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Human Rights and Economic Development in Devloping Countries

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I. Background

This article examines the theory that economic development in third-world countries, especially through the vehicles of free market forces, direct foreign investment, and international business, necessarily involves compromises in human rights. Governments of highly successful Asian economies have given this idea greater resonance and respectability in recent years, and they can hardly be ignored. These governments have been able to achieve economic success by liberally indigenizing and adapting capitalist economic culture and exploding time-honored absolutes in capitalist philosophies. Several of these states advocate an Asian view of human rights that takes their socio-cultural circumstances into account. Preparatory to the Vienna World Conference in Human Rights,[1] Asian countries met in Bangkok to refine their positions for the Vienna Conference. In what is now known as the Bangkok Declaration, they affirmed the universality of human rights, but contended that such rights: "must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural, and religious backgrounds."[2]

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1. June 14-15, 1993.
2. *Preparatory Meeting of Asian Countries in Bangkok, March 1993*, Far E. Econ. Rev., June 17, 1993, at 16.

A distinct viewpoint in this crusade for human rights autonomy is that typified by Mahatir Mohammed, the Malaysian Prime Minister. He asserted that emphasis in developing states must be on "development rights," and implied that civil and political rights must be subordinated to these rights: "You must eat before you can vote."[3] The response of the West, flushed with the epochal "victory" of capitalism over communism has been to insist on the universality of human rights and to attempt, where possible,[4] to punish human rights violations by economic sanctions of varying kinds.[5]

Questions that arise are: Does economic growth in third-world countries necessarily involve making choices between growth and human rights, and should such growth result in trade-offs in human rights enforcement? When such conflicts arise, should the choice to be made be country-specific? An affirmative response would obviously imply that universality in the observance and enforcement of human rights is unrealistic.

Perhaps a more intricate problem is the ironic clash between civil and political rights (the so-called first generation rights) and socio-economic or development rights (the so-called third generation rights). Is there a real conflict or is the conflict a convenient excuse for authoritarianism?

In resolving these problems, some functional descriptions of the operative concepts and institutions must be understood, or at least fashioned. It is also necessary to understand the nature, patterns, types, and impact of growth-oriented economic policies in third world economies; the character and categorizations of third world economies; the structure of transnational corporations; and the impact of transnational corporations on the economies of host third-world states.

A. RIGHTS

Western liberal traditions gave birth to the concept of inalienable human rights and fundamental freedoms that inhere in all human bèings individually by virtue of their humanity, dignity, and integrity.[6] The rights to liberty, freedom of expression, and association are essentially civil and political rights conceived as applicable to individuals. It is apt to note that these rights are essentially atomistic in practical terms, even when exercised by a group of people, or as group rights.[7] These rights have earned the description of first generation rights and are con-

3. Boo Tion Kwa, *Righteous Talk*, FAR E. ECON. REV., June 17, 1993, at 28.

4. For purely economic reasons such sanctions have been half-hearted. The East Timor Massacre by Indonesian authorities has led to moves by countries such as Portugal, to impose economic sanctions against Indonesia, while others have tried to circumvent the sanctions.

5. The United States has stridently criticized Indonesia over violations of workers' rights and has threatened to remove preferential tariffs on Indonesian products.

6. *See* Paul Sieghart, *The International Law of Human Rights—Individual and Democratic Rights, in* REPORT OF THE ADVISORY COMMITTEE ON INDIVIDUAL AND DEMOCRATIC RIGHTS UNDER THE CONSTITUTION 65 (Commonwealth of Australia, 1987).

7. *See also* CIVIL LIBERTIES IN CONFLICT 7 (Larry Costin ed., 1988).

tained in the constitutions of several third-world countries.[8] The effect of the positivization of first generation rights is that institutional machineries exist for their realization.

Second generation rights, on the other hand, which are also largely individualistic rights, are the socio-economic rights, for example, rights to education, work, health, and other social services, including the means of attaining domestic control of the economy.[9]

These rights, which are sometimes described in the constitutions of developing commonwealth countries as "Directive Principles of State Policy"[10] are usually nonjusticiable.[11] Nevertheless, an Indian court has described them as the conscience of any constitution.[12] Collective rights, or the so-called third generation rights, represent a new genre of rights and apply to peoples as a group, as opposed to individuals. These rights include the right to self-determination, liberty, equality,[13] and the use of wealth and natural resources.[14] The most controversial of these rights is the right to development. An example of this concept is provided in the African Charter on Human and Peoples' Rights:

1. All peoples shall have the right to their economic, social, and cultural development, with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.[15]

Despite the apparent limitation of these rights, the right to development is conceptually wide enough to be a justification for infringing on civil and political liberties, especially in the absence of authoritative interpretation of the concept.

Another collective or third generation right is the right of all peoples to "a general satisfactory environment favorable to their development."[16] The pertinent question posed is whether this right can be vigorously enforced by third-world countries anxious to develop and claiming a collective right to do so.

8. NIG. CONST. ch. IV; MALAY. CONST. art. 10; PAK. CONST. art. 19.

9. *See Universal Declaration of Human Rights*, U.N. GAOR, 217A (III) (1948); NIG. CONST. ch. II; INDIA CONST. § 37.

10. *E.g.*, NIG. CONST. ch. II.

11. NIG. CONST. ch. I, pt. II, § 6(6)(c).

12. 3 S.C.R. 625 (India 1980); *see also* INDIA CONST. *as amended up to the 45th Amendment Act* (Central Law Agency Allahabad-2).

13. International Covenant on Civil and Political Rights 1966, arts. 1(1), 1(3). For the text of this Covenant, see IAN BROWNLIE, BASIC DOCUMENTS ON HUMAN RIGHTS 209 (1971).

14. *Id.* arts. 1(2), 47; *see* INTERNATIONAL COMMISSION OF JURISTS, SOME PRELIMINARY VIEWS ON THE RELATIONSHIP BETWEEN CIVIL AND POLITICAL RIGHTS AND ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE CONTEXT OF DEVELOPMENT AND ON THE RIGHT TO DEVELOPMENT (1978).

15. African Charter on Human and Peoples' Rights art. 22 (1981). The full text is contained in the schedule to the African Charter on Human and People's Rights (Ratification and Enforcement) Act, Laws of the Federation of Nigeria ch. 10 (1990).

16. *Id.* art. 24.

B. Transnational Corporations

Transnational corporations are enterprises owning or controlling production or service facilities outside the countries in which they are based.[17] They are the major vehicles of foreign investment in third-world countries and share certain general characteristics: annual sales that generally tend to run into hundreds of millions of dollars, and a large number of foreign branches and affiliates over which control is exercised through complete or majority ownership.[18] Because of the tremendous resources available to transnational corporations, these companies assumed decisive importance in the economic growth and politics of host third-world nations over the years. If it is considered, for example, that General Motors has a world-sales turnover higher than the Swiss GNP and higher than the combined GNP of the 530 million people of sub-Saharan Africa,[19] the potential extent of the influence of such companies in the third-world host countries becomes obvious.

C. Classification of Developing Third-World Countries

Two broad categories of developing third-world countries are considered for our purposes. The low-income developing countries (LIDCs) are largely made up of African countries (especially sub-Saharan African states, but excluding South Africa), some Latin American states, and middle- to high-income third-world countries consisting of the high performing Asian economies (HPAEs) led by Japan. This category includes the so-called four tigers—Hong Kong, the Republic of Korea, Singapore, and Taiwan, as well as the newly industrializing economies of Indonesia, Malaysia and Thailand. This article focuses primarily on sub-Saharan LIDCs and the HPAEs, including Indonesia, Malaysia, and Thailand.

The defining characteristics of LIDCs are extremely low per capita income, widespread poverty, low level of capital accumulation, low foreign exchange reserves, relatively low levels of adult literacy, autocratic civilian or military governments, political instability, exportation of primary agricultural products or minerals with very little value added, and low levels of industrialization and technological skills. The middle- to high-income developing economies (especially the HPAEs) are, on the other hand, defined by their relatively high per

17. U.N. Dep't of Economic and Social Affairs, The Impact of Multinational Corporations on Development and on International Relations 25, U.N. Sales No. E.73.II.A.11 (1972).

18. *See* U.N. Dep't of Economic and Social Affairs, Transnational Corporations in World Development: A Re-Examination 158-61, Annex 1, U.N. Doc. E/C 10/38 (1978); *see also* U.N. Department of Economic and Social Affairs, Transnational Corporations in World Development 4-6, Annex 2, U.N. Sales No. E.73.II.A.11 (1973)

19. Louis Turner, Invisible Empires 135 (1970); *see also* The Trilateral Commission and Elite Planning for World Management, Trilateralism 10-17 (Holly Sklar ed., 1980).

capita income, high capital accumulation, high foreign exchange reserves, high levels of literacy, and high levels of industrialization and technological skills. Significantly, many of these countries have autocratic governments.

II. Rights and Development

A. LIDCs

Several events in the past ten years have also shaped LIDCs and consequently their bargaining powers with transnational companies and other purveyors of foreign investment. The debt crisis was perhaps the most significant of these events. Its most pervasive consequence was that developing countries ceased to receive positive resource transfers and moved to negative positions.[20] A majority of these economies responded to the debt burden and the virtual drying up of foreign capital and reserves by adopting varying versions of IMF-dictated structural adjustment policies (SAPs), which featured the liberalization of economic controls, privatization/commercialization, de-indigenization, introduction of market-driven economic policies, and promotion of exports. SAPs appear to have both worsened the economic circumstances of LIDCs and increased the desperation of those states to attract foreign capital.

Given the structural weaknesses of LIDCs, including inept leadership, general levels of poverty, and the almost complete absence of social-welfare programs, the unleashing of market forces in LIDCs undoubtedly has had the most deleterious consequences for the majority of these countries.

In general, the use of SAPs as development vehicles in LIDCs has led to a severe deterioration in the abilities of these countries to uphold the economic and social rights of their peoples. The fundamental objectives of providing education, health care, housing, and domestic control of their economies have been abandoned, since SAPs by definition result in cut backs in funding for such programs.[21] Privatization and de-indigenization, especially when carried out in conjunction with debt-equity swaps, have created the potential for loss of indigenous control of critical areas of the economy.[22] Faced with standards of living well below poverty levels,[23] the citizenry has usually responded with strikes, rioting, and other forms of dissent, which have almost always been met with suppression by

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20. *See* U.N. DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 1991 (1991) [hereinafter HUMAN DEVELOPMENT REPORT]; *see also* J.J. Olloqui, The International Debt Crisis, Paper Delivered at UNCTC Workshop on International Finance, Abuja, Nigeria (August 1991), *reprinted in* INTERNATIONAL FINANCE & EXTERNAL DEBT MANAGEMENT 5 (1991); *see also* Yemi Osinbajo & Olukonyinsola Ajayi, *External Debt Management Case Study of Nigeria, in* INTERNATIONAL FINANCE & EXTERNAL DEBT MANAGEMENT 69 (1991).

21. Olloqui, *supra* note 20, at 5.

22. *See* GRANVILLE AUSTIN, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION 50-52 (1966).

23. *See* HUMAN DEVELOPMENT REPORT 1991, *supra* note 20.

force or draconian legislation preventing assemblies, processions, and strikes.[24] Consequently, personal liberty, freedom of movement, freedom of speech, and other first generation rights have been infringed. The deployment of state machinery against dissent becomes inevitable, since the state has to continue to show its creditors and foreign investors that it possesses the authority and force to guarantee the safety of their investments by maintaining law and order.[25] Unfortunately, even after this show of being in charge, foreign investments have not been forthcoming to most sub-Saharan LIDCs in recent years, especially since the opening up of Eastern Europe.

The vicious cycle of debt, SAPs, further impoverishment, discontent, rioting, suppression, and further debt has continued unabated largely because Western donor countries, whose market-oriented economic prescriptions are the apparent reason for the instability and repression, have been cautious in vigorously condemning such violations of human rights, preferring to rationalize them (albeit by silence) as inevitable birth pangs prior to the delivery of prosperous market-driven economies. However, the tragedy of most sub-Saharan LIDCs has been the general failure since the early 1980s to show appreciable development or improvement in the standard of living of their peoples, despite the continuing sacrifice they are compelled to make in terms of their restriction and infringement of civil and political liberties. The loss of these rights has not resulted in incremental development, but instead has worsened the misery of their circumstances, escalated political and economic corruption, and increased the perception that public office is the vehicle for economic salvation.

However, the ultimate irony of this vicious cycle is that the exercise of civil and political rights becomes less achievable even after the governments have lost all credibility. The miserable poverty of the majority facilitates the use of money by the same culprits to corruptly hold on to power either by outright force, by widely rigged elections, or through surrogates.[26]

Yet these regimes, although usually condemned by the international community, and especially by donor countries, have by and large remained intact. Withdrawal of external aid and cancellation of loans to such countries have not generally achieved results because aid is rarely completely stopped. Furthermore, since most of these regimes have always considered survival of greater urgency than

24. Most LIDCs have such legislation, while many have preventive detention legislation. *See generally* 1991-1992 AMNESTY INTERNATIONAL REPORTS.

25. MULTINATIONAL CORPORATIONS IN LATIN AMERICA: PRIVATE RIGHTS—PUBLIC RESPONSIBILITIES 4 (Donald Irish ed., 1978).

26. Credible allegations of bribery of elected officials in Nigeria were made regarding the vote in favor of the continued stay in office of then President General Ibrahim Babangida after he shocked the nation by the annulment of elections generally acclaimed as free and fair. General Babangida was eventually eased out of power, but not before he appointed Chief Ernest Shonekan, an obvious surrogate, to take over as interim Head of State. *See generally* THE GUARDIAN, June 21-27, 1993.

the fate of the majority of their peoples, their usual reaction is to entrench themselves and ensure adequate personal security of the leadership.[27] An important reason for the survival of such regimes, and consequently the decline of human rights' observance, is the willing or unwilling collaboration of transnational corporations and other vehicles of international business.

Since transnational corporations are in many cases richer in resources than many modern nation states, the impact of their support, albeit tacit, of the petty dictatorships in poverty-stricken sub-Saharan African states, can be easily appreciated. For example, Idi Amin's regime in Uganda benefitted immensely from the patronage of Ugandan coffee by thirty-three U.S. coffee companies and other distributors.[28] In 1975–76 the largest purchasers of Ugandan coffee were Folgers Coffee Company (53.8 million pounds), General Foods (45.7 million pounds), Saks International (21.8 million pounds), and the Swiss firm Nestle (20.5 million pounds).[29] Coffee exports during Amin's regime accounted for 90 percent of Uganda's foreign exchange earnings.[30] American tire companies were also actively in business under Samuel Doe's bloody regime. Allegedly, Doe's regime used the receipts primarily to purchase military and police equipment required to control internal dissent.[31] Some U.S. multinationals were accused of selling riot and counterinsurgency equipment to repressive regimes in Latin America, Asia, and Africa.[32]

Since the 1976 revelation that Mobil Oil, Shell, British Petroleum, Caitex, and Total of France violated the U.N.-imposed trade embargo against Zimbabwe (then Rhodesia),[33] oil companies and other multinationals have generally continued to do business with third-world regimes, irrespective of their human rights records. This tacit support bolsters the confidence and morale of these regimes even as they trample on the rights of their peoples.

A critical aspect of SAPs is the creation of a conducive environment for foreign investment. This environment usually involves an extensive and far-reaching incentive scheme for transnational businesses or other foreign investments, including the creation of export processing zones, ease of repatriation of profits, tax breaks, special depreciation allowances for new investments, and relaxation

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27. Recent examples are Mobutu Sese-Seko's regime in Zaire, Paul Biya's government in Cameroon, and Gnassingbe Eyadema's government in Togo.

28. Matthew Lippman, *Multinational Corporations and Human Rights*, *in* HUMAN RIGHTS IN THIRD WORLD DEVELOPMENT 257 (George Shepherd & Ved P. Nanda eds., 1984).

29. *Id.*

30. *Id.*

31. *Id.* at 258.

32. THOMAS N. GLADWIN & INGO WATER, MULTINATIONALS UNDER FIRE 183 (1980); *see also* Richard Ullman, *Human Rights and Economic Power: The United States versus Idi Amin*, 56 FOREIGN AFFAIRS 529 (Apr. 1978); *Another Cup of Coffee*, NEW REPUBLIC, May 13, 1978, at 178; AMNESTY INTERNATIONAL, HUMAN RIGHTS IN UGANDA (1978).

33. GLADWIN & WATER, *supra* note 32, at 257.

of investment approvals.[34] Also, a great need to be the "good boy" to international creditors results in allocation of a substantial proportion of foreign exchange earnings to debt-servicing.

By and large, a majority of these concessions to foreign investors have damaging consequences for the host LDIC without commensurate improvement in its economy or living standards. This erosion is especially so in LIDCs where major macro-economic errors have been made in planning; where inappropriate foreign investments have been accommodated; or where leadership is corrupt, inept, or both. For example, Nigeria and Kenya may be obliged to spend almost 40 percent and 28 percent, respectively, of their foreign exchange earnings on debt servicing to continue to receive support from creditors.[35] And these percentages do not include depletion of foreign exchange as a result of massive capital flight and the use of foreign exchange for repatriation of dividends, royalties, and other payments to foreign investors.

Liberalization of exchange control regulations has also created a favorable environment for money laundering and the attendant distortions in legitimate economic activities.[36] The competition among LIDCs to provide the best environment for foreign investment has several drawbacks. It has been suggested, for example, that tax breaks, special depreciation allowances for new investments, and other government incentives have the effect of deflating the value of capital in relation to labor.[37] In sum, the creation of conducive circumstances for foreign investment is costly and may in fact create net outflows of foreign exchange. Where, as in several LIDCs, the response of foreign capital is tepid, the loss of hard-earned revenue considerably impacts the quality of life of the citizenry and further negates the realization of their socio-economic rights.[38]

Developing countries have also been confronted by diplomatic arm-twisting by industrialized nations intent on ensuring that the former's laws and policies are responsive to the problems of the latter's nationals and corporate entities doing business abroad.[39] These laws regarding exchange controls, nationalization, expropriation, and indigenization have usually come under sharp scrutiny by the developed world. The battle between transnational business activities and

34. See Alvin G. Writ, *Special Incentives and Other Measures to Promote Foreign Direct Investment, in* CREATING A FAVORABLE ENVIRONMENT FOR FOREIGN INVESTMENT (1991) (Proceedings of a workshop organized by the United Nations Center on Transnational Corporations (UNCTC) under the auspices of Project NIR/88/002/H/01/02 held in Abuja, Nigeria).

35. *See* B.V. Kumer, Flight Capital Operation and the Developing World, paper delivered at the 10th International Symposium on Economic Crime, Cambridge (July 1992).

36. *See generally* Yemi Osinbajo & Olukonyisola Ajayi, *Money Laundering in Nigeria, in* PERSPECTIVES ON CORRUPTION IN NIGERIA (Awa Kalu & Yemi Osinbajo eds., 1991).

37. GERALD M. MEIER, LEADING ISSUES IN ECONOMIC DEVELOPMENT 364 (3d ed. 1976)

38. HUMAN RIGHTS AND THIRD WORLD DEVELOPMENT, *supra* note 28; *see also* INDEPENDENT COMMISSION ON INTERNATIONAL DEVELOPMENT ISSUES, NORTH-SOUTH, A PROGRAMME FOR SURVIVAL 187 (1980).

39. HENRY J. STEINER & DETLEV F. VAGTS, TRANSNATIONAL LEGAL PROBLEMS ch. 4 (3d ed. 1986).

domestic regulation invariably pits the protection of the rights of the transnational and other foreign entities against the developmental rights of the host countries. Developed countries have sometimes responded by recourse to international minimum standards of justice,[40] uniform trade law,[41] uniform arbitration laws,[42] international sale of goods legislation,[43] and other conventions to assure greater protection for their trade and investment relationships. In some cases, domestic judicial and legislative actions in developed countries have been used. For example, the classical rules of sovereign immunity,[44] accepted by developing countries in the pursuit and defense of economic policies and actions, have been rewritten by judicial[45] and legislative action[46] in industrialized countries to the economic disadvantage of developing nations.[47]

Developing countries will continue to be on the receiving end for as long as they are unable to become effective players in the international economy. These countries are subject to sanctions and diplomatic pressures for nonobservance of human rights. At the same time, they also suffer from self-inflicted disadvantages. Developing nations, as a result of conflict-of-law principles, generally do not cooperate in combating capital flight, siphoning of public funds, and other third-world economic crimes, which inevitably damage the capacities of these countries to realize their developmental rights. The fundamental principle that public laws of a state will not be enforced abroad[48] thus creates problems, as it appears to be generally used in circumvention of exchange controls and other laws made in regulation of business and ultimately for the protection of collective rights.[49] The theoretical weakness of this principle has since been recognized and the need to jettison its excessive formalism is imperative.[50]

40. *See id.*

41. *See* the activities of the United Nations Commission on International Trade Law (UNCITRAL).

42. *See* UNCITRAL Arbitration Rules.

43. *See supra* note 41.

44. *See generally* Kahale, *Does Choice of Law Clause Waive Immunity?*, INT'L FIN. L. REV., July 1988, at 29; PHILIP WOOD, THE LAW & PRACTICE OF INTERNATIONAL FINANCE ch. 4; 2 G.A. PENN, LAW & PRACTICE OF INTERNATIONAL BANKING ch. 3.

45. *See, e.g.*, Rahimtoola v. Nizam of Hyderabad, [1958] App. Cas. 379; Trendtex Trading v. Central Bank of Nigeria, [1977] 1 Q.B. 529.

46. *See, e.g.*, Foreign Sovereign Immunities Act, 28 U.S.C. § 1330 (1976); State Immunity Act, 1978 (U.K.); State Immunity Act, 1982 (Can.); Foreign Sovereign Immunity Act, 1985 (Austl.); *cf.* African Re-Insurance v. Fatanye, [1986] 2 N.N.L.R. 811; *see also* O. Ajayi, *Sovereign Immunity*, [1987] 6 I.B.L. 30 (discussing *African Re-Insurance v. Fatanye*); Yemi Osinbajo, *Sovereign Immunity in International Commercial Arbitration*, 4 R.A.D.I.C. 1 (1992).

47. *See* Leslie L. Rood, *Nationalization & Indigenisation in Africa*, 14 J. MOD. AFR. STUD. 427, 439-47 (1976).

48. A-G of New Zealand v. Ortiz, [1982] 3 All E.R. 432, 457.

49. *See* Barry A.K. Rider, *Policing the City: Combatting Fraud & Other Abuses in the Corporate Securities Industry*, 41 CURRENT LEGAL PROBS. 47, 63-64 (1988).

50. *See* In Re Norway's Applications, (Nos. 1 & 2), [1989] 1 All E.R. 745, 747-763; P.B. Carter, *Transnational Recognition and Enforcement of Foreign Public Laws*, CAMBRIDGE L.J. 417 (Nov. 1989).

B. HPAEs

It is in relation to the HPAEs (high performing Asian economies) that the expression "development dictatorships" finds true meaning. HPAEs have been able to achieve phenomenal economic success through a high degree of state intervention in the economy, including radical land reform policies, subsidies, institutionalized cooperation between government and business, and government intervention in labor pricing and organization.[51] The developmental strategies of HPAEs certainly do not conform to Western capitalist notions. These strategies particularly challenge the underlying philosophy of laissez-faire capitalism, namely that individual initiatives (protected by guarantees of individual liberties) provide the driving engine for economic growth. HPAEs have instead shown that a high degree of state intervention in the economy is compatible with successful capitalist development.[52] The discovery by HPAEs of this successful variation of capitalism, which down-plays individual autonomy and liberties, appears to have emboldened some HPAEs to resist Western complaints of violations of fundamental rights of their citizens on the grounds that enforcement and observance of these rights should take account of socio-cultural and other peculiarities.[53]

However, to conclude that strategic state intervention is solely responsible for the "economic miracles" in HPAEs would be fallacious. Self-discipline, self-denial, postponement of gratification, loyalty, and communalism, which are critical components of the Confucian work ethic as well as attributes of the Sinitic civilization to which all of the HPAEs belong, may also be important components of that success. These same attributes may have provided the justification for dictatorship and abridgement of certain human rights, especially at the early stages of the HPAE's development. Thus, the "development dictatorship" approach appears to have been essentially culture-based, and the successes recorded by these economies might well not have materialized had their approach been different.

While it is true that HPAEs exhibited ambivalence towards human rights at the early stage of economic development, there appears to be some credibility in the theory that the very success of capitalism sped up the process of adoption of democratic ideals and observance of fundamental rights. Using South Korea and Taiwan as examples, one commentator explains that the so-called development dictatorships do the work in earlier or take-off stages of capitalist development.[54]

51. *See generally* HSIN-HUANG HSIAO, GOVERNMENT AGRICULTURAL STRATEGIES IN TAIWAN AND SOUTH KOREA (1981); WILLIAM LOCKWOOD, THE STATE AND ECONOMIC ENTERPRISE IN JAPAN (1965).

52. Easterbrook has, however, demonstrated that there is almost no historical example of any economy that has been either entirely market-driven or entirely planned. *See generally* W. T. Easterbrook, *Long Period Comparative Study: Some Historical Cases*, 17 J. ECON. HIST. 571, 572-76 (1957).

53. *See* Michael Vatikiotis & Robert Delfs, *Cultural Divide: East Asia Claims the Right to Make Its Own Rules*, FAR E. ECON. REV., June 17, 1993, at 20-22.

54. PETER L. BERGER, THE CAPITALIST REVOLUTION 83 (1986).

The social psychology of the process is fairly clear: People who are just escaping from a harsh economic existence and who now see a better life are less likely to be interested in political liberation.[55] This acquiescence is likely to disappear with the maturation of a new generation that no longer remembers the period of grinding poverty, that takes economic progress for granted, and that therefore is able to develop finer aspirations, such as for political and personal liberties.[56] At that point, the legitimacy for a development dictatorship "begins to lose plausibility."[57]

This brief comparative study of dictatorships and development in the LIDCs and HPAEs shows that no general conclusions can be drawn on the actual correlation between the two without some study of the actual motivations for the use of dictatorships in these countries. While it would appear that the leadership in the HPAEs saw dictatorships as critical for positively motivating their economies, the history of most LIDCs, especially those in Africa, instead shows corrupt and inept leadership that deployed dictatorship primarily for self-preservation or the preservation of ethnic or other parochial interests. The result is rapid development in many of the HPAEs, while LIDCs have been hurtling towards negative growth although other equally important disincentives to success have contributed to this downward trend. The "dependency theory" usually bandied by left-wing writers as justification for under-development is not credible, especially in the face of the success of HPAEs who were also victims of dependency and imperialism.

III. Labor Standards and Development

Global expansion of capital economic cultures is a major threat to the protection of workers, especially in third-world countries. A paper presented at the Ninth Commonwealth Law Conference notes that the new international division of labor has resulted in a breakdown of traditional socio-economic structures in the third world, which, in turn, has facilitated the emergence of a vast reservoir of cheap available labor and fragmentation of industrial production.[58] This trend has enabled capitalists—particularly transnational companies—to relocate production in the third world in order to avail themselves of the economies of scale that unskilled subprocesses of production make possible.[59] The harrowing conditions under which workers in the sweat shops of South East Asia function underscores this problem. Clothing companies in Hong Kong working under subcontracts from international trading companies have been successful largely because of their use of cheap labor, including child labor, poor working conditions, and

55. *Id.*
56. *Id.*
57. *Id.* at 84.
58. Adelman, International Labor Standards and the Third World: The Need for a New Approach, paper presented at the 9th Commonwealth Law Conference, New Zealand (Apr. 17, 1990).
59. *Id.*

long hours for low wages.[60] The fierce competition among third-world countries for foreign investments has certainly heightened the exploitive realities of such arrangements.[61] But only countries that eventually attract transnational investments have the "privilege" of being so exploited. Sub-Saharan African states, on the other hand, have usually attracted little foreign investment, largely on account of the relatively low skills of middle-level workers and technicians and declining per capita income. Unemployment has become a way of life for substantial proportions of their employable population. The consequence is poverty and hunger. The question of course is whether employment under harsh circumstances is preferable to unemployment and its consequences.

Generally, the approach of most HPAEs has been to find ways of ensuring more pliant and cooperative labor unions at the cost of the civil and political rights of their members.[62] For example, Japan has suppressed radical activism in its labor unions since the end of World War II.[63] Korea, Singapore, and Taiwan have also restructured labor unions to extinguish the fire of radical activities.[64] Their strategy was essentially to abolish trade-based unions but permit company- or enterprise-based unions.[65] Personnel and other policies are then worked out jointly between management and company union representatives.[66] In Thailand and Indonesia the fear of communist expansion was the convenient excuse for the ruthless suppression of labor unions.[67]

Labor repression in HPAEs has largely been a mixture of compulsion and a readiness to offer labor unions a less belligerent way of achieving welfare concessions for their members. The strategy has been to make labor unions partners in progress, while allowing them no choice but to concede their right to approach the matter differently. Hong Kong, Singapore, and Indonesia all support several successful welfare schemes for workers. Singapore and Hong Kong have successful housing schemes for workers, and Indonesia has given financial backing to a housing scheme initiative by the Indonesia Workers Cooperative Alliance.[68]

However, the question of whether labor repression has a positive correlation to economic growth remains contentious. As a general proposition, a commentator notes that "most dictatorships that suppress unions are incompetent in economic

60. Evers, et al., *Hong Kong: Development and Perspective of a Clothing Colony* (translated summary of Progress Report No. 6 Development Research Institute, Tilburg, Netherlands), *in* GERALD M. MEIER, LEADING ISSUES IN DEVELOPMENT 337 (4th ed. 1984).

61. *See* FOLKER FROEBEL, ET AL., THE NEW INTERNATIONAL DIVISION OF LABOR (1980); *see also* O. Gomez d'Estrada & R. Reddock, *New Trends in the Internationalization of Production: Implications for Female Workers, in* BOYD, COHEN, & GORLAND (1987), *cited in* Adelman, *supra* note 58.

62. THE EAST AFRICAN MIRACLE: A WORLD BANK POLICY RESEARCH REPORT 157 (1993).

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.* at 158.

67. *Id.* at 159.

68. *Id.*

affairs, *vide* Burma in East Asia.''[69] Yet the same commentator is forced to concede that in some situations, especially HPAEs, labor repression might have assisted development.[70] Nevertheless, the issue is seemingly incapable of resolution in isolation of other factors. One certainty that emerges is that for repression of labor to be a successful tool of development, it must be accompanied by welfare and other social security concessions capable of rendering a confrontational posture by labor unreasonable or potentially counterproductive.

IV. Environmental Rights and Development

The right to a clean environment is one of the new, or third generation rights that has continued to attract increasing significance as a central problem of development.[71] For developing countries, however, environmental management is an even greater challenge. Most developing countries are obliged to pursue development patterns that rely heavily on the use of immediately available natural resources such as oil and wood, that have great potential for environmental pollution and degradation. The decline in economic growth and the various features of SAPs have led to an even more devastating exploitation of natural resources by developing countries, and especially by LIDCs. Perforce, the viability of environmental management has become more remote. LIDCs thus have a profound problem. Resources for the maintenance of even the basics of a decent environment long taken for granted in developed countries, and in many HPAEs, are unavailable. Access to clean, disease-free water, prevention of erosion, and depletion of forest reserves by commercial timber felling and bush burning are still major problems in many sub-Saharan African states. In many ways, the level of environmental management is largely a function of economic growth and prosperity.

Yet third-world countries have found that economic growth and prosperity cannot be achieved without great cost to the environment, a cost they may be unable to pay. The construction of the Volta Dam in Ghana resulted in schistosomiasis (bilharzia)[72] reaching epidemic proportions, infecting 90 percent of school-

69. Richard Freeman, Does Suppression of Labour Contribute to Economic Success? Labour Relations and Markets in East Asia, background paper for the East Asian Miracle World Bank Policy Research Development, Washington, D.C.; *see also* Fields, Changing Labour Market Conditions and Economic Development in Hong Kong, Singapore, Korea, Taiwan, China, background paper for the East Asian Miracle World Bank Policy Research Development, Washington, D.C.

70. Freeman, *supra* note 69.

71. The United Nations established the World Commission on Environment and Development [WCED] in 1984. WORLD COMMISSION ON ENVIRONMENTAL DEVELOPMENT, OUR COMMON FUTURE (1987). The report of the WCED clearly established the interrelationship between economic growth and the state of the environment, emphasizing that sustainable growth can only be maintained in the context of prudent management of the resources of the environment. In the 1990s the Earth Conference in Rio appears to have further underscored the appearance of international resolve on environmental protection.

72. Dams, ponds, and canals create conditions for the spread of bilharzia.

children living on the western shores of the new reservoir.[73] The Ogoni people in Nigeria's oil producing Rivers State have experienced some of the worst cases of ecological devastation caused by oil exploration, with agriculture and water-life virtually destroyed.[74] Despite world wide condemnation of the environmental standards being maintained by Shell,[75] the prospecting company, and even threats of secession by the Ogoni people, the then Nigerian government's reaction was to send troops to protect oil workers in Ogoni land and to promulgate an antisecession decree[76] and subsequently the Nigerian Lands (Title Vesting) Decree.[77]

This Decree gave the government ownership of all lands in Nigeria within 100 meters of the shoreline and other land reclaimed from any lagoon, sea, or ocean on or bordering Nigeria. Section 6 of the statute excludes the jurisdiction of any court to hear any matter in connection therewith or to inquire into whether any of the fundamental human rights provisions in the constitution or the African Charter on Human and Peoples' Rights (Ratification and Enforcement Act)[78] has been or would be contravened by any act done in connection with the decree. The effect of this decree is to compulsorily divest individuals, corporations, and local and state governments of land without payment or just compensation. This enactment frustrates the Ogoni people's claims for autonomy and for an end to environmental damage and infractions of collective rights.[79]

Perhaps a more frightening danger, especially for LIDCs, is the dumping of hazardous wastes by some developing states. Taking advantage of the poverty and ignorance of local peoples, especially villagers in LIDCs, developing countries have been known to offer money in exchange for a place to dump toxic wastes.[80] Although no official complicity has been established, Nigeria and Equatorial Guinea have been victims of dumping of hazardous wastes.[81] The resulting loss to the affected communities in terms of the violation of their rights to a clean environment, and indeed to life, is unquantifiable. Along the same lines, industries producing highly toxic products such as pesticides, asbestos, and benzidine dyes,

73. Eniola O. Adeniyi, *Environmental Management and Development in Nigeria*, *in* DEVELOPMENT AND THE ENVIRONMENT 79 (Eniola O. Adeniyi & Bello Inman eds., 1984).

74. *See* THE NEWS, June 7, 1993, at 16.

75. Lord Averbury, President of the British Parliamentary Human Rights Group, recently condemned Shell's disregard for environmental standards in Ogoni land. Greenpeace has made similar statements. TELL, No. 6, Feb. 8, 1993, at 28.

76. Treason and Treasonable Offenses Decree, 1993 (Nig).

77. Decree No. 52 of 1993 (Nig.).

78. Laws of the Federal Republic of Nigeria ch. 10 (1990).

79. The Amazonian province of Napo in Ecuador was subjected to similar environmental devastation by a consortium of oil companies including Texaco, Gulf Oil (U.S.), and CEPE (the National Ecuadorian Oil Company).

80. TRANSNATIONAL CORPORATIONS IN WORLD DEVELOPMENT (TRENDS AND PROSPECTS) 224 (U.N. Centre on Transnational Corporations, 1988).

81. *Id.*; *see The Punch*, AFRICAN DEVELOPMENT NEWS, Sept. 30, 1988, at 9, *cited in* A. UCHEGBU, TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTE AND INTERNATIONAL LAW, ENVIRONMENTAL LAW INCLUDING COMPENSATION 206 (J. Omotola ed., 1990)

tend to move production to developing countries when they are forced to close their operations in environmentally conscious home countries.[82] Few cash-strapped LIDCs pass up such opportunities on the grounds of environmental protection.

Developing countries, especially the poorer ones, have found economic development an easy choice over environmental protection, despite their accession to most conventions on environmental protection and even enactment of state of the art environmental laws.[83] Since environmental protection is a worldwide enterprise, and environmental degradation in one country ultimately affects all, developed nations must devise ways of ensuring that the poverty of LIDCs is not allowed to cause irreparable damage to the earth's resources. Assistance to LIDCs in these areas must be stepped-up, and some benefits ought to accrue to LIDCs who make environmental protection a priority.

V. Conclusion

Our study of the development efforts of LIDCs indicates that compromises in human rights observance and enforcement were and are made by both HPAEs and LIDCs. Whereas these compromises were instrumental in creating the enabling environment for investment and growth in HPAEs, LIDCs have had a different experience. Corruption, political instability, and SAPs in LIDCs have resulted in grave infringements of fundamental rights of their peoples. With de-indigenization and deregulation, the indigenous peoples no longer control their economies. Also, lack of regulatory efficiency has allowed unnecessary leakages in the economy with disastrous overall consequences.

The economic and social policies of LDCs have deprived their citizenry of their rights, and have provided little relief against the resulting hardships. This deprivation compounds the cycle of poverty, instability, dissent, and infringement of rights of the citizenry. Although authoritarian at critical stages of their economic development, HPAEs instead have emphasized and practiced shared growth, by spreading the benefits of economic success across the board. Most HPAEs are rated medium or high in terms of investment in education and health care at all levels, while LIDCs rate poorly.[84] Korea and Taiwan have instituted land reform benefitting the entire populace, and both Korea, Taiwan and Hong Kong have actively and systematically supported medium-sized industries.[85] Hong Kong and Singapore have also invested significantly in such basic amenities as housing and public health.[86]

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82. *See* TRANSNATIONAL CORPORATIONS IN WORLD DEVELOPMENT, *supra* note 80, at 230.

83. Harmful Wastes Decree No. 42 of 1988 (Nig.); Federal Environmental Protection Agency Decree No. 58 of 1988 (Nig.). *See generally* Yemi Osinbajo, *Some Public Law Considerations in Environmental Protection, in* ENVIRONMENTAL LAWS INCLUDING COMPENSATION 128 (J. Omotola ed., 1990).

84. *See* UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP), HUMAN DEVELOPMENT REPORT 13-21 (1991).

85. THE EAST AFRICAN MIRACLE, *supra* note 62, at 159.

86. *Id.*

The fundamental question that remains is whether a correlation exists between human freedom and economic development. Although no conclusive empirical evidence is available, there is some support for the argument that countries ranked high on one factor tended to rank high on the other.[87] However, this observation does not indicate the order in which either factor attained significance. For example, did freedom come before or after development? To compound matters, the same studies indicate that several countries with significantly high levels of development ranked low in freedom, especially in the 1980s when the statistics were gathered. While some countries that ranked low in freedoms also had low development levels, others with relatively modest achievements in economic growth ranked high in human freedom. All that this rather conflicting evidence authoritatively asserts is that economic development does not necessarily require a trade-off in human rights.

Yet the economic performance of the HPAEs maintains and will continue to maintain an allure for other developing countries. Unfortunately, it may also provide justification, even if ex post facto, for infringement of rights by corrupt and inept leadership determined to maintain power. Nevertheless, a lesson from the HPAEs, which might serve other developing countries well, is that if development must mean the sacrifice of certain rights, palliatives by way of welfare and other social security programs may be necessary to prevent instability. More importantly, sincerity and integrity of government will guarantee the people's patience for a good while, especially when they sense an eventual improvement in their lives.

87. UNITED NATIONS DEVELOPMENT PROGRAMME, *supra* note 84, at 18.