Preserving Discursive Spaces to Promote Human Rights: Poverty Reduction Strategy, Human Rights and Development Discourse

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Malgré cette rhétorique fleurie, force est de constater que le concept de développement continue de souffrir de ses orthodoxies. Les PRSP ont la capacité de neutraliser les aspects politiques des droits de la personne et d'occuper l'espace dynamique dans lequel ces droits pourraient normalement opérer. En bref, la réduction de la pauvreté est devenue le véhicule institutionnel par excellence pour façonner l'application des droits de la personne et l'orienter vers la réalisation d'une conception consensuelle et orthodoxe du développement. Ce faisant, la réduction de la pauvreté empêche le potentiel normatif des droits de la personne d'inclure une articulation des objectifs du développement allant au-delà du consensus. Ainsi, d'une part, les droits de la personne ont une forme établie, positiviste et « universelle » au sein du développement; d'autre part, ils conservent une forme indéfinie au sein des sociétés civiles.

International development institutions have embraced the Poverty Reduction Strategy Papers (PRSP) as the principal instrument for promoting an enlightened “post-Washington” conception of development which incorporates social concerns. In particular, PRSPs have become a critical device for integrating human rights into development strategies, so that the realisation of human rights could now be said to be one of the objectives of, and not merely a means to, development.

Amidst the lofty rhetoric, however, it is possible to discern a continuation of the inhibiting orthodoxies which have been at the heart of development since its inception. PRSPs have the potential to neuter the oppositional, political qualities of human rights and occupy the dynamic space in which those rights might otherwise operate. In short, poverty reduction has become the institutional vehicle for shaping and directing the application of human rights towards achieving the orthodox consensus of what constitutes development. In doing so, it reduces the normative potential of human rights to encompass an articulation of developmental aims which go beyond the limits of this consensus. Hence, human rights take an established, positivist and “universal” form “within” development, on the one hand, and an unsettled resistive form within civil societies on the other.

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Coinciding approximately with the beginning of the new millennium, the development project has been undergoing a purportedly momentous transformation in recent years. An underlying principle of this policy revolution is that the effectiveness of development depends on its expansion to holistically address social concerns and that a narrow focus on the conventional components of economic growth alone is insufficient.¹ This “incorporation of the social” in the new development paradigm is perhaps best embodied in the Millennium Development Goals (MDGs) adopted by the United Nations (UN) in 2000² and, more specifically, by the genesis of the Poverty Reduction Strategy (PRS) which is captured within the first of the MDGs. Hence, the Poverty Reduction Strategy Papers (PRSP) have been embraced by the International Monetary Fund (IMF) and the World Bank (the Bank) as the principal instrument for promoting this enlightened conception of development. In particular, PRSPs have become a critical device for integrating human rights into development, to the point where the realisation of human rights could now be said to be one of the objectives of, and not merely a means to, development.

As I will demonstrate in this essay, however, amidst the grandiose claims and lofty rhetoric it is possible to discern a continuation of the inhibiting orthodoxies and rationales that have been at the heart of development since its inception. The PRS model, as conceived by the Bank and the IMF, together, the international financial institutions (the IFIs), has the potential to neuter the oppositional, political qualities of human rights and to occupy the dynamic space in

which those rights might otherwise operate. In short, poverty reduction has become the institutional vehicle for shaping and directing the application of human rights towards achieving the orthodox consensus of what constitutes development. In doing so, it inhibits the normative potential of human rights to encompass and convey an articulation of developmental aims which go beyond the limits of this consensus. In this paper, I will thus situate human rights as taking an established, positivist and “universal” form “within” development, on the one hand, and an unsettled, multifarious, resistive form “beyond” development on the other.

Ultimately, I aim to demonstrate that it is essential to preserve space for the resistive, oppositional expression of rights in order to promote contestation of the meaning of development. PRSPs may have the potential to satisfy certain human rights objectives and specific poverty reduction outcomes (as conceived by developmental institutions). However, the restricted scope for the interpretation and construction of rights will reduce the contestation of development to the conventional question of “growth plus” rather than “what growth how”.

2. DEVELOPMENT AS POVERTY REDUCTION

2.1 The Concept of Development

The notion of “development” and the power of its teleological promise of transformation has become such a prominent feature of international relations that it is almost impossible to imagine a world without it. However, far from being a self-evident truth, development, according to scholars like Ruth Gordon and John Sylvester, is in fact comprised of:

- a set of practices and beliefs that are part of the Western political and cultural imagination, despite being presented as universal, natural and inevitable...a universal and superior way of ordering society, [requiring] that all societies are to advance toward the same goal.

Similarly, the international law context in which development is framed has been critiqued from Third World perspectives, among others, as a tool of colonialism used to fulfil a “civilising mission”. Hence, the international human rights and development assistance regimes which are subject to international law have often been described as an extension of the international political economy of colonialism.

The condition of being “underdeveloped” was effectively conceived in Harry Truman’s presidential inaugural address in 1949 in which he stated that:

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5 Ibid at 4-5.
We must embark on a bold new program for making the benefits of our scientific advances and industrial progress available for the improvement and growth of underdeveloped areas (emphasis added).  

Truman’s speech instantly characterised and transformed billions of people in the “underdeveloped areas” of the world into a homogenous collection of primitive, downtrodden victims. Since then, international relations has been heavily influenced by the desire of “underdeveloped” states to progress towards the seemingly Sisyphean endpoint of “development” and by the willingness of developed states to assist them in that endeavour. Development can thus be described as “transcendence; the place that everyone is trying to get to, to complete themselves. Development is desire – the desire to become that which language promises but never achieves.” In sum, the West’s past must be the Third World’s future.

2.1.1 Development and the World Bank

From the outset there was a clear consensus among Western “experts” who identified lack of income as the problem at the root of underdevelopment and economic growth as the solution. As such, global poverty could be viewed as a social construct which emerged from Truman’s address. The World Bank’s 1948 definition of an annual per capita income of less than $100 as being poor then quantified the meaning of global poverty. Nevertheless, notwithstanding the clarity of purpose, the evolution of development has been characterised by an epochal series of failures or, as they have otherwise been referred to, “cycles of conventional wisdom”. Each of these periodical failures has prompted a cyclical institutional reaction from the developed world consisting of anxiety, evaluation and response which seeks to understand the failures of development and to address these failures by recasting the development paradigm and the mechanisms for implementing it. Trubek and Santos have classified these cycles into three “moments” in law and development theory. The first, which emerged during the

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1950s, focused on the role of the “developmental state” in using the law as an instrument of economic management and a lever for social transformation. This was largely driven by modernization theory which, put simply, dictated that countries needed to pass through a series of successive economic stages of growth to become “modern,” a condition defined exclusively by reference to the developed West. The second moment arose during the 1980s with the ascendency of neo-liberal market economics, personified by the economic policies propounded by Margaret Thatcher and then Ronald Reagan. Law moved to the centre of development policy making during this phase and prompted an exponential expansion of reform initiatives directed towards limiting state intervention, bolstering institutions of private law and facilitating market efficiency. This was a neoliberal formulation of development which came to be known as “the Washington Consensus”. The third of these moments began to materialise around that time, largely in response to the disastrous neoliberal economic policies, and in particular the structural adjustment programs, of the 80s and the terrible social harms they inflicted.

Through the provision of direct loans to client countries and the imposition of policy conditions on the receipt of those funds, the Bank—along with the IMF—is the most important development institution in the world and has played a central role in each of these moments. It has been the only multilateral, public sector institution to have intervened throughout the developing world in relation to a broad range of developmental issues since its inception at Bretton Woods in 1944. Its evolution broadly tracks that of the history of development. Hence, the Bank’s mission, as enshrined in the purposes set out in Article 1 of its Articles of

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17. Ibid at 2.
19. Ibid.
20. Simon Maxwell, “Working Paper 243: The Washington Consensus is dead! Long Live the Meta-Narrative!” Overseas Development Institute Working Papers Series (January 2005), online: Overseas Development Institute <http://www.odi.org.uk/resources/download/1809.pdf> at 1. John Williamson coined this phrase in 1990 in relation to his summary of development policy in Washington. According to Williamson, the types of policy reforms which most officials in Washington favoured for Latin American countries could be summarized in ten propositions: fiscal discipline; a redirection of public expenditure priorities toward fields offering both high economic returns and the potential to improve income distribution, such as primary health care, primary education, and infrastructure; tax reform (to lower marginal rates and broaden the tax base); interest rate liberalization; a competitive exchange rate; trade liberalization; liberalization of inflows of foreign direct investment; privatization; deregulation (to abolish barriers to entry and exit); and secure property rights (See John Williamson, “What Should the World Bank Think about the Washington Consensus?” (2000) 15 The World Bank Research Observer 251 at 252-253).
Agreement, has been interpreted expansively and dynamically to serve an evolving, holistic conception of development in tune with global trends and changes in the world at large.  

Until the escalation of the Cold War in the 1950s the Bank’s role was essentially confined to lending money for demonstrably viable, large-scale infrastructure projects. With George Wood as president in the 1960s, however, the Bank took its first tentative steps in directing formulation of its lending policies towards issues of poverty reduction rather than pure economic growth. This was accelerated under the presidency of Robert McNamara who recognised the close links between security, poverty reduction and development and believed in applying direct policy intervention to actively promote development where necessary. Nevertheless, direct lending for poverty alleviation measures of this kind remained relatively small and peripheral to the Bank’s more conventional lending for infrastructure investment.

The neo-liberal phase of development in the 1980s saw the emergence of a new form of aggressive conditionality in the Bank’s lending which required “structural adjustments” to promote export-orientation and trade-liberalisation in exchange for the provision of loans. The Bank’s underlying policies mandated structural changes which were directed towards privatisation, reduced government spending and increased openness to foreign investment, which caused considerable controversy, especially, and unsurprisingly, within the developing world.

The emergence of a new paradigm of development towards the end of the 1990s was partly triggered by and also reflected in a reconfiguration of the way in which the Bank conceptualised development and its role in it.

2.1.2 The “Emerging Paradigm of Development”

The expansion of the Bank’s mission signalled the death of the Washington Consensus and the proliferation of various competing yet similar paradigms of development. Prominent

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23 According to a 2006 legal opinion of the Bank’s General Counsel, Roberto Dañino, “[t]he Articles of Agreement permit, and in some cases require, the Bank to recognize the human rights dimensions of its development policies and activities, since it is now evident that human rights are an intrinsic part of the Bank’s mission” (Roberto Dañino, Legal Opinion on Human Rights and the Work of the World Bank (January 27, 2006), online: IFI Watchnet <www.ifiwatchnet.org/sites/ifiwatchnet.org/files/DaninoLegalOpinion0106.pdf>).

24 Kapur, Lewis & Webb, supra note 22 at 109-10.


26 Peet, supra note 21 at 136.

27 Ibid at 137.


29 Maxwell, supra note 20 at 1.
among them was the “post-Washington consensus”, supported by economist Joseph Stiglitz\textsuperscript{30} and referred to by David Kennedy as a form of “chastened neo-liberalism”.\textsuperscript{31} These novel reappraisals of development which began to emerge in the late 1990s have now coalesced under the umbrella of the MDGs which arose from the Millennium Declaration adopted by the UN General Assembly in 2000.\textsuperscript{32} It could be said that these have superseded the post-Washington consensus to become the new “meta-narrative” of development.\textsuperscript{33} This multifaceted approach to development was further articulated in the Monterrey Consensus of 2002 which cited the eradication of poverty, economic growth and sustainable development as the goals of development financing.\textsuperscript{34} These recent momentous developments could be seen as constitutive of Trubek and Santos’ “third moment”, or emerging paradigm, of development.

The field of development is currently witnessing the emergence of a new paradigm which represents a break from the past to the extent that it incorporates social concerns into the development agendas of the IFIs.\textsuperscript{35} Critiques of neo-liberalism helped to crystallise two distinct strains of thought which underpin the emerging vision of development: firstly, that markets have limits which may sometimes justify state intervention although markets remain the pre-eminent mode of production and distribution of resources and of economic growth; and secondly, that development must be reconceptualised and expanded to address the political, social and legal dimensions of development, and to reject the exclusive focus on economic growth.\textsuperscript{36} This is best encapsulated in Amartya Sen’s influential thesis positing freedom, and not merely income, as being simultaneously instrumental in and constitutive of development by enhancing people’s capabilities and thereby enabling them to lead the life they choose to lead.\textsuperscript{37}

At the same time, however, it is important to recognise that while mainstream thought in relation to development appears to have undergone significant change, many of its underlying


\textsuperscript{32} Millennium Development Goals, supra note 2. The Bank has pledged attainment of the major targets comprising the MDGs. Thus, its work is directed towards realising the right or rights which each of these eight goals encapsulate (See Roberto Danino, “The Legal Aspects of the World Bank’s Work on Human Rights: Some Preliminary Thoughts” in Philip Alston & Mary Robinson, eds, Human Rights and Development: Towards Mutual Reinforcement (New York: Oxford University Press, 2005) 509 at 521).

\textsuperscript{33} Andrew Sumner, “In Search of the Post-Washington (Dis)consensus: the ‘Missing’ Content of PRSPS” (2006) 27 Third World Quarterly 1401 at 1405-06 [Sumner].


\textsuperscript{35} Rittich, supra note 1 at 199-200.

\textsuperscript{36} Trubek & Santos, supra note 16 at 6-7.

assumptions have not and, consequently, it should not be assumed that development practice has shifted itself in line with the new rhetoric.\textsuperscript{38} In short, while there have been significant changes there is also substantial continuity, ranging from the political predilections of purportedly neutral legal institutions, to the resilience of unreconstructed market fundamentalism and the policies of “containment” and social control which they have generated.\textsuperscript{39} This has important implications for the thesis of this essay, namely, that by expanding their operations into the field of human rights through the PRSP, the IFIs have positioned themselves to authoritatively interpret and delimit the scope of the various rights which are captured within the ambit of the PRSP, thereby reducing the dynamic, emancipatory potential of those rights.

\section*{3. THE ROLE OF POVERTY REDUCTION STRATEGY PAPERS IN REDUCING POVERTY}

The emerging development paradigm has heralded an increased and more explicit policy focus on poverty reduction as a defining mission of international development institutions.\textsuperscript{40} Indeed, poverty reduction is now arguably the \textit{raison d’être} and the most important rationale for the operation of IFIs and significant aspects of international law today.\textsuperscript{41} If not the genesis of this so-called “second-generation” of development, the launch of the Bank’s Comprehensive Development Framework (CDF) in January 1999 at least amounts to a useful marker for signifying the emergence of these reforms.\textsuperscript{42}

The CDF is built around four key principles.\textsuperscript{43} Firstly, development strategies must be comprehensive and directed towards the long-term. Hence, strategy should encompass structural and social considerations such as improvement of health and education facilities, and must not be limited merely to short-term macroeconomic stabilisation. Secondly, the design of each country’s development agenda should be based on the participation and input of that country’s citizens to ensure national ownership of and commitment to development reforms. Thirdly, implementation of development strategies should be conducted through a transparent

\begin{itemize}
\item \textsuperscript{38} Trubek & Santos, \textit{supra} note 16 at 14.
\item \textsuperscript{39} \textit{Ibid} at 14-18.
\item \textsuperscript{40} For example, the World Bank cites “sustainable poverty reduction” as the Bank’s mission and cites “sustainable poverty reduction [as]the Bank’s overarching objective” (World Bank, “Operational Policy 1.00: Poverty Reduction” (2004), online: World Bank <http://siteresources.worldbank.org/INTPOVERTY/Resources/335642-098192957114/op1_poverty_reduction.pdf>). The IMF’s new Poverty Reduction and Growth Facility “aims at making poverty reduction efforts among low-income members a key and more explicit element of a renewed growth-oriented economic strategy” according to which the IMF “aims at making poverty reduction efforts among low-income members a key and more explicit element of a renewed growth-oriented economic strategy” (Interim Committee of the Board of Governors of the International Monetary Fund, \textit{Communiqué of the Interim Committee of the Board of Governors of the International Monetary Fund} (26 September 1999), online: International Monetary Fund <http://www.imf.org/external/np/cm/1999/092699A.HTM> at para 5); Trubek & Santos, \textit{supra} note 16 at 7.
\item \textsuperscript{41} Balakrishnan Rajagopal, “International Law and Social Movements: Challenges of Theorizing Resistance” (2003) 41 Colum J Transnat’l L 397 at 422.
\item \textsuperscript{42} Rittich, \textit{supra} note 1 at 200.
\item \textsuperscript{43} World Bank, Projects and Operations, \textit{Comprehensive Development Framework}, online: World Bank Projects and Operations <http://go.worldbank.org/N2NDBE5QL0>.
\end{itemize}
partnership between government, donors, civil society, the private sector and other stakeholders. Fourthly, evaluation of development performance should be conducted on the basis of measurable results which go beyond resource allocation and consumption to also address the impact of aid on people’s needs. Put simply, the CDF purports to introduce a ground-breaking approach to development by attempting to strike a greater balance between its economic, human, and structural dimensions and by developing more equal partnerships with national institutions to facilitate this process.\(^{44}\) The PRSP was in turn conceived as a vehicle for operationalising the underlying vision of the CDF into an actionable plan of development through poverty reduction for poor countries.\(^{45}\)

3.1 Poverty Reduction Strategy Papers: An Overview

The PRS framework was initially formulated as the framework for determining eligibility for the Enhanced Heavily Indebted Poor Countries Initiative (HIPC) in 1999, however, the IFIs were quick to recognize the potential efficacy for development of linking foreign aid flows to national creation of locally-sensitive national poverty reduction strategies.\(^{46}\) Thus, the PRS was devised by the boards of the IFIs in December 1999 as a new, innovative pro-poor approach to development which sought to re-define the way they had previously provided assistance to low income countries.\(^{47}\) The notion of national ownership is at the core of the PRS so that each debtor state takes responsibility for and has control over the process of designing its Poverty Reduction Strategy Paper (PRSP) which is then submitted to the IFIs as a precondition for access to debt relief and concessional financing.\(^{48}\) According to the Bank, the innovation of the PRS approach signaled:

> a fundamental change in the nature of the relationship between developing countries and donors. It sought to empower governments to set their development priorities and pushed donors to align their assistance around a country’s priorities rather than their own.\(^{49}\)

The PRSP is now accepted as the conventional framework for regulating provision of development assistance.\(^{50}\) Approximately seventy low-income countries presently or have previously engaged in formulating a PRS of their own (many of which are classed as heavily-indebted

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\(^{45}\) Ibid.


\(^{48}\) Ibid; de Búrca, supra note 28 at 268.

\(^{49}\) Bank & Fund, supra note 47 at 1.

\(^{50}\) Piron & Evans, supra note 46 at 3.
poor countries). In addition to countries seeking relief under the HIPC scheme, the PRSP is now the official basis for IFI lending in all low-income countries.

According to the IFIs, the PRS approach is premised on six key principles which require that PRSPs be: (1) results-oriented with targets for poverty reduction that are tangible and monitorable; (2) comprehensive, integrating macroeconomic, structural, sectoral and social elements; (3) country-driven, representing a consensual view of what actions should be taken; (4) participatory, with all relevant stakeholders participating in formulation and implementation; (5) based on partnerships between government and other actors; and (6) long term, focusing on reforming institutions and building capacity, as well as short-term goals.

The PRSP process consists of two basic components. Firstly, the client country must devise and implement an effective participatory process to solicit input from the general public (especially the poor and vulnerable), the government (including parliament), civil society organizations, private sector actors (professional associations, for example) and donors, both bilateral and multilateral. A common mechanism for this (and also for monitoring PRS implementation) is the participatory poverty assessment, which is defined as an “instrument for including poor people’s views in the analysis of poverty and the formulation of strategies to reduce it through public policy”. Technical expert input is usually obtained from donors so that, in practice, “ownership” is invariably built around the skeleton of pre-existing IFI-supported economic policies. As such, the macroeconomic framework in PRSP countries has changed little. Once all of the input has been collated and analysed it is reduced into written format in the shape of the PRSP document which is then submitted to the IFIs.

The second aspect of the process commences upon submission, when the PRSP will be subjected to a “joint staff assessment”. A positive assessment does not necessarily signify agreement with all of the analyses, targets and actions contained in the PRSP, however, it does indicate that it is deemed to be a credible framework through which the IFIs can channel financial assistance. Failure to obtain a positive assessment will disqualify the country from IFI funding and, importantly, will mean that it is unlikely to receive bilateral funding. This
has been criticized as preserving de facto policies of conditionality. If approved, the IFIs will then provide loans to fund the projects envisaged as necessary to execute the PRSP. Recipient countries are required to submit annual progress reports to the IFIs. The PRSP approach is intended to be an iterative process in that it requires countries to review the PRSP which they have produced every three to five years.

3.2 Poverty Reduction Strategy Papers: A Rights-Oriented Critique

PRSPs have been described as “an interesting form of social reform in that they adopt [in the form of the MDGs] the framework of the United Nations with respect to measuring poverty and its indicators, but they adopt the fiscal macroeconomic policies of the IMF”. Balakrishnan Rajagopal adopts a more radical, Foucauldian analysis of the notion of poverty-oriented “social reform” and the exercise of power in the Third World for that purpose. He cites nineteenth-century French author, Firmin Marbeau, who stated that “assisting the poor is a means of government, a potent way of containing the most difficult section of the population and improving all other sections”. He therefore expresses concern as to the ideological nature of international legal institutions purporting to effect a reduction in poverty. The assertion that the PRSP is a case of “old wine in new bottles” is, therefore, worth exploring.

The notion that the IFIs are seriously committed to abandoning orthodox economic policy preferences and to accepting the full implications of a genuinely participatory approach to development has been seriously questioned. Critiques focusing on the definitive participatory focus of PRSPs have thrown up 5 key problems: First, there is a lack of genuine commitment amongst IFIs to the notion of country ownership of PRSPs; second, PRSPs challenge parliamentary democracy within the client country; third, PRSP processes have persistently failed to generate broad-based participation of civil society in general and specifically affected groups in particular; fourth, it is questionable whether the nature and quality of consultations have met the threshold necessary to satisfy the requirement of participation; and finally, the insistent adherence by IFIs to previous policies undermines the capacity of PRSPs to embrace contradictory policies demanded by the public.

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61 de Búrca, supra note 28 at 268.
64 Rajagopal, International Law From Below, supra note 63 at 14.
66 de Búrca, supra note 28 at 266.
67 Ibid at 267.
As a result, there was considerable homogeneity across the otherwise diverse forty-two countries that had produced PRSPs as of March 2005. This has led many commentators to observe that the PRSPs are simply an extension of the Washington consensus, that is, a “Third Way” remorphing of conventional economic approaches to development.

The PRSP can on that basis be viewed more as a vessel for a neo-liberal political agenda and less as a clean slate on which citizens can express their developmental aspirations. According to Piron, the agenda behind the PRSP represents an attempt to shape domestic political processes in the direction of a more “progressive” accountability to citizens. It is axiomatic that the nature, direction and consequences of that “progression” are inherently political. It is also clear that, irrespective of the direction which it takes, the kinds of change demanded by the key PRS principles mentioned above implicitly necessitate a transformation of power relations between state institutions and society. The IFIs clearly have an interest and role to play in managing this process of transformation so as to ensure that it is not “captured” by agendas deemed to be too radical and destabilizing. Ultimately the nature of the transformation that occurs will be heavily influenced by the character of a country’s political system and so for the IFIs it is both essential and desirable to work closely with the national government in order to design the PRSP.

The nature of the political spaces created by the PRSP process and citizens’ engagement with it will, in turn, have important implications for the political dynamism and emancipatory potential of the human rights which they are seeking to claim through it. In short, if we accept that socio-political values and practices are constitutive of human rights then it becomes clear that the PRSP process is an important locus for both the development of existing rights and

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68 For example, one study conducted by the World Development Movement identified nine standard policy prescriptions of the Washington Consensus on development and observed that, on average, the 42 PRSPs contained six of these policies, while differing policies nevertheless shared key characteristics with standard IFI policies (Tim Jones & Peter Hardstaff, Denying Democracy: How the IMF and World Bank take power from people (May 2005), online: World Development Movement <http://siteresources.worldbank.org/INTPRSP1/Resources/PRSP-Review/WDMPRSPsdoc.pdf> at 11, 13).


70 Piron & Evans, supra note 46 at 4.

71 Ibid.

72 Ibid at 5.

73 Davis, supra note 7 at 184; Craig & Porter, supra note 69 at 55.

the construction of emerging, crystallizing rights. Through brief case studies of two rights which are integral to development, it is possible to understand how the PRSP can impact upon the formulation of human rights claims and, consequently, the manner in which specific rights themselves evolve.

3.2.1 Developing Rights through the Poverty Reduction Strategy Paper: The Right of Access to Justice

The right of access to justice, and its numerous components, is effectively enshrined in Art 14 of the International Covenant on Civil and Political Rights (ICCPR). Access to justice has, by its incorporation within the “new rule of law orthodoxy”, become a key component of the expansive “post-Washington” approach to development through poverty reduction. Although it is one of the most long-standing and well-protected rights of the human rights corpus, the increased recognition of its importance in recent years is arguably generating a dramatic expansion in the scope and meaning of “access to justice”. Nevertheless, there is an open question as to the extent to which supposedly nationally-owned PRSPs are genuinely likely to accurately reflect local conceptions of access to justice when these clash with a more international understanding of that term. For example, the “Governance and Rule of Law Pillar” of Liberia’s PRSP cites “expanding access to justice and enhancing the protection and promotion of human

75 As David Kennedy states: “We know that normative principles travel in pairs, at the global as at every other level. Rights conflict. Principles conflict. The most revered texts in the human rights canon are vague and open to interpretation. As a result, it is unlikely that any articulation of a global normative consensus will escape being perceived by those who disagree – and people will disagree – as partial, subjective, selective. These are the wages of speaking universally in a plural world” (David Kennedy, “One, Two, Three, Many Legal Orders: Legal Pluralism and the Cosmopolitan Dream” (2007) 31 NYU Rev L & Soc Change 641 at 656).

76 International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171, Can TS 1976 No 47, 6 ILM 368 (entered into force 23 March 1976) at Article 14 [ICCPR].

77 Amichai Magen, “The Rule of Law and its Promotion Abroad: Three Problems of Scope” (2009) 45 Stan J Int’l L 51 at 90-91. Access to justice was thus identified by the Bank in its landmark Development and Human Rights report as one of the key ingredients in promoting development through equality (Anthony Gaeta with Marina Vasilara, “Development and Human Rights: The Role of the World Bank” (1998), online: International Bank for Reconstruction and Development <http://siteresources.worldbank.org/BRAZILNPOREXTN/Resources/3817166-1185895645304/4044168-1186409169154/08DHR.pdf> at 15 (access to justice was thus identified by the Bank in its landmark ‘Development and Human Rights’ report as one of the key ingredients in promoting development through equality). It is also an important aspect of the Bank’s support for social equity (Danino, supra note 33 at 514-5).

78 Faisal Bhabha refers to this as “the global evolution of access-to-justice” (Faisal Bhabha, “Institutionalizing Access-to-Justice: Judicial, Legislative and Grassroots Dimensions” (2007) 33 Queen’s LJ 139 at 152). Roderick Macdonald gives an example of this evolution of access to justice in the Canadian context, stating that it consists of five waves: the focus on access to lawyers and the courts through legal aid in the 60s; the focus on the judicial system and the civil and criminal justice processes in the 70s; the “demystification of law” generated by equality concerns in the 80s; the “preventative law” approach of the 90s, which entailed the expansion of access-to-justice beyond the justice system; and, beginning in 2000, the “fifth wave” which focuses on a comprehensive approach to empowering citizens through the law (Roderick Macdonald, “Access to Justice in Canada Today: Scope, Scale, Ambitions” in Julia Bass, WA Bogart & Frederick Zemans, eds, Access to Justice for a New Century: The Way Forward (Toronto: Law Society of Upper Canada, 2005) 19 at 20-23).
“rights” as one of its key elements. This in turn is expressed as consisting of strengthening the provision of legal aid and access to justice, improving public awareness, and enhancing the protection and promotion of human rights. It must be emphasized that international human rights law is witnessing the meteoric development of a burgeoning body of indigenous rights law, amongst which there is strong recognition of an emerging right of recourse to customary systems of law. The need to engage with custom is also increasingly recognised as a key component of post-conflict rule of law programming. Nevertheless, although the recognition of custom is welcome and ground-breaking, Liberia’s PRSP makes only brief, simplistic mention of the need to develop a national framework, citing that it is necessary “for the exercise of informal and customary justice to ensure that it conforms to human rights standards including gender equality, upholds the rule of law, and complements the formal justice sector.

Historically, attempts to incorporate customary systems of law within formal state systems have inevitably required the former to yield to the latter, resulting in their cooption and transformation into something entirely unrecognizable by those whom they purport to serve. Furthermore, it is clear from Liberia’s PRSP that support for customary justice is subject to human rights compliance. How to reconcile a conflict between rights is an exceedingly complex question and it is not suggested that this could or should have been addressed in the PRSP; however, it does seem clear that the orthodox, international understanding of the right of access to justice will be the one which prevails in the event of a conflict with customary modes of accessing justice. This could potentially drive a normative shift towards a conception of access to justice which precludes, or severely limits, recourse to customary systems at a critical time at which these systems are increasingly gaining international recognition.

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80 *Ibid* at 94.
83 Liberia PRSP, *supra* note 79 at 92.
3.2.2 Developing Rights through the Poverty Reduction Strategy Paper: The Right to Participation in Public Affairs

According to Art 25 of the ICCPR, “[e]very citizen shall have the right and opportunity… [t]o take part in the conduct of public affairs, directly or through freely chosen representatives.”85 More generally, Art 1(1) of the Declaration on the Right to Development (“Declaration”)86 provides for the right of all human beings to “participate in, contribute to, and enjoy economic, social, and cultural and political development”. The Declaration therefore provides a basis for defining the parameters of participation for the purposes of the PRSP. Precisely where the limits of these parameters lie and how they might shift will be influenced by emerging development practices. It is now widely accepted that participatory processes are critical to promoting a long-term, genuinely sustainable form of development although they are not of themselves sufficient.87 Indeed, the notion of participation symbolises, if not helps to constitute, the social objectives which so markedly differentiate the CDF from its predecessors.88 The process of producing the PRSP must be underpinned by broad-based civil society participation in order to promote the country-driven national ownership which is at the heart of the PRSP.89 Nevertheless, an assessment of numerous PRSPs reveals that the consultations which are critical to their formulation are frequently limited in scope, number, geographical spread and time and often exclude important groups of people (particularly the poor).90 This is in part explained by a tendency to see local, community-level political economies, according to Craig and Porter, “as a source of perverted priorities, corruption and malfeasance, an ‘inconvenience’ to be skirted”.91

Even if participatory processes were significantly improved and given sufficient resources to ensure widespread and genuine consultations, there is still likely to be a significant power imbalance between those consulting and those being consulted arising from a disparity in educational background and information bases.92 Consultancy teams are usually formed from

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85ICCPR, supra note 76 at art 25.
88Ibid at 165 (according to Joseph Stiglitz, “participatory processes’ refers not just to those processes by which decisions are made in national governments, but also to processes used at local and provincial levels, at the workplace, and in capital markets… [and] must entail open dialog and broadly active civic engagement, and…that individuals have a voice in the decisions that affect them”).
90By way of example, in relation to Liberia, regular meetings were held in Monrovia for the purpose of refining the objectives and indicators for each of the four “pillars” which provided the skeleton of the Liberian PRSP. The vast majority of participants at these meetings were foreign staff of international intergovernmental and non-governmental organisations. I attended several of these on behalf of the non-governmental organisation for whom I was working at the time..
91Craig & Porter, supra note 69 at 61.
a mix of officers from a variety of local and international governmental, non-governmental and intergovernmental agencies and are then tasked with collaboratively designing and conducting PRSP consultations. Even the local members of the team are likely to hail from a particularly privileged, educated elite or ethnic group. Further, these consultations may, or at least ought to, extend to remote rural communities, where inhabitants are less likely to have received a formal education.

In designing the consultation process there is a significant risk that the PRSP team will set the agenda in advance, thereby delineating—through their own particular socio-cultural prism—the parameters within which discussions takes place. The community members will then give their input on the particular items on the agenda but, in doing so, are likely to express their views in accordance with the manner in which the particular issues have already been framed for them. Having conducted the consultation, the team can then leave, satisfied that the villagers have had the opportunity to express their views and have, indeed, done so. The community, meanwhile, may have merely expressed their responses to a range of predetermined issues, the meaning and ramifications of which many might not understand. Indeed, it is possible that they do not fully understand the purpose or nature of the consultation itself.93 This exchange might be analogised, somewhat simplistically, to a witness in a court hearing whose responses to a series of leading questions under cross examination only convey the narrow version of events which the lawyer is seeking to elicit.

In sum, at the foundation of the increased emphasis on participation is the post-Washington consensus recognition that the change encompassed by development will only be deep-rooted and effective if it comes from within, rather than being imposed from outside or above.94 Nevertheless, this also connotes, somewhat paradoxically, a need to overcome resistance to change by domestic constituencies. As Stiglitz states, “[p]articipation is…essential to effect the systemic change in mindset associated with the development transformation, and to engender policies that make change – which is at the center of development – more acceptable”.95 It is arguably implicit in this statement that participatory processes should be designed and directed towards promoting receptivity to a particular vision or aspect of development, namely that of the IFIs.96 Thus, the emerging body of practices pertaining to public participation in the PRSP has the potential to shape the scope of the right to participate in public affairs in relation to development. The scope of local participation and national ownership is also limited by the

93 For example, based on my own experience working in a remote part of Liberia, it appeared that rural communities’ understanding of the Liberian state did not extend much beyond awareness that there was a government in the capital which purported to, and sometimes did, exercise control over their lives. This is reflected in the fact that villagers were often unaware of some of the most basic offences under the Penal Code (as opposed to the customary laws which regulate their lives). It is therefore difficult to imagine how the PRSP consultations could have been genuinely participatory rather than merely nominal.

94 Stiglitz, supra note 87 at 165.

95 Ibid at 168.

96 For example, all PRSP country programmes are consistently premised on private sector-led growth as being the most effective mechanism of poverty reduction and do not as a result consider the possibility of alternative approaches to poverty reduction (Stewart & Wang, supra note 79 at 465). Furthermore, the conception of participation which is provided for in the Paris Declaration on Aid Effectiveness, is limited to its utility as a mechanism for improving foreign aid effectiveness and is not referred to as being a key aspect of the right of self-determination (Davis, supra note 7 at 182).
need to secure a balance with what the IFIs referred to in their 2005 PRS review, somewhat
elusively, as “the external aspects of accountability.”

Beyond these illustrative examples, in order to better understand the relationship between
the PRS and human rights in general it is necessary to return again to the concept of develop-
ment and the meta-narratives which underpin it, and to locate the PRSP within that broader
context.

4. DEVELOPMENT, POVERTY REDUCTION AND HUMAN RIGHTS

Partly because of the amorphous and pervasive nature of these concepts, the complex relation-
ship between development, poverty reduction and human rights is not easy to conceptualise.
Poverty could be described simultaneously as a major cause and symptom of the non-fulfill-
ment of human rights. These concepts are clearly not synonymous, however, and some rights
remain beyond the purview of poverty reduction. If we conceptualise poverty as the depriva-
tion of freedom to develop human capabilities to, in turn, achieve well-being, as Amartya Sen
has done, and recognise that most human rights are concerned with fundamental freedoms,
then it is clear that the notion of human freedom is the critical link between these concepts.
This link plausibly finds its expression in what the Office of the High Commission for Human
Rights (“OHCHR”) considers to be the five key pillars of a human rights approach to poverty
reduction, namely: empowering the poor; explicit recognition of the international human
rights normative framework; accountability; non-discrimination and equality; participation.

Put simply, according to the OHCHR, these pillars provide a conceptual framework for inte-
grating human rights into PRSPs thereby ensuring that the basic concerns of poor people
become the basic concerns of PRSPs.

The emergence and ascendancy of the PRS paradigm as a means of addressing poverty
has also been closely accompanied, and is in part explained by, the emergence of a broader,
“sustainable” conception of development. The concept of sustainable development has been
proposed as a means of “guiding relationships at the interstices” of the systems of economic

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97 Bank & Fund, supra note 47 at 36, 42.
98 Marie-Claire Cordonier Segger, Ashfaq Khalfan with Sumudu Atapattu, “International Human Rights
and Poverty Law in Sustainable Development” in Marie-Claire Cordonier Segger & Ashfaq Khalfan, eds,
2004) 303 at 303, 313. [Segger, Khalfan & Atapattu]; World Conference on Human Rights, Vienna
Seen Through the Lens of the Millennium Development Goals” (2005) 27 Hum Rts Q 755 at 786-87;
Gobind Nankani, John Page & Lindsay Judge, “Human Rights and Poverty Reduction Strategies:
Moving Towards Convergence?” in Philip Alston & Mary Robinson, Human Rights and Development:
Judge].
100 Hunt, Nowak & Osmani, supra note 99 at 6.
101 Ibid at 13-20.
102 Ibid at 21.
Sustainable development can be defined as that which “meets the needs of the present without compromising the ability of future generations to meet their own needs”. The elimination of poverty is explicitly at the heart of the UNDP’s expanded 1998 definition of sustainable development. Thus, poverty reduction is a key principle of sustainable development. These concepts must be understood by reference both to each other and to the new development paradigm in whose emergence they have played a formative role. As a result, it could be said that the development and human rights communities are now increasingly enlivened by a shared set of norms and values. The complex relationship between human rights, poverty reduction and sustainable development is summarised by OHCHR as follows:

[i]t is now widely accepted that – on the one hand – poverty should not be seen as a lack of income, but also as a deprivation of human rights, and – on the other hand – that unless the problems of poverty are addressed, there can be no sustainable development.

In short, then, it could be said that “a human rights approach to poverty reduction provides a conceptual framework for the process of sustainable human development”. The key concern for this essay is to understand the potential implications that the pursuit of development through this rights-oriented conceptual framework has on both the articulation and realisation of human rights.

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104 The term was first coined, at least in the sense that it is now used, in 1987 with the release of Our Common Future (The World Commission on Environment and Development, Our Common Future (New York: Oxford University Press, 1987))


107 Nankani, Page & Judge, supra note 99 at 479.


4.1 The Rights-Development Nexus

The international financial systems in which the IFIs are embedded are constituted by a mix of “hard” and “soft” law. The international human rights system could also be described as consisting of a similarly dynamic blend of law. Both the fluidity within and the increased engagement between these two bodies of law is arguably reflected in complex, contemporary debates regarding the relationship between rights and development.

The first genuine engagement between the concept of development and the human rights edifice arose in relation to the debate on the right to development which itself emerged from the Third World's “New International Economic Order” initiative in the early 1970s. This also coincided with the progression of international law in the 1960s and 1970s towards a premise of active cooperation rather than mere passive coexistence between states. The right to development was formally and legally articulated in 1986 in the United Nation's Declaration. It gives legal expression to the idea that the ability of states to fulfill the human rights duties which they owe to citizens is impeded by the actions and structural limitations of the international community. Among other things, it stipulates that individuals rather than states are the subjects of development and that they are entitled to be given equal opportunity to a series of economic and social rights as enshrined in the International Covenant on Economic, Social and Cultural Rights (“ICESCR”). Furthermore, state parties’ duties include the progressive realisation of development through the design and the implementation of national policies through participation. The international community is obliged to act cooperatively to facilitate these processes. The Declaration is conventionally seen as defining development as the realisation of all rights provided for under the international human rights regime. Nevertheless, it is a poorly-endorsed, de-radicalised instrument which represents a “compromise” between the interests of the industrialised North, which was staunchly opposed to a juridified conception of development, and the developing South, which fervently advocated for it.

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111 See Part IV-B-1, below.

112 This was enshrined in the Declaration on the Establishment of a New International Economic Order, GA Res 3201, UNGAOR, 6th Sess, Supp No 1, UN Doc A/9559 (1974).


114 Mestdagh, supra note 25 at 150.

115 Declaration on the Right to Development, supra note 87.

116 Salomon, supra note 30 at 50.


119 Davis, supra note 7 at 176; Uvin, supra note 113 at 598; Andrea Cornwall & Celestine Nyamu-Musembi, “Putting the “Rights-Based Approach” to Development into Perspective” (2004) 25 Third World Quarterly 1415 at 1422.
It is therefore critical to distinguish between the willingness of the IFIs to recognise and engage with specific human rights for the purpose of poverty reduction – for example, access to justice and public participation – and their willingness to do so with respect to the right to development per se. In short, the rights-development nexus has two aspects: the right to development, as expressed in the legal, positivist language of the Declaration, and “rights-based approaches” to development (“RBAs”) which are more recent in origin.\textsuperscript{120} IFIs’ and donors’ preference for the latter stems largely from a mistrust of the legal obligations which the former might impute to them. This is evidenced, for example, by a reluctance to refer to the Declaration in key policy documents, as opposed to RBAs, which would only impute obligations to aid-receiving states.\textsuperscript{121} RBAs were placed firmly within the “mainstream” of the UN’s development agenda in 2005 pursuant to then-Secretary General Kofi Annan’s reform manifesto, \textit{In Larger Freedom: Towards Development, Security and Human Rights for All}.\textsuperscript{122} This indicates that the IFIs have a substantial interest and role to play in giving content to RBAs and, in particular, in influencing the construction of the rights which flesh out those approaches.\textsuperscript{123}

Donors tend to view RBAs as providing novel analytical and programmatic tools for contributing to poverty reduction within the framework of existing development assistance structures.\textsuperscript{124} Thomas Davis identifies three key components shared by RBAs to development. Firstly, RBAs reframe development debates within the parameters of rights language. Secondly, there is a connection between the use of that language and the attempt to subject duty bearers to moral and legal claims. Thirdly, RBAs are founded on a conception of individuals as active citizens with influence to exercise over the formulation of development policy, rather than as mere passive recipients of largesse.\textsuperscript{125} In respect of the first of the components, it has been argued that donors adopt the language of rights as a means of placating critics of neo-liberal development while simultaneously depriving the language of its original purpose and scope.\textsuperscript{126} Similarly, as Raj Kumar states, “[t]he basic idea behind…rights-based approaches to development is to bring what was hitherto the venue of political discourse into the day-to-day development discourse.”\textsuperscript{127} As discussed further at Part IV B 2 below, not only does this process

\textsuperscript{120} Ibid at 1423. It should be noted, however, that Piron adopts a five-part typology for classifying approaches to the integration of human rights into development (the most onerous of which is the RBA): implicit human rights work, human rights projects, human rights dialogue, human rights mainstreaming, and human rights-based approaches (Laure Hélène Piron & Tammie O’Neill, \textit{Integrating Human Rights Into Development: A synthesis of donor approaches and experiences} (2005), online: Overseas Development Institute <http://www.odi.org.uk/resources/download/3364-full-report.pdf> at vi).

\textsuperscript{121} Stewart & Wang, supra note 69 at 469; Davis, supra note 7 at 176.


\textsuperscript{124} Ibid at 179.

\textsuperscript{125} Ibid at 180-181.

\textsuperscript{126} Uvin, supra note 113 at 597–606.

strip the language of its original meaning, it also reduces its potential and availability for use by marginalised and oppressed persons as a language through which to convey other, differing claims, which history has shown, can often bear a meaning deep enough for them to risk their lives and die for.\(^\text{128}\)

While there is considerable debate as to the precise nature of the relationship, contemporary development discourses embrace RBAs as the vehicle for achieving the MDGs and it is clear that the MDGs are firmly anchored both procedurally and substantively in human rights.\(^\text{129}\) PRSPs have been similarly conceptualised as a mechanism for achieving the MDGs.\(^\text{130}\) If we accept the MDGs as encapsulating contemporary mainstream thinking on the intended objectives of development, and as constituting the current meta-narrative of development, the broader function and instrumentality of both PRSPs and RBAs therefore becomes clear.\(^\text{131}\)

The key question with respect to development and human rights, then, is not whether the IFIs will subject their development mandate to the imperative of human rights promotion, but how, to what extent and, most importantly, to what ends.\(^\text{132}\)

4.2 The Co-opting Influence of the Development and Poverty Reduction Paradigm on Human Rights\(^\text{133}\)

4.2.1 The Dynamic, Discursive Nature of Human Rights

Principles of international law, including international human rights law, are by their nature, dynamic, capable of multiple and often contradictory applications and have considerable normative potential.\(^\text{134}\) In this sense, the *Universal Declaration on Human Rights* should be seen as a beginning, not an end and the series of human rights instruments which have been adopted since then, and the novel, changing ways in which these continue to be interpreted and adapted reflects this. As a result, human rights are widely recognised as having the capacity to flexibly perform both a hegemonic and a counter-hegemonic function.\(^\text{135}\) This is particularly the case if we recognise human rights as being discursive in nature. The significance of discourse goes beyond its linguistic meaning. As Chris Weedon observes, discourse lies “in the sense that it

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\(^{130}\) Sumner, *supra* note 33 at 1406; Nankani, Page & Judge, *supra* note 100 at 492.

\(^{131}\) Sumner, *supra* note 3 at 1405-1406.


is located in institutions and practices which define difference and shape the material world, including bodies”. The notion of discourse thereby provides an analytical tool for better understanding the actions and statements of power structures. Thus, discursive approaches to human rights encompass “the full range of social knowledge regimes through which human rights emerges in social practice”. In that way they offer a mechanism for social movements to mobilise a cause by employing human rights language in a particular way and for a particular purpose.

Digging deeper, it is possible to discern a symbolic valence within rights which incudes rights-discourse with an emancipatory appeal. It is a “political” aspect which draws from within but, crucially, exceeds the legal boundaries marked out by the positive rules of IHRL. Rights therefore consist of both a core, regulatory dimension and a more peripheral, emancipatory or hortatory dimension. This emancipatory dimension is a corollary of the fundamental aspirational tenet that human rights are universal. As Pahuja argues, rights “contain the seeds of their own excess in a way that regulation, in the sense of rules plus enforcement mechanisms, does not”. This seed is nourished by the universal claim of human rights. In other words, human rights have a particular scope and are anchored by particular values which clearly delimit the situations and persons to which they would unquestionably apply while possessing a universality containing the normative potential to encompass situations and persons seemingly beyond that particular description.

4.2.2 Development and the PRS: Neutering the Normative, Discursive Potential of Human Rights

The increased engagement between international economic law and international human rights law through the PRS has given a platform for human rights advocates to:

convince countries that have thus far resisted pressure to accept the legitimacy of liberal human rights to do so in concurrence with western liberal economic models, or rather, to adopt liberalism as a complete rather than as a bifurcated or partial

\[\text{Chris Weedon, Feminism, Theory and the Politics of Difference (Oxford: Blackwell, 1999) at 103.}\]
\[\text{Goodale, supra note 74 at 8.}\]
\[\text{Pahuja, supra note 12 at 168; Uvin, supra note 114 at 603.}\]
\[\text{Pahuja, supra note 12 at 169.}\]
\[\text{Ibid.}\]
\[\text{Ibid. This is arguably reified, for example, in the lacuna which existed for many years between the limited scope permitted by the orthodox legal interpretation of Articles 2 of the ICESCR, supra note 117, and Article 27 of the ICCPR, supra note 76, and the expansive entitlements which indigenous peoples claimed that those provisions conferred. The effect of the latter claims on the former interpretation was destabilising and unsettling, yet arguably culminated in the expansive conception of self-determination which is enshrined in the Declaration on the Rights of Indigenous Peoples (Declaration on the Rights of Indigenous Peoples, UNGAOR, 61st Sess, UN Doc A/Res/61/295 (2007))}.\]
Thus, incorporating human rights obligations into development could be seen as a process of persuading the IFIs, as well as recipient states, to concede a limited space for human rights to enter their domain on their terms and without unduly compromising their own institutional priorities. On that basis, Philip Alston urges rights advocates to adopt a “gradualist approach” to promotion of RBAs which can be “more easily incorporated into existing development paradigms, will be less threatening and thus meet less resistance, will be better able to emphasize the benefits of taking some aspects of human rights on board, and is far better able to be monitored and evaluated”. This kind of merger between development and human rights stabilises “the transcendent space of universality” and extinguishes the political quality of human rights, so that they become a means by which society is subjected to the imperative of economic growth through markets. The consequence, putting it bluntly, is a colonisation of the human rights discourse.

The PRSP (of which, as discussed above, human rights is an integral part) itself arguably amounts to a refinement of the liberal political project aimed at, what Craig and Porter call “the disciplined inclusion of the poor”, or indeed of any marginalised groups whose claims might compete with orthodox visions of development. At the core of the PRSP is a “managerialist” conception of participation which draws heavily on the colonial model of indirect rule. In this sense, human rights can easily be seen as subsidiary to, facilitative of and dependent on the liberal economic agenda for development.

144 Ochoa, supra note 132 at 103-04.
145 Ibid at 105; Alston, supra note 99 at 807-08; James Thuo Gathii, “Good Governance as a Counter Insurgency Agenda to Oppositional and Transformative Social Projects in International Law” (1999) 5 Buff HRL Rev 107 at 120-21. Okafor locates this practice in a broader historical pattern under which international law willingly ‘donates the power of dissent’ to Third World peoples—provided this will not lead to a fundamental restructuring of the world order—while preserving for the First World the ‘prescription of solutions to world problems’ (Obiora Chinedu Okafor, “Poverty, Agency and Resistance in the Future of International Law: an African perspective” (2006) 27 Third World Quarterly 799 at 810).
146 Alston, supra note 99 at 808. See also Nankani, Page & Judge, supra note 99 at 490-92. Similarly, Mark Plant of the IMF has suggested that “[I]f...[the OHCHR] guidelines were recast as OHCHR’s idea of what human rights mean in the PRS process and as an offer of how it can assist low-income countries, then a conversation may be opened up as to how, for example, the IMF’s efforts to establish transparent and sound accounting mechanisms in the budgetary process fit in with the human rights imperatives and how it can complement the OHCHR’s efforts to ensure accountability. Similarly, the OHCHR could begin to understand how the IMF frames its macroeconomic assistance, and the OHCHR could offer ideas as to how participation can best be used to help the discussion of macroeconomic policy choices” [emphasis added] (Plant, supra note 92 at 505).
147 Pahuja, supra note 12 at 170.
148 Uvin, supra note 113 at 599.
149 Craig & Porter, supra note 69 at 54.
There are two key inter-connected explanations as to why the IFIs might want to co-opt and limit the normative potential of human rights. It can firstly be viewed in conjunction with the PRS as a response to the barrage of criticism directed towards the IFIs as a result of their structural adjustment policies of the 1980s. Above and beyond specific economic policies, it is arguable that this is an attempt to promote greater accountability, or the appearance of it, within the IFIs in order to nullify the persistent critique of democratic illegitimacy.\footnote{de Búrca, supra note 28 at 275- 279.} Authoritative norms and practices produced by international institutions which have a clear public impact will invariably trigger questions as to their legitimacy and acceptability within the populations which are subjected to them.\footnote{Ibid at 235.} Thus, the meteoric expansion of the international economic governance mandate within inter-governmental organisations in recent years has triggered a wave of popular challenges to their legitimacy, manifested in the form of public protests, campaigns and votes against prevailing policies of economic development.\footnote{Ibid at 224.} As de Búrca succinctly puts it, “[t]he existence of a need to coordinate aspects of social life is invariably accompanied by deep disagreement over how it should be done”.\footnote{Ibid at 229.} There is, in short, a paradox which arises on the one hand from the public scope and impact of the IFIs’ policies on governance and the lack of public accountability or transparency in the formulation and implementation of those policies. Although most commentators agree that a democratic solution is neither feasible nor desirable, the IFIs have begun to recognise the need to address this deficit in recent years, in part by devising new policies which are “more likely to be met with acceptance and compliance”.\footnote{Ibid at 225-6.}

By embracing the language and framework of human rights, the IFIs have struck upon a mechanism for channelling the elucidation of these popular challenges within an apparently empowering but actually limiting structure and thereby ameliorating the perception of the democratic deficit which has been such a prominent source of criticism of their policies. This is essential to understanding the central thesis of this essay, namely, that the incorporation of human rights within the development discourse neuters their potential to facilitate a contestation over the meaning and aims of development and to offer alternative pathways for pursuing those aims.

Secondly, the IFIs might plausibly fear the possibility that genuinely broad-based participation might give rise to more radical interpretations of rights that could abet the destruction of the liberal social, economic and political structures which form the basis of the IFIs’ conception of development. In light of this, the defects in the PRS referred to above should be seen as deliberate rather than accidental design flaws specifically intended to carve out a small role for national ownership, participation and control while giving the veneer of legitimacy required to preserve key IFI policies.\footnote{Stewart & Wang, supra note 69 at 471.} “The discursive, malleable nature of rights renders them especially vulnerable to “capture”, not only by radical social groups but also by conventional organs of power. The PRS is therefore a lightning rod around which competing discourses on
the meaning of rights and their relationship with development converge. The consequence of this is that:

[a]t the nexus of these two very different languages for special purposes – one focused on rights, the other on economic activity – grows a new language for the purpose of integrating human rights and international economic policies.\textsuperscript{157}

This convergence can raise serious transformative implications for human rights. As Carol Cohn has explored in relation to gender, the development and learning of a new language generates new modes of thinking, the parameters of which are defined by the limitations and nuances of that language.\textsuperscript{158} In this way, marginalised groups which use rights discourse as a vehicle for launching radical challenges to entrenched patterns of oppression run the risk of entrenching their marginalisation through accommodation by Foucauldian “disciplinary power” structures, of the kind referred to by Rajagopal, above.\textsuperscript{159} That is, they might be compelled to express their demands within the narrow, discursive framework laid out by the state to facilitate rights claims, thereby neutralising the radical aspects of their demands which do not fit within this restrictive framework. As such, a genuinely empowering, emancipatory rights-based approach to development is one which taps into the unregulated dynamism of the political realm and goes beyond conventional frameworks such as the PRSP.\textsuperscript{160} Consequently, as Peter Uvin puts it:

\begin{quote}
[r]here is a lot less in the emerging human-rights-in-development regime than meets the eye. Much of it is about the quest for the moral high ground: draping oneself in the mantle of human rights to cover the fat belly of the development community, avoiding challenging the status quo too much, or questioning oneself or the international system. As a result, one can see power at work here… most of this rethinking constitutes a voluntary act by people in New York, Washington, London, or Geneva – smart and well-intended, most of them, but not exactly those in great need of overthrowing the established order. This stuff has not been fought for by the masses in whose name it is adopted. It is not part of a fundamental reshuffling of the cards of power, or a redistribution of resources worldwide: no such dynamic has occurred.\textsuperscript{161}
\end{quote}

As a result, sustained contact between the human rights and economic fields of international law hold serious risks for the advancement of the former.\textsuperscript{162} Craig and Porter argue that this increased contact represents, in the form of the PRSP, an emerging convergence between policies of global economic integration and social inclusion on a scale not witnessed since colonial times.\textsuperscript{163} In the face of this grave challenge the goal for human rights advocates – indeed, for all persons who wish to use rights to contest the power structures of international development – is to “retain the compelling and utopian language of rights” and infuse it with the intellectual

\begin{footnotes}
\item[157] Ochoa, supra note 132 at 106.
\item[159] Davis, supra note 7 at 184.
\item[160] Uvin, supra note 113 at 604; Stewart & Wang, supra note 69 at 469-471.
\item[161] Uvin, supra note 113 at 603-04.
\item[162] Ochoa, supra note 132 at 111.
\item[163] Craig & Porter, supra note 69 at 55.
\end{footnotes}
fortitude and vigour of their own experiences and interests at the points of contact with the economic sector.164

5. CONCLUSION

The emerging paradigm of development reflects a general recognition of the failure of policies concerned exclusively with economic growth and the consequent need to expand these policies to recognise and address the social dimensions of development. This is reflected in the watershed promulgation of the CDF which gave rise in turn to the PRSP. Although PRSPs have clearly given greater voice to national populations to have an input into formulation of incumbent governments and, more importantly, to the retention of conventional theories of market-driven economic development by the IFIs. This can be seen, for example, in the IFIs’ imposition, through PRSPs, of de facto boundaries by which delineate the scope for articulating and realising the rights of access to justice and to participate in public affairs.

John Ralston Saul has said that:

Democracy is not intended to be efficient, linear, logical, cheap, the source of absolute truth, manned by angels, saints or virgins, profitable, the justification for any particular economic system, a simple matter of majority rule or for that matter a simple matter of majorities. Nor is it an administrative procedure, patriotic, a reflection of tribalism, a passive servant of either law or regulation, elegant or particularly charming … the key to its secret is the involvement of the citizen.165

The same might also be said of human rights. Human rights are inherently dynamic, discursive and capable of being utilised for a variety of radical counter-hegemonic political claims. By engaging with and consuming human rights the development sector is co-opting and potentially limiting this capacity. The IFIs have a clear interest not only in neutering the capacity of human rights discourse to be used by radical claims which are opposed to their own orthodox economic policies but also to exploit that capacity to serve their own ends. If we identify the narrative of international development as a post-colonial political construct – rather than as a self-evident axiom of human progress – and if we recognise the PRSP as the latest reification of this project, then the underlying aims of a development-oriented engagement with rights become much easier to understand. The challenge for rights advocates, and indeed for all persons with a position to stake in relation to development policies, is to locate the PRSP at the heart of the rights-development nexus and, on that basis, to maintain space for the operation of the peripheral emancipatory dimension of rights beyond the realm of institutional regulation.

164 Ochoa, supra note 132 at 113.