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DEVELOPMENT AS A HUMAN RITE

Paul H. Brietzke

Human rights today function as a kind of Rorschach test: optimists see a fundamentally new international order evolving from recent initiatives,¹ while pessimists see only the international anarchy of the Amins and the Pol Pots:²

There is little enthusiasm in the Western world at the moment for discussions about human rights. The very words induce a stifled yawn. Realpolitik is the order of the day. [W]hen the Americans announce that they intend to resume arms sales to Guatemala, many people might be surprised to hear that such sales had ever stopped.³

Even the most cheerfully optimistic are hard put to discover progress in the area of development, beyond the achievements of a few small communities. The first Brandt Commission Report and its calls for a New International Economic Order left little more than a trace on the thinking of its intended audience.⁴ The theoretical ("Club of Rome") limits to growth, reenforced by OPEC and the recessionary mismanagement of the international economy, have provoked an international "free-for-all on the limits to equity."⁵ Thus, the putting together of development, human rights, and the New International Economic Order was a stroke of ideological genius. The creators of the right to development offer a core around which the nobler aspirations in the Third World can coalesce to shame the First and Second Worlds. But their innovation is not without its risks; instead of drawing strength from each other, the shaky concepts of human rights, development, and the NIEO may collapse upon each other.⁶

By collapse I mean that the rhetoric of development as a human right⁷ will continue, without serious efforts at implementation. Development will then be (or continue to be) a human rite: "new creations will look very much like legal escapism, and refuge will be sought in solutions which are illusory."⁸ The danger is that a rather utopian rhetoric, which so quickly fostered new concepts and a nascent movement, will be absorbed into the rituals and routines of international conferences and U.N. agencies. If the pessimists are correct, or even partly correct, only a few countries display a consistent commitment to human rights and to development. Most countries (including the major powers) would thus be glad to leave the human right to development as hortatory, as an ideal morality lacking enforceable legal standards. This amounts to leaving it with international bureaucracies, which must be presumed to be no more developed than their constituent states. These bureaucracies often measure progress in terms of growing budgets and the numbers of vague covenants, resolutions, and expert reports adopted. We

have had Decades of Development and Disarmament, an International Women's Year, etc. Why not stand in line behind the Years of Youth and Old Age for an equally ineffective Decade (or Year) of the Right to Development? Development agencies could continue to by and large ignore the domestic political context of rights violations, in a rush to carry out programmes comfortably within their traditions, and to stick to the "safe" social and cultural issues.⁹ Philp Aiston points out related dangers inherent in this "structural" (international-level) approach:

[It may] become identified with a sweepingly broad, non-legal, economically or sociologically-oriented approach. Its impact then would be to downplay the importance of other, specifically legal, approaches to human rights issues, to move . . . away from specifics towards global economic problems, and generally "to disappear into the clouds of a universality that leaves the larger world stranded far below."¹⁰

Regrettably, an international political development can never be built upon the foundation of a severe national underdevelopment; the bottleneck to implementing the human right to development is the political underdevelopment of most constituent states.¹¹ Negotiations "for a new international order will require changes not only in relations between states but also . . . inside the industrialized states as well as inside the Third World states."¹² For "all but the poorest countries," John Weeks and Elizabeth Dore argue, "internal resources are more than sufficient to successfully solve the basic needs problems within a reasonable time." The continuing failure to do this "is explained by the structure of economic and political power in underdeveloped countries."¹³ Numerous gaps and weak points in law and politics, within and between nation-states and "higher" levels of political organization, mean that the situation described by Weeks and Dore is unlikely to change soon;¹⁴ sovereignty is jealously guarded precisely because it is so frequently a pretense, a legal fiction flying in the face of the economic and military dependence felt in varying degrees by most First, Second and Third World countries. We thus seem to be at a Machiavellian or "Grotian moment," a "time when an old system of world order is unable to deal successfully with the challenges posed,"¹⁵ and when extreme self-reliance or a neo-mercantilism proves self-impooverishing in an interdependent world.

Dealing with this "moment," keeping the human right to development from becoming a cynically manipulative rite, requires that a healthy dose of an almost Machiavellian pragmatism be laid alongside the existing utopianism, in preference to other approaches.¹⁶ Definitional "games, logicized hierarchic constructs, positivistic inadequacies, transcendental nonsense, and other inhibiting jurisprudential or philosophic tendencies have left far too many scholars and decision-makers without adequate tools for . . . inquiry and choice about

human rights."¹⁷ In a rush to applaud and extend rights, the fact that rights violations have been declared impermissible is frequently mistaken for the having and exercising of these rights by real people and their groups. Their victory requires a lengthy political and legal process of gestation and maturation. Having and exercising are inevitably limited by conflicts with other rights, especially those rights which governmental and economic elites arrogate to themselves. The right to development must therefore be defined in terms of empirical justifications, demonstrations of the necessity of the right to achieving the interests of its would-be violators. This right must attain broad applicability through good faith attempts at an ideological neutrality of definition, and through its de minimus character. In the terms used by Wesley Hohfeld, a multiplicity of duties correlate with the right to development. These duties do not fall on all domestic and international parties equally, and they may be relaxed in light of absolute or relative resource scarcities (including a lack of coercion and legitimacy relative to need) or even violated on occasion.¹⁸ But if, on an independent assessment, a protracted abuse of the right to development is the way an uncreative regime chooses to rule, stern sanctions must be applied under a new body of rules. The U.N.'s experience with South Africa suggests that, as things stand, such a regime could be made uncomfortable, but really effective sanctions require an international consensus.¹⁹ How this can be achieved is discussed below.²⁰

I. DOMESTIC UNDERDEVELOPMENT

Richard Falk poses an interesting question concerning rights violations: "Why do smart people keep making stupid policies?"²¹ I think the answer is political underdevelopment, if we assume that rights are not eternal verities but grants by particular elites for predetermined purposes.²² These purposes will be described as enhancing political stability, and strengthening the state by marshalling whatever resources come to hand as such purposes are frequently advanced by policies favourable to rights. But even more frequently, particularly during such crises as the perpetual states of emergency under which some countries are ruled, rights violations are perceived to enhance stability and strength. When this happens, rights will be violated. Courts, if they are consulted, and even international documents almost always rubberstamp the political perceptions on which these violations are based.²³ Overreactions among leaders preoccupied with their own power and dignity are virtually guaranteed, when events impair critical faculties by inflaming passions. A mild setback becomes a grave menace for a Nixon, a J. Edgar Hoover, and many a leader in the Third World -- where hardly a sparrow falls from a tree but what it is perceived to endanger an unstable regime maneuvering within a weak state. The pursuit of wealth and/or power is perceived as a nasty, zero-sum game in the short run; winners are seen to profit only at the expense of losers, who frequently lose life as well as position. Political and constitutional

development, on the other hand, involves a raising of the game stakes by augmenting political and bureaucratic capabilities over time. But improved capabilities mean more controllers (ultimately, an increased political participation²⁴), an eventuality opposed by the wealthy and powerful whose relative positions will be eroded. The right to development, or any other right, frequently gets lost in the game shuffle because it is not perceived as providing a regime with something it can use, such as legitimacy.²⁵

A. Political Instability and Its Economic Consequences

The opportunity to exercise statesmanship is a precondition to attaining many other goals. It requires but little power to capture the state, relative to the massive power that the state can then exert on your behalf. This is particularly true in the many Third World countries where the state floats free of many socio-economic moorings, as an enclave in the capital city. Intense competitions to capture such states serve to dissipate political and economic resources: an enduring coalition or entrenched power position is not the way a short-term, zero-sum game is played. Dissipation means that such vital political resources as coercion and legitimacy remain in short supply relative to need; might does not make right and right does not make might, in what might otherwise be a dialectic of effectiveness and validity. Underdevelopment means that there is too little power and wealth, and too few civil service jobs, to satisfy even the minimum demands of all elite groups. Maneuverings within the existing political environment thus cannot palliate the disputes that arise. A certain number of the subsequent rebellions, coups, etc. will succeed, but levels of political stability seldom change because the underlying conditions remain unchanged. The time-honoured means of dealing with this political underdevelopment is the politics of a paternalistic despotism, always petty and sometimes benevolent, under a monarchical constitution (as opposed to a constitutional monarchy). The monarch (sometimes termed "President" or "Chairman of the ... Council" -- the monarchy is usually too unstable to form the basis for a dynasty) is wistfully portrayed as the fountainhead of all legitimate power. The broadest possible notions of State sovereignty are constantly reiterated in the face of an acute foreign dependence.²⁶

A monarchical constitution amounts to the father-child relationship writ large; the "children" are not to question what is sought on their behalf, under laws and institutions which do not merely act in loco parentis but are direct manifestations of the parent's will. Leaders seek to define their followers into "subjects," which is to say objects of exploitation for benevolent or other purposes; into "the masses," an undifferentiated lump which must be forced to see the coincidence of interests between rulers and ruled; or into "public opinion," rulers' attempts to bypass elite demands by purporting to represent inarticulate

public desires (as in Nixon's "silent majority"). Balancing, more or less rationally, the harms and benefits from these political performances, the poor and powerless usually find these performances seriously wanting. Their reactions, ranging from bemused apathy to open rebellion, can become a significant cause for political instability when a Lenin, a Juan Peron or a Huey Long comes to organize them as a stepping-stone to power. If government and its rivals use terrorism and the other artifacts of a penal politics, a "culture of fear" joins the "culture of poverty" as prime constraints on the right to development.²⁷

This political underdevelopment is mirrored in the two main types of economic policies pursued in the Third World. Asbjorn Eide appropriately terms these "coercive dissociation" and "coercive submission."²⁸ Under the latter,

governments of some Third World countries seek to maintain...subordination to an unjust international economic system, by making extraction of its resources inexpensive and its labour cheap. [T]he consequence is almost by necessity a policy of labour repression and denial of political participation in order to avoid processes of democratisation. This ... creates ... concern by the governors with internal security ... [which] becomes increasingly difficult [to maintain] without external support.²⁹

Avaricious local elites, having been easily coopted into a state of dependence, are unwilling to have their privileges trimmed in the interests of an equalisation and a greater self-reliance. A Green Revolution through extension agents aggravates rural misery: more food frequently means more for export only, and many peasants have to abandon their land and culture or face harsh consequences. This market liberalism of this "trickle down" has been far from liberal to the poor, yet many argue today for increased "efficiency" in Third World economies, and an international "management of interdependence" -- along with a few attempts to correct some inequities. This amounts to an acceptance of the present economic order, a making the best of such opportunities as arise.³⁰

Coercive dissociation, on the other hand,

is characterized by a centralized system of government, an economic policy directed by a small number of persons, aimed at the elimination of existing linkages with the international economy as well as a profound internal reorganization of ... production and ownership, but carried out in rejection of general political participation,

without the normal guarantees of the rule of law...³¹

This autochthony has meant slightly larger slices for the poor and powerless, but the pie remains desperately small or gets even smaller. A "vanguard" party or (more commonly in recent years) military faction does have perspectives which differ from the common people's perspective on some things, but this elite can hardly be said to have a more "advanced consciousness."³² As Reginald Green argues, a Marxian call for centralized national revolutions, so as to permit changes in Third World peripheries, is no less arrogant, Eurocentric and neo-colonial than its bourgeois counterpart; to ignore the constraints on the transition to socialism posed by limited production resources in the Third World (the "base") is to revert from materialism to idealism.³³

The Cold War of the 1950's and 1960's, now making a comeback, obscured such higher ideals as development and human rights, and fostered macro-economic growth policies and assertions of a political sovereignty at the expense of other aspects of self-determination. External threats and superpower rivalries are exaggerated, in an attempt to hide failings in domestic and international policies. Strategies of dissociation and submission alike share a coercive character and the denial of political participation. Under them, ruling elites experience grave difficulties while forcing their conception of development on the populace; governments propose but the people dispose (as Antony Allott says somewhere), such as by grumbling and turning in a mediocre economic performance. Self-realization, the essence of a right to development variously defined, cannot be attained by the Invisible Hand - especially when there are thumbs on the scale -- or by following in the wake of another's (secular) consciousness.³⁴

B. The Soft State and Another Development

Jim Paul notes that, "irrespective of official ideology, the power of the state over prices and incomes, communications, land, tools and technology, educational, health and agricultural services, nutrition and housing is very broad."³⁵ How, then, can we speak of Myrdal's "soft state," which is admittedly far from soft on the poor and powerless?³⁶ The answer is that the state and its bureaucracy may be strong compared to many other organized elements in society, yet weak in terms of its ability to provide the services demanded by increasingly urbanized and sophisticated publics. A major reason for low levels of governmental legitimacy, and hence for political instability in the Third World, is that politicians have little long-term bargaining power. Bargaining presupposes a state strong enough to provide the public with services that will be bartered for public loyalty. The main political purpose behind successful bargaining is augmenting the state's "penetration," that is, extending state authority into satraps of urban opposition and the vast rural "outback." Penetration increases tax collections and

chances that government will be obeyed in other respects. But the instability of the zero-sum political game means that the royal road to the strong state is frequently blocked in the Third World. Bureaucrats cannot gain power as a group and at the expense of the public rather than of senior politicians or each other.³⁷

In all countries, the public evaluates the legitimacy of a particular segment of the bureaucracy on the basis of gains and losses flowing from its programs, as well as on general notions of administrative fairness and competence. Commonly in the Third World, the public's contacts with a bureaucracy perceived as venal and parasitic (in the sense that it consumes much more than it produces) almost always lead to harm rather than benefit. Administrative programs are new and constantly uprooted. Bureaucrats behave like unspecialised courtiers arrayed in concentric circles around a "throne;" staff-and-line hierarchies and notions of a legal-rational legitimacy prove all but irrelevant in practice. Rapid-fire personnel transfers frustrate the formation of cliques which endanger political stability, and also frustrate consistent policy implementation, the development of expertise, and the kinds of organizational loyalty that constitute legitimacy within a bureaucracy.³⁸

This perpetuation of soft states in the Third World, and an unwillingness and inability to implement development and human rights efforts from the top downwards, have led some theorists to suggest alternative development approaches, to Another Development.³⁹ These "bottom-up" strategies are deeply anarchistic,⁴⁰ in that they seek to circumvent the state and to manipulate gaps or weak points in state power through a self-managed mobilization and organization of the poor. These strategies appeal to those pragmatic perpetuators of anarchism, peasants who have not become too demoralized, Westernised or collectivised. Some local autonomy in development efforts is obviously needed to take advantage of traditional practices, and to counter the top heaviness and coerciveness of policies of a submission or a dissociation. Advocates of Another Development are clearly correct when they argue, in effect, that the economic surplus cannot be captured by the poor and powerless for their own purposes unless the "political surplus" is abolished or redistributed, at least at the local level. But, like anarchism and many other valuable doctrines of social reconstruction, Another Development flounders at the point of actually dismantling or restructuring the power of a state which bristles at the slightest derogation of its privileges. Indeed, to succeed in this effort is to become the problem: a revolutionary state which cannot advance political development or avoid repression in the face of elitist enemies -- as Ukrainian and Catalonian anarchists (and American followers of Cesar Chavez) found out. Again like anarchism, Another Development has not yet devised alternative ways to organize mass consumption and production, by large-scale industries needing a central direction. A rather romantic, backward-looking society of artisans and peasants seems to be what theorists of Another Development, and anarchism, have in mind. Another Development may thus

foster the effective pursuit of development by particular groups yet leave untouched the equally important right of all to live in a developing society.⁴¹

Many of the ambiguities in the Another Development approach are highlighted when the role of law gets discussed. Yash Ghai offers a useful introduction:

During the colonial period there was a series of protest movements which sought to set up their own alternative institutions based, unlike those of the colonial regime, on wide participation and democratic practices. They pursued political, economic and social welfare objectives, seeking a high degree of self-reliance and autonomy. In both their political and economic aims they were perceived to run counter to the policies of the colonial state, and were thus harassed and suppressed. In such a situation, it may be possible to use the law to challenge the oppressive action of the authorities -- often possible because of the contradictions of the liberal legal order (or the ideology and to some extent the rules of which the colonial state, despite its authoritarianism, partakes). The strategy of turning the law of a state against itself can operate, however, only in a very restricted way.⁴²

In "a very restricted way" should be underlined, when we evaluate these strategies as potential means for implementing the human right to development. Ever since the end of formal colonialism, "the liberal legal order" has very much receded and been replaced by an authoritarianism in and beyond law. Much of governance is carried out under what is a martial law in substance, and often in name as well. Laws and decisions resembling military orders (a congenial state of affairs for the many military regimes, of course) are specific yet far from precise, and they have no necessary connection one to another. It is as though more law automatically signifies more order. So chaotic a body of rules leaves unchecked a significant perpetuator of underdevelopment: incoherent and arbitrary political and administrative decisions. Action is inescapably demanded without formal legal authorization, and legally-mandated acts are ignored for reasons of inertia or political convenience. Cynicism and indifference toward law as a means of control or change breed among politicians, bureaucrats, and the public, all of whom see yawning gaps between law and practice.⁴³

These gaps can be exploited under strategies of Another Development only to a very limited extent; the gaps are quickly filled by new laws, administrative action or the barrel of a gun wielded with few

compunctions by a regime perceiving itself under threat. The odds are always strongly against a victory had by invoking normal procedures in a legal system strongly biased against the poor, while appearing before a compromised judiciary during what frequently seem to be states of emergency. We should not jump to the conclusion that legal advocates of Another Development know better than the people they would serve: "It is common knowledge that the majority of Kenyan citizens [for example] want nothing to do with official law."⁴⁴ In any event, there is "little doubt" that the human rights tradition is more consistent with "top-heavy" development strategies, where rights and duties can be defined more easily and enforced more readily.⁴⁵

II. THE QUEST FOR AN INTERNATIONAL CONSENSUS

The international whole is, unfortunately, no greater than the sum of its parts; the incoherence, cynicism and indifference described above - shorn of some authoritarian trappings - also characterises the underdeveloped international legal system. The international "state" is so weak that Max Weber's legal-rational legitimacy can seldom be discerned. Leaders contest for control over definitions of concepts perceived as crucial to shaping the future, and there are thus no agreed-on definition of rights and duties, implementation strategies, or even topics for research. This is especially so for the collective ("third generation") rights embodied in Covenants which many states have yet to ratify: rights to development, self-determination, peace, and a safe environment. The right to development reflects an ongoing movement away from a passive co-existence under international law, and towards an active cooperation. The formal equality of states in their economic dealings, and "neutral" rules and procedures for resolving disputes, are being further eroded by those who feel the urgency of this right.⁴⁶ The opinion of Rene-Jean Dupuy in the Texaco/Libya arbitration⁴⁷ reflects the tensions that have resulted: Article 2 of the Economic Charter⁴⁸ "must be analyzed as a political, rather than as a legal, declaration concerned with the ideological strategy of development and, as such, supported only by non-industrialized states." The reality of relations between states is that solidarity remains a myth and "the egoism of national interest predominates."⁴⁹ Even so, a human rights violation is no longer so consistently a victimless international crime. Individuals can sometimes gain an audience, if not a remedy, for claims which were purely internal matters until very recently.⁵⁰

A. The Problem Sketched

Some experts, such as Peter Mutharika, find the international law of development to consist largely of bilateral and multilateral agreements and investment transaction formats; others, such as Abi-Saab, stress

emerging principles of entitlement based on need, new standards of compensation for expropriation, and North-South negotiation and consultation procedures.⁵¹ Both views are correct, since each validly describes a lex specialis. George Schwarzenberger calls these "international quasi-orders," which exist alongside such ideological or utopian international pseudo-orders as laissez-faire liberalism, Marxian world revolution⁵² and, presumably, the right to development. Despite universalist aspirations, none of these orders can become the order. This is because of deep disagreements over the content and consequences of rights. To summarize briefly, political and civil ("first generation") rights have Stoic, Christian, and Roman law roots, but are usually traced to American and French revolutionary pronouncements. "Second generation" economic and social rights are grounded in a very different tradition begun with the Russian Revolution. The "third generation" of, for example, the right to development is a de novo product of the ongoing experience of decolonialization.⁵³

Each of these three sets of rights forms a successively-overlapping layer, without much depth or interpenetration, imposed on a rather reluctant international "consciousness." Each has its own covenants and resolutions, and its own, frequently self-satisfied, sloganeers. Demands for particular rights, and claims that they have been fulfilled, arise in diverse and shifting ideological and socio-economic contexts. Clearly, no progress can be made at the international level unless there are legitimate ways to compare Haiti's human rights performance with Cuba's, or Nicaragua's with El Salvador's. How can this be done? The best (but nevertheless imperfect) answer is that evaluations should encompass all commonly-asserted rights -- a conflation of the Covenants, if you will -- particularly American-style "negative rights enforced by regularized grievance procedures" and Soviet-style "positive rights implemented by a system of administrative support."⁵⁴ In the end, evaluations can attain an ideological neutrality only if everyone's ox gets gored, if each theory of rights is admitted as a partly valid insight.⁵⁵

B. Exercises in Consensus-Building

Initially, the right to development requires us to consider the performance of politics in the Third World. The widely-respected criteria elaborated in Gunnar Myrdal's Asian Drama⁵⁶ can hardly be improved upon for this purpose. But thoughtful criteria suggested by Barrington Moore's Reflections on the Cause of Human Misery⁵⁷ are even more useful, when evaluations are expanded to include countries in the First and Second Worlds. Moore's criteria differ from those associated with the human right to development in one crucial respect: instead of struggling with conflict-provoking definitions of social justice, Moore proceeds to define injustices -- concepts around which a consensus almost seems to form by itself. This is because it "is easier to condemn particular practices as unjust than to produce an articulate and

convincing concept of the just."⁵⁸ Gut reactions can be taken into account, yet the sense of injustice -- reactions to painful experiences without justification -- is fairly objective and universal: "The experience of living in society produces in human beings a distinction between legitimate and illegitimate authority."⁵⁹ Victims "generally resent what is done to them and ... would rarely concede that, because such behavior is common in their country, their tormentors are acting quite properly."⁶⁰ In particular, there is a tendency to self-defense against arbitrary abuses of authority, to compel authorities to listen to grievances arising when expectations are violated, and to remove, sometimes violently, institutional obstacles to social justice.⁶¹

While they may quarrel over human rights definitions, people everywhere are almost uniformly scandalized and their passions aroused when a government exacerbates or does nothing to ameliorate human miseries. Moore generalises these miseries, "hardly ever really enjoyed" for their own sake, into four species or categories of roughly equal importance: poverty, hunger and disease; oppressive socio-economic relations; governmental persecution for dissident beliefs; and war, in both its conventional and guerrilla forms.⁶² I argue that a broad consensus would most easily form around a human right to development defined as the progressive amelioration of these miseries. This definition seems to convert negative rights into positive rights, and vice versa, a possibly useful way to "shake up" a debate long grown stale. Under Moore's criteria, the legal essence of liberal democracy, the Rule of Law as traditionally defined, prefers freedom from governmental persecution to the amelioration of poverty, hunger, disease, and oppressive socio-economic relations.⁶³ A Marxian socialist legality reverses these preferences while asserting a series of what are largely non-justiciable rights.⁶⁴ Advocates of the human right to development can properly gore the oxen of both sides evenhandedly: "Freedom of speech without social justice may become freedom to die from hunger. Material satisfaction without freedom of expression and creative innovation may result in spiritual starvation or death in a welfare prison."⁶⁵

The progressive amelioration of Moore's species of misery is a viable goal (difficult but far from impossible to achieve) to set for regimes, if they are assisted by a saner international order. It would require that everybody be more creative economically, however. Many rights advocates seem to have something like this in mind: "a drift ... toward an international welfare state"⁶⁶ where richer people and states help the poorer, under a synthesis of some elements from the radical critique of existing development efforts and of liberals' views of world economy. A few words of caution are in order; we know that few of even the prosperous states are organized to fulfill basic needs properly, and that European states attempting to combine the best of liberal democratic and socialist models sometimes (at least) wind up with the worst of both worlds. No state has yet meaningfully and consistently implemented welfare "rights." What has happened is that the public exchanged

individual political rights, perceived as often illusory or irrelevant, for the individual (and a few group) economic rights that usually turn out to be equally illusory. This is not development, and the only things certain to happen are that "welfare" states will get stronger and assert their own, bureaucratic, interests more effectively. In any event, it seems unlikely that international bureaucracy could ever become an efficient and effective Earth Mother, holding the cornucopia of her "socialised" people. On an international "dole," underdeveloped countries could expect the same kind of second-class legal citizenship experienced by domestic welfare recipients, a denial of equal protection by laws reifying inequalities.⁶⁷

What the human right to development (the amelioration of Moore's miseries) thus seems to require is the fostering of social democracies, properly defined⁶⁸ to circumvent the welfare state problems sketched above. Such a strategy might command an international consensus, after an adroit and lengthy sales effort. The constraints on ameliorating the Third World underdevelopment described above⁶⁹ are the same as those constraining further development, movement toward genuine social democracy, in the First and Second worlds: a paucity of economic and other resources needed to support and enforce a socio-economic equalisation and genuine welfare measures, a failure of will among leaders preoccupied with their short-term political survival, and a bureaucracy manifestly incapable of assuming additional "service" tasks efficiently and effectively.⁷⁰ Seeking change of such magnitudes would amount to attempting a grand, new social contract in each country, to replace Locke's theoretical construct. Such an attempt failed under Britain's Wilson/Callaghan Government, and failed again under postulates of the new Social Democratic Party. But this does not mean that more imaginative and competent attempts would not succeed, perhaps with negotiations and guarantees undertaken by the international community. Even then, problems would remain. No legal regime (liberal, socialist or social democratic) has succeeded in eliminating public apathy, the subtler forms of a petty despotism, or the fissiparous tendencies that supply the temptations to terrorism and guerrilla war. All systems fail to deal creatively with the dilemma apparent in, for example, race relations and welfare debates in the West; the "private" goals of liberty and the "collectivist" goals of equality seem mutually exclusive at many junctures.⁷¹

A pragmatic way around this dilemma, as old as philosophy itself, and around my rather utopian advocacy of a strict social democracy, is to conclude that, as many polities have made little or no progress in ameliorating any of Moore's categories of misery, their citizens have little to lose. We should thus applaud progress towards eliminating any one category.⁷² This is a useful way to proceed, to allow for national divergences of ideologies and economic policies in areas where consensus is most difficult to achieve, once we dispose of a caveat which usually proves specious. Progress towards eliminating any species of misery is frequently asserted to have its opportunity costs, particularly the loss

of liberty to gain more equality. Violations are then rationalized by labelling human rights notions as "Western," "socialist" or "colonial," depending on which ideological aversion is practiced. A reluctance to condemn even gross and persistent violations by countries in your own region follows, lest you be condemned in return.⁷³ Given the international dissensus over rights, there was no good rebuttal to this strategy, until the human right to development came along. As an effort by "them" to judge "us" from a Third World perspective, the human right to development invites "us" to judge "them" in return; a country is in an awkward position when soliciting foreign help while at the same time rejecting foreign models.

It is now more difficult for a leader to relegate foreign complaints about his or her rights violations to the ash-heap of a cultural or moral imperialism. (This is really an invitation to adopt the seemingly-enlightened and tolerant relativism of an armchair anthropologist, an invitation to mask one's feelings of moral/cultural superiority by failing to object to rights violations.) The single most valuable facet of the conflated human right to development is that it reduces what is frequently a specious justification and a false dichotomy to its true proportions: it is no longer necessary, and frequently no longer possible, to choose between human rights and development.⁷⁴ The way a former Senator from the Philippines deals with the matter is worth quoting at length:

Two justifications for authoritarianism in Asian developing countries are currently fashionable.

One is that Asian societies are authoritarian and paternalistic and so need governments that are also authoritarian and paternalistic; that Asia's hungry masses are too concerned with providing their families with food, clothing, and shelter, to concern themselves with civil liberties and political freedoms; that the Asian conception of freedom differs from that of the West; that, in short, Asians are not fit for democracy.

Another is that developing countries must sacrifice freedom temporarily to achieve the rapid economic development that their exploding populations and rising expectations demand; that in short, government must be authoritarian to promote development.

The first justification is racist nonsense. The second is a lie: authoritarianism is not needed for developing; it is needed to perpetuate the status quo.⁷⁵

To elaborate on the Senator's last point, the right to development makes it easier to distinguish "reason of state" justifications⁷⁶ (bolstered by natural law rationalizations for many centuries) from the evanescent and more capricious justifications of the ruler of the moment. Taking the trouble to rebut justifications is an extremely important task for, as H.L.A. Hart tells us, any society using the idea of rights (having signed on for the human right to development, for example) also recognizes justifications for violating those rights. David Sidorsky offers a telling illustration: Persons "employed as guards in an unjust system ... understand ..., as do their employers, that they have a moral right to extra pay for overtime if it had been promised them."⁷⁷ The pragmatic question then becomes how guards' and employers' perceptions can be changed, how the guard's sense of injustice can be expanded into a reflection on the prisoner's plight in a little more just, unjust prison. This amounts to forcing an examination of which considerations count as justifications for rights violations. By disposing of many such considerations, the right to development has altered the burden of proof⁷⁸ -- a favorite lawyers' concept -- on rights violations. If, for example, we are told that "You must break eggs to make an omelette," the right to development makes us feel more entitled to ask: "Why is that metaphor relevant?" and "Show us the omelette, if you really did make it. What's so good about it?"⁷⁹

We have come a long way towards a conceptual consensus. If (as Barrington Moore notes) factual evidence and logic about rights are sound, the moral starting point plays a minor role and can even be reversed: "if the general arguments are correct, presumably anyone who wished to increase human suffering would find the discussion pertinent."⁸⁰ The "general arguments" are now pretty clear:

No persuasive evidence has been advanced that basic civil and political rights need to be derogated or sacrificed to meet essential human needs. The concept that economic growth is the indispensable prerequisite to political and civil rights has not been borne out in practice. Governments that ruthlessly suppress ... rights, even on the pretext of achieving some economic purpose, are seldom predisposed at a later date to restore these same rights. ... Injustice feeds on injustice⁸¹

If independent observers place the burden of proof on leaders who argue that it is necessary and effective to abridge one category of (misery-ameliorating) rights to expand those in another category, few politicians in the Third World or elsewhere could satisfy this burden.⁸² There are a few loose ends to this argument,⁸³ but great progress could be made by giving this burden of proof a practical significance and by coercing the more extreme deviants.

III. A PRAGMATIC WAY FORWARD

The human right to development teaches that the only way to resolve the liberty/equality dilemma is through development: the upward movement of the whole society along the lines described by Myrdal, including fairly rapid reductions of the percentages in the most disadvantaged categories.⁸⁴ We know that such a policy is fiendishly difficult to devise and implement, but isn't it open to the more fundamental objection that politicians and bureaucrats have too few incentives to even attempt it? The answer is no, if we focus on the enlightened self-interest of politicians and bureaucrats. Admittedly, their altruism is often limited, and their self-interest is frequently narrow and occupies short time horizons, reflecting limited capacities as well as an understandable desire for survival in office. The maintenance of an order backed by threats (the traditional concern of positivism in an underdeveloped jurisprudence) is perceived to be of such overwhelming importance that a genuine effort is required to stand back from day-to-day preoccupations, in order to ponder the longer-term policies associated with the human right to development. Paradoxically, a regime strong and stable enough to ensure a leader's survival in office in at least the short run, the capacity to deal with the most pressing of crises, is the first step (but no more than that) to the right to development. Prudence and moderation will then replace overreaction progressively, as (sane) politicians become more and more preoccupied with the longer-term survival of their regime and with their place in history.⁸⁵

A. Domestic Pragmatism

The hard fact is that progress toward the human right to development presupposes a certain level of political development; the Amins and Pol Pots can be overthrown but not otherwise made to conform with humane international standards. Even after this level is achieved, a certain amount of backsliding -- smart people making stupid policies -- will occur as leaders react to misperceived threats and advantages. I have stressed the effects that perceptions have on policy⁸⁶ because perceptions can be changed over time, through a patient educational process. This process would include strategic doses of coercion, if necessary and available. Many non-governmental organizations (NGOs), such as the Argentinian Center for Legal and Social Studies formed by lawyers and families of "disappeared" persons and the Consumer Association of Penang (Malaysia), attempt to educate politicians, bureaucrats and the public in this fashion.⁸⁷ These efforts also progress at the international level, and strong international federations of NGO's would further these efforts markedly.⁸⁸ Withdrawals of support and the threat of rebellion by publics made aware of "their" rights reinforce these teachings, among politicians who have something to lose. As a black American Abolitionist, Frederick Douglass, argued in 1857, "power concedes nothing without a demand Find out just what

people will submit to and you have found the exact amount of injustice and wrong which will be imposed on them⁸⁹

Twentieth century politics is characterized by, above all else, numerous demands made by elites (and other segments of the public), which are often backed by threats. Politicians and bureaucrats aware of their self-interest will seek to grant as many of these demands as the level of development permits, perhaps in a cynically manipulative fashion. This will occur unless the use of naked coercion by the regime's opponents "so severely undermines ... the authority of the regime itself that it is difficult ... to change policy in response to such tactics without compromising their [the rulers'] position entirely."⁹⁰ If rulers perceive the polity to be strong and stable enough to cope with these threats, as they perceive them, elite and public demands will be granted. This serves to align the "is" and "ought" of human rights through a dialectical process: the daily exercise of power in ways designed to legitimate, and thus to strengthen, that power.⁹¹

It is at this point, ensuring that demands for the right to development are made and heard, that Another Development strategies can play a crucial role by offering a voice to the voiceless. Along lines described by Paulo Friere, a self-taught awareness of basic needs can lead to the mobilization of the poor and powerless that often results in confrontation and struggle. As Richard Falk puts it: "It is the world's dissidents, the resistance movements, and the human rights actors, especially those independent of state power, that are creating possibilities for change and the basis for hope."⁹² Unfortunately, a conceptual and political gap opens up: isolated demands and their satisfaction are not institutionalized for the whole society's benefit; independent initiatives do not add up to a macro force for change. Such a force would inevitably display a centralising tendency frightening to grass-roots movements, which are frequently content with their small-scale progress.⁹³ I would argue that this gap can be partly filled by utilising the concept of legitimacy, the importance of which is stressed in this article.⁹⁴ If pursuing the right to development becomes pivotal to a regime's legitimacy, a backsliding toward underdevelopment can be retarded -- ultimately in the interests of the rulers as well as the ruled.⁹⁵ An illustration is given below.⁹⁶

B. An International Pragmatism

There seems to be a clear moral in all of this for international law and policy. More specific and forceful, and more ideologically neutral, descriptions of what the right to development "ought" to entail in a particular country are indeed possible. Such criteria should be based upon more thorough determinations of what that situation actually "is," and extensively informed by careful assessments of what "can" be done to

improve development prospects.⁹⁷ A programmatic yet realistic policy should be the aim, one which is the best attainable under existing and reasonably foreseeable levels of development in a country -- but no more demanding than that. Such an aim might serve to excuse marginal violations by petty despots, but the need to avoid the frustrations of attempting to attain a too-demanding standard is a more compelling policy consideration. Success will ultimately turn on the degree of commitment to a sensible development strategy rather than on the level of development currently obtaining, once a country has reached the threshold where pursuit of the right to development becomes possible. Nothing very elaborate should be attempted; the obligations generated by a few critical rights -- to food, work and health care, for example -- should be identified, along with more difficult determinations of who is responsible for meeting these obligations nationally and internationally. The international community should then carefully monitor performance under these criteria, and act on trends toward or away from the right to development.⁹⁸

Non-governmental organizations, such as Amnesty International, the International Commission of Jurists, and Partnership for Productivity, are ideally suited to act as monitors. These NGO's have managed to avoid the bureaucratisation and politicisation of U.N. agencies. While I have argued that the focal point of activity must be the nation-state, international NGO watchdogs can supplement efforts there from a broader base, educating politicians' self-interested choices and engaging in a planning to advance rights rather than merely responding to violations with an inspired ad hoc-ery. NGOs can promote grass-roots organizations more freely than can U.N. agencies. Details of what is happening in an unaccessible outback, and of how national legal systems are actually functioning, can be (and are) collected and passed along in an expanded NGO network, along with descriptions of workable strategies. NGOs could even mediate between nations and between a nation and U.N. organs, so as to realize small gains from the human right to development quickly and in the most urgent areas. These tasks would require a greatly increased funding for NGOs, of course, but it would be money best spent.⁹⁹ The whole effort would be one of taking rights seriously in the literal sense, of taking constitutions, five-year plans, political speeches, etc. at face value, and thus trying to make rhetoric over into reality. This is the relatively unobjectionable strategy of trying to make a regime's legitimacy turn on criteria it has itself selected.

There is also a darker side to international efforts. While the right to development (more precisely, the NIEO) holds out the promise that more of the economic surplus will accumulate in Third World countries,¹⁰⁰ pragmatists caution that this would require the redistribution of an international "political surplus". This requires reductions in the duelling by muscle-bound economic royalists that is a chronic cause of political instability and of wasteful military expenditures. A friendly bargaining for First and Second World support of the right to development would require a lessening of North-South and

East-West tensions. Barring this rather unlikely eventuality, domestic and international NGO efforts will dominate. The U.N. should nevertheless try to come up with new rules of the game, designed to limit bad faith bargaining tactics and to ensure a more reliable fulfilling of expectations. As things stand internationally, Third World countries are left to capitalise on what are largely negative (non-developmental) resources: dependency, demography, threats to acquire nuclear weapons, withdrawal of purchasing power, and menacing with revolution or counter-revolution. There is some room to maneuver, for developed countries have the power but are increasingly unable to guarantee order; the room is limited, however, by the challengers' lack of the power to create the New Order by themselves.¹⁰¹

Can we cheer ourselves with the thought that this unpromising material holds the reasonable prospect of an international political development, guided by law? Yes, perhaps; international law does develop in response to need, and the need for something like the right to development is growing more painfully obvious to increasing numbers of leaders. Much more work is needed than is commonly imagined, however. Conceptual troubles have been stored up, as a result of the tendencies to equate a diffuse human dignity with human rights, to equate declarations of the impermissibility of violations with the concrete exercise of rights, and for a rhetorical ethics to run so far ahead of anemic legal rules as to lose touch with concrete international processes. Politically, the risks of this development as a human rite are confusion and the dilution of rights already recognized.¹⁰² These tendencies are not completely new: Roland Pennock¹⁰³ notes that Article 25 of the 1948 Universal Declaration¹⁰⁴ stated that "everyone has the right to a standard of living adequate for the health and well-being of himself and his family." This "well-being" is so vague a right as to be indistinguishable from an interest.

Philip Alston¹⁰⁵ finds the essence of the 1979 Secretary-General's Report¹⁰⁶ to be such optimistically vague ethical themes as justice, fairness, solidarity, interdependence, reparation for past exploitation, and the maintenance of peace. These kinds of precepts have been termed pré-droit, para-droit, péri-droit and the normes sauvages that some wish to annihilate and others to domesticate. Continuing in a French law vein, we might more charitably but legitimately describe documents dealing with the right to development as "organic laws" -- the effect of which depends upon more specific statutes. Such statutes would remedy a lex imperfecta by imposing concrete duties on particular parties, duties correlative to the rights which are being created. Important sources of these duties would be the duties laid on rulers and individuals by the customs, scriptures, etc. of many societies, duties which have not hitherto been correlated with the particular rights of particular parties.¹⁰⁷ Sohn describes the lengthy procedures involved:

As it happened in the United States and many other countries, vague constitutional precepts have been

translated by general agreement of states into more detailed principles, which, because of their higher precision, impart a more definite character to the whole international legal order. At the same time, the limits of autointerpretation are narrowed¹⁰⁸

Autointerpretation is the legal form of the international political underdevelopment that can be expected to retard this process substantially, although we are rather optimistically told that domestic jurisdiction is a residual concept or another way of saying that international law does not apply.¹⁰⁹ It is certainly true that: "Sovereignty may be a shield against officious external meddling; it was not fashioned to be a sword against a nation's own people."¹¹⁰ But that is frequently its use, a use dictated by a domestic political underdevelopment. D'Amato thus expresses the reality of jurisdiction and implies the hope of effective action: "The human rights violator is, like the pirate, hostis humani generis, an enemy of all mankind, and jurisdiction to punish his violations is universal."¹¹¹ If punishment were to become a reality, the likes of Amin, Samozza, and the Shah might be deterred by lack of a subsequent place to hide.

C. Academics' Roles

The right to development has been taken up by a "movement" with radically new priorities and programmes. The movers have been politicians, a few bureaucrats, and, above all, the activists who are frequently dissidents in their own countries. But academics qua academics also have important roles to play, in devising badly-needed theories of the right to development. As soon as efforts go beyond the promulgation of vague covenants and resolutions, the tendency is to use a praxis which is nominally based on Third World needs but which draws inspiration from the Eurocentric radical traditions that are frequently irrelevant to those needs. For example, this praxis is sometimes associated with a "struggle jurisprudence." Struggle is vital to advancing the right to development, but it has its limitations for the poor and powerless who frequently lose the "struggle" as means to the ends of others. This is precisely the outcome that the right to development seeks to avoid. A right to development praxis has run so far ahead of meagre philosophical foundations, and even of a sense of direction, that a floundering about is increasingly evident. Theory has hitherto consisted of a simple summation of particular theories of rights and of development, without adequate attention to contradictions or efforts to make the right to development greater than the sum of these parts.¹¹² This article is perhaps the best evidence of such a tendency, the result of making do with the best I could find.

Activists are said to be too busy to reflect upon theory. While

academics have the time to reflect, they also tend to become passive in the company of activists and reluctant to question the assumptions underlying human rights. Such a questioning should now go forward; increased consensus would, in fact, result if political arguments could be converted into an intellectual dialogue, into ideas and ideals with the power to move people. Behind all claims to rights are beliefs about the nature of persons, groups, markets and governments. These beliefs have yet to be rigorously described and defended for the right to development, so as to provide a sense of direction and to rebut justifications for rights violations effectively.¹¹³ I have offered descriptions which build upon Barrington Moore's species of human misery;¹¹⁴ other formulations are clearly possible. Different sets of entitlements for each society could be elaborated along lines suggested by John Rawls' Theory of Justice,¹¹⁵ divested of its many Americanisms. If this is thought too paternalistic, entitlements can be defined by local people themselves, under elaborated canons of Another Development. Beyond a justifying of rights to their would-be violators -- as essential to their political well-being -- the most important task is to give these precepts a legal legitimacy. Lawyers are certainly needed as right-to-development advocates, educators, mobilizers, planners, and law reformers. But their most important tasks at present are to be critics of the right to development and creators of its (pragmatic) jurisprudential framework.¹¹⁶ Jose Zalaquett has devised useful lists of many of the components necessary to such a theory.¹¹⁷

Most of the answers to questions about the right to development can be found by students of comparative law and politics. Much could be learned

from case studies comparing countries in which large-scale violations of human rights take place with countries with similar economic and social conditions where such violations do not occur. While the causes for oppression and tyranny are often clear for all to see, it is equally clear that those very conditions sometimes do not produce comparable results in other countries.¹¹⁸

What precise effect do different economic policies have on political rights, and vice versa, in various countries -- a subject on which much nonsense has been written and more spoken? Why do coups occur in some countries, and not in others which seem to face similar conditions? What are the roots of political violence, and why do different people and different societies react to violence in such seemingly-different ways? How have countries fared under different degrees of integration into the international economy? What makes for a self-realization in different societies, and why does it so often seem to escape the people and the more developed societies pursuing it? Above all, what, if anything, serves to legitimate (help to stabilize and strengthen) a polity, and how can this be manipulated to accommodate the right to development? The aim

would be to correatate rights with national circumstances, and to predict what changes will accompany changed circumstances. In this way, constraints on the right to development and feasible policy choices could be identified.¹¹⁹

* * * * *

These are very large questions for a research agenda, but no larger than the topic seems to require. A domestic or international "constitutional law is mainly juristic theories of politics and economics,"¹²⁰ so it is essential for lawyers to get their theories exactly right while attempting to constitute the right to development. Development as a human rite is so depressing a prospect¹²¹ in the face of so much promise that an uplifting conclusion from Andrei Sakharov seems appropriate:

The ideology of human rights is probably the only one which can be combined with such diverse ideologies as communism, social democracy, religion, technocracy, and those ideologies which may be described as national and indigenous. It can also serve as a foothold for those who do not wish to be aligned with theoretical intricacies and dogmas and who have tired of the abundance of ideologies, none of which have brought mankind a simple happiness.

The defense of human rights is a clear path, towards the unification of people in our turbulent world and a path toward the relief of suffering.¹²²

FOOTNOTES

1. Henkin, Human Rights, in Essays on Human Rights (ed. D. Sidorsky, 1979) 68, 74-76 [hereinafter Henkin I]; Sohn, "The International Law of Human Rights", 9 Hofstra L. Rev. (1981), 347, 349, [hereinafter Sohn I]. See State Department's Amicus Curiae Brief at 16 n. 34, Filartiga v. PenaIrala, 630 F. 2d 876 (2d Cir. 1980). The hearing of individual and group complaints by the Human Rights Commission is a "momentous step forward". Stark, Human Rights and International Law, in Human Rights (eds. E. Kamenka and A. Tay, 1978), 113, 120, 124-5 [hereinafter Stark]. But see Laquer, The Issue of Human Rights, in Essays on Human Rights, 5, 10 (hereinafter Laquer): "The Human Rights Commission is a totally irrelevant institution."
2. Ferencz, "The Future of Human Rights in International Jurisprudence", 10 Hofstra L. Rev. (1982), 379, 396 [hereinafter Ferencz]; Sohn I., supra note 1, at 347-48; Laquer, supra, n. 1.
3. "South of the Border", Manchester Guardian Weekly, Jan. 16, 1983, 10 at col. 3. Problems include an over-generalized human rights debate, and cycles of hope and disillusion. Falk, Responding to Severe Violations, in Enhancing Global Human Rights (eds. J. Dominquez, et al., 1979), 205, 210-11 [hereinafter Falk I].
4. In Independent Commission on International Development Issues, North-South: A Programme for Survival (1980). The Commission's longer-term goals have been crowded out by a more immediately urgent programme, chiefly concerned with the international financial system. See Alston, "Peace as a Human Right", 11 Bull. Peace Proposals (1980), 319, 321 [hereinafter Alston I]; Thomas, "Problems Postponed Only Worsen", Manchester Guardian Weekly, Feb. 20, 1983, 7 at col. 1 [hereinafter Thomas].
5. I. Horowitz, "Economic Equality as a Social Goal", 5 Policy Studies Review Annual (1981), 256 [hereinafter Horowitz]. See Club of Rome, The Limits to Growth (1974), Club of Rome, Mankind at the Turning Point (1975). See also F. Hirsch, Social Limits to Growth (1977); E. Schumacher, Small is Beautiful (1974).
6. But see also J. O'Brien, "Human Rights and Development Assistance" (an excellent discussion paper, presented to the 9th Windsor, Ontario Symposium on Law and Development, 24-26 Mar. 1983) [hereinafter J. O'Brien].
7. Perhaps the most widely-accepted formulation is in the Report of the Secretary General, Commission on Human Rights, Question of the Realization in All Countries ... E/CN.4/1334, 2 Jan. 1979. See also African Charter on Human and People's Rights, O.A.U. Doc. CAB/LEG./67/3/Rev. 3 (July 1981), Art. 22(1), reprinted in 21 Int. Legal Materials (1982), 59; M. Rahman, infra, note 24, at 2;

Lehning, infra, note 34, at 71. The origins of the human right to development can be traced to the ILO Constitution of 1946, annex II(a), at 24 (1969), and to the advocacy of Keba M'Baye; Sohn, "The New International Law", 32 Amer. U. L. Rev. 1, (1982), 52-53 [hereinafter Sohn II].

8. Mestdagh, The Right to Development, in Development, Human Rights and the Rule of Law (1981), 143, 152 [hereinafter Mestdagh].
9. See Henkin, supra note 1, at 69, 81; id. at 71; Bello, "Human Rights: The Rule of Law in Africa" 30 Int. and Comp. L.Q. (1981), 628, 636 [hereinafter Bello]; Brietzke, "Administrative Law and Development", 26 Howard L.J. (1983), 645 [hereinafter Brietzke]; Cox, "Ideologies and the New International Economic Order", 33 Int. Org. (1979), 258, 279 [hereinafter Cox]; J. O'Brien, supra, note 6, at 23-24; C. Okolie, International Law Perspectives of the Developing Countries (1978), 173 [hereinafter C. Okolie]; id. at 326 (quoted in note 14, infra); J. Zalaquett, International Human Rights Research (1983), II (Columbia Univ. Center for the Study of Human Rights) [hereinafter J. Zalaquett].
10. Alston, Development and the Rule of Law, in Development, Human Rights and the Rule of Law (1981), 31, 44 [hereinafter Alston II].
11. Ibid., at 44; Mestdagh, supra note 8, at 172, 174. See also G. Schwarzenberger, World Economic Order? (1970), 64, 67-69 [hereinafter G. Schwarzenberger]; Shue, Rights in the Light of Duties, in Human Rights and U.S. Foreign Policy (eds. P. Brown & D. MacLean, 1979), 65, 68 [hereinafter Shue].
12. Eide, "Choosing the Path to Development", 11 Bull. Peace Proposals (1980), 349, 359 [hereinafter Eide].
13. Quoted in J. O'Brien, supra note 6, at 6.
14. See McDougal and Chen, Introduction, 9 Hofstra L. Rev. (1981), 337, 343 [hereinafter McDougal & Chen].
15. Falk, "Some Thoughts on the Decline of International Law", 9 Hofstra L. Rev. (1981), 399, 408 [hereinafter Falk II]. See M. Lerner, Machiavelli and Machiavellism, in Ideas for an Ice Age (1974), 83, 93 [hereinafter M. Lerner]. Even the affluent countries are conscious of their vulnerability and dependence; Schachter, "The Evolving International Law of Development", 15 Col. J. Transnat'l L. (1976), 1, 12 [hereinafter Schachter].
16. See Falk I, supra note 3, at 212; Pennock, Rights, Natural Rights, Human Rights, in Nomos XXIII: Human Rights (J. Pennock and J. Chapman, eds. 1981) 1, 6 [hereinafter Pennock]; Sidorsky, Contemporary Reinterpretations of the Concept of Human Rights (D.

- Sidorsky, ed.) (1979), 88, 97, 102 [hereinafter Sidorsky]; D'Amato, "The Concept of Human Rights in International Law", 82 Col. L. Rev. (1982), 1110, 1111 [hereinafter D'Amato]; McDougal and Chen, supra note 10, at 341; Assembly Urges Promotion of Right to Development as Inalienable Rights, 19 U.N. Chron. (1982), 55, 55-56; notes 47-66, 72-79, 85-109, infra.
17. Paust, "Review," 56 N.Y. U. L. Rev. (1981), 227, 245 (reviewing M. McDougal, H. Lasswell & L. Chen, Human Rights & World Public Order (1980) [hereinafter Paust]. For an example of the kind of analysis criticized by Paust, see Nayar, "Human Rights and Economic Development: The Legal Foundations," 2 Universal Human Rights (July - Sept., 1980), 551.
 18. See Henkin, I, supra note 1, at 78; Scanlon, Human Rights as a Neutral Concern, in Human Rights & U.S. Foreign Policy (eds. P. Brown and D. MacLean, 1979), 83, 83-86, 89, 82 [hereinafter Scanlon]; Shue, supra note 11, at 78; Sidorsky, supra note 16 at 96-97; J. Zalaquett, supra note 9, at 13-14; Donnelly, "Human Rights & Human Dignity", 76 Am. Pol. Sci. Rev. 303, 308 (1982) [hereinafter Donnelly].
 19. Ramphal, in Development, Human Rights and the Rule of Law (1981), 9, 13, argues that, if people in the West were fully exposed to the horrors in South Africa, they would in revulsion demand the eradication of these horrors. But see Falk I, supra note 3, at 213; Scanlon, supra, note 18, at 92.
 20. See notes 54-83 and text accompanying, infra.
 21. Falk II, supra note 15 at 401.
 22. See, G. Marshall, Constitutional Theory (1971), 32; A. Miller, Democratic Dictatorship (1981), 97 [hereinafter A. Miller]; note 23, infra. But see also Donnelly, supra note 18, at 305.
 23. K. Boyle, et al., Law and State: The Case of Northern Ireland (1975), 55, passim; F. Castberg, Freedom of Speech in the West (1960), 411-18; C. McIlwain, Constitutionalism, Ancient and Modern (1947), 139-40 [hereinafter C. McIlwain]; J. Zalaquett, supra note 9, at 17. Compare McEldowney v. Forde (1969), 3 W.L.R. 179; Liversidge v. Anderson (1942) A.C. 206; Zadig v. Halliday (1917), A.C. 260 with United States v. O'Brien (1968), 391 U.S. 367; Barenblatt v. United States (1959), 360 U.S. 109; Dennis v. United States (1951), 341 U.S. 494; Korematsu v. United States (1944), 323 U.S. 214; Ex Parte Quirin (1942), 317 U.S. 1; Helvering v. Davis (1937), 301 U.S. 619; Home Bldg. and Loan Ass'n v. Blaisdell (1934), 290 U.S. 398; Schenck v. United States (1919), 249 U.S. 47; Halkin v. Helms (D.C. Cir. 1978), 598 F. 2d 1; United States v. The Progressive Inc. (D. Ct. Wis. 1979), 467 F. Supp. 990.

24. For the meaning of "Participation" in this context, see Dias, Realizing the Right to Development, in Development, Human Rights and the Rule of Law (1981), 187, 189. Summary of Discussions and Conclusions, ibid., 223, 228 [hereinafter Summary].
25. See G. Almond and G. Powell, Comparative Politics (2d. Ed. 1978), 68-69 [hereinafter G. Almond and G. Powell]; R. Dumont and M. Mozayer, Socialism and Development (1973), 330; S. Finer, Comparative Government (1970), 12-13 [hereinafter S. Finer]; J. Habermas, Legitimation Crisis (1976), 36 [hereinafter J. Habermas]; G. Heeger, The Politics of Underdevelopment (1974), 112 [hereinafter G. Heeger]; G. Lenski, Power and Privilege (1966), 45, 315; [hereinafter G. Lenski]; A. Miller, supra note 22 at 48; Shue, supra note 11; Sidorsky, supra note 16, at 92; Comparative Constitutional Law (eds. W. Murphy and J. Tanenhaus, 1977), 597, 646 [hereinafter Murphy and Tanenhaus]; Samuels, "The Economy as a System of Power and its Legal Bases", 27 U. Miami L. Rev. (1973), 261.
26. See G. Almond and G. Powell, supra note 25 at 13-16, 204; A. Bonadeo, Corruption, Conflict and Power in the Works and Times of Niccolo Machiavelli (1975), 125; R. Dahrendorf, Class and Class Conflict in Industrial Society (1959), 290 [hereinafter R. Dahrendorf]; J. Farrar, Introduction to Legal Method (1977), 10 [hereinafter J. Farrar]; S. Finer, supra note 25 at 29-30; L. Friedman, The Legal Process (1975), 112 [hereinafter L. Friedman]; Horowitz, supra note 5 at 261; Keohane, Claude de Seyssel and Sixteenth Century France, in Nomos XX: Constitutionalism (eds. J. Pennock and J. Chapman, 1979) 41, 48, 60, 68-69 [hereinafter Keohane]; C. McIlwain, supra note 23 at 70, 76-78; P. Merkl, Modern Comparative Politics (1970), 334-35, 466 [hereinafter P. Merkl]; G. Poggi, The Development of the Modern State (1978), 36-42, 53-55, 60-62, 79-84, 99-100 [hereinafter G. Poggi]; G. Sabine, A History of Political Thought (3d ed. 1961), 331-33, 344-45 [hereinafter G. Sabine]; R. Tucker, The Marxian Revolutionary Idea (1970), 85; Claude, "The Western Tradition of Human Rights in a Comparative Perspective", 14 Comp. Judicial Rev. (1977), 3, 13, 20 [hereinafter Claude].
27. See D. Apter, Ideology and Discontent, in Ideology and Discontent (1964), 15, 22; R. Dahrendorf, supra note 26 at 317; Esman, The Politics of Development Administration, in Approaches to Development (eds. J. Montgomery & W. Siffen, 1966); 59, 88; M. Lerner, supra, note 15, at 95; Levinson, Idea Systems in the Individual and in Society, in Explorations in Social Change (eds. G. Zollschon & W. Hirsch, 1964), 297, 299-302; J. Markakis, Ethiopia (1974), 208; G. Sabine, supra note 26 at 349; J. Zalaquett, supra note 9 at 8, 29, 33; Hazard, "The Common Core of Marxian Socialist Constitutions", 19 San Diego L. Rev. (1982), 297, 300 [hereinafter Hazard]; Lewis, "The Culture of Poverty",

Scientific American No. 219, Oct. 1966, at 19; Markovits, "Law or Order -- Constitutionalism in Eastern Europe", 34 Stan. Law Rev (1982), 513, 521 [hereinafter Markovits I]; I. Duchacek, Power Maps (1973), 4 [hereinafter I. Duchacek I].

28. Eide, supra note 12, at 353-58. See Galtung, What Kind of Development and What Kind of Law, in Development, Human Rights and the Rule of Law (1981), 121; A. Wildavsky, Speaking Truth to Power (1979), 144.
29. Eide, supra note 12 at 358.
30. See Chauchol, The Declaration of Human Rights and the Right to Development, in Development, Human Rights and the Rule of Law (1981), 109, 113; J. O'Brien, supra note 6 at 5; M. Rahman, The Rules and Significance of Participatory Organizations of the Rural Poor in Alternative Strategies of Rural Development (paper presented to the 8th Windsor, Ontario Symposium on Law and Development, 24-26 Mar. 1983), 1, 12 [hereinafter M. Rahman]; Cox, supra note 9 at 260-61, 280, 293; Eide, supra note 12 at 353-54.
31. Ibid at 358. See Schwab, "Human Rights in Ethiopia", 14 J. Mod. Af. Stud. (1975), 155.
32. M. Rahman, supra note 30 at 1-2.
33. Cox, supra note 9 at 290; ibid, at 292.
34. M. Rahman, supra note 30 at 4. See Galtung, supra note 28; Sidorsky, supra note 16, at 104; Alston I, supra note 4, at 320; Eide, supra note 12, at 359; Falk II, supra note 15, at 403.
35. Paul, Human Rights and Legal Development, in Human Rights Law and Practice (1978), 23, 30.
36. G. Myrdal, Asian Drama (abr. ed. 1977), 164 [hereinafter G. Myrdal]. But see also Falk I, supra note 3 at 247.
37. See G. Almond and G. Powell, supra note 25, at 402-15; J. Habermas, supra note 25, at 5, 8; O. Kirchheimer, Expertise and Politics in the Administration, in Politics, Law and Social Change (eds. F. Burin & K. Shell), 372; La Palombara, Penetration, in Crises and Sequences in Political Development (eds. L. Binder, et. al., 1968), 205; T. McCarthy, The Critical Theory of Jurgen Habermas (1978), 369-72; C. Macpherson, The Life and Times of Liberal Democracy (1977), 91; A. Miller, supra note 22 at 130, 134, 147; C. Wilber, The Soviet Model and Underdeveloped Countries (1969), 23; Claude, supra note 26, at 46; Giraud, "Judicial Review and Comparative Politics", 6 Hastings Const. L. Q. (1979), 1137, 1138, 1159; Klinghoffer, "Modernization and Political development in Africa," 11 J. Mod. Af. Stud (1973), 1, 14; note 84, infra.

38. G. Almond and G. Powell, supra note 25 at 205, 226; R. Dahrendorf, supra note 26 at 303; M. Janowitz, The Military in the Political Development of New Nations (1964), 2, 26-27, 77-78; A. Miller, supra note 22 at 8, 106, 143; G. Poggi, supra note 26 at 135-38; P. Self, Administrative Theories and Development (1972), 251; Brietzke, supra note 9; Claude, supra note 26, at 48-52.
39. See e.g. M. Rahman, supra note 30; Dag Hammarskjold Project on Development and Cooperation, What Now: Another Development (1975); Paul, "Introduction", 7 Rev. of Socialist L. (1981), 235.
40. See J. Joll, The Anarchists (1964) [hereinafter J. Joll]; Lehning, Anarchism, in 1 Dictionary of the History of Ideas (1973), 70 [hereinafter Lehning]; The Fontana Dictionary of Modern Thought (eds. A. Bullock & O. Stallybrass, 1977), 22-23 [hereinafter Fontana].
41. See C. Darch, Saddle Blankets Into Shrouds; Galtung, supra note 28, at 122-124; J. Joll, supra note 34, at 275-77; Fontana, supra note 34; Lehning, supra note 34, at 75; G. Orwell, Homage to Catalonia (1969); Donnelly, supra note 18, at 312; Sohn II, supra note 7, at 55; note 34, supra; notes 92-96 and text accompanying, infra.
42. Y. Ghai, State, Law and Participatory Institutions: The Papua New Guinea Experience (1981), 11 (7th Windsor, Ontario Law and Development Symposium paper).
43. See Lowenstein, Reflections on the Value of Constitutions in our Revolutionary Age, in Constitutions and Constitutional Trends Since World War II (ed. A. Zurcher, 1951); 191, 199; Brietzke, supra note 9; Markovitz I, supra note 27, at 525; Markovits, "Socialist vs. Bourgeois Rights -- on East-West German Comparison", 45 U. Chi. L. Rev. (1978), 612, 627 [hereinafter Markovits II].
44. Dias, supra note 24, at 193. See J. O'Brien, supra note 6, at 27; M. Rahman, supra note 30, at 16.
45. Galtung, supra note 28, at 126.
46. See R. Aron, Democracy and Totalitarianism (V. Ionescu, transl. 1969), 234; W. Friedmann, The Changing Structure of International Law (1964), 60 ff; Mesdagh, supra note 8, at 150, 160-161; J. Zalaquett, supra note 9, at vii, 6, 15, 19, 33; D'Amato, supra note 16, at 1115; Seidman, "Constitutions in Anglo phonic, Sub-Saharan Africa" (1969), Wis. L. Rev. 83, 116-17.
47. 17 Int. Legal Matl's (1978), 1, 30. See Henkin, supra note 1, at 73; note 108 and text accompanying, infra.
48. Charter of Economic Rights and Duties, G.A. Res. 3281 (xxix, 29 U.N. GAOR, Supp. (No. 31) 50, U.N. Doc. A/9631 (1974).

49. Summary, supra note 24, at 229.
50. See Henkin, I., supra note 1, at 72.
51. Laing, "International Economic Law and Public Order in the Age of Equality," 12 L. & Pol. in Int. Bus. (1980), 727, 745 [hereinafter Laing].
52. G. Schwarzenberger, supra note 11 at 4-5, 9. Ibid., at 64, 67-69; Laing, supra note 51, at 740-1; Schachter, supra note 15, at 2.
53. Kamenka, The Anatomy of an Idea, in Human Rights, (eds. E. Kamenka and A. Tay, 1978), 1, 6 [hereinafter Kamenka]; Klenig, Human Rights, Legal Rights and Social Change, in Human Rights 36, 45; Falk II, supra note 15, at 405; Sohn II, supra note 7, at 32-33; Marks, "Development and Human Rights", 8 Bull. Peace Proposals (1977), 236, 238 [hereinafter Marks]. The Western view has, of course changed substantially in the last fifteen years. Compare International Commission of Jurists, The Rule of Law and Human Rights (1966) with International Commission of Jurists, The Right to Development (1982). See also MacDermot, Opening of the Plenary Discussion, in Development, Human Rights and the Rule of Law (1981), 25.
54. Claude, supra note 26, at 8. See Schochet, Introduction, in Nomos XX: Constitutionalism (eds. J. Pennock and J. Chapman, 1979), 1, 7 [hereinafter Schochet]; Claude, at 44-45. See also Markovits II, supra note 43 at 612.
55. See Murphy, "Objections to Western Conceptions of Human Rights," 9 Hofstra L. Rev. (1981), 433, 443 [hereinafter Murphy].
56. Supra note 36, at 15, 27, 30-36, 364.
57. 2, passim (1972) [hereinafter B. Moore]. See Eide, supra note 12, at 350. See also Kamenka, supra note 53, at 6.
58. J. Farrar, supra note 26, at 20.
59. B. Moore, supra note 57, at 52-53.
60. Scanlon, supra note 1, at 88.
61. B. Moore, supra note 57, at 28; Paust, supra note 17, at 234.
62. B. Moore, supra note 57, at 2, passim.
63. See David, Introduction in 2(1) International Encyclopedia of Comparative Law (R. David, ed. 1975), 3, 7-8; O. Kirchheimer, The Rechtsstaat as Magic Wall, in Politics, Law and Social Change (eds.

F. Burin and K. Shell, 1969), 428, 429; Schochet, supra note 54 at 7; Claude, supra note 26 at 7, 22-23, 58; Markovits II, supra note 43 at 612; note 53, supra. See also Donnelly, supra note 18 at 311; Murphy, supra note 55 at 44.

64. The communist party-state addresses rights to the working class rather than to individuals, and the state acts in loco parentis; Markovits, I, supra note 27 at 521. See Ibid at 519-21; Markovits II, supra note 43, at 612; note 27 and text accompanying, supra. As in many Third World constitutions, evanescent policy pronouncements are paramount in community party-state constitutions. See Markovits II, at 627. See also R. David and J. Brierley, Major Legal Systems in the World Today (1968), 82, 158; Hoffheimer, "Law and Modernization in China", 7 Ga. J. Ind. and Comp. L. (1977), 515, 518; Markovits II, at 615-17, 631.
65. I. Duchacek, Rights and Liberties in the World Today (1973), 62 [hereinafter I. Duchacek II]. See Beitz, Human Rights and Social Justice, in Human Rights and U.S. Foreign Policy (eds. P. Brown and D. MacLean, 1979), 45, 51 [hereinafter Beitz]; Lehning, supra note 40, at 71.
66. Falk I, supra note 3, at 248. See Ramphal, supra note 19, at 21; Schachter, supra note 12, at 10.
67. See Falk I, supra note 3, at 241-42; Mestagh, supra note 8, at 152; Cox, supra note 9, at 275; notes 37-38 and text accompanying, supra.
68. For definitions of "Social Democracy", see: Fontana, supra note 40 at 579; Donnelly, supra note 18 at 314.
69. See notes 23-38, 43 and text accompanying, supra.
70. See J. Habermas, supra note 25, at 49.
71. See J. Feinberg, Social Philosophy (1973), 96; De Jouvenal, Sovereignty, in Introduction to Jurisprudence (ed. D. Lloyd, 1972), 377; G. Lenski, supra note 25 at 36-39; P. Stein and J. Shand, Legal Values in Western Society (1974), passim 59 [hereinafter P. Stein & J. Shand]. But see note 84 and text accompanying, infra.
72. See J. Zalaquett, supra note 9 at 16; Donnelly, supra note 18 at 304.
73. Hauser, International Human Rights Protection, in Essays on Human Rights (D. Sidorsky, ed. 1979), 21, 26-27; J. Zalaquett, supra note 9, at 11; Cox, supra note 9 at 263. "Opportunity cost" arguments are described in detail (but analysed inadequately) in Hewlett, "Human Rights and Economic Realities: Trade-offs in Historical Perspective", 94 Pol. Sci. Q. (1979), 453.

74. See Henkin I, supra note 1, at 81-82; Scanlon, supra note 18, at 88, 90.
75. Quoted in Alston II, supra note 10, at 53-54. But see also note 83, infra.
76. Machiavelli's enduring contribution to constitutional law is that rulers must act badly from the standpoint of private morality, where this advances the welfare of the state -- a goal far more important than the welfare of individuals or groups harmed by the act. See J. Hexter, The Vision of Politics on the Eve of the Reformation (1973), 168-70; M. Lerner, supra note 15 at 96; A. Miller, supra note 22, at xii, 23, 45, 80-81; Sawyer, The Western Conception of Law, in 2(1) International Encyclopedia of Comparative Law (ed. R. David, 1975), 14, 24; note 23 and text accompanying, supra.
77. Sidorsky, supra note 18, at 100 and 101.
78. For one attempt to formulate this burden of proof, see B. Ackerman, Social Justice in the Liberal State (1980), 6-13 passim [hereinafter B. Ackerman].
79. See Henkin, I, supra note 1 at 83.
80. B. Moore, supra note 57, at 5. See note 78, supra.
81. J. O'Brien, supra note 6, at 9-10. See text accompanying note 75, supra; note 79, supra.
82. See Chauchol, supra note 30, at 117; note 65 and text accompanying, supra.
83. I.e., circumstances in which the burden of proof would be met. It may be, for example, that the non-recognition or qualified acceptance of political and civil rights reflects a genuine veneration of traditional hierarchical structures, which have been given renewed vitality by political change (not necessarily development). Compare Murphy, supra note 55, at 437 with text accompanying note 75, supra. Likewise, it may be necessary to curb particular political opponents of sensible development policies in some countries, but monitoring by independent outside observers offers some assurance that matters will not get out of hand. See Scanlon, supra note 18, at 91. It may also be necessary pragmatically to tolerate a shaky, rights-violating regime which would probably be replaced by a more repressive and more stable (in the short run) regime. Further research is needed to evaluate the arguments of, e.g., Niedergang, et. al., "Croissance et Constante," Le Monde, Feb. 22-28, 1977: economic "take-off" has often been accompanied by restrictions and repression. Marks, supra note 53, at 240.

84. See G. Myrdal, supra note 36, passim; note 71 and text accompanying, supra.
85. See C. Friedrich, The Philosophy of Law in Historical Perspective (1963), 92; G. Kennedy, The Military and the Third World (1974), 56; N. Mouzelis, Organization and Bureaucracy (1967), 129; P. Stein & J. Shand, supra note 71 at v; D'Amato, supra note 16 at 1148; Donnelly, supra note 18 at 314; notes 22-34, 37-38, 70 and text accompanying, supra. See also B. Moore, supra note 57 at 38-39, 192.
86. See notes 21, 23, 25, 31, 46, 78 and text accompanying, supra; text following note 43, supra; note 96 and text accompanying, infra.
87. See J. O'Brien, supra note 6, at 17, 40; M. Rahman, supra note 30, at 16.
88. See note 99 and text accompanying and following, infra.
89. Quoted by Carim, "Violence and Social Change", New Internationalist, Jan. 1977, at 17. See Cox, supra note 9, at 296.
90. G. Almond & G. Powell, supra note 25, at 169 and 189; Comparative Constitutional Law (ed. H. Groves, 1963), 278-79. See also Hazard, supra note 27, at 986.
91. This is one of the links between a constitutional reality of the exercise of power and the ideal of a rightful exercise. The outcome of this dialectic is often the one described by Machiavelli's dictum: good arms make good law. See G. Lenski, supra note 25, at 57; Donnelly, supra note 18, at 314, note 26 and text accompanying, supra.
92. McDougal and Chen, supra note 14 at 342. See J. O'Brien, supra note 6 at 27, 41; M. Rahman, supra note 30 at 4, 6; Galtung and Wirak, "Human Needs and Human Rights", 8 Bull. Peace Proposals (1977), 251; notes 61, 80, 89-90 and text accompanying, supra.
93. M. Rahman, supra note 30 at 13-15.
94. See notes 25-26, 37-38, 54, 91 and text accompanying, supra; notes 116, 119 and text accompanying, infra.
95. See Marks, supra note 53 at 239.
96. In their early stages, American civil rights groups were very like the organizations described by theorists of Another Development. See Glazer, Individual Rights Against Group Rights, in Human Rights (eds. E. Kamenka and A. Tay, 1979), 91, 92-94.

97. See Alston II, supra note 10, at 65; Laquer, supra note 2, at 15; F. Machlup, Methodology of Economics and Other Social Sciences (1978), 103 ("positive economics tells you 'what is', normative economics what 'ought to be'"); J. Zalaquett, supra note 9, at 13-14; note 18, supra. See also Eide, supra note 12, at 352.
98. Alston II, supra note 10, at 51; Laquer, supra note 2, at 16; J. Zalaquett, supra note 9, at 14-16. See B. Ackerman, supra note 78 at 18; A. Gramsci, The Modern Prince, in The Modern Prince and Other Writings (L. Marks, transl., 1957), 135, 165.
99. See Alston II, supra note 10, at 43; C. Khaminwa, Needs of Rural Self-Help Groups in Kenya for Legal Resources (8th Windsor, Ontario Symposium on Law and Development paper presentation, 24-26 March, 1983); J. O'Brien, supra note 6, at 12, 18-19, 27 and 41.
100. Alston II, supra note 10, at 90.
101. See Falk I, supra note 3, at 248; Cox, supra note 9, at 280-82, 285; Laing, supra note 51, at 731; Schachter, supra note 15, at 14-15.
102. See Alston II, supra note 10, at 102; Alston I, supra note 4, at 320, 322; Donnelly, supra note 18, at 303, 308; Laing, supra note 51, at 728; Stark, supra note 1, at 116.
103. Supra note 16, at 13.
104. G.A. Res. 217, U.N. Doc. A/810 at 71 (1948).
105. Alston II, supra note 10, at 102. But see also, Laing, supra note 51, at 762-64.
106. Supra note 7.
107. See I. Duchacek II, supra note 65, at 44; Donnelly, supra note 18, at 306, 308; Schachter, supra note 15, at 3-4; Stark, supra note 1, at 116; Galtung, supra note 28, at 125.
108. Sohn I, supra note 1, at 355. See Paust, supra note 17, at 229 (citing Filartiga, supra note 1); Fernandez v. Wilkinson, 505 F. Supp. 787 (D. Kan. 1980), aff'd No. 81-1238 (10th Cir. July 9, 1981):

First, international norms become legal norms when they are supported by generally shared expectations in the community at large. Second, international norms supported by generally shared expectations create legally binding obligations on

nation-states. Third, international norms [so supported] ... are judicially enforceable in domestic courts. Fourth, state actors may be liable in domestic courts for conduct in violation of legally enforceable norms.

On this scale, the right to development is half-way through the first stage. See text accompanying notes 47-48, supra; note 2, supra.

109. D'Amato, supra note 16, at 1125. See note 2, supra.
110. Ramphal, supra note 19, at 10.
111. D'Amato, supra note 16, at 1126.
112. See Galtung, supra note 28 at 121; Henkin, International Human Rights as "Rights", in Nomos XXIII: Human Rights (eds. J. Pennock & J. Chapman, 1981), 257, 262, [hereinafter Henkin II]; C. Khaminwa, supra note 99; J. O'Brien, supra note 6, at 31; M. Rahman, supra note 30, at 1; Murphy, supra note 55, at 444; note 7, supra. See also J. Zalaquett, supra note 9, at vii, 2 and 7.
113. See Murphy, supra note 55, at 444-45.
114. See notes 57-66 and text accompanying, supra.
115. See Beitz, supra note 65, at 60.
116. See Alston II, supra note 10, at 34; Dias, supra note 24, at 194; M. Rahman, supra note 30, at 16; Schachter, supra note 15, at 6; notes 16-17, 89-96 and text accompanying, supra.
117. See J. Zalaquett, supra note 9, at 11-12, 14-16, 21 and 31-32.
118. Buergenthal & Torney, supra note 79, at 331. See also Bello, supra note 9, at 633.
119. See Eorsi, On the Problem of the Division of Legal Systems, in 2 Inchieste di Diritto Comparato (ed. M. Rotondo, 1973), 179, 181, 203; S. Finer, supra note 25, at 30-40; A. Miller, supra note 22, at 155; B. Moore, supra note 57, at 102; Pennock, supra note 16, at 10-12; Peteri, Goals and Methods in Legal Comparison, in The Comparison of Law (ed. Z. Peteri, 1974), 45, 2; J. Robinson, supra note 38, at 122; J. Zalaquett, supra note 9, at 8, 14-15, 23-24, 29; K. Zweigert and H. Kotz, An Introduction to Comparative Law (T. Weir transl. 1977), 38, 327; Summary, supra note 24, at 232; Cox, supra note 9, at 296; Seidman, "Law and Development", 6 L. & Soc. Rev. (1972), 311, 316.

120. A. Miller, supra note 22, at ix.
121. See Sohn II, supra note 7, at 63.
122. Osnos, "Review", Manchester Guardian Weekly, Jan. 30, 1983, p. 18 at cols. 2-3 (quoting Sakharov). See text accompanying note 92, supra.