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A Right against Extreme Wage Inequality: A Social Justice Modernisation of International Labour Law?

Dr Ioannis Katsaroumpas*

A. INTRODUCTION

The ILO centenary celebrated in 2019 offers an occasion for reflection on the past, present and future of international labour law (ILL),¹ in the context of broader debates over its contemporary relevance² and the future of work.³ With inequality described by the ILO as ‘one of the most daunting challenges for future of work’,⁴ ILL confronts the task of developing regulatory responses to the sharp rise in extreme income inequalities which serve as a powerful indictment of the socially dysfunctional nature of globalised neo-liberal capitalism. Following the 2008 economic and financial crisis, the ‘inequality question’ was thrust onto the forefront of mainstream academic, political and policy debates.⁵

A chief manifestation and driver of this inequality is the extreme inequality in remuneration between the highest and lowest paid workers increasingly employed in precarious working conditions.⁶ In search of new solutions for reversing this process, there has been a recent momentum behind *maximum pay ratio initiatives*. These initiatives focus on limiting the range of wage disparities between workers at the top and bottom (or middle) of wage distribution. They assume different forms, including ‘softer’ mandatory disclosure rules (UK⁷ and USA⁸), and ‘harder’ norms in the form of higher corporate tax surcharges for companies with excessive pay ratios.⁹ A maximum pay ratio was also the subject of the unsuccessful 2013 Swiss

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¹ P van der Heijden, ‘The ILO Stumbling toward its Centenary Anniversary’ (2018) 15(1) *International Organizations Law Review* 203; C Gironde and G Carbonnier (eds), *The ILO @ 100: Addressing the past and future of work and social protection* (Brill 2019); L Helfer, ‘The ILO at 100: Institutional Innovation in an Era of Populism’ (2019) 113 *AJIL Unbound* 396.

² See F Maupain, *The Future of the International Labour Organization in the Global Economy* (Hart 2013) and A Supiot, *The Spirit of Philadelphia: Social Justice vs. the Total Market* (S Brown tr, Verso 2012)

³ Global Commission on the Future of Work, *Work for a brighter future* (ILO 2019).

⁴ ILO, ‘Tackling income inequality is key to ensure equitable and prosperous societies’ https://www.ilo.org/global/topics/future-of-work/trends/WCMS_545643/lang--en/index.html.

⁵ A Berg and J Ostry, ‘Inequality and Unsustainable Growth: Two Sides of the Same Coin?’ IMF Staff Discussion Note 11/08 (IMF 2011); OECD, *In It Together: Why Less Inequality Benefits All* (OECD 2015); B Milanovic, *The Haves and the Have-Nots* (Basic Books 2010); J Stiglitz, *The Price of Inequality: How Today's Divided Society Endangers Our Future* (W. W. Norton & Company 2012); T Piketty, *Capital in the Twenty-First Century* (HUP 2014); J Newell, ‘Obama: income inequality is “defining challenge of our time”’, *Guardian* (4 December 2013); G O’Connell, ‘Pope Francis to judges: “There is no justice when there is inequality”’ *America: the Jesuit Review* (4 June 2019).

⁶ See for the rise in top wages as a source of income inequality T Piketty and E Saez, ‘The Evolution of Top Incomes: A Historical and International Perspective’ (2006) 96(2) *American Economic Review* 200; for the latest Oxfam report on inequalities see *The Inequality Virus* (Oxfam January 2021); On precariousness see G Standing, *The Precariat: The New Dangerous Class* (Bloomsbury 2011) and ILO, *Non-Standard Employment around the world* (ILO 2016).

⁷ The Companies (Miscellaneous Reporting) Regulations 2018.

⁸ Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010 s 953(b).

⁹ City of Portland (Charter, Code and Policies) ARB-LIC-5.02 <https://www.portlandoregon.gov/citycode/article/663142>.

referendum (though gathering 32.1% support).¹⁰ Maximum pay ratios also featured in the political manifestos of the Labour Party in the UK,¹¹ and Bernie Sanders' 2020 US presidential campaign.¹²

In sharp contrast to the non-legal literature on pay ratios,¹³ maximum pay ratios have received limited attention in labour law literature and none in ILL scholarship. This is the case even though labour law literature has made important advances towards broadening the traditional employer/employee focus of labour law to cover what are formally intra-worker inequalities. Following Wedderburn's identification of excessive managerial pay as a 'New Development' in 2004,¹⁴ Mundlak observed a 'third' function of labour law as distributing opportunities between workers,¹⁵ while Davies also talked about exploitative compromises between different groups of workers.¹⁶ Recently, Njoya drew attention to the status disparities between the contractual remuneration of managers whose packages comprise various forms of labour income besides wages and other workers typically relying solely on wages.¹⁷ Extending this stream, Davidov briefly referred to maximum pay ratios as an example of the application of distributive justice to labour law.¹⁸

Located in this literature, this article seeks to undertake a further step in addressing this gap on maximum pay ratios by arguing for a *right against extreme wage inequality* as a social justice modernization of ILL. Compared to other rights, its distinctive feature is that it acknowledges a vertical wage inequality norm as its very essence rather than as a potential secondary by-effect. It seeks to mitigate and contain that inequality. ILL is chosen as a normative field due to the explicit social justice mandate of ILO and the global nature of the challenge posed by extreme wage disparities. 'Modernisation' refers to the need for a dynamic adaptation of ILL's social justice mandate, the 'driving force behind the idea of international labour law',¹⁹ to the ever-growing contemporary inequalities. In this article ILL refers to ILO norms broadly conceived as found in its constitutional documents and standard-setting instruments.

The analysis proceeds as follows. Part B identifies a normative vertical wage inequality gap in ILL, meaning the absence of substantive norms directly constraining vertical wage inequalities. It also observes a more pronounced recent recognition of the issue of vertical wage inequality

¹⁰ J Ewing 'Swiss Voters Decisively Reject a Measure to Put Limits on Executive Pay' *New York Times* (Frankfurt, 24 November 2013).

¹¹ Labour Party, *It's Time for Real Change: The Labour Party Manifesto 2019* 30. Pay ratios are included as an assessment criterion for public procurement while a 20:1 pay ratio for the public sector was also explicitly mentioned.

¹² B Sanders, 'The Sanders Income Inequality Tax Plan' (available at <https://berniesanders.com/issues/income-inequality-tax-plan/>); The plan called for corporate tax surcharges for companies (with revenue over \$100 million) exceeding the required pay ratios.

¹³ M Ramsay, 'A modest proposal: the case for a maximum wage' (2005) 11(4) *Contemporary Politics* 201; S Pizzigati, *The Case for a Maximum Wage* (Polity 2018); H Buch-Hansen and M Koch, 'Degrowth through income and wealth caps' (2019) 160 *Ecological Economics* 264.

¹⁴ B Wedderburn, *The Future of Company Law: Fat Cats, Corporate Governance and Workers* (IER 2004) Chapter 3.

¹⁵ G Mundlak, 'The Third Function of Labour Law: Distributing Labour Market Opportunities among Workers' in G Davidov and B Langille (eds), *The Idea of Labour Law* (OUP 2011).

¹⁶ ACL Davies, 'Identifying "Exploitative Compromises": The Role of Labour Law in Resolving Disputes Between Workers' (2012) 65(1) *Current Legal Problems* 269.

¹⁷ W Njoya, 'The Contract of Employment, Corporate Law and Labour Income' in M Freedland and others (eds), *The Contract of Employment* (OUP 2016).

¹⁸ G Davidov, 'Distributive Justice and Labour Law' in H Collins, G Lester and V Mantouvalou (eds), *Philosophical Foundations of Labour Law* (OUP 2018) references in pages 150, 153, 155.

¹⁹ N Valticos and G Von Potobsky, *International Labour law* (2nd edn, Kluwer 1995) 26.

in ILO's major policy documents, yet to be translated into new concrete standards or rights. In addressing this gap, the article argues in Part C for the recognition of a new right against extreme wage inequality grounded in the 'just share of the fruits of progress' imperative of the Declaration of Philadelphia along with offering justifications and discussing potential objections. Part D advances a multi-faceted regulatory model for implementing this right consisting of five elements: (a) corporate disclosure of pay ratios; (b) pay ratios as a public procurement linkage; (c) taxation of firms with extreme wage inequality; (d) recognition of a mandatory and legally enforceable term in the employment contract not to be paid at such a low level that exceeds the prescribed maximum pay ratio between the highest and lowest paid employee; (e) an open democratic-procedural model of determination of pay ratios at national level subject to ILL-prescribed democratic-procedural guarantees. The final part concludes.

B. VERTICAL WAGE INEQUALITY AND INTERNATIONAL LABOUR LAW: LOCATING THE GAP

This part makes two findings. It identifies a normative gap in ILL concerning vertical wage inequality, meaning the absence of any direct substantive norms constraining the gap between the uppermost and lowest ends of wage distribution. This gap is situated against a proposed typology of five types of ILO's normative interventions in wage-setting: sufficientarian; horizontal equality; capital-labour vertical inequality; intra-labour vertical equality; general 'distributive fairness' norms. The part also observes a more pronounced recent recognition of the issue of vertical wage inequality in ILO's major policy documents, yet to be translated into new concrete standards or rights.

1. Sufficientarian and Egalitarian Norms

Following Moyn, a useful division of substantive wage-setting norms is between *sufficientarian* and *egalitarian* norms.²⁰ The former set non-comparative absolute standards on how far a wage is 'from having nothing',²¹ for instance minimum living standards or absolute poverty levels. In contrast, egalitarian norms are concerned with the comparative question of how far individual wages 'are from one another'.²² ILO's constitutional references to 'hardship' and 'privation',²³ 'poverty',²⁴ 'war against want',²⁵ 'adequate living wage'²⁶ and that of a 'minimum living wage'²⁷ espouse a sufficientarian approach. But notwithstanding the 'living wage reference' in the 1919 Constitution, ILO's early conventions followed a procedural paradigm. Their focus was on the availability of minimum wage-setting machinery,

²⁰ S Moyn, *Not enough: human rights in an unequal world* (HUP 2018) 3.

²¹ *ibid.* Italics removed from the original

²² *ibid.* Italics removed from the original.

²³ ILO Constitution, *Preamble*.

²⁴ Declaration of Philadelphia (annexed to the ILO Constitution) I (c).

²⁵ *ibid.* (d)

²⁶ ILO Constitution, *Preamble*.

²⁷ Declaration of Philadelphia (n 24) III (d).

especially with regards to the ordinary collective bargaining processes, and the normative effect of minimum wages.²⁸

But ILO Convention 131²⁹ (adopted in 1970) made a notable shift towards a more substantive approach in the form of the stipulation of a list of factors to be taken into account in minimum-wage determination. Besides economically-related factors,³⁰ the list contains the *sufficientarian* criteria of ‘the needs of workers and their families’ and ‘cost of living’ along with more *comparative-oriented* factors, namely ‘the general level of wages in the country’ and ‘relative living standards of other groups’.³¹ Recommendation 135 (adopted at the same time) reiterated these criteria³² while stressing the anti-poverty function of minimum wage fixing as ‘one element in a policy designed to overcome poverty and to ensure the satisfaction of the needs of all workers and their families’.³³ Without dismissing the major significance of sufficientarian norms in guaranteeing the ‘living’ function of wages and indirectly affecting vertical wage inequality through preserving (or raising) the floor, it is important to stress that they do not incorporate any norm (pay ratio) against extreme wage inequality as part of their substantive content. To put it another way, a sufficientarian minimum wage norm is perfectly compatible with rising top/bottom pay ratios.

Turning to egalitarian norms, the distinction between ‘horizontal’ and ‘vertical’ inequality is useful. Horizontal inequality is generally associated with ‘group-based differences’ in remuneration for work of equal value, for example on the grounds of gender or race. Conversely, vertical inequality denotes the individual distribution of income among various individuals performing different types of work,³⁴ as for example in the case of disparities between CEOs and lowest-paid workers. This distinction is of course not clear-cut and rigid, illustrated by the well-documented example of institutional under-valuation of certain jobs just because they are done by women.³⁵ Even though in the Treaty of Versailles establishing the ILO the parties recognised ‘the principle that men and women should receive equal remuneration for work of equal value’ as of ‘special and urgent importance’,³⁶ it was only in the 1950s that the ILO became active in this area in the form of substantive standard-setting.

Thus, the Equal Remuneration Convention (1951) (Convention 100) allowed differentiation in wages between men and women only for work of unequal value and after an objective appraisal of a specific job.³⁷ ILO Convention 111 on Discrimination in Employment and Occupation³⁸ (1957) prohibited ‘any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation’.³⁹

²⁸ ILO Convention 26 on Minimum Wage-Fixing Machinery (1928); See also ILO Convention 99 on Minimum Wage Fixing Machinery (Agriculture) (1951) and ILO Recommendation 30 on Minimum Wage-Fixing Machinery (1928).

²⁹ ILO Convention 131 on Minimum Wage Fixing (1970).

³⁰ *ibid* Article 3(b).

³¹ *ibid* Article 3(a).

³² ILO Recommendation 135 on Minimum Wage Fixing (1970) Article 3.

³³ *ibid* Article 1.

³⁴ P Alston, ‘Report of the Special Rapporteur on extreme poverty and human rights’ A/HRC/29/31 (Human Rights Council 2014) 5; For the distinction see also F Stewart, ‘Horizontal Inequalities: A Neglected Dimension of Development’ (2004) CRISE Working Paper 1, 3.

³⁵ See J Acker, *Doing comparable worth: Gender, Class and Pay Equity* (Temple University Press 1989) and ILO, *Time for Equality at Work* (Geneva 2003) ILC 91st Session 2003 Report I(B).

³⁶ Part XIII, Article 427 of the Peace Treaty of Versailles 1919.

³⁷ Article 3 of ILO Convention 100 on Equal Remuneration (1951)

³⁸ ILO Convention 111 on Discrimination (Employment and Occupation) (1958).

³⁹ *ibid* Article 1(1a).

Differences were permitted only on the basis of ‘inherent requirements’ ‘in respect of a particular job’.⁴⁰ The ILO Declaration on Fundamental Rights and Principles at Work 1998 reaffirmed the value of these latter Conventions by granting them core status as part of the principle concerning the fundamental right of ‘elimination of discrimination in respect of employment and occupation’.⁴¹ Yet despite their significant role in addressing gender equality, Conventions 100 and 111 fail to address the issue of extreme vertical wage inequality. Guy Standing rightly highlights the limitations of the ILO’s focus on horizontal inequality in that it cannot be used to ‘criticize legislation strengthening the advantages of managers or high-income employees relative to the “unskilled”’.⁴²

2. Vertical Inequalities

Let us turn to the vertical inequalities. These can be divided in two types: capital-labour vertical inequalities and intra-worker vertical inequalities. Labour law and ILL is traditionally oriented towards the former. As Hepple aptly observed, the ‘more traditional focus of labour law, and of the ILO, has been on what may be called vertical equality between the parties to the employment relationship’.⁴³ This conceptualisation is rooted in the function of labour law as a means for redressing the power asymmetries between employers and employees⁴⁴ by substantive standards (minimum rights) or participatory norms, notably collective bargaining. Freedom of association and the effective recognition of the right to collective bargaining are key pillars of ILO’s normative intervention in wage-setting.⁴⁵ They are considered fundamental principles and rights⁴⁶ and are monitored by a separate ILO supervisory regime. Even though there is robust evidence on the secondary impact of bargaining rates of coverage on reducing overall wage inequality,⁴⁷ they do not themselves guarantee a limit on extreme vertical wage inequalities as between workers.

Alongside these approaches, there exist general constitutional norms concerned with ‘distributive fairness’. The Declaration of Philadelphia calls for ‘policies in regard to wages and earnings, hours and other conditions of work *calculated to ensure a just share of the fruits of progress to all*’.⁴⁸ In linking fundamental rights with the ‘fair share of wealth’, the 1998 ILO Declaration on Fundamental Principles and Rights at Work characteristically states in the preamble that:

the guarantee of fundamental principles and rights at work is of particular significance in that it enables the persons concerned, to claim freely and on the basis of equality of opportunity, their *fair share of the wealth* which they have helped to generate, and to achieve fully their human potential.⁴⁹

The Declaration offers an instrumental justification of fundamental rights as performing an ‘enabling function’ for workers in getting their fair share of wealth. But is this function exclusive to those rights deemed as ‘fundamental’? A negative answer seems to be supported

⁴⁰ *ibid* Article 1(2).

⁴¹ ILO, *Declaration on Fundamental Principles and Rights at Work and its Follow-Up* (ILO 1998) 2d.

⁴² G Standing, ‘The ILO: An Agency for Globalization?’ (2008) 39(3) *Development and Change* 355, 369.

⁴³ B Hepple, ‘Equality and empowerment for decent work’ (2001) 140(1) *ILR* 5, 12.

⁴⁴ O Kahn-Freund, *Labour and the Law* (3rd edn, Stevens & Sons 1983) 18.

⁴⁵ See F Milman-Sivan, ‘Freedom of Association as a Core Labor Right and the ILO: Toward a Normative Framework’ (2009) 3(2) *Law & Ethics of Human Rights* 110.

⁴⁶ Declaration on Fundamental Principles and Rights at Work (n 41) 2a.

⁴⁷ S Hayter and B Weinberg, ‘Mind the Gap: Collective Bargaining and Wage Inequality’ in S Hayter (ed), *The Role of Collective Bargaining in the Global Economy* (Edward Elgar 2011); G Bosch, ‘Shrinking collective bargaining coverage, increasing income inequality: A Comparison of five EU countries’ (2015) 154(1) *ILR* 57.

⁴⁸ Declaration of Philadelphia (n 24) III (d). Emphasis added.

⁴⁹ Declaration on Fundamental Principles and Rights at Work (n 41).

by the fact that the right to a minimum wage, absent from the fundamental rights and principles list, is obviously relevant for workers receiving a fair share of wealth.

When all approaches are viewed together, an apparent vertical wage inequality gap emerges in ILL. At this point, it is also useful to highlight the increased thematization of extreme vertical wage disparities as a problem in major ILO policy documents. Just before the 2008 crisis, the ILO World Commission on the Social Dimension of Globalisation stressed the ‘increase in wage inequality between the mid-1980s and the mid-1990s’,⁵⁰ as exemplified by the ‘sharp increase in the share of the top 1 per cent of income earners in the United States, United Kingdom and Canada’.⁵¹ The eventual ILO Declaration on Social Justice for a Fair Globalization in 2008, adopting an explicit social justice language combining sufficiency and equality considerations, framed the major challenges as that of ‘poverty and rising inequalities’.⁵² It also reiterated the constitutional call for wage-setting policies ‘designed to ensure a just share of the fruits of progress to all’.⁵³ The recent flagship *Future of Work* report makes numerous references to vertical inequalities before cautioning that ‘without decisive action we will be heading into a world that widens existing inequalities and uncertainties’.⁵⁴ However, the more pronounced focus on inequality is yet to be translated into meaningful new rights or standards for ILL.

C. A RIGHT AGAINST EXTREME WAGE INEQUALITY: ADDRESSING THE GAP

The following sections put forward a new rights-based proposal for addressing this gap. It is argued that ILL should recognise a *right against extreme wage inequality*. In granting every worker a right not to be paid at such a low level that exceeds the prescribed maximum pay ratio between the highest and lowest paid employee, the distinctive feature of this right is that it acknowledges a vertical wage inequality norm as its essence rather than as a potential secondary by-effect. Postponing the elaboration of a specific regulatory model for the right implementation to the next part, our focus here is on the normative task of grounding and justifying the right in ILL along with considering possible objections.

1. Grounding the Right

This right can be grounded in ILL in a normative opening offered by the Declaration of Philadelphia. This Declaration recognises the centrality of wage-setting for social justice in calling for ‘policies in regard to wages and earnings, hours and other conditions of work *calculated to ensure a just share of the fruits of progress to all*, and a minimum living wage to all employed and in need of such protection’.⁵⁵ The phrase ‘just share of the fruits of progress to all’ acts as a source of integration of broader distributive justice consideration in ILL norms on wage-setting. It implicitly recognises the status of wages as the primary means by which most workers access the benefits of the fruits of progress. In addition, the phrase that wages policies should be ‘*calculated to ensure*’ this just share seemingly privileges a policy frame that legitimizes normative intervention in the operation of an economy in a manner that subordinates economic processes to social justice imperatives. In this sense, it corresponds to

⁵⁰ World Commission on the Social Dimension of Globalization, *A Fair Globalization: Creating Opportunities for All* (ILO 2004) 42.

⁵¹ *ibid.*

⁵² ILO Declaration on Social Justice for a Fair Globalization (ILO 2008) 6.

⁵³ *ibid.* 10.

⁵⁴ ILO, *Work for a brighter future* (n 3) 10.

⁵⁵ Declaration of Philadelphia (n 24) III (d). Emphasis added.

the conception of inequality and injustices not as inevitable occurrences but as ‘shaped by politics and policies’.⁵⁶

It is true, of course, that the content of what counts as a ‘just share’ is left undetermined by the Declaration. Rather than a weakness, though, this is its major strength. It places a constant demand for its adaptation to changing circumstances and challenges faced by each generation, a verbal code for social justice modernization in wage-setting if you like. ‘Just share’ is an inherently relative and comparative concept; after all, a ‘share’ is a proportional value requiring a comparison to the value of other shareholders thus inviting a pay ratio frame. This constitutional ecology offers a hospitable terrain for grounding a right against extreme wage inequality. By enacting a range-sensitive limit to extreme wage disparities, this right provides a *marker* of what counts as an ‘unjust share’ wage distribution. It thus belongs to the category of distributive rules termed by Anderson as specifying ‘the range of acceptable variations in distributive outcomes’.⁵⁷

2. Justifying the Right

Having discussed a potential grounding of the right in ILL’s ‘just share’ imperative, we now turn to discussing four sets of justifications for the right. Firstly, *this right exposes the unfairness of the capitalist valuation of wages*. One major contradiction in capitalism is the tension between the fictitious individual determination of worker contributions valued through the wage system and the *fact* of production as a collective and inter-dependent effort undertaken by all workers to which the reference to a ‘just share’ alludes. This point was perfectly made by Franklin Roosevelt who commented that wealth ‘results from a combination of individual effort and of the manifold uses to which the community puts that effort’.⁵⁸

Secondly, besides the neglect of the collective dimension of production, the justification for this right can be premised upon *other critiques against the fairness of the individual valuation of economic contribution as reflected in wages*. Indeed, a prominent justification for unrestrained wage inequalities is that of ‘due desert’,⁵⁹ meaning that workers receive what they deserve. Mainstream economic theory attributes wage disparities to differences in ‘marginal productivity’. According to this theory, a worker is paid according to the value of her marginal revenue.⁶⁰ However, both positions are more fictitious than real.⁶¹ Even the then Conservative Prime Minister Theresa May conceded that the gap between workers’ and bosses’ remuneration is ‘irrational’.⁶² In addition, academic authors criticised the defence of CEO remuneration on the basis of contribution and performance⁶³ by exposing it as ‘*rent extraction*’.⁶⁴

⁵⁶ M Doyle and J Stiglitz, ‘Eliminating Extreme Inequality: A Sustainable Development Goal, 2015-2030’ (2014) 28(1) *Ethics & International Affairs* 5, 7.

⁵⁷ E Anderson, ‘How Should Egalitarians Cope with Market Risks?’ (2009) 9(1) *Theoretical Inquiries in Law* 239, 239.

⁵⁸ F Roosevelt, *Message to Congress on Tax Revision* 19 June 1935.

⁵⁹ W Hutton, *Hutton Review of fair Pay in the public sector: Final Report* (HM Treasury March 2011) 7.

⁶⁰ The idea of marginal productivity was first introduced by J Clark, *The Distribution of Wealth: A Theory of Wages, Interest and Profits* (Cosimo 2005 original published in 1899); For a critical account see J Stiglitz, ‘Inequality and Economic Growth’ (2015) 86(1) *The Political Quarterly* 134.

⁶¹ See M Moore, ‘Corporate Governance, Pay Equity, and the Limitations of Agency Theory’ (2015) 68(1) *Current Legal Problems* 431 and Wedderburn, *The Future of Company Law* (n 14) 11-24.

⁶² T May, 2016 Speech to Launch Leadership Campaign (11 July 2016) <http://www.ukpol.co.uk/theresa-may-2016-speech-to-launch-leadership-campaign/>.

⁶³ H Tosi and others, ‘How Much Does Performance Matter? A Meta-Analysis of CEO Pay Studies’ (2000) 26(2) *Journal of Management* 301; R Iyengar, ‘CEO Compensation in Poorly Performing Firms’ (2000) 16(3) *Journal of Applied Business Research* 97; R Marshall and LE Lee, ‘Are CEOs Paid for Performance?’ (MSCI 2016).

⁶⁴ See Wedderburn, *The Future of Company Law* (n 14) 20-24.

Describing the suboptimal situation whereby an income generated ‘not as a reward for creating wealth but by grabbing a larger share of the wealth that would have been produced anyway’,⁶⁵ rent-extraction means that resources are under-utilized by being deprived from investment or other employees.⁶⁶ Coming from a philosophical starting point, Davidov justifies maximum pay ratios on the ground that it is a reasonable assumption to make that ‘excessive wage variations can only be explained by considerable good/bad luck’.⁶⁷ It is also notable that Rawls himself hinted towards inequality ratio limits in his statement that the lack of specification of any ratio for the shares of the more and less disadvantaged ‘is perfectly acceptable, unless, on due reflection, the ratio strikes us as unjust’.⁶⁸ Indeed, a right against extreme wage inequality acts as an insurance against such ‘strikingly unjust’ pay ratios.

Thirdly, another set of justifications relate to *the instrumental effect of such a right on limiting overall extreme inequality*. Academic literature is replete with warnings (Rousseau,⁶⁹ Fukuyama,⁷⁰ Tawney⁷¹, Daly⁷²) over the presence of a tipping point or threshold level beyond which inequalities turn into rigid hierarchies with the effect of challenging the political and status equality as professed by liberal democracy. More recently, the philosophical stream of ‘limitationism’ advocated wealth limits on *democratic grounds* (due to the convertibility of wealth to political influence) and *on grounds of urgent needs* (prioritising meeting the needs of the poor over those who lead a flourishing life due to extreme poverty or other challenges, such as climate change).⁷³ Khaitan made a similar case against extreme inequality from the perspective of the legitimacy of liberal constitutionalism.⁷⁴ Considering its effect on limiting extreme inequality, a pay ratio can contribute to addressing the negative effect of inequalities on health and social cohesion,⁷⁵ political participation⁷⁶ and housing.⁷⁷

Finally and fourthly, a different type of justification focuses on its *expressive-symbolic effects*. In capping extreme wage differentials, this tackles the *disrespect* signaled by the extreme nature of wage disparities and their effects on the relational standing of workers.⁷⁸ These expressive-symbolic benefits can be cast in the language of addressing ‘mis-recognition’, a term describing the non-distributive injury resulting from the relative under-valuation of labour

⁶⁵ Stiglitz, ‘Inequality and Economic Growth’ (n 60) 141.

⁶⁶ D Friedrichs, ‘Exorbitant CEO compensation: just reward or grand theft?’ (2009) 51 *Crime, Law and Social Change* 45; S Jacoby, ‘Finance and Labor: Perspectives on Risk, Inequality, and Democracy’ (2008) 30(1) *Comparative Labor Law & Policy Journal* 17, 27-28.

⁶⁷ Davidov, ‘Distributive Justice and Labour Law’ (n 18) 155.

⁶⁸ J Rawls, *Justice as Fairness: A Restatement* (HUP 2001) 68.

⁶⁹ J Rousseau, *The Social Contract* (G.D.H Cole tr 1782, original published in 1762) Book II Chapter 11.

⁷⁰ F Fukuyama, ‘Dealing with Inequality’ in F Fukuyama, L Diamond and M Plattner (eds), *Poverty, Inequality and Democracy* (John Hopkins University Press 2012).

⁷¹ R Tawney, *Equality* (3rd edn, Allen & Unwin 1938) 185.

⁷² See HE Daly, *Steady-state economics* (Island Press 1991) 54-55.

⁷³ I Robeyns, ‘What, if Anything, is Wrong With Extreme Wealth?’ (2019) 20(3) *Journal of Human Development and Capabilities* 251.

⁷⁴ T Khaitan, ‘Political insurance for the (relative) poor: How liberal constitutionalism could resist plutocracy’ (2019) 8(3) *Global Constitutionalism* 536.

⁷⁵ I Kawachi and B Kennedy, ‘Socioeconomic determinants of health: Health and social cohesion: why care about income inequality?’ (1997) 314 *BMJ* 1037.

⁷⁶ B Lancee and H van de Werfhorst, ‘Income inequality and participation: A comparison of 24 European countries’ (2012) 41(5) *Social Science Research* 1166.

⁷⁷ J Matlack and J Vigdor, ‘Do rising tides lift all prices? Income inequality and housing affordability’ (2008) 17(3) *Journal of Housing Economics* 212.

⁷⁸ For relational accounts of equality see B Rogers, ‘Justice at Work: Minimum Wage Laws and Social Equality’ (2014) 92 *Texas Law Review* 1543, 1571-1576 and N Fraser, ‘Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation’ in L Ray and A Sayer (eds), *Culture and Economy after the Cultural Turn* (Sage Publications 1999).

of some workers as manifested in inequalities between the remuneration of highly and lowly paid workers.⁷⁹ Solow perfectly captures the social value of wages in stating that :

wage rates and jobs are not exactly like other prices and quantities. They are much more deeply involved in the way people see themselves, think about their social status, and evaluate whether they are getting a fair shake out of society.⁸⁰

3. Objections to the Right

Let us now discuss possible objections to our thesis. A libertarian or even an economically liberal critique⁸¹ would argue that a maximum pay ratio infringes the contractual autonomy of both the lowest paid and highest paid employee. Under this view, extreme wage inequalities are normatively unproblematic as they merely reflect the autonomous will of the parties. If a worker wishes to be paid 1000 times less than the highest remunerated worker, this is none of law's business. And even if one adopts a more nuanced 'harm-based' approach so as to justify a minimum wage intervention as addressing the 'harm'⁸² of low pay, it could be argued that any broadening of the minimum wage to encompass a pay ratio is an unwarranted interference owing to the absence of a similar harm caused by inequality.

However, this position raises multiple problems with regards to ILL. To begin with, there is nothing novel in the law considering the equity between contractual relationships of workers with a given employer. Non-discrimination provisions already set comparative norms between different employment relationships with the same employer, as for example the equal pay for men and women for work of equal value. In addition, this libertarian view is incompatible with the 'just share' imperative and the reality of the collective nature of production. In this sense, it is already rejected by the ILO's constitutional approach. Moreover, there is ample evidence that inequality is harmful, not least because of its detrimental instrumental effects. Furthermore, as argued in the next part, our proposed model does not directly impede the contractual freedom between the highest paid employee and the employer. It merely provides for specific legal implications of this freely concluded relationship on the relationship between the same employer and the lowest paid employee(s).

A second objection may proceed from utilitarian concerns rather than contractual autonomy. Under this view, pay ratios are likely to hamper efficiency since 'talented' CEOs may be unwilling to work for lower remuneration. Besides the lack of empirical evidence for this proposition, the critique fails as soon as the marginal productivity theory of wages is disputed. This objection also ignores the positive effect of a more equitable sharing of wages on the overall wage productivity. As Ramsay puts it:

When the maximum wage is tied to the minimum wage there are good reasons to suppose that rather than threatening productivity and economic growth and diminishing social utility the reverse could be the case. Funds from capping wages could be used for investment in health, education, research and development, safer workplaces and working conditions that are also prerequisites for a lasting productivity.⁸³

⁷⁹ For misrecognition see A Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts* (MIT Press 1995) and Fraser *ibid*.

⁸⁰ R Solow, *The Labor Market as a Social Institution* (Blackwell 1990) 22.

⁸¹ R Nozick, *Anarchy, State and Utopia* (Basic Books 1974); For the classic formulation of the negative conception of liberty see I Berlin, *Two Concepts of Liberty* (Clarendon Press 1958).

⁸² JS Mill, *On liberty* (Hackett 1978) 9.

⁸³ Ramsay (n 13) 208.

Two further points need to be made in response to this objection. Maximum pay ratios do not in themselves preclude higher remunerations for the highest paid employee. They just require a proportional rise to the remuneration of the lowest paid employee(s). And more fundamentally, even if one concedes a reduction of efficiency, the Declaration of Philadelphia clearly prioritises normative considerations against the ‘unjust shares of wealth’ over narrow efficiency-utilitarian concerns.

A third objection may accept the desirability of having pay ratio regimes but cast scepticism over its proposed status as an international labour right. Why have a right against extreme wage inequality? Here we can refer to Collins’ view of a right as ‘universal and imperative, with a special moral weight that normally overrides other considerations’.⁸⁴ He usefully identifies two major strands for labour rights justification: (a) efficiency and welfare (b) fair distribution of wealth, power and other goods in a society.⁸⁵ A maximum pay ratio falls within Collins’ ‘fair distribution’ strand of rights as well as operating as a right aiming at guaranteeing a ‘just share of the fruits of progress’ as recognized by the Declaration of Philadelphia. Given the significance of the wage relation for workers’ access to the benefits of collective cooperation, a right against extreme wage inequality should enjoy this special normative weight similar to the right to minimum wage or non-discrimination.

This analysis also aligns with a recent welcome shift in human rights law towards the issue of extreme wage inequality. Alston explicitly called for the ‘formal recognition of the fact that there are limits of some sort to the degrees of inequality that can be reconciled with notions of equality, dignity and commitments to human rights’⁸⁶ and asked member states to ‘commit themselves to policies explicitly designed to reduce, if not eliminate, extreme inequality’.⁸⁷ In a major development, the Sustainable Development Goals 2030 now contain an explicit Inequality Target (No 10), namely to ‘reduce inequality within and among countries’. This target includes the aims of ‘reduc[ing] inequalities of outcome’ (10.3) and that of adopting ‘policies, especially fiscal, wage and social protection policies, and progressively achieve greater equality (10.4)’.⁸⁸ Against a conservative mainstream wishing to purge distribute consideration outside of human rights⁸⁹ an ILO-sponsored maximum pay regime can be developed within the intersection of international labour law and international human rights law.

A different criticism on the right status of pay ratios would point to the danger of potential depoliticisation associated with turning a political claim against inequality to a social right.⁹⁰ These concerns should not be underestimated. However, there is a broad range of literature highlighting the political nature of human or labour rights as enabling contestation.⁹¹ But in response to this objection it is also critical that the right is configured in such a way as to *extend* the reach of political control by allowing opportunities for public contestation of the permissible wage inequalities. The right should transfer the issue of vertical wage inequality

⁸⁴ H Collins, ‘Theories of Rights as Justifications for Labour Law’ in *The Idea of Labour Law* (n 15) 140.

⁸⁵ *ibid* 137.

⁸⁶ Alston (n 34) 16.

⁸⁷ *ibid*.

⁸⁸ See K Freistein and B Mahlert, ‘The potential for tackling inequality in the Sustainable Development Goals’ (2016) 37(12) *Third World Quarterly* 2139.

⁸⁹ J Griffin, *On Human Rights* (OUP 2008); C Beitz, *The Idea of Human Rights* (OUP 2009).

⁹⁰ W Brown, ‘Rights and Identity in Late Modernity: Revisiting the “Jewish Question”’ in A Sarat and T Keams (eds), *Identities, Politics and Rights* (University of Michigan Press 1995); see also F Atria, ‘Social Rights, Social Contract, Socialism’ (2015) 24(4) *Social & Legal Studies* 598.

⁹¹ M Goodhart, ‘Human Rights and the Politics of Contestation’ in M Goodale (ed), *Human Rights at the Crossroads* (OUP 2014); For labour rights see A Bogg and C Estlund, ‘The Right to Strike and Contestatory Citizenship’ in *Philosophical Foundations of Labour Law* (n 18).

from the private to the public domain. This understanding of the right informs the preference for a democratic-procedural mechanism for determining this pay ratio assigning a prominent role to collective bargaining. Rather than foreclosing contestation, our model developed in the next part aims at rendering the issue of extreme wage inequality more contestable and visible.

D. ENACTING THE RIGHT AGAINST EXTREME WAGE INEQUALITY IN ILL: A MULTI-FACETED REGULATORY MODEL

This part proposes a multi-faceted regulatory model for implementing the right against extreme wage inequality in ILL. After discussing the personal and material dimensions of pay ratios ('who' and 'what' to be compared), the analysis constructs a regulatory model consisting of five key elements: (a) corporate disclosure of pay ratios; (b) pay ratios as a public procurement linkage; (c) taxation of firms with extreme wage inequality; (d) a mandatory and legally enforceable term in the employment contract not to be paid at such a low level that exceeds the prescribed maximum pay ratio between the highest and lowest paid employee (e) an open democratic-procedural model of determination of pay ratios at national level subject to ILL-prescribed democratic-procedural guarantees. The final section of this part offers an overview of the proposed model, acknowledges some its limitations and discusses issues of embeddedness in ILL.

1. The Personal and Material Dimensions of the Pay Ratio: Who and What is to be Compared?

In arguing for a top/bottom ratio between the uppermost and the lowest end of the wage distribution,⁹² our proposal differs from other ratio proposals using the 'median' worker as the low-end comparator.⁹³ A top/median ratio presents admittedly certain advantages. Unlike the top/bottom ratio which by design captures movements at the top and bottom of distribution, the high/median ratio displays higher sensitivity to fluctuations in the middle of the wage distribution. In addition, a higher/median ratio is harder to be manipulated by companies wishing to avoid the pay ratio by dismissing their lowest paid staff. However, the use of the high/median ratio has three major disadvantages. First, in normative terms, a top/bottom ratio is better suited to the aim of protecting the lowest paid workers. Assuming a given CEO remuneration, the CEO/median ratio can be preserved even in the face of growing inequalities between the upper and lower half of wage distribution. Even more importantly for our purposes, a top/bottom ratio enables a reframing of pay ratio as an *extension* of the minimum wage which is impossible under a top/median ratio. With this said, nothing in our analysis should be taken as precluding these ratios as additional ones.

Following these clarifications, a major challenge concerns the personal dimension of the pay ratio: who should we compare for calculating the pay ratio? The answer initially appears straightforward. The highest and lowest paid workers are to enter the equation. What is the pool, though, among which to select the lowest paid workers? For addressing the real possibility of companies evading pay ratios by using 'vertical disintegration' strategies for their lowest paid staff (e.g bogus self-employment, subcontracting, outsourcing, temporary agency work), ILL must require a broad and inclusive concept of the 'employing entity'. This concept must move beyond a formal contractual model covering only contractually employed workers

⁹²See Pizzigati (n 13).

⁹³ For example see City of Portland (n 9) and Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 s 953(b) both adopting the median as the low-end comparator.

towards a more ‘functional’ or ‘purposive’ model⁹⁴ justified both by the aim of preventing abuse but also on grounds of equity.⁹⁵ Drawing the boundaries of the employing unit so as to include all workers participating in a shared productive economic activity regardless of the contractual boundaries is better aligned with a right motivated by the aim of addressing inequity through targeting ‘unjust share’ wage inequalities in the productive process.

Mindful of the fact that the question of personal scope is a notoriously complex area in employment law and any solutions need constant fine-tuning and adjustment based on experience, we make the following suggestions. Firstly, any legal regime governing the personal scope of the ratio should contain solid anti-abuse provisions prohibiting recourse to vertical disintegration strategies such as outsourcing or subcontracting when the avoidance of pay ratios is a ‘substantial reason’ for the decision. These provisions need to be accompanied by a reversal of the burden of proof placing the onus on the employer to demonstrate that avoiding pay ratios were not a ‘substantial reason’ for its decision. In addition, findings of abuse must attract civil sanctions or preferably a finding that individuals subject to vertical disintegration strategies under conditions of abuse (e.g outsourced or subcontracted) are to be automatically included in the employing unit.

Building on these basic provisions, two other strategies may be helpful: (i) explicit inclusion of specified categories, and (ii) the adoption of a general broad conception of the employing entity modelled upon the ‘joint employer’ doctrine. As for the former, temporary agency workers should be automatically included in the employing unit of the user due to their integration in the business,⁹⁶ and the same may apply for other relevant categories which may vary between sectors. The Israeli law on pay ratios in the financial sector mandating the inclusion of those employed through temporary employment agencies and contractors provides one example.⁹⁷ The second strategy involves the use of a broad general concept of the employing unit. Pursuant to this approach, if a worker’s terms and conditions of employment ‘are capable of being determined directly or indirectly, actually or potentially by the employing entity’, then her remuneration should be factored in the calculation of the pay of this entity. This test is modelled after the US test of ‘joint employer’ formulated in *Browning-Ferris*.⁹⁸ It needs to be stressed that one implication of this proposal on the personal scope of the ratios is that a worker may fall within the pay ratio calculation of more than one employing entity.

A similarly broad approach must apply to the material scope of comparison concerning the elements of remuneration to be compared. For preventing an abuse strategy of merely shifting wage to other non-wage elements, the ‘total remuneration’ should be considered. This should encompass ‘fixed’ (base salary, fees and fringe benefits) and ‘variable’ aspects (bonuses and share-based remuneration), pension expenses and any other items given to the executive in a financial year such as retention bonuses. This definition approximates the EU broad definition of remuneration used for the purpose of calculating the ratio between variable and fixed elements in the context of the Capital Shareholders Directive⁹⁹ as clarified by a recent

⁹⁴ See among other S Deakin, ‘Commentary: the changing concept of the “employer” in labour law’ (2001) 30(1) ILJ 72; G Davidov, *A Purposive Approach to Labour Law* (OUP 2016) and J Prassl, *The Concept of an Employer* (OUP 2015).

⁹⁵ For equity as a ground for determining who is an employer see Deakin *ibid*.

⁹⁶ L Corazza, ‘Who is an Employer?’ WP C.S.D.L.E. "Massimo D'Antona".INT – 110/2014 18.

⁹⁷ Davidov, ‘Distributive Justice and Labour Law’ (n 18) 150 footnote 47.

⁹⁸ *Browning-Ferris Industries of California, Inc., d/b/a BFI Newby Island Recyclery*, 362 NLRB No. 186 (2015) at 15-16.

⁹⁹ Directive (EU) 2017/828; see Article 9(b)a and recital 34 of the preamble.

communication from the European Commission.¹⁰⁰ Common accounting standards are needed to resolve issues of equity valuation of non-wage elements (such as use of company car or house based on the market price at the start of a given financial year).¹⁰¹ For reasons of equivalence, total remuneration should form the basis for calculating the remuneration of the lowest paid employees albeit with an explicit right to refuse equity benefits.

2. Applying the Pay Ratios: A Multi-Dimensional Approach

(a) *Pay Ratio Disclosure*

Mandatory disclosure of pay ratios is an important starting point for the implementation of the right against extreme wage inequality. ILL is generally silent on issues of corporate disclosure despite its recognition as a tool capable of also performing a social or ethical function,¹⁰² through what Hombach and Sellhorn term as ‘targeted transparency regulation’.¹⁰³ Both the USA and UK recently enacted such rules for pay ratios. Passed in the aftermath of the 2008 financial crisis, the Dodd-Frank Amendment (implemented in 2015)¹⁰⁴ imposed a duty on listed companies to disclose the ratio between the annual total compensation of the CEO and the annual total compensation of the median worker. The British model mandates public companies employing more than 250 employees to disclose and explain the ratios of the total remuneration of the chief executive to various points of the wage structure, namely the 25th percentile, median and 75th percentile over a financial year.¹⁰⁵ However, these obligations fall short of mandating the disclosure of the lowest paid employees and hence the top/bottom ratios while also covering a limited number of companies.

Disclosure is of both symbolic-expressive and instrumental value. At a symbolic-expressive level, it affirms the *public* significance of the wage structure as the mediating mechanism through which most humans access their ‘share of the fruits of progress’. By rendering transparent the high and low ends of the wage structure, corporate decision-making is deprived of the hidden private veil and is moved to the public eye. Workers and society in general are empowered as witnesses to the information relevant to the determination of the share of wealth made through wage-setting decisions, thus increasing what Acker calls ‘visibility of inequality’.¹⁰⁶ Disclosure may also produce self-restraining material effects. To quote Judge Frankfurter:

[t]he existence of bonuses, of excessive commissions and salaries may all be open secrets among the knowing, but the knowing are few....[t]o force knowledge of them into the open is

¹⁰⁰ European Commission, *Communication from the Commission: Guidelines on the standardised presentation of the remuneration report under Directive 2007/36/EC, as amended by Directive (EU) 2017/828 as regards the encouragement of long-term shareholder engagement* (01/03/2019)

¹⁰¹ see *ibid* 10.

¹⁰² See W Cary, ‘Corporate Standards and Legal Rules’ (1962) 50(3) *California Law Review* 408; T Schoenbaum, ‘The Relationship between Corporate Disclosure and Corporate Responsibility’ (1972) 40(3) *Fordham Law Review* 565, 578; A Lipton, ‘Not Everything is About Investors: The Case for Mandatory Stakeholder Disclosure’ (2020) 37(2) *Yale Journal on Regulation* 499.

¹⁰³ K Hombach and T Sellhorn, ‘Shaping Corporate Actions Through Targeted Transparency Regulation: A Framework and Review of Extant Evidence’ (2019) 71 *Schmalenbach Business Review* 137.

¹⁰⁴ s 953(b); This provision was finally implemented by the Security and Exchange Commission in 2015 see U.S. Security and Exchange Commission, ‘SEC Adopts Rule for Pay Ratio Disclosure’ (*Aug. 5, 2015*) <https://www.sec.gov/news/pressrelease/2015-160.html>. For a critical account see S Bank and G Georgiev, ‘Securities Disclosure as Soundbite: The Case of CEO Pay Ratios’ (2019) 60(4) *Boston College Law Review* 1123.

¹⁰⁵ The Companies (Miscellaneous Reporting) Regulations 2018 No. 860 Part 8.

¹⁰⁶ J Acker, ‘Inequality Regimes: Gender, Class and Race in Organizations’ (2006) *Gender & Society* 441, 452.

largely to restrain their happening. Many practices safely pursued in private lose their justification in public.¹⁰⁷

For our purposes, though, mandatory disclosure is essential in that it is a major pre-condition for the meaningful enforcement of a substantive regime of pay ratios as developed below. Beyond a top/bottom ratio, ILL must prescribe a clear duty of disclosure of pay ratios at various points of the wage distribution, including the median, 25th/75th percentiles and the bottom. The idea of ‘changes in reporting practices’ as possible actions is mentioned in the ILO’s *Future of Work report*.¹⁰⁸ Even in the case of compliance with the nationally-determined top/bottom ratio, companies must actively account for their wage structure in a spirit of public transparency and justification of their wage decisions. A failure to disclose or inaccurate disclosures should attract effective and dissuasive sanctions. It is also imperative that trade unions or worker representatives are pro-actively involved in their drafting and monitoring.

(b) Extreme Pay Ratios and Tax Law

Tax law offers another avenue for implementing this right in the form of higher taxation for companies with extreme wage ratios. While tax law is admittedly an unusual instrument for the enforcement of labour rights, maximum wage proposals of various sorts have principally relied on taxation for their enforcement (through a 100% taxation of incomes above the maximum wage threshold).¹⁰⁹

This proposal brings together two developments in tax law. Firstly, it relies on the concept of ‘corrective taxation’ as a means for addressing the ‘negative externalities’ produced by companies not reflected in the price of market transactions,¹¹⁰ which in this case are extreme inequalities. Tax is used here as a *regulatory* tool for ‘encourag[ing] desired behavior by financial incentives rather than by legal compulsion’.¹¹¹ The second is a long-established critical tradition perceiving taxation not solely as a revenue-based exercise but as intimately linked with the fulfillment of social¹¹² and communitarian functions through ‘embod[y]ing the civic contract between the people and the government’.¹¹³ As put by Isaac Martin et al, ‘taxes formalize our obligations to each other. *They define the inequalities we accept and those that we collectively seek to redress*’.¹¹⁴ Along similar lines, Murphy and Nagel consider taxes besides a payment method for government and public services as ‘the most important instrument by which the political system puts into practice a conception of economic or

¹⁰⁷ Judge Frankfurter, ‘Securities Act- Social Consequence’ *Fortune* (August 1933) 55.

¹⁰⁸ ILO, *Work for a brighter future* (n 3) 13.

¹⁰⁹ Roosevelt considered but eventually did not adopt the proposal of a maximum income enforced as 100% taxation over a certain annual threshold during WWII (\$25000) Pizzigati (n 13) 22; For the use of taxation for social distribution and the debates see J Thorndike, ‘The Unfair Advantage of the Few’: The New Deal Origins of “Soak the Rich” Taxation’ in I Martin and others (eds), *The New Fiscal Sociology: Taxation in Comparative and Historical Perspective* (CUP 2009).

¹¹⁰ A Pigou, *The Economics of Welfare* (4th edn, Macmillan 1932) Part II, ch 3) and by the same author *A Study in Public Finance* (3rd edn, Macmillan 1947) Part 11, ch 8.

¹¹¹ A Ogus, ‘Corrective Taxes and Financial Impositions as Regulatory Instruments’ (1998) 61(6) MLR 767, 768.

¹¹² See J Schumpeter, ‘The Crisis of the Tax State’ in R Swedberg (ed), *The Economics and Sociology of Capitalism* (Princeton University Press 1991) 99-100 and I Martin, A Mehrotra and M Prasad, ‘The Thunder of History: The Origins and Development of the New Fiscal Sociology’ in *The New Fiscal Sociology* (n 109).

¹¹³ O de Schutter, ‘Taxing for the Realization of Economic, Social, and Cultural Rights’ in P Alston and N Reisch (eds), *Tax, Inequality and Human Rights* (OUP 2019) 60.

¹¹⁴ Martin, Mehrotra and Prasad (n 112) 1. Emphasis added.

distributive justice'.¹¹⁵ In recognition of the significance of tax law for work policies, the ILO Future of Work report includes in the list of possible actions that of 'fair fiscal policies'.¹¹⁶

In this context, subjecting companies exceeding pay ratios to more stringent tax regimes offers an alternative means of enforcement against the cost of inequitable structures while acknowledging that extreme wage inequality is not only a 'negative externality' but also one which should form part of community interests. In 2018, the US city of Portland enacted a similar pay ratio regime for the purpose of municipal tax where companies listed in Portland that exceed a certain pay ratio attracted a corporate law surcharge. The scheme is based on a graduated surcharge to the company tax above 100:1 ratios which is 10% (for ratios between 100:1 to 250:1) and 25% for ratios above 250:1.¹¹⁷ This scheme, however, used the top/median ratio unlike our proposal based on the top/bottom ratio.

While revenue-raising is not the principal aim of this scheme, ILL should set certain principles over its use. Drawing on Marron and Morris' typology,¹¹⁸ any 'revenue' should be used either to further the goal of reducing inequalities or for compensating those low-paid workers who bear the cost of inequitable wage structures. For example, revenues may be used for various benefits for low-paid workers (such as pensions or medical insurance), or in a more transformative direction in assisting their collective organization. Clear procedural norms should be established mandating the involvement of social partners in the determination of the uses of potential revenue with the specific inclusion of organisations representing low-paid workers.

Nonetheless, this strategy is not without weaknesses. Leaving aside that this model of enforcement of a pay ratio involves the use of tax officials and the possibility of tax evasion since because 'wealthy and powerful actors are better able to exploit complexity than are the powerless, measures which increase complexity tend to widen inequities',¹¹⁹ a more fundamental critique could be levelled against the 'economism' of this measure¹²⁰ in that it uses market signals rather than legal compulsion. However, this critique is premised upon the assumption that tax measures are deployed as alternatives to legal compulsion. In our case, though, corrective taxation is only one measure for enforcing this right along with measures of legal compulsion.

(c) Maximum Pay Ratios as a Public Procurement Linkage

The third element in our proposed ILL model is the elevation of pay ratios to the status of a mandatory labour law linkage¹²¹ in public procurement decisions. There is a long history of using public procurement for safeguarding 'fair wages' and equality along with broader social objectives.¹²² In 1949, ILO adopted a public procurement Convention¹²³ based on a concern against the danger of the economization on labour costs and the associated danger of

¹¹⁵ L Murphy and T Nagel, *The Myth of Ownership: Taxes and Justice* (OUP 2002) 3.

¹¹⁶ ILO, *Work for a brighter future* (n 3) 13.

¹¹⁷ City of Portland (n 9)

¹¹⁸ D Marron and A Morris, *How should governments revenue from corrective taxes* (Tax Policy Centre 2016).

¹¹⁹ J Braithwaite, 'The Limits of Economism in Controlling Harmful Corporate Conduct' (1981-1982) 16(3) *Law and Society Review* 481, 493.

¹²⁰ *ibid* 482.

¹²¹ C McCrudden, *Buying Social Justice* (OUP 2007); see also C Barnard, 'Using Procurement Law to Enforce Labour Standards' in *The Idea of Labour Law* (n 15).

¹²² For the early connection between public procurement and social objectives, including through fair wages clauses see McCrudden *ibid* Chapter 2.

¹²³ Convention 94 on Labour Clauses (Public Contracts) (1949) and Recommendation 84 on Labour Clauses (Public Contracts) (1949).

undercutting labour standards if contracts are awarded solely to the lowest bidder.¹²⁴ However, the Convention does not prescribe directly any substantive standards and is limited to horizontal inequality in the sense of referring to work of the same value. It mandates clauses in public contracts that are not less favourable when compared to ‘work of the same character’ or to the ‘general level’ in the trade or industry but only for ‘general circumstances [that] are similar’.¹²⁵

A maximum pay ratio linkage is capable of broadening the notion of ‘fair wages’ to encompass vertical wage inequalities. The use of public procurement is useful in at least two respects. Firstly, it can be a very effective means as it invokes the regulatory function of the public purse by using what Daintith calls ‘dominium’, a term denoting the ‘employment of the wealth of government’.¹²⁶ Secondly, it expresses a public commitment against extreme wage inequality. It should be noted that references to these linkages were included in the UK Labour Party Manifesto for the last two elections.¹²⁷ In practical terms, ILL should allow for the consideration of the specified pay ratios in the various stages of the public procurement, notably as part of eligibility, award criteria and as a condition of the performance of the contract by a successful bidder. In line with ILO Recommendation 84, these clauses should also cover cases of ‘granted subsidies’ or companies ‘licensed to operate a public utility’.¹²⁸ Public procurement of course requires a strong administrative apparatus for control and monitoring.

(d) Pay Ratios as Mandatory Terms in the Contract: Broadening the Minimum Wage

It is rather puzzling that academic literature has not yet considered a contractual route for maximum pay ratios enforcement in the form of mandatory and legally enforceable term in the employment contract not to be paid at such a low level that exceeds the prescribed maximum pay ratio between the highest and lowest ends of the *wage distribution of the employing entity*. This term essentially broadens the definition of minimum wage to include a *comparative-relative* minimum. Radical as it may seem, the idea of a relative determination of minimum wage is hardly novel. ILO Convention 131 stipulated *relative* factors for the minimum-wage determination, namely the ‘general level of wages in the country’ and ‘relative living standards of other social groups’, as criteria for the determination of ‘needs of workers and their families’.¹²⁹ In many countries, a prominent factor in minimum-wage determination is that of average or median wages.¹³⁰

The inclusion of a pay ratio in the minimum wage fully corresponds to a two-dimensional understanding of minimum wage as a tool against extreme inequality as well as against poverty.¹³¹ Waltman called for a living wage rate to be calculated as a percentage of high-income earners, either in relation to public official salaries or those in the upper 5% income.¹³²

¹²⁴ ILC, *General Survey concerning the Labour Clauses (Public Contracts) Convention, 1949 (No. 94) and Recommendation (No. 84)* 97th Session ILC Report III (Part 1B) (ILO 2008) 1.

¹²⁵ Article 2 of Convention no 94 (n 123).

¹²⁶ T Daintith, ‘The Techniques of Government’ in J Jowell and D Oliver (eds), *The Changing Constitution* (OUP 1994) 213.

¹²⁷ Labour Party Manifesto (n 11) 30. Pay ratios are considered as one of the criteria for assessing ‘best practice public service criteria’.

¹²⁸ Article 1 of Recommendation 84 (n 123).

¹²⁹ Article 3 of Convention 131 (n 29).

¹³⁰ See ILC, *Minimum Wage systems: General Survey of the reports on the Minimum Wage Fixing Convention, 1970 (No. 131) and the Minimum Wage Fixing Recommendation, 1970 (No. 135)*, Report III 1B (ILO 2014) 127-128.

¹³¹ F Bennett, ‘The “living wage”, low pay and in work poverty: Rethinking the relationships’ (2013) 34(1) *Critical Social Policy* 46.

¹³² J Waltman, *The Case for the Living Wage* (Algora Publishing 2004) 123.

Our proposal merely places this relative comparison at a corporate level. From a labour law perspective, a mandatory pay ratio term is an example of what Deakin and Freedland described as the ‘fair exchange’ which underpins the contract of employment,¹³³ and is realized through three forms of linkages: ‘conditionalities’ (obligations to work and pay), parities and minimum standards.¹³⁴ Parities are defined as when ‘one worker’s contract of employment has to be compared with another’s’¹³⁵ while minimum standards include that of minimum hourly wages.¹³⁶

A mandatory pay ratio term as part of an expanded minimum wage is a synthesis of ‘parities’ and ‘minimum standards’ in the form a comparative minimum against extreme wage disparities as a concretisation of the meaning of fair exchange. The inclusion of this term should be done via the normal minimum wage-setting processes, which for common law countries may include an implied term as a matter of law.¹³⁷ This route presents many advantages. In expressive terms, a maximum pay ratio as minimum wage provides a powerful challenge to the bilateral perception of the employment relationship as a private affair between the two parties. It focuses on tackling *extreme disparities* by linking the contractual relationships at the top and bottom of the wage distribution of the employing entity. In this sense, it treats the employing unity as an *organic unit* where unjust share relations are precluded rather than a web of isolated and independent contractual transactions.

In placing the focus on the lowest paid workers this term does not intervene directly in the contractual relationship of the employer with the upper part of the wage distribution. Parties remain free to determine whatever remuneration they wish. What it does is to provide for specific implications of the employer/highest-employees relationship for those at the bottom of the wage distribution. In practice, this term will be directly enforced by the courts through litigation, or other appropriate procedures. For ratios exceeding the nationally determined pay ratio (or the one agreed by collective bargaining if it is narrower), workers would be entitled to demand as unpaid wages those required for the ratio to be complied with. So, for example: for a 10:1 ratio and a CEO receiving £200 per hour, a worker receiving £10 per hour would have a claim for an additional £10 per hour. A worker receiving £12 per hour would have a claim for additional £8 per hour, and so on.

This is not to deny that there are problems with this model based on its individual enforcement nature (or ‘individual justice models’), including those associated with costs, potential inadequate institutional assistance, inadequate remedies and delays.¹³⁸ Potential barriers to justice are significant, but these are not dissimilar to other labour law rights. For addressing these issues, there could be scope for public enforcement of the ratios through a well-funded labour inspectorate in addition to civil enforcement through the courts. It is also critical that trade unions and/or worker representatives are closely involved in the monitoring process of pay ratios and empowered to bring claims on behalf of the lowest paid workers.

¹³³ M Freedland and S Deakin, ‘The Exchange Principle and the Wage-Work Bargain’ in *The Contract of Employment* (n 17).

¹³⁴ *ibid.*

¹³⁵ *ibid* 61.

¹³⁶ *ibid* 56.

¹³⁷ See ACL Davies, ‘Terms Inserted into the Contract of Employment by Legislation’ in *The Contract of Employment* (n 17).

¹³⁸ McCrudden (n 121) 69.

(e) *A Procedural-Democratic Model for Pay Ratio-Fixing*

The reader may have noticed the absence of any discussion on the precise maximum pay ratio. This omission is not accidental. It is suggested that ILL should not prescribe a specific ratio. Instead, pay ratio-fixing should be left to be made at national level subject to ILL-prescribed democratic-procedural guarantees. There exist multiple reasons for this. Firstly, as supporters of maximum wages themselves acknowledge, ‘any specific cap... would have to be somewhat arbitrary’¹³⁹ and that ‘[t]he exact ratio is less important than the principle that limits be placed somewhere, and can be adjusted on the basis of experience’.¹⁴⁰ Secondly, this method of determination avoids the danger of ILL being seen as prescribing a single one-size-fits-all formula by introducing a ‘reflexive’ element, allowing adaptation to national context and conditions.¹⁴¹ It hence addresses (at least partly) Collins’ concern that ‘agreement on general mandatory standards at international level seems both impossible and probably in many instances undesirable because it does not satisfy a requirement of reflexivity’.¹⁴² In addition, it fits with a political understanding of the right as both promoting a ‘language that creates the basis for deliberation’¹⁴³ and initiating contestation around the specification of the pay ratios in national settings.¹⁴⁴

However, ILL should focus on establishing broader substantive criteria for ratio-fixing along with setting procedural rules. Pay ratios need to be meaningful and effective, sensitive to social justice considerations of what is unacceptable as an ‘unjust share’ wage in accordance with the reality that any production is a collective enterprise. The overall state of income inequalities in the country and social policy design (including social protection) should also be relevant factors. With regard to procedural norms, it is critical that there is inclusive and broad participation.¹⁴⁵ In accordance with the diverse national traditions or national preferences, this may involve a political process of minimum wage-determination after consultation with social partners, a tripartite model or a bipartite model through collective bargaining.¹⁴⁶ However, as with minimum wage-setting any consultation should be meaningful and effective and be based on the active participation of the social partners.¹⁴⁷ Additional special guarantees for the inclusion of low-paid workers or their representatives in this process are also necessary. These would allow the thematization of vertical wage inequalities and hence increase the visibility of the issue of inequality at the public debate in the course of the pay ratio-fixing process.

Besides the inclusive nature of the process, the democratic implementation of the right should be strengthened by assigning collective bargaining a major role in pay ratio-fixing. Given the democratic function of collective agreements,¹⁴⁸ ILL should recognise pay ratio-fixing as an express issue for collective bargaining and grant the power to collective agreements (sectoral or firm-level) to set *narrower* pay ratios than those determined at national level. This essentially follows the well-known principle of *favourability* for concurrence of different normative

¹³⁹ Pizzigati (n 13) 18.

¹⁴⁰ Ramsay (n 13) 207.

¹⁴¹ See further R Rogowski, *Reflexive Labour Law in the World Society* (Edward Elgar) 2013.

¹⁴² H Collins, *Employment Law* (OUP 2010) 49.

¹⁴³ M Ignatieff, ‘Human Rights as Politics and Idolatry’ in A Gutman (ed), *Human Rights as Politics and Idolatry* (Princeton University Press 2001) 95.

¹⁴⁴ See Atria (n 90).

¹⁴⁵ On participation as a pro-active duty of human rights see S Fredman, *Human Rights Transformed* (OUP 2008).

¹⁴⁶ See ILC, *Minimum Wage systems: General Survey* (n 130) Chapter III.

¹⁴⁷ For a social justice comparison of collective bargaining and the Low Pay Commission in the UK as minimum wage-setting mechanisms See I Katsaroumpas, *UK report on social dialogue in wage-setting* (Ethos Consortium 2019).

¹⁴⁸ See A Bogg, *The Democratic Aspects of Trade Union Recognition* (Hart 2009); M O’Neill and S White, ‘Trade Unions and Political Equality’ in *Philosophical Foundations of Labour Law* (n 18).

sources and precludes a situation where a weak bargaining power of trade unions is translated into an extreme pay ratio which would be the case if collective agreements were allowed to set wider pay ratios.¹⁴⁹ Very importantly, this proposal enables the use of industrial action as a means of resolving disputes over pay ratios thus opening another means of contestation against extreme wage inequalities. Conceived likewise, the proposed democratic-procedural model can exploit the complementary role of litigation and collective bargaining for the determination, monitoring and enforcement of pay ratios. As Deakin finds in his analysis on pay equity norms and collective bargaining, litigation

is unlikely to be effective in advancing an equality agenda in the absence of well-functioning arrangements for collective wage determination [but], [c]onversely, collective bargaining ‘in the shadow of the law’ is likely to lead to more egalitarian and equitable outcomes than would be obtained from a purely voluntarist approach based on the autonomy of the wage determination process.¹⁵⁰

The proposed method of determination combines a statutory scheme of national pay-ratio setting with collective bargaining and collective autonomy. But it should also be stated that corporations ought to be able unilaterally to set narrower pay ratios than the ones prescribed by collective bargaining or when they are absent by the nationally determined ratios.

(f) Limitations and Embeddedness

This regulatory model translates the right against extreme wage inequality into a range of concrete procedural and substantive duties imposed on the state and employers. Like wage fixing, it aims to *mainstream* pay ratios in different levels and contexts. A hierarchy of pay ratios is envisaged. National pay ratios should set the broader possible pay ratios. Collective agreements can provide for lower pay ratios for the purpose of setting enforceable terms in the employment relationship. In addition, state authorities should establish pay ratios for taxation purposes and public procurement which shall not exceed the national ones. The entire regime depends upon a robust duty of corporate disclosure.

Before looking at the issue of embeddedness of this model in ILL, however, it is important to caution against overstating the case for maximum pay ratios by acknowledging some of the limitations of the strategy. Firstly, a maximum pay ratio does not *eliminate* inequalities or the reality of wage stratification and differentiation. As Ramsay puts it, a maximum wage

does nothing to address inequalities in the ownership and control of productive forces, but it is a simple and direct way of limiting the degree of economic inequality and it is compatible with other measures such as a wealth, inheritance or progressive consumption tax, or with more radical proposals such as the provision of a basic income.¹⁵¹

While maximum pay ratios are capable of forming an essential *part* of a broader transformative agenda, they shall not be treated as a panacea for addressing inequalities or, even worse, as ‘isolated’ policies.¹⁵² This danger is manifest in Anderson’s account on democratic inequality

¹⁴⁹ See Lord Wedderburn, ‘Inderogability, Collective Agreements, and Community Law’ (1992) 21(4) ILJ 245.

¹⁵⁰ S Deakin and others, ‘Are litigation and collective bargaining complements or substitutes for achieving gender equality? A study of the British Equal Pay Act’ (2015) 39(2) Cambridge Journal of Economics 381, 382.

¹⁵¹ Ramsay (n 13) 213.

¹⁵² For UK minimum wage as an isolated effect see D Grimshaw, G Bosch and J Rubery, ‘Minimum wages and collective bargaining: What types of pay bargaining can foster positive pay equity outcomes?’ (2014) 52(3) BJIR 470, 479.

which defends the inclusion of range-constraining rules in distribution but leaves the market to dictate the rest of distributive outcomes.¹⁵³

For mitigating this possibility, the right against extreme wage inequality should be seen as a *complement* rather than a substitute for the safeguarding of workers' voice in the workplace through worker representation in the corporation and strong collective bargaining institutions.¹⁵⁴ The model presented here not only offers a substantive guarantee for enforcement of pay ratios but also involves collective bargaining as a major mechanism for pay ratio-fixing backed by the possibility of industrial action. Secondly, the thesis that ILO should not determine the exact level of pay ratios is vulnerable to the charge that the national regimes may be meaningless. One could point to the real danger that countries may pay lip-service to the idea and appear to comply with their obligation but set the ratio at such a high level as to have little or no practical value. This problem is of course not dissimilar to that of minimum wages and is inherent in any model which does not adopt a rigid ILO-prescribed number. Even though this danger cannot be fully avoided, the recourse to creating procedural spaces around the implementation of the right at least provides a way for making the issue visible at national/societal level and at least creating a 'culture of justification'¹⁵⁵ where wage ratios are not treated as a private affair.

A final objection concerns the potential for the maximum pay ratios to become the norm for companies, or a ceiling rather than a floor. This objection would invoke the well-documented 'anchoring bias' in behavioural psychology, according to which individuals tend to adopt or move towards an initially provided numerical value as the basis for making judgments.¹⁵⁶ Academic literature offers some evidence for this effect in legal contexts,¹⁵⁷ in groups¹⁵⁸ and in relation to 'evaluations of just reward levels and degrees of injustice'.¹⁵⁹

Without understating this possibility, four points should be made as a response. Firstly, there is a surprising absence of literature on the issue of wage determination and the anchoring effect. It is also important that the anchoring effect is shown to be almost nonexistent for 'implausibly extreme anchors'.¹⁶⁰ The second is that, under the proposed model, national pay ratios will themselves be subject to processes of deliberation and contestation. As a result, even if companies adopt the national pay ratios they will at least be nationally determined according to public processes.

Thirdly, it is essential that the law provides for workers' presence in the decisions on pay ratios or alternatively granting strong bargaining regimes to assist trade unions in their negotiation for lower pay ratios. This will not be dissimilar to wages where it is evident that collectively bargained wages are not all set at the level of the minimum wages. There is also evidence in academic literature on the negative effect of strong unionisation rates on executive

¹⁵³ Anderson (n 57).

¹⁵⁴ See Wedderburn, *The Future of Company Law* (n 14).

¹⁵⁵ See R Forst, *The Right to Justification: Elements of a Constructivist Theory of Justice* (Columbia University Press 2011).

¹⁵⁶ For the original formulation see A Tversky and D Kahneman, 'Judgment under Uncertainty: Heuristic and Biases' (1974) 185(4157) *Science* 1124.

¹⁵⁷ J Robbenolt and C Studebaker, 'Anchoring in the Courtroom: The Effects of Caps on Punitive Damages' (1999) 23 *Law and Human Behavior* 353; M Marti and R Wissler, 'Be Careful What You Ask For: The effect of anchors on personal-injury damages awards' (2000) 6(2) *Journal of Experimental Psychology Applied* 91.

¹⁵⁸ See T de Wilde, F Ten Velden and C De Dreu, 'The anchoring-bias in groups' (2018) 76 *Journal of Experimental Social Psychology* 116.

¹⁵⁹ B Markovsky, 'Anchoring Justice' (1988) 51(3) *Social Psychology Quarterly* 213.

¹⁶⁰ G Chapman, 'The limits of anchoring' (1994) 7(4) *Journal of Behavioral Decision Making* 223.

compensation which can apply to pay ratios as well.¹⁶¹ Fourthly, ILL needs to set procedural safeguards against the possibility that the enactment of a national pay ratio may lead to an increase of company pay ratios up to the national one through a non-regression clause. Under this clause, it will not be possible for a company to increase its pay ratios for a set period of years even if they are still compliant with national pay ratios. And any increase of pay ratios after this period even in case that pay ratios still do not exceed the nationally determined ratios must gather the consent of the majority of workers in the employing unit or be agreed through collective bargaining.

Following this discussion on possible limitations, let us now turn to the question of embeddedness of this model in ILL. In light of the major significance of the right for wage distribution and recognition, it is desirable to use the ‘normative function’¹⁶² of ILO, namely Conventions and secondarily Recommendations. This may take the form of a comprehensive *ILO Convention against Extreme Inequality* which could include the proposed regime calling for interventions in public procurement, tax law (social policy), minimum wage-setting, corporate disclosure and freedom of association/collective bargaining along with other initiatives in these areas. This broad range of topics aligns with the *Declaration of Philadelphia’s* vision of the ILO ‘as an all-purpose organization capable of dealing with a diversity of subjects and more attuned to social and economic policy than to the sphere of labor’.¹⁶³ There is no doubt of course that even if ILL makes what appears at least in the current conjuncture an extremely radical move, there are inevitable political compromises to be made which are beyond the scope of this article. Alternatively, ILL may decide to embed at least some of the elements of our framework or articulate a more general duty for Member States to *respect, ensure and promote* maximum pay ratios in a recommendation.

As a minimum, ILO has the capacity to assist in the development of accounting standards and indicators for measuring pay ratios, as part of the indicators formed by the ILO Future of Work Report measuring the ‘distributional and equity dimensions of economic growth’.¹⁶⁴

E. Conclusion

This article sought to make two contributions to existing academic literature. Firstly, it argued for the recognition of a right against extreme wage inequality as an ILL right. Secondly, it advanced a multi-faceted regulatory model for its implementation encompassing a diverse range of duties along with a democratic-procedural model for the determination of pay ratio. Besides the value of this right in extending the boundaries of multiple disciplines to take vertical wage inequality more seriously (labour law, tax law, public procurement, equality law), it offers an example of a ‘social justice modernization’ of ILL. This modernization can contribute to a labour law agenda that moves the ‘future of work’ discussion beyond the obsessive fear of technology towards addressing the injustice generated by unchecked capitalism. Indeed, the ‘mismatch between [ILO’s] lofty aspirations and practical

¹⁶¹ Rafael Gomez and Konstantinos Tzioumis, ‘What do unions do to executive compensation?’ (2006) CEP Discussion Papers LSE; Q Huan et al and others, ‘The Effect of Labor Unions on CEO Compensation?’ (2017) 52(2) *Journal of Financial and Quantitative Analysis* 553.

¹⁶² Maupain (n 2) 6.

¹⁶³ E Cordova, ‘Some Reflections on the Overproduction of International Labor Standards’ (1993) 14 *Comparative Labor Law and Policy Journal* 138, 140.

¹⁶⁴ ILO, *Work for a brighter future* (n 3) 50.

achievements'¹⁶⁵ is nowhere more visible than in the contrast between the recognition of the issue of widening inequality and the lack of new regulatory solutions.

This is unfortunate since ILL is uniquely well-placed to promote a maximum pay ratio policy. In placing its focus on inequality, a pay ratio regime highlights the structural problem of inequality and de-reifies the market determination of wage as an issue of policy design rather than as an inevitable natural occurrence. More significantly, maximum pay ratios have the potential to act as catalysts for discussing the fairness of wage equity under conditions of neo-liberal globalization. Hence an ILO-sponsored maximum pay ratio regime follows the spirit of Philadelphia which, according to Alain Supiot is to 'bring the markets back into the arena of legal and political debate'¹⁶⁶ and Maupain's call for 'widening the horizon of social justice'.¹⁶⁷

Aware of its utopian nature at the current conjuncture, our proposal hopes at least to expose a latent possibility of what is elsewhere termed as 'alternative, transnational futures of international labour law'.¹⁶⁸ Notwithstanding its imperfections, a maximum pay ratio regime should be a part of the renewed search for the Spirit of Philadelphia, understood not as an historic relic, but as imposing a continuous demand upon each generation to 'realise that the paths we forge for the future must measure up to the demands of the present'.¹⁶⁹ Against a society that currently regresses to intense stratification under the guise of pseudo-scientific doctrines of 'efficiency' and 'marginal productivity', the ILO should lead the offensive against rampant inequalities. A right against extreme inequality deserves to be considered for inclusion in this much-needed offensive.

¹⁶⁵ Helfer (n 1) 399.

¹⁶⁶ Supiot (n 2) 74.

¹⁶⁷ Maupain (n 2) 256.

¹⁶⁸ A Blackett and L Helfer, 'Introduction to the Symposium on Transnational Futures of International Labor Law' (2019) 113 *AJIL Unbound* 385, 389.

¹⁶⁹ Supiot (n 2) 75.