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## Articles

# Ideologies of Globalization and Sovereign Debt: Cuba and the IMF

Larry Catá Backer\*

### Abstract

This article examines two fundamentally different perspectives when nation-states participate as creditors and debtors. The issue of sovereign debt—its character and effect—is really part of the much larger battle between two fundamentally opposed visions of the nature and character of the nation-states in general, and debtor states in particular, and of the global system that maintains the market for such transactions. The dominant vision, firmly grounded in private law, posits that growth can occur only in a tightly integrated global economy founded on trade liberalization, privatization, and macrostability. When

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\* Copyright © 2005 Larry Catá Backer. Professor of Law, The Pennsylvania State University, Dickinson School of Law. The author can be contacted at lcb11@psu.edu. An earlier version of this article was presented for the panel on “The International Monetary Fund, Debtor Nations and International Trade and Finance: New Issues, Problems and Solutions,” Second National People of Color Legal Scholarship Conference, *America, Race and Law at the Crossroads*, The George Washington University School of Law, Washington, D.C., Oct. 7, 2004. Special thanks to Welber Barral (Universidade Federal de Santa Catarina, Brazil) for his review and for many months of discussion of the issues raised here. The author’s research assistant Pedro E. Hernandez provided very able work on this project.

the state fails to pay its debts, it ought to be treated like any other failed corporate enterprise—a stay on debt collection efforts, broad enforcement of absolute priority, creditor approval of the proposed reorganization plan, and well protected new interim financing pending restructuring. Opposing the dominant vision is an anti-corporatist approach grounded in public law and the subordination of economics and markets to political control in the furtherance of deliberate state public policy and planning. States fail because it is in the interest of dominant states to use sovereign debt as a means of perpetuating subordination and a hierarchy of power among states. When a state fails to pay its debts, the focus ought to be on the creditor, and the fairness of the debt in terms of the larger public policy concerns—development, and the maximization of living standards for all individuals through state planning. The article first explores the normative foundations of each vision and its consequences for dealing with the borrowings of nation-states.

For this purpose the article concentrates on two actors who most starkly highlight the opposing views. For the dominant vision focus is on Anne Krueger, the First Deputy Managing Director of the International Monetary Fund, and specifically on her proposal to create a bankruptcy model for sovereign state debt restructuring. For the opposing vision the focus is on Fidel Castro Ruz, the President of the Republic of Cuba, and specifically on his elaboration of a critique of the dominant vision of global economic development championed by the IMF. These actors nicely distill the positions subject to analysis in this paper. The implications of each for the shape and character of international regulation, and of the state as an actor in the context of the emerging global system of economic and political regulation, are then explored. In particular, this article contextualizes the Castro vision within the developing positions of a number of public sector institutions, from Latin American opposition to the Free Trade Area of the Americas, to its use by the United Nations Human Rights establishment in Geneva to regulate transnational corporations, to its use by non-state actors in the West, particularly the Roman Catholic Church, to challenge, from within the West, the market driven system elaborated through the IMF and well illustrated by Krueger's proposal for a corporate bankruptcy style state discipline overseen by international regulatory agencies.

President Bush challenged Latin American leaders on Sunday to choose between competing visions, one that would ensure social justice through democracy and free enterprise and another that would reverse progress by eroding democratic institutions and heightening fear. . . . Bush said the plan he supports for the region would ensure social justice through representative government, open markets and “faith in the transformative power of freedom in individual lives. The opposing vision, he said, “seeks to roll back the democratic progress of the past two decades by playing to fear, pitting neighbor against neighbor and blaming others for their own failures to provide for their people.<sup>1</sup>

The problem of sovereign debt—that is of the debt obligations of nation-states when repayment becomes a problem—is generally understood as a legal problem of contract,<sup>2</sup> or as a regulatory problem within a context of global markets for goods, services and capital requiring some sort of disciplinary mechanism for states and their creditors to ensure the integrity of markets.<sup>3</sup> As a result, sovereign debt could be understood as a specific iteration of a more general problem of competition, investment and transactions in goods and services within an emerging system of global trade in which states are facilitators of private activity including foreign direct investment, dispute resolution, anti-corruption measures, and the like.<sup>4</sup> Most generally, perhaps, sovereign debt is considered a political issue bound up in development generally within the confines of the global trade system emerging since the 1970s.<sup>5</sup>

But the usual forms of discussion of the “problems” of sovereign debt serve as proxy for a much more basic battle over much larger stakes. As the initial quote suggests, global elites have come to understand that

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1. Michael A. Fletcher, *In Brazil, Bush Continues Trade Push*, WASH. POST, Nov. 7, 2005, at A15, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/06/AR2005110600636.html> (last visited Mar. 1, 2006).

2. For a very good example of this form of engagement with the sovereign debt issue, see, e.g., William W. Bratton and G. Mitu Gulati, *Sovereign Debt Reform and the Best Interests of Creditors*, 57 VAND. L. REV. 1 (2004). For older analysis, see, e.g., Sarkis J. Khoury, *Sovereign Debt: A Critical Look at the Causes and the Nature of the Problem*, in *ESSAYS IN INTERNATIONAL BUSINESS* (1985).

3. See, e.g., THOMAS M. FRANCK, *THE POWER OF LEGITIMACY AMONG NATIONS* 145-148 (1990) (discussing sovereign debt, debt forgiveness and a legitimacy principle for international law).

4. See, e.g., MICHEL HENRI BOUCHET, *THE POLITICAL ECONOMY OF INTERNATIONAL DEBT: WHO, WHAT, HOW MUCH, AND WHY?* (1987); see also Jeremy Bulow, *First World Governments and Third World Debts*, *Brookings Papers on Economic Activity* 229 (2002).

5. See, e.g., RICHARD FALK, *PREDATORY GLOBALIZATION: A CRITIQUE* 48-63 (1999).

two clear and opposed visions of the purpose, shape and character of the modern state, and the state system have emerged since the end of the Second World War. These differences rest on very different conceptions of what sort of law ought to rule the relations among states, and the importance of the public and moral obligations of the political community. The dominant vision derives from what has sometimes been called the “Washington Consensus.”<sup>6</sup> This is the vision of developed states, and public and private creditors. The foundation of this vision is the private law of contract, the market and market integrity for trade and for capital.<sup>7</sup> This is a system of individual rational actors, of economics, science and formulae. It assumes development is possible only through a rigorous adherence to private property and free market principles, and that markets lead to efficient outcomes.

Opposed to this view is one embraced by developing states, especially those heavily indebted to creditor nations, significant elements of civil society and elements of international institutions and religious organizations. The foundation of this vision is public law and political obligations of states over the economic imperatives of markets. This is a view suspicious of markets and private actors. It sees development and economics as public and political issues rather than private and economic issues. It sees the world as a community of political collectives subject to moral and ethical obligations of development imposed through an emerging system of international law. This is a system of states and other communal actors. This is a system in which economics is another form of political expression, and where the fulfillment of moral obligation is utility maximizing. It assumes development is possible only by transfers of wealth from developed to developing states.

This article examines these two visions of the emerging regime of lending to political sovereigns in the context of this battle for control of the construction of globalization’s *grundnorms*. For this purpose the author focuses on two actors who most starkly highlight the two

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6. “Fiscal austerity, privatization, and market liberalization were the three pillars of Washington Consensus advice throughout the 1980s and 1990s.” JOSEPH E. STIOGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* 53 (2002).

7. “Market fundamentalism plays a crucial role in the global capitalist system. . . . Market fundamentalism came to dominate policy around 1980, when Ronald Reagan and Margaret Thatcher came to power more or less simultaneously.” GEORGE SOROS, *THE CRISIS OF GLOBAL CAPITALISM* 128 (1998). The suggestion is that harmonization is being driven by non-state actors within supra-national markets, and that these actors, within these markets, are the most efficient source of the convergence of law and practice. “[A] convergence of practices among important international civil society actors has led to a rational uniformity of governance. . . . In other words, since the practices of international banking, international trade, and communicating on the Internet are similar in different states, the mechanism of governance of these practices has become similar.” JARROD WIENER, *GLOBALIZATION AND THE HARMONIZATION OF LAW* 10 (1999).

opposing camps.<sup>8</sup> For the emerging dominant vision based on markets and private law, the author focuses on Anne Krueger of the International Monetary Fund.<sup>9</sup> For the articulation of the vision of those resisting or opposing this emerging dominant view, the author focuses on Fidel Castro, the leader of the Cuban State and its Communist Party.<sup>10</sup>

The article first examines the very different basis of each normative framework within which the issue of sovereign debt and debt repayment is articulated. For that purpose it focuses on a single work of Anne Krueger and of Fidel Castro, each of which nicely distills the positions subject to analysis in this article. First the dominant view in the context of Anne Krueger's proposal for a sovereign debt restructuring mechanism (SDRM) is examined, a sort of bankruptcy procedure for states, with the objective of preserving asset values and protecting creditors' rights.<sup>11</sup> Then the article examines the critique of this dominant view and the development of an alternative perspective in a speech delivered at the

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8. It is clear that the ideological framework within which sovereign debt, and the larger issue of globalization and market reforms, is debated, encompasses a broad spectrum. Focusing on two of the actors in this vast and complex debate increases the dangers of oversimplification and misrepresentation. Thus, for example, there is great variation within those who consider themselves members of the "Washington Consensus" camp. There is a tolerance for dissent and difference within this group. *See, e.g.,* STIOGLITZ, *supra* note 6, at 101-135 (1998). But Krueger and Castro represent, in almost pristine form, the differences at the core of the two great opposing camps—one essentially private and market driven, the other public and state control driven. For the purposes of this article, they serve to cast the debate in starkest form. That adds the clarity necessary for analysis.

9. According to her biographical information posted at the IMF website, "Anne O. Krueger has been the First Deputy Managing Director of the International Monetary Fund since September 1, 2001. Before coming to the Fund, Ms. Krueger was the Herald L. and Caroline L. Ritch Professor in Humanities and Sciences in the Department of Economics at Stanford University. She was also the founding Director of Stanford's Center for Research on Economic Development and Policy Reform; and a Senior Fellow of the Hoover Institution." International Monetary Fund, Anne O. Krueger, *Biographical Information*, available at <http://www.imf.org/external/np/omd/bios/ak.htm> (last visited Mar. 15, 2006).

10. Since January 1, 1959, Fidel Castro has been the leader of the Republic of Cuba. He has been a major actor in the international stage, projecting Cuban influence in the 1960s through the 1980s through aid to Marxist revolutionary movements throughout the world. He has served as an influential force among various organizations of developing and so-called non-aligned states. He has been tireless in popularizing his views through speeches and other forms of public addresses. Collections of his public addresses have been published. *See, e.g.,* FIDEL CASTRO RUZ, *DE SEATTLE AL 11 DE SEPTIEMBRE 185* (2002); FIDEL CASTRO RUZ, *FIDEL CASTRO: SPEECHES 1984-85, WAR AND CRISIS IN THE AMERICAS* (1985). Among the many biographies of Castro, *see, e.g.,* LEYCESTER COLTMAN, *THE REAL FIDEL CASTRO* (2003).

11. Anne O. Krueger, *A New Approach to Sovereign Debt Restructuring*, International Monetary Fund, Apr. 30, 2002, available at <http://www.imf.org/external/pubs/ft/exrp/sdrm/eng/sdrm.pdf> (last visited Mar. 2, 2006).

University of Central Venezuela in 1999.<sup>12</sup> Krueger's work illustrates the dominant vision, firmly grounded in private law, and the consequence of its positing that growth can occur only in a tightly integrated global economy founded on trade liberalization, privatization, and macrostability. When the state fails to pay its debts, it ought to be treated like any other failed corporate enterprise—a stay on debt collection efforts, broad enforcement of absolute priority, creditor approval of the proposed reorganization plan, and well protected new interim financing pending restructuring. Castro's work contextualizes sovereign debt issues within an anti-corporatist approach grounded in public law and the value of a command economy on an international scale. The anti-corporatist vision posits that the current regime of globalized financial markets produce rather than decrease poverty. Sovereign debt has the effect of ceding sovereignty from borrower to lender institutions. The dynamics of colonization reappear using the coercive power of economic globalization rather than the troops of an imperial power.

The article ends with a preliminary consideration of the great underlying issue of sovereign debt—its implications for the shape and character of international regulation, and of the state as an actor in the context of the emerging global system of economic and political regulation. These implications are most starkly drawn by the IMF and Castro, each for its own side. The neo-liberal model underlying much of modern globalization and its international systems vaunts markets and market integrity over the niceties of a political order based on nation states. "From the Greek loan of 1832 through the practices of the European Bank for Reconstruction and Development founded in 1990, creditors have routinely compromised the domestic autonomy of weaker lenders."<sup>13</sup> The IMF system continues in that tradition through the embrace of American ideology and interests generalized as a normative system for global governance. Primary responsibility must fall on the borrowing sovereign, as head of a borrowing community, who must be controlled domestically by the political system that constrains debtor governments. The opposing vision articulated by Castro presumes economics is merely politics by other means; and that economics is merely another means of exercising power. Such power must be used

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12. Fidel Castro Ruz, *Una revolucion solo puede ser hija de la cultura y sus ideas*, Discurso pronunciado por el Presidente del Consejo de Estado de la República de Cuba, Fidel Castro Ruz, en la Aula Magna de la Universidad Central de Venezuela, 3 Feb. 1999, available at <http://www.cuba.cu/gobierno/discursos/1999/esp/f030299e.html> (last visited Mar. 2, 2006) [hereinafter *FCR 1999 Speech*]. For the ease of the reader, the English translation shall be used throughout the article.

13. STEPHEN D. KRASNER, *SOVEREIGNTY: ORGANIZED HYPOCRISY* 161 (1999).

directly for the benefit of individuals in accordance with political and ideological formulae dear to the hearts of particular political communities. Castro posits an inversion of that system without loosening in any respect the control inherent in it. Primary responsibility must fall on the lending creditor who must comply with a public law code of ethics and obligations in lending. Obligation would flow from and to creditor states—the framework would seek to serve the debtor rather than the creditor for the purpose of remaking power relationships among states. Castro's view is then contextualized within a globalization discourse that rejects the IMF vision and finds expression both in international political organizations—principally the United Nations—and in global religious organizations—the positions of the Roman Catholic Church.

One final introductory caution: Americans have obsessively indulged in two traditions since Fidel Castro seized power in Cuba on January 1, 1959. American political and economic institutions, the Cuban Diaspora and many segments of American society, demonize Fidel Castro, reducing him first to little more than the intellectual whore of the Soviets and then caricaturing him as a shill for third world cynical opportunism conflated with a sadly anachronistic Stalinist Marxist-Leninist patina.<sup>14</sup> It is hard for this segment of Western society in general, and Americans in particular, to see Castro as other than a proxy for systems of governance and approaches to economic regulation absolutely inimical to deeply held Western, and particularly American traditions.<sup>15</sup> The American political left, on the other hand, has used Castro and his revolution as a sort of poster child of the noble (Marxist-Leninist) Third World savage valiantly battling the forces of reaction in the United States, a battle undertaken within the United States by these “vanguards” of change in the United States in its battles for political dominance within the United States.<sup>16</sup> For the American left, it took

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14. See Tomas Borge, El Nuevo Diario Interview with Fidel Castro: *Blaming Stalin For Everything Would Be Historical Simplism*, EL NUEVO DIARIO, Managua, Nicaragua, June 3, 1992, available at <http://www.marxists.org/history/cuba/archive/castro/1992/06/03.htm> (Castro argued that Stalin “established unity in the Soviet Union. He consolidated what Lenin had begun: party unity. He gave the international revolutionary movement a new impetus. The USSR’s industrialization was one of Stalin’s wisest actions, and I believe it was a determining factor in the USSR’s capacity to resist.”). *Id.*

15. For them only a total embargo of this contagion is appropriate. The United States is not the only state with a taste for embargos as a means of political action. The world community (or a large part of it) participated in a boycott of the apartheid regime in South Africa until that government was toppled and replaced. Many majority Muslim states have participated in a so-called Arab embargo of Israel. Hassan M. Fattah, *Kuwaitis Quietly Breach Taboo: Easing Hostility Toward Israel*, N.Y. TIMES, Oct. 5, 2005, at A10.

16. From early in the Revolution, this solidarity of the left was dramatized by



nearly a generation to admit that, indeed, it was foolish to believe that Castro could do no wrong, even when judged against the American left's own moral and political value systems.<sup>17</sup>

In a sense, Castro has mirrored that American obsession with an obsession of his own—directed at the United States and all it appears to stand for in his view. To some extent, this obsession colors Castro's view of an international financial system dominated by the United States.<sup>18</sup> Nonetheless, Castro manages to articulate a sophisticated socio-political theory of international relations. This theory, in its many forms, and often stripped of its Marxist-Leninist patina, is influential outside of the United States. In this sense, Castro serves as both influence and convergence point for ideas in opposition to those derived from, or supported by, the dominant global political establishment centered in the United States. Even his enemies concede that “[f]or the past four decades Fidel Castro and his regime have been the most vocal and active proponents of anti-Americanism throughout the developing world. The often-repeated view in many countries that the U.S. is an evil power, guilty for much of the problems and sufferings of the poor nations, owes

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legions of American youth flocking to help cut sugarcane in Cuba to help the Revolution in the 1960s and 1970s—the so-called “Venceremos Brigades” that for a few years from 1969 on provided a means for American youth to travel to Cuba to aid in Castro's revolutionary efforts. Until late in the 20<sup>th</sup> century, the American left was quite willing to excuse the excesses of Castro's Stalinist totalitarianism, his exportation of revolution and his moral conservatism with respect to, for example, gay men and lesbians. See Ian Keith Lekus, *Queer Harvests: Homosexuality, the U.S. New Left, and the Venceremos Brigades to Cuba*, 89 RADICAL HIST. REV. 57-91 (2004).

17. Cases in point involved race and the response to AIDS. In both cases the Cuban government implemented policies that, had they been attempted in the United States, would have provoked a massive cry of human rights abuse. For a discussion, see, e.g., David W. Johnston, *Cuba's Quarantine of AIDS victims, A Violation of Human Rights?*, B.C. INT'L & COMP. L. REV. 189 (1992). And, of course, there is the matter of a free press, one with respect to which the Cuban government and the American left have had difficulty finding common ground. See, e.g., Inter American Press Association, Press Freedom in the Americas Country by Country Reports, Cuba, (2005) available at [http://www.sipiapa.org/pulications/report\\_cuba2005.cfm](http://www.sipiapa.org/pulications/report_cuba2005.cfm) (last visited Mar. 1, 2006). Some non-governmental organizations (NGOs) have not been kind to Cuba on this score in recent years. See, e.g., Sarah A. DeCrosse, Human Rights Watch, *Cuba's Repressive Machinery: Human Rights Forty Years After the Revolution*, available at <http://www.hrw.org/reports/1999/cuba> (last visited Mar. 1, 2006).

18. Jaime Suchlicki, *Forward*, in SELECTED STATEMENTS: 1958-2003 FIDEL CASTRO ON THE UNITED STATES (Hans de Salas del Valle, ed., 2003) available at [http://www.neoliberalismo.com/salas\\_valle.htm](http://www.neoliberalismo.com/salas_valle.htm) (last visited Mar. 1, 2006) (“Since becoming the leader of Cuba, one of Castro's main objectives has been to undermine U.S. power and prestige in the world. His support of anti-American guerrillas and terrorists in Latin America in the 1960s and 1970s, his military involvement with and support for anti-American regimes and groups in Africa and the Middle East in the 1970s and 1980s, and his constant denunciations of ‘U.S. imperialism,’ ‘capitalism,’ and ‘neoliberalism’ in international organizations and forums attest to his determination and consistency.”).

its power, in some respects, to the media efforts of Castro and his officials.”<sup>19</sup>

Viewed in a broader context, what appear to be Castro’s mere media efforts against the United States might be more usefully understood as symptomatic of a form of theorizing the purpose of which is to challenge the currently dominant normative basis for global economic organization—including the rules for regulating sovereign debt—that is to a great extent influenced by American thinking. And perhaps it is meant to challenge the United States itself. Castro’s voice is one among many. These ideas find their echo in the approach increasingly voiced by organs of the United Nations human rights institutions in Geneva.<sup>20</sup> Shorn of Castro’s overlay of overt anti-Americanism and uncompromising anti-capitalism, the approach articulated by Castro finds a parallel in the United Nations efforts to regulate corporate governance,<sup>21</sup> as well as recent efforts to overhaul the structure of the United Nations itself.<sup>22</sup> It will likely serve as a basis, even if its source remains unidentified, of resistance to the developing Western institutional consensus relating to global governance in general, and to the character of states and sovereign debt in particular. It has served as a basis for resistance in Latin America to American efforts to institute a regional trade zone—the Free Trade Area of the Americas.<sup>23</sup> And it has

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19. *Id.*

20. For that reason, among others, this institution has come under very heavy criticism from the United States, and might well see its existence substantially changed under proposals for modification of the United Nation’s governance structure proposed at the end of 2004. See Warren Hoge, *UN Panel Proposes Sweeping Changes: Security Council Would Grow to 24*, INT’L HERALD TRIB., Dec. 2, 2004, available at 2004 WLNR 12918822 (“The panel was very critical of the Human Rights Commission, a body that has often brought the United Nations into disrepute by incorporating some of the worst rights violators like Cuba, Libya and Sudan into its membership. The commission, which is based in Geneva, suffers from a credibility deficit that casts doubt on the overall reputation of the United Nations,” the report said. The official who briefed reporters added that too often the chief motivation for countries to join was to deflect attention from deplorable rights conditions at home.”).

21. For a discussion, see Larry Catá Backer, *Multinational Corporations, Transnational Law: The United Nation’s Norms of the Responsibilities of Transnational Corporations as Harbinger of Corporate Social Responsibility as International Law*, 37 COLUM. HUM. RTS. L. REV. 287 (2005).

22. United Nations, Office of the Secretary General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, Report of the Secretary General of the United Nations for Decision by the Heads of State and Government in September 2005, Mar. 21, 2005, available at <http://www.un.org/largerfreedom/>. See also David Nason, *Annan Urges Radical Overhaul of UN*, AUSTRALIAN (Mar. 22, 2005), available at 2005 WLNR 4351609 (“Mr. Annan also called on developed nations to agree to a 2015 deadline for providing 0.7 percent of their gross domestic product for the fight against poverty, and for urgent international agreement on new measures to fight terrorism and nuclear proliferation.”).

23. President Bush’s visit to Mar del Plata in Argentina in October 2005 to promote

produced popularly elected demagogues—Hugo Chavez in Venezuela and Evo Morales in Bolivia.<sup>24</sup>

Castro's vision finds an equally important echo in the Catholic social thought of the late 20<sup>th</sup> century.<sup>25</sup> Since its rejection of so-called liberation theology in the 1980s,<sup>26</sup> Catholic social thought has stressed many of the objectives identified by Castro, and has criticized aspects of market based globalization, and the resulting system of unsustainable state debt, attacked by Castro. At the same time it embraced the form of the critique, the Roman Catholic Church has been careful to reject what it calls the secularism inherent in any form of Marxist-Leninist program of opposition to market globalization.<sup>27</sup> The Roman Catholic Church has thus developed, under the leadership of John Paul II, an extensive catalogue of criticism of the modern global market system that stressed development and charity, within a Catholic context, that paralleled Castro's opposition to neo-liberal globalization, within a Marxist-Leninist context.<sup>28</sup> Both understand sovereign debt as a piece of the larger problem of the nature of the organization, and the character of the normative structure, of the emerging global governance system. If for no other reason, Castro's vision of global governance and sovereign debt is worth extracting and considering.

#### I. The Dominant Vision: The United States, the International Monetary Fund, the Market and the Supremacy of Private Law

The dominant vision is driven by nations representing the most powerful economic powers. It is to a large extent facilitated by the great financial instruments created after the Second World War, the International Monetary Fund<sup>29</sup> and the World Bank.<sup>30</sup> The Washington

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progress on the Free Trade Area of the Americas, was a substantial failure. The American efforts was met not only with official resistance at the conference but also with extensively televised popular demonstrations in which much of the rhetoric of Castro described in this paper was deployed against the Free Trade Area of the Americas. See CITE.

24. At least one nationally syndicated American news commentator has greeted the election of Evo Morales with some alarm and a certain amount of cynicism. See, e.g., Georgie Anne Geyer, *History of Failure: Bolivia's New President Offers an Old Idea: Socialism*, THE PATRIOT NEWS, Dec. 28, 2005, at A10.

25. For American academic application of the principles of Catholic social thought, see, e.g., William P. Quigley, *Prison Work, Wages, and Catholic Social Thought: Justice Demands Decent Work for Decent Wages, Even for Prisoners*, 44 SANTA CLARA L. REV. 1159, 1174 (2004).

26. See, Joseph Cardinal Ratzinger, Sacred Congregation for the Doctrine of the Faith, *Instruction on Christian Freedom and Liberation* (1986).

27. See *id.*

28. See discussion, *infra* at Part III.

29. "The IMF is an organization of 184 countries, working to foster global monetary cooperation, secure financial stability, facilitate international trade, promote high

Consensus posits that growth can occur only in a tightly integrated global economy founded on trade liberalization, privatization, and macrostability. Micro-stability will always come—in the long run. It views regulatory institutions—like the nation-state—in much the same way Enlightenment *philosophes* understood God—as the great clockmaker whose function was limited to delineating the parameters under which individuals could freely and fairly optimize their condition. In the parlance of economic globalization, the state functions best as a sort of ur- or meta-enterprise providing the stability through which private ordering can fuel wealth, by reducing transaction costs and costs of information, and by policing the system to ensure that all parties play by the same set of aggregate wealth maximizing rules.

When private enterprises fail, they must be subject to reordering under rules meant to minimize the risk of aggregate loss to the economic communities within the state. Bankruptcy provides a means through which private economic orderings can be reabsorbed into a functioning economic system and used to maximum effect with as little disruption to the economic system as possible. It provides the smallest protection to the greatest risk takers—the shareholders, and greatest protection to those whose risk, and also whose reward, was contractually limited—the debt holders. Lenders must be paid, shareholders must bear the risk of loss, and enterprises that might be viable ought to be able to continue to produce wealth even as they are being reorganized. All of this maximizes the aggregate wealth of all stakeholders in the system. For this purpose, the political community—organized as a sort of meta-corporation—serves as regulator, ensuring that wealth-creating capacity is appropriately reabsorbed and again becomes productive.

But nation-states are not strangers to this market over segments of which they preside. Political rather than purely economic aggregations, states nonetheless participate as regulators of segments of the global market. As regulatory bodies, nation-states, like corporations, must be subject to some sort of discipline to ensure aggregate wealth

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employment and sustainable economic growth, and reduce poverty.” International Monetary Fund, <http://www.imf.org>. For a fairly complete self-description of the IMF and its mission, *see*, <http://www.imf.org/external/about.htm> (last visited Mar. 1, 2006).

30. Like the IMF, the World Bank has a fairly comprehensive self-description that parallels that of the IMF at some level of generality. “The World Bank Group’s mission is to fight poverty and improve the living standards of people in the developing world. It is a development Bank which provides loans, policy advice, technical assistance and knowledge sharing services to low and middle income countries to reduce poverty. The Bank promotes growth to create jobs and to empower poor people to take advantage of these opportunities.” World Bank Group, About US, *available at* <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,pagePK:50004410~piPK:36602~theSitePK:29708,00.html> (last visited Mar. 1, 2006). For more information about the World Bank, *see, e.g.*, <http://www.worldbank.org>.

maximization. For this purpose states also serve a higher master. Each state is bound by the rules of a community of states that together have acquired an autonomous personality constituting all nation-states as a singular body corporate. This international community is meant to be superior to any of its constituent parts and is charged with providing stability through which state ordering can fuel wealth for its citizens. When the state fails to pay its own debts, it, too, ought to be treated like any other failed enterprise and made subject to rehabilitation rules imposed by the community of states and its financial instrumentalities.

Those rules have recently taken the form either of a strong contractarianism, requiring implementation of the terms of sovereign debt instruments, or of a state enterprise-type bankruptcy standard, imposing a stay on debt collection efforts, broad enforcement of absolute priority, creditor approval of the proposed reorganization plan, and well protected new interim financing pending restructuring. The IMF has recently suggested a more powerful implementation of the state bankruptcy mechanism through Anne Krueger's proposal to create a "Sovereign Debt Restructuring Mechanism" in which the IMF would serve as a sort of bankruptcy court for states.

Anne Krueger proposes a sovereign debt restructuring mechanism (SDRM) that aims to help preserve asset values and protect creditors' rights, while paving the way toward an agreement that helps the debtor return to viability and growth.<sup>31</sup> The purpose of the proposal is efficiency, and the maximization of the welfare of creditors and the citizens of the overextended state:

The absence of a robust legal framework for sovereign debt restructuring generates important costs. Sovereigns with unsustainable debts often wait too long before they seek a restructuring, leaving both their citizens and their creditors worse off. And when sovereigns finally do opt for restructuring, the process is more protracted than it needs to be and less predictable than creditors would like.<sup>32</sup>

The basis for this approach is contract;<sup>33</sup> the model is corporate bankruptcy. "This approach draws on the principles of well-designed corporate bankruptcy regimes, and is similar in concept to the decision-

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31. Krueger, *supra* note 11.

32. *Id.* at 39.

33. *Id.* at 29-32. Krueger notes two significant problems with a wholly contractual basis for sovereign debt programs. "First, it would be difficult to establish a purely contract based framework." *Id.* at 30. "Second, even if a contract-based framework could be established, it would not provide a comprehensive and durable solution to collective action problems." *Id.* at 31. To overcome these limitations of contract, she suggests a statutory regime based on domestic and international law. *Id.* at 31-33.

making procedures among holders of a single bond issue that contains a majority restructuring clause.<sup>34</sup> Most useful is the already developed for municipalities under American law.<sup>35</sup>

SDRM is designed to create incentives for a debtor with unsustainable debts to approach its creditors promptly—and preferably before it interrupts its payments. But it should also avoid creating incentives for countries with sustainable debts to suspend payments rather than make necessary adjustments to their economic policies.<sup>36</sup> In addition, Krueger's proposal calls for the resort to SDRM at the instance of the debtor country; and not for the IMF or creditors to impose.<sup>37</sup> More importantly, "the mechanism would be implemented when the mechanism would be invoked where there is no feasible set of sustainable macroeconomic policies that would enable the debtor to resolve the immediate crisis and restore medium-term viability unless they were accompanied by a significant reduction in the net present value of the sovereign's debt."<sup>38</sup> In other words, it would be a last resort.

Krueger argues that there are two key challenges to the successful design and implementation of an SDRM. One is to create incentives for debtors with unsustainable debt burdens to address their problems promptly in a manner that preserves asset values and paves the way toward a restoration of sustainability and growth, while avoiding the creation of incentives for the misuse of the mechanism. The other is to design the mechanism so that, once activated, the relative roles assigned to the sovereign debtor and its creditors create incentives for all parties to reach rapid agreement on restructuring terms that are consistent with a return to sustainability and growth.<sup>39</sup> For that purpose SDRM must have four key elements, consistent with a pattern from out of corporate practice: majority restructuring,<sup>40</sup> a stay on creditor enforcement,<sup>41</sup> and protection of creditor interests,<sup>42</sup> and priority financing.<sup>43</sup> With these key

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34. *Id.* at 39.

35. *Id.* at 12-14.

36. *Id.*

37. Krueger, *supra* note 11, at 4.

38. *Id.*

39. *Id.* at 5.

40. *Id.* at 14-15 ("The creation of a mechanism that would enable the affirmative vote of a qualified majority of creditors to bind a dissenting minority to the terms of a restructuring agreement would be the most important element of any new restructuring framework.").

41. *Id.* at 15-16 ("In the event that an agreement had not been reached prior to a default, a temporary stay on creditor litigation after a suspension of payments but before a restructuring agreement is reached would support the effective operation of the majority restructuring provision.").

42. *Id.* at 16-17 ("An SDRM would need to include safeguards that give creditors adequate assurances that their interests were being protected during the period of the stay.

elements in place the real value of the SDRM is more clearly revealed—a method for enhancing the value of sovereign debt as an asset class, and therefore the willingness of the lender class to make additional loans with less onerous conditions.<sup>44</sup>

Krueger then asks the question: What role should the IMF play in the actual operation of the mechanism?<sup>45</sup> The answer, Krueger asserts, is inherent in the IMF's current role and authority within the framework of international finance.<sup>46</sup> In effect, a formal SDRM structure merely institutionalizes the role the IMF has fashioned for itself in connection with sovereign debt difficulties.<sup>47</sup> She points out that the main concern would be that the IMF as a creditor and as an institution, whose members include debtors and bilateral official creditors, would not be perceived as being entirely impartial in exercising this authority.<sup>48</sup> However, Krueger proposes a number of administrative procedures to ensure a minimization of conflict and the maximization of the implementation of the will of the majority of creditors.<sup>49</sup> The IMF would rely on its existing financial

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These safeguards would have two complementary elements. First, the sovereign debtor would be required not to make payments to nonpriority creditors. Second, there would have to be assurances that the debtor would conduct policies in a fashion that preserves asset values.”). Assurances could be most efficiently provided through the IMF. *Id.* at 16-17.

43. Krueger, *supra* note 11, at 17. (“A majority restructuring mechanism could also usefully be buttressed by a mechanism that would facilitate the provision of new money from private creditors during the period of the stay. It is in the collective interests of private creditors and the sovereign debtor that new money be provided in appropriate amounts. Such financing, when used in the context of good policies, can help limit the degree of economic dislocation and thereby help preserve the member's capacity to generate the resources for meeting debt-service obligations.” *Id.*).

44. “More generally, to the extent that the establishment of a sovereign debt restructuring framework serves to create a more structured negotiating framework between creditors and sovereign debtors, it may enhance the value of sovereign debt as an asset class.” *Id.* at 20.

45. *Id.* at 21-28.

46. *Id.* at 21.

47. *Id.* at 20-22. Specifically, Krueger sees the IMF's involvement as most effective in three key areas:

First, *activation of a stay on creditor action* would require a request by the sovereign debtor and IMF endorsement. Such endorsement would be based on the IMF's determination that the member's debt is unsustainable and that appropriate policies are being—or will soon be—implemented. Second, any *extension of the stay* would require a determination by the IMF not only that adequate policies continue to be implemented but also that the member is making progress in its negotiations with its creditors. Third, IMF *approval of a restructuring agreement* that had been accepted by the requisite majority of creditors would be a condition for its effectiveness. Such approval would be based on a determination that it provides for a sustainable debt profile.

*Id.* at 23.

48. Krueger, *supra* note 11, at 24-29.

49. *Id.* at 23-28.

powers to create the incentives for the relevant parties to use the mechanism appropriately.<sup>50</sup> In addition, provision would be made for the preservation of the domestic banking and capital finance system. In particular, the possible tradeoff between the magnitude of debt reduction obtained through a restructuring, on the one hand, and the prospect that the sovereign will be able to mobilize savings from domestic capital markets in the aftermath of a restructuring—particularly in the period while access to international capital markets will likely remain closed.<sup>51</sup>

Krueger considers a number of different approaches to creating a legal framework for institutionalizing this system.<sup>52</sup> She considers contract as a basis for implementing the framework.<sup>53</sup> Another approach is grounded in statutory requirements. A statutory framework could cover a broad range of debt, including domestic debt. An alternative approach would exclude domestic debt from the scope of the statutory approach and rely instead on the existing governing legal frameworks to facilitate any required restructurings of these claims. The framework would address collective action problems that to date have made the cost of restructuring excessively high for both debtors and creditors.<sup>54</sup>

If a statutory approach that creates the legal basis for majority action across all sovereign indebtedness offers the best method of achieving the objectives of a sovereign debt restructuring mechanism, the question arises as to how best to implement a change in the statutory regime.<sup>55</sup> The final section of the proposal considers these issues. In this final section, Krueger discusses the difficulties of implementation given the present state of domestic, international, and transnational legal regimes. She rejects the idea of harmonization of domestic law in favor of adopting a binding treaty regime grounded in changes in the constitution of the IMF.<sup>56</sup>

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50. *Id.* at 24-29.

51. *Id.* 18-19.

52. *Id.* at 29.

53. Krueger, *supra* note 11, at 29-33.

54. *Id.* at 9.

55. *Id.*

56. *Id.* at 29. Krueger offers several reasons in support of this approach:

First, it would prevent circumvention: if the statutory framework is only in place in a limited number of jurisdictions, creditors could ensure that future instruments enable them to enforce their claims in jurisdictions that have not adopted such jurisdictions but whose money judgments are recognized in under treaties or local law. Second, an international treaty would ensure both uniformity of text and, if there is an institution given interpretive authority, uniformity of interpretation. Third, it would address a potential “free rider” problem: without a treaty, countries would be reluctant to adopt legislation until they were assured other countries had also done so. Finally, the establishment of a treaty facilitates the establishment of a single international judicial entity that would have exclusive jurisdiction over all disputes that would arise



The policy concerns underlying the plan are fairly simple to summarize. These concerns include: preservation of financial markets for capital, conflation of nation-state and corporation on a nexus of contract model, with due regard for differences between a subordinate economic entity (a corporation), a subordinate political entity (a municipality), and a nation-state. But for all of that regard, the focus remains on the debt and the market facilitating that debt. The state's highest priority is to preserve its credit, and its ability to acquire more debt on advantageous terms. The great difficulty is the collective action problem among sovereign state creditors.<sup>57</sup> The goal is economic stability, well functioning markets, and the creation of wealth that ultimately will seep down to all levels of social organization. Prosperity and development hinge on wealth creation through markets facilitated by loan and equity capital available on the most advantageous terms possible.

Krueger's proposal is one of many coming from the United States, and represents among the most well articulated statements of the current position of developed countries and the international financial establishment. All proposals would treat the state as a form of super, hyper, or special-form corporation, ultimately subject to a set of greater, third-party or supra-national sovereigns.<sup>58</sup> In the case of Krueger's type of proposal, the ultimate sovereign to be designated would be one or another set of international institutions, like the IMF.<sup>59</sup> In other cases, the third-party could be chosen by the sovereign and creditors, or by others.<sup>60</sup> In either case, the nature of the sovereign debt transaction

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between the debtor and its domestic and international creditors and among such creditors.

*Id.* at 33-34.

57. *Id.* at 2.

58. To a significant extent, the difference is inherent in differences between economic and political communities. Corporations, and even municipalities, might be dissolved, and the interests of residuary owners dispersed or transferred to those with a higher interest. Where the residuaries are citizens of a state, those solutions are less likely to be either possible or palatable. The special nature of allocation of risk for state debt repayment failures to its "equity holders"—its citizens and local enterprises—provides both opportunity and risk for creditors. *See, e.g.,* Patrick Bolton, *Toward a Statutory Approach to Sovereign Debt Restructuring: Lessons From Corporate Bankruptcy Practice Around the World*, IMF Staff Papers No. 41, Jan. 1, 2003, available at 2003 WL 56959225.

59. Thus, for example, Bolton notes, and not inaccurately from the perspective of the Washington consensus, that in the context of sovereign debt, the "IMF has a special role to play that has no counterpart in the corporate context, except perhaps the relationship banking role played by a corporation's main bank." *Id.* at 18.

60. For a penetrating analysis of this sort, *see, e.g.,* A. Mechele Dickerson, *A Politically Viable Approach to Sovereign Debt Restructuring*, 53 EMORY L.J. 997(2004). Professor Dickerson's thesis is that:

[A] politically viable approach to resolving sovereign debt crises is to develop a

retains its character as a private rather than a public transaction, subject by analogy, and with due regard to the slight differences between economic and political “corporations,” to domestic bankruptcy law models.<sup>61</sup>

These approaches focus on the state as autonomous entities, and on lenders as subjects of equal dignity under the leveling principles of contract law. The aim is to preserve the flow of funds into sovereign states as debt, and out of sovereign states as interest and repayment of principal. The more regularized the flow, the more stable the political environment in which transnational markets may flourish, business may grow and people will prosper. Prosperity provides the basis for stable political relationships, and maybe even for democracy; control in the name of political aims is inimical to freedom and to the ultimate best interests of any political community.<sup>62</sup>

Even when states cannot immediately pay their debts, a debtor/creditor environment that maximizes incentives to continue lending during any period of sovereign insolvency provides the optimal basis for market expansion within a framework of global capital flows in which states play a critical role. From this perspective, protection of the global creditor class, now consisting of a widely dispersed and varied group of individuals and entities, becomes the key to world economic stability as well as a source of trouble for dealing with defaulting states.<sup>63</sup>

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flexible statutory framework that encourages sovereigns to activate early restructurings. To give sovereigns such incentives, the IMF should condition future lending on sovereigns’ willingness to enact basic mandatory debt restructuring procedures. While sovereigns should be encouraged to enact comprehensive debt restructuring legislation, they should be allowed to customize their debt restructuring procedures by negotiating a private written “protocol” with their creditors. If the sovereign and its creditors are unable to reach agreement on the protocol before the sovereign activates the mandatory debt restructuring provisions (including a brief standstill and stay on enforcement actions), the restructuring initially should be governed by paired pro-debtor and pro-creditor default terms selected by a neutral third-party entity.

*Id.* at 997-98.

61. For an excellent example of the genre, see Bolton, *supra* note 58, at 15-18; 22-25.

62. See George W. Bush, Second Inaugural Address (Jan. 20, 2005), available at <http://www.whitehouse.gov/news/inaugural-address.html>. President Bush suggested that democracy and human dignity provide a framework limiting the power of any political community—nation, state, international organization, etc.—to organize its society. He also noted that every nation has the right to choose its own path to freedom and democracy, and every other state has the authority to help its neighbors achieve and maintain compliance with these standards.

63. Horst Köhler, Opening Remarks for the Sovereign Debt Restructuring Mechanism Conference (Jan. 22, 2003), available at <http://www.imf.org/external/np/speeches/2003/012203.htm>. (“Twenty years ago, when sovereign debt consisted mainly of syndicated bank loans, a debt restructuring—while never pleasant—was relatively

The intellectual battle lines, then, are drawn around the rights of creditors, and the smoothness of restructuring debt transactions to ease and rapidity of resumption of lending and repayment patterns, rather than anything else.<sup>64</sup>

At a greater level of generality, the focus of these proposals is essentially economic, rather than social or political. The normative basis of regulation is the private contractual relation, not the public or political transaction. The regulatory framework is the market instead of the political community. Indeed, the effect of political considerations, to the extent they detract from efficiency, can be viewed as politically wrong if the object is the long-term stability and prosperity of state debtors and their citizens. Even the IMF itself is subject to criticism for what is sometimes deemed the importation of extraneous, political, considerations in matters affecting the debt of sovereigns. For example, some have observed that:

In theory, these loans are conditional, requiring the sovereign to reform its economic policies and the unpaid creditors to share the pain by cutting back their claims to induce lending that facilitates economic recovery. In practice, the IMF often acts precipitously, bailing out the sovereign so as to stabilize the international financial system or satisfy some other political goal of its major shareholders.<sup>65</sup>

Thus, the objective with the greatest value appears to be the development and maintenance of a mechanism through which the state can correct its failures and resume its role as an Enlightenment deity, as clock maker while protecting the market for private and public debt, and while maximizing protection of creditor (states and institutions). As the managing director of the IMF recently reminded an audience at a conference of sovereign debt restructuring: “Globalization offers many opportunities, and integration in the world economy is surely the most potent instrument for poverty alleviation. But we need to invest in globalization to ensure that its opportunities are more widely shared and

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straight-forward. But today, the market is characterized by an enormous diversity of debt instruments and a multiplicity of creditors. Argentina alone has some 700,000 retail creditors! As a result, debt restructuring has become much more complex.” *Id.*)

64. See William W. Bratton and G. Mitu Gulati, *Sovereign Debt Reform and the Best Interests of Creditors*, 57 VAND. L. REV. 1 (2004) (discussing harm to creditors, and credit markets for states, of proposals that seek to treat sovereign debt as debt guaranteed by international financial establishment (in opposition to the current regime of strict contractarianism and its more flexible alternative—swapping (either mandatory or permissive) because it does not preserve all of the creditors’ rights (but contemplates the possibility of changes in terms) without the consent of every creditor).

65. *Id.* at 3.

that its risks are contained.”<sup>66</sup>

## II. Fidel Castro, the State, and Global Cycles of Permanent Subordination Through Debt

Opposing the dominant vision is an anti-corporatist vision articulated by Fidel Castro. Cuba is the idea place for the development of a normative system of global finance opposing the system developed under the influence of the Washington Consensus. The United States and Cuba have been bitter political and cultural rivals almost from the inception of the success of the Cuban Revolution on January 1, 1959. The United States has imposed a near-total embargo on Cuba since the early 1960s.<sup>67</sup> A significant focus of the embargo is on Cuban goods and raw materials.<sup>68</sup> For purposes of this article, however, the financial embargo is even more important to the development of Castro’s ideas. The United States has sought to cut Cuba off from all sources of global finance. Before the collapse of the Soviet Union and its allies that goal had been difficult to achieve because of the steady support of the Soviet

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66. See generally Köhler, *supra* note 63.

67. For a discussion of the Cuban embargo, see, e.g., PATRICK J. HANEY, *THE DOMESTIC POLITICS OF AN AMERICAN FOREIGN POLICY* (2005), JAIME SUCHLICKI, *THE U.S. EMBARGO OF CUBA* (2000); ADOLFO LEYVA DE VARONA, *PROPAGANDA AND REALITY, A LOOK AT THE U.S. EMBARGO AGAINST CASTRO’S CUBA* (1994). A number of pro-embargo web sites also provide a tremendous amount of information. See, e.g., <http://www.hermanos.org> (Brothers to the Rescue Website) (last visited Mar. 1, 2006), <http://ctp.iccas.miami.edu/default.htm> (Institute for Cuban and Cuban American Studies, University of Miami Cuba Transition Project Website) (last visited Mar. 1, 2006), <http://www.cubacenter.org/> (Center for a Free Cuba website) (last visited Mar. 1, 2006). For the embargo from the Cuban perspective, see <http://www.cubavsbloqueo.cu/> (last visited Mar. 1, 2006).

68. The American blockage effectively embargos most transactions with or travel to Cuba without the permission of the federal government. Among the laws which facilitate this embargo are: (1) Trading With the Enemy Act of 1917, 50 U.S.C. appx. 5 *et seq.*, (under which the President may limit trade with an enemy nation during times of war or peace, and under which American Presidents issue annual reports on the Cuban state of emergency); (2) Foreign Assistance Act of 1961, 22 U.S.C. § 2151 *et seq.* (pursuant to which aid is provided to nations other than Cuba, which is expressly excluded from its provision as long as Cuba retains a Marxist-Leninist government); (3) Cuban Democracy Act of 1992, 22 U.S.C. § 6001 *et seq.* (under which foreign aid is promised to Cuba once the Marxist-Leninist government is removed); and (4) Cuban Liberty and Democratic Solidarity (Libertad) Act of 1995, 22 U.S.C. §§ 6021-6091 (under which third country investment in Cuba is discouraged, democratic reform in Cuba is encouraged, an assistance plan if transition to market economy occurs is proposed, the property rights of U.S. nationals are protected, and all prior federal regulations involving Cuba are codified). Under regulations implementing the Trading With the Enemy Act, all unlicensed financial and commercial transactions by Americans with Cuba or Cuban citizens is prohibited, Cuban assets of Cuba in the United States are frozen, remittances to Cuban citizens limited, and travel to and expenditure of money in Cuba is prohibited.

Union.<sup>69</sup>

Since the collapse of the Soviet Union, however, it has been much easier for the United States to cut Cuba off from international capital.<sup>70</sup> First, American law requires the Secretary of the Treasury to “instruct the United States executive director of each international financial institution to use the voice and vote of the United States to oppose the admission of Cuba.”<sup>71</sup> Second, the United States has aggressively pressured international lending institutions to avoid lending to Cuba.<sup>72</sup> However, the United States is not entirely to blame for Cuba’s poor credit situation. Cuba’s inability to resolve payment issues relating to its enormous debt to the Soviet Union, which is now owed to the nations succeeding the Soviet Union, as well as its aggressive ideologically-based embrace of default, as a justifiable strategy for interaction with international debtors,<sup>73</sup> has also contributed to its poor credit worthiness in the eyes of the international financial community. Taken together,

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69. This produced a massive debt held first by the Soviet Union and then by the states that emerged out of its collapse. For a discussion of the nature of the Soviet Union’s economic support of Cuba until the early 1990s, *see, e.g.*, Carmelo Mesa-Lago, *The Cuban Economy in 1999-2001: Evaluation of Performance and Debate on the Future*, in 11 CUBA IN TRANSITION 1, 4 (2001).

70. Recently, however, the People’s Republic of China has been more active in cultivating Cuba. But is unclear, however, the extent to which this friendship will serve as an effective counterweight to American plans for Cuba. *See, e.g.*, Larry Catá Backer, *Cuban Corporate Governance at the Crossroads: Cuban Marxism: Private Economic Collectives and Free Market Globalism*, 14 TRANSNAT’L L. & CONTEMP. PROBS. 337, 404-13 (2004).

71. Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996, Pub. L. No. 104-114, 110 Stat. 785 (codified at 22 U.S.C. § 69A), at 22 U.S.C. § 6034(a)(1) (2000) (Helms Burton Act). For an American perspective report on the success of the Helms Burton Act, *see* Paolo Spadoni, *The Impact of the Helms-Burton Legislation on Foreign Investment in Cuba*, in 11 CUBA IN TRANSITION 18 (2001).

72. In addition, U.S. law requires U.S. contributions to specific international organizations—the International Monetary Fund, the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guaranty Agency, and the Inter-American Development Bank—to be reduced to any amount granted by these institutions to Cuba. 22 U.S.C. § 6034(b) (2000).

73. The U.S. State Department reports that:

The Cuban Government defaulted on most of its international debt in 1986 and does not have access to credit from international financial institutions like the World Bank, which means Havana must rely heavily on short-term loans to finance imports, chiefly food and fuel. Because of its poor credit rating, an \$11 billion hard currency debt, and the risks associated with Cuban investment, interest rates have reportedly been as high as 22%. In 2002, citing chronic delinquencies and mounting short-term debts, Moody’s lowered Cuba’s credit rating to Caal—“speculative grade, very poor.” Dunn and Bradstreet rate Cuba as “one of the riskiest economies in the world.”

*See* U.S. DEPT. OF STATE, BACKGROUND NOTE: CUBA, available at <http://www.state.gov/r/pa/ei/bgn/2886.htm> (last visited Feb. 27, 2006).

these problems contribute to a difficult position for Cuba on the global economic stage. Recently, however, this American control of Cuba's access to finance (but not the financial markets) has been threatened by the growing interest of the People's Republic of China in Cuba.<sup>74</sup> Still, Cuba remains substantially isolated from the world economic community and the system developed for economic interactions since the 1950s.

Castro's vision has been developing slowly over the last thirty years. Its essence is an anti-corporatist vision that posits that the current regime of globalized financial markets produce rather than decrease poverty because the system is structured to inequitably favor creditors over borrowers. The economic overlay of the current system masks its political realities: sovereign debt has the effect of ceding a certain amount of sovereignty from the borrower to the lender and its instrumentalities. As a consequence, globalized capital markets are actually slave markets of sorts—where wealthy states purchase rights to control borrower states, and to remake them to suit the needs and preferences of the lending states. The purpose of ownership is not crude dominance in the manner of 19<sup>th</sup> century imperialism, but to provide expanded access to capital and labor, suppliers and customers, for the economic activities of the controlling states and their economic “running dogs.” But for Castro the effect is the same.

The bulk of the substance of Castro's ideas has been developed through speeches delivered in various venues within Cuba and abroad. While many of them have been translated into other languages and uploaded onto the Cuban government's official websites,<sup>75</sup> a number have not. A number of American institutions also maintain collections of speeches and other communications.<sup>76</sup> With respect to the emerging

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74. The Cuba Transition Project website reported that as of the end of 2004, China was the sixth largest hard currency lender to the Republic of Cuba. See Cuba Transition Project, *Cuba Facts*, Issue 8, Feb. 2005, available at [http://ctp.iccas.miami.edu/FACTS\\_Web/Cuba%20Facts%20Issue%208%20February%202005.htm](http://ctp.iccas.miami.edu/FACTS_Web/Cuba%20Facts%20Issue%208%20February%202005.htm) (reporting a debt of \$682 million as of December 2004) (last visited Feb. 27, 2006). It cited the following sources as well: Mark Frank, *China's Cuba Business Takes Big Leap Forward*, Havana, Reuters, Apr. 11, 2001 (which cites a US\$210 loan granted in 2000); BBC News, *China To Lend Cuba \$400m*, Havana, Apr. 13, 2001; *China Offer 400 Million Dollars In Loans To Cuba*, Beijing, *People's Daily*, Apr. 14, 2001. In addition, the Bank of Shanghai provided a loan in 2002 to a state-owned Sino-Cuban joint venture for construction of hotels in Havana and Shanghai. Cf. Feliberto Carrié, *El Banco de Shanghai concede a Cuba un crédito por 72 millones de dólares para la construcción de un hotel*, EUROPA PRESS, Havana, Oct. 4, 2004. *Id.* at n.6.

75. See *Discursos e intervenciones del Comandante en Jefe Fidel Castro Ruz, Presidente del Consejo de Estado de la República de Cuba*. <http://www.cuba.cu/gobierno/discursos/index.html#f130502> (incomplete database of speeches from 1959-2005) (last visited Feb. 22, 2006).

76. See, e.g., University of Texas Castro Speech Database, available at <http://lanic.utexas.edu/la/cb/cuba/castro.html> (database contains English translations of

international financial system centering on the IMF, Castro's vision has found its most complete expression in a speech delivered at the University of Central Venezuela in 1999.<sup>77</sup> This speech provides the basis for his understanding of "the disasters that the god of the market, its laws and principles, and the formulas of the International Monetary Fund and other global neocolonizing and recolonizing institutions recommended to and imposed on practically every country, has occasioned."<sup>78</sup> That speech forms the basis of this section, supplemented by other speeches that are publicly circulated.

Castro starts by arguing that the current global economic system, of which state debt forms merely an integrated part, cannot be understood without first acknowledging the basic political context in which it has developed. One must start, he suggests, with the reality of a single

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thousands of speeches, interviews, and press conferences given by Fidel Castro between 1959 and 1996) (last visited Feb. 27, 2006); Marxists.org History Archive, *Fidel Castro History Archive*, available at <http://www.marxists.org/history/cuba/archive/castro> (last visited Feb. 24, 2006).

77. *FCR 1999 Speech*, *supra* note 12.

I synthesize my essential ideas: what I think about neoliberal globalization, the absolute insustainability, socially and ecologically, of the currently imposed economic order, the origin of production and accelerated development of science and technology, its temporal character and its inevitable disappearance by operation of the laws of history, the swindle on the world and inconceivable privileges usurped by the United States, special emphasis on the value of ideas, demoralization and uncertainty of that system, tactics and strategies of resistance, probable course of the course of events, and great confidence in the human capacity for survival.

*Id.* at 3. ("Expresé, en síntesis, mis ideas esenciales: lo que pienso de la globalización neoliberal; lo absolutamente insostenible, social y ecológicamente, del orden económico impuesto a la humanidad; el origen de las fuerzas productivas y el desarrollo acelerado de la ciencia y la técnica; su carácter temporal; la estafa al mundo y los inconcebibles privilegios usurpados por Estados Unidos; énfasis especial en el valor de las ideas; desmoralización e incertidumbre de los teóricos del sistema; tácticas y estrategias de lucha; curso probable de los acontecimientos; confianza plena en la capacidad humana para sobrevivir.").

78. *FCR 1999 Speech*, *supra* note 12, at 18 ("[T]enemos una idea, a nuestro juicio, bastante clara de los desastres que el dios del Mercado, sus leyes y principios, y las recetas del Fondo Monetario Internacional y demás instituciones neocolonizadoras o recolonizadoras del planeta, recomendadas e impuestas prácticamente a todos los países, han ocasionado."). This is a long held view. A 1987 speech of Castro's uses similar language to describe plans by the IMF to lend money to privatize state owned industries. Castro asserted that the consequence of these plans was to "advocate the worst form of neocolonialism and the renunciation on the part of the state of the propriety of these state owned businesses. The IMF doesn't predict that privatized business will be better run, not just simply that they be transferred to private hands." Fidel Castro Ruz, *Discurso pronunciado por el Comandante en Jefe Fidel Castro Ruz, Primer Secretario del Comité Central del Partido Comunista de Cuba y Presidente de los Consejos de Estado y de Ministros, en la clausura de la VIII Conferencia de la Asociación Americana de Juristas, celebrada en el Palacio de las Convenciones, Sept. 17, 1987*, available at <http://www1.lanic.utexas.edu/la/cb/cuba/castro.html> (last visited Feb. 28, 2006).

hegemonic power, the United States, seeking to reshape the world in its image.<sup>79</sup> The United State's battle with Cuba reflects, in microcosm, its struggle for dominance on a global scale, first dominated by its physical aspects, and lately dominated by its ideological dimensions.<sup>80</sup>

Indeed, the struggle over American power now extends globally, and is dominated not by physical, but rather ideological aspects.<sup>81</sup> For Castro, the consequence is clear: the battle against hegemony and subordination cannot be conceived in its old form as a liberation struggle by individual peoples, but must instead be understood that it manifests itself as a global struggle<sup>82</sup> against the "dominion of an enormous superpower."<sup>83</sup> "For this what is needed are not nuclear weapons or great wars; what is needed are ideas."<sup>84</sup>

Globalization, is thus better conceived as a manifestation of the struggle for hegemony and subordination. As such, it constitutes a particular set of ideas deployed in the service of the singular hegemonic power.<sup>85</sup> That deployment is based almost exclusively on the methodology of the carrot and the stick, both of which are monopolized by the United States as a great hegemonic power (though, frankly any

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79. After the disintegration of the Soviet Union, the United States "remained the only superpower in a unipolar world, without rivals in the political, economic, military, technological and cultural fields." *FCR 1999 Speech, supra* note 12, at 6 ("y aquel vecino quedó como única superpotencia en un mundo unipolar, sin rival en el terreno político, económico, military, tecnológico y cultural.").

80. "[N]onetheless, the battlefield is not our little island, though there is struggle on this little island. Today the battlefield is the world." *Id.* at 9 ("sin embargo, el campo de batalla no es nuestra isleta, aunque en la isleta hay que luchar. El campo de batalla hoy es el mundo.").

81. "A more difficult battle has been necessary to free and will be necessary to continue freeing us from that very powerful empire, the ideology that incessantly there is no hope, which will be intensified with all their resources after the collapse of the socialist regime." *Id.* at 6 ("Una batalla más difícil ha sido necesario librar y habrá que seguir librando contra ese poderosísimo imperio, es la lucha ideológica que incesantemente ha temido lugar y que ellos arreciaron con todos sus recursos much más después del derrumbe del campo socialista.").

82. "It is not today that a town exists to free, today it is not a town that we must save; but today there is a world, today there is a humanity for us to free and to save, and that is our task, that is the task of you." *Id.* at 7 ("Es que hoy no existe un pueblo para liberar, hoy no existe un pueblo para salvar; hoy hay un mundo, hoy hay una humanidad por liberar y salvar, y esa es la tarea nuestra, es la tarea de ustedes.").

83. *Id.* ("hoy tememos al mundo y a la humanidad bajo el dominio de una enorme superpotencia.").

84. *Id.* ("Para ello lo que necesita no son armas nucleares ni grandes guerras; lo que necesita son ideas.").

85. Castro, of course, posits this set of circumstances as inevitable within the normative framework of Marxist determinism. "Globalization is a law of history, its follows from the circumstances of the development of productive forces." *Id.* at 8 ("La globalización es una ley histórica, es una circunstancia del desarrollo de las fuerzas productivas.").



hegemon would due for purposes of the application of this theory, even Cuba) and naturalized as the inevitable working of a neutral system based on natural principles.<sup>86</sup> The engine of globalization is the normative framework provided by what Castro calls “neoliberalism.” “Moreover, it is about a globalized world, really globalized, a world dominated by the ideology, norms and principles of neoliberal globalization.”<sup>87</sup> Neo-liberalism is not an idea or system that can be separated out from the power which seeks to use it for its own purposes. Though it may masquerade as a neutral system free of any national political agenda, it is neither neutral nor a-political.<sup>88</sup>

Instead, neoliberalism as a basis for globalization of the kind advanced by the United States since 1945 masks a very specific set of political aims. First, it seeks to convert all countries, but especially developing states, into a vast private property sphere.<sup>89</sup> In part, this has been done, according to Castro, through the miracle of converting gold into paper—that is of building an international financial system on the basis of confidence in foundational global currencies—principally the U.S. dollar.<sup>90</sup> Within this sphere everything is for sale.<sup>91</sup> Labor is for

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86. “There are those who can be confused, and they are confused, or softened, or weakened by the combination of economic difficulties, material privation, the exhibition of the luxuries available in the consumer societies, and the rotten ideas well inculcated about the fabulous advantages of their economic system, following that small minded principle that humans are little animals who can only be moved when a carrot is put in front of them or when they are beaten with a whip.” *FCR 1999 Speech, supra* note 12, at 9 (“Existen los que pueden ser confundidos, y lo son, o reblandecidos, o debilitados con la mezcla de las dificultades económicas, las privaciones materiales, la exhibición del lujo de las sociedades de consumo y las podridas ideas bien edulcoradas sobre las fabulosas ventajas de su sistema económico, a partir del mezquizo criterio de que el hombre es un animalito que solo se mueve cuando le ponen delante una zanahoria o le golpean con un látigo. Sobre esa base ellos apoyan toda su estrategia ideológica[.]”).

87. *Id.* (“Además se trata de un mundo globalizado, realmente globalizado, un mundo dominado por la ideología, las normas y los principios de la globalización neoliberal.”).

88. This notion has found its supporters among Western legal academics. *See, e.g.,* Uggo Mattei, *A Theory of Imperial Law: A Study of U.S. Hegemony and the Latin Resistance*, 10 *IND. J. GLOBAL L. STUD.* 383 (2002).

89. *FCR 1999 Speech, supra* note 12, at 11 (“The neoliberal globalization wants to convert all countries, especially our country, into a private property state.” *Id.*) (“La globalización neoliberal quiere convertir a todos los países, especialmente a todos nuestros países, en propiedades privadas.”).

90. *Id.* (“[T]hey have accumulated vast wealth by working that miracle to which the alchemists of the Middle Ages aspired, of converting paper into gold, they were even capable of turning gold into paper.” *Id.*) (“ellos . . . han acumulando inmensas riquezas . . . obrando el milagro al que aspiraron los alquimistas de la edad media, convertir el papel en oro, a la vez fueron capaces de convertir el oro en papel.”).

91. *Id.* (“They buy natural resources, factories, communication systems, services, etc. etc. They even buy [our] land, thinking that because they are cheaper than land in their own countries, they might make a good investment for the future.” *Id.*) (“Compran recursos naturales, fábricas, sistemas completos de comunicaciones, servicios, etcetera,

sale.<sup>92</sup> Even states may be for sale.<sup>93</sup> This idea, long expressed by Castro,<sup>94</sup> also finds expression in Western academic writing.<sup>95</sup>

Second, within this vast private market, neoliberalism aims to convert all nation-states into a giant free trade zone.<sup>96</sup> Not just any kind of free trade zone, however, but one with “special characteristics, where taxes are not paid, where raw materials, parts, [and] components can be assembled or various products produced, especially with respect to those endeavors requiring abundant cheap labor to produce for salaries often no higher than 5% of that paid in the producers’ home countries, and the only thing left [after production] are these miserable salaries.”<sup>97</sup> The regime of private transactions reduces state control of labor markets to nothing but a unified global capital, held by the hegemonic power and its allies, thus exploiting a fractured and state-based labor market over which there appears to be no movement toward globalization.<sup>98</sup> Within this system the state itself disappears, and a public economic policy is unthinkable.<sup>99</sup> “This is the future that neo-liberal globalization offers.”<sup>100</sup>

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etcetera. Hasta tierras están comprando por el mundo, pensando que como son más baratas que en sus propio países es una buena inversión para el futuro.”)

92. Castro makes much of the commodification of baseball players by the United States. *Id.* at 13-14.

93. *Id.* at 11 (“I have seen how they have encourages competition between our countries, seeing which among them offers more facilities and larger tax breaks for their investment; they have put Third World countries to competing for investment and free trade zones.” *Id.*) (“He visto cómo han puesto a competir a muchos de nuestros países, viendo quiénes les dan más facilidades y más exenciones de impuestos para invertir; han puesto a competir a los países del Tercer Mundo por las inversiones y las zonas francas.”)

94. See Fidel Castro Ruz, Discurso pronunciado por el Comandante en Jefe Fidel Castro Ruz, Primer Secretario del Comité Central del Partido Comunista de Cuba y Presidente de Estado y de Ministros, en el acto central por el XXXI aniversario del asalto al cuartel Moncada, efectuado en la ciudad de Cienfuegos, July 24, 1984, available at <http://www1.lanic.utexas.edu/la/cb/cuba/castro.html> (last visited Feb. 27, 2006).

95. “It is property law more than any other area of law which constitutes the institutional foundation of market capitalism and is thus a critical battle ground in the fight for social justice and wealth redistribution.” Uggo Mattei, *The Peruvian Civil Code, Property and Poliunder. Time for a Latin American Alliance to Resist the Neo-Liberal Order*, 5(1) GLOBAL JURIST TOPICS ART. 3, at 2 (2005), available at <http://www.bepress.com/gj> (last visited Feb. 28, 2006) (“At the international level, neo-liberal policy, with its black and white efficiency based theory of property law, is interpreted and propagated by the WTO, the IMF, the World Bank and its regional offices (Inter-American Development Bank), as well as by governments in the G7-G8 club.” *Id.* at 4).

96. *FCR 1999 Speech*, *supra* note 12, at 11.

97. *Id.*

98. *Id.*

99. *Id.* at 17. The most conservative neo-liberal analysts “don’t even want to speak of the State; the State ought not to be mentioned at all! They wish for a central bank on the Moon so that no human could be tempted to raise or lower interest rates.” *Id.* (“no quieren ni oír hablar del Estado, ¡ni siquiera mencionarlo! Los que anhelan un banco central en la Luna, para que a ningún humano se le ocurra andar rebajando o subiéndolo

These free trade zones are particularly important for two characteristics, both of which Castro emphasizes. One is the absence of a public power within them, especially the power to tax.<sup>101</sup> This amplifies the first core characteristic of the “neo-liberal system,” its fundamental character as a system of private rather than public relationships.<sup>102</sup> The other is the form of production encouraged within these zones. Domestic production is discouraged, or even eliminated, in favor of an *export driven model* grounded in two key concepts: (i) product specialization and (ii) over production tied to global credit facilities.<sup>103</sup> Both contribute to the “immense contradiction” of the neo-liberal system: the problem of unemployment and underemployment for both individuals and states; the larger the material riches produced for some, the greater the poverty produced for a larger number of others.<sup>104</sup>

How do the product specialization and over production attributes of globalist neo-liberalism produce necessary effects on both state productivity and sovereign debt? First, product specialization produces or sustains an immense stratification of labor within a globally unified labor market. Non-technical jobs are exported to the least developed states and most advanced or skilled work flows up to the most developed

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intereses.”).

100. FCR 1999 Speech, *supra* note 12, at 12 (“Es el porvenir que nos está ofreciendo la globalización neoliberal.”). And not just local labor—but also local productive classes suffer disadvantage of competition against a stacked deck in the form of global capital. “[D]on’t think that it is only workers, but also included are national merchants, small and medium proprietors of business who have to compete . . . without reliance on the abundant commercial credit that their powerful competitors can access for the sale of their products.” *Id.* (“no vayan a creer que solo a los trabajadores, sino incluso, a los empresarios nacionales, a los pequeños y medianos propietarios que tendrán que competir . . . sin contar con los abundantes créditos comerciales que sus poderosos competidores pueden utilizar para vender sus productos.”).

101. *Id.* “What would be left of an internal market if an accelerated reduction of import duties are imposed, which serve as an important source of budgetary income for many Third World states?” *Id.* (“¿Qué quedará del mercado interno si se les impone la reducción acelerada de las tarifas aduanales, fuentes además importante de los ingresos presupuestarios de muchos países del Tercer Mundo?”).

102. *Id.* at 11. (“We will see how many air lines will remain as state properties, how many maritime transport lines, how many services survive as property of the people or the nation.” *Id.*) (“Ya veremos cuántas líneas aéreas quedan como propiedades nacionales, cuántas líneas de transporte maritime, cuántos servicios permanecerán como propiedades del pueblo o de la nación.”).

103. *Id.* at 12.

104. *Id.* (“That while the more they invest and the more they are modernized, the more people they launch to the street without employment. The productivity of the work; the most sophisticated teams of the human talent, that multiply the wealth of materials and at the same time the misery and the dismissals.” *Id.*) (“Que mientras más invierten y más se tecnifican, más gente lanzan a la calle sin empleo. La productividad del trabajo; los equipos más sofisticados, nacidos del talento humano, que multiplican las riquezas materiales y a la vez la miseria y los despidos.”).

states.<sup>105</sup> Required by the laws of global demand and imperfect labor markets to produce an extraordinary amount of specialized goods for a global (but not domestic ) market, globalization on these terms transforms domestic workers into strangers in their own states, unable to afford to buy even the products they produce.<sup>106</sup> As a consequence, production specialization inherent in neo-liberalist globalization intensifies incentives, within the stateless private sphere of production it has fostered, for skilled labor to be taken from developing states by developed ones.<sup>107</sup> However, developing states are also encouraged to export labor to the developed states in order to perform the most menial tasks.<sup>108</sup>

To meet the needs of developed states for highly skilled workers, developing states are encouraged to invest capital into education for the production of skilled workers. This reduces the costs of education by shifting the costs of education to lower priced foreign education systems<sup>109</sup>—it is more efficient to encourage the immigration of cheaply

105. *Id.* (“For rich countries, cutting edge industry; for the workers of the Third World, concocting cowboy pants, tee shirts, costume jewelry, shoes; plant flowers, exotic fruits and other products for which there is a growing demand in industrial societies.” *Id.*) (“Para los países ricos, industrias de punta; para los trabajadores del Tercer Mundo, confeccionar pantalones de vaquero, pulvres, prendas de vestir, calzado; sembrar flores, frutas exóticas y otros productos de creciente demanda en las sociedades industriales.”)

106. *FCR 1999 Speech, supra* note 12, at 13 (“And so that we may become strangers inside our borders, as I have already suggested, to make things, but they put us, by virtue of their ‘marvelous’ economic laws, to produce as many pants as if the world already had 40 million inhabitants, and each one of them had enough money to be buy them.” *Id.*) (“Y para que nos quedamos convertidos en extrajeros dentro de nuestras propias fronteras, ya lo dije, confeccionar pitusas y cosas por el estilo, pero nos ponen, en virtud de sus ‘maravillosas’ leyes económicas, a producir tantos pantalones como si el mundo contara ya con 40 000 millones de habitantes y cada uno de ellos tuviera el dinero suficiente para comprarse el pantaloncito de vaquero.”)

107. *Id.* (“Where are they? I meet many eminent Latin Americans who are there. Who took them? Ah!, Venezuela, Guatemala, Brazil, Argentina, any Latin American country; but they have no possibilities in his native country. The industrialized countries have the monopoly of the laboratories, of the money, they hire them and they snatch them from the poor nations.” *Id.*) (¿Donde están? Yo conozco a muchos latinoamericanos eminentes que están allá. ¿Quién los formo? ¡Ah!, Venezuela, Guatemala, Brasil, Argentina, cualquier país latinoamericana; pero no tienen posibilidades en su propia patria. Los países industrializados tienen el monopolio de los laboratorios, del dinero, los contratan y se los arrebatan a las naciones pobres.”)

108. *Id.* at 15 (“In the happy developed world hard agricultural work of which the perfect machine has yet to be invented, street cleaning and other unpleasant work that no one in consumer societies wants to undertake, how are these tasks done? For these tasks there are the immigrants from the Third World.” *Id.*) (“En el feliz mundo desarrollado los trabajos duros de la agricultura . . . para lo qual no se ha inventado todavía una máquina perfecta. . . limpiar calles y otras tareas ingrates que en las sociedades de consume nadie quiere realizar, ¿cómo se resuelven? . . . para eso están los inmigrantes del Tercer Mundo.”)

109. *Id.* at 13 (“So that we will have too many universities or they will be used to

trained skilled labor than to pay for domestic training of their citizens.<sup>110</sup> “You might have recently read that the United States, in view of the needs of its cutting edge electronics, computer and other industries, proposed to acquire in the international market, better said the Third World, and issue visas to 200,000 qualified workers for these industries.”<sup>111</sup>

The result of this strategy leaves poorer states with high cost populations and (by limiting income generating power by restricting recourse to tariffs and similar charges) no prospect of deploying public resources to ameliorate the problem posed by a population of that character. Less developed states are locked into a cycle that requires them to spend what little capital they have to produce support for production capacity they cannot tax, and producing goods their citizens cannot afford. In addition, their skilled and well-trained workers, most of whom emigrate and do not contribute to the broadening of a production base, leave least trained and least well paid workers to be supported by the state. The result is that citizens of undeveloped states find it difficult to participate as consumers in the global market for goods, and undeveloped states find it difficult to participate on an equal basis with developed countries in markets for funds.

Overproduction is the other iron rule of neo-liberal globalization. Global neo-liberalism produces the investment of tremendous sums without any central planning, resulting in the creation of double the necessary capacity to produce things and resulting in the employment of a tremendously large number of laborers throughout the world producing the same things.<sup>112</sup> Castro illustrates this idea through the example of cars. Workers employed throughout the world to produce cars in “Africa, Latin America and other places don’t have a cent to buy these

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produce skilled labor for the developed world.” *Id.* (“De modo que sobrarán nuestras universidades o quedarán para producir a bajo costo técnico para el mundo desarrollado.”).

110. *Id.* (“[T]hey don’t have enough geniuses, or well qualified workers for their cutting edge industries, so they come to our world and take away of ours who are then to us forever.” *Id.*) (“no tienen todas las lumbreras, o los bien calificados trabajadores para sus industrias de punta, vienen a nuestro mundo y recultan a unos cuantos que después se pierden para siempre.”).

111. *Id.* (“Habrán leído en estos días en la prensa que Estados Unidos, en vista de las necesidades de sus industrias de computación, electrónica, etcetera, etcetera, etcetera, se propone adquirir en el Mercado internacional, dígase mayor el Tercer Mundo, y conceder visas a 200 000 trabajadores muy calificados para sus industrias de punto.”).

112. *FCR 1999 Speech, supra* note 12, at 18 (“Investing hundreds of thousands of millions without rhyme or reason; scores of workers producing the same things. . . . They have created two times the ability necessary to produce automobiles.” *Id.*) (“Invertir cientos de miles de millones sin orden ni concierto algun; decenas de millones de trabajadores produciendo las mismas cosas. . . . Han creado el doble de capacidad necesaria para producir automóviles.”).

goods, nor roads on which to use them, nor garages, all of which would in any case further ruin Third World countries, wasting needed for social development and further destroying the environment.”<sup>113</sup> According to Castro, it follows that overproduction intensifies the obliteration of the state from any possibility of control over the welfare of its citizens.

Let us suppose that other Third World countries produce refrigerators of acceptable quality and low cost [for domestic consumption.] Its powerful competitors constantly revise the design, invest fabulous sums in increasing the prestige of their trademarks, manufacture in many free trade zones with low wages or in any other place exempted from taxation, abundant capital or financial mechanisms to obtain credits that are amortized in one, two, three or whatever many years, markets saturated with domestic electrical products that are the fruit of the anarchy and the chaos of the distribution of global investment capital, under a generalized instruction to grow and develop on an export oriented basis as the IMF counsels, what space is left for national industry, for whom and how will they export, where are the potential consumers among the thousands of poor, hungry and unemployed who inhabit the greater part of this planet?<sup>114</sup>

The state is thus written out of production, and by writing the state out of production, the market writes the individual out as well. This overproduction misallocates resources without any corrective action that is possible through public law.

Consumerism provides the key to understanding the power of overproduction both in the developed as well as in the developing world. It is an essential tool of neo-liberal globalization, and a powerful disciplinary tool against state attempts to move their political community in a different direction.<sup>115</sup> This tool supplies the carrot that seduces even those who have absolutely no prospects of sharing in the fruits of globalized overproduction as well as the states that borrow to finance

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113. *Id.* (“¿Qué clients para los automóviles? Están en Africa, en América Latina y en otros muchos lugares del mundo, solo que no tienen un centavo para adquirirlos, ni gasoline, ni autopistas, ni talleres, que acabarían aún más los países del Tercer Mundo, despilfarrando recursos que requiere el desarrollo social y destruyendo aún más la naturaleza.”).

114. *Id.* at 12.

115. *Id.* at 16 (“This is how it is, inculcating the people with all of that [consumerism]; they have dehumanized millions, dozens, hundred of millions of persons, increasing their suffering all the more when they are least capable of satisfying their most basic needs because they have access neither to doctors or schools.” *Id.*) (“Es así, han inculcado todo eso a la gente; han enajenado a millones, a decenas de millones y a cientos de millones de personas, y las hacen sufrir tanto más cuanto menos son capaces de satisfacer sus necesidades elementales porque no tienen siquiera el medico ni tienen la escuela.”).

these unattainable dreams.<sup>116</sup> It provides a justification for overproduction that is ultimately unsustainable on economic and ecological grounds.<sup>117</sup> Castro suggests the example of the fantasy of automobile ownership for every individual is a well known expression of the export driven globalized neo-liberal consumer vision, and if this fantasy was actually realized in the People's Republic of China, "100 million *hectares* of land that is needed for the production of food would be converted into highways, garages, car parks with nothing left for the cultivation of even one grain of rice."<sup>118</sup> Thus, Castro concludes, the "consumption model being imposed on the world is not only crazy but chaotic and absurd as well," and "not that [Castro pretends] that the planet should be converted into a monastery of Cartesian monks, but [he] does believe that the planet has no alternative but to define the models of attainable and affordable consumption, in the principles of which humanity ought to be educated."<sup>119</sup> However, the current system of consumption is meant solely to enhance the privileged position of consumers in industrialized states through the operation of a system in which the underdeveloped world provides the greatest subsidy.<sup>120</sup>

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116. *Id.* at 14 ("Thus the people are poisoned with this propaganda, so that even the powerful are cruelly influenced and induced to dream of the possibility of all things, impossible for them in fact, that capitalism can offer them." *Id.*) (Así van envenenando a la gente con esa propaganda, de modo que hasta los poderosos son influenciados de forma cruel y puestos a soñar con el cielo, imposible para ellos, que el capitalismo ofrece.").

117. *FCR 1999 Speech*, *supra* note 12, at 14-15.

118. *Id.* at 15 ("Me imagino que si en China hicieron eso, los 100 millones de hectáreas de que se disponen para producir alimentos, se convierten en autopistas, garajes, parques de automóviles y no que daría dónde cultivar un grano de arroz").

119. *Id.* (Es loco, incluso caótico y absurdo, el modelo de consumo que le están imponiendo al mundo. . . . No pretendo que este planeta sea un convento de monjes cartujos, pero si pienso que este planeta no tiene otra alternativa que definir cuáles deben ser los patrones o modelos de consumo alcanzables y asequibles, en los cuales debe ser educada la humanidad").

120. Thus, Castro asks,

why should people today endure on a daily basis—exclusively on account of the commercial rationales, profits and interests of the superprivileged and powerful elites, under the imperium of chaotic economic laws and institutions, that have not been nor are nor ever will be eternal, like the famous market laws transformed into objects of idolatry, discussed at all times as if they were Holy Writ—hunger, unemployment premature death, curable disease, ignorance, lack of culture and all types of human and social calamities, if they could create all the riches necessary to satisfy reasonable human needs in a manner compatible with the preservation of nature and life on our planet?

*Id.* at 15 ("¿Por qué debido exclusivamente a razones comerciales, ganancias e intereses de elites superprivilegiadas y poderosas, bajo el imperio de leyes económicas caóticas e instituciones que no son eternas, ni lo fueron y lo serán nunca, como las famosas leyes del Mercado convertido en objeto de idolatría, en palabra sacrosanta que a todas horas se menciona, todos los días, el hombre de hoy tiene que soportar hambre, desempleo, muerte premature, enfermedades curables, ignorancia, incultura y todo tipo de

Thus the great importance of overproduction within neo-liberal globalization: it is the means of reinforcing the power and wealth of the industrialized elite by diverting production to those products and services that only the elite can afford or need, thus producing a great global hunger for the same products among the poor of the developing world and the states in which they live,<sup>121</sup> a hunger that economic theory suggests might be satisfied but in reality leaves barely enough resources to satisfy the basic needs of that population.<sup>122</sup> Overproduction produces a massive misallocation of resources from the perspective of maximizing the economic condition of the global population. The misallocation is deliberate and meant to sustain the power and privilege of the individuals and states of the developed world, that is of the former colonial and imperial powers (Europe) and their most successful offspring (the United States, Australia, Canada and New Zealand).

The fate of the former Soviet Union illustrates well the problems of the standard global vision on non-developed states.<sup>123</sup> Castro takes the standard version of the collapse of the Soviet Union and the rise (eventually) of a modern free (or freer) market Russian state,<sup>124</sup> and inverts it.<sup>125</sup> No longer the story of a command economy completely ossified and worn out, unable to maintain a level of productivity in the absence of market discipline, or a system that necessarily collapsed as a result of nearly a century of misallocation of resources, the USSR for Castro epitomizes the way the IMF, through its monetary policies, could wreck even the strongest of states.<sup>126</sup> The object is to keep states other

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calamidades humanas y sociales, si pudieran crearse crearse todas las riquezas necesarias para satisfacer necesidades humanas razonables que sean compatibles con la preservación de la naturaleza y la vida en nuestro planeta?”).

121. *Id.* at 16 (“sowing impossible dreams in the rest of the planet”) (“sembrando sueños imposibles en el resto del planeta.”).

122. *Id.*

123. *FCR 1999 Speech*, *supra* note 12, at 18.

124. For an account of the collapse of the Soviet Union, see WISLA SURASKA, *HOW THE SOVIET UNION DISAPPEARED: AN ESSAY ON THE CAUSES OF DISSOLUTION* (1998); WALTER LAQUEUR, *THE DREAM THAT FAILED: REFLECTIONS ON THE SOVIET UNION* (1994).

125. In giving a description, it is not suggested that this inversion is too great a simplification to withstand dispassionate analysis. It is clear that the fall of the Soviet Union and the rise, fall and reconstitution of Russia after 1991 had a great impact, both materially and ideologically on Castro. Castro’s analysis of the transformation of the Soviet Union into Russia may better explain the psychology of the Cuban Revolution after 1991 than it explains any sort of Russian reality. See, e.g., J. Richard Planas, *Why Does Castro Survive?* 154(3) *WORLD AFFAIRS* 87 (1992).

126. *FCR 1999 Speech*, *supra* note 12, at 17-18 (“There, in the Old USSR, they arrived with their neoliberal prescriptions and market, and they have caused incredible destructions, truly incredible! They have split nations, dismantled federations of republics, economically and politically; they have reduced the life expectancy, as much as 14 and 15 years; they have multiplied the infant mortality three or four times; have



than developed states at the edge of a financial precipice so that IMF is in a position to control its economic policy in favor of the neo-liberal model.<sup>127</sup> But rather than provide Russia with some of the large contribution the United States made to the IMF<sup>128</sup> “to avoid political or economic catastrophe . . . what they sought to do was demand a bunch of conditions that are impossible to implement. They demand the reduction of the national budget which has already been reduced below an essential level, they demand free conversion, the immediate payment of high debt, all of the requirements that deplete whatever reserves may be left in any state.”<sup>129</sup> Even European states as powerful as the United Kingdom have had to adjust to the realities of neo-liberal globalization in the service of the United States.<sup>130</sup>

Connected to this analysis is Castro’s assertion of a close connection between currency standards and the primacy of the U.S. dollar in international commerce, and U.S. hegemony with its

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created social and economic problems that not even a resurrected Dante would be capable of imagining.” *Id.*) (“Allá, en la Antigua URSS, llegaron con sus recetas neoliberales y de mercado y han ocasionado destrozos increíbles, ¡verdaderamente increíbles!, desgajado naciones, desarticulados federaciones de repúblicas, económica y políticamente; han reducido las perspectivas de vida, en algunas de ellas 14 y 15 años; han multiplicado la mortalidad infantil tres o cuatro veces; han creado problemas sociales y económicos que ni siquiera un Dante resucitado sería capaz de imaginar.”). For a similar account, see, e.g., DAVID LOCKWOOD, *THE DESTRUCTION OF THE SOVIET UNION: A STUDY IN GLOBALIZATION* (2000).

127. *FCR 1999 Speech*, supra note 12, at 20 (“They pretend to maintain Russia at the edge of a precipice. It is not a small country, it the largest country in the world with a population of 146 million people . . . where a social explosion, internal conflict of one kind or another could cause terrible harm.” *Id.*) (“A Rusia la pretenden mantener al borde de un abismo. No es un país pequeño, es un país que tiene la mayor extensión territorial del mundo y 146 millones de habitantes . . . donde una explosión social, un conflicto interno o cualquier cosa puede causar terribles daño.”).

128. Castro claims this amounted to about \$90 million. *Id.* at 19-20.

129. *Id.* at 20 (“Lo que se les ocurre es exigirle un montón de condiciones imposibles de aplicar. Le exigen que baje presupuestos que están ya por debajo del límite indispensable, le exigen la libre conversión, el pago inmediato de elevadas deudas, todos aquellos requisitos que acaban con las reservas que puedan quedarle a cualquier país. No piensan, no escarmienten; pretenden mantenerla en situación precaria, al borde de un abismo, con ayuda humanitaria, exigiendo condiciones y creando peligros realmente serios.”). Castro further explained in this context: “They do not think, they don’t learn; they pretend to maintain the country in a precarious situation, at the edge of an abyss, with humanitarian aid, imposing conditions and creating really serious dangers.” *Id.* (“No piensan, no escarmientan; pretenden mantenerla en situación precaria, al borde de un abismo, con ayuda humanitaria, exigiendo condiciones y creando peligros realmente serios.”).

130. Castro argues that one of the principle reasons for the creation of the Euro was to protect the Member States of the European Union from the power of the U.S. dollar to avoid the crises of currency speculation. *Id.* at 18-19. Castro asserts that part of the power of the United States derives from its ability to destabilize other economies through currency fluctuations against the dollar. *Id.* at 23.

implementation through the IMF.<sup>131</sup> Castro asserted that since the development of the Bretton Woods system, the United States Dollar has served as the global reserve currency. "This has given the United States enormous power and special privileges, which it has been using ever since to advance its own interests; it has given the United States the power to manage the global economy, establish the rules, dominate the IMF in which an 85% vote is required for action to be taken and with 17.5% of the votes the United States can effectively veto any action, and on that basis the United States dominates and practically owns the IMF, they have the last word and have achieved the imposition of the global economic order which we now must suffer."<sup>132</sup>

Thus, the heart of the political basis of global economic theory, and its consequences for state debt: Castro argues that neo-liberal conceptions of market efficiency as a neutral rule of the a-political social science of economics actually masks its political dimensions. Neo-liberal efficiency is defined and deployed to confirm rather than to test the benefits of overproduction and labor specialization within a system postulated as one where the state cannot interfere. Overproduction and labor specialization, renamed competition and open markets for labor, become essential to efficiency. State regulation and taxation become distortions of perfect efficiency in perfect markets.<sup>133</sup> The values of both are judged in relation to reductions in price. But price reductions in such a system, Castro argues, are really price reallocations. Price reductions within the neo-liberal globalized market system are essentially a subsidy in favor of the consumers of products residing in developed countries that are borne by the workers, political and economic communities of less developed states. Individuals bear the subsidy through lower wages than they might otherwise obtain. The state effectively subsidizes price reductions by tax forbearance, passing that tax burden to others, principally local commercial interests and workers. These local commercial interests and workers now bear a double subsidy through depressed wages and increased taxes. Other services provided through taxes are either forgone or paid through loans from developed states.

The IMF serves a critical role in this process of transfers to developing countries in order to subsidize overproduction and maintain

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131. *FCR 1999 Speech, supra* note 12, at 22-24.

132. *Id.* at 13 ("Eso le dio un enorme poder y un especial privilegio a Estados Unidos, que lo ha estado usando hasta ahora en favor de sus propios intereses; le dio el poder de manejar la economía mundial, establecer las reglas, dominar el Fondo Monetario, donde hace falta un 85% de los votos para tomar algún acuerdo, y con el 17.5% ellos pueden bloquear cualquier decisión de esa institución, y, por tanto, dominan, son prácticamente dueños del Fondo Monetario, dicen la última palabra, y han logrado imponer el orden económico mundial que estamos padeciendo.").

133. *Id.* at 19.

the system.<sup>134</sup> The last alternative is exceedingly perverse—the developed states enjoy the benefit of product price subsidies and then increase their wealth by financing the subsidy they enjoy through loans to developing states. When repayments cannot be made by the developing states, the developed states might take payment in kind, in the form of natural or other resources, the only thing the state can sell. Thus the last source of subsidy: future generations will have to forego the misallocation of non-renewable resources by the current generation. In the meantime, developed states draw additional wealth from developing states through transfers of capital in the form of interest payments. In a sense, the developing world is obliged to pay part of the costs of their own exploitation.

It is the effectively mandatory subsidy by states that serves as Castro's shorthand for the current system overseen by the IMF, and the importance of sovereign indebtedness to the operation of the system, which can be summarized roughly along the following lines: States must participate in the construction of a global marketplace on principles of neo-liberal economic (but also to some extent also its social and political) theory. That system is grounded on private property, with the primacy of neutral and a-political markets, and the absence of state interference with market processes either in the form of regulation or taxation of the production and market processes.<sup>135</sup> This market system masks a bias toward the reinforcement of the economic dominance of developed states—the primary consumers of goods—by fostering the production of too many goods at prices substantially below the real costs of production.

The resulting imbalance must be made up somehow. At some point real costs will have to be paid. That burden tends to fall on political communities. Not all political communities share the burden of subsidizing overproduction, however. As a trans-border and porous system, the organization of economic activity as private and market based makes it as easy for developed states to subsidize while reaping the

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134. Castro relates the story of the 1998 funding of the IMF for the purpose of averting financial crises in Russia and Brazil. The developed states preferred to act through the IMF and its lending conditions than to deliver aid directly to the states affected. *Id.* at 19-20.

135. Consumption and income taxes—that is taxation falling on individuals and at the very beginning or end of the process leading from extraction to consumption—is permitted. This affects even the United States and is consonant with the normative foundations of economic globalization on the basis of the Washington Consensus. *See, e.g.,* LAURENCE S. SEIDMAN, *ECONOMIC PARABLES & POLICIES: SAVING FOR AMERICA'S FUTURE* 50-69 (1998). The Europeans have been taxing income and consumption for years as well. For a discussion, *see, e.g.,* *THE TAX SYSTEM IN INDUSTRIALIZED COUNTRIES* (Ken Messere, ed., 1998).

benefits of overproduction, making it difficult for developing states to do the same.

Four factors inherent in the market-based system contribute to this result:

First, labor specialization shifts the most skilled and highest paying jobs to the developed states and away from developing states. Developing states must make due with the lowest paid and least skilled work, with the labor price depressed further by an excess of population, and a scarcity of even the lowest paying jobs and competition among developing states even for these jobs.

Second, overproduction shifts the benefits of misallocation of resources from the developing to the developed states. Overproduction depresses the price of these goods, making them more affordable in the developed world, where the highest paying jobs tend to be found, but remain unaffordable in the states where they are for the most part produced by workers whose wages are too low to pay for them.

Third, the incentives to move capital freely tends to make it more difficult for developing states to tax consumption or income of the entities producing goods for the global market because wealth, like goods, tends to flow toward developed states and away from developing states. Moreover, because of competition for even low wage work enterprises, developing states are forced to subsidize their capital by foregoing any power to tax local economic operations of global capital. Because individual consumption and income tends to be lower among the poor, the developing state tends to have a much lower wealth base to tax, but a much more needy population to govern.

Fourth, the propaganda of consumerism keeps the wheels of overproduction going and fuels a constant aspirational hope among those in developing states. The constant lack of satisfaction adds a level of need to the population—they want what individuals in the developed states appear to have, but they can neither afford it, nor their own basic needs. Critical citizen needs of these sorts that remain unmet, in whole or in part, might cause social and political upheaval—and money can ameliorate both.

States, without wealth to tax and with critical needs to meet, must borrow. Developing states borrow directly, in the debt markets, and indirectly, through the IMF, from developed states. In effect, developing states acquire as a debt obligation a portion of the wealth that represents the required subsidy of global production at the heart of the neo-liberal system. Thus the spiral deepens.

Sovereign debt tends to be acquired under conditions designed to perpetuate the system—the conditions imposed on the debt contribute to an increasing inability of states to generate the wealth they need to repay,

or loans are made to states whose leaders are satisfied to act as agents of the developing states and contribute to the subordination of their nations within the global economic system. Eventually, the loan framework within this system cannot be repaid. States must borrow additional sums of money to pay the portion of prior loans which are unpaid while meeting continuing need, or sell their wealth (in the form of natural resources or other wealth) in an effort to pay their loans.

Now the cycle is both complete and recurring: a cycle that effectively produces states whose resources and productive capacity are owned and used for the benefit of others while subsidizing the production of wealth for others.<sup>136</sup> The cycle is fed by the cultivation of an unattainable consumerism in individuals worldwide as an inseparable part of a system based on markets for goods. That consumerism forms the outward manifestation of an economic dynamic in which the interests and needs of developed states are subsidized by developing states that are forced into a system of endless borrowing. That need to borrow represents both a form of the subsidy of developed states built into the neo-liberal model of global economics, and a means of destabilizing and weakening developing states so that, always near crisis, these states remain dependent on and subordinate to the creditor states and their instrumentalities.<sup>137</sup>

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136. With the aid of mathematics, we have analyzed all of the variations suggested to resolve the problem of state debt: with actual interest rates or reduced interest rates, with new credits or without new credits, with limited payments associated to export levels or without such limits, with moratoria or without moratoria, and even on the assumption of a sustained accelerated rate of development that is itself utopian, the result of all of these analyses is that sovereign debt, like an enormous and monstrous cancer, whose malignant cells reproduce at an accelerating rate, tends to reproduce itself and grow without limit.

Fidel Castro Ruz, Discurso pronunciado por el Comandante en Jefe Fidel Castro Ruz, Primer Secretario del Comité Central del Partido Comunista de Cuba y Presidente de los Consejos de Estado y de Ministros, en la VIII Conferencia Cumbre del Movimiento de Países No Alineados, celebrada en Harare, Zimbabwe, Sept. 2, 1986, *available at* <http://www1.lanic.utexas.edu/la/cb/cuba/castro.html> ("Con la ayuda de las matemáticas, hemos analizado todas las variantes que se sugieren para resolver el problema de la deuda: con los intereses actuales o con intereses más bajos, con nuevos créditos o sin nuevos créditos, con límites de pagos asociados a las exportaciones o sin un límite, con moratoria o sin moratoria, y aun en el supuesto de un desarrollo sostenido a ritmos elevados, lo cual anda con la utopía, el resultado de todos los análisis es que la deuda, como un enorme y monstruoso cáncer, cuyas células malignas se multiplican a ritmo acelerado, tiende a reproducirse y crecer hasta lo infinito.").

137. The nature of dependency is varied. Castro explains:

There is a bit of everything: depression in some countries, inflation in others, formulas and measures for destabilizing governments. Everyone on earth now understands that the IMF, for all the states it seeks to help, for all the states that it pretends to help, actually drowns those states economically and destabilizes them politically. There is no better way to put it than that the aid of the IMF is

There is a parallelism between the need for capital on the micro level (for the creation of sites for production within the global economic network to participate in world markets), and the need for capital on a macro level (for the absorption of the true costs of production by the providers of labor and materials). This parallelism produces a tendency to see the “problem” of state borrowing in private contract and bankruptcy terms on the part of the IMF. The appropriate analogy for the IMF is always the company or individual who cannot learn to live within his means and for whom the cultivation of appropriate and “responsible” behavior is most important.<sup>138</sup> Castro looks at the same thing and understands the “problem” of state borrowing in public terms, putting a political dimension on the consequences of a perpetual condition of state indebtedness, or obligation, to others: an intensification of hierarchy and subordination with political, social, cultural as well as economic dimensions.

### III. Implications: A Preliminary View of Solutions and the Articulation of Parallel Visions by the United Nations and in Roman Catholic Thought

There are a number of implications that flow from embrace of either vision. This section is meant to suggest some of the more interesting consequences that might follow from adoption of either system as the

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the devil’s kiss.

*FCR 1999 Speech, supra* note 12, at 24 (“Hay hoy de todo: depression uen unos países, inflación en otros, recetas y medidas que desestabilizan a los gobiernos. Todos en el mundo comprenden ya que el Fondo Monetario Internacional a todo país que ayuda, a todo país que pretende ayudar, lo hunde económicamente y lo desestabiliza políticamente. Nunca pudo decirse major que las ayudas del Fondo Monetario Internacional son el beso del Diablo.”).

138. Indeed, there is a strong parallel between the rhetoric accompanying the passage of recent amendments to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, described generally as pro creditor, and the rhetoric of state responsibility for its obligations in light of the recklessness of its past patterns of borrowing to live beyond its means. See, e.g., The Columnist Manifesto, *The Visa/MBNA-America Bankruptcy Reform Act of 2005, Why not allow—nay, require—legislation to bear the names of its corporate sponsors?* Mar. 9, 2005, available at [http://thecolumnistmanifesto.blogspot.com/2005/03/visa-mbna-america-bankruptcy-reform\\_09.html](http://thecolumnistmanifesto.blogspot.com/2005/03/visa-mbna-america-bankruptcy-reform_09.html) (“The rhetoric of the bankruptcy ‘reform’ bill’s Republican backers is full of talk of ‘personal responsibility.’”). See also Public Broadcast Service, *Now: Debating the Bankruptcy Reform Bill*, Mar. 25, 2005, available at <http://www.pbs.org/now/politics/bankruptcydebate.html> (“Some critics . . . maintain that the new means test is “one size fits all” and doesn’t take into account the myriad of reasons that lead people to seek bankruptcy. Other critics point to perceived “loopholes” which seem to allow wealthier bankruptcy filers to protect more of their assets. . . . Proponents of the bill say that the great rise in bankruptcies necessitates tightening the rules. They point to people who seem to be ‘gaming’ the system—filing for Chapter 7 when they don’t deserve the ‘fresh start’ it promises.”).

basis of sovereign lending. The purpose here is to avoid covering well-worn ground, and in particular, the actual consequences and contours of the current debate about the boundaries of lending and sovereign debt under the Washington Consensus. That subject has already been given wide attention within authoritative global institutions and academia.<sup>139</sup> Here the focus is more generally on the implications of each vision for building the boundaries within which the international regulation of states can be authoritatively discussed (especially by those with power to do so). The consequences of that boundary building are great for defining the character of the state as an actor and its role in the context of the emerging global system of economic and political regulation.

Both visions share certain similarities. Both visions are energetically unitary. Castro is unapologetically political and public in orientation. For him it is impossible to separate the private concerns from issues requiring direction and control by the political community. Every activity has a bearing on the welfare of the people, and to that extent, must be understood as both essentially public and political in nature. In this context, a movement to private decision-making appears to put the economic over the political, and appears to be an attempt by the state to reduce the power of the people to govern themselves. The IMF system is unapologetically private and transactional in orientation.<sup>140</sup> States serve only to facilitate the private sphere.

Industrial countries need to reform their pension systems to make them viable over the long term. Emerging market economies need to press ahead with fiscal and financial sector reforms that will deliver debt sustainability. And low income countries need to focus on issues like the rule of law, institutional and other reforms that will permit more rapid and sustainable growth.<sup>141</sup>

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139. See discussion at Part II, *supra*.

140. Anne Krueger, First Deputy Managing Director of the IMF, nicely states the IMF view of economic reform and growth promotion: "Economic growth permits rising living standards and poverty reduction. Arguing over how to cut the cake can never get us very far if we are serious about reducing poverty. Make the cake bigger is the only way of helping the poor over the longer term." Anne O. Krueger, *Bismarck's Warning: The Challenge of Economic Policy Reform in the Twenty-First Century*, Lecture given at University Philosophical Society, Trinity College, Dublin, Ireland, Apr. 5, 2005, available at <http://www.imf.org/external/np/speeches/2005/040505a.htm> (last visited Feb. 27, 2006).

141. *Id.* Developing countries especially require continued adjustment to facilitate integration into a global private sphere.

And there is an urgent need for further reform in low income countries if they are to achieve the more rapid growth they so badly need. For many, especially in sub-Saharan Africa, the improvement recorded over a relatively short time is welcome. But growth is not yet rapid enough to make attainment of the Millennium Development Goals likely. Reforms aimed at improving the rule

While IMF studies concede the value of public spending on human capital, it suggests that spending on markets can have comparable effects.<sup>142</sup>

Both Castro and the IMF embrace an aggressively globalist outlook. The IMF is an institutional component essential to the implementation of a stable market oriented economic system based on open, level, transparent, non-coercive, private transactions of goods and services with no interference.<sup>143</sup> The market and contract stands at the apex of the hierarchy of global norms. Castro posits a nation-state-based institutionalist globalization based on the primacy of rights to development, focused on the nation-state as the foundation of a world political order. The nation-state and political stability stand at the apex of the hierarchy of global norms. As Pierre Bourdieu noted several years ago, both use the same vocabulary, though to very different ends.<sup>144</sup>

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of law, strengthening public institutions, combating corruption, make public expenditure more efficient and more effective—all these are part of the necessary groundwork to make more rapid growth possible.

*Id.*

142. Emanuele Baldacci, et. al., *Social Spending, Human Capital, and Growth in Developing Countries: Implications for Achieving the MDGs*, IMF Working Paper, Fiscal Affairs Department, WP/04/217, Nov. 2004, available at <http://www.imf.org>.

143. As Krueger observes:

A sound macroeconomic framework also requires institutions that can administer laws fairly, that can enforce property rights, that don't put unreasonable burdens on businesses that export, that encourage competition and enterprise. It means reducing trade restrictions, lowering or removing tariff and non-tariff barriers, encouraging foreign investment. It means developing a sound financial system, with well-capitalized and well-run banks that can allocate credit where it can be most efficiently used, rather than propping up badly run but politically well-connected companies. There has to be a level playing field, with a clear and balanced incentive structure, and microeconomic reforms that foster enterprise.

Krueger, *supra* note 140.

144. See Pierre Bourdieu and Loïc Wacquan, *Neoliberal Newspeak: Notes On The New Planetary Vulgate* (World Social Forum, Library of Alternatives, June 30, 2003), available at [http://www.forumsocialmundial.org.br/dinamic.php?pagina=bourdieu\\_ing](http://www.forumsocialmundial.org.br/dinamic.php?pagina=bourdieu_ing) (last visited Feb. 26, 2006) (expanded translation by David Macey and Loïc Wacquant of an article that originally appeared in French in *LE MONDE DIPLOMATIQUE*, 554, May 2000, pp. 6-7). Bourdieu explained that:

Its vocabulary, which seems to have sprung out of nowhere, is now on everyone's lips: "globalization" and "flexibility," "governance" and "employability," "underclass" and "exclusion," "new economy" and "zero tolerance," "communitarianism" and "multiculturalism," not to mention their so-called postmodern cousins, "minority," "ethnicity," "identity," "fragmentation," etc. The diffusion of this new planetary vulgate—from which the terms "capitalism," "class," "exploitation," "domination," and "inequality" are conspicuous by their absence, having been peremptorily dismissed under the pretext that they are obsolete and non-pertinent—is the result of a new type of imperialism whose effects are all the more powerful and pernicious in that it is promoted not only by the partisans of the neoliberal revolution who, under



Inherent in both are the corollary norms of democracy and fairness. The system fostered through the IMF is grounded in the notion that democracy is only possible through the development of individual wealth in stable, open, market oriented systems.<sup>145</sup> The pursuit of gain, free from state tyranny, is the greatest antipode of an anti-democratic political control, and thus the best defense against the anti-democratic forces of political, social, economic and cultural oppression.<sup>146</sup> For Castro, the reverse is irrefutably true. Democracy is impossible in systems under which economic control is separated from economic production.<sup>147</sup>

Also inherent in both are the corollary norms of the public nature of

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cover of "modernization," intend to remake the world by sweeping away the social and economic conquests of a century of social struggles, henceforth depicted as so many archaisms and obstacles to the emergent new order, but also by cultural producers (researchers, writers and artists) and left-wing activists who, for the vast majority of them, still think of themselves as progressives.

*Id.*

145. The American government recently described this relationship in its statement in opposition to a recommendation from the United Nations Commission on Human Rights for the appointment of a special representative special representative on the issue of human rights and transnational corporations and other business enterprises:

Throughout the world, businesses are creating an environment to help ensure the strongest possible promotion of human rights. By the very nature of their core activities, they provide employment and income for individuals. They provide essential goods and services. They contribute to education, training and healthcare. They provide the venues for the organization of civil society and labor movements that promote democratization. They contribute to the empowerment of individuals that is at the heart of ensuring protection of human rights.

United States of America, Explanation of the Position of the United States of America on UN-Resolution of 20 April 2005, *available at* <http://www.business-humanrights.org/Links/Repository/120185> (last visited Mar. 6, 2006).

146. These ideas were recently well expressed by the U.S. President, George W. Bush in his Second Inaugural Address. *See* George W. Bush, Second Inaugural Address, Jan. 20, 2005, *available at* <http://www.whitehouse.gov/news/inaugural-address.html> ("Through much of the last century, America's faith in freedom and democracy was a rock in a raging sea. Now it is a seed upon the wind, taking root in many nations. Our democratic faith is more than the creed of our country, it is the inborn hope of our humanity, an ideal we carry but do not own, a trust we bear and pass along.") *Id.*

147. Fidel Castro Ruz, *Las manos del gobierno de EEUU están sucias*, in FIDEL CASTRO RUZ, DE SEATTLE AL 11 DE SEPTIEMBRE 185 (2002) ("No one should try to fool and confuse us with the new terminology flowing from out of the hypocritical propaganda of those specialists in lies and deceit, in the service of which there has been imposed on humanity an economic and political order increasingly unequal and unjust, that has absolutely nothing to do with solidarity and democracy, nor even a hint of respect for even the most limited rights that every human being deserves." *Id.*) ("Nadie trate de engañarnos y confundirnos con las nuevas terminologías salidas de la propaganda hipócrita de los especialistas en engaños y mentiras, al servicio de los que han impuesto a la humanidad un orden económico y político cada vez más desigual e injusto, que no tiene absolutamente nada de solidario o democrático ni siquiera un ápice de respeto por los más mínimos derechos que son acreedores los seres humanos.").

state control and anti-subordination among the community of states. For Castro, of principle importance in the context of state debt is the “intransigent defense of the principle of self-determination of our political communities that requires the end of interference by international organisms in the financial administration of our nations.”<sup>148</sup> Sovereign debt, for Castro represents the passing of power from the states as independent political entities at the apex of power, to other, now more powerful global entities.<sup>149</sup>

In the context of these competing visions of global governance, sovereign debt can only be understood under either perspective as a subset of a much more universal approach to world order. Both would impose obligations and duties on creditor and lender, these duties serving as proxies for the control relationships underlying the act of lending or borrowing. But each would accomplish this from fundamentally opposite directions. Both Castro and the IMF see the same thing, but understand what they see in such different terms that it is sometimes hard to remember that it is not the object seen but the meaning they ascribe to that object which separates the two views.<sup>150</sup>

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148. Fidel Castro Ruz, Discurso pronunciado por el Comandante en Jefe Fidel Castro Ruz, Primer Secretario del Comité Central de Partido Comunista de Cuba y Presidente de los Consejos de Estado y Ministros, en la sesión de clausura del encuentro sobre la deuda externa de América Latina y el Caribe, efectuada en el Palacio de las Convenciones clausura del diálogo juvenil y estudiantil de América Latina y el Caribe sobre la deuda externa, celebrado en el Palacio de las Convenciones, Sept. 14, 1985, available at <http://www1.lanic.utexas.edu/la/cb/cuba/castro/1985/19850915.html> [hereinafter *FCR 1985 Speech*] (“la defensa intransigente del principio de autodeterminación de nuestros pueblos requiere el fin de la interferencia de organismos internacionales en la administración financiera de nuestras naciones”).

149. “Latin American debt is so great that many of the nations of the region, whatever their Gross National Product might show, cannot guarantee a majority of their citizens a decent quality of life. Their economies, which in macro economic terms appear to be proceeding well, have actually decreased in the hands of the great financial and technological powers.” Fidel Castro Ruz, *Cuba no negocia ni vende su Revolución*, in FIDEL CASTRO RUZ, DE SEATTLE AL 11 DE SEPTIEMBRE 69, 74 (2002) (“La deuda latinoamericana es tan grande que muchas de las naciones de la región, cualquiera que sea su Producto Interno Bruto, no les garantizan una calidad de vida digna a la mayoría de sus ciudadanos. Sus economías, que en cifras macroeconómicas parecen a veces marchar bien, han caído en las manos de las grandes potencias financieras y tecnológicas. . .”).

150. An excellent example was recently provided in the context of the dispersion of sovereign debt. The Managing director of the IMF saw the dispersion of sovereign debt as key factor for the systematization and regularization of the debtor-creditor relationship. The problem was one of managing markets for debt involving a small set of large debtors and a very large and dispersed set of lenders holding debt, which itself has become a highly liquid form of wealth. See, e.g., Köhler, *supra* note 63. For Castro, the same dispersion of holding in sovereign debt suggests key evidence of the gross inequality of terms to which debtors have been subject. Such dispersion is evidence of the value to lenders of exploitative terms meant to benefit a growing class of lenders from the developing world by providing a means of wealth transfer to them from the developing

The IMF system is grounded in Western notions of contract and private property. The state, like a corporation, is increasingly viewed as the nexus of complex amalgamations of contracts among stakeholders in a political community, whose individual and collective contract arrangements overlap the state and other private and private amalgamations of economic, social, and political power. In a world in which entities are proxies for systems of self-referencing contracts, the debt of sovereigns, like the debt of other amalgamations, is just another form of contract, and should be subject to the same sets of uniform rules for enforcement. The object is not necessarily the preservation of a particular quantum of state power or dignity; the public character of the community is irrelevant. The critical consideration is the contract itself; the contract must be honored absent overreaching or fraud by lenders. The object of all action is not to preserve a particular character of the state but to strengthen the systems viewed as the basis for maximizing the wealth, in the aggregate, of individuals, either at a macro level, when measured collectively and on a global basis, or on a micro level, when measured within states or sub-state communities. States, like corporations, NGOs and other entities, serve best when they help produce or maintain the greatest efficiency of markets for transactions of all kinds—economic, political, social and cultural. Sovereign debt, to the extent it represents inefficiencies or “wrong” social, political or economic choices, must be minimized. The IMF vision shifts ultimate responsibility for debt to the shareholders of every nation state: its citizens and their productive capacity. States are stripped of an active public function, other than to facilitate market transactions, protect against fraud, and maintain productive infrastructure for the benefit of market participants. This is a good thing because states are usually inefficient at the delivery of services and political control tends to inhibit human freedom.

Castro takes the foundational ideas of the market system—utility maximization, markets and democracy, and inverts them; contorting them into criticisms of the very systems created to further these principles. Democracy is impossible in an economic system in which the democratic order is subject to control by creditors and debtor states are

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world. Fidel Castro Ruz, *Hay que rescatarel espíritu de lucha*, in FIDEL CASTRO RUZ, DE SEATTLE AL 11 DE SEPTIEMBRE (2002) 149, 153. The inequities of the terms of this debt, suggested by its very dispersion, also suggest the equity of debt cancellation. *Id.* at 153-54. This is a debt that “continues to feed on itself in a vicious cycle where one seeks additional debt to pay interest” that continues to increase as the size of the debt itself increases. *Id.* at 154 (“La deuda continua alimentántose a sí misma en un círculo vicioso donde se pide prestado para poder pagar los intereses.”).

made to subsidize developed state wealth.<sup>151</sup> Sovereign debt analogized to corporate debt has a peculiar effect on the public or political function of states as representatives of political communities. Debt conditions can act as addendums to political constitutions. In effect, covenants and conditions of state debt can modify the constitutional structure of nation-states in effect if not in form. Economic policy power is effectively diverted from the political community—the sovereign as the people of the nation, to the creditors—lenders asserting a power to direct a core function of sovereignty.<sup>152</sup> Where the debtor is a corporation and the ultimate sovereign the shareholders, subject to regulation by a political community, this result is not problematic. However, where the debtor is a state, and the ultimate sovereigns the citizens of that state, the result appears to reduce the sovereign power of nations.<sup>153</sup> A consequence: a conflation of governance models for states and corporations fundamental to the West is rejected by Castro as fundamentally incompatible with his theory of the state as a public political body. Furthermore,

It is inconceivable that democratic governments will call out their armed forces to suppress its people so that it might pay its external debt, and to kill its people like they killed them in Santo Domingo, because the measures required by the IMF have already cost more than 100 lives in Santo Domingo, more than 400 injured from

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151. We look at the situation in Latin America, where the more people talk about democracy, the more there are shantytowns, dozens of millions of illiterate people, millions of unemployed persons, and tens and tens of millions of people who go without medical attention. Owing to the measures of the IMF and similar institutions, the situation has grown worse instead of better. There are countries in Latin America where 10 percent of the people earn more than 50 percent of the national income. How can one talk of democracy under these conditions?

Fidel Castro Ruz, Interview: Fidel Castro, *EL DIARIO (NICARAGUA)*, June 4, 1992.

152. This idea is reflected in Western critiques of the IMF system as well. See, e.g., Tamara Lothian, *The Criticism of the Third-World Debt and the Revision of Legal Doctrine*, 13 *WIS. INT'L L.J.* 421 (1995) (“The imposition of the IMF-style program undermines economic sovereignty in the debtor countries by removing from the country’s internal control many of the chief tools of macroeconomic policy.” *Id.* at 442).

153. Castro speaks of sovereign debt as touching on the great struggle for independence among less developed states:

Because, how can one call a government or a nation independent that must go every month to discuss with the IMF all of the things it must do in its own territory? That amounts to a fictive independence, and we see this as a battle for national liberation, that can truly unite, and for the first time in the history of our Hemisphere, all social classes in a struggle to attain true independence.

*FCR 1985 Speech, supra* note 148 (“Porque, ¿Cómo puede llamarse independiente un gobierno y un país que tiene que ir todos los meses a discutir con el Fondo Monetario Internacional lo que tiene que hacer en su casa? Es una ficción de independencia, y nosotros vemos esto como una lucha de liberación nacional, que puede agrupar de verdad, y por primera vez en la historia de nuestro hemisferio, a todas las capas sociales en una lucha para alcanzar su verdadera independencia.”).

gunshot wounds in a context of severe national tension, an unsupportable situation.<sup>154</sup>

Castro would shift the balance of responsibility for loans to creditors. In this respect, Castro's vision clearly reflects criticisms of sovereign debt especially common in Latin America from the 1980s:

Throughout the 1980s, three standard objections were raised against repayment of the debt: first, many of the debts were tainted by their origins in the military regimes of the 1970s; second, the commercial banks were largely responsible for the excessive borrowing of the period; and third, full repayment of the loans would create intolerable social hardship.<sup>155</sup>

Reflecting this scholarship, Castro's discourse reflects a refinement of this analysis at both a macro and micro level.

At the macro level, that shifting would involve the abandonment of what Castro views as the anarchic global market finance system<sup>156</sup> in favor of a control model of public finance, with control vested in an organization reflecting the desires of the majority of the world's population and grounded in principles of redistribution and public obligation. This requires a union of Latin American and Caribbean states similar to the European Union.<sup>157</sup> This would make it easier to resist the unitary standard for neo liberal subsidization of developed state wealth through the imposition of global financial institution's one size fits all formulas.<sup>158</sup>

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154. *Id.* ("Es inconcebible que los gobiernos de los procesos democráticos llamen a las juerzas armadas a reprimir al pueblo para poder cobrar la deuda, y a matar a la gente como materon en Santo Domingo, porque las medidas del Fondo Monetario Internacional ya costaron más de 100 vidas en Santo Domingo, más de 400 heridos de balas y una situación de tension tremenda en el país, una situación insportable.").

155. Lothian, *supra* note 152, at 439.

156. Castro has described the current system as chaotic and anarchic at the global level as a direct product of the policy of the International Monetary Fund. *See FCR 1999 Speech, supra* note 12, at 12 (describing the system of overproduction for export markets as "fruits of the anarchy and chaos in the distribution of investment capital at a global level pursuant to the generalized order to grow and develop on the basis of exports as the IMF counsels") ("fruto de la anarquía y el caos en la distribución de los capitales de inversion a nivel mundial, bajo la consigna generalizada de crecer y desarrollarse a base de exportaciones como aconseja el FMI.").

157. "First of all we have the need to unite Latin American communities without wasting a second." *Id.* at 34. Castro suggests the importance of union to prevent the United States from exploiting divisions between smaller Latin American states. *Id.* at 37-38 ("Primero tenemos el deber de unirnos los pueblos latinoamericanos sin perder unminuto.").

158. *Id.* at 26 ("One can't treat states at different levels of development the same way. One can't ignore inequalities between them. One can't apply the same formula for each. One can't impose a single method. And regulatory and international economic development formulas are worthless if their purpose is to exclusively benefit the richest

At the micro level, the shifting to lenders would occur in a related manner. When states fail, they ought to be treated like victims of normative wrongs. A global equity standard, based on emerging international standards of individual and state conduct, ought to be applied. The focus is public rather than private, political and social rather than economic, focused on output rather than on efficiencies in the use of factors of production divorced from their socio-political context. Thus, liability for the debt, and the other harms arising from or related to the provision of the loan, ought to shift to the lender, at least to the extent that the loan was used to commit or facilitate the commission of violations of human rights, humanitarian laws or other international or national violations of norms or laws.

This micro and macro approach reflects the hard lessons learned by the Castro regime in its first years in power when it was held accountable for the irresponsible actions of the predecessor regime. These events ultimately resulted in Cuba pulling out of the IMF system and beginning a half-century campaign for change. As explained by the IMF:

Cuba drew its gold tranche and its first credit tranche (\$25 million) from the Fund in September 1958, during the final months of the collapsing regime of President Fulgencio Batista. The Fund repeatedly agreed to postpone repayment after Fidel Castro took power in 1959, until the five-year limit on outstanding drawings was about to expire. The Managing Director issued a formal complaint in September 1963 and initiated procedures that could have led to a declaration that Cuba was ineligible to use Fund resources. That process was aborted when Cuba withdrew from the Fund in 1964, and the Castro government eventually repaid the money over the remainder of the decade.<sup>159</sup>

Alternatively, something like the rules of predatory lending liability, currently emerging as an object of discussion in the U.S. and other states, ought to form the basis of any approach to the responsibility of creditors for the debtor state's obligations to pay their sovereign debts.<sup>160</sup> The

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and most powerful states. The IMF like the WTO desire to start clean with them all." *Id.*) ("No se puede tratar igual a todos países, con muy distintos niveles de desarrollo. No se puede ignorar las desigualdades. No se puede aplicar una receta para todos. No se puede imponer una sola vía. Y de nada valen formulas para regular y desarrollar las relaciones económicas internacionales si es para beneficiar exclusivamente a los más ricos y poderosos. Tanto el Fondo Monetario como la OMC, quieren hacer tabla rosa con todo.").

159. International Monetary Fund, *SILENT REVOLUTION: THE IMF 1979-1989* 758 (Oct. 1, 2001) *citing in part*, J. Keith Horsefield, *Chronicle*, in 1 *THE INTERNATIONAL MONETARY FUND, 1945-1965: TWENTY YEARS OF INTERNATIONAL MONETARY COOPERATION*, 548-50 (J. Keith Horsefield, ed., 1969).

160. For a general discussion of predatory lending and the policy reasons for

policy reasons for regulating, and even prohibiting such practices, are fairly straightforward. They include avoiding a “debt trap” in which the debtor becomes enmeshed in a series of loans with no realistic possibility of repayment, forcing many into bankruptcy.<sup>161</sup> In the area of consumer law, especially with respect to mortgages on real property, several states have enacted laws regulating, or restricting, a number of practices.<sup>162</sup> Many of these can be easily translated to the public law field and specifically to sovereign lending, if one embraces the public law character of sovereign debt and the overriding policy imperative of development as articulated by Castro.

Castro has long suggested that the nature of IMF lending has some elements that have come to be understood as predatory.<sup>163</sup> Indeed, for Castro, the essential problem of sovereign debt within the context of the neoliberal global order is that it is designed intentionally to make it impossible for the state to extricate itself from debt, or from dependence

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curtailing the practice, *see, e.g.*, U.S. Departments of Housing and Urban Development and Treasury, *Curbing Predatory Home Mortgage Lending: A Joint Report*, July 15, 2000, available at <http://www.treas.gov/press/releases/report3076.htm> (last visited Feb. 22, 2006). Predatory lending practices and their regulations have been the subject of recent Congressional investigation. *See* *Predatory Mortgage Lending: The Problem, Impact, and Response: Hearing Before the U.S. S. Comm. on Banking, Hous., and Urban Affairs*, 107th Cong. 1 (2001).

161. Commentators have suggested this likely outcome from a number of lending practices, including, recently, the practice and terms of so-called payday loans. *See, e.g.*, Michael S. Barr, *Banking the Poor*, 21 YALE J. ON REG. 121 (2004); Creola Jones, *Payday Loans: Shrewd Business or Predatory Lending?*, 87 MINN. L. REV. 1 (2002).

162. North Carolina’s provision has been among the first and often copied provisions in this area. *See* S.B. 1149, codified at N.C. GEN. STAT. 24-1.1E, 24-10.2 (eff. July 1, 2000). Many of these rules were later preempted by federal legislation. *See* Therese G. Franzen and Leslie M. Howell, *Predatory Lending Legislation in 2004*, 60 BUS. LAW. 677 (2005); Nicholas Bagley, *Note: The Unwarranted Regulatory Preemption of Predatory Lending Laws*, 79 N.Y.U. L. REV. 2274 (2004).

163. As early as 1979, Castro suggested:

You are statesmen who daily face the harsh tasks of your countries’ economies. You know very well what the enormous difficulties are—the constant increase in the foreign debt; the scarcity of funds; the increasing cost of energy and manufactured products; unequal trade; incessant and progressive robbery by means of low prices on the foreign market for the products that are the fruit of our peoples’ sweat; inflation; increasing domestic prices; the blight of social conflicts resulting from all of the foregoing. Progressive governments which are carrying out a noble effort to achieve development and freedom for their countries are crushed and, at times, apparently even overwhelmed by the economic difficulties and the one sided and antipopular conditions imposed by international loan organization. Haven’t many of you had to pay a political price because of IMF regulations? We Cubans, who have been excluded from that institution by imperialist will, are not so sure now whether or not it constituted punishment or a privilege.

Fidel Castro Ruz, *Speech Sixth Summit Conference of the Nonaligned Countries Movement*, Havana, Cuba, Sept. 3, 1979, available at <http://www.lanic.utexas.edu/la/cb/cuba/castro.html> (last visited Feb. 24, 2006).

on the debtor.<sup>164</sup> State failure, a state's inability to pay sovereign debt, thus ought to trigger an investigation to determine of the nature of the debt, the conditions under which the debt was incurred and the equities of continuing the obligation. In many cases, states should be free to repudiate debt without further consequence.<sup>165</sup>

Debt repudiation may also be based on notions of "odious debt."<sup>166</sup> The concept has gained some currency in the West as debtor-states seek new bases for approaching their debt obligations short of a private law based default,<sup>167</sup> and as the implications of a democracy based global market system are tested.<sup>168</sup> Most recently the concept has been applied

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164. *FCR 1985 Speech*, *supra* note 148 ("We say: it is unpayable. But because it is unpayable for mathematical or economic reasons does not implicate a moral, legal or political judgment of the problem. But to that we also say: it is impossible as a political matter. No government in Latin America is in a condition to comply with any of the IMF's measures, not by blood or fire could they comply." *Id.*) ("Nosotros decimos: es impagable. Pero impagable por razones matemáticas, económicas, no implica un juicio moral del problema, o legal, o político del problema. Pero nosotros decimos también: es un imposible político. Los gobiernos no están en condiciones, en ningún país de América Latina, de aplicar esas medidas del Fondo Monetario, en ninguno; ni a sangre y fuego pueden hacerlo.").

165. Fidel Castro Ruz, Intervención del Comandante Fidel Castro Ruz, Primer Secretariodel Comité Central de Partido Comunista de Cuba y Presidente de los Consejos de Estado y Ministros, en el IV Congreso de la FELAP, efectuado en el Palacio de las Convenciones, en la tarde de 6 de Julio de 1985, "año del tercer congreso," *available at* <http://www1.lanic.utexas.edu/la/cb/cuba/castro.html> (last visited Feb. 23, 2006) ("One would have to be crazy now to seek internal unity in order to pay one's debt to the IMF; internal unity not to pay! Indeed, we suggest more: when one hears: sacrifice to pay one's debt, we say sacrifice for development is all that ought to be asked of the masses; sacrifice to pay the debt, never!" *Id.*) ("Ahora para pagar esa deuda al Fondo Monetario, habría que estar loco para pedir unidad interna; es unidad interna para no pagarla, ¡unidad interna para no pagarla! Inclusive, nosotros planteamos más. Cuando se dice: sacrificio para pagar la deuda, nosotros decimos: sacrificio para el desarrollo si se les puede pedir a las masas; sacrificios para pagar la deuda, ¡jamás!"). *See also FCR 1985 Speech*, *supra* note 148 ("And if we see that within the enemy camp more than one member embraces the idea of cancellation, why renounce the idea of cancellation?") ("Y si vemos que en las filas enemigas empieza ya más de uno a aceptar la idea de la cancelación, ¿por qué renunciar a la idea de la cancelación de la deuda?").

166. For a discussion of the concept and calls for its application in various contexts, *see, e.g.*, PATRICIA ADAMS, ODIUS DEBTS: LOOSE LENDING, CORRUPTION, AND THE THIRD WORLD'S ENVIRONMENTAL LEGACY 165 (1991). Adams quotes ALEXANDER SACK, LES EFFETS DES TRANSFORMATIONS DES ÉTATS SUR LEURS DETTES PUBLIQUES ET AUTRES OBLIGATIONS FINANCIÈRES (1927) for an early statement of the idea: "If a despotic power incurs a debt not for the needs or in the interest of the State, but to strengthen its despotic regime, to repress the population that fights against it etc., this debt is odious for the population of the State."

167. For a non-governmental organization with a website devoted to the issue, *see* <http://www.odiousdebts.org> (last visited Mar. 3, 2006). For an argument that the concept ought to be expanded and more broadly applied, *see, e.g.*, Anupam Chander, *Odious Securitization*, 53 EMORY L.J. 923 (2004).

168. For a review, *see, e.g.*, Emily F. Mancina, *Note: Sinners in the Hands of an Angry God: Resurrecting the Odious Debt Doctrine in International Law*, 36 GEO.



to the debt of Iraq under the dictatorship of Saddam Hussein before 2003.<sup>169</sup>

Castro provides a theoretical justification for the concept of “odious debt” on a vastly expanded scale. The notion ought not to be limited to successor states, or treated as a narrow argument bounded by the legalisms of Western oriented international law. Instead, the notion must be tied to the realities of lending at the international level and the legitimacy of the government to which a loan is made.<sup>170</sup> Thus, even where there is no issue of “successor state” to which the concept has usually and traditionally limited,<sup>171</sup> the odious debt concept ought to apply to determine the lender’s complicity in subsidizing the government of an illegitimate ruler and limiting the lender’s ability to profit thereby, especially after the overthrow and establishment of a legitimate state apparatus.<sup>172</sup>

Perversely, the rise of the possibility of repudiation on the basis of

WASH. INT’L L. REV. 1239 (2004).

169. See, e.g., Detlev F. Vagts, *Sovereign Bankruptcy: In Re Germany (1953)*, in *Re Iraq (2004)*, 98 AM. J. INT’L L. 302 (2004) (referencing Seema Jayachandran & Michael R. Kremer, *A Dictator’s Crippling Debt*, HARV. MAG., July/Aug. 2003, at 30, and a further listing of their relevant work at <http://post.economics.harvard.edu/faculty/kremer/papers.html>).

170. Fidel Castro Ruz, *Latin America’s Foreign Debt Must Be Canceled*, in FIDEL CASTRO SPEECHES 1984-85: WAR AND CRISIS IN THE AMERICAS 206 (Michael Tabor, ed., 1985) (text of interview of Fidel Castro Ruz conducted by Regino Díaz, editor of the Mexican newspaper Excelsior, March 21, 1985) (“The military men are withdrawing from public administration. If the economic situation had been less serious, they would have resisted. . . . Now they have turned the state administration over to civilians and have left them a terrible inheritance, to be sure.” *Id.* at 211). Castro asserts that while the civilian governments that succeeded military dictators cannot be held to blame for the financial, and particularly the debt crises they inherited, military dictators can be held liable. “Pinochet can be blamed for a large part of them, because of his fratricidal coup and his enthusiastic contributions to and cooperation with that policy [IMF policy] for nearly twelve years. . . . In short, as a rule, I should honestly say that all these aspects make for a situation that escapes the control, the desires, and the wishes of government.” *Id.* at 219-20.

171. See, e.g., P.K. MENON, THE SUCCESSION OF STATES IN RESPECT TO TREATIES, STATE PROPERTY, ARCHIVES AND DEBTS 158-63 (1991); Paul Williams & Jennifer Harris, *State Succession to Debts and Assets: The Modern Law and Policy*, 42 HARV. INT’L L. REV. 355 (2001); Hubert Beemelmans, *State Succession in International Law: Remarks on Theory and State Praxis*, 15 B.U. INT’L L. J. 71 (1997) (esp. notes 173-74).

172. “As a result of all of these mathematical calculations and moral, historical, political and economic reflections, I have come to the conclusion that the Latin American debt is unpayable and should be canceled. . . . I suggest that the industrialized creditor countries can and should make themselves responsible for the debts of their own banks.” Fidel Castro Ruz, *Latin America’s Foreign Debt Must Be Canceled*, in FIDEL CASTRO SPEECHES 1984-85: WAR AND CRISIS IN THE AMERICAS 206, 228 (Michael Tabor, ed., 1985) (text of interview of Fidel Castro Ruz conducted by Regino Díaz, editor of the Mexican newspaper Excelsior, March 21, 1985). This finds its echo in the work of some commentators, for example, out of Africa. See, e.g., Chris N. Okeke, *The Debt Burden: An African Perspective*, 35 INT’L LAW. 1489 (2001).

an “odious debt” doctrine has made blanket debt forgiveness by creditor nations somewhat more problematic. Debtor nations become suspicious that such forgiveness offers are motivated solely by a creditor nation’s desire to avoid exposure of possible connections between creditor states and governments implicated in violations of national or international laws and norms.<sup>173</sup> Moreover, forgiveness on these terms provides a means for creditor states to retain power to control forgiveness, so that it remains an extraordinary act controlled wholly by creditor states. Debtor states are reduced to begging for debt forgiveness. And thus, forgiveness on its current terms retains the hierarchies of power and dependence that serve to perpetuate the power disparities between states.

The recent round of debt forgiveness at the insistence of the world’s richest nations in 2005 attest to the way in which debt forgiveness reinforces the subordination of debtor states, and their dependence on the largesse of creditor states.<sup>174</sup> In both cases, the impetus for debt forgiveness came from the great creditor nations. The charitable nature of the forgiveness was very much in evidence, from the control of the nature, character, and terms of the forgiveness, to the expectations that were imposed on those sovereigns whose debt was forgiven.<sup>175</sup> The parallels to patterns of traditional almsgiving to the poor were striking.<sup>176</sup> In place of discussion of the way in which “welfare” makes the poor irresponsible (an individual moral hazard problem), there is substituted a rhetoric of state irresponsibility if they can escape the consequences of their excessive borrowing.<sup>177</sup>

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173. For a discussion from the perspective of the IMF, see Jack Boorman, *Dealing Justly With Debt*, Speech Given at the Carnegie Council on Ethics and International Affairs New York, Apr. 30, 2003, available at <http://www.imf.org/external/np/speeches/2003/043003.htm> (last visited Mar. 5, 2006).

174. See International Monetary Fund, Policy Development and Review, Legal and Finance Departments, *The G-8 Debt Cancellation Proposal and Its Implications for the Fund*, July 20, 2005, available at <http://www.imf.org> (last visited Mar. 1, 2006).

175. *Id.* at 4-13. For an analysis of overall aid, including debt forgiveness prior to 2005, see Sanjeev Gupta, Catherine Pattillo, and Smita Wagh, *Are Donor Countries Giving More or Less Aid?* IMF Working Paper No. WP/06/1 (Jan. 2006) available at <http://www.imf.org/external/pubs/ft/wp/2006/w0601/pdf> (last visited Mar. 9, 2006). A significant and adverse consequence of donor control is relief volatility. Donations are made to maximize benefit to the donor rather than to maximize the benefit to the recipient. “Some part of the higher volatility in recent years can be attributed to the forgiveness of countries’ debt, which, as one-off events, is inherently volatile.” *Id.* at 20.

176. For a discussion of the dynamics of public charitable giving, see Larry Catá Backer, *Welfare Reform at the Limit: The Futility of Ending Welfare as We Know It*, 30 HARV. C.R.-C.L. L. REV. 339 (1995); Larry Catá Backer, *Medieval Poor Law in Twentieth Century America: Looking Back Towards a General Theory of Modern American Poor Relief*, 44 CASE W. RES. L. REV. 871 (1995).

177. See Ralph Chami, Sunil Sharma and Ilhyock Shim, *A Model of the IMF as a Coinsurance Arrangement*, June 1, 2004, paper delivered at Conference on “Dollars, Debt and Deficits—60 Years After Bretton Woods,” Banco de España, Madrid, June 14-

Castro's vision would reverse these relationships—stripping creditor states of the power to control forgiveness. Under an anti-corporatist vision, the processes of forgiveness is governed by international standards that seek to serve the goals of reducing power disparities between states and reduce the political, social, and cultural effects of power disparities in the current regime of globalized financial markets. That is, the goal of lending would be to foster development targeting individual welfare through public programs, rather than targeting indirect welfare increases through fostering markets.<sup>178</sup>

A critical question in evaluating Castro's approach is the importance of its Marxist overlay to the integrity of the analysis. Castro argues that his vision is inextricable from his Marxist determinism.<sup>179</sup> The current system of neoliberal globalization has reached its highest stage of development from which the contradictions inherent in it will cause its collapse. That collapse will be marked by profound and catastrophic crises.<sup>180</sup> The crises will provide the basis for successful resistance and the implementation of the next (and last?) stage of globalization, "which could not be than solidarity, socialist, communist, or whatever else you want to call it."<sup>181</sup> This transformation is objectively inevitable and without alternative.<sup>182</sup> For Americans, of course, this doctrinal Marxist gloss is off-putting. Old school doctrinal Marxist-Leninist orthodoxy is at best on the defensive since the collapse of the Soviet Union and the turn of China to Marxist-Leninist market strategies. But can Castro's analysis be sustained without its Marxist determinist overlay? Castro suggests that it can, but only because the course of ideas are inevitable and the problem is the neither Marxism nor socialism, but the success of the American propaganda machine to distort the meaning of those ideas.<sup>183</sup> But that is hardly an answer. And Castro can be particularly ambiguous when the necessity arises, especially in the context of developing and marketing his ideas.<sup>184</sup>

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15, 2004, available at <http://www.imf.org/external/np/res/seminars/2004/60/sharma.pdf> (last accessed January 6, 2006).

178. For an example of arguments suggesting this approach, see, e.g., Obijiofor Aginam, *Between Isolationism and Mutual Vulnerability: A South-North Perspective on Global Governance of Epidemics in an Age of Globalization*, 77 TEMP. L. REV. 297 (2004).

179. *FCR 1999 Speech*, supra note 12, at 58.

180. *Id.* at 59.

181. *Id.* ("No podría ser otra que solidaria, socialista, comunista, o como ustedes quieran llamarla.").

182. *Id.*

183. *Id.* at 4-5.

184. In an ironic twist, Castro has served as a model for American military thinking. For an excellent American analysis of the power of ambiguity in the propaganda front of a military campaign, using Castro as a model, see Russell J. Hampsey, *Voices From the*

Castro's old fashioned, Stalinist Marxism, tends to provide a basis for an easy dismissal of his perspectives—no more so than in the context of sovereign debt and the character of the state. After 1989, many assumed that Marxism was dead as a potent basis for global harmonization. Indeed, it is easy to dismiss an aging Stalinist who may well have lost touch even with China, the current great Marxist-Leninist superpower.<sup>185</sup> But the death of Marxism as a political ideology has not necessarily resulted in the disappearance of its economic theory or of those who still believe in its form of analysis, now reconstituted as parts of the doctrinal underbelly of any number of anti-globalization or anti-corporatist or free market ideas advanced by Western states.<sup>186</sup> Castro himself has always been clear that Marxism might be best advanced among the people on the sly—advancing its ideas without labeling those ideas with the ideological brand name “Marxism.”<sup>187</sup>

The death of Marxism as a state ideology seems to have permitted its dispersal rather than its elimination from political discourse. Castro reminds us of the origins of the “Marxism recycled” in which the ideas expressed by Castro also serve other groups.<sup>188</sup> It should come as no surprise that Castro provides at least symbolic support for a large number of leftist and anti-globalization elements of civil society in the West and in developing states. But the ideas articulated by Castro also find significant echo in the positions and rhetoric from a number of public and private sectors, most of which have no formal connection to Marxism, and indeed have constituted some of political Marxism's greatest enemies. His ideas on sovereign debt, reconstituted in perhaps less politically inflammatory terms, finds equally strong expression in the work of the United Nations High Commissioner for Human Rights in Geneva, and pronouncements of the Roman Catholic Church, both highly influential actors in global socio-political discourse.

Nor is Castro necessarily the most sophisticated or influential proponent of the ideas he expresses. Certainly, in Latin America, Castro

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*Sierra Maestra: Fidel Castro's Revolutionary Propaganda*, MILITARY REV. 93 (Nov.-Dec. 2002) available at <http://www.leavenworth.army.mil/milrev/English/NovDec02/indxnd02.htm> (last visited Feb. 21, 2006). “Incidentally, the program Castro successfully executed parallels current U.S. PSYOP doctrine, illustrating the soundness of these principles.” *Id.*

185. For a discussion of the differences in approaches between Cuba and China, see Larry Catá Backer, *Cuban Corporate Governance at the Crossroads: Cuban Marxism, Private Economic Collectives, and Free Market Globalism*, 14 TRANSNATIONAL LAW & CONTEMP. PROBS. 337, 381-403 (2004).

186. See, e.g., GEORGE ALLEN COHEN, HISTORY, ETHICS, MARXISM (1995) (proposing methods through which Marxist and socialist objectives can be attained in a post-Marxist world).

187. See *FCR 1999 Speech*, *supra* note 12, at 4-5.

188. See P. VAN PARJIS, MARXISM RECYCLED (1993).

represents only one of a large number of voices, many of them academic voices, all proceeding along the same lines. The most influential current expression of that wave of academic and civil society approaches from out of Latin America is the World Social Forum.<sup>189</sup> Like Castro, this umbrella organization, centered on a series of meetings originating in Porto Alegre, Brazil in 2001,<sup>190</sup> is grounded in opposition to the normative structure of Western economic and political theory.<sup>191</sup> Like Castro, these elements of civil society work to “delegitimize the logic of the system on which globalization is based and reconstruct utopia as the ethical and political touchstone of our action for change,”<sup>192</sup> but are not necessarily doctrinally Marxist-Leninist organizations.<sup>193</sup>

It is becoming increasingly clear that the ideas expressed by Castro have also come to be incorporated, at least in some respects, by a new generation of democratically elected leaders in Latin America. “The left is undergoing an extraordinary rebirth throughout the continent; Castro’s survival, Chávez’s rise, the prospect that the next president of Mexico will be Andrés Manuel López Obrador, the leftist mayor of Mexico City, and the stunning trajectory of Morales himself [in Bolivia] all testify to

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189. According to its website,

The World Social Forum is an open meeting place where social movements, networks, NGOs and other civil society organizations opposed to neo-liberalism and a world dominated by capital or by any form of imperialism come together to pursue their thinking, to debate ideas democratically, for formulate proposals, share their experiences freely and network for effective action.

World Social Forum, What the World Social Forum is, Aug. 22, 2002, *available at* [http://www.forumsocialmundial.org.br/main.php?id\\_menu=19&cd\\_language=2](http://www.forumsocialmundial.org.br/main.php?id_menu=19&cd_language=2) (last visited Mar. 2, 2006).

190. *See* World Social Forum, *Origins and Aims*, June 22, 2004, *available at* [http://www.forumsocialmundial.org.br/main.php?id\\_menu=2\\_1&cd\\_language=2](http://www.forumsocialmundial.org.br/main.php?id_menu=2_1&cd_language=2) (last visited Mar. 2, 2006).

191. *See* Susan George, *Another World is Possible*, Aug. 24, 2002, *available at* [http://www.forumsocialmundial.org.br/dinamic/eng\\_1bal3.php](http://www.forumsocialmundial.org.br/dinamic/eng_1bal3.php) (last visited Mar. 2, 2006) (Part of Opinions of the 2001 World Social Forum, Porto Alegre, Brazil) (“This combat is really between those who want inclusive globalization based on cooperation and solidarity and those who want the market to make all the decisions.”).

192. World Social Forum, *Methodology, Methodology of WSF 2004, Draft Proposal: Criteria for Programming the Work of the World Social Forum Process for 2004*, Oct. 10, 2003, *available at* [http://www.forumsocialmundial.org.br/main.php?id\\_menu=5\\_3&cd\\_language=2](http://www.forumsocialmundial.org.br/main.php?id_menu=5_3&cd_language=2) (last visited Mar. 1, 2006).

193. *See id.* (“We are diverse as movements, organizations, networks, coalitions and campaigns; diverse in our approaches, diagnoses and analyses; diverse in our proposals and strategies; and diverse in our experiences.”). According to its Charter of Principles, “The World Social Forum is a plural, diversified, non-confessional, non-governmental and non-party context that, in a decentralized fashion, interrelates organizations and movements engaged in concrete action at levels from the local to the international to build another world.” World Social Forum, *Charter of Principles*, June 8, 2002, *available at* [http://www.forumsocialmundial.org.br/main.php?id\\_menu=4&cd\\_language=2](http://www.forumsocialmundial.org.br/main.php?id_menu=4&cd_language=2) (last visited Mar. 1, 2006).

that fact . . . [b]ut it is also a product of the wider popular mood in Bolivia and, for that matter, in much of contemporary Latin America.”<sup>194</sup> These leaders have begun to internalize the vision expressed by Castro within the states they lead.<sup>195</sup> They are also increasingly using their positions to significantly stymie American economic policy in Latin America. Hugo Chavez, the Venezuelan President, used the media flamboyantly to convey a message of anti-Americanism, and anti-Washington Consensus type “neoliberalism” very similar to the type elaborated by Castro during the November 2005 summit meeting of the Organization of American States.<sup>196</sup> The United States, entering this OAS summit with high hopes of securing progress on cobbling together a Free Trade Area of the Americas, walked away with nothing.<sup>197</sup> “The

194. David Rieff, *Che's Second Coming?: The Indian Leader of a Coca-Growers' Movement Wants to Make Bolivia the Next Domino in Latin America's Revolt Against Globalization, Neoliberalism, and the Bush Administration*, THE N.Y. TIMES MAGAZINE, Nov. 20, 2005, 72, 74-75. The connection between newly elected leader Morales of Bolivia, and Chávez and Castro are likely to be deep. Morales had “denied any particular affinity with either regime, there is no doubt that these two ‘radical’ leaders are the ones to whom he has turned time and again for advice. Certainly, Hugo Chávez has made no secret of the sympathy he feels for Morales’ campaign, while the state run Cuban press has lavished a great deal of attention on Morales.” *Id.* at 76-77.

195. Many on the American political right have made this claim for years—a claim that Chavez has not necessarily rejected. *See, e.g.*, William S. Prillaman, *The Castro in Caracas: Venezuelan Strongman Hugo Chavez in Fidel's Image*, 55(6) NAT'L REV. (Apr. 7, 2003) (noting that, in at least one 2003 speech, Chavez “blamed the country’s woes on the United States, the international capitalist system, Venezuela’s ‘rotten oligarchy’ and ‘squalid elites,’ bankers, coup plotters in Miami, ‘savagely neoliberalism,’ bad weather, and the recent shortage of full moons”); Steve Bonta, *Castro's Stooge in Latin America: Though Ousted By a Recent Coup, Venezuela's Marxist President Hugo Chavez was Brought Back to Power by His Goon Squads—the Bolivian Circles—With a Little Help From Cuba*, 18 THE NEW AM. (May 20, 2002). More generally, some American commentators have noted:

Today, the models of democracy and free market economics so popular at the beginning of the decade are increasingly criticized across Latin America. Venezuela’s President Hugo Chavez owes his popularity to his image as a revolutionary populist. Chavez’s message, that the democratic system in its current state was hopelessly corrupt and unresponsive to the real concerns of the public, struck a chord across Latin America. In the eyes of many Latin Americans, democracy—or at least democratic politicians—have done little to address the poverty, social inequalities, and lack of development that plague their nations.

JOSEPH S. TULCHIN & RAPH H. ESBACH, *Latin America in the New International System: A Call for Strategic Thinking*, in LATIN AMERICA IN THE NEW INTERNATIONAL SYSTEM 1, 15 (2001).

196. TULCHIN & ESBACH, *supra* note 195, at 74 (“At the summit meeting of the Organization of American States held in Mar del Plata, Argentina, earlier this month, [Morales of Bolivia] appeared with Chávez at a huge anti-American and anti-globalization rally just before the meetings began. The two men spoke in front of a huge image of Che Guevara. This is symbolic politics, but it is more than that, too.”).

197. *No Trade Deal at the Americas Summit: Leaders of 34 Nations From Across the Americas Have Failed to Find a Compromise on a Regional Free Trade Zone At Their*

nations of the Mercosur took a stand against renewing FTAA talks to declare their opposition to free trade agreements along the NAFTA model that do not take into account the needs of developing countries while locking in competitive advantages for developed nations.”<sup>198</sup>

But Latin America is not the only place where this form of resistance to IMF type norm structures is being cultivated successfully. As important, perhaps, by two communities neither connected neither to doctrinal Marxist-Leninist institutions nor to the Cuban state apparatus—the Office of the United Nations Commissioner for Human Rights and the Roman Catholic Church. It is in this form, that the ideas expressed by Castro becomes of more concern to the United States and others advocating the dominant approach to globalization and sovereign debt within that broad context.

The work of the United Nations Human Rights Commission and its staff in Geneva is from time to time infused with the language of opposition to neoliberalism that suggests an affinity to the spirit of Castro’s vision. It has not always been successful in finding ways of implementing these understandings into international law.<sup>199</sup> The recent attempt to impose a system of mandatory obligations on transnational corporations serves as an example of the way in which regulatory frameworks within the U.N. now derive from the vision articulated by Castro. The focus of the efforts in this respect was not on contractual relationships, nor on efficiency of markets as regulatory mechanisms, but rather on worker rights and development. For these points of focus, the modern transnational corporation could be constructed as nothing more than a means to a socially acceptable end. Thus, for example, an influential report introduces the subject from the viewpoint of maximization of worker welfare maximization rather than from the more traditional perspective of contract holder rights.<sup>200</sup> Like states, it is

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*Summit in Argentina*, BBC News, Nov. 6, 2005, available at <http://news.bbc.co.uk/1/hi/world/americas/4410190.stm> (last visited Jan. 2, 2006).

198. Laura Carlsen, *Timely Demise for Free Trade Area of the Americas*, International Relations Center Americas Program Commentary, Nov. 23, 2005, available at <http://americas.irc-online.org/am/2954> (last visited Jan. 5, 2006). The International Relations Center is a policy studies institute based in Silver City New Mexico, the mission of which is to “make the U.S. a more responsible member of the global community by promoting progressive strategic dialogues that lead to new citizen-based agendas.” IRC, Mission Statement, available at <http://www.irc-online.org/about.php> (last visited Jan. 5, 2006).

199. For a discussion of what will likely be the latest failed attempt—the imposition of Norms on the Responsibilities of Transnational Corporations, see Backer, *supra* note 21.

200. “Today’s economic and financial systems are organized in such a way as to act as pumps that suck up the output of the labour of the toiling masses and transfer it, in the form of wealth and power, to a privileged minority.” United Nations, Economic and

important for international institutions to “consider how we are going to manage the development and proliferation of transnational corporations to the benefit of all.”<sup>201</sup> The proposed Norms *on the Responsibilities of Transnational Corporations and Other Business Enterprises With Regard to Human Rights*<sup>202</sup> elaborates a fundamental principle of corporate governance—that corporate activity must be directed to the encouragement of social progress and development, rather than shareholder wealth maximization.<sup>203</sup> In a related vein, the United Nations Human Rights Commission began exploring the possibility of creating an enforcement vehicle for the obligations of states and others to protect economic, social and cultural rights.<sup>204</sup>

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Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *The Realization of Economic, Social and Cultural Rights: The Question of Transnational Corporations*, E/CN.4/Sub.2/1998/6, June 10, 1998, at ¶ 1 (working document on the impact of the activities of transnational corporations on the realization of economic, social and cultural rights, prepared by Mr. El Hadji Guisé, pursuant to Sub-Commission resolution 1977/11).

201. *Id.* at ¶ 8.

202. United Nations, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Transnational Corporations, *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises With Regard to Human Rights*, E/CN.4/Sub.2/2003/L.8 (7 Aug. 2003) available at <http://www.unhchr.ch/huridocda/huridoca.nsf/Documents?OpenFrameset>. The Norms were subsequently revised, see *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises With Regard to Human Rights*, E/CN.4/Sub.2/2003/12/Rev.2 (dated 26 Aug. 2003, resolution adopted 13 Aug. 2003), available at <http://www.unhchr.ch/huridocda/huridoca.nsf/0/64155e7e8141b38cc1256d63002c55e8?OpenDocument>. All references to the Norms are to the revised Norms issued August 26, 2003 [hereafter the *Norms*]. For the official commentary on the *Norms*, see United Nations Economic and Social Council, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Economic, Social and Cultural Rights, *Commentary on the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises With Regard to Human Rights*, E/CN.4/Sub.2/2003/38/Rev.2 (26 Aug. 2003) [hereafter the *Norms Commentary*]. For a report on the finalization of the statement of norms, see United Nations Economic and Social Council, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Report of the Sessional Working Group on the Working Methods and Activities of Transnational Corporations on its fifth session, E/CN.4/Sub.2/2003/13, available at <http://www.unhchr.ch/huridocda/huridoca.nsf/Documents?OpenFrameset>.

203. E/CN.4/Sub.2/2002/WG.2/WP.1/Add.2 at ¶ 10 Comment (a). The Commentary was added in 2001 after the Sessional Working Group agreed to radically shorten the guidelines into a form of general principles. “Commentaries were added to make more specific reference to the relevant international standards.” See United Nations, Economic and Social Council, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, *Economic, Social and Cultural Rights, Report of the Sessional Working Group on the Working Methods and Activities of Transnational Corporations on its Third Session*, E/CN.4/Sub.2/2001/9 (Aug. 14, 2001), at 6-7.

204. For a useful discussion, see, e.g., Michael J. Dennis, David P. Stewart, *Justiciability of Economic, Social and Cultural Rights: Should There be an International Complaints Mechanism to Adjudicate the Rights to Food, Water, Housing, and Health?*,



Indeed, this idea of development as a public law function of economic institutions has added weight in the context of state action—and particularly the approach to be taken by the community of nations to the debt burdens of the less developed states. The United Nations Office of the Secretariat has recently endorsed a report suggesting the need for the wealthier states to begin wealth transfer programs for the benefit of less developed states.<sup>205</sup> This reflects years of so-called “North-South” dialog on development as a foundational principle of international cooperation,<sup>206</sup> superior to the imperatives of market economics, and limiting the utility of the private loan model to state debt.<sup>207</sup>

The Roman Catholic Church has long embraced a variant of this vision. American writers on Catholic social thought have articulated this variant focusing on the obligations of corporations and individuals in society. Much of the Vatican’s concerns were expressed in the context of the financial crises of Latin American and Asian states in the late

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98 AM. J. INT’L L. 462 (2004).

205. United Nations, Office of the Secretary General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, Report of the Secretary General of the United Nations for Decision by the Heads of State and Government in September 2005, available at <http://www.un.org/largerfreedom/>.

206. See generally, LOUIS HENKIN ET AL., HUMAN RIGHTS 68-72 (1999) (suggesting a connection between human rights as articulated after the Second World War and development as currently conceived); ANJA LINDROOS, THE RIGHT TO DEVELOPMENT (1999) (legal and political analysis underlying assertions of obligation to aid in development).

207. Thus, for example, the followings statement nicely states the proposition with respect to the importance of development as now appropriately understood under the 1986 United Nations Declaration on the Right to Development:

The Declaration on the Right to Development approaches development in broad and comprehensive terms, as a multidimensional and global process encompassing the economic, social, cultural, civil, and political spheres which are interdependent and complementary. It underlies a number of important principles on which development must be based including equality, non-discrimination, solidarity, self-reliance and social justice. Respect for these principles cannot be waived even in the short term. The progress sought is not just economic and financial efficiency and an improvement in the main macroeconomic indicators, but one that can be measured in terms of social justice, equality, well-being and respect for the fundamental dignity of all individuals, groups and peoples.”

United Nations Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Report to the Secretary General: *The Realization of Economic, Social and Cultural Rights: The Impact of the Activities and Working Methods of Transnational Corporations on the Full Enjoyment of all Human Rights, in Particular Economic, Social and Cultural Rights and the Right to Development, Bearing in Mind Existing International Guidelines, Rules and Standards Relating to the Subject Matter*, E/CN.4/Sub.2/1996/12 (July 2, 1996), at ¶ 110. Compare the language of Fidel Castro in this point: see Fidel Castro Ruz, *Cuba no negocia ni vende su Revolución*, in FIDEL CASTRO RUZ, DE SEATTLE AL 11 DE SEPTIEMBRE 69, 74 (2002).

1990s. Thus, for example, John Paul II suggested that “Christians will have to raise their voice on behalf of all the poor of the world, proposing the Jubilee as an appropriate time to give thought, among other things, to reducing substantially, if not canceling outright, the international debt which seriously threatens the future of many nations.”<sup>208</sup> John Paul II, like Castro, suggests a “critical analysis of the world economic order, in its positive and negative aspects, so as to correct the present order, and that they would propose a system and mechanisms capable of ensuring an integral and concerted development of individuals and peoples.”<sup>209</sup> Like Castro, John Paul II would have sought a recasting of the current global economic system away from markets and toward development and “social justice.”<sup>210</sup> These views are echoed by American prelates as well.<sup>211</sup> Like Castro, John Paul II was no friend of the consumerism that formed an integral part of the global economic system contributing, in some measure, to the need to borrow by states least able to afford the debt.<sup>212</sup> But The Catholic Church views the adoption of this vision as an

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208. John Paul II, *Ecclesia In America*, (Apostolic Exhortation: To the Bishops, Deacons, and Priests), available at <http://www.vatican.va/index.htm> (last visited Feb. 22, 2006) (“Once more I express the hope [that] through study and dialogue with representatives of the First World and with the leaders of the World Bank and the International Monetary Fund, will seek ways of resolving the problem of the foreign debt and produce guidelines that would prevent similar situations from recurring on the occasion of future loans.”).

209. *Id.*

210. “The cry of millions upon millions of poor and marginalized people in our Latin American and Caribbean societies due to this unjust economic system with its ‘face of suffering’ (S.D. 179), must be heard by the Church in the Americas, and must be eased with evangelical courage, and a desire to promote, for everyone’s benefit, this ‘new international socio-economic order’ based on solidarity and justice.” SYNODUS EPISCOPORUM BULLETIN of the Commission for information of the SPECIAL ASSEMBLY FOR AMERICA OF THE SYNOD OF BISHOPS 16 November-12 December 1997.

211. “Another reason we care is that the most vulnerable people in society were not responsible for contracting the debt, yet they pay the price for it. Some countries used borrowed funds to finance their militaries or projects benefiting the elites rather than for projects that would have benefited the poor. Poor people suffer the most by the diversion of scarce resources to debt repayments from human development.” United States Bishops, Jubilee, *That’s Why We Care About International Debt*, (June 2000), available at [http://www.vatican.va/phome\\_en.htm](http://www.vatican.va/phome_en.htm) (last visited Mar. 1, 2006). Cf., Synod of Bishops, Special Assembly for America, Instrumentum Laboris, *Encounter With the Living Jesus Christ: The Way to Conversion, Communion and Solidarity in America* (1997), available at [http://www.vatican.va/roman\\_curia/synod/documents/rc\\_synod\\_doc\\_01091997\\_usa-instrlabor\\_en.html](http://www.vatican.va/roman_curia/synod/documents/rc_synod_doc_01091997_usa-instrlabor_en.html) (last visited Feb. 27, 2006).

212. In the entire American continent, there are indications of the difference mentioned by Pope John Paul II in his Encyclical Letter *Redemptoris missio*: “the North has constructed (a development model) which is now spreading to the South, where a sense of religion as well as human values are in danger of being overwhelmed by a wave of consumerism.” Various answers point to the urgent need to find a solution to the problem of the foreign debt in the context of the celebration of the Great Jubilee of the Year 2000, as proposed by the Holy Father in his Apostolic Letter *Tertio millennio*

aspect of conversion to Christian, that is, Catholic, universalism.<sup>213</sup> And so, like Castro, within his system, the Roman Catholic Church must continue to witness its faith in its economic and social justice manifestations:

In the next two years, we plan to do a lot of work on the debt issue. We will continue to press the World Bank, IMF, and US government for more substantial relief for the countries that qualify under the new initiative. We will work with CRS' partners in Africa and Latin America who want to do their own work on debt. We will also support more exchanges of bishops and clergy from countries that are deeply indebted.<sup>214</sup>

Like Castro, elements of the Catholic hierarchy have suggested a greater lender responsibility for sovereign debt, especially to less developed states in which the ruling institutions might not be totally free of corruption or entirely legitimate.<sup>215</sup> The Catholic Church has

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*adveniente.*" Synod of Bishops, Special Assembly for America, *Instrumentum Laboris, Encounter With the Living Jesus Christ: The Way to Conversion, Communion and Solidarity in America* (1997), available at [http://www.vatican.va/roman\\_curia/synod/documents/rc\\_synod\\_doc\\_01091997\\_usa-instrlabor\\_en.html](http://www.vatican.va/roman_curia/synod/documents/rc_synod_doc_01091997_usa-instrlabor_en.html) (last visited Mar. 2, 2006).

213. Thus, the issue of sovereign debt has been conceived as forming a part of a total conversion:

Certain economic systems and policies exist which control the commercial market and affect the financial matter of loans and interests, generating in some cases an enormous debt for nations and impeding the development of peoples. There are also certain types of economic aid dependent on the ideologies of small political groups, various people in power and nations which are not always governed by the criteria of equity and solidarity, but rather by selfish interests. Such conditions call for conversion, especially as they relate to the economic inequality between the northern and southern areas of the continent. The situation calls out to faith and to conscience—both human and Christian—for a response.

Synod of Bishops, Special Assembly for America, *Encounter With the Living Jesus Christ: The Way to Conversion, Community and Solidarity in America: Lineamenta*, available at [http://www.vatican.va/roman\\_curia/synod/documents/rc\\_synod\\_doc\\_01081996\\_usa-lineam\\_en.html](http://www.vatican.va/roman_curia/synod/documents/rc_synod_doc_01081996_usa-lineam_en.html), at ¶ 25 (last visited Feb. 28, 2006).

214. United States Bishops, Jubilee, *That's Why We Care About International Debt*, (June 2000), available at [http://www.vatican.va/phome\\_en.htm](http://www.vatican.va/phome_en.htm) (last visited Feb. 27, 2006).

215. Thus, for example, the Pontifical Council for Justice and Peace Trade, Development and the Fight Against Poverty suggested that:

Among the causes which have helped to create massive external debt are not only high interest rates, caused by speculative financial policies, but also the irresponsibility of people in government who, in incurring debt, have given too little thought to the real possibility of repaying it. This has been aggravated by the fact that huge sums obtained through international loans sometimes go to enrich individuals instead of being used to pay for the changes needed for the country's development. At the same time, it would be unjust to impose the burden resulting from these irresponsible decisions upon those who did not

indicated a willingness to embrace a form of Castro's subsidy argument about neo liberal global trade and its effects on developing states as borrowers.<sup>216</sup> A Roman Catholic Church official has stated, for example, that

Another reason we care is that the most vulnerable people in society were not responsible for contracting the debt, yet they pay the price for it. Some countries used borrowed funds to finance their militaries or projects benefiting the elites rather than for projects that would have benefited the poor. Poor people suffer the most by the diversion of scarce resources to debt repayments from human development.<sup>217</sup>

At the same time, the Catholic hierarchy has been very careful to curb political expression of its moral stances. The Catholic Church firmly restrained the "liberation theology" popular with Latin American religious during the 1970s and 1980s.<sup>218</sup> The current Pontiff, Benedict XVI, as Cardinal Ratzinger, was crucial in that effort. He made a distinction between Marxist elements of liberation theology—which he considered an error within the traditions of the Roman Catholic faith, though an alluring one<sup>219</sup>—and the traditional and doctrinally appropriate

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make them.

Bishop Diarmud Martin, Pontifical Council for Justice and Peace Trade, Development and the Fight against Poverty, Report (Nov. 18, 1999), available at [http://www.vatican.va/phome\\_en.htm](http://www.vatican.va/phome_en.htm) (last visited Mar. 1, 2006).

216. See *id.* But, unfortunately, "the international trade system today frequently discriminates against the products of the young industries of the developing countries and discourages the producers of raw materials," as noted by Pope John Paul II in the 1980s (Encyclical Letter *Sollicitudo rei socialis*, N.43). . . . The trends in primary commodity trade, access to world markets and diversification of production have a decisive impact on developing countries, affecting the balance of payments, foreign debt, domestic budget and the success of savings and investment policies." *Id.*

217. Cardinal Etchegaray, Speech: *Pontifical Council for Justice and Peace*, (June 9-10, 2000), available at [http://www.vatican.va/phome\\_en.htm](http://www.vatican.va/phome_en.htm) (last visited Feb. 22, 2006) (this speech was given during the Pontifical Council for Justice and Peace, with the support of the Adenauer Foundation, organized a seminar, in Rome on June 9 and 10, which gathered the leaders of international financial institutions (World Bank, International Monetary Fund, Inter-American Bank for Development), the presidency of the Latin American Bishops' Conference and representatives of the US and German Bishops' Conferences).

218. See GUSTAVO GUTIERREZ, *A THEOLOGY OF LIBERATION* (1973).

219. Joseph Cardinal Ratzinger, *Liberation Theology*, Preliminary Notes, (1984), available at <http://www.christendom-awake.org/pages/ratzinger/liberationtheol.htm> (last visited Mar. 3, 2006). Specifically, as Cardinal Ratzinger, Pope Boniface explained:

In trying to arrive at an overall evaluation it must be said that, if one accepts the fundamental assumptions which underlie liberation theology, it cannot be denied that the whole edifice has an almost irresistible logic. By adopting the position of biblical criticism and of a hermeneutics that grows through experience, on the one hand, and of the Marxist analysis of history, on the other, liberation theologians have succeeded in creating a total picture of the Christian reality, and this total view seems to respond fully both to the claims

concern for the poor.<sup>220</sup> And here, perhaps, can be found the best answer to the question posed: at least within Roman Catholic institutional doctrinal thought Castro's vision in opposition to neo-liberalism exist outside of Castro's personal Marxist-Leninist ideological framework. Benedict XVI has suggested for years that it can.<sup>221</sup> As Ratzinger stated:

An analysis of the phenomenon of liberation theology reveals that it constitutes a fundamental threat to the faith of the Church . . . [i]n denouncing error and pointing to dangers in liberation theology, we must always be ready to ask what truth is latent in the error and how it can be given its rightful place, how it can be released from error's monopoly.<sup>222</sup>

Castro's influence is not necessarily limited to direct or indirect effect on the development of the normative approach to global economics. Whatever the direct or indirect connection between the development of Castro's understanding of emerging global capital markets, including markets in sovereign debt, and the very similar understanding advanced by institutions of the United Nations and official elements of the Roman Catholic Church, that view remains vibrant and influential. To an increasing extent, the vision also fuels an ever more vocal aspect of domestic so-called civil society opinion. A number of influential Western based, non-governmental organizations, have started speaking in terms similar to those used by Castro in attempts to influence both international discourse and domestic political discourse on development in general and sovereign debt in particular.<sup>223</sup> In this sense,

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of science and to the moral challenges of our time, urging people to make Christianity an instrument of concrete world transformation; it seems to have united Christianity, in this way, with all the "progressive forces" of our era.

*Id.*

220. See Edward A. Lynch, *The Retreat of Liberation Theology*, HOMILETIC & PASTORAL REVIEW 12-21 (Feb. 1994) available at [http://www.catholicculture.org/docs/doc\\_view.cfm?recnum=643](http://www.catholicculture.org/docs/doc_view.cfm?recnum=643). Professor Lynch notes that "[o]pponents of liberation theology have incorporated their struggle against this particular philosophy into a more general attack on secularism, societal disunity and a culture confined to addressing economic conflict. The approach has been quite successful." *Id.*

221. For the official pronouncement, see Congregation for the Doctrine of the Faith, *Instruction on Certain Aspects of the "Theology of Liberation,"* available at [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19840806\\_theology-liberation\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19840806_theology-liberation_en.html) (last visited Feb. 21, 2006). Part VII offers a critique of Christian Marxism. In particular, there was a concern for the inevitable link between Marxist ideology and totalitarianism. See *id.* at VII.7.

222. Ratzinger, *supra* note 219.

223. Sungjoon Cho described the embrace by American and other Western NGOs, Greenpeace, Oxfam, and others, of the rhetoric of development and the position of the developing states in the context of WTO negotiations. See Sungjoon Cho, *A Bridge Too Far: The Fall of the Fifth WTO Ministerial Conference in Cancun and the Future of Trade Constitution*, 7 J. INT'L ECON. L. 219, 235-237 (2004).

Castro's effect may strike right at the heart of internal American (and other Western) politics. This would be a great irony, indeed.

#### IV. Conclusion

This article has examined two very different visions of state debt and the obligations that such debt may give rise to among both creditors and debtors. It has explored the implications of each for the shape and character of international regulation, and of the state as an actor in the context of the emerging global system of economic and political regulation. It now appears clear that the issue of sovereign debt, its character and effect, is really part of a much larger issue touching on the nature and character of the nation-states in general and debtor states in particular, and of the global system that maintains the market for such transactions.

When Frantz Fanon looked out on the world in the late 1950s, he experienced hierarchy as a direct and very physical force. From this he was able to articulate a psychology of the brute and her victim that has been embraced by the developing world.<sup>224</sup> The contours of that violently divided world were easy to discern: the world was divided among a small number of states exercising direct authority or control over large parts of the world for their own benefit.<sup>225</sup> As Fidel Castro looks out on the world at the beginning of the 21st century, he sees a world much changed in form and little changed in fact. The psychology of the relationships between nations has not changed, only its manifestations are different. Embracing the language of Fanon, Castro suggests that in place of the relationship between colonizer/exploiter and subordinate peoples characterized by direct application of brute force are the financiers and their client states, whose relationship is bounded by the market and the rule of law. The nation, as a nexus of *private* relations, is substituted for the state, which served as the *public*

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224. Among his most often referenced works in this regard are FRANTZ FANON, *BLACK SKIN, WHITE MASKS* (Charles Lam Markmann, trans., 1991( 1967)), FRANTZ FANON, *THE WRETCHED OF THE EARTH* (Constance Farrington, trans., 1968), FRANTZ FANON, *TOWARD THE AFRICAN REVOLUTION, POLITICAL ESSAYS* (Haakon Chevalier, trans., 1967).

225. Franz Fanon suggested:

Colonial domination, because it is total and tends to over-simplify, very soon manages to disrupt in spectacular fashion the cultural life of a conquered people. This cultural obliteration is made possible by the negation of national reality, by new legal relations introduced by the acquiring power, by the banishment of the natives and their customs to outlying districts by colonial society, by expropriation, and by the systematic enslaving of men and women.

Frantz Fanon, *Reciprocal Bases of National Culture and the Fight for Freedom*, Speech to Congress of Black African Writers (1959), reproduced in *THE WRETCHED OF THE EARTH*.

manifestation of the sovereign will of a political community. The state is reconceived as a sort of super body corporate, the manifestation in institutional form of an infinite number of contractual relations among its stakeholders. The theory of the firm<sup>226</sup> is thus generalized as the public law of states and as a fundamental requisite for state governance policy.<sup>227</sup> The international system thus continues to serve as a site for subordination—a routinized and institutionalized hierarchy of states whose purpose is to maintain the advantages of the states at the top of the hierarchy.

The view from the United States was different in the 1950s. The need to create and maintain a system of common values and interconnectivity drove a new American internationalism that prized those American values that helped this country emerge triumphant from the Second World War.

In the twentieth century sovereign lending routinely involved violations of Westphalian autonomy. International financial institutions, such as the World Bank and the International Monetary Fund, have institutionalized and routinized practices that are inconsistent with Westphalian autonomy. These institutions do not simply offer funds on the condition that they are repaid; they extend resources only if borrowers are willing to accept changes in their domestic policies and often institutional structures as well. . . . Conditionality attached to loans from international financial institutions was initially supported by the United States but resisted at Bretton Woods by the representatives of European and Latin American states, who correctly assumed that they would be the targets of policies that were heavily influenced by American decision makers. Ultimately the Americans succeeded in having conditionality written into the Articles of Agreement of the fund because the United States was the only source of significant capital in the 1950s.<sup>228</sup>

Little has changed from the perspective of the International

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226. The theory of the firm attempts an explanation of the phenomena of the tendency to amalgamate capital and operate through juridical entities in market systems. For an early and classic description of the issue and an approach to explanation, see Ronald H. Coase, *The Nature of the Firm*, 4 *ECONOMICA* 388 (1937). See generally, OLIVER E. WILLIAMSON, *THE ECONOMIC INSTITUTIONS OF CAPITALISM* 82-105 (1985); Michael L. Wachter and Edward B. Rock, *Islands of Conscious Power: Law, Norms, and the Self-Governing Corporation*, 149 *U. PA. L. REV.* 1619, 1624-40 (2001).

227. For a modern application in the reconstruction of the economic policies of the former Communist states and recently liberated states in the Middle East and Central Asia, see Troy A. Paredes, *A Systems Approach to Corporate Governance Reform: Why Importing U.S. Corporate Law Isn't the Answer*, 45 *WM. & MARY L. REV.* 1055 (2004).

228. STEPHEN D. KRASNER, *SOVEREIGNTY: ORGANIZED HYPOCRISY* 84-85 (1999).

Monetary Fund<sup>229</sup> at the beginning of the 21<sup>st</sup> century. “IMF-supported programs are intended to help a country adopt policies that will help it regain market confidence and thereby have access to private capital, which are essential for growth and jobs.”<sup>230</sup> These policies are meant to foster independence and full participation in global systems of economic activity on an equal basis.<sup>231</sup> “Corrective policies will restore investor confidence, so that capital will once again flow into the country. This should not be seen as “favoring” bankers and elites.”<sup>232</sup> The international system thus seeks to serve the citizens of every state equally by providing them, through their political communities, with the means necessary to compete in the global marketplace on equal terms. This sort of competition requires adjustment of state practices for the benefit of the many. The international system thus provides the greatest hope against subordination. For this purpose, the availability of money, and social, political and economic discipline, provide the foundation for the internationalization of the good life for the planet’s individuals.

Yet for all their differences, presently it seems that for both the IMF and Castro, the “question is not whether to embrace one or the other but how best to find the appropriate mixture.”<sup>233</sup> The IMF system is grounded on Western notions of contract and private property. The state, like a corporation, is increasingly viewed as the nexus of complex amalgamations of contracts among stakeholders in a political community

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229. “The IMF is an international organization of 184 member countries. It was established to promote international monetary cooperation, exchange stability, and orderly exchange arrangements; to foster economic growth and high levels of employment; and to provide temporary financial assistance to countries to help ease balance of payments adjustment.” International Monetary Fund, *About the IMF*, available at <http://www.imf.org/external/about.htm> (last visited Mar. 1, 2006). “The International Monetary Fund was established by international treaty in 1945 to help promote the health of the world economy.” International Monetary Fund, *What is the International Monetary Fund*, available at <http://www.imf.org/external/pubs/ft/exrp/what.htm> (last visited Mar. 1, 2006). The IMF “aims to prevent crises in the [international monetary] system by encouraging countries to adopt sound economic policies; it is also—as its name suggests—a fund that can be tapped by members needing temporary financing to address balance of payments problems.” *Id.*

230. International Monetary Fund, *Common Criticisms of the IMF: Some Responses*, Mar. 25, 2005, available at <http://www.imf.org/external/np/exr/ccrit/eng/crans.htm#be>. “The IMF and the rest of the official community (the World Bank, individual governments) face a choice between helping a country in a crisis situation or cutting off support for the country.” *Id.*

231. “It’s true that the bulk of the IMF’s financial resources are provided by the G-7, but decisions on policy and country matters are made by consensus among IMF shareholders.” *Id.*

232. *Id.* “If a county adopts corrective policies that will help put it on a sustainable path in the long-term, the IMF supports a country because cutting off financing would worsen the situation, and the poor would be particularly hard hit.” *Id.*

233. Alan Wolfe, *The Modern Corporation: Private Agent or Public Actor?*, 50 WASH. & LEE L. REV. 1673, 1696 (1993).



whose individual and collective contract arrangements overlap the state and other private amalgamations of economic, social, and political power. In a world in which entities are proxies for systems of self-referencing contracts, the debt of sovereigns, like the debt of other amalgamations of things, is just another form of contract, and should be subject to the same sets of uniform rules for enforcement. The object is not necessarily the preservation of a particular quantum of state power or dignity; the public character of the community is irrelevant. The critical consideration is the contract itself; the contract must be honored absent overreaching or fraud by lenders. The object of all action is not to preserve a particular character of the state, but to strengthen the systems viewed as the basis for maximizing the wealth, in the aggregate, of individuals, either at a macro level—when measured collectively and on a global basis or on a micro level—when measured within states or sub-state communities. States, like corporations, NGOs and other entities serve best when they help produce or maintain the greatest efficiency of markets for transactions of all kinds—economic, political, social and cultural. Sovereign debt, to the extent it represents inefficiencies or ‘wrong’ social, political or economic choices, must be minimized.

Castro’s vision is far more sensitive to the consequences of a private law lender-debtor analogy where public political power is involved. Democracy is impossible in an economic system in which the democratic order is subject to control by creditors and debtor states are made to subsidize developed state wealth. Sovereign debt analogized to corporate debt has a peculiar effect on the public or political function of states as representatives of political communities. Debt conditions can act as addendums to political constitutions. In effect, covenants and conditions of state debt can modify the constitutional structure of nation-states in effect if not in form. Economic policy power is effectively diverted from the political community—the sovereign as the people of the nation, to the creditors—lenders asserting a power to direct a core function of sovereignty. Where the debtor is a corporation and the ultimate sovereign the shareholders, subject to regulation by a political community, this result is not problematic. However, where the debtor is a state, and the ultimate sovereigns the citizens of that state, the result appears to reduce the sovereign power of nations. A consequence: a conflation of governance models for states and corporations fundamental to the West is rejected by Castro as fundamentally incompatible with his theory of the state as a public political body.

Castro’s approach to sovereign debt, and the international financial system of which it forms an integral part, may appear to be largely irrelevant in a globe that has increasingly embraced the Washington Consensus and its essentially private law, market and contract basis for

economic relations, including relations between states and their creditors. But Castro is more influential, at least at the margins, than he might otherwise appear to be. The author has attempted to show the way Castro's vision has become an important part of the normative base of important segments of the international institutional community—and principally of the United Nations Human Rights Commission community in Geneva. The author has also suggested the many ways in which Castro presents a secular version of an important religious perspective of sovereign debt in the context of the international economic system in which it is perpetuated.

The author by no means suggests that these views are correct, or that the West and its financial institutions ought to change their behavior necessarily on the basis of them. It is merely suggested that these views are influential, and growing in importance among large segments of the world community. Castro's ideas may not be original. Others might have better developed the ideas that Castro has articulated. Castro himself, unlike those sharing his views in the Vatican or in the United Nations, might firmly believe that the ideas are inextricable from his own Marxist-Leninist realities. For all that, his ideas ought to be taken seriously by American policy makers. It is the author's belief that the West will see a growing recourse to the rhetoric and ideas, the alternative vision of global economic posited by Castro, in the coming decades. The West had better be prepared to deal with these challenges if it intends to defend and protect the system it has sought to put in place over the last half a century.

