

INTERNATIONAL POVERTY LAW:

a Response to Economic Globalization

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This paper addresses the relationship between economic globalization and the theory and practice of poverty law in the United States. It suggests that poverty law must be ‘internationalized’ in order to scrutinize poverty in today’s conditions.² The degree to which redistributionist and transformative social agendas are viable absent such “internationalization” is the yardstick by which this need is to be measured. These agendas to reduce inequality and facilitate empowerment of the poor have been increasingly frustrated by some of the political and economic policies at the heart of economic globalization. Ironically, other aspects of globalization offer great promise for the realization of these agendas. Although this paper mainly addresses the challenges to such agendas, the potential for a proactive use of globalization is addressed in conclusion. Section One explains why the traditional domestic focus of poverty law theory and practice must be expanded. Precise areas where this expansion is needed are suggested in Section Two. By way of conclusion, Section Three proposes ways for poverty lawyers to address the challenges outlined in the foregoing Sections.

Two preliminary matters must be emphasized at the outset. First, this paper focuses primarily on particular aspects of economic globalization, not the other components of globalization, such as those relating to science and technology, popular

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² See JULIE A. NICE AND LOUISE G. TRUBEK, CASES AND MATERIALS ON POVERTY LAW THEORY AND PRACTICE 1 (1997) (suggesting that the mission of poverty law is to “engage in a process of scrutinizing poverty”).

culture, or legal entitlements to human rights. For present purposes, economic globalization is defined as the process by which free-market capitalism spreads across nation-states and is incorporated into domestic socio-political structure.³ Second, much of the relationship between globalization and poverty has been explored by scholars, most of whom writing from within the fields of international development or political science. Charting this relationship is by no means a new endeavor, nor is the idea of reinventing poverty law in order to account for international processes. The general contribution of this paper is to adapt and expand on that analysis for creating an area of research and advocacy that can be termed “international poverty law.” Again, this is distinct from revealing that certain subjects of poverty law are in fact international in cause or effect, or analyzing those causes or effects from the standpoint of development or political science disciplines. This paper is limited to exploring how this new discipline might be exercised by poverty lawyers, and, in so doing, it adapts some existing analyses and offers some original analyses as well. As such, this paper merely names and outlines what will likely prove to be a long journey.

1. *Rationales for International Poverty Law*

Scholars have noted certain symptoms that justify a reinvention of poverty law. First, a “globalization of both wealth and poverty” has occurred.⁴ In so asserting,

³ Defined as such, economic globalization is both a procedural and substantive phenomenon. The former refers to the transmission of certain ideas, not the ideas themselves. The latter, refers to the content of those ideas, both in theory and in their actual effects as implemented in domestic social and political institutions. For support of this view, see Glenda Laws, *Globalization, Immigration, and Changing Social Relationships in U.S. Cities*, 551 ANNALS AM. ACAD. POL. & SOC. SCI. 89, 90 (1990) (“The term ‘globalization,’ as it is currently used, suggests that linkages between places around the world are now more numerous and more intense than hitherto and that supranational organizations are assuming an ever greater importance. In the context of economic activity, this involves the growth over the last few decades of multinational corporations, the expansion of international capital markets, and related changes in patterns of international trade”).

⁴ See Edgar S. Cahn, *Reinventing Poverty Law*, 103 YALE L.J. 2133 (1994).

Professor Edgar Cahn specifies that *our* poor are increasingly pitted against *their* poor because of the increased economic competition between nations.⁵ The globalization of wealth and poverty, however, affects not only the poor. The middle and wealthy classes have also become agitated, and, as a result, “[a]ny efforts undertaken by legal services attorneys to redistribute wealth...are bound to meet with continued and increasing political and judicial resistance.”⁶

Second, domestic issues have become international issues. Professor Lucy Williams notes that “[l]abor and welfare law cannot be viewed as ‘domestic issues’ within any nation-state,” adding that individual states are not able to “control the impact of capital flight and currency fluctuations” or successfully regulate immigration.⁷ Adding to this, Professor Dani Rodrik signals the “significant increase in volatility in labor-market conditions” in the United States and an “increase in job insecurity.”⁸

Third, international issues have become domestic issues and produced domestic changes. Economic globalization, itself an international issue of coordination among countries, has produced prescriptions for domestic policy. Professor Kerry Rittich suggests that principal among the results of these prescriptions are a widespread trend among states of adopting “deregulated labor markets, open trade and capital accounts” and “curtail[ing] or eliminat[ing] activities... which threaten to impede the proper functioning of the global economy and economic growth.”⁹

⁵ *Id.* at 2133 (“International economic competition pits our poor against the poor of the rest of the world”).

⁶ *Id.* at 2134.

⁷ Lucy A. Williams, *Property, Wealth and Inequality Through the Lense of Globalization: Lessons from the United States and Mexico*, 34 *IND. L. REV.* 1243, 1245 (2001).

⁸ DANI RODRIK, *HAS GLOBALIZATION GONE TOO FAR?* 21-2 (Institute for International Economics, 1997).

⁹ Kerry Rittich, *Transformed Pursuits: the Quest for Equality in Globalized Markets*, 13 *HARV. HUM. RTS. J.* 231, 233 (2000).

Each of these three types of symptoms of economic globalization implies that poverty is now an international phenomenon—a product of the relationship between nation-states. Poverty is affected and in some cases caused by global and regional factors. This implication presupposes a new conceptualization of poverty, a task already undertaken by the United Nations Development Program (UNDP). The UNDP has defined poverty in terms of the absence of the “choices and opportunities most basic to human development—to lead a long, healthy, creative life and to enjoy a decent standard of living, freedom, dignity, self-esteem and the respect of others.”¹⁰ It has situated the availability of these choices and opportunities within the broader context of human rights.¹¹ The relevant human rights, in turn, are pursued by UNDP in three principal ways: first, “establishing the right to development as one of the rights emanating from the numerous multilateral human rights treaty regimes;”¹² second, encouraging governments to “work to enable individuals to realize full human dignity, including human rights—economic, social, cultural, civil, and political;”¹³ and, third, fostering “good governance” through “legislative, executive, and juridical reformation in all nations, at all levels [...to] foster individual participation in democracy nationally and locally.”¹⁴

Despite this growing recognition that poverty is a global issue, the focus of both the research agenda and practice areas of poverty law has thus far been domestic. This is problematic for two reasons: first, the international strategy of the UNDP, described above, will fail without domestic support. The United Nations (UN) is composed of

¹⁰ See UNDP, Human Development Report: Glossary of Selected Terms, at <http://www.undp.org/hdro/hd/htm>.

¹¹ Cristina N. Campanella, *The United Nations' New Approach to Human Development and Poverty*, 17 N.Y.L. SCH. J. HUM. RTS, 951, 953-4 (2001).

¹² *Id.* at 954.

¹³ *Id.*

¹⁴ *Id.*

member states and has very limited power to affect domestic change; rather, the UN serves as a forum in which the community of states generates solutions to cross-border problems. Those solutions depend on the actions of individual states for implementation. Consequently, the focus of U.S. poverty law must be broadened in order for international collaboration to bear fruit.

The second reason is that, regardless of the UN's agenda, the lack of attention paid to the impact of international and transnational processes on domestic poverty condemns poverty law to failure. A purely domestic focus reflects a *de facto* strategy of attending to "proximate causes" of poverty while ignoring "but for causes." Because of this focus, poverty law is not directed at explaining how it can be possible in a democracy to allow inner city schools to crumble while spending hundreds of billions of dollars to invade and then rebuild a remote country.¹⁵ Perhaps that explanation would overlap with the work of sociologists. However, poverty lawyers as advocates and participants, rather than observers, could usefully expand their focus in this regard.

Poverty law does, of course, provide frameworks for handling the social needs of the people attending those crumbling schools. This focus is essential, given the widespread brutal need for immediate assistance.¹⁶ The power and emotional impact of tangible suffering motivates efforts to manage and reduce such suffering. Those efforts

¹⁵ See, e.g., Mark Gongloff, "How much will war cost?", CNN MONEY, Mar. 19, 2003 available at http://money.cnn.com/2003/03/17/news/economy/war_cost/ ("the Center for Strategic and Budgetary Assessments... said in February that war could cost between \$18 and \$85 billion."); Liz George, "Rebuilding Iraq: What will it cost?", CNN.COM, Apr. 22, 2003, available at <http://www.cnn.com/2003/WORLD/meast/04/17/rebuilding.cost> ("One economist from America's Yale University predicted rebuilding Iraq could cost up to \$1.6 trillion over 10 years...so far the cost of rebuilding Afghanistan has topped \$900 million.")

¹⁶ See *Goldberg v. Kelly*, 397 U.S. 254 (1970) (interpreting the constitutional right to due process as requiring a fair hearing before the termination of benefits under Aid to Families with Dependent Children (AFDC). The court considered AFDC recipients to be on the constant brink of economic disaster, and as possessing a brutal need that would cause an unconscionable result if no hearing were afforded prior to termination of benefits.)

attend to proximate causes and their immediate results, and can be characterized as poverty management. However, an international focus does not detract from the domestic focus. Management alone is insufficient if, as appears to be the case, the same quantity of poverty, that same quota of human suffering, will be churned out next year by the reigning social and political machinery. In light of this understanding, the traditional domestic focus of poverty law must be expanded. Insofar as these transnational and international factors are not incorporated into poverty law's theory and practice, they will have unmitigated effects.

2. *Focus Areas of International Poverty Law*

This Section contains a list and explanation of five areas of research and advocacy that could constitute the beginning of an international poverty law agenda. Each of these five areas is logically related to one or both of the latter two UNDP pursuits mentioned earlier: the full realization of human dignity, including human rights, and good governance.¹⁷ Human rights and good governance are, in turn, closely linked to two of the primary strategies of poverty law: “securing a redistribution of goods, services, and power on a more equitable basis,” and “expanding entitlements and creating new [legal] remedies.”¹⁸ The first of these strategies depends on good governance. A properly functioning executive and legislative branch should be responsive to the needs of its constituents independent of their wealth and social status. The second of these strategies depends on human rights. Such rights protect vulnerable individuals from exploitation at the hands of powerful actors—including both government and private citizens. These

¹⁷ See *supra* notes 13-14 and accompanying text.

¹⁸ Cahn, *supra* note 4, at 2135.

strategies are equally relevant to international poverty law. But, as is explained below, they will have to adapt to new terrain created by economic globalization.

Destruction of community. The particular form taken by economic globalization is on course to make all forms of human activity irrational unless that activity is efficient for the purpose of wealth production. What is rational, of course, depends in part on the value system of the actor. However, it also depends on the incentives inherent in economic or other social structure. Market capitalism is of course not logically relevant to ideology, but rather constitutes an economic system. Whether because of nature, nurture, or independent truth, it is apparent that the economic and social spheres are interdependent. And in an environment of scarcity, many humans cannot afford to subjugate the economic sphere to their social goals. Most importantly, for purposes of defining poverty, the two spheres are intertwined.

In addition to a simple lack of money or “deprivation of the basic necessities of life, ...poverty is also isolation, lack of access to resources and support systems.”¹⁹ Resources denote not just economic capital, but family, community, and ultimately psychic resources. The notion of a support system can quite literally be equated with a biological ecosystem, the strength of which can be measured in accordance with the health of its members and sustainability of their shared project—for the planet, for themselves and for others, even those living in distinct ecosystems. This support system is part of the nonmarket economy, which is damaged by economic globalization. Before examining that relationship, consider the importance of the nonmarket economy:

Everywhere sectors of the market economy and the formal political system are crying out for help from the nonmarket economy. Schools cannot educate

¹⁹ *Id.*

without the help of parents. Delinquency, dropout rates, and illegitimacy cannot be checked without help from home. Drugs cannot be curtailed without parental involvement or peer support. Crime cannot be prevented without neighborhood watch committees. Local government and the democratic process itself rest on effective citizen participation. The elderly cannot be cared for without help from family and spouse...Affordable, high-quality child care cannot be achieved without the functional equivalent of extended family that combines emotional nurture, developmental stimuli, and flexible hours. Good health requires prevention, maintenance, nutrition, exercise, rest, and social support.²⁰

A relevant project for international poverty law would therefore be not just wealth production by and for the poor, but also facilitating the preservation of the nonmarket economy. This project requires that poverty lawyers engage with and modify the economic globalization scheme as it takes root in the United States.

The market criterion of “efficiency for the purpose of wealth production” would be perfectly acceptable if measured over geological time, and in accordance with a more enlightened definition of wealth. In that sense, maybe the market ideology really *is* perfect; the problem might lie with its shortsighted and greedy participants. Yet, the market must be judged as it is implemented, and, as implemented, the motor of economic globalization is the promotion of “growth as measured through increases in macroeconomic indicators such as the gross domestic product.”²¹ To illustrate the inadequacy of this measurement for the purpose of human welfare, consider that “every time we put a grandmother in a nursing home, we record growth in the GDP[, while] keeping a grandmother out of a nursing home...does not contribute to GDP.”²²

The GDP represents the culmination of one particular social construction (in the sociological sense) of work. This social construction contains delicate decisions as to what types of human activity should be compensated. These decisions may be far less

²⁰ *Id.* at 2142.

²¹ Rittich, *supra* note 9, at 243.

²² Cahn, *supra* note 4, at 2140.

controversial, however, than the decision that only work that is compensated should be considered in measuring the health of a country. It is unlikely that families should desire to be compensated for caring for a relative in need. Indeed, the key issue is not where the line has been drawn between productive work—encompassing “economic activity taking place on the market”—and reproductive work—encompassing “such activities as child and elder care, food preparation, volunteer work, and large amounts of education and health care.”²³ Rather, the key issue is whether the motor of economic globalization should be the maximization of GDP, as opposed to human welfare. This project of maximization dares human societies to see how *inhuman* they can become, and then proceeds to reward the winner!

That some countries make the choice to prioritize GDP above all else would seem to have little bearing on the choices of other countries. However, diversity among states in this regard is not tenable in the international order, because the competition among nation-states is winner take all.²⁴ Economic power leads to political and military power, which in turn leads to a decrease in restraints on how the national interest can be pursued. On the domestic level, the existence of a judicial branch with binding enforcement powers prevents this sort of “anarchy.” The judiciary can apply civil rights entitlements to preclude unjust exploitation, bringing the power of the state to enforce its judgment. No such system exists on the international level, or even within many corrupt, dictatorial, or developing nations.

²³ Rittich, *supra* note 9, at 242-3.

²⁴ Professor Kenneth Waltz posits that a Hobbesian state of nature presides over the international system: “[b]ecause any state may at any time use force, all states must constantly be ready either to counter force with force or to pay the cost of weakness.” See KENNETH N. WALTZ, *MAN, THE STATE, AND WAR* 160 (3d ed., 2001).

The political incentive to measure growth in the narrowest of economic terms relates to this reality of competition among countries. This complicates the substitution of more holistic measures of wealth for GDP. Such projects are underway, nonetheless. The Human Development Index (HDI)²⁵ incorporates not only GDP, but other measurements as well. Poverty law could productively focus on discovering the limits of GDP and formulating and implementing alternative measurements of growth that would make competition among nations a productive exercise, rather than a “race to the bottom.”²⁶

The evisceration of democratic politics. The project to reform the measurement of wealth depends on the functioning of the democratic system. More broadly, the ability of the poor, or any sector of the population, to effect change depends on the operation of politics. Part of what makes economic globalization such a difficult subject for analysis (and object of social change) is its impact on all areas of social life, including the democratic system.

Globalization has defused politics in two ways: first, certain outcomes have been conclusively deemed inappropriate, irrespective of democratic will, such as the provision of social services. This so-called “golden straitjacket” arises from the market doctrine that the private sector to be the source of growth, that the budget be balanced, that inflation be eliminated, that tariffs and quotas be eliminated, and that domestic industries and markets not be protected from foreign ownership or investment.²⁷ The subsequent

²⁵ See United Nations Development Programme, Human Development Report.

²⁶ See ROBERT Z. LAWRENCE, ALBERT BRESSAND & TAKATOSHI ITO, A VISION OF THE WORLD ECONOMY 31 (1996).

²⁷ THOMAS L. FRIEDMAN, THE LEXUS AND THE OLIVE TREE: UNDERSTANDING GLOBALIZATION 15 (1999), quoted in Jim Chen, *Globalization and Its Losers*, 9 MINN. J. GLOBAL TRADE 157, 167 (2000).

toll on democratic choice is two-part. At the outset, governments cannot afford to offer extensive social services without infringing upon the newly-created domain of the private sector. Additionally, the regulatory function is inhibited, since governments cannot pass legislation mandating higher labor or environmental standards, unless the government itself can absorb the cost of those standards. If corporations are forced to internalize the externalities of their production (that is, to improve their environmental impact or benefits to workers), they may choose to move to a less regulated country.²⁸ These dynamics explain why “[i]nternational economic integration is taking place against the background of receding governments and diminished social obligations.”²⁹

Second, the level of accountability of government to its citizens has decreased as the nation-state itself has undergone a process of subjugation to largely unregulated economic forces.³⁰ The literature on the World Bank, International Monetary Fund, Inter-American Development Bank, and World Trade Organization is beyond the scope of this paper. For present purposes, it is sufficient to point out a commonality: each of these institutions exists at a supranational level. Their processes of policy formation and policy execution are not accountable to any one nation-state, or, by implication, to any concrete electorate.

Systemic inequality. Although inequality can result from the preclusion of democratic change, economic globalization has been linked to inequality in other ways. One of the more readily apparent of these is that “reduced barriers to trade and investment accentuate the asymmetry between groups that can cross international borders ... and

²⁸ This is known as the risk of “capital flight.”

²⁹ Rodrik, *supra* note 8, at 6.

³⁰ See generally DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW (Gregory H. Fox and Brad R. Roth, eds., 2000).

those that cannot.”³¹ For example, highly skilled workers and many professionals are in a superior position, vis-à-vis unskilled and semiskilled workers, to capitalize on open markets. Although this constitutes a form of inequality, it is generated from a pre-existing social ranking—professionals versus workers. Systemic inequality inherent in and unique to the free-market economy is more difficult to isolate. It emanates from entities whose existing is made possible only by the free-market economy: the multinational corporation.

It is not contested that the goal and overall effect of this capitalist model of globalization is wealth creation.³² The disputed question is “wealth creation *for whom?*” Cahn observes that the problem is “not simply society’s lack of material abundance. This society produces enough and has sufficient know-how and productive capacity to satisfy the needs of every American. The issue is distribution.”³³ This distributive question lurks in the shadows of the sparkling creation of joint gains.

The distributive question is two-fold, encompassing, first, the domestic distribution of benefits from globalization, and, second, the international distribution of benefits as between nation-states. With regard to the former, workers may encounter worsening standards and benefits, and decreased job security.³⁴ However, this is not necessarily a distributive issue, unless it can be shown that other social classes fair better, and that they do so at the expense of workers. Cahn suggests that in the United States, “[t]hose who contribute capital or labor are entitled to a return, although the lion’s share

³¹ Rodrik, *supra* note 8, at 4.

³² See Chen, *supra* note 27, at 216 (“the capitalist model of globalization[is] the greatest engine of wealth ever devised”).

³³ Cahn, *supra* note 4, at 2136.

³⁴ See Rodrik, *supra* note 8, at 16-17 (Noting that the demand for labor becomes “more responsive to changes in the price of labor,” or more “elastic,” to the extent the economy becomes “more open to foreign trade and investment”).

seems to go to those who contribute capital.”³⁵ Certainly, U.S. labor representatives and NAFTA protesters believe that a similar result obtains within the United States.³⁶ The distributive calculus appears to be similar in other countries, although potentially more harsh in its implications. In Eastern Europe, Cahn claims that “market economics has meant sinking into abject poverty while watching a handful of entrepreneurs reap inconceivable wealth as the sole beneficiaries of free enterprise.”³⁷

Regarding the latter distributive question, the international distribution of benefits from globalization, traditional societies are, at best, at a disadvantage compared to postindustrial societies in reaping gains from economic globalization. At worst, they are affirmatively harmed by economic globalization. Professor Pippa Norris has presented evidence that supports this latter proposition.

Traditional societies are facing increasing financial volatility and economic insecurities produced by opening up markets to global forces, illustrated by the East Asian financial crisis in 1997-99, throwing millions into unemployment and slowing down investments in Latin America. Since 1980, the majority of countries in Sub-Saharan Africa, many in Latin America, and most in transition have experienced disastrous failures in growth, with setbacks in human security and growing poverty.³⁸

The United States is widely considered to have gained the most from this inequality.

Both empirically and in common parlance, it is “[t]he country that has benefited most from globalization, and [to have] the greatest stake in its success.”³⁹

³⁵ Cahn, *supra* note 4, at 2136.

³⁶ See US Department of Labor, *International Labor Standards and Global Economic Integration: Proceedings of a Symposium* 47 (1994) (“the world has become a huge bazaar with nations peddling their work forces in competition against one another, offering the lowest prices for doing business. The customers, of course, are the multinational corporations”), *quoted in* Rodrik, *supra* note 8. See also the Seattle Protests of NAFTA and the WTO.

³⁷ Cahn, *supra* note 4, at 2154.

³⁸ Pippa Norris, “Global Governance and Cosmopolitan Citizens,” in *GOVERNANCE IN A GLOBALIZING WORLD* 162-3 (Joseph S. Nye and John D. Donahue, eds., 2000).

³⁹ James Gustave Speth, *Toward Security for All: Development Assistance and Global Poverty*, 32 ENVTL. L. REP. 10480 (2002) (publication page references unavailable on Westlaw).

An unequal distribution of benefits on both domestic and international fronts is considered a cause of instability and social upheaval. Speth notes that “the world today is deeply divided. It has become more polarized, both between countries and within countries. The risk of an evolution toward an unstable, two-class world, with a huge global underclass, is quite real.”⁴⁰ Based on this international distributive calculus and its projected, if not current, effects, poverty law could productively focus on advising U.S. economic planners on tailoring their globalizing influence to ensure norms of basic fairness to and equal participation of traditional societies. Since poverty lawyers are concerned with the plight of the poor in relation to U.S. government, it is a small stretch to expand that concern to the situation of poor nations in relation to the U.S. government.

Forced globalization, the military budget, and subsequent effects. The existence of conflicts sufficient to warrant a use of force cannot be separated from the fact that some states have far less to gain from globalization than others. A use of force by the United States under current standards of practice requires one of several things: (1) authorization from the United Nations Security Council, which itself requires that international peace and security be threatened;⁴¹ (2) an armed attack by another state against U.S. territorial integrity, justifying the use of defensive force;⁴² (3) indications that such an attack is forthcoming, justifying the use of pre-emptive defensive force;⁴³ or (4) a declaration by

⁴⁰ *Id.*

⁴¹ *See* United Nations Charter, June 16, 1945, 59 Stat. 1031, T.S. No. 993, 3 Bevens 1153, at Chapter Seven.

⁴² *Id.* at art. 51.

⁴³ *See generally* the Bush doctrine of “pre-emptive self-defense.” *See also* Michael Byers, *Preemptive Self-Defense: Hegemony, Equality and Strategies of Legal Change*, forthcoming: J. POL. PHILOSOPHY (2003), *on file with the author* (“[T]he United States is engaged in a sophisticated effort to secure generally applicable legal changes that, while in principle available to all, will in practice be of use only to the most powerful of countries ... If successful, this attempt would create greater ambiguity in the law on the use of force, thus allowing more space for the application of power and influence in determining when and where

the executive, preferably endorsed by Congress, that another country constitutes an unacceptable threat to U.S. interests, is therefore a “rogue state,” and consequently can be attacked under a Just War theory.⁴⁴ The first two types are unquestionably legal under international law. The third is understandable, but illegal, and the fourth is unquestionably illegal. It is difficult to imagine that a state that had both accepted the tenants of economic globalization and prospered from them would ever constitute a colorable threat to peace and security in the eyes of the UN, perpetrate an armed attack against the United States, plan to perpetrate such an attack, or be deemed a rogue state by the executive branch.

As noted above, globalization is not unconditionally positive for all countries at all times. Rather, it has a “vast potential for further marginalizing already weak nations.”⁴⁵ Armed conflicts between the United States and other nations can partly be contextualized in light of the *comparative disadvantage* of some nations in the scheme of free-market capitalism and their subsequent resistance and hostility thereto. The task of making economic globalization more inclusive, flexible, and equitable is therefore synonymous with the task of eliminating inter-state conflict. Eliminating or even merely decreasing the magnitude of such conflict would constitute a tremendous step towards

it is legal to intervene. In practical terms, the result would be a virtually unlimited discretion for the United States to engage in military action under international law, but relatively little if any change in the limited scope of discretion available to other, less-powerful states.”).

⁴⁴ This is my interpretation of the legal precedent established by the final war in Iraq. Since no explicit authorization was obtained from the Security Council, and Iraq neither invaded the United States nor has been found to be planning to do so, or even capable of doing so, the only remaining rationale for the invasion was a general threat to U.S. interests. This fourth justification for an armed attack hinges on the intrinsic superiority of democracy to other methods of governance, such as dictatorship. The theory is that U.S. intervention is just, because the ends are just—that is, democracy benefits people unconditionally and all people living under anything but a democratic regime utter a constant, implied plea to be liberated. This theory has some basis in international law under the so-called emerging right to representative governance. However, that emerging right does not contain a concomitant right vesting in other countries to liberate any group of people not living under a system of representative government.

⁴⁵ Campanella, *supra* note 11, at 953.

enabling the federal government to focus its financial and intellectual resources on eliminating the social problems within its own borders. Furthermore, poverty lawyers are best able to observe how the poor within the United States are affected by international conflict. As such, the task of making economic globalization more tenable for disadvantaged states should not be delegated only to international development theorists. For the domestic poverty law agenda, this task is worthwhile for many reasons, not least of which avoiding the squandering of scarce federal resources in arms races, war, and subsequent rebuilding of conquered states.

Armed conflicts between the United States and other nations can also be contextualized in light of a lack of input by the poor in the United States into the reigning model of economic globalization itself. Although it is true, as stated above, that globalization has a “vast potential for further marginalizing already weak nations,”⁴⁶ it is also true that globalization has ‘vast potential for further marginalizing already weak *individuals*’ within the United States.⁴⁷ Each nation contains a variety of social classes with potentially disparate interests. It is therefore a mistake to treat each nation as a unitary actor asserting a set of homogenous interests. This mistake is more strategic than substantive. It is not inaccurate to state that “we are heading into the twenty-first century in a world consisting for the most part of a *relatively* small number of rich, satiated, demographically stagnant societies and a large number of poverty-stricken, resource-depleted nations,”⁴⁸ nor is it inappropriate to ask “must it be the West against the rest?”⁴⁹

⁴⁶ *See id.*

⁴⁷ *See Cahn, supra* note 4, and Rodrik, *supra* note 8.

⁴⁸ Speth, *supra* note 39, (emphasis added).

⁴⁹ *Id.*

Strategically, however, the word “relatively” in the first quotation must be emphasized. Although the U.S.’ poor have more “tangible capital”⁵⁰ than other nations’ poor, they may be in a worse situation than other nations’ poor relative to the rich within their own societies. The poor in the United States may have less as compared to the rich in the United States, than do the poor in other nations as compared to the rich in other nations.

The strategic implication of U.S. poverty is that economic globalization could be meaningfully altered if the poor had a greater voice in its design and pursuit through forceful means. Not only might the poor have opposed the invasion of Iraq if the choice were understood as a tradeoff between war and Medicare,⁵¹ but the incidence of violent confrontation between states might decline if economic globalization were a more attractive plan for economically disadvantaged states. Poverty lawyers must recognize that welfare programs compete with foreign policy imperatives for funding, and that the nature of foreign policy depends, at its outset, on the amount of input by the poor into the decisional processes that generate it.

The need for poverty law to incorporate foreign policy into its areas of research and advocacy could not be clearer. Studies compiled by professors James Petras and Morris Morley suggest a steadily increasing military expenditure by the United States:

Over the past three decades, U.S. military spending has been on an accelerated upward spiral: during the Kennedy-Johnson years, it averaged \$59 billion (in current dollars) yearly; under Nixon and Ford, ...\$82 billion; ... Carter pushed it to \$113 billion annually between

⁵⁰“Tangible capital” refers to income, financial capital, physical assets, and even educational capital, as distinguished from other forms of capital, such as community resources, solidarity, informal economic opportunities, or even psychic resources that may greatly contribute to self-esteem and happiness.

⁵¹ This is not necessarily a hypothetical tradeoff. Presently, state officials “confronting a third straight year of fiscal crisis” are “pleading for federal help” so as to avoid cutting Medicaid, a program that insures 50 million Americans. See Robin Toner and Robert Pear, “Cutbacks Imperil Health Coverage for States’ Poor,” N.Y. TIMES, Apr. 28, 2003, at <http://www.nytimes.com/2003/04/28/politics/28HEAL.html>.

1977 and 1980; [during] the Reagan presidency, defense outlays skyrocketed past \$240 billion annually. ...during the Bush presidency[,] over the four-year period, total spending exceeded \$1.2 trillion. The greatest absolute increases occurred at a time when the world's only other superpower was disintegrating, thereby reinforcing Washington's capacity and will to intervene in any region of the globe where imperial policy dictated.⁵²

Currently, such spending has increased sharply, due both to factors outside direct U.S. control—such as the attacks of September 11, 2001 and the subsequent necessity of federal disaster relief funds—and factors within U.S. control—such as the creation of the Department of Homeland Security, and invasion and ongoing efforts to reconstruct Afghanistan and Iraq. The actions and commitments undertaken thus far by the second Bush administration have totaled roughly \$2 trillion for invasions and reconstructions.⁵³

This is not to suggest that such funds would necessarily be destined for domestic welfare programs if not dedicated to military spending and “humanitarian relief.” Massive military spending does, however, make domestic welfare an even smaller budgetary priority and distract from public attention on the same. The lack of public attention then stifles the operation of democratic mechanisms for change.

Additionally, the investment in military operations and regime change cannot always be traced to future pay-offs in peace and stability. Rather, it often contributes to future debacles devastating for the poor, including the rise to power of such relevant figures as Osama Bin Laden and Saddam Hussein.⁵⁴ The activities sustained by the

⁵² JAMES PETRAS AND MORRIS MORLEY, *EMPIRE OR REPUBLIC? AMERICAN GLOBAL POWER AND DOMESTIC DECAY* 8-9 (1995).

⁵³ See Gongloff and George, *supra* note 15.

⁵⁴ Both Bin Laden and Hussein were close allies of the United States, receiving U.S. funds and operational support, respectively, for operations against the Soviet Union in Afghanistan and efforts to undermine Iran, both in the 1970s and 1980s. See Michael Moran, “Bin Laden Comes Home to Roost,” MSNBC News, available at <http://stacks.msnbc.com/news/190144.asp?cp1=1#BODY> (last visited Jul. 17, 2003) (“As his unclassified CIA biography states, bin Laden left Saudi Arabia to fight the Soviet army in Afghanistan after Moscow’s invasion in 1979. ...What the CIA bio conveniently fails to specify (in its unclassified form, at least) is that the MAK was nurtured by Pakistan’s state security services, the Inter-Services Intelligence

military budget appear not only to generate future debacles that occasion the need for future spending, but to generate or perpetuate threats to national security that, in turn, result in the repealing of civil and human rights. As U.S. civil rights, as set out in the Constitution, are largely identical to the human rights the U.S. is bound to uphold per treaty,⁵⁵ the use of the phrase “civil rights” is meant to include “human rights.”

agency, or ISI, the CIA’s primary conduit for conducting the covert war against Moscow’s occupation... So bin Laden, along with a small group of Islamic militants from Egypt, Pakistan, Lebanon, Syria and Palestinian refugee camps all over the Middle East, became the “reliable” partners of the CIA in its war against Moscow.”); The George Washington University, “U.S. Documents Show Embrace of Saddam Hussein in Early 1980s Despite Chemical Weapons, External Agression, Human Rights Abuses,” NAT’L SECURITY ARCHIVE, at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB82/press.htm> (last visited Jul. 17, 2003); CNN.com, “Regime Change: From Building Ties with Saddam to Removing him From Power,” available at <http://www.cnn.com/2002/US/09/30/sproject.irq.regime.change/> (last visited Jul. 17, 2003) (“Twenty years ago, the U.S. government was building ties to Saddam Hussein’s government -- not trying to overthrow it... To the United States, Iraq’s secular regime was an important counter-balance to Iran, where anti-American passion mixed with radical Islam had led to the overthrow of the U.S.-backed Shah... The relationship with Iraq was severely tested after Saddam used chemical weapons against Iranian forces and even gassed rebellious Kurds in the northern part of the country. [Also,] Iraq had begun a secret program of its own: nuclear weapons. In 1981, Israel bombed and destroyed a nuclear reactor near Baghdad believed to be the foundation of the weapons program... Iraq went on a multi-billion dollar buying binge, purchasing components for building a nuclear bomb from Western companies eager for cash... It wasn’t until Iraq invaded Kuwait on August 2, 1990, that the United States turned against Saddam. Iraq was now seen as big a danger to U.S. interests as Iran. ‘Now the same fear was being projected on Iraq -- that he was an alarming, threatening leader in the region who was out to grab the oil weapon and use it against the West...’”)

⁵⁵ Compare the following human rights treaties with the rights guaranteed by the U.S. Constitution. The United States has ratified the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], *entered into force* June 26, 1987, at <http://heiwwww.unige.ch/humanrts/instree/h2catoc.htm>, the International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, at <http://heiwwww.unige.ch/humanrts/instree/b3ccpr.htm>, and the International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969, at <http://heiwwww.unige.ch/humanrts/instree/d1cerd.htm>. It has signed, but not ratified, the Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981, at <http://heiwwww.unige.ch/humanrts/instree/e1cedaw.htm>, the Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2 1990, at <http://heiwwww.unige.ch/humanrts/instree/k2crc.htm>, and the International Covenant on Economic, Social, and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976, at <http://heiwwww.unige.ch/humanrts/instree/b2esc.htm>.

The Repealing of rights. The poor are the most likely to be on the receiving end of civil rights infringements: they are less visible, have fewer funds to dedicate to their legal defense, are more likely to have partial or no citizenship, are more likely to be racial, ethnic, religious, or political minorities, and exert less pressure on political decision-makers.

National security and civil rights form a sort of dialectic, in that they are often perceived as directly conflicting and an increase in pressure from one may serve to erode the other. There has been a partial repealing of habeas corpus, open trials, the right to counsel, the attorney–client privilege, equal protection, and privacy rights post September 11th.⁵⁶ This result of the “terrorist threat” is predictable from past experience. Over fifty years ago, Dr. O. John Rogge, detailing the ‘vanishment of our civil liberties,’ noted the incremental nature of danger to such rights and the contexts in which such danger manifests: “Insidiously, step by step, the enemies of our civil liberties have advanced behind the poisonous smoke–screen of the ‘Communist threat’.”⁵⁷ As if to prove

⁵⁶ See *Hamdi v. Rumsfeld* (4th Cir 2003), No. 02-7338 (Jan. 8, 2003). See generally Human Rights Watch, “Presumption of Guilt: Human Rights Abuses of Post–September 11 Detainees,” available at <http://www.hrw.org/reports/2002/us911/> (last visited Apr. 6, 2003); America Civil Liberties Union, “A Second Federal Court Rejects Government Secrecy, Orders Open Immigration Hearings in Post–Sept. 11 Challenge,” May 29, 2002 available at <http://www.aclu.org/ImmigrantsRights/ImmigrantsRights.cfm?ID=10413&c=22> (last visited Apr. 6, 2003); American Civil Liberties Union, “ACLU Calls Immigrant Registration Program Pretext for Mass Detentions,” December 19, 2002, available at <http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=11503&c=206>; Dianne Donovan, “Let’s Take Away Your Freedom,” Chicago Tribune, November 27, 2001, available at <http://www.globalpolicy.org/wtc/liberties/1127freedom.htm>; Charles Lane, “Has Bush Infringed the Constitution? The Debate Heats Up,” Washington Post, September 3, 2002, available at <http://foi.missouri.edu/terrorandcivilib/hasbushinfringed.html>. Writing in 1951, Dean Alison Reppy of New York Law School, prophesized that “if the grist of the mill in the field of civil rights covering the contemporary scene is any criterion of the future, we may be certain that the immediate succeeding years, clouded as they are by the overtones of world conflict, will each produce for discussion their share of new problems involving the maintenance and the advancement of our civil liberties.” See ALISON REPPY, CIVIL RIGHTS IN THE UNITED STATES 266 (1951).

⁵⁷ O. JOHN ROGGE, OUR VANISHING CIVIL LIBERTIES, 275 (1949). Dr. Rogge served as Assistant General Counsel to the Securities and Exchange Commission and the Assistant United States Attorney General in

Rogge's premise, Attorney General John Ashcroft declared last week that illegal aliens can be detained indefinitely, even if they have no known links to terrorist groups.⁵⁸

It bears mentioning that the 'war on terror' did not begin with a declaration of war by Congress, nor is it likely to conclude in the signing of a treaty between the United States on one side of the table and all terrorists, present and future, on the other. Rather, much like the 'war on drugs,' this war could be a long-standing feature of life in the United States. Given its potential for long duration and the extreme vulnerability of the poor to the decrease in civil liberties accompanying the war on terror, international poverty law must make the war on terror and repealing of civil rights an area of research and advocacy.

3. Specific Actions for International Poverty Lawyers

The previous Section described possible components of a poverty law research and advocacy agenda. This Section offers ideas about how those components could be addressed, and leads up to a conclusion on the overall project of international poverty law. The premise underlying each of these ideas is that poverty law should make use of the opportunities generated by globalization, as it goes about the task of exposing and correcting its negative consequences for the poor.

First, a comparative analysis of poverty and solutions to poverty can be employed. Asking, for example, how other countries handle immigration or balance the tension between national security and human rights could generate insight for the resolution of domestic problems. Justice Stevens of the U.S. Supreme Court recently did just this

charge of the Criminal Division before taking on the sedition case, investigating the spread of fascism and the monopoly-cartel system. *See id.* at 14-23.

⁵⁸ Rachel L. Swarns, "Illegal Aliens Can be Held Indefinitely, Ashcroft Says," N.Y. TIMES, Apr. 26, 2003, at <http://www.nytimes.com/2003/04/26/international/worldspecial/26IMMI.html>.

considering how to define the “evolving standards of decency,” which, in turn, aid in the definition of cruel and unusual punishment prohibited by the Eighth Amendment.⁵⁹

Broadly speaking, cross-pollination of social and legal insight could enable economic globalization to be more positive for all social strata. Globalization is neutral—its content depends on those who engage it.

Second, international poverty lawyers should engage in the ‘international regulatory agenda’⁶⁰ and should do so in partnership with CEOs and military generals. It should not be assumed that CEOs, military generals, or rich nations desire to disadvantage the poor. They may even desire to help and believe in what they are doing. These powerful actors, like anybody else, can be caught in difficult situations, such as collective action problems. Absent regulation of economic globalization—to mandate compliance, for example, with labor or environmental standards—individual companies seeking to ‘do the right thing’ alone may be placed at a disadvantage from the increased production costs. Their competitors could, by merely holding out a month or two before following suit, achieve comparatively lower pricing and edge out their socially conscious

⁵⁹ See *Atkins v. Virginia*, 122 S.Ct. 2242 (2002), n. 21 (In deciding that the execution of the mentally retarded violates the Eighth Amendment, the Court felt it relevant to state that “within the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved.”) The Supreme Court recently employed another comparative law analysis, this time in striking down a law prohibiting homosexual sodomy. See *Lawrence v. Texas*, 539 U.S. at ___ (2003) (“To the extent *Bowers* relied on values we share with a wider civilization, it should be noted that the reasoning and holding in *Bowers* have been rejected elsewhere. The European Court of Human Rights has followed not *Bowers*, but its own decision in *Dudgeon v. United Kingdom*. Other nations, too, have taken action consistent with an affirmation of the protected right of homosexual adults to engage in intimate, consensual conduct... The doctrine of *stare decisis* is essential to the respect accorded to the judgments of the Court and to the stability of the law. It is not, however, an inexorable command.”) See also EDWARD J. IMWINKELRIED, *THE NEW WIGMORE: A TREATISE ON EVIDENCE* 1396 (2002) (“On a higher level of policy analysis, though, it may be useful to consider how foreign jurisdictions have resolved ‘roughly comparable questions,’” citing *Knight v. Florida*, 528 U.S. 990, 993, 997 (1999) (Bryer, J., dissenting from denial of certiorari)).

⁶⁰ For an introduction to international administrative law, see Eleanor D. Kinney, *The Emerging Field of International Administrative Law: Its Content and Potential*, 54 ADMIN. L. REV. 415 (2002).

competitors. This reasoning assumes consumer ignorance or apathy regarding the social and environmental practices of corporations.⁶¹

Finally, for purposes of empowering the poor to understand the factors affecting their lives, the “sociological imagination” should be emphasized and employed by poverty lawyers. Forty-four years ago, Professor C. Wright Mills wrote about a problem of disempowerment that has likely increased since then:

Nowadays men often feel that their private lives are a series of traps. They sense that within their everyday worlds, they cannot overcome their troubles, and in this feeling, they are often quite correct: What ordinary men are directly aware of and what they try to do are bounded by the private orbits in which they live; their visions and their powers are limited to the close-up scenes of job, family, neighborhood... And the more aware they become, however vaguely, of ambitions and threats which transcend their immediate locales, the more trapped they seem to feel. Underlying this sense of being trapped are seemingly impersonal changes in the very structure of continent-wide societies.⁶²

One particular subset of these seemingly impersonal changes has been the subject of this paper. Mills’ resolution to this problem hinged on recognizing the connection between such grand changes and people’s every-day lives. With this recognition comes the potential for action. If poverty lawyers can help chart, communicate, and affect these connections, the poor will have powerful advocates indeed.

⁶¹ Consider, for example, the market dominance of Wall Mart. Such dominance is, of course, maintained by patronage.

⁶² C. WRIGHT MILLS, *THE SOCIOLOGICAL IMAGINATION* 1 (40th Anniversary ed., 2000).