

Core Workers Rights and the Global Economy

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Tensions between the substantive recognition of human rights, as a condition for legitimate democratic progress and economic development

Introduction

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In the past few decades, democracy, human rights and economic development have become supreme political ideals that are “fundamental, interdependent and mutually reinforcing.”¹ States, that do not at least claim to pursue majoritarian democratic political participation, respect for the rights of individuals and rapid sustained economic growth, risk their national and international legitimacy.² This paper will consider the tensions between the substantive recognition of human rights, as a condition for legitimate democratic progress and economic development.

Given that the definition and nature of the term ‘human rights’ has broad contested interpretations, for the purposes of this discussion it is sufficient to adopt the common usage, a term used to identify the broad range of rights necessary for human dignity.³ Particular attention will be paid to the bundle of rights associated with core workers rights.⁴

There are no easy answers to finding a balance between the three elements of democracy, core workers rights (human rights) and economic development. A large part of the problem is due to the rapid globalisation of economic development and increased capital mobility that continues to occur in a diverse political world with varying degrees of success in human rights enforcement. The globalisation of the world economy encourages developing states to use every possible advantage to compete for foreign direct investment if they wish to develop and remain competitive in the global market.⁵ The competition for investment capital has resulted in the race-to-the-bottom dynamics in which multinational corporations would rather establish production facilities in states with lower labour and production costs, lower labour standards and fewer labour rights.⁶ The resultant business flight to low wage areas and lower labour standards, commonly referred to as the “runaway shop”, has been a concern of

¹Vienna Declaration and Programme of Action, U.N. GAOR, World Conference on Human Rights, 48th Session 22nd plan. Mgt., part1, 8, U.N. Doc. A/CONF.157/24 (1993), available on, <http://www.unhchr.ch/html/menu5/d/vienna.htm>, [hereinafter Vienna Declaration].

²J. Donnelly, *Human Rights, Democracy and Development* 21 Nos. 3-4 HRQ 608 (1999).

³The terms human rights and core workers rights will be used interchangeably.

⁴See; Report of the Director-General, International Labour Conference, 85th Session (1997), The ILO, standard setting and globalisation, available on, <http://www.us.ilo.org/news/ilowatch/dgrep.html>. *Per*; The list of fundamental rights, without which workers cannot be assured of receiving their fair share of the fruits of economic progress seems on longer open to dispute: freedom of association and collective bargaining, prohibition of forced labour, including forced labour of children and non-discrimination.

⁵See; K. Stone, *Labor and the Global Economy: Four Approaches to Transnational Labor Regulation* 16 Michigan Journal of International Law 998 (1995). The globalization of the world economy has moved at such a rapid pace that world trade has for the most part displaced domestic trade as the engine of economic growth.

⁶*Id.* at 992.

Western labour movements for many decades.⁷ At the bottom end of the scale are the so called “new slavery” workers who experience gross human rights violations and have almost no recognizable workers rights, but still contribute to the global economy.⁸ For the most part “new slave” economy’s are found in developing states with either non-democratic, or newly democratic political systems, however they are not strictly limited to these circumstances.⁹

The advent of free trade pacts and the lowering of trade barriers creates an additional problem for workers. States now have an incentive to compete for business by altering their domestic regulations in order to create a regulatory environment that multinational corporations will find attractive.¹⁰ Academics and the like have discussed the possibility that this “regulatory competition” leads to the lowering of labour standards and environmental standards.¹¹ Both strands of the race-to-the-bottom problem weaken core worker rights as the threat of business flight could trigger a deregulatory spiral in which states compete for business on the basis of their low labour costs and standards.¹²

Given the globalisation of human rights norms and the continuous development of substantive enforcement mechanisms, it would only seem

⁷See; S. Johnson, *Excuse Me, But Is That Football “Child-Free”?* *Pakistan & Child Labor* 7 #1 *Tulsa Journal of Comparative and International Law* 164-167 (1999), Pakistan is in a difficult position as it needs to compete with capital investment for exports, but, has up until recently only been able to do so by being at the bottom of the downward spiral. Not only does Pakistan fail to protect fundamental children rights, per International Labor organization Convention Article 23, but, in the process violates numerous other labor standards. With 30% of the population living below the poverty level, child labour, through sewing footballs for export, is one way for children to help families make ends meet. The sale of footballs, mainly to Western states, helps Pakistan’s \$1 billion annual exports.

⁸See; K. Bales, *Disposable People, New Slavery in the Global Economy* (Uni. Of California Press 2000). The author estimates that there are 27 million ‘new slaves’ in the world. The biggest number, 15-20 million, is represented by bonded labour in India, Pakistan, Bangladesh and Nepal. Other slavery trends are concentrated in Southeast Asia, Africa, and parts of South America. Slaves tend to be used in simple, non-technical, and traditional work with the largest number being in agriculture. However, in Brazil the auto industry is supported by traditional charcoal workers who assist in steel making. After multinational corporations, including Volkswagen, have deforested vast tracts of land the slave workers are then put to work to produce charcoal, necessary in steel production, using the felled timber. This is just one example of many depicting how multinational corporations, acting through subsidiaries in the developing world, take advantage of slave labour to improve their bottom line and increase the dividends to their shareholders. The author gives numerous examples of new slavery and how it directly and indirectly effects the global economy.

⁹See; J. Hall, *Human Rights and the Garment Industry in Contemporary Cambodia* 36 #1 *Stanford Journal of International Law* 119-122 (2000). The author uses Cambodia as an example of a non-democratic political system where a culture of impunity has been created for human rights violations in the garment industry. Garment workers are subjected to slave like conditions while those in power operated the factories with impunity. These violations continue despite the fact that Cambodia has ratified the International Covenant on Civil and Political Rights and is a United Nations member, both of which provide for human rights protections. The political system is non-democratic despite the procedural show of elections, in reality there is no substance to its democracy.

Also see; J. Bindman, *Global Sex Workers: Rights, Resistance and Redefinition* *Human Rights Quarterly* 839 (August 1999). *And,* For information on “sweat-shops” in USA and other democratic states, available on, <<http://www.sweatshopwatch.org/swatch/newsletter/11.html>>.

¹⁰*Id.* Hall at 119.

¹¹Stone *supra* note 5, at 993.

¹²*Id.* at 993.

reasonable that Western liberal democratic states,¹³ with advantaged economic and political positions, would champion the cause for human rights and core workers rights equality. It is ironic that this is not always the case as the capitalist free market economic model seeks the greatest profit return on investments, even at the expense of human rights. Therefore, what is required is a system where the tension between the three elements is kept in balance.

In trying to establish an ideal global model, in which each element can flourish interdependently but in a mutually reinforcing manner, it is worth considering which is the best approach as not all states have the necessary built in human rights safeguards. Even liberal democratic states that do, still host multinational corporations that help to fund numerous core workers and human rights violations in developing states. The better solution might be a collection of reciprocal regional systems, with similar economic, social and cultural values and democratic maturity, operating in compliance with a universal set of standards.

Democracy and State legitimacy

Historically, most states have rested their authority on a divine approval, natural order, or a tradition that legitimated hierarchical rule by those with advantageous social and technological attributes. Traditional classic international legal theory focuses upon the rights and duties of states and rejects the argument that the rights of states are simply derivative of the rights and interests of individuals. Accordingly, international legitimacy and state sovereignty are a function of whether the government politically controls the population rather than whether it justly represents the people.¹⁴ The classic view suggests a dual model for the ordering of individuals, one domestic and another international. It may well be that domestic systems aim to promote justice through the majoritarian process while the international system only seeks reciprocal order and compliance.

In the 17th-18th centuries democratic philosophy¹⁵ began to transform Western European states into a more complex social structure. The traditional higher source authority, as exercised by monarchs and feudal

¹³See; N. Stammers, *A Critique of Social Approaches to Human Rights* 17 Human Rights Quarterly 493 (1995), The term "liberal" refers to the radical or developmental strand of liberal thought which can also be termed "social democracy."

¹⁴F. Teson, *A Philosophy of International Law* 1 (Westview Press 1998).

¹⁵For example, 17th century political scientists Locke, Hobbes and Bentham concerning the principle of individual autonomy, natural law, reason, utilitarianism, the rule of law and positive and negative duties of states to their citizens.

rulers, was replaced by democratic bottom-up authorization from the people. Building upon the assumptions of classic international legal theories, the liberal theory is committed to concepts of *normative individualism*¹⁶ where the state and governments are to serve and benefit its citizens, in turn, international law must also serve and benefit individuals not states or governments.¹⁷ Respect for states and sovereignty is simply derivative of respect for individuals. In this way the, notion of sovereignty is redefined as the state is dependant upon the state's domestic legitimacy. The idea that a state's legitimacy is a function of the extent to which it ensures and protects the human rights of its citizens received its first major substantive international recognition in the 1948 Universal Declaration of Human Rights.¹⁸ Since then human rights has been a regular issue in international politics and has joined democracy and economic development as indicators of a state's legitimacy. However, despite the recent prominence of the international law of human rights, the dominant discussion in international law still fails to fully recognize the important normative status of the individual.¹⁹ Democracy, human rights and development have important theoretical and practical connections the most obvious being that international human rights norms require democratic government.²⁰ Because democratic states seek to ensure and protect individuals rights by providing accountability, transparency²¹ and the redistribution of economic growth, along with the rights that they provide²², into the state, rather than private enrichment, they may restrict predatory abuses that undermines development.²³ The redistribution required by

¹⁶See; Teson, *supra* note 14, at 45. *Normative individualism* recognizes that the primary normative unit is the individual, not the state. It also insists that our moral concepts should be referred to individual rights and interests. Placing the individual in a primary position, it is understandable that a states legitimacy is a function of the extent to which it ensures and protects the individual rights of its citizens. In other words, state sovereignty is derivative of the rights of individuals, namely *derivative statism*.

¹⁷International law is generally divided in to conflict laws and public international law. The term public international law was first used by J. Bentham, see Introduction to the Principles of Morals and Legislation, (London 1780). It is the law that consists of a number of rules regulating state and individual behavior and reflects to some extent, the ideas and preoccupations of the global society. For this reason it is suited to consider human rights issues and the standards reflected by the international community.

¹⁸Universal Declaration of Human Rights, adopted 10 Dec. 1948, G.A. 217A(111), U.N. GAOR, 3d Sess. (Resolutions, part 1), at 71, U.N.Doc. A/810 (1948)[hereinafter UDHR]. Since the United Nations General Assembly adopted the UDHR, the vast majority of states have endorsed the Declaration, which arguably has acquired the added status of customary international law.

¹⁹Teson, *supra* note 14, at 1. International law generally deals with inter state relationships while human rights law aims to protect individuals rights within a state.

²⁰ See; UDHR *supra* note 18, at Article 21. It states that "the will of the people shall be the basis of the authority of government."

²¹ International Covenant on Civil and Political Rights, adopted 16 December 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc A/6316 (1966), 99 U.N.T.S. 1771)entered into force 23 March 1976) [hereinafter ICCPR]. *Per*, Civil and Political rights.

²²International Covenant on Economic, Social and Cultural Rights, adopted 16 December 1966, 993 U.N.T.S. 3 (entered into force 3 January 1976) [hereinafter ICESCR].

²³Donnelly, *supra* note 2, at 610.

economic and social rights seek to assure that prosperity is diffused throughout society, rather than concentrated in a small advantaged elite.

As we are aware ideals don't readily translate into reality, vast inequalities of collective national prosperity exist between states and this underscores the central role of politics in translating development into the enjoyment of internationally recognized economic and social rights. In the past, most states justified violations of human rights by appealing to national security, cultural relativism and the higher imperatives of economic development and democracy. These justifications are still claimed by a limited number of states, however in the post-Cold War international society arguments of interdependence are the norm.²⁴ Whatever the gap between ideals and practice, most states today prominently feature appeals to democracy, human rights and economic development in their efforts to establish national and international legitimacy.²⁵ Arguably, the supreme international ideology rests on the success of Western liberal democratic welfare states.²⁶ One of the most successful models, where the three elements have developed in relative harmony, is the European Union (EU) through Member State cooperation. Although EU states are relatively economically comfortable they remain deeply committed to an extensive redistributive welfare state system.²⁷ Politically, EU states maintain a strong commitment to the substantive democratic majoritarian process and have made deep inroads to ensuring civil, political, social and economic protections through adherence to the European Human Rights Convention.²⁸ The EU partnership takes a variety of approaches to ensure core workers rights.²⁹ The primary standards setting is through the Convention, however

²⁴For example; a recent United Nations Development Program policy statement affirms that "human rights and sustainable human development are interdependent and mutually reinforcing." See; United Nations Development Program, Integrating Human Rights with Sustainable Development: A UNDP Policy Document 2 (1998). Available on <<http://magnet.undp.org/Docs/policy5.html>>, [hereinafter UNDP].

²⁵Donnelly, *supra* note 2, at 611.

²⁶C. Cerna, *Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts* 16 *Human Rights Quarterly* 740 (1994). This view is still contested by states with different socio-cultural values, however, there exists no non-democratic model state that is able to balance human rights, economic development within a political system capable of progressive growth.

²⁷T. Blair, W. Kok, G. Persson, G. Schroder, *The Left takes on the World* A19 *The Washington Post* Sept. 6 (2000) available on <[wysiwyg://http://www.washingto...-dyn/articles/A18301-2000Sep5.html](http://www.washingto...-dyn/articles/A18301-2000Sep5.html)>, Tony Blair is the prime minister of the UK; Wim Kok is prime minister of the Netherlands; Goran Persson is prime minister of Sweden; and Gerhard Schroeder is chancellor of Germany.

²⁸European Convention For The Protection Of Human Rights And Fundamental Freedoms, Opened for signature by the Council of Europe on 4 November 1950. Entered into force 3 September 1953.

²⁹See; Stone *supra* note 5, at 1000-1001. The European Economic Community Treaty sets out specific provisions of supranational law in specific areas, however, the majority of core workers rights protections are enacted and enforced by the European Council of Ministers. In 1989, European lawmakers attempted to enact a Community Charter of Fundamental Social Rights of Workers called the *Social Charter*. The list of Fundamental social rights of Workers includes guarantees for the right to organize and bargain collectively, rights to adequate social welfare benefits, workplace consultation and participation rights, and

the doctrine of the margin of appreciation and harmonization procedures permits for state flexibility, but only as is necessary in a pluralistic democratic society.³⁰

protection for children, older persons and the disabled. To date 11 Member states have ratified the Social Charter treating it as a mandate for the European Commission to formulate directives for the protection of labor and the promotion of collective bargaining.

³⁰See; P. Mahoney, *The Doctrine of the Margin of Appreciation under the European Convention on Human Rights: Its legitimacy in Theory and Application in Practice*, 19 #1 Human Rights Law Journal 1 (1998),

The doctrine of the margin of appreciation developed from its origins in the European Commission of Human Rights case law on derogation from the Convention under Article 15, to the Court's recent judgments in its role as the ultimate interpreter of the law of the Convention. The Commission had (replaced by a full time Court per, Protocol 11 1998) a somewhat political function within its decision making process and its opinions are not *per se* legally binding on the state parties. For these reasons the Commission is not strictly considered a judicial body. The Commission acted as a petition filter, established facts and encouraged friendly settlements. Where no friendly settlements was reached the Commission determined whether there was a breach of the Convention according to specific criteria. Within its interpretative function states are permitted greater latitude to implement the Convention standards as it is considered they are closer to the circumstances in each state and therefore probably better informed of the exact circumstances than in international enforcement body. However, the doctrine doesn't invest Member States with unrestrained freedom to restrict or regulate the exercise of guaranteed rights as they wish. It comes into operation after it has been established that all necessary preconditions and state democratic obligations are satisfied.

This function, of state prerogative, is also carried out by Direct and Indirect Harmonization of EU Directives. See, Stone, *supra* note ,at 1001-1005, for more details on Harmonization.

Part of the commitment for expanding regional progress, strengthen civil society, broaden the international social compact and widen the “winners’ circle”³¹ in the new economy the EU accepts additional member states. In a recent meeting with the 15-nation EU, the struggling Balkan nations³² were offered about \$4 billion in economic aid providing they follow EU membership rules, including, democratic reforms, market economies and peace with neighbouring states.³³

However, as a regional model that has so far proved successful in protecting basic workers rights in a liberal free market democracy it is questionable if this model can be successfully expanded globally. There is always the danger that as less developed states, in the three areas of discussion, enter the regional alliance then additional pressures could cause a watering down of standards and make the enforcement of standards ineffective. One possible option is that the EU model is copied in other regions, and liberal democratic trading blocks all conform to universal standards.³⁴ In effect this will have the advantage of empowering other international governance and regulatory bodies, for example the United Nations and its organs.

Defining Democracy

In 1998 the High Commissioner for Human Rights stated that “democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives.”³⁵ According to the Vienna Declaration formulation, the objective is to determine “the freely expressed will of the people.”³⁶ Democratic theories are frequently distinguished by their reliance on substantive or procedural tests in making this decision. One way to determine the will of the people is to consult them, or their representatives,

³¹Blair, *supra* note 27, at 1.

³²Bosnia, Croatia, Macedonia, Yugoslavia and Albania.

³³The New York Times International Saturday A4 November 25th 2000.

³⁴See; Blair *supra* note 27, at 1. Last June in Berlin 14 heads of government from Europe, the Americas, South Africa and New Zealand signed a unique political document, the Berlin Communique, to forge a new progressive agenda. The agenda considered three main foundations for global progress, economic policy, civil society and an international social compact.

³⁵M. Robinson, Message from the High Commissioner for Human Rights, in Integrating Human Rights, United Nations Development Programme, Integrating Human Rights with Sustainable Development: A UNDP Policy Document 2 (1998), available on <<http://magnet.undp.org/Docs/policy5.html>>.

³⁶Vienna, *supra* note 1, at Part1 para. 8.

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directly through free and open elections within an unfettered political environment.³⁷ Extensive political freedom includes the right of every individual or representative to participate, freedom of association, freedom from discrimination, freedom of expression and access to information. In determining the will of a work force it is important that there are functional democratic electoral systems in place with the same rights and freedoms guaranteed. Social theorists have recognized that a robust democracy requires that there be an abundance of voluntary organizations in which citizens can participate.³⁸ Without voluntary labour unions, it is virtually impossible for groups of people to articulate shared concerns and bring their interests into the political process. Collectively, labour unions express the interests and public policy concerns of a large segment of the population, if they are silenced the democratic process would be diminished.³⁹ It is for this reason that workers' rights to organize unions are an essential element in a democratic state.⁴⁰ But no matter how many safeguards exist for procedurally priority, the consultation process is only the mechanism to determine the will of the people. Even procedural democracy can decline into non-democratic, or anti-democratic ceremonies.⁴¹ Substantive conceptions justly assert that we not lose sight of the core values of popular authority and control of the state.⁴²

Defining Human Rights

Human rights are literally the rights that one has simply as a human being. They are equal rights because we are all inherently equally human

³⁷ See; D. Held, *Models of Democracy 2* (1987). "a form of government in which ...the people rule." There are certain indicators to determine what the rule of the people means. They include, the people are involved in processes of legislation, judiciary, administration, crucial decision making,, general policy, and, that the rulers are, accountable to the ruled and to the representatives of the ruled, rulers are chosen by the ruled and to the representatives of the ruled and finally the rulers should act in the best interests if the ruled.

³⁸ Stone, *supra* note 5, at 996.

³⁹ *Id.* at 997.

⁴⁰ See; S. Dillon, *Union Vote In Mexico Illustrates Abuses* The New York Times, A8 Monday, October 13th 1997. Also see; K. Sullivan *Puebla, Mexico: The City of Bugs* The Washington Post, A16 Thursday, August 24th 2000.

⁴¹ See; J. J. Linz, & A. Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe* (1996). See also G. A. O'Donnell, *Illusions About Consolidation*, 7 *Journal Democracy*, April 1997, at 34 (1996).

⁴² Donnelly, *supra* note 2, at 618.

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beings.⁴³ They are also inalienable rights, because no matter how inhumanely we act or are treated we cannot become other than human beings. Every person is entitled to enjoy his or her human right even though they are subject to a variety of social and political obligations. Human rights specify an inalienable set of individual goods, services, and opportunities that the state and society are usually required to respect or provide. Because these inherent rights of individuals have *prima facie* priority over the interests and desires of society and the state, human rights restrict the legitimate range of state action.⁴⁴ Although this priority is rarely absolute,⁴⁵ rights ordinarily “trump” other legitimate claims of the state and society.⁴⁶ The legitimacy of a state, from a human rights viewpoint, is a function of the extent to which it respects, ensures, protects and realizes the natural human rights of its citizens.⁴⁷ As the UDHR states; “a common standard of achievement for all peoples and all nations.”⁴⁸ The United Nations Commission on Human Rights has adopted a series of resolutions that have reaffirmed “the universality, indivisibility, interdependence and interrelationship of all human rights and concluded that promoting and protecting one category of rights should never exempt or exclude states from the promotion and protection of rights.”⁴⁹ Core workers rights are claimed to be a fundamental component of human rights in part because they fall under both the ICCPR and the ICESCR.⁵⁰ The preamble to the International Labour Organization considers social justice and conditions of labour a prerequisite for lasting peace,⁵¹ similar sentiments are affirmed by the World Bank.⁵²

⁴³ See; Universal Declaration, *supra* note 18, at Article 1, “all human beings are born free and equal in dignity and rights.” ICCPR *supra* note 8, and ICESCR *supra* note 9, *per*; “these rights derive from the inherent dignity of the human person.” The Vienna Declaration *supra* note 2, “all human rights derive from the dignity and worth inherent in the human person.” In contemporary international society these documents set the meaning of “human rights.”

⁴⁴ Donnelly, *supra* note 2, at 612.

⁴⁵ See; ICCPR *supra* note 21, at Articles 4 (derogations in times of state emergencies). Also, Article 22 for legal restrictions as “prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order the protection of public health or morals or the protection of the rights and freedoms of others.

⁴⁶ Donnelly, *supra* note 2, at 613.

⁴⁷ See; ICCPR *supra* note 21, at Article 2 (1) Each State Party to the present Covenant undertakes to *respect* and to *ensure* to all individuals.... and (2) Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes *to take the necessary steps*,...to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

⁴⁸ UDHR, *supra* note 18, at Preamble.

⁴⁹ *Per*; U.N.Doc. E/CN.4/1998/33(1998) available on <<http://www.unhcr.ch/html/menu4/chrres/1998.res44.htm>>.

⁵⁰ See; ICCPR, *supra* note 21, at Article 22 (1) freedom of association including the right to form and join trade unions, and Article 8 prohibition of slavery and compulsory labour.

⁵¹ International Labour Organization <<http://www.ilo.org/public/english/about/iloconst.htm>>.

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However, the prevention and remedying of violations of economic and social rights has achieved at the best modest success.⁵³ In comparison to the enforcement procedures available to violations of actual bodily harm,⁵⁴ deprivations of economic and related social rights are given little attention.⁵⁵ One need only to witness the excessive levels of non-compliance with the ICESCR, the large number of states that have failed to ratify this convention,⁵⁶ and the widespread refusal of governments to give active support to an Optional Protocol complaint procedure under the ICESCR⁵⁷ to observe how far human rights law and practice has yet to be actualised.

Democracy and Human Rights

Democracy and human rights share a commitment to the ideal of equal political dignity for all. As has been previously noted, international human rights norms require democratic government. However, problems arise because the link between them does not necessarily run in both directions, as rights of democratic participation are only one set of internationally recognized human rights. Even where democracy and human rights are fundamentally different in character but are not in direct conflict, they often point in significantly different directions.⁵⁸

Also See; ILO 274th Session Geneva, March 1999, The ILO Declaration on Fundamental Principles and Rights at Work, adopted by the ILO Conference at its 86th Session on 18 June 1998, the freedom of association and effective recognition of the right to collective bargaining

⁵²The World Bank <<http://www.worldbank.org/html/extdr/about/programe.htm>>.

⁵³S. Leckie, *Another Step Towards Indivisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights* 20 Human Rights Quarterly 82 (1998).

⁵⁴For example, torture, genocide, deprivation of freedom of life and disappearances, which are covered by the ICCPR.

⁵⁵Part of this reason is due to the difficulty in defining economic, social and cultural rights and effective enforcement procedures. While this area is highly debated there is little consensus on how to establish universal standards and state obligations. The majority of core workers rights fall under the ICCPR which is better enforced.

⁵⁶See; United Nations Human Rights International Instruments: Chart of Ratifications as of June 1996, U.N. Doc. ST/HR/4/Rev.14 (1996), As of January 1997, fifty-seven states had not yet ratified the ICESCR.

⁵⁷Report of the Committee on Economic, Social and Cultural Rights to the Commission on Human Rights on a Draft Optional Protocol for the Consideration of Communications Concerning Non-Compliance with the Covenant on Economic, Social and Cultural Rights, U.N. ESCOR, Comm. On Econ., Soc. & Cult. Rts., 14th & 15th Sess., ch. IV, at 91-109 (30 Apr.-17 May 1996, 18 Nov.-6 Dec. 1996), U.N. Doc. E/C.12/1996/6 (1996).

⁵⁸Donnelly, *supra* note 2, at 619.

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Although democracy aims to allocate sovereign authority to the people, to empower them in order to ensure that they rule, it requires little of the sovereign people in return.⁵⁹ At the same time, human rights aim to empower individuals to stand up for their ensured and protected rights, therefore, restricting rather than empowering the people and governments. The tension that exists between the two suggests that unless human rights advocacy is majoritarian it is profoundly anti-democratic as advocacy regularly frustrates the will of the majority. This is not as problematic within the liberal democratic model as some rights-abusive choices are denied to the people and other rights-protective choices are mandated. When considering all the world players in the scheme of democracy, human rights and economic development it is important tailor trade agreements to fit the model in question. Liberal democratic states must meet certain substantive standards and at the same time achieve a balance of democratic and human rights principles. However, prior to the liberal democratic model is the less robust procedural, electoral model of democracy. Therefore, the struggle for liberal democracy is a struggle for human rights but only because the adjective has built human rights into the definition. In mature liberal democracies by requiring that every person receives certain goods, opportunities, and services, the acceptable range of political, social, economic and cultural systems and practices are greatly limited. A balancing act goes on within the democratic state with different players promoting and negotiating their causes. The only conciliation for individuals who are not able to secure all their affirmed rights within a just majoritarian process is that it has been for the greater benefit of all in the state. However, problems arise when the majoritarian process is not just and those with advantaged social attributes dominate the negotiations. The same is true when developed liberal democratic states negotiate with developing states and gain favourable trade agreements due to their economic power.

In general democracies may have a better human rights record than non-democratic states. However, this is not always the case as some non-democratic states perform better on certain rights than democratic states. Furthermore, human rights practices among democracies vary greatly.

⁵⁹See; Vienna, *supra* note 1, at Part1 para. 8. The Vienna Declaration puts it, the peoples are free "to determine their own political, economic, social and cultural systems and practices."

Defining Economic Development

Defining economic development is difficult due to the diversity on how it is to be measured. Defining development in terms of growth in per capita gross domestic product (GNP) is one of the most popular methods economically and politically. Levels of industrialization are generally seen as indicators of potential growth in GNP. In the past few decades there has been an increased reliance on market-oriented economic strategies for conceptions of growth development.⁶⁰ Market-orientated strategies consider that markets are social institutions tuned to maximize aggregate growth output.

There are two main development theories, dependency theorists and equitable growth theorists.

Dependency theories propose that pre-industrial states become incorporated into the capitalist world system through structural subordination. This suggests that there is some economic advantage for developed industrial and high technology states to keep a hierarchical order. Providing the main balance of power is kept relatively intact, then, the system will work efficiently.

Equitable growth theorists take a more radically progressive view to a growth-based understanding of development; they emphasize equality or social justice rather than the narrow economic process.⁶¹ Sunup's vision of sustainable human development provides one of the current indicators for an expanded conception of development. According to the UNDP there are five aspects to sustainable development all affecting the lives of the poor and vulnerable.⁶²

⁶⁰Donnelly, *supra* note 2, at 623.

⁶¹M. Robinson, UN High Commissioner for Human Rights, *Business and Human Rights: A Progress Report* available at <<http://www.unhchr.ch/business.htm>>. She stressed that today, human rights is a key performance indicator for corporations all over the world. Also see, *The Global Compact*, available on <<http://www.unglobalcompact.org>>. The UN and its organs have continually stressed human rights as the primary objective, however, this has not always been translated into practice by states and business. Also see; Employment, Growth and Basic Needs: A one-world Problem, Int. Labor Office (1977). In the late 1970's, the International Labor Organizations's World Employment Program stressed increasing employment as a mechanism to spread income and the benefits of growth world wide.

⁶²United Nations Development Programme, *Governance for Sustainable Development: A UNDP Policy Document 2* (1997), available on <<http://magnet.undp.org/policy/default.htm>>. Hereinafter UNDP They include, empowerment, co-operation, equality, security and sustainability. However, some claim this definition is incomplete as it simply redefines human rights, along with democracy, justice and peace as subsets of development 625. Less radically equity orientated theories face similar problems.

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It would seem that the progressive equitable growth theories are more in line with human rights ideals and should be given greater consideration in balancing the three elements.

Development and Human Rights

Development and Civil and Political Rights.

There is a growing tendency to emphasize compatibilities between civil and political rights and development. For example, international financial institutions have increasingly emphasized the economic contributions of “good governance.”⁶³ They have fallen short of advocating the full range of internationally recognized civil and political rights. However, an emphasis on transparency, accountability, and the rule of law do generally lead to satisfactory procedural democracy and a comprehensive range of civil liberties.⁶⁴

Markets and Economic and Social Rights

Recognizing the rampant social inequalities produced by an unregulated capitalist economy, it is proposed that a right to private property cannot be considered a right to unfettered accumulation.⁶⁵ The relationship between development and economic and social rights is complex, especially when considering the role of the free markets. Markets are social institutions designed to produce economic efficiency. Smoothly functioning markets systems of production and distribution generally produce a greater output of goods and services with a given quantity of resources than alternate schemes. Growth seems to be substantively linked to economic and social rights. What is at time an un-containable contemporary enthusiasm for

⁶³See, World Bank, *Governance and Development* (1992).

⁶⁴Donnelly, *supra* note 2, at 627. In the relatively rare cases where sustained economic growth has been achieved by highly repressive regimes, there is little evidence that repression has been the necessary for development. An emphasis on the compatibility between civil and political rights and economic development is entirely appropriate.

⁶⁵Stammers, *supra* note 13, at 493.

markets is extremely problematic from a human rights perspective.⁶⁶ Unless the market is kept in check by human rights standards it is possible for a crude class of privilege to merge.⁶⁷ Like pure models of democracy, where individuals rights are equally considered along with the collective, free markets are justified by discussions of collective good and mutual benefit and not individual rights (except for the right to participate and economic accumulation). Markets encourage efficiency, not social equality or the enjoyment of individual rights for all.⁶⁸ Rather than ensuring that every individual is treated with concern and respect, markets systematically deprive some individuals in order to achieve the collective benefits of efficiency.⁶⁹ Markets are designed to distribute growth without regard for individual needs and rights. The poor tend to be less efficient as a class, they have fewer skills valued highly by markets, therefore, they are systematically disadvantaged. What is most frustrating for human rights activists and those who care for the well being of others is that it is generally the “economically downtrodden” that end up being kicked time and time again.⁷⁰

⁶⁶See; W. Meyer, *Human Rights and International Political Economic in 3rd World Nations: Multinational Corporations, Foreign Aid and Repression* 21 #3 Human Rights Quarterly 824 August (1999). Globalization advocates, mainly comprising of multinational corporations, neoliberal economists and their political allies, argue that direct foreign investment and multinational corporation production promotes economic development and protects economic and social rights. They argue that jobs, workers standards, technology, housing benefits and numerous civil and political rights are promoted and protected through the liberal democratic economic alliance. Critics, mainly human rights and environmental advocates, argue that multinational corporations directly and indirectly contribute to human rights violations in developing states. Leftist intellectuals, argue that multinational corporations drain resources, exploit labor and contribute to the inequitable transfer of wealth. They also claim that destabilization of society occurs often leading to social unrest and political repression by the rich and powerful, including the multinational investors. Examples include, Chile and the USA 1970's interference into elections with the resulting Pinochet administration and massive human rights violations.

⁶⁷On the face of it, it does seem that the liberal democratic capitalist system relies upon competition and necessary expulsion. This exclusion places certain individuals and segments of society at a further disadvantage. While it may not be exactly true that “my success requires your failure” there are elements of failure necessary in the “race to the bottom” trends in the globalization process.

⁶⁸See; R. Claude, B. Weston, M. Lippman, *Human Rights in the World Community, Issues and Action* 392-393 (2nd Ed. 1999). Authors make an analysis of the role of multinational corporations in developing states. They have concentrated their questions on whether multinational corporations assist or hinder the economic and social development of developing states. The discussion has diverted attention from the fact that their activities may often result (directly or indirectly) in the violation of the civil, political and socioeconomic universal human rights of the citizens of the host state. This raises the question whether it would be advisable to impose, on multinational corporations, the legal, or at least ethical, duty and obligation to protect human rights. There are some limited instruments that set forth standards for multinational corporations, however, the majority of these duties are to respect state sovereignty and not directed at ensuring or protecting individual human rights freedoms. Arguments for considering imposing a comprehensive set on international obligations and duties are based on at least four interrelated considerations. First, economic power is often stronger than state political systems. Second, International character and economic power combined are, per Brandt Commission, are major actors in the worlds political economy. Third, socioeconomic impacts on developing states are impressive. Finally, some small developing states are too weak, or unable, to regulate the activities of multinational corporations.

⁶⁹Donnelly, *supra* note 2, at 628.

⁷⁰K. Ehrenberg, *Social Structure and Responsibility* 5 Loyola Poverty Law Journal spring (1999). “Economically downtrodden” is a term referring to the weak, poor and those who can't compete.

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Market advocates typically argues that in return for short run disadvantages for the few, everybody benefits from the greater supply of goods and services made available through growth.⁷¹ Everyone is in reference to the average, an abstract entity, and not substantial individuals and their families. Efficient markets offer improvements to a limited few at the cost of the others, while the suffering is usually at the expense of the most vulnerable and the weakest. Additionally, markets redistribute the benefits of growth without regard to the short-term deprivations. Those who suffer adjustment costs, such as lost jobs, higher food prices, or inferior health care or education, acquire no special claim to a share of the collective benefits that efficient markets produce.

The Liberal Democratic Welfare State.

All Liberal democratic states compensate some of those who fare less well in the market through the welfare state. Individuals who are harmed by the operation of social institutions that benefit the whole are recognized as having a right to a fair share of the social product their participation helped to produce. The collective that benefits in the aggregate has an obligation to look after individual members who are disadvantaged in, or harmed by, markets. The welfare state guarantees all individuals certain economic and social goods, services, and opportunities irrespective of the market value of their labour. The state assumes the responsibility for short-term suffering and assures long-term compensation. The welfare state is a device to assure that a minority that is disadvantaged in, or deprived by, the markets is treated with maximum economic concern and respect.⁷²

The liberal democratic models of Western Europe, Japan and North America are attractive models for the world because of the balance they have struck between the competing demands of democratic participation, market efficiency and internationally recognized human rights. “Markets democracy”⁷³ are of largely instrumental value from a human rights perspective. Without market efficiencies and democratic electoral politics, internationally recognized human rights are at grave risk. However, it

⁷¹Meyer, *supra* note 66 , at 825. See; Quantitative model measuring direct foreign investment and GNP to increase in human rights protections.

⁷²Donnelly, *supra* note 2, at 630.

⁷³The language of President Clinton's administration foreign policy.

should be noted that even the noted liberal democratic states fall short of realizing all human rights for their own citizens.

A number of developing states are advocating that the human rights principles enshrined in the Universal Declaration reflect Western values and are not their own.⁷⁴ They complain that the West is interfering in their internal affairs when it comes to imposing its own definition of human rights upon them, and it hampers their trade and weakens their competitiveness. Because of social and cultural differences, they say, they should not be held to the same standards.⁷⁵

Conclusion

If western liberal democratic welfare states are to be morally and ethically legitimised through the fusion of capital economies, sustainable development and continued human rights protections this must occur throughout the globalisation process. However, it has not been possible to reach a consensus on development strategy and democracy. Part of the problem lies in the self-interests of individuals, multinational corporations and states.

⁷⁴See; Cerna, *supra* note 26, at 740. Example of states include, China, Columbia, Cuba, Indonesia, Iran, Iraq, Libya, Malaysia, Mexico, Myanmar, Pakistan, Singapore, Syria, Vietnam and Yemen.

⁷⁵*Id.* at 740-741. This debate was center-stage at the second UN World Conference on Human Rights, held in June 1993 in Vienna Austria. The Vienna Declaration and Programme of Action, adopted by the World Conference, repeatedly affirmed the universality of human rights. See, The Vienna Declaration and Programme of Action, adopted by The World Conference on Human Rights 24 June 1993, U.N. Doc. A/Conf.157/24 (Part1), at 20-46 (13 Oct. 1993).

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There are no simple answers to highly complex issues and progress continues to be slow. Globalisation of basic minimum standards or core workers rights has been resisted in part due to the selfish ethos of capitalism, as evidenced by the P & L factor. However, successful businesses also contribute to alleviate human suffering through charitable works and socially responsible governance.

As a model the EU member states have addressed a number of rights issues, domestically and regionally. At the heart of the liberal democratic state lie the right of the individual and the will of the people. Member states are obligated to act in the best interests of individual welfare and in doing so manage to keep the three elements in balance. In turn this allows for progressive growth in democracy, human rights and economic development and help to substantiate universal standards. However, the effect multinational corporations have in developing states has not been fully addressed. If they were required to work in accordance with their regional standard more effective enforcement procedures could be implemented. At the same time encouraging stronger regional blocks that would be more effective at state enforcement. Naturally, this would not entirely benefit the wealthy developed states, as it would reverse the race-to-the-bottom dynamics, make runaway shops less attractive and reduce new slavery helping to raise the cost of goods and services to developed states. Developing regions could collectively compete more effectively with wealth developing regions and states. The effect being redistribution of wealth through a greater share of the profit and raised core workers rights through emerging democratic safeguards.

It is now time for developed states to consider what is the full extent of globalized democratic ideals. Sooner or later this conclusion has to be reached, global equality in democracy, human rights and economic wealth means widening the “winners circle”⁷⁶ and redistribution of wealth.

⁷⁶Blair, *supra* note 27, at 1.