

**The Right to Development and the Importance of Human and
Social Capital as Human Rights Issues**

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*Trieste Forum on Science and Technology:
Impact on Society and Economy*

World Academy of Art & Science

Trieste, Italy

March 4-6, 2013

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INTRODUCTION

One of the most far-reaching decisions of the United Nations General Assembly was the adoption of the Declaration on the Right to Development in 1986. The Declaration was adopted with an expectation of optimism about progression to a new global economic dispensation. This did not happen. However, the Declaration remains an important symbol of global expectation. Notwithstanding it is an instrument that remains contested in many global fora. To the extent that the expectations of the Declaration received modest success, it is possible to explain this by the fact that the Declaration anticipated an economic theory that had not been intellectually and scholastically developed to make it work in practical policy arenas. On the other hand, a competing theory had evolved which embodied an important level of intellectual coherence and was justified by a version of conventional economics that supported the political perspectives of the capital intensive states and related interest groups. In this competitive universe of economic paradigms, the right to development initiative was seriously disadvantaged. However, today things are changing.

In a recent volume of CADMUS, a publication of the World Academy of Art and Science, the editors boldly called for “Revolution in Economics.” The editors declare that “the discipline of economics is at a crossroads. Either it undertakes a complete re-evaluation of its fundamental postulates and a critical reassessment of their utility to solve real problems or it risks sliding further into irrelevance.” The editors believe that now is the time “for a renaissance of thinking in economics.” They maintain “inadequate thought” leads to “failed policies.”

The central challenge to the conventional wisdom of economic theory is that the construction of its 19th century roots were significantly influenced by a conception of science identified with a Newtonian universe. This approach generates an approach to economic order that is largely mechanistic having an autonomous machine-like character. This approach serves as a foundation and a constraint on economic thinking. The CADMUS editors note that the conditions of economic organization have changed. Economic evolution has developed a knowledge based service economy. Under these conditions, the central fact of economic importance is the critical value of human capital. This is a profoundly important insight for understanding economics in its relation to the social and psychological sciences, including law, and the necessity of understanding the interdisciplinary interdependence of social science, economics and law.

It is a part of the intellectual legacy of the World Academy of Art and Science that a former president of the academy, Harold Lasswell, also recognized the centrality of human and social capital in the social sciences and law. He spent a lifetime seeking to create a comprehensive theory for inquiry about the individual human being in the global social process. This focus on the individual as a capital resource is also an important idea behind the

contemporary development of human rights perspectives and practices in global society. The right to development refines the human rights perspective by making the individual a central component of development from a human rights point of view. In this sense, the individual human being as a bearer of social and economic capital becomes important in the development of a theory of development itself. What seems to be emerging from this discourse, with the human being placed in the center of an appropriate focus of inquiry, is the necessity of integrating knowledge across disciplinary lines as one of the most important elements in the creation of a revolution in economic thinking.

According to the editors of CADMUS “today there is an urgent need to reconnect disparate fields of thought in the social sciences-economics, politics, sociology and psychology. Unification of the social sciences and the humanities can generate precious insights into social process.” I would add the discipline of law to this process as well.

One of the great insights of President Franklin Roosevelt was his statement with regard to the crisis of the Great Depression that this crisis was not the product of an autonomous machine. It was a crisis created by human choices and one that could be ended by human choices. Clearly, the insight suggests that human choice is integral to human and social capital. Connecting the idea of human capital to human choice brings in the centrality of understanding choice in terms of decision and the architecture of decision itself. The related challenge is the direction of decision making and choice with respect to defensive human goals and values. The most defensible goal of choice and development is the common good of all. Human choice is implicated in the Declaration of the Right to Development and therefore expresses a challenge of new economic thinking to give decision making a central place in theory and to understand challenges of decision for giving operative effect in policy arenas for the advancement of human and social capital in global economic order.

As the editors of CADMUS indicate, we need a richer and more scientifically integrated understanding of a multitude of disciplines which can inform a new paradigm of revolutionary thinking in the development of a useable theory of human capital defined developmental processes. I believe that the new thinking pioneered in WAAS is one of the most challenging initiatives for grappling with a coherent and defensible economic theory to give credibility to a global right to development. In short, the context presented by the new economic thinking suggests a promising root to fully understand the problems and possibilities of an emphatic emphasis on human and social capital for triggering the dynamism of development in social process.

Here it seems to me that the model developed by former WAAS President, Lasswell may facilitate the new economic thinking processes. Lasswell developed a human centered social process description that could serve as a model for knowledge integration across disciplinary lines. Lasswell expressed this in an elegant and reasonably simple framework: Social process means social interaction at any level. Social process/interaction consists of human beings (human

capital) pursuing values, through institutions based on resources. This model can be expressed with greater complexity and clarity at any level of social organization. I would suspect indeed, that it is a tool that can bridge the divide between the universe of macro-economics and the universe of micro-economics. This model as will be later shown is compatible with the UN Declaration of the Right to Development as well.

The Conceptual Challenges of the Right to Development

The conceptual basis of the international right to development is to be found in the Atlantic Charter which Roosevelt declared in the U.S. Congress in 1941. The Charter emerged as an agreement with Churchill to codify the war aims of the allies. The Charter contains the famous Four Freedoms for which the war was being waged. The Four Freedoms were a merger of Roosevelt's New Deal liberalism and Churchill's eclectic humanistic conservatism. The Four Freedoms became the war aims of the allies and the basis for a post-war form of global organization. The Four Freedoms were: the freedom from fear (security); the freedom of speech and expression (political); the freedom of conscience and belief (confessional); the freedom from want (economic and material well-being). It should be recalled parenthetically that when the UN unleashed its millennium development project it recalled that the project was intrinsically a part of the Four Freedoms articulated by Roosevelt.

The end of the war generated conditions which held an uneasy coexistence with the Four Freedoms and the UN Charter. The Red Army had largely beaten the Nazis on the continent. This represented the geographic reality of a socialistic sphere of influence. In certain economic circles this fact saw the state and its control over the means of production as represented also the extinction of private property and correspondingly, an extinction of human freedom. A group of individuals met in Mount Peloron and devoted their intellectual efforts to resisting state tyranny. Among the tools they used was a recasting of forms of 19th century capitalism as an intellectual barrier to the unlimited growth of state power. The consequence of the Mount Peloron initiative is a good example of the durability and power of ideas especially when coherently and elegantly expressed, as well as justified at the altar of scientific verification. The fundamental ideas had ideological traction: strong state equals weak freedom. This idea challenged the Roosevelt idea that necessitous human beings experienced diminished freedom. In this view the state was not a destroyer of freedom but an active promoter of freedom by expanding opportunity and promoting equality.

The UN Decisions Relating to the Right to Development

A threshold concern with the United Nations Declaration of the Right to Development is the challenge to give it an appropriate juridical status. Juris consults have designated the prescriptions and guidelines in these instruments as forms of international economic soft law. I suspect that the weak position that the Declaration on the Right to Development holds in global affairs is that it has been urged to be construed as a document of human rights. However, it is by

no means clear that the juridical character of this instrument is obvious. Additionally, I suspect that behind the motivation for the adoption of the Declaration was that it was meant to be a directive providing normative guidance for the idea of global social justice. However, it cannot be said that at the time it was adopted, our theories of political economy, which implicate the social justice normative dimension of global political economy, had been adequately developed to provide a strong conceptual and normative foundation for the Declaration. Additionally, our theories of justice from a philosophical point of view had not evolved to provide us with an objective justification for a universal theory of global social justice universalizing the concept of human dignity.

Institutionally the UN has taken the right to development as a serious part of its mandate. However, it cannot be said that it has established a dominant place for even the discourse about a charter-based right to development. In point of fact, the UN has strenuously pressed the right to development as an important and evolving charter-based expectation. At the same time as the UN has pursued this track, the issue has had little traction in many of the centers and fora of global economic policy making. This would suggest that the evolving law of development carries an even softer legal pedigree than its compelling symbols might suggest. It would be appropriate to step back for a moment and trace this development to provide a better understanding of the contemporary prospects and challenges for a human right development today.

Contextual Background

An important component of the contextual background that has triggered my interest in revisiting the right to development idea, is the importance of the current global economic recession which I believe is founded and generated by a seriously flawed economic theory. That theory emerged as we said as a response to the implied threats which it saw in the development of a theory couched in human rights terms of a general right to development. That flawed theory is today described as economic neo-liberalism.

At the end of World War II, the victorious powers represented distinguishable versions of political economy. In Eastern Europe the Red Army, which was significantly victorious over the Nazis established a geographical sphere of influence with the USSR as the main center of influence. In that sphere of influence the expectation of political economy was that it would be under state control. In the geographic sphere of the West, the guidelines of post-war governance were influenced by the Atlantic Charter and the war aims of the allies. Both of these emergent expectations envisioned an important role for the state in the reconstruction of Europe. These contending perspectives however, shaped the evolution of the UN approach to the issue of the future of global political economy.

During this period an important group of center left economists and philosophers met in Switzerland and formed the Mont Pelerin Society. They saw the danger that the Soviet style state posed for human freedom, in particular its claim to the exclusive patrimony of the national

economy. This approach they saw as an incipient threat to freedom on a global basis. The fundamental idea behind this was that the extinction of economic freedom represented the demise of human liberty. A central component of this emergent perspective was the role of private law institutions. This role historically had established the important technical basis for the protection of private property. Hayak the Austrian economist, refined this idea by an ingenious merger of law (property law) and economic theory (*Law, Legislation, and Liberty*. 1973, Chicago: University of Chicago Press). The tradition of private law in both the civil and common law provided legal protections against the arbitrary taking of property.

This question of property rights, law and newer approaches to economic theory which required political interventions into traditional private law institutions, came to a head during the period of the New Deal of the Roosevelt Administration. The Supreme Court led the charge in an effort to dismantle New Deal legislation on the basis that they violated private property rights. These private property rights were justified as being beyond the reach of legislative sovereignty. Indeed, they were justified by natural law. This challenge was not so much theoretically resolved as it was resolved by changes in the composition of the court.

In 1945, the UN Charter came into force. Among its major purposes was the obligation to “achieve international cooperation in solving problems of an economic... character.” Article 55 of the text explains that the UN shall promote “higher standards of living, full employment, and conditions of economic progress and development.” In 1966, the UN adopted an important human rights treaty: The International Covenant on Economic, Social, and Cultural Rights. The Preamble to the Covenant recognizes the influence on its adoption of the Universal Declaration of Human Rights, the Atlantic Charter, including its provision for a freedom from want. Overall, the document is an early step in recognizing the right to development. It also places prime responsibility for giving force to these rights on the state. It should be noted that Articles 6 and 7 identify a right to work and the right of an opportunity to work and related work rights. Although the Covenant has a comprehensive codification of prescriptions, it does not give us any guidance that identifies a theory of development or a global theory of political economy based on social justice goals. Indeed, I would be surprised if anyone in this ordinance could provide a citation in conventional economics that even refers to this instrument.

We must step back a moment to a period shortly before the adoption of the Economic Rights Covenant. In 1960, the UN General Assembly adopted a declaration on the granting of independence to colonial countries and people. This was a sovereignty supporting declaration. It effectually suggested that realizable development progress will be facilitated by the expansions in sovereign bodies politic. It also recognized that colonialism had been exploitive and an impediment to development. It therefore implied that new sovereign status would be an ideal vehicle for economic, social and cultural development.

This declaration was followed by a highly controversial sequence of General Assembly Resolutions. These were the Resolutions relating to permanent sovereignty over natural

resources of 1962 and 1974. These Resolutions effectually sought to advance thinking about a state centered right to development. They also underline the strength of sovereignty by changing the conventional international law of rules about the protection of private property in the global environment. It was around Article 4 of the 1962 Resolution that the battle lines were drawn. This Article sought to change the traditional way in which private property was protected globally. Under this Article, a sovereign state could nationalize private property for reasons of public utility. Additionally, the sovereign would only consider compensation in terms of “appropriate” standards. The prior regime required the sovereign to provide prompt, just, and adequate compensation. In effect, the control over foreign investments would be subject to sovereign economic discretion. This issue became a major matter of juridical importance which resulted in changes to the doctrines of sovereign immunity and act of state. Following on these Resolutions the UN adopted a program of action for the establishment of a new economic international order. The primary objective of this program was to improve the economic position of the new sovereign participants in global society.

This new program was suggesting that a new regime secure a higher level of international cooperation regarding economic resources and processes. The approach also saw cooperation as an important obligation on the older sovereigns. The fundamental ideas in this program were codified in the Declaration on a New Economic Order (1974). In 1975, this was followed by the adoption of a charter of Economic Rights and Duties of States. These instruments sought to both promote and prescribe a legal regime for a new international order based on the primary role of the sovereign state in the management of economic order. A decade later the complex prescriptions in the (New International Economic Order (NIEO) and its state centric orientation were merged into the 1986 Declaration on the Right to Development. The model implicit in this document seeks to strike some sort of balance between the individual social participant and the near exclusive reliance on a state centric economic paradigm. The focus on the individual is reflected in Article 1 and Articles 2 (1&2). The rest of the document in all the other articles stress the state central approach to development. In Article 1, it is stated that the right to development is an inalienable human right. It also states that individuals and peoples are entitled to participate in development. This therefore means that the human rights foundation of the idea of individual and peoples human capital is also a foundation of modern human rights. This suggests that a new theory of economic thinking must account for universal human rights.

At this point, the development initiative presents a critical intellectual challenge for those who wish to give the Declaration policy relevance. Notwithstanding the reference to individuals, the Declaration has a largely macro-economic emphasis. Although I have not seen a macro-economic theory based on the Declaration. However, regardless of the underdeveloped theory of macro-economics in this context, there is the ringing reference to an inalienable human right. This suggests that we also are lacking a theory of micro-economic importance. Additionally, the integration of a macro and a micro-economic perspective would seem to be a critical foundation for giving the right to development intellectual credibility and efficacy in policy arenas.

World Academy fellows such as Orio, Giarini, Ivo Slaus, and Garry Jacobs, call for a new economic theory that is relevant to our time. I would suggest that notwithstanding the imperfections in the drafting of a right to development, the right to development represents a concept that with proper clarification could enhance the kind of thinking that anticipates a new global economic paradigm. It is particularly important from a right to development point of view, to recognize that the individual participant in economic order is a capital resource and the appropriate development of this resource is the pathway to the generation of a new and sustainable economic message. Additionally, the normative constraint on how individual capital is nurtured and developed has to be guided by the normative component of human rights, which places a premium on human well being.

It is worthy of note that although the right to development has had diminished traction the UN continues its vigorous promotion of this idea. Its recent project dealing with developmental targets for its millennium initiative is a very clear project that focuses on developing human capital via projects such as the eradication of illiteracy.

The theoretical limit implied in the right to development is that we do not have an identification of the critical stakeholders in this project. The stakeholders include a multitude of participants and theory would have to account for that. For example, the assumption that globally states largely monopolize economic activity obscures the reality of the global enterprising private sector. That sector includes not only conventional business activities across state lines, but also the significant monopoly the private sector has on global capital and its related financial institutions.

This omission has tended to obscure the salience it has been given to neo-liberal principles of economic order. For example, the private sector was outraged over the resolution related to permanent sovereignty over natural resources. It categorically rejected the weakening of the protection of private investment property. This battle implicated the entire new international economic order paradigm. It implicated it at levels below the economic radar screen. For example, sovereignty is given operational effect in many different ways in international society. The capital export in countries worked on a restriction on the immunity of sovereigns from legal accounting when they acted in the market (restrictive theory of sovereign immunity). Another major technical doctrine that could insulate a state when it took foreign property was the Act of State Doctrine. This Doctrine too was gradually reduced so that a state nationalizing foreign property could be challenged in foreign courts. This led to the so-called Hot Good Doctrine, which meant that if a state took foreign property, wherever that property showed up abroad it could be subject to legal proceedings, which would seize the property and litigate its title. The owners of private property investment were fighting back. In this regard it became apparent that development of any sort could not happen without foreign investment.

This meant that foreign investment could come in with terms favorable to the investor. The abuses of this newer approach to global economic relations is well documented in Perkins,

The Confessions of an Economic Hit Man. New state elites found that there was plenty of capital to borrow often for dubious projects and often to satisfy foreign bank accounts of the new elites. This process of neo-liberalism generated diversified forms of economic activity in which corporations could relocate to undeveloped countries and produce goods, which could be sold to the corporations' original corporate home. Outsourcing became an important tool in the exploitation of the regulatory vacuum of doing business abroad. Cheap labor, relaxed labor standards, access to developed markets, and tax avoidance schemes, all of which made doing business in an unregulated market attractive for self-interest but unattractive for the common good. The limits on this model include vast accumulated debts vested in the sovereigns, which was a further limitation and what a state centric model could do about development.

The principle behind the Declaration on the Right to Development included the idea of sharing economic and technical resources to benefit the new states.¹ The United Nations promoted the principle of sharing as a mandatory, rather than a discretionary, obligation to sustain global equity. It is clear that this evolving international law was confronting two radically contentious ideological perspectives. The first would center on the promise of protecting property in the international environment. The protection of property would be a marker of a state's commitment to a paradigm sympathetic to the global private sector rather than the national or global public sector. The second perspective is associated with the perspectives of international socialists or social democratic ideology. It recognized that the public should control all economic development or that the public shares in the management of the production and distribution of wealth and related values.

The contemporary state of the global economy witnessed the ascent of the privatization of national and global economic institutions. It also witnessed emerging market economies, free trade zones, and the dominant role of corporate enterprise. The mantra of the free trade market phenomena has been "world peace through world trade."² The ascent of the private sector is considered to be more efficient and less wasteful than corrupt and inefficient state bureaucracies.

The global institutionalization reflected these developments (the legal and political cultures of the WTO, the IMF, and the World Bank). To some degree, they came at the expense of working through the development agencies of the United Nations. However, a significant policy shift had emerged in the global economy. The emergence of a coalition of economically dominant states, the Group of Eight, now approximately a group of 20, reflected this policy shift. This shift has the appearance of creating an Economic Security Council of the UN but functioning outside of the organization. From a technical point of view, the international economic soft law associated with the new international economic order has become even softer. On the other hand, it is unclear what the general emerging rules are that

¹ Id at art. 3(3).

² Lawyer Roles, *supra* note 2, at 134.

govern the neo-liberal economy. The institutions of this perspective have been under pressure in part because the *lex specialis* within these institutions is sometimes incompatible with general international law and international human rights law. Moreover, critical appraisal of many of the operational rules often shows that the rules are enforced strictly against the powerless and often ignored by the powerful. Moreover, the efficiency of the model is under critical examination because the outcomes seem to generate greater global disparity and greater global alienation, and some would even suggest, the radical division between rich and poor may be a cause of radical religious activism or possibly even apocalyptic terrorism. In the next section, we try to provide some of the tools that may facilitate a revolution in economic thinking along the lines of a human right to development. We start with the importance of the global context and how that context may realistically mapped. We borrow from the work of a former president of the World Academy, Harold Lasswell and a current fellow of the academy, Michael Reisman:

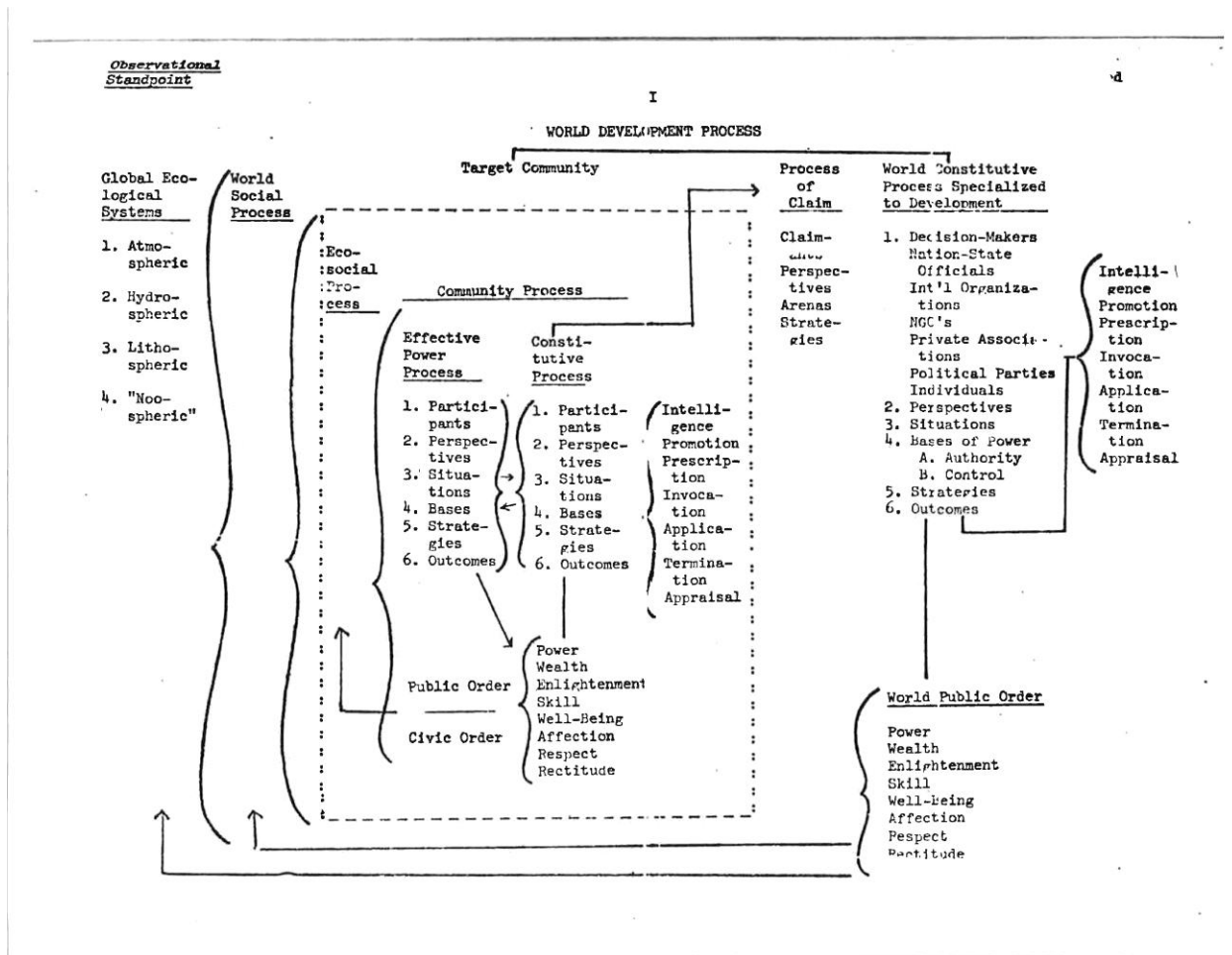
Some Suggested Elements That May go into the Formulation of a New Economic Theory of Development

We start this section with some guidelines drawn from the Declaration on the Right to Development. Article 1 stipulates the following:

“The right to development is an alienable human right by virtue of which every human person are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”

Article 1(2) expresses the controverted norm that the human right to development includes the exercise of an inalienable right to full sovereignty over all their natural wealth and resources. This provision provides for a more state central in development policy and application. Article 2(1) stipulates that “the human person is the central subject of development and should be the active participant and beneficiary of the right to development.” This provision moves somewhat from the state centered view. The central point is that the human person is not an object of development, but a subject of development. Seen in this light, the human person is more closely analogous to the idea of the person representing individual and social capital.

The above quoted excerpts from the right to development assume a context from which the essential subject generated claims for development emerge as challenges for policy, decision, prescription, application, and enforcement. This requires a realistic map of the entire global social process. Because it is from this process that the challenges relating to individual and social capital as central elements of a right to development emerge. Below is a map appropriated from the traditions of international law scholarship inspired by fellows of the World Academy (Lasswell, McDougal, Reisman).



This chart developed by Lasswell, Mc Dougal and WAAS fellow Reisman is meant to provide the essential global context for a new economic theory of development. The model provides for an identification and an inter-relationship of change together with a standard which may evaluate them against the preferred objectives of a theory of development. The approach clearly demonstrates the development must be understood in terms of all comprehensive values implicated in human rights and not simply a single value such as wealth. Fundamental to understanding the map is an effort to identify the idea that all variables are inter-stimulating each other in global society. The map helps us to generate specific targets of change recognizing their inter-dependence and inter-stimulation as factors implicating the entire context.

I. The context of ecological values. Time was when the conventional wisdom in economics was that nature and related environmental resources were unlimited. Today, the reality of climate change challenges this earlier altruism. A new economics must consider both the potentials and the limits of the ecology of the planet. The ecology of the planet, therefore, is a crucial factor of context for a new political economy.

II. The context of global social interaction. Global social interaction involves the shaping and sharing of all values. The outcomes of this process generate the aggregate statistics of human

development or the lack of human development. One of the most important problems that emerge from global social interaction are the problems of effective power and social conflict. However, the new economic theory must have a useable model of the global social process in order to fully appreciate the problems it generates on a global basis for all values.

III. The global process of effective power. The global social process reproduces the institutions and imperfections of the production and distribution of global power. It is well understood that the outcomes of global power represent conflict and competition. Additionally, the expression on global power in society is done through the process of decision-making itself. We can call this decision-making according to naked power. Since power expresses itself in terms of conflict, war and often violence, it will be obvious that peace and security are critical foundations for a social process that seeks to maximize its human capital resources. In short, war consumes human capital resources, and does not enhance or reproduce it. The new economic theory must, therefore, account for the global processes that generate and sustain human conflict, since these processes generate deficits in development.

IV. The evolution of power into behavioral constitutional processes. Conflicts about power do not always endure indefinitely. Indeed, there are periods when the power broker contestants in conflict may see that the continuance of conflict may only result in zero sum losses. This realization may generate the elements of inter-elite collaboration from which understandings may emerge about how to manage power in ways that avoid conflict and promote collaboration. If this happens, a society may emerge with a series of understandings about how power is to be distributed, indeed allocated among the power broker contestants. This level of institutionalization of power will reflect the emergence of the power dynamics constrained by distributions which have the support of the authority of community members. When there is a form of constitutional process, we effectually have expectations about institutionalizing the forms of authorized decisions about decision-making itself. This is the foundation for the establishment of a system of public order in which all the values are distributed and produced via the authorized institutions of society. It would, therefore, be appropriate that the new economic theory develop and map the constitutive process (local to global) because it provides the framework of authorized decision-making regarding all the basic values in society including wealth. In this sense, a constitutional order that has a working capacity has an approximation to the idea of the rule of law. And the constitutive process is made operative by the constitutive functions of decision-making. Thus, constitutive decision-making may both directly and indirectly influence development and progress. Additionally, a theory of economic novelty would have to account for the decision-making functions:

1. *Intelligence* which includes gathering information relevant to making decisions and its processing, storage, retrieval, and distribution to all participators performing decision functions.

2. The decision-making function of *promotion* requires agitation and recommendation of certain policies which in the form of prescription have the quality of law. In this sense, promotion is a critical component in decision for directly changing the common interest. It is in this sense, that we cannot look at economics as value-free.

3. *Prescription*. This decision function implicates the formulation and adoption of certain policies as authoritative pronouncements in appropriate sectors of the social process.

4. *Invocation*. This function of decision-making is essentially a provisional decision function that characterizes behavior as incompatible with the law and goals of the community. Those who perform the invocation function raise the question of what initiatives enhance or violate community prescriptions.

5. *Application*. This is the authoritative characterization of conduct as lawful or unlawful. To secure lawful ends, the applier must use tools of some form of sanction to secure appropriate application. In terms of the objectives of development, the consequences of development may be critically related to the actual applicative performance. The new economic initiative must, therefore, give careful attention to the idea of application if development goals are to be real.

6. *Termination*. The decision function of termination means the termination of something in the status quo and its replacement by something that changes the status quo. New economic theory must ensure the termination of dysfunctional traditional standards and the embrace of new thinking.

7. *Appraisal*. The theory of decision-making as applied to development requires that there be constant measures that may be appraised in terms of advancing toward progressive developmental goals and avoiding the regression to the opposite.

New Economic Thinking, Development and Social Change

The new economic thinking has its focus on development in terms of human capital and its potentials for improving the human prospect. The new economic thinking would have to identify a plurality of community systems that are inter-dependant and inter-determining and range from the local and the global. What we observe are territorial communities who know what they want and where they need to go but they lack resources and skills. An extreme example is “cargo cults”. If placed on a continuum, we may see the socio-pathological condition of hyper development. There are a multitude of problematic circumstances in between. For us to develop an approach that permits us to identify where we are and where we want to go, we would have to measure development in terms of the existent state and potentials for transformation of at least the following nine values; power, wealth, enlightenment, skill, well-being, affection, respect, rectitude and aesthetics.

1. Power. The most important expression of power as decision is the understanding of the institution within which it expresses itself. For example, globally, power is significantly decentralized. This means an economic paradigm of global salience runs into the problem of the degree of lack of institutionalization of power. It is probably true that the most power-deprived are the least well-off in global society. The new theory must be able to map global power and to appreciate its capacity to be mobilized for rational developmental objectives.

2. Wealth. In general, this refers to the aggregate volume and composition of what a society produces. It may also refer to income in the community and it may also refer to the notion of an aggregate resource base. In general, when wealth is developed, the outcome is an increase in the volume and composition of products without depleting the resource base. $P+I \div (R)$

3. Enlightenment:

What we mean by enlightenment is the prescription and application of education in social and economic development. The nature of enlightenment as a social capital is evident when education in a society leads to development. A society with an increased education-knowledge base uses enlightenment to extend development through informed decision-making. Decision-makers would make decisions based on informed enlightenment.

4. Well-being:

Well-being including health refers to the state or condition of a society and its members. The well-being of a society is directly proportional to the level of “life expectancy” and indirectly proportional to the expectancy of disease occurrence in that society. The optimum level of well-being, however, is dependent on other values in that society.

5. Skill:

Skill is the ability to perform tasks (especially employment or professional tasks), as a function of human capital development. The skill value is for the benefit of society. Skill development is a consequence of an increase in the strength of the “skill pool” in a society where the skills are directed towards development. Skill is a critical component of individual and social capital.

6. Affection:

Affection is a form of positive sentiment and underlines the loyalty of individuals and associations to the group. Being a basic value, it has tremendous social capital. The increase in scope of positive sentiments in a society increases development achievements and goals.

7. Respect:

Showing regard for other individuals within a society is crucial in development. A lack of respect gives rise to discrimination, which in turn is a direct cause of retarded development.

8. Rectitude:

Rectitude drives moral behavior in society. When rectitude of individuals within a society matches the development goals of the same society, there emerges what we call rectitude development.

These values are the critical components of the theory of a right to development. They are also implicated in the development and enhancement of human and social capital.

The system of mapping the global social, power, constitutive and public order processes represent the essential contextual background for a political economy that focuses its theoretical foundations on the development of human and social capital. Essentially the repository of human and social capital should be focused on the value institutional context and the framework of decision making that shapes this context in ways that maximize the human and social capital capacity in society. The values approach gives us a shorthand method of understanding that human and social capital are clearly implicated in at least nine values that a cross cultural world can be observed with a appropriate tools of investigation. The challenge for theory is to understand the divergent institutions respecting the cultural values and their level of efficacy in practice. We could start with the first challenge of theory which is to establish the appropriate goals of human and social capital development. Here the challenge is to generate procedures and practices, as well as a theory to explain and justify this, which has the task of maximizing the production, distribution and sustainability of every value institutional process in order to maximize the structure, understanding and deployment of human capital.

As a consequence we want to maximize the production, distribution and sustainability of power, wealth, respect, skill, enlightenment, well being, affection, rectitude and aesthetics. In developing this framework we will be alert to the interdependence and inter-determination of functioning value systems. This means that power may be sought for its own sake but it may also be used to maximize value shaping and sharing and sustainability with regard to every other value listed above. Wealth may be sought for its own sake but may serve as a base of power to acquire power and all other values. In short, every value may be sought for its own sake and may also serve as a base of power to shape, share and sustain every other value. This approach requires us to see economics as not a disembodied field from human relations, and if we see in the value processes the repositories of human and social capital, we bring a sense of realism required for a durable new economic theory.

It will be obvious that these value institution relationships that we identify are sought to contextualize what happens in the context of the global social, power and constitutive processes. The central feature of power and constitutive process is the centrality of decision making. We can expand this idea further by suggesting that the centrality to the development and uses of human and social capital is the capacity for the human agents of capital formation and use, to be active and important decision makers in the very processes through which human beings generate value through human capacity. I therefore suspect that the mechanistic approach to economics represents a dramatic failure in its omission to understand the role of decision as a critical component of human and social capital. I now will proceed to provide a few practical examples of these theoretical possibilities.

Human and Social Capital in Development: The Vicos Experiment

The Vicos Experiment was a form of intellectual inquiry that also sought to induce a form of constructive, evolutionary social change in development. The inspiration for the experiment emerged from a view that peasants were incapable of modernization. The project was led by an anthropologist, Allen Holmberg and a former president of WAAS, Harold D. Lasswell. The project was located in the Uplands of Peru and included the village of Vicos. The project leader understood that the Vicosinos were the occupiers of land owned by an absentee landlord. Their position on the land was defined as the status of serfdom. With a small grant from the Ford Foundation, Holmberg purchased the land and the hacienda and essentially became the patron.

The farming practices of the village was unproductive because they had no incentive to produce crops that would be expropriated by an absentee landlord. This involved the project leaders in providing incentives to improve the village economy via farming. That also meant a movement away from near survival to a circumstance of modest prosperity. The incentive was that if the villages cooperated in farming operations, they could keep the profits for community purposes and if the profits were sufficient, they could purchase the land and become land owners. The project leaders found that the initiatives of the serfs with their intimate knowledge of farming capacity and climate, etc., and supplemented by some technical expertise, essentially produced a significant sequence of crops and upon marketing, funds as well. It was important that the villages were participating in the decisions about agricultural production. This initial initiative raised questions about how to exercise decision making in managing the profits from farming activity. This permitted the interveners to promote the idea that maybe decision making should be shared with the community and decisions eventually evolved to issues about healthcare, in particular, healthcare of women, schooling, including schooling for women, and the project evolved with a self conscious direction of training in the processes of decision making and an awareness of appropriate goal values. One significant event was when the community decided they would invest in a truck to transport their products directly to the metropole and increase the value of their products by direct marketing.

The model pursued in Vicos attracted external attention. Some of the Peruvian elites were particularly concerned about what they saw as an incipient process of empowering the underclass. Other Indian communities saw Vicos as a model that they would try to emulate. The Vicos leadership were willing to transfer skills to other Indian communities as well. Unfortunately, a delegation of Indian leaders on the way to Vicos to retrieve the recipe were attacked by hired goons. Several were killed. This gave the sovereign Peruvian state an excuse to terminate the project on the basis that it was disruptive of social peace. Although the project was ended technically, enough of the seeds of change and the processes of decision making to enhance human capital had been transferred. This village is still an example of the importance of developing human capital on the basis that it is sustainable over time.

The idea behind Vicos was recently of interest to the World Bank. One of the participants in the project presented the Bank with a broad prototypical framework of how this could be replicated elsewhere. The World Bank has also developed a more limited version of this idea in its projects that have dealt with micro-enterprise finance. It would seem that bank theorists would prefer to focus on a narrower framework of value institutional capital. The Vicos project combines elements of macro theory, intermediate macro theory and micro theory. The theoretical value of the Vicos experiment is that it can be simplified in terms of a useable development prototype. In this sense, it could have some value for new economic theory to focus on the multitude of possible prototypes that might be given operation effect worldwide. Several years ago I discovered that there were several women from the village of Vicos who had completed advanced doctorates in the United States.

Human and Social Capital Development: Opportunity Lost

When the transformation to democracy in South Africa was underway, the ANC the major opposition party at the time, convened a meeting to discuss central concerns in the development of a new South African Constitution. I was invited to attend and to present a paper on the problems of socio-economic justice under a new dispensation. The focus of my paper was on the transitional arrangements in which the previous government was giving away huge amounts of state investment to its friends and cronies. In short, a new black government coming in would have very little in the treasury to devote to the issue of social justice and the consequences of the apartheid system. I wrote a paper in which I suggested that the constitution should include in its text the idea of a human right to development. I generally suggested that the foundation of such a right would be in the empowering and decision making skill of the poorest of the poor. In short, the paper worked on the assumption that the poor have the least effective voice in the arenas of governmental power.

To my surprise, I found that many of the ANC's leaders were skeptical of this idea. One of them said, you need to show us how such an idea could be implemented practically, as a constitutional mandate. The assumption behind this was that as an institutional matter a court of law would be ill equipped to prescribe and apply this idea without entrenching on executive and

legislative powers of the other branches of government. I then produced a response. I suggested that the right to development idea include in its text the creation of a constitutional commission on the human right to development. This commission would comprise of experts in law and disciplines related to development. One of their functions would be to serve as an arm of advocacy of the poor. In this role it could monitor legislation or executive action to determine its effect on the aspirations of the poor and it could advocate for changes sensitive to the claims of the poor. Additionally, the commission could have an arm of education in which it would seek to transfer education about decision, values and institutions. It could have a propaganda arm to generate solidarity among the poor and a sympathetic perception of the poor in the larger body politic. It could also monitor legislation and determine whether such legislation in undermining the interest of the poor was also undermining the interests of the constitution. In short, they would have a strong arm of well funded litigation capabilities. Regrettably, the forces opposed to establishing a human right to development as a constitutional right prevailed, and I lost. However, the position of the poor in South Africa has remained somewhat static with an unemployment rate of about 25 percent. I have recently heard from scholars who have found my paper and suggestions that had this issue been resolved and adopted, South Africa would have been in a far better position today than has been the case.

I used the two illustrations from Vicos and South Africa to indicate that a state centric model of development may in certain circumstances be a problem. In other work I have done in Latin America, I have found the state support for the plight of the poor to be a verbal truism. However, when concrete initiatives are generated, what state elites see is that the empowerment of the poor or the indigenous people may constitute a threat to the primacy of the current elite. It therefore means that a new economic theory has to be sensitive to the sovereignty dynamics of imperium and dominium and must also search for those elements of fundamental law and human rights law to weaken the negative inclusions of the state and hopefully to strengthen the real public interest in the body politic. In the South African illustration given we can only speculate about the specific role of a constitutional right to development in the enhancement of human and social capital. But it is a matter that a new economic theory should seriously consider.

Issues that a New Global Economic Theory Founded on the Basis of the Normative Salience of Human and Social Capital May Consider

1. The right to development and the millennium declaration

This is a program generated by and promoted by the UN. It is an aspect of the UN commitment to the universalization of the right to development. The program has struggled for want of support from globally privileged centers of economic advantage. However, the goals of the millennium initiative are intricately connected with the ideas of generating policies that secure and advance the importance of human and social capital. The specific goals are as follows:

1. Eradicate extreme hunger and poverty
2. Achieve universal primary education
3. Promote gender equality and empower women
4. Reduce child mortality
5. Improve maternal health
6. Combat HIV/AIDS, malaria and other diseases
7. Ensure environmental sustainability
8. Develop a global partnership for development

One of the factors that may have diminished the global salience of this initiative is that it isn't sustained by an articulate, coherent and compelling economic theory. This kind of initiative would benefit from the thinking generated from the World Academy's effort and call for a revolution in economic thinking.

2. The problem of globalizing and institutionalizing world economic policy

In general, the UN was the key forum generating discussions concerning a political economy of world order based on the NIEO or the principles centralizing private property and neo-liberalism. What emerged was a shift in the locus of discourse from the UN to something outside of the UN. This emerged as a group of four, group of eight and more recently, a group of twenty. For an outsider this appears to be the creation of a kind of global, economic Security Council functioning outside of the UN's authority structure. This raises the question about such an important forum and its level of institutionalization, which would include a concern for transparency, responsibility, and accountability and more pertinently, what its normative foundations are. For example, does its process explicitly and deliberately embrace a right to development as a human right rooted in the concern for human and social capital? Here it seems that at another level of international concern, the call for a revolutionary economic theory would require that the theory critically evaluate whether the organization of the group of twenty diminishes or enhances global solidarity and well-being. We would do well to consider the disappointment of Nelson Mandela when he met with the G8. According to Mandela, everyone had their pens and papers but the pens had no ink. According to Mandela:

“As long as poverty, injustice, and gross inequality persist in our world, none of us can truly rest... The steps that are needed from the developed nations are clear. First, is ensuring trade justice... The second is an end to the debt crisis for the poorest countries. The third is to deliver much more aid and to make sure it is of the highly quality... But not to do this would be a crime against humanity, against which I ask all humanity now to rise up.”

3. Corporate responsibility for global values

Corporations have as a primary responsibility a focus on profit maximalization. As institutions of economic power in the global context many corporations have GDPs that are higher than many states. Yet, the control and regulation of corporate conduct globally, is weakly regulated and falls far short of the importance of transparency responsibility and accountability. In short, a new revolutionary economic theory must apply as appropriate, principles of good governance to private for profit entities in order to make them so far as possible accountable for the fundamental values of human rights, human dignity, and the deliberate focus and development of the widest level of human and social capital. Practice falls short of this objective. In significant measure major transnational corporations find attractive the global business environment which has weak regulatory standards. In such a context corporations can make up their own rules of the game and some of these practices may be seen as significantly contrary to agreed upon global values. Let me provide two anecdotal illustrations:

John Perkins in his well reviewed book, *Confessions of an Economic Hit Man* (2004), provides a multitude of examples of the construction of state indebtedness in which states are scammed into obtaining vast loans for development projects. The loans fund foreign companies engaged in dubious projects and vast sums are siphoned off to local elites which sums end up in foreign bank accounts. Years later, when honest governments come to power, they find they are straddled with an enormous debt and can find nothing to show what the funds were expended on.

Another illustration is the vast pollution of the upper reaches of the Amazon by Texaco/Chevron. Here the company was both negligent and venal in its casual and colossal pollution from its oil extracting operations. It fought tooth and nail to prevent itself from being accountable. Its practice including bribes and other forms of corruption. Eventually an Ecuadorian Court found them liable for the pollution in the amount of some nineteen billion dollars. The company is still trying to fight the judgment. We could provide scores of examples where corporate operations involve the support of practices which violate human rights. I will not mention the role of the private sector in the globalized drug industry or practices of sex trafficking. These are criminal for-profit activities. Currently, there is a strong body of evidence that suggests that corporate malfeasance, negligence, or greed, has had a great deal to do with the current recession. This has raised the question of an economic theory that may more critically examine and appropriately contextualize the structure and function of corporate enterprise in global society. Among the suggestions for reform are the following:

1. Limit the power of top executives and financial decision-makers who may have the power to use the corporation for inappropriate ends and for personal gain;

2. Allow institutional investors, such as pension fund managers, to nominate independent directors to the boards of the corporations in which they are major investors;
3. Implement an aggressive program to make employees on all levels stakeholders in the corporation itself, thus giving them an interest in the success of the corporation; corporations may achieve this by awarding stock options to employees as bonuses or rewards for excellent company performance;
4. Give blue and white collar employees a direct voice in corporate decision-making to represent the perspectives of professional and non-professional employees in the business to improve the objectivity and quality of corporate decision-making;
5. Reduce salary packages and stock options for top-level executives to avoid artificial inflation of the company's share price; stock options may remain part of an executive incentive package, but the corporation should limit their magnitude to protect and enhance corporate interest.

4. Human social and capital development in the context of world trade issues

One of the central challenges at a practical level is the problems of free trade and the idea that free trade favors the powerful and the alternative idea of fair trade which favors a balanced perspective. Some of the issues that serve as an important dividing point of reference are listed below:

1. A critical review of the "North" states' agricultural subsidies. The \$353 billion of agricultural subsidies given by the North to its farmers radically depresses world prices of agricultural commodities critical to Africa; as a consequence, African produce remains unsubsidized while the North subsidizes its produce, generating manifestly unfair competition;³
2. A critical review of WTO rules of the past that institutionalized discriminatory trade consequences for the South;
3. Improved "special and differential treatment" in WTO agreements for the "South" would permit poorer nations to adjust or generate some flexibility in the application of WTO agreements;
4. For improved access to the "North" markets, the least developed countries, including thirty-three in Africa, should be given duty-free rights of access.

³ See ActionAid, *Reducing Poverty in a World of Plenty: The Crisis of Aid, in IMPACT OF RICH COUNTRIES' POLICIES ON POOR COUNTRIES* 23, 28 (Robert Picciotto & Rachel Weaving eds., 2004).

5. Enlarged "Aid for Trade" to facilitate the volume of export to "North" markets would improve compliance with WTO rules.

These issues are summarized as problems for global development by Professor Stiglitz as follows:

Both as it was conceived, and even more as it has evolved, today's development round does not deserve its name Many of the issues that it has addressed should never have been on the agenda of a genuine development round, and many issues that should have been on the agenda are not.... Those in the developing world who believe that there has been a history of bargaining in bad faith have a strong case.⁴

When the trade issues are put into the context of the priorities of the World Bank for example, the question has been raised in bank circles as to how much human rights should factor into its financing of a bank conceived developmental agenda. Perhaps the time is now approaching that the economic foundations of the bank's policy and direction should be subjected to a more compelling and even possibly revolutionary rethinking of the appropriate theory for the economic ordering of the World Bank. In the context of the bank's work, there should be a recognition of a global commitment to a right to development with an explicit emphasis on the development of human and social capital as the true repository and generator of human values on a global scale.

The Development Agenda According to Neo-Liberalism (Free Trade/Fair Trade)

The World Trade Organization (WTO) has undergone a continuing crisis of indecision.⁵ When the WTO admitted third world players to its process, it had to ensure that third world governments and their advisors understood the complex rules governing world trade and development.⁶ Thus, the WTO consistently assumed that third world countries would violate ground rules of world trade. The experience in the organization and the greatest skill of those representing the so-called "South" states began to review more critically the fine print of agreements and regulation to avoid discrimination through the rules and processes of the WTO. Thus, the "South" began to push for a much more informed discussion and a more meaningful agenda reflecting its critical interests. These interests represent Africa's interests as well. The agenda it put forward contained the following issues:

These claims were presented to the WTO process during a period dominated by the mantra of economic liberalization and free trade. The WTO, while making verbal commitments with some measure of empathy for the claims of the South, has in effect done

⁴ Joseph Stiglitz, *The Development Round That Wasn't*, ECON. TIMES (India), Dec. 15, 2005.

⁵ THE WORLD TRADE ORGANIZATION MILLENNIUM ROUND: FREER TRADE IN THE TWENTY-FIRST CENTURY 36 (Klaus Ginter Deutsch & Bernhard Speyer eds., 2001).

⁶ PETER VAN DEN BOSSCHE, THE LAW AND POLICY OF THE WORLD TRADE ORGANIZATION: TEXT, CASES AND MATERIALS 24 (2005).

very little to advance them politically or legally. Mr. Tetteh Hormeku of the Third World Network best articulates the nature of the problem from the African perspective:

Trade liberalization has not been beneficial to African economies. We have not improved our location in the global economy. We have not moved out of dependency on primary commodities. We have not moved into more efficient provision of manufactured goods and services. We are on the receiving end of the global economy, which is repatriating our resources and locking in IMF and World Bank conditionalities through trade agreements.... What we have at the moment is a trade paradigm that African countries should open up all sectors of their economy to foreign providers in a context that destroys the basis for domestic production and jobs. It can never lead an African country out of poverty.⁷

Conclusions can be drawn from the two illustrations of enterprise economics in the global system. The major role lawyers play in defining the maximum freedom for the corporate or entrepreneurial sector indicates that a corporation with an army of lawyers might fare well in the system. Conversely, when governments and private sector watchdogs seek to police the business sector, they often cannot generate the legal muscle to constrain corporate or economic license. This presents a challenge to the legal profession and to the teaching of law. An effective and socially responsible corporate or legal culture may function optimally when it works within a framework of established rules expeditiously and fairly enforced.

It is hard to imagine a successful capitalist system without an excellent commercial and corporate legal framework. This framework is in fact a central feature of a working, dynamic, entrepreneurial system. When the system works well, the corporate lawyers themselves, within the corporations, serve as an internal restraint to ensure compliance with the law and to ensure further that corporate energy and resources are not wasted on public investigations and possible prosecutions. The WTO system also seems to have developed without regard to effective input from the lawyers of the South. When they finally learned the rules of the game, those who benefited from the unfair system were reluctant to modify the rules sufficiently to reflect the fundamental policies of world economic order. It is clear, however, that without a legal framework that is defensible, free trade may become unfair trade, and grotesque exploitation may lead to conflicts and alienation.

Thus, there must be some circumspection about how the global economic system appropriately is regulated so that corporate activity falls within the fundamental norms established by law. There is no obvious or easy answer to the problem of managing power, material, technological and financial resources, and common rules that function within

⁷ Michael Fleshman, *Trade Talks: Where is the Development*, 20 AFR. RENEWAL 14 (2006), available at <http://www.un.org/ecosocdev/geninfo/afrec/vol20no1/20Itradetalks.html> (quoting Tetteh Hormeku).

and across state lines without a framework of developed legal expectations. Lawyers must play a major role in organizing the business of teaching business; they can outline appropriate legal standards to enhance accountable and responsible enterprise. In short, the ideological principle that enterprise behavior does not include social responsibility is no longer tenable. However, this new view requires more focus on the development of evolving legal rules and principles that touch on many areas of law-domestic, regional, and international.

CONCLUSION

The Consequences of the Current Global Economic Order: The Need for a Revolutionary Global Economic Theory of the Right to Development with an Emphasis on Decision and the Salience of Human and Social Capital⁸

The shortest way to get a grasp of the consequences of the current state of global economic order is reflected in numbers. The planet has a population of roughly 6.5 billion people.⁹ Every year 30 million people die of hunger,¹⁰ and 800 million people are starving or suffer acute malnutrition.¹¹ Roughly one billion are underemployed or unemployed.¹² The above figure may be contrasted with the fact that the richest 2 percent of adults in the world own more than half of the global household wealth.¹³ The richest 1 percent of adults own 40 percent of the global assets, and the richest 10 percent account for 85 percent of the total world assets.¹⁴ On the other hand, the bottom half of the world adult population owns 1 percent of global assets.¹⁵ Every two minutes four people die from malaria.¹⁶ One in five people (one billion people) in the world survive on less than \$1 a day.¹⁷ Another 1.5 billion live on \$1 to \$2 a day.¹⁸ More than one billion people do not have access to safe water.¹⁹

⁸ John Hooper, *Pope's Book Accuses Rich Nations of Robbery*, THE GUARDIAN (London), Apr. 5, 2007, available at <http://www.guardian.co.uk/globalisation/story/0,2050253,00.html>.

⁹ U.S. Census Bureau, U.S. & World Population Clocks, <http://www.census.gov/main/www/popclock.html> (last visited Apr. 1, 2008).

¹⁰ See Global Policy World Hunger-Social and Economic Policy, www.globalpolicy.org/soecon/hunger/hungerindex.htm (last visited Apr. 1, 2008).

¹¹ See Conscious Alliance, Educate, www.consciousalliance.org/educate.htm (last visited May 8, 2007).

¹² See ILO WORLD EMPLOYMENT REPORT 1998--99, www.ilo.org/public/english/bureau/inf/pr/1998/33.htm.

¹³ See Worthwhile Canadian Initiative, Growth, http://worthwhile.typepad.com/worthwhile_canadian_initi/growth/index.html (last visited Apr. 1, 2008). See also, Richest 2% Hold Half the World's Assets, FIN. TIMES, Dec 5, 2006, <http://www.ft.com/cms/s/41470ec0-845b-11db-87e0-0000779e2340.html>.

¹⁴ James Randerson, *World's Richest 1% Own 40% of All Wealth, UN Report Discovers*, THE GUARDIAN (London), Dec. 6, 2006, available at <http://business.guardian.co.uk/story/0,1965149,00.html>.

¹⁵ *Id.*

¹⁶ See Human Development Report 2005, The State of Human Development, ch. 1, http://hdr.undp.org/reports/global/2005/pdf/HDR05_chapter_1.pdf.

¹⁷ *Id.*

¹⁸ *Id.*

About 2.6 billion people lack access to improved sanitation.²⁰ Some authorities hold that approximately five hundred million people on the planet live in relative comfort, which is in stark contrast to the six billion people in the world who struggle to survive and live. Even in the United States, 44.8 million people are deprived of medical health care or coverage²¹ and almost forty million Americans live close to or below the poverty line.²² In short, globalism, which has produced a vast increase in the production of values, seems to fail miserably in the distribution or sharing of those values.

As the new millennium unfolds, statistics indicate that nearly 800 million people are illiterate.²³ This fact illustrates that people basically are powerless. They are treated as economic commodities to be exploited by the powerful or as economic waste matter to be discarded by the market. The adverse effects that the global market has caused does not just include illiteracy, but other areas including: demographics, the migration of people, issues of conflict, trade, aid, debt, debt repayment, etc. However, this new world order referred to as neo-liberal global economics, is not solely to blame. For example, the economic arrangements in China, India, Brazil, and other parts of Asia demonstrate that each of these state-commanded economies are designated to benefit the elite who are not held accountable by government constraints for their actions.

Further, neo-economic freedoms may vanish much like they did in the former Soviet Union, when it transitioned from a communist state to a capitalist market. These problems include the mass concentration of wealth in actors well-placed in the former communist regime.²⁴ Many of the dominant communist elite took a lion's share of state-owned enterprises, essentially claiming it as their own property.²⁵ In order for economic

¹⁹ *Id.*

²⁰ *Id.*

²¹ U.S. Census Bureau, Newsroom, Mar. 23, 2007, <http://www.census.gov/Press-Release/www/releases/archives/health-care-insurance/009789.html>.

²² U.S. CENSUS BUREAU, POVERTY: 2005 HIGHLIGHTS, available at <http://www.census.gov/hhes/www/poverty/poverty05/pov05hi.html> (last visited May 8, 2007).

²³ See HUMAN DEVELOPMENT REPORT 2005, CH. 1: THE STATE OF HUMAN DEVELOPMENT, available at http://hdr.undp.org/reports/global/2005/pdf/HDRO5_chapter-I.pdf.

²⁴ Vladimir Volkov & Julia Denenberg, Wealth & Poverty in Modern Russia, WORLD SOCIALIST, Mar. 11, 2005, <http://www.wsws.org/articles/2005/mar2005/russ-mll.shtml>.

Twenty percent of the Russian population lives below the poverty line and the great majority of Russian families are teetering on the edge of poverty. Then there is the other Russia. Russia is ranked third in the world for the number of billionaires. The greatest part of shareholdings in the largest Russian enterprises can be found in the hands of this tiny social layer. There are more billionaires in Russia (36) than anywhere else in the world. The total assets of these thirty-six richest Russians amounts to \$110 billion-24 percent of the country's economic output.

Id.

²⁵ JOSEPH RAPHAEL BLASI ET AL., KREMLIN CAPITALISM 33-36 (1996).

freedom to be preserved, public and private laws need to be implemented and adhered to, in order to prevent a select few from destroying this freedom.

The economic revolutions in India, China, and Brazil were successful because their populations implemented a strong legal framework that did not allow any individual to manipulate the market system. The central flaw in the philosophy of economic liberalization from a lawyer's point of view is the principle that liberalization if unconstrained will result in a license for the liberalizer and oppression for the victim. A specific problem with socialist regimes is that the government can abuse its power of control. The concentration of power does not necessarily mean that everyone shares in it; such a belief is typified by the myth: "dictatorship of the proletariat." In practice, the proletariats likely will be disempowered by the internal elites who manage the power of the state, according to their own interests.

If we take a social democratic state where the power resides in both public and private sectors, a high level of disparity arises. Nonetheless, the power of the various groups, if reasonably well distributed, imposes certain checks and balances sufficient to sustain a reasonably transparent, responsible, and accountable system. For example, in a neo-liberal state, certain groups abhor government interference, except when the government acts in its interest. In this type of state, corporate culture stakes a claim to legitimacy on the basis that state officials and state elites simply are inefficient.

To generate economic efficiency, it is important to allocate as much power to economic enterprise as possible. Thus, labor unions must be weakened because they represent a dysfunctional limit on the freedom of enterprise. Social spending, spending for education, health, and other public purposes are matters for which the state is an ineffectual distributor. Thus, where possible, these matters must be privatized in order for these enterprises to be most efficiently run. In short, the private arena does not need many rules; the master rule of enterprise is to generate productivity and profit, while stimulating the interest for invention and for economic expansion. The public's fear of depreciation in social and political capital by such a process is seen as a necessary, but short-term, cost for the greater good of society.

The state's imperfections in its exercise of power recreates a need for a strong legal infrastructure that would help to foster the ideals of responsibility, transparency, and change. It is not clear what standards govern decision-making inside major economic enterprises when its business cannot be on an optimal level. Whether power and authority, transparency and openness are invested solely in government or not, we will not have solved the problem of how power itself is controlled, regulated, appraised, and changed in the interest of the people.

Furthermore, we should keep in mind, that the abuse of economic power could have large-scale impacts on the political and legal cultures of a society and could generate social unrest and political deterioration.