

NEOLIBERALISM AND HUMAN RIGHTS: THE BRANDT COMMISSION AND THE STRUGGLE FOR A NEW WORLD

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I INTRODUCTION

It is now widely understood that various forms of neoliberalism began to gain a significant foothold in the legal and economic systems of numerous states after the effective collapse of the Bretton Woods monetary order in the early 1970s. A product of the interwar period, neoliberalism emerged during the 1970s and 1980s from the universities, think tanks, and peripheral policy fora to which it had been consigned after suffering defeat in the immediate post-Second World War era. Its rise during this period is generally attributed to decades of mobilization by the Mont Pèlerin Society, a transatlantic forum organized along broadly anti-Keynesian lines that brought together Friedrich Hayek, Milton Friedman, and the German ordoliberals. Previously dismissed by many on the grounds that it failed to appreciate the lessons of the Great Depression and peddled an unsustainably austere form of neo-Smithian economics, neoliberalism came to establish itself as the dominant ideology of governance, the norm against which every exception was to be evaluated. Whatever opposition there may be in some quarters to using the term “neoliberalism,” the general contours of this historical transition have been established and are now the subject of a robust, rapidly growing, and increasingly multifaceted literature. Less a tightly coordinated school of thought than a loose network of heterodox economists, political thinkers, and enterprising publicists who shared a common opposition to socialism and social democracy, neoliberals are now recognized as having waged a decades-long struggle to transform both state and society in accordance with a particular understanding of the market.¹

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1. The literature on neoliberalism is enormous, rapidly growing, and fraught with internal debate. *See generally* WERNER BONEFELD, *THE STRONG STATE AND THE FREE ECONOMY* (2017); WENDY BROWN, *UNDOING THE DEMOS: NEOLIBERALISM’S STEALTH REVOLUTION* (2015); YVES DEZALAY & BRYANT G. GARTH, *THE INTERNATIONALIZATION OF PALACE WARS: LAWYERS, ECONOMISTS, AND THE CONTEST TO TRANSFORM LATIN AMERICAN STATES* (2002); MICHEL FOUCAULT, *THE BIRTH OF BIOPOLITICS: LECTURES AT THE COLLÈGE DE FRANCE 1978–79* (Michel Senellart ed., Graham Burchell

What are *not* widely understood, though, are the relations between this turn to neoliberalism and the contemporaneous success of international human rights movements. A new generation of scholars now view the 1970s as critical for the operational breakthrough of individualistic human rights, broached not so much as a set of rhetorical tropes that draw upon the discursive arsenal of the natural rights tradition (this much had been available long before the 1970s) but as an organized, large-scale movement with strong and effective representation at the highest levels of state power and international organization.² However, despite the era's transformative significance, work on the political economy of this breakthrough, especially its relation to the consolidation and concomitant normalization of neoliberalism, remains patchy and unsystematic.

This article attempts to contribute to the development of a more nuanced understanding of the relationship between neoliberalism and human rights. It does so by examining a particularly important endeavor: the “North-South Commission” (hereinafter “Commission”), chaired by former West German Chancellor Willy Brandt during the late 1970s and early 1980s. Established with the aim of providing an additional forum for dialogue between the Group of 7 and Group of 77,³ the Brandt Commission sought to win support for a model of global political economy in which enhanced aid, lending, debt-relief, investment, technology

trans., 2008); DAVID HARVEY, *A BRIEF HISTORY OF NEOLIBERALISM* (2005); PHILIP MIROWSKI, *NEVER LET A SERIOUS CRISIS GO TO WASTE: HOW NEOLIBERALISM SURVIVED THE FINANCIAL MELTDOWN* (2013); QUINN SLOBODIAN, *GLOBALISTS: THE END OF EMPIRE AND THE BIRTH OF NEOLIBERALISM* (2018); DANIEL STEDMAN JONES, *MASTERS OF THE UNIVERSE: HAYEK, FRIEDMAN, AND THE BIRTH OF NEOLIBERAL POLITICS* (2012); *THE ROAD FROM MONT PÈLERIN: THE MAKING OF THE NEOLIBERAL THOUGHT COLLECTIVE* (Philip Mirowski & Dieter Plehwe eds., 2009) [hereinafter *THE ROAD FROM MONT PÈLERIN*]. The specifically legal dimensions receive attention in *NEOLIBERAL LEGALITY: UNDERSTANDING THE ROLE OF LAW IN THE NEOLIBERAL PROJECT 3* (Honor Brabazon ed., 2017) (arguing that “neoliberalism must be seen as a convergence of intertwined and mutually influential political, economic, and *juridical* trajectories. Neoliberalism is as much a juridical phenomenon as a political and economic one”); *THE POLITICS OF LEGALITY IN A NEOLIBERAL AGE* (Ben Golder & Daniel McLoughlin eds., 2017); Symposium, *Law and Neoliberalism*, 77 *LAW & CONTEMP. PROBS.* (2014). Important for understanding neoliberalism's success but typically neglected by students of this literature is LUC BOLTANSKI & EVE CHIAPELLO, *THE NEW SPIRIT OF CAPITALISM* (Gregory Elliott trans., 2006) (1999).

2. For the best-known illustration of this thesis, see SAMUEL MOYN, *THE LAST UTOPIA: HUMAN RIGHTS IN HISTORY* (2010). *See also* *THE BREAKTHROUGH: HUMAN RIGHTS IN THE 1970S* (Jan Eckel & Samuel Moyn eds., 2013); SAMUEL MOYN, *NOT ENOUGH: HUMAN RIGHTS IN AN UNEQUAL WORLD* (2018). Of course, not everyone accepts this periodization. *See, e.g.*, STEVEN L. B. JENSEN, *THE MAKING OF INTERNATIONAL HUMAN RIGHTS: THE 1960S, DECOLONIZATION, AND THE RECONSTRUCTION OF GLOBAL VALUES* 4, 11 (2016); Meredith Terretta, *Where Are the Lawyers, the Activists, the Claimants, and the Experts?*, 39 *HUM. RTS. Q.* 226 (2017) (reviewing JENSEN, *supra*).

3. It bears noting that while the Group of 77 had been formed in 1964, the Group of 7 was a more recent invention, having been established in 1975–76. Key motivational factors included fear of political fragmentation in Western Europe, the popularity of many communist parties and organizations on the continent, and the desire (felt widely and acutely among Western policymakers) to “reenergize” capitalism by closing ranks and neutralizing the more radical demands of the global South. Many of these factors were also at work in the creation of the Rockefeller-sponsored Trilateral Commission in 1973. The rhetoric of “dialogue”—ubiquitous at the time in policy reports, journalistic commentaries, and the work of international organizations—referred most specifically to the activities of the Conference for International Economic Cooperation, formed in the mid-1970s to discuss issues of energy, finance, commodities,

transfer, and a host of related measures would foster economic growth and meet “basic needs” in the “South” while countering inflation and unemployment in the “North,” thereby facilitating a generalized expansion of international trade.⁴ Tellingly, even this market-oriented framework for development ultimately fell flat, with U.S. President Ronald Reagan and British Prime Minister Margaret Thatcher famously rejecting the feasibility of the Commission’s principal report, *North-South: A Programme for Survival*,⁵ at the “North-South Summit” convened in Cancún in October 1981.⁶ The Commission was not centrally concerned with matters of human rights, and it did not subscribe to a “rights-centric” model of socio-economic development. Nor can it justifiably be characterized as a fundamentally neoliberal enterprise, given its overriding commitment to a form of global Keynesianism. Still, the Commission’s effort to articulate a broadly rights-friendly form of development that accommodated certain elements of neoliberalism, both in this first report and in a 1983 follow-up entitled *Common Crisis*,⁷ sheds light upon the complex relationship between neoliberalism and human rights during their shared moment of global ascendance and institutionalization.

This article begins with a brief discussion of the recent literature on the historical and conceptual relations between the neoliberal and human rights movements. It then proceeds to consider the operational context and substantive recommendations of the Brandt Commission, focusing upon the proposals that comprised its model of international political economy. Finally, it concludes by arguing that revisiting the Commission’s work illuminates the hazy mixture of neoliberal prescriptions and rights discourse that has characterized so much policy and academic thinking since the 1970s.

II

NEOLIBERAL HUMAN RIGHTS?

In a sweep of the recent historiography on human rights, Stefan-Ludwig Hoffmann has suggested that the recent rise of scholarly interest in the historical development and transformation of different modes of humanitarianism and human rights may be symptomatic of the end of an era. Human rights have become identified with global justice—and thereby presented as a moral touchstone for

development, and, more generally, the ongoing struggle between North and South. See GIULIANO GARAVINI, *AFTER EMPIRES: EUROPEAN INTEGRATION, DECOLONIZATION, AND THE CHALLENGE FROM THE GLOBAL SOUTH 1957–1986* ch. 6 (Richard R. Nybakken trans., 2012) (2009).

4. For an argument to the effect that the terms “North” and “South” owe much of their popularity in developmental, geopolitical, and other debates to the Brandt Commission, see ARIF DIRLIK, *GLOBAL MODERNITY: MODERNITY IN THE AGE OF GLOBAL CAPITALISM* 134 (2007) (noting that “[t]he term *global South*—or at least the ‘South’ component of it— . . . was popularized by the Brandt Commission reports published in 1980 and 1983, both of which bore ‘North-South’ in their titles”).

5. INDEP. COMMISSION ON INT’L DEV. ISSUES, *NORTH-SOUTH: A PROGRAMME FOR SURVIVAL* (1980) [hereinafter NORTH-SOUTH].

6. For a useful description of the event, see VIJAY PRASHAD, *THE POORER NATIONS: A POSSIBLE HISTORY OF THE GLOBAL SOUTH* 76–83 (2012).

7. *COMMON CRISIS NORTH-SOUTH: CO-OPERATION FOR WORLD RECOVERY* (1983) [hereinafter COMMON CRISIS].

concern with strangers near and far—so often and so closely that the very compulsion to situate them in time, in the political and economic vagaries of history, appears to signal a certain disenchantment with the notion that they command trans-historical authority.⁸ On this account, the field of “human rights history” has come into its own largely during the past decade precisely because this period has witnessed a marked decline in the normative resonance of human rights and the political intensity of their popular mobilizations.⁹

Interestingly, one point to which Hoffmann does not devote any real attention is that the past decade has also played host to a wide-ranging and at times rather acrimonious debate about the fate of another ideology, namely neoliberalism. Only a small number of human rights scholars have devoted significant time and energy to the task of unearthing the politico-economic conditions of their actual operation. Fewer still have pressed the matter further by attending to the concrete class interests behind the establishment, expansion, and incremental refinement of the organizations and advocacy networks that are responsible for the real work of human rights. It is striking that the political economy of modern human rights movements—movements that have grown and arguably receded in tandem with the recent history of neoliberalism—is understood only in bits and pieces.¹⁰

A large part of the difficulty here is that the nature and future prospects of neoliberalism are subject to considerable debate. Some have construed neoliberalism narrowly, arguing that the return of protectionist tariffs and quotas, the effective breakdown of the World Trade Organization’s Doha round of negotiations, the future prospects of the Transatlantic Trade and Investment Partnership (TTIP) and the European Union (EU), and questions about the implications of the United States–Mexico–Canada Agreement (USMCA)¹¹ and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), all point

8. Stefan-Ludwig Hoffmann, *Human Rights and History*, 232 PAST & PRESENT 279 (2016). Hoffmann’s article appears in the context of an exchange with Samuel Moyn. See Samuel Moyn, *The End of Human Rights History*, 233 PAST & PRESENT 307 (2016).

9. Sentiments of this sort are shared by many others. For a particularly impassioned argument that the normative and organizational machinery of the Western-dominated human rights industry is not only undergoing decline but *should* undergo decline, see STEPHEN HOPGOOD, *THE ENDTIMES OF HUMAN RIGHTS* (2013).

10. The most sustained (albeit now dated) attempt to undertake a politico-economic analysis of human rights remains 1 NOAM CHOMSKY & EDWARD S. HERMAN, *THE POLITICAL ECONOMY OF HUMAN RIGHTS* 33 (1979) (“A potent complex of business and financial interests, military-intelligence-State Department bureaucrats, and politicians are concerned exclusively with investment climate and the dependability of military clients, and this structure of interests has long determined the broad sweep of policy. Liberals and humanitarians in public office have found ‘business confidence’ sagging and hostile forces quickly mobilized when they push too far, even verbally, in the direction of taking human rights values seriously.”). More recent efforts include BAS DE GAAY FORTMAN, *POLITICAL ECONOMY OF HUMAN RIGHTS: RIGHTS, REALITIES AND REALIZATION* (2011) and IVAN MANOKHA, *THE POLITICAL ECONOMY OF HUMAN RIGHTS ENFORCEMENT: MORAL AND INTELLECTUAL LEADERSHIP IN THE CONTEXT OF GLOBAL HEGEMONY* (2008). Tellingly, none of these works belong to the new wave of interest in human rights among historians and historically oriented scholars.

11. “USMCA” is the acronym for the revised North American Free Trade Act (“NAFTA”). For a comparison of these treaties, see Shawn Donnan, Andrew Mayeda, Jenny Leonard & Jeremy C.F. Lin,

to a shift to one or another form of post-neoliberal international trade and investment. Those who espouse this view tend to claim that the establishment of populist governments of right-wing authoritarian persuasion in many former fortresses of liberal democracy portends an impending reaction against free trade.¹²

Others have chosen to define neoliberalism in broader, more capacious, and sometimes specifically Marxist terms. Here, neoliberalism is viewed as a specific mode of late capitalism that not only prioritizes nineteenth-century notions of private property, freedom of contract, “individual responsibility,” and anti-union “fiscal discipline,” but fetishizes reduction of transaction costs in the name of enhanced efficiency, retreat from social services associated with the post-1945 welfare state, liberalization of international trade through multilateral agreements, and, more generally, a faith in the view that markets, though operating according to fluid, inscrutable logics of their own, are to be entrenched and preserved through state power. On this view, an administration such as that over which U.S. President Donald Trump currently presides is in some respects not less but more aligned with core principles of neoliberalism than many of its rivals and counterparts.¹³

While some dismiss the term “neoliberalism” as over-extensive, arguing that it captures too many distinct trends and tendencies to be of real analytical use,¹⁴

Trump's 'Historic' Trade Deal: How Different is it From Nafta?, BLOOMBERG (Oct. 2, 2018), <https://www.bloomberg.com/graphics/2018-nafta-vs-usmca/> [<https://perma.cc/X3W4-M4SJ>].

12. See, e.g., Cornell West, *Goodbye, American Neoliberalism: A New Era Is Here*, THE GUARDIAN (Nov. 17, 2016), <https://www.theguardian.com/commentisfree/2016/nov/17/american-neoliberalism-cornel-west-2016-election> [<https://perma.cc/EE76-VD5R>] (suggesting that with U.S. President Trump's election “[t]he neoliberal era in the United States ended with a neofascist bang”); Ashley Smith, *Trump and the Crisis of the Neoliberal World Order*, INT'L SOCIALIST REV., Summer 2017, <https://isreview.org/issue/105/trump-and-crisis-neoliberal-world-order> [<https://perma.cc/T6UG-XQZK>] (arguing that “Trump wants to upend the neoliberal Washington Consensus” in the international sphere).

13. See, e.g., Daniel Bessner & Matthew Sparke, *Don't Let His Trade Policy Fool You: Trump Is a Neoliberal*, WASHINGTON POST (Mar. 22, 2017), https://www.washingtonpost.com/posteverything/wp/2017/03/22/dont-let-his-trade-policy-fool-you-trump-is-a-neoliberal/?utm_term=.7c8d9af2b92b [<https://perma.cc/WT5A-3PZA>] (suggesting that President Trump's economic policies align with the “foremost goals of neoliberalism: privatization, deregulation, tax-cutting, anti-unionism, and the strict enforcement of property rights”); George Monbiot, *Neoliberalism: The Deep Story That Lies Beneath Donald Trump's Triumph*, THE GUARDIAN (Nov. 14, 2016), <https://www.theguardian.com/commentisfree/2016/nov/14/neoliberalism-donald-trump-george-monbiot> [<https://perma.cc/9N3Q-2Q9A>] (arguing that “[t]he paradoxical result is that the backlash against neoliberalism's crushing of political choice has elevated just the kind of man that Hayek worshipped”). For the argument that the Trump administration represents a form of “hyper-reactionary neoliberalism,” see Nancy Fraser, *From Progressive Neoliberalism to Trump—And Beyond*, 1 AM. AFF. 46 (2017); Nancy Fraser, *The Crisis of Progressive Neoliberalism*, L. & POL. ECON., Jan. 25, 2018, <https://lpeblog.org/2018/01/25/the-crisis-of-progressive-neoliberalism/> [<https://perma.cc/E8DG-UWCT>].

14. See, e.g., Thomas Hylland Eriksen et al., *Debate: 'The Concept of Neoliberalism Has Become An Obstacle to the Anthropological Understanding of the Twenty-First Century'*, 21 J. ROYAL ANTHRO. INST. 911 (2015); Rajesh Venugopal, *Neoliberalism as Concept*, 44 ECON. & SOC. 165, 166 (2015) (observing that the term “neoliberalism” is “controversial, incoherent and crisis-ridden,” and in need of “explanation and critical challenge”); Daniel Rodgers, *Fault Lines*, DISSENT (Jan. 22, 2018), <https://www.dissent-magazine.org/blog/neoliberalism-forum-daniel-rodgers-reply> [<https://perma.cc/F57C-R776>]; Timothy Shenk, *Jargon or Clickbait?*, DISSENT (Jan. 22, 2018), <https://www.dissentmagazine.org/blog/neoliberalism-forum-timothy-shenk> [<https://perma.cc/3GLZ-Z7YQ>].

others suggest that neoliberalism is best understood not as a unified theory or canonical dogma but rather as a “thought collective,” shifting and internally heterogeneous but anchored in seventy odd years of conceptual refinement and strategic collaboration sponsored by the Mont Pèlerin Society and associated networks.¹⁵ After all, the latter often point out, if neoliberalism “did not emerge from the spontaneous operation of free market forces but was created through a long politico-ideological war of position, relentless lobbying, targeted legislation, and judicial decisions,” it should come as no surprise that the movement it spawned would have been home to tensions of various kinds.¹⁶

This debate has significant consequences for practical and scholarly appreciations of human rights. If it is true that both neoliberalism and human rights acquired significantly enhanced operational traction during the 1970s among state functionaries and social reformers, that both ultimately found expression in the domestic and foreign policies of a large number of Euro-American governments, and that the political and normative inviolability of each has been questioned over the last decade, it is difficult to argue that their trajectories are entirely independent. Regardless of how neoliberalism and human rights are understood, there seems to be something more than sheer coincidence at work here. This raises a host of complex questions. Are neoliberalism and human rights part and parcel of the same ideological constellation? Are they grounded in the same set of socio-economic forces and relations? If human rights are not reducible to neoliberalism, are they perhaps something of a handmaiden to neoliberal power? In other words, if the relation between human rights and neoliberalism is not intrinsic or essential, have human rights been “co-opted,” “abused,” or “instrumentalized” by neoliberalism? Has what was once deemed an emancipatory project been transformed into a tool of exploitation? When all is said and done, what is the relationship between neoliberalism, once branded by Perry Anderson as the “most successful ideology in world history,”¹⁷ and human rights, Samuel Moyn’s “last utopia”?¹⁸

Questions of this sort cannot be answered satisfactorily in the abstract. Rather, they must be broached historically and with a view to shedding light upon

15. Philip Mirowski, *Defining Neoliberalism*, in Mirowski & Plehwe, *supra* note 1, at 433–40. For Mirowski, neoliberalism is “a sociological thought collective that eventually produced a relatively shared ontology concerning the world coupled with a more-or-less shared set of propositions about markets and political economy.” See MIROWSKI, *supra* note 1, at 50. See also SLOBODIAN, *supra* note 1; William Davies, *The Difficulty of “Neoliberalism,”* PERCblog (Jan. 1, 2016), http://www.perc.org.uk/project_posts/the-difficulty-of-neoliberalism/ [https://perma.cc/D467-6YWM]; Julia Ott, *Words Can’t Do the Work For Us*, DISSENT (Jan. 22, 2018), <https://www.dissentmagazine.org/blog/neoliberalism-forum-julia-ott> [https://perma.cc/WA8H-PSFL].

16. Bob Jessop, *Primacy of the Economy, Primacy of the Political: Critical Theory of Neoliberalism*, in HANDBUCH KRITISCHE THEORIE 1, 10–11 (Ullrich Bauer, Uwe H. Bittlingmayer, Alex Demirovic, & Tatjana Freytag eds., 2016).

17. Perry Anderson, *Renewals*, 1 NEW LEFT REV. 1, 13 (2000).

18. MOYN, LAST UTOPIA, *supra* note 2. For a useful typology of possible answers to such questions, see Zachary Manfredi, *An Unlikely Resonance? Subjects of Human Rights and Subjects of Human Capital Reconsidered*, in Golder & McLoughlin, *supra* note 1, at 164–65 (“Neoliberal political rationality may, in certain contexts, amalgamate with human rights in ways that transform both concepts.”).

the concrete social circumstances in which neoliberal and human rights movements have gained and lost momentum. While research on the socio-historical relationship between neoliberalism and organized human rights movements during the 1970s is still in its infancy, several key contributions to the debate have already been made. Exploring contradictions and dialectical tensions within the Marxist tradition's engagement with rights-based modes of political mobilization, Paul O'Connell, for instance, has argued that neoliberalism, though itself encased in various rights, is fundamentally inimical to the protection of social and economic rights.¹⁹ For O'Connell, the political usefulness of any right—human or other—must be analyzed in the context of concrete social struggles, and it would be myopic to abjure social and economic rights in the struggle against the privatization and commodification unleashed by the latest wave of “globalization.”²⁰

By contrast, Susan Marks has suggested that the ascent of human rights in the 1970s must be situated squarely in the context of neoliberal capitalism's steady institutionalization.²¹ For Marks, a key “part of the context for the consolidation of neo-liberalism . . . was the emergence of the human rights movement, with its non-political creed.”²² It was neoliberalism, not human rights, that was regarded by many at the time as the “last utopia,” and human rights activists tended to restrict “their criticism to the denunciation of abuses, leaving unchallenged the conditions in which those abuses had become possible and even, in some sense, rational.”²³ To speak of the operational breakthrough of the human rights movement in the 1970s without probing the politico-economic conditions that made this development possible is therefore to miss the ideological usefulness of human rights in legitimating neoliberal policymaking.

Finally, and partly as a response to such views, Samuel Moyn has pointed out that the historical correlation of neoliberalism's programmatic implementation and the success of Anglo-American human rights organizations is not necessarily demonstrative of social or structural causation. Accordingly, he has called for granular, empirically grounded research into the conditions of their concurrent success.²⁴ Particularly useful is his observation that a key failure of the human

19. See Paul O'Connell, *On the Human Rights Question*, HUM. RTS. Q. (forthcoming 2018) (on file with author). For an earlier formulation of this approach, see also Paul O'Connell, *On Reconciling Irreconcilables: Neo-Liberal Globalization and Human Rights*, 7 HUM. RTS. L. REV. 483, 508 (2007) (concluding that “[i]f we are serious about the protection and realisation of human rights we have to consciously break with the hegemony of the neo-liberal approach.”).

20. *Id.*

21. Susan Marks, *Four Human Rights Myths*, in HUMAN RIGHTS: OLD PROBLEMS, NEW POSSIBILITIES 217 (David Kinley, Wojciech Sadurski & Kevin Walton eds., 2013).

22. *Id.* at 226.

23. *Id.*

24. See MOYN, NOT ENOUGH, *supra* note 2, at ch. 7; Samuel Moyn, *A Powerless Companion: Human Rights in the Age of Neoliberalism*, 77 LAW & CONTEMP. PROBS., no. 4, 2014, at 147. *Cf.* Mary Nolan, *Human Rights and Market Fundamentalism in the Long 1970s*, in TOWARD A NEW MORAL WORLD ORDER?: MENSCHENRECHTSPOLITIK UND VÖLKERRECHT SEIT 1945, 172, 180 (Norbert Frei & Annette Weinke eds., 2013) (“Causality did not run in one direction between market fundamentalism and human rights, nor did the two discourses and practices reinforce one another at every moment.”).

rights movement is its dedication “to establishing a normative and actual floor for protection” while failing “to respond to . . . neoliberalism’s obliteration of the ceiling on inequality.”²⁵ In no way is this type of point restricted to neoliberalism. In the first volume of *Capital*, amidst his discussion of the “so-called primitive accumulation” of capital through legal and extra-legal violence, Marx makes an inverse but closely related observation in regard to the 1349 Statute of Labourers, issued during the reign of Edward III with a view to suppressing wages for urban and agricultural workers: “The spirit of the Statute of Labourers of 1349 and its offshoots shines out clearly in the fact that while the state certainly dictates a maximum of wages, it on no account fixes a minimum.”²⁶ Nevertheless, Moyn’s central point is justified. It is far from self-evident that human rights instruments, even those enshrining social and economic rights, can be interpreted as imposing strict legal duties to curb inequalities in wealth and income, at least not directly and with robustly distributive force.²⁷

Reconsidering the Brandt Commission in light of this debate helps to explain how certain commitments typically associated with the neoliberal movement came to be conjoined with certain modes of human rights discourse as part of a drive to reconstitute the international legal and economic order during the “North-South dialogue” of the 1970s. Like Marks, this article maintains that neoliberalism and human rights are to a significant degree structurally intertwined and mutually reinforcing, both historically and conceptually. Like Moyn’s work,

25. Moyn, *A Powerless Companion*, *supra* note 24, at 149. Elsewhere, Moyn has argued that human rights may not have helped to generate neoliberalism, and may in some cases have proven useful for ensuring the satisfaction of rudimentary subsistence needs, but they did remarkably little to check the explosion of wealth and income inequality: “[W]ith their moral focus on a floor of sufficient protection in a globalizing economy, human rights did nothing to interfere with the obliteration of any ceiling on distributive inequality. Deprived of the ambience of national welfare, human rights emerged in a neoliberal age as weak tools to aim at sufficient provision alone.” MOYN, NOT ENOUGH, *supra* note 2, at 176.

26. 1 KARL MARX, CAPITAL: A CRITIQUE OF POLITICAL ECONOMY 901 (Ben Fowkes trans., 1990) (1867).

27. It must be noted, though, that some jurists have attempted to reorient and develop human rights law in this direction over the years. The recent work of Philip Alston, currently UN Special Rapporteur on Extreme Poverty and Human Rights, is a good example. For details on his work, see the documents and information available on the Office of the United Nations High Commissioner for Human Rights website: <http://www.ohchr.org/EN/Issues/Poverty/Pages/SRExtremePovertyIndex.aspx> [<https://perma.cc/TX94-9YN9>]. For a succinct statement of his position, see Philip Alston, *Extreme Inequality as the Antithesis of Human Rights*, OPENDEMOCRACY (Aug. 27, 2015), <https://www.opendemocracy.net/openglobalrights/philip-alston/extreme-inequality-as-antithesis-of-human-rights> [<https://perma.cc/KM7H-TYYW>] (arguing that “human rights demand that states reject extreme inequality and formally commit themselves to policies explicitly designed to reduce if not eliminate it”). Another such example is Juan Pablo Bohoslavsky’s work as UN Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights, Particularly Economic, Social, and Cultural Rights. For details, see the documents and information available on the Office of the United Nations High Commissioner for Human Rights website: <https://www.ohchr.org/en/issues/development/iedebt/pages/iedebtindex.aspx> [<https://perma.cc/FS54-JSHJ>]. For a concise statement of his position, see Juan Pablo Bohoslavsky, *Economic Inequality, Debt Crises and Human Rights*, 41 YALE J. INT’L L. 177, 179 (2016) (arguing that “the recognition of economic and social rights imposes upon States the duty to address and/or prevent inequality inasmuch as it constitutes a threat to human rights realization.”).

though, this article does not attempt to reduce the logic of one to the logic of the other, or to analyze the relation between the two causally. Historically, both neoliberalism and human rights experienced considerable operational growth during the 1970s, being mobilized by a wide range of different actors and gaining significant footholds in the domestic and foreign policies of most advanced capitalist states (and shortly thereafter most other states).²⁸ Conceptually, their most pervasive and politically influential forms tend to accord primacy to the individual rights-bearer, presuppose a stark distinction between private right and public authority, present themselves as apolitical and beyond ideology, and encourage a high degree of suspicion of state power (while nonetheless leaning heavily upon such power). The neoliberal and human rights movements have always been heterogeneous, multifaceted, and irreducible to singular rationalities. Nevertheless, dominant conceptions of human rights have tended to track shifts in prevailing economic and political structures, including, crucially, during the neoliberal era that has dominated since the mid-1970s. While the Brandt Commission was not an essentially neoliberal enterprise, and while it was concerned with matters of human rights only peripherally, its reports shed light upon the degree to which such rights, far from opposing neoliberalism at every turn, could be fused with some of its precepts.

III TWO REPORTS

A. The Commission's Context

Formed in late 1977 at the suggestion of Robert McNamara, then in the midst of his second full term as president of the World Bank and deeply taken by the idea of prioritizing “basic needs” as a poverty-reduction strategy,²⁹ a mainstay of

28. Jimmy Carter's administration is a classic example, having laid the groundwork for much of the fusion of neoliberal and human rights policies that would subsequently be put on offer by the Reagan administration. See MARY E. STUCKEY, *JIMMY CARTER, HUMAN RIGHTS, AND THE NATIONAL AGENDA* 78–80 (2008). See also CATHERINE V. SCOTT, *NEOLIBERALISM AND U.S. FOREIGN POLICY: FROM CARTER TO TRUMP* 4–7 (2018).

29. While the International Labor Organization did some of the heavy lifting, a significant portion of the work of popularizing the idea of basic needs—generally understood as the minimal needs of human well-being (food, health, shelter, education, etc.)—was conducted at the World Bank under McNamara's tenure, not least because Mahbub ul Haq, the Pakistani economist who theorized the new approach, spent much of the 1970s occupying senior positions within the organization. For ul Haq's key contribution to the basic needs turn in international development policy, see MAHBUB UL HAQ, *THE POVERTY CURTAIN: CHOICES FOR THE THIRD WORLD* (1976). Note that ul Haq was one of the “eminent persons” the Brandt Commission consulted. See *NORTH-SOUTH*, *supra* note 5, at 298. For McNamara's efforts to reorient international development policy at the World Bank, see generally PATRICK ALLAN SHARMA, *ROBERT MCNAMARA'S OTHER WAR: THE WORLD BANK AND INTERNATIONAL DEVELOPMENT* 4 (2017) (“In order to prevent [conflicts like the Vietnam War] from erupting elsewhere, McNamara the World Banker insisted that the Western world involve itself more extensively in the affairs of developing countries.”).

international policy discussion at the time and a staple of the United States' human rights-inflected foreign policy during the Carter era,³⁰ the Brandt Commission—or, as it was known formally, the Independent Commission on International Development Issues—was entrusted with the task of studying questions pertaining to socio-economic development. Supported by United Nations Secretary-General Kurt Waldheim, funded by grants from a variety of predominantly Northern governments and foundations, and composed of some twenty economists, politicians, and businesspersons—who had, in turn, consulted “many of the world’s most eminent people from the various fields of international development”³¹—the Commission was to recommend effective and pragmatic policies for economic growth and redistribution that would be acceptable to North and South alike. Its mandate consisted of an expansive smorgasbord of topics: energy politics, the arms race, demographic growth, development financing, Third World debt, and decades-long North-South rivalries, not to mention the trading and pricing of commodities, the regulation of transnational corporations, the need for a new international monetary order, and the plight of the “least developed countries.”³² While human rights were not expressly included in the Commission’s terms of reference,³³ they were to find expression in its analyses and recommendations.

The Brandt Commission was not a wholly unprecedented venture. The Pearson Commission on International Development, constituted by McNamara and named after the Canadian politician and Nobel laureate who chaired it, had been

30. Contemporaneous lawyers and development economists debated the question of whether basic needs should be understood as human rights. See, e.g., Philip Alston, *Human Rights and Basic Needs: A Critical Assessment*, 12 REVUE DES DROITS DE L’HOMME 19, 41 (1979) (“The [Basic Needs Approach’s] emphasis on the desirability of individuals and other entities determining their own basic needs also represents a different approach from that adopted in relation to human rights guarantees.”); Upendra Baxi, *The New International Economic Order, Basic Needs and Rights: Notes Towards Development of the Right to Development*, 23 INDIAN J. INT’L L. 225, 229 (1983) (describing basic needs as those which “enable human entities to subsist as human beings,” and, at a minimum, as “the right to bodily and mental integrity or survival”); Paul Streeten, *Basic Needs and Human Rights*, 8 WORLD DEV. 107 (1980). For astute reconstruction of a variety of basic needs approaches in the context of broader struggles about human rights and economic development, see Julia Dehm, *Highlighting Inequalities in the Histories of Human Rights: Contestations over Justice, Needs and Rights in the 1970s*, 31 LEIDEN J. INT’L L. 871 (2018). On the role of basic needs in U.S. foreign policy, see Michael Franczak, *Human Rights and Basic Needs: Jimmy Carter’s North-South Dialogue, 1977–81*, COLD WAR HIST. (forthcoming 2018) (on file with author). It is worth noting that the relation between needs and rights is not necessarily strictly oppositional, even within liberal legal theory. See Jeremy Waldron, *The Role of Rights in Practical Reasoning: “Rights” Versus “Needs,”* 4 J. ETHICS 115, 135 (2000).

31. NORTH-SOUTH, *supra* note 5, at 77.

32. On “least developed countries,” see NORTH-SOUTH, *supra* note 5, at 51 (equating a lesser degree of development with low national income and sluggish economic growth prospects), 78–89 (detailing “an action programme” of emergency and longer-term measures designed to “assist the poverty belts of Africa and Asia and particularly the least developed countries”), 227–29. For initial forays in this direction by the United Nations, including an inventory of countries that were deemed to fall into the category, see G.A. Res. 2768 (XXVI), Identification of the Least Developed Among the Developing Countries (Nov. 18, 1971); Comm. for Dev. Planning, Rep. on the Seventh Session, Mar. 22–Apr. 1, 1971, ¶¶ 54–71, U.N. Doc. E/4990 (1971) (organizing and listing countries by various economic indicators).

33. NORTH-SOUTH, *supra* note 5, at 296–97.

charged with a broadly analogous mission. But its recommendations—published in a 1969 report dealing mainly with issues of aid and private investment³⁴—had been largely ignored. This time the mandate was broader, and so too was the Commission’s membership, which was considerably more cosmopolitan than the essentially Atlanticist Pearson Commission.³⁵ Brandt was selected as chair of the Commission on account of his commitment to *Ostpolitik*,³⁶ his demonstrated willingness to engage with prominent leaders of the Non-Aligned Movement, his broadly centrist commitment to a relatively benign form of social democracy (as exemplified by his leadership of the Socialist International), and his reputation for seeking reconciliation within Western Europe and détente in West Germany’s relations with Eastern European states. Indeed, Brandt had received the Nobel Peace Prize in 1971 for his efforts to bridge the East-West divide in Europe.

The Commission was launched partly in order to break the deadlock in North-South negotiations that had set in following the formal inauguration of the New International Economic Order (NIEO) project during the “oil shock” of 1973–74. At the core of the NIEO lay a push for greater aid, debt-relief, and technology transfer, as well as a commitment to seeing through the establishment of a specific right to development, the consolidation of the principle of permanent sovereignty over natural resources, the normalization of preferential and non-reciprocal treatment for developing countries, and the institution of mechanisms of regulatory oversight in regard to foreign investors and multinational corporations. To be sure, many elements of this program had been in circulation for some time. The idea of national self-determination had already found expression in the United Nations Charter and the human rights covenants of 1966, not to mention the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples and the 1970 Friendly Relations Declaration.³⁷ Likewise, the notion of

34. See COMM’N ON INT’L DEV., PARTNERS IN DEVELOPMENT (1969).

35. Though it must be noted that the Brandt Commission included no Chinese or Eastern European members, and no person with an established history of supporting radical or liberation movements in the Third World. For differing appraisals of the substantive differences between the two commissions, see Cranford Pratt, *From Pearson to Brandt: Evolving Perceptions Concerning International Development*, 35 INT’L J. 623, 627 (1980) (arguing that neither report “reflects upon the actual desirability of the Western consumer society which has set the standards for the material aspirations of the Third World” and that “[t]here is little or nothing about the political and administrative prerequisites for development either within national governments or on the international scene; they also say little about oppression, about class rule, or about tyranny”); and Walter F. Stettner, *The Brandt Commission Report: A Critical Appraisal*, 57 INT’L SOC. SCI. REV. 67, 74–75 (1982) (arguing that “the Pearson Commission put much greater emphasis on the development performance of the aid-recipients as a prerequisite for greater assistance by the industrialized countries” and that the Brandt Commission “greatly weakens the link between assistance and performance”).

36. This “Eastern Policy” was Brandt’s attempt to normalize relations between West and East Germany. See ARNE HOFMANN, *THE EMERGENCE OF DÉTENTE IN EUROPE: BRANDT, KENNEDY AND THE FORMATION OF OSTPOLITIK* (2007) and *OSTPOLITIK, 1969–1974: EUROPEAN AND GLOBAL RESPONSES* (Carole Fink & Bernd Schaefer eds., 2009).

37. See U.N. Charter art. 1, ¶ 2; International Covenant on Economic, Social, and Cultural Rights art. 1, Dec. 16, 1966, 993 U.N.T.S. 1; International Covenant on Civil and Political Rights art. 1, Dec. 16,

resource sovereignty had come to be enshrined in General Assembly resolutions as part of the post-war wave of decolonization, the most notable such instrument being the 1962 Declaration on Permanent Sovereignty over Natural Resources.³⁸

Even so, it was only in the early 1970s that the NIEO emerged as a concerted program to reform international legal and economic relations on the back of the enormous leverage that the Organization of Petroleum Exporting Countries (OPEC) had acquired from renegotiated concessionary agreements, expropriation and nationalization enterprises, and, most important of all, the steep rise in the price of oil resulting from its embargo on the United States and other countries during and after the 1973 Yom Kippur War. The specifically legal outcome of this drive to reconfigure much of the world economy through United Nations institutions were three 1974 General Assembly resolutions: the Declaration on the Establishment of a New International Economic Order, the accompanying Programme of Action on the Establishment of a New International Economic Order, and the Charter of Economic Rights and Duties of States.³⁹ More honored in the breach than in the observance, these non-binding instruments nevertheless captured many an imagination, fueling the push for economic emancipation that so many had expected would accompany the attainment of political liberation.⁴⁰

The Brandt Commission neutralized the more ambitious facets of the NIEO while co-opting its more “sensible” proposals. The NIEO had always prioritized reform rather than revolution, and it would be difficult, if not impossible, to characterize its program as “anti-capitalist,” particularly since it was made possible only through the concerted action of oil-producing states that were nearly always committed to the capitalist world economy.⁴¹ It too had been premised upon the

1966, 999 U.N.T.S. 171; G.A. Res. 2625 (XXV), Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (Oct. 24, 1970); G.A. Res. 1514 (XV), Declaration on the Granting of Independence to Colonial Countries and Peoples (Dec. 14, 1960).

38. See G.A. Res. 1803 (XVII), Permanent Sovereignty over Natural Resources (Dec. 14, 1962). See also International Covenant on Economic, Social, and Cultural Rights art. 1, Dec. 16, 1966, 993 U.N.T.S. 1; International Covenant on Civil and Political Rights art. 1, Dec. 16, 1966, 999 U.N.T.S. 171; G.A. Res. 626 (VII), Right to Exploit Freely Natural Wealth and Resources (Dec. 21, 1952); G.A. Res. 523 (VI), Integrated Economic Development and Commercial Agreements (Jan. 12, 1952).

39. See G.A. Res. 3281 (XXIX), Charter of Economic Rights and Duties of States (Dec. 12, 1974); G.A. Res. 3201 (S-VI), Declaration on the Establishment of a New International Economic Order (May 1, 1974); G.A. Res. 3202 (S-VI), Programme of Action on the Establishment of a New International Economic Order (May 1, 1974).

40. For recent reconsideration of the NIEO’s objectives, strategies, and complex consequences, see the articles in 6 HUMANITY (2015) (special issue entitled *Toward a History of the New International Economic Order*). I have considered various aspects and implications of the NIEO in earlier work: Umut Özsu, “*In the Interests of Mankind as a Whole*”: Mohammed Bedjaoui’s *New International Economic Order*, 6 HUMANITY 129 (2015); Umut Özsu, *Neoliberalism and the New International Economic Order: A History of “Contemporary Legal Thought,”* in SEARCHING FOR CONTEMPORARY LEGAL THOUGHT 330 (Justin Desautels-Stein & Christopher Tomlins eds., 2017).

41. Hence the indifference or outright hostility of many Marxists toward the program. See, e.g., Herb Addo, *The New International Economic Order and Imperialism: A Context for Evaluation*, in PEACE, DEVELOPMENT, AND NEW INTERNATIONAL ECONOMIC ORDER: PROCEEDINGS OF THE INTERNATIONAL PEACE RESEARCH ASSOCIATION SEVENTH GENERAL CONFERENCE 194 (Luis Herrera & Raimo Väyrynen eds., 1979); Samir Amin, *After the New International Economic Order: The*

assumption that the international economic order established at the conclusion of the Second World War was in need of “fundamental correction” rather than outright disavowal.⁴² Yet some members of the Brandt Commission believed that the NIEO needed to be integrated into a still more conciliatory and comprehensive reform package.⁴³ The Commission lent support to a variety of elements in the NIEO platform, such as technology transfer and commodity market stabilization, and even included the general issue of “roads to a new international economic order” in its formal terms of reference.⁴⁴ But it also insisted upon basic needs-style action, arguing that “the case for a new international economic order will lose much of its moral force unless it is geared to a global effort to eradicate mass poverty.”⁴⁵ More importantly, the Commission departed sharply from the NIEO in regard to certain “controversial issues” like the authority of host states to nationalize the assets of foreign investors.⁴⁶ Brandt was quite candid—if not a little derisive—about this later in life, writing that the Commission had set out from the understanding that “many misconceptions in the Third World would have to be swept aside,” and that it did not therefore “identify itself with maximalist, comprehensive demands for a ‘new world economy’, ideas such as those considered by the United Nations in 1974–[7]5—as if the resolutions passed in its glass palace in New York could have revolutionary consequences world-wide.”⁴⁷ The Commission’s proposals were not, he went on to note, “conspicuous for radicalism, particularly not in matters of money and finance.”⁴⁸ Its principal report

Future of International Economic Relations, in *NEW INTERNATIONAL ECONOMIC ORDER: A THIRD WORLD PERSPECTIVE* 297, 300 (Pradip K. Ghosh ed., 1984) (“The truth is, however, that the ‘negotiations’ initiated since the oil crisis of 1973, and the adoption in 1974 of the Declaration and the Programme of Action on the Establishment of a New International Economic Order, have been fruitless.”); André Gunder Frank, *Rhetoric and Reality of the New International Economic Order*, in *TRANSFORMING THE WORLD-ECONOMY?: NINE CRITICAL ESSAYS ON THE NEW INTERNATIONAL ECONOMIC ORDER* 165 (Herb Addo ed., 1984); Samir Amin, *Self-Reliance and the New International Economic Order*, 29 *MONTHLY REV.* 1 (Jul.–Aug. 1977). Even U.S. think tanks like the Institute for Policy Studies found the NIEO’s insistence upon increased aid wanting from the standpoint of dependency theory. See Paul Adler, “*The Basis of a New Internationalism?*”: *The Institute for Policy Studies and North-South Politics from the NIEO to Neoliberalism*, 41 *DIPLOMATIC HIST.* 665, 675 (2017). Reinforcing this tendency was the fact that a large number of non-aligned states actively took steps to prevent the NIEO from being confused with (or passed off as) a Soviet project. See ROY ALLISON, *THE SOVIET UNION AND THE STRATEGY OF NON-ALIGNMENT IN THE THIRD WORLD* 111–25 (1988).

42. The language belongs to the Brandt Commission. See *NORTH-SOUTH*, *supra* note 5, at 11.

43. For a sense of the Commission’s understanding of the NIEO and the context in which it first arose, see especially *id.* at 30–47 (describing the background conflicts and crises that separated North and South), 168–69 (characterizing energy price and supply shocks as “[t]he greatest dangers facing the world in the short and medium term”).

44. *Id.* at 297.

45. *Id.* at 133.

46. *Id.* at 73, 188–93. The Commission threw its weight behind the “fair and effective” formula for compensation in the event of nationalization. See *id.* at 193. By contrast, the NIEO had famously required no more than “appropriate compensation,” this to be determined by the host state in accordance with “its relevant laws and regulations and all circumstances that the State considers pertinent.” See G.A. Res. 3281 (XXIX), art. 2, ¶ 2(c), Charter of Economic Rights and Duties of States (Dec. 12, 1974).

47. WILLY BRANDT, *MY LIFE IN POLITICS* 344–45 (Anthea Bell trans., 1992).

48. *Id.* at 347.

evinced a serious concern with, or at least a serious rhetorical prioritization of, crises of various kinds—“the crisis of relentless inflation and increasing energy costs, the crisis of dwindling energy availability, the crisis resulting from mounting financial requirements, and the crisis posed by constraints on world trade and on the growth of export earnings to meet increased debt service commitments.”⁴⁹ Such crises were understood by many observers, particularly those of Marxist persuasion, to be anchored in a secular decline in the rate of profit stemming from overproduction in advanced capitalist countries and the concomitant completion of the post-Second World War cycle of capital accumulation.⁵⁰ For Brandt and his colleagues, such crises could not be resolved by way of the NIEO.⁵¹

B. A First Report

At its most progressive, or at least its most experimental, *North-South: A Programme for Survival* displayed a willingness to suspend “doctrinaire concerns about intervention with the operation of market forces,”⁵² encourage “[d]ecentralized government or administrative systems” as a form of participatory development,⁵³ adapt the International Monetary Fund (IMF) to provide additional support to countries that were harmed by fluctuations in commodity export earnings,⁵⁴ criticize the IMF for its “paternalist” tendency to “impose conditions which go beyond its legitimate interests,”⁵⁵ acknowledge that the “international division of labour is a dynamic process which calls for continuous adaptation and

49. NORTH-SOUTH, *supra* note 5, at 239. The Commission was wont to wax lyrical about these and other “crises” and “dangers.” For an especially charged list, see *id.* at 269–70.

50. See Folker Fröbel, *The Current Development of the World-Economy: Reproduction of Labour and Accumulation of Capital on a World Scale*, in TRANSFORMING THE WORLD-ECONOMY? NINE CRITICAL ESSAYS ON THE NEW INTERNATIONAL ECONOMIC ORDER 51, 51–55, 68–69, 77–78 (Herb Addo ed., 1984); ERNEST MANDEL, THE SECOND SLUMP: A MARXIST ANALYSIS OF RECESSION IN THE SEVENTIES 22–46 (Jon Rothschild trans., 1980). For broader and more recent discussion, see generally ROBERT BRENNER, THE ECONOMICS OF GLOBAL TURBULENCE: THE ADVANCED CAPITALIST ECONOMIES FROM LONG BOOM TO LONG DOWNTURN, 1945–2005 26 (2005) (rooting this “long downturn . . . in the tendency of producers to develop the productive forces and increase economic productivity by means of the installation of increasingly cheap and effective methods of production, without regard for existing investments and their requirements for realization, with the result that aggregate profitability is squeezed by reduced prices in the face of downwardly inflexible costs.”).

51. For a similar argument about the Brandt Commission’s relation to the NIEO, see William Graf, *From Brandt to Brundtland and Beyond: Hegemonic-Ideological Aspects of the North-South Dialogue in the 1990s*, 15 HIST. EUR. IDEAS 399, 400–01 (1992).

52. NORTH-SOUTH, *supra* note 5, at 151 (criticizing the reluctance of some industrialized countries to enter into international commodity agreements).

53. *Id.* at 133 (“In achieving the main objectives of development, no system lacking in genuine and full participation of the people will be fully satisfactory or truly effective.”).

54. *Id.* at 153 (“In relation to commodities an important consideration for the future is whether the [IMF Compensatory Financing] Facility could be adapted to accommodate adequately the needs that arise from the fluctuations in commodity export earnings.”).

55. *Id.* at 215.

adjustment,”⁵⁶ eschew many capital-exporting states’ “prompt, adequate, and effective payment” approach to compensation in the event of nationalization,⁵⁷ and toy with the idea of rolling both the United Nations Conference on Trade and Development and the General Agreement on Tariffs and Trade into a new and more comprehensive trade organization.⁵⁸ Most ambitiously, the report considered the idea of a levy on international trade and other forms of international taxation, and called for the creation of a “World Development Fund” that would use these resources to “help the disbursement of World Bank projects held up by the shortage of domestic resources, and help also to keep countries from reaching a crisis situation in which they have to go to the IMF for balance of payments adjustment finance.”⁵⁹

At its most overtly polemical, the report was more aggressive—and more easily recognizable as linked with, or at least sympathetic to, various elements of the nascent neoliberal tide. It presented trade liberalization as key to “food security.”⁶⁰ It argued that corruption and political meddling plagued only a small fraction of the transnational corporations that interlinked the world economy.⁶¹ It insisted that “market promotion and the improvement of market structures” must be central to developing countries’ efforts to increase returns from the sale of their commodities.⁶² It depicted the IMF’s “surveillance” mechanism of monitoring as vital to ensuring stability of exchange rates, which “requires both discipline at home and international cooperation.”⁶³ It chided those who would restrict trade, insisting instead on an “open trading system,”⁶⁴ and warned against most forms of prolonged protectionism, which “threatens the future of the world economy and is inimical to the long-term interests of developing and developed countries alike.”⁶⁵ It glossed deindustrialization in advanced capitalist countries with bold assurances to the effect that “structural change of the world economy

56. *Id.* at 175.

57. U.S. Secretary of State Cordell Hull first propounded this formulation in the context of Mexico’s move to nationalize foreign oil assets in 1938. For its implications, see M. SORNARAJAH, *THE INTERNATIONAL LAW ON FOREIGN INVESTMENT* 414–43 (3d ed. 2010). As already mentioned, the Commission preferred the (less stringent) “fair and effective” approach. See NORTH-SOUTH, *supra* note 5, at 193.

58. NORTH-SOUTH, *supra* note 5, at 184–85, 288.

59. *Id.* at 253. For the Commission’s reasons for imposing a levy on international trade and adopting related measures, see *id.* at 244–47. For the Commission’s justification for the “World Development Fund,” see *id.* at 252–55. For a summary of the Commission’s newly articulated approach to development finance, see *id.* at 273–75.

60. *Id.* at 90–104 (“Liberalization of trade in food and other agricultural products within and between North and South would contribute to the stabilization of food supplies.”). For the Commission’s invocation of “a new, more comprehensive understanding of ‘security,’” see *id.* at 124 (understood not simply in its “purely military aspects” but rather encompassing a “sustainable biological environment, and sustainable prosperity based on equitably shared resources.”).

61. *Id.* at 189 (“Many of [the transnational corporations] have believed in maintaining legal and ethical standards In some cases governments may be as much to blame as the corporations”).

62. *Id.* at 144.

63. *Id.* at 208.

64. *Id.* at 179.

65. *Id.* at 287. See also *id.* at 70–71.

is inevitable and will bring many mutual gains in the long run.”⁶⁶ It stressed that “[f]or most countries, balanced trade expansion is a less inflationary form of raising the level of economic activity than stimulation through increases in domestic public expenditure.”⁶⁷ It dismissed trade union concerns by stating that “the loss of jobs in the North due to imports from the South has been very small in relation to total unemployment.”⁶⁸ It stressed the importance of strong population control programs, marshalling a neo-Malthusian “nightmarish vision of a hopelessly overcrowded planet” to underscore the need for family planning policies.⁶⁹ And it tempered its commitment to general human well-being with reminders that “[r]estructuring is a continuous process in efficient economies, through which more productive activities replace less productive ones.”⁷⁰

Sprinkled throughout this muddled verbiage was the occasional nod toward dependency theory and related models of global political economy. “Producing countries contend that there is a tendency towards a long-term decline in commodity prices relative to the price of manufactured goods,” the report observed, going on to note that “[t]here has been some debate as to whether over the long run the terms of trade have been unfavourable to commodity producers.”⁷¹ Nevertheless, such comments—relatively few in number and clearly alluding to the work of Hans Singer and Raúl Prebisch,⁷² as well as long-running discussions about import-substitution industrialization and related matters within the United Nations Conference on Trade and Development, a forum in which “what used to be called ‘peripheral’ countries” comprised a majority⁷³—were never taken up systematically. Although some Commission members, including Brandt himself, may have espoused “global social democracy,”⁷⁴ it is hard to escape the impression that such rhetoric consisted of mere gestures intended to appease those who

66. *Id.* at 177.

67. *Id.* at 68. It is interesting to consider this statement in connection with the report’s related commitment to the view that the South needed “to complement measures of international social justice with domestic ones to achieve the same ends.” *Id.* at 76.

68. *Id.* at 69.

69. *Id.* at 106–07.

70. *Id.* at 35.

71. *Id.* at 146–47.

72. See RAÚL PREBISCH, *THE ECONOMIC DEVELOPMENT OF LATIN AMERICA AND ITS PRINCIPAL PROBLEMS* (1950); H. W. Singer, *The Distribution of Gains Between Investing and Borrowing Countries*, 40 AM. ECON. REV. 473 (1950). Singer appears to have been the first to develop the thesis of a long-term downward trend in the price of primary commodities relative to the price of manufactured goods, with “unfair” consequences for the distribution of gains from trade. Prebisch would position this trend at the heart of the dynamic interaction between states in the “center” and “periphery” of the world economy, inaugurating a mode of politico-economic analysis that would find expression in dependency theory and world-systems theory. See JOHN TOYE & RICHARD TOYE, *THE UN AND GLOBAL POLITICAL ECONOMY: TRADE, FINANCE, AND DEVELOPMENT* 110–36 (2004). The Brandt Commission consulted Prebisch as an “eminent person” (alongside Henry Kissinger, former U.S. Secretary of State, and Harlan Cleveland, former U.S. Permanent Representative to NATO, both of whom were extended the same status) in August 1978. See NORTH-SOUTH, *supra* note 5, at 300.

73. NORTH-SOUTH, *supra* note 5, at 53.

74. See GARAVINI, *supra* note 3, at 236.

would otherwise chafe at the report's commitment to revitalizing global capitalism after its post-war phase of expanded trade and growth had run aground.

To some extent, this murkiness—which was as much political as it was analytical—stemmed from the Commission's composition and basic mandate. And to be fair, what more could have been expected from a committee that was to propose measures for restructuring the entirety of “North-South relations,” and that counted as members both Joe Morris, the Canadian union leader and chair of the International Labor Organization's governing body, and Peter G. Peterson, the long-time investment banker who had served as Commerce Secretary under U.S. President Richard Nixon and who was then chairman and chief executive officer of Lehman Brothers? As Brandt would later acknowledge, this was no easy task, particularly since the Commission did not put any of its decisions to a vote, opting instead to work by consensus.⁷⁵ The result, perhaps predictably, was a confused and conflict-ridden text, one that sought to paper over its internal contradictions by sermonizing ritualistically about the need to institute “co-management of the world economy”⁷⁶ and to demonstrate that “countries and continents can overcome their differences and resolve the contradictions between their self-interest and their joint interests.”⁷⁷ An overlapping consensus of sorts would emerge from sustained dialogue and the long-term convergence of competing visions of world order that would follow from a *bona fides* effort to break “the present deadlock.”⁷⁸ Reduced tariffs, coupled with greater levels of aid, project lending, debt restructuring, institution-building, and technology transfer, would help to expand global markets, stoking production in the South and driving down inflation and unemployment in the North. The resulting redistribution of capital and know-how from North to South would help to combat hunger, alleviate poverty, foster greater gender equality, and accelerate the provision of better health, housing, and educational services, all part and parcel of the rights-friendly basic needs approach in circulation at the time. Notwithstanding its predilection toward lofty rhetoric (a predilection that was shared by the NIEO's chief proponents), the Brandt Commission saw large-scale transfer of resources and technology not simply as a good in itself, but as a means of ensuring that the South would have the ability to purchase goods from the North, thereby wrenching the latter out of persistent “stagflation” and bolstering its levels of employment.

In response to those who might voice doubts, the report argued that “the lessons of reform,” both domestic and international, were inspired by “great moral

75. BRANDT, *supra* note 47, at 342–43. *See also id.* at 354 (“Incidentally, it is simpler to write a book alone than with two dozen other people, but that is the occupational hazard of drawing up a work setting out a programme, in which many people rightly wish their views to be reflected”).

76. NORTH-SOUTH, *supra* note 5, at 74.

77. *Id.* at 30.

78. *Id.* at 281 (“But we believe the present deadlock is so serious, and the need to break through is so evident, that nothing should delay discussion and negotiation at the highest level. We hope that a summit could enable political leaders to take the first steps towards committing themselves and their people to a global agreement for the benefit of the whole world.”).

imperatives” and the demands of “human solidarity.”⁷⁹ “World society” necessitated as much.⁸⁰ “International social justice should take into account the growing awareness of a fundamental equality and dignity among all men and women,” the report intoned, stressing that “[s]trong efforts should be made to further a growing recognition of human rights.”⁸¹ The Commission aimed above all to “ensure development and be consistent with human dignity,”⁸² and this was a task that called for nothing less than “a global consensus on the moral plane that the basis of any world or national order must be people and respect for their essential rights, as defined in the Universal Declaration of Human Rights.”⁸³ The “economic solutions” required of “the new generations of the world”⁸⁴—solutions premised upon an understanding that “questions of historical guilt will not provide answers to the crucial problem of self-responsibility,”⁸⁵ and that “[s]elf-righteousness will neither create jobs nor feed hungry mouths”⁸⁶—had necessarily to be accompanied by “a belief in man, in human dignity, in basic human rights.”⁸⁷ The rights and dignity of peoples, both individual and collective, were the *telos* for the report’s economic proposals—and their espousal and achievement was to a great degree a matter of common faith. The lesson that “countries have to strengthen their capability to sustain development” provided an “analogy for individuals and families”; the latter had, after all, to satisfy “essential human needs,” the most basic being “the right to participate in change and to share in the outcome.”⁸⁸ As Brandt himself stated sharply in his introduction to the report, “[w]e in the South *and* the North should frankly discuss abuses of power by élites, the outburst of fanaticism, the misery of millions of refugees, or other violations of human rights which harm the cause of justice and solidarity, at home and abroad.”⁸⁹ Human rights may not have been his Commission’s primary concern, but Brandt and his colleagues were happy to clothe the development proposals they churned out in rights-friendly language.

C. A Second Report

The Commission’s 1983 follow-up report, prepared in the wake of the Latin American debt crisis, did not deviate markedly from this turgid and internally

79. *Id.* at 77.

80. *Id.*

81. *Id.* at 25.

82. *Id.* at 63.

83. *Id.* at 268.

84. *Id.* at 12.

85. *Id.* at 25.

86. *Id.*

87. *Id.* at 12.

88. *Id.* at 63. *See also id.* at 84, 129, 228.

89. *Id.* at 10 (original emphasis).

contradictory moralism, much of which read like a reproduction of earlier suggestions by development specialists.⁹⁰ All but two of the Commission members who had appended their names to the first report did so in the case of the second report.⁹¹ By this point, the Commission found itself facing a severe international recession that seemed capable of deepening into a full-blown depression, wreaking havoc on financial markets, disordering the international trade system, engendering widespread unemployment, and encouraging wars and civil strife.⁹² As in *North-South: A Programme for Survival*, its proposed solution was sustained and significant growth, in the South as well as the North, and the institution of further measures to curb protectionism while ensuring that poorer states were provided additional aid and access to loans. And, once again, its written recommendations were muddled.

On the one hand, the report defended developing countries from the “extreme” charge of having “brought all their problems on themselves,” explaining that their “extreme retrenchment” with respect to international trade was due in large part to an “unfavourable external environment.”⁹³ It maintained that aid-supported development should have as one of its principal purposes “the creation of nation states capable of sustaining their own political independence,” this being “among the essential foundations of international stability.”⁹⁴ Citing the 1982 report of the Independent Commission on Disarmament and Security Issues, chaired by Swedish social democrat Olof Palme,⁹⁵ it decried large-scale military expenditures, a source of serious economic concern quite apart from the obvious humanitarian consequences of nuclear and other weapons that are capable of

90. Susan Strange, the pioneering scholar of international political economy, put the point with admirable bluntness: “If it often seems that we have heard or read much the same sort of thing before, it is because we *have* actually heard it before. The earnest lecture on the sad and sorry state of the world is consequently apt to sound as sonorous and predictable in our ears as a Sunday sermon, a fund-raising appeal, or a Fourth of July oration.” Susan Strange, *Reactions to Brandt: Popular Acclaim and Academic Attack*, 25 INT’L STUD. Q. 328, 333 (1981).

91. One exception was Eduardo Frei Montalva, a former Chilean head of state who had nationalized foreign-owned copper mines before supporting the coup against Salvador Allende’s administration. He died in 1982, and *Common Crisis* is dedicated to his memory. The other was Peter G. Peterson of the United States, who, as the first page of the report states, “did not participate in the preparation of this Memorandum.” (Interestingly, the only other Commission member hailing from the United States was Katharine Graham, the *Washington Post* publisher who is often credited with having facilitated Richard Nixon’s downfall through her support for the investigative work of Bob Woodward and Carl Bernstein. Graham appended her name to the 1983 report, as she had to the 1980 report.). Compare COMMON CRISIS, *supra* note 7, at iii with NORTH-SOUTH, *supra* note 5, at 1.

92. See, e.g., COMMON CRISIS, *supra* note 7, at 16 (“The world economy faces its fourth consecutive year of stagnation. It could well contract further.”). See also *id.* at 11, 18–20, 56.

93. *Id.* at 20.

94. *Id.* at 36.

95. See THE INDEPENDENT COMMISSION ON DISARMAMENT AND SECURITY ISSUES, COMMON SECURITY: A BLUEPRINT FOR SURVIVAL (1982).

causing mass destruction.⁹⁶ It toyed with such measures as preferential trade arrangements among developing countries,⁹⁷ and lent a measure of support (or at least understanding) to the default bargaining strategy of oil-producing countries, which typically rejected attempts to divorce energy issues from other issues and threw their weight behind full-spectrum negotiations.⁹⁸

Like its precursor, though, the report was also given to adopting a different line. It emphasized that “private business can play and has played an extremely valuable part in development.”⁹⁹ It cautioned developing countries against becoming “premature welfare states,” urging them to “lay the foundations of growth in all the important sectors.”¹⁰⁰ It once again extolled the virtues of an “open trading system,” likening it to a bicycle that “must keep moving forward in order to stay upright.”¹⁰¹ It sought “to restore confidence in the banking system,”¹⁰² defending it against unduly “harsh” accusations of “irresponsibility” and stressing that “[i]t is essential that private flows continue, with support from international institutions and central banks.”¹⁰³ It presented the World Bank’s program of structural adjustment lending as an example of the “very modest progress” since the publication of its first report, lamenting only that the organization did not always respect its commitment to “dialogue” with borrowing countries and “remained restricted by its rule that not more than 10 per cent of its loans be used for non-project lending.”¹⁰⁴ Similarly, while Commission members were hardly blind to the “painful policy changes” so frequently imposed by the IMF, which generally “assume[d] a very limited range of possibilities” and ignored the fact that “[t]here is typically more than one way of achieving external equilibrium,” they also felt a need to chastise developing countries for failing to “go to the IMF until they are *in extremis*,” at which point “the medicine prescribed is unpleasant.”¹⁰⁵ The Commission rejected demands for increased oversight of the commercial banking system by central banks on the grounds that a “clearer definition of central banks’ responsibilities in the event of serious disruptions in the international capital market” would have the perverse effect of

96. COMMON CRISIS, *supra* note 7, at 7, 38 (“All we can do is to add our plea to theirs: that genuine disarmament be pursued as the first priority of international action, to rid the world both of the growing insecurity of the proliferation of weapons, and of their unacceptable costs, which now pose a serious threat to several industrial and developing economies.”). Among members of the Brandt Commission, Palme, Haruki Mori of Japan, and Shridath Ramphal of Guyana were also members of the Palme Commission, and joint work between the two ventures was contemplated. *Id.* at 168.

97. *Id.* at 117.

98. *Id.* at 134–36.

99. *Id.* at 82.

100. *Id.* at 79.

101. *Id.* at 101.

102. *Id.* at 13.

103. *Id.* at 46–47.

104. *Id.* at 27–29, 73. See also *id.* at 70 (insisting, revealingly, that “more funds should be available for the Bank’s programme of Structural Adjustment Loans”).

105. *Id.* at 61–62. For a list of detailed recommendations with respect to the IMF, see *id.* at 65–67, 95–96, 152–53.

further encouraging imprudent lending.¹⁰⁶ After all, it observed, “it is well understood by everyone that for most purposes the market must make its own choices, for good or ill.”¹⁰⁷ Finally, it reaffirmed its call for a “global energy research centre” to be established under United Nations auspices, explaining that much of its work “would be positively beneficial to private companies wishing to invest in this sector.”¹⁰⁸

Ultimately, this yielded a variety of methods to press ahead with what the Commissioners, like so many others at the time, continued to describe as the “North-South dialogue.” The Commission called for a follow-up to the 1981 “North-South Summit.”¹⁰⁹ It characterized Cancún as a major “setback” for having allowed major industrialized states to adopt “self-centred measures—with dramatic and damaging side-effects on North-South economic cooperation.”¹¹⁰ If its members believed that “the world’s economic and monetary system must now be reconsidered and restructured under circumstances nearly as serious as those of 1944,”¹¹¹ they also believed that such reconstruction was in the “mutual interest” of North and South, and that acting purely on the basis of “an impulse of self-preservation” was destined to injure “both our collective and individual condition.”¹¹² Tellingly, though, such “mutual interest” was deemed possible only to the extent that the South “showed less rigidity in the forms and procedures of its group system, and a greater readiness to use more specialised fora and non-global approaches”—precisely the kinds of institutional contexts and bargaining arrangements in which voted resolutions and majority decisions, key to the Third World diplomatic strategies that had yielded the NIEO, were less available.¹¹³ Even if the “power structure” of the Bretton Woods organizations still reflected “the distribution of financial and economic power of thirty-five years ago,” the South remained, in the Commission’s view, obliged to “give due weight to perceptions of prudence and good management of those developed countries whose continued financial support for the institutions is so necessary for the maintenance and expansion of their operations.”¹¹⁴ Broached from this perspective, the Commission’s incessant talk of “dialogue,” “common ground,” and “mutual interests”—all “based on a respect for the individual” and its rights, in combination

106. *Id.* at 88–89.

107. *Id.* at 88.

108. *Id.* at 136–38. *See also* NORTH-SOUTH, *supra* note 5, at 169 (“We would recommend the setting-up of a global energy research centre under UN auspices which could in the first place provide a focus for information, research and projections. Such a centre could support in particular research in the field of renewable sources of energy.”)

109. NORTH-SOUTH, *supra* note 5, at 281–82.

110. COMMON CRISIS, *supra* note 7, at 4. *See also id.* at 2, 12, 150.

111. *Id.* at 2.

112. *Id.* at 11–12.

113. *Id.* at 142. For the same point, see also *id.* at 143. The Commission also reminded Northern states and policymakers that they had “important long-term interests in the evolution of a cooperative and stable international system,” and that it “would therefore be wise for them to accept the reality of the Third World as a continuing and significant political grouping.” *Id.* at 140.

114. *Id.* at 147.

with “the national heritage and the common good”¹¹⁵—appears significantly less laudable than it has sometimes been made out to be. If the South’s productive capacities were to be augmented in order to bolster its exports and enable enhanced consumption of Northern goods, thereby containing inflation and shoring up employment throughout the North, then the “solidarity” of which the Commission’s reports made so much was tantamount to little more than a shared commitment to global capitalism, inflected by neoliberal commitments to sweeping trade liberalization and structural adjustment lending.¹¹⁶

When all was said and done, the Commission reminded the more *étatist* among its readers, “[t]he basis of any world order—or any national or regional order—must be respect for individual people and their essential rights, as defined in the Universal Declaration of Human Rights.”¹¹⁷ Important for this endeavor was respect for fundamental civil and political rights and the satisfaction of basic needs such as those relating to health, shelter, and education, which the Commission characterized as having “a high economic return as well as being essential to elementary human welfare.”¹¹⁸ Once again, while rights were not central to the Commission’s work, they were useful for the purpose of rendering the Commission’s development proposals more attractive than they might otherwise have been, at least to some audiences.

IV CONCLUSION

North-South: A Programme for Survival and *Common Crisis* bear the same image on their front covers: the Gall-Peters projection for representing the globe, an alternative to the centuries-old and more widely employed Mercator projection that so often figures on such covers (*image 1*). This is notable for two reasons. First, the Gall-Peters projection that was popularized in the 1970s and that appears on the two covers (*image 2*) is marked by a rather curious feature. A dark, thick line slithers from one end of the world to the other; cutting North America roughly along the Rio Grande before jumping across the North Atlantic, it runs the length of the Mediterranean Sea, divides the Soviet Union from its southern neighbors, makes a sharp turn southward immediately before reaching Japan,

115. *Id.* at 8.

116. Consider, for instance, the following observations: “5 per cent of all jobs and *one industrial job in six* in the USA depends on exports to the Third World; in several other countries where trade makes up a higher proportion of total production the figure is even larger. What is at risk for the North is plain to see, if the downward trend of flows of finance and trade with the South is not reversed. . . . It is increasingly obvious that we are all in the same boat, that the North cannot contemplate with unconcern the fact that the South’s end of the boat is sinking. The North’s end of the boat is already none too buoyant either.” *Id.* at 27. *See also id.* at 39, 55. It has long been argued that liberalized trade and structural adjustment “did nothing to improve [the position of low- and middle-income countries] in the global hierarchy of wealth but greatly facilitated the redirection of capital flows toward sustaining the revival of US wealth and power.” Giovanni Arrighi, *The World Economy and the Cold War, 1970–1990*, in 3 *THE CAMBRIDGE HISTORY OF THE COLD WAR* 23, 35 (Melvyn P. Leffler & Odd Arne Westad eds., 2010).

117. COMMON CRISIS, *supra* note 7., at 8–9.

118. *Id.* at 71.

and leaves the entirety of East and Southeast Asia on its other side before rounding Australia and New Zealand. Dubbed the “Brandt line,” this feature was intended to provide something of a rough visual approximation of the line dividing North and South, developed from developing, a politico-economic equivalent of sorts to the “color line” about which Frederick Douglass and W. E. B. Du Bois had written so long ago.¹¹⁹

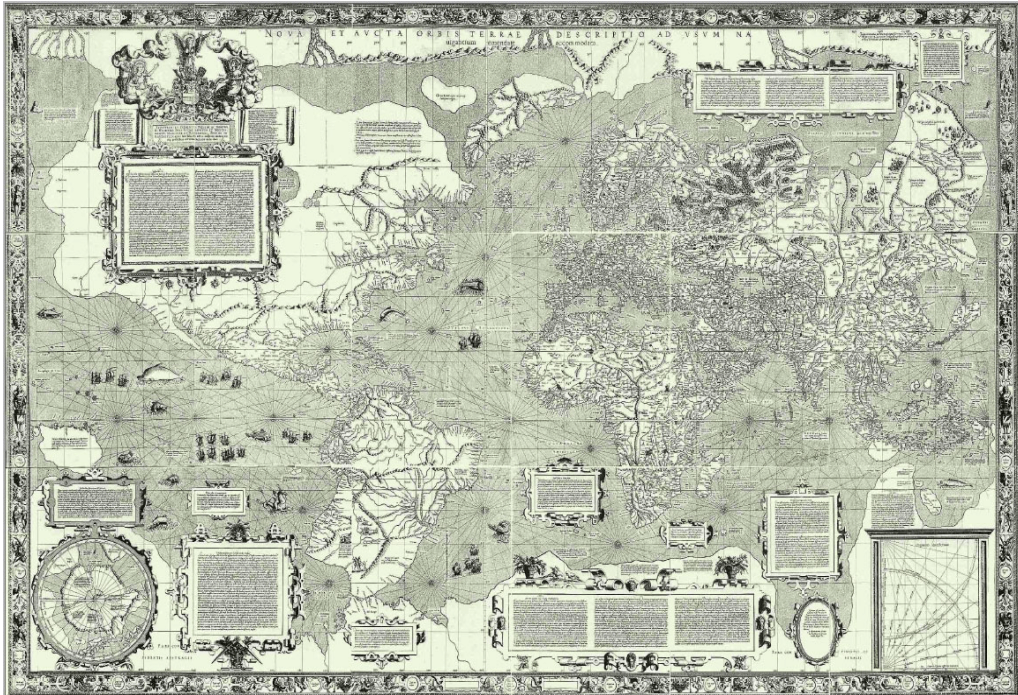


Image 1: Gerardus Mercator's 1569 world map (*Nova et aucta orbis terrae descriptio ad usum navigantium emendate accommodata*), source of the Mercator projection. Courtesy of WIKIPEDIA, https://en.wikipedia.org/wiki/Mercator_projection#/media/File:Mercator_1569.png [<https://perma.cc/E8K4-DAUE>].

119. See Frederick Douglass, *The Color Line*, 132 *N. AM. REV.* 567 (1881); W. E. B. DU BOIS, *THE SOULS OF BLACK FOLK*, ch. 6 (1903).

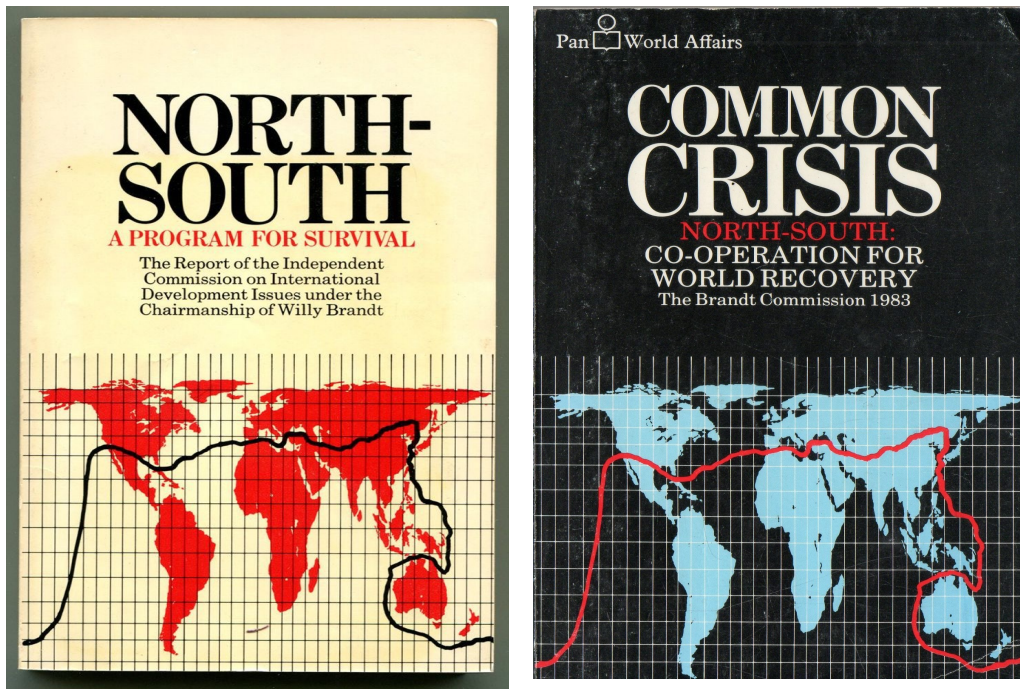


Image 2: The Gall-Peters projection, as it appears on the covers of the Brandt Commission's two published reports.

Second, both reports' copyright pages contain a lengthy explanation of the Gall-Peters projection: "The surface distortions that do appear are distributed at the Equator and the poles; the more densely settled earth zones, it is claimed, appear in proper proportion to each other. This projection represents an important step away from the prevailing Eurocentric geographical and cultural concept of the world."¹²⁰ By replacing the more common and recognizable Mercator map with its Gall-Peters rival, the Brandt Commission hoped to signal its commitment to a different vision of world order, one that would make room for greater attentiveness to the concerns of the developing world without denying the existence of important and growing power differentials.

While the Brandt Commission's influence was admittedly limited,¹²¹ many to-

120. NORTH-SOUTH, *supra* note 5, at ii; COMMON CRISIS, *supra* note 7, at iv.

121. See, e.g., COMMON CRISIS, *supra* note 7, at 164 (confessing that "the Commission's impact has been slow in general and limited in scope"). To the question of whether the endeavor had been worth the trouble, Brandt would later provide a rather unenthusiastic response: "Even if it had only meant adding a couple of slim volumes to the library of works on development policy, I would say that worse things have happened in the history of mankind, and answer 'Yes.'" BRANDT, *supra* note 47, at 353-54.

day would be inclined to view it as a fundamentally progressive initiative. If nothing else, the word salad it offered in its two reports compares favorably with many subsequent efforts to restructure international legal and economic relations. Even so, when understood in its political and historical context, it is best understood as a watered-down NIEO, one tempered by elements of the neoliberalism that would soon establish itself as the dominant ideology of governance in the West as well as in the “Rest.” Support for German industrial exports had been key to Brandt’s success, and had, interestingly enough, proven compatible with increased concern in Germany with exploitation in the global South.¹²² The Commission’s reports reflected something similar. “The industrial capacity of the North is under-used, causing unemployment unprecedented in recent years,” the Commission stated in its first report, adding that the South, for its part, “is in urgent need of goods that the North could produce.”¹²³ Only a systemic renewal of capitalism—the first watershed revivification since the reconstruction of the international legal and economic order after 1945—was up to the challenge, a challenge “on which the destiny of mankind depend[ed].”¹²⁴

When asked to provide his opinion on the NIEO in 1979, a year before the publication of the Commission’s first report, Brandt dodged the question and retreated to his standard line about the “mutuality of interests”:

I have discussed this with economic experts from Europe, America and also from Japan and more and more of them admit that the economic future of the western world, a decent standard of living as one understands it here, jobs for the next generation, *et cetera*, will depend in a much higher degree than one believed till recently, on the development of countries of the Third World. It is also in the interest of the developing countries that the western world should settle problems because otherwise the western world or the industrialised world would not be in a good shape to play the role it should play in international cooperation.¹²⁵

The Commission’s reports conflated human survival with the survival of capitalism, sketching a program of redistribution to stimulate demand so as to integrate the South into global capitalist networks commandeered by the North all the more completely. While it is undeniable that this program was anchored to a significant degree in earlier Keynesian ideas about effective demand and recovery through intervention from above,¹²⁶ it also accommodated far more of the

122. Ernest Mandel, *Willy Brandt and Petra Kelly*, 196 *NEW LEFT REV.* 125, 126 (1992) (“Brandt’s offensive, as president of the Socialist International, in favour of a more ‘reasonable’ attitude towards this problem was supportive of German industry’s export drive. But at the same time it nourished a greater awareness among important layers of the West German population of the problem of Third World overexploitation and misery—indeed, it strengthened solidarity with the ‘Third World’. This awareness is probably more widespread today in West Germany than in any other European country.”).

123. *NORTH-SOUTH*, *supra* note 5, at 267.

124. *Id.*

125. Willy Brandt & Altaf Gauhar, *Willy Brandt*, 1 *THIRD WORLD Q.* 7, 10 (1979).

126. See, e.g., Diane Elson, *The Brandt Report: A Programme for Survival*, 6 *CAP. & CLASS* 110, 116–18, 125 (1982); André Gunder Frank, *North-South and East-West Keynesian Paradoxes in the Brandt Report*, 2 *THIRD WORLD Q.* 669, 671–76, 679–80, 680 (1980); Gavin Williams, *The Brandt Commission: A Critical Introduction*, 19 *REV. AFR. POL. ECON.* 77, 79 (1980) (“It may appear ironic that the commis-

employer-oriented drive to increase competitiveness by promoting private investment, laying protectionism aside, and bolstering structural adjustment lending than has generally been assumed.¹²⁷

Of course, none of this precluded arguments that the Commission was insufficiently respectful of the market's magic. Neoliberal economist Deepak Lal was driven to publish *The Poverty of "Development Economics"* in response to the "dirigiste dogma" he discerned in the Commission's work.¹²⁸ His discussion made reference to a critical review of the 1980 report by P. D. Henderson, a British economist who argued that the Commission had succumbed to unfounded faith in the capacity of governments to stabilize markets through regulatory intervention, had mistakenly associated poverty and under-development with unequal distributions of economic power, and had attempted to link war, displacement, and ecological degradation to issues of economic development without sufficient evidence.¹²⁹ Additional support for Henderson's criticisms came from no less a source than Friedrich Hayek, who was so irritated by what he called the "notorious *North-South* report" that he felt compelled to pen an op-ed in the *London Times* denouncing the "traditional fallacy that poverty can be cured by a massive transfer of wealth."¹³⁰ This was a misleading characterization of the Commission's proposals, eliding the degree to which it had gone out of its way to make room for the kind of market-oriented reforms that many neoliberals, Hayek included, had long touted.¹³¹ Brandt and his fellow Commissioners may have reached out to neoliberals in a number of key respects, but most neoliberals were not willing to return the favor—a stance that is hardly surprising given the incoherent and milquetoast character of the Commission's proposals.

Development scholar Gilbert Rist has argued that the Brandt Commission's work "mark[ed] the end of an era when hopes of tackling the causes of 'underdevelopment' had been high, and the beginning of a new era when, in the name of the same values, it was decided to make do with more and more palliative (or 'humanitarian') measures."¹³² This may well be true. Yet the Commission was not entirely hostile to the neoliberalism that was then on the verge of settling in. For

sion should recommend the 'Keynesian' solution of increasing government's expenditure to expand demand and thus employment . . ."). For a more recent example, see also PRASHAD, *supra* note 6, at 69–70, 75.

127. Brandt would later explicitly disown the Keynesian lineage, claiming that the Commission's work "was certainly not based on 'outright Keynesianism', as alleged by critics." BRANDT, *supra* note 47, at 348. Note that Keynesian proposals for demand management through government expenditure had garnered a somewhat inconsistent response even from the earliest neoliberals. See Ben Jackson, *At the Origins of Neo-liberalism: The Free Economy and the Strong State, 1930–1947*, 53 HIST. J. 129, 147–49 (2010).

128. DEEPAK LAL, *THE POVERTY OF "DEVELOPMENT ECONOMICS"* 5 (2d ed. 2000).

129. P. D. Henderson, *Survival, Development and the Report of the Brandt Commission*, 3 WORLD ECON. 87 (1980).

130. F. A. Hayek, *The Flaws in the Brandt Report*, THE TIMES (LONDON), Jan. 9, 1981, at 10. I thank Quinn Slobodian for drawing my attention to this article.

131. *Id.*

132. GILBERT RIST, *THE HISTORY OF DEVELOPMENT: FROM WESTERN ORIGINS TO GLOBAL FAITH* 162 (4th ed. 2014).

Brandt and most other Commission members, markets—and the rights and needs with which they were intertwined—were integral to a new “society of nations, a new world order based on greater international justice and on rules which participating countries observe.”¹³³ Here, as elsewhere,¹³⁴ bits and pieces of the neoliberal and human rights movements merged into a vague, internally contradictory series of proposals for reconstructing the post-1945 international order. It was a revealing irony that the Commission held two meetings in Mont Pèlerin, the Swiss resort that had for decades offered sanctuary to the transatlantic advocacy group that bore its name.¹³⁵

In the hands of Brandt and his fellow Commissioners, human rights did not speak truth to the power of neoliberalism. Nor did neoliberalism seek to liberate itself from the constraining power of human rights. A post-Bretton Woods world, a world transformed to no small degree by neoliberalism’s “new planetary vulgate,”¹³⁶ was one in which human rights were respected, not one in which they were denounced. Those who are enamored or suspicious of “corporate social responsibility” today, who have become accustomed to reading legal scholars claim that “[t]he moral ‘categorical imperative’ of maximizing personal autonomy and equal liberties across frontiers corresponds with the economic objective of maximizing consumer welfare through open markets and non-discriminatory competition,”¹³⁷ would do well to pay heed to the Brandt Commission. In some respects, it may have proven more consequential than originally thought.

133. NORTH-SOUTH, *supra* note 5, at 75.

134. A particularly lucid example is the early work of Liberté sans frontières, an organization that was established by Médecins sans frontières in 1984 and that mounted a sustained campaign against the NIEO and “Third Worldism” more generally. See Jessica Whyte, *Powerless Companions or Fellow Travelers?: Human Rights and the Neoliberal Assault on Post-Colonial Economic Justice*, 2.02 RADICAL PHIL. 13 (2018).

135. See THE ROAD FROM MONT PÈLERIN, *supra* note 1. For details on the meetings, which took place in March 1978 and February 1979, see NORTH-SOUTH, *supra* note 5, at 298–99, 301–02.

136. Pierre Bourdieu & Loïc Wacquant, *NewLiberalSpeak: Notes on the New Planetary Vulgate*, 105 RADICAL PHIL. 2 (2001) (“The diffusion of this new planetary vulgate—from which the terms ‘capitalism’, ‘class’, ‘exploitation’, ‘domination’ and ‘inequality’ are conspicuous by their absence, having been peremptorily dismissed under the pretext that they are obsolete and non-pertinent—is the result of a new type of imperialism.”).

137. Ernst-Ulrich Petersmann, *Time for a United Nations “Global Compact” for Integrating Human Rights into the Law of Worldwide Organizations: Lessons from European Integration*, 13 EUR. J. INT’L L. 621, 629–30 (2002). On Petersmann’s illustrative attempt to frame capital’s interests as human rights, see SLOBODIAN, *supra* note 1, at 277–81.