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Finance Capital in Uganda: A Collision of Perspectives of Marxism and Capitalism

John W. Van Doren*

I. Introduction

We are prisoners of our ideas, and the boundaries of our prisons are defined by our individual world-views. Our world-views determine the questions that we ask, the answers that we find, and the solutions that we develop. Law students, professors and legal scholars are not exempt. Those who teach the law may often shape the world-views of their students. They determine the agenda which includes which questions are "legitimate" to ask and which questions will be avoided.

There are various schools of thought within legal academia. The world-view espoused by each actor determines the questions that will be addressed. This article will examine the issue of foreign investment (finance capital) in Uganda as perceived by some Ugandan law students. The article will continue with a discussion of how that investment is perceived by Marxists, advocates of Critical Legal Studies, and the Yale School of Policy Science.

Section I will provide background information about the beliefs and philosophical underpinnings of each of the schools of thought. Section II will describe some Ugandan law students' perceptions of Uganda's social and political history relevant to foreign investment. Section III will evaluate the law students' theses concerning finance capital, and their de facto mentor, Professor Nabudere. Section IV will apply various Western jurisprudential theories to the finance capital issues raised by the law students' theses.

A. Legal Philosophies

1. Legal Positivism.—Advocates of Legal Positivism control the legal curriculum in the United States,¹ and the testing processes

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* Professor, Florida State University College of Law; A.B. Harvard University, 1956; LL.B. Yale University, 1959.

¹. See Van Doren, Implications of Jurisprudence to Law Teaching and Student Learning, 12 Stetson L. Rev. 613 (1983) (legal positivism is the prevailing model).
that lead to admission to the bar. Legal Positivists define law as a set of rules that determine the results in cases or disputes. They appear to believe that the law is divorced from politics and morality. Because advocates of Positivism control most law school curricula, law students are steeped in the tradition that law and politics are separate. Positivists preach that moral, policy or political questions generally need not be introduced into a legal dispute. Positivism is linked to the doctrine of *stare decisis*, which involves the idea that prior legal decisions determine the outcome of similar future cases.

It may be consistent with Positivism to address the morality of a particular law once it is determined. The morality or legitimacy of the entire legal system is seldom discussed; that area is left to “sociologists” or “political scientists.” Issues that are the province of sociologists or political scientists are not the “law.” The failure of legal scholars to address the morality of the legal system results in an effective ideological mechanism to control the limits of inquiry, argument and thought. It is not clear that those who act out their roles in this drama, particularly professors and judges, are conscious of their ideological control.

The major taboo, according to Positivist theory, is an attempt to justify legal decisions by means other than the “rules” or perhaps by some principles that are, allegedly, generally applicable. Justifications based upon politics, morality, divine sources, or personal preconceptions are generally outlawed. The personal element obviously carries a bias (by definition) and is the antithesis of reasoned articulation of a rule or principle likened to the application of rules to a game.

One of the theoretical underpinnings of the Western liberal order, embraced by Positivism, is the notion that the law itself is necessary to avoid the bias that results when one group or faction arbitrarily imposes its will on another group. According to this theory,

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3. *Id.* at 988-89 (law and morality are separate; law is composed of rules with a core of certainty that guides officials and does not require a fresh judgment from case to case).
4. This belief follows from the notion that law and morality or law and politics are separate. *See id.*
6. The presumed nature of truth is a related issue. There is an underlying presumption that truth and knowledge are objective and identifiable. This concept is not specifically addressed by even sophisticated versions of Positivism. *See id.*
there is no way to arbitrate morals. Personal bias is a matter of taste. There can be no state-imposed moral content to, or agreement on what constitutes the good life. The rules must be neutral, objective, impersonal, and applied equally to all. Part of the legitimation of the Western liberal order through Positivism is based upon this premise.

But this tight ship posited by the Western liberal order, and by Positivism, has developed leaks and cracks, and is sinking. It is sinking only in the sense that the theory does not conform to the observed phenomena. To make the theory appear to fit the phenomena, law students are, for three years, indoctrinated with the Positivist catechism. Legal education becomes an elaborate obfuscation of the true processes at work. Law students are socialized to believe the myth, encouraged by the substantial emotional and economic rewards that go to the good players.

In the process, all the sophisticated Positivist qualifications fall by the wayside. Positivists, for example, acknowledge that particular laws may be unjust, but this is rarely discussed during a student’s legal education. Conflicting rules or principles are present in most appellate cases. The fact that these conflicting rules or principles cannot be resolved, except through bogus resolutions, is concealed from law students. The only way to resolve conflicting rules is through some extra-legal moral, policy, or political judgment. If the case is decided under the doctrine of stare decisis, the decision to accept that doctrine is political. The brainwashing has been so intense and effective that the participants (including professors) do not recognize the premises under which they are proceeding.

Accordingly, the cumulative effect of the legal system is seldom discussed in the ivy halls of law school. A contrast is presented when one considers other legal schools of thought which perceive Western law as an instrument of the dominant capitalist international order, imposed to secure the proponents’ own hegemony and power. Advocates of these theories believe that the law is used to keep certain disadvantaged groups in a state of permanent subjection. They believe that such a legal system, imposed in the name of progress and development, is neither neutral, objective, nor impersonal. Instead, they believe that the law is highly political and reflects the ideological baggage of capitalism. These critics of the mainstream Western legal philosophy maintain that the entire Western legal structure

11. H. Hart, supra note 9 at 253 (Kelsen, for example believed in non-cognitivism in ethics — that ethical disputes could not be resolved by reason).
12. See infra note 142.
13. See, e.g., Mirfield, supra note 2, at 990-91.
14. See infra notes 38-123 and accompanying text.
15. Id.
supports a capitalist system that promotes and protects the international and national distribution of wealth and power.\textsuperscript{16}

As suggested above, Positivists do not even permit such questions on their agenda because the questions are not "legal" questions. This refusal to consider the ideological questions demonstrates the bias and legitimating baggage carried by current Western legal education with its supporting framework of casebooks, texts and jurisprudence. Positivist-oriented casebooks have little or nothing to say about this shortcoming and omission of Western legal education.\textsuperscript{17} The only thing that Positivists have to say about the morality of a particular legal system is that a system's validity is tested by the criteria that the system itself sets up for validity.\textsuperscript{18} So we have the irony that the political system in the U.S.S.R., of which many would disapprove, is supported by an official Positivist creed.\textsuperscript{19} In any Positivist system, judges are supposed to keep their morality and politics to themselves. It is common knowledge that they do not. Positivists have little to say about such instances except to vehemently deny that Positivism has anything to do with the resulting political systems.\textsuperscript{20}

There are two points in particular that Positivist teachers suppress. First, legal systems have political biases and therefore carry ideological baggage, and second, that the application of legal systems is, and must be much more political and moral than is commonly recognized.\textsuperscript{21} By refusing to acknowledge the evidence, and by ruling these questions irrelevant and immaterial, or by consigning them to "other disciplines,"\textsuperscript{22} the status quo is reinforced.\textsuperscript{23}

2. American Legal Realism.—In the 1920s and 1930s the American Legal Realists opened the Pandora's box that the Positivists had kept so tightly closed. In doing so, the Realists struck a blow at the heart of Positivism from which it has not recovered. Realists maintained that whether the question involved the Constitution, a statute, or common law, attorneys can construct respectable legal arguments that reach opposite results.\textsuperscript{24} Realists argued, there-

\textsuperscript{16} Id.
\textsuperscript{17} See infra, notes 151-57 and accompanying text.
\textsuperscript{18} H. Hart, supra note 9, at 107.
\textsuperscript{19} See M. Glendon, M. Gordon & C. Osakwe, Comparative Legal Traditions in A Nutshell 264-65 (1982).
\textsuperscript{20} See Mirfield, supra note 2, at 990-92.
\textsuperscript{22} Id.
\textsuperscript{24} See Van Doren, Impasse: Is There a Beyond?, 13 W. St. U. L. Rev. 493, 499-500 (1986) (for every rule there may be an opposite one).
fore, that the opinions of judges — their official rationalizations — may not reflect the real reasons for their decisions. If two competing arguments can be made, from different lines of cases or from ambiguous terms such as equal protection or due process, then no preexisting rule or principle could objectively yield the correct solution.

3. Critical Legal Studies.—Advocates of Critical Legal Studies (CLS) have adopted the Realists' premises. Founded in 1977, this persistent group has challenged the legal orthodoxy of Positivism and of any other approach that purports to find the resolution of a controversy in some objective manner. To a CLS advocate, law is politics. No separate body of rules or principles governs the resolution of cases. Furthermore, there are no uncontested objective policies that govern the resolution of cases. For every policy, there is another policy waiting in the wings to negate it.

4. Marxist Legal Philosophy.—Marxists view the law as a reflection of the interests of the dominant class or classes. They see the law and "democratic processes" as a facade for domination by the elite.

5. Yale School of Policy Science.—Proponents of the Yale School of Policy Science view of law introduce policy, and therefore politics, into law. These policy scientists scoff at the pretensions of Positivism. They agree with proponents of CLS that law is politics, and that national and international law should be directed toward political or policy-based objectives. Policy Scientists seek a consensus based upon "expectations" that could provide an objective referent for decision making.

B. The Vehicle for Debate: Foreign Investment in Developing Countries

This Article will first describe the perception of Ugandan law students concerning the effect of foreign investment in Uganda. These students approach the analysis from a Marxist perspective. They are influenced by the analysis offered by D. Wadada Nabudere who helped form the Ugandan National Liberation Front (UNLF) and was a former minister in the Ugandan Government.

25. Id. at 495, 500-01.
27. Van Doren, supra note 26, at 22-23.
28. Id. For example, the mother's right to control her body versus the fetus' right to life.
30. Id. at 66.
31. See infra notes 158-86 and accompanying text.
32. See D. Nabudere, Imperialism and Revolution in Uganda 343 and biography on back cover (1980).
Marxist Ugandan perspective will be evaluated in the context of the Yale Policy Science approach of Professors McDougal and Reisman, and the Critical Legal Studies approach developed by Professor Unger in his recent trilogy, *Politics.*

C. The Focus of Dispute: The Nature of a Legal System

1. *Is the law an instrument for the domination and perpetuation of unnecessary class differences, or is it a neutral process that is applied in a non-biased manner?*—CLS advocates believe that Western legalism supports unnecessary domination. They argue that the Positivist attempt to separate law and politics is a means to hide the essential operation of the legal process. CLS advocates point to the role the judiciary plays in making us think that what is particular to time, place, and society is, in fact, natural and objective.

2. *Are the rules under which we allegedly operate neutral in their derivation as distinguished from their operation?*—The Western legal academy does not discuss this issue. Questions concerning the legitimacy of derivation of law are not legal questions; they are something else. They either rule the question of “origin of law” inadmissible, or say that democratic processes produce the results, and citizens have agreed to abide by these processes. Marxists, on the other hand, deny that law in the West is neutrally derived. They do ask whether law is autonomous or not autonomous and therefore controlled by elite interest groups. If law is autonomous it is not created by dominant elites and is not subject to change when the interests of the elite are affected.

3. *Is the law superstructural?*—A legal structure that does not exist autonomously but instead facilitates hierarchical domination in a particular order is superstructural. It is, in effect, produced, created or interpreted to support and maintain the system of domination.

4. *Are there deep structure laws that determine historical change?*—The notion of deep structure laws which determine change is deeply imbedded in Western social theory. If there is a particular set of deep structure laws, the course of institutions and law is largely predetermined, and little can be done to change the course

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33. R. UNGER, POLITICALS, A WORK IN CONSTRUCTIVE SOCIAL THEORY (1987); see also Van Doren, supra note 10.


35. See R. Bork, The Tempting of America 146-47 (1990), one of the few authors who discusses this issue.

36. For an early statement of implied consent see Plato, Crito, from the Dialogues of Plato (B. Jowett trans.), in W. REISMAN & A. SCHREIBER, supra note 23 at 83.

37. See infra § III B 1.
which follows by necessity.

II. The Student Perspectives

The Ugandan law students' views were obtained from their dissertations on file at the University of Makerere, Kampala, Uganda. Many of these theses centered cogently on the Marxist interpretations of foreign investment, termed "finance capital" in Marxist philosophy. Most, if not all of the theses reflected the revolutionary Marxist position. The students' perception of Ugandan political history serves as a backdrop for their Marxist interpretations.

A. Student Perspectives of Colonial History — Land Policy

Pre-colonial Uganda was ruled by kings in the regions of Bunyoro, Buganda and Ankole. Tribal rivalries erupted when some tribes took cattle from other tribes, and engaged in the slave trade. Societal arrangements in pre-colonial Uganda were complex. There were both stratified societies, those with a hierarchical class structure, and unstratified societies.

In unstratified societies, although there were "proprietors," all individuals worked. Work produced use values, that is, items produced were used, not sold. When a surplus was produced, it was not extensive. Any surplus that was produced was bartered with other groups or given to the needy. A Western commentator noted that in stratified societies, however, those at the top of the hierarchy obtained surplus in the form of a tribute, for which they did not labor.

In unstratified societies, there was no centralized power called "the state"; there was communal appropriation of property and there was no alienation. Families held clan lands in common ownership.

38. The term "finance capital" will be used throughout the remainder of this Article to describe foreign investment in developing nations derived from surplus value.

39. The revolutionary Marxist position calls for violent revolution and disassociation from the world hegemony of capitalism and its local agents of neocolonialism. See infra notes 187-93 and accompanying text.


41. Id.

42. See W. Sewagudde, The Legal and Socio-Economic Aspects of Land Dispute Resolution in Uganda, 1, 2 (1989) (unpublished thesis available through the Faculty of Law, University of Makerere, Kampala, Uganda and through the Dickinson Journal of International Law).

43. See H. West, The Mailo System in Buganda, 4-5 (1964) (stating that the overlord had a right to beer and food from peasants as well as the right to their obligatory labor).

44. W. Sewagudde, supra note 42, at 2.

45. Id.; see also Doornbos, Land Tenure and Political Conflict in Ankole, Uganda, 12 J. Development Stud., 54, 58 (1975) (access to land before 1900 was not problematic — could open up a new plot with consent of the local people and chief which was not especially difficult).
In some places land was nominally owned by a chief or tribal leader, but all were entitled to use it. Land was, in effect, held in trust and could not be bought or sold. The chief, or tribal leader, had the power to settle any land disputes.

In 1894, Britain, with sabres rattling, knocked on Uganda’s door and put an end to the status quo. The 1900 Buganda Agreement between Britain and the Kabaka (king) of Buganda provided that half of the land in Buganda would be vested in the chiefs, in fee simple, as remuneration for their cooperation with Britain’s effort to colonize Buganda. Similar agreements were made in other areas of Uganda. The Agreement, by vesting fee simple title in the chiefs and other royalty, had the intended effect - it excluded the customary land rights that had previously existed. The agreements also reserved to Britain various “Crown lands,” defined as uncultivated land, waste lands and forest. Britain thus acquired political power. In several regions, the Ugandans lost their customary land rights such as easements and access, the right to obtain firewood, farm the land, hunt, and obtain water from streams.

During British rule, the indigenous elite with their fee simple titles unencumbered by any customary rights, exacted tribute from their lands. These local elites became the petit bourgeois, while the peasants either became sharecroppers, subject to demands for customary labor owed the chief, or rented the land that they occupied from the chiefs. Land became available for purchase and increased numbers of people were able to obtain a few acres. The Ugandan students’ perspective is a Marxist perspective: “[t]he fruits of [the peasants’] sweat were enjoyed by the bourgeoisie who benefitted from the taxes, and the colonial government which took the products to their home government.”

47. Id.
48. Id. at 3.
49. Id.
50. Id. at 5-7.
51. Id. at 4-5.
52. Id. at 5.
53. Id. at 5-7.
54. Id. at 8. Traditional rights apparently lost included grazing rights, water rights, the rights to gather wild fruits and firewood, and building poles; see also H. West, supra note 43, at 79-98. Some customary rights remained, such as those governing inheritance.
55. W. Sewagudde, supra note 42, at 6-8.
56. Id. at 9.
57. Id. at 10. W. Sewagudde’s conclusion is supported by an account more biased toward the colonial government, see H. West, supra note 43, at 19-21 (cotton sharecropping developed, and other tribute was exacted in the form of rent demanded by owners, leading to the Butaka movement of protest).
58. W. Sewagudde, supra note 42, at 12.
The Marxist position, echoed by the students, views Ugandan history as a series of events in which capitalists attained hegemony and necessarily changed the land tenure situation that had existed. First, many feudal customary rights such as grazing, water and hunting rights, as well as the right to obtain firewood, were eliminated. The customary land tenure, with land held in trust for members of the tribe in a manner which generally precluded its sale, had to be, and was, altered. Colonialists introduced the laws of fee ownership, land registration, land finance, and sale to the highest bidder. The British, beginning in 1900, imposed or facilitated a transition from feudalism to capitalism. There was a concomitant change from the feudal practice of services for land to money payment or rent. The British also imposed taxes, such as the hut tax, as part of the scheme. Imposition of taxes created the need for a cash-based economy. If money must be obtained to pay a hut tax to the colonialists, cash crops must be grown and members of the indigenous population must seek employment in the colonialist-run industries and plantations.

Uganda gained independence in 1962 and a constitution was written. An indigenous bourgeoisie came forward to make or influence policies to enhance their economic position, at the expense of a population seventy percent of whom were illiterate. On February 14, 1965, Milton Obote seized power in a coup. In 1966 Obote abrogated the 1962 Independence Constitution; he ruled instead through a defense council. In 1967 he promulgated a new "Republican" Constitution that curtailed the power of the traditional chiefs in Buganda. The Obote government took over the Kabaka's (King's) palace at Lubiri.

The Obote government's Public Lands Act of 1969 declared a fee simple title in the former Mailo owners, who had become local

available through the Faculty of Law, University of Makerere, Kampala, Uganda and through the Dickinson Journal of International Law. In the dedication, the author states: "[i]f this piece of work promotes the progressive struggle against neocolonialist and imperialist exploitation, then it will have achieved its ultimate objective." Id. at Dedication immediately preceding page 1.

60. R. Ojambo, supra note 40, at VIII.
61. Id. at 26 (citing F. Jjuuko, The Social Economic Basis of Natural Law Revivalism 169-70 (no date available). The cited work was an LL.M. thesis. Its author is now Dean of the Law Faculty at the University of Makerere.
63. See id. at 1.
64. R. Ojambo, supra note 40, at 31 (citing J. Jorgensen, Uganda, A Modern History 177 (1981).
66. Mailo ownership may be used to refer to quasi-freehold or other land tenure that combines aspects of customary land tenure with Western imported practices, such as land registration. See H. West, supra note 43, at vi-vii. More technically, Mailo tenure may be
elites or petit bourgeois. The Act provided for land registration of 500 acres or more, with ministerial consent. Under the Public Lands Act, foreigners could also acquire land.

A coup, allegedly staged with the connivance of Western capitalists, brought Idi Amin to power in 1971. In 1975 the Amin government passed the Land Reform Decree. This decree, in essence, vested title to all land in the government and converted all freehold titles, including Mailo ownership, to leaseholds. The Decree confirmed the customary rights to occupy public land, but only at sufferance.

B. Student Perspectives of Business and Commerce

1. Recent History.—In 1952 the British colonialists in Uganda created an internal development organization, the Uganda Development Corporation (UDC). The UDC was started with a grant of capital from Britain and from local sources. The UDC had entered into contracts with foreign firms that specialized in areas such as cement, and limestone extraction. Under the auspices of the UDC, monopolies such as the Japanese textile manufacturers entered Uganda. In 1970, during the first Obote regime, the Nakivubo Proclamations nationalized as many as 80 firms. Although nationalized, the firms were still subjected to the de facto power of foreign capital.

In 1971 Idi Amin, backed by Israel, Britain, and the United States, seized power; in 1972 he expelled the Asian owners of Ugandan enterprises. Over five thousand six hundred firms, factories, referred to as a form of holding land in quasi-freehold, an almost completely alien system abruptly introduced after 1900. Mailo is a local rendition of the English word "mile." The term came to be used to apply to any holding of land rights.

68. W. Sewagudde, supra note 42, at 14.
69. Id. at 14.
70. See infra note 78 and accompanying text (his note 107).
71. Decree 3/75.
73. Id. at 16. Apparently the governmental authority could grant year-to-year leases, despite the "at sufferance" wording. Id. at 17. One student argues that provisions for compensation or resettlement were either nugatory or inadequate in practice. Id. at 17-19.
75. Id. at 28.
76. Id. at 30.
77. Id. at 30-32. Most firms negotiated agreements with the Obote regime that gave the regime (government) 49% ownership and permitted the firms to retain 51% controlling ownership, thus defeating nationalization. Id. at 30.
78. Id. at 32-33 (Israel and Britain); see also R. Ojambo, supra note 40, at 43-47 (United States and Britain).
and agricultural properties were affected by the expulsion. Some firms were nationalized and came under UDC control; others went to Amin’s supporters.

Amin’s regime relied on taxation of coffee as a substantial source of government revenue. In 1972-73 the farmer received twenty-nine percent of the value of his coffee and the state received forty percent. In 1973-74 the farmer received twenty-seven percent of the value, while the state received fifty-eight percent. During Amin’s regime state enterprises faltered. Amin annexed an area of Tanzania, and in 1979 Tanzania engaged in a war with Uganda that resulted in Amin’s removal. The student accounts posit that Amin’s actions were controlled by or coincident with the interests of finance capital.

Obote returned to power during the period 1980-85. In 1986 the National Resistance Movement (NRM) assumed power. Under the current president, Mr. Museveni, Uganda has a mixed economy. The problem perceived by the students in this regime is finance capital.

2. **Student Theory.**—There is obvious irony when a government that is externally-backed by capitalists nationalizes its industry in a socialist fashion. The students suggest that the socialization of firms was done in collaboration with agents of finance capital, so that the action was not really socialist. They argue that nationalization of industry does not necessarily make a government socialist. A government that serves the interests of finance capital is not a socialist government in the true sense. The present situation could be salvaged through a redemptive political movement by an alliance of workers and peasants, a movement that would be responsive to those
The student theses reflected the Marxist-Leninist theory of imperialism. According to that theory, capitalism exploits the workers. Before capitalism came to Uganda, products had use value either consumed by the producers or bartered. Capitalists obtained surplus value from peasants and workers, which surplus thus became part of finance capital. Capitalists introduced Western capitalist law into colonies to facilitate capitalist activity. Law became superstructural, in other words only reflective of and an instrument of effective capitalist power.

The students then apply Marxist analysis to the situation in Uganda. The International Bank of Reconstruction and Development and the World Bank are viewed as agents for the United States and others, which leads to the neo-imperialist, neo-colonial policy of hegemony through finance capital. Marxist analysis is also applied to land policies. The Public Lands Act of 1969, that allowed registration of 500 or more acres, created the capitalist farmer backed by finance capital which permitted acquisition of large tracts. After Amin's 1975 land reform decree, more lands were purchased by Mafuta Mingi, the monied class, and peasants were dispossessed.

One student also alleges that the Ugandan elite use chai, bribes, to influence local officials to approve the elites' land purchases, to the detriment of the fragile rights of long-time customary tenants.

90. J. Ayela, supra note 59, at 79-80.
91. W. Sewagudde, supra note 42, at viii, ix.
92. See E. Walusimbi, The Role of The Multinational Corporation in Neo-colonies — With Specific Reference to Uganda, vii-ix (1986) (unpublished thesis available through Faculty of Law, University of Makerere, Kampala, Uganda and through the Dickinson Journal of International Law) (surplus value becomes finance capital).
93. See e.g., J. Munulo, A Critique of Imported Technology and Development in Uganda in Conjunction With Law and Development 80 (1987) (unpublished thesis available through Faculty of Law, University of Makerere, Kampala, Uganda and through the Dickinson Journal of International Law) (laws relating to importation of technology have aided imperialist bourgeoisie).
94. Id. at 83 (imported law is superstructural).
95. W. Sewagudde, supra note 42, at 18.
96. Id. at 23-25; see also S. Banenya, Law in the Settlement of Land Disputes 75-77 (1989) (basic Marxist thesis that land law is the instrument of dominant classes and their agents, determined by the economic base for the interest of the few elite) (unpublished thesis available through the Faculty of Law, University of Makerere, Kampala, Uganda and through the Dickinson Journal of International Law).
98. W. Sewagudde, supra note 42, at 29.
99. Id. at 31.
100. Id. at 43-44; see also Ghai, Nature and Purposes of Legal Research, NAIROBI L. MONTHLY. Sept.- Oct. 1989, at 29, 31 (corruption in African governments exists to a large extent which enables the petit bourgeoisie to obtain economic and political power).
C. Professor Nabudere's Analysis

The Ugandan law students accept and echo the analysis offered by D. Wadada Nabudere, who was a minister in the Ugandan government and was active in forming the Uganda National Liberation Front (UNLF).\(^{101}\) Nabudere has been in exile since 1980.

Nabudere views finance capital as an evil. He argues that so long as Uganda is subject to the control of finance capital, the people at the bottom, and some of the petit bourgeois, will lose out.\(^{102}\) All governments, from the colonial British through independence and into the present, were beholden to finance capital.\(^{103}\) These regimes created and encouraged development of an indigenous petit bourgeois, who then benefitted from and aspired to the position of the external bourgeois, the real controllers of finance capital.\(^{104}\) Even Amin's nationalization of many Ugandan industries and his expulsion of Asians are basically consistent with the aims of finance capitalists.\(^{105}\)

The law students' analyses follow Nabudere's lead. Capitalist governments are faced with periodic internal crises due to the inherent contradiction between capital and labor. They seek new markets and seek to lower the cost of raw materials and labor. This leads to colonization. Surplus value is extracted both at home and in the colonies.\(^{106}\) Finance capital plays the same role externally as it does internally: control over workers, colonies, independence governments, and the petit bourgeois indigenous elements who benefit (in smaller part) from it.

Professor Nabudere states that statistics show that finance capitalists take most of the capital surplus out of Uganda.\(^{107}\) The position of workers\(^{108}\) and peasants worsens as the major benefits go to foreign interests. Nabudere's argument has several components. First, those who control finance capital tend to introduce capital-intensive\(^{109}\) technology, such as automated assembly, that squeezes out the local workers. Unless they introduce such machinery, foreign capital-holders cannot be competitive. Finance capitalists also import

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\(^{101}\) See D. Nabudere, supra note 32, at 343 and back cover.

\(^{102}\) See id. at 37-72, 179-85, 250, 320-30.

\(^{103}\) See id. at 317-46.

\(^{104}\) See, e.g., id. at 250 (petty bourgeoisie group developed internally and exploits and dominates but arises out of imperatives of finance capitalism); see also Jamal, supra note 80, at 616 (after expulsion of the Asians, the African entrepreneurs take-over of enterprises, the farmer may find that he has exchanged one set of rich people for another).

\(^{105}\) D. Nabudere, supra note 32, at 295-97.

\(^{106}\) Surplus value is the difference between the value obtained for a commodity and the cost (primarily composed of necessary labor costs) which goes into banks as finance capital.

\(^{107}\) See id. at 65-66 (surplus capital exported out of Uganda).

\(^{108}\) Id. at 229-36 (detailing worsening position of labor).

\(^{109}\) Id. at 24 (capitalists introduce machines to exploit labor).
a substantial amount of duty-free raw material into Uganda for use in their operations there; presumably because it is cheaper to import than to use locally available raw materials.\textsuperscript{110} Therefore, any benefit that would have been derived from local extraction or production of raw materials is reduced or lost. Workers are squeezed so that labor costs will be kept down and capitalists will prosper and will continue to enter Uganda.\textsuperscript{111} The colonialist government used the law to separate union activities from politics, and otherwise dampened union activity. While some “good times” have occurred in Uganda, they were based upon exports to Kenya and Tanzania, now barred or reduced due to local production.\textsuperscript{112}

The industrial proletariat in Uganda is small because industry is not highly developed.\textsuperscript{113} This group is to serve as the vanguard. Ninety percent of the Ugandan citizens are peasants. They do not have the consciousness or awareness that the industrial proletariat does, or could, have.\textsuperscript{114} Seventy percent of the population are poor peasants who work for others, such as the middle level bourgeois farmers or the rich farmers, and their hold on land is precarious.\textsuperscript{115} The drive of finance capital has led to the peasants’ basic insecurity in their tenure on the land.\textsuperscript{116} These peasants have the potential to become a revolutionary force.\textsuperscript{117}

Nabudere believes that finance capital, like Satan, is the chief enemy of the people. He claims, echoed by the law students, that no previous Ugandan regime has been truly socialist. Only when the interests of the workers and peasants are considered is there true socialism.\textsuperscript{118}

Nabudere envisions a conversion of the present situation into true socialism. The conversion begins with a dictatorship of the proletariat as a prelude to a socialism in which finance capital is eliminated. Private property continues to exist, as do private enterprises, but these are free from the control of outside finance capital.\textsuperscript{119} Nabudere distinguishes between monopolies and other capitalist enterprises that may be permitted to continue operation. Industrial banking and holding enterprises are monopolies that must be brought under state control. State-controlled enterprises will run on

\textsuperscript{110} Id. at 225-26.
\textsuperscript{111} Id. at 231 (wages kept low to keep local capitalists in profit).
\textsuperscript{112} Id. at 226 (Kenya and Tanzania put up barriers to stop inflow from Uganda).
\textsuperscript{113} Id. at 323-24.
\textsuperscript{114} Id. at 324.
\textsuperscript{115} Id.
\textsuperscript{116} Id.
\textsuperscript{117} Id. (poor peasants are the main contingent of revolutionary force, in alliance with proletariat).
\textsuperscript{118} Id. at 329.
\textsuperscript{119} Id. The present “public sector” is subject to the power of external finance capital. Nabudere sees the UDC as a holding company for finance capital. Id.
socialist principles. Private small- and medium-sized enterprises that work closely with state-controlled enterprises will be permitted. The national bourgeoisie, divorced from its connection with finance capital, the capitalist farmer, the rich peasant, or the small trader will still have a place in the national economy of the new democratic republic. But just as large-scale private monopoly-ownership of industry will not be permitted, neither will the large-scale private ownership of land be allowed.\textsuperscript{120}

The national bourgeois, once their link to finance capital is severed, will be able to produce within state-set production quotas.\textsuperscript{121} The capitalist farmer and rich peasants will also play a part.\textsuperscript{122} Although the poor peasantry and rural proletariat, working in cooperatives and upon state-owned land, will be the motive force behind restoration of productive power, the rural bourgeoisie, nevertheless, will play a vital role in restoring productive output.\textsuperscript{123} Thus, once finance capital is out of the way, it is smooth sailing.

The student-Nabudere theme is that law is determined by an economic base of capitalist power according to historical imperatives. The only way to break out is to eliminate the bait of finance capital. Power must be seized from the local agents of capitalist power, who represent neo-colonialism. Working for change from within the system would, apparently, be ineffective.

III. Evaluation of the Student-Nabudere Thesis

\textit{A. Finance Capital}

The Nabudere cure, echoed by the students, strains credulity. One need not believe that finance capital is an unmitigated good to question how the infrastructure can be brought to a level of acceptability that will release productive capabilities. Finance capital, in Marxist terms, is the major source of foreign capital investment funds. Without such capital it is doubtful that there can be maintenance of the basic infrastructure: roads, telephones, railways, trucks, spare parts, basic transportation and communications facilities, to say nothing of computerization. The Nabudere scheme is a pipe dream, pure and simple.

One could assume that finance capital has evil aspects and that colonization was motivated by self-interest. One could believe that Western rationalizations for colonialism fall somewhere between fatuous and pathetic. One could also find that whatever development of

\textsuperscript{120} \textit{Id.}
\textsuperscript{121} \textit{Id. at 330.}
\textsuperscript{122} \textit{Id. at 329.}
\textsuperscript{123} \textit{Id. at 330.}
the infrastructure was implemented by colonialists was done to facilitate the extraction of resources and to open markets for manufactured goods. One can believe that neo-colonial governments did serve, in some sense, as agents for external-capital interests, and that this does constitute a new colonialism. It does not follow, however, that economic development will occur without access to a major source of existing capital, referred to as finance capital, unless one believes in economic spontaneous combustion.

Nabudere exaggerates to make his case. His idea that Israel was a major backer of Amin, an idea he relies upon to show that Amin was a henchman of the West, is farfetched. One can believe that various factions, including Amin, received financial support from the West and can even believe that Amin's police or military were trained in the United States, without subscribing to Nabudere's thesis.

Nabudere wants to demonstrate that finance capital is the major evil, the "primary contradiction" and to show that local rivalries and squabbling among the petit bourgeois is a less important, secondary contradiction. He downplays local rivalries between the Buganda, who live around Kampala, and the Northern tribes, formerly represented by Obote. Nabudere makes little reference to the "contradiction" between Asians and Africans in Uganda. The Asians became part of an internal "contradiction" when, in the twentieth century, they acquired control of "middleman" power and concomitant wealth. Nabudere's argument is flawed because he subordinates the importance of local "contradictions." Elimination of foreign capital will not necessarily resolve local contradictions, nor will it necessarily lead to a workers' and peasants' state in some unstratified society.

The traditional, as well as the present Ugandan framework is societal stratification, from past kings to the present "Wabenzy" or the petit bourgeois. Nothing offered by Nabudere or the students would lead us to believe that the rigid framework of this cycle can be broken. Nabudere admits that there were stratified societies in precolonial Uganda, societies in which surplus product went to those at the top. Ugandan feudalism certainly manifested that phenomenon.

124. See id. at 249-51, 280-89 (rejecting theories of others that the backing of finance capital was minimal and that Amin's rule reflected primarily internal contradictions).
125. See Standstill Revolution, supra note 87, at 12-13 (discussing these hostilities).
126. See generally Jamal, supra note 80.
127. Those who drive Mercedes automobiles.
128. See D. NABUDERE, supra note 32, at 15-20 (class rule emerges in parts of precolonial Uganda on the basis of feudalism, plunder, enslavement, production by privileged chiefs, specialized artisans, etc.).
Nonetheless, political activity needs an ideal to support it as well as a plan.\textsuperscript{129} Persons, whether in or out of political power, need some legitimating theory. Advocates of CLS remind us that unless you think something is possible, you will not try it. The Frankfurt School\textsuperscript{130} teaches that we must look at societies, particularly capitalist ones, to see how power and hegemony are maintained. Those theorists remind us that a panoply of legitimation occurs, through law, education and through popular culture.\textsuperscript{131} The need to examine the mechanisms through which power is maintained is applicable not only to capitalist societies, but to all societies. This thought invites us to examine Nabudere's Marxist ideology and observe that it may be used as a tool to pass from one sub-set of domination to another. Domination may be achieved through any ideology that legitimates practices which do not square with its expressed ideals. This is no less true of domination achieved in Uganda, whether it is achieved through capitalism, through socialism, or through something in between.

The only way that “the people” are going to get even a modicum of power is through some sort of meaningful voting power. In developing countries voting power is a necessary, but is not a sufficient empowerment to enable the people to achieve any redistribution of wealth and power. In Africa, models of the Westminster parliamentary system are honored in the breach; one-person rule has emerged. The conditions that gave rise to Western democracy were presumably based on an expanding industrial product that was sufficient to allow almost everyone to share some of it. Due to the scarcity of resources and the fragility of the infrastructure, there is no such luxury in many developing countries.

Developing countries can follow Kenya's lead and develop with "finance capital," including the capital realized through tourism, or may follow Burma's route, by excluding finance capital, and remain in a pre-industrial state. To express the pessimistic notion, as this article has done, that unstratified societies may not develop without finance capital is to fall into the trap of accepting, without question, some naturalistic determinist theory.\textsuperscript{132} Unger suggests that a cur-

\textsuperscript{129} Many would not have thought possible the current political transitions occurring in Eastern Europe.
\textsuperscript{130} The Frankfurt School is composed of scholars who analyze societies to determine how domination is achieved. Why is it, they ask, that Marxist-style revolutions have \textit{not} occurred in the West. They study the societal forces of education, religion, popular culture, and other attributes of a society that serve to pacify those who might otherwise revolt. See, Van Doren, \textit{Critical Legal Studies and South Africa}, 106 S. Afr. L.J. 648, 650-53 (1989).
\textsuperscript{131} \textit{Id.}
\textsuperscript{132} See R. Unger, \textit{False Necessity} 2-8 passim (1987). Unger mentions the trap of accepting \textit{sub silentio} a naturalistic determinist theory. Unger's views oppose those who maintain that currently available forms of social organization reflect "deeply rooted constraints or a logic of social development." \textit{Id.} at 2-3; see also Van Doren, \textit{supra} note 10, at 80-89.
rent legitimation technique is justification of the status quo as a result of claimed inherent limitations in human nature, or of the nature of things. According to these naturalistic theories laws of historical development, embodied in a "framework," determine social stratification. This framework, Unger tells us, must be resisted. His point that perhaps greater equality can be achieved is well taken.

But, a basic flaw in Nabudere's Marxist theory is the uncritical acceptance of surplus value. The surplus value argument is normative and problematic, although no more nor less so than the utility-based market approach. Both market and Marxist approaches rest on normative judgements.

Advocates of surplus value theory ignore the ideas that:

1. protection, whether provided by colonialists or by any government, is worth something;
2. capital accumulated in any manner is (de facto) worth something; without capital there is little hope for the development of industrial capability;
3. management is a skill entitled to some compensation, payment of which should not be morally condemned;
4. machines, know how, patents, and technology are valuable components of a product.

While Marxists appear to over-stress the value of social product due to labor, capitalists often tend to undervalue labor's contribution. Thus, capitalists may also overlook the importance of incentive and security to workers. Capitalists correspondingly tend to over-stress the need for market incentives to capitalists in order to justify social inequality.

However the problems of surplus value are resolved, the fact remains that some groups do not do well in the "free" market system. The North-South problem is illustrative of what occurs in developing countries due to the gap between rich and poor. Market claims are widely accepted because they are a convenient way to legitimate the inequalities. That legitimation is severely questioned by the Marxist analysis, and appropriately so. Uganda may be willing to consign itself to the Burmese situation, that of a non-industrial society that subsists on what it produces. A nation that chooses to embark on a program to enhance industrial and agricultural production using machines and technology will be hampered if it is denied

133. See M. DOBB, ON ECONOMIC THEORY AND SOCIALISM 117 (1986) (both surplus value theory and competing utility theory that consumers' welfare is maximized and factor groups get what they deserve in capitalist market make a "qualitative statement.")
134. The utility-based market approach indicates that whatever the market provides is what commodities, including labor, are worth.
135. Id.
access to finance capital. To claim that a society can go the indus-
trial route without access to this major source of capital today is a
noble dream, but a dream nonetheless.

Another legitimation technique is couched in the argument that
capitalism, as it exists in the rich North Atlantic countries, must be
taken by developing countries as a whole or not at all. Under this
view, social planners cannot transplant a branch here and there, but
must take the whole capitalist tree. Unger criticizes this view, and
correctly so.136 There are many routes to industrialization with vary-
ing degrees of private and state ownership and control. But economic
development will be severely retarded in twenty-first century Uganda
without finance capital. The decision to accept finance capital does,
however, create a dilemma because access to finance capital pro-
duces pressure to conform to the international capitalist legal order.

B. Differing Perspectives on Finance Capital

The perspectives of those who provide finance capital stand in
stark contrast to the perspectives of the Ugandan recipients of fi-
nance capital. These differing perspectives reveal deeper resentment
and pain associated with the arrogance and coercion of past colonial-
ism, present neo-colonialism and broader problems such as the
North-South problem. The current debt crisis between “developing
countries” and private commercial banks also reflects both the differ-
ing perspectives and the deeper resentment felt by recipient coun-
tries. Other factors that must figure into the perspectives-resentment
equation are the basic approach of the Western liberal legal system,
the jurisprudence of national and international arenas, and the ideo-
logical terms used to express those conflicts.

The contrast created by differing perspectives of the interna-
tional arena is inherent in the implicit or explicit ideology of West-
ern liberal capitalism as well as in Marxist and CLS philosophies.137
The Ugandan situation can be used to exemplify the differing ap-
proaches to international law displayed by the liberal-oriented Yale
School of Policy Science, and the leftist models or movements in the
West represented by Professor Unger and CLS.138 These models

136. See Van Doren, supra note 10, at 84-85 (capitalism has many possible combina-
tions of institutions and mixtures of public and private control: in short, its institutions are
malleable and it is divisible; no one set of relations must be transplanted in toto or not at all).
137. The current lessening of military and ideological tensions between the West and the
U.S.S.R. may have no effect on Third World Marxist ideological perceptions of finance
capital.
138. Paradigms of both Marxism and Critical Legal Studies will be treated here as left-
ist, although there are substantial contrasts between the Ugandan students’ Marxism and the
position espoused by proponents of CLS and Professor Unger. Unger, for example, vehemently
rejects orthodox Marxism. See Van Doren, supra note 10, at 81-86. Unger rejects Marxist
claims that law, like constraints, determine historical evolution. See also R. Unger, Social
have, however, been derived from Western society's experiences and
do not provide a close fit to the Ugandan situation. Although they
are useful analytic tools, the solutions they propose seem more appli-
cable to Western liberal societies than to Third World countries. 139

It is important, nonetheless, to consider the perspectives of those
who are recipients in world processes, 140 particularly when the recipients perceive themselves as victims. Scholars, addressing the problems faced by minorities in the United States, are giving increased attention to the victims' perspective. 141

1. Law And Society: Autonomy or Relative Autonomy?—One of the beauties of the student-Nabudere approach is the purity of its economic determinism. Their approach contains no notion that the indigenous legal system is relatively autonomous. They simply perceive evil capitalists, aided by an indigenous petit bourgeois government acting as their agents, raping and looting the developing country.

Those who are uninitiated to Marxist thought will remain confused. Distilled to its essence, orthodox Marxist theory can be described in the following way. A ruling elite controls the means of production. They make law to suit their own interests and to keep themselves in control and on top while they keep the workers, and presumably the peasants, on the bottom. It follows, then, that the law is an instrument that serves to carve out an arena of power, exercised by an elite, to dominate workers and peasants. The elite may or may not pay lip service to the idea that they are, in fact, bound by the law. To the extent that the elite are bound by law, they cannot change it to suit their whims nor to make their exercise of control more convenient. Law, in that situation, is autonomous to the extent that it does not reflect the dominant interests of those who control the current productive system.

Marxism and Western Liberalism differ markedly in their views

139. See Ghai, supra note 100, at 31. As Professor Ghai has intimated, it may be inappropriate to apply those models derived from the experiences of European societies to an African country such as Uganda.


about the extent to which the law, in fact, serves the interests of ruling groups, and the extent to which the law is neutral and treats all persons equally regardless of their position in the social hierarchy. In Western mythology this concept is known as the "Rule of Law." Under the "Rule of Law," rules and principles are to be neutral, impersonal, and autonomous. Such norms are to be applied in a way that does not favor one class over another.142

One strain of orthodox Marxism opposes the "Rule of Law" view that law is neutral and autonomous. It argues that the law is in fact determined and class biased. Marx believed that material conditions determine law and that law is part of an ideology that supports a system which favors those who own the means of production. To Marx, the key is who gets what out of production relations. The level and particular circumstances of the relations or production determines what the law is and makes the law a dependent variable. The law is then used to obfuscate unfair distribution and class distinctions.

A "relative autonomist" is one who does not totally subscribe to either economic deterministic Marxist theory or the view that law is independent of economic forces and therefore neutral and free of class bias. A relative autonomist believes that the law may or may not vary with the perceived needs of the controlling capitalist elite. This compromise is attacked from the right as a non-theory or as meaningless, while the left may argue that it is pernicious, disabling and does not explain the way societal evolution occurs.143 Unger discusses and criticizes the concept of relative autonomy.144

Unger argues that relative autonomy is problematic because so many qualifications have to be introduced to make Marxism fit, that the rule becomes weighted down with exceptions. While Unger argues that the present working of the liberal order results in privilege, he also contends that since there is no script, unnecessary hierarchy can be eliminated. Unger (and CLS) believes that small factions in industry and finance use property and contract constructs to superar-

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142. See R. Bork, supra note 35, at 78, 146-85; see also Ghai, supra note 100; see also R. Unger, Liberal Political Theory 16, in A. Hutchinson, Critical Legal Studies (1989) (impersonal rules to govern).
143. See R. Unger, Social Theory: Its Situation and Task 113-117, 176 (1987); but see Oloka-onyango, Law, "Grassroots Democracy" and the National Resistance Movement in Uganda, 17 Int'l J. Soc. L. 465 (1989). This excellent study concludes that conduct may be unlawful in Uganda whether specifically proscribed by law or not. Id. at 476-77. The writer appears to reject autonomy arguments as applied to Uganda, and concludes that it is power that determines law, consistent with orthodox Marxism. Id. at 478 (without changes in social relations of production, "even prima facie positive legal innovations remain inhibited in their operation.") Id. at 478. When I questioned the writer, he affirmed that law also influences society but said he left that out of the article. For criticism of the theory of relative autonomy from a conservative perspective, see Krygier, Critical Legal Studies and Social Theory — A Response to Alan Hunt, 7 Oxford J. Legal Stud. 26, 30 (1987).
144. R. Unger, supra note 143, at 113-117, 176.
He also maintains that social change occurs in an unexpected and unintentional fashion. At any given stage in history anything could have happened so that only in retrospect do events seem to move along a perceived trajectory. Unger maintains that because there is no script, individual efforts toward social transformation can be effective.\textsuperscript{146}

2. \textit{Unger's Attack on Functionalism}.—Unger is bent on debunking the idea that ironclad historically-determined laws determine social progress or movement. He also attacks the notion that there are deep structure laws that determine what law will be and what institutional and societal arrangements will evolve. This leads to his attack on the functionalist theory that a particular set of institutions necessarily accompanies capitalist or market economies. Unger's position puts him on a collision course with the Ugandan students, whose theories are undergirded by a notion of economic determinism. If the Marxists are correct, then the mode of production must change or be changed to produce meaningful societal change. Marxism's theoretical straitjacket is inimical to Unger's belief in the possibility of continued internal revisability.\textsuperscript{147}

Unger might agree that the institutional and legal changes associated with capitalism were more or less convenient, but he would contend that they were not functionally necessary to the development of capitalism. He argues that "capitalism" has indeterminate meaning. Several combinations of laws and institutions, and several mixtures of public and private institutions could produce "capitalism." To Unger, Marxist functionalism is a mirage, as is the Marxist notion of determinism. Ironically, conservatives also argue that the particular institutional arrangements associated with capitalism in the rich West are necessary to capitalism.

Unger's criticism of Marxist or conservative oriented functionalism may be correct. He claims that any of several structures would have served capitalism just as well as the structure that did evolve. Because capitalism is an indeterminate concept, varying degrees of state involvement could develop. Unger and advocates of CLS deny that any particular legal arrangements are functionally necessary. We should note, however, that even if particular laws or arrangements are not absolutely necessary, certain changes are helpful to capitalist development. The elimination of feudal restrictions on land (the functional equivalent of the enclosure acts), the movement from a service-based exchange to a money-based exchange, the hut tax,\textsuperscript{145-147}

\textsuperscript{145} \textit{Id.} at 91.
\textsuperscript{146} \textit{See} Van Doren, \textit{supra} note 10, at 77, 81-86.
\textsuperscript{147} \textit{Id.} at 82, 86.
the preferences and advantages given to colonial land policy and industry, if not necessary, were at least helpful. If contract and property notions are not helpful, why are they introduced, and why are they the reigning model in international trade and investment?

One can doubt that the law necessarily influences behavior in society and still see the law as an important factor in society. Insurance may not be actually used very often, and parties who have business dealings with each other over a long period of time often do not resort to legal contract remedies. Thus, the capitalist legal structure may be used relatively infrequently, but it provides an important, if indeterminate, backdrop against loss which provides stability and promotes investment. Indeterminacy can be and is tolerated, but there is a basic ideological underpinning that serves as a safety net for the capitalist investor, owner, controller, or entrepreneur.

Framework, to use Unger's term for the forces that produce a status quo, can have a powerful tendency to reproduce and maintain its essential features. Thus, in the context of the flow of capital into and the force of colonialism on Uganda, the Marxist explanation, Unger notwithstanding, has a lot of explanatory power. Did it have to happen that way? Perhaps nothing is preordained. An organization such as the United Nations might have prevented it, had there been one in 1895. Perhaps balance-of-power forces could have placed a check on new colonialization, as it appears to do today, but in 1895 no such forces were observable.

It is possible that several legal constructs of property and contract could be used in a market economy. Market and capitalism may be indeterminate concepts. Perhaps capitalism and market embody contradiction, and are therefore indeterminate. Perhaps such forces conflict with true democracy. But certain legal forms, such as property and the concept of transferability certainly aid capitalist development. It has been said that despite all the cultural diversity and differing legal systems in the world, there is little difference in the way that business disputes are actually resolved. If true, it may mean that there is a hegemonic capitalist ideology.

3. Law And Society: Not Relatively Autonomous — The Ugandan Student Perspective.—Much of the Ugandan student analysis is borne out by conditions in the neo-colonial Ugandan state. Ownership and control of industry is concentrated in the hands of foreign capitalists and of the ruling neo-colonial elite. Ninety percent

149. Lecture by Professor Arthur Rosette, Florida State University, College of Law, March 18, 1990.
of Ugandans are peasants and seventy percent are illiterate. Bribery, *chai*, does occur. No doubt many neo-colonial nations have developed a legal structure conducive to capitalism, a legal structure that Marxists refer to as “superstructural.”

It would be difficult, in Uganda and other neo-colonial nations, to maintain that those legal structures give rise to even a relatively stable formal equality. In present day Uganda, it has been forbidden to print criticism of the state of the economy. The head of state has indicated that some activity, not legally proscribed, may be punished as illegal. This supports the claim that the law is not autonomous, but is superstructural. Even the Western casebook approaches suggest that the impelling force behind capitalism is the drive to profit from low wages, repatriate as much capital as possible, and let indigenous industry survive as best it can.\(^1\)

The idea that there should be an autonomous law that controls the exercise of power could seem relatively unimportant to those who believe that the legal system under which they live is designed to protect profit and control by the dominant class. There are detentions, lack of a tradition to guide or encourage a human-rights oriented, constitution-based approach, no strong traditions of individual rights, and the threat of sanctions for conduct that is not specifically proscribed. All this easily leads to a perception that the law is designed to protect the entrenched elite who are supported, actively or otherwise, by foreign capitalists.

Perhaps those who are in power at any given time are more concerned with protecting their own power than in protecting any particular mode of production. Thus, the law may be an instrument of those in power, used to protect their power rather than to protect the system through which they happened to achieve power. The interests of those who benefit from a particular mode of production are, however, often coincident with those who have political power.

### IV. Finance Capital: Law and Ideology

#### A. Western Casebook Treatment

The debate over the influx of finance capital implicates the ideology of Western jurisprudence. International law casebooks, or international trade and investment casebooks, used in the United States generally do not address the way in which recipients perceive finance capital. At most, the casebooks give the situation a breezy mention that, if taken seriously, is devastating to the “how to do it” exposition that follows.\(^2\) As CLS advocates would argue, it high-

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\(^1\) See infra notes 151-157 and accompanying text.

lights an unresolved contradiction.

Curiously, cryptic reference to recipient perceptions may support the Ugandan student claims. For example, one casebook mentions that the condition of developing countries may be more desperate than supposed; according to high tech theory, almost irreversibly desperate.\(^1\) It is no surprise, continue the editors, that a Marxist-style class interest argument is often made against foreign investment, and that in the developing world, it is often persuasive. Developed societies use foreign investment to gain power in developing societies. No more than a small enclave develops and there is no opportunity for local business.\(^2\) After this brief sojourn, the editors get on with the legal niceties of how to conduct that international trade and investment.

More of the dominant capitalist ideology can be found, at least implicitly, in a leading international law casebook.\(^3\) In it there is a confident, brisk treatment of the alphabet soup of agencies with their billions of dollars available for everything from Agriculture to Zebras (actually weather).\(^4\) The casebook notes, in passing, that Marxist doctrine challenged "the national state" as an instrument of the interests of the bourgeois that enables them to exploit the working classes, and that should lead to revolution.\(^5\) Little is heard, say the editors in their most recent edition, from this perspective in the late 20th century.\(^6\)

B. Policy Science vs. Marxism and Critical Legal Studies

The implicit "let us get on with how to do it" ideology of the United States offerings is matched by the more subtle exposition of value-oriented Western jurisprudence, such as that offered by the Yale School of Policy Science. This important step, from the implicit to the seemingly explicit, also results in mystification by creating its own ideology without quite acknowledging the fact. Advocates of the

\(^{15-21, 28}\) (some mention, in passing, of the possibility of competing perceptions); see also W. HOLDER & G. BRENNAN, THE INTERNATIONAL LEGAL SYSTEM 33-34 (1972) (international law may be class oriented and arise out of social and economic structure). Some ignore the issue. See W. BISHOP, INTERNATIONAL LAW (3rd ed. 1962) (no mention of Marxist approach, although editor did advise that his approach was "legal" and that "non-legal" influences could greatly affect law." Id. at viii.

\(^{152}\) See J. BARTON & B. FISHER, supra note 151, at 22.

\(^{153}\) Id. at 28.

\(^{154}\) L. HENKIN, R. PUGH, O. SCHACHTER & H. SMIT, INTERNATIONAL LAW (2d ed. 1987); see note 157 infra.

\(^{155}\) Id. at 1387-1412.

\(^{156}\) See id. at xxxix-xl. See also W. FRIEDMANN, O. LISITZYN & R. PUGH, INTERNATIONAL LAW 7 (1969) (Marxist doctrine challenges national state as instrument of oppression. "This, of course, was incompatible with the structure of the law of nations, built on a system of sovereign national states").

\(^{157}\) L. HENKIN, R. PUGH, O. SCHACHTER & H. SMIT, supra note 154, at xxxix-xl (little is heard from Marxist philosophy in the 20th century).
Yale School of Policy Science stress consensus with respect to shared values, thus downplaying conflict. The Yale Policy approach, however, at least rejects the alleged autonomy of law in Western liberalism. In Policy Science, rules do not control substantive results or have a life of their own: rules are and should be manipulated to achieve substantive goals. Policy Science advocates speak of shared values and describe eight categories of “things people want.”

These include power, wealth, well-being, skill, enlightenment, respect, rectitude and affection.

Professor McDougal, a founder and advocate of Policy Science, sets up a model for global value sharing. He speaks of control or power, and authority. Authority is legitimated power or control; legitimation is based in part on peoples’ expectations of legitimacy. McDougal also speaks of the importance of maximizing free choice. Citizens’ and opinion makers’ “expectations” mediate between Mills’ power elite and (legitimate) authority.

Policy Science advocates invite us to view the world legal process as one of clarification of values through reason. Policy Science can be contrasted with Critical Legal Studies. However, the two views are not totally incompatible. CLS advocates would not differ, in principle, with the idea that values should be clarified. Both schools of thought developed from American Legal Realism, whose adherents assume that rule-oriented formalism is designed to obfuscate political choices. This view is similar to the Marxist thesis that

158. See M. McDougal & H. Lasswell, supra note 140, at 24 (values should be widely shared, and private choice, rather than coercion, emphasized as the predominant modality of power).
159. See e.g., Reisman, Law from the Policy Perspective, in INTERNATIONAL LAW ESSAYS; A SUPPLEMENT TO INTERNATIONAL LAW IN CONTEMPORARY PERSPECTIVE 6 (M. McDougal & W. Reisman eds. 1981).
160. See W. Holder & G. Brennan, supra note 151, at 37.
161. Influence in the making of events and the executing of decisions. Id.
162. Income, goods and services. Id.
163. Health and safety. Id.
164. Proficiency in any practice. Id.
165. Knowledge and information. Id.
166. Status and recognition. Id.
167. Moral goodness. Id.
168. Love, friendship, and group feeling. Id.
169. See McDougal & Lasswell, supra note 140, at 56 (authority is defined in terms of expectations of persons in a community); W. Reisman, supra note 159, at 6; see also A. SHeikh, INTERNATIONAL LAW AND NATIONAL BEHAVIOR 17 (1974) (McDougal defines legality as action in conformity with consensus of relevant community).
171. See W. Reisman & A. Schreiber, supra note 23, 48-52 (for excerpts of C. Wright Mills’ study of the power elite).
172. See W. Reisman & A. Schreiber, supra note 23, 48-53; W. Reisman, supra note 159, at 6,9 (authority, i.e., relevant community’s expectations about power serves to limit its exercise).
law mystifies power and conceals domination. Indeed, Unger's latest trilogy is, albeit somewhat obtusely, a goal clarification exercise.\textsuperscript{173}

Thus, both Unger and Policy Scientists would agree that the positivist legalist enterprise leads to a mystification of the legal process that disguises goal choices.\textsuperscript{174} Perhaps nothing in Policy Science's eight enumerated categories of "things people want" would be contested; people want wealth, affection, intelligence, security, and so on.\textsuperscript{175} Both Policy Scientists and CLS advocates are interested in the tension between power and (legitimate) authority. Both agree that law is politics.\textsuperscript{176}

But Policy Science is unhelpfully vague, and can be used to justify a status quo consensus. Its postulated goals are too vague and do not resolve specific situations. References to maximizing free choice and to the widest possible sharing of values are helpful ideals, but how do we bring them about? Policy Scientists do not answer the question of whether the market is the appropriate mechanism for value determination. They do not clarify whether the elite financial and industrial hierarchies should be broken down, or what mix of public and private power should be used to achieve their results. McDougal's idea that there should be the widest possible sharing of values raises rather than resolves the question of whether the capitalist market is the appropriate distributor of "the things people want," and if it is not, what can be done about it.

One may wonder how Policy Scientists deal with the fact that individual choice tends to preclude some values of the community. African commentators have pointed out, for example, that a basic presupposition of African culture is unity through community. The community is primary and individuals' interests are subordinate to the interests of the community.\textsuperscript{177} Are Policy Scientists selective in the expansion of individual choice? Are they willing to expand the concept of greater free choice and power to the workers in the industrial arena in order to reduce hierarchy there as Unger suggests? In some Third World situations the preconditions necessary to maintain stability where free choice exists may not be present. The Policy Science goals of free choice and of security lead to conflict in this scena-

\textsuperscript{173} See generally R. UNGER, supra note 33.
\textsuperscript{174} See Reisman, supra note 159.
\textsuperscript{175} See W. HOLDER & G. BRENNAN, supra note 151, at 37, for an enumeration of the eight factors.
\textsuperscript{176} See Reisman, supra note 159.
\textsuperscript{177} See Mugambi, The African Heritage: Change and Continuity, in THE S.M. OTIENO CASE, DEATH AND BURIAL IN MODERN KENYA 165, 171 (J. Ojwang & J. Mugambi eds. 1989) ("The African value system places God and community above individual interests."). Going further, Mugambi finds the whole approach of Western natural science involves a world view that persons are separate from nature and observe it, which is alien to a more cohesive African world view of the relationship between people and nature. \textit{Id.} at 169.
Policy Scientists use the term "expectations" as a synonym for consensus and rely on consensus as a desired goal. Consensus in the international community, however, may be another name for Western-dominated capitalist power. Policy Science may be just another tool in the service of domination of a particular value imposed under the guise of consensus.

Policy Scientists may not have correctly identified the problem. Their basic premise is that consensus would result if goals were sufficiently clarified. The reverse, however, could be true. In practice, consciousness of and clarification of human wants may lead to rising expectations and conflict. Advocates of CLS deny consensus and could assert that consensus can be a mystifying word used to smuggle in the dominant ideology. Moreover, Policy Scientists allege that, at least within the United States, expectations can produce consensus that provides objective closure for legal disputes and choices. CLS advocates point to a basic contradiction between freedom and authority, in Policy Science terms between security and free choice, and deny the possibility that consensus can be freely obtained under present liberal circumstances.

Advocates of CLS could assert that where Policy Science is specific it can be cast in the role of a defender of the present liberal Western order. At the same time, when headed for the stratosphere of posited goals, Policy Scientists may offer only indeterminacy, ambiguity and uncertainty. Its eight categories of "things people want" are so broad that they could accommodate almost any arrangement. The current think-piece of Policy Science, edited by Professors Reisman and Schreiber, while useful as an analytical tool, so debunks every approach that it should receive the Inadvertent CLS Treatise of the Year Award.

Consensus within a nation state aside, there can be no allegation of consensus in the international sphere. Problems with the consensus approach within a nation state are writ large in the international sphere. Who determines consensus in an international sphere? To what "relevant community policies" would one look to find consensus? Problems with coercion and lack of access to information suggest that if a consensus is obtained it may not be morally valid. People may "expect" nothing, may expect what they are told to ex-

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178. See W. McDougal & Laswell, supra note 169.
179. See L. McDougal & M. McDougal, supra note 170, at 5-6 (reference to contemporary community policy as closure criteria).
180. For example, natural law, positivism, and legal realism.
181. See W. Reisman & A. Schreiber, supra note 23, passim.
182. See e.g., L. McDougal & M. McDougal, supra note 170, at 63 ("relevant" community policies should be sought). In this respect, the conflict is joined when Policy Scientists downplay the problem between the individual and community interest. Id. at 4.
pect, or may expect contradictory things. In the international sphere, Policy Scientists may look less like apologists for an existing system because there is no existing global democratic system to protect. Policy Scientists may usefully posit a goal of consensus and a search for shared values, but that is only a beginning.

Critics from the left, such as CLS and branches of Marxism, point out the conflicts. The problem with McDougal's analysis is its failure to recognize the continuing necessity of contradictions in societies given the hegemony of the capitalist system. McDougal may be right; it might be better to take as an ideal the possibility of consensus and shared values. That process, however, could lead to the discrete incorporation of Western ideological values under the rubric of "expectations." It may not be meaningful to speak of consensus in developing societies where competition in ideas is not permitted. In these societies alternative points of view are not permitted and power is often transferred through violence. What appears to be a consensus, or an observable behavioral regularity could, in fact, be a coerced accommodation with power realities.

Thus, the Policy Science approach to elitist power is ambivalent. The CLS approach could easily incorporate Mills' study of the power elite. Mills argued that there is an elite, composed of people in government, business, banking and the military that, in fact, rules in the United States. Policy Scientists admire the Mills study but find that Mills does not take sufficient notice of expectations. While it affirms the importance of power, McDougal's theory suggests that, in the United States, the power elite is limited by the peoples' expectations. A military coup in the United States, for example, would not be well received. McDougal's approach minimizes the inevitability of conflict.

Both CLS and Policy Science are useful in counselling us to free ourselves from the idea that things cannot be different. The Third World Marxist critique's strength is its offer of an alternative
description of reality; one glossed over by the concept of consensus and other Western expositions. Marxism, as adapted to Third World international business conditions, provides an antithesis in the dialectic process. The CLS conflict-contradiction model also provides an antithesis to the liberal apologists. Both Marxism and CLS share a power critique of the immorality of present operations. Both are incomplete, as critics never tire of repeating, in offering little in the way of viable alternatives. Unger, however, has recently provided a model.

C. Unger’s Politics and Third World Marxism

Unger has developed a relatively specific political model. He argues that supposed psychological, organizational, and naturalistic constraints and explanations serve to limit options. If that analysis were extended to the international arenas we would be encouraged to view naturalistic constraints as unnecessary. Unger focuses on the “framework,” or implicit structure of roles. He equates this framework to the many ways that hierarchy is maintained in social, economic and political life.¹⁸⁷

Third World Marxists, however, may go beyond Unger and urge violent revolution as the key. Unger advises working within nation state systems to fight dominance constraints.¹⁸⁸ There is a point at which those constraints are so overwhelming and where existing channels are so closed that violence is understandable. Much of Africa’s liberation from colonialism has occurred through violence. In America’s War of Independence, and in the French Revolution, as well as in the American Civil War, the “framework” may have been so rigid that revolution was necessary. Some Africans may find Unger’s suggestion, to work within the system, to be society-specific to current Western style liberalism. Thus, good faith observers in a Third World situation such as Uganda’s may not know what to do with the CLS analysis. These observers could infer that social action within the system is the only appropriate action. Certainly Unger, with his deviationist legal approach, suggests this point.¹⁸⁹ But Unger’s position is all the more puzzling because he concerns himself with politics in part of the Third World, namely Brazil, where he drafts political platforms and writes newspaper articles about governmental forms that reflect his ideas.

CLS, at least as augmented by Unger, may provide an important tool to use to resist the domination supported by theories of necessity based on Social Darwinism, naturalism and historicism. It is

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¹⁸⁷. See Van Doren, supra note 10, at 87.
¹⁸⁸. Id. at 100.
¹⁸⁹. Id. at 100.
not clear, however, that this approach would be effective in Uganda. CLS and Unger would stress the importance of a consciousness that things could be different. The ability of the elite to control and intimidate is great. Elites see human rights as a limit to their power. Human rights may presuppose competing public and private units that are subject to popular check. Competing public and private units, and voting checks on power are necessary but not sufficient prerequisites for greater sharing.

Unger's tactic of resisting within the system may presuppose that the participants are acting in a Western-type liberal society. The odds against success of such a tactic are overwhelming in some places. There are places where an individual would not be permitted to write or speak to people in order to alter their consciousness; an Unger would probably be detained or imprisoned. One might even wonder if there could have been an Unger and a CLS in the United States during the 1950s.

It is here that the Frankfurt School, influenced by Gramsci, offers more help by providing a theory for understanding legitimating techniques to maintain domination in Western liberalism.\(^\text{190}\) This understanding provides a model for internal critics\(^\text{191}\) to perceive what is happening to them, an understanding that is only nascent in CLS and in Unger's works.\(^\text{192}\) CLS is relevant, however, to provide an antidote to deep historicism and structural naturalism, theories that deny the possibility of change. Even in situations that appear hopeless, one must begin somewhere. Historicians teach that the law cannot be used to make basic changes in human nature or in organic political or economic development. The law is superstructural to the historicists, too. Historicians may claim that it would be wrong or impossible to change naturally evolving patterns of social behavior. What is, is right. Structural naturalists are close allies. They may argue that human nature is always going to be basically predatory, self-seeking and elitist, so it is hopeless to try to bring about change.

However, what legitimizes societal relations in Uganda is not clear. There is no overt colonial presence that could legitimate an anti-colonial direction. Nabudere argues, however, that functionally, there is such a neo-colonial presence. The internal legitimation model, however, is presumably based on more customary explanations of legitimacy. When administered by Blacks to Blacks, however, the basis of legitimation of such a model is indeterminate. It is

\(^\text{190. See Van Doren, supra note 130, at 655 (Gramsci led movement to focus on how domination is achieved by consent through ideology).}\)

\(^\text{191. Internal critics are those individuals who are outside the current power structure, such as South African people of color.}\)

\(^\text{192. Id. at 630-60.}\)
uncertain in which direction a Frankfurt School study might proceed.

The international market model, which impacts the Third World, reflects Western-style capitalist power. There is strength to the market model, even if its content is indeterminate. Pressures develop that result in smuggling where there are advantages that can be obtained through a cash-backed difference between what people want and what they can obtain. Essential features of the international capitalist framework are static. It is the ruling framework.193 The capitalist model has an international legal structure, through such devices as protection of property, contract, and the use of arbitration to avoid developing nations' legal systems. This picture supports the claim that the international legal order, particularly in the area of international trade and business, is superstructural; it is designed to facilitate international capitalist power. A dilemma results: either accept the dominant capitalist mode with its constraints and wealth concentration, or reject it and return to a pastoral state. The choice is not a happy one.

D. The Applicability of Marxist and Unger/CLS Models

Marx saw legal rights as bourgeois rights which subjected those at the bottom to domination. He also believed that individual rights inhibited a sense of community and served to alienate people from each other and from the best in themselves. CLS is split on the subject of rights. Unger has embraced the concept of rights and believes that the problem is with rights as constituted, not rights in themselves. There are people of color who are sympathetic to CLS, but who affirm the rights tradition as an important part of their struggle. The two models for change espoused by the left, Unger and CLS, relate to the society-specific situation of Western industrial capitalism. One such model has been mentioned, that of increasing consciousness that things could be different. The second is Unger's model suggesting increased control of capital in order to produce fewer inequalities, while allowing private decentralized economic operations. Uganda's problem is that there is already too much power concentrated in private, foreign, and local sources, and in the state.

Consideration of the Uganda situation reveals a struggle for limited resources. While there are democratic aspects of the tribal system, there is also a strong hierarchical pattern. The democratic aspects include the fact that dispute resolution may be open to the public, that members may ask questions, that the chief can be re-

193. See Ghai, supra note 100, at 31 (economies of Africa are integrated into international capitalist framework dominated by multinationals).
moved, and that there may be deliberation in the chief's councils. The element of popular participation is lost, however, in the post-independence state. Democratic aspects of tribal life are being eroded. Capitalism, duly adopted by post-independence regimes, has eroded the peoples' traditional protections.

Unger affirms rights and emphasizes that the state, as the repository of rights, is necessary for his program. But in Uganda no opposition is allowed and most people live a subsistence existence with insufficient access to education. It makes no sense to aggregate more power in an already power-concentrated, executive oriented state. Unger's model presupposes a strong tradition of human rights, as he terms it, "immunity" rights. Marx may have also envisioned that his changes would occur in an environment in which material welfare would be sufficient to support political freedom.\footnote{See D. McLellan, supra note 138, at 83.}

Some aspects of Unger's model are already in effect in Uganda. The state exercises substantial control over land and industry, except where agreements have been made with foreign capital owners. Land ownership is thus concentrated in the hands of the few. Much of the Ugandan industry is foreign-controlled and the UDC is owned by the state. Some enterprises, referred to as parastatals, are run by the state. If the state cannot or will not do anything about the concentrated ownership of land and business capital, if it indeed encourages it, the state does not have the will to establish equitable arrangements for sharing social product.

There is nothing to be gained by adding the element of state power in situations where there is little history of individual rights. Some powerful individuals exercise rights against the state, but in some developing countries these people are forced into early retirement, detained, or denied membership in the ruling party. Unger himself recognizes that simply aggregating power to the state, as in socialism, does not provide an answer.

Consciousness is an awareness that things could be different. Perhaps Marx was reluctant to include the peasants in his revolutionary program because they can often subsist on the land, even in the worst of times. There is, no doubt, tension and resentment in Uganda. Alice Lakwena, a Ugandan religious cult figure, spoke to the oppressed and told them to rise up, that the bullets would not hurt them. They were killed and she was exiled to Kenya, but the incident demonstrates that there is built-up resentment in Uganda. When there is military revolt, as with the Museveni coup, there is a period of raised consciousness but the situation quickly reverts to business as usual. An individual seeking to raise consciousness risks
detention whether it be South Africa, Kenya, or Uganda.

Unger's programmatic model does not readily translate to a Third World situation such as Uganda's. It will not work in regimes where the state already has "too much" power. In some societies the only means of political change is by force or revolution. Marx indicated that the key is the set of relationships that governs the means of production. Marx, however, also correctly observed that revolution may be premature if it is unsupported by an ideological or power infrastructure of thought and belief.\(^9\)

In other societies, where there is a tradition of personal liberty and private rights and where sufficient surplus exists to afford a minimum standard of economic rights, a program giving increased power to the state may be a risk worth taking. But where some minimal economic and political independence is unavailable, it is inappropriate to cede more power to the state sector. Merely aggregating more power in private sources, individuals, multinationals, and corporate aggregations, will not be a panacea either. Private power is potentially as coercive and oppressive as public power. From the view at the bottom, coercive power is the same whether its source is public or private.

That Unger's model may not fit does not mean that the approaches and values embodied in his theories or in CLS cannot be applied to the Third World or elsewhere. Much of Unger's approach is derived from Marxist inspiration despite Unger's rejection of Marx's view of historical development. It is appropriate to return to and end with this source of Marxist humanism.

E. The Contribution of Marxism

Marx took the idea of a dialectic process from Hegel. Hegel saw this dialectic, the presence of negation,\(^9\) as the molding force of history. Marx equates Hegel's concept of spirit with mind and ideas.\(^9\) Marx believed that Hegel failed to consider the effect of the material. Material is not goods or commodities, but the processes through which a community is sustained and allowed to reproduce itself. Marx focused on the importance of work to secular emancipation and felt that people achieved redemption by self-expression through individuated collective work. He believed that machine mass production robbed people of their redemption. Capitalism prevents people from interacting with nature, or the material, in a creative,}

\(^{195}\) Id. at 65 (if socio-economic circumstances are inappropriate revolution will produce terror and counter-terror).

\(^{196}\) Unger terms this concept "negative capability," the capacity for a different direction.

\(^{197}\) Id. (D. McLellan) at 25-26.
liberative and loving way by denying them individual expression through work. In short, if one makes a material object for another, that can express love for another, and affirm existence and bonding to another necessary for communal existence. To use Marxist terminology, work allows individuals to objectify themselves.

Marx said that he turned Hegel on his feet; it was material conditions or the economic base, rather than ideas, that governed the flow of historical events. Material refers to conditions under which persons interact to sustain life. The economic base refers to the relations of production at a particular phase of history, which leads to the question; who owns the productive means?

Capitalism, defined by Marx as private ownership or control of the means of production, leads both nationally and internationally to concentration of power and capital. Marx finds material forces result in a dominant class that attains its position through ownership of the means of production. Treating people like commodities also results in dehumanization. Capitalism gives rise to, and is encouraged by a heavy emphasis on wealth and material gain. The interpersonal aspects of life and community are relegated to a lower value.

In idealized Marxism, people would be treated as an end in themselves, not a means. Discovery and objectification of self reflect important humanist objectives. But Marx’s ultimate vision of society is and will be fiercely resisted. Although there are pressures for equality there are stronger pressures for inequality. Marx’s goals remain important. He was critical of division of labor, but that division has led to productivity. The objective and challenge is how to achieve greater opportunity and equality and to restore the sense of community lost in modern capitalism.

V. Conclusion

Historically, generally, there has not been any substantial sharing of social product without some voter check. This is often true where resources are scarce. A tradition of sharing must somehow develop. Constitutions can be important symbols, but in themselves offer no necessary panacea. Such constitutions may embody conflicting principles and be indeterminate; their words can be disregarded, or they may be completely set aside. Tradition evolves

198. Id. at 33-34.
199. Id. at 34.
200. Id. at 38-39.
201. Id. at 33-34.
202. Id.
203. Id. at 67-68 (Marx saw division of labor as the root of many social evils).
204. See Pfeiffer, The Role of the Judiciary in the Constitutional Systems of East Africa 16 J. MOD. AFR. STUD. 33, 62-63 (1979) (original independence constitution contained
gradually, and expectations based thereon,' stressed by Policy Science, and the willingness to act upon them may be the only true limit to power. The rule of law is as much a tradition as it is a guarantee of words. The British, for example, operate without a written Bill of Rights in the American sense, and with a constitutional structure that is customary rather than written. 205

The evolution of such a tradition may be more important to Uganda than a magic wand eliminating finance capital. Some capital seems necessary to promote an economic base for those at the bottom of the scale. The peasant economy can be productive, but land reform is necessary for political freedom, and political freedom may be necessary to obtain land reform. In Uganda the gap in wealth is not necessarily rural-urban, it is class oriented. The poor in both the cities and in the countryside are getting poorer and the rich in both urban and rural areas are getting richer. 206

Uganda is in a crucial stage now; a constitution that could become the basis for development of a tradition is being molded. The promised 1990 elections have not been held. Perhaps the economically dominant West should play a part through economically induced socio-political changes that could turn the IMF and World Bank complex into something more than a capitalist economic dictator. 207

Internal reformers in Uganda should not, it is respectfully submitted, become so mesmerized by finance capital, evil as it may be, that they neglect the internal development necessary to achieve their goals. Without underplaying the evils of finance capital, internal political development 208 and education are the primary problems that should be remedied as a precondition to achievement of the goals desired by the Ugandan Marxist critics.

205. Id. at 60-66 (discussing Uganda). The Westminster model adopted in Uganda was written; the British constitution is based on custom and is unwritten. Id. at 34-35, 44.
206. See Jamal & Weeks, supra note 81, at 274-75, 286-88 (city dwellers do farming and work in informal sector).
208. Cf. Ssekandi, supra note 62, at 3 (reason for 1971 Amin coup was “failure to appreciate the need for balancing various pressure groups in the country and to reconcile them with democratic needs”).