The World Bank and the Ideology of Reform and Development in International Economic Development Discourse♣

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Keberadaan dari Bank Dunia dan kiprahnya di dunia internasional pada dasarnya bertujuan untuk menjaga kestabilan perekonomian dunia dan membantu negara-negara yang mengalami kesulitan ekonomi. Pada kenyataannya, seringkali kebijakan yang ditempuh oleh Bank Dunia, terutama terhadap negara dunia ketiga memunculkan adanya tudingan bagi dirinya sendiri. Salah satu pandangan negatif yang muncul adalah adanya anggapan bahwa agenda reformasi bagi perkembangan dunia internasional yang dicetuskan oleh Bank Dunia merupakan salah satu cara untuk mengideologi dan membungkam negara-negara dunia ketiga di kancah internasional. Tulisan ini merupakan suatu bentuk analisa terhadap peran dari Bank Dunia dalam perkembangan ekonomi internasional, seperti apakah Bank Dunia berusaha untuk mengideologi, apakah hal ini merupakan suatu hal yang penting untuk ditanggapi, dan apakah tindakan dari Bank Dunia berdampak pada hubungan internasional dan permasalahan internasional lainnya.

I Introduction

Is the current international development reform agenda Ideological?[1] Does it matter? In particular, would a confirmation

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that the development reform agenda is Ideological have any implications for foreign relations and international affairs? In this article, I answer all these three questions in the affirmative. I argue that the development reform agenda, especially the one operationalized by the World Bank, is Ideological, and that the development reform agenda effectively weakens the ability of Third World countries[2] to articulate their foreign policies in ways that would benefit their citizenry the most more than any other aspect of international law.

This article proceeds as follows. In the next section, I make some remarks on terminology and the discourse of development. In Section III, I expound on the meaning and consequences of calling the development and reform agenda "Ideological." In Section IV, I identify the various ways in which the World Bank development agenda is Ideological. I address the practical repercussions of having an Ideological development agenda in Section V before concluding in Section VI.

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[1] In this article, I use the word "Ideological" with capitalized "I" deliberately. I have explained the meaning of "Ideology" below. *See, infra,* notes 19-22 and accompanying text.

[2] I use the term "Third World" as an analytical category. This conception of the "Third World" de-emphasizes the importance of geography and political ideology in the definition of the Third World. In this conception, the Third World is not a geopolitical construct referring to specific areas of the world that are economically under-developed. Neither is it an ideological position of non-alignment with either the Western powers or the former communist powers. It also is not a historical category referring to the post-colonial political period in the non-Western world. Rather, the analytical category of the Third World emphasizes the power contestation between different holders and actors and its articulation in international relations. *See* Balakrishnan Rajagopal, *Locating the Third World in Cultural Geography*, Third World Legal Stud. 1 (1998-99).

II Development Discourse, Development Model, and Causation

One direct objective of my study is to examine the claim repeatedly made by the World Bank that the development policies that it prescribes are based on proven economic ideas that spur development in a determinate matter.[3] Rather, I argue that the

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[3] In the 1990s, the World Bank's prescriptive agenda for the developing countries became known as the "Washington Consensus." The term was initially coined by John Williamson in 1989, in a conference presentation at the Institute for International Economics. He used it to refer to 10 policies "almost everyone in Washington" including the World Bank, IMF, and the US Treasury thought were needed in Latin America: fiscal discipline, reordering public expenditure priorities, tax reform, liberalization of interest rates, a competitive exchange rate, trade liberalization, liberalization of inward foreign direct investment, privatization, deregulation, and property rights. *See* John Williamson "Introduction," in *Latin American Adjustment: How Much Happened* (John Williamson (ed.), 1 (1990)). Over time, the term "Washington Consensus" came to be identified with the policies of International Financial Institutions. Joseph Stiglitz, himself a former Chief Economist at the World Bank, wrote that these policies were derived from "the free market mantra" that gripped Washington in the 1980s: an extremely limited role for government intervention in the economy of developing nations; rapid privatization of formerly-owned government industries; liberalization of trade and capital markets. *See*, Joseph Stiglitz, *Globalization And Its Discontents*, 16 (2002). The World Bank has always maintained that it is not "ideological." However, there are rare glimpses of the revelation that the World Bank regards some of its work as ideological. Such glimpses occur mostly when the Bank seeks to shift directions. One such rare moment was in 2004 when the World Bank announced in 2004 that it was replacing the much-maligned Adjustment Lending Instrument with a new and improved "Development Lending Instrument", the Vice President and Head of the Operations Policy and Country Services Network, Mr. James Adams, said the switch to Development Policy Lending was much more than just a name change:

> We have abandoned the prescriptive character of the old policy statement, in which we essentially enshrined goals and methods: 'this is how you do public sector reform,' 'this is how you privatize.....We have learned that a wide variety of approaches can work but we've also learned that the key ingredients to successful economic growth include giving greater space to the private sector, and promoting the rule of law and a functioning judiciary.

policies represent one of the numerous ways in which economic development *could* occur. Further, these World Bank policies are based on many assumptions about human nature and social institutions on the one hand, and legal and economic institutions on the other, and the way these two sets of institutions interact.[4] Many of these assumptions are based on fundamental misconceptions of both sets of institutions based on oversimplifications of how economic development occurred in Western liberal democracies.[5]

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http://web.worldbank.org (last visited on April 20, 2006).

[4] In particular, the World Bank takes the "Market" as either "given or transcendental." *See* Warren Samuels, *Markets and Their Social Construction*, 71 SOC. RES. 357 (2004). This is implicit in the World Bank's approach towards economic policy in developing countries as evidenced by the title to its 2002 World Development Report, "Building Institutions for Markets." While the World Bank does not define what it means by "market", it states that the report is about "building market institutions that promote growth and reduce poverty." *See* World Bank, *World Development 2002: Building Institutions For Markets*, III (2002). This approach neglects the fact that markets are "created, changed, manipulated, and restructured through the actions of government, firms, and groups of firms." Warren Samuels, *Id.*, 364.

[5] In particular, the roles of institutions and the government are unrecognized or misrepresented. The perception that the only institutions that matter are formal legal institutions is misconceived as is the policy debate whether what is required is "more" or "less" government intervention: the government is omnipresent; the only relevant question is who would be benefited by a change in regulation. As Clarence Ayres long argued:

> The object of dissent is the conception of the market as the guiding mechanism of the economy, or more broadly, the conception of the economy as organized and guided by the market. It simply is not true that scarce resources are allocated among alternative uses by the market. The real determinant of whatever allocation occurs in any society is the organizational structure of that society – in short, its institutions. At most the market gives effect to prevailing institutions. By focusing attention on the market mechanism, economists have ignored the real allocation mechanism.

Clarence Ayres, *Institutional Economics: Discussion*, 47 Am. Econ. Rev. 26-27 (1957).

To illustrate this point, the basic precept of World Bank development agenda goes as follows: If at Time 0 (T0) you take a society that has social, economic, and legal institutions which are inappropriate for economic development, if you introduce the "shock therapy"[6] of "appropriate" formal legal institutions, and control for corruption at Time 1 (T1), you will generate economic development at the Time 2 (T2).

T_0	T_1	T_2
Social & Cultural Institutions	Formal Legal Institutions	Economic Development

In this sequence, both the social and cultural institutions on the one hand, and the legal institutions on the other, are determinate phenomena – which accounts for the prediction that they would interact determinately. Hence, diagrammatically, we can represent this logic as follows:

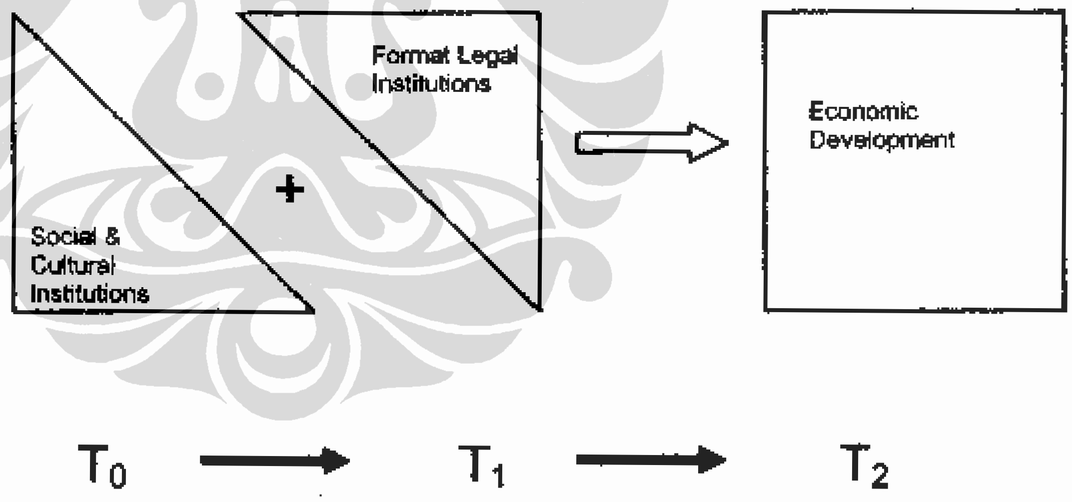

Chart 1a. How economic development occurs in World Bank thinking.

[6] Economists, development experts and IFIs often think of the reforms which need to be introduced in the Third World as a form of "shock therapy." "Shock Therapy" refers to a set of radical economic reforms aimed at rapid economic stabilization, liberalization, privatization and the opening of the economy to international trade. "Shock Therapy" was first used in Bolivia under the advice of Prof. Jeffrey Sachs before it was exported to Poland, Czechoslovakia, and Russia. For a conceptual overview of "Shock Therapy", *see* Jeffrey Sachs, Understanding Shock Therapy (1994).

As Clarence Ayres pointed out long ago, this mode of theorizing ignores all institutions other than the formal legal institutions.[7] The hope is that juxtaposing formal legal institutions onto social and cultural institutions forces economic actors in a given community to channel their "political conflict to an economic transaction."[8] In the context of developing countries, it is hoped that by providing formal legal institutions, the economic actors will begin channeling their claims over resources using the formal categories provided by these formal legal institutions. But, of course, providing the formal legal institutions is not a guarantee that the economic actors will use them as envisaged. In fact, two distinct problems often emerge. In the first place, the formal legal institutions only become extra chips which the economic actors add to the already existing array of informal institutions that they could use to press their claims over scarce resources.[9] At best, this means that the formal legal institutions would not have any determinate outcome because it is not possible to tell *a priori* which economic actors will choose which institutions to press their claims and which ones will succeed.[10] This problem is exacerbated rather than remedied by having an independent judiciary. This is because with an independent judiciary it is difficult for the government to compel economic actors to channel their claims using the formal legal institutions by ensuring that claims expressed in terms of the formal legal institutions are given more favorable treatment.[11]

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[7] Clarence Ayres, *supra* note 5.

[8] Abba Lerner, *The Economics and Politics of Consumer Sovereignty*, 62 Am. Econ. Rev. 258 (1971).

[9] *See, e.g.*, Joel Ngugi, *Re-Examining the Role of Private Property in Market Democracies: Problematic Ideological Issues Raised by Land Registration*, 25 Mich. J. Int'l L. 467, 512-513 (demonstrating that, at times, economic actors organize, invent, and mobilize competing norms to frustrate the complete operation of the formal institutions).

[10] *Id.*

In the second place, the assumption that social and political conflicts can be neatly expressed using the formal legal categories provided by the state is problematic for two distinct reasons. First, some slippage occurs at the level of translation of the conflict from the political to the economic.[12] Second, even the formal legal categories supplied by the state are themselves manipulable and indeterminate.[13] As Duncan Kennedy has argued, the claim is not that the law is "globally" indeterminate.[14] Rather, the claim is that even "clear" formal legal categories leave sufficient room for legal actors to engage in "strategic behavior" to struggle against the constraints the legal actors feel arise from the formal legal categories.[15] The "strategic behavior" permit judges [and other legal actors] to "do legal work on the legal materials in pursuance of strategies that are well understood as ideological projects, and that this work often inflects outcomes in ways that dispose high ideological stakes."[16]

In other words, contrary to the World Bank's unstated assumptions, there is no necessary and determinate relationship between formal legal institutions and economic development. Indeed, both the social-cultural conditions at Time 0 (T0) and the formal legal institutions introduced at Time 1 (T1) are themselves indeterminate. Hence the correct diagrammatical rendering of the interactions between the two would most likely look as follows:

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[11] *Id.*

[12] *Id.*

[13] Duncan Kennedy, *A Critique Of Adjudication* [Fin De Siecle], 1, 279 (1997) (hereinafter "Kennedy, *A Critique Of Adjudication*").

[14] *Id.*

[15] *Id.*, at 279.

[16] *Id.*

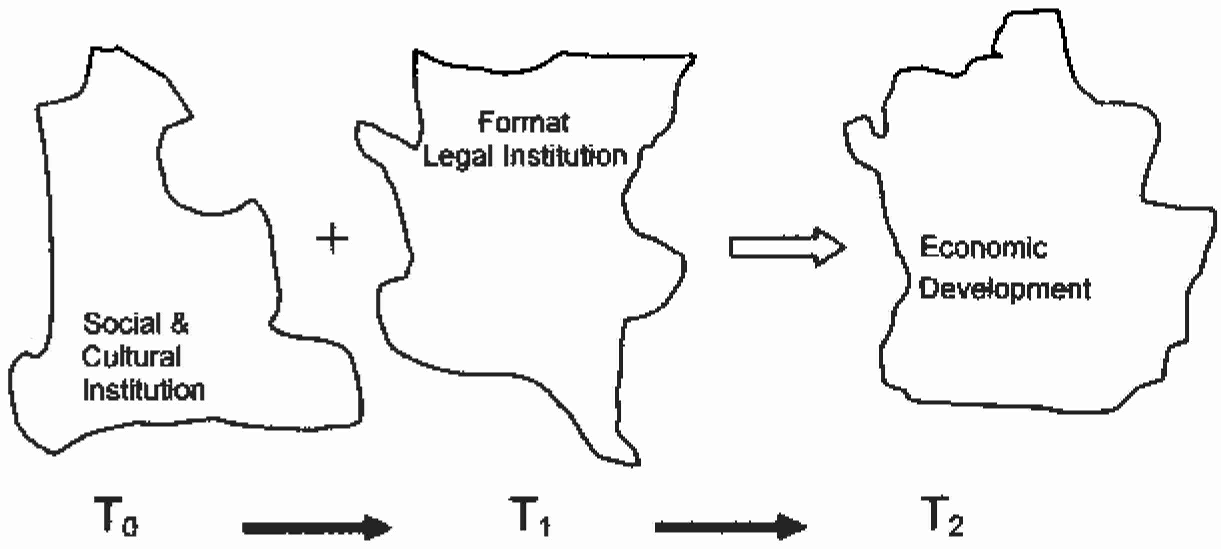

Chart 1b. How social and cultural institutions interact with format legal institutions in real life.

Rather than a determinate socio-cultural sphere interacting with determinate formal legal institutions to produce determinate economic results, messy and contested socio-cultural practices interact with ideological and manipulable legal institutions to produce an indeterminate economic reality at the end of the process. But all these seem tautological. Anthropologists, on the one hand, and institutional economists on the other have made this point before.[17] Yet it appears to be an important aspect of the World Bank's attitude toward development.

In the next section, I hypothesize that it is important for the World Bank to maintain this assumption for a variety of reasons. The chief reason is that it gives the World Bank a determinate discourse in which interventions in the developing world are produced, rationalized, stabilized, and justified.[18] It thus becomes

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[17] *See, e.g., Sally Falk Moore, Law and Social Change: The Semi-Autonomous Social Field As An Appropriate Subject of Study,* Law And Society Review, 719 (1973); Clarence Ayres, *supra* note 5.

[18] *See,* generally, Arturo Escobar, *Encountering Development: The Making And Unmaking Of The Third World* (Sherry B. Ortner et al. eds., 1995) (demonstrating how development discourse and practice can, through the use of particular categories, become a mechanism of control, influencing both social and economic realities).

important for the World Bank to insist on the need for "appropriate" legal institutions which, if introduced in the developing world, would spur economic prosperity. It then behooves the World Bank and other international development agencies (IDAs) to devise projects and programs to install these "appropriate" institutions in the developing world. This is the Law and Development project; the Development industry: the task of producing and managing interventions.[19] First, the World Bank is Ideological in this important sense. By maintaining a particular idea about how economic development can or should be produced with the aid of formal legal institutions, the World Bank necessarily acts to legitimate a particular type of society.[20] This is the classic definition of Ideology. I have borrowed the "Ideological" with capitalized "I" from Duncan Kennedy to convey the meaning that the attitudes are a mechanism for legitimating a particular type of society.[21] In other words, the World Bank attitudes toward development seen as a whole are "the product of the underlying structure of economic forces and relations, which it legitimizes."[22] That "underlying structure" is the current system of international economic relations including the international division of labor, extraction of natural resources, banking and trading systems as supposedly supported by a world of liberal democracies.

However, while I contend that the World Bank is Ideological in its attitudes toward development, this is not the same as claiming a necessary correlation between the World Bank's attitudes toward development and "bad" consequences. It is very difficult, and perhaps futile to try and prove a causation and effect relationship between the World Bank development projects and "bad" consequences that flow from them. The reason is that, first,

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[19] *Id.*

[20] Kennedy, *A Critique Of Adjudication*, 291.

[21] *Id.*

[22] *Id.*

such a causation theory is too simplistic and second, it may turn out that at times, in fact, some projects do have good consequences: progressive social change, more growth, more accountability, even redistribution of resources.[23] An explanation that simply tries to prove "causation and consequences" would then be blunted by an exposition that demonstrates some "benefits" brought by World Bank engagement.[24] A further danger of such an approach would be to give the implicit impression that methodologically one can only claim "Ideology" where one can "prove" the case with detailed data and statistics. The danger here would be that whenever the World Bank (or any other person or organization) can mathematically prove that a certain project would be "beneficial" then it should be adopted not withstanding the democratic content of the process with which this is arrived at.[25]

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[23] It is, for example, true that the World Bank has committed massive resources to funding education and the fight against HIV/AIDS. According to the World Bank, it has committed over US $33 billion in loans and credits to funding education. It has also committed over $1.6 billion to "fight the spread of HIV/AIDS around the world." See, World Bank, *10 Things You Never Knew About the World Bank*, available at http://www.worldbank.org/tenthings/10things2004-english.pdf (last visited on March 14, 2006).

[24] For example, in the face of major criticisms about its Structural Adjustment Programs (SAPs), the World Bank responded by setting up "a separate process to help those who are adversely affected by adjustment. In other words, the World Bank was willing to let the participation of others, including those affected by the policies, only to reduce the impact of the adjustment process--but not willing to debate the desirability of the adjustment process itself. While the World Bank justified its position based on the argument that promoting economic growth is the only way to achieve significant poverty reduction, it only allowed refutation of its premises as argument for reforming the way to deal with adjustment--but not as questioning the merits of the adjustment process itself." Joel Ngugi, *Policing Neo-liberal Reforms: The Rule of Law as a Constraining and Enabling Discourse*, 26 Univ. Of Pa. J. Int'l & Econ. L. 568-9 (2005).

[25] John Ohnoserge has alluded to this danger in discussing the instrumental way in which the World Bank understands the concept of the Rule of law. *See* John K.M. Ohnesorge, "The Rule of Law, Economic Development, and the Developmental States of Northeast Asia", in *Law And Development In*

Contrary to many critics of the World Bank, I contend that there is no such thing as a World Bank development "Model."[26] At first blush this may appear contradictory with the claim that an "Ideology" drives the World Bank development attitudes. However, to claim that there is an "Ideology" is not to the same as alleging that there is a coherent "Model" that we can identify as a "World Bank Development Model."[27] Indeed, if in fact there was a Model, the task at hand would be much simpler than it is now. The claim here, therefore, is *not* that the World Bank identifies and uses some institutions functionally to achieve previously determined and articulated purposes according to some clearly discernable unitary "Model" which renders predictable decisions on particular questions.

The claim is that the process or the discourse through which the World Bank develops and operates its attitudes toward development are similar to the formation of hegemonies.[28] It is in

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East And Southeast Asia 91, 112 (Christoph Antons ed., 2003) (arguing that the "Rule of Law" can have different meanings to different professions and in different parts of the world).This danger is also what has provoked the charge by some World Bank critics that it promotes "governance by economics." *See, generally,* Nicholas Hildyard, *The World Bank And The State: A Recipe For Change?* (1997).

[26] *See, e.g.,* Walden Bello, *Dilemmas Of Domination: The Unmaking Of The American Empire* (2005); Walden Bello & Shalmali Guttal, *Programmed to Fail: The World Bank Clings to a Bankrupt Development Model*, Multinational Monitor, July/August 2005, available at http://www.thirdworldtraveler.com/IMF_WB/WB_ProgrammedToFail.html (last visited on May 8, 2006)

[27] As Alan Hunt has argued, "ideology is not a unitary entity... Ideologies actually operate in a state of disorder . . . competing, clashing, affecting, drowning, silencing one another." Alan Hunt, *The Ideology of Law: Advances and Problems in Recent Applications of the Concept of Ideology to the Analysis of Law*, 19 Law & Society Rev. 16 (1985) quoting Goran Therborn, *The Ideology Of Power And The Power Of Ideology* (1980).

[28] "Hegemony" as a concept was used by Antonio Gramsci to denote the permeation in the society (both within official government ranks and civil society) an entire system of values, attitudes, beliefs or morality which support the maintenance of the status quo. Such permeation then has the effect of

their conflictual contestation for meanings, the trials and errors, the fits and starts that eventually shape the very nature or form of intervention that constrains and transforms the development discourse in a way that makes it more easily apprehendable for political mobilization – that is for "Ideological" purposes. In other words, the World Bank has not managed to maintain its influence over the development discourse through a homogenous "ideology"[29] that is unified and easily reducible or discernible as "belonging" to the World Bank. Rather, the strength draws more from the lack of unity and the diversity of the "Ideology" (capitalized) coupled with the ability to 'hang together' the conflicting elements (the different "ideologies"). It is this characteristic if the "Ideology" that makes it mobile, more easily deployable and more effective in interventions.[30]

In other words, the World Bank does not possess a "Model" which it "consults" and "squeezes" in moments of need or challenge to throw our consistent arguments and responses to changing circumstances. Rather, the World Bank has generated a

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socializing the members of the society the prevailing circumstances are not the product of historical circumstances but are inevitable, natural and desirable; the present reality is not a product of historical circumstances but the product of self-evident truths. *See, generally*, Antonio Gramsci, *Selections From The Prison Notebook* (1971). As Susan Hirsch and Mindie Lazarus-Black concisely explain: "Hegemony refers to power that 'naturalizes' a social order, an institution, or even an everyday practice so that 'how things are' seems inevitable." Susan Hirsch & Mindie Lazarus-Black, *Introduction/Performance and Paradox: Exploring Law's Role in Hegemony and Resistance*, in M. Lazarus-Black & S. Hirsch, eds., *Contested States: Law, Hegemony, And Resistance*, 7 (1994).

[29] Again I borrow "ideology" here with lower-case "i" to refer to what Duncan Kennedy would call a "universalization project". In other words, the World Bank does not have one particular "ideology" in this sense – but many competing ideologies but which can all be comprehended within the superstructure of the "Ideology". *See* Duncan Kennedy, *Critique Of Adjudication.*

[30] As Kitty Calavita has argued respecting legal Ideology, Ideology "may be powerful precisely because it is replete with contradictions." Kitty Calavita, *Blue Jeans, Rape and the "De-Constitutive" Power of Law*, 35 Law & Soc'y Rev. 89, 107 (2001).

discourse which creates a general sensibility that drives the field of development: an "Ideology". It is not a coherent set of ideas that displaces other ideas in a determinate way. Rather, it is a stable concept which, though diffuse, even indeterminate, still marks the boundaries of the development process and the discourse.

II Positioning World Bank Attitudes toward Development as a Subject of Critique: Ideology and the Difficulty of Critique

It is difficult to critique the World Bank attitudes toward development for two related reasons. First, as I have argued above, there is no "Model" that one can identify as World Bank's Model of development. Every time one maps out a typical "Model" for analysis, the trend changes and the rhetoric, perhaps even part of the substance of the 'Model' changes considerably.[31]

The second reason why it is so difficult to critique the World Bank is due to what I call only for descriptive purposes "the disappearance of the subject". While this is connected to the first

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[31] A quick example would be the general rhetoric used to convey the World Bank's thinking about the role of the state in development. In the 1996, the World Bank asserted that the state needed to be "minimized" and gave the standard, formulaic ten point justifications for this "minimization". The "ten points" I am referring to are what the inventor of the term "Washington consensus", John Williamson asserts to be the "convergence" that the world economists have reached on issues of economic development. *See,* World Bank, *World Development Report 1996: From Plan To Market* (2006); John Williamson, "What Washington Means by Policy Reform", in *Latin American Adjustment: How Much Has Happened?* (John Williamson, ed., (1990)). However, by 1997, the World Bank was already advocating for an "effective" state. It still used the "ten points" to reach its conclusions about what the proper role of the state should be. *See* World Bank, *World Development Report 1997: The State In A Changing World* (1997). So, the shift from a "minimized" state to an "effective" one is achieved relying on the same economic justifications, at least at the rhetorical level. Another less cited example is the shift from the support and financing of Import Substitution Industrialization (ISI) in developing countries in the sixties and seventies to the export-oriented growth strategies if the nineties.

reason, it relates more to the act of disappearance within a given specific debate rather than to the protean nature of the 'model' itself. I explain this more concretely below.

The obvious question for us then would be how do we analyze and critique a "Model" that is not quite a model? How do we concretize it for analysis? And when you do so, what is the assurance that you would not be engaging in a post-mortem exercise as a result of the expected shift in the dynamics of the 'model'? In this section, I am trying to locate the World Bank attitudes toward development in a 'position' that is "critic apprehendable".

In order to do this, I propose using the concept of "Ideology" with the capitalized "I: as used by Duncan Kennedy to convey the meaning given to the term by scholars such as Antonio Gramsci.[32] I also propose using the concept of "hegemony" as understood by Antonio Gramsci.[33] Finally I use the concept "ideology" with the lower-case "I" to indicate the meaning of ideology as understood from the sociology of knowledge point of view especially by Karl Mannheim.[34] In this sense, "ideologies" mean "those complexes of ideas which tend to generate activities toward maintenance of ideas of the existing order [as well as] those complexes of ideas which tend to generate activities toward changes of the prevailing order [which Karl Mannheim calls "utopia"].[35]

Both of these complexes of ideas (those that operate to maintain an existing order and those that operate to structure change as and when needed) are the stock-in-trade for the operationalization of the "Ideology". This is because these

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[32] Duncan Kennedy, *Critique Of Adjudication*.

[33] Antonio Gramsci, *supra* note 28.

[34] Karl Mennheim, *Ideology And Utopia: An Introduction To The Sociology Of Knowledge*, (Trans. Louis Wirth and Edward Shils, 1989) (hereinafter, "Mannheim, *Ideology And Utopia*").

[35] *Id* at p. xxi.

complexes of ideas are just one set in the spectrum of ideas in the society. However, the set of ideas seen as an ideology is made possible by the fact that the indeterminacy that exists gives the entity making an evaluation some choice; some discretion. Whether the motive of the person is to maintain the existing order or to structure an impending change or evolution, the choice made is packaged as "universal" and "scientific" so that the claim that is applicable across board can be made. In other words, both discretion and indeterminacy is denied so as to mask the real motive of the person making the choice – which may be either to maintain an existing order that the person prefers or to change it in a particular direction. In other words, what enables the Ideology to "reign" is the fact of manipulable interpretation as a result of indeterminacy. The complexes of ideas are "ideological" by denying or masking both the motive and the fact that the interpretation represents only a choice of interpretation.[36]

This quality of manipulability of the interpretations attributable to different rules and concepts, and the alternate maintenance and/or change of the existing order based on ideological stakes in this understanding eventually structures the overall "Ideology" that the World Bank espouses. This "Ideology", by contrast to the "ideology" I have been describing above, is the formal presentation of the world-view that the World Bank prefers – the economic structure itself. As Gramsci would have it:

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[36] This is really not different from what Nobel laureate Douglass North describes as institutional evolution. *See, generally,* Douglass North, *Institutions, Institutional Change, And Economic Performance*, (1990). However, to talk of the manipulability of the interpretation is not to say that the motive or material interests of the interpreter would always correlate determinately with a particular consistent interpretation. This is because the method/system of interpretation itself acquires a life of its own which mediates the relationship between the motives and the choice. This aspect of the system acquiring its own autonomous life is what Duncan Kennedy refers to when he says that: "The rule choices that emerge from the interaction [between legal materials and the ideological projects] should be understood neither as simply the implications of authority as the implications of the ideological projects, but as a compromise." Kennedy, A *Critique Of Adjudication*, 19.

"[Ideology is the terrain] on which men move, acquire consciousness of their position, struggle."[37]

Ideology in this sense functions by being determinate rather than being indeterminate. In the case of the World Bank, it is a determinate argument about the nature of economics and economics relations, the nature and economic role of the State, how to dispose questions of equity and redistribution when they conflict with formal definitions of efficiency, how to structure worldwide production to increase wealth and so forth. It is the super structure where the ideologies are produced and diffused. Among its central characteristics is an abiding faith in neo-classical formulation of the instrumental rationality postulate coupled with a bias toward erasure or severe limitation of the exceptions of these assumptions at the micro-level. At the macro-level, the "Ideology" is identifiable by a co-incidence of a rhetorical opposition to 'big government' domestically[38] and a commitment to liberalization and

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[37] Gramsci, *supra* note 28 at 377.

[38] I say that the opposition to "big government" is rhetorical because what the "Ideology" opposes is not really "big government" but the specific way in which the government chooses to intervene in the economy. Either way, the government intervenes and the only question to ask is for whose benefit and with what consequences. At this particular juncture in history, it would appear, the formula that would get the kind of government interventions that are considered "efficient" is one that emphasizes a cutback on "public" interventions. In the same way, "de-regulation" may actually mean "re-regulation". As John Kay & John Vickers have argued: "[D]eregulation is a misleading term, because, as often as not, new and generally more explicit regulatory structures are simultaneously erected in place of what went before." John Kay & John Vickers, in "Regulatory Reform: An Appraisal" in *Deregulation Or Regulation? Regulatory Reform In Europe And The United States,* 223 (Giadomenico Majone, ed., (1990)). The main issue is who is privileged by the shift in corporate form and who benefits from it. Or, as mainstream literature would put it, there has been a growing awareness that de-regulation "cannot just set rules designed to let competition flourish and then stand back. They also need to be ready to intervene to keep markets open". Tony Prosser, "Regulation and Privatized Enterprises: Institutions and Procedures" in *Capitalism, Culture, And Economic Regulation,* 139 (Leigh Hancher, et al, ed., (1988)). Hence the framing of the issue as one of more or less government is misleading. Theodore J. Lowi remarks that:

privatization internationally under a supposed "consensus" known as the Washington Consensus.[39]

Both the "ideologies" and the "Ideology" are maintained by their combined ability to elaborate "dominant, residual and emergent cultural practices"-- in other words, by being hegemonic .[40] They carve out a unifying world-view. This

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> It should be clear that the issues [which he deals with in the book are remote from the mere question of more government or less government. We already have more, and twentieth Century [Liberal] democracies will tolerate nothing less. It is my hope that such a question will be completely discarded...Instead, the issues will be the still older and almost forgotten ones of what kind of government, what government, what ends of government, what forms of government, what consequences of government.

Theodore J. Lowi, *The End Of Liberalism*, xvi (1979). We could replace the word "government" in this quote with "intervention" or "regulation" and leave the rest intact to convey the point here.

[39] An easy way to demonstrate that the position of the World Bank is "Ideological" in this sense is to show that the instrumental rationality postulate has been "refuted" even in the field of economics. Refutation here means that the assumption has been shown to apply to far fewer situations than the neo-orthodox positions prescribe. A distinct division of economics, known as the "New Institutional Economics" is precisely built on this refutation. The point, however, is not that the instrumental rationality postulate has been "proved" to be false – but rather that is has been so substantially modified by economists. Plausible debates on the exact reach and usefulness of the assumption are taking place in the field with the result that it is not possible to determine a priori the effect of the assumption in economic theorizing except by electing to side with one side of the debate. A good example here would be Douglas North. *See*, Douglas North, *Institutions, Institutional Change And Economic Performance*, (1990). In this book, North questions the basic assumptions that human beings are mere economic agents all acting in a self-interested way and seeking to maximize their wealth and that the market acts in a neutrally consistent way to equilibrate the actions of these so-called rational actors through the price mechanism. He also explicitly acknowledges the fact that human action is undersocialized in this mode of economic theorizing.

[40] Stuart Hall, "Cultural Studies: Two Paradigms", in *Culture, Ideology And Social Process*, 24 (Tony Bennet, *et al*, eds., (1981)).

common world-view would include "ideological elements from varying sources, but its unity will stem from its articulating principle."[41]

This follows in the working of Gramsci. In his understanding of hegemony, Gramsci, critiques both the conventional (modernist) tendency to separate culture from politics and economics and the Marxist tendency to merely see culture as a "transmission belt" for the dominant class in any given society.[42]

Gramsci uses hegemony to examine the precise political, cultural and ideological forms through which, in any given society, a fundamental class is able to establish its leadership as distinct from the more coercive forms of dominations such as colonization or imperialism.[43] There are diverse ways in which this "leadership" has been established historically. In the next section, I have outlined how, in addition to relying on the 'decisive nucleus of economic activity,' [44] the World Bank has established this "leadership" and hence ensure domination of ideas.

It bears repeating two things. First, the domination of ideas takes place irrespective of the value of the content of these ideas though the dominance is often, justified or explained in terms of the inherent truth or value of the ideas themselves. Second, to point out this "dominant" idea is not the same as claiming the existence of an essentialist, singularly coherent idea or set of ideas to which the World Bank invariably returns to support their programs. Rather, it is to re-register the claim already made that there is a general sensibility that is loosely discernable that drives the development discourse.

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[41] Chantal Mouffe, "Hegemony and Ideology and in Gramsci," in Tony Bennet, *id.* at 231.

[42] *See especially* Gramsci, *supra* note 28.

[43] *Id.*

[44] *Id.*

However, it is a mistake also to assume that this looseness renders the attitudes of the World Bank so diffuse that the "Ideology" becomes definitionally and tangibly inoperable hence necessitating an utterly contextual contestation in each specific case. Indeed, it is through the creation of this delusion of "diffusion" that the "Ideology" entrenches itself by defying recognition as such. As Kerry Rittich points out:

> However, because it is an inherently open concept, the actual content of best practice [the diffusion of World Bank attitudes undergirded by a stable sensibility] and the policy proposals now in vogue could undergo dramatic change, even reversal, without disrupting the idea of submission and conformity to a dominant model……The fact that [it] defies any stable definition may be precisely the property which enables it to survive as a discourse and structure of analysis.[45]

The current intellectual fashion within the World Bank and among its protagonists is to deny that neo-liberalism is synonymous with the "Washington Consensus."[46] They argue that critics have fundamentally misunderstood and mischaracterized the Washington Consensus by calling it an "Ideology."[47] The ability of the World Bank to respond to claims that it is "Ideological" comes in part because it is able to point to the conflicts that characterize its attitudes as "proof" that its discourse is not ideological. It turns out however that the inconsistencies are actually part of the stock-in-trade that debilitates criticism by decentering its "systemism" hence masking its hegemonic traits. The tendency to be conflictual therefore turns out to be a strength rather than a weakness.

However, since despite the conflictual nature of the discourse it maintains its own stability, the World Bank is still able

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[45] Kerry Rittich, Recharacterizing Restructuring: Gender and Distribution in the Legal Structures of Market Reform, 183 (1998) (Unpublished SJD dissertation, Harvard Law School).

[46] *See, for example*, John Williamson, *supra* note 31.

[47] *Id.*

to point to its internal incoherence as a response to the claim that it is "Ideological". In doing this, the World Bank implicitly links "Ideology" with coherent structures and internal harmony of arguments. Thus the World Bank misrepresents the nature of "Ideology" and its ability to withstand incoherence. In fact, internal incoherence and fluidity is the predisposing factor for the prosperity of the Ideology.

IV The Vehicles and Methods of World Bank's Development Ideology

So far, we have already seen two ways in which the World Bank attitudes toward development are Ideological. First, we have seen how the manipulability of interpretation creates indeterminacy that gives choice that is, however, packaged as universal and scientific. The choice is however based on motive. Second, along with this packaging of a choice based on motive as universal and scientific, the World Bank also engages in a discourse aimed at denying the indeterminacy. This is the development discourse. This process of 'naturalizing' or universalizing the preferred policy choices is Ideological in the sense that it masks the motive behind the policy choices themselves.

But how can one explain the success of the World Bank's attitudes toward development in becoming so dominant? I will here briefly propose seven ways in which the World Bank has responded to its critics and thereby ensured the continued dominance of the attitudes toward development that it prefers.

One way that the World Bank responds to claims that it is Ideological is by simply pointing to its own incoherence as an ostensible categorical impeachment of the charge that it is Ideological.[48] By correctly denying the existence of a 'Model' in the sense of coherent structures with unified and internal harmony, the World Bank hopes that it also disproves the claim that it is

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[48] *Id.*

Ideological. To still show that it is Ideological, I propose to restore the meaning of Ideology that does not insist on formal structures or false consciousness as a necessary characteristic of Ideology.[49] Rather, we should understand Ideology as competing and conflicting discourses taking place to define a stable boundary. If we do this, then the "proof" that the World Bank discourse is in fact internally incoherent would strengthen rather than weaken the claim that it is Ideological.[50] Hence the meaning of Ideology that I am using is one that divorces itself from understanding Ideology exclusively as a false consciousness.[51]

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[49] *See supra* notes 19-22, and accompanying text.

[50] Kerry Rittich uses the concept of "best practice" to explain this point:

> "In a sense, best practice is neoliberalism. Best practice may encompass everything from specific policy recommendations based on detailed empirical analysis to broad generalities and received conventional wisdom about the attributes and requirements of a market economy. This quality permits best practice to function as the meta concept, linking together disparate arguments and positions which might seem otherwise only contingently related or, on their own, indeterminate or at least unpersuasive."

Kerry Rittich, *supra* note 45, at 175-176.

[51] "False consciousness" in the Marxist mode is the idea that material and institutional processes mislead participants in an economic system to misperceive their real interests so that it interferes with the ability of the members of an oppressed group or class from perceiving the real cause of their oppression. In this mode, Marxists would define Ideology as synonymous with "false consciousness." Engels wrote:

> "Ideology is a process accomplished by the so-called thinker consciously indeed but with a false consciousness. The real motives impelling him remain unknown to him, otherwise it would not be an ideological process at all. Hence he imagines false or apparent motives. Because it is a process of thought he derives both its form and its content from pure thought, either his own or his predecessors."

Second, the World Bank claims that the attitudes that it espouses toward development are "true" because they are universal. That explains, the claim goes, why they are dominant. The Washington Consensus is really "universal" convergence that deserves to "be endorsed across the political spectrum" because it represents, not just one point of view, but the truth.[52] The World Bank generally implies that the superiority of its development attitudes over rival other

development agenda is self-evident. [53] The rival ideas on development have been "proved" not to work – and "jettisoning of the Marxist baggage that the left has been saddled with for the last 140 years or so should enhance the prospects of the left…."[54]

In this mode of argument, the World Bank conflates the content/value of its attitudes toward development with their dominance. The superiority of the attitudes is explained in terms of their dominance while their dominance is explained in terms of their superiority. Hence, the World Bank has stated that: "Although the recipe for good policies is well known, too many countries still fail to take it to heart."[55] This statement apparently comes as a justification for an earlier one in the same report that: "[It is]

K. Marx and F. Engels, *Engels to Mehring*, in *Selected Correspon-Dence Of Marx And Engels*, 511 (1942).

[52] John Williamson, *Democracy and the 'Washington Consensus'*, in 21 *World Development*, 1329-1336, reprinted in Stuart Corbridge, *Development: Critical Concepts In The Social Sciences*, 587 (Vol. I, 1999).

[53] Nicholas Hildyard, *The World Bank And The State: A Recipe For Change?* 41 (1997). In its publications and reports, the World Bank equates "good policies" with the Washington Consensus and implies that the only disagreement is on the implementation of the Consensus."

[54] John Williamson *supra* note 31 at 592.

[55] World Bank, *World Development Report 1997: The State In A Changing World*, 147 (1997).

generally recognized that the market was the best instrument for realizing growth and improving welfare."[56]

This conflation of the truth/value/content debate with the dominance of ideas makes it extremely difficult for alternative viewpoints to be raised to challenge the World Bank attitudes. This is because of the fact that the discourse is structured cyclically. If one addresses their criticism to the value/content of the Ideology, then the World Bank uses the dominance or prevalence of the attitudes as a response, and vice versa. A criticism directed at the prevalence of the attitudes invites a response based on the alleged truth/content of the attitudes themselves.

Beyond these, the third, fourth and fifth reasons why the World Bank has been so successful in operationalizing its Ideology are related. The third is simply the sheer resources that are used to maintain the orthodox World Bank attitudes toward development. These resources are employed in a variety of ways to entrench World Bank's attitudes toward development. One obvious way is its own financial power as the foremost international development agency with an administrative budget of $2,011.3 million during last year's fiscal year.[57] The World Bank also spends US $15-$20 billion in loans for various projects.[58] This gives it a ready visibility which is magnified by coordinating and subordinating many other international financial and technical organizations, bilateral aid agencies, and export credit institutions.[59] As Cheryl Payer reports:

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[56] *Id.*, at 31.

[57] World Bank, *The World Bank Annual Report 2005: Year in Review*, available at http://web.worldbank.org (last visited on March 16, 2006).

[58] World Bank, Project Cycle: Overview, available at http://web.world-bank.org (last visited on May 8, 2006).

[59] See, generally, Cheryl Payer, *The World Bank: A Critical Analysis* (1982).

> *Financially, the World Bank puts great emphasis on 'co-financing'. It persuades other (and potentially rival) funding agencies to contribute their capital to projects that have been prepared and appraised by the Bank for its own funding... [They all] frequently invest or contribute money to projects selected, defined, appraised, supervised by the World Bank. Even the International Fund for Agricultural Development, which began operations in 1978 and was intended specifically as a rival lending institution controlled by developing country members, has signed a cooperation agreement with the Bank and has contributed its funds to several Bank projects.*[60]

Fourth, the World Bank also requires borrowing governments to contribute funds to Bank projects "usually in the form of infrastructure or operating expenses necessary for the success of the project."[61] This technique of "matching" funds no doubt induces the government to spend money and other resources for funding purposes determined by the Bank. It thus ensures that governments acquire "ownership" interests in World Bank-funded projects, hence disabling them from criticizing such projects in the future.

The fifth way that the World Bank uses its vast resources to facilitate the success of its ideology is by churning out literature that almost literally silences alternative viewpoints. The Bank employs more than 800 professional economists with an annual research budget of about $25 million.[62] The influence that his has in the development field cannot be slighted. Two studies devoted to it effects have come to almost similar conclusions. Mahbub Ul Haq remarked:

[60] *Id.*, at 52.

[61] *Id.*, at 18.

[62] Nicholas Stern & Francisco Ferreira, "The World Bank as 'Intellectual Actor,'" in *The World Bank: Its First Half Century*, 524 (Devesh Kapur, et al. eds., Vol. II, (1997)).

> This whole desire to build a research empire here, to duplicate a Harvard or a Yale, to try to do better than they do, and publish, has been very counterproductive. There is a lot more of an argument to have indigenous research because it would be more suited to the cultural and other peculiarities of each nation.[63]

While Nicholas Stern wrote, succinctly summarizing our three points above:

> The Size of the Bank's lending program (of the order of $15 billion to $20 billion a year) allows it to exert considerable influence on the thinking and policies of borrowing countries. The weight of the number of development economists, the research budget and the leverage from its lending means that the Bank's potential influence is profound, and it cannot be seen as just one of a number of fairly equal actors in the world of development economics.[64]

In short, the vast resources that the World Bank has at its disposal skew the development discourse in its favor. Its role as a producer and disseminator of knowledge influences the acceptance of its attitudes toward development.

The penultimate way to explain World Bank's success in pushing forward its attitudes toward development is what I call *justificatory oscillationism.* To maintain the link between the truth/content of is attitudes toward development and the dominance of the attitudes, the Bank characteristically resorts to three arguments: the Hayekean liberalism argument, the efficiency argument and the economic empiricism argument.[65]

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[63] Mahbub Ul Haq, *World Bank Oral History Project*, quoted in 'The World Bank and the State, a Recipe for Change?', Bretton Woods Project, 1998.

[64] Nicholas Stern & Francisco Ferreira, "The World Bank as 'Intellectual Actor,'" in *The World Bank: Its First Half Century*, 524 (Devesh Kapur, et al, eds., Vol. II, (1997)).

[65] I have distilled these three arguments from the work of Kerry Rittich. *See* Kerry Rittich, *supra* note 45. The coinage of the terms as used here is

In every project, literal or literary, the World Bank oscillates between these three justifications for its attitudes toward development shifting between and among them in a manner that makes it difficult for critics to conceptually respond without getting caught in the justificatory oscillation. The foundational argument is usually styled in terms of the rational basis for the emergence of certain institutions which "have been proved to work."[66] This then lays down the case for transplanting these institutions to those areas of the world that desire development. This is what I call the Hayekean Liberalism justification.[67] It has its roots in Darwinian theory of evolution: beliefs about the necessity of intense competition and the moral necessity of market forces in the economy.

The implicit argument is that the market as a form of social organization is a socially neutral institution.[68] Hence it is readily

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actually Duncan Kennedy's characterization of the arguments raised by Kerry Rittich in a personal conversation.

[66] From 1996, the World Bank's mantra has been the neo-classical message that "markets work." Hence, the World Bank's development agenda in the developing countries has been about transforming "planned" economies into "market" economies. One can discern this clear patter by looking at some of the sub-titles of the World Bank's annual flagship publication, the World Development Report -- in 1996: *From Plan to Market*; and in 2002: *Building Institutions for Markets*. In this regard, the World Bank merely represents the general neo-classical view which may be summarized as saying that market failures are better than government failures. As Richard Posner has stated: "We have reason to believe that markets work - that capitalism delivers the goods, if not the Good -- and it would be a mistake to allow philosophy to deflect us from the implications, just as it would be a mistake to allow philosophy to alter our views of infanticide ... The mounting evidence that capitalism is more efficient than socialism gives us an additional reason for believing economic theory." Richard Posner, *The Problems Of Jurisprudence*, 384 (1990).

[67] Named after Friedrich Hayek who pioneered a view of neo-classical economics that views the market as spontaneously ordered institutions which culturally evolves in the same way institutions of language or morality evolve. *See, generally*, Friedrich Hayek, *Individualism And Economic Order* (1949); Friedrick Hayek, *The Road To Serfdom* (1944).

transferable. The mechanism through which this transfer takes place is by usage of legal institutions. Hence the World Bank attitudes toward development are characterized by invocations about certain formal institutional prerequisites is based on the evolution-toward-efficiency paradigm.[69] This paradigm casts the institutions obtaining in the industrialized (developed) economies as efficient by virtue of their having facilitated the development of these regions and thus prescribes the establishment of these institutions in the developing regions of the world. However, this paradigm has recently increasingly been impugned not only in the biological evolutionary field from where it was plucked but also by mainstream law and economics scholars who have used it indiscriminately in the past to explain the rise of the West.[70]

The broader arguments in support of the attitudes are suggestive. It is common and predictable to explain underdevelopment in the developing regions of the world by blaming excessive government intervention and interference in

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[68] *See* Friedrich A. Hayek, Law, *Legislation And Liberty: Rules And Order*, 35-38; 96-102 (1973).

[69] This is the theory which posits that, in a "free market", over time, inefficient institutions are replaced by more efficient ones. As a theory of legal transplant, this theory would then hold that it makes sense to export institutions which have already proved to be "efficient" to developing countries rather than attempt to evolve new ones there.

[70] For example, in corporate law, Mark Roe and others have persuasively shown that evolution-toward-efficiency does not adequately explain the survival of legal and economic institutions. Mark Roe has observed:

> Within the looseness of acceptable efficiency, what survives depends not just on efficiency but on the initial, often accidental conditions (chaos theory), on the history of problems that had to be solved in the past but that may be irrelevant today (path dependence), and on evolutionary accidents--what might do best today could have been selected out for extinction in the past.

Mark J. Roe, *Chaos and Evolution in Law and Economics*, 109 Harv. L. Rev. 641 (1996).

economic activities.[71] This, it is explained, leads to a distortion of the price mechanism thus inducing inefficient allocation of resources and ultimately leads to market and growth failures.[72] The remedy then suggested is the familiar one: Free the market forces by creating and strengthening the institutions that support the market and pull the state out of economic activities. In other words, export *the market* institution to the transition economies, plant it there and let the free exchange that it will induce do everything else. Hayek's name in this mode of justification conveys the sense and logic popularized by Hayek that the regulations "needed to ensure the proper functioning of markets……..should be agreed internationally and be enforceable through international law, since national legislations invariably leads to protection and trade barriers."[73]

This line of argument ties in with the second justification that the World Bank characteristically resorts to in support of its attitudes toward development. This is the allocative efficiency argument. By use of the mathematically proven rules of general equilibrium, Walrasian identity of market and the ability of an open and competitive economy to operate at a Pareto optimum, it is often theoretically shown that these economies could automatically build stable markets which would then allocate resources efficiently and put the economy at the operational path on the utilities possibilities frontier. *The market* is thus prescribed as the cure to all economic ailments. It is this thinking that has characterized World Bank policies in formulating Structural Adjustment Programs.

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[71] *See, for example,* B. Balassa, *The Structure Of Protection In Developing Countries* (1971); Deepak Lal, *The Poverty Of Development Economics* (1987).

[72] Christopher Colclough, *Structuralism Versus Neo-liberalism: An Introduction,* in *States Or Markets: Neo-Liberalism And The Development Policy Debate*, 6 (Christopher Colclough & James Manor eds., (1990)).

[73] Nicholas Hildyard, *supra* note 53 at 43. For Hayek's views on this, *see* Friedrick Hayek, *supra* note 67.

Even while this may be an oversimplification of the policies, it captures the main spirit and philosophy. In spite of its mathematical elegance, it readily suggests three difficulties. First, it is based on the implicit assumption for long shared both by the Marxists and Modern economic theorists of the West that the predominantly agrarian societies in the developing world are essentially different from the industrialized societies in two major respects. One they are not market-oriented (the Marxists would even go further and say that, indeed, they are anti-markets). Two the agrarian mode of production, being the same as the mode of consumption, differs greatly from that obtaining in the industrialized economies and that this means that the agrarian societies do not or cannot adequately respond to economic pressures in a rational way. In other words, the mode of production of the farm differs substantially from the mode of production of the firm.[74]

The second difficulty is that the World Bank development attitudes take the kind of market that it prescribes as a socially-neutral institution. This is implicitly based on the assumption that the market functions well when there is a generalized impersonal exchange by atomized individuals in the society. In other words it is assumed that it is desirable to tear the individual from the social context for the market to perform well. It is further assumed that markets in the industrialized economies have actually achieved this: freeing the individual from societal context, relations, solidarity and the domination effect that is generated in a hierarchically ordered society.[75] This way, only the price mediates relations between actors in the market.

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[74] I am indebted to Prof Robert Bates for these profound insights. Also *see* Robert Bates, *Some Conventional Orthodoxies in the Study of Agrarian Change*, Social Science Working Paper 458, 1-74.

[75] Robert W. Gordon, *Macaulay, Macneil, and the Discovery of Solidarity and Power in Contract Law*, 1985 Wis. L. Rev. 565 (1985)(arguing that contract law is often marginal to the process of contract-making, and that parties enter into contracts for reasons other than allocating risks.)

Third, and related to the second, the model equates the formation of a market to the imposition of a formal set of rules which would overnight transform transition economies into productive ones. In other words it assumes that the only institutions that are necessary for the establishment of a stable market are formal rules. The attitudes therefore follows in the tradition of the dominant neo-classical theorizing in which the individual is thoroughly undersocialized and ignores the fact that transaction take place and the actions of individuals are embedded in concrete, on-going system of social relations.[76] The formation of an anonymous market by use of formal rules would only solve half the problem if at all.

In tandem with this dominant attitudes toward development policies is the continual identification (bolder and more explicit in the post-cold war period) of the economic policy that is fashioned as "appropriate" with a certain form of organization of world affairs and national economies. With these are crafted various concepts that are readily reconstructed in contemporary malleable and pragmatic international law to enter its vocabulary with much ease. This in part explains the renewed invocations of concepts such as the rule of law, human rights and good governance – all with a distinct economic hue lately imbued.

The third justification that the World Bank resorts to is the economic empiricism justification. The argument simply goes that the attitudes and policies that the World Bank espouses have been deemed to work in specific cited examples and that this made a strong case for their application. As Kerry Rittch observes:

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[76] This is now hotly contested even in the field of economics. In part Douglass North's Nobel winning book is an attempt to modify the neo-classical postulates that are guilty of this undersocialization. *See* Douglass North, *Institutions, Institutional Change And Economic Performance* (1990). North hopes to use institutions, broadly defined as "rules of the game" to bring back social relations into economics. Now a whole branch of economics styled as "The New Political Economy" or the "New Institutional Economics" is based around this issue.

> Assertions about best practices ostensibly rest on an empirical base. An important, if not definitional, aspect of best practice is establishing the role that particular types of investments or institutional factors play in economic growth.[77]

In this mode, the justification neither relies on the "efficiency" of the attitudes themselves nor the argument that the attitudes require the prescription of particular time-honored "liberal" institutions that are traditionally associated with democracy and economic growth. Rather, the argument is simply that the attitudes are superior because they work.

This is, of course, a slippery slope. Basing economic prescriptions on empirical evidence requires consistent results from the studies undertaken in the field. But these are not always forthcoming. A famous example of conflicting empirical evidence included the successes of the Newly Industrializing Countries despite following paths different from that typically advanced by the World Bank.[78] A less famous example of contrary evidence is the land titling program in Kenya. Generally empirical evidence has at best been moot as to whether formal registration of titles with respect to land actually enhances security in land ownership and further, whether such registration and titling has any significant causal relationship with investment and land productivity.[79]

However, the empiricism component of the three justifications is extremely important. In a sense, it functions like

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[77] Kerry Rittich, *supra* note 45, at 175.

[78] Of course, the World Bank has attempted in the last decade to subsume the NIC model to its own thinking. *See for example*, World Bank, THE LESSONS FROM THE EAST ASIAN MIRACLE, (1989).

[79] Migot-Adholla, S.E., Hazell, P., et al, *Indigenous land rights systems in Sub-Saharan Africa: A Constraint on Productivity?*, *World Bank Economic Review*, 5 (1), 155-175, (1991) found no such causal relationship in Kenya. This result was confirmed by Carter, M., et al, *Tenure Security for Whom? Differential Impacts of Land Policy in Kenya*, Land Tenure Center Research Paper No. 106, University of Wisconsin-Madison, 1991

the rational choice model in economic theorizing – and, in fact, the World Bank conflates the two. As Milton Friedman long stated in his famous defense of the rational choice model, the assumptions do not have to be realistic.[80] All that is required is that the predictions that flow from those assumptions be affirmed by confrontation with evidence.[81]

Like the empiricism component in the World Bank thinking about development, the rational choice theory involves suspending complex social and political complexities and drawing economic conclusions in a situation that has been produced by an interaction of all three. However, every time you critique the essentialism of reification, you are likely to get the response that rational choice theory reduces the complexities for the sake of making abstractions that are necessary for the constructing models which can then be tested empirically. So, if you proved that in one specific case the model does not match the reality, the response would be that such an example does not necessarily repudiate the model. In any event, given what is included or excluded in compiling the results, it becomes impossible to come up with 'scientific' results. When the results are moot, it is resort to the other two justifications that does the rest of the work.

V The Effects of Ideology in the Development Field

The Bank is an international organization formed to "assist in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes."[82]

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[80] Milton Friedman, *Essays In Positive Economics*, (1953).

[81] *Id.*

[82] Articles of Agreement of the International Bank for Reconstruction and Development (hereinafter, "IBRD Articles"), Article I(i). Other purposes of the Bank include: to promote private foreign investment by means of guarantees or participations in loans and other investments made by private investors; to promote long-range balanced growth of international trade by encouraging

From the outset, "events bumped the Bank aside from the first of its two mandates ("reconstruction") and prompted a determined commitment to development."[83] This was because the US chose to finance the bulk of reconstruction efforts in Europe bilaterally through the European Recovery Program (or Marshall Program) rather than through the Bank.[84] The Bank has been touted as a "prototypical operational organization."[85] This refers to what is considered one of the primary functions of international organizations: to centralize administration for purposes of efficiently managing collective activities.[86] The Bank is seen as a latter-day epitomization of the "functional" role of international organizations. In this mode international organizations are technical bodies with very specific non-political mandates aimed at addressing technical problems requiring international cooperation for solution.[87] These follows in the tradition of states coordinating actions in the socio-economic areas of life made necessary by the internationalization of economic life.[88] These functional needs of states to share information and technical expertise had led to the formation of the earliest international organizations like the

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international investment for the development of the productive resources of members; and, generally, to assist in bringing about a smooth transition from a wartime to a peacetime economy. IBRD, Article I.

[83] Devesh Kapur, et al, "Introduction", in *The World Bank: Its First Half Century*, 2 (Devesh Kapur, et al, Vol. I, (1997)).

[84] *See* generally USAID, *The Marshall Plan Study Guide*, available at http://www.usaid.gov/multimedia/ video/marshall/study.html (last visited April 30, 2006, 2005).

[85] Kenneth Abbott & Duncan Snidal, *Why States Act Through Formal International Organizations*, in *The Politics Of Global Governance*, 19 (Paul Diehl, ed., 2nd ed. 2001)

[86] *Id.* at 15.

[87] Margaret Karns, *The Theoretical Foundations of Global Governance*, in Margaret Karns, *International Organizations*, 40 (1998).

[88] Clive Archer, INTERNATIONAL ORGANIZATIONS, 11 (1994).

International Telegraphic Union (ITU); the Universal Postal Union (UPU); the International Bureau of Weights and Measures; the Metric Union; and the World Meteorological Organization (WMO). Since such cooperation involves non-political matters, internal sovereignty of the cooperating states is not implicated.

This was clearly the animating philosophy of the Bretton Woods Institutions – including the Bank. Hence, one may say that the "Prime Directive"[89] of the Bank is spelled out in Article IV(10) of its Articles of Agreement. It provides:

> The Bank and its offers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I.[90]

This functional vision of international organizations is in line with the dominant view in the post-war period whereby international organizations are viewed as functional responses "to the complexities of the modern state system rather than an optional experiment fastened upon it."[91] Consequently, through the first three decades of its existence, the World Bank read its Articles of Agreement as forbidding the use of economic Ideology as a reason to refuse lending. During this time, the Bank fastidiously eschewed

[89] This refers to the fundamental, inviolable principle of non-interference in the popular American television series, *Star Trek* (NBC television series, 1966-69) created by Gene Roddenberry. The "The Prime Directive" is rendered in many forms but it has been rendered thus by the authors of the authoritative encyclopedia on Star Trek: "The Prime Directive prohibits Starfleet personnel and spacecraft from interfering in the normal development of any society, and mandates that any Starfleet vessel or crew member is expendable to prevent violation of this rule." *See* Michael Okuda & Denise Okuda, *The Star Trek Encyclopedia: A Reference Guide To The Future* 453 (rev. ed. 1999).

[90] IBRD Articles, Article IV(10).

[91] Inis Claude, *Swords Into Plowshares*, 6 (4th ed., 1984).

explicitly espousing any economic Ideology – even though one could make the argument that the Bank's policies and lending criteria were driven by a loosely "market ideology."[92]

While it is contested whether this functional prohibition of engagement in the political affairs of states is pragmatically possible, this principle was the foundation of the Bank's lending criterion and policies through its first three decades.[93] During this time, both the Bank and the IMF read their founding charters narrowly to oust any discretion on their part to make political considerations in their operations.[94] One may therefore argue that during these early years, at the very least, the political considerations prohibition served as a constraint on the ability of the Bank to act Ideologically. Indeed, until 1980, the most "explicit statement on the virtues of the market mechanism espoused by the Bank in its early years [was] found in the Report on Cuba [that]: 'For, to date, none of man's efforts to repeal the law of supply and demand have been successful.' The report was intended to reflect the views of the [Bank Mission to Cuba], which were not necessarily identical to those of the Bank; but the letter from the President of the Bank to the President of Cuba which accompanied the report in effect endorsed the Mission's recommendation and came very close to identifying the Bank with the Mission's views."[95]

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[92] *See, e.g.,* Art van de Laar, *The World Bank And The Poor*, 32 (1980).

[93] *See, e.g.,* James Gathii, *Good Governance as a Counter Insurgency Agenda to Oppositional and Transformative Social Projects in International Law,* 5 Buff. Hum. RTS L. Rev. 107 (1999).

[94] *See, e.g.,* Samuel Bleicher, *UN v. IBRD: A Dilemma of Functionalism,* 24 Int'l Org. 31 (1970); Joseph Gold, *Political Considerations are Prohibited by Articles of Agreement When the Fund Considers Requests for Use of Resources,* IMF SURVEY, May 9, 1983, 146-148.

[95] Art van de Laar, *supra* note 92 at 32.

To understand how far we have come from the constraints placed by the political affairs prohibition in the early years of the Bank and now, consider the following paragraph from the Bank's flagship publication, the World Development Report of 1996:

> It is a hard fact of transition that the features of a market economy that many of these countries need most are the very ones that will take the longest to build....moving from Plan to Market requires a new way of thinking about the entire legal system.[96]

By the mid-nineties, the World Bank had completed the task of re-reading its mandate to include a "restrictive" incorporation of "political" considerations within the borrower countries as long as those considerations are pre-requisites for the creation of an enabling environment for economic development.[97]

How did this happen? How did the Bank transform a rule against explicit consideration of the Ideological orientation of a state in lending decisions to become a rule requiring such an explicit consideration as a goal of development? The answer is supplied by the concept of "Good Governance." As James Gathii has ably traced the origin of the Bank's use of the concept, with time, the Bank sought to explain failure of development in terms of the adverse effects of governmental intervention in the economy.[98] Since such adverse effects directly contribute to the construction of the environment in which development occurs, "Good Governance" defined in terms of institutions that establish predictable, impartial, and consistently enforced rules for investors became an important economic consideration in the Bank's activities and policies.[99] The

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[96] World Bank, World Development Report 1996: From Plan To Market.

[97] *See, e.g.,* World Bank, *Governance: The World Bank's Experience,* (1994).

[98] James Thuo Gathii, *Representations of Africa in Good Governance Discourse: Policing and Containing Dissidence to Neo-Liberalism*, 1998-1999 Third World Legal Stud. 65 (1999).

result was that any concept which vaguely implicated the construction of an "enabling" environment for economic development to take place could potentially become an "economic consideration." [100] However, whether particular activities or concepts in fact become incorporated in the "Good Governance" agenda depends on the utility of those concepts to the Bank's programs.

This nebulous interpretation of the non-political mandate of the Bank is therefore problematic not just because it is potentially over-broad, it is also plastic enough that it can be and has been used selectively by the Bank. This allows the Bank to insert Ideology in its lending activities at two different stages. First, the Bank introduces Ideology in the broadening of the potential meaning of "non-political mandate", and then rendering only selective aspects of those social, cultural, and political activities that the Bank considers important for the promotion of its economic programs as the "economic considerations" which the Bank is authorized to take into account. As James Gathii has argued:

> [The] political conditionality or good governance primarily leaves the economic programs promoted by these institutions intact. The project cycle is simply the process of giving practical effect to these pre-conceptualized programs of the IFIs [International Financial Institutions]. It consists mostly of the process of disbursement of loan funds from "project identification to preparation, appraisal, negotiation, implementation and supervision and finally evaluation. In addition, the Articles of Agreement of the IMF and the World Bank limit the scope of political conditionality to only those considerations that affect the economic factors which justify loan disbursement. Political conditionality, therefore, focuses on the behavior of the borrowing state and primarily leaves the economic programs promoted by these institutions intact. (internal quotations omitted)[101]

[99] Joel Ngugi, *supra* note 24 at 528-9.

[100] *Id.*

[101] James Gathii, *supra* note 98 at 158.

Second, as I argued above, it also turns out that the economic programs of these institutions were themselves crafted Ideologically: presented as though they are based on universal truths while, in fact, they represent only one approach to economic development. Hence, in the end, the Bank ends up impermissibly entrenching Ideology in its lending programs. From the point of view of international law, this is problematic for at least four reasons. One, the development discourse as driven by the World Bank undermines the possibility of achieving economic development. This is because, as I have demonstrated above, the Bank policies are often founded on a misguided view of how formal legal institutions interact with other institutions to impact economic activities in a given country, region, or even the village. Two, the current discourse undermines the fundamental architecture of international law. One of the key organizing principles that emerged in the post-war public international law is the principle of non-intervention in the affairs of states. This core principle is enshrined in Article 2 of the UN Charter[102] and is reflected in Article IV(10) of the Bank's Articles of Agreements. As many commentators have pointed out, the drafters of the UN Charter were keen to maintain the legal notion of "domestic jurisdiction" as an important limitation on the powers of the UN and the reach of international law generally.[103] This is because, the post-war international legal architecture was based on the idea that the best way to preserve peace, security, and human rights was to protect each state from suffering limitations with regard to issues that were best left to the citizens of each state. This view, reflected in post-war international legal policy, was then that states should not suffer limitations with regard to "the treatment of [their] own citizens, or

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[102] Article 2(7) of the UN Charter reads: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter."

[103] *See, e.g.*, Mannaraswamighala S. Rajan, *United Nations And Domestic Jurisdiction*, (2nd ed., 1961); Benedetto Conforti, *The Law And Practice Of The United Nations*, 133-151 (1985).

regarding [their] own organization of government, or, lastly, in activities concerning the use of [their] own territory."[104] This core principle that peace, human rights, and development are best achieved when each state has the right to determine its own policies subject, of course, to the outer limits set by the state's international obligations is undermined by the Bank's over-broad interpretation of Article IV(10) of the Bank's Articles of Agreements to permit it to consider a state's Ideological orientation before extending economic assistance.

Moreover, the broadening of the Bank's mandate to include political considerations has the further impact of undermining democracy. This is because the Bank's broadened mandate disables political majorities in developing countries from choosing their own economic philosophies. This occurs because the Bank has used its broadened mandate to design political conditionalities whose effect is to cushion fundamental political questions from political debate by including them in the concept of "economic considerations" and hence subject to the Bank's review powers in making lending decisions. If a state's economic orientation, social, and political policies can all be taken into account in determining whether the Bank would extend help to a given state, it follows that the Bank can dictate these policies for the states. In the end, these "economic considerations" simply become the tool which the Bank uses to legitimate "he introduction and continuation of a set of economic reform policies enacted by surprise and independently of public opinion and of representative organizations and institutions."[105] It hardly bears concluding that a state which is hardly capable of marshalling its own democratic processes to determine its own social, political and economic policies, is not capable of spelling out its own foreign policies in the best interests of its citizens. The broadening of the Bank's mandate, therefore, has been a very effective tool in subverting the principle of equal sovereignty which

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[104] Benedetto Conforti, *Id* at 136.

[105] Adam Przeworski, *Democracy And The Market: Political And Economic Reforms In Eastern Europe And Latin America*, 183 (1991).

is at the core of contemporary international legal architecture. Since it is the developing countries that are least developed which most need the Bank's economic assistance, it follows that the Bank has the biggest leverage in influencing the domestic policies of these countries.

VI Conclusion

Does it matter that the international development discourse as operationalized by the World Bank is Ideological? There are many reasons why this matters. First, if in fact, as I suggest, the outcome of the Ideological rendering of the development reform agenda is to effete the ability of Third World countries to attain the best interests of their citizens, then it needs to be reformed to the extent that it harms these citizens. Second, since the World Bank, as the other international financial institutions (IFIs) who are the key players in the development reform agenda are international organizations which are meant to reflect the collective will of their members, the charge of Ideological bias should be taken more seriously than it has been in the past. Third, the Ideology of reform and development enables the construction of a discourse which obfuscates the real causes of poverty and "underdevelopment" and therefore undermines the efforts to find real solutions to world poverty. Fourth, and related, the Ideological development discourse thus produced facilitates the building of stable alliances between national political and economic elites in Third World countries, IFIs, and multinational corporations. These alliances are sometimes at odds with one another but, overall, they operate to stabilize the international economic system as presently configured by containing any major threat of major rapture. These alliances therefore ensure the continued underdevelopment of the Third World and undermine the very goal of development for which these IFIs were formed.