

1-15-2016

Development

Frank J. Garcia

Boston College Law School, garciafr@bc.edu

Follow this and additional works at: <https://lawdigitalcommons.bc.edu/lspf>

 Part of the [Human Rights Law Commons](#), [International Humanitarian Law Commons](#), [International Law Commons](#), and the [International Trade Law Commons](#)

Recommended Citation

Frank J Garcia. "Development", *Encyclopedia of International Economic Law*, edited by Krista Nadakavukaren Schefer and Thomas Cottier. Edward Elgar Publishing, 2016.

This Article is brought to you for free and open access by Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College Law School Faculty Papers by an authorized administrator of Digital Commons @ Boston College Law School. For more information, please contact nick.szydowski@bc.edu.

Development

Professor Frank J. Garcia
Boston College Law School

I Overview

At its deepest level, development is about aspiration—our longing for a better life as individuals and as a community—and respect, as we individually and collectively recognize and support these aspirations. Development requires both the freedom to define and choose that better life, and a fair share of the resources needed to realize that life. Development requires that we construct narratives of where we find ourselves in time, space and history with regard to our aspirations, and why; and narratives of where we want to go and what it will take to get there. This means that development inevitably takes place in and through politics and law, as we struggle to articulate both our aspirations and our claims to fairness, respect and resources; and the social sciences (especially economics), as we work to enhance and use wisely our own resources and to understand how development can occur sustainably within an environment of finite resources. This all means that development will necessarily raise difficult issues of causality, path dependence, responsibility and justice, and can lead to urgent and painful conflicts, but can equally lead to understanding and cooperation towards deeply shared aims.

A Core Questions and Issues

Development involves a series of fundamental and recurring questions. What *is* development? How do we measure it? What is its relationship to industrialization? Modernity? Consumerism? Is development the same as justice? As fairness? Should we focus on economic growth, or the realization of human capabilities?¹ Such questions underlie the evolution of development goals, from “modernization” and “overcoming dependency” in the 1950’s and 60’s to “structural adjustment” in the 1970’s and 80’s, to “poverty reduction” and “good governance” in the 1990s, to “sustainable development” in the new millennium.²

A related set of vexed questions concerns the drivers of development. What laws, policies and institutions are necessary to promote development? Or, framed in

¹ The influential capabilities approach to development emphasizes the importance of substantive freedoms and human flourishing, and led to the creation of the UN Human Development Index. See Amartya Sen, *Development as Freedom* (1999); Martha Nussbaum, *Creating Capabilities: The Human Development Approach* (2011).

² On the intellectual history of development, see Gilbert Rist, *The History of Development: From Western Origins to Global Faith* (Patrick Camiller, trans., Zed Books 4th ed., 2014); William Easterly, *The Elusive Quest for Growth: Economists’ Adventures and Misadventures in the Tropics* (2001); see generally *International Development* (Benedict Bull and Morten Boas eds. 2010).

the negative, why does underdevelopment persist? Is it the legacy of colonialism, necessitating remedial policies such as post-colonial reparations and corrective justice? Does colonialism itself persist and exert its force today through neocolonial economic and political structures and relationships? Or is underdevelopment a product of deficient domestic political and social institutions and policies, necessitating domestic institutional reform? To what extent is underdevelopment attributable to insufficient openness to and integration in the global economy? Or are the institutions and structures of the global economy themselves the cause of persistent underdevelopment?

B Dominant Narratives of Development

While there are many complex and nuanced accounts of development, one can discern two archetypal competing narratives, sketched in composite here.

From the developing country perspective, development is a human right, imposing obligations on the international community. The challenge of development lies in the legacy of European colonialism, and multilateral institutions continue to shape development processes and discourse throughout the former colonial territories. Development therefore requires fundamental change to the terms of engagement that structure participation in the global economy, and domestic policy space in the face of encroaching multilateral economic policies that would displace agency and dismantle domestic social policies as the price of globalization.

From the developed country perspective, development is a pragmatic market-driven process of economic growth cloaked within an aspirational “right.” Persistent underdevelopment is principally the result of protectionist economic policies, corrupt and inefficient domestic governance, and an obsession with the past instead of openness to the future. Successful development requires deeper engagement in the global economy, which offers investment and trade opportunities, and concomitant domestic policy reforms to eliminate unsustainable levels of public spending and shed remaining vestiges of non-market models.

C Common Themes in the Narratives

Whatever the narrative, one constant is the legacy of colonialism. There is no substantive disagreement about the exploitative and corrosive effects of colonialism. Rather, the issues lie with whether developed nations, as former colonialists, have an ongoing responsibility to both remedy the past and restructure a world economic and political system that (many argue) continues to follow colonialist lines.

A related theme is the relationship between development and engagement with the global economy. Market theories of development have coalesced around the controversial so-called “Washington Consensus” (a term first used and then

disowned by economist John Williamson) requiring the privatization of state enterprises, a reduction in public sector expenditures, and the increase trade and investment liberalization as conditions of development aid. Empirical debate over the efficacy of such measures rages, and is difficult to disentangle from the question of economic ideology, since Marxist and dependency theorists question whether a capitalist order could ever really support development goals.³

A third theme involves the role of domestic institutions in development. Ongoing attempts to identify key domestic policies of “successful” developing states and replicate these policies in other states have been shadowed by resentment towards what can often seem a simplistic and convenient “blame the victim” strategy. The issue is whether successful policies, if they can be identified, will work across a wide spectrum of socio-economic contexts, and which levels of governance (national or global) need to make the key reforms. Development organizations such as the World Bank have increasingly recognized the role of governance, shifting at least rhetorically from structural adjustment-style policies and neoliberal conditionality towards “good governance,” “best practices,” and “political” conditionality, while seeking to reform their own internal governance practices.

D The Legal Discourse of Development

Law plays an important role in development, both domestically (the rule of law and the “Law and Development” school) and internationally. Not surprisingly, many of the key international legal texts of development view development as a human right, and represent strategies—legal, political, rhetorical—for claiming space, resources, and public attention for development concerns at multiple levels of governance.⁴ Far from being simple instruments of positive law, these texts are many things at once: attempts to build consensus, to articulate effective language for rights and claims, to motivate change, to set benchmarks for progress, and to shift the discussion. They cannot be understood outside their context, the political conversation of which they form a constitutive part.

II Current Challenges to Traditional Thinking

³ See, e.g., Raul Prebisch, *The Economic Development of Latin America and Its Principal Problems* (1949); Paul Baran, *The Political Economy of Growth* (1957); and Andre Gunder Frank, *Capitalism and Underdevelopment in Latin America: Historical Studies of Chile and Brazil* (1967).

⁴ See Katherine G. Young, *Constituting Economic and Social Rights* (2012). Key legal texts include the UN Resolution on Permanent Sovereignty over Natural Resources (Dec. 14, 1962); the International Covenant on Economic, Social and Cultural Rights (1966); the UN Declaration for the Establishment of a New International Economic Order (May 1, 1974); the GATT Decision on Differential and More Favourable Treatment, Reciprocity, and Fuller Participation of Developing Countries, (Nov. 28 1979); the UN Declaration on the Right to Development (Dec. 4, 1986); and the UN Millennium Declaration (Sept. 18, 2000).

A Development and Globalization

Globalization has disruptive and transformative effects across the socio-legal landscape, including development. The most visible challenges relate to the economy. Empirically, there is great disagreement over whether closer engagement with a globalizing economy is increasing or reducing poverty, inequality and development. Systemic shocks such as global financial crises are particularly challenging to less resilient developing countries, facing problems they have not created, but which they are nevertheless subject to, with fewer resources. Globalization also challenges the viability of “domestic” policy, as it becomes increasingly difficult for any nation to map the boundaries of the “domestic” and to maintain policy space in the face of deepening interconnectedness.

B Development and the Environment

Environmental degradation, climate change and sustainability are truly global in effect, yet they pose unique challenges to developing countries. The world’s leading developed economies reached their current level of development through a process of “dirty” industrialization no longer sustainable or even legal, posing challenging questions for the international community. Moreover, there are simply not enough resources for all countries to enjoy that level of consumption, raising fundamental technical, economic, and fairness issues. Finally, it is widely recognized that the effects of environmental degradation through climate change could undermine any progress towards development: climate change is no respecter of national boundaries, capacities, or vulnerabilities.

C Development and the Post-Industrial Economy

A “post-industrial” economy in which knowledge and finance are the key drivers is particularly challenging, if not alarming, for developing countries, at a deep disadvantage when it comes to endogenous knowledge and finance resources. There is concern that WTO rules on IP protection and services liberalization lock in the economic dominance of the developed world, holding a near-monopoly on IP and service industries. Developing country efforts to capitalize on traditional forms of knowledge (patentable alternative medicines, for example) have been only intermittently successful, and the recent global financial crisis has highlighted the acute vulnerability of developing countries with endogenous finance capabilities.

III New Directions

A The Scale of Development

Given these macro trends and the failure of large expensive development projects, there is renewed interest in shifting the scale of development work towards a more localized and “participatory” models of development, with

international institutions taking a facilitative and monitoring role. There is renewed emphasis, even at the broadest levels of discourse such as the recent 2015 UN Summit on Sustainable Development, in adapting the global agenda to national conditions and situations.

B The Gender and Psychology of Development

There has been new attention on the role of gender in development, focusing on the differential impact of economic policies such as trade liberalization on women, and on the nature and valuation of their manifold contributions to the work and theory of development. The World Bank has recently reinvigorated the psychology of development approach (a focus on the internal, subjective element of development dating back to Abraham Maslow's 1940's work on a hierarchy of needs), seeking to address embedded decision-making behaviors of both developing country nationals and development professionals that create biases and interfere with the adoption and implementation of development policies.

C Development as the Aim of Global Justice

These trends have brought new attention to the relationship between development, poverty, inequality and global justice. Justice discourse (understood as "what we owe the poor") has long been part of development, including both corrective justice (reparations, postcolonial obligations) and distributive justice (reallocations of rights and resources, including wealth), and has usually focused on wealth transfers and other forms of assistance. What is new is the interest in re-framing the goal of justice away from assistance towards development, and along a broad capabilities front that includes but is not solely about distributive economic fairness.⁵

IV Conclusion: Beyond Development

Development discourse has begun to transcend the "developed" versus "developing" distinction itself. The erosion of this distinction is more than semantic—it heralds a "post-national" development discourse in which we no longer arbitrarily distinguish between the "local," comprising innovative, flexible and sustained community efforts to enhance opportunities and fulfill aspirations for all their members, and the "international," too often consisting of clumsy, formalistic and under-resourced projects and programs that pass for development. This could signal the end of both "development" and "global" justice, and the beginning of actual justice—inclusive, effective investment in human capabilities—for everyone.

⁵ On the global justice debate, see John Rawls, *A Theory of Justice* (1979); David Miller, *On Nationality* (1995); John Rawls, *The Law of Peoples* (1999); Thomas Pogge, *World Poverty and Human Rights* (2002). On the new emphasis on development, see Pietro Maffetone and Ryan Muldoon, "Two Views of Assistance," [forthcoming].