



PROMOTING LEADERSHIP IN THOUGHT
THAT LEADS TO ACTION

THE WEALTH OF NATIONS REVISITED

CADMUS

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The CADMUS Journal

The acronym of the South-East European Division of The World Academy of Art and Science – SEED – prompted us to initiate a journal devoted to seed ideas - to leadership in thought that leads to action. Cadmus (or Kadmos in Greek and Phoenician mythology) was a son of King Agenor and Queen Telephassa of Tyre, and brother of Cilix, Phoenix and Europa. Cadmus is credited with introducing the original alphabet – the Phoenician alphabet, with “the invention” of agriculture, and with founding the city of Thebes. His marriage with Harmonia represents the symbolic coupling of Eastern learning and Western love of beauty. The youngest son of Cadmus and Harmonia is Illyrius. The city of Zagreb, which is the formal seat of SEED, was once a part of Illyria, a region including what is today referred to as the Western Balkans and even more. Cadmus will be a journal for fresh thinking and new perspectives that integrate knowledge from all fields of science, art and humanities to address real-life issues, inform policy and decision-making, and enhance our collective response to the challenges and opportunities facing the world today.

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Human Rights, Liberty & Socio-Economic Justice: Economic Theory and the Ascent of Private Property Values

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1. Introduction

In the Introduction to the first issue of CADMUS, Ivo Šlaus and Garry Jacobs essentially provide us with a reminder that the founders of modern economics were also important moral philosophers. In particular, Adam Smith would appear to be influenced by the idea that economics has a great deal to do with human well-being. His theory was meant to be a tool to better understand economics for the improvement of the human condition. Certainly in the case of Smith, the idea of supply and demand represented an allocation of competence in society over economic activity that was designed to empower both suppliers and demanders of economic goods and services. As a thought construct there is a great deal that is appealing in the idea that the supplier is serving the demander and that the demander may rely on the supplier to supply. However, if the supplier is a laborer and the demander is an employer and there is a surplus of labor, the employer may drive the price of labor down dramatically with severe impacts on the status of labor in society. If the demander of labor is a technologically modernizing enterprise he may create a glut in the labor market by replacing labor with machines. Thus, important as the allocation of competence is to economic participants, it cannot cure the imperfections in the distribution of the benefits of the market. Significant injustices may obscure, if inquiry is abstracted from social reality and focused exclusively on idealized economic constructions such as the perfections and equilibrium of an idealized market. Smith emerged from the intellectual and moral revolution identified with the Scottish Enlightenment.* The leading figures in the Scottish Enlightenment were influenced by its important moral philosophers.^{†1} One of the current concerns is how professionally economics has developed in the context of Smith and the other classicists, and somehow appeared to sideline the moral sensibility and motivation that drove them. Part of the answer is that Smith may have been too successful and economics became a very discrete discipline under the influence of 19th Century positivism. And positivism sought to preclude the contamination of the new science from moral sensitivity.

To provide a contemporary example of the problem we may look at the conceptual foundations of Posner's economic analysis of law.^{2,3,4} Posner posits wealth maximization as a

* Adam Smith's (1723–1790) *The Wealth of Nations* was the first modern treatise on economics.

† Francis Hutcheson held a chair of moral philosopher at the University of Glasgow and he taught Adam Smith.

defensible value foundation of his approach. If we put his approach into the reality of social process, it could be described as human beings pursuing wealth through institutions based on resources. In this view wealth has a preferred value and is probably supported by moral analyses and justifications. However, the scope of law and economics may be limited by the focus on wealth to the exclusion of other indicators of human well-being that realism requires we acknowledge. In short, social process may be described as human beings pursuing all the values relevant to a culture of human rights and dignity. Posner's model would, of course, preclude this from the enquirer's legitimate concern. In short, the narrow focus short changes a proper consideration of important moral and value factors. For example, the social process model may see the individual as pursuing more than wealth. An individual may be pursuing power, respect, skill, well-being, enlightenment, affection, rectitude. Posner's model will not account for these other values and in this sense morality is depreciated. We should note a person may pursue wealth to get more wealth. The person could also use every other value listed above to achieve more wealth outcomes. And what may be obscured is that wealth may be used to acquire a share of all the other values. In short, wealth may be used to leverage power, respect, skill and the other values. Understanding the moral and value implications of political economy requires that we go back to reinvent the moral motivations of the classical economists. In this approach the entire culture of modern human rights is obscured or ignored. The idea of political economy as a measure of social justice and social justice deficits does not quite grab the attention of high powered figures in the field.

The great depression provided a serious challenge to the failures of Free Market Capitalism. There was a widespread recognition, politically, that choices had a great deal to do with getting the world into a depression. Therefore, a remedy to depression choices would be better choices that explicitly accounted for the public interest. This suggested a broader role for public sector decision-making and regulation to moderate the worst aspects of the depression and to generate policies and initiatives to stimulate an economic recovery. This approach to economics came under the label "The New Deal". Powerful forces resisted the New Deal. The rhetoric remains curiously static. In the 1930s the right wing railed against public expenditure and investments on the basis that public borrowing increases the public debt and mortgages the prosperity of future generations. This is the rhetoric still expressed today in the current recession in the US. During the New Deal the practical governing side of political economy found itself stumbling into the moral perspectives of classic economists. These moral ideas stressed the importance of political economy for the common good and well-being of all the stakeholders in the political process.

In grappling with these issues the New Deal practitioners generated a powerful insight of great ideological importance about the nature and the scope of human liberty. Their insight was that human liberty was not only a liberty for the economic elite but rather a liberty for all social participants. The concentration of wealth in the few enormously maximizes the liberty of the few. On the other hand the majority, including the poor, the unemployed and the disadvantaged and who otherwise suffer the deprivation of human necessity would really seriously be deprived of liberty: necessitous human beings are un-free. The critical challenge of new deal economic choices was in reality the challenge of expansion and fair distribution of human freedom. Therefore theory and method in economics had to confront the choice between liberty for the few and liberty for the many. The economic crisis of the

1930s was also therefore a crisis of human freedom that had directly impacted on human welfare and human dignity. In this essay we provide a short overview to the economic crisis of the 1930s including an indication of what Roosevelt and his advisers learned from that experience. Crucial to Roosevelt's education was the brilliant formulation of the war time goals for the United States and the world community. Characteristically it was expressed in terms of broadening the foundations of freedom. The four freedoms which included freedom from fear, want, as well as freedom of conscience and belief and freedom of speech and association, were values that Roosevelt said were not for a distant millennium, but were definitely achievable in our lifetime. These freedoms became the cornerstone of the UN Charter, the International Bill of Rights and a foundation for the UN's economic justice initiatives expressed in the United Nations Millennium Development Goals.

2. New Deal Influence on Freedom and Liberty

The depression meant oppression for the poor. The concern for the oppression of the poor has its roots in a multitude of religious traditions, and finds expression in philosophical and political theory, such as the works of Marx and Engels, Kant and Rawls, Sen and Dworkin, as well as McDougal and Lasswell. The enhancement of socio-economic rights into the discourse of liberty and world order owes a great deal to Eleanor and Franklin Roosevelt.

The currency of contemporary human rights finds its boundaries in the Four Freedoms proclaimed by President Roosevelt to the Congress of the United States and later included into the text of the Atlantic Charter agreed to by Churchill and Roosevelt. The Atlantic Charter reflected the war aims of the allies. It expressed in simple but telling terms the idea "of why we fight." The Four Freedoms could be generalized in terms of the critical importance to human survival and human welfare and the idea of security. Thus, the Four Freedoms spell out four different dimensions of the critical importance of security to human values. The Four Freedoms include the freedom from fear which is the freedom from aggression and the protection of the right to peace; the freedom of speech and expression which is the freedom of political security; the freedom of conscience and belief which is the freedom to be secure in one's fundamental perspectives of belief. Finally, there is the freedom from want, which is the security for material survival and well-being of the person. The central importance of the Four Freedoms is that they served as an inspiration for the goals and purposes of the UN Charter. They also inspired the development of an international bill of human rights. Thus the boundaries of the security interests would evolve in widespread ways and impact global values in important future directions. The freedom that this chapter focuses on is the freedom from want. This freedom encapsulates the importance of socio-economic values to human welfare and therefore reflects a concern for the salience of social justice as a global human rights imperative.

President Roosevelt was elected at a time when the United States was facing the worst economic crisis in its history. The economic system was on the verge of collapse and he considered the widespread effects on employment and poverty to be a national crisis. The administration of Roosevelt experimented with governmental initiatives to revive the American economy and to explore policies that would alleviate the economic suffering experienced by millions of Americans who were victims of the depression. In this sense, the administration determined that there was a crucial role for the government in developing

and implementing policies to alleviate the material suffering of millions of Americans who suffered economic deprivation. Economic deprivation meant that millions of people were deprived of essential wants necessary for material survival. According to Roosevelt economic laws which dictated poverty were not “sacred, inviolable, unchangeable.” He stressed that “economic laws are not made by nature. They are made by human beings.” Roosevelt explained the problem that inspired his freedom from want— war aim. “In this nation I see tens of millions of its citizens—a substantial part of the whole population—who at this very moment are denied the greater part of what the very lowest standards of today call the necessities of life. . . . I see millions denied education, recreation and the opportunity to better their lot and the lot of their children. I see millions lacking the means to buy products of farm and factory and by their poverty denying work and productiveness to many other millions. I see one-third of a nation ill-housed, ill-clad and ill-nourished.” Roosevelt saw such extreme material deprivation as also a deprivation on that most cherished of American values, the concept of liberty. In short, material deprivation made American citizens un-free. According to Roosevelt, “necessitous men are not free.” Roosevelt genuinely believed that there would be a need for constitutional change for the purpose of creating a bill of socio-economic rights which would have constitutional stature and would be an essential safeguard to the freedom of the American citizen. In 1943 the Public Resources Board began working on a draft of a Bill of Socio-Economic Rights which Roosevelt approved. The preliminary draft was submitted to Congress. The rights enumerated in the draft took the following form:

- The right to work, usefully and creatively through the productive years;
- The right to fair play, adequate to command the necessities and amenities of life in exchange for work, ideas, thrift and other socially valuable services;
- The right to adequate food, clothing, shelter and medical care;
- The right to security, with freedom from fear of old age, want, dependency, sickness, unemployment and accident;
- The right to live in a system of free enterprise, free from compulsory labor, irresponsible state power, arbitrary public authority and unregulated monopolies;
- The right to come and go, to speak or to be silent, free from the spying of secret political police;
- The right to equality before the law, with equal access to justice in fact;
- The right to education, for work, for citizenship and for personal growth and happiness; and
- The right to rest, recreation and adventure, the opportunity to enjoy life and take part in advancing civilization.

Roosevelt’s belief in freedom and the importance of socio-economic rights in strengthening human freedom he believed was more than a matter of national American politics. The Four Freedoms thus were not “a vision for a distant millennium. It is a definite basis for the kind of world attainable in our time and generation.” He compared this to “the new so-called order of tyranny which dictators seek to create with a crash of a bomb.” He seemed to appreciate that

there was something revolutionary in the Four Freedoms. He justified it as follows: “Since the beginning of our American history, we have been engaged in change—in a perpetual peaceful revolution—a revolution which goes on steadily, quietly adjusting itself to changing conditions—without the concentration camp or the quicklime ditch.” In substantial measure, the goal of the Four Freedoms was to defeat “Hitlerism in the world forever.” Clearly, the New Deal experience of President Roosevelt reflected the values that explained to the American people why they were engaged in the wars against Hitlerism. The idea that the deprivations of poverty were antithetical to both religious experience as well as major commentators on social thought and social justice clearly would have had some influence on Roosevelt and certainly influenced the development of human rights in the post war period.

The boundaries of Roosevelt’s Four Freedoms included a wide vista of human rights interests. One of the critical questions now is—what exactly is the status of the human rights in implicating socio-economic justice? Some views have sought to distinguish them by suggesting that human rights represent discrete clusters of interests that are dependent on each other for efficacy. Thus, it is urged that the first generation of human rights are essentially civil and political rights. That a society must establish the culture of these rights before it can aspire to the rights of the next generation which are socio-economic and the aspiration to realize collective rights to peace and environmental integrity cannot be realized until first and second generation rights are realized. An innovative conceptualization of the International Bill of Rights suggests that all the rights are interdependent and underdetermining in the realization of the entire human rights agenda.

In his 1941 Atlantic Charter iteration, Roosevelt specifically included the freedom from want in the four freedoms that were the basis and justification for the war. In his 1944 State of the Union Address, he challenged the notion that true individual freedom could exist without economic security and independence: “Necessitous men are not free men.” He went on to suggest that unemployment often became a strut for the creation of dictatorships. He spoke specifically about the practical acceptance of a “second Bill of Rights” under which a new base of security and prosperity could be established for all. Among the specific rights mentioned in that speech were the right to employment, adequate food, clothing, recreation, the right of every family to a decent home, adequate medical care, the right to social security, employment and a good education. According to Roosevelt, all these rights “spell security.” Roosevelt saw the post war period as an opportunity to move toward the implementation of these rights and establish “new goals for human happiness and well-being” along the way. Eleanor Roosevelt was given the task of organizing a draft of the Universal Declaration of Human Rights and, as a result of her involvement, the U.S. Delegation offered strong support for the inclusion of economic and social rights. Later presidential administrations, however, would reverse the official policy of the U.S. toward the concept of economic and social rights, despite a concurrent acknowledgment of “the urgency and moral seriousness of the need to eliminate starvation and poverty from the world.” The justification centered around the fear that repressive governments too easily abused the idea of economic and social rights, at once claiming to promote human rights while simultaneously “deny[ing] their citizens the basic civil and political rights.”

Since 1948, when the Universal Declaration was adopted as a General Assembly Resolution of the UN, the UDHR came to constitute a major part of international relations

and international law. This resolution was originally adopted as an instrument of *political* obligation; and its ongoing development as a legal instrument reveals the somewhat limited nature of its legal character. At its creation, the UDHR was not considered to be a legal instrument imposing binding obligations on states. (In this sense, the UDHR hardly reflected the commonly accepted notion of a ‘law’— a rule-based prescription and prohibition of behaviors, with its adherents and enforcers.) The subsequent development of the culture of human rights into the realm of law mirrored the development of human rights instruments as international treaties imposing binding obligations on states. Clearly, the UDHR’s political message and the political morality implicit in the articulation of the “rights” in this instrument, had a sturdy shelf life, reflected in the considerable global consensus that those rights should be transformed into instruments of juridical importance. The political moral status of the Universal Declaration was converted into a regime of complex treaty obligations incorporating concerns for socio-economic justice.

3. Human Rights, Political Economy and Development

In this section we introduce some of the elements that have contributed to the current recession. At the back of the recession are choices made which have facilitated greed. These choices are sustained by the economic theories of neo-liberal political economy associated with the Mont Pelerin group. Extremists from this perspective campaign for a non-regulatory state. Regulation, they believe, diminishes freedom. We also refer to the philosopher Polanyi who explains the importance of regulatory standards for increasing the quantum of freedom for the individual.

3.1 The Relevance of National Economies

The viability of a state’s political economy is a critical condition for the promise of human rights therein. It is commonly accepted that we live in a world in which the sovereignty of a state and its borders are increasingly porous, conditioned by the forces of globalization. Within these forces economic indicators loom large. We also currently confront one of the downsides of the political economy of globalization: a global recession. Commentators maintain that the crash of the financial markets occurred in large part because the major institutional players behind them were able to exploit a zone of no regulation. In other words, the state became a bystander to the dynamics of the financial markets. The prime players were making money under the sole directive of self-interest. The agenda of self-interest precluded self-regulation and was abetted by the concurrent lack of state regulation. This recession may endure for some time and it is not clear how it will ultimately impact the human rights expectations of the world community.

The current recession is an outcome of a change in the way wealth is exponentially generated in the national economy of the United States as well as the global reach of its economic style and practices. Broadly speaking, the crisis is a financial one and is reflective of the dynamism of the financial sector in the economy. That dynamism was partly facilitated by a regime of non-regulation in the United States that was even more accentuated in the global context. That regime was deeply influenced by the ideology of neo-liberalism as an organizing perspective of economic decision making. Neo-liberalism became a critical ideological strut for the ascendance of financial mechanisms as driving the accretion of

wealth. Additionally, the financial mechanisms were facilitated by ingenious ways in which property interest and securities could be invented or created. This gave dynamism to the financial markets as these new instruments became a cornerstone for market trading. Non-regulation permitted the generation of new forms of property. Laws which gave a high priority to the protection of private property ensured the insulation of these innovations from regulation and accountability.

The process by which paper assets could be manipulated and marketed essentially resulted in a ton of paper assets generated by new financial instrumentalities such as derivatives. This made for a huge gap between finance capital and capital generated by the real economy. The securitization, bundling and marketing of mortgage obligations and the growth of sub-prime lending in this regard accelerated the gap between finance capital and the real economy. This gap proved to be unsustainable and the financial bubble burst, creating a major economic crisis in the economy of the United States and other leading economic powers. The financial sector remains a backbone of the real economy and the collapse of the financial market impacted upon the viability of the real economy. Thus, the recession impacted on the global political economy of all states with resultant impacts for socio-economic justice. When national economies struggle, that struggle is reflected in the depreciation of living standards.

3.2 Market Theory and Regulation

To put these developments into a broader context of governance perspectives, it is important to recognize that the UN system inspired by the four freedoms which were in turn influenced by the New Deal, had developed a greater confidence in the role of government in moderating the negative effects of free market capitalism. In this sense the role of governance and regulation was at least implicitly apparent in setting up a global mechanism of limited but important global normative guidance in the form of the UN. When Roosevelt expressed the war aims of the allies in terms of the four freedoms, he was also expressing those aims of a social democratic form of governance which as a global matter was engaged in a war with totalitarianism. In the totalitarian state, the assumption of omnipotent powers could be seen as powers which extinguish freedom.

In 1944, the scholar Karl Polanyi provided a critical meditation on the role of governance and regulation in the context of human freedom. He distinguished two kinds of freedom: a form of good freedom, and the other a form of bad freedom. Bad freedom involved the freedom to exploit others. The freedom to take disproportionate benefits without commensurate service to the community, the freedom to appropriate technological invention without use for public benefit and the freedom to exploit social disaster for private benefit. With regard to the good side of freedom, Polanyi stated “The market economy under which these freedoms thrive also produced freedoms we prize highly; Freedom of conscience, freedom of speech, freedom of meeting, freedom of association, freedom to choose one’s own job.” These freedoms are the product of the conditions that also give us the bad freedoms. Polanyi speculated, interestingly, on a post market economy and its capacity to enhance freedom. According to Polanyi, the passing of the market economy can become the beginning of an era of unprecedented freedom. Juridical and actual freedom can be made wider and more general than ever before; regulation and control can achieve freedom not only for the few, but for all. Freedom is not an appurtenance of privilege, tainted at the source, but as a prescriptive

right extending far beyond the narrow confines of the political sphere into the intimate organization of society itself. Thus will old freedoms and civic rights be added to the fund of new freedoms generated by the leisure and security that industrial society offers to all. Such a society can afford to be both just and free.

Polanyi also noted that an important impediment to such a future was the moral obstacle of liberal utopianism. He refers to Hayek as a key figure in this area. According to Polanyi, "Planning and control are being attacked as a denial of freedom. Free enterprise and private ownership are declared to be essentials of freedom. No society built on other foundations is said to deserve to be called free. The freedom that regulation creates is denounced as unfreedom; the justice, liberty and welfare are decried as a camouflage of slavery."^{5, 6}

Polanyi's view of neo-liberalism is that it is doomed. It has the seed of authoritarianism and fascism. Thus, the good freedoms are destroyed and the bad ones are ascended. Polanyi's view of good and bad freedom and the role of the state in maximizing the good and minimizing the bad is an important insight into the modern industrial state influenced by social democratic political principles. It is very consistent with Roosevelt's view that severe economic deprivation and poverty diminishes the freedom of the person deprived. Polanyi's view is that the disparities between the elite rich and the deprived poor are moderated by regulation which has the consequence of enhancing good freedom and moderating bad freedom. Thus, regulation in this view is not an oppressive state-centered invention but part of the complex process of using the state to manage power in ways that enhance the aggregate position of the individual in terms of equality and freedom. This idea is reflected internationally in the International Bill of Rights. The development of human rights codes, regulations and practices are not instruments of repression but instruments that enhance human freedom and liberation. In this sense, the UN Charter and Roosevelt's four freedoms reflect social democratic ideology about the values which guide and animate governance and regulation at the international level as well.

It was probably the implications of social democratic ideology and values that gave significant impetus to the development of an alternative ideological perspective: neo-liberalism. Neo-liberalism was essentially meant to provide a solution to the problems of capitalist political economy. But it would do so in ways that were antithetical to the modern New Deal style state. In 1947, a group of influential academics met in Switzerland in a town called Mont Pelerin. There they formed the Mont Pelerin Society and formulated a founding document which would serve as a guide to its members. Those who attended the meeting included the Austrian political philosopher, Friedrich von Hayek, Milton Friedman and the philosopher, Karl Popper. The founding document explains the problem of modern political economy as seen through the lens of a neo-liberal philosophical perspective: The central values of civilization are in danger. Over large stretches of the earth's surface the essential conditions of human dignity and freedom have already disappeared. In others they are under constant menace from the development of current tendencies of policy. The position of the individual and the voluntary group are progressively undermined by the extensions of arbitrary power. Even that most precious possession of Western Man, freedom of thought and expression, is threatened by the spread of creeds which, claiming the privilege of tolerance when in the position of a minority, seek only to establish a position of power in which they can suppress and obliterate all views but their own.

The group holds that these developments have been fostered by the growth of a new history which denies all absolute moral standards and by the growth of theories which question the desirability of the rule of law. It holds further that they have been fostered by a decline of belief in private property and the competitive market; for without the diffused power and initiative associated with these institutions it is difficult to imagine a society in which freedom may be effectively preserved.

They firmly believed that self-interested greed in the market would be moderated by the invisible hand in market institutions that would generate benefits for all. In this sense, the invisible hand was one of the elements in neo-liberalism that stood in stark contrast to state interventionist theories inspired by John Maynard Keynes. In the context of post war policies governments were still committed to various versions of Keynesian economics to manage the ups and downs of the business cycle. The founding statement was an especially skilful draft in its effort to pre-empt the foundations of freedom, human dignity and the rule of law. Central to the privatizing of the political economy would be the institutions of private law themselves. These institutions reflected the notion of strong protections of private property by law. They also reflected a critical reliance on the stability and efficacy, if not primacy of contractual undertakings. To the extent that the economy was subject to legal regulation, it was legal regulation anchored in institutions of private property and the security of title as well as the rules generated in the market relating to the terms and conditions of enforceable exchanges.

The emergence of neo-liberalism as a dominating global ideology from its modest beginnings in Switzerland is in itself a remarkable narrative of the power of ideas and the ability to disseminate them. Two institutions besides Mont Pelerin of importance were think tanks which were generously supported by private sector capital. These were London based Institute of Economic Affairs and in the US (Washington), the Heritage Foundation. These institutions provided a regular flow of critical appraisal of economic policy. Additionally, in 1974, the neo-liberal perspective gained considerable respectability when Hayek received the Nobel Prize in economics. Two years later, Milton Friedman received the Nobel Prize as well. Thus, neo-liberalism was fed by the power of well-financed, critically placed think tanks together with the validation given by two Nobel prizes.

There was the emergence of two critical leaders on the international stage. The first was Margaret Thatcher who was elected Prime Minister of the UK. She had a strong mandate to reform the ailing British economy and she generated an economic revolution based on the privatization of public enterprises diminishing the entitlements of the welfare state, reducing taxes, and creating a favorable business climate which induced foreign investment. Thatcher's approach to the implementation of the neo-liberal economy was revolutionary. She described economics as the method, but the objective was effectually to change the soul of the individuals comprising the body politic.

3.3 Neo-Liberal Values in the United States

In the US, it is commonly thought that Ronald Reagan led the charge for the drift in the US economy toward neo-liberal values. However, just prior to Reagan coming into power, Paul Volcker, Chairman of the US Federal Reserve, organized a major change in US

monetary policy. It was an approach which effectually undermined key tenets of the New Deal. Central to Volcker's objective was to bring inflation under control even if it meant high unemployment. When Reagan came into power his advisors intuitively liked Volcker's monetarist initiatives for the ailing US economy and he was reappointed by Reagan. Reagan then provided the political muscle for massive deregulation, tax cuts, tax on union power and more. These developments were sufficiently far reaching in the UK and the US that the Labour government of Tony Blair and the democratic administration of Bill Clinton were basically conducting economic policy within the doctrines of neo-liberalism. What is important is that the ideology of neo-liberalism influenced institutions critical to the global political economy like the IMF and the World Bank. What is central to the construction of freedom and human dignity in the neo-liberal view is radically divorced from the policies of government intervention to promote social justice. In this sense, the New Deal human rights framework that covers economic, social, and cultural rights does not have a preferred placement in the structure and process of neo-liberal governance. For example, the millennium goals—developed by the UN and based explicitly on the promise and mandate of the four freedoms—do not figure into the discourse of neo-liberal political economy.

3.4 The Current Financial Crisis

At least at a superficial level there is a consensus that the current financial crisis which has threatened the economic foundations of the global economy is partly the result of the deregulation of the financial sector. This means that the financial sector would essentially be driven by the self-interest of financial leaders unconstrained and unguided by effective regulatory values. Consequently, the leaders had vast powers of entrepreneurial freedom; and, without a regulatory scheme sanctioned by law the only limits on their decision-making competence (driven by self-interest) would be whether there are moral standards of good judgment that should as well have served as an instrument of decision making guidance and constraint. Some scholars argue that the self-interest was in fact fuelled by moral heuristic principles. Thus, self-interest could have been fed by the assumption that since everyone was acting in terms of expanded risk such decision making was appropriate; a kind of bandwagon prejudice. Another justification for high risk decision making could have been the assumption that it was morally appropriate and right and must be assessed according to consequences. This means that if your high risk pays off it is not wrong. Similarly, wrongfulness only attaches to failure. This is described as an ornamental heuristic. A further limitation on the self-appraisal of high risk conduct in decisions relies on a certain amnesia and therefore incomplete data about past failures. Whether the market implicit in neo-liberalism conspires to limit the focus of appropriate decision-making inquiry may also suggest that such limitations undermine the possibility of identification in terms of solidarity, empathy, and (more generally) the mandate of altruism. It is possible that the model of thinking required for success is so limited by the boundaries of self-interest that the construction of freedom and dignity rather than being enhanced is in fact disparaged.

However, prior to the global financial crisis we could distil important outcomes of the state of the world's political economy. We could anticipate both negative consequences—like global economic apartheid⁷—as well as positive—like the human right to development or development as a gift of the planet's economically dominant actors.⁸ We could foresee

the promise of opposing points of view as well, such as the propensity of global economic institutions to vindicate the interests of the powerful over the interest of the powerless: free trade versus fair trade.* We could predict significant issues to come, including the protection of the environment, global warming; and the undermining of global understandings regarding the balance between sustainable development and the destruction of the environment.⁹ We could project threatening outcomes to arise from these circumstances, and anticipate issues like the global capacity to respond to natural catastrophes (i.e., tsunamis, earthquakes, hurricanes).¹⁰ Other foreseen looming dangers included the growth of the human population; the capacity of the earth to maintain human populations within the eco-social and economic capacity of the earth; the global health crisis (AIDS, malaria, bird flu, resurgence of TB, etc.);^{11,12,13,14} and the crisis regarding the respect for human rights and humanitarian values.^{15,16,17,18} This crisis was foreseen to develop at all social levels, as reflected in the crisis of the global war system,^{19,20} the acceleration of the global arms market at all levels, the proliferation and ostensible deregulation of nuclear arsenals as well as biological and chemical weapons of mass destruction²¹ and the growth of civil society deviance, which threatens the world order in the form of apocalyptic terrorism, state terrorism, organized crime, trafficking in human beings, drugs, small arms, and, possibly, criminal trading in the components of weapons of mass destruction.²²

3.5 The Role of Post-Colonial Sovereignty in A Regulatory Nation-State vs. Neo-Liberal Economic Policy in A Non-regulatory Globalized Environment

The unfinished and contested structure of normative priority for international economic order and social justice reflects the clash of two important, but critical, ideological perspectives associated with the original North/South divide. The U.N. General Assembly Resolution on Permanent Sovereignty over Natural Resources articulated a link between state sovereignty and the sovereign's right and obligation to vest a stronger form of property entitlement in the state itself.²³ The Resolution formulated the principle of a state's right to permanent sovereignty over its natural resources and touched on critical, practical and ideological interests. For example, in justifying the state's power to control and expropriate property, the Resolutions targeted the economic legacy of colonialism.

The Resolution on Permanent Sovereignty was a significant effort to change the economic expectations of the colonial era.[†] It also was a critical step in dissolving colonial claims and transitioning the colonized people toward independence. By promoting traditional market-driven concepts of state appropriation of property at the expense of colonialism, the Resolution weakened the protection of the right to property in the international environment. That is, by emphasizing state goals regarding property over individual/community goals, the preference removed individual/community proprietary rights from the human rights discussion.

Meanwhile, the supporters of the new international economic order forged ahead with an important U.N. initiative: the Charter on the Economic Rights and Duties of States.[‡] The Charter subsequently was followed by the Declaration on the Right to Development.²⁴ These instruments forged two principal expectations about the conflicts in international economic

* See Ravi Batra, *The Myth of Free Trade: The Pooring of America* (1996).

† See Resolution on the Permanent Sovereignty, *supra*.

‡ See Charter on Economic Rights and Duties of States G.A. Res. 29/3281, U.N. Doc. A/RES/29/3281 (Dec. 12, 1979).

order. The Charter and the Declaration vested a great deal of developmental power in newly freed states. The economic model, apparently incorporated into this state-central ideology, implied a form of creeping socialism.

The principle behind the Declaration on the Right to Development included the idea of sharing economic and technical resources to benefit the new states.²⁵ The United Nations promoted the principle of sharing as a mandatory (rather than a discretionary) obligation to sustain global equity. It is clear that this evolving international law was confronting two radically contentious ideological perspectives. The first would center on the promise of protecting property in the international environment. The protection of property would be a marker of a state's commitment to a paradigm sympathetic to the global private sector rather than the national or global public sector. The second perspective is associated with the perspectives of international socialists or social democratic ideology. It recognized that the public should control all economic development or that the public shares in the management of the production and distribution of wealth and related values.

3.6 *Efficiency and Legality in the New Economy*

The contemporary state of the global economy witnessed the ascent of the privatization of national and global economic institutions. It also witnessed emerging market economies, free trade zones, and the dominant role of corporate enterprise. The mantra of the free trade market phenomena has been world peace through world trade.* The ascent of the private sector is considered to be more efficient and less wasteful than corrupt and inefficient state bureaucracies. A central element of the neo-liberal view is the weight given to the idea of private property and the strength of its defense in the private law institutions of property.

The global institutionalization reflected these developments (the legal and political cultures of the WTO, the IMF, and the World Bank). To some degree, they came at the expense of working through the development agencies of the United Nations. However, a significant policy shift had emerged in the global economy, reflected in the emergence of a coalition of economically dominant states, the Group of Eight. From a technical point of view, the international economic soft law associated with the new international economic order has become even softer.

On the other hand, it is unclear what the general emerging rules are that govern the neo-liberal economy. The institutions of this perspective have been under pressure in part because the *lex specialis* within these institutions is sometimes incompatible with general international law and international human rights law. Moreover, critical appraisal of many of the operational rules often shows that the rules are enforced strictly against the powerless and often ignored by the powerful. Moreover, the efficiency of the model is under critical examination because the outcomes seem to generate greater global disparity and greater global alienation, and some would even suggest, the radical division between rich and poor may be a cause of radical religious activism or possibly even apocalyptic terrorism. Catastrophic natural events such as the tsunami in Southeast Asia, Hurricane Katrina in the United States, and the recent earthquake in Pakistan raise the question whether the global

* Lawyer Roles, *supra*, at 134. "The world peace through world trade movements, spearheaded by the Trilateral Commission, envisaged a global world order under the direction of the captains of corporate monopoly efficiency, a vision which comprises a diffuse human rights agenda focusing on the role of NGO's and an enhanced role for the corporate side of civil society." *Id.*

collective responses to these natural tragedies are a matter of beneficence and altruism or whether the responses themselves simply generate tacit but important expectations of international soft law obligation.

In Africa, the high intensity violent conflicts in many parts of the continent, particularly in the Sudan, the horn of Africa, Sierra Leone and the Democratic Republic of the Congo, also raise concerns about the protection of global peace and security as either a matter of discretionary altruism or legal obligation. It may be that constructing a stronger moral foundation for global solidarity in the context of natural or man-made catastrophic crises requires the first step in moral or value justification to be an appeal to the self-interest of the powerful sectors of global society. A compelling argument may be made that the self-interest of the haves in security, economic prosperity, and the health of their populations is better protected when those interests are recognized as of critical importance. When that interest is complemented by the idea of global solidarity and the element of altruism, we may have a stronger basis for the design of progressive policies that ensure a commitment to the deprived parts of humanity. In short, helping the poor actually helps the rich as well.

A good deal of modern economic theory seeks to insulate the market from non-market factors. Altruism may be valued only to the extent that it has market value. In short, altruism standing alone as a moral principle may actually be seen as a marker indicating weakness within the functions of market conditions and corporate culture. The business culture thrives on self-interest. This is a reality. Theory might improve the structure and process of both business and the larger social universe if the meaning of self-interest is defined more broadly to capture the real world of human and economic relations and supplemented by an altruistic gloss to provide a strong justification for broadening the focus and concern of the culture of enterprise.

4. The Human Rights Implications of Political Economy

The conceptualization of human rights in its varied forms has, for the most part, reflected deference to disciplinary orthodoxy. Among the most influential of these traditional notions is the characterization of human rights values as something of a generational step-function. Under this framework, civil and political rights values make up the foundational first-generation human rights. The realization of first-generation human rights is, in turn, a condition for the realization of second-generation human rights—the social justice rights. Finally, the so-called “collective” human rights round out a third generation of rights, realized only upon the attainment of the first two. The right to peace and the manifold environmental rights are prominent examples of third generation human rights. The implication of this generational model was that progress on generations two and three could justifiably be deferred while humanity grappled with generations one and two.

This orthodox model is now largely rejected in favor of one that recognizes human rights values as interdependent. Civil and political rights influence socio-economic rights and vice versa. These rights in turn influence the right to peace and environmental integrity and are, in turn, influenced by these latter values. Perhaps the best and most lucid explanation of the interrelationships of human rights values is found in the Maastricht Guidelines, stipulating that “[i]t is now undisputed that all human rights are indivisible, interdependent, interrelated

and of equal importance for human dignity. Therefore, states are as responsible for violations of economic, social and cultural rights as they are for violations of civil and political rights.” Thus, a view of rights as interdependent still requires us to develop explanatory models indicating the nature and consequences of the interdependence of human rights prescriptions.

5. Human Rights Political Economy: Theories of Justice and Morality

In terms of the socially-based underpinnings of economic theory, Marx and Engels were the leaders in rigorously elaborating the social prescription deploring the expropriation of the surplus value of labor and seeking to provide a more equalitarian form of access to the economic patrimony of the community. In contemporary social theory, philosophers have sought to bring an enlightened normative understanding to this and other value-based economic perspectives.

John Rawls,* for instance, wrote *A Theory of Justice* (1971) inspired by the concern that utilitarianism does not account for a justice that carefully considers the position of individual rights. Rawls directed his critique at utilitarianism’s emphasis on the collective right to happiness without adequately accounting for the distribution of that right to individuals. In faulting utilitarianism for insufficiently addressing the allocation of rights, opportunity, liberties and other important values, Rawls charged the theory of utilitarianism with a principal lack of respect for the distinctive identity of the individual and with a blindness toward the freedom and equality of citizens in a democracy. Rawls made clear that, in the process of prioritizing the greater happiness of the many, the implication of the utilitarian economic approach would be to restrict the rights, opportunities and liberties of the individual.

Like many social philosophers who address the values and exchange of values underlying economic theory, Rawls constructs a thought experiment by which we are directed to reimagine society. With a blank slate about the particular facts involving the thinker and society—but with a sense of the general facts about society and science—the individual thinker is challenged to consider some justice principles to govern society that all can rationally agree upon. According to Rawls, the first principle would be that ‘justice’ must guarantee equal fundamental liberties for all (e.g., equal political rights, freedom of thought/expression/association/religion, freedom of choice with regard to private property). The second principle of justice would require the allocation of ‘fair equal opportunities’ to develop talent and capacity and permit individuals to compete for desired social positions. (This second principle implies educational and healthcare benefits for all.) Rawls’ third principle—the ‘difference principle’—is a crucial innovation. This principle of justice mandates that any economic inequality must be subject to reallocations in order to provide a maximum benefit for the least advantaged members of society. The implication is that political economy should be driven by the impulse for redistribution of income, wealth, and economic powers and responsibilities, so that the least advantaged class would be better off than it would be in any other system of political economy. In effect, Rawls’ theory of justice is reconcilable with a private property-owning democracy.

In drawing up this intellectual framework, Rawls permits the reality of social and economic inequality to be redefined as ‘just’ only insofar as these inequalities work to the advantage

* John Bordley Rawls (1921-2002) was an American philosopher and a professor at Harvard University.

of the least advantaged people in society. In fact, Rawls would prescribe this unequal distribution to work like two water levels, driving the wheel and producing the energy that motors the economy. The redistributive effect of the third principle moderates the potentially unjust discrepancies of the first and second principles. In such a way, Rawls' theory has reinvigorated the philosophic discourse about the fundamental idea of justice. Given the historic difficulty of making fundamental value commitments and morality an important part of the critical discourse of legal theory (which gives authority to community decisions about regulating rights such as private property), Rawls' effort to generate an objective theory of morality has compelled conventional jurisprudence to more seriously consider not only Rawls' version of justice but also the imperative of the idea of justice *in general* to legal theory and public order. Rawls critically stresses the importance of defining criteria for the rational allocation of important values, in terms that are equitable and that which reasonable people may intuitively find acceptable. Moreover, Rawls provided a critical justification for a society based on social democratic principles and seeking to avoid the social deficits that result from extremes of wealth and poverty. Building upon Rawls' approach, later social philosophers (like the founders of configurative jurisprudence—Lasswell and McDougal²⁶) would go on to develop a theory of decision making that is context-driven to give more precision to the challenge of providing maximum benefit for the least advantaged members of society.

More recently, the Nobel Prize winning economist Amartya Sen²⁷ sought to address the perceived shortcomings of Rawls' view of justice, which does not address more contemporary concerns of *global* justice. Sen's approach is influenced by this commitment to social choice theory,* which has its roots in the mathematical application and insights to social policy generated in revolutionary France. A central issue in social choice theory is the problem of integrating incompatible preferences. In this theory, the effort is made to inform choice by calculating the effects on individual well-being that result from alternative social policies.²⁸ Social choice theory shares a focus with the approach of configurative jurisprudence in that it identifies individual interests and values that are important to human welfare. To the extent that this identification is designed to influence collective social choice, it sets as the task a mathematical method of measuring individual interests and values.

Since the focus of social choice theory is on the individual, it is an approach that should see human problems emerging from the bottom and percolating up to the policy process. This approach implicitly suggests that what are identified are perhaps the problems that individuals generate about the values that they value. However, this is not entirely clear, since the process of rationally integrating these values may not be in terms of an explicitly postulated goal value (such as the realization of human dignity). Of course, one of the most problematic issues in social choice theory is how to choose rationally between competing values. Nevertheless, this theory seeks to provide a method of evaluating different social states (in terms of claims for values) and seeks to resolve value conflicts by constructing meaningful measures of social welfare. It is possible that the ideas of social welfare and social well-being have a function of guiding choice, at least statistically, in the direction of

* Sen's earlier work has been highly influenced by social choice theory; although it is clear that, in the evolution of this work, he has expanded the boundaries of social choice theory. Social choice theory is: the formal study of choices or decisions by groups of people including society. Social choice theory seeks to provide a basis for arriving at collective decisions given peoples' differences in preferences and values. Widespread agreement on social and political policies is relatively rare. In view of widespread disagreement, how can we make sense of the idea that society itself prefers or chooses one alternative over another? Are there any ways to consistently combine different individual opinions and values into a collective choice for society as a whole?

an integrated value norm—namely, well-being. Indeed, it may be that, from the economists' perspective, projecting desired value beyond well-being (so as to include the other principal desired values) represents excessive methodological complexity. Thus, from the perspective of configurative theories of justice, the inquiry would include not only well-being but also power, wealth, respect, skill, affection, enlightenment and rectitude. Still, it is possible to give the concept of well-being a stretched meaning to include all the values that sustain the human rights and human dignity principle.

For a deeper and wider empirical understanding of individual value problems and claims, Sen has suggested a method that may be described as *informational broadening of the focus on contending values*.²⁷ This solution appears to represent a much more explicit and in-depth form of contextuality, in that Sen's informational theory requires value comparisons to be made with a wider range of real data. Sen seeks to look at values in terms of basic needs, basic freedoms, and basic capabilities. These factors enable practitioners to see the actual status of value deprivation and the possibilities of access to value advantages.

The capabilities aspect of Sen's analysis emerged as an approach to welfare economics. Sen was attempting to broaden the scope of discourse of welfare economics in order to encompass a wider range of real values important to opportunity and process freedoms. In collaboration with Nussbaum, Sen identified ten capabilities that they believe should be supported by all democracies. These include capabilities related to life, bodily health, bodily integrity, sense, imagination and thought, emotion, practical reasoning, affiliation, other species, play, control over one's environment.²⁹ This explicit effort to distill capability values may be usefully compared to the eight or nine values identified in the configurative jurisprudential approach. Configurative jurisprudence certainly welcomes the effort to delineate the central capability values, which are globally and cross-culturally important. In configurative jurisprudence, there is a set of values that have both capability and opportunity aspects. However, configurative jurisprudence uses values in two senses. Values are used in normative terms; and values are also used to provide a clear contextual background to the value problems in describing society as it is. Thus, values make scholastic sense—as well as significant social relevance—when theorists connect values to the institutional social and cultural processes of a community. In this way, the value of 'power' is represented in governance institutions; 'wealth' in corporate-type institutions; 'labor' and 'skill' in the organization of unions and guilds; 'affection' in the family; 'health' and 'well-being' in clinics and hospitals; 'rectitude' in churches, temples, and mosques; 'respect' in the structure of social stratification; and 'enlightenment' in schools and universities.

It is not as easy to develop a precise analog of institutions relating to the capability values developed by Sen and Nussbaum. For example, the value 'life' would seem to include (institutionally) the idea of community or society; but this would include too much. 'Bodily health' may include the institutions of healthcare or fitness but it is unclear exactly to which institutions bodily integrity is specialized. Similarly, the values of 'sense', 'imagination', 'thought', 'emotion' and 'practical reasoning' would seem to be ambiguous in terms of whether one is talking about the family, the system of community education, the system of fundamental laws protecting artistic freedom and privacy, or the system of legal and academic freedom. Moreover, it is not easy to develop the institutional mechanisms that Sen has in mind regarding 'play', 'other species of life', and 'environment'—these being such

generalized values they effectively implicate every other value, making their autonomous statuses problematic. Nevertheless, the central challenge is the identification and clarification of the content of justice principles and the development of principles of procedure to give these principles concrete realization in social practice. Here, configurative jurisprudence, with its sensitivity to the general problem that confronts practical lawyers in decision-making context, deals with the problem of grounding value judgments in instances of particular application, and developing a coherent theory and method for the clarification and procedural grounding of such values.^{30, 31}

Like Rawls, Sen engages in a shifting of vantage point in order to theorize the framework for justice. While Sen stresses the issue of capabilities for functioning, he simultaneously indicates caution concerning the accounting for peoples' preferences. He is not looking at preference from the perspective of the person asserting a preference; he is examining those preferences from the perspective of a disengaged observer. Similar to Rawls, Sen suggests that preferences may emerge from mistaken beliefs or which "are adaptations to miserable or coercive circumstances." In this sense, deference to human preferences must be tempered by the perspective of a disengaged observer. However, Sen equips the disengaged observer with a standard by which to measure the imperfections of human preference, permitting the observer to evaluate the weakness in the assertion of such preferences. Sen emphasizes that the observer's tools must be sufficiently sharp to penetrate reality, in order to reduce the inequality as it relates to peoples' capabilities and to stress policies and practices that secure real capability for functioning in an environment of real opportunity.

Sen's capability approach to the study of justice, which includes a focus on freedom, is an important contribution to unpacking the modern discourse of the theory of justice itself. Sen has identified a critical problem, the solution of which requires innovative and perhaps novel thinking methods. Sen's capability approach requires individual thinkers to clarify the specifics (or the specific aspects) of abstract ideas, like liberty and equality; yet these terms are often loaded for the individual and will perhaps obscure more than they actually reveal about a viable and defensible theory of justice. Sen's capability approach to the clarification and grounding of value judgment is an important contribution to the issue of clarifying the specific implications and problems of justice implicated in abstract ideas such as liberty and equality. Of particular importance is Sen's clarification of liberty, which he does in terms of 'freedom' (having an opportunity aspect as well as a process aspect), and Sen's integration of liberty into his capability approach. The central value of his capability approach lies in its elucidation, which is dependent upon an informational focus. This means that capability, in terms of a broader contextual informational focus, provides a more expansive framework for the analysis of justice from a global, cross-cultural perspective. Sen postulates that this approach is more compatible with a global and non-parochial view of the critical discourse about global justice and human rights itself. According to Sen:

Any substantive theory of ethics and political philosophy, particularly any theory of justice, has to choose an informational focus, that is, it has to decide which features of the world we should concentrate on in judging a society and in assessing justice and injustice. It is particularly important, in this context, to have a view as to how an individual's overall advantage is to be assessed; for example, utilitarianism, pioneered by Jeremy Bentham, concentrates on individual happiness or pleasure

(or some other interpretation of individual 'utility') as the best way of assessing how advantaged a person is and how that compares with the advantages of others. Another approach, which can be found in many practical exercises in economics, assesses a person's advantage in terms of his or her income, wealth or resources. These alternatives illustrate the contrast between utility-based and resource-based approaches in contrast with the freedom-based capability approach.

In contrast with the utility-based or resource-based lines of thinking, individual advantage is judged in the capability approach by a person's capability to do things he or she has reason to value. A person's advantage in terms of opportunities is judged to be lower than that of another if she has less capability—less real opportunity—to achieve those things that she has reason to value. The focus here is on the freedom that a person actually has to do this or be that—things that he or she may value doing or being. Obviously, the things we value most are particularly important for us to be able to achieve. [However,] the idea of freedom also respects our being free to determine what we want, what we value and ultimately what we decide to choose. The concept of capability is thus linked closely with the opportunity aspect of freedom, seen in terms of 'comprehensive' opportunities, and not just focusing on what happens at 'culmination'.²⁷

Sen's capability freedom may be considered in light of the values both implicated and found in the Universal Declaration. Sen's capability freedom is apparent in terms of the power process (and the many discriminating particular claims that emerge from this) as well as the claims to all other values implicating freedom of choice (such as wealth, respect, enlightenment, skill, affection, health and well-being, and rectitude). Sen's approach (like that of the configurative thinkers McDougal and Lasswell) requires a deliberate focus on the most comprehensive context from which the problems implicating fundamental values emerge. Sen, by specially emphasizing the process aspects of freedom, is clearly concerned about a discriminating clarification of the content of justice norms—as well as the processes in which these norms can be grounded—in terms of real human beings, regardless of nationality, state, or gender.²⁷ According to Sen:

Both the processes and opportunities can figure in human rights. For the opportunity aspect of freedom, the idea of 'capability'—the real opportunity to achieve valuable functionings—would typically be a good way of formalizing freedoms, but issues related to the process aspect of freedom demand that we go beyond seeing freedoms only in terms of capabilities. A denial of 'due process' in being, say, imprisoned without a proper trial can be the subject matter of human rights—no matter whether the outcome of a fair trial could be expected to be any different or not.²⁷

Most recently, one of the most distinguished jurisprudence scholars of our time, Ronald Dworkin,^{*} has written a book on the theory of justice that elaborates on the interdependent framework of individual and social obligations elemental to the goal of justice. Dworkin makes a critical distinction between ethical issues and moral issues to establish his theory of justice. The ethical issues address "what people should do to live well: what they should aim to be and achieve in their own lives." There is a second kind of issue that flows from this—

^{*} Ronald Dworkin (1931-) is an American philosopher of law, a scholar of constitutional law, and a professor of law and philosophy at University College London. See *Justice for Hedgehogs* (2011).

how people should treat others. This issue, according to Dworkin, involves a moral principle. In Dworkin's view, when an individual answers the *ethical* question, "What does it take for a life to go well?" the individual can then answer the *moral* question, "How should I consider or take into account the lives of others?" Dworkin isolates an ethical principle focusing on the nature of self-respect. Self-respect requires recognition of taking one's own life seriously and understanding what is important to make one's life a successful experience (rather than a 'wasted opportunity'). Dworkin isolates a second principle—one that supports self-respect—that focuses on the experience of authenticity: an individual has the responsibility to identify what counts as success in that individual's life. Dworkin believes that these principles, taken together, generate a concept of human dignity that must be accounted for in any theory (economic or otherwise) of justice.

Dworkin's theory, like the process-focused theories of Sen and configurative jurisprudence, illuminates an element of dynamism in the demand for justice. It is in the nature of human beings that they are transformative in their capacity for growth and in their relations with others. Sen focuses on individuals as transformative agents, having capabilities and needing opportunities. On the other hand, Dworkin insists "we need a statement of what we should take our personal goals to be that fits with and justifies our sense of what obligations and duties and responsibilities we have to others."³² We may read into both of these perspectives the idea that justice requires individual responsibility and effort, that an individual's life "should be a successful performance rather than a wasted opportunity."³³ Dworkin also requires capability and process freedoms, if life is not to be a 'wasted opportunity.' There is a genius in joining opportunity and capability with a responsibility to take one's life seriously as an aspect of both personal and community justice. The idea that each individual has a right to a life of self-respect and authenticity—which must be given operational effect by capability and opportunity freedoms—moves from that of an ethical commitment to that of a moral principle, in the sense that self-respect, authenticity, capability and opportunity freedoms are encapsulated in the universal principle of human dignity. Dynamism is rooted in the responsibility and obligation of the person to respect oneself. Such respect is sustained by the idea that the self is truthful to the self and, therefore, expresses to the self its self-validating authenticity. This means that the subjects of the idea of justice are meant to be active participants in the shaping and sharing of justice and, moreover, to be active participants in the transformational dynamics of the principle of justice.

This brief survey of contemporary ideas of justice shows the relevance of the essential dignity of the individual—enabled and expressed by economic functions within society—to disciplines such as law, politics, economics, social theory and business methods. These developments concerning the general theory of justice provide considerable depth to the moral motivations of the classic economists. These developments in theory of justice may hopefully influence developments in economic theory and choice making, as well as provide a challenge for the development of a new paradigm of political economy that is more intricately tied to the major purpose of economic theory and method—namely, that priority be given to human needs, human well-being, human prosperity, and human dignity.

Notes

1. Gordon Graham, "Morality and Feeling in the Scottish Enlightenment Philosophy," *Philosophy* 76(2001): 271–282.

2. Lewis Kornhauser, 2008. The Economic Analysis of Law. *The Stanford Encyclopedia of Philosophy*. Available at <http://plato.stanford.edu/entries/legal-econanalysis/>
3. Richard Posner, *Economic Analysis of Law*. (Boston: Little Brown, 1973).
4. Richard Posner, "Wealth Maximization Revisited," *Notre Dame Journal of Law, Ethics, and Public Policy* 2(1985):85-106.
5. Karl Polanyi, *The Great Transformation* (Boston: Beacon Press, 1954), 256-258.
6. David Harvey, *A brief history of neo-liberalism* (New York: Oxford University Press, 2007), 36-37.
7. Winston P. Nagan, "An Appraisal of the Comprehensive Anti-Apartheid Act of 1986," *J.L. & Rel.* 5, no. 2(1987): 327.
8. Declaration on the Right to Development, G.A. Res. 41/128, at 186, U.N. GAOR, 41st Sess., Supp. No. 53, U.N. Doc. A/41/128 (Dec. 4, 1986).
9. U.N. Conference on the Human Env't, June 5.16, 1972, Declaration of the United Nations Conference on the Human Environment, U.N. Doc. A/CONF.48/14 and Corr. 1 (June 16, 1972); World Charter for Nature, G.A. Res. 37/7, at 17, U.N. GAOR, 37th Sess., Supp. No. 51, U.N. Doc. A/37/7 (Oct. 28, 1982); United Nations Conference on Environment and Development, Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151/5/Rev.1 (1992); Johannesburg Declaration on Sustainable Development, U.N. Doc. A/CONF.199/L.6/Rev.2, in Report of the World Summit on Sustainable Development, U.N. Doc. A/CONF.199/20 (Sept. 4, 2002). Available at <http://www.un.org>.
10. How prepared are we New York? 2006. *New York University Center for Catastrophe Response & The American Red Cross of Greater New York*. Available at <http://www.nyu.edu>.
11. World Health Organization, *The World Health Report 2006: Working together for health* (Geneva: World Health Organization, 2006).
12. World Health Organization, *The World Health Report 2005: Make every mother and child count* (Geneva: World Health Organization, 2005).
13. World Health Organization, *The World Health Report 2004: Changing history* (Geneva: World Health Organization, 2004)
14. World Health Organization, *The World Health Report 2003: Shaping Future* (Geneva: World Health Organization, 2003).
15. Winston P. Nagan, "African Human Rights Process: A Contextual Policy Oriented Approach," *Sw. U. L. Rev.* 21, no. 63 (1992).
16. Winston P. Nagan, "The Politics of Ratification: The Potential for United States Adoption and Enforcement of the Convention Against Torture, The Covenants on Civil and Political Rights and Economic, Social and Cultural Rights," *Ga. J. Int'l & Comp. L.* 20, no.311 (1990).
17. Winston P. Nagan, "International Intellectual Property, Access to Health Care, and Human Rights: South Africa v. United States," *Fla. J. Int'l L.* 14, no.155 (2002).
18. Winston P. Nagan, "Strengthening Humanitarian Law: Sovereignty, International Criminal Law and the Ad Hoc Tribunal for the Former Yugoslavia," *Duke J. Comp. & Int'l L.* 6, no. 127 (1995).
19. Winston P. Nagan and Craig Hammer, "The New Bush National Security Doctrine and the Rule of Law," *Berkeley J. Int'l L.* 20, no. 375 (2004).
20. Winston P. Nagan and Craig Hammer, "Patriotism, Nationalism and the War on Terror: A Mild Plea in Avoidance," *Fla. L. Rev.* 56, no. 933 (2004).
21. Winston Nagan, "Nuclear Arsenals, International Lawyers, and the Challenge of the Millennium," *Yale J. Int'l L.* 24, no. 485 (1999).
22. Winston P. Nagan and Alvaro de Medeiros, "Old Poison in New Bottles: Trafficking and the Extinction of Respect," *Tul. J. Int'l & Comp. L.* 14, no.255 (2006).
23. Resolution on the Permanent Sovereignty Over Natural Resources, G.A. Res. 1803 (XVII), U.N. Doc. A/5207 (Dec. 14, 1962). Available at <http://www.unhchr.ch>.
24. Declaration on the Right to Development, G.A. Res. 41/128, at 1, U.N. GAOR, 41st Sess., Annex, Agenda Item 101, 97th plen. mtg., U.N. Doc. A/RES/41/128 (1986). Available at <http://daccessdds.un.org/doc>.
25. *Id.* art. 3(3).
26. Harold D. Lasswell and Myres S. McDougal, *Jurisprudence for a Free Society: Studies in Law, Science & Policy* (Boston: Nijhoff, 1992).
27. Amartya Sen, *The Idea of Justice*. (Massachusetts: Belknap Press of Harvard Univ. Press, 2009).
28. Samuel Freeman, "A New Theory of Justice," *The New York Review of Books*. 17, no. 15(2010):58. Available at <http://www.nybooks.com>.
29. Martha Craven Nussbaum et al., *The Quality of Life* (Gloucestershire: Oxford Univ. Press, 1993).
30. Harold D. Lasswell and Myers S. McDougal, "The Application of Constitutive Prescriptions: An Addendum to Justice Cardozo," in *Jurisprudence for a Free Society: Studies in Law, Science and Policy* (Birmingham: New Haven Press, 1992).
31. Harold D. Lasswell and Myers S. McDougal, "Human Rights and World Public Order: Principles of Content and Procedure for Clarifying General Community Policies," in *Jurisprudence for a Free Society: Studies in Law, Science and Policy* (Birmingham: New Haven Press, 1992).
32. Ronald Dworkin, *Justice For Hedgehogs* (Cambridge: Belknap Press, 2011).
33. *Id.* at 128.

Those who are engaged in building democracy in their countries and who are animated with a fresh spirit like in Egypt will have to ask themselves: What purpose does building a democratic nation have if it is embedded into an undemocratic and non-transparent international system? In a globalized world the confinement of democratic participation of citizens to the institutions of the nation-state is almost equivalent to disenfranchisement. True democratic emancipation cannot stop at national borders.

Andreas Bummel, Chair, Committee for a Democratic UN

Politics is the whole of which economics is a part and employment is a small part of the wider domain of economic life. Ushering in a global government generates the power of solving these minor problems. Government is the context that activates the politician. Politicians can cure the ills created by economists. A wider vision of economics solves the problems created by narrow inspiration.

T. Natarajan, President, The Mother's Service Society

The role of labour is crucial for the social cohesion and stability it provides. Threats to financial stability do not exclusively emanate out of capital markets. As the unrest in several Arab countries demonstrate yet again, without social stability there can be no financial stability.

Patrick Leidtke, Director, Geneva Association

Economic thinking is still very largely related to traditional Cartesian (and Newtonian) concepts of science. The notion of equilibrium is not really a concept or an explanation, but rather a tautology, which has been given the value or status of an axiom. Understanding this notion of equilibrium, where supply is equal to demand, is essential because it explains why economic theory has from the beginning always tended to be one-sided...Once we enter real time, uncertainty and disequilibrium become the reference criteria of reality. Introducing the notion of real time into the economics of supply and demand (in modern terms, service based production and consumption) is a radical alternative to the view of the economic process as being based on timeless (instant) equilibrium.

Orio Giarini, Director, The Risk Institute

According to Roosevelt, "necessitous men are not free." The narrow conception of individual freedom founded on private property rights advocated by neoliberalism neglects a much wider, more humane conception of social democracy, freedom from want and human security affirmed by the New Deal, the Atlantic Charter and the UN Charter.

Winston Nagan, Director, Inst. for Human Rights, Peace & Development

A human-centered theory of economy and employment needs to be founded on the realization that human beings – not impersonal principles, market mechanisms, money or technology – are the driving force and central determinants of economic development.

Garry Jacobs & Ivo Šlaus, World Academy of Art & Science Global Employment Project

CADMUS

Inside This Issue

Our world is headed into a Perfect Storm of an interconnected financial, ecological and social crisis. Almost all forward-looking assessments demonstrate that business as usual and incremental improvements will not be sufficient to take us to a future world blessed by equitable prosperity, safety, security and contentment.

Ian Johnson,
Secretary General of the Club of Rome

The three organizations – WAAS, Club of Rome and the Pugwash Movement – should sincerely join forces and act together, so that we can fully utilize use our collective experience, intellectual capacity and foresight. Together, we will have a much stronger voice to get our good messages out to the world and be listened to by policy makers, parliaments, governments, academics and all societies in general, in both the industrialized and developing economies.

Heitor Gurgulino de Souza,
Former Rector of United Nations University

Decisions on our common future should no longer rest solely on world leaders, who can evade or even obstruct meaningful change. A simultaneous electronic ballot on saving bios is a brilliant opportunity to demonstrate that, as citizens of the world, we can all agree on safeguarding the Earth for the generations to come. By giving priority to individual voices to be heard, the World Referendum can elicit the personal involvement of every citizen in the race to save the environment and help to bridge the gap between the rich and poor.

Agni Vlavianos Arvanitis,
President, Biopolitics International

The greatest global challenge that faces the international community today is that of the current trans-national revolution in human affairs, which in turn is triggered by the combination of three revolutions: a revolution of rising expectations, the information and communications revolution, and a broader industrial-technological revolution.

Jasjit Singh,
Director, Centre for Air Power Strategy

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