorships in 89 corporations with assets totaling over $20 billion.[154] Financial interests protected their clients, who purchased bonds and stocks. From their position as board members, they advocated for high and regular dividends and prompt payment of interest. Financial interests, which were affiliates of the big banks, sold securities to the public, who in turn financed those investments by call loans through brokers. Moreover, firm financing was mainly through the issuance of new equity. In addition, there was no effective regulation of

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[151] Bernard Harcourt, THE ILLUSION OF FREE MARKETS: PUNISHMENT AND THE MYTH OF NATURAL ORDER, Harvard (2011) at 17.

[152] James Weinstein, THE CORPORATE IDEAL IN THE LIBERAL STATE, 1900–1918, Beacon Press (1968).

[153] Gabriel Kolko, THE TRIUMPH OF CONSERVATISM: A REINTERPRETATION OF AMERICAN HISTORY, 1900–1916, Quadrangle Books (1963) at 23.

[154] Michael Hiltzik, THE NEW DEAL: A MODERN HISTORY, Free Press (2011) at 82.

finance, and therefore no institutions could prevent a financial bubble and collapse.[155] Labor unions were held in check by Sherman Act interpretations prohibiting unions, which were viewed as horizontal conspiracies.[156] Courts regularly enjoined picketing, strike activity, and secondary boycotts. Federal judges issued roughly 2100 anti-labor injunctions during the decade of the 1920s.[157] Nevertheless, wages were sufficiently high that manufacturers were prompted to introduce technological advances including electrifications and assembly lines. Finally, there was little fiscal policy to stabilize the economy, and monetary policy was limited by adherence to the gold standard.

At the end of the 1920s, with this economic and political structure in place, the economy entered into a serious recession, the stock market crashed, banks were allowed to fail, and approximately one third of manufacturing firms failed. In the midst of the crisis, Franklin Roosevelt was inaugurated on March 4, 1933. As Thomas Ferguson aptly described, "taking office at the moment of the greatest financial collapse of the nation's history, President Franklin D. Roosevelt initiated a dazzling burst of government actions designed to square the circle that was baffling governments elsewhere: how to enact major social reforms while preserving both democracy and capitalism."[158]

When Roosevelt took office, there were three prominent theories about the cause of the depression. The first was that risky and sometimes fraudulent practices by the financial sector caused the crash. The second theory held that excessive competition and a lack of industrial policy was responsible. The third view, as developed by Harold Moulton at the Brookings Institution, claimed that distorted income distribution resulted in inadequate demand in the economy.[159] In his inaugural speech on March 4, Roosevelt stressed the first theory. He said that the economic crisis was the result of "the unscrupulous money changers."[160] Several significant policy actions followed. On March 6, Roosevelt declared a national bank holiday.[161]

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[155] Carmen Reinhart and Kenneth Rogoff, THIS TIME IS DIFFERENT: EIGHT CENTURIES OF FINANCIAL FOLLY, Princeton University Press. (2009); Robert Aliber and Charles Kindleberger, MANIAS, PANICS AND CRASHES: A HISTORY OF FINANCIAL CRISES, Palgrave Macmillan (2005).

[156] Other measures also held Unions in check. See generally Thomas Ferguson and Joel Rogers, RIGHT TURN: THE DECLINE OF THE DEMOCRATS AND THE FUTURE OF AMERICAN POLITICS, Hill and Wang (1986).

[157] William Forbath, LAW AND THE SHAPING OF THE AMERICAN LABOR MOVEMENT, Harvard (1989) at 118.

[158] Thomas Ferguson, "From Normalcy to New Deal: Industrial Structure, Party Competition, and American Public Policy in the Great Depression," 38 Int. Org. 41 (1984).

[159] Internationally, other factors included the decline in construction spending, international banking crises, Britain's return to the gold standard, the indebtedness of agriculture, and other factors. Peter Temin addressed the many factors involved in the Great Depression in Peter Temin, DID MONETARY FORCES CAUSE THE GREAT DEPRESSION, Norton (1976).

[160] Quoted in Michael Hiltzik, THE NEW Deal: A Modern History, pub. (2011) at 26.

[161] Thomas Ferguson, "From Normalcy to New Deal: Industrial Structure, Party Competition, and American Public Policy in the Great Depression," 38 Int. Org. 41 (1984). As Ferguson describes FDR's momentum, "taking office at the moment of the greatest financial collapse of the nation's history, President Franklin D. Roosevelt

The 1933 Banking Act, also known as the Glass-Stegall Act, followed closely thereafter. It separated commercial and investing banking and established the Federal Deposit Insurance Corporation. It also preserved the prohibition on interstate branch banking and prevented payment of interest on demand deposits. The Securities Act of 1933 required disclosure of accurate information about securities and outlawed misrepresentations. The Securities and Exchange Act of 1934 created the Securities and Exchange Commission to regulate stock and bond markets. The 1935 Banking Act strengthened the Federal Reserve System by placing control of open market operations under the Federal Reserve Board. The result of these actions was that only two banks failed in the first two terms of Roosevelt's presidency, and there were very few large bank failures until the bank deregulations of the late 1970s.[162]

The second causal theory of the Great Depression (excessive competition and lack of planning) motivated the 1933 passage of the National Industrial Recovery Act (NIRA). NIRA created the National Recovery Administration (NRA), which formed cartels by industry and encouraged planning similar to the War Industries Board during World War I. Hugh Johnson, one of the leaders of the War Industries Board, headed the NRA. But the NRA quickly began to fall into chaos, and in 1935 it was declared unconstitutional by the Supreme Court.

After the demise of the NRA, the focus of what has been called the Second New Deal addressed the third causal theory of the Depression: distorted income distribution.[163] The policy approach was to reduce the power and the income of big business, and to raise the income and power of the other classes, in particular workers and agriculture. As described by Ellis Hawley:

> But if one insisted on a dominant theme [of the second New Deal] he could find it in the concept of counterorganization, in the idea of using the government to promote the organization of economically weak groups, thus restoring economic balance.[164]

Congress passed the National Labor Relations Act (the "Wagner Act") in 1935, which dampened businesses' ability to prevent unions. As a result, union membership tripled in the 1930s. By 1945, 25% of the American work force belonged to a union.[165] The Revenue Act of 1935 introduced a "wealth tax" and set top income tax rates at 75% (increased to 77% the next year). Congress also passed the first minimum wage of $0.25 per hour, and the work week was

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initiated a dazzling burst of government actions designed to square the circle that was baffling governments elsewhere: how to enact major social reforms while preserving both democracy and capitalism."

[162] Anthony Badger, THE NEW DEAL: THE DEPRESSION YEARS 1933–1940, Noonday Press (1989) at 73.

[163] The Second New Deal also shifted toward free trade with passage of The Reciprocal Trade Agreements Act (RTAA) of 1934. See Thomas Ferguson, "From Normalcy to New Deal: Industrial Structure, Party Competition, and American Public Policy in the Great Depression," International Organization 38, no. 1 (1984): 41–94. http://www.jstor.org/stable/2706601.

[164] Id. at 187.

[165] Id.

limited to 40 hours for many workers.[166] The Social Security Act was enacted in August 1935. The Railroad Retirement Board, the Works Progress Administration, the Civilian Conservation Corps, and the National Youth Administration provided jobs and income to the unemployed. The Agricultural Adjustment Act passed in 1935 provided support to the 35% of the population who were farmers. However, in order to pass any of this legislation, Roosevelt had to win the support of the plantation capitalists in the southern states. As a result, various exclusions were included for occupations primarily occupied by African Americans.[167] The Department of Justice's Antitrust Division brought antitrust enforcement out of its dormancy, and Robert Jackson was appointed head of the DOJ Antitrust Division in 1937. Partly as a result of these measures, the percentage of total income held by the top 1% of the population dropped from 24% in the 1920s to 16.6% in the 1930s, and continued to drop during World War II and after.[168]

The antitrust enforcement efforts of the 1930s and 1940s included concerns about monopoly resulting from the control of patents. In 1932, the government forced RCA to license its patents on radio technology, including the vacuum tube, radio frequencies, microphones, and many other features. In the 1940s, the government successfully forced General Electric to license important patents related to incandescent electric lamps and related equipment.[169] This was followed by other lawsuits that opened AT&T's transistor and other telecommunications apparatus patents, IBM's computer patents, Xerox's plain-paper copying patents, and several pharmaceutical patents. It is estimated that the opening of the AT&T (Bell Labs) patents resulted in an increase of 17% in follow-on innovations.[170] In his book "The Age of Extraction," Tim Wu describes how *United States v. AT&T* was the starting point for the development of the computer industry in the United States, and IBM's fear of antitrust scrutiny created a competitive software industry in the U.S.[171] Together both of these government actions created the conditions for the rise of Silicon Valley.[172]

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[166] Id. at 103.

[167] See Ira Katznelson, THE NEW DEAL AND THE ORIGIN OF OUR TIME, Norton (2013).

[168] Mark Glick, "Antitrust and Economic History: The Historic Failure of the Chicago School of Antitrust," 64 Antitrust Bull. 295 (2019) at Appendix I.

[169] F. M. Scherer, "Political Economy of Patent Policy Reform in the United Sates," Working Paper, Dec. 2006 at 4.

[170] Martin Watzinger, Thomas A. Fackler, Markus Nagler, and Monika Schnitzer, "How Antitrust Enforcement Can Spur Innovation: Bell Labs and the 1956 Consent Decree," 12 American Economic Journal: Economic Policy 328 (2017) at 3.

[171] Tim Wu, THE AGE OF EXTRACTION: HOW TECH PLATFORMS CONQUERED THE ECONOMY AND THREATEN OUR FUTURE PROSPERITY, Alfred Knoff, (2025) at 28–36.

[172] See also Spencer Weber Waller, "The Story of Alcoa: The Enduring Questions of Market Power, Conduct, and Remedy in Monopolization Cases," in Eleanor M. Fox and Daniel A. Crane, eds., ANTITRUST STORIES 137 (Foundation Press 2007). Through the Surplus Property Act of 1944, the government sold or leased its war-built aluminum smelters and reduction plants to competitors—primarily Reynolds Metals and Kaiser Aluminum—

Another thing that changed under Roosevelt was the personal income tax. In 1931, the top marginal tax bracket was 25%, but in 1932 it was 63%, in 1936 it was 79%, in 1942 it was 88%, and in 1944 it was 94%. It stayed above 90% until 1964, fell to 70% in 1965, and stayed there until it dropped to 50% in 1982 under President Reagan, and 38.5% in 1987. It has not reached 40% in any of the succeeding years.[173]

Under the Equity-Efficiency tradeoff thesis, Roosevelt's actions should have led to disaster including losses in productivity, innovation, and growth. But the opposite occurred (for the reasons we explained in Section I.D). There was a spectacular increase in productivity and GDP growth. One of the most comprehensive measures of productivity is total factor productivity because it measures the output increases from all inputs into the production process. The average total factor productivity for the years 1900 to 1920 was about 1%. The average for the decade of the 1920s was 2%. It grew to 3% in the 1930s and 2.5% for the 1940s. It remained high at 2% until the 1970s, when it dropped back below 1% through the 1990s.[174]

Alfred Kleinknecht studied the timing and implementation of major basic innovations. He found that the period from the 1930s to approximately the late 1940s produced more basic innovations and greater "product-related breakthrough patents" than any other period.[175] Between 1933 and 1940, R&D employment in the U.S. manufacturing sector almost tripled, from 10,918 to 27,777.[176] There were technological advances in chemicals, automobiles, communications, electronics, transportation, construction, retail and wholesale trade, and other sectors.[177] During World War II and after, the government sponsored research that resulted in advances in radar, materials science, microwave technology, jet engines, heavy water, continuous catalytic cracking, silicone, Teflon, nylon, aerosol spray, and many other products. Vernon Ruttan contends that research conducted during the war created the radical "general purpose technologies" that would be the foundation for the prosperity of the postwar

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rather than allowing them to be acquired by Alcoa, which had controlled almost all of the market. Waller notes that the court deferred remedy, citing "hearings of the Senate Truman Committee on War Preparedness which showed that Alcoa's own production was now dwarfed by the production of the government plants under lease and the smaller plants of two new entrants, the Reynolds and Olin companies."

[173] Tax Foundation, "Federal Individual Income Tax Rates History," https://files.taxfoundation.org/legacy/docs/fed_individual_rate_history_nominal.pdf.

[174] Robert Shackleton, "Total Factor Productivity Growth in Historical Perspective," Congressional Budget Office, (2013); Robert Gordon, THE RISE AND FALL OF AMERICAN GROWTH: The U.S. Standard of Living Since the Civil War, pub, (2016) at 566-67.

[175] Alfred Kleinknecht, "Are There Schumpeterian Waves of Innovations?" 14 Cambridge J. of Econ. 81, 84 (1990).

[176] Alexander Field, "The Most Technologically Progressive Decade of the Century," 93 Amer. Econ. Rev. 1399 (2003).

[177] Id. at 1406–1409.

decades.[178] During the Second New Deal, GDP grew at about 9%, in part because it was starting from a deep depression. But rates of growth continued between 4% and 5% for the next three decades. In sum, public policy measures that gave public subsidies to research, increased equality and democracy, limited the influence of finance, and reduced monopoly power through antitrust measures resulted in spectacular economic advances.

The U.S. economy emerged from World War II with modern technology, high wages, strong unions, declining inequality, and a political consensus favoring democratic governance. That prosperity and growth continued until the 1970s arrived. U.S. corporate profits declined as a result of the recovery of the Japanese and German economies, which challenged the U.S. in consumer electronics, automobiles, steel, and petrochemicals. The oil crisis in 1973 increased energy costs. For high income Americans, the 1970s were a period of income stagnation. There was unprecedented income equality. The stock market flatlined: from 1972–1981, the real cumulative stock return was -17.55% (compared with a +43.16% cumulative return in the 1960s). The real ten-year Treasury bond return for the same period was much worse, -39.35%. The pressure on high incomes was substantial, and the wealthy began to use their political influence to promote significant policy changes.

In the next section, we see the effect of those changes.

2. Policies that Undermined Equality

The 1970s witnessed a major political backlash by the right; we will refer to this period as the "neoliberal revolution." The neoliberal revolution included the formation of numerous well-funded conservative think tanks. The Business Roundtable was founded in 1972.[179] The Heritage Foundation was established in 1973. Already-existing conservative think tanks included the John M. Olin Foundation and the American Enterprise Institute.[180] Corporate lobbying significantly increased, resulting in what Jacob Hacker and Paul Pierson call "a domestic version of Shock and Awe."[181] They observe:

> The number of corporations with public affairs offices in Washington grew from 100 in 1968 to over 500 in 1978. In 1971, only 174 firms had registered lobbyists in Washington, but by 1982, nearly 2500 did. The number of corporate

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[178] Vernon Ruttan, IS WAR NECESSARY FOR ECONOMIC GROWTH? Oxford University Press, (2006) at 13–14. On the other hand, Alexander Field argues that the foundation for postwar prosperity was technological change between 1929 and 1941, that is, before the U.S. entered WWII. Field, *supra* note 176 at 1399.

[179] Marc Linder, WARS OF ATTRITION: VIETNAM, THE BUSINESS ROUNDTABLE, AND THE DECLINE OF CONSTRUCTION UNIONS, Iowa City, IO: Fanpihua Press (2000). The Business Roundtable was the consolidation of two separate groups, the Construction Users Anti-Inflation Roundtable and the Labor Law Study Group, soon joined by the March Group of CEO's.

[180] Roger Backhouse, "Economists and the Rise of Neo-Liberalism,"117 Renewal 17 (2009).

[181] Quoted in Alan Nassar, OVERRIPE ECONOMY: AMERICAN CAPITALISM AND THE CRISIS OF DEMOCRACY, Pluto Press (2018) at 155.

> PACS increased from under 300 in 1976 to over 1200 by the middle of 1980….[182]

The conservative political movement (or "neoliberalism") was remarkably successful in changing public policy and transforming the economy. It began under Democratic president Jimmy Carter, with efforts at deregulation and the appointment of Paul Volker as the Fed chair in 1979, but it accelerated quickly under Republican president Ronald Regan. One by one the measures that had created the New Deal's income equality were reversed and, as the economy evolved, no new controls to limit high incomes were instituted.

One important reversal of the New Deal Consensus support for labor started earlier than the late 1970s, but accelerated after the election of Ronald Reagan. The New Deal's Wagner Act was considerably weakened by the passage of the Taft Hartley Act of 1947. The Act limited the power of unions by banning wildcat strikes and secondary boycotts, and it lifted employer restrictions on opposing labor unions. Taft Hartly also allowed states to pass "right to work" laws, limited union political activity, and gave the President an 80-day halt to certain strikes. In the late 1960's, rising construction costs caused by Vietnam War draft-induced labor shortages prompted the CEOs of large industrial firms to establish the Construction Users Anti-Inflation Round Table "to build solidarity among large industrial firms in setting common terms when agreeing to construction contracts and to find methods to reduce the power of construction to press wage increases."[183] As described by James Gross in his book "Broken Promise: The Subversion of U.S. Labor Relations Policy, 1947–1994," there was a slow but consistent erosion of union rights within the National Labor Relations Board beginning with Taft Hartley, but unions came under much greater attack after the 1980s.[184] As described by James Gross, union rights deteriorated quickly when President Reagan appointed Donald Dotson as chair of the National Labor Relations Board. Dotson was a former management consultant on labor issues. As described by Timothy Noah, Dotson engineered "a succession of rulings that gave management greater leeway to interrogate and fire union supporters and to make misleading statements during union elections."[185] As a result, union membership declined in each decade following the Taft Harley Act, with the decline accelerating in the 1980s. In the 1950s, a little

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[182] Id. In terms of dollars, corporate political action committees' congressional candidate contributions rose from $1.7 million in 1972 to $19.2 million in 1980 (in current dollars): Joseph E. Cantor, Congressional Research Service, "Political Action Committees: Their Role in Financing Congressional Elections" (July 11, 2003) CRS-7, https://www.congress.gov/crs_external_products/RS/PDF/98-255/98-255.2.pdf.

[183] Bruce Cronin, "The Rise and Decline of the Business Roundtable." In Alejandra Salas-Porras and Georgina Murray, eds., THINK TANKS AND GLOBAL POLITICS: KEY SPACES IN THE STRUCTURE OF POWER, Palgrave Macmillan (2017), 135.

[184] James Gross, BROKEN PROMISE: THE SUBVERSION OF U.S. LABOR RELATIONS POLICY 1947–1994, Temple (1995).

[185] Timothy Noah, THE GREAT DIVERGENCE: AMERICA'S GROWING INEQUALITY CRISIS AND WHAT WE CAN DO ABOUT IT, Bloomsbury (2012) at 142.

less than 35% of U.S. workers belonged to unions. In 1980, it had declined to about 23%. Three years into the Reagan administration, unionization was at 20%, and by the 1990s it had declined to 16.6%. In 2022 union membership was about 10%.[186]

Other changes negatively impacted both union and nonunion workers. The minimum wage was allowed to lag behind inflation. In 1975, the real federal minimum wage was $12.04, but by 2023 it had declined to $7.25.[187] In his book "The Fissured Workplace," David Weil described how employers converted employees to subcontractors, thereby avoiding employee costs of safety compliance, training, and benefits. For example, according to Weil, "[b]y 2000 an estimated 45% of janitors worked under contracting arrangements and more than 70% of guards were employed as contractors."[188] This process took advantage of employment law loopholes and an opposition to updating employment law to prevent the fissured workplace.

At the other end of the spectrum, tax rates for the wealthy and for corporations were reduced. In 1960 the top tax rate was 91%. It was reduced under the Kennedy and Johnson administrations to around 70%. But the Reagan administration reduced the top tax rate to 50% by 1985 and for a brief period it was 28%. The top rates were increased in the 1990s but then were lowered again. Today the top rate is 37%. The corporate tax rate has also declined from approximately 50% in the 1950s to its current 21% today.

The Reagan administration also gutted the New Deal financial regulations. In 1980, Congress passed the Depository Institutions Deregulation and Monetary Control Act, which phased out Regulation Q and allowed banks to pay interest on demand accounts. The Depository Institutions Act of 1982, among other things, sanctioned certain cross-state bank mergers. The Competitive Equality in Banking Act of 1987 expanded the ability of banks to acquire nonhealthy banks across state lines. The Federal Deposit Insurance Corporation Improvement Act of 1991 initiated the process of removing the separation of commercial and investment banking; the separation was eventually eliminated by the Riegle-Neal Interstate Banking and Branding Efficiency Act of 1994. The Glass-Stegall Act was repealed in 1999.[189]

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[186] Laura Feiveson, "Labor Unions and the U.S. Economy," U.S. Department of the Treasury, August 28, 2023. One notable exception is President Kennedy's Executive Order allowing government employee labor organizations. See EMPLOYEE-MANAGEMENT COOPERATION IN THE FEDERAL SERVICE, 27 Fed. Reg. 551 (1962).

[187] Marcus Lu, "Chart: Declining Value of the U.S. Federal Minimum Wage," The Visual Capitalist, March 25, 2024.

[188] David Weil, THE FISSURED WORKPLACE: WHY WORK BECAME SO BAD FOR SO MANY AND WHAT CAN BE DONE TO IMPROVE IT, Harvard University Press (2014) at 56.

[189] This history is recounted by Jill Hendrickson, REGULATION AND INSTABILITY IN U.S. COMMERCIAL BANKING: A HISTORY OF CRISIS, Palgrave Macmillan (2011) at 180–187. See also Depository Institutions Deregulation & Monetary Control Act of 1980, Pub. L. No. 96-221, 94 Stat. 132 (codified in scattered sections of 12 U.S.C.); Garn–St Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, 96 Stat. 1469 (codified in scattered sections of 12 U.S.C.); Riegle–Neal Interstate Banking & Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (codified in scattered sections of 12 U.S.C.); National Securities Markets Improvement Act of 1996, Pub. L. No. 104-290, 110 Stat. 3416 (codified in scattered sections of 15 U.S.C.); Gramm–Leach–Bliley Act

The Reagan administration also cut back on antitrust enforcement. Under the guise of the "consumer protection standard" championed by the Chicago School economists and Judge Robert Bork, few mergers were challenged, monopolization cases largely came to end, all but the most egregious vertical constraints were considered efficiency-producing, and the Robinson-Patman Act was no longer enforced.[190] Lax antitrust enforcement resulted in a dramatic increase in concentration in the U.S. economy. For example, the big tech companies acquired thousands of potential competitors without any challenge by the antitrust agencies. Cory Doctorow describes how the "Reagan era saw a quarter of Fortune 500 companies being acquired by another company…. Fifty years later, from eyeglasses to sea freight, glass bottles to payment processing, Vitamin C to beer, most industries are now dominated by five or fewer global companies."[191]

Financial deregulation and lax antitrust enforcement also resulted in banking consolidation. More than 6000 bank mergers occurred between 1980 and 1994. Today, only a handful of banks control most assets held by U.S. banks.[192] As a result of deregulation and consolidation within finance the financial sector's rate of profit surpassed the profit rate of the nonfinancial sector, and the size of the financial sector as a portion of GDP grew from 4.5% in 1974 to about 9% in 2010.[193]

Changes to U.S. corporate law also contributed to greater inequality. As explained by Cray and Drutman, before 1891 U.S. corporations operated under limited, constrained charters given by legislatures to serve a public purpose (at least ostensibly—although sometimes there was corruption). "Beginning in 1891, New Jersey enacted a series of laws that effectively relinquished its ability to regulate and control corporations through charters…. As a result…a stampede of large companies reincorporated in New Jersey. By 1900, 95 percent of the nation's major corporations were chartered in New Jersey…. When New Jersey finally attempted to revoke some of the privileges of its corporations in 1913 to stop the decline it had caused, it was already too late. Many companies simply moved to Delaware, which in 1899 had adopted

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(Financial Services Modernization Act of 1999), Pub. L. No. 106-102, 113 Stat. 1338 (codified in scattered sections of 12 & 15 U.S.C.); Commodity Futures Modernization Act of 2000, Pub. L. No. 106-554, app. E, 114 Stat. 2763A-365 (codified in scattered sections of 7 & 15 U.S.C.); Jumpstart Our Business Startups Act of 2012, Pub. L. No. 112-106, 126 Stat. 306 (codified in scattered sections of 15 U.S.C.).

[190] Mark Glick, "Antitrust and Economic History: The Historic Failure of the Chicago School of Antitrust," 64 Antitrust Bull. 295 (2019).

[191] Cory Doctorow, ENSHITTIFICATION: WHY EVERYTHING SUDDENLY GOT WORSE AND WHAT TO DO ABOUT IT, Farrar, Straus and Giroux (2025).

[192] Jonathan Teper and Denise Hearn, THE MYTH OF CAPITALISM: MONOPOLIES AND THE DEATH OF COMPETITION, Wiley (2019) at 127–128.

[193] Thomas Philippon, "Has the U.S. Finance Industry Become Less Efficient? On the Theory and Measurement of Financial Intermediation," NBER, (2012) at 8; Gerard Duménil and Dominique Lévy, THE CRISIS OF NEOLIBERALISM, Harvard University Press (date) at 67.

an even more permissive law than New Jersey…."[194] "In less than a decade, the corporate law of one state would thoroughly transform the United States economy 'from a reasonably competitive to an oligopolistic structure.'"[195] Then in 1919, "a seminal case in corporate law, *Dodge v. Ford Motor Co.*, set the cardinal principle that a corporation must serve the interests of shareholders rather than the interests of its employees, customers, or the community."[196] It took a while for this idea to become universal; in 1950, "George W. Merck gave a talk at the Medical College of Virginia at Richmond, during which he made a famous statement about how the medical and pharmaceutical community could be successful: '…We try never to forget that medicine is for the people. It is not for the profits. The profits follow, and if we have remembered that, they have never failed to appear.'"[197] In 1970, when Milton Friedman published his famous essay asserting that "[t]here is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game,"[198] he was strongly opposed by a committee of CEO's and key executives of large U.S. companies.[199] But in 1976, Michael C. Jensen and William H. Meckling published perhaps the most widely-cited paper in scholarly business literature, "Theory of the Firm," which was widely interpreted as endorsing shareholder value as the firm's sole concern (that is, the primary goal of a corporation is to benefit the shareholders, even if it harms other stakeholders). In 1985, the Delaware courts followed suit in *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.* by legally requiring corporations in some situations to behave according to the shareholder value theory.[200] This eliminated almost all opposition in

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[194] Charlie Cray and Lee Drutman, "Corporations and the Public Purpose: Restoring the Balance", 4 Seattle Journal for Social Justice 305, 314–316.

[195] Id. at 315, partially quoting Ralph Nader, Mark Green, & Joel Seligman, TAMING THE GIANT CORPORATION, Norton (1976), 47.

[196] Young-Shik Lee, "Reconciling Corporate Interests with Broader Social Interests—Pursuit of Corporate Interests Beyond Shareholder Primacy," 14 William & Mary Business Law Review, Article 2 at 5.

[197] https://www.merck.com/company-overview/history/, "1950."

[198] Milton Friedman, "A Friedman doctrine—The Social Responsibility of Business is to Increase Its Profits," New York Times Magazine (1970).

[199] Committee for Economic Development (1971), *Social Responsibilities of Business Corporations*. New York: Committee for Economic Development. This committee eventually merged in 2015 with a large-business organization called The Conference Board; see https://www.conference-board.org/north-america/committee-economic-development. See also Alexander A. Kangas, "The Collective Action Problem of Capitalists and the Relative Autonomy of the State." Ph.D. dissertation, Department of Economics, University of Utah (2015).

[200] For a rejection of Shareholder Value theory, see W. Lazonick and M. O'Sullivan (2000), "Maximizing Shareholder Value: A New Ideology for Corporate Governance," Economy and Society, 29(1), 13–35, https://doi.org/10.1080/030851400360541; William Lazonick, (2017). The Functions of the Stock Market and the Fallacies of Shareholder Value. SSRN Electronic Journal. 10.2139/ssrn.2993978; and, notably, the 2019 statement of the Business Roundtable, a group of nearly 200 top CEOs, repudiating the Shareholder Value theory: https://opportunity.businessroundtable.org/ourcommitment and David Gelles and David Yaffe-Bellany, "Shareholder Value Is No Longer Everything, Top C.E.O.s Say," New York Times (August 19, 2019), https://www.nytimes.com/2019/08/19/business/business-roundtable-ceos-corporations.html.

the business world to the shareholder value theory. Almost all: Michael C. Jensen, who went on to hold an endowed professorship at Harvard and who was the co-founder and for many years the editor of the world-renowned *Journal of Financial Economics,* gave an interview to journalist Scott Tong in 2016:[201]

> "Has it happened the way I wanted it to happen? Eh, probably not," Jensen said. "There's always going to be some people who take it too far. And then cause damage."
>
> Jensen said focusing solely on stocks and stockholders is a "misreading" of his scholarship. He wrote in 1990 that CEOs should "do what's in the shareholders' best interests."
>
> "I wouldn't put shareholders at the center," he said. "I'm still unhappy about the situation where people end up thinking that shareholders are primary. That they are our only bosses. No."

Tong explains:[202]

> "There is a widespread and completely erroneous belief out there that there is some sort of legal duty that corporate managers have to 'maximize profits' or 'maximize shareholder value,'" said Cornell law professor Lynn Stout, author of "The Shareholder Value Myth." In Stout's view, the misplaced assumption comes from an old case [*Dodge v. Ford*] that cites stockholders' interests. That case did not set legal precedent, she said, compared to a more recent case.
>
> "You can just pick up the Supreme Court case 'Hobby Lobby' decided just a few years ago," she said. "Read the majority opinion, where Justice Alito says, and I quote 'modern corporate law does not require for-profit corporations to pursue profit at the expense of everything else.'"
>
> By contrast, Delaware Chancery Court Judge Leo Strine, now chief justice of the state Supreme Court, wrote in the Wake Forest Law Review: "Corporate law requires directors, as a matter of their duty of loyalty, to pursue a good faith strategy to maximize profits for the stockholders." The debate goes on.

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[201] Scott Tong, "This is how Shareholders got to be First in Line for Profits," Business Insider (2016). Available at https://web.archive.org/web/20160615113035/https://www.businessinsider.com/the-story-of-shareholder-value-2016-6.

[202] Id. See also Lynn A. Stout, "The Problem of Corporate Purpose," Issues in Governance Studies, Number 48, Brookings Institution (June 2012), https://www.brookings.edu/wp-content/uploads/2016/06/Stout_Corporate-Issues.pdf; and Leo E. Strine Jr., "Our Continuing Struggle with the Idea That For-Profit Corporations Seek Profit," 47 Wake Forest Law Review 135 (2012).

> Still, Stout argues that maximizing shareholder value has become the dominant corporate practice. In her view, corporations' efforts to maximize profits led directly to scandals including Enron, the BP oil spill and the 2007–08 financial crisis.

In terms of concrete policies, the decision of the Delaware courts led to decisions that removed obstacles by management to hostile takeovers. In addition, the Securities and Exchange Commission (SEC) revised rule 10b-18 in 1982, allowing corporations to repurchase their stock in an effort to boost their share prices. Corporate executive compensation has increasingly been based on stock options and gains from the vesting of stock awards. In 2013, approximately 84 percent of the compensation of the 500 highest paid executives in one major database of executive compensation were from gains from exercising stock options.[203] Bill Lazonick shows that, when dividends and stock buybacks are combined, little profit is left for reinvestment, which has reduced innovation. In addition, few lower income people own significant amounts of shares. The top 10% of income earners own 93% of stocks in the United States.[204] Lazonick summarized his findings as follows:

> Stock buybacks are an important part of the explanation for both the concentration of income among the richest households and the disappearance of middle-class employment opportunities in the United States over the past three decades. Over that period the resource-allocation regime at many, if not most, major U.S. business corporations has transitioned from 'retain-and-reinvest' to 'downsize-and-distribute.' Under retain-and-reinvest, the corporation retains earnings and reinvests them in the productive capabilities embodied in its labor force. Under downsize-and-distribute, the corporation lays off experienced, and often more expensive, workers, and distributes corporate cash to shareholders. My research suggests that, with its downsize-and-distribute resource allocation regimes, the 'buyback corporation' is in large part responsible for a national economy characterized by income inequity, employment instability, and diminished innovative capability.…[205]

The neoliberal strengthening of the intellectual property laws has also affected distribution. In 1982, Congress established the Federal Circuit and gave it exclusive jurisdiction over intellectual property cases. The Federal Circuit expanded the use of patents into new areas, and

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[203] William Lazonick, "Stock Buybacks: From retain and reinvest to downsize and distribute," Brookings, April 2015 at 8.

[204] Jennifer Sor, "The Wealthiest 10% of Americans Own 93% of Stocks even with Market Participation at a Record High," Business Insider, January 10, 2024.

[205] William Lazonick, "Stock Buybacks: From retain and reinvest to downsize and distribute," Brookings, April 2015 at 2.

it upheld the validity of questionable patents far more than was previously the case.[206] It also made challenges to patent holders and attempts to impose mandatory licensing more difficult. According to Michele Boldrin and David Levine, in 1983 in the United States, 59,715 patents were issued; by 2003, 89,587 patents were issued; and in 2010, 244,341 new patents were approved. "In less than 30 years, the flow of patents more than quadrupled."[207] Boldrin and Levine reviewed the academic studies and concluded that the evidence does not support "much of a connection between patents and innovation."[208] James Bessen and Michael Meurer reviewed a large body of empirical work by economists who studied the impact of patents. They report few studies that show patents increase innovation or growth in any significant, economy-wide manner.[209] Instead, lower standards for patenting resulted in patent arms races that increase innovation costs and create barriers to entry for firms seeking to challenge powerful incumbents, but do little to incentivize innovation.[210] In his book "The Market Power of Technology: Understanding the Second Gilded Age," economist Mordecai Kurz argues that tech companies such as Google create market power by first creating an innovation such as a new search engine, but then they preserve this market power far beyond what is socially optimal by, among other methods, patenting small/marginal improvements and by acquiring potential competitors. These strategies are made possible by inappropriate intellectual property laws and jurisprudence, and weakened antitrust enforcement.

At the same time that patent jurisprudence was changing, copyright laws were also changed to allow powerful corporations to prevent competitive challenges. For example, Section 1201 of the Digital Millennium Copyright Act ("DMCA") in 1998 allowed corporations to use smart chips to prevent consumers from repairing or altering equipment (e.g., John Deere agricultural machinery), accessing data, pairing parts or devices from third parties, or refurbishing devices.

Finally, legal changes can influence distribution by omission rather than by affirmative activity. For example, in her book "The Code: Silicon Valley and the Remaking of America," Margaret O'Mara shows that many Silicon Valley companies were based on government-funded technology, such as the internet, which was a product of the Defense Advanced Research Projects Agency (DARPA). They were also based on military contracts, government labs, and

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[206] Jonathan Masur, "Patent Inflation," 121 The Yale Law Journal 470 at 470 (abstract); Eli Dourado, "The Number of Patents Has Exploded Since 1982, and One Court Is to Blame," The Mercatus Center, George Mason University, March 22, 2016, https://www.mercatus.org/research/data-visualizations/number-patents-has-exploded-1982-and-one-court-blame; Matthew Henry and John Turner, "The Court of Appeals for the Federal Circuit's Impact on Patent Litigation," 35 J. of Legal Studies 85 (2006).

[207] Michele Boldrin and David Levine, "The Case Against Patents," 27 J. of Econ Persp. 3 (2013).

[208] Id. at 5

[209] James Bessen & Michael Meurer, PATENT FAILURE: HOW JUDGES, BUREAUCRATS, AND LAWYERS PUT INNOVATION AT RISK, Princeton (2008). See also, A.B. Jaffe and J. Lerner, INNOVATION AND ITS DISCONTENTS: HOW OUR BROKEN PATENT SYSTEM IS ENDANGERING INNOVATION AND PROGRESS, AND WHAT TO DO ABOUT IT, Princeton (2004).

[210] Michele Boldrin and David Levine, "The Case Against Patents," 27 J. of Econ Persp. 9 (2013).

educational institutions such as Stanford University, which themselves used government funding to engage in research useful to the private sector.[211] Mariana Mazzucato, in her book "The Entrepreneurial State: Debunking Public v. Private Sector Myths," shows that "nearly every state-of-the-art technology found in the iPod, iPhone and iPad is an often overlooked and ignored achievement of the research efforts and funding support of the government and military."[212] There was no imperative that the government give away for free technology that was funded by the taxpayers, let alone allow these companies to become monopolies. Other options could have been implemented, such as license agreements, regulatory agreements, or agreements that require sharing of the profits with employees.

Similarly, trade policy has contributed to inequality. Trade policy and globalization have resulted in substantial manufacturing job losses (justified by flawed economic theory, as discussed above in Section II.C.4). Manufacturing is one of the few sectors where non-college-degree-holding males could earn a good living. The job losses cut across several sectors including high tech, computer parts, electronics, and durable goods manufacturing. Between 2001 and 2018, the Economic Policy Institute estimates that the U.S. lost 1,132,500 jobs to Chinese imports but only gained 175,800 jobs to exporting industries to China.[213] Losses in particular regions can have outsized impact on small towns and cities. Lori Kletzer analyzed the U.S. policy response to trade-induced job losses and found it to be woefully inadequate.[214] In response to the impact on distribution arising from the opening markets to China, a response that provided compensation, training, and deployment would have been possible, but it was not undertaken.

Trade policy also contributed to protections that favored multi-national corporations. As Stiglitz points out,[215] trade agreements such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) strongly favored intellectual property protections at the cost of developing countries, particularly in the realm of medicines. In addition, forcing rapid liberalization advantages multi-national corporations, forcing limitations on local protection of resources and labor.

The neoliberal revolution's legal and regulatory changes biased market outcomes to favor high incomes and unequal income distribution. The top 1% of income earners represented about

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[211] Margaret O'Mara, THE CODE SILICON VALLEY AND THE REMAKING OF AMERICA, Penguin (2020).
[212] Mariana Mazzucato, THE ENTREPRENEURIAL STATE: DEBUNKING PUBLIC VS. PRIVATE SECTOR MYTHS, Anthem (2014) at 88.
[213] Robert Scott and Zane Mokhiber, "Growing China Trade Deficit Cost 3.7 Million American Jobs Between 2001 and 2018," EPI (Jan. 30, 2020).
[214] Lori Kletzer, JOB LOSS FROM IMPORTS: MEASURING THE COSTS, Peterson Inst. Intl. Econ. (2001).
[215] See generally Joseph Stiglitz, GLOBALIZATION AND ITS DISCONTENTS, Norton (2002).

10% of all income from 1947 to 1973. That percentage is now approximately 21%.[216] Were the equity-efficiency tradeoff to hold, this greater inequality should have resulted in stronger economic performance; but it did not. Productivity growth fell from 2.5% from 1947–1979 to 1.4% for the period 1979–2025.[217] Growth in compensation fell from 2.1% from 1948 to 1979 to 0.6% from 1979 to 2025. Finally, the annual growth of real GDP fell from 3.88% during the period 1947–1973 to 2.68% for the period 1980–2024. The increase in inequality did not benefit economic performance.

Another result of the growth of inequality is that U.S. economic mobility has become lower than in almost all developed European countries.[218] According to research by Chetty, U.S. absolute mobility (defined as children that earn more than their parents) has declined significantly in recent decades:

> We found that rates of absolute mobility have fallen from approximately 90% for children born in 1940 to 50% for children born in the 1980s. Increasing Gross Domestic Product (GDP) growth rates alone cannot restore absolute mobility to the rates experienced by children born in the 1940s. However, distributing current GDP growth more equally across income groups as in the 1940 birth cohort would reverse more than 70% of the decline in mobility.[219]

The lack of mobility is likely not a result of deficiency in effort. As reported by Rank et al., one problem is that 40% of all jobs in the United States (in 2018) were low-paying jobs, "that is, jobs paying less than $16 an hour."[220] In addition, the majority of people below the poverty level either work or have worked in the past. Most of the non-working poor are either disabled, in school, or retired.[221] Some of them, while classified as "non-working," actually do

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[216] World Inequality Database, 2024 data. https://wid.world/data/#countrytimeseries/sptinc_p0p50_992_j;sptinc_p99p100_992_j;sptinc_p99p100_z/US/1820/2024/eu/k/p/yearly/s.

[217] EPI, "The Productivity Pay Gap," September 3, 2025.

[218] Id. at 130.

[219] Raj Chetty, David Grusky, Maximilian Hell, Nathaniel Henderson, Robert Manduca, and Jimmy Naring, "The Fading American Dream: Trends in Absolute Mobility Since 1940," 356 Science 398 (2017).

[220] Mark Rank, Lawrence Eppard, and Heather Bullock, POORLY Understood: What America Gets Wrong About Poverty, Oxford (2021) at 50.

[221] Id. at 57. From this source, 35.3% of those in poverty between the ages of 18 and 64 were not eligible for work because they were disabled, in school, or retired. Of the other 64.7%, "nearly two-thirds were indeed working and employed"; two-thirds of 64.7% is 43.133%. Hence of the 64.7% eligible for work, those who are not working (for pay—some are doing non-market socially reproductive domestic labor) are 64.7% - 43.133% = 21.567% of the total of those in poverty. Accordingly, the percent of non-working poor is approximately 35.3% + 21.6% = 56.9%, of whom 35.3% were not eligible for work; and 35.3/56.9 = 0.62 > 0.5, confirming our claim of "most" in the text.

economically vital unpaid work taking care of children, elderly family members, or other members of the household.

The role of political rhetoric in creating and maintaining inequality should not be underestimated. Demonizing the poor, as for example Ronald Reagan did by popularizing the stereotype of the "welfare queen" who was on public assistance while driving a Cadillac, leads people into the "fundamental attribution error" discussed by psychologist and neuroscientist Keith Payne in his book, "The Broken Ladder: How Inequality Affects the Way We Think, Live, and Die." Payne describes the evolutionary research across species and experimental data that shows that people under stress and danger will reproduce at a younger age, take more risks, fail to plan for the future, and seek immediate gratification. In humans these behaviors are associated with poverty. Payne summarizes that: "These experiments suggest that any average person, thrust into these different situations, will start behaving differently."[222] So the fundamental attribution error is that observers reverse the causation and believe that poverty is due to people with these traits, when in fact the traits are the result of poverty, not the cause.[223]

The U.S. system of economics education and U.S. economic scholarship has also played a role in convincing the public and decision-makers that moves towards egalitarianism would be dangerous and should be avoided; we discuss this next.

3. The Indispensable Role of the Economics Profession in Undermining Equality

As detailed in Sections I.C and I.D, well-being studies have shown that associating growth with welfare, independent of distribution, is completely flawed. Most economists' work does not reflect this reality. Economists largely limit their analysis to models in which problems of distribution are assumed, *a priori*, not to exist, or to be outside the scope of the investigation.

For example, in the leading graduate textbook in microeconomics, the only context in which welfare (other than Pareto improvements) is studied is a context in which the following assumption is made: "there is some central authority who redistributes wealth by means of transfers of the numéraire commodity in order to maximize social welfare."[224] In other words, equality is assumed in the background, allowing actual policy measures to be assessed merely on the basis of greater social surplus.

For another example, in standard economics, the justification for using social surplus as the criterion by which to judge policies, and the foundation of Cost-Benefit Analysis, is the Potential Pareto criterion, which we discussed in Section I.B. There, we explained that

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[222] Id. at 79.

[223] Keith Payne, THE BROKEN LADDER: How Inequality Affects the Way we Think, Live and Die, Weidenfield & Nicolson, (2017) at 60-79

[224] Andreu Mas-Colell, Michael D. Whinston, and Jerry R. Green (1995), MICROECONOMIC THEORY. New York: Oxford University Press at 328.

application of that criterion can result in endorsing policies that hurt (i.e., make less well off) some people, and that the people more likely to be hurt are poor rather than wealthy. Both those characteristics are problematic, but the second one is particularly bad from the viewpoint of equality, because it suggests that each successive Cost-Benefit decision tends to make equality worse and worse. The Potential Pareto criterion is also called the Kaldor-Hicks criterion. However, the Kaldor Criterion is different from the Hicks Criterion; the reader curious as to how the Kaldor and Hicks criteria (plural) can be the same as the Potential Pareto criterion (singular), can learn about this flaw (as well as others—reversal paradoxes, the Boadway Paradox, the Paradox of the Non-Neutral Numéraire) by referring to our papers listed in *supra* note 144.

Worse yet, the many undergraduate economics textbooks that train hundreds of thousands of economics students each year never mention that consumer surplus and cost-benefit analysis have any of the flaws mentioned in the previous two paragraphs. At the undergraduate level, the equality/efficiency tradeoff myth (which we debunked in Section I.D) is taught as gospel, and the problem of distribution is simply ignored. At the graduate level, the objective of textbook authors seems to be to minimize the number of times distribution is mentioned subject only to the constraint that the textbook's theorems have to be mathematically correct, meaning that the absurd unreality of the assumptions necessary to justify ignoring distribution (assumptions of quasilinear utility, as well as of the existence of the distribution-optimizing central authority) is never acknowledged, let alone criticized. The only subdiscipline of economics that has not shied away from questions of distribution, namely "welfare economics," has concluded that distribution is important and that consumer surplus and output are flawed measures of welfare, but this subdiscipline is shunned by textbook authors (lest students find out that distribution is important), barely taught in its own right anymore, and is increasingly marginalized in the profession. Amartya Sen may have been given the Nobel Prize in Economics—by an exclusively Swedish prize committee one might add—but his work will be unknown to the vast majority of economics students in the U.S., the country that produces the most economics scholarly research and economics textbooks.[225] The same is unfortunately true

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[225] We are not suggesting that any work is without criticism. Sen's work, for example, has been criticized as under-theorizing power, dependency, care work, and structural domination. Critics suggest Sen's approach risks abstraction from lived gendered inequality and is vulnerable to neoliberal co-optation unless grounded in institutional and political-economic analysis. Educational opportunity, for example, is different for a brilliant daughter culturally expected to care for her parents as they age, compared to a brilliant son who is free to pursue graduate study and employment in a different country, even if public policy does not discriminate between the two of them. See generally Susan Moller Okin, JUSTICE, GENDER, AND THE FAMILY (1989); Nancy Fraser, "After the Family Wage: Gender Equity and the Welfare State," 22 Pol. Theory 591 (1994); Eva Feder Kittay, LOVE'S LABOR: ESSAYS ON WOMEN, EQUALITY, AND DEPENDENCY (1999); Martha C. Nussbaum, "Women and Equality: The Capabilities Approach," 85 Int'l Lab. Rev. 1 (1997); Nancy Fraser, "Feminism, Capitalism and the Cunning of History," New Left Rev., Mar.–Apr. 2013, at 97; Ingrid Robeyns, "The Capability Approach: A Theoretical Survey," 6 J. Hum. Dev. 93 (2005); Alison M. Jaggar, "Reasoning About Well-Being: Nussbaum's Methods of Justifying the Capabilities," 14 J. Pol. Phil. 301 (2006); Serene J. Khader, ADAPTIVE PREFERENCES AND WOMEN'S EMPOWERMENT (2011).

of the admirable book on inequality by another Economics Nobel laureate, Joseph Stiglitz (*supra* note 113).

Stiglitz, Sen and the welfare economists are not the only economists concerned with equality—one can mention the economists who work on intergenerational income mobility, such as Raj Chetty and Steven Durlauf and their coauthors. For the most part, though, economists avoid discussing distribution, and it is difficult to escape the cynical conclusion that they avoid it because, if they were to discuss it, they would risk losing the political, institutional, and financial support of the wealthy classes and the governments those classes at least partially control. As a result, the analysis and policy prescriptions of the economics profession have become largely ideological in nature, meant to support a particular group or class interest, rather than being purely the result of objective scientific investigation. Constructed in this ideological way, economics (unfortunately in our view) has been enormously successful in aiding the adoption of public policies that increase the welfare of the upper classes and, correspondingly, decrease social welfare. This phenomenon is nicely laid out in Elizabeth Popp Berman's book "Thinking Like an Economist: How Efficiency Replaced Equality in U.S. Public Policy," which describes how economists influenced policy changes beginning in the late 1970s aimed at sidelining concerns about equality and focusing attention on achieving the most output at the least cost (that is, at the lowest wages possible), without regard to distribution.[226] Thusly, economics education serves big corporations and the wealthy classes as their gigantic factory, each year producing, not material goods, but something much more valuable: scores of future economists, lawyers, judges, and voters who have been brainwashed into believing that distribution does not affect social welfare, as an objective fact.

That is not all. Coupled with the assumption that the only thing consumers care about is their own consumption, standard economics adopts, and more importantly teaches, the shareholder value idea that the only thing firms care about is their own profit. That was not historically true; it is not true now of Certified B Corporations; it is not true in large German firms, where firms are legally required under laws like the Codetermination Act ("*Mitbestimmungsgesetz* 1976") to have workers participate in company management; and it need not be true. But economics students are not taught that.

Those are the errors and oversights of microeconomics. Most of macroeconomics immediately starts by assuming that GDP growth (growth of output, treated in Section II.A) is always good, and that the only problem is how to get more of it. All of that, in our view, needs a wholesale rethinking.

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[226] Elizabeth Popp Berman, THINKING LIKE AN ECONOMIST: HOW EFFICIENCY REPLACED EQUALITY IN U.S. PUBLIC POLICY, Princeton (2022).

Where can one turn for an example of an alternative paradigm where equality is valued, even at the expense of other goals?

B. Culture and Equality in the Nordic Countries

The Nordic countries rank very highly in both subjective and objective measures of well-being: why? Certainly, it is their public policies; but what has led them to adopt such policies? Consider that in those countries, there is a wide cultural understanding, known as the Law of Jante, that striving to be better than other people is socially unacceptable.[227] Psychologist Lindsay Dupuis explains,[228] "If you're consistently told that you're no better or any worse than anyone else, then you're essentially being told that you're a very average person. You'll probably set your sights on living a very average life. With such a mentality, you're likely to be quite content when life hands you very average things…. Compare this to the United States, where people are raised to shoot for the stars…. With expectations set so high, the attainment of anything less is viewed as nothing short of a disappointment, and depression soon sets in. Interestingly, in 2014, neuroscientist Robb Rutledge and colleagues of University College in London put this theory of expectations and happiness to the test and determined that happiness is, indeed, relative to how well we're doing compared to how we expect we should be doing (Rutledge, Skandali, Dayan & Dolan, 2014)." In short, the Nordic social code condemns feelings of superiority. This engenders egalitarianism, also in public policy. Egalitarianism enhances well-being. This causal chain looks quite plausible.[229]

C. Envisioning a More Equal United States

Achieving a more equal United States in the twenty-first century will no doubt require important structural changes. In addition, while it may not require cultural changes sufficient to make American culture become a copy of Nordic culture, it may be facilitated by cultural shifts in, for example, the general perception of the moral worth of poor people, and by abandoning false economic beliefs such as that there is a significant tradeoff between equality and efficiency.

A more equal United States in the twenty-first century would not look exactly like the United States of the 1950s. We hope it would look even better, and would like to suggest what it

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[227] Rebecca Thandi Norman, "What is Janteloven?", Scandinavia Standard, 2018. https://www.scandinaviastandard.com/what-is-janteloven-the-law-of-jante/

[228] Lindsay Dupuis, "To Be Average is To Be Happy: A Lesson from the Danes." Psych Central blog, 2016. http://psychcentral.com/blog/archives/2016/09/27/to-be-average-is-to-be-happy-a-lesson-from-the-danes/

[229] There are other cultural traditions condemning feelings of superiority, such as the Greek legend of Icarus, and even the story of the Fall coming after the original sin in the Hebrew Bible, which resulted from ambition: deciding to eat from the Tree of the Knowledge of Good and Evil. For critiques of inequality from the standpoint of several religions see Glick et al., Houston Business and Tax Law Journal, *supra* note 144, 71 and footnotes 148, 149.

would look like in some aspects.[230] It will require an effort and restructuring comparable to that implemented in the New Deal. In particular, the public policies adopted must facilitate efforts to achieve for each individual, regardless of race or gender, social success and a good fit between the individual and their employment (without guaranteeing everyone their "dream job").[231] The social goal would be to provide everyone sufficient capabilities in order to achieve equality of opportunity to obtain successful outcomes. This goal is shared by the vast majority of Americans, who believe that every American should have an equal opportunity to improve their economic standing.[232]

Among the specific policies geared towards giving everyone equal opportunity for success are policies enhancing educational equality in the particular sense that those who have greater educational needs receive greater resources, so that the competition for social positions is equalized.[233] Universal access to healthcare would be critical to equality of opportunity. Also critical would be the elimination of all employment discrimination, appropriate minimum wages, and job programs that allow structurally unemployed people to participate in work and on the job training.[234] Another aspect would be election finance reform, so that people have an equal influence on political decisions.

Neither we nor the political philosophers of Section I.B are advocating a two-class society where, as Tim Wu describes it,[235] society has divided into owners and managers of monopolies, and a class of dependent employees or unemployed that receive generous transfer payments. This might eliminate freedom from poverty, but it is indifferent to autonomy and control over one's ability to produce, to achieve success in meaningful work, and to share equally in political power.

At the other end of the spectrum, the advantages of the wealthy elite have to be dampened, even though such changes will create political opposition. New policies are needed to reverse the numerous subtle legal measures, discussed in Section III.A.2, that have undermined unions and concentrated wealth in the hands of a minority of the population, subverting equality. These laws and rulings should be reversed by restoring progressive taxes, reviving effective

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[230] I. Robeyns, "The Capability Approach in Practice," 14 J. of Pol. Phil. 351 (2006).
[231] Joan Williams, OUTCLASSED: HOW THE LEFT LOST THE WORKING CLASS AND HOW TO WIN THEM BACK, St. Martins (2025).
[232] Mark Rank, Lawrence Eppard, and Heather Bullock, POORLY UNDERSTOOD: WHAT AMERICA GETS WRONG ABOUT POVERTY, Oxford (2021) at 149.
[233] Maryann Dalkilic and Jennifer Vadeboncoeur, "Reframing Inclusive Education Through the Capability Approach: An Elaboration of the Model of Relational Inclusion," 3 Global Ed. Dev. 122 (2016).
[234] Mark Paul, William Darity, and Darrick Hamilton, "The Federal Job Guarantee – A Policy to Achieve Permanent Full Employment," Center on Budget and Policy Priorities, March 9, 2018; Eric Tymoigne, "Job Guarantee and Its Critiques: Insights from the New Deal Experience," 42 Int. J. of Pol. Econ. 63 (2013).
[235] Tim Wu, THE AGE OF EXTRACTION: HOW TECH PLATFORMS CONQUERED THE ECONOMY AND THREATEN OUR FUTURE PROSPERITY. Alfred Knopf (2025) at 154–156.

antitrust enforcement, and revising intellectual property laws.[236] New policies would also include restoration of financial regulation, reversal of the laws implementing the shareholder value theory in corporate law,[237] campaign finance reform, and restrictions on regulatory capture.

IV. Conclusion

The human species evolved in egalitarian societies, and full human flourishing is only possible when humans live in a society that has some resemblance to the kind of society humans are evolutionarily adapted to. The compatibility between humans and egalitarianism, arising from humans' evolutionary history as uncovered by biologists and anthropologists, is supported by many modern moral and political philosophers, which is just what an anthropologist would predict, since philosophers are humans too. Sociologists and epidemiologists overwhelmingly find that greater equality improves average objective measures of well-being (and sometimes even the well-being of almost everyone), and greater inequality exacerbates social problems of many kinds.

The case for adopting a social goal that is indifferent to distribution, such as GDP per capita or social surplus, is weaker than the case for adopting equality as a goal (at least in rich countries). Unfortunately, the social science that looks most favorably on ignoring distribution is economics. There are exceptions: some prominent economists, such as Amartya Sen and Joseph Stiglitz, have written about the importance of distribution and egalitarianism; some economists are experts in welfare economics, and put questions of distribution at the center of their research; and some economists are doing the valuable work of determining whether equality of opportunity leads to equality of results or vice versa. Most economists, though, ignore distribution, certainly in their pedagogy. However, the economic arguments in favor of ignoring distribution are based on outdated and inadequate nineteenth century ideas about what humans care about. Because the extent of equality in a free-market economy is determined overwhelmingly by public policy rather than any iron laws of the marketplace, supporting the words of Keynes that the world is ruled by little other than the ideas of economists and political philosophers,[238] correcting the errors in economists' perceptions of human nature is a critical

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[236] Tomas Rotta, "Intellectual Monopoly and Income Inequality in the United States, 1948-2021: A Long-run Analysis", 57 Rev. of Rad. Econ. 826 (2025).

[237] William Lazonick, "The Theory of Innovative Enterprise," 24 Industrial and Corporate Change 1 (2015).

[238] John Maynard Keynes, The General Theory of Employment, Interest, and Money. Harcourt Brace Jovanovich 1953, 383: "The ideas of economists and political philosophers, both when they are right and when they are wrong, are more powerful than is commonly understood. Indeed, the world is ruled by little else. Practical men, who believe themselves to be quite exempt from any intellectual influences, are usually the slaves of some defunct economist. Madmen in authority, who hear voices in the air, are distilling their frenzy from some academic scribbler of a few years back. I am sure that the power of vested interests is vastly exaggerated compared with the gradual encroachment of ideas. Not, indeed immediately, but after a certain interval; for in the field of economic and political philosophy there are not many who are influenced by new theories after they are twenty-five or thirty

step toward making a more equal society possible. Correcting the errors in economists' conceptions of what can motivate firms would also help, as would rejecting the "growth is good" bedrock foundation of macroeconomics. Better economics can lead to a better world; the outdated economics of the present will not.

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years of age, so that the ideas which civil servants and politicians and even agitators apply to current events are not likely to be the newest. But, soon or late, it is ideas, not vested interests, which are dangerous for good or evil."