

REVIEW ESSAY

Resistance Is Futile – You Will Be Assimilated^I

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Sigrun Skogly, *The Human Rights Obligations of the World Bank and the IMF*, London, Cavendish Publishing, 2001, ISBN 1859416659, 240 pp., £71.50 (pb).

Mac Darrow, *Between Light and Shadow: The World Bank, the International Monetary Fund and International Human Rights Law*, Oxford, Hart Publishing, 2003, ISBN 1841133906, 376 pp., £42.00.00 (hb).

Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance*, Cambridge, Cambridge University Press, 2003, ISBN 0521016711, 360 pp., £19.99 (pb).

I. INTRODUCTION

This review essay, through the lens of three works that weave around the discursive spaces of development and human rights, plots certain movements, patterns, and disjunctures. The works release certain urgent queries. How does the idea of development persist? How do human rights and development connect, disconnect, reconnect? How is the management of the development apparatus organized? What is the relationship of human rights to resistance and social movements? What is the nature of the play between international institutions and resistance?

Skogly's study examines whether the International Bank for Reconstruction and Development (IBRD), commonly known as the World Bank, and the International Monetary Fund (IMF) have legal human rights obligations that must be taken into account when designing, implementing, and evaluating their own policies. Darrow's work documents the neglect of, and the impacts on, human rights by the international financial institutions (IFIs), as important aspects of the case for more explicit IFI recognition of and engagement with their responsibilities under international human rights law. Rajagopal's book chronicles the complex relationship between international law and the Third World through factoring in two phenomena: first, a focus on development discourse as the governing logic of the political,

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1. This encapsulates the ideology of the Borg, arch-villains in the popular sci-fi television series *Star Trek*. In a later section I describe this in more detail and also use the 'Borg' as a metaphor.

economic, and social life of the Third World; and second, an appreciation of the role of social movements in shaping the relationship between Third World resistance and international law. International institutions – prominently including the World Bank and the IMF – and human rights are a key focus in Rajagopal's book.

It thus appears that the three books share to some extent a focus on development and human rights, specifically with regard to the role of the World Bank and the IMF. This essay is organized around some assorted themes that feature in some or all of the works. These are (i) development mantras and the art of the fiscal chant; (ii) human rights to the rescue; and (iii) anti-politics machines² and resistance machines (covering cyberspatial and complexity theory provocations).³

2. DEVELOPMENT MANTRAS: THE ART OF THE FISCAL CHANT

From decolonization and the Second World War, through the Cold War and twentieth-century conflicts, development as an idea and ideology has thrived, persisted, and spread virally. The chanting and mythologizing of development's ubiquity and inevitability have in part aided its aggrandizement and intellectual improvisation. Poverty is the host for its spread, its channel of legitimation, and its indispensable proxy.⁴

Development discourse has thrived in the 'discursive terrain' of the Third World and this is mapped in Rajagopal's work. The development apparatus for many people is seen as a practical tool for the solution of universal problems.⁵ As an idea development is able to operate in both academia and policy domains.⁶

Development is an ideology that constructs and manages difference between cultures, nature, peoples, and places. As Mahmud argues,

The idea of 'development' operated as both a cognitive category and a relation of force, mapping the terrain of this encounter between the West and 'the rest' . . . It is the latest variant of Europe's 500-year-old project variously referred to, at one time or another, as: saving native souls, the white man's burden, manifest destiny, the civilizing mission, or the historical imperative of progress . . . Development is not just a theory about economic growth and elimination of poverty, but an ideological and institutional device to consolidate the domination and hegemony of the West over the rest.⁷

Rajagopal's work corresponds with this, and he informs us that 'This new mantra of development suited the new nations, which ardently believed and invested in the project of nation building in the image of the West' (p. 26).

2. Term coined in J. Ferguson, *The Anti-Politics Machine: 'Development', Depoliticization, and Bureaucratic Power in Lesotho* (1994).

3. See A. Escobar, 'Beyond the Third World: Imperial Globality, Global Coloniality and Anti-globalization Social Movements', (2004) 25 *Third World Quarterly* 207.

4. The discovery of poverty and the subsequent spread of development has been studied by many authors and was recently explored in R. E. Gordon and J. H. Sylvester, 'Deconstructing Development', Villanova University School of Law Working Paper Series 4 (2004) (final version forthcoming in *Wisconsin International Law Journal*); see also A. Escobar, *Encountering Development: The Making and Unmaking of the Third World* (1995). It is also evident in Rajagopal's presently reviewed work.

5. See Ferguson, *supra* note 2, at 10.

6. M. Bøås and D. McNeill (eds.), *Global Institutions and Development: Framing the World?* (2004), 1.

7. Tayyab Mahmud, 'Postcolonial Imaginaries: Alternative Development or Alternatives to Development?', (1999) 9 *Transnational Law and Contemporary Problems* 25, at 26.

While the post-colonial state indulged in nation building and the development project, this came at huge costs to peoples and communities in the nation-state:

Unlike the modernizing nationalist elites of the immediate post World War II period, the activists and ordinary people who participated in popular organizing in the 1970s were concerned about the social and human costs of ‘development’ that had been unleashed in the Third World, because they themselves were the victims of that process. In their view, the root of misery in the Third World was not the failure to deliver development; rather, it was the very process of delivering development that made them miserable. (p. 97)

For this article, I use the term ‘development’ speculatively and like Ferguson propose to look at development as a social entity in its own right: the set of ‘development’ institutions, agencies, and ideologies peculiar to our age.⁸ Of the development institutions and purveyors of ideologies, the World Bank and the IMF⁹ stand out and are the objects of curiosity in this essay and in all the works reviewed.

The story of the World Bank and the IMF may span only a few decades, but its intellectual genealogy can be traced to the mandate system of the League of Nations. Anghie, in his work on the colonial encounter with international law, argues that the ‘contemporary discipline of development originated with the Mandate system in important ways’.¹⁰ It was the very existence of international institutions that provided international law with the ‘reach and range of technologies that previously had never been available to it in its attempts to organize the international community’.¹¹ In terms of the link between the mandate system and colonialism, the mandate system ‘was not a departure from colonialism as such; rather, it was a system of a progressive, enlightened colonialism, as opposed to the bad, exploitative colonialism of the nineteenth century’.¹² Rajagopal also deals with the mandate system in his work and notes that the relationship between the West and the Third World was governed not by colonialism, but by a new discipline called development, which replaced the colonizer–colonized relationship with the developed–underdeveloped one (p. 25).

The other consistent theme, however, is that the development project has magnified and become an all-consuming enterprise. There is ‘the decisive and ever-expanding position of these institutions in the “cycles of conventional wisdom” that make up the ensuing narrative of development’.¹³ From initially being viewed as a vehicle for ‘economic growth’, through challenges brought against this narrow view, development is now relabelled as encompassing the social, the structural, and the human. The change from merely ‘economic’ to ‘human’ development is attributed to the work of celebrated economists such as Amartya Sen and the work of the United Nations Development Programme (UNDP). Imagining development as freedom meant that some social issues that once lay outside the purview of the IFIs and

8. Ferguson, *supra* note 2.

9. The World Bank and the IMF are also referred to as Bretton Woods institutions (BWIs) or as the ‘Bretton Woods twins’.

10. Antony Anghie, ‘Colonialism and the Birth of International Institutions: Sovereignty, Economy, and the Mandate System of the League of Nations’, (2002) 34 *NYU Journal of International Law and Politics* 513, at 522.

11. *Ibid.*, at 548.

12. *Ibid.*, at 582.

13. See Gordon and Sylvester, *supra* note 4, at 19.

beyond the gaze of market reformers became justified in the name of economic development itself.¹⁴ Development has also aspired to be ‘sustainable’, a nod to the environment. ‘The discourse of sustainability provided a new lease of life for development. Indeed the new discourse . . . provided a new, more intrusive set of reasons for managing the “dark, poor and hungry masses” of the Third World’ (Rajagopal, p. 117). What remains through all these renamings and rereadings is the power of the development idea, its power to reinvent and subsume. The twists and turns in nomenclature should not disguise its persistence as an ideology.

On the issue of development, two of the reviewed works (Skogly and Darrow) are firmly on the development wave. They are separately critical and sceptical of development’s outcomes at varying levels, but do not seek to displace it.

Skogly’s work, while focused on the fine print of drawing out the international human rights obligations of the World Bank and the IMF, hardly uses the term ‘development’ at all. There is an assumption of an already established template of development, its goals preset, and the book is only about how to get there in a ‘kinder and gentler’ fashion. In terms of the impact of World Bank and IMF policy prescriptions, Skogly spends some part of chapter 2 of her study detailing the impact of structural adjustment policies (SAPs) and ‘understands’ that development does come with some short-term harm to peoples. She points out that adjustment will necessarily mean more hardship in the short term, but will result in better economic conditions in the long term (p. 150). She notes that if it compromises the core of a right it would be problematic, but if it affects the wider elements of the right, ‘a slightly deteriorated human rights situation for some segments of the population may be permissible in the short run, in order to secure a better human rights enjoyment for all in a longer-term perspective’ (ibid.). Skogly seems to be a bit too hasty in pronouncing on the acceptable costs of development. Rajagopal’s work is almost a counterpoint to this view when he illustrates the ‘violence of development’ and how this has escaped mainstream human rights thinking. As another author puts it, ‘the deprivations suffered by those whose environment is degraded, culture devastated, freedom to protest peacefully suppressed, and traditional ties with the land forcibly severed are seen less as the victims of human rights violations and more as the generation who must bear the cost of economic progress for the good of the wider, future community’.¹⁵

On the issue of ‘development’ Darrow points out that the World Bank’s Articles of Agreement do not define the term ‘development’ for the purposes of their collective development mission or Article 31 of the Vienna Convention, and limit it to ‘economic’ aspects (p. 149). Darrow is far more critical of development’s excesses than Skogly and posits strongly in his book that ‘The recent history of development is littered with foreign template failures, transplanted with arrogance and missionary zeal by external experts’ (p. 243), but, despite this, the framework of ‘development’ is

14. See K. Rittich, ‘The Future of Law and Development: Second Generation Reforms and the Incorporation of the Social’, (2004) 26 *Michigan Journal of International Law* 199, at 202.

15. T. Evans, ‘International Human Rights Law as Power/Knowledge’, (2005) 27 *Human Rights Quarterly* 1046, at 1060.

not supplanted in his work; it can be salvaged. In fact it is these failures that become the entry point for human rights. Given the large-scale human rights impacts of the IFIs' policies and activities, the Bank and the IMF have a clear responsibility to take better account of human rights factors in the spheres affected by their increasingly broad and complex mandates (pp. 111–12).

Darrow adds a disclaimer that his book

has also been unabashedly grounded in some measure of *realpolitique* [sic], taking the institutional inheritances of the post-WWII economic and political order to some extent as a given, as a basis for conceptualizing the IFIs' normative and functional relationships with international human rights law. This should not be mistaken for implicit endorsement of the status quo, nor as undermining the basis for more foundational critiques seeking to contest the dominant neo-liberal paradigm that the IFIs so effectively embody. (p. 298)

However, Darrow does provide a range of suggestions in terms of IFI reform that aim to restructure unequal bargaining and representation among members of the IFIs. The problem with this is that while a push for more Third World country participation in IFI decision-making is a welcome one, the chant of development mantras continues and is left unexamined in his work.

Rajagopal's work in solitary contrast probes the development encounter in some depth, interrogating its boundaries and challenging its myths. He notes that 'the idea of development has proved to be associated with the containment of mass resistance and a destructive modernity' (p. 12).

As regards structural adjustment, Rajagopal points out that 'In the latter half of the twentieth century the physical violence of the western intervention was replaced by the economic violence of structural adjustment and the debt crisis, mediated by the International Monetary Fund (IMF) and the World Bank' (p. 34).

This section of the article has interrogated the extent to which the works reviewed are attuned to development as an ideology, and the World Bank and the IMF as development apparatuses managing social reality in the Third World (Rajagopal), and steers us to the next section, which explores how human rights in development is comprehended in the three works.

3. HUMAN RIGHTS TO THE RESCUE

Development discourse is presently teeming with 'social' innuendo. As one author puts it, 'One of the most significant events in the field of development in recent years has been the effort to incorporate social concerns into the mainstream agenda of market reform and economic development'.¹⁶ Rittich states that 'the "social" diversion has been brought back in through the introduction of a series of additions and reforms, sometimes referred to as "second-generation" reforms or the "post-Washington consensus," to the development agenda of the international financial

16. Rittich, *supra* note 14, at 199; Rittich's paper probes the manner in which the IFIs are managing the incorporation of social justice and greater participation into the development agenda, and describes how the pursuit of social objectives, in turn, is affected by the governance agenda as a whole.

institutions'.¹⁷ At this point, 'the inclusion of the social has now been substantially normalised within the frame of development'.¹⁸

Human rights form a major part of the 'second-generation' reforms literature.¹⁹ Why they do so is because issues surrounding women and children's rights, labour standards, minority rights and indigenous peoples, discrimination, and equality are articulated in the normative frame of human rights law. Also, as Orford notes, many commentators appeal to human rights or democratic participation as a counter to the excesses of economic globalization, possibly as a corrective to technocratic forms of decision-making.²⁰ In Skogly's and Darrow's work, the pathologies of development are to be fixed with the introduction of human rights discourse, international legal obligations, and rights-based approaches to development. This kind of recent human rights literature strongly embraces the use of human rights as a vehicle of accountability for non-state actors such as the World Bank and the IMF.

In Skogly and Darrow's works there is an uncritical reception and a reflexive use of human rights as they are postulated as an article of faith. This faith is not questioned, and generally among human rights advocates even criticisms of human rights continue to 'advance the faith'.²¹ Their works do not question the 'why' of human rights in development, only the 'how'.

Of the three reviewed works Skogly's study is the most forensic, reducing the human rights and development dialectic to the bare bones of duties and rights. Darrow, in contrast, aims for a richer, definitely more nuanced, textual analysis, searching not for brute duties on the part of the World Bank and the IMF but instead for pragmatic policy shifts. Rajagopal, on the other hand critiques the idea of human rights as the language of progressive politics and resistance in the Third World (p. 171). All three approaches will be further discussed in the following subsections.

3.1. Distilling the human rights obligations of the World Bank and the IMF – an exercise in alchemy or chemistry?

The key question for Skogly is whether the World Bank and the IMF have legal human rights obligations that must be taken into account when designing, implementing, and evaluating their own policies, as a way of imposing a check on their activities.

Skogly teases out human rights obligations, using venerated sources of international law including treaty obligations, customary international law, general principles of international law, and *jus cogens*. In working out the obligations of the World Bank and the IMF, Skogly proposes an algorithm of obligations based on a 'typology' of rights. The 'typology' and multiple layers of obligation are to respect, protect, and fulfil.²²

17. Ibid., at 199.

18. Ibid., at 203.

19. Ibid., at 221.

20. A. Orford, 'Beyond Harmonization: Trade, Human Rights and the Economy of Sacrifice', (2004) 18 LJIL 179, at 205.

21. Evans, *supra* note 15, at 1048; see also S. Pahuja, 'This is the World: Have Faith', (2004) 15 EJIL 381.

22. See I. E. Koch, 'Dichotomies, Trichotomies or Waves of Duties?', (2005) 5 *Human Rights Law Review* 81. This article questions the perception of the typology as advancing the conceptual clarification of human rights

Skogly comes to the conclusion that the only obligations the IFIs have are neutral and negative, and fall squarely within the category of ‘respect’. The implications of the obligation to respect would be that first, in designing their policies, the World Bank and the IMF would be under the obligation to be certain that the planned policy or programmes would not violate human rights. Second, the current level of human rights protection should be observed. This would imply that no policies should introduce restrictions to the enjoyment of human rights that are currently in place, or at least not to an extent that would result in a violation of the core content of the right in question (p. 151). The obligation to respect would mean both substantive and procedural obligations.

As Rittich points out, IFI activities either are failures to attend adequately to human rights or are themselves breaches of human rights.²³ There might be overlap in these two lenses but there are also real differences between them. In the view of this essay, ‘respect’ for human rights might persuade the IFIs to attend to human rights but it may not sufficiently deal with breaches of human rights. The ‘redress’ section in Skogly’s work is still at a very nascent stage.

The result of this obligation to respect is unsatisfactory, an obligation without real consequence. Some of this is due to the use of typologies which can be confusing and somewhat tautological, depending on the human rights lawyer, academic, or UN Committee member who employs it. In sum, according to Skogly, the impacts of the projects and policies of the World Bank and the IMF cannot be proved conclusively and their international human rights obligations are of a minimal and vague nature, hovering between neutrality and non-action (to maintain the status quo), and the best that can be hoped for is that these institutions ‘internally’ reform and externally ‘co-ordinate’ with the UN. The search for the base elements of IFI obligations seems to have gone the way of alchemy, with accountability as an elusive elixir.

3.2. Human rights diversions and policy scripts

Darrow broadly reaffirms the ‘typology’ of human rights and the IFIs’ putative obligations in this regard.²⁴ But his work concentrates on the IFI’s Articles of Agreement and the institution’s pliability, with the ability to break down ‘institutional and cultural barriers’. He attempts to fill the gaps by exploring their legal mandates and looking at the policy consequences and practical possibilities for human rights integration. Darrow has an impressive and handy command of the policy arrangements within the IFIs and the inherent flexibilities in design. His arguments are persuasive because he points out the many incursions into the ‘social’ by the IFIs, thus making IFI posturing or using the standard ‘political prohibition’ argument difficult.

and raises doubts as to whether the typology really is a helpful analytical tool in the ongoing debate on the justiciability of economic, social, and cultural rights.

23. Rittich, *supra* note 14, at 209–10.

24. Although in a review article of Skogly’s book Darrow does wonder whether more might have been made of the scope for obligation of a generically ‘positive’ kind. He also notes that the obligation to ‘respect’ human rights has sometimes been interpreted to give rise to positive duties – see M. Darrow, ‘Review Article – Human Rights Accountability of the World Bank and the IMF: Possibilities and Limits of Legal Analysis’, (2003) 12 *Social & Legal Studies* 133.

The World Bank makes implicit mention of human rights in issues ranging from involuntary settlement, indigenous peoples, redress and accountability mechanisms, HIV/AIDS projects, and its child labour policy and anti-corruption programmes. In the case of the IMF, it is its emerging co-operative efforts with the World Bank in the Poverty Reduction Strategy Papers (PRSP) context, and the gradual broadening of their activities into governance, environment, and even selective human rights domains, that provide some of the more compelling evidence of the sorts of function that might be necessary for the fulfilment of the duties entrusted to them, and hence of the allowable nature and scope of their implied powers (Darrow).

Darrow notes that a human rights approach is said to bring a range of comparative advantages to development programming and policy-making, such as a solid, normative basis for values and policy choices, a predictable framework of action, a quintessentially empowering strategy, a ready legal means to secure redress for violations, and a secure basis for accountability.

The IFIs have a series of ‘enabling’ arguments for focusing attention on issues of social and distributive justice. However, it is important to recall that they retain two basic ‘limiting’ arguments from an earlier era:

The first is that such issues may be political; as such, they may fall outside the realm of factors that the IFIs are authorised to consider in their lending decisions. Second, the IFIs maintain that they have no independent, free-floating mandate to act as human rights enforcers; they are strictly limited in their decisions to considerations that demonstrably further economic development . . .²⁵

Darrow posits that their respective charters certainly should not be read as limiting the possibilities for constructive engagement with human rights principles, to the extent desirable for the fulfilment of their purposes or necessary as a matter of international law. Darrow’s work deals with the limiting arguments and shows that

the flexibility with which the mandates of each of the Bank and Fund have been interpreted in practice, along with the imperative for inter-institutional cooperation in the context of inter alia the HIPC [Heavily Indebted Poor Countries’ Initiative] and PRSP processes . . . afford ample scope for the incorporation of human rights dimensions to their policies and operations to the extent that this is necessary or desirable. (p. 121)

The next subsection will examine the larger effect of these approaches on development discourse and some of its hidden costs.

3.3. Effects of human rights diversions on development discourse and practice

‘The development of appropriate means and methodology for capturing and communicating the “value added” of human rights in development activities is a necessary part of the broader human rights mainstreaming challenge’ (Darrow, p. 237). In introducing the human rights diversion into development discourse, two things are essentially taking place. One is that ‘Conceptions of social justice are not merely being incorporated into development, they are being transformed in their encounter

25. See generally Rittich, *supra* note 14.

with and accommodation to other imperatives within the development agenda'.²⁶ 'The second is that the encounter of the economic and the social in second generation reforms has led not only to what is most apparent, an enlarged development and market reform agenda; it has led to a struggle around the nature of the social objectives and the strategies by which they should be pursued'.²⁷

When incorporated into the sphere of IFI activities human rights are transformed in meaning. 'The IFIs are promoting what might be described as market-centred agendas for social justice'.²⁸ As Evans puts it, 'Within the ambit of market discipline, as opposed to that of international law, human rights are conceptualized as the freedoms necessary to maintain and legitimate particular forms of production and exchange'.²⁹ Skogly's accountability framework is no guard against this marketization of human rights. Rajagopal refers to this generally as the 'developmentalization' of human rights and informs us that it 'has given rise to concerns among activists and scholars that a narrow, market-oriented version of human rights is being used to promote economic liberalization and globalization around the world' (p. 218).

In terms of the enlargement of the development and market reform agenda, this has serious repercussions. While expanding the agenda it is difficult to draw the limits. Darrow demonstrates this in his work by drawing a map of policy and mandate co-ordinates for the IFIs that are sadly devoid of the adequate limits or contours of its engagement. He states that the desired limits of their engagement with human rights is indeed a key challenge; however, for the purposes of his book the point is merely to expose the present and potential extent of the World Bank's de facto law-making role in human-rights-related fields.

As Pahuja points out in a review essay,³⁰ and this also applies in the case of Darrow's recommendations, his proposals 'focus by and large on an extension of the human rights regime into areas generally governed by international economic law and institutions, as well as into the domain of corporate capital'.³¹ As Pahuja points out about Wright, Darrow 'urges us along the trajectory in which human rights and environmental regulation within international law are developing as the constitutional framework for global governance by which economic liberalization might be tamed'. But this 'expanded' enforcement through the international economic and financial institutions might instead represent 'an increasingly tentacular extension of the disciplining power of the market'.³² The reasons why this expansion might be problematic is due to the 'vastly disparate impact the IEOs [international economic organizations] have on the South versus the North, and the effect of an expanded

26. Ibid., at 205.

27. Ibid.

28. Ibid., at 228.

29. Evans, *supra* note 15, at 1057.

30. See Pahuja, *supra* note 21. Pahuja reviews Shelly Wright's book, *International Human Rights, Decolonization and Globalization: Becoming Human* (2001). Wright's proposals focus on an extension of the human rights regime into areas generally governed by international economic law and institutions. Darrow's and Skogly's work to some extent is in this cast of human rights enquiry, which is why I believe that the criticisms are equally germane in this context.

31. Ibid., at 390–1.

32. Ibid., at 391.

field of concern in the context of that disparity',³³ a disparity which Darrow recognizes in his work.

As Orford comments on Darrow's work,

So the World Bank sees possibilities for engaging with the human rights community in these areas of health, sanitation, extending safety nets for children and the aging, while human rights commentators (Darrow) in turn see World Bank programmes on child labour, alcohol and drug issues relating to children, HIV/AIDS prevention, judicial reform and press freedom as some areas of potential engagement with human rights approaches.³⁴

Even the IMF has been spurred to embrace the 'social' as a new discursive terrain of development represented by growth (Rajagopal, p. 131).

The problem with this amplified and diffuse engagement is that it becomes an easy ruse for global bio-political management. Orford notes that 'if human rights law reinforces this process of producing the responsible subjects of capitalist economics, it cannot challenge the subjection of Third World populations to bio-political management'.³⁵

Another reason why the introduction of human rights law has not 'disturbed' the development project is as follows.

It is evident that the World Bank has sought to respond to some of its critics and move beyond the macroeconomic failures of structural adjustment. The problem is that the Bank and other international financial institutions are only capable of modifying their policies within the same discursive space.³⁶

This combination of transformation of human rights meaning and the expansion of the IFI policy script using human rights as an entry point blunts Skogly and Darrow's work. In the case of Skogly, attempting to simplify the obligations and its levels might lead to a 'fatal degree of artificiality or arbitrariness'.³⁷ In Darrow's work, even while skilfully avoiding simplifying the 'core' obligations of the IFIs, he pushes the policy envelope maybe a bit too far, with its limits less articulated.

In the next subsection, I shall explore how Rajagopal broadly approaches the notion of human rights in development.

3.4. Human rights: more or less resistance?

Rittich challenges the notion of human rights as a trump as regards the policies and activities of the World Bank and the IMF. She asks about

the extent to which it is safe to vest hopes for transformative change in human rights and other public law norms . . . the recognition of human rights has not paved the way toward a smooth incorporation of social issues into the larger economic project; nor has it bridged the distance between the IFIs and their critics and interlocutors . . . on how to accommodate social and distributive issues within the architecture of the new economy. Rather, the debate has merely shifted to two issues: which human rights

33. Ibid., at 392.

34. Orford, *supra* note 20, at 210.

35. Ibid.

36. Gordon and Sylvester, *supra* note 4, at 28–9.

37. Darrow, *supra* note 24.

should be recognised and what it means to incorporate them into the development agenda.³⁸

The reasons why human rights have not proved to be a trump need to be deeply explored. Rajagopal contends that human rights discourse has generally treated the Third World as object, as a domain or terrain of deployment of its universal imperatives. Human rights, far from being untainted by colonialism, also retain many elements, which are directly descended from colonial ideology and practices (p. 176). He goes on to note that ‘a critical weakness of the received historiography of human rights is the predominant role given to the state where it is looked upon not only as the source of the normative framework, but also the implementer of that framework’ (p. 187). ‘In this sense, human-rights discourse simply becomes a point of insertion for new state programs and interventions that expand the power of governmentality, in a Foucaultian sense’ (p. 193).

International law has remained oblivious to the violence of the development encounter because of what Rajagopal terms the inherent limitations of the market or economic model of resistance that international law sanctions through the doctrine of human rights. Rajagopal suggests that ‘the “human” in human rights is the *homo oeconomicus*, the modern market being who is possessed of full rationality, and whose attempt is to realize his/her full potentialities of the state and the material conditions of the global market’ (p. 199). ‘While international human rights law includes a wide spectrum of rights, the values associated with market discipline remain the dominant mode of thought for global political, social and economic action’.³⁹

According to Rajagopal, resistance should not be limited to and defined by human rights discourse as a result.

Given its colonial legacy, statist and anti-tradition bias, economistic method, and deep imbrication with the development discourse, human-rights discourse remains, at best, a partial, fragmentary, and a sometimes-useful tool of mobilization – not by any means a sole language of resistance and emancipation for oppressed social majorities around the world. (p. 232)

In the next section, ‘resistance’ will be further explored, along with its interface with international institutions and how it relates to development ideology.

4. ANTI-POLITICS MACHINES AND RESISTANCE MACHINES

In this section of the essay I focus on Rajagopal’s book and discuss the idea of resistance and social movements in the Third World and international institutions through using certain frames of analogy including science fiction and complexity theory.

I use the term ‘machine’ to denote both institutions like the World Bank and the IMF and counter-hegemonic resistance. Ferguson, in his work on ‘anti-politics machines’, refers to the ‘machine’ as an anonymous set of interrelations that ends

38. Rittich, *supra* note 14, at 241.

39. Evans, *supra* note 15, at 1065.

up in having only a kind of retrospective coherence.⁴⁰ He uses the term ‘anti-politics machines’ to refer to development and its institutions. His use of the ‘machine’ metaphor was motivated not only by wishing to use a science-fictional analogy, but by a desire ‘to capture something of the way that conceptual and discursive systems link up with social institutions and processes without even approximately determining the form of defining the logic of the outcome.’⁴¹

4.1. Anti-politics machines: movement between ‘discipline’ and change?

In terms of international institutions and the Third World, Rajagopal points out that they are like Siamese twins: one cannot even imagine them as separate from one another because development, human rights, environmental, and other institutions operate mostly in the Third World.⁴² ‘The expansion and renewal of international institutions cannot be understood in isolation from Third World resistance, whether in the form of “new social movements,” such as environmental movements, or in the form of “old social movements,” such as nationalist movements’ (p. 43). As he succinctly puts it, the ‘invocation of the “Third World masses,” whether real or imaginary, was essential to the expansion of international institutions’ (ibid.).

The IFIs did not come to occupy the positions that they do today either as a result of a functionalist logic to solve ‘problems’ or as a result of a gradual learning process, but as a consequence of a historically contingent and complex interaction with popular resistance to ‘development’ in the Third World. It is in this interaction that these institutions have invented and reinvented themselves as apparatuses of the management of social reality in the Third World. (p. 97)

(T)hese international institutions are neither simply benevolent vehicles for ‘development’ . . . , nor ineluctably exploitative mechanisms of global capitalism, but, rather, a terrain on which multiple ideological and other forces intersected, thus producing the expansion and reproduction of these very institutions. (p. 100)

This goes beyond strict ‘intentionality’ or ‘conspiracy’ on the part of institutions like the World Bank and the IMF as development apparatuses, and resonates with the way in which ‘anti-politics machines’ are described in Ferguson’s work.

Rajagopal ends his book by contending:

Yet this does not lead to the dismissal of international institutions as important actors in international law. On the contrary, by being closely interwoven with ‘local’ social movements that generate pressures for change, international institutions may yet have the potential to contribute to that change. (p. 294)

In a recent review essay Orford points out that we might say that the ‘machinery necessary for dealing with economic and social matters’ works for justice, peace, and progress, or, to translate this into less benign terms, we might think of this process in terms of normalization, biopolitical management, and surveillance.⁴³ In

40. Ferguson, *supra* note 2, at 275.

41. Ibid.

42. See also B. S. Chimni, ‘International Institutions Today: An Imperial Global State in the Making’, (2004) 15 EJIL 1, for an interesting discussion on imperialism and international institutions.

43. See A. Orford, ‘The Gift of Formalism’, (2004) 15 EJIL 179, at 190.

evaluating the UN, Orford notes that the ‘different aspects of the “machine” work together to enable and legitimize the reconstruction of cultures the world over as capitalist, liberal democracies committed to privatization, foreign investment, limited regulation and law and order’.⁴⁴ This is even more the case with the World Bank and the IMF, that are in the business of promoting ‘market discipline’ and its orthodoxies through surveillance, data collection, and the like.⁴⁵ Rajagopal’s book unfortunately ends on a softened note that downplays the tension between institutional ‘discipline’ and ‘bio-political management’, and institutions as agents of change.

4.3. Social movements as resistance machines

Rajagopal’s book attempts to rethink Third World resistance to international law.⁴⁶ He articulates a theory of resistance that questions the development ideology of the state and seeks to build alternative sources of legitimacy for the state. He notes that there is a complex relationship between social movements, resistance, and international law. ‘As social movements resist more, international law and institutions renew and grow more. This resistance–renewal . . . is a central aspect of “modern” international law’ (p. 161).

Rajagopal’s work on resistance and international law needs to be placed in the context of a burgeoning and differentiated spotlight on the global nature of resistance. This context includes images, slogans, and practices of global resistance that have become almost commonplace.⁴⁷ His work is almost a counter to the prevailing banners of ‘anti-globalizers’, ‘counter-hegemonizers’, and other epithets that can evoke everything from images of Seattle, the World Social Forums at Porto Alegre, global movements against sweatshops, and the multifarious uses of cyberspace. Rajagopal instead attempts to excavate the ‘local’, to centre the social movements in the Third World.

Rajagopal sees social movements as extra-institutional forms of mobilization that ‘remain beyond the cognitive boundaries of international law’s sole, approved discourse of resistance . . . human rights’ (p. 235). The social movements that emerged in the Third World did so largely as a response to the new, harsh forms of global economy and are strongly associated with survival strategies, and include feminist, gay, and lesbian movements.

Rajagopal claims that ‘None of these movements wish to become transnational as they are locally based movements; but they adopt an eclectic, strategic attitude towards the international when it visits them in their villages, slums, and forests’

44. *Ibid.*, at 191.

45. Evans, *supra* note 15, at 1056, 1057.

46. For a critique of Rajagopal’s book see ‘Book Review – *International Law from Below: Development, Social Movements and Third World Resistance*, reviewed by Marek Grabowski’, (2005) 29 *Yale Journal of International Law* 581. Grabowski points out that while Rajagopal claims to apply a ‘social movement perspective’ to international law, only the final two chapters focus on social movements, and the arguments Rajagopal makes in them fail to support his larger goals. In analysing the complex interactions between the operations of IFIs and ‘resistance’, it is not often clear whether this resistance comes in the form of social movements or people in general.

47. L. Amore (ed.), *The Global Resistance Reader* (2005), 1.

(p. 252). These social movements constitute an alternative human rights discourse, challenge the state but are not necessarily anti-state, redefine terms such as ‘civil society’ and ‘democracy’, and show that increasing globalization does not equate to increased transnationalism – it may well lead to an increase in the importance of the local as the agent of socio-political change in developing countries (pp. 236–7).

There is an uneasy balance in Rajagopal’s book on the issue of how the ‘local’ melds with the ‘global’ or even how the local relates to the global. When he does discuss globalization it is to place an even greater emphasis on the ‘local’. Rajagopal does note that resistance is emerging along different spatial orderings which are not necessarily organized on a transnational or global basis (p. 271). A more complex problematizing of ‘place’ and ‘space’ in his work could have addressed this imbalance between the global and the local.

The politics of place is an emergent form of politics, a novel political imaginary in that it asserts a logic of difference and possibility that builds on the multiplicity of actors and actions operating at the level of everyday life. In this view, places are the site of live cultures, economies and environments rather than nodes in a global and all-embracing capitalist system.⁴⁸

There is definitely a ‘place-based’ and ‘politics of place’ approach in Rajagopal’s work, but its links with ‘global’, ‘globalized’ and ‘transnational’ forms of resistance are under-theorized.

In terms of the social movement form, Rajagopal does note that their internal structures are often fluid, horizontal, and without hierarchical leadership. Escobar studies the logic of social movements and finds inspirations in two domains – cyberspatial practices and theories of complexity in the biological and physical sciences related to discussions of complex adaptive behaviour.⁴⁹ He relates that ‘these movements often entail the production of self-organizing, non-hierarchical networks. Novelty at two levels – organizing logic is self-organization and complexity; and at the level of the social basis of mobilization (place-based yet engaging with transnational networks)’.

However, resistance in the forms of social movements can still conceal differences within and among movements, despite their move to heterogeneity and diversity. While identity should be constitutive of resistance, this may not always be the case. Even keeping the non-hierarchical structure in mind, there is always the danger that resistance itself could be ‘predicated on structures of oppression and suppression at other levels’.⁵⁰

Rajagopal introduces a borrowed notion of ‘subaltern counterpublics’, which are parallel discursive arenas where members of subordinated social groups invent and circulate counter-discourses, which in turn permit them to formulate oppositional interpretations of their identities, interests, and needs (p. 262). I argue that there is a need further to unpack and also critique the concept of resistance in order to unleash its capacities to subvert and challenge entrenched governmental and power

48. Escobar, *supra* note 3, at 223.

49. *Ibid.*, at 222.

50. P. Waterman, ‘Feminism, Globalization and Internationalism’, (2005) *RISQ Reviews*. This review article draws attention to a new focus in feminist writing on the international/global.

structures. What is the relationship of identity to social movements? How do gender and sexual politics feature in resistance? The notion of ‘subaltern counterpublics’ and its parallel discursive arenas and counter-discourses might to some extent confront this danger head on, but this requires a far more critical examination of resistance than is available in Rajagopal’s work.

5. CONCLUSION

The works of Skogly, Darrow, and Rajagopal can be situated within a larger context of dissent from and critique of the World Bank and the IMF. It is also a time of mixed responses, with those who see the Comprehensive Development Framework (CDF), the PRSP process, and the turn to global partnerships, country ownership, and participation as a break from IFI ‘business as usual’ and as an opportunity for change. Criticisms of the World Bank and the IMF have erupted from a variety of perspectives and corners. The list is an eclectic one, ranging from environmental critiques of the IFIs and works by economists that have challenged them, to specific works such as those on the Asian crisis and the IMF.⁵¹ The mainstream human rights critique is relatively new and gathering in some strength with the push for rights-based approaches to development and poverty reduction within aid and UN agencies and for some acknowledgement of the same within the IFIs. The works of Skogly and Darrow fall within this mainstream critique that attempts to establish the human rights accountability of the IFIs and explore the dialectic of human rights and development.⁵² But this human rights critique has thrown up a number of difficult questions, some of which this essay has tried to frame and which is evident in Rajagopal’s work.

The three works are extremely valuable in their own right and are discussed precisely because they break the mould in one way or another. Skogly’s work breaks the mould by being the first to use the letter of international law to distil the human rights obligations on the part of the World Bank and the IMF. Darrow, a denizen of the human rights camp, conveys a true mastery over the dense technocratic and economic jargon of the IFIs, offering a powerful translation of how human rights can be ‘enabled’ in the IFIs’ operations. Rajagopal’s canvas is broader than that of the other two books, traversing historical genealogies and colonial and development encounters to create a portrait of how international institutions, human rights, and Third World resistance interface. Within the larger development and human rights literature, these books crucially deal with the accountability of key development apparatuses – the World Bank and the IMF. Without this scrutiny of these apparatuses and institutions, debates on development and human rights lack sufficient dimension and will be unable to influence change.

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51. See J. A. Fox and L. D. Brown (eds.), *The Struggle for Accountability: The World Bank, NGOs, and Grassroot Movements* (1998); K. Danaher (ed.), *50 Years is Enough: The Case Against the World Bank and the International Monetary Fund* (1994); B. Rich, *Mortgaging the Earth: The World Bank, Environmental Impoverishment, and the Crisis of Development* (1994); J. E. Stiglitz, *Globalization and Its Discontents* (2002); P. Blustein, *The Chastening: Inside the Crisis that Rocked the Global Financial System and Humbled the IMF* (2001).
52. Other works include P. Uvin, *Human Rights and Development* (2004); W. Van Genugten, P. Hunt, S. Mathews (eds.), *World Bank, IMF and Human Rights* (2003); P. Alston and M. Robinson, *Human Rights and Development: Towards Mutual Reinforcement* (2005).

Development ideology is confronted in Rajagopal's work. His work additionally offers the challenge that mainstream human rights thinking may not always confront the 'violence of development'. Human rights discourse comes to the rescue in Skogly and Darrow's work, but the object of accountability might have remained elusive as their separate approaches run the risk of glossing over the transformation and marketization of human rights agendas when incorporated into development discourse. Also, the expansion of policy agendas and all three works need to be reflected on in light of what has been termed as 'global bio-political' management.

In this conclusion I should now like to use the reviewed works as a point of departure and expound on the metaphor of the Borg, part machine and part ideology. The title of my essay, 'Resistance Is Futile – You Will Be Assimilated', is based on the credo of a race of cyborgs in the *Star Trek* science fictional universe. The Borg is a ruthless and totalizing collective in the business of assimilating technologies and species. I adopt the Borg construct as a metaphor for 'development' and 'anti-politics machines' and resistance.

There is inevitability inherent in the Borg's plans for assimilation, similar to that of development ideology, a sense that resistance is futile. Also, anti-politics machines 'discipline' and 'bio-politically manage', and those resisting often do see development and its apparatuses as assimilating, totalizing, and normalizing forces. Human rights discourse can also be assimilated within the 'discursive space' in which development ideology operates. Resistance as explored in Rajagopal's work is often co-opted and appropriated and leads to the renewal of anti-politics machines. However, if the science-fiction analogy is anything to go by, the Borg collective is defeated and subverted in many ways. Orford, quoting Foucault, notes that 'life has [not] been totally integrated into techniques that govern and administer it; it constantly escapes them'.⁵³ And no, resistance against ideology or machine is not futile.

The Borg construct is also relevant for deconstructing the anatomy of the 'resistance machine'. Escobar relies on the science of complexity and self-organization to assess the structure of emerging social movements, using ants and swarming moulds as comparators. The Borg is based on a swarm-structure with individual drones acting in the furtherance of the collective. A key aspect of the swarm-structure is the 'hive mind'. 'Hive mind is a form of collective consciousness strongly exhibiting traits of conformity and groupthink . . . This is somewhat analogous to how colonies (i.e. hives) of social insects such as ants, bees and termites can seem to behave as if they were a single collective organism'.⁵⁴ The reliance on the swarm-structure as per complexity theory, as a template for the structure of social movements and resistance, needs to be reflected on in the light of the 'hive mind'. Celebrating diversity and difference may not always sit well with the dictates of the 'hive mind' and caution is required such that resistance does not silence its 'others' and swallow up identity.

To conclude, while resistance against development ideology is not futile, it should not assimilate identity and difference.

53. Orford, *supra* note 20, at 211.

54. See http://en.wikipedia.org/wiki/Hive_mind, last visited 7 Oct. 2005.