

ECONOMIC EQUALITY IS AN IMMORAL IDEAL

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Capitalism (political and economic freedom) causes economic inequality.¹ Indeed, in most pre-capitalist countries in the world today, there is less inequality than there is in the United States,² despite the United States's ranking among the "most-free" countries in terms of economic freedom.³ But all of these pre-capitalist countries are dirt-poor.⁴ 350 years ago, the pre-capitalist West was also dirt-poor.⁵ There was equality—equality of poverty.⁶ One of capitalism's great virtues is the fact that it has created inequality.⁷

What does that mean? It means that capitalism has allowed the creators of wealth to keep it. Capitalism has rewarded individuals

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1. See, e.g., Trina Jones, *Race, Economic Class, and Employment Opportunity*, 72 LAW & CONTEMP. PROBS. 57, 57–58 (2009) (describing inequality in the U.S.).

2. See *Adam Smith & The Case for Inclusive Capitalism*, 9 NO. 6 SEC. LITIG. REP. 15 (2012).

3. JAMES GWARTNEY, ROBERT LAWSON & JOSHUA HALL, REPORT, ECONOMIC FREEDOM OF THE WORLD: 2016 ANNUAL REPORT 8–9 (2016), <http://www.freetheworld.com/2016/economic-freedom-of-the-world-2016.pdf> (defining "most-free" as countries in the top quartile of economic freedom for 2014, the most recent year of data). The United States ranked 16th of 159 countries, ahead of many other major countries including Germany (30th), Japan (tied-40th), France (tied-57th), Italy (69th), Russia (tied-102nd), India (112th), China (tied-113th) and Brazil (124th). *Id.*

4. CENT. INTELLIGENCE AGENCY, WORLD FACT BOOK, POPULATION BELOW POVERTY LINE (2015) [hereinafter CIA FACT BOOK] (using percentage of population below the poverty line as a proxy for measuring a country's wealth).

5. Max Roser, *GDP Growth Over the Last Centuries*, OUR WORLD IN DATA (2016), <https://ourworldindata.org/gdp-growth-over-the-last-centuries/> [<https://perma.cc/7SYD-33T9>].

6. See *id.* (displaying all countries or regions as nearly equally impoverished).

7. See generally DON WATKINS & YARON BROOK, EQUAL IS UNFAIR: AMERICA'S MISGUIDED FIGHT AGAINST INCOME INEQUALITY (2016).

based on their level of productivity.⁸ The more productive you are, the more you make; the less productive you are, the less you make. This is supply and demand and market forces at work. Capitalism in its pure form, in a free market—setting cronyism aside—is a system of earned inequality.

When we look across the world both historically and geographically, countries that adopt capitalism and free markets are more likely to flourish economically and socially.⁹ The rich get fabulously rich, and the poor just get rich—rich relative to where they were before.¹⁰ Just ask any middle-class Chinese person or Indian person or Taiwanese person. They are rich, relative to the previous generation or relative to where they themselves were just a few years earlier. And given the speed at which this economic transformation is happening on a global scale, projections for continued wealth creation and accumulation continue to be positive.¹¹

So, yes, capitalism creates inequality.¹² But inequality is good. Members of society have different skills, roles, and outcomes, and that's okay. The fact that there are people who are much smarter than I am, who have the ability to create beautiful things like the iPhone and sell them to billions of people, is wonderful. All of us benefit from that. And if these people make billions of dollars, that's a good thing, because that's part of the incentive to make and market the product.

Every time you buy a product like the iPhone, are you better or worse off? Consider J.K. Rowling. She is one of those individuals responsible for inequality in the last 20 years. Every time you bought one of the Harry Potter books, you added to inequality. Scholastic took twenty-five dollars from you for the

8. See WATKINS & BROOK, *supra* note 7, at 59-66, 145-48.

9. TERRY MILLER & ANTHONY B. KIM, *ECONOMIC FREEDOM: THE PROVEN PATH TO PROSPERITY IN INDEX OF ECONOMIC FREEDOM* (2016), available at <http://www.heritage.org/index/book/chapter-1> [<https://perma.cc/7XAJ-FAG8>].

10. See, e.g., CIA FACT BOOK, *supra* note 4.

11. See generally John D. Giorciari, *India's approach to great-power status*, FLETCHER F. WORLD AFF., Winter 2011, at 61; Frank Holmes, *How China went from communist to capitalist*, BUS. INSIDER (Oct. 10, 2015 10:06 AM), <http://www.businessinsider.com/how-china-went-from-communist-to-capitalist-2015-10> [<https://perma.cc/XRK9-E8MX>].

12. See Adam Smith, *supra* note 2.

book, giving a fifth of your payment to J.K. Rowling. She became a billionaire. You became twenty-five dollars poorer.

But why is there any problem with this scenario? You are better off because you get the spiritual value of reading Harry Potter—at the very least you expect you will—and Rowling got monetary compensation. As a result, she became a billionaire, and that’s a good thing, not a bad thing. After all, you are both better off. That is the beauty of markets. That is the beauty of capitalism. Yes, capitalism creates wealth inequality, but so what? If the transactions are win-win, as voluntary trade is, we are all better off.

Now, there are real problems in the world today which, in my view, the whole inequality debate is hiding and trying to disguise. These problems include poverty, cronyism, and low economic growth.¹³ None of these problems has anything to do with the inequality gap between rich and poor. We have a justified sense of outrage and injustice when we see the difficulties in economic mobility for the poor.¹⁴ We see the injustice that arises from cronyism.¹⁵ We resent the fact that some rich people are rich because they are cronies; we rightfully feel that it is a problem.¹⁶ And we are legitimately concerned by the lack of economic growth over the last eight years—a cause of real frustration among many in the middle class. But the inequality gap, the number, the Gini coefficient—however you want to call it—is irrelevant to these legitimate issues. The inequality itself is not an issue; it is a bogus issue. There is no problem of inequality.

If we seriously consider the problem of the poor not being able to rise up from poverty, we see that this is often caused by politicians instituting policies in order to reduce inequality.¹⁷

13. See WATKINS & BROOK, *supra* note 7, at 14–17, 117–75.

14. See, e.g., Cody Branham, *Stuck In The Middle: Curbing Income Inequality With The Better Bargain Plan*, 25 KAN. J.L. & PUB. POL’Y 187 (2016); see also Eric M. Zolt, *Inequality in America: Challenges for Tax and Spending Policies*, 66 TAX L. REV. 641 (2013).

15. Jonathan R. Macey, *Crony Capitalism: Right Here, Right Now*, 37 HARV. J.L. & PUB. POL’Y 5 (2014).

16. *Id.*

17. See *id.*; see also LAWRENCE ABER ET AL., REPORT, OPPORTUNITY, RESPONSIBILITY, AND SECURITY: A CONSENSUS PLAN FOR REDUCING POVERTY AND RESTORING THE AMERICAN DREAM 8 (2015) (reporting findings that social mobility

Common examples include restrictions on credit, minimum wages, and licensing laws.¹⁸ If you really look at it, these policies all make poverty worse and more intractable—all in the name of reducing inequality.

Of course, low economic growth is another factor that doesn't help when it comes to the inability of poor people to rise up from poverty.¹⁹ The question is: what causes low growth? Low growth is easy to understand. It is caused by the federal government overtaxing and dramatically overregulating this economy.²⁰ And when you overregulate the economy, you get low growth.²¹ That shouldn't come as a surprise.

Of course, there are people at the top who make money they do not deserve or rightfully earn. There is massive cronyism in America today.²² But the cronyism problem is not so much that businesses are corrupting politics; rather, the problem begins when power-hungry politicians impose themselves onto businesses.²³ And businesses, in an attempt to defend themselves,

in the United States lags behind other advanced economies), <https://www.brookings.edu/wp-content/uploads/2016/07/Full-Report.pdf> [<https://perma.cc/98PF-TBD4>].

18. See, e.g., Andrew Soergel, *Pay Wars: Would a higher minimum wage help or hurt workers?*, U.S. NEWS & WORLD REPORT (Mar. 28, 2016), <http://www.usnews.com/news/the-report/articles/2016-03-28/ask-an-economist-will-a-minimum-wage-hike-help-or-hurt-workers> [<https://perma.cc/T7GA-R4HC>]; WATKINS & BROOK, *supra* note 7, at 123–38.

19. See Anthony D. Taibi, *Banking, Finance, and Community Economic Empowerment: Structural Economic Theory, Procedural Civil Rights, and Substantive Racial Justice*, 107 HARV. L. REV. 1463, 1520 (1994) (suggesting that local economies must be strengthened to effectuate “real” economic and community empowerment).

20. See, e.g., Ralph Robey et al., *Government Regulation of Business and Its Impact on The Growth of The Economy—Panel Discussion*, 17 BUS. LAW. 24, 35 (1961). Ralph Robey argues that “[e]conomic growth is achieved where people are able to work and are provided an incentive to do so and where Government Regulation is kept to a minimum” *Id.*

21. *Id.*

22. See, e.g., Macey, *supra* note 15 (“Crony capitalism . . . seems as though today it is on the rise.”).

23. See WATKINS & BROOK, *supra* note 7, at 148–53; cf. LAWRENCE G. BAXTER, *Understanding Regulatory Capture: An Academic Perspective from the United States*, in THE MAKING OF GOOD FINANCIAL REGULATION: TOWARDS A POLICY RESPONSE TO REGULATORY CAPTURE 53, 53–54 (Stefano Pagliari ed., 2012), http://www.stefanopagliari.net/making_good_financial_regul.pdf [<http://perma.cc/M9YR-GQVW>] (describing the concept of “regulatory capture,” which occurs when businessmen and regulators switch places; in other words,

ultimately capture the politicians.²⁴ The beginning point is the power we grant politicians and our political institutions.

To reduce and ultimately eliminate cronyism, we must insulate businesses from government rather than government from businesses. My favorite example here is the *United States v. Microsoft*²⁵ case—the famous hearing where Microsoft was brought in front of Congress in the early 1990s and told to increase its lobbying functions in Washington, D.C.²⁶ Microsoft told politicians in Washington to leave it alone, and Microsoft largely resisted resorting to lobbying efforts.²⁷ Indeed, in the past Microsoft had spent very little on lobbying.²⁸ In fact, in 1997, its political donations to federal candidates amounted to less than \$100,000.²⁹ What happened a year or two later? The Justice Department began to investigate, and Microsoft suddenly realized that the government was not going to leave it alone.³⁰ Today, Microsoft spends tens of millions of dollars a year on lobbying.³¹ They even have a beautiful building in Washington, D.C., right behind the Cato building.

businesses become “the umpires” when regulatory capture occurs and therefore have control of how the market is regulated).

24. *Id.*

25. 97 F. Supp. 2d 59 (D.D.C. 2000).

26. John M. Broder & Joel Brinkley, *U.S. Versus Microsoft: The Strategy; How Microsoft Sought Friends in Washington*, N.Y. TIMES (Nov. 7, 1999), <http://www.nytimes.com/1999/11/07/us/us-versus-microsoft-the-strategy-how-microsoft-sought-friends-in-washington.html?pagewanted=all> [<https://perma.cc/J9CF-KSUV>].

27. Michael Kinsley, *The Washington lobbying dance*, L.A. TIMES (APR. 5, 2011), <http://articles.latimes.com/2011/apr/05/opinion/la-oe-kinsley-column-microsoft-20110405> [<https://perma.cc/SM9C-BHCN>].

28. John M. Broder, *Microsoft Spending Millions on Ads and Lobbying Efforts*, N.Y. TIMES, (June 12, 2000), <http://www.nytimes.com/2000/06/12/technology/12lobby.html?pagewanted=all> [<https://perma.cc/RPW6-3BMK>] (claiming that Microsoft had a practice of making “virtually no political donations” until just a few years earlier).

29. Joel Brinkley, *U.S. vs. Microsoft: The Lobbying; A Huge 4-Year Crusade Gets Credit for a Coup*, N.Y. TIMES (Sept. 7, 2001), <http://www.nytimes.com/2001/09/07/business/us-vs-microsoft-the-lobbying-a-huge-4-year-crusade-gets-credit-for-a-coup.html> [<https://perma.cc/YE63-W82K>].

30. *See id.*

31. According to its website, Microsoft’s lobbying efforts in 2013 amounted to roughly \$10 million at the federal level and roughly \$8 million at the state level. These figures decreased slightly for 2014–16. MICROSOFT PUBLIC POLICY ENGAGEMENT, <https://www.microsoft.com/en-us/about/corporate-responsibility/>

We think of inequality as a problem because we have set up a Platonic ideal that economic equality is a good thing when it is not. There is nothing good about equality. Few actually explicitly advocate for total equality of outcome because they know how unacceptable that view is. We have tried it (multiple variants of communism and socialism), and the outcomes are horrible.³²

So whenever I debate somebody who wants more economic equality, I ask, “How much is just right? What Gini coefficient and what redistribution is just right?” There are no rational answers to these questions, because there is no right level of inequality. The ideal that we have all implicitly accepted is that equality is good but it’s just not practical. I reject that. Economic equality is more than just impractical; it is an evil ideal. And equality of opportunity is just another form of equality of outcome and just as impossible and bring into reality.³³

The only legitimate concept of equality is equality of individual rights—the fact that the founders recognized (inconsistently, unfortunately) that each individual has an unalienable right to act to achieve the values necessary for his own life, for his own happiness, free of coercion. This entails equality of liberties and equality before the law. Every attempt to create equality of outcome or equality of opportunity violates the idea of equality of rights and equality of liberty. Somebody’s liberties are restricted in order to supposedly increase the opportunities and the outcome of somebody else. This is immoral and wrong.

public-policy-engagement [https://perma.cc/F8QP-NUEF] (last visited Mar. 7, 2017).

32. See, e.g., Damien Cave, *The Cuban Evolution*, N.Y. TIMES (Mar. 1, 2014), http://www.nytimes.com/2014/03/02/sunday-review/the-cuban-evolution.html?_r=0 [https://perma.cc/Q2QM-HHRZ]; see also Georgi Boorman, *Enforcing Outcome Equality Makes Everyone Miserable*, FEDERALIST, (July 28, 2015), <http://thefederalist.com/2015/07/28/enforcing-outcome-equality-makes-everyone-miserable/> [https://perma.cc/H943-CQMM] (discussing the situations in Venezuela and Cuba); WATKINS & BROOK, *supra* note 7, at 51–56, 207–10.

33. See Paul Krugman, *Liberty, Equality, Efficiency*, N.Y. TIMES (Mar. 9, 2014), <http://www.nytimes.com/2014/03/10/opinion/krugman-liberty-equality-efficiency.html> [https://perma.cc/D9Z3-BE7W]; Paul Krugman, *More Thoughts on Equality of Opportunity*, N.Y. TIMES (Jan. 11, 2011), <http://krugman.blogs.nytimes.com/2011/01/11/more-thoughts-on-equality-of-opportunity/> [https://perma.cc/ZRT8-KN8J].

We must get rid of the moral ideal of equality of outcome. It contradicts our very nature as distinct, unique individuals who, when free, produce unequal results. Inequality is a feature of freedom. The ideal of equality is the negation of human nature and of the value of political freedom. Economic equality, therefore, is a wrong ideal, and it distorts our politics and our policy thoroughly.