

**Development Lawyering:  
Toward a Critical Pedagogy and Practice of Encounter**

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The companion papers for this panel interrogate the relationships between the legal academies of the Global South and North, but I come to these questions obliquely, as my own work has included only passing collaboration with law schools in the Global South but substantially more with non-governmental organizations, trade unions, membership-based organizations, and associated lawyers, almost always in the context of client representational projects emanating from the clinics in which I teach. My perspective on the dynamics of legal production, the negotiation of power, and the ambitions, challenges and limitations of collaboration and exchange across vastly different social, political and economic contexts thus skews toward practice, or a theory of practice, in which the legal academy is a site of critical reflection on transnational collaborative legal practice and thereby generative of a particular kind of legal knowledge. Because my collaborations with partners in the Global South have not been primarily with legal academics, the dynamics of South-North law school relationships fall only into my peripheral vision. But our centers tell us a great deal about our margins, and it is in this spirit of examination that I enter this conversation.

This paper considers the work that students and I have done in the Transnational Development Clinic in which I teach at Yale Law School, paying particular attention to the framework of development, its relationship to human rights, and the structure of our client relationships and organizational partnerships as they relate to questions of North-South power disparity. A salient feature of the clinic's work has been a critical embrace of fraught terminology, frameworks, histories and ideologies; a recognition of and deliberate inquiry into the inescapability of power differentials in the current moment and across the geographies of our partnerships; and the study of the histories that have informed and produced these disparities, even as we seek, aspirationally, models of co-equal collaboration. Thus, rather than eschewing the language of encounter, development, and human rights, we attempt to engage and historicize them so as to understand the ideological spaces we enter through transnational collaboration,

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while simultaneously committing to imagined transformations of them through our practice. In so doing, we seek to expose not only North-South disparities, but also unequal relationships within developing countries as some of them undergo rapid development. This, in turn, creates opportunities to reflect on prevailing disparities in the North, and to appreciate that we are unequal in similar and dissimilar ways. It is this orientation of critical embrace that I wish to advance here as one basis for constructive North-South engagement around law, whether among legal scholars and beyond the academy.

### **1. Three Animating Questions**

As a newly formed clinic, my students, colleagues and I have spent considerable time articulating the Transnational Development Clinic's goals, a process that has been at once reflective and constitutive of ideology. Three interpenetrating questions have animated this discussion: (1) What is the role of U.S.-based lawyers in global poverty work? (2) What value, if any, is added, by shifting from a human rights to a development framework? and (3) Can we identify a set of practices and productive interventions we might term "development lawyering," or alternatively, can we construct a normative vision of what such lawyering should look like? Undergirding these questions is an assumption that global poverty should be a moral, ethical, and professional concern of lawyers in the United States, that such lawyers can and should play a role in addressing the modern phenomenon of global poverty, and that law is both an enabling and disabling force in the construction and maintenance of poverty. Although framed as questions, these are, in fact, our priors; that the questions are posed at all implies a standing to ask them, a claim of expertise, and by extension, of authority. Even the choice of questions for personal and institutional self-reflection, then, begins to give ideological shape to the practice dynamic between North and South.

The first question—What is the role of U.S.-based lawyers in global poverty work?—arises from a concern about and recognition of the limitations as well as the advantages of our location. By asking the question of ourselves, we intend to foreground our own positionality and the situated nature of legal perspective on global problems. The question is also an assertion of identity. By defining ourselves as U.S.-based, we invite consideration of what it means to be Americans, whether in fact or by perception, engaging in interventions in other parts of the

world. By focusing on our role as lawyers, we seek to make visible our membership in an elite profession, in and from a Global North country that is viewed with varying degrees of trust and suspicion. Thus, this first question is about both geographic and social location, not unlike the Global North/Global South construct, and prefigures an inquiry into the nature of our relationships with clients and partners who are, in some respects, worlds apart; role is necessarily contextual and relational. To ask this question of role, then, is to both claim that such a role exists, but to concede that it may be circumscribed. In this way, the question is, by design, both brash and modest.

The second of our animating questions, regarding the value of assuming a human development rather than a human rights framework, is the one on which I wish to focus my comments here, for it is the one that is most fraught, but also most productive, in considering North-South relations in our work. Whereas the first question regards the role of U.S. lawyers in relation to global poverty, and the third imagines a set of lawyering practices to operationalize political and professional commitments to anti-poverty work, the second intermediates, in a literal sense. By considering the shift from human rights to human development, it necessarily implicates histories, ideologies, and institutions that have bound up the North and South for decades, and focuses on the theoretical and conceptual frameworks that we and others in law clinics in the North have chosen for engagement with partners and clients in the South.

On one level, then, the work of our clinic raises the familiar questions of North-South encounter that have long animated international human rights work: orientalist and counter-hegemonic concerns regarding the construction of the Third World Other through the imposition of Western ideologies, norms, and categories;<sup>1</sup> post-colonial suspicion of foreign influence or intervention;<sup>2</sup> and post-9/11 resistance to U.S.-based justice claims. In this sense, human development and human rights may be viewed as fraternal twins, bearing unique characteristics but sharing a common Western parentage, even as they have grown more cosmopolitan. But

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<sup>1</sup> See, e.g., Makau Matua, *Savages, Victims, and Saviors: the Metaphor of Human Rights*, 42 HARV. INT'L L. J. 201 (2001); David Kennedy, *The International Human Rights Movement: Part of the Problem?*, 15 HARV. HUM. RTS. J. 99 (2001).

<sup>2</sup> See, e.g., BALAKRISHNAN RAJAGOPAL, *INTERNATIONAL LAW FROM BELOW: DEVELOPMENT, SOCIAL MOVEMENTS AND THIRD WORLD RESISTANCE* (2003).

because their histories, ideologies, institutions, and practices are not identical, they may structure different forms of encounter between the North and South.

The final question conjures a vision of “development lawyering,” and asks how we might shift from encounter to practice; subjectivity to mutuality; insight to action. It seeks to consolidate answers to the prior questions of role and conceptual framework so as to reconstitute a field of action. It aspires to a set of norms that are procedurally fair, strategically wise, and substantively effective. By this account, development lawyering should feature meaningfully solidaristic relationships that traverse Global North and South, make optimal use of a breadth of expertise of U.S.-based lawyers and their collaborative partners, and achieve real results in reducing global poverty. To be clear, the claim here is not that our clinic succeeds by these measures. Rather, in addition to providing service to clients in need, the clinic functions as a field laboratory for imagining new futures.

## **2. Clinic Projects, Partnerships, and Methods of Accountability**

So as to ground this discussion, I provide here a brief description of several matters on which we have worked over the past two academic years.

- *IFI-Accountability Mechanism Complaint:* Working in collaboration with a coalition of good governance, environmental and labor organizations, along with an international environmental organization in the United States, the clinic helped to prepare a complaint to be filed with an international financial institution pursuant to its internal accountability mechanism, arguing that funding of a specific project violated the IFI’s voluntarily adopted social and environmental standards. The complaint seeks to ensure full participation by locally affected communities in the decisionmaking processes regarding the nature, scale, and impact of the IFI-funded project.
- *Street Vendor Rights in India:* In partnership with the Self-Employed Women’s Association (SEWA) in India, a membership-based organization of poor women works in informal sector employment, the clinic undertook comparative legal research regarding regulation of street vendors in 23 countries so as to identify practices in other jurisdictions that could inform SEWA’s work on behalf of the 22

million street vendors in India. While street vendors have been part of India's economy since at least Mughal times, the dramatic growth of India's economy in recent years has fueled 'modernization' efforts in its major cities, including the construction of new roads and 'flyovers,' repurposing and revaluating of previously undervalued land, and the emergence of an aesthetic of the modern city replete with fixed-foundation stores and shopping malls, all of which have threatened urban street vendors with displacement, police harassment, and deprivation of their meager livelihoods. The clinic's work sought to provide SEWA with comparative legal analysis to support its organizing and policy work on behalf of its street vendor members.

- *Access to Medicines Patent Litigation:* Working with the Initiative for Medicines, Access and Knowledge (I-MAK), a New York-based non-governmental organization that works with scientists in the West and patient advocate groups in developing countries to identify patent applications for essential medicines that should not be granted because they are insufficiently innovative to warrant patent protection, the clinic has assisted with the preparation of patent oppositions filed with the Indian Patent Office. Under the Indian Patents Act of 2005, enacted in compliance with the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs), any citizen of India may file a pre-grant opposition to a patent application. India has one of the most progressive pre-grant opposition systems in the world, and its patent law contains unique provisions intended to promote access to essential medicines by limiting patent protection for existing drugs unless there is a significant improvement of the drug's therapeutic effects. Successful patent oppositions can open or maintain open markets for essential medicines—such as medicines for HIV and multi-drug resistant tuberculosis—to generics manufacturers, thereby driving down the costs of such medicines. This is an especially potent strategy because of India's capacity to provide generic drugs to much of the developing world. In addition, patent oppositions have been effective in pressuring pharmaceutical companies to agree to voluntary licensing and low- or lower-cost access to medicines programs.
- *Remittances Research:* Remittances—the sending of money by migrant workers back to family in their home countries—are widely recognized as a significant component

of international development. In many developing countries, remittances constitute as much as 15-20% of gross domestic product, such that incremental increases in the amount of money remitted, or the way in which that money is used, can have significant developmental impact. The clinic has undertaken research on barriers faced by immigrant communities in New Haven to remitting money home. That research has focused on barriers to banking and access to financial institutions more generally. Working with Junta for Progressive Action, a community-based immigrant rights organization, the clinic has designed and conducted surveys, focus groups, key informant interviews, and secondary research in order to (1) better understand and document the remittance practices and experiences of immigrant workers in New Haven, and (2) using these findings, identify key policy interventions to promote lower costs, greater transparency, and increased opportunities for increased developmental impact of remittances.

- *Trade Adjustment Assistance (TAA)*: TAA is a federal benefits program that provides assistance to U.S. workers who lose their jobs due to increases in import competition or because of outsourcing. Although the program dates to the 1960s, since the 1990s it has been linked politically to the passage of free trade agreements; many members of Congress conditioned their votes for free trade agreements on funding for TAA, on the rationale that U.S. workers adversely affected by the trade agreements should be provided some measure of support. Benefits include monthly cash payments, a substantial subsidy for health insurance, wage gap insurance for older workers, job training, and relocation expenses. The program is administered by the U.S. Department of Labor (DOL), with judicial review by the U.S. Court of International Trade. The clinic has provided representation in several cases of denial of TAA benefits, and has successfully obtained benefits for hundreds of workers in Connecticut.

Like human rights, development is a vast and potentially all-encompassing field. Project selection for the clinic therefore becomes a primary site for enactment of a range of ideological and pedagogical choices. First, rather than work with traditional, mainstream development institutions such as the World Bank, the Inter-American Development Bank, or other international financial institutions, we have chosen “in-country” partners that are, where

possible, membership- or community-based organizations. This is based in part on a suspicion of the traditional development institutions, and implicitly reflects an endorsement of the critique of those institutions as removed from the populations they seek to assist, distant from on-the-ground concerns, and subject to elite capture. The preference for local, membership- or community-based partners therefore reflects a normative judgment that such partnerships will result in better outcomes and a related effort to ensure some measure of accountability for our work, and is generally consistent with conceptions of participatory development. Anisur Rahman distinguishes between a consumerist view of development, in which people in developing countries are understood as passive recipients of growth, and a creativist view which embraces a capabilities approach and conceives of people as creative agents of their own development.<sup>3</sup> Our partner preferences are designed in part to explore and test the creativist view.

This is a partial explanation for why, as a general matter, our primary partnerships have not been with law schools in the Global South. The nature of transnational North-South work, whether in development or in other fields, necessitates intermediaries, and where, as in our case, the aspiration is to promote people-based or participatory models, that goal may not be directly served by collaboration with academic rather than practice-based institutions.

Of course partnerships with membership-based and community-based organizations do not resolve conclusively the accountability concern; just as in the context of domestic community-based advocacy, issues of representativeness persist, in at least two dimensions: the extent to which the group fairly represents the interests and wills of a broader population, and the extent to which the leadership of such organizations fairly represents the interests and wills of their members. Such questions are particularly difficult for us to answer from the U.S.<sup>4</sup> Nonetheless the preference for membership- and community-based organizations reflects a judgment, reinforced by reputational information that we seek to gather from trusted third party

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<sup>3</sup> Md. Anisur Rahman, *People's Self-Development* (1989), available at [http://www.anisurrahman.com/files/sw\\_english/1989\\_1\\_Peoples\\_Self\\_Development.pdf](http://www.anisurrahman.com/files/sw_english/1989_1_Peoples_Self_Development.pdf); see also Philip Alston, *Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals*, 27 HUMAN RIGHTS Q. 755, 760 (2005).

<sup>4</sup> This echoes a rising institutional suspicion at World Bank and other international financial institutions regarding the representativeness of groups and organizations that bring complaints regarding IFI-funded projects to their respective internal accountability mechanisms.

sources, that organizations with meaningful participatory structures are more likely to be representative. Even so, the representativeness question remains a subject of inquiry in our pedagogy and practice even after the partnership is formed. This is especially true because the extent to which our partner organizations have been membership- or community-based has varied considerably. For example, while SEWA is organized as a trade union and features complex internal membership and leadership structures, I-MAK is a New York-based organization with relationships with in-country patient advocacy groups, thus attenuating our substantive ties to communities on the ground and complicating our accountability concerns.

As reflected by the synopses above, rather than focus on a single substantive area of development—food security, infant mortality, or decent work, for example—we have chosen a range of projects that reflect the breadth of human development concerns. We have coupled this subject matter diversity with a methodological pluralism, such that we have mixed more traditional, rights-based approaches in adjudicative or quasi-adjudicative settings in domestic and international contexts with research to support and promote organizing campaigns and to help identify policy interventions. Our IFI accountability project and TAA work falls into the former category, while the street vendor project with SEWA and the remittances research for Junta fall into the latter. Other work, such as our partnership with I-MAK on access to medicines, is traditional in the sense of using domestic administrative and judicial structures, but not classically rights-based legal intervention.

Finally, we have had a preference, but not an iron-clad requirement, to structure our partnerships as lawyer-client relationships. This, too, is an accountability measure, because it elevates a host of obligations to client interests and concerns, thereby constraining our own choices and judgments regarding the welfare of populations of poor people who are geographically distant, and indeed often anonymous, to us, but nonetheless the putative beneficiaries of our work. The lawyer-client rubric is not always a comfortable fit, and the “who is the client?” question is a common refrain in our practice. But we presumptively adopt this structure of partnership as one means of controlling for the structural susceptibilities of Northern chauvinism toward our Southern collaborators. Embracing a modified version of a client-

centered model of lawyer-client representation,<sup>5</sup> we deploy this rubric so as to ensure that our Southern partners define the goals of the project and participate meaningfully in determining the means of achieving those goals,<sup>6</sup> and more broadly that they determine the scope of our involvement. Such deployment of the formalism of the lawyer-client relationship—epitomized by the drafting and signing of a retainer agreement, but manifest in other ways as well—thus holds the promise of destabilizing the structural power differentials between North-South actors by ensuring that our goals and interests as lawyers in the North are subordinate to those of our clients in the South.

### **3. Development and Human Rights: Alternative and Intersecting Frames of Encounter**

In their important work on the history and contemporary practice of law and development, David Trubek and Alvaro Santos recount three ‘moments,’ or crystallizations of orthodoxy, in law & development doctrine: (1) law and the developmental state (import substitution, national economic planning/control, limits on foreign capital, etc.); (2) law and the neoliberal market (shift from public to private law, focus on fostering private conditions, protecting private property, etc.); and (3) the current moment – a reaction to the neoliberal moment, that recognizes the limits of markets, endorses the capabilities approach expansion of the definition of development beyond economic growth, and rejects the false universalisms of one-size-fits-all development in favor of heterogeneous development approaches.<sup>7</sup> We self-consciously locate our clinic’s work in this third moment, and to the extent that the clinic embraces a model of law and development, it is this heterodox approach. Thus, our preference for community-based engagement with development institutions, or, alternatively, our engagement in projects wholly outside of the traditional development institutions, and our deployment of a variety of lawyering methodologies—from rights-based claims-making to comparative legal analysis to data collection, analysis and policy development—reflect

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<sup>5</sup> For discussions of client-centered lawyering theory in the United States, see Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501 (1990). For discussion of how client centeredness might be applied in the context of human rights lawyering, see Dina F. Haynes, *Client-Centered Human Rights Advocacy*, 13 CLIN. L. REV. 379 (2006).

<sup>6</sup> See, e.g., AMERICAN BAR ASS’N, MODEL RULES OF PROFESSIONAL CONDUCT 1.2.

<sup>7</sup> David Trubek & Alvaro Santos, *Introduction: The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice* in *THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL*, 1, 4 (Trubek & Santos eds., 2006).

a conceptual rebuke of traditional development models. Consistent with the Trubek and Santos ‘third moment’ characterization, the clinic’s projects eschew an exclusive focus on economic growth and instead seek to address equitable distribution of growth, accountable and effective institutions, and capabilities-based approaches and understandings.

Some of the clinic’s projects, such as the IFI accountability mechanism complaint, might fairly be characterized as human rights work in that they involve adjudication of rights that derive, directly or indirectly, from human rights law and norms. By this account, IFI accountability mechanisms can be understood as the partial incorporation of human rights into development institutions’ structure and practice. Recognizing this overlap, our clinic collaborated with the human rights clinic on this project, raising anew the question of how, if at all, a development framework differs from a human rights approach, and what value might be gained by such a shift in conceptual frame.

Traditionally, human development and human rights have proceeded on parallel tracks, theorized and practiced by different disciplines, instantiated in distinct institutions, and governed by separate legal frameworks, international arrangements, and norms. While there has been increasing convergence between development and human rights in recent decades, such convergence is neither inevitable nor complete. As such, I want to understand how starting with development rather than human rights as the framework for analysis might open up different conversations, theories, and methodologies than if we started squarely within a human rights framework. This leads to a discussion of how the two frameworks differ, so as to identify productivities and limitations in trying to start with development.

As sociologist Jan Nederveen Pieterse describes, development theory and practice historically have been, and continue to be, “a terrain of hegemony and counterhegemony.”<sup>8</sup> The dominant development theories from the post-war era until the 1980s—development economics, modernization, and neoliberalism—were universalizing and homogenizing, and imagined the West as the ‘developed’ norm into which developing countries must graduate and assimilate.

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<sup>8</sup> JAN NEDERVEEN PIETERSE, *DEVELOPMENT THEORY: DECONSTRUCTIONS/RECONSTRUCTIONS* 9 (2001).

The very idea of modernity, which became a metonym for development, cast developing countries as backwards, pre-modern, and in need of Western prescription. Alternative theories, most notably dependency theory, but also post-colonialism in other disciplines, emerged as critiques of such benevolent universalism, and sought to historicize dominant development theories and practices within larger histories of hegemony, expose their ethnocentrism, and reveal their ongoing hegemonic effects.

The parallels between such critiques of development theory and of international human rights are obvious, and given the emergence of a modern human rights discourse in roughly same era, and as a part of the same global politics, as modern development theory, unsurprising. International development, then, is a deeply fraught framework for encounter between North and South, and arguably even moreso than international human rights, given the widespread adoption of human rights discourse and methods by civil society in many parts of the Global South. If this is right—that there is even greater suspicion of and resistance to development than to human rights as a framework of encounter—then this raises the question anew of what is to be gained by adopting a development approach to our work.

Moreover, the choice of development may seem superfluous in light of the growing convergence of development and human rights, particularly in light of the widespread adoption of the capabilities approach. However, the convergence of development and human rights agendas, institutions, and practices should not be overstated; that they are conceptually distinct paradigms ensures that their convergence will be only partial, and as such the end result may be complementarity rather than unity.

Historically, development has been the primary domain of economists, social scientists, and policy-makers, while human rights has been dominated by lawyers, philosophers, and social activists.<sup>9</sup> Increasingly, however, the two have converged. As the United Nations Development Programme has described:

They promoted divergent strategies of analysis and action—economic and social progress on the one hand, political pressure, legal reform and ethical questioning on the other. But today, as the two converge in both concept and action, the

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<sup>9</sup> UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 2000 at 2.

divide between the human development agenda and the human rights agenda is narrowing. There is growing political support for each of them—and there are new opportunities for partnerships and alliances.<sup>10</sup>

This convergence is especially evident in the human capabilities approach that began to emerge in the 1980s and, as a theoretical matter at least, has since become ascendant. Because the capabilities approach repudiates an economic growth-only model of development, it opens a larger space for non-economists to shape development policy. More specifically, the model's recognition of rights as enabling human capabilities invites direct participation by human rights lawyers, theorists, and activists.

And yet, at both a conceptual level and as a matter of practice, huge gaps exist between development and human rights. As Philip Alston observes in his analysis of the Millennium Development Goals (MDGs)—the predominant framework for development practices among major development institutions, and an instantiation of the capabilities approach—human rights references in the MDGs are “relatively fleeting,”<sup>11</sup> and while human rights norms can be seen to inform several of the MDGs, the terminology, methods, and institutions of human rights are largely absent. As Alston notes, there is particular overlap between several of MDG indicators (e.g., malnutrition, access to clean water, literacy rates, gender equality in school, infant mortality rates) and provisions of the International Convention on Economic, Social and Cultural Rights, suggesting a complementarity between the capabilities approach on the one hand and economic and social rights on the other.<sup>12</sup> But the MDGs do not conceive of the failure of countries to meet these goals as *per se* human rights violations, thus suggesting that incorporation of human rights approaches into the MDG agenda can only be context-specific and not wholesale.

Tracing back to earlier intersections of the human rights and development frameworks reminds us of the fraternal nature of the two enterprises, but equally, of their distinct origins and orientations. The 1977 proclamation of the existence of a right to

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<sup>10</sup> *Id.*

<sup>11</sup> Alston, *supra* note \_\_\_, at 760.

<sup>12</sup> *Id.* at 784-86.

development<sup>13</sup> has largely failed to produce a significant change in human rights or development practice.<sup>14</sup> Likewise, human rights articulations of a right to participation in the development have suffered from the generality of universal claims, with little evidence of traction in practice.<sup>15</sup>

Finally, it would be a mistake, at a conceptual level, to conceive of the achievement of development goals (whether the MDGs or some other articulation) as merely the realization of human rights. Whereas the development paradigm has assumed a world of scarce resources and the need for prioritization among goals, the commitment of the human rights paradigm to a framework of indivisible, non-hierarchical rights poses a theoretical challenge to prioritization.<sup>16</sup> Thus, while prioritization is not incompatible with human rights—as attested to by the principle of progressive realization of human rights—nor is it hardwired. Human rights methodologies may be deployed in service of development goals, but the paradigm does little on its own to help establish, as a policy matter, the most important goals to be achieved. To put it in slightly different terms, human rights *law* may require human rights *policy* in order for the realization of human rights to be fully compatible with the goals of development. The policy framework for progressive realization might productively be borrowed from the realm of development.

#### 4. Legal Agnosticism

Because the projects our clinic has taken on are focused, in one manner or another on issues of global poverty and the role of lawyers in addressing them, we are agnostic as to the form of legal intervention we take. Thus, while some of our projects fit comfortably within a human rights paradigm, others fall outside of the framework of human rights law entirely. The clinic's access to medicines collaboration with I-MAK,

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<sup>13</sup> *Resolution 4 (XXXII) of the Commission on Human Rights*, U.N. ESCOR, Comm'n on Hum. Rts., E/CN.4/RES/1976/4 (1976).

<sup>14</sup> “The main results seem to be innumerable speeches, major diplomatic battles over the wording of resolutions, and the creation of a UN expert working group followed by a UN governmental working group, followed by a UN independent expert, followed by a new UN working group. At the end of the day it is clear that something, at least, is not working.” Alston, *supra* note \_\_, at 798.

<sup>15</sup> As Philip Alston observes, “Too many discussions of the need for *participation* in the development process are hollow and tokenistic. That term, when used in the abstract and not related to a specific context, has remarkably little assured meaning.” *Id.* at 811.

<sup>16</sup> See Alston, *supra* note \_\_, at 807.

for example, is based almost exclusively on domestic patent law—not international human rights law—and is done before domestic patent officers. Similarly, our work on Trade Adjustment Assistance, which is intended to offer our students insight into the maldistributive effects of global trade policy in our own communities (thereby enabling us to imagine such maldistribution elsewhere), is more akin to domestic public benefits litigation than to human rights. Here, then, we see an instrumentalism to law in advancing development goals (access to medicines, subsistence income), without recourse to human rights doctrine, even when a human rights claim (for example, right to health or right to decent work) can be articulated.

Such legal agnosticism may be one result of shifting from a human rights to a development frame; once the goal is articulated as poverty alleviation, then the lawyering methods and strategies potentially broaden beyond human rights claim-making. Where human rights approaches are deemed most productive—because of a well-accepted legal norm, an available forum for adjudication, or contextually specific potential for mobilization—they are deployed. But where other legal approaches are more useful, they determine our path. The result is a legal and methodological pluralism whose specificities are determined by context and strategic judgment.

### **5. Participation and Accountability**

Finally, I wish to return to the project intake and partner selection issues discussed above in order to suggest that development-oriented North-South collaborations may point toward models of accountability through enhanced participation. By choosing to align ourselves with membership- and community-based partners in relationships that presume the United States as our base, we necessarily commit ourselves to a transnational practice, and more specifically, to transnational collaborative relationships. Intake decisions are always value-laden, informed by and reflective of judgments about lawyering, social change theory, and in the clinical context, pedagogy, and the choice of partners is self-consciously part of our work. The privileging of membership- and community-based partners arises from twin commitments to agency and self-determination among poor and marginalized communities, and accountability for agenda-setting by elites, particularly in the Global North. Such alignment also reflects a judgment that

development policy must be context-specific. These concerns are driven in part by a suspicion of institutionally-driven decisionmaking by the traditional development institutions, informed by the history in recent decades of prescriptive policymaking that failed to take sufficient account of local context.

In this respect, the clinic's approach bears similarities not only to theories of 'alternative development' (sometimes called people-centered development or participatory development), but also to theories of community-based lawyering common in the United States. So, too, does it resonate with the right to participation in the human rights context. By focusing on meaningful participation of poor and marginalized communities in the decisionmaking processes of development institutions—or aspiring to do so, as is often the case—we might achieve two goals: self-empowerment for those most affected by international development policy, and relatedly, an important check on freelance agenda-setting by elites, whether in the Global North or the Global South.

Participation, then, may enhance self-determination. What remains to be explored is whether such self-determination produces better substantive outcomes. Here again, human rights and development may intersect, with human rights supplying the right (participation) and development supplying the metrics of substantive improvement. But because both the procedural and the substantive dimensions of this analysis are themselves context-specific, they remain captive to North-South dynamics of knowledge production, thereby rendering even the most endogenous of considerations—self-determination—a transnational concern.