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Cadmus

Promoting Leadership in Thought that Leads to Action

Volume 3, Issue 2 - May 2017

Toward a New Theory of Sustainable Development: Drawing on Insights from Developments in Modern Legal Theory[*]

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Abstract

In the light of the countless hours invested in the development of the Sustainable Development Goals—the set of targets and indicators relating to future international human and sustainable development, which replaced the Millennium Development Goals (MDGs) at the end of 2015—by hundreds of the world's top minds, in addition to more than twenty-five years of analysis associated with the development, implementation, monitoring, and evaluation of the MDGs, international lawyers and economists may wonder whether there is room for a new theory of sustainable development. It might seem counterintuitive to presume that new light might be shed on this vastly over-analyzed concept. However, the goal of this article is indeed to bring a new understanding to this important idea by assaying the current dominant legal theory of neo-liberalism and the radical inequality it promotes, and unpacking processes and identifying insights from advanced legal theory for the development of a new theory of sustainable development, with a primary focus on counteracting radical inequality.

1. Introduction

From 2000 to 2015, the Millennium Development Goals (MDGs) were simultaneously an articulation of eight of the world's most pressing human development and environmental sustainability priorities and an effort to construct a tracking regime to ascertain progress against these goals.[†] More specifically, the MDGs were time-bound, quantitative actions to eradicate extreme poverty and hunger, improve health and education for all, and ensure

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[*] The views expressed are those of the authors and do not represent those of The World Bank Group or its Board of Directors.

[†] See United Nations Millennium Development Goals, *available at* http://www.un.org/millenniumgoals/; see also, United Nations Millennium Declaration, G.A. Res 55/2, UN Doc. A/Res/55/2 (2000) (Sept 18, 2000), *available at* http://mdgs.un.org/unsd/mdg/; see also Kemal Dervis, *Bridging the Gap: How the Millennium Development Goals are Uniting the Fight Against Global Poverty*, 6 Sustainable Development Law & Policy 1, 2 (2005) ("[T]here is unprecedented global support for achieving the MDGs, the eight goals agreed to by all UN Member States in the year 2000...").

environmental sustainability, among related goals, which mutually reinforced each other.[*] Well before the end of 2015, it was clear that progress against the MDGs was at best uneven and that the MDGs insufficiently addressed—or entirely neglected—a range of existential challenges for humanity and the planet.[†] As a result, following the 2010 High-level Plenary Meeting of the General Assembly on the MDGs, former United Nations (UN) Secretary-General Ban Ki-Moon established the UN System Task Team in September 2011 to lead UN preparations for the post-2015 UN development agenda.[‡] The Sustainable Development Goals (SDGs)—the set of targets and indicators relating to future international human and sustainable development—thus replaced the Millennium Development Goals at the end of 2015.[§]

By way of a snapshot of the multi-year process in which hundreds of global experts weighed in to create the 17 SDGs, their 169 targets, and their 304 proposed indicators,[¶] the SDGs were first formally discussed at the United Nations Conference on Sustainable Development held in Rio de Janeiro in June 2012 ("Rio+20").[**] At Rio+20, UN Member States agreed to establish an intergovernmental process to develop a set of "action-oriented, concise and easy to communicate" Sustainable Development Goals (SDGs) to help drive the implementation of sustainable development.[††] The Rio+20 outcome document, *The Future We Want*, also calls for the goals to be coherent with the United Nations development agenda beyond 2015.[‡‡] A 30-member Open Working Group (OWG) of the General Assembly was tasked with preparing a proposal on the SDGs, as well as a concrete list of targets and measurable indicators to ensure that progress against the SDGs can be tracked.[§§] This Open Working Group thereafter proposed 17 goals covering a broad range of sustainable development

[*] See *Millennium Development Goals Indicators, available at*: http://mdgs.un.org/unsd/mdg/Host.aspx?Content=Indicators/OfficialList.htm (detailing the 8 MDGs, their 21 targets, and more than 60 indicators developed to track progress). *See also, Monitoring progress towards the achievement of the Millennium Development Goals, available at*: http://millenniumindicators.un.org/unsd/mi/mi_highlights.asp ("To help track progress, the United Nations Secretariat and the specialized agencies of the UN system, as well as representatives of IMF, the World Bank and OECD defined a set of time-bound and measurable goals and targets for combating poverty, hunger, disease, illiteracy, environmental degradation and discrimination against women"); UN General Assembly, *Road map towards the implementation of the United Nations Millennium Declaration: Report of the Secretary-General*, A/56/326 (2001), available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N01/526/07/PDF/N0152607.pdf?OpenElement

[†] See, e.g., William Easterly, *How the Millennium Development Goals are Unfair to Africa*, 14 Global Economy & Development, Working Paper, Brookings (November 2007), *available at*: http://www.brookings.edu/~/media/research/files/papers/2007/11/poverty-easterly/11_poverty_easterly.pdf (arguing that the MDGs were designed in a poor and arbitrary way, which would inevitably put the continent of Africa at a disadvantage in tracking progress). This argument was validated by the final MDG report itself in 2015. *See* the *Millennium Development Goals Report 2015* at 8, *available at*: http://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20(July%201).pdf ("...progress [against the MDGs] has been uneven across regions and countries, leaving significant gaps. Millions of people are being left behind, especially the poorest and those disadvantaged because of their sex, age, disability, ethnicity or geographic location.").

[‡] See United Nations Development Policy and Analysis Division, *Preparing for the Development Agenda Beyond 2015*, *available at* http://www.un.org/en/development/desa/policy/untaskteam_undf/.

[§] See *The Sustainable Development Agenda*, *available at*: http://www.un.org/sustainabledevelopment/development-agenda/ ("On 1 January 2016, the 17 Sustainable Development Goals (SDGs) of the 2030 Agenda for Sustainable Development—adopted by world leaders in September 2015 at an historic UN Summit—officially came into force...The SDGs build on the success of the Millennium Development Goals (MDGs) and aim to go further to end all forms of poverty.")

[¶] These numbers of targets and indicators are current as of the time of this writing. *See Transforming our world: the 2030 Agenda for Sustainable Development*, G.A. RES/70/1, UN Doc A/RES/70/1 (Sep 25 2015), *available at*: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E; *General Comments on the proposed goals, targets, and indicators for the sustainable development agenda*, at 2, *available at*: http://unstats.un.org/sdgs/files/open-consultation-iaeg/Assessment%20of%20proposed%20SDG%20indicators%20(priority%20and%20missing).pdf

[**] See *United Nations Conference on Sustainable Development*, Rio+20, *available at*: https://sustainabledevelopment.un.org/rio20.

[††] See *The Future We Want* at Para 247, G.A RES/66/288, UN Doc A/RES/66/288 (July 27, 2012), *available at*: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/66/288&Lang=E.

[‡‡] See *id*. at Para 75.

[§§] *Id*. at Para 248.

issues.[*] On September 25, 2015, the United Nations General Assembly accepted that the Open Working Group's proposals would become the basis of the post-2015 development agenda, comprising the following 17 goals:

1. End poverty in all its forms everywhere
2. End hunger, achieve food security and improved nutrition, and promote sustainable agriculture
3. Ensure healthy lives and promote well-being for all at all ages
4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all
5. Achieve gender equality and empower all women and girls
6. Ensure availability and sustainable management of water and sanitation for all
7. Ensure access to affordable, reliable, sustainable and modern energy for all
8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all
9. Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation
10. Reduce inequality within and among countries
11. Make cities and human settlements inclusive, safe, resilient and sustainable
12. Ensure sustainable consumption and production patterns
13. Take urgent action to combat climate change and its impacts
14. Conserve and sustainably use the oceans, seas and marine resources for sustainable development
15. Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, halt and reverse land degradation and halt biodiversity loss
16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels
17. Strengthen the means of implementation and revitalize the global partnership for sustainable development[†]

Under the auspices of the Inter-agency and Expert Group on the Sustainable Development Goal (IAEG-SDGs) Indicators, Member States emphasized that

[*] See *Open Working Group Proposal for Sustainable Development Goals*, *available at*: https://sustainabledevelopment.un.org/content/documents/1579SDGs%20Proposal.pdf; *Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields, Sustainable development: implementation of Agenda 21; the Programme for the Further Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development and of the United Nations Conference on Sustainable Development; Follow-up to the outcome of the Millennium Summit*, G.A. RES/68/970, UN Doc A/68/970 (Aug 12 2014), *available at*: http://www.un.org/ga/search/view_doc.asp?symbol=A/68/970&Lang=E.

[†] See *Transforming our world: the 2030 Agenda for Sustainable Development*, G.A. RES/70/1, UN Doc A/RES/70/1 (Sep 25 2015), *available at*: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

> indicators must directly respond to the goals and targets agreed by the Open Working Group and to their level of ambition; must not undermine or reinterpret the targets; must cover all targets, including targets on means of implementation and give equal weight to all targets; must maintain the balance achieved,... should not introduce any new or contentious issues... [and] that global indicators should be limited in number and should include multi-purpose indicators that address several targets at the same time.*

"Market fundamentalism has tended to obscure salience of human choice as the critical factor in energizing human capital in the evolution of political economy and sustainable development."

With respect to the design of the indicator framework and the criteria of indicator selection, Member States agreed to take criteria into account which emerged from the Expert Group Meeting on the indicator framework for the post-2015 development agenda (in February 2015), and to follow a framework approach in its work. Member states further recognized that while the number of global indicators must be limited, some targets might require multiple indicators to measure their different aspects and recognized the need to systematically address the issue of disaggregation, with a primary goal of "leaving no one behind." Moreover, in line with its Terms of Reference, the IAEG-SDGs has developed a proposal for an indicator framework and a list of indicators for the monitoring of the goals and targets of the post-2015 development agenda at the global level—this proposal was considered for adoption by the Statistical Commission at its 47th session in March 2016 and later presented to the designated political inter-governmental process for its consideration. The IAEG-SDGs has also agreed to establish two discussion streams to which all its members are invited and encouraged to participate: the first one focusing on conceptual frameworks and indicator concepts and definitions, and the second one focusing on identifying linkages among indicators across goals and targets (to date, offers have been made by the Philippines to facilitate the first discussion stream, and by Italy to facilitate the second discussion stream).

In the light of the countless hours invested in the development of the SDGs by hundreds of the world's top minds, in addition to more than twenty-five years of analysis associated with the development, implementation, monitoring, and evaluation of the MDGs, international lawyers and economists may wonder whether there is room for a new theory of sustainable development. It might seem counterintuitive to presume that we might shed new light on the vastly over-analyzed concept. However, the goal of this article is indeed to bring a new understanding to this important idea.

Part II of this article assays the current dominant legal theory of neo-liberalism and the radical inequality it promotes. Part III unpacks processes and identifies insights from

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* *See Inter-agency and Expert Group on the Sustainable Development Goal Indicators: Tentative timeline, work plan and organization of work* (July 7, 2015), *available at*: http://unstats.un.org/sdgs/files/IAEG-SDGs%20-%20timeline%20-%2020150707.pdf

advanced legal theory for the development of a new theory of sustainable development, with a primary focus on counteracting radical inequality. Part IV offers general conclusions.

2. The Neo-Liberal Economic Model and Radical Inequality

The private law aspect is a fundamental component of the conception of the rule of law. It stabilizes expectations about the value of goods and services without the cost of state intervention—which has economic value toward achieving a balance between public and private control over institutions and resources—and is thus critical for sustainable development. The ideological importance of the freedom of contract and the right to exchange and acquire property thus became an organizing principle of the capitalist world. However, market fundamentalism has tended to obscure the role of human capital and the importance of the decision-making aspect of human capital in the production and distribution of desired goods and services. Put another way, market fundamentalism has tended to obscure salience of human choice as the critical factor in energizing human capital in the evolution of political economy and sustainable development. The continuing search for a theory of sustainable development parallels the challenges of the search for a new paradigm that speaks realistically to the crisis of political economy in global public order.

The current dominant economic theory is neo-liberalism, the foundations of which are rooted in market fundamentalism. La Porta, Lopez-de-Silanes, Shleifer and Vishny argued that the achievement of efficient financial markets—and thus economic development—is contingent on the inauguration of the right legal code.[*] In other words, in the neo-liberal view, the market functions largely as a self-generating autonomous institution, which controls and regulates the freedom of contract and the nature of value in terms of property. The market 'machine' functions as it does because concepts of liberty and property are provided for and protected by law; popular conceptions about the market as final arbiter of pricing, foreign exchange rates and more, the liberty to contract, and value related to real and intellectual property have become reified. For example, it is useful to consider the crisis of the Great Depression of the early 1930s, which was an outcome of the then-pervasive belief in *laissez-faire* economics and that the market could self-regulate.[†] A core lesson from the Great Depression was that it was caused by human choices and could be resolved by human choices. The role of the New Deal in regulating the legal foundations of its economic emphasis permitted government intervention to restrain the unlimited power of the private sector often validated by fundamental law. Two of the most important consequences of the victory of the New Deal were reflected first in the Atlantic Charter, which articulated both the war aims of the Allies and a vision for the future, which included freedom from want.[‡] These ideas found

[*] See generally, Rafael La Porta, et al, *Legal Determinants of External Finance*, 3 Journal of Finance LII 1131-1150 (1997); Rafael La Porta, et al, *Law and Finance*, 6 Journal of Political Economy 106, 1113-1155 (1998).

[†] Theodore Rosenof explained that the…devastation of the Great Depression...inspire[d] powerful challenges to orthodox theory, most notably that of Keynes. Orthodoxy had held that the economic "system" or "mechanism" was inherently self-correcting, that downturns were necessarily followed by cyclical upswings, that institutional "imperfections" or external "shocks" were mere aberrations, and that government intervention would only impede and delay normal and natural readjustment and recovery.

See Theodore Rosenof, Economics in the Long Run: New Deal Theorists and their Legacies: 1933-1993 5 (1997).

[‡] Roosevelt articulated four freedoms: freedom from fear, freedom from want, freedom of expression, and freedom of conscience and belief, all of which constituted the war aims of the Allies. *See Four Freedoms Speech*, *Franklin D. Roosevelt*, *1941*, *in* The Public Papers and Addresses of Franklin D. Roosevelt 663 (Facts-on-File, Inc. ed., 1995).

expression in post-war efforts to give direction to global economic development.[*] The economic foundations of international human rights were expressed in the Universal Declaration of Human Rights[†] as well as several important UN documents culminating in the Declaration on the Right to Development.[‡] These developments confronted the emergence of neo-liberal political economy, with a claimed global reach.

Despite the lessons of the Great Depression and the achievements which followed, only eighty years later another economic crisis re-triggered fundamental concerns about the relationship between markets, governments and regulators, and posed further challenges to scholars and intellectuals seeking to develop a durable theory of sustainable development.[§] Until relatively recently, a regulatory enquiry into potential misconduct by a financial institution was often a final "grade" where compliance, corporate governance and other internal control systems have failed to establish an effective operating environment. The global economic crisis of 2008 highlighted the global nature of the financial services industry and the domino effect, a serious failure of regulatory and political controls over financial markets and institutions can have on the soundness of global economies in general and the financial system in particular. The ascendance of neo-liberalism has since had to confront the problems of a global economic system characterized by a lack of regulation, including and particularly of trading financial derivatives, exotic financial instruments, such as credit default swaps, hedge funds and more. Efforts by regulators since then to re-establish economic stability and market confidence have highlighted the need for greater communication, information sharing and co-operation amongst international regulators. Cross-border investigations, harmonization of financial rules and regulations, and other steps toward regulatory convergence are crucial components of a sustainable theory of economic development because they can facilitate the successful and meaningful execution of international investigations and thus establish confidence in the effective regulatory supervision of financial organizations.[¶] Legislation such as the Markets in Financial Instruments Directive[**] in Europe already mirrors in part certain US rules, such as FINRA Rules.[††] This could not be highlighted more potently than by the investigations by law enforcement in the US of those financial organizations most severely impacted by the crisis, including Lehman Brothers, AIG, Fannie Mae and Freddie Mac. The wake-up call received by those organizations in the financial services sector that have relied on the notion of being "too big to fail" was epic. There is a profound lesson in this for a sustainable development paradigm: financial organizations that are "too interconnected to fail"

[*] See generally, Michael Bordo, *The Bretton Woods International Monetary System: A Historical Overview*, in A Retrospective on the Bretton Woods System: Lessons for International Monetary Reform, 3 (Michael Bordo & Barry Eichengreen, eds., 1993).

[†] UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III). Noted in Article 22: "Everyone…has the right to social security and is entitled to realization… of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."

[‡] United Nations Declaration on the Right to Development, G.A. Resolution 41/128 (Dec. 4, 1986).

[§] See generally, Deniz Igan and Mishra, Prachi, *Wall Street, Capitol Hill, and K Street: Political Influence and Financial Regulation*, 57 Journal of Law and Economics 5 (2014), *available at*: http://chicagounbound.uchicago.edu/jle/vol57/iss5/7.

[¶] See Matthew Turk, *Reframing International Financial Regulation After the Global Financial Crisis: Rational States and Interdependence, not Regulatory Networks and Soft Law*, 36 Mich. J. Int'l L. 59, 62 (2014) (explaining that "at a high level, international financial regulation can be divided into the dual goals of maximizing the potential efficiency gains from global integration of financial markets and minimizing the losses threatened by the crises and instability that have historically characterized financial integration").

[**] Markets in Financial Instruments Directive (Directive 2004/39/EC), available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1398325978410&uri=CELEX:02004L0039-20110104 (last visited Feb 26 2016).

[††] The Financial Industry Regulatory Authority ("FINRA") Rules, *available at*: http://finra.complinet.com/en/display/display.html?rbid=2403&element_id=607

will be bailed out by governments and regulators, since letting them go under would have too great an impact on ordinary people and their livelihoods.

> *"The consequence of inequality is that the most important resource in a nation's economic profile—its human capital—is often underutilized."*

The effect of the neo-liberal model on global resources and the climate has also been severe. However, a creeping recognition that unrestrained, free enterprise could exhaust the resources it exploits and otherwise irreparably change the climate has surfaced in the popular consciousness in recent decades. For example, in 1987, the Brundtland Report connected sustainability to development by maintaining that development should promote the human development of people today without compromising the integral human development of people tomorrow.[*] An objective of a theory of sustainable development is that human development must create sustainable conditions of living for all human beings, now and in the future. A theory of sustainable development would necessarily insist that non-renewable resources be used modestly, until they can be entirely eclipsed by renewable resources, since the unlimited exploitation of certain resources could have consequences for the survivability of humanity in light of the ecological conditions of climate change.[†] However, notwithstanding increasingly widespread efforts, the concept of sustainable development is still a highly contested notion.[‡] A multitude of interest groups have latched on to the idea of sustainable development and given it a priority gloss which suits their particular interest orientation. Some interest groups may focus on human development, others may focus on environmental protection. In short, the integration of environmental, social and matters of political economy is an issue that cannot be usefully described, analyzed and evaluated without a recognition that all of these issues reflect matters of interdependence and inter-determination.[§] They require holistic thinking.

The neo-liberal political economy has likewise had significant political consequences on the distribution of the benefits of economic enterprise; as a global matter, it promotes a

[*] Brundtland Comm'n, *Report of the World Commission on Environmental & Development: Our Common Future*, ch. 2, Para 1, UN Doc. A/42/427 (Oct. 1987).

[†] The Report, *Transforming our World: the 2030 Agenda for Sustainable Development*, establishes the current global context with respect to nonrenewable resources and the implications of climate change:

> Natural resource depletion and adverse impacts of environmental degradation, including desertification, drought, land degradation, freshwater scarcity and loss of biodiversity, add to and exacerbate the list of challenges which humanity faces. Climate change is one of the greatest challenges of our time and its adverse impacts undermine the ability of all countries to achieve sustainable development. Increases in global temperature, sea level rise, ocean acidification and other climate change impacts are seriously affecting coastal areas and low-lying coastal countries, including many least developed countries and small island developing States. The survival of many societies, and of the biological support systems of the planet, is at risk.

See Transforming our World: the 2030 Agenda for Sustainable Development, G.A. RES/70/1, UN Doc A/RES/70/1 at Para 14 (Sep 25 2015), *available at*: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E. *See also*, World Health Organization, Climate Change and Human Health (A. J. McMichael, A. Haines, R. Slooff, and S. Kovats. eds.) 96 – 99 (Geneva, Switzerland, 1996) (detailing the human cost of decreased supplies of potable water which results from climate change, particularly the spread of waterborne disease).

[‡] See generally, Colin Williams & Andrew Millington, *The diverse and contested meanings of sustainable development*, 170 the geographical journal 2 (June 2004); and Steve Connelly, *Mapping Sustainable Development as a Contested Concept*, 12 Local Environment 3, (June 2007).

[§] See Bob Giddings, et al, *Environment, Economy and Society: Fitting Them Together into Sustainable Development*, 10 Sustainable Development 4 (2002).

radical form of inequality.[*] The consequence of inequality is that the most important resource in a nation's economic profile—its human capital—is often underutilized.[†] A theory of sustainable development would reflect the well accepted economic concept that human and social capital contribute to growth and stability; this concept emerged from the recognition that physical capital is far from the sum total of a state's total capital, which directly conditions a state's level of economic development. Human capital describes the economic value of the application of human knowledge and skill, which can be improved through investment, since the quality of labor conditions production input, which in part conditions economic growth.[‡] Social capital describes the economic value of intangible aspects of human relationships, customs, and social institutions, including norms and networks, which inform and condition community-level capacity to work together to meet collective needs and achieve common goals.[§] While this necessitates investment in institutions to encourage critical thinking, other factors, such as the political environment, culture and taboo, the strength of public networks, social cohesion or solidarity, access to information, communication, and more also directly impact the economic value of social capital. These two forms of capital are themselves interconnected, as the quality of one can help or hinder the quality of the other.[¶] Economic crises in recent human history bear out the importance of human and social capital, since the relative health of a state's labor market is a frontline indicator of overall economic health.[**] Long term human and social capital investments positively impact employment and ultimately reduce national economic vulnerability when crises erupt.

While radical inequality is a global phenomenon,[††] one need look no further than the American experience in recent decades for a potent example of the inexorable expansion of inequality within an economic system. Distinguished economists tell us that one percent of our population takes one quarter of all income in the United States, that this one percent controls forty percent of the nation's wealth, and that this one percent's income is rising. The neoliberal economic model has created an enabling environment for this ever-worsening inequality; in short, the explosion of radical inequality is an outcome of the policy process itself. When the US congress cuts taxes on the highest incomes and capital gains, and enacts

[*] See generally, James K. Galbraith, *Global inequality and global macroeconomics*, 29 Journal of Policy Modeling 4 (2007); Vicente Navarro, *Neoliberalism as a Class Ideology; Or, the Political Causes of the Growth of Inequalities*, 31 Int J Health Serv 1 (2007); Lisa Duggan, The twilight of equality?: Neoliberalism, cultural politics, and the attack on democracy (2012); and George DeMartino, Global economy, global justice: Theoretical and policy alternatives to neoliberalism (2002).

[†] See Oded Galor, *Inequality, human capital formation and the process of development*, Working Paper No. w17058, National Bureau of Economic Research at 25 (2011) ("...as human capital has become the prime engine of economic growth, a more equal distribution of income…has stimulated investment in human capital and promoted economic growth").

[‡] Theodore Schultz, *Investment in human capital*, 51 The American economic review 1 (1961).

[§] See, *e.g.,* John Brehm & Wendy Rahn, *Individual-level evidence for the causes and consequences of social capital*, American journal of political science (1997); Stephen Knack & Philip Keefer, *Does social capital have an economic payoff? A cross-country investigation*, The Quarterly journal of economics (1997); and Pamela Paxton, *Social capital and democracy: An interdependent relationship*, American sociological review (2002).

[¶] See generally, Nan Lin, Social Capital: A Theory of Social Structure and Action (2002) (setting out a range of case studies and summarizing analyses of the relationship between human capital and social capital).

[**] See, *e.g.,* International Labour Organization, Labour Statistics, *available at*: http://www.ilo.org/inform/online-information-resources/research-guides/labour-statistics/lang--en/index.htm; The World Bank, Social Protection and Labor Data, available at: http://data.worldbank.org/topic/labor-and-social-protection.

[††] See generally, Emma Seery & Ana Caistor Arendar, *Even it Up: Time to end extreme inequality*, Oxfam Report 7 (2014), *available at* https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/cr-even-it-up-extreme-inequality-291014-en.pdf; Branko Milanovic, Worlds apart: Measuring international and global inequality (2011); Sakiko Fukuda□Parr, *Reducing inequality–The missing MDG: A content review of PRSPs and bilateral donor policy statements*, 41 IDS Bulletin 1 (2010); Ayelet Shachar, The birthright lottery: Citizenship and global inequality (2009); Nancy Birdsall & Juan Luis Londoño, *Asset inequality matters: an assessment of the World Bank's approach to poverty reduction*, 87 The American Economic Review 2 (1997).

constraints on organized labor, and limits regulation—including and particularly of the financial sector—the one percent massively benefits. The repeal of Glass-Steagall resulted in the creation of powerful financial behemoths, which resulted in a concentration of financial benefits to the financial sector. The critical influences on the policy process are likewise reflected in the interest group politics of American society, which compete without restraint and demonstrate *de facto* limitations on the ideology of American pluralism, in light of the direct relationship between amounts of money spent and the likelihood of certain policy determinations by operational actors. Non-profit corporations are contributing to campaigns through Super PACs—now a regular part of US election processes—without disclosing the source of these funds. A term of art has been created to describe this phenomenon: "dark money".[*] A critical question is whether, under cover of American democracy, the political culture of the United States is gravitating toward a plutocracy, in which the system of governance is dominated by a minority of its wealthiest citizens.

It is important to note that radical inequality and the marked social and economic disparities which characterize it are not necessarily inevitable consequences of market forces. Indeed, across the last fifty years in particular, the private sector has been celebrated as a potential engine for social and economic development and a key driver of the global knowledge economy. However, the dangers inherent in an overly-powerful and unregulated private sector have long been apparent. One hundred years ago, American economist Thorstein Veblen asserted that a business professional is less a wealth creator and more an economic saboteur.[†] In Veblen's time, a range of wealthy elites in the US were subverting the implicit compact of the social democratic state. Reflecting on this phenomenon, President Theodore Roosevelt said, "…we had come to the stage where for our people what was needed was a real democracy; and of all forms of tyranny the least attractive and the most vulgar is the tyranny of mere wealth, the tyranny of a plutocracy."[‡] The elites of today are likewise undermining the social democratic state and its promise of social protections, reasonable financial regulation, progressive taxation, and a commitment to civil rights and equality. A range of authoritative commentators continuously point out that even the most acrobatic arithmetical exercises do not bear out that the explosive income generation at the top is trickling down to the tens of millions of American citizens at the bottom, and that it has in reality extinguished opportunities for Americans across employment, education, health and welfare, finance, security, energy, and ecology contexts.[§]

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* See*, e.g.,* Trevor Potter & Bryson B. Morgan, *The History of Undisclosed Spending in US Elections & How 2012 Became the Dark Money Election*, 27 Notre Dame Jl Ethics & Pub. Pol'y 383 (2013); Heather K Gerken, *The Real Problem with Citizens United: Campaign Finance, Dark Money, and Shadow Parties*, 97 Marq. L. Rev. 903 (2013).

† Thorstein Veblen, The Engineers and the Price System 38 (1921; New York: Harbinger, 1963).

‡ Theodore Roosevelt, An Autobiography 464 (1913).

§ At the global level, Oxfam has pointed out that "Far from trickling down, income and wealth are instead being sucked upwards at an alarming rate. Once there, an ever more elaborate system of tax havens and an industry of wealth managers ensure that it stays there, far from the reach of ordinary citizens and their governments." *See* Oxfam, *An Economy for the 1%: How privilege and power in the economy drive extreme inequality and how this can be stopped*, Oxfam Briefing Paper 210, at 3 (January 18, 2016), *available at*: http://www.oxfamamerica.org/static/media/files/bp210-economy-one-percent-tax-havens-180116-en_0.pdf *See also,* Era Dabla-Norris, et al., *Causes and Consequences of Income Inequality: A Global Perspective*, International Monetary Fund 7 (2015), *available at*: http://www.imf.org/external/pubs/ft/sdn/2015/sdn1513.pdf (finding an "inverse relationship between the income share accruing to the rich (top 20 percent) and economic growth. If the income share of the top 20 percent increases by 1 percentage point, GDP growth is actually 0.08 percentage point lower in the following five years, suggesting that the benefits do not trickle down").

With the global financial crisis of 2008 only a few years behind us and in light of continuing speculation about another on the way,[*] the circumstances under which the private sector can harm rather than help social and economic development have again come to the fore of the global development discussion, and Veblen's meditations have a contemporary relevance. This is because Veblen's observations in 1904 and the realities of the 21st century are part of the same conventional paradigm, which has failed either to recognize the flaw of deregulation or to meaningfully do something about it. A new paradigm for the political economy of shared prosperity, to eliminate radical inequality as a mission—critical step toward the achievement of sustainable development, is clearly needed. It will require a thorough review of the fundamentals of the neo-liberal economic model and a reasoned and deliberate move away from its failed methods and its lack of concern for the social consequences of its theoretical inadequacy.

3. Unpacking a process to develop a New Theory of Sustainable Development

The political economy of neoliberalism has given us an economic process which accelerates radical inequality. Radical inequality destroys the critical foundations on which economic and political sustainability rest and is self-reinforcing in its disabling effect because it radically subverts the economic value of human capital, which undermines freedom of opportunity, which further extinguishes capability. There can be no sustainable economy if radical inequality continues to dominate the global political economy.

Oxfam has demonstrated the shortcomings of economic models focused particularly on wealth acquisition by famously calculating that as of 2015, the world's 62 wealthiest people collectively have the same total wealth as one-half of the total human population: the world's 3.6 billion poorest people.[†] The organization has thus emphasized that "from Ghana to Germany, South Africa to Spain, the gap between rich and poor is rapidly increasing and economic quality has reached extreme levels…the consequences are corrosive for everyone. Extreme inequality corrupts politics, hinders economic growth, and stifles social mobility. It fuels crime and even violent conflict. It squanders talent, thwarts potential, and undermines the foundations of society."[‡]

Much is indeed needed to achieve a theory toward a comprehensive and effective sustainable development paradigm, including the following considerations:

- *Socio-Economic Development*: How can a range of global actors simultaneously prioritize complementary support for peace- and state-building activities, with an emphasis on

[*] Indubitably, China's fortune has waned since its gargantuan economic growth boom earlier this decade. China's surge in economic debt and decline in economic growth resembles much of the initial indicators of the 2008 global financial crisis, indicating a potential impending crisis for the super economy. *See* The International Monetary Fund, *Global Financial Stability Report*, IMF Survey (April 13, 2016), *available at*: http://www.imf.org/en/News/Articles/2015/09/28/04/53/sopol041316a.

[†] See Oxfam, *An Economy for the 1%: How privilege and power in the economy drive extreme inequality and how this can be stopped*, Oxfam Briefing Paper 210, at 2 (January 18, 2016), *available at*: http://www.oxfamamerica.org/static/media/files/bp210-economy-one-percent-tax-havens-180116-en_0.pdf.

[‡] Emma Seery & Ana Caistor Arendar, *Even it Up: Time to end extreme inequality*, Oxfam Report 7 (2014), *available at*: https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/cr-even-it-up-extreme-inequality-291014-en.pdf

"inclusive political settlements, security, justice, jobs, good management of resources, and accountable and fair service delivery?"[*]

- *Employment*: How can global food security, full employment, and abolition of poverty be achieved within a decade?
- *Energy*: What does practicable, sustainable green energy look like, which combines responsible government and private sector action for transformational energy generation? How can an exponential growth in local technical expertise be achieved, lest any energy assets created be at risk of accelerated deterioration and thus stymie or undo energy transformations?[†]
- *Ecology*: How can global living standards be raised to middle class levels without depleting or destroying the environment or depriving future generations of the capacity to sustain these achievements?
- *Human Capital – Equality, Education, Health and Welfare*: How can global levels of education and public health be raised to OECD level? Inequality severely limits efforts to rid the world globally of extreme poverty—how can sustainable equality be achieved?
- *Finance*: How can the necessary financial resources be generated and mobilized to achieve the goals described in the first three questions?
- *Security*: How can we permanently eliminate war and weapons of mass destruction (WMD) which threaten to destroy all other development achievements?
- *Governance*: How can we design and implement systems of global governance capable of implementing necessary measures to achieve the other five goals for the welfare and well-being of all?

But do the SDGs account for these considerations effectively? Concerns about the substance of the SDGs and what they will measure have been voiced by a range of authoritative commentators. For example, Charles Kenny, a senior fellow at the Center for Global Development, has asserted that the creation of the SDGs was characterized by "overwrought and obese drafts proposed by negotiating committees [which] so far almost ensure that the post-2015 goals will have comparatively limited value and impact."[‡] Similarly, the International Council for Science (ICSU) and the International Social Science Council (ISSC) released a 2015 analysis of the 169 SDG targets and asserted that only 29% are "well-developed"; that 54% "could be strengthened by being more specific"; and that 17% "require significant work".[§] For example, the authors find SDG 16—popularly called the "governance goal"—"overly timid", stating that "the way…SDG [16] is formulated, narrowly emphasizing justice,

[*] See g7+, Fragility Spectrum (2013): "Fragility is a period of time during nationhood when sustainable socio-economic development requires greater emphasis on complementary peacebuilding and state building activities, such as building inclusive political settlements, security, justice, jobs, good management of resources, and accountable and fair service delivery."

[†] See Hazel Henderson, *The Politics of the Solar Age*, (2015)."Green transition is powered by fundamental shifts in human perspectives leading to paradigm shifts in science, academia, governance, leadership, finance, business, social norms, communications and network structures."

[‡] See Charles Kenny, *MDGs to SDGs: Have We Lost the Plot?*, Center for Global Development (May 27, 2015), *available at*: http://www.cgdev.org/sites/default/files/CGD-Essay-Kenny-MDGs-SDGs-Have-Lost-Plot.pdf.

[§] International Council for Science, International Social Science Council, Review of Targets for the Sustainable Development Goals: The Science Perspective (ICSU, 2015, *available at*: http://www.icsu.org/publications/reports-and-reviews/review-of-targets-for-the-sustainable-development-goals-the-science-perspective-2015/SDG-Report.pdf).

accountability and inclusion, is arbitrary and disconnected from research on how governance affects sustainable development.” The authors conclude that “SDG 16... falls short of what the evidence suggests is needed…[and] because the SDG 16 elements point a spotlight overwhelmingly on poor countries, whereas the broader set of governance targets require action universally, the choice of targets undermines the overarching ambitions of the goal.”

> *“Achievement of a new paradigm would depend on operational participants who authentically recognize that the management of political economy is a matter of human choice and decision, and not a matter of meta-physical speculation.”*

In light of these considerations, what are the necessary elements of a new paradigm of sustainable development? In short, legal theory provides robust guidance for the development of a comprehensive and effective sustainable development paradigm to augment economic theory, and to better facilitate the achievement of a new paradigm. Such a theory must be:

- Contextual, i.e., it must perceive all features of the social process of immediate concern in relation to the manifold of events comprising the relevant whole;
- Problem-oriented;
- Multi-method; and
- Interdisciplinary, with a focus on the dynamics of global interdependence and global inter-determination.

To qualify as a new paradigm, it follows that fundamental change would need to happen. Achievement of a new paradigm would depend on operational participants who authentically recognize that the management of political economy is a matter of human choice and decision, and not a matter of meta-physical speculation; who acknowledge centrality of human capital as the prime concern of responsible economics; who recognize the need to balance freedom of contract and responsible regulation toward more and better economic accountability and improved choices for the common good; who examine and clarify the base values of the concepts of free market and command economies; who prioritize the complementary promotion of liberty, equality, security, social justice, conservation, and responsible production.

4. Conclusion

The notion of global political economy is coterminous with the idea of a global sustainable political economy; a new paradigm of sustainable economy should include precepts for a new paradigm for sustainable development, and be focused on how effective and controlling decisions are made and put into effect in the public interest of all social participants. Unpacking this public and private decision-making is a necessary first step toward understanding the creation and the distribution of the values which underpin the policy process of the conventional paradigm, and the development of a theory of sustainable development.

> *"Approaches to resolve challenges are subject to conflicting claims, priorities and interests, for which concerted efforts at reconciliation are necessary."*

Lessons emerged for the development of a theory of sustainable development, which is itself a further step toward the achievement of a new global paradigm which transcends narrow disciplinary boundaries, emphasizes open access to new knowledge and facilitates the availability of new tools and technologies for sustainable human productivity, embraces the primacy of interrelated and interdependent implementation of sustainable development solutions and eschews partial or sectoral approaches, surfaces, implements, and celebrates global solutions and coordinated actions by the international community, and recognizes that approaches to resolve challenges are subject to conflicting claims, priorities and interests, for which concerted efforts at reconciliation are necessary.

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