

The Right to Development

Third generation of rights and our common heritage

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Third World international lawyers have erected a so-called third generation of rights, in contra-distinction to the first two sets, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

This action was intended to correct the self-perception of the Third World as one that has things done to it – colonialism, independence, neo-colonialism, development, debt rescheduling, structural adjustment, conflict resolution, globalisation, and a Euro-centric regime of human rights.

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The core of the third generation set was the Right to Development, which was asserted to be the fundamental right, the precondition of liberty, progress and justice. This action was perceived by the West as a threat, and it was declared to be without foundation and impossible to implement.

David Smiley explores how the Right to Development might be implemented by way of another third generation right, the Right to Our Common Heritage, a right which has been inadequately developed by its architects.

AFTER WORLD WAR TWO, a regime known as *Development* was designed in the more developed countries, or *North*, for the benefit of the Less Developed Countries (LDCs), or *South*. Inspired by the Marshall plan for European reconstruction, a similar massive injection of capital would, so it seemed then, stimulate economic growth in South. Development was perceived as a *process*, its performance measured by capital investment as its input and gross domestic product (GDP) as its outcome. Poverty was not explicitly modelled, it being assumed that the benefits of development would somehow trickle down to the poor.

As each of the development models failed, it was replaced by another. Todaro² summarises five major groups of models. Some were drawn from capitalist ideologies, some from communist ideologies, but the institutions of South were, and still appear to be, somewhat impervious to North's ideologies. Wherever aid came from, it went in directions other than economic growth and poverty relief, and debt accumulated correspondingly.

When the size of the debt was recognised as a problem in its own right, different political responses emerged. North blamed South's corrupt institutions and made debt rescheduling conditional on political alignment for some and structural adjustment for others. The non-governmental organisations (NGOs) claimed that structural adjustment was reversing the outcomes of their poverty reduction programs and argued for debt relief and forgiveness. South responded, with some justification, with a catalogue of complaints:

- debt was not caused by its peoples
- alignment was bribery
- structural adjustment violated sovereignty
- aid too often was tied to Northern interests in industry and agriculture, and
- some of South's institutional failures were legacies of colonialism and neo-colonialism.

DURING THE SAME half-century the regime known as *Human Rights* emerged, almost entirely independently of the development regime. Human rights were perceived as a set of structures rather than a process,³ and therefore had no measures for inputs or outcomes, nor any explicit mechanism for addressing poverty.

The Human Rights regime

The cornerstone, the Universal Declaration of Human Rights (UDHR), was adopted by the General Assembly in 1948. Then, for forty years implementation of the UDHR was delayed by ideological conflict between East and West, between North and South and, in an impasse known as "cultural relativity", between sociologists and anthropologists. Capitalist ideology favoured the International Covenant on Civil and

Political Rights (ICCPR), while socialist and non-aligned ideologies favoured the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Both regimes have been strongly criticised. "Count up the results of 50 years of human rights mechanisms, 30 years of multi-billion dollar development programmes and endless high level rhetoric and the general impact is quite under-whelming ... this is a failure of implementation on a scale that shames us all."⁴

South's criticisms were first articulated in a set of proposals for aid, trade, industrialisation, compensation for previously expropriated resources, and sovereignty over remaining resources, known as the New International Economic Order (NIEO). When these proposals were ignored, they were rearranged and finally reappeared as a third generation of human rights, but slanted strongly towards development. These *Rights of Solidarity*, of which the *Right to Development* is the core, include also rights to peace, the environment, and to the common heritage of mankind.

Of particular concern to North was the obligation to assist on Southern rather than on Northern terms, and the implications of embryo forms of global taxation and global rights to a common heritage.

Of particular concern to South remains the belief that the right to development is central, fundamental, the pre-condition of liberty, progress, justice and creativity, the core right from which all other human rights stem.

We need to re-examine the right to development in its original context of the rights of solidarity, with particular reference to the right to the common heritage of mankind.

Development & Solidarity THE DECLARATION on the Right to Development is intended to reaffirm the right of peoples to self-determination and to full sovereignty over their natural wealth and resources.

All human beings have a responsibility for development and states have the right and duty to create conditions supporting the realisation of the right to development. There is, however, an enormous divergence of opinion on the matter. Georges Abi-Saab has argued that the right to development is a necessary pre-condition for satisfying the social and economic rights of individuals.⁵ Donnelly, in search of "MacIntyre's unicorn",⁶ concludes that the right to development is not only without foundation but is dangerous as well. First, the right of peoples freely to pursue their development is already firmly established as the Right to Self-Determination. Second, if the right to development and the New International Economic Order (NIEO) are regarded as pre-conditions of other human rights then these, together with cultural relativity, provide an excuse not to act on human rights now, and are therefore dangerous.

Bedjaoui⁷ argues that development is a fundamental right and a precondition of liberty, progress, justice and creativity, the core right from which all others stem. The international dimension of this right is the right to an equitable share in the economic well-being of the world and, if learned opinion is divided on its legality, then this right constitutes a challenge thrown down to international law by four-fifths of the world's population.

Philip Alston and Gerard Quinn⁸ ask if the right of some to development establishes an obligation on others to assist. The ICESCR contains three provisions that suggest this obligation. These have been subject to "dramatically diverging interpretations" and the authors conclude that it would be difficult, if not impossible, to make the commitment to international cooperation legally binding.

Keith Griffin and A. R. Khan⁹ claim that "far too much aid serves no developmental purpose but is used instead to promote the exports of the donor country, to encourage the use of [imported] capital-intensive methods of production or to strengthen the police and armed forces of the recipient country." The authors suggest that the mobilisation and allocation of aid be shifted progressively to a 'supranational authority. Countries with a *per capita* income of less than US \$700 should receive aid in proportion to their shortfall from \$700, while countries with a *per capita* income greater than \$700 should donate aid in proportion to their income above that figure.

THE 1968 Teheran Proclamation stated that "Peace is the underlying condition for the full observance of human rights and war is its negation". The 1984 UN Declaration on the Right of Peoples to Peace observed that "the people of this planet have a sacred right to peace". In principle the UN Security Council is empowered here by the UN Charter: Chapter VI on the Pacific Settlement of Disputes, and Chapter VII with respect to threats and acts of aggression. In practice there have been two main responses to acts of aggression, peace keeping and the application of trade sanctions.

Peace and the policing of boundaries

The first response, the policing of boundaries, may often simply reinforce the original cause of conflict – the demarcation of comparative advantage in land and natural resources. The second response may often damage those least well endowed with human rights or property and seems more likely to delay rather than advance the evolution of the politically stable state.¹⁰

Are the instruments that the right to peace can invoke appropriate to contemporary forms of conflict? In today's wars civilian casualties outnumber military casualties by five to one, for whom only one of the four Geneva Conventions of 1949 is relevant. Today's wars are

increasingly fought within states, not between states, yet sovereignty is recognised only for states.

Most wars now take place in the Third World, a region of demographic dislocation and natural resource exploitation during the colonial period and of arbitrary and disputed geographical demarcation ever since.¹¹

Finally, today's wars are often conflicts between sub-national and supra-national interest groups over land and natural resources, conflicts for which the traditional concept of national sovereignty appears increasingly irrelevant, and for which the distinction between private and social property rights are increasingly unclear.

"All peoples shall have the right to a generally satisfactory environment favourable to their development."¹² But are the instruments which the right to a favourable environment can invoke adequate? Tietenberg thinks not, preferring instruments based on the taxation of our uses of natural resources and the environment.¹³

The concept of common heritage rights goes back a long way. John Stuart Mill, for example, apparently anticipating future problems of natural resource depletion and environmental degradation, stated: "The social problem of the future we consider to be, how to unite the greatest individual liberty of action with a common ownership in the raw material of the globe."¹⁴ Nearly 100 years later the UN General Assembly declared that the sea bed beyond the limits of national jurisdiction is part of the common heritage of mankind. Since 1970 this common heritage has been extended to include the oceans, space, and the Antarctic. To these Bedjaoui has added international grain stocks, the land, the environment, and all natural resources.¹⁵

At this point, since all these items of our heritage constitute the natural environment and natural resources, and since common ownership is but one way of implementing the right to heritage, the term *common heritage* will now be replaced by the term *natural heritage*.

In summary, the rights of solidarity were highly controversial, attempting, *inter alia*, to couple development with human rights, process with structure. Of particular interest here is the apparent focus of solidarity on those rights least amenable to implementation by legislation, and most in need of reform. This is particularly clear if we examine solidarity from the standpoint of two other rights, those of property and sovereignty.

Solidarity & property rights THE RIGHT TO OWN and use property is fundamental to both development and human rights. At the same time, property rights can powerfully constrain the implementation of both. How do property rights in our natural heritage constrain or advance the implementation of development and human rights? Let us start with a positive example.

There is a group of LDCs, the Asian Tigers, characterised by successful land reform programs, whose level of rural inequality is lower, and whose rate of economic growth has been far higher, than that of any other group. For one of these countries, Japan, its land reforms in the 19th century and again in 1946 were so successful in generating economic development that it joined the North, that is to say the OECD, a long time ago. At least three other countries, China, South Korea and Taiwan, could reach the present OECD average *per capita* income in the next 35 years, given their average growth rates over the past 20 years. However, land redistribution is appropriate only to agrarian land and, as these countries industrialise and their populations become more urbanised, the relative efficiency and equity gains from rural land reform will diminish, as has happened in Japan.

For human rights, the Tigers' greatest contribution was undoubtedly the liberation of the peasants from feudal and totalitarian oppression. In agrarian societies the most tangible manifestation of democracy and of human rights is the right of families to manage their own land. Criticisms of authoritarianism may need to be assessed in this context. Sen, for example, points out that there is nothing inconsistent with democracy in South Korea's policies that have delivered openness to competition and trade, a high level of literacy, and successful land reforms.¹⁶

There is another group of LDCs, sometimes called Newly Industrialising Countries (NICs), whose development has been accelerated by effective capital investment, often guided by structural adjustment conditions. However, taking a very large example of this group, India, neither development or human rights initiatives appear to have made any impact on poverty and inequality since they have not addressed the land problem embedded in the caste system.

For development consider that, for South as a whole: "Over the past 50 years rich nations have given \$1 trillion in aid to poor ones. This stupendous sum has failed spectacularly to improve the lot of its intended beneficiaries".¹⁷ If we exclude the Tigers and the NICs from the LDCs the situation is even worse. Using World Bank World Development Reports, for 1960-1980 per capita GDP grew at about plus 1% per annum and, for 1985-1995, at minus 1.4%. Recent data suggest a further deterioration¹⁸ showing the following GDP per capita average annual growth rate for 1997-1998: Low Income, excluding India and China, minus 5.9%, Middle Income minus 1.5%. The relatively low level of capital investment in this group suggests that the effect of each extra dollar of capital inflow should generate economic growth rates ten or twenty times higher than the growth rates of the North. That the growth rates for this group passed downwards through zero a long time ago suggests that autocratic and monopolistic institutions,¹⁹ not necessarily all in the Third World, are

capable of absorbing and squandering financial, human and natural capital on a huge scale.

For human rights, the impact of monopolistic property rights is summarised by Todaro as "severe fragmentation of landholdings ... production falls below subsistence ... Peasants are forced to borrow even more from the moneylender [often a landlord] at interest rates ranging from 50% to 200%. Most cannot repay these loans. They are then compelled to sell their land [at bargain prices] and become tenants with large debts...If they are sharecroppers, they typically have to give the landlord [in return for very little] 50% to 80% of their crop".²⁰ Much the same conclusion is reached by Tietenberg: "In agricultural economies access to land is a key ingredient in any attempt to eradicate poverty, but land ownership is frequently highly concentrated among a few extremely wealthy owners."²¹

Solidarity & sovereignty THE SOVEREIGN RIGHT to self-government of a population over a defined territory is regarded as fundamental to international law and order. At the same time, the exercise of sovereignty can powerfully constrain the implementation of development and human rights. Jackson, for example, asks: "What is the good of a world in which hundreds of millions, if not a billion, people are living on the edge of starvation, and are enduring other forms of suffering that, it is argued, can be laid at the feet of the sovereign states system?"²²

South points the finger at the legacies of colonial sovereignty while North points the finger at subsequent misuse of inherited sovereignty. Since no acceptable balance sheet of the assets and liabilities of colonialism and post-colonialism is ever likely to be drawn up, I will approach the failures attributed to sovereignty from a direction seldom found in any balance sheet. I refer to the acquisition and uses of sovereign monopolies in land and natural resources.

Jackson has also argued that sovereignty is a territorial jurisdiction, not an economic notion.²³ But whatever it is or is not, sovereignty confers economic power on some and removes it from others. It provides rulers, in not a few contemporary LDCs as in those of Europe's dynastic history, with protection against external threats to their wealth and the unrestricted imposition of the power of the ruling dynasty against its people. The sovereign frontier then provides a point at which the ruler can extract surpluses from trade, and profitably sell natural resource rights, for example to a transnational corporation.

I will argue, therefore, that sovereignty is in fact an economic notion susceptible of economic analysis.

Sovereignty can derive from prior occupation. Consider a parable from George Bernard Shaw's Fabian Essays. "Imagine a small island to which

castaways swim as ships are successively wrecked on a nearby reef; eventually the earlier occupants will be able to present new castaways with the choice: be our slave, or keep swimming." Today, prior occupants, mindful of human rights, would simply charge new castaways with land rent which, depending on population density, might be as high as 50% of their product.

Sovereignty can derive from conquest. Conquest provides intruder groups with the opportunity to assume property rights in land and natural resources and to erect a "No trespassing" sign at the perimeter of that property.²⁴ As a result there may be massive transfers of potential wealth, what economists call "economic rent".

Though conquest is now far less common than civil war, the legacies of previous conquests explain many civil conflicts. Colonisation by intruder groups has defined most of the world's political boundaries, often in conflict with the natural boundaries of anthropology and geography. Conquest provides the opportunity to classify and consign indigenous and other prior occupants, as well as subsequent migrant populations, to areas of low subsistence value or high plantation value, as in the histories of India, Africa and Latin America. The actors in any subsequent initiatives for self-determination or secession may therefore start from, and quite often remain within, very different allocations of wealth and resources.

Sovereignty can derive from self-determination. This applies not only to countries under foreign domination but to different groups within countries. Article 1 of each of the twin Covenants states that all peoples have the right of self-determination, to determine their political status, pursue their economic, social and cultural development, and freely dispose of their natural wealth and resources. Unfortunately, it is not uncommon in LDCs for 90% of the natural wealth and resources to be owned by 10% of the population, leading to questions as to the meaning of "self" in self-determination.²⁵

The same kinds of dynastic and feudal concentrations of land ownership in European history persist today. They distort the outcomes of self-determination, in the particular systems of caste, feudalism, latifundia or apartheid, and everywhere in the plight of displaced migrants and refugees, and of landless sharecroppers and marginalised urban squatters, each group with a different perception of "self".

Sovereignty can derive from secession. Regarded by Robertson as the most fundamental of all attacks upon the sovereignty of the state, secession nevertheless appears to be inadequately addressed by the law. All peoples have the right of self-determination, but minorities are not peoples. "The simple procedural way forward is to give minorities the standing to bring cases before the ICJ: exclusion from the Court of all potential litigants except states has prevented it from picking up the

pioneering pieces of PCIJ jurisprudence on the minorities treaties.”²⁶

But the Court would need to be informed as to historical and contemporary shifts in the relative property values in land and natural resources being contested. For example, secession may be an indigenous response to earlier allocations of land and natural resources imposed by intruder groups, involving claims for compensation for different resources for different groups for different times. Alternatively, secession may arise when a regional group perceives a comparative advantage in that region's position or natural resources. A legal ruling that is just, not only in cases involving secession, but in all the cases of property and sovereignty considered here, implies the integration of a cost function of great complexity. It may be better to abandon the impossible task of computing such compensations, and implement reforms designed to discourage the misuses of property rights and sovereignty in the future.

Conflict can derive from sovereignty. But the locus of conflict has shifted completely since the drafting of the UDHR and subsequent attempts to implement it through treaties with sovereign states. There are now virtually no wars between states and no wars within those states that have become liberal democracies or that have experienced successful land reform. Almost all conflict appears to arise from monopolistic endowments or transfers in land or natural resources.

Most frequently, positional advantage over real property rights in natural resources such as minerals or oil, in the ground or in transit, is the direct reason for conflict, though it may also be the indirect reason. For example, where this monopoly causes poverty, as it nearly always does, ideologically channelled resentment at poverty can be focussed on almost any external actor, as it did several times in Iraq. Sometimes conflict over these endowments arises from the myths of those who “remember” the loss of earlier endowments, as in Serbia. And sometimes the attainment of ideological objectives is much facilitated by territorial expropriation and may often be its rationalisation. If we analyse all these forms of conflict in the terminology of rent seeking theory,²⁷ the direct offence and defence costs and the indirect dead weight losses inflicted may be very much larger than the rents to be captured. We should not be surprised: the rent seeker hardly ever bears the full cost of his action.

These components of rent seeking can be observed in almost every contemporary political flashpoint.

Economic stagnation and poverty can derive from the restraint of trade and the restraint of trade can derive from sovereignty. Sovereignty can be invoked to appropriate and massively squander the benefits of trade in several ways. For example “farmers in poor countries struggle to compete with heavily-subsidised farmers in Europe and America – and even see their own market destroyed when food surpluses are dumped. Lost trade

costs poor countries an estimated \$700 billion each year, says the UN, a figure that dwarfs aid spending.”²⁸

Sovereignty enables rulers to cream off the surplus between artificially low prices, for example paid to African peasant producers, and international market price.²⁹ LDC rulers benefit from the rents extracted from and restricting otherwise beneficial trade, by tariffs and other import barriers. These reduce living standards by taxing the consumption of the poor while at the same time avoiding the pain to the rich which would otherwise be caused by the need to raise revenue by taxes on wealth, land or income.

Finally, the sovereign frontier provides the opportunity for the appropriation of resource rents. This frontier can form the basis of a duopolistic deal for resource extraction, yielding bonanzas for the rulers and super-normal profits for the trans-national corporation (TNC).

To illustrate the power of sovereignty and the power of monopoly in what has been called the articulation of feudal and capitalist modes of production, consider a TNC, or even the World Bank, negotiating land rights with a local landowner to an enclave sector. This one-to-one collusion between what are, essentially, two monopolies results in the enclosure of sufficient land for development purposes. Just sufficient labour is retained in the enclave sector. Surplus labour is excluded and migrates to what is left of the original rural sector, or to the urban informal or formal sectors, raising land rents and poverty levels in both cases. Increases in land price and land rents in the enclave sector will depend on the ratio of labour-saving to land-saving investment there, the benefits usually being shared by the two monopolies. And, when the rump of the state eventually collapses into what Clapham describes as a modern *terra nullius*,³⁰ local warlords seize and trade natural resources such as diamonds for weapons, in another case of lucrative foreign investment.

IT APPEARS THAT the rights to our natural heritage³¹ form a major determinant of the right to development. For example, economic stagnation seems correlated with high concentrations of land ownership, while vigorous growth seems correlated with widely distributed land ownership.

Development rights and heritage rights

The exploitation of natural resource discoveries diverts productive activity into unproductive rent seeking and rent retention activities. For example, countries rich in oil and diamonds frequently exhibit negative rates of economic growth. Inequality and human rights abuses are greatest where the ownership of land and natural resources is concentrated. Nearly all armed conflicts arise from these concentrations and attempts to shift them by coercive rent seeking. Finally, sustainability depends on the resolution of negative externalities by aligning private and

social heritage rights. The efficient and equitable allocation of heritage rights is now asserted to be the pre-condition for the implementation of the right to development, itself the core right from which all other human rights stem.

Strategies for heritage rights HOW SHOULD heritage rights be allocated and managed? Two strategies, development and human rights, depend on intervention and legislation within existing allocations of heritage rights. Two strategies depend on changes to existing allocations of heritage rights. Of these, common ownership has failed and coercive land redistribution has succeeded. Two strategies depend on economic incentives, for example by taxing land and by taxing the use on natural resources and the environment. Each strategy carries substantial domestic and global implications. Each strategy will be evaluated using criteria borrowed from the principles of public finance.³²

Domestic regulatory and welfare strategies have been inefficient and often inequitable.³³ Regulations that place ceilings on rent, farm size, and prices, and floors on wages, are usually drafted in ways that make them easy to evade or block. Tenancy reform legislation misses the most important target, the landless. Similarly, global interventionist strategies – including the human rights protocols and treaties, the IMF Poverty Reduction and Growth Facility, the World Bank Comprehensive Development Facility, and the UN Global Compact – have apparently failed to address the central problems: inequity in the distribution of heritage rights, and the resulting inefficiency and dead weight losses.

Not surprisingly, recent reports, regarding development but with human rights implications, are discouraging. A statistical survey of the actual use of aid in 96 countries revealed that virtually all aid was being appropriated instead of productively invested.³⁴ Olson argues that differences in the growth of countries are not due to differences in physical, human or natural capital, but are almost entirely due to differences in institutions, and that all forms of capital are being massively squandered in many LDCs.³⁵ Ayittey describes conventional responses to these appropriations and losses as amounting to “reorganising a bankrupt company and placing it, together with massive infusion of new capital, in the hands of the same incompetent managers who ruined it in the first case”.³⁶

Domestic common ownership strategies include common-property, *res nullius* or open-access, and state ownership. Common property and open-access strategies seem to be successful at very low population densities. However, the term common property, implying open access by all in the village to any piece of land, may often be misleading, “The more accurate description is family or lineage ownership.”³⁷ State ownership of land and

natural resources is normally limited to state enterprises and to parks and reserves. State ownership beyond this limit, requiring coercive expropriation, has proved unsuccessful in Russia and China, both for development and in human rights terms of millions of lives lost as a result. Global commons, like domestic commons, are appropriate only where population densities are low and natural resource values are low or undisputed. Common ownership, though equitable, can be highly inefficient and, depending on coercive expropriation, is politically extremely difficult to implement, and is therefore rejected here.

Domestic land redistribution, though also politically extremely difficult to implement, has been found to be relatively efficient and equitable. "The system by which land is held and farmed is a serious impediment to increased productivity in many developing countries ... Elsewhere there have been major land reforms in Japan, Taiwan, Egypt, Israel, South Korea and China"³⁸ Although the most successful major example of land reform, possibly the most successful of any reform, transforming the lives of a billion people, there are better alternatives which do not rely on coercive expropriation: "There is a body of theory with considerable following amongst economists that land reform could be brought about automatically by indirect measures such as tax reform thereby avoiding the high costs of conventional land redistribution programs."³⁹

Land taxation, unlike land redistribution is not confined to rural land, nor does it lead to the fragmentation which discourages economies of scale. In monopolistic or speculative situations land taxation may be the only form of taxation that *encourages* production since it draws unused and under-used land into use. Apart from solving a number of human rights problems by its characteristics of distributive justice, land taxation also provides revenue that can be invested in growth. The potential size of this revenue is unknown, though it is thought to be around 50 percent of agrarian product in South.⁴⁰ In a survey of globalisation's erosion of the tax base of the state⁴¹ it was suggested that as "...the harder it gets to tax mobile people and businesses, the bigger the burden which will have to be borne by the immobile. Land taxes, which used to be one of the most important revenue earners, may regain their former pre-eminence." Land can be taxed heavily without distorting production incentives. Land, as a taxable source of revenue, is generally thought of in terms of domestic sites. But land includes global sites, for example ocean and satellite traffic, transmission frequencies, and renewable energy such as wind, solar, tidal, and hydro. Finally, if farm subsidies are seen as a negative form of land tax then *the repeal of Northern agricultural support would represent a massive global contribution via land taxation to South of \$700 billion a year.*

Resources that are non-renewable such as oil, gas and minerals, or not

easily renewable such as forests and fisheries, also present a taxable source of revenue, and an opportunity to redress contemporary and intergenerational injustices. But natural resource taxation is different to land taxation in two ways. First, it may be used to *discourage* production and consumption, for example in the interests of sustainable development or environmental quality. Second, it is not applied to resources "in the ground" but only at point of extraction or at a point of consumption such as the gasoline pump. Tietenberg⁴² addresses a number of taxes that can be used to control the depletion of scarce natural resources, for example gasoline, extraction, and severance taxes, and a number of taxes that can be used to control environmental degradation, for example carbon, gasoline, ozone depletion, pollution control, and toxic substances taxes.

Implementing the right to development "MANY OBSERVERS believe that the single most important objective of the proponents of the right to development is to establish an obligation on the part of wealthier countries to provide financial and other types of assistance to poorer countries".⁴³ By far the largest discharge of this obligation would arise from the removal of Northern agricultural subsidies, effectively a land tax on North in favour of South in an amount of \$700 billion per year. Other obligations have been quantified here and, though they do not directly involve the natural heritage, they might contribute to accounting items in the supranational clearing house proposed by Griffin and Khan, referred to earlier. Bedjaoui⁴⁴ suggests a one percent tax on military budgets, on a base of some \$800 billion yielding \$8 billion. Foreign aid is already well established and in 1996 totalled \$55 billion⁴⁵ though elsewhere⁴⁶ the point is made that "trade is far more important than aid for long-term development, as shown by the success of East Asia."

The Economist has proposed a unitary tax on TNCs that would compensate for the resource values extracted from each country.⁴⁷ No taxable value or tax percentage is suggested. There are also obligations on South to reform. Recall the strong criticisms made of South's ability to divert unproductively almost all inflows of aid, and the apparent role of heritage rights in these losses. A reform of these heritage rights in the form of a program of land taxation would yield a revenue estimated at \$700 billion per annum, equivalent to that suggested for North's agricultural support reform. It would also go far to solving South's human rights problems of poverty and inequality. The effects of taxes on the usage, by both South and North, of natural resources and the environment are impossible to calculate. However, any sustainability target could be met if the tax levels were set high enough – the choice is ours. But the penalty would be short term. Heavy resource usage taxes would spur technological innovation and resource substitution, not only speeding the

attainment of sustainability targets but regaining and then exceeding development targets. A further long-term outcome for South of both land and resource taxation would be the standard of living which, in North, has been associated with a dramatic decline in armed conflict and the steady advancement of human rights.

These tax regimes by their nature do not disturb property rights of ownership, rights of sovereignty, or any existing operations of the regimes of development and human rights. They simply help remove obstacles to development and human rights and to the final implementation of the right to development. They satisfy the criteria of efficiency, equity and simplicity. Without tax reforms of this kind, near zero growth rates, a surrogate measure of development, will continue to indicate a near zero return on investment in development. And near zero poverty reduction rates, a surrogate measure of human rights, will similarly continue to indicate a near zero return on investment in human rights.

WE HAVE FOUND much evidence to support Mary Robinson's criticisms of the development and human rights regimes. Major problems of economic stagnation, poverty, inequality, natural resource depletion, environmental degradation, and armed conflict are virtually unchanged and all these continue to displace hundreds of millions of the world's poor. Both regimes have failed to address the inequality in heritage rights which causes grinding poverty, human rights has failed to reduce conflict over scarce natural resources, and development has failed to stimulate the growth which might make human rights affordable and the right to development anything but a controversial and unreachable ideal.

**Appropriate
tax laws
exist**

Appropriate and tested tax legislation already exists. The problem, as always, is the political resistance of vested interest. Against this has to be weighed the huge and ongoing bureaucratic cost, both of the development and human rights regimes, and of the ongoing human cost in poverty, displacement, armed conflict, depletion of our natural capital and degradation of our natural environment.

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- 8 Philip Alston and Gerard Quinn 1987 cited *ibid.*, pp. 1327-28.
- 9 Keith Griffin and A. R. Khan 1992 cited *ibid.*, pp. 1328-29.
- 10 "Consciences and Consequences" p. 13, and "Ethical Shopping" p. 58, *The Economist*, 3 June 1995.
- 11 Between 1949 and 1989 more than 99.4 percent of conflict deaths occurred in the Third World. See *World Development Report 1991*, World Bank, pp. 128-142.
- 12 Article 24 of the African Charter on Human and Peoples' Rights, cited in Steiner and Alston, *op.cit.*, p. 1453.
- 13 Of the Protocol emerging from the 1997 Kyoto conference "Our political institutions are not configured to facilitate decision-making on a global scale. International organisations exist at the pleasure of the nations they serve", a comment foreshadowing the failure to implement the Kyoto treaty in the Hague three years later, p. 412, and " ...environmental problems arise because of a divergence between individual and collective objectives". These problems can be solved " ...by realigning individual incentives to make them compatible with collective objectives. As self-evident as this approach may be, it is controversial." p.57, Tom Tietenberg, *Environmental and Natural Resource Economics*, New York, HarperCollins, 2000.
- 14 See 'Autobiography' in Robinson and Stillinger (eds.) *Autobiography and Literary Essays*, Toronto, Univ. of Toronto Press, 1981, p. 232.
- 15 Mohammed Bedjaoui (ed.), *International Law: Achievements and Prospects*, Paris, UNESCO, 1991, pp. 1192-93.
- 16 Amartya Sen, "Freedoms and Needs", *The New Republic*, Jan. 10 and 17 1994, p.33.
- 17 "How to Make Aid Work", *The Economist*, 26 June 1999, p. 23.
- 18 *World Development Report 1982*, Table 1, 1997 Table 1, 1999-2000 Table 1, World Bank.
- 19 Most disciplines define monopoly as concentrated possession or control of resources. Monopoly gives rise to *rent*, typically defined as a pure surplus accruing to an owner who puts no inputs into creating it, and monopoly inflicts a penalty on society called *dead weight loss*. The right to rent is owned hereditarily or acquired by an unproductive activity called *rent seeking*.
- 20 Todaro, *op.cit.*, p. 377.
- 21 Tietenberg, *op.cit.*, p. 540.
- 22 Robert Jackson (ed.), *Sovereignty at the Millenium*, Oxford, Blackwell, 1999, p. 5.
- 23 Jackson, "Sovereignty in World Politics", in Jackson (ed.), *ibid.*, p. 10.
- 24 Christopher Clapham, "Sovereignty and the Third World State", in Jackson (ed.), *ibid.*, p. 103.
- 25 James Mayall, "Sovereignty, Nationalism, and Self-determination", in Jackson (ed.), *ibid.*, p. 54.
- 26 Robertson, *ibid.*, pp. 116, 140, 145.
- 27 Rent seeking is the activity expended in the acquisition and retention of monopoly. It appears to be responsible for zero growth in most of the third world and, paradoxically, for the negative growth of those countries blessed with an abundance of natural resources. This counter-intuitive phenomenon was reported in *The Economist* ("The Natural Resources Myth", *The Economist*, 23 Dec. 1995, p. 101) and has since received tacit confirmation in World Bank Development Reports. Rent seeking may explain the motivation of nearly all armed conflict in conquest, secession, and resistance to secession. Examples include the economic rents of coal

in Kosovo, diamonds in Africa, and oil and natural gas almost everywhere. In contrast, the most economically successful countries, such as Japan, Hong Kong, Taiwan, South Korea and China, are comparatively poorly endowed with natural resources.

- 28 "The Poor Who Are Always With Us", *The Economist*, 1 July 2000, p.50.
- 29 Clapham, "Sovereignty and the Third World State", in Jackson (ed.), *ibid.*, p. 105.
- 30 Clapham, *ibid.*, 115.
- 31 Compared with other factors of production such as labour and capital, and with the returns accruing to these factors, land, natural resources, and the environment do seem to have special characteristics. They are comparatively non-renewable, often depletable, they are created naturally, not by labour or investment, and hence there are recurring claims that some aspect of their value should belong socially not privately. In South especially, they are highly prone to monopolisation with implications for equity, both contemporary and intergenerational, negative externalities, conflict, the depletion of natural resources, and degradation of the environment. We have used the term *natural heritage* in preference to *common heritage* to avoid possible connotations of ownership, and in order to exclude grain storage from Bedjaoui's otherwise excellent list of actual and candidate items of heritage. Sen (*op.cit.*, p. 34) however, hints at more appropriate and more permanent remedies to famine "... famines have never afflicted any country that is independent, that goes to elections regularly, that has opposition parties to voice criticisms, that permits newspapers to report freely and to question the wisdom of government policies without extensive censorship." Another definition of heritage rights, and one that implies the existence of opportunity costs, is *natural opportunities*, by which "The equal right of every human being to the use of all that nature offers is natural, inalienable and limited only by the equal rights of others" (Nicolaus Tideman, "Global Economic Justice", *Geophilos*, Autumn 2000).
- 32 Three criteria for a good taxation regime, and perhaps for many other regimes, are efficiency, equity and simplicity. An efficient tax bears lightly upon the production of goods and services. Efficiency may be more generally considered as the value of outcomes in relation to the cost of inputs. Equity is more contentious. An equitable tax delivers equal treatment. In domestic law equity frequently implies equality of access to resources about which society's public choice mechanisms return different interpretations at different times and in different countries. In international law equity seems increasingly to attract contradiction (see Chemillier-Gendreau, "Equity", in Bedjaoui (ed.), *op.cit.*, p. 281) while international regimes such as that of human rights are still attempting, after 50 years, to formulate equity norms acceptable to the point of willing implementation. In the context of this essay equity is taken to be equality of access to our natural heritage, a pre-condition to the right to development. A simple tax is one where the costs of collection and compliance are low in comparison to the value collected, and one that is difficult to evade. A simple regime, program or reform, then, is one that is easy to implement and difficult to evade.
- 33 See for example *World Development Report 1997*, table 3.1, World Bank.
- 34 Peter Boone, *The Impact of Foreign Aid on Savings and Growth*, Working paper 1265, Centre for Economic Performance, London School of Economics, 1994.
- 35 Mancur Olson, "Big Bills left on the Sidewalk", *J. Econ. Perspectives*, 10/2, 1996.
- 36 G. B. Ayittey, *Africa in Chaos*, New York, St. Martin's Press, 1998, p. 246.
- 37 *Ibid.*, p. 97.
- 38 A.P. Thirlwall, *Growth and Development*, London, MacMillan, 1999, p. 133. See

further correlations between land reform and egalitarian economic growth in Todaro, *op.cit.*, pp. 143, 253, 482, 533.

- 39 Russell King, *Land Reform*, Boulder, Westview Press, 1977, pp. 18-19.
- 40 Land taxation is not often treated in the development literature and apparently not at all in the human rights literature, which suggests the need for some explanation. In North, land is comparatively widely owned and frequently traded and thus frequently assumed to be a form of capital, and pure land rent data are normally excluded from national accounts. Neoclassical economics, upon which development economics is based, always assumes and proceeds from initial allocations of resources, the status quo. Neither assumption has proved appropriate to the implementation of human rights or development initiatives in the LDCs. Although the absorbent powers of LDC landed institutions is now recognised, and the land problem is referred to everywhere in the development literature, land reform is usually equated with land redistribution and the regrettable problem of usurping property rights. It does not seem to be generally recognised that land taxation need not disturb property rights. What proportion of South's GDP is unproductively absorbed in land rent? For sharecroppers Todaro (*op.cit.*, p. 377) suggests 50 to 80 percent. Data assembled by Colin Clark (*The Conditions of Economic Progress*, London, MacMillan, 1957), Hung-Chao Tai (*Land Reform and Politics*, Berkeley, Uni. Of Calif. Press, 1974), and King (*op.cit.*) provide numerous examples of land rent data, clustering around 50 percent of rural product. Further references to source material on land taxation can be found in Robert Andelson (ed.) *Land Value Taxation Around the World*, New York, Robert Schalkenbach Foundation, 1997, articles by Smiley in *Amer. J. of Economics and Sociology*, 54/4, 55/1, 56/1, and in *Third World Intervention*, New York, Robert Schalkenbach Foundation, ISBN 0-911312-39-0. A rough calculation might help to place land taxation in context with other regimes to be considered. A weighted average of agricultural output as a percent of South's GDP (Todaro, *op.cit.*, p.366) comes out at 21 percent. Taking typical land rent proportions of agricultural product, 50 percent, for the 21 percent of South's GDP of about \$5.4 trillion yields a tax revenue of \$567 billion. Assuming a lower land rent of 20 percent for the remaining 79 percent of GDP yields a tax take \$853 billion, totalling \$1,420 billion. If, to allow for sparse data and many untested assumptions we halve this figure, it still dwarfs aid spending.
- 41 "You Pluck, We Hiss", *The Economist*, 29 January 2000, Survey, p. 18.
- 42 See generally Tietenberg, *ibid.*
- 43 Steiner and Alston, *International Human Rights in Context*, edition 1, New York, OUP, 1996, p. 1132.
- 44 Mohammed Bedjaoui (ed.), *op.cit.*, p. 1197.
- 45 Todaro, *op.cit.*, p. 592.
- 46 "The Poor who are always with Us", *The Economist*, July 1, 2000, p. 50.
- 47 "You Pluck, We Hiss", *The Economist*, 29 Jan. 2000, Survey, p. 18.