

# **DEMOCRACY, DEVELOPMENT AND HUMAN RIGHTS: A CRITICAL NEXUS**

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When first asked to speak to you – a graduate class of law students – I was not sure what issue I should address. I am not a lawyer, as you will soon see, and in fact other than frequent speeding tickets near Fiumicino airport, I have managed all my life to stay away from the law. My father dropped out of law school in England and always told my sister and me to stay away from the study of the profession since, according to him, it produced people with dubious motives whose sole purpose in life seemed to

be to exploit their knowledge of legal systems largely with a view to their own betterment. He often referred to the absence of a legal counterpart of the Hypocratic oath and loved to quote George Bernard Shaw about the law being an ass. We took

his advice. I studied political economy and later business and with my wife, embarked on a career in international development. My sister studied fine arts and became an academic. Yet the more I learned about development, the more I realized how critical “the rule of law” is to the process, and how vital it is that our universities

produce graduates who view the law not just as a behavioural framework for how individuals and firms act within societies, but increasingly as a framework for how governments behave as “duty bearers” to their own citizens and with one another.

Hence the importance of human rights, something about which I do have some knowledge, at least in the development context.

A second consideration was how to make what I say to you about human rights and the law sound compelling –how to give it an inspirational significance which could produce young graduates committed to something bigger than their own professional and material success within their own country. Hence the need I felt to situate the law and human rights within the larger historical context of where we are as a planet today –namely in a state of accelerated globalisation.

Without wanting to sound overly dramatic, like many others I feel that today our planet faces both enormous opportunities and challenges, the likes of which we have never experienced before.

On the one hand, dramatic technological and scientific progress which, through accelerated globalisation, is producing in the world’s developed societies material comforts and long life-expectancies. These benefits are also being felt by emerging elites in the world’s poorer developing countries (eg. China, India, South Africa, Brazil, Indonesia etc). On the other hand, we also face today, unprecedented threats which, if not dealt with effectively at a global level, not only risk reversing progress made to date, but constitute existential dangers to our natural environment and to the societies we have created.

Foremost amongst these threats are the political (and I here include religious fundamentalism and its militant surrogates) and economic forces associated with exclusion and growing inequalities in many parts of the globe. I would also include the threats to our natural environment arising from the unrelenting growth in demand for those very resources that have fuelled economic development until now. So, in light of the global context, and the specialized training and knowledge you have, I thought it would be appropriate to talk about how human rights (and the law) can contribute positively to closing the growing inequities both between the developed and the world's poorer countries, and within these poorer states, many of which are newly democratizing (86 countries of which 60% in sub Saharan Africa and Latin America). My contribution to the discussion is not as a theorist or an academician, but rather as a development practitioner who has witnessed, over almost 40 years, which actions and policies have been effective (as well as which have failed) in creating positive transformation of societies less prosperous economically than ours.

There is widespread consensus both in the academic literature and amongst most practitioners that lasting success in transforming such societies requires the presence of at least three processes; sustainable development, democracy, and the provision of human rights. What seems to be emerging today, however, is a growing recognition that the relationship between these three critical concepts needs to be changed and that human rights need to be perceived and utilized as a necessary instrument in this process of societal transformation, rather than as something only of intrinsic or moral

value, which more often than not, have been regarded as fortuitous by-products of development and of democracy.

In fact, the first notable step in formally recognizing human rights as an important instrument of UN development assistance was only taken some 6 years ago in 2003, when a number of core UN agencies issued a “Common Understanding on a Human Rights-based Approach to Development Cooperation” (the World Bank was an inadvertent signatory). This understanding was subsequently incorporated by the UN Development Group (UNDG) into country guidelines for UN country teams in preparing both country assessments and UN country development strategies. More recently in 2006 the UN Office of the High Commissioner for Human Rights (OHCHR) has been developing, in cooperation with the World Bank, draft guidelines on a human rights approach to national poverty reduction programs (PRSPs), a relatively recent consultative approach conceived by the Bank and now used widely by other agencies as a development and foreign assistance framework for governments and donors. These developments, along with a growing recognition that global inequalities are possibly contributing to growing social and political instability on our planet – not to mention continued deterioration of our natural environment – laid the groundwork for the creation of a UN Human Rights Council (succeeding the failed Human Rights Commission). With the creation of the Council, for the first time in history (at least in theory) human rights have been set on an equal footing with security and development as a third key institutional pillar of the UN system. As Koffi Annan stated in 2005, just prior to the creation of the Council; “Accordingly

we will not enjoy development without security and we will not enjoy security without development and we will not enjoy either without human rights. Unless all these are advanced none will succeed.” The fact that the current U.S. government has recently decided to join the Council and seek to reform and strengthen it from within, is another indication of the growing significance accorded to human rights as a potential transformative instrument.

So, while there has been some progress in **how human rights are viewed on a conceptual level**, we are still not yet at the point where they are being used as a development tool, at least not amongst the major development agencies.

To better understand why this reluctance exists requires that I briefly describe to you how our understanding of “development” has evolved over time, including the concept’s relationship with democracy. I won’t go back too far in time – that would be an entire course – but rather begin with the post-war period and the creation of the Bretton Wood’s institutions in 1946, arguably the most influential development agencies, at least until recently.

Created to rebuild Europe and Japan and to bring a modicum of global financial stability, the BW institutions’ conception of development at that moment in history was the reconstruction of Europe and Japan’s physical infrastructure and industrial base that had been destroyed during World War II. Once that was achieved, development institutions (including bilateral agencies) began shifting their focus to those countries which were poorer economically, primarily in the southern hemisphere, though also in southern Europe (my first assignment in the Bank in

1976-79 was as a Loan Officer/Economist for Turkey, Israel and Cyprus – Ireland, Spain and Portugal were also borrowing from the Bank). In part, this shift in focus to the poorer countries of the “south” was done for humanitarian reasons and for concerns about global inequalities (1968 UN report “Partners in Development” authored by Canadian Prime Minister Lester Pearson, for which amongst other things he was awarded a Nobel Peace Prize), though had there not been concerns about the spread of communism and winning cold-war allies in Asia, Africa, and Latin America, it is questionable if any such shift would have occurred and resources for “development” increased to the extent they were.

Conceptually, development was then being defined in terms of economic growth (measured by GDP) emphasizing economic variables and with little attention to social and cultural aspects or the redistributive effects of growth which were basically achieved through the “trickling down” of wealth created. Professor Simon Kuznets provided scientific support with the formulation of the “Kuznet’s curve” in 1966 – it sought to demonstrate the inverse relationship between growth and equity at early levels of development, with a positive link developing as economic growth increased over time. As in the case of Europe and Japan, physical infrastructure was largely seen as the development engine of that economic growth.

Our understanding of development began to change shortly after, however, with the publication in 1968 of Professor Dudley Seer’s book, The Meaning of Development.

In it he contended that the economic growth model and “trickle down” were too narrow and failed to address the multi-faceted nature of development and the issue of

equity. He insisted that the definition of development should also include social objectives such as employment, health and basic housing. Not long after, in 1970, Ester Bostrup produced a study titled “Women’s Role in Economic Development” which broadened even further our conception of the process and its end state. Operationally, however, institutions moved more slowly and it was only with the arrival of Robert McNamara at the World Bank in 1974, that the Bank and other development agencies began to mirror this conceptual shift in their actual assistance programs. McNamara’s major contribution was in his implicit rejection of “trickle down” theory and of Walt Rostow’s 5 stages of development. This was reflected in the content of World Bank programs which increasingly focussed on poverty reduction through agricultural and rural development, as well as the direct provision of basic services. Gender considerations were also given increased prominence. McNamara at the same time introduced the practice of trying to measure numerically the impact of programs on the poor. Because of continued cold-war considerations, however, democracy and its institutional attributes were not given prominence and the World Bank and other western development agencies continued to support autocratic regimes which remained “friends” of the west. Support of such regimes also happened to be perfectly consistent with the prevailing view that the state’s role was to nurture economic activity and closely manage the workings of the development process. Without communizing this process, for which they would lose western aid, third world elites were very much influenced by the intellectual attractions of socialism and strong state involvement (Julius Nyerere in

Tanzania) which conveniently also allowed many of them to enrich themselves and their friends while maintaining their hold on power (Mobutu, Houphouet-Boigny, Senghor, Suharto, Marcos to name but a few).

All that changed in 1989, however, with the collapse of communism and the end of the cold-war. The content of foreign assistance programs was being transformed, reflecting a recognition that had been developing through the 1980s at the conceptual level, that state managed development focussed on economic growth alone was not working and that tens of millions of dollars in tax payer funding was being wasted.

With the threat of communism gone, however, both the definition of development and the process itself underwent rapid evolution. In some quarters, development was

understood even more broadly as “fulfilling the needs of the present generation without jeopardising the resources available to future generations” (The Brundtland

Commission 1987). The publication in 1990 by the UNDP of its first Human Development Report which ranked countries on the basis of the social services they provided also was important in broadening the concept of development. Most significant, however, was the shift in how the state was viewed in the development process. Rather than continuing to own and operate the productive components of the economy, the state was encouraged to regulate and nurture private economic activity.

The secret to development was to give the freest reign possible to market forces to guide economic activity.

Known as “The Washington Consensus” (John Williamson) this process was characterized by policy adjustments on the part of developing countries which

included balancing budgets, trade liberalisation, freeing exchange rates, privatising state owned industries, deregulation, tax reforms including broadening of the tax base, securing of property rights and redirecting public spending to increase growth and redistribute income. Acceptance of these policy prescriptions allowed governments access to substantial financial support from the World Bank, the IMF and other western donors.

Though applied very differently in terms of content and outcome, in the best of circumstances what these policies did was to dramatically increase economic growth (GDP). Nowhere was this more visible than in China, India, and other parts of east Asia and Latin America. Yet even there, it became increasingly clear that with this growth and the emergence from poverty of hundreds of millions of people, inequality in the form of the gap between the haves and the have nots, was growing both within and between societies. The absence in many of the less-developed countries of institutional mechanisms for the disenfranchised to be able to express their needs and frustrations and to hold governments accountable was creating growing concerns among donor governments about prospects for political stability. Prominent academicians and the leading development agencies began to recognize that something was missing from “The Washington Consensus” view of development. As

Sir Nick Stern put it when still the World Bank’s Chief Economist; “The understanding of well-being, and thus poverty, has gone beyond income, and now most of those working on the subject would place strong emphasis on improving health and education as part of development goals and as instrumental in generating

growth of income. More broadly still, development is increasingly seen as expanding freedom of choice and action.”

Put even more explicitly, Joseph Stiglitz, Nick Stern’s predecessor at the Bank, in 1998 sought to transform World Bank assistance by defining development as “a transformation of society, a movement from traditional relations, traditional ways of thinking, of traditional ways of dealing with health and education, traditional methods of production to more modern ways... and to scientific ways of thinking – economic models have failed to grasp the role of institutions and the interface between the economy, narrowly defined, and society more generally.”

From these affirmations, it was only a short step to calling for democracy and its institutional attributes to be perceived as a critical part of the development paradigm.

And yet, on a conceptual level, debate continues to exist today as to whether democracy is necessary for development, as Nick Stern has suggested it is, or whether as in China, democracy is seen as a longer term by-product of effective governance, and not necessarily an inevitability.

What appears to be certain from most recent research (Joseph Seigle, University of Maryland) is that, “there is not a trade-off between democracy and development”, or to quote Amartya Sen (the Cambridge University Nobel laureate in economics), “citizens need not choose between food and freedom”. Joseph Seigle’s research (Polity IV: Democracy Index) does demonstrate clearly, however, that democracies perform substantially better at developing their societies than do autocracies, a few

exceptions notwithstanding. The overall pattern is consistent overtime and using multiple measures of development.

In view of this and the fact that almost 70% of developing countries have embarked on a democratic path, the main preoccupation for us as students and practitioners should be, not whether democratisation is necessary for development, but rather **how do we maximize development in newly democratic developing countries**, as well as in autocratic states?

A good part of the answer I think, lies in the Vienna Declaration and Human Rights Plan of Action from 1993, which presciently stated “Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. And all human rights are inherent to the dignity of every human being – they are therefore indivisible and cannot be ranked hierarchically.” Yet in the 16 years since that declaration was made and the 20 years since the end of the cold-war we have in effect done just that – ranked human rights hierarchically. By cutting off aid to autocratic regimes with poor governance, as we have rightly done in countries such as Zaire, Kenya, Sudan, Myanmar, Cuba, we are saying that the absence of accountability, transparency, freedom of expression – all attributes of political and civil rights - constitute a denial of rights which contribute directly to development, as we understand it today. Renewing our assistance is “conditioned” on governance improving. Indeed the European Union has now shifted its focus away from economic indicators alone to using explicitly conditionality/triggers based on democracy and good governance.

Yet when consistently over time, many of the newly democratic governments (never mind the autocratic ones) fail to even “progressively” provide basic economic and social rights (by consistently under-funding social services or turning a blind eye to mismanaged ambitions causing tens of millions to suffer from high levels of morbidity and mortality) which they are legally bound to provide by virtue of having signed and/or ratified the International Covenant on Economic, Social and Cultural Rights (153 countries), rarely are donors prepared to actively cut off funding. Only the Scandinavian states (Norway in particular) are now beginning to do so.

Though the World Bank and IMF today focus squarely on poverty reduction through effectively “conditioning” their assistance on governments formulating and implementing through the bottom-up broad-based consultative process (democratic in nature) called the Poverty Reduction Strategy, they as well as other major donors, are still not prepared to condition their support on the way in which governments actually spend resources on the basic needs of the poorest and most marginalized. Nor are they prepared to remind governments, in the context of their discussions with them over PRSP spending priorities, that they are legally bound to give priority to a set of social and economic services. Manfred Nowak (the UN’s Special Rapporteur on Torture, and a Professor of International Law in Vienna) has argued that the following nine “rights” should be systematically included in PRSPs; i) the right to food, ii) health, iii) education, iv) decent work, v) adequate housing, vi) personal security, vii) appearing in public without shame, viii) equal justice, ix) political freedoms.

If human development has indeed become the *raison d'être* of today's World Bank, there is nothing in the Bank's Articles of Agreement, nor that of any other major donor, which would prevent its professional staff and management from reminding governments that they have no legal obligation to build a road from point A to B or spend X on the acquisition of new weapons systems, but that they do have legal obligations to put an additional 40 % of their girls into school or provide health care clinics and basic medicines for poor rural areas of their country. Donor institutions need to acknowledge that the obligatory nature of human rights, especially economic and social rights (which when compared to political and civil rights have been largely ignored) gives them an unexploited instrumental power that conventional development tools do not possess. And they need to begin to use them as development tools with legal authority, which means holding governments more directly accountable (since they are not themselves signatories to international human rights conventions and treaties they cannot do so through establishing new forms of formal conditionality, but they can do so by encouraging governments to make expenditure decisions based on their own legal obligations).

The fact that perhaps for the first time since the end of the cold-war, NATO governments are explicitly recognizing that the development effort in Afghanistan is almost on equal par with the military effort is encouraging in this respect, as is the fact that the U.S. army's manual on counter-insurgency warfare now incorporates social analysis into its strategic considerations.

Following 9/11, the Madrid and London bombings, and the emergence of a global jihadist movement, perhaps western governments are finally beginning to acknowledge that in a rapidly globalising world where diversity in thought, race and religion are in much closer proximity than ever before, where hundreds of millions of people are living in poverty and resenting it, where income gaps are widening, the time has come to deploy all instruments to close that gap, including human rights obligations. After all, as some would argue, “human rights have gradually emerged as the only universally accepted and defined value system of our time.” (Nowak (others in the religious community have referred to them as “values for a godless world”).

For the sake of necessity perhaps donor governments and multilateral institutions such as the World Bank and the UN should begin to act in accordance with that set of values and also effectively hold developing country governments accountable for failing to act accordingly. We seem to be reaching a point in the evolution of our planet where threats from failed efforts at sustainable development require us to use all available instruments, though especially economic and social rights. No longer, it seems to me, can international institutions such as the World Bank afford to use its

Articles of Agreement as a shield against holding its member governments accountable for their legal obligations to fulfil the most basic of needs and services of their citizens, especially the poorest and the most marginalized.

As Paul Collier recently concluded in his powerful work titled The Bottom Billion; “We do not need to be bystanders... we will need not just a more intelligent approach

to aid, but complementary actions using instruments that have not conventionally been part of the development armoury: trade policies, security strategies, changes in our laws and new international charters. In short we need to narrow the target and broaden the instruments”. I couldn’t agree more.

Thank you.