

## Article

# Promoting Universal Human Rights: Dilemmas of Integrating Developing Countries

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It is a normal, even necessary, process to debate universal human rights in an effort to retain what is still sound and valid, and to make changes as moral and political judgment dictate. But how to protect human rights in international relations remains a perplexing question.

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### I. INTRODUCTION

We are in a new era of human rights and globalization. The dramatic changes brought about by the end of the Cold War, partly as a consequence of the wider introduction of communication and information technology and partly as a result of trade liberalization, prompted a global drive toward neo-liberal economic reforms and democratization. A

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1. DAVID P. FORSYTHE, HUMAN RIGHTS IN INTERNATIONAL RELATIONS 49 (2000).

comprehensive portrayal of global changes denotes a convergence phenomenon spawned by a global flow of information and cultural homogenization. An emerging strategy of "borderless solidarity," which links single issues such as environmental degradation, women's rights, and racism, serves as an example of how interconnected various dimensions of social life are and how such resistance to globalization gains firm grounding.<sup>2</sup> Some of the more contentious issues of our times have to do with unintended consequences of the post-Cold War era and its unforeseen problems, including civil wars, ethnic strife, sectarian conflict, genocide, rape as a terror campaign, refugee flows, and international trafficking in human beings for both sexual purposes and sweatshop labor.<sup>3</sup>

It is within this context that developing countries' receptivity as well as resistance to global human rights standards must be understood. The thesis argued here is two-fold: (1) that an effective promotion of human rights in the context of globalization requires a deeper understanding of its effects on the most vulnerable people, and (2) that to the extent that globalizing human rights standards overlook the complexity of local conditions and constraints, the promotion of the universal view of human rights will do little to ensure their realization in the developing world.

This paper's main thrust concerns the *de facto* conditions of underdevelopment and the constraints they pose to the application of global norms. It is also important to bear in mind that the Global North does not always practice what it preaches, asserting universal human rights standards but not really following them. For example, considerable controversy has surrounded the neo-liberal reform agendas of the international financial institutions (IFIs) and the mechanisms by which their macroeconomic decisions have been forced upon developing countries. A debate has emerged on the issue of whether the imposition of such global decisions constrains or enables developing countries' national policy choices.

The foregoing assertions, however, should not be construed as a defense of cultural relativism, for there is a difference between adhering less to some global standard of human rights in order to promote overall human rights in socioeconomic realms and not adhering to certain rights because of a lack of political will or hiding behind the mask of cultural relativism.

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2. See JAMES H. MITTELMAN, *THE GLOBALIZATION SYNDROME: TRANSFORMATION AND RESISTANCE* 178 (2000) (chapter coauthored with Christine B.N. Chin).

3. The United Nations' reports indicate that trafficking in people is now the fastest-growing business of organized crime. In the last decade or so, it is estimated, "more than 30 million women and children may have been trafficked within and from Southeast Asia for sexual purposes and sweatshop labor." The report adds that this trend is also visible in the countries of Eastern Europe and the former Soviet Union. This development, which involves sexual exploitation, economic slavery, forced labor and debt enslavement, and exploitation of migrants, amounts to a classic form of slavery. Taken together, one UN official notes, trafficking in human beings is "the biggest violation of human rights in the world." See Barbara Crossette, *UN Warns that Trafficking in Human Beings is Growing*, N.Y. TIMES, June 25, 2000, at A10.

Consider, for example, the highly politicized “Asian values” debate, which urges Asians to become modern but in local ways, and regards order and stability as preconditions for economic growth and growth as the basic foundation of any political order that purports to enhance human dignity.<sup>4</sup> A similar logic is reflected in the belief underlying the prevailing anthropological view that human rights are not based on abstract moral grounds; rather, they are a function of indigenous and concrete social struggles.<sup>5</sup> To these arguments, one can bring several important qualifications. As Andrew Hurrell reminds us, the most pressing ethical dilemmas of advancing universal human rights are as much about practice and power as they are about philosophical foundations.<sup>6</sup> To work towards achieving a practical consensus that is politically potent and morally meaningful, Hurrell notes, requires that we “downplay concern with foundations” and “build on and develop the human rights culture and community that has evolved in practice—the element of consensus visible in the actual practice of states.”<sup>7</sup> There is also broad consensus that the respect for and legal enforcement of *certain* fundamental human rights transcend the developing world’s historical specificity and cultural contexts.<sup>8</sup>

Below, I first explore theoretical discourses surrounding the role of the state in the developing world, identifying different views on the demise, disarray, and persistence of the state. Second, I analyze the intersection between three thematic areas critical to understanding public policy: (1) the development-democracy nexus, (2) child labor, and (3) health. There continues to be disagreement over the connection between democracy and development policies and the many implications that flow from such interconnections. The debate rages over whether child labor is a denial of human rights or necessary to confronting abject poverty. Similarly, with regard to the right to health and health care, the controversy continues

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4. Bilahari Kausikan, Singapore’s permanent representative to the United Nations, argues that Asians place greater value on honesty, self-discipline, and order. The fact is, he argues, Western-style democracy cannot be defended by abstract values or reasoning. For international norms to become universally recognized, such norms must evolve through ongoing debate between different perspectives and value systems. One must be sensitive to the realities of exercising authority in Asian societies characterized by “heterogeneous, unevenly modernized, and imperfectly integrated societies with large rural populations and shallow Western-style civic traditions.” Bilahari Kausikan, *Asian versus ‘Universal’ Human Rights*, 7 RESPONSIVE COMMUNITY 9, 18 (1997).

5. Richard A. Wilson argues that human rights are a question of historical, local, and cultural context, and that historical context of actions and intentions better illuminates the cross-cultural applicability of human rights. See Richard A. Wilson, *Human Rights, Culture and Context: An Introduction*, in HUMAN RIGHTS, CULTURE AND CONTEXT: ANTHROPOLOGICAL PERSPECTIVES 1, 16-17 (Richard A. Wilson ed., 1997). Wilson criticizes the limitations of cultural relativism, arguing that culture must not be seen as shared or normative; rather, it must be viewed as cross-cut by social differences (age, caste, and gender), which are contested, contextualized, and emergent. See *id.* at 9.

6. See Andrew Hurrell, *Power, Principles and Prudence: Protecting Human Rights in a Deeply Divided World*, in HUMAN RIGHTS IN GLOBAL POLITICS 277, 278 (Tim Dunne and Nicholas J. Wheeler eds., 1999).

7. *Id.* at 299.

8. See text accompanying *infra* note 37.

between those who support an activist role for the state and those who wish for minimal interference with the free market. Third, in the course of this discussion, we encounter several different questions. How can states govern effectively in the face of simultaneous localizing and globalizing pressures? Should the state be empowered to protect *certain* fundamental human rights? Can the human rights situation be separated from the political economy of development? Finally, I examine the dilemmas that lie at the heart of contemporary debates over states' choices in a globalizing world. As we deal with these questions, it is useful to define the developing world and globalizing human rights standards.

## II. DEVELOPING COUNTRIES DEFINED

The developing world is neither a monolithic political entity nor a homogeneous cultural domain. The concept of a monolithic "Third World," as Martin W. Lewis writes, "fails to show the profound variations in different states' connections with and participation in the global economy."<sup>9</sup> It may be preferable to use a set of terms, Lewis continues, that are highly descriptive but lack theoretical preconceptions about the ultimate roots of global economic differentiation, hence his preference for the term "poor parts of the world."<sup>10</sup> The diverse countries that make up the developing world render any generalization about that label difficult. An understanding of the differentiation of a whole host of indicators (ethnicity, political process, history, sub-national forces, etc.) is needed if one is to grasp the term. The developing countries' distinguishing features, however, reveal some common characteristics: poverty, overpopulation, colonial history, corruption, mismanagement, and personalized politics.

The least developed countries (those in sub-Saharan Africa and South Asia), stand to lose in today's global economy, while other developing countries known as the "pivotal states" have much to gain.<sup>11</sup> This reference to "pivotal states" in the U.S. foreign policymaking process is made in the context of refashioning U.S. strategy vis-à-vis the developing world along more coherent lines. This necessitates discussing which U.S. interests in the developing world are most important and what should be done to preserve them. The pivotal states strategy presents "new security" issues—including environmental degradation, overpopulation, and underdevelopment—as the biggest dangers to political stability. Pivotal

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9. Martin W. Lewis, *Is There a Third World?*, 98 CURRENT HISTORY 355, 358 (1999).

10. *Id.* at 358.

11. The United Nations Development Programme's recent publication deals with the issue of reducing debt of the poorest countries. It reports that slow progress in tackling the debt issue confronting 41 heavily indebted poor countries (HIPC) is a testament to how globalization has been failing the poorest and the least developed countries. The majority of these countries—that is, 33 countries or eighty percent of them—are in Africa. In 1997, the total debt of these countries reached nearly \$2.2 trillion. See UNDP, HUMAN DEVELOPMENT REPORT 106-07 (1999). For a compelling case supporting an urgent need for action, see Eric A. Friedman, *Debt Relief in 1999: Only One Step on a Long Journey*, 3 YALE HUM. RTS. & DEV. L.J. 191 (2000).

states, which include Mexico, Brazil, Algeria, Egypt, South Africa, Turkey, India, Pakistan, and Indonesia, account for one-half of the developing world's population and are regionally influential. Their stability should be enhanced and their collapse prevented. Chase and others argue, "Given their size, population, geostrategic position, economic potential, [and] capacity to affect global and regional issues . . . [these states] demand focused American attention."<sup>12</sup>

Defending a policy that affirmatively places the developing world within U.S. global strategy, affording them a place at the table and respecting their voices, Charles H. Norchi writes that "a pivotal states human rights policy must be sensitive to cultural variation and not insist on standards to which only advanced industrial societies can be held."<sup>13</sup> This strategy would produce, Norchi adds, "a beneficial human rights outcome if pivotal states became *human dignity platforms*," that is, promoting sustained norms and standards in the region.<sup>14</sup>

This Article is concerned mainly with those developing countries that are ranked among the poorest and least developed countries in the world. These countries have experienced negative economic growth. Since the mid-1980s, most countries in sub-Saharan Africa have consistently failed to deal effectively with their poor economic performance. One study shows that Angola, Burundi, Cameroon, Republic of Congo, Sierra Leone, Democratic Republic of Congo, and Zambia have had high rates of economic decline during the period 1987-1997.<sup>15</sup> Most of these countries depend almost exclusively on primary commodities for their foreign exchange earnings. Others, such as Nigeria, Republic of Congo, Gabon, and Angola, "depend almost exclusively on the export of petroleum for most of their foreign exchange."<sup>16</sup> In narrow economic terms, most of these least developed countries have limited or no capital, technological base, production capacity or access to international markets. Furthermore, these countries' economies are plagued by numerous structural obstacles, including the system of stratification (caste system in India and Nepal), tribalism (predominantly in black Africa, parts of the Middle East and Asia), wide inequality in the wealth/income distribution (Latin America), demographic pressures, material and human capital scarcity, and patriarchal socio-political institutions. These barriers limit the range and parameters of choices available to the local policy makers.<sup>17</sup> How to integrate these countries into global human rights standards brings compelling moral challenges and dilemmas in an era of globalization.

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12. Robert Chase et al., *Introduction*, in *THE PIVOTAL STATES: A NEW FRAMEWORK FOR U.S. POLICY IN THE DEVELOPING WORLD* 1, 8 (Robert Chase et al. eds., 1999).

13. Charles H. Norchi, *A Pivotal States Human Rights Strategy*, in *THE PIVOTAL STATES* 315, 332 (Robert Chase et al. eds., 1999).

14. *Id.* at 333.

15. See Juliet Elu, *Human Development in Sub-Saharan Africa: Analysis and Prospects for the Future*, 17 J. THIRD WORLD STUD. 53, 54 (2000).

16. *Id.* at 59.

17. See Mahmood Monshipouri, *Human Rights Conditions in the Third World: Historical Realities and Prospects in the 1990s*, 9 J. THIRD WORLD STUD. 80 (1992).

### III. BACKGROUND ON GLOBALIZATION

#### A. Economic Dimensions

While the last quarter of the twentieth century became synonymous with economic interdependence and global telecommunications, the beginning of the twenty-first century has coincided with the growing importance of human rights at world stage. At both the local and global levels, protection and promotion of human rights have become caught up in the *process* of the increased flow of ideas, information, technology, and communications links among the nations. This process has raised serious questions concerning justice in the global economy and the welfare and health of the poor more generally.

Globalization implies neither universality nor democratic control over transnational and intergovernmental organizations. Multinational corporations (MNCs), the International Monetary Fund (IMF), the World Bank, and the European Commission of the European Union have rarely, if ever, been held to the standards of democratic accountability. For example, under IMF rules, each member has votes in accordance with a quota that is assessed generally in proportion to its share of the world economy. That accounts for why all IMF decisions are made by a 24-member executive board, in which only the United States, Japan, Germany, France, the United Kingdom, Saudi Arabia, Russia, and China have permanent seats. The IMF's mission and system of governance, as one commentator aptly suggests, both fall well short of a sound global vision, as they lack both representation and accountability.<sup>18</sup> How can it be considered reasonable, it is asked, that decisions in the International Monetary Fund and the World Bank are made by boards of governors, some of whom represent non-democratic governments, and where the votes are weighted according to the raw wealth of the countries concerned?<sup>19</sup>

Regardless of the power and scope of operations of the MNCs and IFIs, the state still remains the cornerstone of international relations. Global monitoring bodies, such as the Human Rights Committee established under the International Covenant on Civil and Political Rights (ICCPR), lack enforcement power. Even if the Human Rights Committee is calling upon states to act, it can have no more effect than a recommendation that states may or may not heed. To be sure, the IFIs have enormous significance and influence, and so do other intergovernmental organizations. But states continue to have the real power, interests, and autonomy.

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18. See Helena Cobban, *No Globalization without Representation*, CHRISTIAN SCI. MONITOR, March 9, 2000, at 11.

19. See Helena Cobban, *Getting to Global Sharing*, CHRISTIAN SCI. MONITOR, April 13, 2000, at 11.

The relation between democracy and economic growth is problematic as is the connection between economic globalization and the protection of social and economic rights. It is easy to see why. Economic globalization has deepened inequality both within and among nation-states.<sup>20</sup> Issues of distribution, unequal access, and uneven access to information have intensified tensions within developing countries. A growing body of evidence shows that privatization and the deregulation of markets in Latin America have led to deepening poverty, sharpening inequalities, more crime, and less safety.<sup>21</sup>

It is also the case, as some analysts explain, that while democracy has been established in South American countries, economic growth has not ensued. Independent citizens' groups have increasingly drawn attention to government corruption and have demanded accountability. Such complaints were instrumental both in the 1992 scandal that brought down Brazil's President Fernando Collor de Mello and led to the 1993 impeachment of Venezuela's President Carlos Andres Perez.<sup>22</sup> Across the region, the media have exposed authorities responsible for corruption (Argentina), money laundering (Panama), and political assassination (Mexico).<sup>23</sup> A noticeable increase in women's representation occurred in the Argentine House of Representatives as a result of a 1991 law stipulating that thirty percent of the candidates for political parties must be female.<sup>24</sup>

Indigenous people throughout the region played an increasingly active role in politics, especially in Guatemala, Ecuador, Bolivia, and Colombia. Bolivia's reforms in the area of popular participation and decentralization have been strikingly sweeping. In Colombia, a new mechanism known as the *tutela*, introduced in the 1991 constitution, allows any citizen to go before any judge and demand protection of her basic rights.<sup>25</sup>

Moreover, public opinion surveys reveal the impression that governments throughout much of the region have not been capable of dealing with rising crime, vast income inequalities, and the spread of drugs, poverty, and unemployment. A 1996 survey by one of Brazil's credible pollsters revealed that eighty-eight percent of Rio de Janeiro residents believed that the local police had connections to organized crime.<sup>26</sup> Similarly, transitional democracies in Argentina, Brazil, and Chile have all witnessed a rise in crime. In many Latin American countries, it is argued, citizens, fairly or unfairly, associate democracy with burgeoning crime, corruption, and deepening insecurity—which is to say, democracy

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20. See, e.g., Blanca Heredia, *Prosper or Perish? Development in the Age of Global Capital*, 96 CURRENT HIST. 383 (November 1997).

21. See Robert Malley, *The Third Worldist Moment*, 98 CURRENT HIST. 359, 369 (1999).

22. See Peter Hakim & Michael Shifter, *New Beginnings: The Promise of Democracy and Prosperity*, in STAND! COMPARATIVE POLITICS: CONTENDING IDEAS AND OPINIONS 181, 181 (Rebecca Davis ed., 1999).

23. See *id.* at 181.

24. See *id.* at 181-182.

25. See *id.* at 182.

26. See *id.* at 182-183.

has become equated with the breakdown of law and order.<sup>27</sup>

Notwithstanding the governments' firmer control over budget deficits, tax codes, and redirection of expenditures, the region's macroeconomic performance has failed to meet expectations. As of the late 1990s, the growth rate was only half the region's six percent average in the 1970s, and it lagged behind the approximately eight percent annual growth rates that several East Asian countries have generated for the past three decades. Only a few countries (Chile and El Salvador) have achieved much higher average growth rates.<sup>28</sup> Latin America holds the most unequal distribution of income and wealth of any region in the world, with current trends pointing to further decay: "The poorest 40 percent of the population receive only ten percent of the region's annual income, while nearly 60 percent of the income goes to the wealthiest 20 percent."<sup>29</sup> Such disparities, especially when reinforced by racial and ethnic differences, would undermine national cohesion and identification as well as democratic values.<sup>30</sup> "The so-called liberalization of the Third World," Robert Malley writes, "has meant a social split, a separation, not a merging. Nor does it pit modernity against tradition, but wealth against want."<sup>31</sup>

Even those analysts who stress the tremendous potential benefits that globalization has for developing countries, warn about the ways in which globalization exacerbates inequality and heightens social tensions. One inescapable consequence is the problem that "increased risks come with its benefits."<sup>32</sup> Globalization—in particular, privatization—presents considerable risks of concentration of wealth unless undertaken with effective regulation. This is a noticeable danger in small economies (e.g., Panama and Peru) with limited competition and high concentrations of political and economic power. One observer points out that "(i)n a recent poll conducted throughout Latin America, respondents agreed by three to one with the general statement that 'markets provide the best solutions.' But in Argentina, Peru, Colombia, Uruguay, and Panama, less than half supported the more specific notion that privatization has been beneficial."<sup>33</sup> The lack of support for privatization in these countries is particularly linked to the "widespread perception that the high costs of newly privatized services reflect the lack of real competition."<sup>34</sup>

## B. Globalizing Human Rights Standards

Globalization of democracy and human rights, in contrast, has often—

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27. *See id.* at 183.

28. *Id.*

29. *Id.* at 184.

30. *See Malley, supra* note 21, at 369.

31. *Id.*

32. Nancy Birdsall, *Managing Inequality in the Developing World*, 98 CURRENT HIST. 376 (1999).

33. *Id.* at 378.

34. *Id.*

though not always—contributed to upholding certain civil and political rights. The most visible signs of the globalization of human rights is the growth of international human rights non-governmental organizations (NGOs), global conferences, and transnational networking.<sup>35</sup> Over the past twenty-five years, women's civil rights and reproductive rights have found their way into the international legal and human rights agendas. The two most relevant human rights conferences of the 1990s were the 1993 Vienna Second World Conference on Human Rights and the 1995 Beijing Fourth World Conference on the Status of Women. In the Vienna Declaration, for example, for the first time, violence against women was recognized as a human rights abuse. The Beijing Conference set an impressive agenda for promoting human development by addressing gender inequality and women's rights.<sup>36</sup> Countries of the developing world displayed different and sometimes contradictory levels of commitment to international human rights embodied in these conferences' proceedings.

It should be noted too that some cultural traditions and state practices—according to which global norms lack legitimacy—have come under critical scrutiny in the developing world, with an unparalleled degree of support for fundamental human rights. The contemporary incarnation of this appeal to human rights has been a renewed emphasis on “basic” rights, albeit in a context shaped by the relentless forces of history, political economy, and culture. Emphasized by the Carter administration (1976-1980), these core rights have become a major part of the human rights discourse for the last quarter of the twentieth century. The emphasis on basic rights has emerged from a principled perspective of paying special attention to the most vulnerable members of society. These basic rights include “the right to be free from government violation of the integrity of the person . . . the right to the fulfillment of such vital needs as food, shelter, health care, and education . . . and the right to enjoy civil and political liberties.”<sup>37</sup>

The new global economy and forces associated with neo-liberal globalization have refocused the attention on economic, social, and cultural rights. Many people in developing countries continue to hold the state accountable for protecting social, economic, and cultural rights, safeguarding the rights of minorities, and rescuing the most vulnerable—women, children, and the poor—from a sense of powerlessness and uncertainty about globalization. This mixed, and often conflicting, perception of and attitude toward the role of the state requires more nuanced methods of understanding both state-society and state-market relations.

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35. See generally Jackie Smith et al., *Globalizing Human Rights: The Work of Transnational Human Rights NGOs in the 1990s*, 20 HUM. RTS. Q. 379 (May 1998) (discussing international human rights NGOs).

36. See CHARLES W. KEGLEY, JR. & EUGENE R. WITTKOPF, *WORLD POLITICS: TREND AND TRANSFORMATION* 356 (2001).

37. HENRY SHUE, *BASIC RIGHTS: SUBSISTENCE, AFFLUENCE, AND U.S. FOREIGN POLICY* 5-6 (1980) (quoting Cyrus Vance).

#### IV. EFFECTS OF GLOBALIZATION: STRUCTURAL CHANGE IN THE DEVELOPING WORLD

##### A. The Future of the State: Alternative Views

This section of the Article is primarily concerned with two issues. First, I examine the veracity of the widely held notion that we are witnessing the end of the state in the developing world as many countries in the South open up to trade and financial liberalization.<sup>38</sup> Secondly, I look at the extent to which state sovereignty is viewed as part of the problem or part of the solution in the developing world. Three views are critical to our investigation of theoretical discourses about the role of the state in developing countries: (1) a focus on the interventionist state, (2) the "societal forces" thesis, and (3) the symbiotic model.

##### B. Rationales for the Interventionist State

There is no doubt that the growth of supra-territorial space and the rise of market forces, including the pressures exerted on states by international financial institutions, have posed new challenges to the role of the state in economic policy. As international norms affect the domestic structure and organization of states, and globalization affecting state policy, state structure and policies, in turn, affect these global norms and processes.<sup>39</sup> The internal political and social dynamics of the post-Cold War period have also strained state-society relations in economically and politically disadvantaged countries of the South, raising the vexing issue of how to balance respect for the state's territorial sovereignty (and stability) against the rights of self-determination enjoyed by "the peoples" of the world.

Theorizing about the intersection of these two conflicting fundamental principles, Richard Falk writes, "As international law vests [the right of self-determination] in 'people' rather than either 'nations' or 'states,' there is considerable room for interpretation."<sup>40</sup> Moreover, Falk points out, "deference to the state has weakened in recent years by changes in geopolitics, greater support for human rights, the impact of globalization, and the countervailing emergence of a variety of micro-nationalisms and ethnic causes."<sup>41</sup> He cautions, however, that "support for claims of self-determination that would shatter an existing state [are not warranted] unless a 'people' was being victimized either by genocidal behavior or

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38. See MARYANN K. CUSIMANO, *BEYOND SOVEREIGNTY: ISSUES FOR A GLOBAL AGENDA* (2000).

39. See IAN CLARK, *GLOBALIZATION AND FRAGMENTATION: INTERNATIONAL RELATIONS IN THE TWENTIETH CENTURY* 6 (1997).

40. Richard Falk, *The New Interventionism and the Third World*, 98 *CURRENT HIST.* 370, 373 (1999).

41. *Id.* at 374.

through repeated crimes against humanity, and in exceptional cases, as a result of severe abuses of basic human rights targeted at a given ethnic community and sustained over a period of years."<sup>42</sup>

The right of self-determination, other experts have reminded us, is one of the few collective rights that is legally binding. It is also the least clear and most controversial of all human rights. This is because it is insufficiently clear who are the bearers of the right of self-determination—which is to say, what is the definition of a “people”? Also, the object of the right of self-determination is not always clear; from an internal to an external referent, the object of self-determination varies.<sup>43</sup>

Although the demise of the state is often suggested, the post-Cold War order remains built on a foundation of sovereign states. Arguably, globalization is not an entirely autonomous force. Historically it has been shaped, fostered, and even stymied by wider currents of international relations. “States still enjoy structural powers from their economic activities,” Ian Clark writes, “and, in turn if less visibly, continue to provide the framework within which the globalized economy functions: to that extent, globalization has a persisting need for viable states and its own stake in their survival.”<sup>44</sup>

Likewise, K. J. Holsti sees state sovereignty as the fundamental rule underlying the foundation of some type of world order. He writes, “We have a Westphalian system [of] order whether there are two or four great powers, whether there are fifty or 150 states, whether we have more wars or fewer wars, or whether there is more or less ‘globalization.’”<sup>45</sup> We have yet to transcend the Westphalian order: “The fundamental rules and institutions underlying international relationships have not changed with the end of the Cold War. Indeed, they have been strengthened.”<sup>46</sup> The problem is the crisis of governance and a return to conditions of a new medievalism. In some parts of the developing world, we have seen the rise of the state-as-enterprise, which is closely connected to foreign organizations, both commercial and humanitarian: “The state has become a giant firm, accountable to no one except local clients and foreign shareholders.”<sup>47</sup> These conditions reflect fundamental weaknesses of state capacity, but they cannot serve as a foundation for challenges toward order. That is to say that order cannot be challenged by ragtag groups of African teenagers, small mercenary armies, or by bankrupted national treasures.<sup>48</sup>

Some tend to view globalization as a political process whose direction is shaped by states, particularly the most powerful states and for their own

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42. *Id.* at 375.

43. See PETER R. BAEHR, HUMAN RIGHTS: UNIVERSALITY IN PRACTICE 55-56 (1999).

44. CLARK, *supra* note 39, at 195 (1997).

45. Kalevi J. Holsti, *The Coming Chaos? Armed Conflict in the World's Periphery*, in INTERNATIONAL ORDER AND THE FUTURE OF WORLD POLITICS 283, 289 (T.V. Paul and John A. Hall eds., 1999) [hereinafter INTERNATIONAL ORDER].

46. *Id.* at 289.

47. *Id.* at 304.

48. See *id.* at 305.

ends.<sup>49</sup> The evidence from contemporary history supports such a view: more trade between nations has meant greater state size and more public services. In the words of Dani Rodrik, "the social welfare state has been the flipside of the open economy."<sup>50</sup> Furthermore, international economic integration is inherently unsettling, creating a tension that tears at social stability. The tension, as Dani Rodrik notes, assumes the form of a modern dilemma: "Globalization increases the demand for social insurance while simultaneously constraining the ability of governments to respond effectively to that demand. Consequently, as globalization deepens, the social consensus required to keep [the] domestic market open to international trade erodes."<sup>51</sup> Privatization and liberalization of economy would result in cuts in government subsidies to the poor, undermining the ability of the state to provide social welfare programs for those in desperate need.

"The economic logic of globalization," Peter Evans points out, "does not in itself dictate" the eclipse of the state.<sup>52</sup> Robust and capable states are in the interests of transnational corporations (TNCs).<sup>53</sup> And Peter F. Drucker points out that while "basic economic decisions are made in and by the global economy rather than the nation-state,"<sup>54</sup> losing its fiscal and monetary sovereignty has not made the state any weaker.<sup>55</sup>

One argument supportive of a strong and legitimate state is the need for economic development, political stability, and conflict management. In those developing countries where person, life, and property are in constant jeopardy, the restoration of order can be a defense of human rights.<sup>56</sup> Also, a great deal of institution building is required to make environmental protection feasible in the developing world. Sophisticated institutions are indispensable for assessing environmental impacts. "At a minimum, the state must have the capacity to decide *authoritatively* what development is sustainable."<sup>57</sup> Scholars have said that in times of major change the state needs to play the dual role of entrepreneur and conflict manager. In both roles, the state is seen as an active agent in economic change.<sup>58</sup> In Malaysia, a combination of a market friendly orientation and proactive role of the

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49. *See id.* at 197.

50. Dani Rodrik, *Sense and Nonsense in the Globalization Debate*, 107 FOREIGN POL'Y 19, 26 (1997).

51. *Id.* at 26.

52. Peter Evans, *The Eclipse of the State? Reflections on Stateness in an Era of Globalization*, 50 WORLD POLITICS 62, 73-74 (1997).

53. *See id.* at 69-70.

54. Peter F. Drucker, *The Global Economy and the Nation-State*, FOREIGN AFF., Sept./Oct. 1997, at 159, 163.

55. *See id.* at 164.

56. Somalia in the 1990s, for example, epitomized a weak state where disorder led to grave human rights deprivations.

57. Michael Holley, *Sustainable Development in Central America: Translating Regional Environmental Accords into Domestic Enforcement Action*, 25 ECOLOGY L.Q. 89, 109 (1998) (emphasis in original).

58. *See* Ha-Joon Change & Robert Rowthorn, *Role of the State in Economic Change: Entrepreneurship and Conflict Management*, in THE ROLE OF THE STATE IN ECONOMIC CHANGE 31, 46 (Ha-Joon Change & Robert Rowthorn eds., 1995).

government proved to be an effective development approach for the period between 1957-1995.<sup>59</sup> In the present era, there is a need for a responsible state as that actively collaborates with the private sector (market) and civil society.<sup>60</sup>

Increasingly, the Washington Consensus, which entails market-oriented policies and the pursuit of neo-liberal economic policies, is being challenged by a latent Southern Consensus. The latter combines the primacy of economic development characteristic of an East Asian economic model with that of a corporatist model of growth, revolving around close state-business ties that have in the past typified Latin American economies. The successful implementation of “productive” development policies, growth-oriented macroeconomic policy, and government-business cooperation has shown the advantages of a pragmatic developmental state. In such a state, the policies are executed, to the extent possible, “through private initiative rather than public ownership, and through the market mechanism rather than administrative controls.”<sup>61</sup> To this end, government plays a key role in both encouraging the private sector and in harnessing its “aggressive pursuit of profits” in order to promote national interest. This, in turn, necessitates an increase in state capacities, not state minimalism.<sup>62</sup> The Asian crisis has prompted some observers, such as Joseph Stiglitz, to argue the need for a “post-Washington Consensus” — a new paradigm that “should seek to achieve broader objectives — embracing a focus on the living standards of people and the promotion of equitable, sustainable and democratic development.”<sup>63</sup>

The increase in state capacities, which has been backed by electoral politics in most cases, has generated no major redistribution of wealth, income, or power.<sup>64</sup> Old and new inequalities persist. Civil and political rights remain the only ways to provide a check on state performance.

Strong and legitimate states are very much in the interest of the international community. Without reliable actors to deal with, very little can be accomplished. The political vacuum left in Africa after the Cold War, when superpowers disengaged themselves from those countries whose geopolitical significance had dramatically declined or been thrown in doubt, continues to plague that continent and the entire world. Combined with a series of economic crises that began in the 1970s,<sup>65</sup> this

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59. See Thamir Salih & Dale Colyer, *A Case Study of Structural Transformations, Trade and Poverty in Malaysia's Socioeconomic Development, 1960-95*, 10 INT'L J. COM. & MGMT. 24, 24 (2000).

60. See Charles A. Reilly, *Balancing State, Market, and Civil Society: NGOs for a New Development Consensus*, in POVERTY AND INEQUALITY IN LATIN AMERICA 169, 176 (Victor E. Tokman & Guillermo O'Donnell eds., 1998).

61. Charles Gore, *The Rise and Fall of the Washington Consensus as a Paradigm for Developing Countries*, 28 WORLD DEV. 789, 797 (2000).

62. *Id.*

63. *Id.* at 799.

64. See Hakim & Shifter, *supra* note 22, at 181. Brazil, Mexico, Peru, Colombia, and Venezuela serve as examples of countries with strong governments and enormous inequality of income and wealth in the region. See *id.*, at 182.

65. See Mick Moore, *Death without Taxes: Democracy, State Capacity, and Aid Dependence*

contributed to the current state of affairs, where African countries are seen as weak states, vulnerable to political instability, with the serious potential of requiring emergency assistance from the international community.

### C. Societal Forces within States

From another perspective, neither state nor market, but rather societal forces determine how different countries respond to the challenges of globalization. States must function in a broader and deeper framework of relationships in order to tackle the pressing problems of our times. To confront the forces of fragmentation in world politics—ethnic violence, international crime, the drug trade, and financial crisis—states must either join supranational organizations, known as intergovernmental organizations (IGOs), or rely on the services of non-governmental organizations (NGOs).

Some scholars argue that the hallmark of the East Asian countries' "economic miracle" is their eclecticism—that is, a combination of the neo-liberal economy and the strong state influence on the economy.<sup>66</sup> Beyond the state and market, one has to factor in the role and the nature of society, culture, history, and the evolving international economy. Moreover, state political or religious leaders do not have a monopoly on interpreting local culture and values. It is critically significant to be sensitive to the heterogeneity within each country and culture. "It is important," Amartya Sen aptly argues, "to listen to the voices of dissent in each society."<sup>67</sup> Nation-states and cultures, Sen continues, "are not particularly good *units* to understand and analyze intellectual and political differences."<sup>68</sup>

Some observers argue that alternatives put forward by post-development thinkers, who underscore the importance of civil society and globalization, fall short of addressing the necessity of emancipatory projects directed at the global underclasses and the issue of inequality.<sup>69</sup> The experience of nearly three decades of worldwide democratization suggests that "[w]ithout political institutionalization or socioeconomic development, an expansive and mobilized civil society is likely to be an unpredictable actor producing potentially destabilizing effects."<sup>70</sup> Socioeconomic development, so goes the argument, is pivotal to the survival of both democracy and civil society, especially in those countries in which the fate of democratic consolidation remains uncertain. Those

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*in the Fourth World*, in *THE DEMOCRATIC DEVELOPMENTAL STATE: POLITICS AND INSTITUTIONAL DESIGN* 84, 108 (Mark Robinson & Gordon White eds., 1998).

66. See Steve Chan et al., *Looking Beyond the Developmental State*, in *BEYOND THE DEVELOPMENTAL STATE: EAST ASIA'S POLITICAL ECONOMIES RECONSIDERED* 1, 3 (Steve Chan et al. eds., 1998).

67. Amartya Sen, *Universal Truth: Human Rights and the Westernizing Illusion*, *HARVARD INT'L REV.*, Summer 1998, at 43.

68. *Id.*

69. See Omar G. Encarnación, *Tocqueville's Missionaries: Civil Society Advocacy and the Promotion of Democracy*, *WORLD POL'Y J.*, Spring 2000, at 9.

70. *Id.* at 17.

democracies in Latin America that have achieved consolidation (in particular, Costa Rica, Chile, and Uruguay) have all reached high levels of political institutionalization, as manifested by their strong political parties.<sup>71</sup>

The preoccupation with civil society and global studies also ignores the role states play in development in the developing world. "It is tragic," Frans J. Schuurman writes, "that, at the moment that many Third World countries are finally starting to get rid of undemocratic regimes, the national state is robbed of its importance."<sup>72</sup> Schuurman adds that "it would be highly premature for development studies to replace the paradigmatic importance of the state by that of civil society."<sup>73</sup> Given Schuurman's point that states are being robbed of their importance in light of a growing significance of a global capitalist system,<sup>74</sup> and given the democratic deficit associated with the opaque nature and character of many international organizations, the weakening of the state is bound to be problematic for people's realization of their rights.

#### D. Symbiotic National and Transnational Relations

Globalization has divergent impacts on states. Some trends weaken the state (capital transformation or global capitalism) and some trends strengthen nation-states (most "new social movements" "demand *more* regulation by their own nation-state through its legal or welfare agencies"<sup>75</sup>). Some trends displace national regulation to international and transnational networks; other trends simultaneously strengthen nation-states and transnationalism.<sup>76</sup> Some experts regard the present context as a kind of symbiosis between the national and transnational. Says one scholar, "most 'transnational' economic relations cannot be necessarily equated with a global universalism. The bulk of capitalist activity is more 'trilateral' than global, being concentrated in the three regions of the advanced 'North': Europe, North America, and East Asia."<sup>77</sup> In general, capitalism retains a geo-economic order dominated by the economies of the advanced nation-states. This form of globalization reinforces national networks of interaction.

Michael Mann argues that "stable government, social order, and education and health systems still seem the minimum of what substantial foreign investment and economic development require. . . . These all require social organization coordinated at the national or state-level —

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71. *See id.*

72. Frans J. Schuurman, *Paradigms lost, Paradigms regained? Development Studies in the Twenty-First Century*, 21 *THIRD WORLD Q.* 7, 18 (2000).

73. *Id.* at 19.

74. *See id.* at 18.

75. Michael Mann, *Has Globalization Ended the Rise and Rise of the Nation-State?* in *INTERNATIONAL ORDER*, *supra* note 45, at 257.

76. *See id.* at 259.

77. *Id.* at 245.

what other agency can provide them?"<sup>78</sup>

#### E. Economic and Financial Dilemmas

The dominant discourse in the international political economy is that the global economy is largely driven by inevitable market forces and the pressures of international competition. Capital flows, merger, and acquisition of foreign direct investment (FDI) have indeed become the yardstick of integration into global economy.<sup>79</sup> Economic liberalism, global currency trade, and international financial institutions have in some areas given rise to conditions that exacerbate economic inequities. Economic liberalization, for example, has brought no tangible benefits to the rural poor in Mexico. "Under NAFTA," some experts point out, "both the number and proportion of the extremely poor have grown."<sup>80</sup> The "maquilization" of Mexico's economy,<sup>81</sup> they continue, has been accompanied by even deeper impoverishment of the country's underprivileged. Maquiladora workers, not typically regarded as poor, have grown poorer under the country's liberalization programs.<sup>82</sup>

The poor countries of the developing world have also become increasingly vulnerable to shocks and fluctuations emanating from the world of global finance. The free-floating exchange rate, a measure pushed by the IMF, has brought havoc upon currencies of some countries in the developing world. The West blamed the "Asian flu" on Asian Governments' macro-level mismanagement. As a result, the IMF and the World Bank imposed stiff measures on these countries as a precondition for loans. Malaysia's Mahathir Mohammad placed the blame elsewhere: "The free trade system has destroyed the Asian economies."<sup>83</sup> Regardless of which view one adopts, the "Asian flu" illustrates the danger of

78. *Id.* at 252.

79. See Grahame Thompson, *Economic Globalization?*, in *A GLOBALIZATION WORLD? CULTURE, ECONOMICS, POLITICS* 85, 108 (David Held ed., 2000).

80. Joel Brenner et al., *Neoliberal Trade and Investment and the Health of Maquiladora Workers on the U.S.-Mexico Border*, in *DYING FOR GROWTH: GLOBAL INEQUALITY AND THE HEALTH OF THE POOR* 261, 287 (Jim Yong Kim et al. eds., 2000) [hereinafter *DYING FOR GROWTH*].

81. The term "maquilization" refers to Mexico's economic strategy of establishing the Border Industrialization Program (BIP). This strategy, which was put in work in the mid-1960s, was designed to attract foreign capital to the areas adjacent to or along its border with the United States. The BIP created an export-processing zone (EPZ) along the border, giving foreign corporations incentives to build assembly plants there to create employment for Mexico's labor surplus. These plants have boosted job opportunities for many laborers, including female paid workers in manufacturing operations. According to one study, "by the late 1980s there were almost 260 EPZs in sixty-seven countries around the world, most prominently in Asia, the Caribbean and the *maquiladora* areas along the Mexican frontier with the USA." JAN AART SCHOLTE, *GLOBALIZATION: A CRITICAL INTRODUCTION* 77-78 (2000). These plants, no longer confined to areas along the border, came to be known as *maquiladoras*. See also Brenner et al., *supra* note 80, at 261.

82. Brenner et al., *supra* note 80, at 288.

83. CNNfn, *Mahathir Blasts Speculators* (Jan. 30, 1999), available at [http://cnnfn.cnn.com/1999/01/30/europe/davos\\_mahathir/](http://cnnfn.cnn.com/1999/01/30/europe/davos_mahathir/) (last visited Apr. 25, 2001).

unmanaged globalization, as well as the inability of governments to pull back the rein of currency dealers and speculators.

Perhaps the most controversial impacts of the globalization of finance on the developing world stem from portfolio investment and short-term flows. Portfolio investment, or liquid capital, flies by night, and fast. It is profit-driven (understandably so, given that "higher returns" indeed constitute the key preoccupation of the portfolio managers) and often results in crony capitalism. Such short-term investment-flows spur purely speculative economic activities such as arbitrage, causing widespread economic disruption in developing countries, especially in East Asia.<sup>84</sup> Known as "hot money," these investments render developing countries' governments vulnerable to short-term profiteering.<sup>85</sup> In such uncertain investments, poor-country governments face colossal difficulties making the long-term budgetary commitments necessary for real improvements in health and welfare.<sup>86</sup> In Indonesia, the panicked flight of foreign portfolio investment in 1997 dealt severe blows to the country's economy. Child malnutrition, once entirely under control, has resurfaced as a pervasive public health threat.<sup>87</sup>

The imposition of structural adjustment programs (SAPs) and privatization on developing countries by international financial institutions has had adverse impacts on the health of the poor. The economically disadvantaged segments of the society, some observers note, continue to serve as the "sentinel chickens" or "mine shaft canaries" of the global economy.<sup>88</sup> In Nicaragua, for example, SAPs have failed either to make more efficient use of limited resources in the health sector or to mobilize local resources through decentralized planning. In the 1990s, Nicaragua experienced its worst recorded epidemics of malaria, a disease predominantly affecting the very poor, both rural and ex-rural. Deteriorating public salaries and a lack of national leadership, caused partly by the country's SAPs, have resulted in a noticeable loss of morale in the public sector and have led some experts to call for the roll-back and

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84. See generally RANJIT GILL, *BLACK SEPTEMBER* (1997) (describing the devastating impacts that portfolio investment has had on Southeast Asia). See also MITTELMAN, *supra* note 2, at 235 (describing discontent over the absence of order in the global capital market).

85. It should be noted that portfolio investment has been highly concentrated and uneven. According to UN studies, over three-quarters of portfolio investment has gone only to those countries that are known as the "emerging markets," such as Brazil, India, and Turkey. While Foreign Direct Investment (FDI) continues to be the largest source of private financial flows, short-term portfolio investments in recent years have grown at a faster rate. Between 1990 and 1995, the annual movement of these short-term flows in the developing world surged from \$3.2 billion to \$45.7 billion as a number of developing countries opened up their economies to liberalized global financial systems. See UNITED NATIONS, 1999 WORLD SURVEY ON THE ROLE OF WOMEN IN DEVELOPMENT: GLOBALIZATION, GENDER AND WORK 7 (1999).

86. See John Gershman & Alec Irwin, *Getting a Grip on the Global Economy*, in *DYING FOR GROWTH*, *supra* note 80, at 38-39.

87. See *id.* at 41.

88. Paul Farmer & Didi Bertrand, *Hypocrisies of Development and the Health of the Haitian Poor*, in *DYING FOR GROWTH*, *supra* note 80, at 87.

reevaluation of some policy measures of structural adjustment.<sup>89</sup>

Structural adjustment and privatization has had a debilitating effect on the malaria control system. In 1990, a voluntary retirement plan was established to curtail public payrolls. It was applied indiscriminately in the health sector, resulting in the elimination of 500 of the 4,000 posts for nurses and doctors.<sup>90</sup> Many staff members of the malaria control program resigned. Moreover, many rural people, dependent largely on small farms, were deprived of much needed credit, which increasingly went to export-oriented industries. Searching for better living conditions, these people rushed to Managua, the capital city, swelling the ranks of urban slums in the 1990s. By the mid-1990s, approximately one-third of the country's population lived in the capital, making Managua a major focus for malaria transmission.<sup>91</sup> From 1992 to 1996, the incidence of malaria in the population tripled. The public health authorities called for a radically revised strategy, including strengthening the technical capacity of national staff, preventing the loss of experienced staff to the private sector, and re-establishing universal access without user fees for examination of self-referring patients' blood slides. Local volunteers were called upon to facilitate the collection of blood samples, administration of directly observed anti-malarial therapy, the upgrading of preventive methods, the promotion of community health education, and the identification of useful local strategies to reduce transmission.<sup>92</sup>

SAPs have routinely imposed unbearable and unjust burdens on the most powerless people of the developing world: women, children, and the wretchedly poor—groups that lack effective social protection in most low-income countries. In the 1980s and 1990s the IFIs imposed SAPs on forty-two African governments as a condition for new loans.<sup>93</sup> Many Africans have suffered negative consequences. The experiences of Benin, Côte d'Ivoire, Kenya, Nigeria, and Zaire bear this out.<sup>94</sup> After two decades, "more Africans are poorer and less healthy than at the beginning of the SAP era." The interplay between powerlessness, poverty, and disease validates the widely held assumption that "disease epidemics result from social processes."<sup>95</sup>

More recently, these IFI-related economic reforms have been renamed under two new IMF initiatives: the Enhanced Structural Adjustment Facility (ESAF) and the Poverty Reduction and Growth Facility (PRGF). The latter rubric has come into play after the 1999 G-7 meetings in Cologne,

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89. See Richard Garfield, *Malaria Control in Nicaragua: Social and Political Influences on Disease Transmission and Control Activities*, 354 LANCET 414, 417 (1999).

90. See *id.* at 416.

91. See *id.*

92. See *id.* at 417.

93. See Brooke G. Schoepf et al., *Theoretical Therapies, Remote Remedies: SAPs and the Political Ecology of Poverty and Health in Africa*, in DYING FOR GROWTH, *supra* note 80, at 92.

94. See Mahmood Monshipouri, *State Prerogatives, Civil Society, and Liberalization: The Paradoxes of the Late Twentieth Century in the Third World*, 11 ETHICS & INT'L AFF. 233, 241 (1997).

95. Schoepf et al., *supra* note 93, at 92.

Germany, held to address the issue of oppressive debt burdens of the Heavily Indebted Poor Countries (HIPCs). It is still questionable whether such initiatives can lead to increased standards of living in the impoverished nations. Debt relief has come to be recognized widely as a human rights issue. Many socioeconomic rights violations are said to be closely linked to the issue of debt and debt relief. "Basic human rights," Eric Friedman argues, "do go unrealized because Mozambique is paying \$1.4 million every week in debt service, instead of spending the money on education, health care, nutritional programs, and the like."<sup>96</sup>

## V. CASE STUDIES

In this section, we turn to the role of the state in some thematic areas, or more accurately case studies, such as the development-democracy nexus, child labor, and health care. Many disagreements — such as whether child labor is an abuse of human rights or a regrettable necessity to counter poverty — shape the contours of moral debate in the international community. Similarly, the controversy lingers on as to whether an activist or minimalist role for the state would be more appropriate in the struggle for upholding the right to health care. In the ensuing discussions, several key questions confront us, of which the two most relevant ones are: Should states be socially empowered to protect certain basic economic and social rights? How is the political economy of development related to human rights?

Contrary to popular perception, the connection between development and democracy is not clear. There are many unknown variables involved in such a relationship. Furthermore, the impact of globalization upon development and democracy is differentiated and holds wide-ranging consequences for the discourse of international human rights. An analysis of the development-democracy nexus is essential to any broader understanding of globalizing human rights standards.

### A. Development-Democracy-Human Rights Nexus

#### 1. Development-Democracy Relationship

Efforts to define and measure development goals and activities, as well as to theorize about the role of foreign aid in promoting development, are highly complex and evolve as world conditions change and more

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96. In a particularly informative and stimulating essay, Eric Friedman writes that "the forty Heavily Indebted Poor Countries (HIPCs) spent a total of about \$8.6 billion per year securing their debts as the 1990s drew to a close"—money that could have been spent on social services to benefit their people. Calling for the relief of large debt burdens, Friedman argues that such burdens facilitate human rights deprivations in many developing countries. See Friedman, *supra* note 11, at 194.

information becomes available.<sup>97</sup> There continues to be disagreement within the academic community and policy circles over what the overarching goal of sustainable development should be, such as poverty reduction or economic infrastructure development.<sup>98</sup> The most effective development models are those that “promote the full enjoyment of all human rights: political, civil, cultural, social and economic.”<sup>99</sup> This realization has rendered poverty reduction, gender equality, and economic growth, and grassroots participation in development essential to the definition of sustainable development.<sup>100</sup>

The Canadian International Development Agency (CIDA) has linked poverty to six pertinent priorities: basic human needs; women in development and gender equity; infrastructure services; human rights, democracy, and good governance; private sector development, and; the environment. CIDA’s findings nevertheless underscore the fact that no single model can achieve poverty-reduction objectives.<sup>101</sup>

The link between development and democratic ideals continues to invite controversy and debate.<sup>102</sup> While some stress the importance of this link for human rights, others caution that unless these concepts are understood and pursued in very particular ways—that is, in the context of the *liberal democratic welfare state*—they may place human rights at risk. Representing the latter perspective, Jack Donnelly challenges the position

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97. See SARAH J. TISCH & MICHAEL B. WALLACE, *DILEMMAS OF DEVELOPMENT ASSISTANCE: THE WHAT, WHY, AND WHO OF FOREIGN AID* 45 (1994).

98. Many also refer to the right to development as the main objective. This entitlement to development has been affirmed as a universal and inalienable right. Declaration on the Right to Development, G.A. res. 41/128, annex, 41 U.N. GAOR Supp. (No. 53) at 186, U.N. Doc. A/41/53 (1986). The human rights approach to the eradication of poverty is based on the premise that “the right to be free of the crushing poverty must be counted among the most fundamental of human rights. Poverty is brutal. It is embedded in all realms of the existence of poor people, and extends beyond lack of income.” James Gustave Speth, *Poverty: A Denial of Human Rights*, 52 J. INT’L AFF. 277, 282 (1999). Speth also argues that “[i]mposing human rights conditions on development cooperation does not lead to improved human rights standards,” and may well serve only to penalize the population. See *id.* at 291.

99. *Id.* at 291.

100. See *id.*

101. KERRY MAX, *DAC INFORMAL NETWORK ON POVERTY REDUCTION — THE CANADIAN INTERNATIONAL DEVELOPMENT AGENCY (CIDA) CASE STUDY 4* (1999), available at <<http://www.nsi-ins.ca/download/dac-cida.pdf>>. The World Bank officials write that development involves a range of goals, including equality, income, education, health, the environment, culture, and social well-being. See WORLD BANK, *ENTERING THE 21<sup>ST</sup> CENTURY: WORLD DEVELOPMENT REPORT 1999/2000*, at 20 (2000).

102. Some analysts have argued that organizational fragmentation within both the state and society has blocked reform efforts in some Latin American countries. This fragmentation has promoted clientelism and segmentalism over universalism, enhancing the power of privileged groups at the expense of disenfranchised groups. In Brazil, the combination of clientelist political parties and a factionalized civil society has left the state as the only vehicle to redistribute the country’s wealth. The actions of the state have been hindered by the continuing bureaucratic in-fighting and intense lobbying from privileged groups. See KURT WEYLAND, *DEMOCRACY WITHOUT EQUITY: FAILURES OF REFORM IN BRAZIL 17-49* (1996). As a result, Brazilian democracy has generated virtually no equity-enhancing reforms. See *id.* at 3. This could foreshadow the emergence of a new brand of democracies that have come to be known as democracies without equity.

that democracy, development, and human rights (especially civil and political rights) are interdependent and mutually reinforcing. Donnelly argues that democracy aims to empower the people and allocates sovereign authority to them, while requiring little of the sovereign people in return. Human rights, in contrast, have the goal of empowering individuals, thereby limiting, not empowering the people and their government.<sup>103</sup> Likewise, development is defensible only when it actually contributes to economic and social rights. Ultimately, Donnelly notes, “[h]uman rights are required to civilize both democracy and markets by restricting their operation to a limited, rights-defined domain.”<sup>104</sup> Criticizing both free markets and pure democracy for sacrificing individual rights to a “higher” collective good, Donnelly argues that “[o]nly when the pursuit of prosperity is tamed by economic and social rights, such as when markets are embedded in a welfare state, does a political economy merit our respect.”<sup>105</sup>

Many leaders of developing countries in the post-colonial era rationalized their development programs in the name of order and economic development. These ruling elites stressed emancipation from colonial exploitation and dependency as the overriding national goal, considering civil and political rights to be luxurious freedoms their countries could not afford. By the mid-1970s, democratic changes in Southern Europe cast a shadow of doubt over such a line of reasoning as a wave of democratization swept Eastern Europe and reached the South American, Asian, and African continents.

Meanwhile, the globalization process (more particularly trade liberalization and international capital flows) has left developing countries with no other alternative but to open their economies to global markets. The result has been mixed and often contradictory. On the one hand, issues of foreign direct investment, good governance, transparency, accountability, and the rule of law have all become intermeshed with other requirements of sustainable development, such as economic development and education. On the other hand, given the exacerbating effects of economic globalization on inequalities between and among nations, new complications have arisen for the application of democratic ideals and human rights. There is an obvious tension between the promotion of economic and social rights and global market forces. The latter aggravates global inequalities in income and living standards. Market profitability and economic efficiency drive the world into greater integration with attendant risks and consequences such as “the race to the bottom” and the curtailment of social safety nets for the poor. Some observers have called this process “the globalization of poverty.”<sup>106</sup> Economic globalization, in the

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103. Without challenging this basic contention, it can be argued that some civil and political rights, such as the First Amendment rights, do empower people. See Jack Donnelly, *Human Rights, Democracy, and Development*, 21 HUM. RTS. Q. 608, 619 (1999).

104. *Id.* at 630.

105. *Id.*

106. See, e.g., Cees J. Hamelink, *The Elusive Concept of Globalization*, 1 GLOBAL

words of Richard Falk, "poses the difficult question as to whether governments locked into wider competitive frameworks retain the effective discretion to ensure that their own citizens can satisfy basic human needs of an economic and social character."<sup>107</sup>

We have yet to solve the problem of whether business is good for human rights or human rights is good for business, or whether liberalization of economics will lead to the liberation of people. The debate rages on between the so-called "Washington Consensus" emphasizing neoliberal strategies and the "Southern Consensus" stressing neostructuralism and the activist state.<sup>108</sup> There is dubious validity to the claim that economic globalization brings democracy. James Mittelman best captures this point: "Although liberal democracy may prove convenient or preferable to other methods of governance, the beneficiaries of globalization have no inherent interest in promoting democracy."<sup>109</sup>

The consequences of globalization for human rights are less certain. Contemporary human rights scholars continue to disagree whether increased participation in the global capitalist economy nudges a government toward more or less respect for its citizens' human rights. David L. Cingranelli and David L. Richards, who have conducted an empirical study on this issue by looking at a sample of 79 developing countries around the world for the years 1981-96, explored the link between physical integrity rights (extrajudicial killings, torture, disappearances, and political imprisonment) and post-Cold War trends such as globalization, democratization, domestic conflicts, and interstate conflicts.<sup>110</sup> They found "that both democratization and participation in the more globalized economy are associated with post-Cold War improvement in government respect for the right not to be politically imprisoned."<sup>111</sup> After the Cold War ended, they noted, the average level of democracy, domestic conflict, interstate conflict, and participation in the global economy increased; nevertheless, the average level of torture, disappearances, and killings did not significantly drop.<sup>112</sup>

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DIALOGUE 1, 5 (1999).

107. RICHARD FALK, PREDATORY GLOBALIZATION: A CRITIQUE 101-102 (1999).

108. See Gore, *supra* note 61, at 789.

109. MITTELMAN, *supra* note 2, at 247.

110. See David L. Cingranelli & David L. Richards, *Respect for Human Rights After the End of the Cold War*, 36 J. PEACE RESEARCH 511, 513 (1999).

111. *Id.*

112. Cingranelli and Richards show that throughout the Cold War, more than half of the 79 governments in their sample held 50 or more political prisoners. In 1993, in contrast, only 24 governments held 50 or more political prisoners. By 1996, the number of governments in this category increased to 25. See *id.* at 524. From 1990 to 1996, in 28 of the 79 countries, there was improvement in the right not to be imprisoned. See *id.* at 526. Respect for this right improved in every region of the world. See *id.* at 525. During this period, however, full respect for the right against extrajudicial killings decreased from 32 to 31 countries, full respect for the right against being disappeared decreased from 49 to 48 countries, and full respect for the right not to be tortured decreased from 13 to 10 countries. See *id.* at 524.

## 2. Unlinking Democracy from Human Rights

The globalization of democracy has pushed a universal movement toward political liberalization and human rights. Pressures have mounted for political reforms in many parts of the world. But this globalization can be a shallow conception of democracy that romanticizes elections and leads to the rise of illiberal democracies, with ominous implications for economic, civil, and religious liberties. Since the end of the Cold War, many previously authoritarian governments have democratized, but largely in this shallow way as a result of international pressure, not indigenous social and political developments.<sup>113</sup>

Under what conditions do elections make sense? Underscoring the importance of pre-election variables, scholars of the developing world often argue that creating relative economic well-being and social welfare for the people is necessary for meaningful elections. "Surely," they say, "voting and elections will count for little in an atmosphere of crippling poverty, want, and despair."<sup>114</sup> Without economic security and minimal levels of development, it is argued, elections and expansion of civil society are unlikely to produce desired outcomes. If anything, they result in potentially uncertain situations for the ruling elites. Russia and many African countries are representative examples.<sup>115</sup>

It is important to distinguish between "fabricated" elections, where the process is flawed, and elections that might be procedurally correct, observed by the international community, yet bound by other constraints, such as economic conditions, fledgling civil society or its lack thereof, and the operation of international financial institutions. In the latter case, while elections may be justified, attention needs to be equally focused on tackling structural problems. Increasingly, the ruling elite and/or military have manipulated electoral laws and processes to perpetuate their rule. In Africa, democratically elected regimes have relapsed into autocratic rule, stifling opposition parties. In some cases, civil wars have rendered next to impossible any move toward the democratizing process. In the Democratic Republic of the Congo, for instance, the two-and-a-half year civil war, pitting the Congolese and their allies, Angola, Namibia and Zimbabwe, against rebel groups and their backers, Rwanda and Uganda, has complicated the prospects of democratization. The DRC's new president, Joseph Kabila, has adopted a reconciliatory posture toward the rebels.<sup>116</sup> The electoral experiences of many other African countries have been strikingly similar. There seems to be a slow but perilous reinstitutionalization of autocratic regimes clad in democratic garb, a political reality characterized by Said Adejumobi as "elections without

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113. See *id.* at 532.

114. Said Adejumobi, *Elections in Africa: A Fading Shadow of Democracy*, 21 INT'L POL. SCI. REV. 59, 62 (2000).

115. See Encarnación, *supra* note 69, at 9.

116. See Henri E. Cauvin, *Congo Leader Offers Talks To the Rebels; Tensions Ease*, N.Y. TIMES, Feb. 16, 2001, at A6.

choice" or caricature elections, which rarely, if ever, advance the cause of a genuine democracy.<sup>117</sup>

The fact remains that democracy alone does not bring about constitutional liberalism. This is evident in many countries, including Argentina, Kazakhstan, Belarus, Romania, Slovakia, Bangladesh, Russia, Peru, and Pakistan.<sup>118</sup> Regular elections, have failed to enhance the rule of law, human autonomy, and dignity. While democracy is flourishing all over the world, constitutional liberalism—which is to say, a combination of free/fair elections, the rule of law, a separation of powers, and the protection of basic liberties—is not.<sup>119</sup>

In Peru, a combination of weak institutions, a culture of mistrust in such institutions, and poor economic conditions has accounted for democratic backsliding. Since President Alberto Fujimori, who was first elected in 1991, won a third five-year term in a rigged electoral process in late May 2000, the notion of "rogue democracies" has entered the political lexicon and the current debate surrounding the viability of the democracy project in developing countries.<sup>120</sup> Peru's election has enforced the position that elections alone fail to guarantee free expression or fair treatment of minorities. Most Peruvians had little respect for institutions such as the courts and the congress. The lack of legitimate institutions, along with widespread poverty, led many Peruvians—who were more interested in the hope of employment than the quality of their democracy—to believe that Fujimori was the man on horseback.<sup>121</sup> Fujimori's grip on power weakened in the fall of 2000 when it was revealed that Vladimiro Montesino, the head of national intelligent service, bribed an opposition congressman. Fujimori then called for new elections but decided not to participate in them. A few weeks later he left the country for Japan and never returned. This episode demonstrated why democracy in Peru was (and still is) largely a masquerade. During his tenure in office (1990-2000), Fujimori undermined the key institutions of democracy in order to consolidate his hold on power. A true and meaningful democracy will take at least as long.<sup>122</sup>

Another contributor to the emergence of "illiberal democracies" around the world are situations that have given developed countries, the IMF, and the World Bank a freer hand in demanding economic and political reform as a condition to grant foreign aid to these developing countries. To accommodate these demands, Cingranelli and Richards

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117. FALK, *supra* note 107, at 70. See also Cauvin, *supra* note 116, at 66 (calling such elections fabricated and electoral coup d'états).

118. See Fareed Zakaria, *The Rise of Illiberal Democracy*, FOREIGN AFF., Nov./Dec.1997, at 22-23.

119. See *id.* at 22-24.

120. See Barbara Crossette, *A Different Kind of Rogue: When Democracy Runs Off the Rails*, N.Y. TIMES, June 4, 2000, at § 4, 1.

121. See Dennis Jett, *Peru's Dark Future*, CHRISTIAN SCI. MONITOR, June 2, 2000, at 11; Clifford Krauss, *Autocrat? Democrat? Well, Both*, N.Y. TIMES, June 4, 2000, at §4, 4.

122. See Dennis Jett, *Ending Peru's Masquerade*, CHRISTIAN SCI. MONITOR, Sept. 25, 2000, at 9.

explain, "many 'illiberal' democracies have been created around the world."<sup>123</sup> In these countries, multiparty systems of political participation have been legalized, elections scheduled, and political prisoners released by former authoritarian rulers bent on manipulating the system to stay in power. Despite these apparent steps toward democratization, these leaders have secured their positions, returning to previous repressive policies and manners after the elections. Cingranelli and Richards found this process to apply in most newly democratized African states, arguing further that the link between democratization and the release of political prisoners remains questionable.<sup>124</sup>

Historically, elections without broad consensus and tolerance have led to colossal difficulties. The increasing practice of competitive elections in Africa, for example, alone will not rectify widespread human rights violations. Political and personal freedoms have in fact deteriorated in several of the longest-surviving democracies of the developing world, including India, Sri Lanka, Colombia, and Venezuela.<sup>125</sup> Those countries that lack a middle class, modernized civil institutions, an established bourgeoisie, and necessary political infrastructure are not viable candidates for democracy.

#### B. Child Labor

Now a widespread and growing problem in the developing world, child labor is generally defined as regular participation of children in the labor force to earn a living or supplement household income. Is child labor a denial of human rights or essential to confronting crushing poverty? How is the poverty trap idea related to child labor and schooling? What is the relation between ILO standards and child labor? And finally, what are the consequences of cuts in social spending, prescribed by neoliberal economic development packages, for child labor? In the long run, the solution for alleviating child labor conditions lies in elevating living standards and improving human capital. This solution presupposes that schooling and child labor are contradictory approaches for all children in the developing world. This may not be the case. Moreover, in the short run, the closure of sweatshops raises serious ethical concerns about the plight of child laborers with less income available.

The consequences of globalizing labor standards for child labor in developing countries are varied. According to International Labour Organization estimates, approximately 250 million children work full or part time, with the majority of them in developing countries: 61% in Asia, 32% in Africa, and 7% in Latin America.<sup>126</sup> While in South Asian countries

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123. Cingranelli & David L. Richards, *supra* note 110, at 532.

124. *See id.*

125. Barbara Crossette, *Democracies Love Peace, Don't They?*, N.Y. TIMES, June 1, 1997, at E3 (quoting Larry Diamond).

126. *See* SUDHARSHAN CANGARAJAH & HAROLD COULOMBE, CHILD LABOR AND SCHOOLING IN GHANA. (World Bank Working Paper no. 1844, 1997), available at

child labor is predominantly in the manufacturing sector, in Africa 90% of the children are involved in unpaid work and at household level agricultural activities.<sup>127</sup> In Ghana, national household surveys conducted between 1987 and 1992 showed that of the 28% of children involved in child labor more than two-thirds were also simultaneously attending school. This survey casts doubt on the commonly held view that poverty pushes children into the labor market; it also shows that the link between poverty and child labor is strong but not essential. Poverty, however, is significantly correlated with the decision to send children to school, because there is a significant negative relationship between going to school and working and thus a resultant loss of income.<sup>128</sup>

An examination of the responses to an enrollment subsidy in Bangladesh calls into question the "poverty trap thesis"—that is, that child labor is a major factor perpetuating poverty by keeping children from poor families out of school. Using a targeted school stipend to compare how much child labor income substitutes for schooling, this study finds strong effects on school attendance of the incentive provided by Bangladesh's Food-for-Education program: "A stipend with a value considerably less than the mean child wage was enough to assure nearly full school attendance amongst participants . . . . The enrollment subsidy also reduced the incidence of child labor."<sup>129</sup> This effect, however, accounted for a small proportion of the surge in school enrollment. The reduction in the practice of child labor by boys (and girls) represented about one quarter (and eighth) of the increase in their school enrollment rate.<sup>130</sup> This is accounted for by the fact that "parents [were] clearly substituting other uses of their children's time, so as to secure the current income gain from access to the program with modest impact on earnings from their children's work."<sup>131</sup>

An ethical absolutist approach, which insists on abolishment of the so-called "sweatshops" and imposing universal labor standards across the globe, would not necessarily alleviate poverty. It could actually aggravate it in the short run. Contrary to popular perceptions, one study has shown that the effect of minimum wage legislation to prop up adult wages has the potential to exacerbate the problem of child labor.<sup>132</sup> This complication would pose a dilemma for the insertion of the "social clause" in international trade agreements, not to mention strong resistance from developing countries that consider such standards a form of

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<<http://econ.worldbank.org/docs/766.pdf>>.

127. *See id.* at 10.

128. *See id.* at 16.

129. MARTIN RAVALLION & QUENTIN WODON, DOES CHILD LABOR DISPLACE SCHOOLING? EVIDENCE ON BEHAVIORAL RESPONSES TO AN ENROLLMENT SUBSIDY, (World Bank Working Paper no. 2116, 1999), available at <<http://econ.worldbank.org/docs/828.pdf>>.

130. *See id.* at 16.

131. *Id.*

132. *See* KAUSHIK BASU, INTRIGUING RELATION BETWEEN ADULT MINIMUM WAGE AND CHILD LABOUR. (World Bank Working Paper no. 2173, 1999), available at <<http://econ.worldbank.org/docs/1000.pdf>>.

protectionism.<sup>133</sup>

Without denying that the case for achieving minimal labor standards for workers is compelling, some economists question the wisdom of using minimum wage as a form of international labor standard.<sup>134</sup> Raising adult wages through a minimum wage law, they argue, can in some cases have the contradictory effect of increasing the amount of child labor. If the increase in wage causes adult unemployment to soar, it is likely that unemployed adults will send their children to work. This is a plausible outcome given that in most developing countries unemployment benefits are non-existent. Thus, "a minimum wage can result in a higher supply of child labor."<sup>135</sup> It should be understood, however, that any reference to "universal labor standards" in this context is directed at a particular standard—that of minimum wage and its effects on another human rights issue (child labor)—and not all universal labor standards, which would include banning child labor.

On balance, arguments against child labor point to the fact that the problem is multifaceted: (1) factory owners, who take advantage of vulnerable children, are intent on promoting their economic self-interest; (2) politicians, media, and other public institutions, who treat child labor as a non-issue, are publicly indifferent to it; (3) government export promotion policies tend to gloss over the impact of such policies on child labor; (4) government officials not only condone but in many cases benefit from child labor; and (5) societal prejudice perpetuates the situation because major portions of the more fortunate classes of society consider child labor of the

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133. For an illuminating and comprehensive discussion on the "social clause" within the context of trade mechanisms to improve working condition for women in the developing world, see JULIE DELAHANTY, *A COMMON THREAD: ISSUES FOR WOMEN WORKERS IN THE GARMENT SECTOR* 41-42, (The North-South Institute, May 17, 1999), available at <http://www.nsi-ins.ca/download/thread.pdf>. Delahanty writes that "many favor 'social clauses' in international trade agreements because, unlike many other mechanisms, they are enforceable in ways that other international standards are not." *Id.* at 41. Furthermore, she adds, such clauses cause "the fear that they will only protect traditionally male forms of work." *Id.* Developing countries, Delahanty notes, are also highly skeptical of such clauses, arguing that "the real motive is to reduce their wage-cost advantage and give developed countries an excuse to discriminate against poorer country exports. As a result, no standards have been included within trade agreements, with the exception of the NAFTA and Chile-Canada side agreements." *Id.*

134. See Basu, *supra* note 132. In general, social scientists agree that workers should have the right to collective bargaining; that child labor is a violation of human rights; that workers should be protected from hazardous working conditions, and; that workers should be able to "earn a living wage." See Virginia A. Leary, *Globalization and Human Rights*, in *HUMAN RIGHTS: NEW DIMENSIONS AND CHALLENGES* 265 (Janusz Symonides ed., 1998). There is also a broad agreement that globalization has weakened the deference to state. The latter's ability to legislate all issues of labor standards has become limited. Julie Delahanty writes, "The changing role of the state needs to be kept in mind when thinking about legislative changes and reforms. The geographic spread of units of production within and between firms is reducing the importance of purely national or local influences in the organization of work and production. In more market-oriented economies, the role of the state and of government agencies is often reduced. As a result, using international labor standards as a way of ensuring the rights of informal sector workers has been an important strategy." *Id.* at 43 (citations omitted).

135. BASU, *supra* note 132, at 1.

underprivileged a part of the natural order.<sup>136</sup>

While some children work for survival, others, who are in bonded labor, work to repay debts incurred by their parents. Still others are either kidnapped or recruited by unscrupulous agents to work away from home as a source of cheap labor.<sup>137</sup> The lack of a federal requirement in many countries for compulsory education is also a major factor contributing to the continued use of child labor.<sup>138</sup>

Some ethical relativists tend to stress the hard realities facing these children and their families. "In poor families," Shahidul Alam writes, "it is simply understood that everyone has to work."<sup>139</sup> Other apologists for child labor have reflected the similar concern: "The choice for many families in developing countries is not between sending a child to a factory and sending a child to school, but, rather, between a factory that sells goods for export and a factory that serves only the internal markets."<sup>140</sup> Under such circumstances, the families give priority to subsistence—by far the most urgent priority—rather than the education of their children. The latter is an important goal, but for those mired in poverty it falls further down the ladder of priority. The logic of the situation is best captured in off-heard phrase: "The sad truth behind child labor is that for millions of poor families, children are an economic asset, and often their only one."<sup>141</sup>

To argue that the only way to confront child labor is for consumers and governments to apply pressure through sanctions and boycotts is simplistic. Following the introduction of the Child Labor Deterrence Act in 1992 by U.S. Senator Tom Harkin, the so-called "Harkin Bill," garment employers dismissed an estimated 50,000 children from their factories, approximately seventy-five percent of all children in the industry.<sup>142</sup> The mere threat of such an act panicked the garment industry, sixty percent of whose products—nearly \$900 million in value—were exported to the United States in 1994.<sup>143</sup> A series of follow-up visits by UNICEF, local NGOs, and the ILO revealed that children went looking for new sources of income and found them in less or non-regulated work such as stone-crushing, street hustling and prostitution—jobs far more hazardous and exploitative than garment production. In other cases, the mothers of laid-off children had to quit their jobs to look after their children again resulting in less household income.<sup>144</sup>

Increasingly, however, global economic and legal convergence trends

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136. See Bruce Weiner, *The Use of Child Labor Violates Human Rights*, in HUMAN RIGHTS: OPPOSING VIEWPOINTS 74, 78 (Mary E. Williams ed., 1998) [hereinafter Williams].

137. *Id.*

138. *Id.* at 80.

139. Shahidul Alam, *The Use of Child Labor Does not Always Violate Human Rights*, in Williams, *supra* note 136, at 86.

140. Jean-Claude Houry, *The Re-emergence of Sweatshops*, in STAND! GLOBAL ISSUES: CONTENTING IDEAS AND OPINIONS 110, (Timothy C. Lim, ed., 1999).

141. *Id.* (quoting *The Economist*).

142. UNICEF, THE STATE OF THE WORLD'S CHILDREN 60 (1997).

143. *Id.* at 23.

144. *Id.* at 60.

toward condemnation of child labor. The U.N. Children's Fund (UNICEF), International Labour Organization (ILO), the International Labour Program on the Elimination of Child Labour (IPEC), and the Convention on the Rights of the Child (CRC) all point in this direction. A minimum age on when a child can begin working is now a near universality feature of the domestic laws across the world.<sup>145</sup> But the plain reality is that global governance has failed to prevail over the widespread local exercise of child labor. Arguably, as countries industrialize, they tend to use child labor initially, but they are likely to abandon it subsequently. Also, as the world develops under the logic of global and industrial capitalism, economies become increasingly interdependent.<sup>146</sup> This trend in turn influences not just the practice of child labor, but also other policy choices of far-reaching implications for business and government decision-makers. Such trends are certain to uphold the argument for universality of human rights in general and the rights of children in particular. Although the argument that use of child labor is inexorably linked to a country's current stage of economic development holds to reason, it is equally true that developed nations have grown beyond their massive dependency on child labor. The case can therefore be made that heavy reliance on child labor is not necessary to economic development.<sup>147</sup>

The fact remains, however, that education will significantly reduce child labor over the long run. Cuts in social spending worldwide have severely undermined educational opportunities, raising hard questions about such neoliberal policies.<sup>148</sup> The majority of children's rights advocates contend that the immediate abolition of all child labor is unrealistic. The first priority, they note, should be to abolish the most abusive forms of child labor, such as prostitution, bonded labor, and hazardous working conditions.<sup>149</sup>

### C. Health as a Human Right

Health and human rights are interconnected and their promotion fundamentally and inextricably intertwined.<sup>150</sup> The effects of violations of dignity and physical integrity on health (mental or otherwise) are as crucial as the effects of poor health on dignity. Both the Universal Declaration of

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145. See UNICEF, *supra* note 142, at 25. The ILO establishes a general minimum age of 15 years, but country practice varies. See *id.*

146. See John T. Rourke & Mark A. Boyer, *WORLD POLITICS, INTERNATIONAL POLITICS ON THE WORLD STAGE* 40-41 (3d ed. 2000). For a discussion raising serious questions about the dominant script of globalization, see MITTELMAN, *supra* note 2, at 234-42.

147. See Hugh D. Hindman & Charles G. Smith, *Cross-Cultural Ethics and the Child Labor Problem*, 19 J. BUS. ETHICS 21, 31-32 (1999).

148. See Carol Bellamy, *Child Labour: Rights, Risks, and Realities*, in *GLOBAL ISSUES* 99/00 186, 188 (Robert M. Jackson ed., 1999).

149. Weiner, *supra* note 136, at 74.

150. Jonathan Mann et al., *Teaching Human Rights to Public Health Practitioners*, in *HUMAN RIGHTS EDUCATION FOR THE TWENTY-FIRST CENTURY* 333, 340 (George J. Andreopoulos & Richard Pierre Claude eds., 1997).

Human Rights<sup>151</sup> and the International Covenant on Economic, Social, and Cultural Rights<sup>152</sup> recognize that health is central to the dignity of the person and that state commitment to the health of the population is a fundamental human right. The realization of other rights is not possible if an individual cannot maintain his/her own health: "Particularly crucial health needs include the prevention of stillbirths and infant mortality; the improvement of environmental and industrial hygiene; the prevention, treatment, and control of diseases; and the provision of medical care to the sick."<sup>153</sup>

It is a central argument of this paper that combating poverty, addressing basic needs, and preventing and treating illness must be seen as part of an integrated process of protecting and promoting human rights. It is also important to keep in perspective the tension between globalization and the right to health. One billion people are unable to secure clean water and basic nourishment, "the most basic measure of disease prevention."<sup>154</sup> An estimated three million people are dying each year from tuberculosis, an infectious disease that is completely curable.<sup>155</sup> In 1995, 17.3 million people died of bacterial, viral, or parasitic infections, giving further credence to the thesis that "the disparities of risk and outcome are embedded in complex *biosocial* realities."<sup>156</sup>

At issue is access to health care. The broadest social determinants of health—such as income inequality—must be considered in this discussion. The field of social epidemiology elucidates the way discrimination, oppression, exploitation, and degradation of human dignity harm health, and how foundational social justice is to public health.<sup>157</sup> Considerations of dramatic income inequities have forced a change in approaches to the key question, as commentators now ask, "Why are some societies healthier than others?" rather than, "Why do some individuals get sick while others stay healthy?"<sup>158</sup>

Earlier medical anthropologists regarded cognitivist approaches to

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151. Section One of Article 25 of the Universal Declaration of Human Rights reads: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." Universal Declaration of Human Rights, art. 25, §1, G.A. Res 217A, U.N. GA OR, 3d sess., Res. 71, U.N. Doc A/810 (1948).

152. Article 12(1) of the International Covenant on Economic, Social, and Cultural Rights reads: "The State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976.

153. CAROL DEVINE ET AL., HUMAN RIGHTS: THE ESSENTIAL REFERENCE 107-08.

154. Paul Farmer, *Foreward*, in DYING FOR GROWTH, *supra* note 80, at xii.

155. PAUL FARMER, INFECTIONS AND INEQUALITIES: THE MODERN PLAGUES 3 (1999).

156. *Id.* at 3-5.

157. See Nancy Krieger, *Discrimination and Health*, in SOCIAL EPIDEMIOLOGY 36, 67-68 (Lisa F. Berkman & Ichiro Kawachi eds., 2000).

158. Ichiro Kawachi, *Income Inequality and Health*, in SOCIAL EPIDEMIOLOGY, *supra* note 157, at 76, 91.

culture as essential to the treatment of epidemics. However, recent debates in the clinical and epidemiologic literatures have refocused attention on the social causation of disease. As Paul Farmer explains: "Poverty has long been the chief risk factor for both acquiring and dying from tuberculosis."<sup>159</sup> Questioning the immodest claims of causality made by medical anthropologists, Farmer writes,

Almost unexamined has been the relationship between the social reproduction of inequalities and the persistence of tuberculosis. To my knowledge, there have been no studies of the mechanisms by which steep grades of inequality might exacerbate resistance to antituberculous drugs. Our failure to discern a political economy of risk both for the development of [multiple drugs resistant tuberculosis] MDRTB and also for suboptimal treatment may be related to a desire to link our (perfectly legitimate) investigations of the shaping of personal experience by culture to (inaccurate) claims of causality.<sup>160</sup>

Farmer deflates the myth of an exaggeration of personal agency in favor of examining the social inequalities in health, positing that in a very real sense, "inequality itself constitutes our modern plague. The burdens of inequality are primarily borne by the poor and marginalized, for not everyone can claim victimhood, despite the self-serving identity politics and 'soft relativism' of our times."<sup>161</sup>

The right to health and health care as an obligation of governments to establish and meet health standards is often a point of controversy between those who support an activist role for the state and those who wish for minimal interference with the free market.<sup>162</sup> An alternative view emphasizes the role that individuals and non-governmental organizations can play in promoting public health.<sup>163</sup> The transnational support for the right to health has dramatically risen. Many NGOs have committed themselves to collecting accurate epidemiological data and information on health conditions throughout the developing world. Since the 1980s, the Philippines' NGOs, like the Medical Action Group (MAG) and the Philippine Action Concerning Torture (PACT), have become connected with international solidarity in relation to facilitating forensic technology transfer.<sup>164</sup>

159. FARMER, *supra* note 155, at 257.

160. *Id.* at 258.

161. *Id.* at 15.

162. SEYOM BROWN, HUMAN RIGHTS IN WORLD POLITICS 85 (2000).

163. For more information on this see generally, George J. Annas, *Human Rights and Health—The Universal Declaration of Human Rights at 50*, 339 NEW ENGLAND J. MED., 1778, 1780-81 (1998). Annas notes that many groups of physicians have stressed the link between promoting public health and human rights, including International Physicians for the Prevention of Nuclear War and its US affiliate, Physicians for Social Responsibility, Physicians for Human Rights, Doctors without Borders, and Global Lawyers and Physicians. The Consortium for Health and Human Rights has provided a forum for cooperation among these health-related NGOs.

164. See Richard P. Claude, *The Right to Health: Transnational Support for the Philippines*, in HUMAN RIGHTS AND DEVELOPMENT: INTERNATIONAL VIEWS 19-38 (David P. Forsythe ed., 1989).

Pressures to improve workplace and environmental conditions throughout the world have given developing countries a voice on the world stage and highlighted the inequities and biases of globalization's politicoeconomic structure.<sup>165</sup> By most accounts, the world's health has improved.<sup>166</sup> The World Health Organization (WHO) has reported important gains in public health on an international scale: "We now have the technical capacity to eradicate nearly all nutritional deficiencies and infectious diseases."<sup>167</sup> Such dramatic improvements, however, have either bypassed the poor of the developing world or have been unevenly distributed throughout the world. In 1998, the director of the WHO declared: "The developing world carries 90 percent of the disease burden, yet poor countries have access to only 10 percent of the resources that go to health."<sup>168</sup> Increasingly, practicing physicians, public health officials, and social scientists call attention to social forces, processes, and conditions that determine the health of the poor by largely affecting the patterns of morbidity and mortality: "We are only now beginning to understand the mechanisms by which social inequality is in and of itself pathogenic."<sup>169</sup>

Similarly, experts argue that AIDS in developing countries—especially in Africa, the continent most dramatically affected so far—is primarily a welfare and education issue, not merely a medical one. Many of those at risk of AIDS cannot read, have never used a condom or been tested, and cannot afford the drugs that Americans have.<sup>170</sup> It is vitally important to put in perspective how poverty impacts and accelerates the spread of HIV/AIDS: "An HIV-positive American can focus on his T-cell counts; an HIV-positive African in a rural village still has to focus on finding clear water and food."<sup>171</sup> In the latter's case, "They have to do high-risk things to

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165. FALK, *supra* note 107, at 128-29.

166. The World Health Organization's (WHO's) 1998 annual report shows that general indicators reflect important gains in public health on the global scale: average worldwide life expectancy increased from 48 years in 1955 to 66 years in 1998; the worldwide infant mortality rate reduced from 148 per 1,000 live births in 1955 to 59 per 1,000 live births in 1995; in 1955, nearly 21 million children died before they reached age five. In 1997, slightly fewer than 11 million children died prior to their fifth birthday. A closer look, however, shows that these signs of dramatic improvements are misleading. Aggregate statistics, for instance, fail to demonstrate the fact that health gains are unevenly distributed and are, in fact, marred by increasing disparities between the world's healthy and the world's poor. According to the same report, more than 50 percent of the people in the world's 46 poorest nations lack access to modern health care; nearly three billion people in developing countries are without access to sanitation facilities; more than one billion individuals in the developing world do not have access to safe drinking water; approximately 600 million urban dwellers in the developing world live in what the WHO describes as life-and-health-threatening homes and neighborhoods; and in 1998, two-fifths of all the people who died in the world died prematurely. See Joyce V. Millen, et. al, *Introduction: What is Growing? Who is Dying?*, in DYING FOR GROWTH, *supra* note 80, at 4.

167. *Id.* at 4.

168. *Id.* at 4 (quoting WHO Director General Gro Harlem Brundtland).

169. Farmer & Bertrand, *supra* note 88, at 87.

170. See Donald G. McNeil, Jr., *No Limit: Writing the Bill for Global AIDS*, N.Y. TIMES, July 2, 2000, at §4, 1.

171. *Id.* at 6

put bread on the table."<sup>172</sup>

As noted in the section on economic and financial dilemmas, structural adjustment programs (SAP) policies, by failing to curtail poverty, have contributed to accelerating the pandemic. Many SAP measures, such as currency devaluation, not only take resources away from the fight against AIDS but also cause social problems and reactions that can make people more vulnerable to HIV.<sup>173</sup> Under such circumstances, the risks to women's biomedical health care are even higher. Demonstrating this grave injustice, some public health experts observe:

Women, and especially adolescent females, are more vulnerable than men to sexually transmitted diseases (STDs), for both biological and social reasons. They are heavily stigmatized if their affliction becomes known. Because many health services primarily target married women or mothers, and are unable to provide private examining spaces, or even treat women courteously, at-risk women are often discouraged from seeking care. User fees are even greater deterrent to successful STD treatment.<sup>174</sup>

SAP-related currency devaluation has raised debt levels by 40 to 50 percent in most African countries. These debt burdens are unsustainable.<sup>175</sup> In virtually every case, African experts note, spending cuts, as directed by SAPs, are "concentrated on politically easy targets—health, education, and support for small farmers—while the interests of the powerful and the wealthy are protected by the state."<sup>176</sup>

Neoliberal economic globalization, which emphasizes the privatization of state-run social programs in developing countries, is certain to have negative consequences for upholding certain rights such as the right to health. The privatization of health services in developing countries affects rich and poor quite differently. Peru is typical. About half of the Peruvian population survives on less than two dollars per day. They have very limited say in determining social policy and surely not much stamina to endure the negative consequences of the privatization of the health care system.<sup>177</sup> Peru's Health Law of 1997, which aimed at bolstering the Peruvian health-care system through promoting efficiency and choice, has done little to forego disease and mortality among the poor Peruvians. Critics warn about the moral and physical hazards of privatization: "By imposing the criterion of *choice* on people who are in no position to exercise it, health-care reformers have prioritized financial outcomes over health

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172. *Id.* at 6 (quoting Anthony Kinghorn).

173. Schoepf et al., *supra* note 93, at 106-08.

174. *Id.* at 109.

175. *See id.* at 120-121.

176. Hartmut Krugmann, *Overcoming Africa's Crisis: Adjusting Structural Adjustment Towards Sustainable Development in Africa*, in *BEYOND ECONOMIC LIBERALIZATION IN AFRICA: STRUCTURAL ADJUSTMENT AND THE ALTERNATIVES* 129, 147 (Kidane Mengisteb & B. Ikbubolajeh Logan eds., 1995). For more on the social dimensions of SAPs, see Mahmood Monshipouri, *State Prerogatives, Civil Society, and Liberalization: The Paradoxes of the Late Twentieth Century in the Third World*, 11 *ETHICS & INT'L AFF.* 240-42 (1997).

177. Jim Yong Kim, et al., *Sickness Amidst Recovery: Public Debt and Private Suffering in Peru*, in *DYING FOR GROWTH*, *supra* note 80, at 129.

outcomes, and further imperiled the health of the poor."<sup>178</sup>

The rising economic and political clout of transnational corporations (TNCs) and multinational corporations (MNCs) has undermined governments' efforts to make policy independent of corporate interests. Since governments are now vying with each other to attract MNCs, the balance of power has definitely tilted in favor of the MNCs and away from host governments. States, for instance, have been forced to lower their labor and environmental standards as well as the taxes foreign companies are required to pay. This has led to a downward, standard-lowering bidding cycle known as the "race to the bottom."<sup>179</sup>

In both the developing and developed world, the fear that increasing pressures in industry are driving standards into a race to the bottom are understandably widespread. Fierce international competition threatens job security, lowers wages and erodes both environmental and labor protection standards. Greater economic openness could lead countries to relax environmental standards, seeking to attract firms by reducing their cost of doing business. Many trade unions in Europe fear the search for greater competitiveness will bring about a downward spiral in pay in a race to the bottom that will threaten the living standards of their members.

Large pharmaceutical, biotechnology, for-profit health-care providers, and health insurance corporations have played an enormous role in the corporatization and commodification of health. That is to say, achieving higher returns for shareholders has become a greater priority than protecting the public health. The commercial interests of pharmaceutical TNCs override the goal of combating diseases that routinely afflict the world's poor. Few transnational pharmaceutical firms have attempted to develop new treatments for the world's most threatening infectious diseases, such as malaria or tuberculosis.<sup>180</sup>

In what amounts to "the race to the bottom," TNCs in many industries tend to locate near or in low-income areas. TNCs in extractive industries locate where the resources are, and probably in some industries have to locate in relatively well off areas because of infrastructural and technological needs. With little or no control over their activities and also with little incentive to regulate their environment practices, TNCs' operations have had devastating consequences for rural lands and local subsistence patterns.<sup>181</sup> All this is not to deny the complicity or greed of government officials, as the case of environmental degradation caused by TNCs such as Royal Dutch Shell in Nigeria has demonstrated. Royal Dutch Shell's oil exploration and production since 1958 have resulted in deadly environmental damages to the 6 million people living in the Niger River Delta named "Ogoni" after the area's dominant ethnic group. The Shell's operations were illegal under the environmental laws of most

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178. *Id.* at 152.

179. Joyce V. Millen & Timothy H. Holtz, *Dying for Growth, Part I: Transnational Corporations and the Health of the Poor*, in *DYING FOR GROWTH*, *supra* note 80, at 184.

180. *Id.* at 220-21.

181. *Id.* at 193.

industrial countries: constant gas flaring, open and unlined toxic waste pits, aged and corroding pipelines carrying oil above ground at high pressure, and chronic oil spills. In addition to suffering enormous environmental destruction, the residents of the Ogoni region who protested against such operations were subjected to systematic violence by the country's military regimes. In 1995, Ken Saro-Wiwa, an author and activist who organized a protest movement called Movement for the Survival of the Ogoni People (MOSOP), along with eight other tribal leaders who protested against continued environmental damage were arrested by the government and subsequently killed.<sup>182</sup>

This case clearly illustrates that government interests and those of Royal Dutch Shell were symbiotically intertwined. Exaggerating the TNCs' role in developing countries, some experts have noted that "the expansion, consolidation, and rising power of TNCs are a major—in many contexts the chief—obstacle to improving health among the poor."<sup>183</sup> The corrupt ruling elite of Nigeria and their unwillingness to account for how they used oil tax revenue also played an important role in the country's failure to secure financial assistance from the IMF.<sup>184</sup> It was, to a large extent, the extreme inequalities in the distribution of resources and economic power that allowed corporate practices inflict enormous harm on the most marginalized segments of the society.<sup>185</sup>

In short, broader access to and availability of resources for the most economically and socially disadvantaged remain the key concern. Lessons of the Cuban case demonstrate that the distribution of resources within a country is far more significant than the overall GNP in affecting health outcomes; that there are economic options that distribute sacrifices the poor are expected to make differently; and that massive social change to improve the health of the poor is more effective than targeting vulnerable sectors with specific programs.<sup>186</sup> Despite its low per capita GDP, Cuba has the lowest infant mortality and under 5 years old mortality rates in Latin America. Cubans enjoy a longer life expectancy at birth, are among the most educated in the Latin American region, and have achieved health standards rarely matched in the region. Notwithstanding variations in income levels among provinces, Cubans in general have are well provided for in terms of health care.<sup>187</sup> During the past 20 years, the Cuban government has effectively mobilized its human, material, and scientific resources to attend to several health problems, including an outbreak of dengue fever in 1981, the discovery of AIDS in Cuba in 1986, and an epidemic of neuropathy in 1993.<sup>188</sup>

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182. *See id.* at 194-95.

183. *Id.* at 222.

184. *See* CHARLES W. L. HILL, *INTERNATIONAL BUSINESS: COMPETING IN THE GLOBAL MARKET PLACE* 114 (2000).

185. *See* Millen & Holtz, *supra* note 180, at 223.

186. *See* Aviva Chomsky, *The Threat of a Good Example: Health and Revolution in Cuba*, in *DYING FOR GROWTH*, *supra* note 80, at 332.

187. *See id.* at 335.

188. *See id.* at 337.

## VI. CONCLUSION

How to protect human rights in the face of global changes remains a nagging question. Globalization of human rights standards tends to overlook the complexity of the local dilemmas and politics of developing countries. Despite the pervasive effects of globalization, both as a process and ideology, local variables have a major impact on success or failure of adaptation. Domestic politics and political institutions will, to a large extent, determine how countries manage to absorb the shocks of globalization.<sup>189</sup> Any theoretical global consensus will do little to curb the deprivation of human rights on the ground in the developing world.

Globalization presents more dilemmas than choices for developing countries. Will the adoption of global human rights standards constrain states' choices at a time when politics are national, business is global, and civil society is rapidly becoming transnational? There exists, some scholars have cautioned, "a broad cumulative trend toward the social disempowerment of the state."<sup>190</sup> The social re-empowerment of the state is imperative. The erosion or disintegration of state authority in many developing countries has been responsible for the breakdown of order and the ensuing egregious human rights violations. Many experts have argued that instituting the rule of law as a prerequisite for norm-abiding behavior requires effective state authority. They have particularly noted that "[h]uman rights campaigns should be about transforming the state, not weakening or even abolishing it."<sup>191</sup>

The dynamics of health provision and child labor demonstrate that government intervention is necessary. The processes of sustainable development and democratization support the argument that state strength cannot be separated from their political legitimacy and coherence. States should be empowered to protect socioeconomic rights. Unless the state is mandated to protect these rights, strong elites cannot be justified. Such a protection cannot be divorced from the political economy of development. The difficulty is how to balance growth, equity, and competition as states become further integrated into the global economy. Effective governance by states when faced simultaneously with globalizing and localizing dynamics remains a formidable task.

The globalizing neoliberal culture of consumerism and individualism creates tensions for the kind of social order sought by many in the developing world. Despite a theoretical optimism that globalization will enable poverty-stricken, non-industrial nations to pull out miracles of economic and social development, there is growing evidence that in reality

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189. See Robert O. Keohane & Joseph S. Nye, Jr., *Globalization: What's New? What's Not? (And So What?)*, 118 *FOREIGN POL'Y* 104, 117 (2000).

190. RICHARD A. FALK, *HUMAN RIGHTS HORIZONS: THE PURSUIT OF JUSTICE IN A GLOBALIZING WORLD* 1 (2000).

191. Thomas Risse & Stephen C. Ropp, *International Human Rights Norms and Domestic Change: Conclusions*, in *THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE* 234, 277 (Thomas Risse et al. eds., 1999).

no groups are more adversely affected by the unforeseen disruptions brought by globalization than women, children, and the poor.

Neoliberal globalization renders the choice between an activist state and the free market contentious, leaving NGOs with much power in defining the contours of moral discourse in the developing world. Economic globalization leads to the loss of "economic" sovereignty, subjugating states to capital flows and compromising their democratic potential. There is no consensus on the relationship between democracy and the free market. That relationship is unclear and complicated. Unlike those of the developed world, stable regimes in developing countries traditionally are those that have had interventionist policies. The growth of the market economy appears more dynamic than that of democracy, with corporate economic rights taking precedence over individual human rights.<sup>192</sup>

Global economic pressures undermine the ability of the developing countries' governments to protect minorities or to preserve important cultural and social elements within communities.<sup>193</sup> These influences increase the possibility of the fragmentation of states as decision-making powers are relinquished to globalized economic institutions and transnational corporations that have a dubious interest in and commitment to the sociocultural welfare or the human rights of the people in developing countries.<sup>194</sup>

One of the most daunting questions facing the international human rights community is how a commitment to the full range of human rights is possible given unequal economic circumstances and priorities. Such a commitment—if and when it exists—remains unrealistic at best. Human rights activists must come to grips with the question of how best to protect and promote human rights in the developing world given the realities and dynamics of developments in international political economy. Without taking such realities and dynamics into account, they will ultimately be helpless to enhance the human rights conditions of the world's poorest people. Global standards must be enforced while taking account of the complexity and diversity of contexts, especially as they relate to the most fragile and vulnerable social groups and states.

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192. See Jacques Attali, *The Crash of Western Civilization: The Limits of the Market and Democracy*, 107 FOREIGN POL'Y 54, 59-61 (1997).

193. See Robert McCorquodale & Richard Fairbrother, *Globalization and Human Rights*, 21 HUM. RTS. Q. 735, 756 (1999).

194. See *id.* at 765.