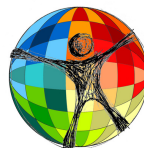


VOL. 9 | NO. 1 | SUMMER 2020

The Ideology of Property Rights and the System it Created

Gabriela Lopes

McGill Centre for
Human Rights
and Legal Pluralism



Centre sur les droits de la
personne et le pluralisme
juridique de McGill



McGill FACULTY OF
Law

ABOUT CHRLP

Established in September 2005, the Centre for Human Rights and Legal Pluralism (CHRLP) was formed to provide students, professors and the larger community with a locus of intellectual and physical resources for engaging critically with the ways in which law affects some of the most compelling social problems of our modern era, most notably human rights issues. Since then, the Centre has distinguished itself by its innovative legal and interdisciplinary approach, and its diverse and vibrant community of scholars, students and practitioners working at the intersection of human rights and legal pluralism.

CHRLP is a focal point for innovative legal and interdisciplinary research, dialogue and outreach on issues of human rights and legal pluralism. The Centre's mission is to provide students, professors and the wider community with a locus of intellectual and physical resources for engaging critically with how law impacts upon some of the compelling social problems of our modern era.

A key objective of the Centre is to deepen transdisciplinary collaboration on the complex social, ethical, political and philosophical dimensions of human rights. The current Centre initiative builds upon the human rights legacy and enormous scholarly engagement found in the Universal Declaration of Human Rights.

ABOUT THE SERIES

The Centre for Human Rights and Legal Pluralism (CHRLP) Working Paper Series enables the dissemination of papers by students who have participated in the Centre's International Human Rights Internship Program (IHRIP). Through the program, students complete placements with NGOs, government institutions, and tribunals where they gain practical work experience in human rights investigation, monitoring, and reporting. Students then write a research paper, supported by a peer review process, while participating in a seminar that critically engages with human rights discourses. In accordance with McGill University's Charter of Students' Rights, students in this course have the right to submit in English or in French any written work that is to be graded. Therefore, papers in this series may be published in either language.

The papers in this series are distributed free of charge and are available in PDF format on the CHRLP's website. Papers may be downloaded for personal use only. The opinions expressed in these papers remain solely those of the author(s). They should not be attributed to the CHRLP or McGill University. The papers in this series are intended to elicit feedback and to encourage debate on important public policy challenges. Copyright belongs to the author(s).

The WPS aims to meaningfully contribute to human rights discourses and encourage debate on important public policy challenges. To connect with the authors or to provide feedback, please contact human.rights@mcgill.ca.

ABSTRACT

Humanity has arrived at a crossroad. To continue on the path of “Development” we have chosen in rhetoric, we must now confront the very core of the ideology: the legal conception of “personhood” and the private property rights regime. Only then can the mission of Development, the eradication of poverty and the empowerment of human dignity for all be achieved. If we wish to divert from the path of environmental and social destruction we have been on in practice, we must commit to a deeply transformational change in our ideologies.

CONTENTS

INTRODUCTION	6
THE MISSION OF DEVELOPMENT	8
THE OBJECTIVITY OF THE RULE OF LAW	11
NEED TO GO DEEPER	21
THE CROSSROAD	21
THE NATURE OF PROPERTY RIGHTS	25
THE CREATION OF OBJECTIVITY	33
ALTERNATIVE MODELS OF GLOBAL SOCIETY	37
BIBLIOGRAPHY	42

*Lost somewhere between immensity and eternity is our tiny
planetary home.
In a cosmic perspective, most human concerns seem
insignificant, even petty.
And yet our species is young and curious and brave and shows
much promise.*

Carl Sagan

Introduction

There seems to be a fundamental contradiction in the experience of a human caught in today's globalized world: everywhere you look there are people with too little and people with way too much, and at the same time many individuals distribute their belongings generously. This paradox is observable on a local as well as global scale: in Canada, there is a stark discrepancy between those who own and those who owe¹ which is persistently growing,² and yet almost everyone donates goods, food or financial contributions to charitable organizations on an annual basis;³ as a nation, Canada is ranked tenth wealthiest per

¹ BroadBent Institute, "The Wealth Gap: Perceptions and Misconceptions in Canada", (December 2014) PDF: https://d3n8a8pro7vhm.cloudfront.net/broadbent/pages/4576/attachments/original/1442413564/The_Wealth_Gap.pdf?1442413564 at 6: "The wealthiest 20% of Canadians actually control 67.4% of the wealth. The poorest 20% do not control any wealth, and are in fact in debt (-0.1%)."

² Government of Canada, "Changes in wealth across the income distribution, 1999 to 2012", (27 November 2015), online: *Statistics Canada* <<https://www150.statcan.gc.ca/n1/pub/75-006-x/2015001/article/14194-eng.htm>>. In Canada between 1999 and 2012, the wealth held by families in the top income grew from 45% to 47% of the total wealth held by Canadian families, while the wealth of the families in the bottom income quintile dropped from 5% to 4%.

³ Martin Turcotte, "Charitable giving by Canadians", (12 April 2012) Component of *Statistics Canada Catalogue no.11-008-X: Canadian Social Trends*, Statistics Canada, PDF: <https://www150.statcan.gc.ca/n1/en/pub/11-008-x/2012001/article/11637-eng.pdf?st=HtDongMt> at 18: "Overall, almost all

capita⁴ and simultaneously tenth most generous as a measure of foreign aid donations.⁵ How can the discrepancy between this seemingly efficient circulation of wealth and the evidently growing wealth disparity be explained?

Attempts at answering this question have perhaps not been as committed as those attempts aimed rather at concretely treating the symptoms of the illness. The field of International Development is less of a theoretical initiative and more of a practical legal, political and economic project dedicated to balancing the inequalities in living standards of people around the world. The ambitions of the field have shifted over the course of its decades-long history, and today there is a general consensus that International Development should aim to enable countries to institute a Rule of Law regime and good governance structures to ensure in solidarity the dignity and freedom of all humans beings.⁶ The problem predictably arises in the interpretation of vague terms, and the values that the normative perspective aims to defend.

This paper will argue that while the juxtaposition of Development and the Rule of Law may present itself as an objective model of progress, it is in fact a narrative that perpetuates the fundamental ideologies that fuel an exploitative engine of concentrated wealth-building. By outlining the historical account of the growth of what today is an Earth-wide network of

Canadians aged 15 and over (94%) gave goods or food, or made a financial donation [to charitable or non-profit organizations between 2007 and 2010]."

⁴ Jeff Desjardins, "Visualizing the Wealth of Nations" (4 July 2019) Visual Capitalist, online: <<https://www.visualcapitalist.com/map-wealth-of-nations/>>.

⁵ Michele Wheat, "Which Countries Provide and Receive the Most Foreign Aid?" (2017) Wristband Resources, online: <<https://www.wristband.com/content/which-countries-provide-receive-most-foreign-aid/>>

⁶ *Transforming our world: the 2030 Agenda for Sustainable Development*, GA Res 70/1, ONGAOR, 70th Sess, A/RES/70/1 (2015) at Preamble: "We are determined to end poverty and hunger, in all their forms and dimensions, and to ensure that all human beings can fulfil their potential in dignity and equality and in a healthy environment"; at Declaration 8: "We envisage a world of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination; of respect for race, ethnicity and cultural diversity; and of equal opportunity permitting the full realization of human potential and contributing to shared prosperity. [...] A just, equitable, tolerant, open and socially inclusive world in which the needs of the most vulnerable are met."

State-based civilization, I will propose an answer to the question of how the discrepancy between our impulse to help each other and our poverty-generating sociopolitical structures can be explained. I will demonstrate that our allegedly objective systems are unwell at their core: our very understanding of what it means to be a “person”, and the power dynamic of the relationships we create with the world around us, cause us to blindly perpetuate our own ailments. The systemic ills that the mission of International Development addresses cannot be healed – cannot even be diagnosed – if this core is not made vulnerable to a critical gaze. Such exposure would inevitably shake the foundation of the world as we know it today, as it has been known for aeons. Yet this vulnerability is a necessary stance if the desire to rectify the oppressive inequality of our current schemes is genuine... which I sincerely believe is true, given that you are reading this paper today.

The Mission of Development

The relationship between the Rule of Law and International Development is as old as the creation of the latter. While the Rule of Law is a somewhat ephemeral concept that has morphed significantly over its long life,⁷ its formal interpretation during the 1960s was compatible with the initially State-centred Development project,⁸ as they both dedicated their attention to institutional powers and government-led strategies. Powerful international actors’ interest in the Rule of Law as a guiding principle for Development was openly economic. Namely, its capacity to stabilize outcomes for investors by curtailing recipient lawmakers’ arbitrary use of power established a minimum expectation of accountability and transparency, and thus

⁷ Brian Tamanaha, “Introduction” in *On the Rule of Law* (Cambridge: Cambridge University Press, 2004) at 3: “Notwithstanding its quick and remarkable ascendancy as a global ideal, however, the rule of law is an exceedingly elusive notion. [...] In view of this rampant divergence of understandings, the rule of law is analogous to the notion of the “good” in the sense that everyone is for it, but have contrasting convictions about what it is.”

⁸ David M Trubek, “Law and Development 50 Years On” (2012) U of Wisconsin Legal Studies Research Paper No 1212 at 2: “But it was only in the 20th century that governments and international institutions concerned with development began to organize systematic legal reform projects. The 1960s saw the start of support for legal reform efforts by international development agencies and the beginnings of academic study of law and development.”

protected the investors' assets and proprietary powers.⁹ These interest groups were the conflicting State superpowers, and through their longstanding influence as controllers of capital and force, they directed beneficiary States to "systematically remodel [their] societies to accelerate maturation."¹⁰ This model of Development was based on a measure of "civilization" predicated on competitive economic growth and participation in the globalized market. It was quite candidly an effort to socially engineer other less-Developed countries through expert-led legal reform, where the experts were influential nations and their controlling class, and the reform was a path of "progress" defined by proprietary interests.¹¹

As the enthusiasm for State-led Development waned due to the partial resolution of global conflicts, faith in the market soared and the reins to the project were all but handed to the tides of corporate competition.¹² The economic benefits of promoting the Rule of Law translated well into the new framework, and the underlying motivation of wealth accumulation by investors was perpetuated (indeed, those who control politics are often the same individuals who control business¹³).

⁹ Nandini Ramanujam & Francesca Farrington, "The Rule of Law, Governance and Development" [forthcoming] at 2-3.

¹⁰ Wolfgang Sachs "Development: The Rise and Decline of an Ideal" (2000) Wuppertal Paper No. 108 (Wuppertal Institute for Climate, Development and Energy) at 5; see also at 6: "Two objectives of development: "first, bringing countries onto the racetrack, i.e. into the orbit of the world market; and secondly, turning them into competent runners, i.e. putting them on a path of sustained growth."

¹¹ John Henry Merryman, "Comparative Law and Social Change: On the Origins, Style, Decline & Revival of the Law and Development Movement" (1977) 25:3 *American J Comp L* 457.

¹² Tor Krever, "The Legal Turn in Late Development Theory: The Rule of Law and the World Bank's Development Model" (2011) 52: 1 *Harv Intl L J* 287 at 305: "Importantly, though, the "facilitating role" of the state was not to be interventionist, for "state-dominated development" had, Wolfensohn insisted, unquestionably failed. Rather, the state's contribution was to support and facilitate markets by "encouraging and complementing the activities of private businesses and individuals"."

¹³ Jeffrey Frieden, "The Political Economy of Economic Policy", (2020) 57:2 *International Monetary Fund, Finance & Development*, at 6: "Even in democracies, plenty of citizens might agree that politics obeys the golden rule: those with the gold make the rules. Special-interest groups do seem to play an outsized role around the world, democratic or not. These include wealthy

Nevertheless, the origin and trajectory of the Development movement demonstrates that despite the mostly fiscal advantages outlined above, there is also an idealistic motivation for the project and its association with the Rule of Law. This idealistic relationship has been brought to the forefront by the latest transformation of both. As the influence of civil society and grassroots-led political manifestations increases, these actors push international jurists to interpret the Rule of Law more substantively (as opposed to only procedurally). As a result, the International Development movement has begun favouring a strategy that better empowers local communities (as opposed to only investors) to enforce their rights.¹⁴ There is a normative sense that for a society to function, those who are well-off must contribute in some fashion towards helping their fellow person. This theory of justice has itself a long and tumultuous history which has influenced many facets of contemporary legal structures. On the national level, it has translated into a proliferation of welfare States and even a growing interest in Universal Basic Income,¹⁵ while on the international scene countries practice solidarity with one another through the auspices of “foreign aid” and the Development project.¹⁶ The “preeminent objective of Development” is today understood as the collective removal of barriers to freedom that leave people with little choice and opportunity to exercise their capacity for reasoned agency.¹⁷

But this ideologically idyllic desire for International Development is continually contradicted by the inequality that has been growing even after the mission of the project has pivoted

individuals, powerful industries, big banks and corporations, and formidable labor unions.”

¹⁴ Sabina Alkire & Séverine Deneulin, “Chapter 1: A Normative Framework for Development” in *An Introduction to Human Development and Capability Approach* (Earthscan, IDRC, 2009) at 19: “Human flourishing and the impact of policies on people’s lives are the fundamental concerns [...at] the core of what is known as the ‘human development and capability’ approach.”

¹⁵ Philippe Van Paris & Yannick Vanderborght, *Basic Income. A Radical Proposal for a Free Society and a Sane Economy* (Cambridge: Harvard University Press, 2017), see chapters 3 and 4.

¹⁶ See William Easterly & Tobias Pfutze, “Where Does the Money Go? Best and Worst Practices in Foreign Aid” (2008) 22:2 *J Econ Perspectives*.

¹⁷ Amartya Sen, “Chapter 2: The Ends and the Means of Development” in *Development as Freedom* (Oxford: Oxford University Press, 1999) at 37.

more than once in the last decades.¹⁸ It is a tool amongst others humanity has recently deployed to empower people to protect their human rights and enjoy their dignity, but somehow none of them seem to be addressing the core of the systemic issue. Development initiatives enthusiastically engage in capacity-building projects, taking for granted the global structure into which these projects will hopefully flourish. This wilful omission perpetuates the very ideological framework which generated all this inequality in the first place. It appears that the mission of Development is not quite on target.

The Objectivity of the Rule of Law

The Rule of Law has long been a metric for measuring the success of Development initiatives, and its many manifestations have been categorized as either “thick” or “thin”. These refer to the breadth of the set of legal norms encompassed by each, where the thinner conception limits its concern to procedural and organizational matters, and the thicker concerns itself with metrics like equity and justice.¹⁹ The thick Rule of Law requires us to consider the content of the Law and the manner in which it interacts with the society that it purports to govern or regulate.²⁰ The thin Rule of Law does not consider any concrete notion of the “good society”, and contrasts objective, procedural Law to subjective discretion.²¹ This understanding of the written

¹⁸ Oxfam “An Economy for the 99%” (January 2017) Oxfam Briefing Paper, online: Oxfam International at 2: “Eight men now own the same amount of wealth as the poorest half of the world. [...] The incomes of the poorest 10% of people increased by less than \$3 a year between 1988 and 2011, while the incomes of the richest 1% increased 182 times as much”.

¹⁹ Christopher May, “The Rule of Law: What is it and Why is it ‘Constantly on People’s Lips?’” (2011) 9:3 *Poli Studies Rev* 357 at 359

²⁰ Ronald Dworkin, *A matter of principle*, (Cambridge, MS: Harvard University Press, 1985) at 11-12: “It assumes that citizens have moral rights and duties with respect to one another, and political rights against the state as a whole. It insists that these moral and political rights be recognized in positive law, so that they may be enforced upon the demand of individual citizens through courts or other judicial institutions of the familiar type, so far as this is practicable. The rule of law in this conception is the ideal of rule by an accurate public conception of individual rights. It does not distinguish...between the rule of law and substantive justice; on the contrary it requires, as part of the ideal of law, that the rules in the book capture and enforce moral rights”.

²¹ *Supra* note 16 at 361.

procedures of Law “as opposed to” subjective discretion obscures how the former is just as normative as the interpretative choices of judges in regards to defining a “good society.”²² Modes of procedure cannot be said to be natural or non-social.

The normative underpinning of the Rule of Law, both thick and thin, is of an economic nature and is not exclusive to this legal concept, encompassing the “system” itself. It is not a coincidence that the first State-led wave of Development was mostly interested in helping the upper class of any given nation, increasing the gap between the poor and the rich.²³ The connection between the transition to a market-led approach and the accelerated increase of inequality should be even more obvious. Even after the redefinition of Development as something “transcending growth, as economic growth plus redistribution, plus participation, or plus human development,”²⁴ the legacy of International Development remains an ever-widening gap between the poor and the rich.²⁵ The actors engaging on the Development playing field have always been distinctly growth-oriented, and this is observable in their patterns of project choices. Powerful interests such as States, international organizations and even corporations invest in Development initiatives that offer an opportunity to increase profit and accumulate more power. Their main concern is often to seek and promote stable property rights regimes as the ideal form for the national culture of the recipient of aid. Under the State-led Law and Development view of the 1960s and early 70s, promotion of the Rule of Law was used as a tool by the United States to facilitate its exercise of macro-economic control, and it managed this by transplanting its institutional norms into the structures of foreign States. This was meant to accelerate the convergence of “developing” nations with the capitalist countries.²⁶ Today, the World Bank and the International Monetary Fund, easily two of

²² *Ibid* at 360.

²³ Robert S McNamara, *Address to the Board of Governors by Robert S. McNamara* (English) (Washington, DC : World Bank Group, 1973) <<http://documents.worldbank.org/curated/en/930801468315304694/Address-to-the-Board-of-Governors-by-Robert-S-McNamara>> : “Growth is not equitably reaching the poor [...] Rapid growth has been accompanied by greater maldistribution of income in many developing countries.”

²⁴ *Supra* note 9 at 9.

²⁵ See Valentina Romei, “How the pandemic is worsening inequality” (31 Dec 2020) *Financial Times*, online: <<https://www.ft.com/content/cd075d91-fafa-47c8-a295-85bbd7a36b50>>.

²⁶ *Supra* note 11 at 295

the most influential actors on the International Development scene,²⁷ expect a secure environment for investments, including firm enforcement of property rights and contractual market transactions, before it will endorse a nation's development. This expectation perpetuates the standard of economic freedom under the Rule of Law, and normalizes capitalist market relations as the defining character of Western political tradition and liberal civilization²⁸.

This property-oriented motivation is often measured in the "objective" thin Rule of Law definition, with its explicit emphasis on stable and predictable property and contract rights. But the substantive versions of the Rule of Law, the current "people-centered" phase of International Development, also provide multiple measures of stable property rights regimes.²⁹ Economic growth predicated on the stability of property rights and transactional relationships is considered by most to be a necessary outcome of a successful Development initiative.³⁰ The 2008 Stiglitz Commission, tasked with the aim of identifying the limits of GDP as an indicator of economic growth and proposing new measures for policy makers to statistically analyze the results of their policies, still directly links social progress with economic performance without questioning the nature of that relationship³¹—and how its normative implications have been at the core of all the systemic social issues Development policies ostensibly challenge in the first place. In its list of recommendations, the Commission proposed that material well-being should be a

²⁷ *Ibid* at 315: "The Doing Business reports have application beyond the private business sector: measures of business-friendliness are increasingly used as proxies for the quality of legal systems more broadly, and have influenced legal reform in a number of developing countries. Economic efficiency and market facilitation have secured a near monopoly as the sole metrics for evaluating legal institutions, and jurisdictions now compete in a crude legal boosterism for both foreign capital and development aid, for which Doing Business and the WGI conveniently provide benchmarks."

²⁸ *Supra* note 7 at 2

²⁹ Hague Institute for the Internationalisation of Law, *Rule of Law Inventory Report*, Discussion Paper for the High Level Expert Meeting on the Rule of Law of 20th April 2007, at 12.

³⁰ *Supra* note 8 at 8.

³¹ Joseph E Stiglitz, Amartya Kumamoto Sen & Jean-Paul Fitoussi, *Report by the commission on the measurement of economic performance and social progress*, (2009) Commission on the Measurement of Economic Performance and Social Progress, Paris, at 7.

measure of wealth which includes income and consumption levels, that such measures should be further broadened to include non-market activities, and that special prominence should be given to the distribution of income, consumption and wealth.³² While these recommendations are essential for understanding how inequality appears today, it pays no attention to the potential causes of that inequality. This neutrality toward an understanding of material well-being as a measure of wealth, based on private property, controlling ownership, and transactional exchanges, presupposes that the market as it currently exists is a strategy that does not require a core re-evaluation.

The shift from State-driven to market-driven Development approaches, and the subsequent disillusionment with the market-driven strategy and the adoption of an empowering bottom-up initiative, all reflect different ways that market resources are directed and allocated. Market-enhancing governance's first priority is achieving and maintaining stable property rights, while the growth-enhancing governance strategy is to get developing nations to "catch up" to developed nations by productively transferring assets, that is, by controlling their State's private property more efficiently.³³ It all revolves around property and how it is controlled, and if the greatest concern remains who is in charge of directing the distribution of private property, then the stability of the internal dynamic is maintained, and a critique of its internal logic avoided. While it is difficult to pinpoint the centre of the complex interactions between Law, the economy, and International Development, what emerges from theoretical analysis of measures of "success" is a protracted focus on a theory of property rights.

"Property rights, above all institutions, establish individual and group incentives of economic behavior and exchange [...] An absence of clearly defined and consistently enforced property rights leads to high transaction costs and, under [a normative] analysis of

³² *Ibid* at 13, see Recommendations 1, 3, 4 and 5.

³³ Mushtaq H Khan, "Governance, Economic Growth and Development since the 1960s" (2007) *UN Department of Economic & Social Affairs Working Paper No54*, at 4

economic history, is a key contributing factor to poor economic performance and growth.”³⁴

This assessment of private property as an essential component of a prosperous society is backed by the World Bank, the theoretical legitimator of mainstream international discourse. The bias in a banking institution, whose business model is built entirely on the concept of private property maximization,³⁵ endorsing a normative global order where the maintenance of private property regimes is the priority should be apparent.

Need to Go Deeper

International Development imagines that the problem is that wealth is not being managed efficiently enough, and its initiatives aim to achieve equitable distribution through markets, government or, more recently, through civil society input. The latest wave of the International Development movement has been focused on breaking the monopoly of the choir of lawmakers by including the voices of those most directly affected. It has effectively rejuvenated the Development mission by strengthening democracy and centring questions of self-determination.³⁶

However, its leaders still imagine that there is a way to balance distribution of wealth so that those at the bottom are not so low, without fundamentally addressing the causes of the overall wealth discrepancies. There are cogent arguments to be made that this supposed new paradigm contributes to sustaining the neoliberal model while masking its continuation.³⁷

The tension felt by those with the decision-making power (either States, or market-entities) between the desire to empower others and the drive to accrue more power for the self seems to

³⁴ *Supra* note 11 at 304.

³⁵ See Natalya Martynova, Lev Ratnovski, & Razvan Vlahu, “Bank Profitability and Risk-Taking”, *IMF Working Paper* (November 2015) WP/15/249.

³⁶ Joseph Markus, “What is the use of a Human Right to Development? Legal Pluralism, ‘Participation’, and a Tentative Rehabilitation” (2014) 41:3 *J of L & Society* 376 at 388: “[...] a right to development analysis can assist in mediating some of the tensions, and neutralize — or, more realistically, substantially equalize — the power differentials that naturally exist between indigenous communities and the wider society in which they live.”

³⁷ *Supra* note 11 at 290.

indicate a fundamental incompatibility which revolves around the concept of “private property”. If the measure of a nation’s developmental achievements is the stability of property rights, then it entrenches the ideology of competitive hoarding that is inherent to the idea of “private property” in the international legal tradition. Inequality of wealth and the institutional corruption that maintains it are direct by-products of a culture that promotes capitalist visions of success³⁸: the existence of billionaires requires slums and sweatshops.³⁹ Many important initiatives in the International Development project demonstrate the inherently predatory nature of a focus on property rights.

One of the most noble pursuits of the movement is the strengthening of the global healthcare standard. A government’s health and medical capacity is a top priority for so-called developing countries, and a significant proportion of international assistance is directly dedicated to such capacity-building.⁴⁰ The impulse to help is embodied in the services of revolutionary vaccine developers who seek contracts to provide their medicine to those in need in other parts of the world.⁴¹ However, the

³⁸ Sarah Chayes, “When Corruption is the Operating System: The Case of Honduras” (2017) *Carnegie Endowment for International Peace* at 9: Corruption is part of the design, not a flaw, when 65 countries in the world are categorized as kleptocracies – “The original exemplar of the pejorative term “banana republic,” Honduras at the turn of the twentieth century was dominated both politically and economically by three competitive U.S.-owned banana growers. In a symbol of these companies’ raw power, the owner of one of them, Samuel Zemurray, fomented a coup in 1910 to secure desired land and trade concessions. While not formally a U.S. colony, in other words, Honduras resembled one in many aspects of its political and economic structure.”

³⁹ Sarah Joseph, “Trade to Live or Live to Trade: The World Trade Organization, Development, and Poverty” in Mashood Baderin & Robert McCorquodale, eds, *Economic, Social, and Cultural Rights in Action* (Oxford University Press, 2007) at 389 : “Poverty is the major cause of human misery in today’s world. The United Nations Development Program, in its Human Development Report of 2004, estimated that 20 per cent of the world’s population in 2000 lived on less than US\$1 a day.”

⁴⁰ Global Affairs Canada, “Statistical report on international assistance 2018-2019” *Government of Canada*, online: <<https://www.international.gc.ca/gac-amc/assets/pdfs/publications/sria-rsai-2018-19-en.pdf>> at 12.

⁴¹ Richard M Scheffler & Vikram Pathania, “Medicines and vaccines for the world’s poorest: Is there any prospect for public-private cooperation?” (2005) 1:10 *Globalization and Health* 1 at 1: “Infectious diseases continue to place a

privatization of gains means that the types of illnesses that will be treated will be those that are profitable,⁴² Further, once specialized vaccines are developed, the contracts for their distribution will be more interested in securing copyright protections and returns in investment than healing sick people, meaning that the agreements pharmaceutical companies will pressure their governments to sign with vulnerable developing nations will be profitable above all.⁴³

Similarly, International Development projects targeted at land use and industrial resource extraction are overwhelmingly sites of violence and extortion. Powerful individuals occupying political positions in countries with many natural resources but little international influence are often persuaded to tolerate immoral (and sometimes effectively illegal) appropriations by

great burden on the people in the developing world. These diseases are for the most part controlled in developed countries. Since the global pharmaceutical industry is mostly grounded in developed countries, infectious diseases are not the prime focus of research and development (R&D).” Those able to develop vaccines are not usually the ones who need them most – a stark example of how the consequences of inequality perpetuate inequality

⁴² Margaret Chan, “Address by DR Margaret Chan, WHO Director-General, at the Opening Ceremony of the Sixty-Fourth Session fo the Who Regional Committee for Africa” (3 November 2014) *World Health Organization Regional Office for Africa AFR/RC64/Conf.Doc/4* at 2-3: “Ebola emerged nearly four decades ago. Why are clinicians still empty-handed, with no vaccines and no cure? Because Ebola has historically been confined to poor African nations. The Research and Development incentive is virtually non-existent. A profit-driven industry does not invest in products for markets that cannot pay.”

⁴³ Kenneth C Shadlen, “Patents and Pills, Power and Procedure: The North-South Politics of Public Health in the WTO” (2004) 39:3 *Studies in Comp Intl Dev* 76 at 98-99: “But in subsequent negotiations in the TRIPS Council over paragraph six, this coalition was markedly less successful in securing reforms that might facilitate the export of generic drugs to countries less capable of using the flexibilities confirmed at Doha. The reason for this is that such changes would have potentially introduced changes to the substantive dimensions of TRIPS, and subsequently they failed the litmus test to which the United States subjected all proposals made in the TRIPS Council. The fact of the matter is that even after Doha and the paragraph 6 settlement, developing countries will have a more difficult time reconciling their TRIPS obligations with public health concerns than developed countries, and among developing countries the poorer and less-industrialized remain particularly disadvantaged. Bad rules may be better than no rules, as discussed above and as illustrated throughout this paper, but they are still bad rules”

powerful corporate interests.⁴⁴ These resource and Development agreements are meant to increase the host country's economic power through taxation over profit, and yet it is not uncommon that the companies engaged in the actual Development operations declare losses year after year – sometimes for over a decade, and yet without cancelling the project.⁴⁵ And when recipient countries' governments do not collaborate, there are alternative means of establishing control over the productive fruits of land Development for private corporate value extraction.⁴⁶

It is often the case that Development initiatives are designed to protect people's livelihoods by providing some basic necessities – including the contested right to security. The controversy is the same as every other presented so far: whose security is being protected by such Development projects? While many civil society organizations strive, at least in rhetoric, to protect vulnerable people at the bottom rungs of the inequality ladder, the stakes at the level of those who actually have the

⁴⁴ Oakland Institute, "The Great Timber Heist: The Logging Industry in Papua New Guinea" *The Oakland Institute* (2016) at 5: "Although PNG supposedly enjoys the most equal distribution of land on earth and is governed by a constitution that protects people's customary land rights and the environment, it has become a major target for international logging operators who are facing growing resistance and scarcity of timber resources in other countries. As documented in the Oakland Institute's report and film *On Our Land*,⁵ logging in PNG obscures a multilayered tragedy of the betrayal of people's constitutional protections and the loss of cultural heritage and land for millions of Papua New Guineans. All over the country, local communities are being deprived of their resources and their rights while their government turns a blind eye to the deceptive practices of the forest industry and police forces that often work on behalf of logging companies."

⁴⁵ *Ibid* at 5: "The discrepancies found in PNG timber export prices and the operational losses declared by many logging companies seem to indicate that transfer pricing is taking place in PNG's forest industry—resulting in a loss of tax revenue that may exceed \$100 million per year."

⁴⁶ Hannah Anousheh, "A Story of Resistance: Argentina's Fight Against Monsanto's Patent Demands", in *Latin America-Related Student Research* (Carleton University, 2015) online <<https://people.carleton.edu/~amontero/Hannah%20Anousheh.pdf>> at 2: "Unlike copyrights, however, patents laws are not transnational, so when nations' governments opposed patents on legal grounds. Monsanto was forced to coerce each country individually to give up the fight against IPR. Most developing nations did not have the resources to ensnare themselves in long legal battles with Monsanto or face unilateral trade sanctions from the US."

power to make institutional decisions revolve around the security of the OECD-dominated economy:

“International negotiations – in particular environmental negotiations – in a “world risk society” deal implicitly with the defence of the stronger against the risk presented by the weaker. The redistribution of risks, and not any longer the redistribution of economic opportunities is their hidden agenda. For both grassroots movements and governments, security has thus become a key concern because this is what is left of the development idea after the belief in progress has vanished.”⁴⁷

These explicitly proprietary interests in the domain of security exemplify the fundamental relationship between the use of force and the imposition of the “developed” economic world order⁴⁸. The legacy of the global capitalist economy is inextricably tied with the development of management methods which enhance control and thus efficiency over the links of the chain of production⁴⁹. Most individuals today labour under conditions which siphon their productive value into the pockets of a minority of property owners; by this process they are objectified.⁵⁰ Objectification results in the effacement of one’s inherent value as a human being and the singular interest in the production capacity

⁴⁷ *Supra* note 9 at 23.

⁴⁸ Jessica White, “Calculation and Conflict” (2020) 119:1 *South Atlantic Q* 31 at 42: “[...] among European nations too, war had been a “means to acquire colonies so as to exploit them to the exclusion of all competitors””; and at 46: “Adopting the market entailed a profound cultural and subjective transformation. And if that transformation was not voluntary, the need to preserve market civilization made it legitimate to impose it by force. [...] The violence that created the conditions for capitalism was not a founding violence relegated to a distant past [...]”.

⁴⁹ Caitlin Rosenthal, “Introduction” in *Accounting for Slavery: Masters and Management* (Cambridge, MS: Harvard University Press, 2018) at 3: “At a minimum, slaveholders (and those who bought their products) built an innovative, global, profit-hungry labor regime that contributed to the emergence of the modern economy.”

⁵⁰ Karl Marx, *Economic and Philosophic Manuscripts of 1844*, David Riazanov, ed, (Marx-Engels-Lenin Institute, 1932) : In a capitalist society, workers are alienated from their humanity because their labour is instrumentalized by a private system of industrial production which values only their productive capacity, not their individual person.

one can dedicate to an owner.⁵¹ The global economic system, which is promoted by the International Development mission, is dependent on this interpersonal dynamic on a transnational level. A recently developed financial instrument called the Development Impact Bond, designed to transform “at risk” populations into universal subjects of economic modernity, is a blatant example of the negative value perceived in unproductive people.⁵² When the feasibility of an ostensibly rights-driven Development project turns on whether there will be a return in proprietary investments, the devaluation of care for care’s sake becomes an international relational norm. “The rule of law orthodoxy provides a new ideological buttress to the neoliberal agenda, while in fact extending the mantras of economic efficiency and entrepreneurial activity as a *raison d’être* for law itself.”⁵³ Stability is framed as dependent on a private property regime, and the unanimously popular principle of Rule of Law can retain its veil of objectivity if it continuously promotes the maintenance of the status quo.⁵⁴

⁵¹ *Supra* note 9 at 16: “[modern citizens] are judged according to what they contribute to the acquisition and ownership of things.”

⁵² Zenia Kish & Justin Leroy, “Bonded Life: Technologies of racial finance from slave insurance to philanthrocapital” (2015) 29:5-6 *Cultural Studies* 630 at 639: “Risk is also reconstituted through [Social Impact Bonds, the national version of the international Development Impact Bonds] in another important way. Where those predominantly targeted by SIBs have long been considered ‘at-risk’ populations – from young male convicts to pregnant teens to the homeless – their riskiness has always been framed as imposing costs on society. They are cast as public burdens, often seen to become more expensive with time. SIBs are considered a breakthrough by many – ‘This is a change in the way government does business for the better’, Massachusetts Secretary of Administration and Finance Glen Shor said of that state’s SIB (Fernandes 2014) – precisely because they purport to make these populations create, rather than drain, value. They therefore shift these subjects’ riskiness from a cost seemingly imposed on taxpayers to a new frontier for investors to capitalize on. Rather than putting others at risk, these subjects become worth taking a risk on – because they can now pay back.”

⁵³ *Supra* note 11 at 317.

⁵⁴ *Supra* note 7 at 1: “Amidst this host of new uncertainties there appears to be a widespread agreement, traversing all fault lines, on one point, and one point alone: that the “rule of law” is good for everyone.”

The Crossroad

This universal orthodoxy has certainly been challenged on multiple occasions. In the years since the rejection of the Washington consensus and the depart from the State-driven approach, agents in the discipline of International Development have learned three strategies to better results: balancing market-led initiatives with State-based solutions; including the perspectives of a wider variety of stakeholders; and respecting the plurality of models that can be developed by each country.⁵⁵ Challenges to the institutional status quo, which both creates and thrives on unequal distribution of controlling power, have been happening for a long time; we may even say that the International Development project itself, as a justice-based concern for “undeveloped” countries, is a direct outcome of such challenges. Our society has been suffering from the incompatibility between our desire to live a secure and comfortable life, and our impulse to help others who are suffering, for a very long time. This cognitive dissonance is apparent throughout our history as a series of oscillations between extreme control over and empowerment of others, between the forces behind the transatlantic slave trade and the legal regime of international human rights.

This dilemma is based on a fundamental assumption which needs to be challenged: that private relationships with “wealth” are the best means of securing peace and stable relationships amongst humans. This assertion implies a scarcity argument: there are finite resources in the world which are insufficient to provide for all the lives that depend on them, and this naturally results in conflicts over control of those resources. Under these conditions, property rights are a civilized means of delineating which resources are controlled by whom, avoiding conflicts, and, if necessary, imposing justice. In other words, the rules of private property justify who goes without enough. But this assertion is only true amid the specific circumstances of a “perpetual growth”

⁵⁵ David M Trubek, “Law and Development 50 Years On” (2012) *Univ of Wisconsin Legal Studies Research Paper No1212* at 6: “However, in the 21st century many are coming to believe that neither planners nor markets working alone can find the optimal path. Rather, strategies must evolve and investment choices must be made through public-private partnerships and processes of iterative experimentation. (Rodrik, 2004; Sabel, 2007; Sabel & Reddy, 2003; Houseman et al., 2007).”

agenda, where individuals race to seize control over as much as they are able not in order to have enough, but to have more than the “other”. There is ample evidence that the world produces enough resources to supply every person with the means to satisfy their physical needs under different sociological models: it is carried in recent ecological research analysis⁵⁶ as well as in the traditional knowledge of Indigenous peoples of the world.⁵⁷ The foundational principle of private wealth hoarding must be challenged for this distribution of resources to be viable: there is not enough to go around if everyone wants to live like a Canadian, but if we are more patient and less wasteful, more than 10 billion people can be sustained on the bountiful fruits of the Earth.⁵⁸

It is true that the human population of the world is quickly increasing, but this is in large part correlated with the lopsided results of our attempts at progress. While the floor of extreme poverty has been continuously rising for decades, the proportion of people who remain in poverty is growing.⁵⁹ This means that

⁵⁶ Jason Hickel, “Is it possible to achieve a good life for all within planetary boundaries?” (2019) 40:1 *Third World Quarterly* 18 at 30: “When it comes to achieving a good life for all within planetary boundaries, poor nations are the ‘easy’ part. It is rich nations that present the real challenge. [...] It requires reductions of resource use that are so significant as to require the adoption of de-growth strategies, and therefore a shift toward post-capitalist economic models. This requires a fundamental reorientation of development theory, from focusing primarily on the deficiencies of poor countries to focusing on the excesses of rich countries.”

⁵⁷ Aaron Mills, (Wapshkaa Mia’iingan) *Indigenous Law Revitalization, Oral teachings* (Faculty of Law, McGill University, 2019); see also Yelkatte Clifford, Robert “Listening to Law” (2016) 33:1 *Windsor Yearbook of Access to Justice* 47; see also James Suzman, *Affluence Without Abundance: The Disappearing World of the Bushmen* (2017, New York: Bloomsbury); see also Shawn Malia Kana’iaupuni & Nolan Malone “This Land is My Land: the Role of Place in Native Hawaiian Identity” (2006) 3:1 *Hūlili: Multidisciplinary Research on Hawaiian Well-Being* 281; see also John Patterson, “Respecting Nature: a Maori Perspective” (1998) 2 *Worldviews: Environment, Culture, Religion* 69.

⁵⁸ Charles C Mann, “Can Planet Earth Feed 10 Billion People?” (March 2018) *The Atlantic*, online: <https://www.theatlantic.com/magazine/archive/2018/03/charles-mann-can-planet-earth-feed-10-billion-people/550928/>

⁵⁹ *Supra* note 9 at 15: “Development policy, indeed, had set out to propel agrarian societies into the urban-industrial age. It sought to replace traditional man by modern man, an endeavour which, however, ended in fatal success; while traditional man has vanished, modern man has by no means arrived. Living

infant mortality is greatly reduced,⁶⁰ but the systemic conditions which cause poor families to have many children⁶¹ are not addressed. Most of the growing population originates from quickly developing countries caught in such predicaments such as India, Brazil and China.⁶² In established and powerful countries, the childbearing trend is actually reversed and their populations are aging out.⁶³ As it stands, Development currently “deprives the poor of their resources for allowing the rich to live beyond their means.”⁶⁴

We can greatly slow down the exponential increase of the global population, which will at this rate soon reach the threshold of what the Earth can supply, if we commit to reconfiguring the power order of the world. And given the imminent climate catastrophe that is looming before us,⁶⁵ we must commit to such reconfigurations quickly. We are at the crossroad where all our schizophrenic history culminates, careening toward the options of a fork in the road: do we follow our rhetoric toward true peace and equality, or do we continue on this path of competitive private

in a no-man’s land, exiled from tradition and excluded from modernity, has since become the destiny of most of the world’s people.”

⁶⁰ World Health Organization. “Children: improving survival and well-being” (8 Sept 2020), WHO online: <<https://www.who.int/news-room/fact-sheets/detail/children-reducing-mortality>>.

⁶¹ Kimberly Rupnarain, “Why do the poor have large families?” *World Vision*, online: <<https://www.worldvision.ca/stories/why-do-the-poor-have-large-families>>.

⁶² Max Roser, Hannah Ritchie & Esteban Ortiz-Ospina, “World Population Growth” (May 2019) *Our World in Data*, online: <<https://ourworldindata.org/world-population-growth>>

⁶³ G Nargund, “Declining birth rate in Developed Countries: A radical policy re-think is required” (2009) 1:3 *Facts, Views & Vis Obgyn* 191.

⁶⁴ *Supra* note 9 at 18.

⁶⁵ William J Ripple et al, “World Scientists’ Warning of a Climate Emergency” (2020) 70:1 *BioScience* 8 at 8-11: “Despite 40 years of global climate negotiations, with few exceptions, we have generally conducted business as usual and have largely failed to address this predicament. The climate crisis has arrived and is accelerating faster than most scientists expected. It is more severe than anticipated, threatening natural ecosystems and the fate of humanity. Especially worrisome are potential irreversible climate tipping points and nature’s reinforcing feedbacks [...] that could lead to a catastrophic “hothouse Earth,” well beyond the control of humans. These climate chain reactions could cause significant disruptions to ecosystems, society, and economies, potentially making large areas of Earth uninhabitable.”

property hoarding? There are compelling reasons to believe that we are at a point where not only we must, but we can orchestrate transformative change. Despite unheard-of wealth concentration, there is also never-before-seen wealth distribution and a strong global middle-class;⁶⁶ the internet and cheap technologies of communication have diffused across the globe;⁶⁷ there is an international language that is capable of connecting complete strangers;⁶⁸ and climate change can no longer be ignored.⁶⁹ All of these factors mean that there is a critical mass of people around the world who can be incited to organize for change. We have the means to alter the course of our ideological path collectively and create a world where humans are not racing to accrue wealth, unlike the previous ten thousand years. Because while ten millennia sounds like a long time, it is only a fraction of Life history – or even the human story.⁷⁰

⁶⁶ Homi Kharas & Kristofer Hamel, "A global tipping point: Half of the world is now middle class or wealthier" (27 September 2018) *The Brookings Institution*, online: <https://www.brookings.edu/blog/future-development/2018/09/27/a-global-tipping-point-half-the-world-is-now-middle-class-or-wealthier/> "Just over 50 percent of the world's population, or some 3.8 billion people, live in households with enough discretionary expenditure to be considered "middle class" or "rich." About the same number of people are living in households that are poor or vulnerable to poverty. So September 2018 marks a global tipping point. After this, for the first time ever, the poor and vulnerable will no longer be a majority in the world."

⁶⁷ Joseph Johnson, "Worldwide digital population as of January 2021" (10 September 2021) *Statista* online: <https://www.statista.com/statistics/617136/digital-population-worldwide/> "As of January 2021 there were 4.66 billion active internet users worldwide – 59.5% of the global population."

⁶⁸ Although only about 13% of people in the world speak English, it is considered an "international language" because it serves an important global function as the official language of a quarter of all countries, the standard language of scientific publication, coding and other important industries, and the language most likely to connect two people with different mother tongues.

⁶⁹ Steven Mufson et al, "Extreme climate change has arrived in America" (13 August 2019) *The Washington Post*, online : <https://www.washingtonpost.com/graphics/2019/national/climate-environment/climate-change-america/>

⁷⁰ Ilana E Strauss, "The Myth of the Barter Economy" (26 February 2016) *The Atlantic* online: <https://www.theatlantic.com/business/archive/2016/02/barter-society-myth/471051/> "Part of the difficulty in imagining a pre-money world lies in the fact that currency has been around for so long. The first Indian money appeared

In order to take the transformative path that will save us, we need to coordinate a critical reassessment of the core of the movement of International Development. The central rationale of “stable property rights” – that is, of private accumulation of power – must be openly and avidly challenged. As the report by the Stiglitz Commission stated, “to focus specifically on the enhancement of inanimate objects of convenience [...] could be ultimately justified – to the extent it could be – only through what these objects do to the human lives they can directly or indirectly influence.”⁷¹ But they didn’t go deep enough into looking at the very understanding we have of these inanimate objects, our relationship to property, and the effects this has had on our understanding of “self” and our social relationships. Because private property is the ideological concept perpetuating the alienation that has led to this present moment, we cannot drastically change directions without first changing these tracks.

The Nature of Property Rights

When talking about the changes that we must strive for, it is necessary to outline the scope of the system in question. There exists currently a somewhat homogenous culture⁷² which is recognizable as the “State-based” legal order of the Anthropocene. Civil law and common law, of European heritage,

during the sixth century B.C. and consisted of silver bars. The world’s first coins appeared in Lydia (modern day Syria) around the same time. But even though money has been around for a long time, humans have been around for hundreds of thousands of years longer, and it may be a mistake to imagine that modern economics reflects some sort of primordial human nature.”

⁷¹ *Supra* note 33 at 2.

⁷² While “globalization” is not a universal development, bypassing large populations and geographies in favour of particular peoples and markets in the distribution of benefits, the fact remains that there is a dominant culture of political, economic, and sociocultural norms which is being imposed on every country in the world by international organizations, global superpowers, and local governmental structures. See Robert Schaeffer, “Theories of Globalization” in *Understanding Globalization: The Social Consequences of Political, Economic and Environmental Change* (New York: Rowman & Littlefield, 2003); see also Subhabrata Bobby Banerjee & Stephen Linseed, “Globalization, Multiculturalism and Other Fictions: Colonialism for the New Millennium?” (2001) 8:4 *Organizations* 683.

are the normative frameworks of this culture.⁷³ This international legal regime structures relationships between States and State-emulating political structures based on governments creating Laws.⁷⁴ While every country writes their own Laws, they all flow from the Euro-centric traditions of common and civil law which were imposed on them to promote liberalized and globalized markets of exchange.⁷⁵ Even countries that ostensibly reject democracy, individual rights, capitalism and liberalism more generally, like Russia, China, Zimbabwe, Indonesia, Iran, Mexico and Afghanistan, still seek to be recognized as legitimate under the global Rule of Law,⁷⁶ which, as was established above, is property-based. Even in the “West”, where democracy and individual rights are valued, this Rule of Law often is interchangeable with the rule of judges and lawyers, an anti-democratic and elitist distribution of normative power.⁷⁷ The

⁷³ *Supra* note 52 at 5: “The literature included a critical strand: Dezalay and Garth (2002) placed law and development within the context of global forces and the hegemony of neo-liberal development economics while authors in the volume edited by Trubek and Santos (2006) outlined several critiques of mainstream law and development. They noted that the supposedly neutral framework of private law could favor certain groups over others and affect the distribution of income.”

⁷⁴ Scott Turner, “Global Civil Society, Anarchy and Governance: Assessing an Emerging Paradigm” (1998) 35:1 *J of Peace Research* 25 at 27: “[T]he first European states were ultimately responsible for the mostly violent extension of the state system throughout the entire world”.

⁷⁵ The main systems of law on which nations are built include common law, civil law, customary law, and religious law. Most countries in the world that are not purely common law or civil law are mixed with those systems – only Andorra, Guernsey, and Jersey are considered “customary law monosystems”, while Afghanistan, the Maldives Islands, and Saudi Arabia are “Muslim law monosystems”. However, these descriptions can still be misleading, as the influence of common law and civil law, European in origin, are the meta-narrative that structure statehood at the international level; further, these countries, in participating in the international legal regime, accept treaties and normative expectations based on these European systems. Finally, Muslim and customary legal traditions “tend to be limited to the laws relating to personal status”. See “Classification of legal systems and corresponding political entities”, online: *JuriGlobe – World Legal Systems Research Group*, by University of Ottawa <<http://www.juriglobe.ca/eng/sys-juri/index-syst.php>>

⁷⁶ *Supra* note 7 at 2-3.

⁷⁷ *Ibid* at 4-5: “Therefore, even as politicians and development specialists are actively promoting the spread of the rule of law to the rest of the world, legal theorists concur about the marked deterioration of the rule of law in the West,

interrelation between the political sphere and the discipline of Law must be recognized:⁷⁸ the global system was imposed upon the world gradually and by force as European states colonized the world,⁷⁹ and subsequent Western imperialism imposed homogenization coercively – and often violently. In this global system, power is distributed top-down,⁸⁰ from the political and economic leaders of the world's superpowers to the individuals in the top social class of every country who participate in and maintain the international legal regime.⁸¹ This entire legal

with some working to accelerate its demise. Those decline suggests that problems are being glossed over in its promotion. [... Further,] the rule of law carries the ever-present danger of becoming rule by judges and lawyers. Aside from having obvious anti-democratic implications, this raises additional concerns in societies where judges and lawyers are drawn exclusively from the elite, or from some oftener discrete subgroup."

⁷⁸ *Supra* note 16 at 363: "Bingham also ignores the professionalisation of the global political classes – the legal profession (which 40% of global politicians hail from) controls the discourse and definition of the field of "rule of law" by abstraction and reduction: "particular problems are reconciled in abstract terms and then reduced to problems that fall within the jurisdiction of the profession". (P.363) The lawyers then depoliticize their very political role: "Writing enabled lawyers to claim to be, and sometimes to appear to be, above and beyond the individual acts of power involved in legal practices and the application of the law. In manifold ways, the written form of law abrogated power to those lawyers claiming specialist expertise in the 'interpretation' of the law." (P.363) They closely guard entry to the profession while promoting their tool (law) as a solution to problems of social order, prompting the increasing normative deployment of the rule of law's practices.

⁷⁹ Ernest Mandel, "In Defence of Socialist Planning" (1986) *New Left Rev* 1/159 at 9: "The 'cult of the market' [...] is an unbridled rehabilitation of the market and of commodity production as civilizational values in themselves"; See also *supra* note 52 at 34: These civilizational values were imposed through the colonization as "the imperative to profit necessitates the forceful imposition of market relations across the globe".

⁸⁰ Nicola Phillips, "Power and inequality in the global political economy" (2017) 93:2 *International Affairs* 429 at 430: "[I]nequality is not a 'bug in the system' of a GVC [global value chain] world; rather, the foundational dynamics of a global economy organized in this manner directly produce these outcomes, on the one hand, and on the other depend on the harnessing of existing inequalities for their ability to emerge and thrive."

⁸¹ William I Robinson & Jerry Harris, "Towards a global ruling class? Globalization and the transnational capitalist class" (200) 64:11 *Science & Society* at 12: "We argue in this essay that a transnational capitalist class (henceforth, TCC) has emerged, and that this TCC is a global ruling class. It is a

framework is predicated on the foundational concept of private property.

Property rights are a socially recognized relationship between a person and an object.⁸² The dynamic of this relationship is defined by the unidirectional exercise of influence. The person is recognized as possessing an entitlement to control the object at their whim and exclude all other persons from creating a relationship with that object. The unfettered escalation of this power dynamic leads to what can only be accurately described as enslavement – that is, the complete objectification of a being for the sole benefit of a personal proprietary interest. Enslaved entities, be they manifestations of nature like forests and rivers, animals wild or domesticated, or even other human beings, are stripped of their personhood and agency, and thus are unable to produce transactional value unless they are controlled by the will of a person. This enslavement is a power dynamic that is bigger than just the owned object and the owner person: it is dependent on being recognized by one's society as a legitimate relationship as opposed to other people's potential relationships.⁸³

In Law, a "person" is defined in opposition to an "object"; what is included in the term "person" is very exclusive, although the boundaries are not fixed. Everything that is not a "person" is an "object". The difference between these two types of beings is the core of the ideological structure of Law as a whole. Each term indicates a relative position of power so diametrically

ruling class because it controls the levers of an emergent transnational state apparatus and of global decision making. This TCC is in the process of constructing a new global capitalist historic bloc: a new hegemonic bloc consisting of various economic and political forces that have become the dominant sector of the ruling class throughout the world, among the developed countries of the North as well as the countries of the South." See also William I Robinson & Jeb Sprague, "The Transnational Capitalist Class" in Mark Juergensmeyer, Manfred Steger, Saskia Sassen, & Victor Faesse, eds., *The Oxford Handbook of Global Studies* (Oxford, UK: Oxford University Press, 2018) 309.

⁸² Carol M Rose, "Possession as the Origin of Property" (1985) 52:1 *U Chicago L Rev* 73 at 75: "Possession now begins to look even more like something that requires a kind of communication, and the original claim to the property looks like a kind of speech, with the audience composed of all others who might be interested in claiming the object in question."

⁸³ *Ibid.*

oppositional to one another that their overlap is cause of serious concern. And yet, the line between person and object is not clear.⁸⁴ For example, consider the objectification of animals. In common law, animals are decidedly not persons, because they are property;⁸⁵ in other words, animals are under the control of persons, and that control is what entitles ownership.⁸⁶ In a circular way, animals have no inherent worth because they are property, and because as property they can only be of value if they are manipulated into shape by a person's work,⁸⁷ control over them is a civilizational benefit and should be encouraged by Law.⁸⁸ In the civil law, the distinction between a "person" and a "thing" is fundamental to the whole organization of the Law, and in a similarly circular way an animal is distinguished from a "person" in its categorization as property because of how it is managed: their care is determined by the rules of property management and not, for instance, child custody;⁸⁹ their value is calculated according to their purchase cost and not the emotional impact they have on their household.⁹⁰

And yet the law is confusing. In common law, animals are recognized as having more value than inanimate objects, as they can be beneficiaries of a trust fund even if they are only entitled to what is necessary for their maintenance, and not to surplus luxury funds.⁹¹ In civil law even if animals remain staunchly in the categorical space of object, they are often legislatively

⁸⁴ Eric Reiter, "Rethinking Civil-Law Taxonomy : Persons, Things, and the Problem of Domat's Monster" (2008) 1 *J Civ L Stud* 189 at 191 : « difficult to negotiate the boundary between persons and things ».

⁸⁵ *R v Krajnc*, [2017] ONCJ 281.

⁸⁶ *Pierson v Post*, Caines Reports 175 (NY Supreme Court, 1805): Based on theory of occupancy: wild animals must be seized after being hunted.

⁸⁷ John Locke, "Of Property" In CB Macpherson, ed, *Property: Mainstream and Critical Positions* (Oxford: Basil Blackwell, 1978) 17.

⁸⁸ *Supra* note 83: "By the pleadings it is admitted that a fox is a "wild and noxious beast."...His depredations on farmers and on barnyards, have not been forgotten; and to put him to death wherever found, is allowed to be meritorious, and of public benefit. Hence it follows, that our decision should have in view the greatest possible encouragement to the destruction of an animal, so cunning and ruthless in his career."

⁸⁹ *A c D* (6 août 2003), Longueuil 505-04-011011-038 (QC CS).

⁹⁰ *Leffers c Da Silva*, 2001 CanLII 17597 (QC CQ).

⁹¹ *Pettingale v Pettingale* (1842), 11 LJ Ch 176.

recognized as having sentience and thus deserving respect.⁹² Furthermore, the circularity of the reasoning used to justify this categorization by both legal traditions would not hold up if made as an argument to justify proprietary control over a human – and in fact has already been rejected on multiple occasions: control effectively exercised over an enslaved human, an infant baby, or a severely mentally disabled person is not sufficient for society today to recognize another person’s property rights over them. Where the line between person and property is drawn is a perpetually contentious topic.

It is collectively recognized that people have rights and objects do not. In fact, people have rights over objects. The attribution of personhood grants a being with rights, that is, the dignity of being recognized as a wilful member of society. The dignity of personhood is a collective admission of one’s inherent value. Objects, on the other side of the line, have no dignity: they have no will or preference, and they have no inherent value beyond what can be made of them through the transformative agency of a person⁹³. In other words, objects depend on being absorbed by a person’s controlling power to have value for society⁹⁴. I call the line between person and object the Dignity of Rights line – it is a fluid, ephemeral distinction, a spectrum of objectification in the shape of a pyramid with two sections, a bottom “property” tier and a top “person” tier, where the peak is located. The shift from property to person is gradual as one climbs the pyramid, but there is a distinct transition where the Dignity of Rights line represents a critical mass of social recognition as a person. To slide down toward the line is to lose dignity; to cross it is to lose rights completely. On the “person” end of the spectrum, there is room for only one “true person” at the top of the pyramid.

⁹² *An Act to improve the legal situation of animals*, QC 2015, c 35, s1: “898.1 – Animals are not things. They are sentient beings and have biological needs. In addition to the provisions of special Acts which protect animals, the provisions of this Code and of any other Act concerning property nonetheless apply to animals.”

⁹³ John Locke, “Of Property” In CB Macpherson, ed, *Property: Mainstream and Critical Positions* (Oxford: Basil Blackwell, 1978) 17 at para 26: “God, who hath given the World to Men in common, hath also given them reason to make use of it to the best advantage of Life, and convenience. The Earth, and all that is therein, is given to Men for the Support and Comfort of their being.”

⁹⁴ *Supra* note 49 at 632: “Minimally trained and dependent slaves, for example, were seen by their owners as burdens in so far as they consumed resources and produced fixed returns that were limited when compared to their potential.”

This ideological setup results in a normalized relational dynamic with a lot of violent movement as individuals try to resist being pushed down as they attempt to climb up. The higher one climbs, the more they hold under their control. On the contrary, the more people climb above you, the more objectified you become to their controlling will.

The dominant power that people hold over objects, and the broader objectification of people, is what International Development initiatives ideologically normalize when they centre the stability of property rights regimes in their understanding of successful Development outcomes. This promotion of ownership power implies the centrality of the collectively recognized right to control completely, to destroy physically, and to exclude other people from forming possessive relationships with property. The ability to control an object so completely that the appropriateness of its destruction is considered only from the perspective of the owner is what most Development projects depend on to be profitable to their investors. This is true for resource extraction projects such as logging and agriculture, as well as the for health initiatives that rely on intellectual property and the interests of pharmaceutical developers. This controlling power extends to the ability for the owner to exclude any person from forming relationships with the object in question. The consequences of such isolating tactics are most obvious in land grabs where Indigenous peoples with predating relationships with the land are barred from interacting with it in the ways they had cultivated for generations.⁹⁵

The whole legal system is built on the foundational distinction between person and object, and is imposed through a violent race to objectify as much as possible. Many (if not all) systemic problems such as environmental destruction, extreme inequality, white supremacy, patriarchy, and late-stage capitalism are interrelated and stem from the struggle of control inherent in the person/property divide. Our very identity as participants in society is built on this distinction. In civil law, patrimony is a direct conflation between a person's identity and the collection of

⁹⁵ CEMIRIDE (Centre for Minority Rights Development) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, African Commission on Human and Peoples' Rights, Communication No. 276/2003.

objects they have under their possessive control.⁹⁶ In the common law, the notion of pouring one's work essence into property in order to control and transform it so that others can recognize it as belonging to them⁹⁷ is inherently about marking the owner's identity.⁹⁸ Under this logic, it is reasonable to attempt to collect as much for yourself as possible while giving very little to others. If identity and power is predicated on ownership of wealth, and those with wealth have the power to impose control over the rest, then you are undoubtedly better off being at the top of the pyramid.

As it stands, we operate in a framework of reality structured from the point of view of a power-holder afraid of losing power. Embedded in a competitive cultural context where there can only be one "most powerful", a position in which one is free from all controlling pressure, the power-holder arrives at that position only by taking as much of the finite resource of power from others as they can, and consequently climbing over them in the hierarchy of personhood. In such a context, it is reasonable to be afraid of losing power to the next rising usurper, and rational to exercise one's hard-won power to control the circumstances

⁹⁶ *Supra* note 81 at 195: Blackstone's monsters are defined in large part not by what they are, but what they can or cannot do (inherit property); see also J Ghestin, *Traité de droit civil : Introduction générale*, 4th ed (Paris: Librairie générale de droit et de jurisprudence, 1994) at para 208: "Selon cette doctrine, l'unité des éléments qui constituent cette universalité n'est autre que celle du sujet des droits et des obligations; c'est la même personne qui est ou sera titulaire des droits présents et à venir et qui est ou sera engagée par ses obligations. Par conséquent, le patrimoine adhère nécessairement à la personne. À tel point que l'on peut dire qu'il est « une émanation de la personnalité et l'expression de la puissance juridique dont une personne se trouve investie comme telle » (11). De là résulte nécessairement que toute personne a un patrimoine, car elle est apte à être sujet de droits, et que seule une personne peut avoir un patrimoine puisqu'il n'existe pas d'autre sujet de droits."

⁹⁷ Patricia Seed, *Ceremonies of Possession in Europe's Conquest of the New World, 1492-1640* (Cambridge: Cambridge University Press, 1995) 154.

⁹⁸ Margaret Jane Radin, "Property and Personhood" (1982) 34 *Stan L Rev* 957: "We must construct sufficiently objective criteria to identify close object relations that should be excluded from recognition as personal property because the particular nature of the relationship works to hinder rather than to support healthy self-constitution. [...] Marx attributed power in a market society to the commodities that form the market. He believed that people become subordinate in their relations to these commodities. In other words, under capitalism property itself is anti-personhood."

around them as much as possible. This constitutive “fear of the other” is in practice a profoundly felt need to extract value from the “other” without giving them any value in return, so that the “self” can have more than the “other” and thus control them in such a way that protects the “self”. This is the logic of the international economic system which seeks to maximize exports and minimize imports.⁹⁹ In fact, this controlling force is imposed on everyone over whom power is held, and the shape that people so pressured take on to avoid being perceived as a threat to the current power structure is the so-called “objective” standard. Objectivity in the courtroom is nothing more than a class of people with power trying to subjectively interpret a situation based on the rules made by a more powerful subjective individual, to assuage the latter’s fear of loss of control; Judges make decisions that maintain the power structure of a Queen across the ocean.¹⁰⁰ This objectivity is only possible because as a collective, we recognize each others’ claims of ownership over property, and we must therefore extrapolate that the proprietary claims made by those who possess the most must be even more legitimate. The power we socially receive to exclude others from forming relationships with our possessions maintains a “single narrative” where the object is unquestionably part of the owner’s identity, and is defined as whatever the owner defines it as. When the one “true person” at the top of the property pyramid is thus recognizing as

⁹⁹ Mohammad Amin, “And they say imports are a bad thing?” (13 May 2009) *World Bank Blogs*, online: <<https://blogs.worldbank.org/psd/and-they-say-imports-are-a-bad-thing>> “According to the mercantilist view which for long shaped trade policies, imports were considered to be a bad thing while exports, a good thing. The reason for this thinking was that imports depleted a country’s gold reserves (foreign exchange reserves) or its national wealth making the country poorer and weaker. On the other hand, exports had the opposite effect. With the establishment of GATT/WTO, the “imports are bad” hypothesis got a new rationale - lowering import barriers worsened a country’s terms of trade (ratio of export prices to import prices) lowering the country’s national welfare. Hence, allowing more imports was considered a “concession” by the importing country that had to be compensated for through greater access to its partners’ markets. This “reciprocity” in trade concessions was the founding principle of GATT.”

¹⁰⁰ Pierre-Emmanuel Moyse, “Propriété : un acte de foi?” (2008) 38:1 *RGD* 259: Ownership, like sovereignty, relies on the notion of hierarchy: others need not be excluded from the owned resource, so long as their position is subordinate to the owner’s. Thus, an owner is not necessarily the only decision maker with respect to a resource - just as sovereign governs a territory without making all decisions that concern it, so the fate of a thing is not solely a function of an owner’s decisions. Thus, the character of ownership is not lost where others have a part in determining what happens to a resource.

holding the strongest proprietary claim over all that falls beneath them, in other words all that is subsumed in their “patrimony” or possessive collection, then this “one true person” gets to impose the narrative of what “objectivity” looks like.

The Creation of Objectivity

This relational dynamic has not always been the dominant force shaping the relationship most humans cultivate with each other and the other entities of creation; it is only one way of understanding the world amongst myriad others. I posit that the source of this possessive impulse may spring from a series of developments in the relationships humans cultivated with the beings we consumed for food that began over ten thousand years ago. When early humans first began spreading around the world, establishing themselves as the original Indigenous Peoples of every continent, some groups found themselves in river basins which were particularly bountiful.¹⁰¹ The area was so plentiful year-round that those peoples no longer felt the need to follow the movement of the seasons, and settled down with their domesticated plants and animals. Food was easy to produce and life was comfortable, which meant that its production could become the specialized responsibility of a particular family without the need for every individual to contribute toward feeding the group. This created an opportunity for others to dedicate their labour entirely to developing other skills, and a series of innovations exponentially increased the bounty of their harvests and the comfort of their lifestyles. This led to group sizes growing, and the specialized food producers were pressured to become more efficient at producing food if they wanted to keep up with the growing number of mouths they were expected to feed every day. Efficiency increases with control, and so it was that those food producing families in the first fully sedentary human groups imposed procedural controls on the lives of their plant and animal

¹⁰¹ Stephen T Jackson, “Climate change since the advent of humans” (20 September 2015) *Britannica* online: <https://www.britannica.com/science/climate-change/Abrupt-climate-changes-in-Earth-history> “The first known examples of animal domestication occurred in western Asia between 11,000 and 9,500 years ago when goats and sheep were first herded, whereas examples of plant domestication date to 9,000 years ago when wheat, lentils, rye, and barley were first cultivated. This phase of technological increase occurred during a time of climatic transition that followed the last glacial period.

relatives. This led to the gradual extinguishment of the voices of their domesticated creatures, limiting the movement of influence in their relationship to a strictly unidirectional exercise of authority. This effectively reduced the value that an animal or plant carried inherently, because any exercise of their agency that caused them to differ from the human's plan in fact carried negative value in the eyes of the efficiency-driven person. It was under these conditions that the social contract humans had with their domesticated relations tipped unequally in favour of increasingly efficient management and production practices, ignoring any lack of consent on the part of the non-humans to maximize value extraction. In other words, nature was enslaved and through the exercise of forceful control, transformed from our relative to our property.¹⁰²

This process was definitely gradual, and not necessarily a conscious decision by any lone actor. The effect was a feedback loop of mental heuristics of alienation: the cognitive dissonance between wanting human comfort and wanting to ensure the dignity of our non-human relations was rationalized by way of a conceptual separation between human and nature, which was then naturally organized into a hierarchy of value.¹⁰³ When things are lower on the hierarchy scales, the amount of brain space used for storing and understanding their details is reduced.¹⁰⁴ This causes more highly valued items to seem complex and full of diversity, while the lowly valued items are homogenized and flattened, with the quality or trait emerging as the simplified description being the

¹⁰² Wapshkaa Mia'iingan (Aaron Mills), "Aki, Anishinaabek, kaye tahsh Crown" (2010) 9:1 *Ind LJ* 107 at 25: "Such an attitude is what Dr Gordon Christie has usefully described as a "user-thing vision" of human-land relations, wherein "resource extraction for trade is simple a means by which the land is used. The land itself is not held to have any interest in the relationship as it is not seen as a thing that has interests or that enters into relationships.""

¹⁰³ Hierarchization is not an inherently evil construct: it is a list of priorities between categories. The first categorization that emerges is the sense of self, and the self is dependent on the survival instinct for its existence. See Abraham H Maslow, "A Theory of Human Motivation", (1943) 50:4 *Psychological Review* 370; See also Alan Sugarman & Lee S Jaffe, "Toward a Developmental Understanding of the Self Schema" (1990) 13:2 *Psychoanalysis and Contemporary Thought* 117.

¹⁰⁴ Alan D Castel, "The Adaptive and Strategic Use of Memory By Older Adults: Evaluative Processing and Value-Directed Remembering" (2007) 48 *Psychology of Learning and Motivation* 225.

one that most differentiates them from the high-value items.¹⁰⁵ This leads to a spiral of alienation: because the “self” is higher on each person’s priority list than “other”, the successive hierarchizations and alienations experienced by these efficiency-driven food producers caused a feedback loop of differentiation between “self” and “other” that rippled beyond their relationships with non-humans.

If labourers hierarchize between themselves according to the nature of their productive labour, then the influential food-producer might have suggested that humans were hierarchically above plants and animals: the active and specialized labour of the food-producer was opposed to the passive labour of eating, reproducing and growing, which every human family could do and which contributed nothing to differentiation.¹⁰⁶ The heightened control the humans had over the plants and animals made them see themselves as superior, despite depending on them for survival – and so the human self was ruptured from and hierarchically superimposed over the non-human other.¹⁰⁷ Collectively, as the majority of humans had decreasing contact with the life-cycles of animals and plants due to the specialized division of labour, the simplification heuristic eventually flattened all non-humans into the homogenous mass of Nature. The members of this abstract collective were objectified, separated from their ability to have a “personhood” by their vast differences from human persons.¹⁰⁸ And so the relationship the humans had with Nature was no longer a relationship at all, because one cannot have relationships with non-persons – it followed that people must own property. And if the line between what is a person and what is property is based on a dynamic of control, then anything can be owned. Thus, these large groups of humans organized themselves based on a structure of alienated efficiency, and this dynamic rippled outward to all interpersonal relationships. The race of objectification led to the whole world to

¹⁰⁵ F Lorenzi-Cioldi, “Group Homogeneity Perception in Status Hierarchies: The Moderating Effect of the Salience of Group Status Differentials” (2008) 21:3 *Revue internationale de psychologie sociale* 67

¹⁰⁶ Donna L Dickenson, “Property and Women’s Alienation from their Own Reproductive Labour” (2002) 15:3 *Bioethics* 205

¹⁰⁷ Brewster Kneen, *From Land to Mouth: Understanding the Food System* (Ontario, Canada: University of Toronto Press, 1993).

¹⁰⁸ Paul Nadasdy, “The Gift of the Animal: The Ontology of Hunting and Human-Animal Sociality” (2007) 34:1 *American Ethnologist*.

become a potential source of wealth, and those who violently emerged at the top of the pyramid held the most power. These self-styled emperors and kings were free to use their objectified subjects to conquer that wealth for private gain. History since has been a continuous narrative of conquest and empire-expansion. The structure of States that we know today is a direct descendant of that history, and despite increasing democratization, that fundamental dynamic of competitive property hoarding has not yet been questioned by the mainstream.

Alternative Models of Global Society

In order to recalibrate the imbalance of our global legal culture, it is necessary to deeply transform our expectations of what the most prioritized outcomes should be. Since the core of the issue stems from a need to exert control so as to increase efficiency, it seems that an embrace of inefficiency is in order. Our fear of high transaction costs and protracted negotiations must be confronted, because our relationships have been too efficient for too long. We must make time in our lives for the consideration of the consent of every party we engage with every time we engage with them, and we must drastically broaden the scope of whose consent is considered.¹⁰⁹ I would go so far as to promote the wholesale erasure of the legal line between “person” and “property”. Rather than a unilateral imposition of control over a thing, the use of our tools and the management of our domesticated creatures should be based on a bidirectional relationship, negotiated according to principles of reciprocity and domination.¹¹⁰ By recognizing the personhood of objects and

¹⁰⁹ John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at 245 : « The active nature of rocks means that they have an agency of their own that must be respected when Anishinabek people use them. As such, it would be inappropriate to use rocks without their acquiescence and participation because such action could oppress their liberty in some circumstances. Using rocks without their consent could be considered akin to using another person against his or her will. The enslavement of rocks could lead to great calamities for the Earth and her people. Therefore, to ensure that rocks and land are used appropriately, particular ceremonies or legal permissions are required. »

¹¹⁰ As explained in note 103, hierarchization occurs naturally and is an important feature of our interactions with the world. By extension, there will

respecting their dignity, we embrace the two-way exchange of influence and appreciate the objectification inherent in any relationship, even between two humans. When the work we put into each other affects our very identities, our functional social value becomes undeniable.¹¹¹

Such a shift would inevitably demand the reconsideration of many of our fundamental truths, most especially the primacy of representative democracy and the strict exchange-logic of market relationships. But these institutional changes may very well precede the deeper ideological transformation. Now that the current third phase of the International Development movement has become a people-centred, rights-based approach where States and corporations have obligations to fulfill in respect of the self-determination of peoples, we may be experiencing the perfect conditions for change.

A further cause for optimism is the mutually reinforcing nature of rights – for instance, when your right to free speech is protected, your freedom of assembly is directly enabled. Partial approaches can still benefit the whole. This means that strengthening political freedoms and empowering more voices to participate in the imperfect democratic system will directly enable deeper ramifications, eventually even allowing us to

always be power struggles in nature and an effort to exercise control over another. The issue I have been outlining concerns an exaggeration of that controlling effort and a dangerous imbalance in our reciprocal relations, with no respect given for the other party. See *Supra* note 108 at 101: “[Author proposes] a model of Kluane human–animal relations composed of two contradictory principles: a positive principle of reciprocity and a negative principle of domination. I want to argue here, however, that there is no theoretical need to make such a distinction and, further, that to do so artificially separates aspects of what Kluane people themselves see as a coherent whole. Although the negative principle of domination, with its elements of coercion, deceit, and danger, is certainly incompatible with popular notions about altruistic gift giving, it is not at all incompatible with the anthropological concept of reciprocity. Anthropologists have long been aware that altruistic giving is in fact extremely rare; for the most part, gifts are neither spontaneous nor freely given. Indeed, this was one of Marcel Mauss’s (1967) main points, and the anthropological literature is replete with examples of reciprocal exchange systems that embroil their participants in unequal, competitive, and even adversarial relations.”

¹¹¹ *Supra* note 81 at 196: « the tension between taxonomy [in defining what is and isn’t a person] and the social function ». Everyone has a social function,

fundamentally reshape our conceptions of economic freedoms.¹¹² Such an interrelated approach makes the “viewpoint of freedom coherent and cogent as the guiding perspective of the process of development”¹¹³ – freedom is a powerful rhetorical image to conjure when attempting to free the objectified masses from the enslaving dynamic of the property rights regime.

Practically, for the International Development mission, the first step is to believe that the idealistic pursuit of peace for all is achievable. Indeed, even in the midst of late-stage-capitalist expectancies, individual people continue to be demonstrably very generous, as exemplified by the paradox described in the introduction of this text. It seems plausible that institutional support may be more than enough to spark collective transformation.

The second step would be to outline a new set of ambitions for the International Development missions. Most urgently required is a genuine commitment to letting go of a “perpetual growth” mindset. Such an orientation is only sustainable in an environment where there are no limits. But in our interconnected ecosystem, growing too large in any one measure will destabilize the entire structure. “In a closed environmental space, the claim for justice cannot be reconciled any longer with the promise of material-intensive growth, at least not for the world’s majority. For this reason, the quest for justice will need to be decoupled from the pursuit of development with a capital “D”.¹¹⁴

Third, the project must confront the centrality of property rights as a measure of good governance. Instead, the varied statistical analyses which collect empirical evidence to direct policy changes could choose to measure the level of care given to respecting the agency of animals, the environment, and every individual human being. Measures of food sustainability and distribution would be quite relevant. Under these new metrics, so-called “developed” countries would necessarily be ranked low, and this should motivate them to transform their own procedures as well.

All of these steps would be aided by the systemic empowerment of Indigenous peoples around the world. They carry in their traditional knowledges examples of alternative

¹¹² *Supra* note 13.

¹¹³ *Ibid.*

¹¹⁴ *Supra* note 9 at 24

relationship models with people, animals and the rest of nature, and this is obvious from the fact that 80% of the world's remaining biodiversity is protected in Indigenous territories.¹¹⁵ There is no question that their communities contain the leaders we need to guide us on how to revitalize our systems and direct the "Development" change. The ongoing battles for Indigenous self-determination must be supported, and for their success we as a global capitalist society must open ourselves up to learning from them, deliberately ceding to them the power to drastically alter our common human relations.

If we don't take the steps necessary to follow the path of our rhetorical ambitions at the crossroad we have arrived at, we risk losing all the progress we've gained as a collective humanity to climate catastrophe. When the privileged few escape the physical confines of our planet to colonize other celestial bodies, the legacy of humanity will be corruption and destruction. We need radical systemic change as quickly as possible. While the analysis of private property that I outlined above may appear to consider efficiency as a negative quality, in truth we are desperately in need of efficient solutions at the moment. The real problem is always a lack of balance: if we have been too efficient up to this point, the solution is to open the floor of negotiation to more voices, actually empowering them to have effect over the whole global process and in so doing balance the overwhelming efficiency we have been cruising on so far with some inefficiency. Real democracy is inefficient, because everyone's interests must be considered and everyone's consent must be acquired. Given my argument that the interest of non-humans must also be considered, the inefficiency is inevitable. It must be embraced. This will ultimately require a consensual loss of power for many who have been in charge of steering efficient economic activities. Most do not trust the "other" and would be resistant to these changes — this is actually the core of the challenge. Under this concept of personhood and power dynamics, Justice would look a lot different and would not be maintained by threat of force. The entire transformative endeavour requires copious amounts of faith, as for many these fundamental critiques have never even been in the realm of possibility. "What is perhaps most interesting

¹¹⁵ Grethel Aguilar, "IUCN Director General's Statement on International Day of the World's Indigenous Peoples 2019" (9 August 2019) *International Union for Conservation of Nature* online: <<https://www.iucn.org/news/secretariat/201908/iucn-director-general-statement-international-day-worlds-indigenous-peoples-2019>>.

is that while we argue whether a thick Rule of Law or merely a thin rule of law is the marker of a democratic and liberal society, we seem to have moved beyond the point when we might ask: is there any other way of ruling society? [...] The Rule of Law has been so normalized as to be beyond anything but reformist critique, [...] leaving the political question both un-posed and unanswered.¹¹⁶ We must dare to ask the unposed questions. And answer them with conviction and courage.

¹¹⁶ *Supra* note 16 at 364.

Bibliography

LEGISLATION

An Act to improve the legal situation of animals, QC 2015, c 35, s1.

JURISPRUDENCE: CANADA

A c D (6 août 2003), Longueuil 505-04-011011-038 (QC CS).

Leffers c Da Silva, 2001 CanLII 17597 (QC CQ).

Pettingale v Pettingale (1842), 11 LJ Ch 176.

Pierson v Post, Caines Reports 175 (NY Supreme Court, 1805)
R v Krajnc, [2017] ONCJ 281.

JURISPRUDENCE: INTERNATIONAL CEMIRIDE

(Centre for Minority Rights Development) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, African Commission on Human and Peoples' Rights, Communication No. 276/2003.

INTERNATIONAL DOCUMENTS

Transforming our world: the 2030 Agenda for Sustainable Development, GA Res 70/1, ONGAOR, 70th Sess, A/RES/70/1 (2015).

SECONDARY MATERIALS: MONOGRAPHS

Aguilar, Grethel, "IUCN Director General's Statement on International Day of the World's Indigenous Peoples 2019" (9 August 2019) *International Union for Conservation of Nature* online: <<https://www.iucn.org/news/secretariat/201908/iucn-director-generals-statement-international-day-worlds-indigenous-peoples-2019>>.

- Alkire, Sabina & Séverine Deneulin, "Chapter 1: A Normative Framework for Development" in *An Introduction to Human Development and Capability Approach* (Earthscan, IDRC, 2009).
- Anousheh, Hannah, "A Story of Resistance: Argentina's Fight Against Monsanto's Patent Demands", in *Latin America-Related Student Research* (Carleton University, 2015) online
<<https://people.carleton.edu/~amontero/Hannah%20Anousheh.pdf>>.
- Banerjee, Subhabrata Bobby & Stephen Linseed, "Globalization, Multiculturalism and Other Fictions: Colonialism for the New Millennium?" (2001) 8:4 *Organizations* 683.
- Borrows, John, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010).
- Castel, Alan D, "The Adaptive and Strategic Use of Memory By Older Adults: Evaluative Processing and Value-Directed Remembering" (2007) 48 *Psychology of Learning and Motivation* 225.
- Chan, Margaret, "Address by Dr Margaret Chan, WHO Director-General, at the Opening Ceremony of the Sixty-Fourth Session of the WHO Regional Committee for Africa" (3 November 2014) *World Health Organization Regional Office for Africa AFR/RC64/Conf.Doc/4*.
- Chayes, Sarah, "When Corruption is the Operating System: The Case of Honduras" (2017) *Carnegie Endowment for International Peace*.
- Dickenson, Donna L "Property and Women's Alienation from their Own Reproductive Labour" (2002) 15:3 *Bioethics* 205.
- Dworkin, Ronald, *A matter of principle*, (Cambridge, MS: Harvard University Press, 1985).
- Easterly, William & Tobias Pfutze, "Where Does the Money Go? Best and Worst Practices in Foreign Aid" (2008) 22:2 *J Econ Perspectives*.

Frieden, Jeffry, "The Political Economy of Economic Policy", (2020) 57:2 International Monetary Fund, *Finance & Development*.

Ghestin, J, *Traité de droit civil : Introduction générale*, 4th ed (Paris: Librairie générale de droit et de jurisprudence, 1994).

Hague Institute for the Internationalisation of Law, *Rule of Law Inventory Report*, Discussion Paper for the High Level Expert Meeting on the Rule of Law of 20th April 2007.

Hickel, Jason, "Is it possible to achieve a good life for all within planetary boundaries?" (2019) 40:1 *Third World Quarterly* 18.

Joseph, Sarah, "Trade to Live or Live to Trade: The World Trade Organization, Development, and Poverty" in Mashood Baderin & Robert McCorquodale, eds, *Economic, Social, and Cultural Rights in Action* (Oxford University Press, 2007).

Kana'iaupuni, Shawn Malia & Nolan Malone "This Land is My Land: the Role of Place in Native Hawaiian Identity" (2006) 3:1 *Hūlili: Multidisciplinary Research on Hawaiian Well-Being* 281.

Khan, Mushtaq H, "Governance, Economic Growth and Development since the 1960s" (2007) *UN Department of Economic & Social Affairs Working Paper No54*.

Kish, Zenia & Justin Leroy, "Bonded Life: Technologies of racial finance from slave insurance to philanthrocapital" (2015) 29:5-6 *Cultural Studies* 630.

Kneen, Brewster, *From Land to Mouth: Understanding the Food System* (Ontario, Canada: University of Toronto Press, 1993).

Krever, Tor, "The Legal Turn in Late Development Theory: The Rule of Law and the World Bank's Development Model" (2011) 52: 1 *Harv Intl LJ* 287.

- Locke, John, "Of Property" In CB Macpherson, ed, *Property: Mainstream and Critical Positions* (Oxford: Basil Blackwell, 1978) 17.
- Lorenzi-Cioldi, F, "Group Homogeneity Perception in Status Hierarchies: The Moderating Effect of the Salience of Group Status Differentials" (2008) 21:3 *Revue internationale de psychologie sociale* 67
- Mandel, Ernest, "In Defence of Socialist Planning" (1986) *New Left Rev* 1/159.
- Markus, Joseph, "What is the use of a Human Right to Development? Legal Pluralism, 'Participation', and a Tentative Rehabilitation" (2014) 41:3 *J of L & Society* 376.
- Martynova, Natalya, Lev Ratnovski, & Razvan Vlahu, "Brank Profitability and Risk-Taking", *IMF Working Paper* (November 2015) WP/15/249.
- Marx, Karl, *Economic and Philosophic Manuscripts of 1844*, David Riazanov, ed, (Marx-Engels-Lenin Institute, 1932).
- Maslow, Abraham H, "A Theory of Human Motivation", (1943) 50:4 *Psychological Review* 370.
- May, Christopher, "The Rule of Law: What is it and Why is it 'Constantly on People's Lips'?" (2011) 9:3 *Poli Studies Rev* 357.
- Merryman, John Henry, "Comparative Law and Social Change: On the Origins, Style, Decline & Revival of the Law and Development Movement" (1977) 25:3 *American J Comp L* 457.
- Mia'iingan, Wapshkaa (Aaron Mills), "Aki, Anishinaabek, kaye tahsh Crown" (2010) 9:1 *Ind LJ* 107.
- Mills, Aaron (Wapshkaa Mia'iingan) *Indigenous Law Revitalization, Oral teachings* (Faculty of Law, McGill University, 2019).
- Moyse, Pierre-Emmanuel, "Propriété : un acte de foi?" (2008) 38:1 *RGD* 259.

Oakland Institute, "The Great Timber Heist: The Logging Industry in Papa New Guinea" *The Oakland Institute* (2016).

Nadasdy, Paul, "The Gift of the Animal: The Ontology of Hunting and Human-Animal Sociality" (2007) 34:1 *American Ethnologist*.

Nargund, G "Declining birth rate in Developed Countries: A radical policy re-think is required" (2009) 1:3 *Facts, Views & Vis Obgyn* 191.

Patterson, John, "Respecting Nature: a Maori Perspective" (1998) 2 *Worldviews: Environment, Culture, Religion* 69.

Phillips, Nicola, "Power and inequality in the global political economy" (2017) 93:2 *International Affairs* 429.

Radin, Margaret Jane, "Property and Personhood" (1982) 34 *Stan L Rev* 957.

Ramanujam, Nandini & Francesca Farrington, "The Rule of Law, Governance and Development" [*forthcoming*].

Reiter, Eric, "Rethinking Civil-Law Taxonomy : Persons, Things, and the Problem of Domat's Monster" (2008) 1 *J Civ L Stud* 189.

Ripple, William J et al, "World Scientists' Warning of a Climate Emergency" (2020) 70:1 *BioScience* 8.

Robinson, William I & Jeb Sprague, "The Transnational Capitalist Class" in Mark Juergensmeyer, Manfred Steger, Saskia Sassen, & Victor Faesse, eds., *The Oxford Handbook of Global Studies* (Oxford, UK: Oxford University Press, 2018) 309.

Robinson, William I & Jerry Harris, "Towards a global ruling class? Globalization and the transnational capitalist class" (200) 64:11 *Science & Society*.

Rose, Carol M, "Possession as the Origin of Property" (1985) 52:1 *U Chicago L Rev* 73.

- Rosenthal, Caitlin, "Introduction" in *Accounting for Slavery: Masters and Management* (Cambridge, MS: Harvard University Press, 2018).
- Sachs, Wolfgang, "Development: The Rise and Decline of an Ideal" (2000) Wuppertal Paper No. 108 (Wuppertal Institute for Climate, Development and Energy).
- Seed, Patricia, *Ceremonies of Possession in Europe's Conquest of the New World, 1492-1640* (Cambridge: Cambridge University Press, 1995) 154.
- Sen, Amartya, "Chapter 2: The Ends and the Means of Development" in *Development as Freedom* (Oxford: Oxford University Press, 1999).
- Shadlen, Kenneth C, "Patents and Pills, Power and Procedure: The North-South Politics of Public Health in the WTO" (2004) 39:3 *Studies in Comp Intl Dev* 76.
- Schaeffer, Robert, "Theories of Globalization" in *Understanding Globalization: The Social Consequences of Political, Economic and Environmental Change* (New York: Rowman & Littlefield, 2003).
- Scheffler, Richard M & Vikram Pathania, "Medicines and vaccines for the world's poorest: Is there any prospect for public-private cooperation?" (2005) 1:10 *Globalization and Health* 1.
- Stiglitz, Joseph E, Amartya Kumamoto Sen & Jean-Paul Fitoussi, *Report by the commission on the measurement of economic performance and social progress*, (2009) Commission on the Measurement of Economic Performance and Social Progress, Paris.
- Sugarman, Alan & Lee S Jaffe, "Toward a Developmental Understanding of the Self Schema" (1990) 13:2 *Psychoanalysis and Contemporary Thought* 117.
- Suzman, James, *Affluence Without Abundance: The Disappearing World of the Bushmen* (2017, New York: Bloomsbury).

Tamanaha, Brian, "Introduction" in *On the Rule of Law* (Cambridge: Cambridge University Press, 2004).

Trubek, David M, "Law and Development 50 Years On" (2012) *Univ of Wisconsin Legal Studies Research Paper No1212*.

Turner, Scott, "Global Civil Society, Anarchy and Governance: Assessing an Emerging Paradigm" (1998) 35:1 *J of Peace Research* 25.

Van Paris, Philippe & Yannick Vanderborght, *Basic Income. A Radical Proposal for a Free Society and a Sane Economy* (Cambridge: Harvard University Press, 2017).

White, Jessica, "Calculation and Conflict" (2020) 119:1 *South Atlantic Q* 31.

Yelkotte Clifford, Robert "Listening to Law" (2016) 33:1 *Windsor Yearbook of Access to Justice* 47.

SECONDARY MATERIALS: ARTICLES

Mohammad Amin, "And they say imports are a bad thing?" (13 May 2009) *World Bank Blogs*, online: <https://blogs.worldbank.org/psd/and-they-say-imports-are-a-bad-thing>

BroadBent Institute, "The Wealth Gap: Perceptions and Misconceptions in Canada", (December 2014) PDF: https://d3n8a8pro7vhmx.cloudfront.net/broadbent/pages/4576/attachments/original/1442413564/The_Wealth_Gap.pdf?1442413564.

"Classification of legal systems and corresponding political entities", online: *JuriGlobe – World Legal Systems Research Group*, by University of Ottawa <http://www.juriglobe.ca/eng/sys-juri/index-syst.php>.

Desjardins, Jeff, "Visualizing the Wealth of Nations" (4 July 2019) *Visual Capitalist*, online: <https://www.visualcapitalist.com/map-wealth-of-nations/>.

Global Affairs Canada, "Statistical report on international assistance 2018-2019" Government of Canada, online: <https://www.international.gc.ca/gac-amc/assets/pdfs/publications/sria-rsai-2018-19-en.pdf>.

Government of Canada, "Changes in wealth across the income distribution, 1999 to 2012", (27 November 2015), online: *Statistics Canada* <https://www150.statcan.gc.ca/n1/pub/75-006-x/2015001/article/14194-eng.htm>.

Jackson, Stephen T, "Climate change since the advent of humans" (20 September 2015) *Britannica* online: <https://www.britannica.com/science/climate-change/Abrupt-climate-changes-in-Earth-history>

Johnson, Joseph , "Worldwide digital population as of January 2021" (10 September 2021) *Statista* online: <https://www.statista.com/statistics/617136/digital-population-worldwide/>

Kharas, Homi & Kristofer Hamel, "A global tipping point: Half of the world is now middle class or wealthier" (27 September 2018) *The Brookings Institution*, online: <https://www.brookings.edu/blog/future-development/2018/09/27/a-global-tipping-point-half-the-world-is-now-middle-class-or-wealthier/>

Mann, Charles C, "Can Planet Earth Feed 10 Billion People?" (March 2018) *The Atlantic*, online: <https://www.theatlantic.com/magazine/archive/2018/03/charles-mann-can-planet-earth-feed-10-billion-people/550928/>.

Mufson, Steven et al, "Extreme climate change has arrived in America" (13 August 2019) *The Washington Post*, online : <https://www.washingtonpost.com/graphics/2019/national/climate-environment/climate-change-america/>

Oxfam "An Economy for the 99%" (January 2017) Oxfam Briefing Paper, online: Oxfam International

Robert S McNamara, *Address to the Board of Governors by Robert S. McNamara (English)* (Washington, DC : World Bank Group, 1973) <http://documents.worldbank.org/curated/en/930801468315304694/Address-to-the-Board-of-Governors-by-Robert-S-McNamara>>.

Romei, Valentina, "How the pandemic is worsening inequality" (31 Dec 2020) *Financial Times*, online: <https://www.ft.com/content/cd075d91-fafa-47c8-a295-85bbd7a36b50>>.

Roser, Max , Hannah Ritchie & Esteban Ortiz-Ospina, "World Population Growth" (May 2019) *Our World in Data*, online: <https://ourworldindata.org/world-population-growth>>.

Rupnarain, Kimberly, "Why do the poor have large families?" *World Vision*, online: <https://www.worldvision.ca/stories/why-do-the-poor-have-large-families>>

Strauss, Ilana E, "The Myth of the Barter Economy" (26 February 2016) *The Atlantic* online: <https://www.theatlantic.com/business/archive/2016/02/barter-society-myth/471051/>>

Trubek, David M, "Law and Development 50 Years On" (2012) U of Wisconsin Legal Studies Research Paper No 1212.

Turcotte, Martin, "Charitable giving by Canadians", (12 April 2012) *Component of Statistics Canada Catalogue no.11-008-X: Canadian Social Trends*, Statistics Canada, PDF: <https://www150.statcan.gc.ca/n1/en/pub/11-008-x/2012001/article/11637-eng.pdf?st=HtDongMt>>.

Wheat, Michele, "Which Countries Provide and Receive the Most Foreign Aid?" (2017) *Wristband Resources*, online: <https://www.wristband.com/content/which-countries-provide-receive-most-foreign-aid/>>.

World Health Organization. "Children: improving survival and well-being" (8 Sept 2020), WHO online: <<https://www.who.int/news-room/fact-sheets/detail/children-reducing-mortality>>.