THE DAWN OF A NEW, NEW INTERNATIONAL ECONOMIC ORDER?

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I
INTRODUCTION

In the aftermath of the Second World War, colonies, protectorates, and other entities under European and American domination gained independence, and the countries that comprise what became known as the Third World emerged.[1] The Third World as a political concept, however, truly came of age during the 1970s, when these nations demanded some semblance of economic and political parity and justice. Even as the notion of "development" materialized and gained ground,[2] it was apparent that the international political, legal, and economic system was unmistakably asymmetrical and weighted against their interests. The mostly colored peoples who comprise the Third World citizenry were mired in poverty and powerlessness, and the international political and legal system seemed to present few options to alter the prevailing paradigm. Accordingly, Third World nations and peoples demanded a New International Economic Order (NIEO),[3] endorsed by the United Nations in

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1. RUTH GORDON, KATRINA, RACE REFUGEES AND IMAGES OF THE THIRD WORLD IN HURRICANE KATRINA AMERICA'S UNNATURAL DISASTER 226, 238–39 (Jeremy Levitt & Matthew Whitaker eds., 2009) (discussing the emergence of the Third World as a political concept); GILBERT RIST, THE HISTORY OF DEVELOPMENT 81–88 (2004). European powers were the primary colonialists. New nations emerged as the British Empire disintegrated and French, Portuguese, and other colonies broke the chains of colonialism. Ruth Gordon, *Saving Failed States, Sometimes a Neocolonialist Notion*, 12 AM. U.J. INT'L L. & POL'Y 903, 953–59 (1997).

2. *See* Ruth E. Gordon & Jon H. Sylvester, *Deconstructing Development*, 22 WIS. INT'L L. REV. 1, 9–11 (2004).

3. Declaration on the Establishment of a New International Economic Order, G.A. Res. 3201 (VI), ¶ 4 U.N. Doc. A/3201 (May 1, 1974).

1974, which would provide them, inter alia, permanent sovereignty over their natural resources and more control over their economic destiny.[4]

Today the world is being presented with a fresh "new international economic order." The crisis of U.S.-led, market-driven capitalism has resulted in a financial meltdown in the principal Northern Tier[5] nations who, along with their corporate entities, control the world economy.[6] The system is theoretically and perhaps literally bankrupt; emerging-market Southern Tier economies, having been drawn into this quagmire, are being asked to step forward and assist in rescuing it.[7] These Southern Tier, middle-income nations are, in turn, predictably demanding a larger role in international economic governance. Thus we are witnessing the creation of a very new international economic order that is led, at least in part, by people of color and nations that were themselves formerly subjected to colonialism and other forms of economic or political domination. The previously subjugated are now sitting at the table with their former oppressors and are taking an active role in reshaping a system that has often meant prosperity for the few and poverty for the many. Indeed, while the nature of inequality has shifted and changed, poverty has remained rampant and the current economic quandary is likely to deepen this profound inequity.[8]

This article will explore the contours of the original call for economic parity and its aftermath, which in due course resulted in a tightening of the legal and economic labyrinth that continues to strangle low-income nations. Any notion of equality, justice, or responsibility for the poverty of former colonies was utterly rejected, and in its place was conditionality, structural adjustment, and eventually, the Washington Consensus, all of which reflect the same conservative, market-driven ideals that have led to the global financial meltdown. Some Third World nations have been climbing the industrialization ladder, however, and have joined the ranks of middle-income nations, albeit not pursuant to the market-driven policies that are keeping low-income states in

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4. Towards these ends, they also promulgated the Charter of Economic Rights and Duties of States. G.A. Res. 3281 (XXIX), Chapter II, art. 2, at 2, U.N. Doc. A/9631 (Dec. 12, 1974).

5. In this article, "Northern Tier nations" refers to high-income, industrialized nations that are also characterized as advanced or developed; "Southern Tier nations" refers to low- or middle-income nations that are often referred to as developing or underdeveloped nations. *See infra* note 16 for a more comprehensive discussion of these terms.

6. *See, e.g.*, Dick Nanto, *The U.S. Financial Crisis: The Global Dimension with Implications for U.S. Policy*, CRS Report RL34742, Congressional Research Service, at 20 (Nov. 10, 2008); Mark Jickling, *Averting Financial Crisis*, CRS Report RL34412, Congressional Research Service 1 (Oct. 8, 2008).

7. *See, e.g.*, Nanto, *supra* note 6, at 38. The assistance would come largely in the form of financing U.S. debt, a role China has been increasingly playing as it seeks a place for its trillions of accumulated U.S. dollars. *Id.*

8. Even as some of the affluent experience a temporary reduction in their disproportionate wealth, the poorest will surely suffer more, and their ranks will almost certainly swell with the newly indigent. *The Financial Crisis: Implications for Developing Countries*, THE WORLD BANK: DATA & RESEARCH, Nov. 13, 2008, http://go.worldbank.org/ITSK95G310 (noting that developing countries are vulnerable to the worst effects of the financial crisis, facing "dwindling capital flows, huge withdrawals of capital leading to losses in equity markets, and skyrocketing interest rates").

misery.[9] Recent successful modernization efforts have changed the global economic equation, and some type of realignment has long been on the horizon; still, few could have anticipated that the shift would come quite so suddenly.[10] The collapse of the western financial system seems to be a catalyst propelling this repositioning forward at a tremendous pace. Its ultimate results are unknowable, but it does present intriguing possibilities for both the poorest and richest nations, as well as for the impoverished inhabitants of all nations. Low-income nations may find themselves sitting across the table from new partners that are posing very different questions, imposing different conditions, and seeking quite different responses. Affluent nations may find themselves in a similar position, with the demise of an economic system dominated by any single nation.[11] Moreover, there is another potential breakthrough in contemporary international economic discourse: a new President of the United States who is himself a person of color and whose roots are firmly planted in organizing impoverished communities of color.[12] He is charged with leading the United States, in tandem with its economic partners, through our current economic catastrophe, meaning that resources are likely to be limited.[13] Nonetheless, development policy has invariably followed existing paradigms in western discourse, and thus President Obama having been elected might be salient for Southern Tier nations. Markets have driven contemporary U.S. policy and thus have driven development policy. With the demise of this market-based ideology, and a fresh approach at the top, it is at least worth

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9. While global inequality has been rising, its distribution has changed as large nations industrialize. China is now the world's fourth largest economy and by 2011 is likely to be the second largest, after the United States. *See* ECONOMIST INTELLIGENCE UNIT, COUNTRY REPORT: BUSINESS ASIA, Nov. 17, 2008 (discussing China's economy).

10. Almost, so to speak, in the form of a big bang. I perceived glimmers of this shift when documenting the almost total powerlessness of very poor nations in the international economic system. *See* Ruth Gordon, *Contemplating the WTO from the Margins*, 17 LA RAZA L.J. 95, 110–12 (2006). But I did not and could not have envisaged a financial crisis of the type and magnitude that we currently face or that it would lead to such a rapid realignment of the international economic structure.

11. The United States has won the military arms race. Its supremacy is so unassailable that no nation is willing to confront America; current military challengers are nonstate actors that attack unarmed civilians and other soft targets, rather than attempt an unwinnable direct military confrontation with the U.S. military. Indeed, we might note that most, if not all, military incursions in this century have been local, and the only nation that has traversed the globe to undertake military action is the United States, which increasingly sees international problems and solutions through a military lens. ANDREW J. BACEVICH, THE LIMITS OF POWER: THE END OF AMERICAN EXCEPTIONALISM 1–13 (2008). The rest of the world appears to have moved on, however, and the competition increasingly takes place with respect to economic matters. In this arena, however, the world is no longer dominated by a single nation. *See* Steven A. Ramirez, *Endogenous Growth Theory, Status Quo Efficiency and Globalization*, 17 LA RAZA L.J. 1, 17 (2006) (discussing how China and other growing Asian economies will begin to exert competitive pressure on the United States).

12. BARACK OBAMA, DREAMS FROM MY FATHER: A STORY OF RACE AND INHERITANCE 144–63 (2004).

13. The World Bank and International Monetary Fund have implored Western nations not to neglect the problems of poor countries or curtail assistance to them. *See, e.g.*, *Fifty Countries Still Hurt by Food, Fuel Crisis, IMF says*, IMF SURV. MAG., Sept. 24, 2008, *available at* http://www.imf.org/external/ pubs/ft/survey/so/2008/new092408a.htm.

considering the possible impact of this new approach on development dogma and the poor nations that are its subjects. Indeed, the "New New International Economic Order" may surprise us all.

After a brief description of the contemporary global hierarchy, part II of this paper surveys global poverty and inequality, whose contours have changed even as the overall statistics have remained constant. The poorest nations remain poor, and they are overwhelmingly populated by people of color.[14] The industrialization of very heavily populated Third World nations has meant that large numbers of people have escaped poverty, even as domestic inequality has increased and the disparities between very poor and very rich nations have expanded. Thus the current state of affairs is complex, and the contemporary crisis may change its parameters yet again. Still, it is in response to global inequality that the Third World demanded a new international economic order. These demands and the ensuing debate are explored briefly in part III. Part IV turns to the ensuing economic collapse in Southern Tier nations, which led to conditionality, structural adjustment, and ultimately to the Washington Consensus and the dominance of market-driven growth. Part IV also touches upon the international institutions that have played critical roles in constructing and enforcing this system. The focus of Part V is the global economic collapse that unfolded at the end of 2008 and its impact on nations along the economic spectrum. The collapse has been a catastrophe whose roots lie in greed and failed economic theories that glorified the market and eschewed regulatory controls. It threatens to devastate the leading market economies and surely portends an economic realignment and a new, new international order quite unlike anything anyone could have predicted. Speculations as to this new order and its potential implications for poor nations are the topic of part VI.

II

THE INTERNATIONAL ECONOMIC ORDER AND GLOBAL INEQUALITY

The international economic global hierarchy remains highly stratified and generally still has majority-Caucasian nations at the apex and nonwhite nations and peoples at the base. Moreover, the gap between the poorest and the richest nations is growing, even as its complexity increases.[15]

A. The International Economic Hierarchy

The contemporary international system is often characterized as being comprised of "developed" and "developing" or "undeveloped" countries. These

14. Africa is the poorest continent, although there are large numbers of very poor people on other continents, including Asia and elsewhere. *See* text and notes, *infra* notes 33 & 34.

15. *See*, *e.g.*, Susan George, *Down the Great Financial Drain: How Debt and the Washington Consensus Destroy Development and Create Poverty*, Remarks at the International Celso Furtado Centre Colloquium on Poverty and Development within the Context of Globalization 4, 8 (July 25–27, 2006) (stating that the advanced countries' percent of the world income grew from seventy-one percent in 1980 to eighty-two percent in 2000).

terms are not only oversimplified and misleading, but, as to the global south, quite derogatory.[16] Differences between these nations are more precisely delineated according to the current international economic hierarchy: the high-income nations that make up the Organization for Economic Cooperation and Development (OECD)[17] are widely viewed as the most prosperous and affluent members of the international community. Average incomes exceed sums equivalent to $17,000 USD a year,[18] and citizens in these nations enjoy high levels of technology, communications, transportation and other types of infrastructure, educational institutions and education, medical services, and other indicia of industrialization.[19] Moreover, these indicators are generally available to broader swathes of the population, even if the statistics hide internal inequality.[20] High-income nations also broadly share a common culture (western), have democratic systems of government, and, with the exception of Japan, are majority Caucasian, even if they have substantial nonwhite populations.[21] These nations currently stand at the top of the economic hierarchy, a position they have consistently occupied, within a system of their own making.

The countries inhabiting the middle rung of the economic spectrum are a diverse group typified by rising levels of industrialization and all it brings, such as infrastructure development, education, and more widely available medical

16. *See*, *e.g.*, Gordon, *supra* note 2, at 79–86; Tayyab Mahmud, *Postcolonial Imaginaries: Alternative Development or Alternatives to Development*, 9 TRANSNAT'L L. & CONTEMP. PROBS. 25, 26–27 (1999). Other, less-derogatory terms for developing countries include emerging-markets, middle-income, industrializing, Southern Tier, Global South, Third World, or for the poorest nations, Fourth World. Developed countries are also denominated as high-income, advanced, or industrialized nations, as well as Northern Tier and the Global North.

17. Members of the OECD and their respective dates of entry: Australia, June 7, 1971; Austria, Sept. 29, 1961; Belgium, Sept. 13, 1961; Canada, Apr. 10, 1961; Czech Republic, Dec. 21, 1995; Denmark, May 30, 1961; Finland, Jan. 28, 1969; France, Aug. 7, 1961; Germany, Sept. 27, 1961; Greece, Sept. 27, 1961; Hungary, May 7, 1996; Iceland, June 5, 1961; Ireland, Aug. 17, 1961; Italy, Mar. 29, 1962; Japan, Apr. 28, 1964; Korea, Dec. 12, 1996; Luxembourg, Dec. 7, 1961; Mexico, May 18, 1994; Netherlands, Nov. 13, 1961; New Zealand, May 29, 1973; Norway, July 4, 1961; Poland, Nov. 22, 1996; Portugal, Aug. 4, 1961; Slovak Republic, Dec. 14, 2000; Spain, Aug. 3, 1961; Sweden, Sept. 28, 1961; Switzerland, Sept. 28, 1961; Turkey, Aug. 2, 1961; United Kingdom, May 2, 1961; United States, Apr. 12, 1961. *Ratification of the Convention on the OECD*, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, http://www.oecd.org/document/58/0,3343,en_2649_201185_1889402_1_1_1_1,00.html (last visited Jan. 30, 2009).

18. GLENN FIREBAUGH, THE NEW GEOGRAPHY OF GLOBAL INCOME INEQUALITY 9–10 (2003). Of course, any classification scheme depends upon the methodology employed. For example, the World Bank classifies countries with a gross national income (GNI) per capita of at least $11,456 as high-income economies. Members of the OECD are placed in a separate category than nonmembers with similar income statistics. *Country Groups*, THE WORLD BANK: DATA & RESEARCH, Nov. 13, 2008, *available at* http://go.worldbank.org/D7SN0B8YU0.

19. FIREBAUGH, *supra* note 18, at 42–46.

20. *Id*.

21. The OECD was created to assist European countries in the post–World War II era. With the exception of Japan and Korea, the member states continue to be European. The OECD headquarters is located in Paris, France. Organisation for Economic Cooperation and Development, *About OECD*, http: //www.oecd.org/pages/0,3417,en_36734052_36734103_1_1_1_1_1,00.html (last visited May 27, 2009).

services.[22] Also denominated "emerging-market" nations, the states in this category usually include China, India, Brazil, Mexico, Indonesia, Thailand, and South Korea.[23] They are not linked by a common cultural heritage, race, geography, form of government, or any other particular element except perhaps that they are, for the most part, nonwhite.[24] What does link these nations is rapid industrialization and being on the threshold of joining the economic ranks of the industrialized nations that are currently at its pinnacle. Also on the economic periphery of high-income nations are former Eastern-bloc countries, some of which are quickly being absorbed by the West[25],especially by the European Union (EU),and are on the way to joining the high-income West.[26]

22. For a comprehensive list grouping countries by their economic classification, see the International Monetary Fund, Country Composition of WEO Groups, http://www.imf.org/external/pubs/ft/weo/2008/01/weodata/groups.htm#oem (last visited Jan. 30, 2009). For a list of countries organized by growth rate of real GDP, see the Central Intelligence Agency Fact Book, https://www.cia.gov/library/publications/the-world-factbook/rankorder/2003rank.html (last visited Jan. 30, 2009) [note: classification is not by real GDP but by percentage change].

23. Other nations in this category include Panama, Argentina, Costa Rica, Venezuela, Malaysia, and a number of others. There is currently a "Group of Twenty" comprised of the nine major industrialized nations: the United States, Japan, Germany, the United Kingdom, Australia, Canada, France, Germany, and Italy. The rising or other important economic powers are China, Brazil, India, Turkey, South Korea, Indonesia, Russia, Saudi Arabia, Indonesia, Argentina, Mexico, and South Africa. For a list of middle-income countries compiled by the World Bank, see The World Bank, Data & Statistics: Country Groups, http://web.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,contentMDK:20421402~pagePK:64133150~piPK:64133175~theSitePK:239419,00.html (last visited June 11, 2009) [hereinafter Data & Statistics].

24. Indeed, China's growth may prove that representational democracy is neither a necessary precursor nor a requisite for rapid economic development, although it has long been insisted upon by western governments and development experts as a necessary precondition. *See, e.g.*, Bradley Klein, *Democracy Optional: China and the Developing World's Challenge to the Washington Consensus*, 22 UCLA PAC. BASIN L.J. 89, 89–90 (2004); Rana Foroohar, *China's Economy Stays Out of the Red*, NEWSWEEK, Jan. 19, 2009, at 38. Kenneth Arrow, the 1972 Nobel Prize winner for Economics, advocated the Impossibility Theorem, which postulates that governments have no ability to create rational economies. Rigid regimes such as dictatorships maintain the ability to promote economic success despite their restrictive political policies. Kevin Hassett, *Does Economic Success Require Democracy?*, AMERICAN, May–June 2007, http://american.com/archive/2007/may-june-magazine-contents/does-economic-success-require-democracy. *See also* FRANCISCO L. RIVERA-BATIZ, DEMOCRACY, GOVERNANCE AND ECONOMIC GROWTH: THEORY AND EVIDENCE 3–4 (2002).

25. At times this absorption is accompanied by severe political difficulties. *See, e.g.*, Karen E. Bravo, *Smoke, Mirrors and the Joker in the Pack: On Transitioning to Democracy and the Rule of Law in Post-Soviet Armenia*, 29 HOUS. J. INT'L L. 489, 494–99 (2007) (dissecting Armenia's struggles to become a democracy).

26. In 2004, the EU expanded to include ten post-bloc countries, marking its largest expansion ever. Countries given membership included Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia. *EU Welcomes 10 New Members*, May 1, 2004, CNN, Apr. 30, 2004, http://edition.cnn.com/2004/WORLD/europe/04/30/eu.enlargement/index.html. Incorporating Romania and Bulgaria has highlighted the tensions entailed in aggressively expanding the European Union. *See Who's Afraid of the EU's Largest Enlargement? Report on the Impact of Bulgaria and Romania Joining the Union on Free Movement of People*, EUR. CITIZEN ACTION SERVICE, Jan. 28, 2008, http://www.libertysecurity.org/article1874.html (discussing the impact of Bulgaria and Romania joining the EU in 2007). Furthermore, countries such as the Ukraine and Turkey are currently engaged in membership deliberations. *See*, *e.g.*, EU-UKRAINE COOPERATION COUNCIL, EU/UKRAINE ACTION PLAN (2005), http://ec.europa.eu/world/enp/pdf/ action_plans/ukraine_enp_ap_final_en.pdf (discussing Ukraine); European Commission – Enlargement Candidates: Turkey, http://ec.europa.eu/enlargement/

Others may be more properly characterized as being on the West's margins, either because of culture,[27] lack of industrialization, relatively high rates of poverty,[28] or proximity to Russia, where they are drawn, voluntarily or not, into its distinct orbit.[29]

At the base of the international economic hierarchy are the poorest nations, where the majority of the populace is impoverished. These nations are characterized by widespread poverty, a technology deficit and all that it entails—a deteriorating or absent infrastructure, high levels of unemployment, a small or nonexistent industrial base, insufficient housing and running water, an absence of universal education and thus high levels of illiteracy, scarce or nonexistent medical services, and low life expectancy and other indicia of poverty.[30] They tend to export natural resources or foodstuffs and to import manufactured goods; indeed, if there is foreign investment by multinational corporations, it tends to be in those sectors from which raw materials are extracted and exported in their unprocessed state.[31] Commodity prices are notoriously volatile, and farm products are scandalously subsidized in the West, making competition fierce and ultimately unfair.[32] Although disproportionately

candidate-countries/turkey/ key_documents_en.htm (listing European Union documents regarding Turkish accession).

27. This marginal status might perhaps be more specifically characterized as a lack of democratic governance and a sense of not being part of Europe. *See, e.g.*, Bravo, *supra* note 25, at 493–94. The possible inclusion and integration of Turkey into the EU, and into a "New Europe" in general, has sparked fierce debates both in the EU and within Turkey. Turkey has faced an identity crisis regarding how the country will be perceived if it is part of Europe. The European Union has imposed strict adherence to the EU model of economics and democracy, although Turkey has had a secular, democratic government since the end of the First World War. MEHMET UGUR & NERGIS CANEFE, TURKEY AND EUROPEAN INTEGRATION 187 (2004).

28. The World Bank classifies the following Eastern European countries in the "lower-middle" income bracket, by per capita GNI, in 2007: Albania ($3290), Bosnia and Herzegovina ($3790), Macedonia ($3460), Moldova ($1260), and Ukraine ($2250). The following Eastern European countries are classified as upper-middle income: Belarus ($4220), Bulgaria ($4590), Croatia ($10,460), Latvia ($9930), Lithuania ($9920), Montenegro ($5180), Poland ($9840), Romania ($6150), and Serbia ($4730). The following Eastern European countries are classified as high income: Estonia ($13,200), Hungary ($11,570), and Slovak Republic ($11,730). THE WORLD BANK, WORLD DEVELOPMENT INDICATORS 2008, *available at* http://siteresources.worldbank.org/ DATASTATISTICS/Resources/GNIPC.pdf.

29. Russia is often a barrier on the political–military front. *See, e.g.*, Michael Schwartz et al., *Russia and Georgia Clash Over Separatist Region*, N.Y. TIMES, Aug. 9, 2008, at A1; Ariel Cohen, *The Lessons of Ukraine: Russia's Growing Influence in Eurasia*, THE HERITAGE FOUND., Nov. 12, 2004, http://www.heritage.org/research/russiaandeurasia/em949.cfm (discussing former Soviet personnel and their influence on the politics of Ukraine and its effects of the rest of the former Bloc countries).

30. FIREBAUGH, *supra* note 18, at 39–46 (discussing living standards in low-income nations); Ruth Gordon, *Sub-Saharan Africa and the Brave New World of the WTO Multilateral Trade Regime*, 8 BERK. J. AFR.-AM. L. & POL'Y 79, 86 (2006).

31. *See* OSWALDO DE RIVERO, THE MYTH OF DEVELOPMENT: THE NON-VIABLE ECONOMIES OF THE 21ST CENTURY 100–03 (2001) (discussing the decline in demand and the volatility of raw material prices in the international economy). For a detailed look at investment in poor countries, see MICHAEL J. TWOMEY, A CENTURY OF FOREIGN INVESTMENT IN THE THIRD WORLD 6–20 (2000).

32. Gordon, *supra* note 30, at 110–16.

located on the African subcontinent,[33] low-income nations are also found in other parts of the world.[34] What links most of the poorest states is a history of colonialism, which saddled them with poor governing structures[35] and abysmal administrative and legal systems.[36] They are mired in widespread poverty, exporting primary products, repaying huge debts, and increasingly subject to the policies of international financial institutions, such as the World Bank and International Monetary Fund (IMF).

B. Domestic Inequality

The level of inequality within a nation is a composite of myriad factors and forces that are "historical, economic, demographic, institutional, cultural, political, and technological."[37] Consequently, it may be difficult to identify consistent or uniform changes in income inequality within nations, making it ineffectual to ascribe internal inequality to a specific set of causes that move in the same direction within all countries.[38] Moreover, researchers must depend on national governments for data, which may be unreliable or nonexistent.[39] That being said, over the last fifty years, particular changes that have foreshadowed destabilizing forces signify a profound impact on domestic inequality.[40] Among the most critical are industrial expansion in the world's most populated regions, such as China and India; the fall of communism in Eastern Europe;[41] and the

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33. According to World Bank classifications, thirty-two of the world's forty-nine countries classified as low-income ($975 or less) are located in Africa: Benin, Burkina Faso, Burundi, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Côte d'Ivoire, Eritrea, Ethiopia, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Niger, Nigeria, São Tomé and Principe, Senegal, Sierra Leone, Somalia, Tanzania, Togo, Uganda, Zambia, and Zimbabwe. Data & Statistics, *supra* note 23; The World Bank, Data & Statistics: Country Classification, http://web.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,contentMDK:20420458~menuPK:64133156~pagePK:64133150~piPK:64133175~theSitePK:239419,00.html (last visited June 11, 2009). Additionally, thirteen of the fifty-four designated lower-middle-income economies (GNI of $936–$3,705) are African countries: Algeria, Angola, Cameroon, Cape Verde, Republic of Congo, Djibouti, Arab Republic of Egypt, Lesotho, Morocco, Namibia, Sudan, Swaziland, and Tunisia. *Id.*

34. According to the World Bank, Haiti, Afghanistan, Bangladesh, Myanmar, Vietnam, Pakistan, and Uzbekistan are among the lowest income nations. *Id.* (last visited June 11, 2009).

35. Ruth Gordon, *Growing Constitutions*, 1 U. PA. J. CONST. L. 528, 542–58 (1999).

36. Administrative systems that were constructed to control populations were left in place, while constitutional democracies were superimposed over them. All references to the underlying culture were ignored or erased as the governing elites sought to be "modern" and thus western, like their former colonial masters. *Id*. at 554–55.

37. FIREBAUGH, *supra* note 18, at 152.

38. For a discussion of the performance of poor countries in regional terms, see BRANKO MILANOVIC, WORLDS APART: MEASURING INTERNATIONAL AND GLOBAL INEQUALITY at 45–50 (2005).

39. Data on sub-Saharan Africa, for example, often is not available. FIREBAUGH, *supra* note 18, at 152.

40. *Id*. at 152–53.

41. In 1989, the lowest levels of income inequality were found in Eastern Europe, yet by 1995 income inequality in Eastern Europe had surpassed that found in Western Europe and more or less matched that found in Southern Europe. With the fall of communism one would expect rising levels of

post-industrial, services-led economic evolution in nations such as the United States.[42] Whereas absolute rates of poverty are stagnant or increasing,[43] these events have heralded rapidly rising domestic inequality in numerous nations, which grew between 1980 and 1995 for nations in all regions.[44]

Still, inequality persists at different levels in different regions and, as might be expected, the reasons vary. For example, even as many European and other western nations experience growing levels of inequality,[45] domestic inequality is still lowest in Western Europe, followed by other European nations.[46] As a general rule, poorer nations tend to have more-disparate income distributions than high-income nations, if considered from a class or spatial perspective.[47] Nations with higher incomes tend to garner a larger share of available resources, leading to higher rates of economic variation. It might also be because the poor are so very poor, with inadequate access to education, health care, living-wage employment, potable water, electricity, and other variables that wealthier members of society might possess.[48] Historical dynamics, such as a small, landed class in tandem with a large, landless peasantry, or political and

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inequality, but the increase of approximately 100% in such a short period was rather dramatic. *Id*. at 159.

42. For a discussion on the development of the service economy, and the underlying industrial base that allows it to exist, see RICHARD A. WALKER, IS THERE A SERVICE ECONOMY? 97 (2004).

43. Income inequality has increased in the four most populated nations in the world: China, India, the former Soviet Republic, and the United States. In the first three nations, the growth in income inequality followed economic liberalization. These nations contain more than half the world's population, and thus rising inequality in these nations portends rising average inequality in the remainder of nations, absent evidence of greatly declining equality across these nations. FIREBAUGH, *supra* note 18, at 153.

44. Regions are defined as Western Europe, Western offshoots (Australia, New Zealand, Canada, and the United States), Southern Europe (Greece, Portugal, Spain, and Turkey), Eastern Europe, Latin America, Asia, and Africa, although the data on Africa is thought to be unreliable. *Id.* at 158–59.

45. This has especially been the case in the United States, which is second only to Eastern European nations when measuring rising inequality. Asian nations, including China and India, have seen inequality measures rise by between 13–22%; Western offshoots (which includes the U.S.) by 17–20%; Latin America by about 10%; and Eastern Europe by between 94% and 119%. The measures are by definition imprecise, and the figures represent the results of different studies that come to different results. *Id.* at 161; *see also* Gary Clyde Hufbauer, *International Economic Law in Times That are Stressful*, 5 J. INT'L ECON. L. 3, 10 (2002) (noting increase in domestic inequality in the United States and emerging-market nations).

46. Although inequality has recently been growing in Eastern Europe, existing inequality still lags behind all other regions except Western Europe. MILANOVIC, *supra* note 38, at 48–49.

47. For example, rural areas tend to be poorer, and those in the highest income strata tend to garner a larger proportion of total income. Much of the data on inequality between nations tends to discuss indicators such as gross national product (GNP) or number of physicians per person without regard to these differences. RICHARD PEET & ELAINE HARTIWICK, THEORIES OF DEVELOPMENT 8–9 (1999). Industrialized nations may face similar problems, but because more physicians are available generally, the problem may not be as acute, and with more overall resources, they are better positioned to deal with the problem.

48. *Id*. at 4–11.

social structures that give an advantage to a small minority, might also be relevant.[49]

Thus, inequality within nations is intensifying, while poverty rates remain stagnant or escalate. With the global economic meltdown, poverty is likely to increase. Although trickle-down economics, the notion that wealth trickles down, may be totally discredited,[50] there is little doubt that economic pain and misery trickles downward. When those at the top of any given domestic economy are suffering losses, those at the base of the system will undoubtedly do worse. The IMF and World Bank have already called on donor nations to remember poor nations.[51] Still, although by way of development, the international system seeks to reduce poverty, it does not, and perhaps cannot, address domestic inequality.

C. Inequality Between Nations

Inequality between nations, however, is another matter. In the contemporary world, inequality between nations is a choice. Although in an earlier era it was at least questionable whether resources were sufficient to meet all of humanity's needs, there is now little doubt that it is possible to produce at least the necessities.[52] The global economic pie has expanded to a size at which poverty is now a function more of how wealth is distributed than whether adequate resources exist. There is currently the potential to meet humankind's need for food, shelter, clothing, and medical care, even as these needs are not being met for broad segments of humanity.[53]

The shift from domestic to international inequality is a result of nineteenth- and early twentieth-century industrialization. The Industrial Revolution garnered substantial gains in productivity that contributed to concrete gains in

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49. Professor Peet notes that some nations have particularly distorted income and consumption distributions. He cites income percentages from different nations to illustrate the point: Guatemala (richest 20% receiving 63% of total income, poorest 20% receiving 2.1%); South Africa (richest 20% receiving 63% of total income, poorest 20% receiving 3.3%) Brazil (richest 20% receiving 67.5% of total income, poorest 20% receiving 2.1%), making Brazil the most unequal nation in the world. South African inequality is a direct result of Apartheid, where race discrimination was an instrument of an economic, social, and political policy that mandated inequality. Some Central and South American states have long histories of grossly disparate land distribution structures. *Id*. at 8–9.

50. *See* Gordon, *supra* note 2, at 32 (discussing the "trickle-down" theory, which proved to be false).

51. *See*, *e.g.*, *Forceful Action Needed to Contain Crisis, Panel Agrees*, IMF SURV. MAG., Oct. 12, 2008, www.imf.org/external/pubs/ft/survey/so/2008/NEW101408A.htm (discussing need for comprehensive coordinated action to address the 2008 financial crisis); *see also* Robert Zoellick, *Stimulus Package for the World*, N.Y. TIMES, Jan. 23, 2009, at A27 (calling for wealthiest countries to pledge 0.7 percent of stimulus packages to poor countries).

52. Of course, the sustainability of the western lifestyle when applied to the entire human community is another question. Ruth Gordon, *Climate Change and the Poorest Nations: Further Reflections on Global Inequality*, 78 U. COLO. L. REV. 1559, 1623–24 (2007) (discussing the deteriorating climate, which is a direct result of industrialization). Since industrialization is the ultimate goal of development policy, its sustainability is a valid question.

53. FIREBAUGH, *supra* note 18, at 12–14 (noting that today, poverty is largely a matter of distribution rather than production and that there is greater capacity to meet human needs).

human welfare, and the collective global population has generally witnessed an increase in the aggregate standard of living over the last two centuries.[54] Furthermore, this growth has generally been sustained, especially since the post–World War II era,[55] as measured by longer life expectancies and higher average incomes.[56] But industrialization in selected nations has resulted in an immense divergence in per capita incomes between rich and poor nations, transforming "the world from a place where poverty was the norm in all nations, to a wealthier world with significantly lower poverty rates, but also with much greater income inequality across nations."[57]

Because wealthier areas benefitted more from industrialization than poorer locales, global inequality intensified,[58] and worldwide inequality is now at an all-time high when measured by the gap between nations at the top and nations at the bottom of the economic ladder. Over the last several hundred years, poor nations have been falling farther and farther behind affluent nations, with the difference being starkest on the margins.[59] For example, the average American family is now seventy-two times richer than the average Ethiopian family, whereas at the beginning of the nineteenth century this ratio was three to one.[60] Although standards of living are arguably relative and an Ethiopian might manage to survive on even a fraction of the wealth held by a U.S. citizen,[61] there is an absolute dimension to deprivation, local conditions notwithstanding. Lack of access to clean water, adequate housing, education, and sanitation is absolute, for example, as are other indicia of impoverishment, such as high rates of childhood mortality and malnourishment.[62]

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54. *Id*. at 23–30.

55. MILANOVIC, *supra* note 38, at 34.

56. Life expectancy is up to an average of sixty-six years, with people living longer and better. FIREBAUGH, *supra* note 18, at 5. Average income has grown dramatically, although it has disproportionately benefited certain regions. *Id.* at 6.

57. *Id.* at 24.

58. *Id*. at 6–10. Three income groups were evident in 1820, and they are still present today, although the divisions are now much sharper. Richer regions got richer at a much faster pace than poorer regions. The world income pie expanded, but not all pieces of that pie grew at the same rate. *Id*. at 7. Gary Hufbauer asserts that inequality between countries steadily increased until 1950, was briefly interrupted between 1950 and 1970, and has resumed since 1970. Hufbauer, *supra* note 45, at 10–12.

59. Worldwide inequality has never been greater. Although the pie grew larger and the large Indian and Chinese populations skewed the figures somewhat, the disparities are stark. If the world is divided into "advanced" countries and the rest of the world (including China and India), in 1980 the advanced countries, with 18% of the world's population, had 71% of the world's income, leaving 82% of the world's population with 29% of the world's income. By 2000 this imbalance had skewed even further out of equilibrium, with 16% of the world's population in the advanced nations now capturing 81% of the world's income, leaving the remaining 84% of the world's population with 19%. George, *supra* note 15, at 8.

60. MICHAEL BLIM, EQUALITY & ECONOMY THE GLOBAL CHALLENGE 1–2 (2004) (discussing the world's increasing economic inequality).

61. *See* FIREBAUGH, *supra* note 18, at 44–49 (comparing living standards of Ghanaians, Chadians, and Americans).

62. One out of twelve children in poor nations dies before the age of five, and one in six under the age of five is malnourished. Out of the 4.4 billion people living in so-called developing nations, three-fifths have no sanitation, one-third have no access to clean water, and one-quarter lack adequate

With the rapid industrialization of poor nations with large populations, however, these statistics are becoming more complex. As standards of living rise in China, India, and other densely inhabited countries, at least some populations are improving their economic positions, if not being lifted out of poverty, though these nations still have huge numbers of very poor people.[63] Thus, international statistics have shifted somewhat; there are gains in some areas,[64] but most of these advances seem to be due to the rapid industrialization of China, India, and other populous middle-income nations.[65] Moreover, an enormous gap between rich and poor states remains, and the absolute poverty found at the base is as devastating as it was when these nations emerged from political colonialism in the 1960s. To the extent we have "class" and hierarchy in the international system, a very poor and relatively powerless group still comprises the foundation of a system marked by wealth and privilege at its pinnacle.

III
A NEW INTERNATIONAL ECONOMIC ORDER

In response to their economic plight and their seeming lack of the political power to alter it within the existing system, newly minted Third World nations called for the establishment of a New International Economic Order (NIEO),[66] and the UN promulgated the Charter of Economic Rights and Duties of States.[67] In effect, Third World nations demanded that the international community evolve towards at least a semblance of international economic parity and equity. The movement began with attempts to exert dominion over natural resources, which were all these nations had to sell in the international marketplace.[68] Nations whose natural patrimony was owned and controlled by

housing. The average citizen in rich countries has a life expectancy of seventy-four, while those in poor nations average less than sixty-two years and in sub-Saharan Africa, only forty-seven years. BLIM, *supra* note 630, at 2.

63. For example, even as China's economy grows, and it manages to reduce poverty in some areas of the country, there is still a great deal of inequality between cities and rural areas. Joseph Stiglitz, *Development in Defiance of the Washington Consensus*, GUARDIAN, Apr. 13, 2006, *available at* http://www.guardian.co.uk/commentisfree/2006/apr/13/comment.business.

64. For instance, literacy rates are improving, as is life expectancy, even if industrialized nations continue to outpace poor and middle-income nations. A person born in 1995 in the affluent West will live on average twenty years longer than someone born that year in a poor nation. Yet a person born in a poor nation in 1995 will also live on average ten years longer than one born in such a nation in 1970, demonstrating some gains in life expectancy, even if it does not rise to the level of life expectancy in affluent members of the world community. Similarly, since the 1970s, illiteracy rates in poor nations have improved from 47% to 25% of all adults. BLIM, *supra* note 63, at 2–4.

65. Milanovic describes it as urban China and India pulling away from the rural areas of their respective countries. MILANOVIC, *supra* note 38, at 111–16.

66. G.A. Res. 3201, *supra* note 3, at ¶ 4.

67. G.A. Res. 3281, *supra* note 4, at Chapter II, art. 2, at 2.

68. The idea of domestic control over natural resources actually began in the 1960s. Permanent Sovereignty over Natural Resources, G.A. Res. 1803 (XVII), 17 GAOR Supp. (No.17) at 15, U.N. Doc. A/5217 (Dec. 14, 1962). This resolution confirmed sovereign control over all natural resources within a state, but also stated that prompt, adequate, and effective compensation had to be paid if alien owners

foreign interests championed the idea of permanent sovereignty over natural resources.[69] They maintained that the peoples and governments in whose territories these resources were found had the right to exploit (or not to exploit) them, and to set the terms of their use. This assertion and the broader claims crystallized in UN Resolution 3201, the NIEO Declaration,[70] demanded a restructuring of the international economic system to make it operate more favorably towards poor nations. At its core was "equity, sovereign equality, interdependence, and cooperation between states" as well as a call to "correct inequalities and redress existing injustices, so as "to eliminate the widening gap between developed and the developing countries and ensure steadily accelerating economic and social development."[71] Developing countries sought, inter alia, better terms of trade[72] and more control over the activities of the foreign corporations operating within their borders.[73] With respect to natural resources, the resolution not only declared that host nations had permanent sovereignty over the natural resources within their territory, but also asserted a right to nationalize and transfer ownership of foreign entities and turn over those resources to the state or to its citizens.[74] This part of the NIEO

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were to be divested of their ownership. Almost all foreign direct investment in low-income nations was to extract minerals, oil, and other natural resources. This remains true today in the lowest-income nations. *See* United Nations Conference on Trade and Development, WORLD INVESTMENT REPORT, TRANSNATIONAL CORPORATIONS AND THE INFRASTRUCTURE CHALLENGE 10–11 (2008).

69. *See* Permanent Sovereignty over Natural Resources, *supra* note 68, at 15. Under this resolution, compensation to foreign owners upon nationalization of foreign interests was to be in accordance with international legal standards, which western capital-exporting states insisted was "prompt, adequate and effective compensation." Gordon, *supra* note 2, at 55. Capital-importing states did not agree with this assessment at that time, and indeed perhaps never did actually concur. *Id.* at 55–56. The NIEO Declaration reintroduced the Calvo doctrine, which required a uniform standard of treatment for foreign or domestic investors. G.A. Res. 3201, *supra* note 3, at ¶ 4. It recognized the right of a state to nationalize foreign-owned property and the right of a state to use its own law to measure compensation. James Gathii, *Third World Approaches To International Economic Governance*, *in* INTERNATIONAL LAW AND THE THIRD WORLD RESHAPING JUSTICE 254–65 (Richard Falk, Balakrishnan Rajagopal & Jacqueline Stevens eds., 2008); *see also* Gordon, *supra* note 2, at 53–56 (discussing the Third World struggle for permanent sovereignty over its natural resources).

70. G.A. Res. 3201, *supra* note 3, at ¶ 4.

71. G.A. Res. 3201, *supra* note 3, at preamble. Poor nations wanted to more fully participate in resolving economic problems and to banish inequality. The NIEO Declaration proclaimed the sovereign equality of all states and sought broad cooperation between states based on equity, towards the end of banishing prevailing inequality. *Id*.

72. For example, the NIEO Declaration called for improving unsatisfactory terms of trade between primary commodities and manufactured goods, and for preferential and nonreciprocal treatment for developing countries wherever feasible. It requested a more just and equitable relationship between raw materials and primary commodities, and between manufactured and semi-manufactured goods from industrialized nations. *Id.* at ¶¶ 4j, 4n.

73. The NIEO Declaration decreed that all states have full and effective participation in solving economic problems, and the right to regulate and control the activities of foreign corporations operating within their territories. Closely connected to the latter was "full permanent sovereignty of every State over its natural resources and all economic activities." *Id.* at ¶ 4.

74. Third World nations, which possessed most of the world's resources, claimed the right to nationalize and to determine appropriate compensation under their national laws. *See* Gordon, *supra* note 2, at 53–55. Industrialized nations, whose nationals owned and exploited the resources, claimed that although there was a right to nationalize, it had to be in accordance with international standards,

Declaration, as well as similar claims in the Charter of Economic Rights and Duties of States,[75] proved to be highly controversial,[76] for capital-exporting nations which refused to be divested of these riches without what they considered appropriate payment.

With these resolutions the Third World attempted not only to attain economic parity but also to establish that assisting the Southern Tier should be an *obligation* on the part of rich western nations.[77] The Southern Tier attempted to use its control over the raw materials needed for the manufactured goods of rich nations to force changes in the international order, with the goal of establishing some form of international economic equality.[78] These attempts were roundly rejected by Northern Tier nations,[79] however, who have never acknowledged any responsibility to ensure even a semblance of equality between Northern and Southern Tier nations. Northern Tier nations refused to vote in favor of the resolutions, never acknowledged any obligation to carry out their content, and worked tirelessly to make certain that western views of international law prevailed.[80] Such consistent and strident attack by western governments and scholars[81] prevented the proposals of the Southern Tier nations from attaining even the status of "soft law," meaning being at least an aspirational guide for governmental behavior. Indeed, the resolutions came to be viewed as radical and perhaps "socialist," which was a highly charged epithet

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and the international standard was the payment of "prompt, adequate, and effective compensation." *See id.* at 55. The literature of the time was voluminous, and since most of it was written in the West by western scholars it generally supported the position of western nations even as most of the nations of the world supported the posture maintained in the NIEO Declaration. *See* Gordon, *supra* note 2, at 56–60 (and citations therein). The point has been rendered moot, however, by a series of bilateral investment treaties, which set the standard as prompt, adequate, and effective. Given the proliferation of these treaties, this standard has become the standard and thus arguably reflects the practice and *opinio juris* of states. Kenneth J. Vandevelde, *A Brief History of International Investment Agreements*, 12 U.C. DAVIS J. INT'L L. & POL'Y 157, 168–75 (2005).

75. G.A. Res. 3281, *supra* note 4, at Chapter II, art. 2, at 2.

76. Gordon, *supra* note 2, at 53 (noting the conflict of economic interests between the capital exporting nations and capital importing nations, which was exacerbated by PSNR).

77. Just a cursory glance of some of the most important books and documents of the time gives some flavor of the obstacles poorer nations faced and the solutions they posed. *See, e.g.*, THE BRANDT COMMISSION 1983, COMMON CRISIS: NORTH-SOUTH: COOPERATION FOR WORLD RECOVERY, 30-47 (1983), *available at* http://files.globalmarshallplan.org/inhalt/coc_2.pdf; WILLY BRANDT, NORTH-SOUTH A PROGRAM FOR SURVIVAL, A REPORT OF THE INDEPENDENT COMMISSION ON INTERNATIONAL DEVELOPMENT ISSUES (1986) for a comprehensive summary and discussion of the salient topics and concerns. For a critical appraisal of the Brandt Report, see GILBERT RIST, THE HISTORY OF DEVELOPMENT 159–62 (2006).

78. *See* Gordon, *supra* note 2, at 53–56 (discussing that the movement for permanent sovereignty over natural resources established momentum for a New International Economic Order).

79. *Id.* at 59 (stating that opposition from the Northern Tier Nations was "immediate, uniform and adamant").

80. *See id.* (stating that the West disagreed with, and has never adopted, the NIEO resolutions).

81. James Thuo Gathii, *Good Governance as a Counter Insurgency Agenda to Oppositional and Transformative Social Projects in International Law*, 5 BUFF. HUM. RTS. L. REV. 107, 120 (1999). Gathii notes that other "soft law" norms such as an international bill of rights and international guarantees of environmental protection have attracted hostility from Third World governments.

during the Cold War.[82] They represented the antithesis of international economic relations because they seemed to undermine "the implicit assumption that the economic sphere is market driven, self-regulating and thus should not be subject to regulatory intervention" by governments who were soon deemed part of the problem.[83] With the economic disintegration of the Third World, the resolutions faded from view.[84]

IV
THE ECONOMIC COLLAPSE OF THE SOUTH & THE RISE OF THE WASHINGTON CONSENSUS

The Northern Tier nations' dissent from what they perceived to be radical ideas emanating from the South was not an idle one. Indeed, with an ideological Cold War raging in the background, they promoted development and established a rather elaborate edifice towards this end.[85] These efforts were, and still are, purely voluntary, however, as any right to development was and remains firmly and vociferously rejected by the West.[86] The West has written the development script, for the most part, prescribing which policies would be pursued, which segments of the population would be assisted, and when additional issues, such as the environment or basic needs, would be relevant or the key focus. If there is one common theme, it is that development policies tend to follow upon the prevailing ideology and latest trends in the West; hence, cycles of conventional wisdom have emerged as successive development theories surfaced, thrived, and expired as yet a new hypothesis gained credence.[87]

In due course, the Southern Tier was lured into expensive development projects they could not pay for[88] and that eventually trapped them under

82. *Id.* at 114–15 (contrasting the basic-needs approach advocated by human-rights activists with the more radical NIEO agenda, which attempted to transform international law).

83. *Id.* at 120–22.

84. Having lived and studied during this era, I found this to be actually quite a turn of events. These resolutions were the topic of scholarly writing and significant discussions for at least a decade.

85. The World Bank, originally created to rebuild Europe in the aftermath of World War II, became the leading development agency when the Marshall Plan fulfilled this role. Gordon, *supra* note 2, at 23–26.

86. *Id.* at 61–64.

87. *Id.* at 29–49 (discussing the various development policies that have emerged since the post-war dawning of development). The phrase "cycles of conventional wisdom" to describe development policies was coined by Nobel Prize–winning economist Paul Krugman. Paul Krugman, *Cycles of Conventional Wisdom in Economic Development*, 72 INT'L AFFAIRS 717, 723–24 (1996) (providing an overview of conventional wisdoms). Some of the development policies that have been used and discarded include, inter alia, basic needs in the 1970s, the environment and feminist concerns in the 1980s, and, by the 1990s, globalization and neoliberal policies. Gordon, *supra* note 2, at 29–30. Between 1950 and 1970, government-led development was trumpeted, and huge, unaffordable projects followed. *Id.* at 31–32.

88. *See* George, *supra* note 15, at 9. Credit was easy and extraordinarily cheap until 1981. For example, in 1975, interest rates were -1.3%; in 1980 they were only 1.8%. Governments were almost paid to borrow money. *Id.*

mountains of debt, some of which is still being repaid. Financial catastrophes in numerous countries soon followed.[89] By 1982 the debt crisis had reached disastrous proportions, for capital flows from private sources towards low- and middle-income nations had begun to seriously decline.[90] As International Financial Institutions (IFIs) became the lenders of last resort, they also acquired the power to impose Structural Adjustment Programs (SAPs) on deeply indebted Southern Tier nations,[91] which by the 1980s had become synonymous with IFI lending.[92] As Southern Tier nations struggled to repay their debts, they had to institute certain policies chiefly requiring privatization, liberalization, and reliance upon the efficiency of the market.[93] These nations adopted a variety of plans,[94] such as balancing government budgets[95] and

89. When the U.S. Treasury raised interest rates in 1981 to 8.6% in real terms, these nations were trapped. Having borrowed at variable rates, these nations were in effect buried under mountains of debt; financial catastrophes in numerous countries soon followed. The first occurred in Mexico in 1982. *Id*.

90. Debt has remained a persistent problem. *See* JAMES H. MITTELMAN & MUSTAPHA KAMAL PASHA, OUT FROM UNDERDEVELOPMENT REVISITED 79 (Timothy M. Shaw ed., 2d ed. 1997) (discussing the continuing challenges the Bretton Woods institutions pose on Third World countries); *see also* Daniel Cohen, *Towards a New Modus Operandi of the International Financial System*, *in* THE WASHINGTON CONSENSUS RECONSIDERED 150, 153–56 (Narcis Serra & Joseph Stiglitz eds., 2008) (detailing the debt crisis).

91. IFIs would lend only if the borrower adopted a SAP. *See* DE RIVERO, *supra* note 31, at 89–90 (discussing that SAPs were the only way for these nations to establish "creditworthiness"). For an analysis of whether or not IMF or World Bank conditionality is coercive, see Ariel Buira, Paper Prepared for the XVI Technical Group Meeting of the Intergovernmental Group of 24: An Analysis of IMF Conditionality, at 5 (Feb. 13–14, 2003).

92. The World Bank, which is largely controlled by U.S. interests (the president of the World Bank is always appointed by the United States), promoted SAPs as broad-based, enduring remedies for debtor nations. *See* WILLIAM EASTERLY, WORLD BANK, THE EFFECT OF IMF AND WORLD BANK PROGRAMS ON POVERTY 5 (2000), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=256883 (noting that the IMF and the World Bank use SAPs, which require policy changes from states in order to get loans).

93. Debt renegotiations mandated neoliberal structural adjustment as a precondition for relief. *See* MITTELMAN, *supra* note 90, at 75–76. Almost all low- and middle-income nations in Africa and South and Central America, as well as some of the transitional economies in East and Central Europe, have implemented SAPs. *See id.* These policies have generally succeeded in reducing government budget deficits, eradicating hyperinflation, and sustaining debt-payment schedules, all of which fit within the parameters of the coming Washington Consensus. *Id.* at 76.

94. For example, nations had to devalue their currencies and lift import and export restrictions. *See id*. When a currency is devalued, domestic goods become less expensive for foreign buyers, and foreign imports become more costly. The goal is to slow the purchase of expensive imports and make exports more attractive to other nations. Suzanne Slusser, The World Bank, Structural Adjustment Programs and Developing Countries: A Review Using Resource Dependency Theory 5, *available at* http://www.allacademic.com/meta/p_mla_apa_ research_citation/1/0/2/9/2/p102921_index.html. IMF loans, however, made such purchases possible, and of course those imports are sold by multinational corporations and other foreign businesses, often to the detriment of local concerns. Martin Khor, *The World Trading System and Development Concerns*, *in* THE WASHINGTON CONSENSUS RECONSIDERED, *supra* note 90, at 213, 227–29 (discussing the impact of IFI conditionality in conjunction with WTO trade rules on low-income countries). Poor nations were encouraged to focus on producing and exporting primary commodities such as cotton and coffee to garner foreign exchange earnings. But commodity prices are highly variable and unpredictable, being subject to the whims of global markets. Nations can invest in these crops and then prices can drop rather dramatically.

removing price controls and state subsidies.[96] Yet budgets were usually balanced on the backs of the most vulnerable members of society by radically reducing spending on education, health, and social programs.[97] As the stress on local communities became intolerable,[98] riots and unrest erupted in numerous poor nations, as people, quite literally, fought back.[99] Indeed, structural adjustment came to have such negative connotations that the World Bank and the IMF renamed SAPs the Poverty Reduction Strategy Initiative, although the underlying policies continued.[100]

In a slightly milder form, structural adjustment eventually evolved into the so-called Washington Consensus.[101] As originally formulated, the Washington

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Agricultural products are highly subsidized in industrial nations, and thus local farmers in poor nations find it difficult if not impossible to compete. *Id*. at 228; Gordon, *supra* note 30, at 99–102, 110–16.

95. A nation can balance its budget by raising taxes, or by reducing government spending, a step the IMF enthusiastically supported. The end result was often drastic reductions in government spending. Slusser, *supra* note 94, at 4–7.

96. PEET, *supra* note 47, at 51–53.

97. Subsidies often meant families could purchase needed staples, such as fuel and foodstuffs, at reduced prices. Since the most impoverished members of the population depend on such safety nets, SAPs had a disproportionate impact on the poor. Structural adjustment programs often mandated the eradication of subsidies that had been relied upon to manage and stabilize the prices of such fundamentals as food. Currency devaluations accompanied by the removal of price controls meant large price increases, which only pushed more people into poverty and worsened the suffering of the poorest members of the community. *See* MITTELMAN, *supra* note 90, at 76–77 (stating that the burden of adjustment fell most heavily on urban wage earners and women).

98. In numerous countries, IFI-mandated structural adjustment meant deteriorating standards of living, reduced access to public services, harsh environmental consequences, plummeting employment opportunities, and myriad other harmful effects. *See* MITTELMAN, *supra* note 90, at 77. It meant the destruction of local industry, increased reliance on food imports, devastated social services, and rising inequality. *Id.* at 76–77.

99. They fought back, both in the streets and with a damning analysis of structural adjustment. Riots to protest the IMF erupted in countries such as Peru and the Dominican Republic. Other protests and mass movements were organized across the globe. MITTELMAN, *supra* note 90, at 76.

100. To lessen the oftentimes cruel societal shocks of the economic restructuring and austerity measures mandated by SAPs, IFIs initiated social investment funds, which supported temporary relief measures that were intended to deflect political unrest until the benefits of neoliberal reform began to trickle down to the lower rungs of society. The underlying structural reasons for poverty, unemployment, and malnourishment, however, were never dealt with. WILLIAM I. ROBINSON, TRANSNATIONAL CONFLICTS 246–47 (2003).

101. Devised by John Williamson in 1990, the Washington Consensus quickly took on a life of its own. For Williamson's views of his original theory and his critique of its evolution, see John Williamson, *A Short History of the Washington Consensus*, *in* THE WASHINGTON CONSENSUS RECONSIDERED, *supra* note 90, at 14–30; *see also*, Council on Hemispheric Affairs, *The IMF and the Washington Consensus: A Misunderstood and Poorly Implemented Development Strategy*, July 17, 2005, http://www.coha.org/NEW_PRESS_RELEASES/New_Press_Releases_2005/COHA_Research_The_IMF_and_the_Washington_Consensus_A_Misunderstood_and_Poorly_Implemented_Development_Strategy.htm. The three big ideas of the original Washington Consensus were macroeconomic discipline, a market economy, and openness to the world with respect to trade and foreign direct investment. It probably grew beyond its original contours because it fit within an emerging-market-driven paradigm. Narcis Serra, Shari Spiegel, & Joseph Stiglitz, *Introduction: From the Washington Consensus Towards a New Global Governance*, *in* THE WASHINGTON CONSENSUS RECONSIDERED, *supra* note 90, at 3.

Consensus espoused fiscal discipline,[102] the redirection of public expenditure priorities,[103] tax reform, competitive exchange rates,[104] trade liberalization,[105] favorable conditions for foreign direct investment, privatization of state enterprises,[106] deregulation,[107] and protecting property rights.[108] Eventually, additional policies were attached to the Washington Consensus, some in response to the harshness of its policy prescriptions, but most originating in an evolving, almost fanatical devotion to market-based policy prescriptions.[109]

In a broader sense, the Washington Consensus was about ending nationalistic inclinations towards state-led development policies,[110] particularly policies that espoused import substitution or protected national industries and local agricultural production. The emphasis was on ending the state's role in both redistributing wealth and providing for the general welfare and on displacing theories that placed governments at the center of development

102. Fiscal discipline meant government budget deficits should not be more than 2% of GDP. PEET, *supra* note 47, at 52. It came to mean "accumulating large budget surpluses" that were not to be tapped even if the nation's citizens were suffering deprivation. *Id.*

103. Reordering government priorities came to mean spending less on health and education and forcing people to rely on their own resources to pay for them. George, *supra* note 15, at 5. Reducing public expenditures meant eliminating subsidies for many of the necessities that people depend upon, such as basic foodstuffs, energy, and the like, while tax reform meant lower taxes for the rich. *Id.*

104. Exchange rates were to be "sufficiently competitive to induce rapid growth in nontraditional areas." PEET, *supra* note 47, at 52. Flexible interest rates often meant rising interest rates, however, thereby strangling fledgling small businesses, the very same enterprises that provide job opportunities. *See* George, *supra* note 15, at 5. Williamson maintains that he should have framed "liberalizing interest rates" more broadly, in terms of "financial liberalization with prudential supervision." Williamson, *supra* note 101, at 17.

105. This entailed replacing quantitative restrictions on imports with tariffs in the ten percent range over a period of three to ten years. PEET, *supra* note 47, at 52.

106. Steven A. Ramirez, *Market Fundamentalism's New Fiasco: Globalization as Exhibit B in the Case for a New Law and Economics*, 24 MICH. J. INT'L L. 831, 835–36 (2003) (reviewing JOSEPH E. STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS (2002)) (asserting the virtues of private ownership, the failure of government ownership in the Eastern block, and that IFIs simply may have taken a good idea too far). Privatization meant a bonanza for wealthy local elites and multinational corporations that were in a position to buy state entities, while an open environment for foreign direct investment did not translate into the kinds of investment that created employment. *Id*. at 839–41.

107. Governments were pressed to abolish regulations that restrict competition. PEET, *supra* note 47, at 52.

108. George, *supra* note 15, at 5 (2007); *see* Dani Rodrik, *Goodbye Washington Consensus, Hello Washington Confusion? A Review of World Banks' Economic Growth in the 1990s: Learning from a Decade of Reform*, 44 J. ECON. LIT. 973, 978 (2006).

109. The original Washington Consensus called for "fiscal discipline; reorientation of public expenditures; tax reform; financial liberalization; unified and competitive exchange rates; trade liberalization; openness to direct foreign investments; privatization; deregulation; secure property rights." The augmented Washington Consensus appends "corporate governance; anti-corruption; flexible labor markets; WTO agreements; financial codes and standards; prudent capital account opening; non-intermediate exchange rate regimes; independent central banks/inflation targeting; social safety nets; targeted poverty reduction." *Id.* George terms it "content-creep." George, *supra* note 15, at 5; *see also* PEET, *supra* note 47, at 52–53.

110. George, *supra* note 15, at 6; Cohen, *supra* note 90, at 3. State-led development was the theory *du jour* during the 1900s. Gordon, *supra* note 2, at 22.

policy.[111] Instead, the state's function was to open the economy to private international actors, such as multinational corporations, banks, and other willing financial entities, and to insure "flexible labor markets" and full participation in WTO-ruled trade agreements. [112] Essentially, governments were to leave decisions regarding their "currency, employment, local businesses and domestic social structures to the judgments of self-interested outsiders whose main interest was profit and who possessed more financial power than these very same governments."[113]

These policies ultimately were a war on the poorest and most-vulnerable members of society and for many reasons were ineffective, failing to yield tangible, positive results.[114] Almost all low-income nations still rely on exporting raw materials, which does not create enough, or the right types, of jobs and is subject to highly variable prices;[115] low-income nations have been unable to attract foreign direct investment outside of this sector.[116] Debt[117] and debt

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111. IMF and World Bank conditions had an uneven effect, however. They were felt most heavily by urban wage earners. *See, e.g.*, MITTELMAN, *supra* note 90, at 122–23 (describing unrest in Brazil).

112. PEET, *supra* note 47, at 52–53.

113. The role and nature of the World Bank and the IMF have been vigorously challenged by economists, environmentalists, and Third World activists. They have charged these institutions with "secrecy, misallocation of funds, disregard for poverty reduction, and promotion of socially disruptive and ecologically harmful projects." MITTELMAN, *supra* note 90, at 78. Some see it as a self-interested "unelected and unaccountable global cohort [that] is entrenched in the commanding heights of [IFIs], callous to the pangs of the world's poor." *Id.* Others have noted that the power the IMF and World Bank have over poor nations has elevated these entities to a kind of "supranational high clergy," which preaches a particular and "single economic creed for the salvation of all underdeveloped countries from the nightmare of poverty and their emersion into emerging capitalist economies." DE RIVERO, *supra* note 31, at 56–57.

114. Even as some nations stabilized their economies, lowered inflation, and achieved modest economic growth, this only led to more imports, while poverty continued unabated. The most highly visible sign of failure was the collapse of the emerging economies of Asia. The IMF intervened with a multimillion-dollar financial package to save investors and transnational lenders from insolvency in Thailand, Indonesia, and South Korea. This totally contradicted free-market principles, which call for punishing reckless investors. DE RIVERO, *supra* note 31, at 58. Given the events of late 2008, one could say we have not seen anything yet.

115. Most nations have tried to reduce their dependence on export earnings and national incomes, which are highly dependent on commodity markets. *See* United Nations Conference on Trade & Development, *supra* note 68, at IV. These markets tend to be volatile, making long-range planning difficult. Yet diversification in industrial development is a complex and time-consuming process that is not possible without capital formation and the requisite skills. In 2008, commodity prices were actually higher than their peaks in the mid-1990s, an upward trend resulting from increasing demand from fast-growing, middle-income nations such as China. *Id.* As commodity prices become increasingly linked to general and financial markets, they have become a more important policy issue. *Id.* But the plummeting world economy at the end of 2008 means this upswing may be weakening, even as western nations implement huge government-sponsored projects that will in all likelihood be inner directed.

116. DE RIVERO, *supra* note 31, at 129–30 (discussing kinds of production in poor nations and unlikelihood of attracting the kind of foreign investment drawn to Asia).

117. Some of these funds were appropriated by despots who used it to line their own pockets or to subjugate their people. Termed "odious debt," these loans were not incurred for the benefit of the nation or its people, but to boost despotic regimes and repress the population if it attempted to rebel. *See* George, *supra* note 15, at 10. It is questionable whether successor governments should be responsible for such debt or if it should be the responsibility of the despot who contracted it. *Id.* This is especially questionable if the lender was aware of whom it was lending to and what the loan was

repayment[118] only cemented Northern Tier control, requiring hard currency and driving numerous other policy choices.[119] The repayment statistics are astounding,[120] and the massive outflow has not been offset by Northern Tier to Southern Tier capital inflows.[121] Sadly, this paradigm has created yet more poverty and inequality and has not led to the desired growth.[122] Instead, financial market dominated globalization has made a select few very rich and the masses generally poorer[123] and, just as distressingly, even more voiceless.[124] As for the promised land of modernization, no industrialized country, including

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contracted for. *Id.* During the Cold War many funds went to dictators whose only saving grace was being against communism. *See* Gordon, *supra* note 2, at 32–33 (noting that the Cold War was the "primary consideration in U.S. policy toward the Third World").

118. The IMF meets with debtor countries to determine "the proportion of export revenues a country can expect to pay in debt service." George, *supra* note 15, at 10. For example, in 2006 it predicted that Brazil would be paying fifty-five percent of the value of its exports of goods and services, meaning Brazil could use whatever was left to meet the needs of Brazilians. Yet Brazil is a large, middle-income nation that is growing and has a favorable export outlook. *Id*.

119. Poor and middle-income nations must make these payments in hard currency, which can be obtained only through exports (including the export of people such as migrant workers). *Id.* Many smaller countries are dependent on two or three basic commodities, however, where declines in exports are rampant and subject to fluctuation. *Id.* The U.N. Conference on Trade and Development noted that between 1977 and 2001, average yearly declines in the prices of commodities grew. *Id.* Foodstuffs prices were down 2.6%, tropical beverage prices declined 5.6%, and oilseed and oil prices were down 3.5%. Most of these items are produced by small stakeholders. *Id.* Metals, on the other hand, are produced by larger entities and did slightly better, losing ground at a rate of 1.9%. *Id*.

120. Eastern bloc nations have become what appear to be permanent debtors. *Id.* at 9. The numbers are indeed astounding. The most egregious example is sub-Saharan Africa, given its impoverishment and supposed debt-relief promises by the G-8 and IFIs. In 2004, nations within sub-Saharan Africa paid their creditors (mostly public institutions) $41 million a day, $1.7 million an hour, or $28,000 a minute. *Id.* Africa paid $15 billion on debt of $220 billion, comprising 6.8% of its economy. In 2004, Latin America disbursed $331 million a day, $13.5 million an hour or $230,000 a minute. It had $770 billion in debt and disbursed $121 billion in debt service. *Id*.

121. Thus, in 2004, $204 billion total flowed from the Northern Tier to the Southern Tier, while $478 billion streamed South to North, meaning a net Northward transfer of $274 billion. Of North to South flows, $78 billion came from official public Overseas Development Aid and $126 billion from migrant worker remittances. South to North flows included debt service of $374 billion and MNC repatriations of profit and capital of $104 billion. George, *supra* note 15, at 10.

122. In part, this is due to the wealthy being able to subvert the political, regulatory, and legal institutions that benefit society for their own benefit. Many programs that enhance human capital, such as education and healthcare, essentially pay for themselves. But elites may not pursue such policies on their own under the neoclassical paradigm, nor will they support a wider distribution of opportunities and resources. Ramirez, *supra* note 11, at 11–12.

123. The Forbes list of world billionaires has generally been growing longer each year, as has the number of high net worth individuals. Of course, recessions and other economic slumps may adversely influence this general trend. *See* Luisa Kroll et al., *The World's Billionaires*, FORBES, Mar. 11, 2009, *available at* http://www.forbes.com/2009/03/11/worlds-richest-people-billionaires-2009-billionaires-intro.html. There are about 8.8 million, mostly in Europe and the United States. George, *supra* note 15, at 8. "Each owns more than a million dollars in assets over and above his principal residence," and their combined wealth is about $30 trillion. *Id.* "The combined GDP of the OECD countries amounts to $35 trillion." *Id.* It is possible that their combined wealth surpasses the $2.600 trillion in global Southern Tier debt. *Id.* Indeed, the combined fortunes of the three richest individuals in the world are greater than the combined GDP of the world's forty-eight poorest nations. George, *supra* note 15, at 8; *see also* Serra, *supra* note 101, at 4.

124. DE RIVERO, *supra* note 31, at 59; Ramirez, *supra* note 11, at 5 (noting that only an infinitesimal percentage of those with a stake in globalization have any real voice in it).

the United States, has relied solely on the market to industrialize.[125] Most, including China and the East Asian economies of Japan, Taiwan, and South Korea, continue to employ widespread government intervention whenever and however it is deemed necessary.[126] Thus, the nations that have managed to industrialize during the last twenty-five years have pursued policies that often contradict the market-driven prescriptions of the Washington Consensus and, given the financial meltdown, these nations appear to be poised to venture even further from free-market propositions.[127]

Yet the Washington Consensus continues to hold some sway in at least some IFI circles. And it still has its defenders, who are reluctant to admit that the theory is deeply flawed.[128] When Washington Consensus policies fail, its victims are told they have not worked hard enough, made themselves competitive enough, or waited long enough for the benefits to reveal themselves.[129] Some (so-called) developing nations do believe Washington Consensus policies are a necessary evil if they are to join the vaulted ranks of the industrialized.[130] Most, however, reluctantly adhere so as to avoid becoming international economic pariahs.[131] Nonetheless, there are few alternatives in the absence of a change in course on the part of IFIs,[132] and thus the question is the extent to which such a change is on the horizon.

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125. The United States intervenes through its huge military-industrial complex, which grants subsidies and supports the development of technology and employs many workers. DE RIVERO, *supra* note 31, at 59–60. Indeed, many nations view it as an unfair subsidy that is justified in the name of national security but gives an enormous boost to U.S. industry. Defense contracts are spread across almost all U.S. congressional districts, making individual projects difficult to kill. If there are any doubts that military spending, at least in part, is intended to support U.S. industry, one might recall the response to awarding part of a military contract to the European aircraft manufacturer, Airbus. Outrage and lawsuits soon followed. *See* Leslie Wayne, *U.S.-Europe Team Beats out Boeing on Big Contract*, N.Y. TIMES, Mar. 1, 2008, at Al, *available at* http://www.nytimes.com/2008/03/01/business/01tanker.html?scp=1&sq=military%20airbus%20contract&st=cse (discussing the contract upset and the outrage that ensued in Congress).

126. China and the East Asian economies of Japan, Taiwan, and South Korea relied on massive government intervention and state-directed development; free markets did not rule without regulatory controls. Ramirez, *supra* note 11, at 6; Cohen, *supra* note 90, at 41, 43–44.

127. Free-market efficiency only preserves the economic status quo, while the law entrenches power elites, which seek to solidify already existing power relationships in statutes or through the courts. Ramirez, *supra* note 11, at 5.

128. George, *supra* note 15, at 7. The World Bank has conceded some doubts as to its efficacy, however. DE RIVERO, *supra* note 31, at 93–94; Rodrik, *supra* note 108, at 974.

129. Rodrik, *supra* note 108, at 977–78.

130. DE RIVERO, *supra* note 31, at 57.

131. *Id*. The smaller and weaker a nation, the fewer choices it has to deviate from whatever policies are mandated, and the more likely it will be required to follow market, capital, and outsider friendly policies. African countries are the most defenseless before IFIs, although even larger Southern Tier nations such as Brazil have adhered to Washington Consensus principles. *Id*. at 42–45.

132. The World Bank, at least, has finally relented and determined that perhaps a one-size-fits-all, market-driven approach is not suitable for all nations, and has been abandoning the Washington Consensus. *See, e.g.*, Rodrik, *supra* note 108, at 973–77. The IMF, however, continues to assert that to the extent the Washington Consensus has been a failure, it is because policies have not been satisfactorily carried out. *Id*. at 977.

IFIs adopted and persisted in pursing Washington Consensus policies because U.S. doctrine, and consequently development policy, has professed an abiding faith in markets, which have been touted as the source of wealth and economic development.[133] For the last twenty-five years, conservative, market-driven forces have controlled and dominated western discourse, and the power and centrality of markets has become ingrained as ideology; indeed, free-market forces have come to be how globalization itself is defined.[134] Because a neoliberal ideology is held by those who hold the power in IFIs and the governments that run the international economy, it has been imposed on the poor and almost-poor nations of the world.[135] It has made globalization an apparatus that favors financial and corporate sectors as well as a strong force for exploiting cheap labor.[136] In short, neoliberal globalization has fortified the Northern Tier's stranglehold over the South. But now it is the global North that is in severe trouble, and it may be that the dynamic is changing once again.

V

GLOBAL ECONOMIC COLLAPSE AND THE RISE OF A NEW SOUTHERN TIER

In the last quarter of 2008, the U.S. financial system seemed to be on the verge of near total collapse and threatened to take the rest of the western financial system down with it.[137] The U.S. government pumped massive sums of money into failing banks, insurance companies, and other entities; central banks in other nations also undertook a variety of measures.[138] The nation of Iceland teetered on the edge of bankruptcy.[139] Wall Street, the hub of international

133. Ultimately, the Washington Consensus, like most development policies, is a product of politics more than anything else, and those politics emanate from western capitalism and from prevailing western philosophies and models. Gordon, *supra* note 2, at 36. IFIs such as the IMF and World Bank adopted policy prescriptions that reflected the prevailing market-driven ethos of U.S. policies, paradigms that were being vigorously pushed in the United States and abroad. George notes how close these institutions are to the U.S. Treasury Department. George, *supra* note 15, at 7. IFIs are structured to maximize the power of special interests to prevail, because officials move between IFIs and the private sector. They are notoriously nontransparent and are not monitored by the public, which has few tools with which to comprehend issues related to globalization. *Id*.

134. The overtly free-market approach of the Washington Consensus permeated IFIs and the U.S. government. Eisuke Suzuki, *The Fallacy of Globalism and the Protection of National Economies*, 26 YALE J. INT'L L. 319, 319 (2001). Western think tanks and policymaking forums disseminated market-based theories that were once considered on the radical fringe. George, *supra* note 15, at 7. These ideas eventually became so dominant that they rose to the level of ideology, thus becoming extraordinarily difficult to contest. Almost any article from that era extols the virtues of the market for development. *Id*.

135. DE RIVERO, *supra* note 31, at 61–62. Even middle-income nations had to adopt some of these policies when they were in need of IMF funds. *See id.* at 61 (discussing how more powerful countries like Brazil and India have very little power under the IMF and the World Bank).

136. Ramirez, *supra* note 11, at 6.

137. Jickling, *supra* note 6, at 1–2; Nanto, *supra* note 6, at 2–3.

138. *See, e.g.*, Nanto, *supra* note 6, at 36–40 (describing actions taken by various states).

139. *See e.g*., Penny Olson, *Iceland Teeters on Bankruptcy*, FORBES, Oct. 8, 2008, *available at* http://www.Forbes.com/2008/10/08/iceland-sovereign-currency-markets-currency-cx_po_1008markets28.html; Eric Pfanner, *Iceland is All but Officially Bankrupt*, N.Y. TIMES., Oct. 9, 2008, *available at* http://www.nytimes.com/2008/10/09/business/worldbusiness/09iht-

finance, indeed, the beating heart of capitalism, spiraled dramatically downward, losing fifty percent of its value in a matter of months.[140] By December 2008, the U.S. economy had lost 2.55 million jobs into a deepening recession;[141] the U.S. government granted funds to a U.S. auto industry that stood on the brink of bankruptcy, threatening the potential loss of up to three million additional jobs.[142]

Crisis often begets change, however, and this particular disaster is no different. The American people took the unprecedented step of electing a young African-American as their President, who will undoubtedly seek to regulate unregulated entities, markets, and instruments, and who professes that his focus will be Main Street rather than Wall Street.[143] The nations of the G-8 unequivocally became the nations of the G-20 as middle-income nations unambiguously took part in the discussions on how to restructure the international economic order; nations other than the United States moved front and center to propose new structures for the global financial system.[144] The West is now requesting funds from the Southern Tier and pondering the extent to which middle-income nations will insist upon influencing how the system is structured and operated.[145] In other words, it seems the days of unregulated, neoliberal, American-style capitalism are numbered, perhaps having planted the seeds of its own demise, or at least of its own rigorous revision.[146] Whether these changes will make a difference to those at the bottom of the international

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icebank.4.16827672.html?_r=1&scp=2&sq=iceland&st=cse. Iceland eventually entered into a financing package with the IMF. Nanto, *supra* note 6, at 30–32.

140. Jickling, *supra* note 6, at 1–2; Nanto, *supra* note 6, at 6.

141. Catherine Rampell, *Layoffs Spread to More Sectors of the Economy*, N.Y. TIMES, Jan. 27, 2009, at A1. On January 15, 2009, the second largest U.S. electronic retailer, Circuit City, declared bankruptcy and began the liquidation of its assets. This meant the loss of another 34,000 jobs. Stephanie Rosenbloom, *Circuit City to Shut Down*, N.Y. TIMES, Jan. 17, 2009, at B1.

142. Jackie Calmes, *Obama Asks Bush to Provide Help for Automakers*, N.Y. TIMES, Nov. 11, 2008, at A1. The three U.S. automakers faced different degrees of distress, but all were on the brink of varying levels of dislocation, with Ford being the relatively strongest. Funds were finally advanced to a perhaps doomed domestic automobile industry. For a brief history of the tribulations and situations of these companies, see Times Topics – Automotive Industry Crisis, N.Y. TIMES, http://topics.nytimes.com/top/reference/timestopics/subjects/c/credit_crisis/auto_industry/index.html.

143. *See* Editorial, *Government's Promise*, N.Y. TIMES, Jan. 20, 2009, at A32 (discussing a proposed $825 billion economic-recovery plan aimed at helping main street).

144. Nanto, *supra* note 6, at 44–45 (detailing the G-20 meeting on November 15, 2008). The members of the G-8 (or G-7 plus Russia) are Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, and the United States. The members of the G-20 are Argentina, Australia, Brazil, Canada, China, the EU, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey, the United Kingdom, and the United States. THE GROUP OF TWENTY: A HISTORY 8 (2008), *available at* https://www.g20.org/Documents/history_report_dm1.pdf. The G-20 was formed in 1999 at the behest of members of the G-8. The purpose was to include emerging market nations in discussions of the global economy. *Id.* at 5. It has evolved into a permanent and important voice in international economic discussions. *Id*. (detailing the evolution of the G-20 since its inception).

145. Nanto, *supra* note 6, at 4–5.

146. I am not so naive as to underestimate the forces supporting the status quo. The only claim being made is that the ascendancy of very different perspectives and voices may portend a new order, whether the ruling elites like it or not.

economic hierarchy remains an open question, but one surely worth exploring. Indeed, the current crisis may foreshadow the end of western economic dominance, which could mean improved prospects for the peoples of the Third World.[147] In fact, this crisis will inevitably have international implications, including different effects on various regions at various positions in the international economic hierarchy.

A. A Financial Crisis in the Making

As of January 2009, the United States appears to be at an extraordinary economic crossroads. The economy is shrinking faster than it has in a quarter of a century, with mounting job losses, retail stores closing by the score, and a credit market that is almost frozen, making it impossible to finance purchases.[148] The Great Depression of the 1930s is on the lips of commentators, economists, and citizens alike. Undoubtedly, the world is in the midst of a grave "financial crisis,"[149] for what initially began as a bursting U.S. housing bubble and a subprime-mortgage debacle has ballooned into a global financial crisis with some of the largest and most revered banks, investment houses, and insurance companies failing or needing bailouts.[150] An in-depth examination of the financial crisis is beyond the focus of this paper. Nonetheless, a broad outline of its contours is helpful in assessing its depth and thus the scope of the possible changes in its wake. Moreover, at its core is an ideology of growth by way of unfettered markets and deregulation, the same failed policies foisted upon the global South.

Some have traced the roots of the crisis to the boom and then bust of the technology bubble of the late 1990s, which led to sharply lower interest rates

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147. For example, there are persistent and constant refrains regarding China's human-rights record and its refusal to hold poor nations accountable as it grants assistance or aid. *See*, *e.g.*, DAMBISA MOYO, DEAD AID WHY AID IS NOT WORKING AND HOW THERE IS A BETTER WAY FOR AFRICA 107–11 (2009) (discussing objections to Chinese investment in Africa). But this complaint often rings hollow, for human rights are extraordinarily selective, and within the development context, human rights have been tied to so-called first generation human rights, such as the protection of private property, freedom of assembly, voting rights and the like. Gathii, *supra* note 81, at 120.

148. Rampell, *supra* note 141; Michael Barbaro, *Retailing Chains Caught in a Wave of Bankruptcies*, N.Y. TIMES, Apr. 15, 2008, at A1. The so-called middle class has finally hit the proverbial wall, having reached a breaking point where they can no longer supplement their incomes, which have been shrinking for decades, by borrowing against the diminishing assets they reside in, and as they watch their retirement and other investments (if they are so lucky as to have investments for retirement or otherwise) sink like stones. Although the financial-services industry undoubtedly bears the majority of the blame for the debacle resulting from their excesses, it is also clear that Americans have been highly leveraged, sometimes living beyond their means, at other times just trying to live. President Barack Obama, Inaugural Address (Jan. 20, 2008), *available at* http://www.whitehouse.gov/blog/inaugural-address.

149. Financial crisis has been defined as when "disruptions in financial markets rise to the level of a crisis when the flow of credit to households and businesses is constrained and the real economy of goods and services is adversely affected." Jickling, *supra* note 6, at 1.

150. By October 2008, "credit flows were essentially frozen, lender confidence had dropped to all time lows and the economies of nations around the world veered toward recession." Nanto, *supra* note 6, at 2.

that in turn fueled a housing bubble.[151] This caused the demand for mortgages to increase dramatically, and, in an unregulated environment with little government oversight, the quality of those mortgages declined.[152] By 2007, some of these loans began to sour, default and delinquency rates began to rise,[153] and the rising number of foreclosures resulted in housing prices tumbling even further.[154] Still, the relatively minor subprime market cannot alone account for the cataclysm that has followed.[155] Rather, the securitization of those mortgages and the complex financial instruments that packaged, divided, and resold both risky and standard mortgages are at the core.[156] These instruments are held by numerous financial entities, and their worth is in severe doubt, meaning the worth of the institutions holding them is in doubt.[157] In addition, given the rather obvious risk of holding these assets, financial instruments such as credit default swaps (CDS) were created to cover the risk of default. Although CDSs were essentially insurance instruments, they operated outside of the regulated insurance industry, whose companies are required to keep reserves to cover outstanding obligations. Unfortunately, these particular commitments are now being called, and there are insufficient funds to compensate the holders.[158] It

151. Some commentators trace the roots to the Asian financial crisis, which led to money fleeing Asia and fueling the technology bubble. Nanto, *supra* note 6, at 32. When the technology bubble burst, recession and a steep decline in the stock market soon followed, and the Federal Reserve sharply lowered interest rates to contain the harm. Times Topics, *supra* note 142. Drastically lower interest rates made mortgages more affordable; demand for homes began to rise, and housing prices began to rise. *Id*. Lower interest rates also triggered the refinancing of existing mortgages. *Id*.

152. For example, loans were fully leveraged, meaning the borrowers committed none of their own funds, such as down payments, and buyer creditworthiness was not always verified. Nanto, *supra* note 6, at 7; Times Topics, *supra* note 142.

153. Delinquency rates and defaults began to rise in 2006, although lending rates did not decelerate. Times Topics, *supra* note 142.

154. *Id*. The crisis was worse where the boom was loudest: Miami, Las Vegas, and parts of California. Lenders lent money to people they knew probably could not afford to repay the loans, and in instruments such as adjustable-rate mortgages that would only become even more expensive over time. Some borrowers were assured that they would be able to refinance adjustable-rate mortgages when the rate adjusted upwards. But this hinged on the underlying asset being worth more when it came time to refinance. Instead, homeowners, many of whom had not made down payments, found themselves paying mortgages on homes worth less than their mortgages; of course, refinancing was out of the question. *Fresh Air Interview with University of Maryland School of Law Professor Michael Greenberger* (NPR radio broadcast Sept. 17, 2008) [hereinafter *Greenberger Interview*].

155. Jickling, *supra* note 6, at 1.

156. Banks and other entities devised a variety of instruments, including securities that could be bought and sold to investors. Jickling, *supra* note 6, at 2–5; Nanto, *supra* note 6, at 8–13. Banks traditionally made and held mortgage loans. These loans were backed by local deposits. Over the last thirty years, however, mortgage financing has shifted increasingly to investors in the bond market. The mortgages, as well as other debt, were securitized and offered to many investors. They were "sliced and diced" into various instruments and resold as yet another kind of security, all based on the wager that people who could not afford to pay their mortgages would somehow be able to pay them. *Greenberger Interview*, *supra* note 154.

157. Jickling, *supra* note 6, at 3–5.

158. These impossible-to-value instruments are sitting on balance sheets in unknown amounts, causing still more uncertainty. CDSs have also proven impossible to value, and no one is quite sure how many are in circulation, causing rampant uncertainty as banks are hesitant to lend to other banks or institutions that they fear may be insolvent. *Greenberger Interview*, *supra* note 154; Jickling, *supra* note

would be serious enough if this were the end of the chronicle, but unfortunately it is not. Instead, languishing on numerous balance sheets are myriad other investment vehicles whose values are unknown and for which there is no underlying cash to meet obligations if they are called.[159] It became increasingly apparent that many banks and other financial institutions were tainted with "toxic mortgages" and their derivatives,[160] and by last quarter 2008, with losses mounting, they began to fall like dominoes. Investment banks,[161] insurance companies,[162] and the nation's two biggest mortgage entities, Freddie Mac and Fannie Mae, failed or had to be rescued.[163] This credit crisis spilled over to Main Street, as credit markets froze and banks stopped lending to consumers and businesses alike.[164] But neither the United States nor other governments stood idly by.[165] The Federal Reserve and foreign central banks used every weapon in their arsenals to keep the system afloat,[166] including a $700-billion assistance

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6, at 2–5 (describing various financial instruments, their riskiness, and the uncertainty regarding their value).

159. *Greenberger Interview*, *supra* note 154, at 2–4. Some of them are so complex that the CEOs of the institutions that own them do not understand the assets and obligations on their own books. *Id*.

160. Times Topics, *supra* note 142. In June 2007, two hedge funds owned by Bear Stearns that had heavily invested in the subprime market collapsed. *Id*.

161. By September 12, 2008, there were talks regarding saving Lehman Brothers. When these talks failed and the firm failed, the financial world was shaken to its very core. It also became clear that Merrill Lynch, an institution previously thought sound, was in trouble; it sold itself to Bank of America. *Id.* Bear Stearns was acquired by J.P. Morgan Chase in a deal brokered by the Federal Reserve. Jickling, *supra* note 6, at 13–14.

162. On September 16, 2008, the U.S. government rescued AIG, which was on the verge of bankruptcy due to its exposure to CDSs. Jickling, *supra* note 6, at 15.

163. In August 2008, the government became increasingly concerned about the stock prices of Fannie Mae and Freddie Mac, government entities at the heart of the U.S. housing market; and in September 2008, they were effectively nationalized. *Id.* at 14–15.

164. Credit-card limits were reduced, auto loans and other borrowing froze, mortgages became increasingly difficult to obtain, and consumer spending tumbled. *See*, *e.g.*, David Leonhardt, *Economy Shrinks as Consumers Cut Back*, N.Y. Times Economix Blog, Oct. 30, 2008, http://economix.blogs.nytimes.com/2008/10/30/economy-shrinks-as-consumers-cut-back/. Businesses were unable to finance the kinds of short-term borrowing that keeps many companies afloat. Louis Uchitelle, *Steep Slide in Economy as Unsold Goods Pile Up*, N.Y. TIMES, Jan. 31, 2009, at A1. Indeed, even compliant debtors have been forced into bankruptcy as banks began to demand immediate repayment. For example, because banks have perceived that the underlying value of assets such as newly built houses or land purchased for development have deteriorated, they have begun to demand that builders immediately repay the entire building loan, even if the builders have made every single payment. Small builders unable to come up with the cash have been forced into bankruptcy. John Collins Rudolph, *Banks Foreclose on Builders with Perfect Records*, N.Y. TIMES, Jan. 20, 2009, at B1.

165. *See supra* notes 160–64 and accompanying text discussing the rescues of Bear Stearns and AIG, among others.

166. For example, the Federal Reserve dramatically cut short-term interest rates and pumped billions into the banking system in an effort to keep it afloat. As of 2008, U.S. interest rates were at an all-time low, currently between 0% and 0.25%. Edmund L. Andrews & Jackie Calmes, *Fed Cuts Key Rate to Record Low*, N.Y. TIMES, Dec. 17, 2008, at A1. Investors have flocked to U.S. bonds, seeking safety in an exceedingly turbulent financial world. Investors might be willing to undertake negative rates, knowing their funds will at least be safe. BBC News, Q&A: U.S. Rate Cut, Dec. 17, 2008, http://news.bbc.co.uk/go/pr/fr/-/2/hi/business/7787484.stm.

package.[167] The Troubled Asset Relief Program (TARP) has been fraught with difficulties, however, and its effectiveness remains uncertain.[168] It definitely has not halted a deepening recession that threatens to become a depression.[169]

B. International Dimensions of the U.S. Financial Crisis

Although the crisis began with the subprime debacle in the United States,[170] it has metastasized far beyond U.S. shores, widening into a global economic catastrophe.[171] The United States' position at the center of the international

167. Emergency Economic Stabilization Act of 2008, Pub. L. No. 110–343, § 115, 122 Stat. 3765 (2008); Times Topics, *supra* note 142; Jickling, *supra* note 6, at 15–16. The political battles and drama leading up to the passage of this legislation in the midst of a presidential campaign are fascinating. *See, e.g.*, Elisabeth Bumiller & Jeff Zeleny, *First Debate up in Air as McCain Steps off the Trail*, N Y. TIMES, Sept. 25, 2008, at A1; Elisabeth Bumiller & Michael Cooper, *Obama Rebuffs McCain on Debate Delay*, N.Y. TIMES, Sept. 25, 2008, *available at* http://www.nytimes.com/2008/09/25/us/politics/25mccain.html?scp=1&sq=obama%20rebuffs&st=cse.

168. Congressional efforts to insert some control over the disbursement and use of the TARP funds have been unsuccessful, and many Americans fear the money has simply gone down a deep, unaccountable black hole. *See, e.g.*, David Barstow & Mike McInitire, *Calls for Clarity in New Bailout for U.S. Banks*, N.Y. TIMES, Feb. 10, 2009, at B1. There has also been a great deal of controversy over executive compensation. For example, when Merrill Lynch rushed to pay annual bonuses to its employees before the deal with Bank of America closed on January 1, 2009, a firestorm erupted. Moreover, its chairman, John Thain, lavishly refurbished his office, with such items as an $87,000 rug, a $68,000 credenza, and a $1500 trash can. Julies Creswell & Louise Story, *Thain Resigns Amid Losses at Bank of America*, N.Y. TIMES, Jan. 23, 2009, at A1.

169. Plummeting home prices have led to the loss of "hundreds of thousands of jobs, ranging from [those of] bankers and real estate agents to [jobs in] construction . . . and furniture mak[ing]." Peter S. Goodman, *Deepening Cycle of Job Loss Seen Lasting Into '09*, N.Y. TIMES, July 2, 2008, at A1. Credit has become very difficult to obtain as banks impose tighter lending standards in the aftermath of ballooning mortgage losses. Credit, however, is what has fueled consumer spending in recent years, and it now constitutes seventy percent of the U.S. economy. Joblessness has been accelerating and employers have slashed working hours for those remaining on their payrolls, meaning shrinking paychecks. *Id*. With no cash machine in the form of refinancing mortgages for homes that are now depreciating assets, shrinking credit from credit-card companies, dwindling paychecks, and rising unemployment, Americans are simply tapped out. Indeed, it has reached a point at which even credit-card companies, facing an avalanche of defaults, are negotiating new terms. This situation is expected to last well into 2009 and perhaps 2010. Indeed, one must wonder what will become of an economy that is built on consumer spending when consumers can no longer spend. And then there is the possibility that at least two of the three major auto companies would permanently close their doors, adding up to another three-million people to the unemployment rolls. With the U.S. economy facing an utter catastrophe, a bailout was structured, albeit this one with numerous conditions and an attempt by some to break the United Auto Workers. Times Topics, *supra* note 142. Toyota has faced its own difficulties as the U.S. car market has simply collapsed. Toyota posted the first loss in its history in 2008. Hiroko Tabuchi, *Toyota Posts an Annual Loss*, N.Y. TIMES, May 9, 2009, at B2. Japanese automakers have sought the survival of U.S. auto makers, given their shared supply lines. Ian Rowley, *GM Bankruptcy: What It Means for Asian Rivals*, CUSTOMER RELATIONSHIP MGMT. DAILY, June 3, 2009, *available at* http://www.crm-daily.com/news/GM-Bankruptcy-and-Asian-Carmakers/story.xhtml?story_id=100000A17HUK&full_skip=1.

170. Subprime lending also took place in Great Britain. Nanto, *supra* note 6, at 24.

171. "What began as a bursting of the U.S. housing market bubble and a rise in foreclosures has ballooned into a global financial and economic crisis." Nanto, *supra* note 6, at Summary. "The World is witnessing unprecedented turbulence in international financial markets, a financial crisis that has the potential to affect every country and household around the world." *Managing The Global Economy Through Turbulent Times*, HM TREASURY CABINET OFFICE, December 2008, at 5, *http://www.hm-*

financial system partly accounts for the widespread effects.[172] In addition, some foreign banks were exposed to the same toxic assets contaminating U.S. banks, which has led to the same crisis in confidence affecting U.S. banks.[173] In any case, as confidence in the global financial system deteriorates, many nations have been compelled to intervene in their domestic economies to varying extents and to coordinate expansive efforts with other nations.[174]

The consequences in middle-income, "emerging market" nations, has been mixed thus far,[175] hitting the nations of Eastern Europe the hardest.[176] The effect has been somewhat different in Asian nations, where there has yet to be a large scale bankruptcy or rescue of a major financial institution.[177] In the aftermath of the Asian financial crisis during the 1990s, Asian nations have accumulated foreign reserves in case they face another financial crisis.[178] This has been part of

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treasury.gov.uk/d/managingtheglobaleconomy_081208.pdf [hereinafter, *Managing the Global Economy*].

172. It seems that a crisis in the United States still affects the global economy. Nanto, *supra* note 6, at 3. "Regional financial crises (such as the Asian financial crisis, Japan's banking crisis, or the Latin American debt crisis) can occur without seriously infecting the rest of the international financial system." *Id*. Emerging-market nations have been trying to "decouple" their economies from western economies to provide insulation from economic shocks in the West. *Id.* at 17. This crisis proves that this effort has not been entirely successful. *Id*. at 18.

173. Thus, just as U.S. banks lost confidence and refused to lend to each other or anyone else, this crumpling of confidence also hit European banks, making the credit crunch a worldwide phenomenon. *Id.* at 23.

174. Thus far, eighteen industrialized nations have taken various actions either in the form of bank guarantees, capital injections, purchasing bank assets, or various other actions. *Id.* at 13–14 (chart detailing the nations that have taken action, the type of action taken, and in what amount where applicable).

175. For example, investors have "fled stocks and debt instruments for the relative safety of cash, often held in the form of U.S. Treasury or other government securities. It has increased the demand for dollars," but it has also made the demand for other currencies plummet, and shrinking currency values have made debt servicing more expensive. *Id.* at 12. Because of the high demand for U.S. Treasury notes, the United States did not have to raise interest rates to attract the funds needed to finance its bailouts. *Id*. at 12–13. Currencies that had been appreciating relative to the dollar have sharply declined. When combined with weakening stock markets, national governments have had to take drastic measures to avoid financial collapse. Weakening stock markets means a deteriorating capital base that along with more expensive debt servicing has proven to be intolerable. *Id*. at 13.

176. Nanto, *supra* note 6, at 18. Eastern European nations have been so affected because of their high dependence on foreign capital to finance their growth, and thus they were highly vulnerable when foreign capital came to a virtual standstill. *Id.* at 15. It also became more expensive to finance foreign debt. Some have had to turn to the IMF for emergency lending. *Id.* at 16. Because European banks account for most loans to Eastern European nations, they have been the most vulnerable and the most affected. *Id*. at 20. Russia stands alone as an industrialized nation that is highly dependent on the export of oil. For a more detailed account of the effect of the economic crisis on Russia, see *id*. at 21–22.

177. *Id*. at 32. With the exception of South Korea, leverage in Asia has been comparatively low, with nearly all East Asian nations running current account surpluses. *Id*. But the possibility of more widespread disruption is certainly not unfathomable. For example, although not in bankruptcy, the Chinese auto industry has experienced an unprecedented slowdown and has pressed the government for a bailout. Keith Bradsher, *Facing a Slowdown, China's Auto Industry Presses for a Bailout from Beijing*, N.Y. TIMES, Nov. 19, 2008, at B5.

178. Nanto, *supra* note 6, at 16. "[M]any Asian emerging market economies enacted a policy of foreign reserve accumulation as a form of self-insurance in case they once again faced a sudden stop of capital flows and the subsequent financial and balance of payments crises that result from a rapid

an effort to decouple Asian economies and growth prospects from those of industrialized nations.[179] The current crisis demonstrates that this effort has been only partly successful, and perhaps it can never be achieved in a global economy.[180] Asian nations are certainly suffering the secondary effects of the crisis, having pursued an export-led growth strategy directed towards the United States and other markets that makes them vulnerable as western economies dramatically contract,[181] consumption declines, and imports from nations such as China decrease.[182] Asian governments have been forced to support domestic financial systems and have adopted fiscal stimulus packages to maintain growth;[183] indeed, China will pump more than $550 billion into government funded projects over two years.[184] Thus, Asian governments face challenges, perhaps immense challenges. But at this point they seem to be the best positioned to weather the storm, albeit on what appears to be a sinking ship.

VI
TOWARDS A NEW, NEW INTERNATIONAL ECONOMIC ORDER

The relative postures of Asian and western nations are at the heart of what is bound to be a new international economic order. There is little doubt that citizens of other nations, and perhaps many U.S. citizens, believe that the economic crisis is due to an unfettered faith in markets, unmoored from government regulation. Governments are already coalescing to construct

tightening of international credit flows. . . . These reserves provided a sense of financial security to [emerging-market] countries. Some countries, particularly China and certain oil exporters, also established sovereign wealth funds that invested the foreign exchange reserves in assets that promised higher yields." *Id*. at 16–17.

179. *Id.* at 17. These nations have "diversified their economies, achieved high growth rates and become important players in the global economy." *Id*. at 18 (quoting Cigdem Akin & M. Ayhan Kose, *Changing Nature of North-South Linkages: Stylized Facts and Explanations*, INTERNATIONAL MONETARY FUND WORKING PAPER 07/280, *available at* http://www.imf.org/external/pubs/ft/wp/2007/wp07280.pdf).

180. Even as Asian banks hold few of the toxic assets affecting U.S. and European banks, their financial systems have not been immune. Moreover, the Japanese stock market lost half of its value in 2008, and the South Korean stock market and currency has plunged. Nanto, *supra* note 6, at 33 (detailing the effect on Japan, South Korea, and China).

181. This has permitted them to generate huge trade surpluses. "A sharp rise in commodity prices between 2004 and the first quarter of 2008 left many oil-exporting economies and other commodity-based exporters with very large current account surpluses." *Id*. at 16–17.

182. The Chinese economy is decelerating, and China's export-led growth is slowing. *See id.* at 33–34; China's Economic Growth Slows Sharply, CNNMONEY.COM, Jan. 22, 2009, http://money.cnn.com/2009/01/22/news/international/china_growth.reut/index.htm; Chris Hogg, *Growth Slows but China is Not Collapsing*, BBC NEWS, Jan. 22, 2009, http://news.bbc.co.uk/go/pr/fr/-/2/hi/business/7844281.stm.

183. Nanto, *supra* note 6, at 34. The governments in "Japan, South Korea, Hong Kong, Singapore, Malaysia, Australia, New Zealand, Indonesia and elsewhere have been forced into a range of moves to support domestic financial systems, pumping money into financial markets, issuing guarantees for bank deposits, and providing fiscal stimulus to keep growth strong and slow declines in local stock markets." *Id*.

184. *Id.* at 38.

regulatory systems that will be coordinated between major nations and perhaps involve a larger role for the IMF.[185] The United States is likely to occupy a lesser, albeit still important, position within such a system, but there will be a bigger cast, and the other participants will play greater roles. Some are looking towards Asian reserves as a resource to assist, or perhaps rescue, the global economy.[186] Asian reserves are suggested as a potential funding source for the IMF or for individual nations in need of assistance.[187] But it seems almost axiomatic that if these nations supply funds, they will want an enhanced position in setting policy.[188]

Accordingly, when the nations at the top of the international economic order met to discuss how to address the crisis and to begin determining how the new system should function, the hierarchy was wider, broader, and included people of color; it was the G-20 rather than the G-8, with such nations as India, China, Brazil, South Africa, and Mexico at the table. These nations have very large numbers of poor people and people of color, as do their neighboring nations. Some of these nations are quite familiar with economic prescriptions from the IMF, World Bank, and industrialized nations, and they have recently witnessed financial and other crises. This knowledge and immediacy cannot help but loom large in their deliberations on structuring the international system. Indeed, even if it is shaped by self-interest, their interests are different from those in the West, which has long been industrialized and has long possessed the ability to care for all of its citizens (whether they have chosen to do so, of course, is another matter).

185. Great Britain has been at the forefront of this effort to generate a wide-ranging framework and a set of general and specific proposals. *See, e.g.*, *Managing the Global Economy*, *supra* note 171, at 15–16 (suggesting a broad range of measures to govern the global economy); Alistair Darling, *UK Objectives for the G20 in 2009*, HM TREASURY, LETTER TO G20, (Jan. 7, 2009). President Barack Obama has also announced that his administration will regulate or outlaw the financial instruments responsible for the crisis. Stephen Labaton, *Obama Plans Fast Action to Tighten Financial Rules*, N.Y. TIMES, Jan. 25, 2009, at A1.

186. The evolving power relationship is fascinating, as China finances the U.S. bailout, the United States seeks funds from China, and the latter appears to be rapidly moving closer to the apex of the international economic hierarchy, while U.S. influence wanes beneath a failing system and mountains of debt. China is a major buyer of U.S. treasuries, and some commentators have speculated that those reserves might be used to prop up the system by shoring up financial institutions in the United States and elsewhere. Nanto, *supra* note 6, at 38. Some speculate that China might use their reserves to buy U.S. debt securities, which will be issued to fund the hundreds of billions of dollars the United States will expend to purchase troubled assets and stimulate the economy. *Id*. Indeed, it may be that President Bush made such a direct request to China's President. *Id*. The President purportedly made a call to President Hu on September 21, 2008 to discuss the global financial crisis and steps the United States planned to take to address the crisis. *Id*. An unnamed Chinese official stated the purpose of the call was to urge China to hold even more U.S. Treasury bonds and U.S. assets. *Id*. Such dependence on Chinese funding will undoubtedly affect U.S. power and influence regarding China.

187. *Managing the Global Economy*, *supra* note 171, at 9; Nanto, *supra* note 6, at 35.

188. This includes determining the nature of probable regulation and how support is structured. Nanto, *supra* note 6, at 35. Asian leaders have sought to create regional mechanisms to separate themselves from a global economy dominated by Europe and the United States. *Id*. Although they have thus far been unsuccessful, it is not inconceivable that these efforts will be revived.

Finally, the leadership at the top of the hierarchy has changed. Even as U.S. influence wanes, it is and will remain a major player in the international economy and in the development paradigm that it has largely created and directed.[189] The new U.S. President might bring hope not only to Americans, but also to poor people all over the world. Early in his career he chose to work with and advocate on behalf of poor people, and he has expressed a profound interest in helping those who are economically powerless.[190] Moreover, he sought to do so by according people agency and control over their lives.[191] Perhaps this attitude can signal a new direction among IFIs.

So what might the new, new international economic order look like, and could it operate more to the benefit of the poorest members of the economic community? In the short run, with the looming economic crisis, the poor are likely to suffer more as richer nations attempt to shore up their own economies and take care of their citizens. Though IFIs have called for attention to the poorest nations[192] and President Obama has vowed not to forget them,[193] insufficient resources may simply render this attention and remembering futile. Moreover, as the world plunges into the deepest recession in fifty years, demand for commodities is bound to fall, thereby weakening export earnings. Because economic pain, misery, and suffering trickle down, and because the poor, not-so-rich, and middle-income nations often lack the safety nets that are at least an option for richer nations, the poor will be more adversely affected than the rich.

Moreover, poor nations have not been invited to the discussions on the future of the international economic system.[194] They still reside on the periphery and are not parties to the policymaking that either ignores them or determines their fortunes.[195] But of course that is one of the markers of the powerlessness that comes from poverty and from thus being at the bottom of the hierarchy. It is part of being in the working class or among the poor, and it is part of why everyone would rather be designated middle class. Thus the prospects for reform must come from the hope that policymakers will support different policies and decisions regarding low-income nations.

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189. The United States has always held the presidency of the World Bank, and the prevailing ideology of the World Bank has shaped development policy. Gordon, *supra* note 2, at 9–11.

190. OBAMA, *supra* note 12, at 149–86.

191. *See generally* OBAMA, *supra* note 12.

192. *See* Gordon, *supra* note 10, at 100 (noting the great deal of involvement IFIs have with poor countries).

193. President Barak Obama, *supra* note 148.

194. Only twenty nations were present at these discussions, although to the extent many of these nations have large numbers of poor people, the conversation has clearly broadened.

195. Gordon, *supra* note 10, at 101–06. South Africa is the only sub-Saharan African nation represented in the G-20, and it does indeed straddle the fence between the global north and south. It is an industrialized nation with a majority African population, and since 1992 it has been under black majority rule. Yet its economic structure remains white-dominated. Because it is an industrialized nation on a poor continent, it is in a unique position to affect what happens in that area of the world. Thus far, South Africa has had little effect on the wider poverty found on the continent.

Perhaps there is some notion of racial or postcolonial solidarity whereby people of color or those who share memories of colonialism and domination might be more sympathetic to the very poor nations of the world.[196] But, of course, race is a complex subject on the international stage and might not be congruent with American racial constructs.[197] Indeed, racism might be quite rampant within a variety of quarters, and given the expansiveness of the international landscape, there are simply no guarantees. Yet surely culture and local—or even national—constructs must count for something, unless we believe there is only one cultural lens through which to view the world, or that what currently transpires in IFIs and western capitals is somehow universal. Thus, the presence of people of color from nations with large numbers of poor people who bear some similarity to the poverty found in impoverished nations must matter and might make some difference.

Will low-income nations gain some semblance of the NIEO they sought decades ago, at least in the sense of a fairer system in which they have more control over their destiny? Perhaps they will, or perhaps they will not. Yet with exceptionally different leadership in the United States, indeed a president with an African father,[198] sitting with very new partners at a significantly expanded table, policy will undoubtedly be "new," and ideally, it will benefit the poorest nations. With these incalculable and affirmative developments, perhaps there is hope for a grand transformation or, at a minimum, for a positive change. Although its ultimate contours cannot be predicted, it is difficult to see how it could be much worse.

196. *Id*. at 111–12.

197. *Id.*; Ruth Gordon, *Racing U.S. Foreign Policy*, 17 NAT'L BLACK L.J. 1, 6–8 (2003); Ruth Gordon, *Critical Race Theory and International Law: Convergence and Divergence*, 45 VILL. L. REV. 827, 832–34, 839–40 (2000).

198. President Barack Obama is not only a person of color, but that and his having actually worked in poor communities might have led him to understand poverty and race in a way no previous U.S. President ever has. *See* OBAMA, *supra* note 12, at 149–86 (discussing President Obama's early work as a community organizer).