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LATCRIT X: CRITICAL APPROACHES TO ECONOMIC IN/JUSTICE: ARTICLE: **Endogenous Growth Theory, Status Quo Efficiency, and Globalization**

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**SUMMARY:**

... This essay proceeds on the premise that the international economic integration (or globalization) that has marked the past quarter century of international economic activity is neither inherently positive nor negative. ... The institutional framework governing the global economy, dating to the depths of World War II, is overwhelmed by the pace and risks of globalization, and has been captured by a narrow corporate and financial elite that appears to disregard the long term viability of the global economy and its potential for realizing poverty reduction and amelioration of economic oppression. ... In fact, where globalization has had its greatest success, from Japan to China and East Asia, it seems to have worked specifically because those nations have rejected the "Washington Consensus" in favor of a more interventionist model of economic growth. ... Instead, it shows that modern economic science has demonstrated there is far too much inequality in the world and that "inequality traps" are stunting human economic potential and therefore macroeconomic performance around the world. ... Aside from the destruction of human capital in "inequality traps," inequality harms macroeconomic performance by leading to economic institutions and laws that are distorted in favor of those with power. ... Nevertheless, because the status quo is essentially at odds with economic science, periodic macroeconomic disruptions will provide reform moments. ...

**TEXT:**

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I. Introduction

This essay proceeds on the premise that the international economic integration (or globalization) that has marked the past quarter century of international economic activity is neither inherently positive nor negative. Instead, globalization holds promise and peril. The pivot for globalization will be the legal infrastructure governing the process.<sup>1</sup> If the current free market approach known as the "Washington Consensus" prevails, then the prospects of globalization in terms of its ability to deliver rising living standards as well as more stable and robust macroeconomic performance will be dim.<sup>2</sup> If, on the other hand, sufficient legal infrastructure can secure a globalization based upon economic science instead of economic dogma, often serving thinly veiled special interests, then the promise of globalization can be achieved.<sup>3</sup> The law can play a central role in assuring that economic science prevails over economic dogma by securing human capital development to the full extent of economic potential; regulating other infrastructure [\*2] development; and supporting institutions necessary for unleashing human potential.<sup>4</sup> This essay seeks to set forth a theoretical framework for achieving a globalization based upon economic science, by urging legal scholars, policymakers and activists to apply the lessons of endogenous growth theory to the process of legal reform.<sup>5</sup> I conclude that because economic science and social justice coincide, reformers should seek opportunities to reform the process of globalization in a way that exploits the political sway of those seeking a more just globalization as well as those who benefit from a more economically sound globalization.<sup>6</sup>

Part I of this essay will focus upon the paradox of globalization, in terms of its macroeconomic promises and its potential nightmares. Part II will synthesize the best economic science available, particularly from the recently emergent field of endogenous growth theory, in terms of creating a sounder globalization, and will highlight the role of the law

for securing this sounder globalization. Part III will apply longstanding lessons regarding the process of legal reform in an effort to articulate how a theory of legal reform can support future opportunities for reform; central to this process will be legal infrastructure necessary to achieve a "hardened" governing framework for globalization, free of subversion by special interests.<sup>n7</sup> The essay concludes that globalization can fulfill its promise of a more interwoven and prosperous world, but only under certain conditions.

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## II. The Paradox of Globalization

Globalization may hold the promise for the most massive amelioration of poverty and economic oppression in the history of humanity.<sup>n8</sup> Today in China and India, hundreds of millions of people of color are emerging from the depths of economic marginalization to be the core of a new economic center of gravity in the world.<sup>n9</sup> Indeed, this part of the world seems much more likely to fundamentally challenge the traditional Western economic hegemony than to submit to it.<sup>n10</sup> This development follows on the heels of the stunning success of the so-called Asian Tigers in the 1980s and the 1990s.<sup>n11</sup> The Asian Tigers, in turn, followed in the wake of the remarkable success of Japan, which grew in the 1980s into an economic superpower.<sup>n12</sup> This is the promise of globalization.

At the same time, globalization threatens to impose a new corporate feudalism upon workers worldwide, as the bargaining power of laborers is relentlessly eroded by huge pools of dormant labor.<sup>n13</sup> Nation-states around the world seem powerless to preserve a vibrant middle class, as any job not bound by geography moves to the lowest cost worker - from lawyers to engineers, jobs are migrating to low cost labor locales.<sup>n14</sup> Even the ability of governments to secure the [\*4] human rights of their citizens is under siege.<sup>n15</sup> Economic security has become a myth, and combined with the destruction of earnings implicit in the movement of jobs to lower wage locales, threatens to create a crisis in buying power.<sup>n16</sup> As a result, globalization seems as likely to exacerbate inequality as to relieve poverty and oppression.<sup>n17</sup> Worldwide, poverty seems to resist the positive impact of globalization.<sup>n18</sup>

The institutional framework governing the global economy, dating to the depths of World War II, is overwhelmed by the pace and risks of globalization, and has been captured by a narrow corporate and financial elite that appears to disregard the long term viability of the global economy and its potential for realizing poverty reduction and amelioration of economic oppression.<sup>n19</sup> Despite fifty years of increasing international trade and financial integration, there has been no expansion of the institutional framework governing globalization, other than to secure more free trade. This narrow framework has resulted in higher levels of instability and accompanying risk with no apparent means of managing any significant crisis.<sup>n20</sup> Consequently, financial regulators with little transnational authority must cobble together solutions to emerging crises on an ad hoc basis, and with little proactive planning.<sup>n21</sup> Thus, the IMF recently warned of "dangerous global imbalances" resulting from soaring U.S. foreign debt and a concentration of consumption largely within the U.S. that seems economically unsustainable.<sup>n22</sup> Yet, the IMF did nothing to remedy this problem, and is largely powerless to undertake any significant action [\*5] to address these imbalances.<sup>n23</sup> These problems are the nightmares of globalization, and they are as real as the promise of globalization.

In short, the promise of globalization is being subverted by the dominating influence of elites.<sup>n24</sup> Consider economics.<sup>n25</sup> Traditionally, economics has ignored growth in favor of the obsessive glorification of free market efficiency which has always operated to preserve the economic status quo.<sup>n26</sup> Similarly, law has always operated to entrench power elites from the very process of status quo driven, even reactionary, common law rule making, or the ossification of pre-existing power relationships as manifest in statutes.<sup>n27</sup> It should, therefore, come as no surprise that under mainstream Law & Economics, the status quo invariably remains the status quo.<sup>n28</sup> In terms of globalization this elite domination is amplified by the fact that only an infinitesimal percentage of those with a stake in globalization have any real voice in the terms of globalization.<sup>n29</sup> Thus, one should not be surprised that many [\*6] believe our globalized economy is of elites, by elites and for elites.<sup>n30</sup>

Economists have argued that the IMF and World Bank are keener to further economic dogma than to grapple with the more complex issues of spurring development in areas that have been left behind by globalization.<sup>n31</sup> Thus the "Washington Consensus" insists that the developing world pursue policies of limited state intervention in the economy, fiscal rectitude, mass privatization and financial liberalization.<sup>n32</sup> Indeed, the IMF's actions in particular seem well-designed to assure repayment for western banks rather than to act in accordance with its stated counter-cyclical purpose.<sup>n33</sup> The international financial institutions are structured in a way that maximizes the ability of special interests to hold sway: there is a revolving door between the relevant officials and the private sector; the public has little ability to monitor and comprehend issues relating to globalization; the institutions have no independent source of funding; and, there

are powerful interests that have significant stakes in the course of globalization.<sup>n34</sup> Finally, globalization has so far favored the interests of the financial and corporate sector in that it has been a strong force for the exploitation of cheap labor and for capital market liberalization.<sup>n35</sup>

All signs suggest that the promise of globalization has gone "horribly wrong."<sup>n36</sup> Poverty has not been significantly reduced and continues by all accounts to impede global growth.<sup>n37</sup> While corporations have been able to exploit cheap labor, there are signs that that buying power and consumption are sure to falter.<sup>n38</sup> Inequality is threatening to grow both on a global basis and within leading nations such as the U.S. and the U.K.<sup>n39</sup> In fact, where globalization has had its greatest success, from Japan to China and East Asia, it seems to have worked specifically because those nations have rejected the "Washington Consensus" in favor of a more interventionist model of economic growth.<sup>n40</sup> A radical rethinking is needed to reset globalization on a track that fulfills its fundamental promises of greater prosperity [\*7] and real poverty reduction.<sup>n41</sup>

The next part of this essay will summarize the lessons learned from economic science, with an emphasis on the meaning of those lessons in terms of law. In sum, it will show that promise of globalization is achievable if law can operate to secure the empowerment of all people, even when such resource allocations do not appear to be in the narrow self-interest of political and economic elites.

### III. The Law and Macroeconomics of Globalization

Recently, a new economic truth has emerged. It is simple and powerful. Those nations that economically empower and exploit their people to the fullest extent possible, win.<sup>n42</sup> And, those nations that permit their people to suffer mass economic marginalization, lose.<sup>n43</sup> Economic science, as opposed to economic mythology, fully supports this central point.<sup>n44</sup> Nations that build human capital, reduce economically corrosive inequality, and build institutions to support the exploitation of human ingenuity, outgrow those that neglect these props to free market capitalism.<sup>n45</sup> This new economic science, known as endogenous growth theory, means that economics has turned an important corner.<sup>n46</sup> Specifically, economics is now engaged in the serious study of the dynamics of economic growth.<sup>n47</sup> Its very name demonstrates this reality, as growth is finally considered [\*8] endogenous to economic studies rather than simply falling from the sky through the traditionally exogenous factor of "technological change."<sup>n48</sup>

As a result of this study of the endogenous factors of growth, the traditional neoclassical efficiency paradigm, while still inexplicably dominant within its last bastion of the legal academy, is as a matter of reality in its death throes, at least insofar as economic growth is concerned.<sup>n49</sup> With its fundamental agnosticism toward distributional concerns, the neoclassical model failed to reckon with its multitudinous efficient outcomes, which may serve neither to empower people nor to maximize economic growth.<sup>n50</sup> Still, this is at the heart of economic progress, particularly in this post-industrial age.<sup>n51</sup> Fundamentally, the neoclassical paradigm permitted unexploited human capital to languish, even rot, on the sidelines of the economy.<sup>n52</sup> A model so driven by the status quo may have been viable when labor was viewed as a largely homogenous input with no variable product in an economy that manufactures widgets.<sup>n53</sup> But, in an economy in which innovation, creativity, knowledge, and human ingenuity are the keys to performance, no society can afford to be hamstrung by any model of economics that relegates human capital to an often pernicious economic and political status quo.<sup>n54</sup>

Thus, the neoclassical model alone fails to ensure economic success everywhere and always.<sup>n55</sup> From pre-industrial England to China, economic success instead turns on the ability of a society to take action to unleash human potential that was previously pent up in oppressive social, political, and economic regimes that have plagued human history.<sup>n56</sup> One example is the economic success enjoyed by the [\*9] eight East Asian countries that were part of the so-called East Asian miracle of the 1980s and 1990s. Economist Joseph E. Stiglitz has attributed the economic success of these nations to: "enormous" investments in human capital; government policies that created more equality; appropriate government investments in other infrastructure; and legal structures that assured that government institutions were not subverted by self-interest and corruption.<sup>n57</sup> This episode of rapid development therefore belies the free market approach that has been the mantra of the "Washington Consensus."

Another example is the more recent growth miracle in China. From 1978 through 2005 China grew at an annual rate that was unprecedented for such a large nation. During this time period "the accumulation of human capital was quite rapid" and "contributed significantly" to Chinese economic growth; yet, China also achieved higher returns from its human capital as productivity surged.<sup>n58</sup> According to one study of Chinese economic growth this productivity leap was the result of concerted state interventions that defy the supposed centrality of free market allocation of investment capital: the "state-centered explanation of growth is controversial but it ... is nevertheless the most plausible explanation

of China's swift growth since 1978."<sup>n59</sup> Specifically, the Chinese government intervened to boost aggregate demand, to manage the agricultural sector, to pursue protectionist trade policies, and to allocate investments in state-owned enterprises as well as infrastructure.<sup>n60</sup> While China certainly has a unique cultural and economic background, many of these lessons transcend that nation's unique background.

The World Bank issued its World Development Report 2006 in September 2005, entitled Equity and Development.<sup>n61</sup> It shatters the myth the free markets alone lead to optimal macroeconomic performance.<sup>n62</sup> Instead, it shows that modern economic science has demonstrated there is far too much inequality in the world and that "inequality traps" are stunting human economic potential and therefore [\*10] macroeconomic performance around the world.<sup>n63</sup> Too many children are born with no real opportunity for economic self-actualization, and this amounts to the destruction of human capital.<sup>n64</sup> It recommends active government intervention to level the economic playing field. Among the actions it recommends are: early interventions in childhood health care;<sup>n65</sup> enhanced investments in education and human capital infrastructure;<sup>n66</sup> actions to reduce stereotype threat and racially based impediments to opportunity;<sup>n67</sup> a redistribution of political power, enhanced safety nets to support individual risk-taking, land reforms, and more fair justice systems including innovations such as the Civil Rights Act of 1964 or, in appropriate circumstances, "affirmative action."<sup>n68</sup> The World Bank endorses these methods not on the basis of their intrinsic fairness, but instrumentally on the basis of their need to unleash the human potential of those stuck in "inequality traps" and to enhance macroeconomic performance.<sup>n69</sup>

The World Bank, however, does not stop there. Aside from the destruction of human capital in "inequality traps," inequality harms macroeconomic performance by leading to economic institutions and laws that are distorted in favor of those with power.<sup>n70</sup> As the Bank explains:

When personal and property rights are enforced only selectively, when budget allocations benefit mainly the politically influential, and when the distribution of public services favors the wealthy, both the middle and poorer groups end up with unexploited talent. Society as a whole is then likely to be more inefficient and to miss out on opportunities for innovation and investment. At the global level, when developing countries have little or no voice in global [\*11] governance, the rules can be inappropriate and costly for poorer countries.<sup>n71</sup>

In other words, the World Bank is concerned that inequality leads not only to concentrated economic power but also concentrated political power that in turn will lead to restricted opportunities and government policies for the disempowered.<sup>n72</sup>

This concern is well-founded, according to the best available economic studies based upon empirical evidence.<sup>n73</sup> One such study found a correlation between concentrated economic and political power and compromised macroeconomic performance in post-communist Eastern Europe and during the Gilded Age (1865 to 1900) in the U.S., as well as in countries with weak rules of law. The authors of this study surmise that "inequality is detrimental to the security of property rights, and therefore to growth, because it enables the rich to subvert the political, regulatory, and legal institutions of society for their own benefit."<sup>n74</sup> Other economists note that "political elites may block technological change and institutional development because of a political replacement effect... fearing replacement political elites are unwilling to initiate change, and may even block economic development."<sup>n75</sup> This view of the operation of inequality in harming macroeconomic performance is also consistent with the growth miracles that have occurred since World War II.

In Japan, elite classes were displaced in a manner that permitted a rationalization of government policies that could serve to unlock unexploited human potential.<sup>n76</sup> One economist has termed the relative equality in China and the East Asian economies at the beginning of their miraculous growth as "striking."<sup>n77</sup> Japan, Taiwan, and South Korea had each pursued land reforms.<sup>n78</sup> Of course, China's communist experience, complete with periodic purges, meant that at the beginning of its economic reforms it was unencumbered by the influence of entrenched elites.<sup>n79</sup> In each of these nations, the absence of powerful interest groups made growth promoting policies such as human capital investment programs possible.<sup>n80</sup> Elites will not generally support a wider distribution of opportunities and resources if left [\*12] to their own devices, as the neoclassical paradigm does.<sup>n81</sup>

Wider human capital development is central to economic growth.<sup>n82</sup> Study after study suggests that societies that invest in their people and economically empower previously marginalized populations economically outperform those that do not.<sup>n83</sup> Economists have demonstrated that a wide range of programs that serve to enhance human capital - from education<sup>n84</sup> to healthcare<sup>n85</sup> - essentially pay for themselves.<sup>n86</sup> Yet, these expenditures and programs are likely to be distorted or diminished by elites that are more concerned with their relative position, rather than the absolute level of

economic resources available to meet the needs of their fellow citizens.<sup>n87</sup> Consequently the world economy is plagued by stunted human capital development and distorted human capital expenditures.<sup>n88</sup> Free markets alone will not resolve this problem.<sup>n89</sup>

[\*13] Thus, the World Bank's position on the danger that inequality may stunt the ability of a society to exploit its human resources and that it may lead to entrenched elites uninterested in economic progress is well aligned with mainstream economics.<sup>n90</sup> Each recognizes that the international financial institutions must be more than zealots for free markets, which will leave elites empowered with little hope of disruption;<sup>n91</sup> instead, globalization must be reconfigured in a way that values the balanced and sustainable growth that can arise through mass economic empowerment.<sup>n92</sup> This is the essential challenge posed to the law: how can law place globalization upon a firmer economic foundation, if the elites that benefit from the current regime resist change?

#### IV. Toward A Dynamic Theory of Legal Reform

Professor Derrick Bell posits that reform only occurs in accordance with the interests of those holding political and economic power. Bell has applied this "interest convergence" theory of reform to the judicial abolition of "separate but equal" and to the issue of affirmative action.<sup>n93</sup> In a capitalist democracy, it is a truism that law is made in response to political and economic power.<sup>n94</sup> Other scholars have shown much the same dynamic in connection with the progressive era and the New Deal reforms.<sup>n95</sup> All reform requires coalitions of sufficient economic [\*14] and political power to make any reform law.<sup>n96</sup> As such, "interest convergence" is not just a statement of historic fact, it also lights the way for future reformers.<sup>n97</sup> Reform, however, need not be held hostage to the interests of those with power.

With respect to reforms regarding the legal and regulatory structure underlying the economy, an additional dynamic is at play: the prospect of a macroeconomic disruption.<sup>n98</sup> The Federal Reserve System exists as a creature of the Panic of 1907.<sup>n99</sup> The New Deal, which fundamentally re-worked the nation's system of financial regulation, occurred in the wake of the Great Depression.<sup>n100</sup> Most recently, Congress enacted the Sarbanes-Oxley Act of 2002 in the face of a potential market meltdown arising from a crisis in investor confidence.<sup>n101</sup> Such macroeconomic events can shift political and economic interests in a way that makes a reform coalition possible. If elites overplay the hand of entrenchment, the risk of macroeconomic disruptions threatens their ability to stem reform.<sup>n102</sup> A reform moment follows.

Of course, making reform possible is not the same as making reform durable or effective. The Sarbanes-Oxley Act is an instance of ineffective and non-durable reform. Business interests successfully lobbied against some of the more significant reforms associated with that Act.<sup>n103</sup> The Act imposed "quack corporate governance" according to respected scholars.<sup>n104</sup> Most importantly, the Act preserves the CEO primacy model of corporate governance, so much so that recently a CEO of a public financial institution was able to disguise more than \$ 400 million in questionable loans to an entity he controlled.<sup>n105</sup> Many commentators have suggested that the string of scandals preceding the enactment of Sarbanes-Oxley was driven [\*15] primarily by the drive of CEOs to enhance their compensation.<sup>n106</sup> CEO compensation has increased unabated since the Act.<sup>n107</sup>

The reason Sarbanes-Oxley seems to have been so ill-founded may highlight the importance of ideology and discourse. Rightly or wrongly there was little support for using private litigation against business leaders as a means of reducing agency costs.<sup>n108</sup> Instead, in accordance with a society with the highest incarceration rate in the world, enhanced criminality was the selected tool for meeting the wrongdoing.<sup>n109</sup> Ironically, the accounting industry also seemed to have significant control over the reform effort, and was able to guide reform in a way that resulted in enhanced revenues for audit firms.<sup>n110</sup> But, there is reason to believe that the reform effort would have had a fundamentally different direction if a different administration or a different Congress had been in place.<sup>n111</sup> The political ideology of the current governing political and economic coalition therefore matters in terms of the content of any reform, even if some macroeconomic disturbance creates sufficient energy for reform.<sup>n112</sup>

Sarbanes-Oxley illustrates a final point regarding the process of reform. An individual scholar was able to exploit the pressure created for reform to achieve significant reform with respect to the duties of counsel representing public corporations.<sup>n113</sup> This reform was achieved notwithstanding the prodigious political power of the attorneys subject to these new federal rules of professional responsibility.<sup>n114</sup> Therefore, one individual scholar with a focused and developed scholarly agenda can reach out atomistically to those with power over a given reform to effect change.<sup>n115</sup> Consequently, Sarbanes-Oxley ultimately suggests that durable and effective reform is possible with respect to globalization despite the fact that there may be entrenched interests that may resist reform.

These reform lessons bode well for the future of globalization. First, as previously shown, the current financial system is ill-founded and crisis prone.<sup>n116</sup> Recently, leading voices have expressed concern that a serious crisis looms.<sup>n117</sup>

[\*16] Indeed, the system is blinking red.<sup>n118</sup> The number of voices defending the status quo is dwindling and a new scholarly consensus is emerging in favor of reform.<sup>n119</sup> It is beyond the scope of this essay to either catalogue or assess the various proposals for reform; the point is that these proposals for reform will be accessible in the event of the next macroeconomic disruption resulting from the flawed model of globalization now being pursued.<sup>n120</sup> Legal scholars wishing to promulgate proposals focusing upon human capital actualization, and the institutions necessary to achieve such actualization, need to demonstrate that such proposals would give rise to a more powerful global economy, however, in order to maximize the political viability of such proposals.

Second, a major prop supporting the status quo in terms of global inequality and globalization has been removed. Endogenous growth theory extends an opportunity to progressive voices to fundamentally change the discourse with respect to the relationship of economics, social justice and globalization.<sup>n121</sup> For too long, the voices of the traditional Law and Economics movement and the "Washington Consensus" have predominated in the debate regarding issues of economic structure.<sup>n122</sup> Endogenous growth theory has demonstrated that the laissez faire approach, while comforting to those in power, is simply wrong in terms of its utility regarding macroeconomic performance.<sup>n123</sup> Given the reality of United States history, [\*17] and the spread of Western economic hegemony, progressive voices can no longer cede the economic high ground (and implicitly the moral high ground, at least in a highly materialistic society) to neo-liberal ideology.<sup>n124</sup> Discourse matters and progressives can no longer permit economic dogma to trump economic science as well as social justice.

Third, the experience of high growth nations throughout history and most prominently in China today, demonstrates the power of endogenous growth theory and the naked failures of neo-liberal dogma. This creates a competitive pressure the global framework towards reform.<sup>n125</sup> Professor Bell argued, and subsequently evidence was found supporting his position, that Brown v. Board of Education was decided in part because the U.S. was locked in a titanic competition with U.S.S.R.<sup>n126</sup> The U.S. reformed in response to a threat to its hegemony. China and the other Asian successes may well serve to exert this kind of competitive pressure upon the U.S. China's approach to economic growth is fundamentally at odds with the approach proffered by the Washington Consensus that has thus far dominated globalization.<sup>n127</sup> As such, China's economic performance demonstrates that the United States cannot continue to credibly support the neo-liberal approach to globalization.<sup>n128</sup> Instead, more nation states will look to the Chinese method of achieving macroeconomic success. This method includes an emphasis on the development of human capital and state-supported initiatives to unleash economic performance.<sup>n129</sup> This means that progressive reformers will be able to use China as evidence of the weaknesses in the Western economic order.

Accordingly, progressive reformers must begin to articulate alternatives and means of pursuing the lessons of endogenous growth theory and the benefits of developing human capital to the maximum extent possible. This suggests a refocus of progressive energy on issues relating to legal infrastructure that can secure a more dynamic legal foundation for change, much as endogenous growth theory has refocused economics from free market rhetoric to studying the dynamics of economic growth.<sup>n130</sup> For example, depoliticized administrative agencies can serve [\*18] to place economic policy on a more scientific foundation, out of reach of special interests seeking to indulge narrow short term economic enrichment at the expense of the general interest in a stable and dynamic economy.<sup>n131</sup> This fact has been demonstrated by the legal structure of the Federal Reserve Board in the United States and the performance in expertly administering monetary policy free of special interests, even special interests with huge stakes in monetary policy such as the automobile, banking, or real estate industry.<sup>n132</sup> Thus, depoliticization is a tool available to secure a more scientific policymaking function.<sup>n133</sup> It is a second best alternative to a fully-functioning, idealized democratic means of formulating and implementing economic policies such as fiscal policy; but, given the stakes at issue in fiscal policy determinations, it may be superior to the current status quo in terms of how globalization policy is formulated.

Depoliticization is just one of many potential means by which the current corrosive influence of special interests over macroeconomic performance in general and globalization in particular can be quelled.<sup>n134</sup> There may be many other means of securing a greater social justice which comports with macroeconomic performance.<sup>n135</sup> Of course, articulating one means by which a depoliticized agency structure can serve to enhance social justice while at the same time supporting superior macroeconomic growth is different from articulating a means by which such a vision can become a reality, as long as elites retain to preserve the status quo.<sup>n136</sup> Nevertheless, progressive reformers thinking about globalization and economic issues must recognize that one of the fatal flaws of the neoclassical paradigm is its failure to provide for appropriate institutions to stabilize and rationalize economic policymaking.<sup>n137</sup> Because of this failure, the system spawned by neoclassical thinking is inherently unstable and inclined towards financial crises of significant macroeconomic dimensions.<sup>n138</sup> This was certainly true in Asia in 1997 and it [\*19] remains no less true today.<sup>n139</sup> In fact, many economists are today arguing that the system of globalization rests on infirm institutional frameworks and that a

major crisis is imminent because of huge imbalances whereby consumption is centered largely in the United States, and production is increasingly centered in Asia.<sup>n140</sup> Should the dollar collapse or should buying power otherwise be compromised, there are no frameworks that currently exist to right globalization.

Reformers must opportunistically exploit the political pressures for change that are certain to follow in the wake of the major macroeconomic disturbances that are inevitable.<sup>n141</sup> When those political forces become manifest, it is crucial that progressive voices have an arsenal of reform ideas from which real progress in terms of both social justice and macroeconomic performance may be supported.<sup>n142</sup> The system currently in place is sufficiently complex that it can be deemed a chaotic system, particularly given the role of macroeconomic disruptions.<sup>n143</sup> In such systems, clear patterns of special interest influence, overreaching, crises, and reform, emerge.<sup>n144</sup> The key is to exploit such reform moments.

## V. Conclusion

The international financial institutions must be restructured in a way that permits those agencies to facilitate growth through maximum development of human resources worldwide. The international financial institutions must be equipped to act as a source of pressure on individual nations to pursue more egalitarian policies to extend greater opportunity to more persons. Japan, the nations of East Asia, and most recently China, have proven the value of rapid human capital formation and diminished inequality. Politically, each of these growth miracles were achieved against a backdrop of redistributed political and economic power - whether through land reform or, in the case of China, an extended period of communism.

Certainly, there is no recipe for growth miracles and much depends upon the cultural context of any given nation. Nevertheless, the common themes are clear: growth takes off wherever humans are empowered and barriers to success such as privilege or oppression are removed. Institutions for a depoliticized monetary function or a depoliticized fiscal policy may hold promise in some societies while other structures are needed elsewhere. Economists have identified a host of similar institutions associated with growth ranging from corporate governance to financial regulation to intellectual property regimes. Lawyers need to respond to this new economic learning by crafting legal structures to support the creation of the right mix of institutions both trans-nationally and globally.

[\*20] Quite frequently, these growth enhancing institutions may well conflict with the interests of those currently holding economic and political power both within specific nations as well as over the process of globalization itself. It may be impossible to convince these elites to approve of any reforms that are destructive to their current privileged positions. Nevertheless, because the status quo is essentially at odds with economic science, periodic macroeconomic disruptions will provide reform moments. These reform moments will emerge chaotically and will provide opportunities for progressive scholars to forge coalitions among disrupted economic and political elites for durable and effective reform. With respect to globalization, there is cause for optimism that reform is not inexorably held hostage to the short term interests of elites. First, China provides a profoundly competitive model to the "Washington Consensus." Second, endogenous growth theory and mainstream macroeconomic science should fundamentally change the discourse away from mere neoclassical ideology towards a more rationalized globalization. All of this suggests that globalization can be righted in a manner that may well fulfill its promises.

## Legal Topics:

For related research and practice materials, see the following legal topics:  
Civil Procedure Eminent Domain Proceedings General Overview

## FOOTNOTES:

n1. I use the term "legal infrastructure" to denote those regulatory and legal rules that either lower the cost of capital or raise the return to capital. See Steven A. Ramirez, *The Law and Macroeconomics of the New Deal* at 70, 62 Md. L. Rev. 515, 519-520 n.20 (2003). Others define the term in a highly similar way, to mean rules that facilitate the efficient operation of markets. See Ragurham G. Rajan & Luigi Zingales, *Saving Capitalism from the Capitalists* x (2003) (stating that government must provide "rules and regulations" as "infrastructure" to assure open and competitive markets).

n2. The term "Washington Consensus" generally refers to the set of global economic policies pursued by the International Monetary Fund and the World Bank at the behest of the United States. The policies emphasize free markets, capital market liberalization, privatization of state functions, and free trade. Other commentators refer to this same dynamic as the "Wall Street-Treasury Complex." 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 Law* 831, 835 (2003) (reviewing Joseph Stiglitz, *Globalization and its Discontents* (2002)). Implicit in this approach is a highly limited role for the government, other than providing basic legal infrastructure such as contract laws, property rights and a judiciary, which serves to preserve the status quo.

n3. Joseph Stiglitz, *Globalization and its Discontents* xiii (2002) ("Decisions were made on the basis of what seemed a curious blend of ideology and bad economics, dogma that sometimes seemed to be thinly veiling special interests."). Economist Stiglitz, the Nobel laureate for 2001, formerly served as the Chief Economist at the World Bank. *Id.* at ix.

n4. Human capital development entails a wide variety of initiatives necessary to secure the full economic potential of individuals. Thus, nations that achieve an above average increase in literacy experience an above average increase in GDP growth, and nations that achieve an increase in life expectancy of one year experience up to 4 percent higher GDP growth. Emanuele Baldacci, Benedict Clements, Sanjeev Gupta & Qiang Cui, *What Does it Really Take to Help the Poor?*, *Fin. & Dev.*, June 2005 (finding that enhanced public spending on health care and education is associated with higher economic growth) available at <http://www.imf.org/external/pubs/ft/fandd/2005/06/baldacci.htm>.

n5. Endogenous growth theory is a branch of economics that seeks to study the underlying dynamics of economic growth, frequently through empirical studies of transnational growth rates. Robert J. Gordon, *Macroeconomics* 339-343 (2006). While the focus on empirically studying growth would seem to be the natural domain of economics in general, and macroeconomics in particular, in fact, most macroeconomic focus has traditionally been upon business cycles rather than the empirics of growth. Martin Zagler, *Endogenous Growth, Market Failures and Economic Policy* 1-2 (1999). See also Philippe Aghion & Peter Howitt, *Endogenous Growth Theory* 1 (1999) (stating that "people's innovative activities are conditioned by the laws, institutions, customs, and regulations that affect their incentive and their ability to appropriate rents from newly created knowledge" and that "the purpose of endogenous growth theory is to seek some understanding of this interplay between technological knowledge and various structural characteristics of the economy... and how such an interplay results in economic growth.").

n6. The idea that there are pro-growth policies that promote a more egalitarian distribution of resources is no longer a new idea. See Steven A. Ramirez, *Bearing the Costs of Racial Inequality: Brown and the Myth of the Equality/Efficiency Trade-Off*, 44 *Washburn L.J.* 87, 87 (2004) (stating that inequality harms economic growth and stability). Indeed, economists have long demonstrated that alleviating poverty and pursuing greater equity in the distribution of resources can enhance allocative efficiency and macroeconomic growth. E.g., Pranab Bardhan, *Efficiency, Equality and Poverty Alleviation*, 106 *Econ. J.* 1344, 1345, 1355 (1996).

n7. Chris Bramall, *Sources of Chinese Economic Growth 1978-1996* 470 (2000) (finding that China's experience suggests a role for "selective interventionism," but only if the state is "hardened" against the influence of special interests which can be expected to arise and retard growth when inequality goes unchecked). See also Dani Rodrik, *Understanding Economic Policy Reform*, 34 *J. Econ. Lit.* 9, 13, 19, 20 (1996) (contesting then-prevailing orthodoxy that free markets alone led to East Asian growth, and demonstrating instead that it was attributable to rapid accumulation of physical and human capital that was facilitated by a political context marked by a "hard" state with the ability to resist special interests due to relative equality).

n8. Pranab Bardhan, *Does Globalization Help or Hurt the World's Poor?*, *Sci. Am.*, Apr. 2006, at 84, 86 (stating that the percentage of persons living in extreme poverty declined between 1981 and 2001 from "79 percent to 27 percent in China, 63 to 42 percent in India, and 55 to 11 percent in Indonesia.").

n9. Bramall, *supra* note 7, at 17 (showing that real GDP from 1978 to 1996 grew at nearly 10 percent per annum). Bramall's study of the dynamics of Chinese economic growth during its period of rapid development does not ignore China's many problems beyond its impressive, even historic, economic performance. He recognizes its poor human rights record, its disregard of environmental concerns, and its soaring inequality. *Id.* at 415. Indeed, with respect to inequality, Bramall concludes that China's economic performance will be compromised by rising inequality and the consequent likelihood that "growth-retarding" elites will emerge. *Id.* at 470.



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n10. *Id.* at 416 (stating that Chinese growth, like that of Japan and East Asia, occurred due to the rejection of the "Washington Consensus" and the "Anglo-Saxon model of capitalism"). See also Stiglitz, *supra* note 3, at 91, 126 (stating that Asian growth miracles occurred when nations took a state interventionist approach that was "directly opposite" to the Washington Consensus); Jagdish Bhagwati, *The Wind of the Hundred Days: How Washington Mismanaged Globalization* 357-358 (2000) (noting that growth in India was accompanied by government policies fostering education, land reform, community development and health care).

n11. Bramall, *supra* note 7, at 416 (showing that South Korea grew at an annual rate of 8.6 percent between 1960 and 1990, while Taiwan grew at 8.7 percent during a similar period).

n12. *Id.* at 3 (in 1952 Japan had one-half of Europe's GDP; in 1994 its GDP was 40 percent higher).

n13. The threat that globalization poses to the economic welfare of workers is a concern that spans the political spectrum. See Paul Krugman, *Graduates vs. Oligarchs*, *NY Times*, Feb. 27, 2006, at A19 (demonstrating that while the vast majority of American workers saw wages stagnate from 1972 and 2001, the income of those in the 99.99 percentile rose by 467%); Patrick J. Buchanan, *Morning in Which America?*, *American Conservative Magazine*, Aug. 24, 2004, at 6 (stating that globalization has diminished bargaining power for U.S. workers, resulting in stagnant real wages from October, 1991 through June, 2004). The idea that workers are losing political power as a result of globalization, and that a new form of corporate feudalism is taking root, is less mainstream. Tim Duvall, *The New Feudalism: Globalization, the Market and the Great Chain of Consumption*, 25 *New Pol. Sci.* 81 (2003).

n14. E.g., Frances Stewart & Albert Berry, *Globalization, Liberalization, and Inequality: Expectations and Experience in Inequality, Globalization, and World Politics* 150, 185 (Andrew Hurrell and Ngaire Woods, eds., 1999) (finding that globalization and trade liberalization was associated with increased inequality in middle income and high income nations, but was also associated with decreased inequality in lower income countries).

n15. See Frank J. Garcia, *Global Markets and Human Rights: Trading Away The Human Rights Principle*, 25 *Brook. J. Int'l. L.* 113 (1999) (noting the inability for nation-states to protect human rights under globalization). In a related work, I argue that full actualization of economic human rights is essential to the full actualization of economic potential. Steven A. Ramirez, *Taking Economic Human Rights Seriously* (forthcoming 2007).

n16. Allen S. Blinder, *Offshoring: The Next Industrial Revolution?*, *Foreign Affairs*, Mar.-Apr. 2006, at 113, 120, 122 (predicting that between 28 million and 42 million "impersonal" service jobs may be offshored in the "electronic future."). See also Buchanan, *supra* note 4, at 6 (stating that U.S. labor participation between 1994 and 2004 remained constant).

n17. E.g., Stewart & Berry, *supra* note 14, at 185.

n18. Even after decades of freer markets and enhanced global trade, 2.8 billion people live on less than two dollars per day. Ramirez, *supra* note 1, at 831 n.1. Between 1981 and 2001, the percentage of persons in Africa living in extreme poverty has increased from 42 percent to 47 percent. Bardhan, *supra* note 4, at 87.

n19. See Stiglitz, *supra* note 3, at 18-20, 195, 207 and 208 (stating that IMF policies are only coherent if their objective is deemed to be assuring repayment for western banks). Both conservative and left-leaning voices agree that "the market system gets distorted by politically powerful elites." Rajan & Zingales, *supra* note 1, at x-xi.

n20. See Andrew Balls and Richard McGregor, *G20 Urges Reform of IMF and World Bank*, *Fin. Times*, Oct. 17, 2005, at 9 (noting that the international financial institutions have failed to keep pace with trade and that the global economy faced risks from higher oil prices, trade imbalances, and protectionist pressures).

n21. Stiglitz, *supra* note 3, at 215-247 (proposing wide ranging restructuring of the international financial institutions to assure that economic science rather than special interest influence dictates policy, particularly when crises emerge).

n22. Edmund L. Andrews, I.M.F. Warns of Imbalances in World Consumption, *NY Times*, Sept. 22, 2005, at C3. The possibility of a dollar crisis has alarmed mainstream authorities. Essentially the US consumes far more than it produces and the rest of the world finances the difference. *The Disappearing Dollar*, *The Economist*, Dec. 2, 2004, at 56. If the world lost confidence in the value of the dollar a financial crisis would follow. See *id.* (stating that the loss of confidence in the dollar is causing "great strain" on the global financial system).

n23. One such problem is the looming threat to the dollar as a result of trade imbalances that the US runs with the rest of the world, and in particular with China. See International Monetary Fund, *World Economic Outlook 188-189 (2005)* (urging "policymakers" to undertake needed reforms) available at: <http://www.imf.org/external/pubs/ft/weo/2005/02/pdf/annex.pdf>. Thus the IMF welcomed enhanced exchange rate flexibility in China, but has no tools to facilitate further efforts, which are necessary to "unwind imbalances." *Id.* at 190.

n24. The problem of special interest/elite influence over public policy is a longstanding area of scholarly inquiry, and its application to the process of globalization is not new. DW MacKenzie, *Book Review: Globalization and Its Discontents*, 120 *Pub. Choice* 234, 237-238 (2004) (arguing that special interest influence over globalization should be taken as a given and that consequently any government-based solution to the challenges of globalization should be viewed with suspicion).

n25. William I. Robinson, *Promoting Polyarchy: Globalization, U.S. Intervention, and Hegemony* 372-373 (1996) (stating that within the world financial institutions "technical economic criteria corresponding to the objective needs of capital" is exalted at the expense of any single nation's need). Globalization is not the first context where economic thinking was colored by the needs of those in power. See Robert Heilbroner, *Teachings from the Worldly Philosophy* 45, 70 (1996) (demonstrating that great economists may fall prey to the temptation to articulate "apologia" or become "apologists" for extant power relationships such as deepening class divisions or the exalted role of land ownership). Indeed, the great civil libertarian, John Stuart Mill, specifically endorsed colonialism as an exception to general principles of personal liberty. *Id.* at 154-155.

n26. One such example of this normative approach is the prescriptive analysis of mainstream Law and Economics with respect to the economic implications of race. According to Judge Richard Posner, any intervention in the market is "inefficient" because it impedes freedom of contract and markets will tend to eliminate discrimination on their own. See Steven A. Ramirez, *What We Teach About When We Teach About Race: The Problem of Law and Pseudo-Economics*, 54 *J. Legal Educ.* 365, 367 (2004). Of course, this thesis is contrary to US history, and ignores the central economic problem of race: it amounts to the wanton and irrational destruction of human capital and is therefore an economic catastrophe. *Id.* at 371 (stating that race results in the "underdevelopment of human capital on a massive scale throughout society."). For further over-extensions of the neoclassical paradigm, see Ramirez, *supra* note 2, at 835 n.21 (collecting authorities arguing for *laissez-faire* regarding deposit insurance, securities regulation and labor legislation). According to economist Stiglitz such an approach is rejected by "modern economics" which recognizes the limitations free market efficiency. Stiglitz, *supra* note 3, at 73.

n27. Ramirez, *supra* note 26, at 378-379.

n28. E.g., Richard A. Posner, *Creating a Legal Framework for Economic Development*, 13 *World Bank Res. Obs.* 1, 9 (1998) (advocating "efficient" rules of contract and property rights but neglecting to mention human capital, infrastructure investment, or institutions necessary to protect rights of the oppressed). This is precisely the type of "market fundamentalism" that Nobel laureate economist Joseph Stiglitz blames for the "pain and suffering" that has accompanied globalization. Stiglitz, *supra* note 3, at 36. In essence, there is much more to economic development than free market structures: *laissez faire* ideology has been proven a failure. *Id.* at 74.

n29. Stiglitz, *supra* note 3, at 225.

n30. Rojan & Zingales, *supra* note 1, at 312; Robinson, *supra* note 25, at 372 (stating that a "transnational elite" dominates the IMF, World Bank and WTO).

n31. " Despite repeated promises of poverty reduction made over the last decade of the twentieth century, the actual number of people living in poverty has actually increased by almost 100 million." Stiglitz, supra note 8, at 5. Between 1981 and 2001, the percentage of Africans living in extreme poverty (defined as living on less than \$ 1 per day) increased from 42 to 47 percent. Bardhan, supra note 8, at 87.

n32. Supra note 2. See also Rodrik, supra note 7, at 9.

n33. Stiglitz, supra note 3, at 195 (suggesting that IMF believes that "what the financial community views as good for the global economy is good for the global economy and should be done.").

n34. Ramirez, supra note 2, at 844-846.

n35. Stiglitz, supra note 3, at 19-20 ("the net effect of the policies set by the Washington Consensus has all too to benefit the few at the expense of the many, the well-off at the expense of the poor... commercial interests and values have superseded concern for the environment, democracy, human rights, and social justice.").

n36. Stiglitz, supra note 3, at 4.

n37. Supra notes 18 and 31.

n38. You Need Us and We Need You, Economist.com, April 6, 2005 (stating that US over-consumption is driving world growth but is not sustainable) available at [http://www.economist.com/agenda/displaystory.cfm?story\\_id=3834261](http://www.economist.com/agenda/displaystory.cfm?story_id=3834261). See also Blinder, supra note 16, at 120, 122 and 124 (predicting massive migration of jobs from the US to low labor cost areas such as China and India, along with declining wages for many jobs that remain). Essentially, the US is the consumer of last resort in the world, and it is burdened by excessive debt and the prospect of competing in a world labor market that is rapidly expanding through the massive entry of low wage workers.

n39. Supra note 14.

n40. Supra notes 10-12.

n41. Stiglitz, supra note 3, at x.

n42. Angela de la Fuente & Rafael Domenech, Human Capital in Growth Regressions: How Much Difference Does Data Quality Make?, 4 J. Eur. Econ. Ass'n 1 (2006) (finding that refined data sets yields a stronger correlation between human capital stock and economic growth, meaning prior studies may be underestimating the influence of human capital investments); Antonio Ciccone & Elias Papaioannou, Human Capital, Production, and Growth, Nov. 2005, at 26 ("We find that output growth in schooling-intensive industries was significantly faster in economies with higher education levels and greater education improvements."). The role of human capital formation in economic growth has naturally attracted the attention of those seeking to identify the endogenous dynamics of growth. See Robert Lucas, The Making of a Miracle, 61 Econometrica 251, 270 (1993) ("The main source of growth is the accumulation of human capital - of knowledge - and the main source of differences in living standards among nations is differences in human capital.").

n43. See Robert E. Hall & Charles I. Jones, *Why Do Some Countries Produce So Much More Output per Worker than Others?*, 114 Q. J. Econ. 83, 95 (1999) (finding that output is influenced by investment in physical capital, human capital and social infrastructure which consists of government action that encourages people to undertake productive activities).

n44. A notable example of economic mythology in this context is the view of Judge Posner with respect to inequality. Essentially he speculates that although a more egalitarian distribution may have some benefits, overall it would be harmful because it would lead to more crime as goods would become harder to protect and easier to fence as they become more scarce. Ramirez, *supra* note 6, at 93. Of course Posner is dead wrong as inequality has been empirically shown to harm economic performance. *Supra* note 6. In general, Posner's economic theorizing and speculation is oblivious to the possibility that race, class or any other construct, can operate to destroy human capital and diminish economic output as masses of humanity are economically marginalized, whatever economic science may show. I have termed such flawed thinking to be law and pseudo-economics. See *supra* note 28.

n45. See David Romer, *Advanced Macroeconomics* 100, 138-166 (3rd ed. 2006) (finding that cross country differences in economic performance are due to differences in physical capital, human capital and social infrastructure).

n46. *Id.* at 100 (stating that endogenous growth theory investigates the fundamentals of growth more deeply and "analyzes the dynamics of the economy when knowledge accumulation is endogenous.").

n47. *Supra* note 5.

n48. Robert J. Gordon, *Macroeconomics* 339-340 (10th ed. 2006). See also Aghion & Howitt, *supra* note 5, at 4 (stating that economics has traditionally treated the underlying dynamics of growth as "manna from heaven.").

n49. Of course, the foundation of any successful economy must be free markets, as a matter of historical fact. Romer, *supra* note 45, at 147 (comparing economic performance between communist East Germany and North Korea versus free market South Korea and West Germany and concluding that "market-oriented regimes were dramatically more successful economically than the communist ones."). "Capitalism, or more precisely the free market system, is the most effective way to organize production and distribution that human beings have found." Rajan & Zingales, *supra* note 1, at 1.

n50. Adam Smith posited that "the greatest improvement in the productive powers of labor" arise from ever more refined divisions of labor. Heilbroner, *supra* note 25, at 75. Famously, Smith uses the example of a pin factory to illustrate the multiplying impact on production that results from the division of labor, with virtually no role for education. *Id.* at 76-77. Indeed, Smith recognized that ultimately workers forced to repeat routine tasks endlessly would become "stupid and ignorant." *Id.* at 96.

n51. Rajan & Zingales, *supra* note 1, at 87 and 90 ("Human capital is replacing inanimate assets as the most important source of corporate capabilities and value.").

n52. The fundamental agnosticism of the efficiency paradigm with respect to distributional concerns has been a source of skepticism concerning its usefulness within the legal academy. James B. Hackney, Jr., *Law and Neoclassical Economics Theory: A Critical History of the Distribution/Efficiency Debate*, 32 J. Socioeconomics 361 (2003). Similarly, the fact that there may be multiple efficient outcomes seemingly further undercuts the value of the neoclassical paradigm. See Donald E. Campbell, *Resource Allocation Mechanisms* 24 (1987). However, the fact that an efficient outcome may include an economic reality whereby the vast majority of a given population is totally stripped of all ability to produce anything may be the fatal blow to efficiency as a normative principle.

n53. See *supra* notes 6, 26 and 52.

n54. Supra note 42.

n55. See Stiglitz, supra note 3, at 21, 74, 76, 79, 85 and 216-218 (stating that the US imposed laissez faire policies on third world countries which it knew were flawed and which it had rejected).

n56. See Rajan & Zingales, supra note 1, at 136-149, 149 (arguing that the expropriation and redistribution of land in England during the reign of Henry VIII had the effect of "spreading economic power" and moving land into the hands of more efficient owners); Bramall, supra note 7, at 458 ("The absence of significant concentrations of economic and financial power in late Maoist China thus made it easier to introduce growth promoting institutional structures."). Of course, redistributive policies, while quelling the power of elites and empowering individuals, may not be a sanitary option. One element of the Chinese experience that resulted in limited interest group resistance to pro-growth policies was the purges of the Cultural Revolution. Nearly 500,000 Chinese citizens died during this tumultuous era. Bramall, supra note 7, at 454. That is one way to limit the influence of entrenched elites; but, the moral costs are simply unacceptable.

n57. Joseph E. Stiglitz, Some Lessons from the East Asian Miracle, 11 World Bank Res. Obs. 151, 152, 153, 154, 162 (1996).

n58. Yan Wang and Yudong Wao, Sources of Chinese Economic Growth 1952-1999: Incorporating Human Capital Accumulation, 14 China Econ. Rev. 32, 34, 47 (2003). One commentator has suggested that China's educational record constitutes a "failure" because of a policy decision to limit mass education in favor of a model relying on merit to allocate secondary education. Bramall, supra note 7, at 411-412. While it may be that China's restriction of education to the most qualified will prove to be a misstep, total educational expenditures more than quadrupled in real terms between 1978 and 1995. Id. at 412. Moreover, China's literacy rate expanded from 77% to 84% from 1982 to 1990. Id. at 221. Thus, by all accounts China greatly expanded its social capabilities to support enhanced technical progress. Id. at 415 and 465.

n59. Bramall, supra note 7, at 300.

n60. Id. at 300-414.

n61. The World Bank, World Development Report 2006, Equity and Development (2005).

n62. Id. at 1 ("Institutions and policies that promote a level playing field - where all members have similar chances to be socially active, politically influential, and economically productive - contribute to sustainable growth and development.").

n63. Id. at 2 and 7 ("If China and India are excluded, global inequalities have continued to rise.").

n64. Id. at 2 ("differences in life chances across nationality, race, gender, and social groups will strike many readers as fundamentally unfair. They are also likely to lead to wasted human potential and thus to missed development opportunities.").

n65. Id. at 11 ("Evidence supports the view that investing in early childhood has large impacts on children's health and readiness to learn and can bring important economic returns later in life - often greater than investments in formal education and training.").

n66. Id. at 11 ("Actions to equalize opportunities in formal education need to ensure that all children have acquire at least a basic level of skills necessary to participate in society and today's global economy.").

n67. Id. at 8 ("Discrimination and stereotyping - mechanisms for the reproduction of inequality between groups - have been found to lower the self-esteem, effort and performance of individuals... This reduces their potential for individual growth and their ability to contribute to the economy."). The World Bank relied upon a study replicating the work of Claude Steele on stereotype threat, in reaching this conclusion. See Ramirez, supra note 26, at 370. Essentially Steele showed that oppressed groups in the US can internalize stereotypes of inferiority in a way that compromises performance. Id. The World Bank cites a study on the effect of caste in India. Low caste children performed tasks on par with high caste children when their caste was not disclosed, but their performance declined relative to the high caste children when caste was made public. Karla Hoff & Priyanka Pandey, *Belief Systems and Durable Inequalities: An Experimental Investigation of Indian Caste*, May 2004, at 32 available at <http://sticerd.lse.ac.uk/dps/bpde2004/hoff.pdf>.

n68. World Bank, supra note 61, at 13.

n69. Id. at 17 ("Greater equity can, over the long run, underpin faster growth.").

n70. Id. at 7-9 (finding that: "With imperfect markets, inequalities in power and wealth translate into unequal opportunities, leading to wasted productive potential and to an inefficient allocation of resources;" and, "economic and political inequalities are associated with impaired institutional development.").

n71. Id. at 2.

n72. A prime example of such a dysfunctional society would be the pre-civil rights era south. This society literally eliminated opportunities to excel among millions of its citizens, pursuant to an oppressive legal regime which apparently served the interests of a narrow elite (in their own minds at least). Economists have noted that the elimination of Jim Crow laws transformed the south from an economically backwards region to a region that has grown to reach par with the rest of the nation. William Easterly, *The Elusive Quest for Growth* 276-277 (2002).

n73. Ramirez, supra note 6, at 93-100.

n74. Edward Glaeser, Jose Scheinkman & Andrei Shleifer, *The Injustice of Inequality*, 50 *J. Mon. Econ.* 199 (2003).

n75. Daren Acemoglu & James A. Robinson, *Economic Backwardness in Political Perspective*, at 42-43 (working paper on file with author) (May, 2002) (arguing that elites will oppose technological change and economic development when their incumbency advantages are threatened and finding historical evidence in support of this dynamic) available at <http://econ.lse.ac.uk/staff/rburgess/aea/backward9.pdf>.

n76. Bramall, supra note 7, at 449.

n77. Id. at 451. See also supra notes 6, 56, 57 and 63.

n78. Bramall, supra note 7, at 449-451. Economists have also noted the key role of land reform in pre-industrial England. Rajan & Zingales, supra note 1, at 136-149.

n79. Bramall, supra note 7, at 454-458.

n80. E.g., supra notes 42, 57, 58 and 66.

n81. The economically powerful would naturally resist opportunities that were equally available based upon merit as such a regime "would make power redundant." Further, any such regime would force the powerful (and their progeny) to prove their merit over and over again. Thus, those with power can be expected to resist free flowing opportunities. Rajan & Zingales, supra note 1, at 9.

n82. Ampro Castello & Rafael Domenech, Human Capital Inequality and Economic Growth: Some New Evidence, 112 *Econ. J.* C187, C199 (2002) ("In short, these findings indicate that education inequality is associated with lower investment rates and, consequently, lower income growth."). See also supra note 42.

n83. Aghion & Howitt, supra note 5, at 354 (surveying literature and finding that "the educational achievement of a society ... plays an important role in economic growth"). See also Wang & Yoo, supra note 58, at 47 ("We find that ... the accumulation of human capital in China, as measured by the average years of schooling in population aged 15-64 years, was quite rapid and it contributed significantly to growth and welfare.").

n84. Serge Coulombe, Jean Francois Tremblay & Sylvie Marchand, Literacy Scores, Human Capital and Growth Across Fourteen OECD Countries 31 (2004) ("A country that achieves literacy scores one percent higher than average ends up ...with labor productivity and GDP per capita respectively higher by 2.5 and 1.5 percent on average.") available at <http://www.nald.ca/fulltext/oced/oced.pdf>.

n85. Kwabena Gyimah-Brempong & Mark Wilson, Health Human Capital and Economic Growth in Sub-Saharan Africa and OECD Countries, 44 *Q. Rev. Econ & Fin.* 296 (2004) (finding that health capital accounts for about 22 to 30 percent of economic growth and that increasing life expectancy by one year may raise economic growth by up to 4 percent per annum).

n86. See Steven A. Ramirez, The Law and Macroeconomics of the New Deal at 70, 62 *Md. L. Rev.* 515, 558 (2003) (showing that the GI Bill yielded increased tax revenues of between 5 and 12 times the cost of the program).

n87. See Era Dabla Norris & Mark Gradstein, The Distributional Bias of Public Education: Causes and Consequences, IMF Working Paper, Nov. 2004, at 14 (finding that spending on education is biased towards the rich and that "weak governance leads to intensified rent-seeking over public education funds, increasing inequality, reducing social mobility, and slowing growth.") available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=879039](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=879039).

n88. The underinvestment in human capital is manifest in the very high returns such investments generate. See Bramall, supra note 7, at 107 (citing World Bank study demonstrating private rates of return for primary education of more than 25 percent and for 17 percent for secondary education).

n89. Lenders face risks of uncertainty (i.e., not knowing whether a borrower will earn enough to repay the loan); adverse selection (i.e., when rates go higher in response to uncertainty many good credit risks will respond by exiting the market, leaving only the worst risks remaining); and, moral hazard (i.e., borrowers may take on too much risk when repayment looks unlikely as they will not lose, the lender will). As such they will demand collateral. When this happens credit is allocated in accordance with wealth, not merit. Rajan & Zingales, supra note 1, at 28-33. Of course, if commercial loans are not available a putative borrower may seek funds from social networks, such as family members. Unfortunately, here too, funds will flow to the wealthy, who are likely to have wealthier social networks. *Id.* at 33-34. See also World Bank, supra note 61, at 2 (discussing how imperfect credit markets mean that highly capable poor children will not get basic education while wealthy children who are less able may go to college).

n90. All else being equal, politically powerful groups would welcome superior institutions and technologies. But in practice all else is not equal, because superior institutions and technologies may reduce their political power, and make it more likely that they will be replaced. At

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the center of our theory is therefore the idea of that changes in institutions or the introduction of new technologies often create turbulence, eroding the political advantages and future economic rents of incumbent elites. Alternatively, new technologies may enrich competing groups, increasing their threat to incumbents. These considerations make politically powerful groups fear losing power and oppose economic and political change, even when such change will benefit society as a whole. Acemoglu & Robinson, *supra* note 75, at 1.

n91. See Rajan & Zingales, *supra* note 1, at 312 (noting that capitalism "easily degenerates into a system of the incumbents, by the incumbents and for incumbents.")

n92. See Jeff Faux, *Global Class War* 1, 28-80, 101 (2006) (stating that elites are forming a transnational cohesive allegiance without any sense of obligation of building either national economic or the global economy). See Rajan & Zingales, *supra* note 1, at 302 and 304 (stating that it is a "travesty that children in the United States, the future of the nation, do not have health insurance as a matter of course" while the wealthy elderly are fawned upon, and that the U.S. needs a "revolution in higher education" akin to the GI Bill).

n93. Derrick Bell, *Diversity's Distractions*, 103 *Colum. L. Rev.* 1622, 1632 (2003) ("Diversity then is less a means of continuing minority admissions programs in the face of widespread opposition than it is a shield behind which college administrators can retain policies of admission that are woefully poor measures of quality, but convenient vehicles for admitting the children of wealth and privilege."); Derrick Bell, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 *Harv. L. Rev.* 518, 523 (1980) ("the decision in *Brown*... cannot be understood without some consideration of the decision's value to whites, not simply those concerned about the immorality of racial inequality, but also those whites in policymaking positions able to see the economic and political advances at home and abroad that would follow abandonment of segregation.").

n94. See Neal Devins, *Explaining Grutter v. Bollinger*, 152 *U. Pa. L. Rev.* 347, 366 (2003) (analyzing amici briefs as a means of assessing the interests of those with power in the outcome of *Grutter*).

n95. Colin Gordon, *New Deals: Business, Labor and Politics 1920-1935* 4 (1994) ("This study contributes to a broad stream of interpretation that has stressed the primacy of business interests in the formulation of U.S. public policy and the essential conservatism of the New Deal."); Gabriel Kolko, *The Triumph of Conservatism* 2-3 (1963) (finding progressive era reforms amounted to "business control of politics" rather than politicians taming business).

n96. Steven A. Ramirez, *Games CEOs Play and Interest Convergence Theory: Why Diversity Lags in America's Boardrooms and What To Do About It?*, 61 *Wash. & Lee L. Rev.* 1583, 1603-1604 (2004).

n97. Richard Delgado, *Crossroads and Blind Alleys*, 82 *Tex. L. Rev.* 121, 137 (2003) (stating that identifying interests which may benefit from reform can assist in "determining when the time is right to strike.").

n98. Rodrik, *supra* note 7, at 31-38 (summarizing theory of economic reform which identifies economic crises as one factor leading to reform).

n99. Steven A. Ramirez, *Depoliticizing Financial Regulation*, 41 *Wm. & Mary L. Rev.* 503, 522-527 (2000).

n100. *Id.*

n101. *Sarbanes-Oxley Act of 2002*, Pub. L. No. 107-204, 116 Stat. 745.



n102. For example, the Sarbanes-Oxley Act of 2002 was a response to a crisis in investor confidence that destabilized American stock markets in the wake of string of corporate scandals, which culminated in a market meltdown in the summer of 2002. Steven A. Ramirez, *Fear and Social Capitalism: The Law and Macroeconomics of Investor Confidence*, 42 Washburn L. J. 31, 31-38, 63 (2002). This breakdown in investor confidence was quite predictable as elites had spent years shredding important laws that were enacted to maintain investor confidence. *Id.* at 59-62.

n103. Steven A. Ramirez, *Rethinking the Corporation (and Race) in America: Can Law (and Professionalization) Fix Minor Problems of Externalization, Internalization and Governance?*, 79 St. John's L. Rev. 977 (2005).

n104. Roberta Romano, *The Sarbanes-Oxley Act and the Making of Quack Corporate Governance*, 114 Yale L. J. 1521 (2005).

n105. *Customers Behind Refco's \$ 430 M Bad Debt*, CNNMoney, Oct. 21, 2005, available at [http://money.cnn.com/2005/10/21/markets/refco\\_customers.reut/index.htm?section=money\\_latest](http://money.cnn.com/2005/10/21/markets/refco_customers.reut/index.htm?section=money_latest)

n106. Ramirez, *supra* note 103, at 996.

n107. Indeed, in 2005, median CEO pay soared 27%. Eric Dash, *Off to the Races Again, Leaving Many Behind*, NY Times, Apr. 9, 2006, at sec. 3, p. 31.

n108. Ramirez, *supra* note 102, at 65.

n109. Mary Kreiner Ramirez, *Just in Crime: Guiding Economic Crime Reform After the Sarbanes-Oxley Act of 2002*, 34 Loy. Chi. L. J. 359 (2003).

n110. *Confidence Game*, Investors Bus. Daily, June 9, 2005, at A14 (blaming Sarbanes-Oxley Act for making accounting firms richer at the expense of corporate America).

n111. Ramirez, *Depoliticized*, *supra* note 38, 560-562 (summarizing the politics underlying the Private Securities Litigation Reform Act).

n112. See James B. Kau & Paul H. Rubin, *Self-interest, Ideology and Logrolling in Congressional Voting*, 22 J. L. Econ. 365, 384 (1979) (showing that ideology matters).

n113. See Ramirez, *Games CEOs Play*, *supra* note 96, at 1601-1602 (discussing Richard Painter's effort to redesign the professional obligations of counsel for public corporations). See also 17 C.F.R. §§205.1 to 205.7 (creating a new federal rules of professional responsibility for attorneys representing publicly held companies to supplement state regulation).

n114. Ramirez, *supra* note 96, at 1602 n. 102.

n115. *Id.* at 1601-1602.

n116. *Supra* notes 16, 18, 31 and 31.

n117. E.g., Javier Blas, IMF Warns High Prices Risk Global Crisis, *Fin. Times*, Apr. 7, 2006, at 9 (reporting IMF warnings that high oil prices are exacerbating global imbalances such as the US current account deficit threatening a "sudden disorderly adjustment.").

n118. See Leslie Wroughton, Rato Seeks IMF Forum to Tackle Economic Imbalances, *Reuters*, Apr. 4, 2006 (quoting IMF Managing Director Rodrigo Rato: "Global imbalances are the problem not of just one country but of many, and we need a multilateral format for consultations to address them, and to address other issues of systemic importance, as they arise.") available at [http://today.reuters.com/investing/financeArticle.aspx?type=bondsNews&storyID=2006-04-04T201637Z\\_01\\_WBT005086\\_RTRIDST\\_0\\_ECONOMY-IMF-IMBALANCES.XML](http://today.reuters.com/investing/financeArticle.aspx?type=bondsNews&storyID=2006-04-04T201637Z_01_WBT005086_RTRIDST_0_ECONOMY-IMF-IMBALANCES.XML). The fundamental problem is that too much consumption and buying power is concentrated in the US. *Supra* note 38. This buying power rests on a shaky foundation. *Supra* notes 16 and 117. This is a direct result of impaired human capital formation, as the system as currently constructed permits half of the world's population (the vast majority of whom are people of color) to languish in extreme poverty. *Supra* note 18. Only highly retarded human capital development can explain the fact that 2.8 billion people live on less than two dollars per day; this amounts to a gaping hole in buying power.

n119. E.g., Ofer Eldar, Reform of Conditionality: A Proposal for Self-Imposed Conditionality, 8 *J. Int'l Econ. L.* 509, 548-549 (2005) (proposing a new framework for IMF conditionality with an emphasis on debtor sovereignty); Patrick Bolten & David A. Skeel, Jr., Redesigning the International Lender of Last Resort, 6 *Chi. J. Int'l. L.* 177, 195 (2005) (arguing that IMF should be restructured from a lender of last resort to a sovereign bankruptcy authority); Ernst-Ulrich Petersmen, The "Human Rights Approach" Advocated by the UN High Commissioner for Human Rights and the International Labour Organization: Is It relevant for WTO Law and Policy, 7 *J. Int'l. Econ. L.* 605, 626 (2004) (concluding that WTO should give greater emphasis to the role of human rights). See also Steven A. Ramirez, Taking Economic Human Rights Seriously (working paper on file with author) (forthcoming 2006) (arguing that more powerful enforcement of economic human rights could secure greater human capital development and thereby place globalization on a firmer foundation).

n120. Accessibility is just the start. Professor Roberta Romano uses the term "policy entrepreneur" to denote individuals who opportunistically exploit reform moments to achieve changes in law or regulation. Romano, *supra* note 104, at 1565-1581.

n121. Nobel laureate Robert Lucas is widely recognized as a founder of endogenous growth theory, and he has endorsed human capital development as the key pathway to growth in no uncertain terms. *Supra* note 42; Robert Skidelsky, *The Mystery of Growth*, NY Rev. Books, Mar 13, 2001, at 28-31 available at <http://www.compilerpress.atfreeweb.com/Anno%20Skidelsky%20Mystery%20of%20Growth%20NYBR%202003.htm>.

n122. Bramall, *supra* note 7, at 285-300.

n123. Judge Posner sees little difference between discredited laissez faire economics and the neoclassical efficiency paradigm that is the bedrock of his brand of law and economics. Ramirez, *supra* note 1, at 836 n. 23. Certainly, with respect to the mass destruction of human capital, through constructs such as race, Judge Posner favors free market laissez-faire approaches, with seemingly no appreciation for the economically pernicious effects of leaving social and economic hierarchies, no matter how economically oppressive, undisturbed. *Supra* note 26.

n124. Macroeconomics typically casts the costs of human capital destruction in large terms. For example, I have estimated the costs of race in America to approach \$ 1 trillion per year. Ramirez, *supra* note 26, at 371. The economic costs of mass disempowerment under the current market fundamentalist approach to globalization is probably a multiple of this number. This is a truism based solely on the fact that 2.8 billion world citizens live on less than two dollars per day. *Supra* note 18. I wonder whether such mass destruction of human capital on global basis would be possible without the mediating cognitive dissonance of race in America. In any event, the sheer number of deeply marginalized individuals suggests a powerful economic as well as moral basis for a greater global social justice.

n125. See Rajan & Zingales, *supra* note 1, at 14 (stating that if elites or "incumbents" are exposed to transnational competition "who have cut their teeth in a more competitive environment" then their ability to maintain power through manipulation of law and regulation to suppress competitors, is compromised).

n126. Bell, *supra* note 35, 525.

n127. *Supra* note 10.

n128. *Supra* note 9.

n129. *Supra* note 58.

n130. *Supra* notes 46 and 50.

n131. Ramirez, *Depoliticizing*, *supra* note 38, at 553-554.

n132. *Id.*

n133. See Rajan & Zingales, *supra* note 1, at 296-297 (listing the creation of the Federal Reserve System as one means by which the power of an elite may be curbed).

n134. Rajan and Zingales argue that sound antitrust regulation and the Glass-Steagall Act of 1933 are additional measures that can stem the power of elites. Rajan & Zingales, *supra* note 1, at 296-297.

n135. Because the US dominates globalization, in general, and the international financial institutions, in particular, the proper political arena is the US democratic process. See Ngaire Woods, *The United States and the International Financial Institutions: Power and Influence Within the World Bank and the IMF in US Hegemony and International Organizations* 92-114, 113 (Rosemary Foot, S. Neil MacFarlane & Michael Mastanuno, eds., 2003) ("In sum, the US has substantial capabilities to bring to bear in shaping the mandates, policies and modus operandi of the international financial institutions."). The bad news is we are most responsible for the construction of the system that permits 2.8 billion persons to live on less than two dollars per day. The good news is that it is not impossible for the US body politic to insist upon change. See also Stiglitz, *supra* note 3, at 12 and 19 (stating that by custom the head of the World Bank is an American and that the only country with an effective veto over IMF policy is the US).

n136. *Supra* notes 71, 74, 75, 81 and 90.

n137. For example, Judge Posner would relegate the victims of discrimination to whatever status quo existed in terms of economic and political power, undisrupted by law. *Supra* note 26. It appears that his focus is upon contract law and property law, and the enforcement of these regimes, as the near exclusive legal framework to support globalization. *Supra* note 28.

n138. *Supra* notes 99, 100 and 101. Stiglitz posits that the East Asian crisis of 1997, also spawned by market fundamentalism, was the worst economic crisis since the Great Depression. Stiglitz, *supra* note 3, at 73-89 and 89.

n139. For example, "the failure to take on board the lessons of modern economic science left [the IMF and World Bank] ill-prepared to deal with the East Asian crisis when it occurred, and less able to promote growth around the world." Stiglitz, *supra* note 3, at 221-222. Instead, globalization has been driven by free market "ideology." *Id.* at 222 (emphasis supplied).

n140. E.g., *supra* note 38.

n141. Delgado, *supra* note 97, at 137.

n142. It may take years before a reform moment meets a scholarly idea. Ramirez, *supra* note 96, at 1601-1602.

n143. Steven A. Ramirez, *The Chaos of Smith.*, 45 *Washburn L. J.* \_\_ (2005).

n144. *Id.*