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**Jindal School of Government
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Foreword

The essays in this issue of the *Jindal Journal of Public Policy* published by the Jindal School of Government and Public Policy cover a wide range of empirical and theoretical public policy concerns in countries with different political regimes. Drawing on research from Asian and Latin American contexts, these essays engage with the themes of federalism in China, the role of international institutions in alleviating poverty, local government taxation reforms, and the position of women in conflict afflicted zone. The essays published in this issue are selected from papers presented at an international conference on “Federalisms and Localisms” and the public lectures organized by the Jindal School of Government and Public Policy.

The opening essay by Michael Davis deliberates on the characteristics of Chinese federalism and the lessons that the country can learn from its neighbor – the large multinational state, India. Davis argues for a dual model - federalism for the Chinese mainland and confederation for the peripheral communities for maintaining the territorial integrity of the country. Public dissatisfaction over State policies nationwide and especially among ethnic groups, who occupy at least a third of Chinese territory pose a threat to maintaining territorial integrity of China. Although the country has thus far been able to keep their peripheral communities under control largely through the use of force, as succinctly argued by Davis, it would be difficult to adopt such a repressive posture. He concludes that a confederal arrangement for China’s peripheral communities would provide a reliable umbrella under which these communities could be brought together in the “state-nation” vision. The viability of such an arrangement hinges on the presence of a strong judiciary for third-party dispute resolution and for implementing confederal agreements.

The rule of law is critical to the vibrancy and stability of any democratic polity, which in the Indian context is enshrined in the Article 21 of the Indian Constitution. Public perception about the prevalence of law or its status affects the stability of governments. Although the ideal of rule of law is associated with modernity, in ancient societies as highlighted in the second essay by Moro, law was fundamental to their existence. The history of the Indian legal system dates back to 2700 years ago and was constituted of diverse sources of law and sophisticated interpretative tradition. However, very little is known about its functioning. He argues for blurring the disciplinary boundaries of legal education and policy studies to strengthen the pedagogy of legal training in India.

Achieving horizontal and vertical equity in tax regimes is a key challenge confronting policy makers worldwide. Poorer citizens in many contexts end up paying a higher proportion of their income in taxes as compared to their wealthier counterparts. Moving away from the Asian sub-continent, Aaron Schneider deliberates on this paradox of increased state revenues and the prevalence of vertical and horizontal inequity in taxation structure drawing on the Brazilian experience. After a concerted effort starting from the mid-nineties, the Brazilian government managed to reform its taxation policy and increase the tax revenues. Schneider traces the manner in which different social groups were incorporated in the reformed tax regime and the political moment that favored the reform agenda. A key factor favoring the reforms agenda was the support extended by a cross-coalition of popular sector and middle class groups to a high capacity tax regime. Whilst tax reforms enabled the Brazilian government to generate more revenue, it was not able to overcome the institutional legacies of previous patterns of incorporation. Consequently, as has been eloquently elaborated by Schneider, the economic and political elites are able to preserve elements of particularism and progressivity in the tax system.

Poverty and inequality, as Tilly argued has remained durable over the years, despite various forms of intervention by diverse range of international and national level institutions. The Millennium Development Goal (MDG) articulated by the United Nations is one among the long list of development agendas aimed at reducing poverty and inequality. By now, there is a consensus that the MDG though useful in drawing the attention of Governments to reduce poverty, will not be able to achieve its target. Exploring the development challenges confronting government in the post 2015 era, Naresh Singh argues the need for better governance and the importance of integrating human rights agenda and Sustainable Development Initiative. As underscored in his essay, a strong political mobilization of popular groups to pressurize leaders and policy makers is imperative to realize the goal of poverty reduction and sustainable development. The essay concludes with outlining an agenda for schools of public policy and government in terms of addressing inclusive development.

The essay by Suraj Kumar traces the trajectory and outcomes as well as their limitations or constraints of two major interventions viz., the State Human Development Reports (SHDRs) and the Development Policy Loans (DPL) promoted by the United Nations Development Programme (UNDP) and the World Bank in the Indian context. Both interventions focused on reforming governance mechanisms and thereby address issues of poverty and inequality. Arguing that the persistence of poverty in the Indian context is more due to internal inequality and poor implementation

of policies, the essay points to the urgency of reforming internal distribution and implementation capacity of the State rather than relying on Overseas Development Aid and other concessional aid flows. Further, the essay underscores the importance of reform initiatives in India to move beyond the “prayer and petition” approach gain political leverage and engage with a much larger audience, including with crowds. In this light, it is critical to harness political will through institutions of parliamentary democracy in India. However, the public disenchantment with political processes complicates the introduction of reforms, especially, at a time when the youth are becoming demographically more significant but increasingly alienated from mainstream parliamentary politics. Sustained engagement with the Governments at the National and the Regional level is critical to harness political will for enacting governance reform in India.

Sukriti Chauhan draws our attention to the plight of women in conflict zones. Her essay attempts to archive the unheard voices of women in conflict zones. Despite our clamor of modernity, society and law continue to discriminate women and subordinate them to men. She argues that violence against women in such contexts tend to be dismissed as a natural consequence of war and often leading to immunity for those perpetrating crimes against women. Pointing to the multidimensional impact of violence on women in terms of physical and emotional suffering inflicted on the individual concerned, their families and community, Chauhan pleads for a reconceptualization of the paradigm of human rights.

Finally, the public policy concerns discussed in this issue demand not only a shift in the way we run our institutions, implement laws or policies, but as several authors have pointed out require new ways of thinking about who we are and what kind of a society we want to be. Disciplinary training and ways of thinking about policy issues have contributed to our disconnected approach to complex problems, ignoring their connectedness. Perhaps a small step forward is to move out of our disciplinary boundaries and begin to think and work in trans-disciplinary ways.

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FEDERALISM AND DEMOCRATIC REFORM IN CHINA WITH LESSONS FROM INDIA

Michael C. Davis*

The Chinese political fabric appears to be under great stress, with reports of nearly 200,000 “mass incidents” every year, especially from workers with labor disputes and ordinary people whose property is often seized by corrupt officials. Such incidents are fuelled by public dissatisfaction nationwide as well as the disenchantment of Chinese State policies among ethnic groups, who occupy at least a third of Chinese territory. China has so far been able to keep its peripheral communities under control (or in the case of Taiwan, to ensure a degree of restraint) through its clear willingness to use force, which has aggravated the unease. A democratic China, however, would find it difficult to adopt such a repressive posture. Drawing on Linz and Stepan and Yadav’s theoretical and empirical elaboration, the article examines the characteristics of Chinese federalism and the lessons that can be learnt from a large multinational state like India. The article suggests a dual mechanism of federalism on the Chinese mainland and confederation with peripheral communities for addressing China’s territorial and political development. A confederal arrangement for China’s peripheral communities would provide a reliable umbrella of national laws and institutions under which these communities could be brought together in the “state-nation” vision. The viability of such an arrangement hinges on the presence of a strong judiciary for third-party dispute resolution and for implementing confederal agreements

INTRODUCTION

When I first wrote about the case for Chinese federalism over a decade ago, I worried that China’s political reform process was being held hostage to the Communist Party’s (CCP) repressive efforts to secure China’s periphery (Davis 1999). While CCP’s political paranoia extended to the population at large, it was especially driven by a myth of a unified state deeply embedded in the CCP psyche. This myth held that if the center relaxed its grip, China would

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descend into a chaos riven with separatism at the periphery. That sentiment remains. Measured by the level of political reform over the past decade, which has been next to nothing, there would be no need to update this argument. Measured, however, by the growing demands of a restless public and the concern of China's neighbors over China's increasingly nationalistic foreign policy posture, renewed reflection on this concern is warranted.

The Chinese political fabric appears to be under great stress, with reports of nearly 200,000 "mass incidents" every year, especially from workers with labor disputes and ordinary people whose property is often seized by corrupt officials. Massive levels of corruption have fueled public dissatisfaction nationwide, while ethnic national groups on the periphery, who are the primary occupants of at least a third of current Chinese territory, have become increasingly disenchanted by repressive CCP policies. In some ways the CCP has become a victim of its own success, as it becomes apparent that the CCP lacks the political and institutional tools to manage and meet the expectations of an increasingly complex and diverse society. These domestic developments, along with increasingly critical global responses to the rise of a powerful authoritarian regime, have met with government fury and increased repression, causing only further unease. One area of great concern has been political reform, as authoritarianism and reduced liberties and rights become less tolerable in an economically emerging society.

Recent theorizing of federalism in a multinational democratic state by Stepan, Juan J. Linz and Yadav (2010) encourages further reflection on lessons that may inform the political reform process in a large multinational state such as China. As early as 1996, Stepan and Linz had advanced a theory for federalism in a multinational state where they first introduced the notion of a "state-nation," though with little elaboration (Linz and Stepan, 1996).¹ That Linz and Stepan, along with eminent Indian scholar Yadav, have taken up the theoretical and empirical elaboration of this concept makes further reflection in respect of multinational China timely. The opportunity to reflect on lessons China might learn from Indian experience is of particular interest in the present venue.

I will address these issues in three parts in the sections that follow: first, a theory of federalism in a multinational and multicultural democratic state,

¹ Juan J. Linz and A. Stepan, 1996. "Stateness, Nationalism, and Democratization," in Juan J. Linz and A. Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*, Baltimore: Johns Hopkins University Press, (see page 34, as well as Figure 2.1).

relying on a parsimonious account of the argument advanced by Stepan, Linz and Yadav (2010) derived from the Indian model (Stepan, Linz & Yadav 2010);² second, the historical Chinese experience with and resistance to federalism; and, third, how this multinational state federal theory might be applied in China to address current problems and democratic reform. Given the parsimony expected here the aim will be to lay out the basic argument, leaving plenty of room for later refining this multinational federal model in the Chinese context.

FEDERALISM IN A MULTINATIONAL DEMOCRATIC STATE: LESSONS FROM INDIA

In considering the roles of federalism may play in developing democracy in a multinational state, seminal theories derived from the Indian experience offer a good starting point. India's founders appeared early on to understand the challenges of forming and holding together a multinational state. The Nehru Report approved by the All Parties Conference in 1928 foreshadowed the broadly inclusive "state-nation" vision discussed by Stepan, Linz and Yadav (2010). The 1950 Indian Constitution envisioned a multicultural, multinational, federal and consociational India with a dozen (now 22) major languages and every major world religion. India offers several features of interest to a multinational state contemplating constitutional reform, including an asymmetric "holding together" federalism, a new secularism that was rather extraordinary for an intensely religious community, the rule of law, and parliamentary government. Under this model as it evolved ethnic or linguistic communities could have a state of their own (1957) while special deals co-opted most tribal communities into the system. As Stepan, Linz and Yadav (2010) describe it, this spawned centric-regional parties, at first aligned under the Indian National Congress, but today pretty much essential for any ruling coalition. The model featured a strong central government. A powerful Supreme Court retained original jurisdiction in almost all matters, today facilitating a rash of much discussed public interest litigation. Though India has no officially declared religion there is a system of personal laws with wide state sponsorship and official respect for all religions.

² This theory is elaborated with considerable empirical support in the book-length account. Alfred Stepan, Juan J. Linz and Yogendra Yadav, *Crafting State-Nations: India and Other Multinational Democracies*, Washington: Johns Hopkins University Press, 2010. The present analysis will rely on key theoretical aspects as most easily accessible in the 2010 article. Alfred Stepan, Juan J. Linz and Yogendra Yadav, "The Rise of 'State-Nations,'" *Journal of Democracy*, Vol. 21/3, 2010, pp. 50-68.

This Indian model has encouraged a state support system that would be the envy of many multinational states struggling with secessionism or insurgency. To be sure, at its founding India lost territories dominated by Muslim communities to the northwest that became Pakistan and the northeast, the present day Bangladesh. The struggles over the autonomy of Jammu and Kashmir continue. However, India has been able to hold the loyalty of a large rather diverse collection of nationalities. Stepan, Linz and Yadav (2010) describe wide positive identification with the state, with multiple and complimentary political identities in 35 states and union territories. Even at present, the provision in the constitutional framework to form new states has engendered several pending claims for regional autonomy within India. There appears to be reasonable constitutional, legal and administrative institutional trust and wide support for democratic institutions.³ Though the conditions addressed and precise solutions derived are unique to India, this state-nation model is certainly of comparative interest in a world riven by ethnic national conflicts.

Stepan, Linz and Yadav (2010) identify three broad categories of states: 1) *state-nations* that are robustly multinational, with strong territorially-based cultural diversity whose units advance claims of independence in the name of nationalism and self-determination—includes India, Spain, Canada, Belgium; 2) *nation-states* with non-territorially-based cultural diversity without independence movements—includes federal Switzerland and the US; and 3) *unitary nation-states* that are culturally homogeneous—Japan, Portugal, Sweden. They note that France may have shifted to unitary nation state status through forced assimilation.

China, akin to France, may be attempting forced assimilation. Such would mark a shift from a state-nation to a unitary nation-state. That China is a multinational state is often not appreciated, although this was acknowledged by the CCP during its founding phase. While 90 percent of China's 1.3 billion people are officially designated as ethnic Han Chinese, nearly half of its current territory is primarily occupied by other ethnic national groups. While China has designated 55 “national minorities” only the large border nationalities, including the Tibetans, Uyghur and Mongols have historically been viewed as a security concern by the Central Government. As noted by Stepan, Linz and Yadav (2010), a number of strategies with increasing intensity may be employed to encourage or force assimilation on such ethnic nationalities: 1) arousing special cultural identity or allegiance among residents; 2) encouraging voluntary assimilation into

³ Stepan, Linz and Yadav note that, despite poverty and great diversity, there appears to be “great pride” in the state of India (67%) and strong support for democracy (87 percent).

the nation-state's identity; 3) asserting various forms of social pressure and coercion to achieve this; 4) imposing coercion that might in extreme cases involve ethnic cleansing. Forcing such nation-state identity usually favors one socio-cultural group, typically the dominant nationality inside the multinational state. The "state-nation" thesis effectively promotes a gentler more consensual approach to build a voluntary less-conflictual community of nations in a multi-national state. As discussed by Stepan et al (2010), this approach may favor multiple and complementary identities, asymmetric territorial arrangements, individual and collective rights, political integration without cultural assimilation, positive identification with the state, high institutional trust and democracy.

THE CHINESE EXPERIENCE: RESISTING FEDERALISM

China presents an opaque and complex picture to the outside world. What is less understood overseas is China's growing diversification consequent on both its existing multinational character and its economic success in recent years. It has produced massive inequalities across the country and a marked tension in the relationships between the Beijing government and its assertive peripheral and regional communities. By contrast to the assumed trajectory of political reform accompanying dramatic economic growth, China has appeared to defy gravity, pushing ahead with a communist regime attempting to manage dramatic free market reform. The authoritarian, ostensibly unitary regime employs repressive tactics to control the restless ethnic national communities along the western region of the country and to centralize political control. This has important implications for the prospect of political liberalization and democratization in China.

The unitary territorial identity of China has been elevated to the level of a cultural myth. This myth appears to explain more about the historical imperatives of maintaining authoritarian central control than it does about Chinese culture. In ancient times, much of what is now Chinese territory in Central Asia and elsewhere on the periphery was made up of independent or tributary states or protectorates, where central control from the Chinese imperial capital was generally minimal or nonexistent (Crossly 1999). Over several thousand years of war and conflict, peripheral communities, as well as forces emerging from the Chinese heartland, would frequently compete with the imperial regime at the center for control. This either produced a new alien power at the center, as it did for two of China's last three dynasties, or it would split China into competing kingdoms. As many of these regimes were characterized by autocratic or authoritarian rule, the myth of a unitary state under strong central leadership emerged. According to this myth, a regime that relinquished strong central control

would be perceived as weak and have its territory seized or its government toppled by its opponents.

In the communist period, the unitary myth was reinforced by the Marxist-Leninist commitment to dictatorship and democratic centralism. This has generally meant centralizing State control with little regard to basic liberties and human rights. The denial of such rights constitutes one of the tactics of forced assimilation for the ethnic minorities at the periphery as described by Stepan et al (2010). In the recent decades of the reform era, the historical commitment to a unitary system has posed problems for advocates of political reform.

The heavy-handed tactics employed by the Chinese state to maintain its unitary system have also presented problems for its foreign partners. Besides China expanding its territorial claims in the first decades of the 21st Century, its authoritarian regime and the tactics deployed have become a security concern for its neighbors. Such harsh crackdowns and repressive policies are frequently difficult to ignore. These concerns point to the need for democratic political reform.

The present analysis suggests the merits of federalism on the Chinese mainland and confederation with peripheral communities as a dual mechanism for addressing China's territorial and political development. It will be useful here to define confederation and federation in this paper. The term "confederation" will be understood simply to signify a higher degree of subunit independence with a more enforceable status. *Confederation* often reflects a "coming together" by agreement, though it can also be employed to allow existing units greater autonomy. The units may have a substantial international status or the right to opt out. *Federalism*, on the other hand, often aims at holding together and is understood to include a lesser degree of local autonomy and a stronger center with broader authority. In the United States, federalism was born of an earlier confederation and evolved over time from a states-rights orientation to a substantial level of central power. In a federal system, the right to opt out may be excluded and the units may be allowed little or no role in international relations.

Beijing has recently adopted policies that move in contradictory directions. On the one hand, it has sought to maintain the myth of a unitary political system. On the other hand, it has pursued policies favoring multiple legal jurisdictions with the peripheral communities and decentralized decision making in the mainland. Such decentralization has often failed to include umbrella institutions to promote integration and unity. Four prominent factors exert pressure on China to restructure itself: 1) the tensions over

economic/political reform and the structure of China's political territory, as reflected in the debate over regionalism on the mainland; 2) the failure of national minority autonomy policies and the problem of restless ethnic national communities in Tibet, Xinjiang and to some extent Inner Mongolia; 3) the tensions and contradictions evident in the central government's attempts to contain democracy in Hong Kong; and 4) Taiwan's reluctance to take unification seriously in the absence of democratic reform on the mainland and a more reliable political formula. These issues are addressed briefly in the following subsections before considering solutions in the parts that follow.

Regionalism on the Mainland

Regionalism on the Chinese mainland is one of the forces propelling China towards political reform. The diverse social and economic interests created by economic liberalization encourage a search for formal channels of interest representation and conflict resolution. The democratization, human rights and rule of law reforms that this implies may ultimately be the primary force that encourages federalism. As a result of China's economic reform policies, the economy very early on decentralized rapidly, but constitutional structural change from the start lagged behind (Waldron 1995 & Gerald Segal 1994). Economists have noted that decentralization and regionalism in the reform era quickly produced a form of economic federalism in mainland China (Huang 1996).⁴ With the central government increasingly overburdened, regional initiatives were necessary to guide the economic development process. Steven Solnick (1996) highlighted this phenomenon early on, pointing out that in China's developing market system; the initial decentralization of the economy involved the transfer of control from central planners to local officials, creating a class of local cadre-entrepreneurs (Solnick 1996). By making it lucrative for these officials to remain in their posts, China at least initially avoided the large-scale theft of state property by local officials, which took place in Russia.

By the early 1990s, state owned enterprises (SOEs) largely controlled by local officials dominated the Chinese economy. The late 1990s saw attempts to recentralize by converting SOEs into private stock companies often in joint ventures with foreign firms. But during the most recent decade the SOEs have again come to dominate the economy. The mixing of government and business has encouraged corruption in the form of

⁴ Yasheng Huang has noted: "Political scientists tend to be legalistically oriented and define federalism as a system in which divisions of responsibilities and power are specified constitutionally. Economists define federalism in terms of administrative levels at which allocative decisions are made." Yasheng Huang, "Central-Local Relations in China During the Reform Era: The Economic and Institutional Dimensions," *World Development* 24 (April 1996): 655.

back room dealing, out of control lending and legal breakdown (Nathan 1996). By-products of this have included regional protectionism, land confiscation by greedy local officials, labor abuse, weak social networks due to wide-scale labor migration, environmental problems and poor public accountability. These problems have encouraged frequent protest at the local level. Harsh political control has been the only tool the center retains.

Mutually reinforcing factors encourage corruption. The judiciary is often corrupted and captured by regional forces in a system that presumes legislative supervision and CCP oversight of the courts (Minzner 2013). Various fiscal and tax problems reflect a central-local competition for revenue. The reform of the SOE system has been seriously burdened by enterprise-based housing and retirement systems rooted in the Marxist past, making it difficult to allow unproductive SOEs to fail. Accordingly, regional and local governments continue to be confronted with the seemingly contradictory tasks of managing and regulating state enterprises. In the context of these difficulties, people will demand greater accountability from local, regional, and national governments, and this requires political reform (Pei 2006).

Economic federalism has not been accompanied by the related formal constitutional changes (Nathan 2013). The lack of democratic institutions that can involve the populace in the search for solutions has been the most serious failing. Beijing has instituted village-level elections, which sometimes encourage genuine choice, but people have not been granted freedom of association, and strong opposition voices are still not tolerated. Popular elections are not tolerated above the village level. The persistent demands of economically successful regions in China's heartland for more reliable local and national governance pose yet another challenge to China's insistence on a unitary and authoritarian system.

National Minorities on the Periphery

The brief overview in this paper can only highlight the current posture of an otherwise deeply embedded historical relationship between China and its border nationalities. China's autonomy policies applied to designated national minority areas throughout the country are promulgated in the current 1982 PRC Constitution (PRC Constitution 1982)⁵ and in the Law on Regional National Autonomy (LRNA) passed in 1984, as revised in 2001.⁶ Article 4 of PRC Constitution provides that, "Regional autonomy

⁵ PRC Constitution (1982), Articles 4, 59, 65, 89 and 112-122. <http://english.peopledaily.com.cn/constitution/constitution.html>

⁶ Law of the People's Republic of China on Regional National Autonomy (hereinafter LRNA), 1984, revised 2001. http://www.china.org.cn/government/laws/2007-04/13/content_1207139.ht

is practiced in areas where people of minority nationalities live in concentrated communities.” Under LRNA, Article 15 autonomous areas carry out their role “under the unified leadership of the State Council and shall be subordinate to it.” The LRNA promises national minority autonomy in respect of language, education, political representation, administrative appointments, local economic and financial policies, and the use of local natural resources. Effective practice of such promised autonomy is seriously underdeveloped. These laws are narrowly applied and tend to allow a much higher degree of direct Central control and interference over these areas than in other non-autonomous areas. They contrast sharply with the more flexible approach under PRC Constitution Article 31 discussed below, as applied in Hong Kong and Macau.

The 1982 PRC Constitution, passed during China’s liberalizing phase, appears to promise enhanced local autonomy. Along with the LRNA, it includes the power, subject to higher approval, to enact “regulations on the exercise of autonomy (*zizhixingfa*) and other separate regulations (*danxingtiaoli*) in light of the political, economic and cultural characteristics.”⁷ “Regulations on the exercise of autonomy” have the status of a sub-constitution or basic law and it is expected that one such regulation will be enacted in each autonomous area. The required higher approval must typically come from the next higher level of government, for autonomous regions from the Central Government and for autonomous prefectures and counties from the provincial government. None of the PRC’s five autonomous regions - Tibet, Xinjiang, Inner Mongolia, Guangxi, and Ningxia, have received approval for such basic regulation on the exercise of autonomy. The one attempt at enacting such regulation in the Tibetan Autonomous Region (TAR) went through 15 drafts and was eventually abandoned before being submitted to the State Council (Yash Ghai and Woodman 2009). Various autonomous prefectures and counties have received approval from provincial governments for basic autonomy laws that largely track the LRNA content. Autonomous regions and other areas have enacted many “separate regulations” on subjects such as language, marriage, family planning, and the like. A third category would be ordinary laws unrelated to autonomy, which do not require such higher approval.⁸

Chinese Communist Party (CCP) control over the legislative drafting process is an even more daunting challenge to autonomy. Chunli Xia

⁷ PRC Constitution (1982), *supra* note 45, Article 116; LRNA, *supra* note 47, Article 19. Such provision is repeated in Article 66 of the Legislative Law.

⁸ Organic Law of the People’s Republic of China, Article 7 and the Legislative Law, Article 63).

describes the complex ways by which CCP oversees the legislative drafting process at every stage of the enactment process (Oliveira & Cardinal 2009). Given the center's control over the CCP, this leaves little room for local legislative initiative.

A number of structural and conceptual impediments further limit autonomy. First, the replication of the national political structures in national minority areas makes such areas highly susceptible to top-down central administrative control. For Tibetans, the indigenous form of government promised in the 1951 Seventeen-point Agreement has not survived.⁹ Today only Hong Kong and Macau possess such distinctive local self-rule. Second, Marxist ideology denies the essential character of China's policies, identifying the 1950s occupation of the Tibetan and Uyghur areas as "liberation" and the institution of CCP rule as "democratic reform."¹⁰ Under such united front policy autonomy was merely a temporary solution on the path to ultimate assimilation.¹¹ The 17-point agreement in the Tibetan case shows that the CCP envisioned that local governments would carry out such "reform" voluntarily. Failing that, after the Dalai Lama fled in 1959 such a top-down repressive system was imposed.

Such imposition has left a dire track record over the years. The Cultural Revolution (1966-1976) was an especially severe period of hardline class struggle and massive cultural destruction across China. In the recent decade, the Uyghur areas of Xinjiang have witnessed Chinese accusations of terrorism, restrictions on the practice of Muslim faith and high levels of security. Tibet has witnessed a policy of cracking down on political support for the Dalai Lama, including so-called "patriotic education" and greater emphasis on economic development under which Chinese immigration has been favored (Smith 2004).¹² The Mongols have been reduced to a minority of about 17 percent in their areas. Major popular dissent and rebellion famously arose across these regions in 1959, 1989, 2008 and 2009. Increased tensions in Tibet, most recently evident in a rash of 120 self-immolations bear out the continued Tibetan frustration

⁹ Agreement of the Central People's Government and the Local Government of Tibet on Measures for the Peaceful Liberation of Tibet, 23 May 1951, available at <http://www.tibet.net/en/diir/pubs/phri/17point/data/app1.html>

¹⁰ China is said to have "liberated" the exploited classes under a Chinese "internal multinational system," in a "common program" of local autonomous rule. Common Program of the Chinese Peoples Political Consultative Committee (1949).

¹¹ Warren W. Smith, *China's Tibet*, *supra* note 2, at 233. Chinese officials cite advanced technology and modern communications to justify direct rule. Interview with Liu Hongji, *supra* note 17.

¹² Warren W. Smith, "China's Policy on Tibetan Autonomy", East-West Center Washington Working Papers, No. 2, October 2004.

with Chinese policies (Jacobs 2012).¹³ Rather than relax controls and seek accommodation with these communities the Chinese government tends to harden its stance over time. This was most recently evident in the March 2012 Chinese government's decision to put Tibetan monasteries under direct Chinese government rule in the place of the nominal independence that previously prevailed (Chi-yuk Choi 2012).¹⁴ Uyghurs have encountered bouts of official violence against alleged terrorist, recently including a gun battle where 21 people died.

Autonomy Issues in Hong Kong

Many of the tensions between an authoritarian center and a liberalizing region have been most visible in the evolving efforts to establish the promised high degree of autonomy in Hong Kong. As the prototypical example of China's "one country, two systems" formula in practice, Hong Kong's experience has wider implications. The 1984 Sino-British Joint Declaration (SBJD) promises Hong Kong self-rule and a high degree of autonomy, along with the essential elements of liberal constitutionalism: democracy, human rights, and the rule of law. It further provides that the legislature is to be chosen by elections, and the chief executive by elections or consultations held locally. Approximately sixteen liberal human rights are promised, fully or half relating in one way or the other to freedom of expression. All of these commitments are stipulated for inclusion in the Hong Kong Basic Law (HKBL), a requirement that was more or less complied with when the HKBL was promulgated by China's National People's Congress (NPC) in April 1990, though some areas of ambiguity remain. Though the NPC Standing Committee (NPCSC) has a free standing power of interpretation of the HKBL, the HKBL concurrently assigns broad powers of interpretation within the scope of autonomy to the Hong Kong courts. Both the SBJD and HKBL promises Hong Kong the right to conduct its own "external affairs" in regard to commerce, culture, sports, the arts, science, and related areas. China retains power over Hong Kong's defense and "foreign affairs."

Hong Kong has labored since the handover to PRC, under the risk of Central Government interference. Such interference was to a certain degree invited by some areas of ambiguity in the HKBL text in combination with

¹³ Andrew Jacobs, "Tibetan Self-Immolations Rise as China Tightens its Grip," *New York Times*, March 22, 2012. http://www.nytimes.com/2012/03/23/world/asia/in-self-immolations-signs-of-new-turmoil-in-tibet.html?nl=todaysheadlines&emc=tha22_20120323; LobsangSangay, "For Tibetans No Other way to Protest," *The Washington Post*, July 13, 2012.

¹⁴ Human Rights Watch, "China: Tibetan Monasteries Placed Under Direct Rule Decision Ends Long-Standing Policy Allowing Nominal Self-Rule of Monasteries," (New York: March 16, 2012); Chi-yuk Choi, "Stay loyal, troops in Tibet told," *SCMP*, July 17, 2012.

the NPCSC's freestanding power of interpretation. Moreover, the Central Government has been reluctant to allow the full development of Hong Kong's democratic self-rule. In applying the HKBL, the Hong Kong Court of Final Appeal (CFA) quickly embraced constitutional judicial review of legislative and administrative acts broadly within the scope of Hong Kong's autonomy. However, the broad concurrent power of interpretation retained for the NPCSC has left Hong Kong and its courts under the shadow of Central Government interference in sensitive areas such as democratic development and the rule of law.¹⁵ The Hong Kong CFA has valiantly defended its jurisdiction and the rule of law in the years since the handover. However, the Hong Kong government's occasional request to refer matters to the NPCSC for interpretation and the few NPCSC interpretations issued in regard to legal disputes and democratic development have put Hong Kong's rule of law and autonomy under strain. In the face of incomplete democratic development, local politicians beholden to Beijing have likewise occasionally invited Central Government interference in Hong Kong affairs.

Despite such shortcomings, the welcoming of Hong Kong back into the Chinese fold under the "one country, two systems" formula has fundamentally altered the nature of the Chinese state. In essence, Beijing has recognized the international legitimacy for two territorial governments in China, thereby diminishing the unitary character of the Chinese state. A regional government has been elevated to a quasi-federate status by being given a legal expectation of compliance with the guarantees provided in the SBJD. This quasi-federate status embodies a much lower level of integration than normally obtains in either unitary or federal systems--in effect, recognizing two constituent legal systems. In spite of such strong commitments, the interpretative weaknesses and the partial development of democratic self-rule noted above have, in effect, left this quasi-federate autonomy arrangement with no institutional umbrella to legally enforce compliance with the commitments made.

¹⁵ The Hong Kong Court of Final Appeal (CFA), in a landmark decision, right after the handover upheld a generous approach to Basic Law human rights guarantees and asserted the power to review local laws and even examine NPC acts for compliance with Basic Law requirements. *Ng Ka Ling v. The Director of Immigration*, Final Appeal No. 14 of 1998, 29 January 1999. Beijing, however, was angry at the Court's attempt to "put itself above the NPC" and threatened to have the NPC "rectify" the judgment. The Hong Kong government filed an extraordinary motion to "clarify" the judgment on this point. On February 26, the Court granted the motion and restated that it was not putting itself above the NPC and that the NPC was free to "do any act which was in accordance with the Basic Law." At the same time, given that the CFA has refused to refer the case to the NPCSC for an interpretation of the right of abode issue that was before the court, the Hong Kong government directly took the case to the NPCSC for an interpretation. The resultant interpretation overruled the CFA interpretation.

The liberal democratic commitments in the Joint Declaration, along with Hong Kong's democratic capacity for popular challenges to policy decisions emanating from the central government, has been perceived as politically threatening by the authoritarian center in Beijing. Chinese leaders have sought to contain this threat at every turn. This was evident at the very beginning in the HKBL text and continuing efforts at democratic reform. The Basic Law, while conforming to most of the requirements of the SBJD, reflects China's very conservative posture toward democracy. It provides for Beijing's appointment of the chief executive based on the selection of a very pro-Beijing oriented Election Committee currently made up of 1200 members chosen mostly by various functional sectors. The HKBL Article 45 proclaims the ultimate aim is election of the Chief Executive by "universal suffrage" upon nomination by a broadly representative Nominating Committee. The Central Government has indicated that such universal suffrage can be initiated in 2017 but has also suggested that the Nominating Committee may vet the candidates to eliminate those from the democratic camp.

Half of the Legislative Council is likewise made up of functional constituencies and a similar promise of universal suffrage looms as a possibility after universal suffrage is achieved for the Chief Executive.¹⁶ Again, skeptics harbor doubts about the abolition of the functional constituencies, which have largely been a base of support for the Beijing appointed Hong Kong Government. HKBL Article 74 further limits the powers of the elected Legislative Council. In effect, only the government can propose legislation, at least where expenditure or government policy is involved. Even when legislative amendments to government bills are proposed, under HKBL Annex II, Article II, they must be passed in a split voting system by a majority of the now 35 functional-sector legislators and by the half that are directly elected.

China's containment policy has been especially directed against the prodemocracy camp in Hong Kong. Before the June 1997 handover, popularly elected democrats were excluded from nearly all of China's appointed transition bodies. At the handover, these "pan-democrats" were dismissed and refused to join the appointed Provisional Legislature. They quickly regained their seats in the next Legislative Council election and have generally amassed just under 60 percent of the popular vote for the

¹⁶ Such commitment to allow fulfilling of the universal suffrage requirement was made in a December 29, 2007 NPCSC interpretation. Decision of the Standing Committee of the National People's Congress of December 29, 2007. <http://www.legco.gov.hk/yr07-08/english/panels/ca/papers/ca0121-ppr071229-e.pdf>

directly elected seats in the elections since. However, as noted, Beijing remains weary of the pan-democratic politicians and seems bent on containing their role in any future elected government under the promised universal suffrage. If the Hong Kong Government's proposal for universal suffrage seeks a model to exclude such candidates from the pan-democratic camp then they will surely use their power under the 2/3 legislative vote of approval requirement to veto any electoral change, leaving the system frozen in place as it now is. China has warned that Hong Kong must not be a base of subversion, especially after the 1989 Tiananmen-related demonstrations in Hong Kong (where a million demonstrators led by the prodemocracy leaders took to the streets). At that time, leaders of Hong Kong's prodemocracy movement were specifically accused of subversion. Their behavior since has certainly lacked any subversive tendencies but Beijing appears to lack trust regarding their intentions.

At the heart of all the policies towards Hong Kong is the principle of maintaining the current mainland system, both as an authoritarian regime and as a unitary state. Accordingly, Taiwan sees Hong Kong as an example of the sort of tension that would be likely if it entered into any relationship with the mainland. If reforms are not pursued on the mainland, however, tensions between an authoritarian center and a liberalizing region will only increase as democratization slowly moves forward in Hong Kong.

Taiwan

If unification with Hong Kong has created difficulties for Beijing, unification with Taiwan would stretch the mainland's authoritarian unitary system to the breaking point. To date, Taiwan has responded coldly to China's offer of unification on the "one country, two systems" model. Although both sides favor improved legal arrangements for their blossoming trade and other private-sector relationships, neither side has made any commitments that would substantially meet the other's concerns when it comes to unification (Henckaerts 1996).¹⁷

The mainland authorities insist on Taiwan's submission to one China, dominated by the current government in Beijing. They seek to impose this view on China's foreign partners, as was evident when then US President Bill Clinton was pressed to articulate, a U.S. policy of "three nos" during his 1998 visit to China. These include no support for Taiwan's independence, no

¹⁷ The mainland and Taiwan white papers on cross-strait relations published as early as 1993 and 1994 set forth the basic positions of the respective sides. These positions remain largely intact. See Jean-Marie Henckaerts, ed., *The International Status of Taiwan in the New World Order, Legal and Political Considerations* (London: Kluwer Law International, 1996) (white papers at 267 and 279).

support for Taiwan's entrance into state-based international organizations, and no "two-China" policy. Beijing is willing to concede a slightly higher degree of autonomy for Taiwan than for Hong Kong, allowing the former local military defense and "certain rights in foreign affairs," in addition to local self-rule and control over external affairs. . But Beijing has been extremely reluctant to allow Taiwan the security of substantial autonomy in international affairs, seeking to block nearly every effort Taiwan makes to gain bilateral or multilateral recognition.

In any case, Taiwan has shown no confidence in the "one country, two systems" formula. It has pursued a policy of democratic reform and consolidation at home, while seeking to enhance its international status through practical diplomacy. In negotiations with Beijing, it has limited its overtures largely to trade and various private exchange arrangements, insisting that democratic reform on the mainland precede further steps toward unification. Surveys in Taiwan generally show popular support for the status quo, being obviously the least risky position to take. Even the current Republic of China Government, under the leadership of a more Beijing-friendly Nationalist Party has so far refused any negotiations on political status. Any movement in that direction would surely cost them the next election.

The mainland's proposals offer Taiwan little incentive to respond favorably to unification. People on Taiwan undoubtedly feel a historical affinity with Chinese civilization, but they view the current regime on the mainland with trepidation. While the benefits of more secure trade with the mainland and the promise of noninterference in Taiwan's external trade relations are attractive, they are clearly not sufficient to persuade an economically successful democratic community to surrender its independence to an authoritarian power. Any successful unification arrangement must give Taiwan confidence about its status in a reconstructed Chinese state. Some flexibility on Beijing's part as to what unification means seems imperative.

TOWARD A CHINESE FEDERAL AND CONFEDERAL MODEL

China is clearly a multi-national state with all the stresses and strains envisioned by Stepan, Linz and Yadav (2010) reflected in their "state-nation" model. At the same time, it does not meet the prerequisite of their proposal, that it be a democracy. China seems to be at a political reform impasse. On the one hand, the CCP's reluctance to embrace substantial democratic reform seems driven in part by fear of losing control both over the increasingly diverse economic forces in China proper and over the

restless periphery. On the other hand, any effort at substantial democratic political reform to address this growing economic diversity and China's multinational character would almost certainly require a non-unitary federal model on the Chinese mainland and a degree of asymmetry with respect to contentious peripheral regions.

What would federalism mean in China? While one can easily construct ideal types of federal and confederal structures that constitution drafters might hope to achieve, it is much more difficult to imagine a path of orderly change that reformers might follow in their effort to democratize and federalize China. In their earlier writings, Linz (1997) and Stepan (1997, 2001) identified the chief functions of federalism as either "coming together" or "holding together" (Juan Linz 1997 and Juan Linz 2001). In the proposal made above for a mix of federalism (for the core of the Chinese mainland) and confederation (to bring in peripheral communities such as Hong Kong, Tibet and Taiwan), one can detect stronger elements of "holding together" in the first two and "coming together" in the latter. But these are not the only goals that federalism might serve. Chinese reformers are attracted by federalism because it is directly related to democracy. As Linz (1997) and Stepan (1997) note, it is not meaningful to speak of federalism under authoritarian or other dictatorial systems. Such systems tend to be incompatible with the local or regional self-rule upon which federalism depends. At the same time, merely launching national elections without meaningful democracy at the regional level, as occurred in Russia, may also lead to a failed federalism.

Federalism in China Proper

When Beijing is ready to take democratization on the mainland seriously, federalism may facilitate that process. As Stepan and Linz emphasize, the largest democracies in nearly every part of the world are federal. Logically, the notion of popular control suggests units of government small enough to allow voters to influence the decisions that affect their daily lives.¹⁸

As suggested in the discussion of federal theory above, federal institutions for the mainland portion of a democratizing China should ensure that politicians have reasons to be committed to the autonomy of their regional units while also being solicitous of the interests of the broader political community. Such dual loyalty has long been emphasized as an overriding concern for a federal model (Ordeshook and Shvetsova 1997). Various

¹⁸ Larry Diamond notes that decentralization may enhance the efficacy, quality, and legitimacy of democracy. Larry Diamond, *Developing Democracy: Toward Consolidation* (Baltimore: Johns Hopkins University Press, (forthcoming), ch. 4.

institutional models are employed for this purpose. A fairly standard legislative configuration for a federal system involves a bicameral legislature, with one assembly composed of legislators representing the units equally and the other directly elected on the basis of population. Alternatively, a unicameral legislature may include some members who represent the units directly. The existence of substantial numbers of local and regional elected offices affords a ladder to political advancement at the national level, thereby encouraging among politicians loyalty to both the unit and the nation.

In a standard symmetrical federal system, as might be employed on the Chinese mainland, most powers are reserved for the regional governments. The federal government should be particularly concerned with the provision of public goods (defense, a unified monetary system, and the like) and with the regulation of policy areas where the interests of individual regions may be contrary to the larger good of the federation as a whole, or where the interests of units are better served by a national policy. In China's case, one such issue might be the development and evolution of a national retirement or social security system to alleviate the enormous burdens in this area alternatively borne either by SOEs or local government. The central government would also be expected to provide a regulatory framework for commerce among individual units and with outsiders. These are areas where the absence of a federal legal and political structure in China has resulted in fiscal difficulties, regional protectionism, suppression of minorities, corruption, lack of economic reliability for outside investors and lenders, and the suppression of information vital to corrective actions.

Independent federal courts are also important in addressing these concerns. China now just has an inclusive national court system. Federal courts, if not under the thumb of regional officials, can help to integrate the system and to implement federal guarantees by reviewing regional and national laws and official actions for conformity to federal constitutional and other legal requirements. In a civil-law country such as China, a separate federal constitutional court may be needed to adjudicate questions of constitutional rights and to police jurisdictional boundaries. Local provincial courts can be employed to foster a commitment to local jurisdiction and laws, within appropriate constitutional constraints.

If reformers in China wish to get to federalism in an orderly fashion without a major crisis, then the current economic reforms, decentralization, and moderate political and legal reforms may point the way forward. Now largely missing, democratization should clearly be part of this trajectory. China has

already instituted village elections, with limited choice, but occasional talk of expanding such franchise to the country and provincial levels has been largely stalled. In the absence of associational freedoms, the village level elections have offered little substantive choice. Accordingly, more than just elevating such elections to a higher level would be required. As it now stands, there is a great deal of room for interference on the part of the political elite, and multiparty contestation is forbidden. Surveys have long shown that 60 to 70 percent of local officials in less developed provinces have a “tense” or “relatively tense” relationship with the public (Pei 1998). The numerous reported mass actions surely bear out the persistence of this problem. China would be well advised to grant broader freedom of association and to encourage the formation of genuine opposition parties. Unfortunately, an earlier attempt to register an opposition party, the China Democracy Party, met with rejection and arrests.

Under this scenario of gradual reform, the National People’s Congress (NPC) might initially be retained as the national legislature and the body out of which the national government can be formed, though its size should be reduced well below its current membership of nearly 3,000 members and CCP control over its agenda would have to be phased out. Under the present system, the NPC is formally chosen from a limited number of candidates per the number of seats (110 for 100 seats) by people’s assemblies at lower levels of government in a multi-tiered pyramid-like structure. Presently, CCP control at the top may dictate electoral outcomes but this could be reformed to allow genuine bottom-up choice. If democracy with direct competitive elections were instituted at the provincial level and the provincial assemblies genuinely chose the national legislature, there would be an incentive for parties to organize on a national level or to form political alliances in order to acquire influence in the national body.

China has made other institutional moves that could provide the software to pave the way towards a federal democracy. It earlier signed the International Covenant on Civil and Political Rights (ICCPR), though it has yet to ratify this covenant. Several other international human rights treaties have been signed and ratified, though the state of implementation leaves much to be desired. A genuine commitment to implement the ICCPR and other human rights treaties would affirm in principle the national commitment to basic rights and freedoms that would be required for any democratic reform to take hold. In recent years, proposals for a constitutional court have also been advanced by scholars, though this too has been condemned by the CCP leadership. A national court system already exists, and it could be restructured to create separate federal courts and local provincial

courts. If Beijing were merely to carry out these steps in an orderly fashion and begin to cut back the special status of the Chinese Communist Party, it could arrive at a position just short of formal federal democracy on the mainland before any major constitutional revision were undertaken. China's new President, Xi Jinping, has offered ambiguous commitments in this regard, reflecting a conflict in his policies between according primacy to the constitution and the party.

With a national democratically elected body and minimal legal institutions in place, there would be time to consider formal constitutional steps toward federalism. These might include -calling of a constitutional convention, instituting bicameralism, reforming the legal and judicial systems, reducing the size of the NPC, and adopting alternative methods for forming future governments. Similarly, elected provincial assemblies could take the necessary steps to reconstitute provincial governments. This would be a sensible orderly route toward ultimate democratization on the mainland.

Towards A Confederal Solution for the Periphery?

A confederal arrangement for China's peripheral communities would provide a reliable umbrella of national laws and institutions under which these communities could be brought together in the "state-nation" vision discussed above. Such an arrangement would involve many of the same types of institutions envisioned in the proposed federal structure for the mainland, but a more limited role for the central government must be accepted. The key question, once again, is how to get there. In offering Taiwan the same arrangement that it granted Hong Kong, plus substantial rights in the area of self-defense and foreign affairs, Beijing has moved toward an asymmetrical confederal formula--though not far enough to attract Taiwan.

Beijing's policies still fail to offer an overarching institutional structure for unification that would be acceptable to a multinational democratic state. It insists on political domination of the peripheral communities by an authoritarian center. In response to Beijing's overtures, Taiwan has stressed the need for democratization on the mainland and a more egalitarian and consensual cross-strait relationship. China's willingness to concede to Taiwan a high degree of autonomy, combined with this seeming impasse over democratization and the consensual character of any settlement, led some Chinese democratic theorists in the past to raise the possibility of confederation (Jiaqi 1995).

What would a confederation arrangement mean for China? Confederation is commonly achieved through the coming together of territorial

communities by consensual agreement or the relaxing of central control over an existing unit. The purposes of confederation usually include commerce and trade, and may also extend to security, defense, public health, human rights, and monetary issues. Decisions in the early phase usually require the unanimous agreement of the confederal partners, though, as time goes on and trust is built, this may be reduced to a supermajority requirement for more routine matters. The operative body for securing such consent may initially be a representative council. While a directly elected legislative assembly or parliament may be employed in an advisory capacity, the representative council is unlikely to concede its final authority in the early period. These representative bodies are usually served by some executive authority or secretariat to provide administrative services in drafting and implementation.¹⁹

Scholars have especially emphasized the importance of a judicial organ for third-party dispute resolution and for implementing confederal agreements. A confederal judicial body can encourage the penetration of confederation law--both treaty and secondary law--into the domestic law of the subunits and produce a spillover effect from the narrowly economic into other areas of law and politics (Burley & Mattli 1993). This reduces the politicization of many issues and allows for incremental change. The European Court of Justice (ECJ) offers a good model. By ordering the direct application of community laws in national courts and accepting referrals for preliminary rulings, the ECJ has encouraged the development of confederation jurisprudence and has helped to constitutionalize and integrate the European system. To ensure that members of the court do not favor any one state, the ECJ employs a system providing for secrecy of deliberations and does not issue dissenting opinions.

In China's case, some form of confederal arrangement linking the mainland with peripheral communities could contribute to the rationalization of its internal order. China has so far been able to keep its peripheral communities under control (or in the case of Taiwan, to ensure a degree of restraint) through its clear willingness to use force. A democratic China, however, would find it difficult to adopt such a menacing posture. In a sense, then, democratization is now a hostage to the perceived need for forcibly controlling the periphery. As discussed by Stepan, Linz and Yadav (2010), highlighted above, this dilemma can be resolved only by coming up with a more consensual unifying arrangement as an alternative to authoritarianism and force. The key here is that the periphery (initially

¹⁹ The most noteworthy and successful recent example of a confederation in practice is the European Union, though its multi-state characteristic is not essential.

Taiwan, and later possibly an autonomous Tibet, Hong Kong and Macau) would not be submitting to Beijing but joining in a partnership--in effect, creating a Chinese political community. In this regard, a workable solution with regard to Tibet may serve as a model to address the Uyghur issue in Xinjiang. China sometimes argues that there would be chaos if all 55 national minorities sought special status, but really only two or three "national minorities" are seeking such genuine autonomy.²⁰ The claim about 55 is a red herring.

Given the great difference both in size and socioeconomic conditions between the mainland and Taiwan, an initial arrangement might confine itself to specifying and policing trade and investment rights. As the mainland democratizes and liberalizes its system and experiences further economic development, the jurisdiction of the confederation judicial body might expand to new subject areas by consensus. At first the only official institutions might be a joint council, an executive authority, and a judicial body. The council would ensure that all decisions were made by unanimous consent, and the staff of the authority could produce any regulatory material and reports requested. The authority could also investigate official complaints from confederation members before any submission to the judicial organ, which would adjudicate these official complaints and any private complaints referred from the subunit courts. The latter could be referred for preliminary rulings on confederation requirements and jurisdictional conflicts. If the confederation requirements are directly enforceable by individuals in the courts, then the confederation judicial body may contribute to the development of the rule of law in China's confederal units by offering authoritative interpretations of rights and of jurisdictional and choice-of-law requirements in individual cases. Keeping their deliberations secret and not issuing dissenting opinions would also help to insulate confederation judges from political pressure. If these arrangements succeeded in satisfying both the center and Taiwan, they could be considered as a basis for ensuring autonomy in other peripheral communities in an asymmetric form to meet the justified needs of these communities.

Any confederation arrangement could also include an external dimension. The twentieth century has witnessed a dramatic evolution in the role of the state and in the structures and rights of international participation. Traditional nineteenth-century views of sovereign exclusivity have been

²⁰ One may suspect that the CCP created a symmetry of national minority status for 55 ethnic groups to water down the status of the contentious claims of genuine nationalities on its border regions in Tibet, Xinjiang and Inner Mongolia.

replaced by an increasing emphasis on sovereignty as international participation. Since the end of World War II, there has been a dramatic increase in the number of sovereign states, ranging from mammoth countries like China and India to island states with a few thousand citizens. The growth of the international order has reduced the prerogatives of states, and their zone of exclusively internal affairs has contracted. At the same time, a number of territorial communities not formally recognized as states, including Palestine, Hong Kong, and Taiwan, have come to enjoy considerable international status. Moreover, rights to autonomy and local self-rule within states have become matters of international concern.

Beijing's official view on the nature of the state and on the boundaries between its exclusive prerogatives and the international order stands in stark contrast to this emerging twentieth-century practice. Applying a nineteenth-century view of sovereignty, the Chinese government is prone to respond to its critics by declaring that its human rights practices and its treatment of domestic autonomous communities are internal affairs. Nevertheless, in practice, it shows evidence of greater flexibility. China has signed various international human rights treaties and has entered into dialogue with other countries regarding human rights. It has also, in effect, internationalized its relationship with Hong Kong by grounding it on an international agreement upon which it invites its international partners to rely. Beijing should recognize that affording an autonomous constituent community a substantial degree of international participation would help to gain its trust in any agreed arrangement. For a confederal Taiwan, in the spirit of asymmetry this might even include participatory rights normally enjoyed by the states. Taiwan's leaders will be reluctant to agree to anything less.

The emergence of what has been called "non-territorial global functional space" raises a whole range of new possibilities in international affairs (Ruggie 1993). This space includes activities concerned with commerce, the environment, science, human rights, the arts, flows of information, and civil society more generally. The ability of states to attract and regulate such activities depends on the reliability of their institutions. In its unification formula, China offers its local partner the power to conduct "external affairs" in this non-state global channel. Taiwan already operates very effectively in this space. For this reason, China's ability to isolate Taiwan is limited. To attract Taiwan towards unification, Beijing must recognize this international reality.

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UNIFYING A BINARY ONTOLOGY OF LAW AND POLICY

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The Constitution of India is the instrument by which Indians subjected their individual will to modernity's ideal of subjecting individual will to social control. However, the history of Indian legal systems dating back to 2700 years ago show that pre-modern legal systems is constituted of diverse sources of law and sophisticated interpretive traditions. While historical evidence shows that law was fundamental to ancient societies, they shed little light on the prevalence or status of rule of law. The rule of law is critical to democratic aspiration for it presupposes due process, which is enshrined in Article 21 of the Constitution. Its translation in practice has been marginally successful. Public perception of the government has been as one of a crumbling institution. The article argues for incorporating policy education in legal curriculum to foster a political culture that can appreciate and commit to the interconnections between law and policy formulation and its implementation.

If modernity means to subject the individual will to social control through instrument of law, then Indians achieved it in the Constitution of India, which limited the state ordinarily to “the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.”¹

The constitution, however, was not the first instrument of modernity: The history of Indian legal systems has been tracked back some 2,700 years to the pre-Mauryan period enabled by the Dharma Sutras (5th through 3rd cent. BC) and the Arthashastra (4th cent. BC). The Gazetteer of India edited by Pran Nath Chopra (2003) recorded, “The customs and practices of regions and villages, of castes and families, and of functional groups are clearly recognized as authoritative sources of law in the Dharma Sutras

*Based on JSJP Open Lecture, at the time a public policy scholar of The Hindu Centre for Politics and Public Policy, Chennai

¹ Indian Constitution, part III, article 12.

(Chopra 2003).” The Arthashastra listed “sacred canons, current law, usage and reason,”² all subject to syllogistic reasoning, as sources of law. Later, debates about proper limits on libertarian freedom are reported to have occurred in Ashoka’s period around 250 BC.

Evidently, the ancient legal systems included not only diverse sources of law but also sophisticated interpretive traditions. Nevertheless, while the historical evidence indicated that law was fundamental to the ancient societies, which consequently were modern for it, it shed little light on the prevalence or status of rule of law.

The rule of law is critical to democratic aspiration for it presupposes due process, which the Supreme Court of India has found in the intent of Article 21 and in the basic structure of the constitution (Prמודh 2007).³ The rule of law, as opposed to rules by man, “divine will,” or brutality, is simply understood in the 17th-century English church historian Thomas Fuller’s cry, “Be you ever so high, the law is above you.”⁴ For example, Constitutional Article 14 forbids the Indian state from denying any individual “equality before the law or the equal protection of the laws”(language partly taken from the 14th Amendment of the U.S. constitution.⁵) The rule of law exists in an egalitarian utopia of seven necessary presumptions: the law is legitimately produced, necessarily enforced, equally obeyed regardless of an individual’s political or financial status, prospectively applied, independently adjudicated, easily accessible, and written in language that is clear and determinate.

² Ibid.

³ The supreme court ruled in *Mithun v. State of Punjab*, (1983) 2 SCR 690, “It is now too late in the day to contend that it is for the legislature to prescribe the procedure and for the Court to follow it, that it is for the legislature to provide the punishment and for the courts to impose it . . . the last word on the question of justice does not rest with the legislature. It is for the courts to decide whether the procedure prescribed by a law for depriving a person of his life or liberty is fair, just and reasonable” (at 698-699.) In addition, “It is also significant to note that [due process] falls within the protection of the concept of ‘basic structure,’ putting its abridgement beyond the legislature’s competence.” Pramodh Saxena, *International Journal of Refugee Law* (2007), 19, 2: 246.

⁴ As quoted by Alfred “Tom” Denning, or Lord Denning, the distinguished English jurist and Master of the Rolls 1962-1982, in *Gouriet v. Union of Post Office Workers* (1977) 1 All ER 696 at 716j-717h. Lord Denning admonished belligerent trade union workers in these words: “To every subject in this land, no matter how powerful, I would use Thomas Fuller’s words over 300 years ago: ‘Be you ever so high, the law is above you.’”

⁵ The legal scholar Robert B. Charles finds “no other nation has had a polity more receptive to the fundamental rights enshrined in the American Constitution, nor a judiciary more conscientious in its attempt to guard those rights, than India.” See, “American influence on the Indian Constitution: Focus on equal protection of the laws,” *Columbia Human Rights Law Review*, 17 (1986), 193-204, at 193.

How successful has republican India been in achieving the rule of law? Only marginally successful, suggests anecdotal evidence in news-media reports. Public dissatisfaction with government bungling, bribery and pandering is overwhelming; public perception of crumbling public institutions is widespread.

In addition, the poor state of legal literacy and education in India is not scalable; it is, on the other hand, anachronistic to any aspiration of the rule of law. While Indian legal systems are of hoary heritage, the evidence of formal legal education is much newer. Even in the late 19th century, India had a handful of law colleges in Ernakulum, Allahabad, Mumbai, Madras, Meerut and Bareilly. The best Indian law graduates were perceived to necessarily pass from exalted English universities such as Oxford and Cambridge. Today, more than 60,000 law students graduate in India every year; the profession in India has approximately 1.2 million lawyers.⁶ Expectations of quality, not to mention the aspirations of rule of law, continue to falter in Indian institutions of legal education. An effective route towards achieving if not realizing the rule of law would take a system of legal and policy education that enables the political culture to appreciate and commit to- law and policy formulation, application and criticism.

As Indian democratic aspirations mature, the law, in all its majesty, has never been more relevant to delimiting Indian society. However, legal and policy education, although increasingly accessible since the late 1980s, is seriously inadequate. Its positivistic focus is diminishing expectations of any syncretic ontology. Disciplines coalesce as boundaries disappear, but the legal academy appears to lag more than it leads. Two reasons can explain the crunch: A de-emphasis of policy studies in legal curricula and a severe neglect of research. Legal departments and universities ought to emphasize research in instruction and implicate the rule of law, both through a simple structural innovation: Including policy studies in undergraduate legal curricula and offering incentives for faculty members to routinely offer their subject expertise to the institutions of state. After all, knowledge that is not disseminated runs a risk of atrophy; to argue otherwise is not inspirational, it is cynical. Among current Indian colleges, two of every three were set up in the last three decades. In January of 2013, the Bar Council of India recognized 709 law colleges

⁶ "Vision Statement 2011-2013," Bar Council of India. <http://www.barcouncilofindia.org/about/about-the-bar-council-of-india/vision-statement-2011-13/> (accessed 28 January 2014)

or departments, in addition to 13 national “law universities.”⁷ The first law university – dedicated to legal education -- was opened in Bangalore twenty-seven years ago. The council, established by the Advocates Act of 1961, is the statutory regulator of Indian lawyers and their profession but it is also charged with prescribing the norms of legal education (per section 7 of the act), accrediting law programs (section 10), and defining rules of admission and graduation (section 49).⁸

Offering law students and professors strong incentives for policy research while using the existing infrastructure of legal programs would represent an academic imperative to not only strengthen rule of law and include public policy in political discourse, but also implicate law students in policy appreciation. It is high time the bar council led the academy to enabling a new republic of the mind by advancing fundamental knowledge about basic constitutional structure and enabling new vistas of democratic aspiration.

Even as Indian legal education becomes more accessible, poor quality persists as its abiding shame. Static curricula, an overemphasis of problem-solving skills at an expense of theorizing, inaccessible primary sources such as acts of legislature and *Shepardized* cases,⁹ and the systematic ignorance if not de-emphasis on policy studies are all self-defeating. So are unmotivated professors and pedagogic emphases on litigation, business, and rote learning. Even in the national legal universities, there is little if any systematic expectation of faculty research; the typical law professor’s workload reflects little peer-reviewed publishing in national venues of erudite exchange. Legal scholars tend to have routine access to few secondary sources such as law reviews. Fresh insights, new knowledge, and currency of case law seem elusive. Not surprisingly, sixty-four years after the republic was born, Indian jurists, including many appellate judges, seem to prefer citing non-native precedent.

Indian law graduates, it seems, are too often unable to demonstrate cognitive skills of logical reasoning, critical thinking, pattern recognition, problem solving, vocabulary, and writing. They are too often inadequately

⁷ See, “List of law colleges,” <http://www.barcouncilofindia.org/wp-content/uploads/2010/05/List-of-Law-Colleges-2013-as-on-1st-Jan.-2013.pdf> (accessed 28 January 2014)

⁸ See, Advocates Act, 1961, <http://www.barcouncilofindia.org/wp-content/uploads/2010/05/Advocates-Act1961.pdf> (accessed 28 January 2014)

⁹ “How to *Shepardize*.” LexisNexis, <http://www.lexisnexis.com/infopro/training/reference/shepards/shepardscompgd.pdf> (accessed 28 January 2014)

aware of Indian philosophy (including the dialectic of Dharma¹⁰ available in Upanishadic, (Ranade 1926)¹¹ and later literature), social anthropology, and intellectual history, all of which are critical to comprehending any Indian-legal epistemology. Too many law graduates, it appears, struggle to distinguish facts from law or a legal question from a political one. True, none of these concerns has been measured for its impact on public confidence in lawyers, but it is safe to state that, consequently, many Indian law graduates fail to evoke high expectations of either intellectual heft or just passion. Many law graduates would only inadequately value vetted evidence and rigorous reasoning, even though they would readily indulge self-righteous opinion.

The problems highlight a key inadequacy in Indian legal curricula: A systematic de-emphasis on public-policy studies. Law is fundamental to modern society, but so is policy. If law is defined as a code of conduct established and enforced by duly constituted authority—such as a legislature—for the society, then policy is understood in formulating and applying executive-branch decisions, consistent with the law, to manage public resources. Sources of law include constitutions, acts of legislature, international treaties, rules of quasi-judicial agencies, equity rulings, and common-law precedents. Sources of public policy, on the other hand, include decisions and orders of the cabinet and its bureaucracy and

¹⁰ Dharma held multifaceted meanings in Vedic and later Smṛiti and Buddhist narratives, including law, righteousness, ethical decision-making, duty, custom, morality, and the Buddha's teaching. See generally, Alf Hiltebeitel. *Dharma: Its Early History in Law, Religion, and Narrative* (New York: Oxford University Press, 2011); M. Rama Jois, a former chief justice of the Punjab and Haryana High Court, found in Mahabharata and other mostly Smṛiti texts that Dharma necessarily encompassed attributes of individuals that would sustain society, maintain social order, ensure others' well-being, and enable inclusive progress of humanity. In Jois' discussion, Dharma was more consistent with social responsibility than with self-fulfilment. E.g., see, *Legal and Constitutional History of India* (New Delhi: Universal Law Publishing Co., 2010), 3-9. For Jois' separate discussion of Dharma as protections of civil rights, see *Be Immortal* (Bangalore, India: Canara Press, 2013), 48-65. Sarvepalli Radhakrishnan, among others, has found Dharma to emphasise a rule of law in that the sovereign was necessarily subordinate to Dharma. S. Radhakrishnan, ed. *The Principal Upanisads* (London: George Allen & Unwin, 1968); An exclusive church, holy book, and hagiography – all necessary presumptions of later Semitic religion – had no equivalence or parallel in Dharma. See generally, Will Durant. *Our Oriental Heritage*, 11 vols. (New York: Simon and Schuster, 1942), I; Per T.V. Subba Rao, visiting professor, National Law School of India University, Dharma is “a guide to life . . . whatever brings society together is Dharma, what divides is Adharma.” Lecture to Indian Police Service probationers attended by author. Bangalore, 17 June 2013.

¹¹ The eminent Sanskritist Ramachandra Dattatreya Ranade states “the Upanishads occupy a unique place in the development of Indian thought. All the later systems of Indian philosophy . . . have been rooted in the Upanishads.” R.D. Ranade, *A Constructive Survey of Upanishadic Philosophy* (Poona, India: Oriental, 1926), ch. II, 3.

independent administrative agencies. Without public policy to enlighten it, clearly, much law would remain locked in books.

International broadcast law, developed by treaty through the Geneva-based International Telecommunications Union of which (in its predecessor) India has been a continuous member since the British Raj starting 1858, offers an illustration of the symbiotic relationship between law and policy. The law declares the electromagnetic spectrum as a public resource, but policy allows the executive branch, through either the wireless planning & coordination wing of the Indian ministry of communications and information technology or the statutory autonomous regulator, the Telecom Regulatory Authority of India, to administer the legal intent. The Indian department of telecommunications, part of the ministry, allocates use of the spectrum; typically, frequencies between 9 kHz and 3000 GHz are assigned for purposes including mobile telephony, broadcast television, and satellite radio. In the United States, has Congress declared, through the Radio Act of 1927- later replaced by the Communications Act of 1934- the electromagnetic spectrum to be a public resource owned not by government, broadcasters or advertisers but by the American people. Licensees, consequently, would use the spectrum necessarily in the public interest. In addition, because the electromagnetic spectrum was scarce, intrusive, and failed to recognize civic-national boundaries, the Supreme Court of the United States has upheld its regulation in ways that could not be similarly justified for print, cable or Internet; the spectrum thus is the most regulated of all media. In its fiduciary responsibility, the American state, through its hyperactive Federal Communications Commission, allocates licenses for use of that public resource for specific purposes: 3 to 30 Hz for submarine communication, 30-300 MHz for FM broadcasting, 300-3000 MHz for microwave ovens, 30-300 GHz for remote sensing, etc. The FCC, through eloquent rulemaking and policy, also regulates broadcast content for hoaxes, lotteries and indecency. It makes and enforces the limits on ownership of media properties and enforces statutory requirements of the “equal time rule,” the V-chip, and “safe harbor” hours.¹²

As the broadcast-regulation example illustrates, the law can lay out a determinate framework of sanctions; policy would then enable the executive to enforce the legal intent by an astute management of public resources. Because law enforcement and policy formulation and enforcement are all executive prerogatives, the cabinet and its bureaucrats tend to enjoy wide-ranging powers unrivalled in the legislative and judicial branches.

¹² For an overview of broadcast regulation in the United States, see “The public and broadcasting,” <http://www.fcc.gov/guides/public-and-broadcasting-july-2008> (accessed 28 January 2014)

There is a strong case to be made that legal curricula ought to reflect that growing reality of executive power. Generally, policy has been like the errand boy who runs around the office all day but is systematically ignored when it is time for a meeting. Including its studies and method in legal curricula, as some fine law programs in the United States have done, would empower future lawyers with a head start to celebrate rule of law and legal literacy. At the Harvard Law School, for example, 23 research programs and centers provide connective tissue between the theory and practice: the Spring 2014 catalogue includes courses titled Communications and Internet Law and Policy (taught by Professor Yochai Benkler), Climate Energy Law and Politics (Jody Freeman), Behavioral Economics and Public Policy (Cass Sunstein), and Corporate and Capital Markets Law and Policy (Lucian Bebchuk), among dozens of others.¹³ Indian legal departments could emulate such law-policy interactions to develop their own tandem functions with agencies and governments to expand dialogue and link legislators with bureaucrats. In celebrating the vitality of policy studies, they would lead an interdisciplinary, lateral influence on democratic processes. Legal departments that incorporate policy studies would complement a small number of independent policy-incubator institutions such as the Centre for Policy Research, New Delhi, the Centre for Policy Studies, Chennai, and more recently, The Hindu Centre for Politics and Public Policy, also Chennai.

Having argued in favor of including policy studies in legal curricula, I will now attempt to lay out a normative draft of mission, agenda and strategic plan as a starting point of possible directions for a new undergraduate legal curriculum.

The mission of the new policy-inclusive curriculum ought to be necessarily pursuit of research leading to new knowledge, fresh insights, or practical recommendations in (1) reconceptualising the purpose of Indian democracy; (2) strengthening democratic processes; and (3) restoring confidence in public institutions. Its agenda would advance the mission via pursuit of two goals: (1) Producing scholarship of high quality; and (2) Disseminating that scholarship widely. The cognate and intertwined goals would be addressed in such a way that achieving the one does not impede pursuit of the other. In other words, the goals are not exclusive of each other.

Goal 1 simply means publishing in peer-reviewed journals. In research, the significant measure of quality is to pass rigorous and blind scrutiny

¹³ See, generally, "Harvard Law School: Course catalog," <http://www.law.harvard.edu/academics/curriculum/catalog/> (accessed 28 January 2014)

by disciplinary experts. Papers produced at the resurgent Indian legal departments would be disseminated only upon passing peer review. That, in turn, would singularly build the reputation of the respective legal department as a place for serious research. Consequently, Goal 1 would be pursued in any of three ways. Scholars and faculty members would:

- Submit completed papers to a peer-reviewed journal of choice. For example, the Centre for Policy Research, New Delhi, requires its scholars to submit to peer-reviewed journals. The peer-review process can take many weeks before any acceptance decision is conveyed to the author. Papers not accepted would be revised and resubmitted to that journal or another until published.
- Submit completed papers to a prospective in-house, peer-reviewed journal, which, whether online or offline, open-source or subscription, would be located at the legal department. An example is the Centre for Policy Studies, Chennai, practice of publishing its scholars' work under its own auspices. So does the Brookings Institution, Washington, D.C., which also owns Brookings Institution Press. Edited by an eminent academic and aided by an honorary editorial board, the proposed journal would adopt a peer-review process no less rigorous than that of eminent journals in political science and public policy. If not accepted, the paper would be published in an outside peer-reviewed journal or developed into a monograph (see below).
- Submit completed papers in the form of 35,000 to 50,000-word monographs (60 to 90 Word pages, single spaced, with footnotes and one-inch margins) to the department chair who would then initiate a process of blind peer review leading to possible publication under the auspices of the department. The monograph could be published in any medium: newsprint, online, or more creatively, cable or film (the last two requiring an additional narrative script) and in any form: traditional paper, interactive Web site, or audiovisual artifact.

In sum, publishing peer-reviewed research by *any* of the above means would be the legal department's measure of producing "scholarship of high quality." Consequently, an awareness of quality would be a norm in every decision in the department's research agenda.

Goal 2, which is to disseminate the scholarship widely, would be pursued in any of six ways:

- Present completed papers (prior to taking any step under Goal 1) or working papers at conferences or professional meetings. A working

paper would be defined as an original report of a partially completed research project including a literature review, statements of problem and method, and preliminary or anticipated findings.

- Prioritize international, national or local gatherings of scholars, journalists and policy leaders. Possible presentation venues would include the Indian Political Science Association, Forum on Contemporary Theory, South Asian Centre for Policy Studies, International Communication Association, and other scholarly meetings in politics, policy, communication and media.
- Present working papers at monthly colloquia
 - Students, faculty, scholars or fellows would lead, at their respective legal department or university, monthly colloquia to which local officials, legislators, scholars and journalists are invited. The colloquia would serve as bouncing boards for ideas, but they would also help assess current issues in public affairs and solicit feedback about ongoing projects
- Present working papers in a monthly lecture series
 - Students, faculty, scholars or fellows would offer a monthly lecture or seminar for the general public, with an invited local expert officiating as a moderator or chief critic. Special invitees would include local officials, legislators, scholars and journalists. The monthly lectures, in addition to helping participants brainstorm, would enhance the accessibility of the program for various outside constituencies
 - If a student, faculty member, scholar or fellow was not available to offer a lecture, then an outside expert would deliver an invited lecture, with a faculty member officiating as chief critic
- Publish an annual anthology of extended abstracts or working papers
 - Titled, say, *Abstracts from the Mysore Department of Law*, the publication would be sold to local and state libraries
- Republish papers in an annual edited volume, online or offline -- open source if offline, with copyright release duly obtained -- titled, say, the *Annals of Mysore Department of Law* or *The Mysore Journal of Politics and Public Policy*; and

- Announce ongoing projects, preliminary results, and published papers regularly via media conferences or releases and on a department Web site.

A five-year strategic plan for the resurgent legal department would be as follows.

Year 1:

1. Publish at least four peer-reviewed articles or four monographs, or a combination of the two, as described in Goal 1.
2. Complete at least 12 activities as described in Goal 2.

Year 2 onward:

1. Publish at least 12 peer-reviewed articles or six monographs, or a combination of the two, as described in Goal 1.
2. Complete at least 18 activities as described in Goal 2.
3. Make the national press at least twice for published research or other activities
4. Influence policy, in its formulation or execution, at the national level in at least two measurable executive or legislative actions attributable to research produced at the program and at the state level in two separate actions.

To conclude, it seems clear that Indian legal programs tend to be well-positioned to strengthen traditional pedagogy. First, they ought to discount the space for exclusive ontological binaries by restoring to legal education policy studies. In doing so, they would recognize a syncretic unity in the disciplines and, consequently-second-raise the bar for useful research. Expanding legal curricula into the rule of law would not only elevate the political discourse, it would, in addition, revive the best traditions in Indian legal systems and embolden Indian aspirations of modernity.

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THE POLITICAL ECONOMY OF TAX: PATTERNS OF INCORPORATION AND POLITICAL INSTITUTIONS IN BRAZIL

Aaron Schneider*

In Brazil, a cross-class coalition of popular sector and middle-class groups have won incorporation and provided support to a high-capacity tax regime. A cross-class alliance was produced by specific strategies and sequences as groups clamored for access and brought down the military regime in the 1980s. The group consolidated their alliance in opposition to neoliberal stabilization in the 1990s and institutionalized their participation in politics in the neo-developmental strategies of the 2000s. This trajectory of incorporation provided support for an ambitious effort to raise tax capacity, but it could not overcome the institutional legacies of previous patterns of incorporation that permitted economic and political elites to preserve elements of particularism and regressivity in the tax system.

INTRODUCTION

The Brazilian government collects a remarkable 36% of GDP in revenues, well above the Latin American average of approximately 22% and comfortably in the middle of rates collected in much wealthier countries. This was not always the case, and the last two decades have seen a significant tax effort that increased revenues by almost a third. In addition to its overall size, another notable characteristic of Brazil's impressive revenue increase is that it has particularly expanded social contributions, levied tax on various bases and generally attributed to spending in the social sector. Further, there is a decreasing but still heavy reliance on indirect taxes. One result of the particularities of the tax architecture is that there are ongoing problems of vertical inequity, as poorer citizens end up paying more of their incomes in tax than wealthier

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ones. In addition, there are stubborn problems of horizontal inequity across jurisdictions, as tax contributions vary depending on where payers transact.

To make sense of this peculiar combination of revenue capacity and vertical and horizontal inequity, the current project traces the evolution of political incorporation of key social groups. These social groups included middle sector, social movement, and working class actors. They mobilized and legitimated through the struggle to remove the military regime that left power in the 1980s, consolidated their position and linked to political actors in struggles over neoliberal stabilization during the 1990s, and incorporated in the post-neoliberal 2000s through intermediary organizations, policies, and state institutions.

The incorporation of this social coalition supported the expansion of tax capacity, but it was unable to address core problems of vertical and horizontal inequity. These shortcomings can be traced to institutional legacies of efforts to incorporate other groups, namely executive-legislative relations and federal arrangements that privilege regional elites.

The current paper begins with an overview of the Brazilian tax structure, emphasizing impressive increases in the amounts collected and ongoing problems of equity in the system. The next three sections trace the transformation, consolidation, and incorporation of middle class and popular actors; and the final section considers the institutions and political practices that protect the interests of economic and political elites.

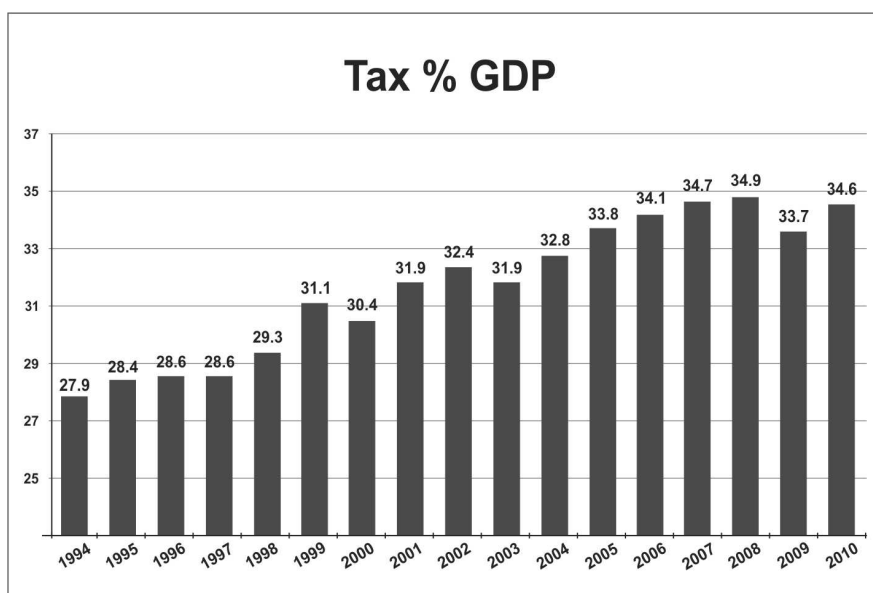
BRAZILIAN TAX

After a concerted effort from the mid-1990s to the present, Brazilian taxes are among the highest in the developing world¹. From 1994 to 2008, tax revenue increased steadily, with notable reforms to the tax system driven by an increase in income taxes and the implementation of numerous contributions linked to social spending outlays. These increases more than compensated for decreases in tariffs as Brazil liberalized international trade.

From 1994 to 2010, taxes increased from 28.4 percent to 34.6 percent, an increase of almost one quarter. These revenues were necessary as the

¹ Calculations by the IMF (2011) and Pessino and Fenochietto (2010) estimate Brazil taxes 98% of what would be possible given its level of development and other characteristics.

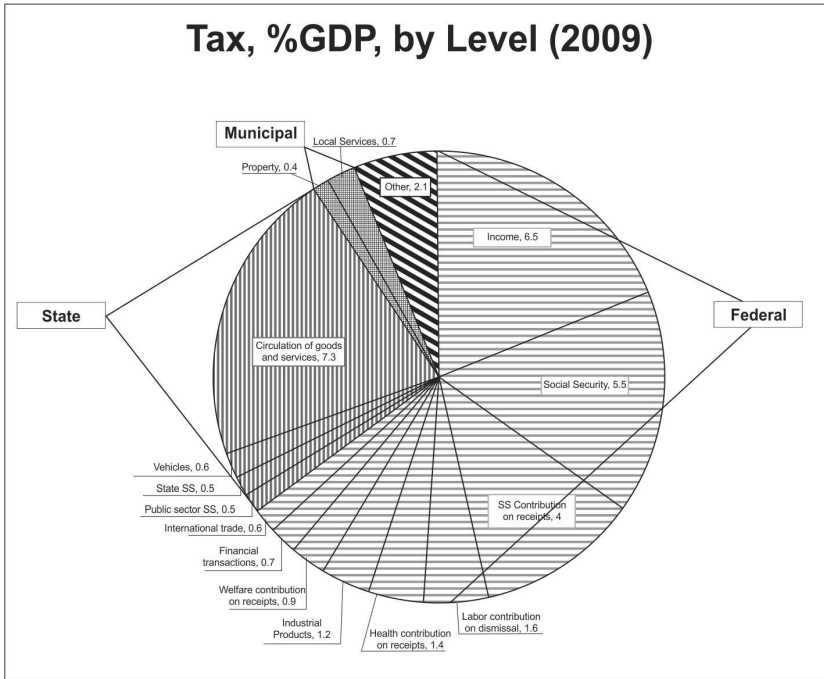
country faced fiscal insolvency during the 1980s and had to muster revenues to combat inflation, and needed further income to support expanded social spending mandated in the 1988 Constitution and responding to demand pent up during the 20 year military regime that left power in 1985.



Source: **Ministerio de Fazenda, Receita Federal**

A glimpse at the distribution of taxes and their attribution to different levels of government highlights two patterns. First, the tax system is complex, made more so with a large number of contributions tied to specific social spending outlays. These are mostly collected by the federal level (social security, labor, health, welfare), and some use payroll as a base while others calculate contributions on the basis of gross receipts. The single largest tax is a tax on the circulation of goods and services attributed to the states, accounting for 7.3 percent of GDP.

With the most important tax on consumption controlled by state governments, the federal government was forced to exchange trade taxes lowered by liberalization for income taxes. This replacement was reasonably effective, as federal taxes stood at 7.97 percent of GDP in 1994 and 7.67 percent in 2010. The effort to raise income taxes showed especially in an increase in direct taxes in the 2000s. By 2009, direct taxes were almost 60 percent of the total, up from barely 44 percent in 2000. As a percentage of GDP, this represented an increase from 13.59 percent to 17.83 percent (Afonso, et al, 2013).



Source: <http://brasildadosefatos.com.br>, from Min. Fazenda, Receita Federal

To increase revenues further, the federal government made marked use of contributions, which increased from 8.95% percent of GDP in 1994 to 12.94% of GDP in 2010. Federal contributions include social security, a social security contribution on business receipts (COFINS), a contribution to unemployment benefits for dismissed workers (FGTS), a health contribution on receipts (CSS), a welfare contribution on receipts (PIS), a public sector social security contribution (CPSS), a contribution on profits towards social security (CSL), a contribution on fuel towards education and health (CIDE), and for a time there was a contribution towards education and health on financial transactions (CPMF).²

Contributions hold several attractions as sources of revenue. First, while other federal taxes are shared with state and local governments, contributions are not³. Second, while contributions are putatively reserved for specific outlays, they are frequently available for other uses, either

² At the state level, there was a social security program on salaries (SSS).

³ In fact, for temporary periods that were repeatedly renewed, 20% of all federal revenues were separated from the pool of shared taxes and made available only to the federal government, first through the Social Emergency Fund and later through Disconnection of Receipts (Mendes, 2013).

because the outlays would occur long in the future (as in social security) or because the outlays were not particularly well monitored. A complication of contributions, as well as other indirect taxes, is that they tend to be regressive, but their most important characteristic is that they carry the political legitimacy of a promise. The government commits to increasing social spending that primarily benefits middle class and popular sector groups in exchange for increased revenues.⁴

One way to explore the equity impact of changes to the tax system is in terms of the relative burden on income groups.

Table 1: Family Income and Tax in 1996 and 2004

Family Income	Direct % Income 1996	Direct % Income 2004	Indirect % Income 1996	Indirect % Income 2004	Tax % Income 1996	Tax % Income 2004	Tax Increase
<2SM	1.7	3.1	26.5	45.8	28.2	48.8	20.6
2 to 3	2.6	3.5	20	34.5	22.6	38	15.4
3 to 5	3.1	3.7	16.3	30.2	19.4	33.9	14.5
5 to 6	4	4.1	14	27.9	18	32	14
6 to 8	4.2	5.2	13.8	26.5	18	31.7	13.7
8 to 10	4.1	5.9	12	25.7	16.1	31.7	15.6
10 to 15	4.6	6.8	10.5	23.7	15.1	30.5	15.4
15 to 20	5.5	6.9	9.4	21.6	14.9	28.4	13.5
20 to 30	5.7	8.6	9.1	20.1	14.8	28.7	13.9
>30	10.6	9.9	7.3	16.4	17.9	26.3	8.4

Source: Afonso, 2013, Zockun, et al, 2007

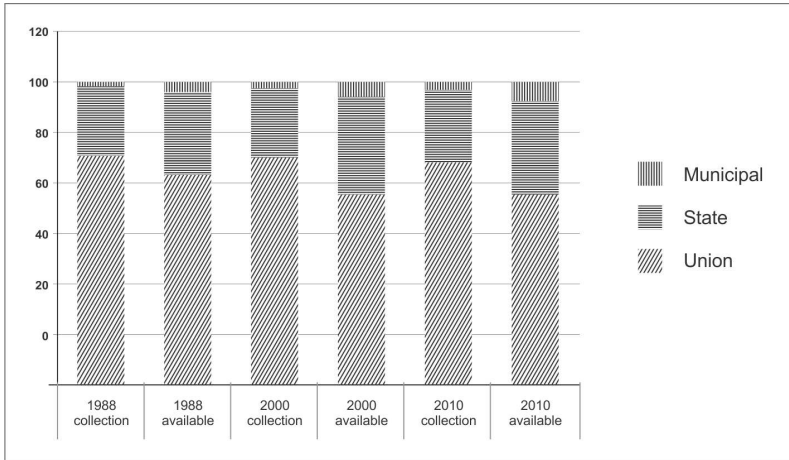
Table 1 is drawn from a study that uses household surveys to calculate the incidence of tax, and displays the change from 1996 to 2004 in direct, indirect, and overall taxes. First, the change from 1996 to 2004 shows an increasing burden for all deciles. People pay more of their incomes in tax. Second, the increase is steadily greater for poorer deciles than it is for richer deciles (except a portion of the upper middle class), and the increase weighs heavier on the poor. Still, though they appear to have become less progressive over time, the burden of direct taxes continues to increase with wealth.

As a result of these shifts in tax structure, the federal government continued to collect the bulk of revenues, close to 70 percent of the total. Of these revenues, it could decentralize resources to municipalities without losing

⁴ Taxes on consumption still account for about half of all taxes (DIEESE, 2009).

too much of the resources available. Municipalities significantly increased their share of receipts available after transfers from 10.7 percent in 1988 to 18.3 percent in 2010. This increase came only partly at the expense of the federal government, which dropped from 62.5 percent of available receipts to 57 percent, with the rest coming out of the share of state governments, which fell from 26.8 to 24.7 percent of available receipts.

Figure 1: Share of Tax Revenues Accrued to Federal, State and Municipal Governments



Source: Afonso et al, 2013

In the absence of fiscal space at the state level, and with the elimination of their other developmental tools, such as state enterprises and banks, they were forced to privatize; state governments engaged in a practice labeled “fiscal war” in the popular Brazilian press. Fiscal war among the states is the competitive offer of tax incentives to businesses that transact in their state, as well as efforts to pressure the federal government to alter the tax rates paid in one state or another. This introduces horizontal inequities as taxpayers operating in one state face different tax rates from those operating in another.⁵As an illustration of the confusing array of tax rules, the table below displays some of the main benefits conceded by different states.

⁵ To add to confusion in the cases of goods sold across state borders, the rate depends on where the good originated and where it is sold. For example, goods originating in SP face a rate of 18 percent if sold in SP, 12 percent if sold in RJ, MG, PR, SC, or RS, and seven percent if sold in all others.

Table 2: Benefits Conceded by State

State Abbreviation	Main Benefit Conceded
AL	Eliminate tax debts with bonds
AM	6% credit on imports
BA	Tax holiday on ICMS
CE	90% financing on ICMS without adjustment
DF	Presumed credit of 24% on distribution costs
ES	Financing of ICMS without adjustment by FUNDAP
GO	Financing of ICMS and presumed credit of 5%
MG	Financing of ICMS with need-based increase
MS	Presumed credit up to 100% on ICMS owed
MT	Presumed credit of up to 50% on ICMS owed
PE	Presumed credit by PRODEPE
PR	Suspend ICMS on imports
RJ	Reduced base for calculation for ICMS
RN	Presumed credit of 50% of ICMS owed
RO	Presumed credit of 95% of ICMS owed
RS	Presumed credit of 75% of ICMS owed
SC	Financing of ICMS without adjustment
SP	Reduced base for calculation of ICMS for industry

Source: Folha de São Paulo from Sec. Fazenda São Paulo

The tax system in Brazil is impressive in the gains it has produced in terms of revenue. In an incredibly short period, the country has increased its tax effort, and this has supported both a fiscal adjustment and social spending increase. Yet, these are desirable uses for tax revenue in many contexts in which such impressive revenue increases have not occurred. The need for more revenue also does not explain why revenue was raised in the particular way it was raised, leaving untouched and even worsened a tax structure with serious problems of inequity. That inequity is apparent both in vertical terms, in the larger burden paid by poorer sections, and in horizontal terms, as taxpayers face different rates depending on where they transact. The sections below trace the combination of tax capacity increase and stubbornness of inequity to the patterns of incorporation of key social groups.

INCORPORATION

Incorporation is the way social actors are recognized as legitimate participants in the democratic process and claimants on government

resources and authority. One way of thinking about incorporation is in terms of citizenship, in the sense of the rights and responsibilities entailed by membership in a political community. Citizenship regimes have been disaggregated into civil, political, and social rights guaranteed by the state and exercised by individuals and groups, “citizenship regimes define *who* has political membership, *which* rights they possess, and *how* interest intermediation with the state is structured” (Yashar, 2004: 6). According to T.H. Marshall’s (1950) narrative of citizenship rights in England, there was a progressive deepening of citizenship first in the civil sphere (*habeus corpus*, private property protections, access to justice), then in the political sphere (voting rights, freedom of assembly, protections of speech), and finally in the social sphere (education, health, pensions). Each deepening of citizenship involved struggle, and began first with extension to social and economic elites such as nobles and landowners and was gradually extended to middle and working classes.⁶

The concept of incorporation recognizes the political dynamic of evolving citizenship as “the first sustained and at least partially successful attempt by the state to legitimate and shape an institutionalized” movement (Collier and Collier, 1991: 783). Excluded social actors mobilize to establish themselves and their demands as legitimate, engaging existing members of the polity and established institutions. When successful, these movements secure mechanisms of incorporation from the state, including policies, institutions, and intermediary organizations, and they confirm membership in a political community, establish relationships between state and society, and shape ensuing political dynamics.

For two reasons, the key social actors of importance in exploring contemporary incorporation in Brazil are popular sector and middle class actors. The first reason is that these are the actors who have traditionally been excluded, and their mobilization for incorporation drove the deterioration and replacement of previous citizenship regimes. Second, in Brazil, the mobilization and incorporation of these groups has coincided with and been accelerated by neoliberal reforms that sought to insert national economic actors more deeply into international processes and introduce market forces into areas where they had been absent.

The way in which popular sector and middle class actors are incorporated has important long-term impacts on politics and policy. Popular sectors include working classes, both formal and informal sector, whose demands

⁶ Marshall was well aware that this progression could follow very different orders, paces, and degrees of universality (1950).

for incorporation include protection from patterns of exploitation exacerbated by integration in global production processes. Other popular sectors, frequently organized on a territorial basis by neighborhood or community, mobilize around non-market provision of public goods, such as health, education, housing, public services, and environmental protection. Other actors mobilize around the democratization of daily life to address ways in which citizenship has been truncated on the basis of race, gender, sector, or other identities.

Middle classes include the professionals, public sector and services sector workers identified by patterns of urbanization, education, income, and consumption. They fit in a peculiar position in struggles for incorporation around neoliberalism, as some portions of the middle class lose access to state employment, subsidized consumption, and benefits, while others capitalize on human capital to participate in newly emerging transnational activities.

The alliances struck and cleavages articulated in the pattern of incorporation have a critical impact on future citizenship regimes and patterns of politics. In Brazil, middle class and popular sector actors have struck a cross-class alliance in pursuit of incorporation. Mechanisms to incorporate these groups now coexist with the legacies of previous institutions that incorporated groups such as regional elites. The result in public finance is support for expanded capacity but stubborn elements of particularism and regressivity in the tax system.

INCORPORATION OF POPULAR SECTORS, SOCIAL MOVEMENTS AND MIDDLE CLASSES

To explore patterns of incorporation, the sections below are organized around three recent historical periods defined by patterns of cleavage and alliance among key social groups as they mobilize, consolidate, and institutionalize their access to politics.

The first period is the struggle for democratization of the 1970s and 1980s, important in constituting key working class and popular social actors, and defining an initial partisan cleavage between pro-democracy and pro-military forces. The 1990s reoriented partisan cleavages around economic stabilization, in which aspects of neoliberal adjustment expelled some groups from the mechanisms by which they had previously been incorporated, and the governing party adopted a governance strategy that accommodated political and economic elite allies through a pattern referred to as “*presidential coalitionism*” (Abranches 1988). Meanwhile, the

Workers' Party (PT) in opposition solidified its bonds to sectors opposed to neoliberalism and prepared for an eventual rise to national prominence by experimenting with potentially radical participatory mechanisms of policymaking at the local level. The PT held national power during the final period since 2002, and there was a further reorientation of partisan cleavages around the PT strategy of neo-developmental growth. The period expanded the reincorporation of working class, social movement, and middle sectors through partisan and state institutions, though it inherited from previous periods patterns of coalitional presidentialism that accommodated political and economic elites.

PERIOD 1: THE DEMOCRATIZATION CLEAVAGE

The military leaders who governed Brazil from 1964 to 1985 brutalized opponents and carefully manipulated political institutions to reinforce military control. The limited space available for partisan and civic organizing allowed democracy advocates to constitute themselves as legitimate political actors, helped them learn strategies of organization and collaboration, and established political party vehicles and patterns of party system cleavage defined by the struggle for democratic transition. The period established the antecedent conditions for subsequent struggles of exclusion and incorporation; the old regime broke down; new social actors established themselves; and, intermediary associations such as political parties began to structure political conflict.

Middle class sectors, including public sector workers and private urban professionals, had been among the original supporters of the military regime, responding to the inflationary spirals of post-World War II boom-bust growth, perceptions of corruption among the political elite, and the increasing political polarization of the period (Skidmore, 1988). These sectors had already been incorporated through the state institutions and party organs of the post-World War II import substitution industrialization drive, but their support to the military faded as persecution intensified through Institutional Act 5 (AI5) of 1968, which particularly targeted opponents among the political elites, activist students, intellectuals, peasant and worker leaders, and others defined as threats (Stepan, 1988).

While high rates of growth assuaged some, worsening human rights violations and economic crisis in the 1970s and especially the 1980s turned many against the regime (Hagopian and Mainwaring, 1987). The first signs of declining support appeared in 1973 elections that were interpreted as a resounding defeat for the military; urban professionals and public sector workers increasingly joined active movements for democratization.

The struggle for democracy brought them together with a wide range of social movements, understood as those subaltern movements addressing citizenship and quality of life issues for excluded groups, including movements for human rights, Afro-Brazilian rights, women's rights, environmental protection, neighborhood services, and public health movements, among others (Escobar and Alvarez, 1992; Alvarez, 1997).

Working classes also mobilized in opposition to the regime, as they bore the brunt of both military repression and regressive growth strategies. Urban formal sector workers had been previously incorporated by the unions and labor institutions of the corporatist system set up during the Depression-era Estado Novo (Collier and Collier, 1991: 369- 370)⁷. Yet, as the military regime required larger concentrations of capital for industrial deepening, these same corporatist institutions came to be used primarily as mechanisms to repress worker organizing, depress wages, and concentrate profits (Leff, 1982; Evans, 1979).

Gradually, urban formal sector workers created a space for autonomous organizing and struggle. They targeted efforts to keep wage adjustments in line with inflation, organized on the shop-floor to avoid the reactionary control of sector-wide unions, and expanded their workplace organizing to include community demands for public services. The articulation of such demands and organizational efforts eventually birthed a New Union Movement, capable of securing workplace representation, producing new leaders, and joining urban worker struggle to movements by other classes and sectors within a broader struggle for democratization (Seidman, 1994). Strike waves in the late 1970s were especially vigorous in the manufacturing belt around São Paulo, where an alternative national federation of unions, Unitary Worker Central (CUT), formed in 1983⁸.

These popular and middle sector movements constituted themselves as legitimate social actors and increasingly learned to operate in tandem. The struggle for democratization offered a unified target in the form of the military regime, and strikes and protests accelerated in the course of the

⁷These were eventually channeled, imperfectly, through the party system in the populist Brazilian Workers' Party in the post-World War II period (Schmitter, 1971).

⁸The rural poor also felt the weight of the military regime. Never included in the same incentives and constraints that characterized urban corporatist mechanisms of incorporation, the rural landless population swelled in number and suffered particularly from political repression and biased growth strategies. Rural workers resisted, and with the help especially of the progressive Catholic Church (Houtzager, 2000), developed a rural landless worker movement with a series of occupations in 1979, becoming one of the largest social movements in Latin America, the Landless Worker Movement (MST) (Woolford, 2010).

1970s. The gradual opening of electoral competition after 1973 oriented at least part of the democratization struggle into the party system.

A main cleavage divided parties according to their support or opposition to the military regime, in which the main aggregator of opposition was the Democratic Movement of Brazil (MDB, later PMDB). Elections were opened sequentially for Congress, Senate, local and state executive, managing the transition through the electoral system as a top-down and gradual one (Kinzo, 1993)⁹. The table below is adapted from Lavarreda (1991) to array the parties in lighter shades according to their relative opposition to the military regime and trace as much as possible their historical evolution. The table displays the vote percentage and in parentheses the number of seats. Of particular note is that changes to electoral laws largely had the effects intended by the military – fragmenting and underrepresenting opposition parties.

Table 3: Party Vote Percent and Seats by Election

	Opposition % (Seats)						Regime % (Seats)					
	MDB						ARENA					
1974	48 (161)						52 (203)					
1978	49.6 (191)						50.4 (231)					
	PT		PDT		PMDB		PTB		PDS			
1982	3.5 (8)		5.8 (23)		43 (200)		4.4 (13)		43.2 (235)			
	PT	PCdoB	PCB	PSB	PDT	PMDB	PSC	PTB	PDC	PL	PFL	PDS
1986	6.9 (16)	.6 (3)	.9 (3)	1.0 (1)	6.5 (24)	47.8 (260)	0.4 (1)	4.5 (17)	1.2 (5)	2.8 (6)	17.7 (118)	7.9 (33)

Adapted from Lavareda (1991)

After electoral rules allowed the emergence of additional parties, the Workers' Party (PT) formed in 1980, offering an organizational and ideological vehicle of coordination for the urban and rural working classes, and their social movement and middle sector allies, including the political Left of various Marxist hues and ex-guerrillas. The PT was a new kind of partisan organization in Brazil, considered an “anomaly” compared to previous political formations, as it emerged from a “solid base in labor and social movements,” with much of “its leadership drawn from the labor movement” (Keck, 1992:3). From the 1982 PT newspaper supplement entitled, the “PT and the Economy,” the party established its roots in a

⁹ Brazil is taken as the prototypical “conservative” transition to democracy (Power, 1996: 57).

worker and civil society alliance to advance socialism, “*Socialism will be the result of worker struggle alongside other oppressed groups – women, Afro-Brazilians, indigenous, handicapped, elderly, gays – all fighting and winning against oppression and exploitation* (Jornal dos Trabalhadores, 1982:10).

As a party that emerged “*from the bottom up*” (Nylen, 1997: 9) with “extra-parliamentary” origins (Meneguello, 1989: 33), the PT was committed to the autonomy of its movement and union allies. There was a “formal separation” between the party and civil society organizations, avoiding the subordination that characterized the traditional Brazilian Left and its relationship between populist parties and labor movements (Keck, 1992: 68-69, 184-185). Internally, the party maintained a vibrant internal debate that encouraged the emergence and competition of more than 30 factions, and chief among them was the Articulação, led by autoworker Luis Ignacio “Lula” da Silva, and including a number of Catholic and labor activists (Keck, 1992: 114).

The struggle over democratization produced the antecedent conditions for subsequent struggles over incorporation. The old regime broke down; various social forces constituted themselves as legitimate political actors; and intermediary institutions such as political parties emerged to channel these actors into the political sphere. Though they failed to achieve direct elections in 1985, they forced the military to accept the candidate of the PMDB and leave power (Stepan, 1988), followed by a Constituent Assembly in 1988 that enshrined rights as many social movement demands,¹⁰ and by 1989 the Workers’ Party candidate, Lula, made it to the second round of the presidential elections before falling to Fernando Collor.

PERIOD 2: THE NEOLIBERAL CLEAVAGE

Before he was removed for corruption 1992, Collor began the liberalization of trade and deregulation of the Brazilian economy that would be accelerated under Fernando Henrique Cardoso’s PSDB-led government from 1994 to 2002. While Brazil experienced more gradual and less complete liberalization during this period than some other countries in Latin America, the 1990s represent a critical juncture for the country, especially in terms of the patterns of political cleavage among important social groups and the institutional response this provoked in the party system and in state institutions. During the decade, the party system reoriented around a primary cleavage of support or opposition to the national strategy of

¹⁰ The 1988 Constitution enshrined a host of social rights and institutional reforms that represented both the vested interests of previously incorporated sectors and the claims of social movements that channeled their demands through the Constituent Assembly (Figueiredo and Limongi, 1999).

liberalization (Roman, 2012; Hagopian, Gervasoni, and Moraes, 2009), and governance settled into an elite-level pattern of “presidential coalitionism” (Abranches, 1988; Figueiredo, 2007). The Workers’ Party preserved its core bases of support by remaining in opposition to neoliberalism at the national level and experimenting with participatory institutions in the local jurisdictions where it won office.

The priority of the Cardoso period was stabilization of the currency. As finance minister in 1994, Cardoso had introduced the Real Plan that included a new currency and the end to stubborn inflation. To sustain stability, the Plan also called for ongoing policies of fiscal discipline, deregulation, and trade liberalization, and the government removed interventions in the economy such as subsidies and price controls. The strategy was at first heterodox, with an overvalued Real fixed within a currency band, that the government sustained by pursuing foreign inflows through privatization and high interest rates (Giambiagi, Reis, and Urani, 20004). When this strategy collapsed after the Asian and Russian crises of 1998, the Cardoso government switched to a more orthodox inflation-targeting regime achieved through high interest rates and fiscal surplus targets (Serrano, 2010).

As a complement to this strategy of stabilization, the government also sought to “improve competitiveness” through liberalized trade, privatizing public enterprises, and the pursuit of foreign investment (Amaral, Kingstone, and Krieckhaus, 2008: 141-2). While the end of inflation coincided with a moderate recovery during Cardoso’s first term, the second term was characterized by economic slowdown and de-industrialization provoked by a loss of ground to imports, overvalued currency, and a lack of attention to industrial policy (Ross Schneider, 2004). The policies associated with this version of stabilization shifted the nature of political alignments in society and the nature of engagement with the state (Stokes, 2001). Continued liberalization of trade and prices allowed portions of poor and middle classes to consume again after facing runaway prices and limited supply during 1980s cycles of hyperinflation and low growth (Baker, 2009: 229-254). Also, the 1988 Constitution had expanded welfare state policies, decentralized power and resources, and increased public participation in social policy (Draibe, 2003:69), and the Cardoso government took the first steps in implementing mandates for universal provision in health and education, expanded funding for housing and sanitation, and implemented targeted income-transfer programs¹¹. At least temporarily, the new consumers and those benefiting from elements of social protection lined up behind the PSDB, providing convincing electoral victories to Cardoso (Power, 2008; Roma, 2002).

¹¹ Fund for the Maintenance and Support of Basic Education (Fundef) and Unified Health System (SUS) and conditional cash transfer BolsaEscola (Melo, 2008).

Yet, despite these significant achievements, neoliberal stabilization caused hardship and stimulated opposition among key social groups. Social movements opposed Cardoso effort to curtail the powers of states and municipalities (Arretche, 2000) and the extensive use of decrees and other executive privileges that removed aspects of neoliberal policy from public debate (Figueiredo, 2001). While social movements had lost some of their national level protagonism during the 1990s,¹² they remained important actors at the local level, especially in jurisdictions where Left parties won power and needed support to advance an anti-neoliberal agenda.¹³

PT-led local governments opposed neoliberal adjustment and offered alternative patterns of incorporation to urban and rural popular sector actors. The growing informal sector was more difficult to organize, but CUT and other labor federations continued to defend remaining benefits and social protections and oppose privatization, at least slowing the pace of neoliberal reforms (Weyland, 1996; Kingstone, 2004: 25-28; Hunter, 2010: 61-71).¹⁴ These social cleavages articulated through the party system into support or opposition to the stabilization program of the Cardoso government. The table below is organized according to the relative ideological position as derived from surveys of legislator self-placement and placement of other parties (Power and Zucco, 2009; Power, 1998: 61-2; Hunter, 2010: 48-49). Parties to the left are more intensely opposed to neoliberalism and the numbers in each cell indicate the number of seats won by each party.

Table 4: Party Seats and Governing Coalition by Election

	PCdoB	PT	PSB	PDT	PSDB	PMDB	PTB	PL	PFL	PSD	PRN	Other
1990	5	35	11	46	37	109	34	15	83	42	41	55
	PCdoB	PT	PSB	PDT	PMDB	PSDB	PTB	PL	PFL	PP	PPR	Other
1994	10	49	16	34	107	63	31	13	89	35	51	15
	PCdoB	PT	PSB	PDT	PMDB	PSDB	PTB	PL	PFL		PPB	Other
1998	7	58	19	25	83	99	31	12	105		60	14

Adapted from Power and Zucco (2009: 228), Hunter (2010), Amorim (2002: 64), and electoral data from the Supreme Electoral Tribunal.

¹² See also Foweraker, 1995; Hochstetler, 2000.

¹³ The PT self-consciously understood the practice of mobilizing social movement allies to balance conservative political elites as part of a “PT way of governing” (Couto, 2000).

¹⁴ To the rural popular sector, the Cardoso government made some overtures, especially by fulfilling the Constitutional promise to include non-contributing retirees in public social security and extending universal health and education (Melo, 2008). Still, limited attention to land reform, price competition from liberalized imports, and reliance on clientelist political allies exacerbated rural contradictions, and the MST landless movement increased its activity in the form of occupations and public protest. Brutal repression at El Dorado dos Carajás in 1996 sparked intensified MST mobilization and sustained a close association with the Workers’ Party. The close association included sharing leaders, policy agendas, and political strategy, though the MST continued to guard its autonomy and never formally associated as an organization with the PT (Gómez Bruera, 2013: 36).

The table suggests a few observations about the character of the party system with important implications for party and government strategy. During the 1990s, the party of the president had consistently low representation, never above the 99 seats out of 513 achieved in 1998, and was as low as 41 seats under Collor's PRN 1990 government (Kinzo, 2004: 27). This result compelled the need for coalitions to secure majorities, and the shaded boxes indicate the parties that were at one point or another in governing coalitions.¹⁵

Some observers labeled the fragmented and volatile party system as “inchoate” (Mainwaring and Scully, 1995) characterized by party system instability and weak party institutionalization (Mainwaring, 1993; Powers, 2000) “over-determined by both electoral and executive-legislative institutional incentives (Ames and Power, 2007).¹⁶ These incentives include a proportional representation electoral system in large, multi-member federal districts that create adequate room for small parties to secure representation. Further, with multi-round elections for executive office, politicians have an additional incentive to create small parties to offer as potential allies for second-round elections, producing a proliferation of small parties varying across jurisdictions (Jones, 1994; Mainwaring, 1999).¹⁷ Governing majorities are further problematized by weak legislative coherence as there are few limits on party-switching after elections, and politicians migrate into and out of parties to secure executive patronage or place themselves strategically for the next election (Ames, 2002; Melo, 2004; Desposato, 2006).¹⁸ In addition, the open-list ballot drives politicians to compete within their own party for votes to secure a high position on the party list.¹⁹

To deal with these issues, Cardoso managed governance through “presidential coalitionism” (Abranches, 1988), building legislative supermajorities that

¹⁵ Collor's coalition never rose above 50%, and he was eventually impeached for corruption in 1992. Cardoso's government mastered the coalitional presidentialism strategy of governance, sustaining majorities well over the required 60% for constitutional reforms (Figuereido, 2007).

¹⁶ As well as the patrimonial and authoritarian practices of politicians inherited from the military regime, if not earlier (Marks, 1993).

¹⁷ The institutional disincentives are detailed by Power and Ames (2010); Power (2010), Amorim Neto (2002); Armijo, Faucher and Dembinska, (2006); Cintra (2007); and Santos and Vilarouca (2008). The effective number of parties in the Congress was 8.2 in 1994 and 7.1 in 1998, and volatility from 1994 to 1998 was 25 percent (Kinzo, 2004: 32. 34 and data from the Supreme Electoral Tribunal).

¹⁸ This practice was also tightened somewhat, though politicians are still allowed to leave their party for a newly created party without losing their seat (Lyne, 2008).

¹⁹ This greatly increases the cost of elections, as it prevents parties from coordinating campaigns and spending and encourages individual politicians to generate their own funds (Samuels, 2002). Individual politicians are further incentivized to distance themselves from national organizations as career incentives direct them to municipal level executive office (Samuels, 2003).

could withstand occasional defections.²⁰ A host of interlocutors manage such coalitions, including single-issue caucuses,²¹ governors with leverage over state delegations,²² party leaders, and individual politicians with large vote-banks. To secure their support, Cardoso deployed a bevy of resources, such as ministerial appointments, tens of thousands of federal jobs, and the release of investments in the bailiwicks of individual legislators (Figueiredo and Limongi, 1999). In the event of legislative obstructionism, the president could also make use of presidential decrees to temporarily impose measures, and renew them repeatedly, even if a majority in the legislature could not be manufactured (Pereira, Power, and Rennó, 2005). Though these mechanisms and the horse-trading entailed diluted legislation, the Cardoso government managed coalitional presidentialism to pass most of its legislative priorities, including 35 difficult Constitutional reforms (Meneguello, 1998; Santos, 2003; AmorimNeto, 2003; AmorimNeto, 2006).²³

As the government built supermajorities and passed much of its agenda, the party system reoriented around support or opposition to the PSDB stabilization strategy (Power and Zucco, 2009; Lyne, 2005; Hagopian, Gervasoni, and Moraes, 2009). Along with a few other Left-of-Center parties, the Workers' Party maintained principled opposition and experimented with

²⁰ This pattern is presumed to operate in parliamentary systems where coalition government is not uncommon, though it is also prevalent in presidential systems where governing parties fail to secure legislative majorities (Cheibub, Przeworski, and Saiegh, 2004). Cardoso built supermajorities as large as 74% during the 1999-2002 period, when his PSDB enjoyed the support of the PMDB, PFL, and PPB and Lula's coalition peaked at 70% of the Congress from 2005-2007, when he was backed by the PL, PCdoB, PSB, PTB, PP, and PMDB (Figueiredo, 2007: 190).

²¹ There are multiple single-issue caucuses, such as the rural bloc, Evangelical deputies, health caucus and others.

²² Governor power over resources and appointments gives them leverage over state representatives (Samuels and Abrucio, 2000) and malapportionment in both houses of Congress increases the power of governors of rural states where the inheritors of conservative, clientelist parties with origins in the military regime are most likely to dominate (Samuels and Snyder, 2001).

²³ "The wider view of *presidencialismo de coalizão* can incorporate both extramural and intramural visions of the legislature. The framework is compatible with all of the following assumptions. Open-list- PR really does cause extreme multipartism; permanent multiparty presidentialism generates severe collective action problems; these collective action problems are addressed on the executive side by impressive agenda power and on the legislative side by centralizing rules; president must act like prime ministers in multiparty parliamentary systems, cultivating the support of other parties by sharing power with them; presidents face many of the same risks as prime ministers, facing blackmail threats and the high costs of keeping diverse coalition partners happy; and to the extent that presidents can neutralize some of these risks, they can attain legislative success by deploying some or all of the governing tools" (Power, 2010: 28).

potentially radical participatory innovations at the local level, consolidating its base of support among popular sectors and social movements.

One local strategy was experimentation with participatory institutions. Such mechanisms had been mandated in the 1988 Constitution, but they were advanced only partially across the country and in narrow policy areas, yet the Workers' Party committed itself to participatory decision-making in issues of local control such as housing and health. Its innovation of participatory budgeting became a global reference, and these institutions further bonded social actors to the Workers' Party, which preserved its reputation as the partisan vehicle by which popular sectors and social movements could channel their interests to the state (Lavalle, Acharya, and Houtzager, 2005).²⁴

While principled opposition at the national level and local experimentation with participation solidified PT credentials with anti-neoliberal actors, an alternative strategy appeared to mimic "coalitional presidentialism" at the elite level. Office-oriented factions within the party, especially Lula's *Articulação*, urged accommodation as they sought to manage governance challenges in the jurisdictions where their members governed and as they eyed national power.²⁵ Over time, they pushed the PT rightwards, taking over important positions within the party and shifting the party platform set in bi-annual party conventions away from a commitment to socialism (Freire de Lacerda, 2002: 58; Mendes, 2004). Moderate candidates demonstrated greater capacity to win elections, pushing the average PT placement over time on legislative surveys from 1.51 in 1990 to 2.27 in 2001 on a 10 point scale scored from Left to Right (Powers, 2008 as cited in Hunter: 2010: 77). In substantive terms, party leaders considered compromise on policies like privatization (Manzetti, 1999:39), and they allowed for the possibility of forming alliances for elections, even with more conservative parties.²⁶

²⁴ There is a vast literature on participatory budgeting, noting its role in addressing patrimonial patterns of policymaking to create a new political culture (Avritzer, 2002), deepening democracy (Goldfrank, 2011), bringing radicals to power (Baiocchi, 2005), and institutionalizing elite and popular levels of support (Wampler, 2009).

²⁵ A number of these leaders either held local executive office or participated in Lula's failed presidential bids, and in the process developed a particular understanding of the strategies useful to navigate a fragmented party system to win elections and secure governability (Gómez Bruera, 2013: 47-48)

²⁶ "Alliances forged by the PT in the municipal elections of 2000 reflect a move to include coalitional partners not on the Left while retaining former allies" (Hunter, 2010: 99). For the 2000 municipal elections, the strategy demonstrated some success, as the party increased its number of mayors to 27 of the 100 largest cities and six state capitals, including Porto Alegre and Belém, regaining São Paulo, and earning new victories in Recife, Aracajú, and Goiânia governing cities with a total of 17.8 percent of the population (Hunter, 2010: 100)

These efforts to moderate provoked surprisingly few defections during the period. The party held its disparate factions together, despite considerable grumbling, through a variety of safety valves, including internal democracy among factions and efforts to accommodate as many factions as possible in government cabinets.²⁷ Further, polarization around the neoliberal stabilization policy at the national level preserved the Workers' Party leftist credentials, and participatory institutions at the local level created a space for civil society and popular allies to voice manageable dissent. When Lula finally won presidential power for the Workers' Party in 2002, he would have to balance the necessities of "coalitional presidentialism" and the desire to use the institutions of government to expand the incorporation of core social groups through the Workers' Party.

PERIOD 3: NEODEVELOPMENTALIST CLEAVAGE

The 2002 presidential election marked another shift in the party system as it allowed the eventual Lula government to institutionalize the incorporation of core social actors. In part, institutionalization shifted incorporation to state institutions, where the interests of political and economic elites were also accommodated through the practices of coalitional presidentialism. The fiscal room to pursue this dual strategy came from a period of global expansion, which the Workers' Party did not miss, as it increased tax capacity in the context of neo-developmental strategies to insert Brazilian economic actors in the global economy. These policies, and the institutional adaptations to deliver them, confirmed the Workers' Party as the vehicle for the incorporation of a cross-class coalition of popular sectors and middle classes, but PT's accommodation of political and economic elites through coalitional presidentialism preserved elements of regressivity and particularism in tax.

In pursuit of the 2002 presidency, the Workers' Party had signaled that it would continue elements of neoliberal stabilization.²⁸ Still, the PT

²⁷ Until Heloína/Heloisa exited in 2004 to form the PSOL, the only major break within the PT had been the departure of the PSTU in 1992 (Lacerda, 2002).

²⁸ Lula promised in a letter addressed to the Brazilian people (but directed to capital markets) that he would respect Brazilian commitments to the IMF, which he ultimately paid off early, in 2005. He picked a businessman running-mate from the conservative Liberal Party (PL), and a slick campaign manager, Duda Mendonça, orchestrated a campaign labeled "peace and love" in the press. On election, Lula appointed a minister of finance from the most conservative wing of the party, Antonio Palocci, and named a Central Bank president from the banking sector, Henrique Meirelles of Bank of Boston. The government maintained Cardoso's inflation targeting regime, setting primary surplus targets even higher than required, at 4.25% of GDP. To sustain this fiscal effort, among the first reforms the government pursued in 2003 was a cutback in benefits to public pensioners, a move that even the Cardoso government had been unable to impose (Bresser Pereira, 2010).

in government did not miss the growth occurring in the rest of the international economy, benefiting in particular from high prices for commodities.²⁹ These were sustained by demand in emerging markets, as China came to absorb 40% of Brazilian soy exports, a third of iron exports, and 10% of meat, pulp, oil, and paper. By 2011, commodities exports were \$162.2 billion versus \$60.3 billion in manufactures (WDI, 2012).³⁰ Finance, which had already benefited from high interest rates associated with the stabilization strategy begun under Cardoso, also continued to enjoy high returns and boosted the services sector.³¹

These sectors set patterns of accumulation mostly enjoyed by economic elites, ameliorating their potential opposition, even as the government enacted policies and institutions to reach its core supporters. Increased fiscal space allowed a more aggressive macroeconomic stance beginning in 2006, including expanded public sector employment and public investment, especially when the 2008 crisis gave the government room to embark on aggressive counter-cyclical investment. The Growth Acceleration Program averaged R\$35 billion from 2009 to 2012, 19.4% of GDP, and aimed for a 2014 total of R\$955 billion (Ministry of Finance, 2012: 26-28).

Public sector expansion included increased salaries and pensions for middle sector professionals, who were further privileged by an expansion in consumer and housing credit, stimulated by public banking institutions (Barbosa, 2010). The middle class is labeled class C in Brazil, above the poor (A, B) and below the very rich (D), and has increased to 55% of the population, 105.5 million people. Lower-middle class families received subsidized credit to purchase homes that aimed to distribute R\$200 billion by the end of 2014.

²⁹ In the context of a strong currency and high interest rates, foreign multinationals have located operations in Brazil, though they do so primarily to target the increased purchasing power of Brazilian consumers. During the 1990s, the hope was that such external investment would upgrade Brazilian production and management, but in the presence of a strong currency prejudiced against exports, the entrance of multinationals has largely replaced Brazilian production and ownership with foreign multinational production and ownership.

³⁰ From 1996 to 2008, the import content coefficient increased by 8.1 percentage points, and the increase was even higher in the most technologically advanced industries, such as communications and electronics equipment (32.7 percent) and medical and hospital equipment, industrial automation and precision (35.1%) (Carneiro 2010). Industrial imports outpaced exports by US\$92.1 billion in 2011 (Ministry of Finance, 2012).

³¹ This has been especially pronounced since 2008, when industry shrank 12.3 percent and recovered to only 2.4 percent above previous levels while the service sector lost only 2.6 percent of its pre-recession peak, and is now 8.5 percent above pre-recession levels by 2011 (Ray, 2011).

Even more significant were the efforts to expand the incomes and consumption of popular sectors. Successive increases in the monthly minimum wage, from R\$350 in 2002 to R\$560 in 2012 have improved conditions across the board, as many low-income jobs and pensions are indexed to minimum wages. Further extending the impact is the extension of pensions to informal sector workers, providing 28 million Brazilians with old-age protection. In the rural sector, small farmer credits and agricultural extension reached almost 2 million small producers.

The flagship social policy, an income transfer program called Bolsa Familia, has absorbed and expanded various social programs to extend income support, education, and health to low income families. Bolsa Familia currently reaches more than 40 million Brazilians, and has been credited with cutting poverty, improving health outcomes, and improving educational attainment (Castañera, Nunes, and Rungo 2009; Hall 2006).³² The percentage of the population in poverty fell from 26.7 percent in 2002 to 10.9 percent in 2012; the incomes of the poorest three deciles have annual average rates of growth of 7.2, 6.3, and 5.9 percent, as compared to 1.4, 2.5, and 3.3 percent for the highest deciles. This has produced a fall in *gini* coefficients from .596 in 2001 to .519 by 2012 (Ministry of Finance, 2012).

All of these policies targeted working class and poor beneficiaries, and they institutionalized PT electoral support around a class-coalition that appeared in both individual levels of support and regional patterns of voting. During the 1990s, Cardoso's mix of inflation-beating, social spending expansion, and alliances with clientelist rural politicians had earned enough support from lower classes to muddy class-based voting patterns, and the PT continued to draw support from educated and middle class voters as a result of its successful local governments in a number of urban centers. Between 2002 and 2006, however, a class cleavage consolidated in voting patterns, as the PT polled better among poorer voters and in poorer regions (Roman, 2012). The chart below shows vote intention for the PT in the last poll before the elections in 2002, 2006, and 2010, with voters categorized by income, education, and region, in which the Northeast is the poorest region of Brazil, and the South and the Southeast are more developed. Bolsa Familia and other state programs had institutionalized the association between the Workers' Party, growth, and redistributive programs associated with neo-developmentalism (Hunter 2007; Bohn 2011).³³

³² BolsaFamilia distributes an impressive R\$20 billion per year to 13.4 million households, but it should be noted that it costs only .4% of GDP.

³³ PSDB candidate Serra attempted in 2010 to claim credit for his party initiating income transfer programs, but poor voters stayed with the PT candidate Dilma.

Table 5: PT Vote Percent by Income, Education, and Region

	1998 ¹	2002 (1 st round)	2002 (2 nd round)	2006 (1 st round)	2006 (2 nd round)	2010 (1 st round)	2010 (2 nd round)
Income							
<2 MS				46	61	53	56
<5 MS	25	45	59				
2-5 MS				41	53	43	49
5-10 MS	23	48	63	29	44	37	45
>10 MS	25	50	60	27	41	31	39
Education							
Primary	24	42	56	46	69	52	57
Secondary	25	47	63	38	53	45	48
Tertiary	31	52	58	27	43	31	40
Region							
South	18.4	37	55	26	42	40	42
Southeast	44.5	37	58	35	50	41	48
North/ Central West	10.6	36	60	39	55	44	50
Northeast	26.5	36	55	58	71	61	63

Source: Datafolha public opinion surveys of various years from the last date before the elections. (<http://datafolha.folha.uol.com.br/>, checked 8/15/13). 1998 and 2002 second round data from IBOPE public opinion survey (<http://www.ibope.com.br/> checked 8/15/13).

An additional set of state innovations institutionalized channels of communication and incorporation for social movements. With the arrival of the Workers' Party at the national level, public policy participatory councils experienced a significant expansion in funding and importance. Operating in 31 different policy areas, they include 1350 members, with slightly more civil society (55 percent) than government (45 percent) representation, and undertake both deliberative and advisory tasks (Lopez, Leão, and Grangeia, 2011; Lopez and Pires, 2010). As of 2005, there were over 300 thousand registered civic society organizations, and by 2009, they were receiving over \$R14 billion in government transfers. Public policy participatory councils at higher levels of regional and national government tend to be dominated by middle-sector professionals operating through

social movements, this is especially the case in policy-specific councils where they bear some expertise, such as health professionals and health NGOs operating in health councils (Houtzager and Lavallo, 2010).³⁴

Even as the Workers' Party adapted state institutions and policies to incorporate its core supporters, it managed its relationship to political elites by making use of the coalitional presidentialism practices demonstrated under Cardoso. This included the construction of a supermajority coalition in Congress, held together in part by sharing seats in the cabinet with coalition partners, as well as privileges and power reserved for regional political elites and their economic elite allies, often from natural resource and commodity exporting states.³⁵

Coalitional presidentialism as practiced by the Workers' Party operated through Congress and the federal system. Like the PSDB under Cardoso, the Workers' Party failed to secure legislative majorities for its party in elections, taking 91 of 513 seats in 2002, 83 in 2006, and 88 in 2010. To govern, the PT at first resisted coalitional presidentialism in Congress, building only a minority coalition of 218 seats. Legislative paralysis and the crisis of a scandal related to purchasing legislative votes, the "mensalão," forced the party to revise its strategy, and it built coalitions that stretched across the ideological spectrum.³⁶

The chart below displays the characteristics of the PT coalition in Congress immediately after Lula's election, after the mensalão, at the start of Lula's second term, and to start Dilma's term. The far right column shows that

³⁴ For popular sectors, many of these institutions were structured such that preferential access and redistribution were built into institutional design and practice. Participatory budgeting, for example, included allocation mechanisms that targeted working class neighborhoods in the redistribution of resources, "inverting priorities" that had long been dominated by elites (Avritzer, Marquetti, and Navarro, 2003). Further, levels of participation among the poor tended to be higher than among the wealthy, both because of institutional incentives and the efforts of intermediary organizations such as unions and neighborhood associations (Goldfrank, 2011). Participatory institutions also responded to the demands of social movements, occasionally providing privileged access to social movement representatives, such as councils with specific sectoral orientations. For example, in São Paulo, education councils included reserved seats for civil society organizations active in education policy, and similar arrangements operated in health and housing (Cornwall, 2008).

³⁵ "The PT in the national executive – Lula and his inner circle, in particular – adopted an elite-centered strategy similar to other Brazilian parties" (Bruera, Gómez 2013: 86), "the end of an anomaly" (Hunter, 2007).

³⁶ The mensalão, or "big monthly payment," scandal was so named for the monthly payments to deputies in exchange for votes, perhaps made necessary by the unwillingness to distribute cabinet posts to coalition partners.

the coalition percent of Congress was a minority at first, until the PT committed itself under Lula's leadership to the coalitional presidency strategy after the *mensalão*. Also, below the number of seats and the percent of the coalition, the chart shows the percentage of cabinet seats allocated to each coalition member. The PT (different from Cardoso), reserved the bulk of cabinet seats for itself, distributing fewer seats to partners (Goldfrank and Wampler, 2008).

Table 6: Workers Party Governing Coalition

Lula I	PT	PL	PCdoB	PSB	PTB	PDT	PPS	PV		Coalition % of Cong
Seats	91	26	12	22	26	21	15	5		42
% Coalition	42	12	6	10	12	10	7	2		
% Cabinet	48	4	4	4	4	4	4	4		
Lula Post-Mensalão	PT	PL	PCdoB	PSB	PTB		PP		PMDB	
Seats	83	38	10	29	44		54		80	66
% Coalition	25	11	3	9	13		16		24	
% Cabinet	44	4	4	9	4		4		13	
Lula II	PT	PR	PCdoB	PSB	PTB	PDT	PP	PV	PMDB	
Seats	83	34	13	28	21	23	41	13	90	65
% Coalition	24	10	4	8	6	7	12	4	26	
% Cabinet	44	4	4	9	4	0	4	4	13	
Dilma	PT	PR	PCdoB	PSB	PSC	PDT	PRB	PTC	PMDB	
Seats	87	40	15	34	17	26	8	1	78	59
% Coalition	28	13	5	11	6	8	3	0	25	

Source: From Figueiredo (2011: 190); Hunter (2010: 207) and <http://www2.camara.leg.br/> (checked 8/15/13).

The most important change was signaled by the inclusion of the PMDB, always among the top-three in seats in the legislature and an anchor of coalitional presidential strategies since the 1980s (Abranches, 1988). From its origins as a partisan umbrella for a wide range of opponents against the military regime, the PMDB evolved into a catch-all vehicle. This gave a central role to "PMDBism" in terms of two characteristics of the Brazilian party system (Nobre, 2010).³⁷ The first characteristic, offering free entry to all interests, obscures the substantive content of partisan polarization, provides a bridge across ideological cleavages, and facilitates the functioning of legislative majorities. The second characteristic, veto power, limits what

³⁷ The PMDB "attempts, in the end, to absorb and administer all the interests and ideas of society. In second place, it offers to whoever enters that, in the event they can organize as a pressure group, they will earn the right to veto any deliberation or decision that offends their interests" (Nobre, 2010: 4).

legislative majorities can do by playing into the hands of regional economic elites.³⁸ Access to government through the PMDB allows economic elites rooted in commodity-producing regions to retain a veto over redistributive efforts or changes to the extractive development model.³⁹ Most importantly for the current analysis, it allows them to preserve the privileges for particular regional and elite interests in the tax system that produce regressivity and a lack of universality.

CONCLUSION

In Brazil, key social groups clamored for access to politics and brought down the military regime. In the process, they legitimated themselves as social and political actors, and positioned themselves for the struggle around neoliberalism during the 1990s. In this struggle, they consolidated linkages to partisan actors, led by the Workers' Party, and experimented with patterns of access into the political system. When the Workers' Party came to power in the 2000s, the social base transformed and consolidated during previous periods were institutionalized in a hegemonic bloc led by the Workers' Party. This bloc implemented policies to target key social allies, and established mechanisms of access and participation that transformed state institutions. The trajectory of transformation, consolidation, and institutionalized incorporation of key popular sector and middle class actors provided support for an ambitious effort to raise tax capacity.

The increase in tax capacity was impressive, giving the Brazilian government sufficient revenues to address fiscal insolvency and finance necessary to implement social programs. However, the effort to increase tax capacity has not addressed ongoing problems of inequity, which are apparent in the regressive character of tax burdens that weigh more heavily on the poor and in a complicated pattern of different tax rates that operate across

³⁸ Previously, such elites maintained their access to power through control of state governments, especially in resource rich and commodity producing but poorer regions (Abrucio, 1998). Cardoso's stabilization strategy removed most of the fiscal tools from state governments, and they no longer have the same influence on cabinet appointments or the general legislative process (Figueiredo, 2007).

³⁹ "The mark of the new rise in PMDBism was represented in 2009 by the renewal of José Sarney as president of the Senate despite a slew of corruption accusations. Lula's decisive support to Sarney's permanence sealed the alliance of the PMDB for the 2010 presidential elections, and, at the same time, marked the return of PMDBism to the struggle for hegemony within Brazilian political grammar" (Nobre, 2010: 6). In 2011, a long-debated new forestry law passed, decentralizing control over forest management and reducing federal protections for indigenous and environmentally sensitive lands, reflecting especially the concerns of regional economic elites and their political allies cohered in a "ruralist" caucus (Ferraz da Fonseca and Ana Paula Moreira da Silva, 2011).

jurisdictions. While incorporation of a popular sector and middle class coalition can explain the increase in capacity, the stubbornness of inequity is due to institutions and practices that protect the interests of political and economic elites.

The key institutions and practices are the nature of executive-legislative relations and federalism. A fragmented party system forces presidents to operate as though they were in a parliamentary system, cobbling together governing coalitions that often include conservative parties and regional elites. Regional elites further protect their interests in the federal system by capturing key sites of decision-making such as the upper house of the legislature, the Senate, as well as areas of regulation important to their regressive and environmentally damaging accumulation strategies of natural resource extraction and large-scale commodity exports.

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DEALING WITH THE POST 2015 DEVELOPMENT CHALLENGES.

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There is growing consensus that the 2015 Millennium Development Goals (MDG's) with all their limitations have been very useful in mobilizing attention, resources and action to addressing development concerns around poverty, gender, health, education and environment. While significant progress has been made, there is also consensus that MDG's will remain important in the post 2015 era. However, the loudest calls from "a million voices" speak to an agenda centered on the injustice people feel because of growing inequalities and insecurities that exist particularly for poorer and marginalized people. The challenges are complex and interlinked, requiring a sustainable development agenda that is integrated, holistic and universal, applying to all countries and all people. The call is for a new agenda built on human rights, and universal values of equality, justice and security. Better governance underpins many of their calls. These calls are not new and have either not been addressed, or have been addressed and failed. Transformation will require nothing less than a rethinking of the dominant narratives of our current civilizations.

INTRODUCTION

During this second decade of the 21st century we have observed or will observe the 20th anniversaries of the United Nations world summits on various dimensions of development including Education (Jomtein,1990), Human Rights (Vienna,1991), Sustainable Development (Rio, 1992) Women (Beijing,1993), Population (Cairo, 1994), Social Development (Copenhagen, 1995), Human Settlements (Cities) (Istanbul, 1996), Food (Rome, 1999); and also the Millennium Summit with its millennium development goals, (New York, 2000). The targets of the millennium declaration are to be achieved halfway through the decade, in 2015. World leaders will then gather at the United Nations and elsewhere to reflect on the progress the world has made and it will be viewed mainly through the

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lens of sustainable development or through one of its dimensions. They are likely to conclude that the results have been mixed. Although some progress has been made, it is not enough. They are likely to articulate a new vision based at least partly on the outcome of the Rio +20 Conference (Brazil 2012) entitled the *Future We Want* and partly on the “million voices” process entitled the *World we Want*. They would seek new commitments, resources and strategies to accelerate progress and are likely to adopt existing strategies slightly modified at best, to achieve a new set of bold targets which they will call for in a loud and unified voice. They will not notice, or may pretend not to notice the huge gap between the weakness of their strategies and the ambition of their targets. They will also commit to be more accountable and to deliver on their promises, but the targets will not be reached in the time frames they set unless the analysis of past performances are rigorous and hard hitting - and above all, a new world view and radically different strategies flowing from it are pursued. This will demand political, business and spiritual leadership at a whole new level as the lynchpin of failure or success. This paper, prepared on the eve of the post 2015 era seeks to frame the debate in context of capitalism and democracy as the dominant drivers of world progress and failure. It suggests a new public policy agenda on what can be done differently to put the world on an equitable, just, secure and sustainable development path.

REVIEWING THE PAST TO INFORM THE FUTURE

Just after the end of the Second World War, the ideas of development and underdevelopment were significantly influenced by the Americans who had a dominant world position. In order to consolidate that hegemony and make it permanent, they conceived a political campaign under the guise of a global development agenda. In the words of President Truman at his inauguration in 1949 : “ *We must embark on a bold new program for making the benefits of scientific advances and industrial progress available for the improvement and growth of underdeveloped areas...The old imperialism – exploitation for foreign profit - has no place in our plans. What we envisage is a program of development based on the concepts of democratic fair dealing.*” Reflecting on this statement, Gustavo Esteva commented: “*On that day (20th January, 1949), 2 billion people became underdeveloped. In a real sense, from that time on, they ceased being what they were in all their diversity, and were transmogrified into an inverted mirror of others’ reality: a mirror that belittles them and sends them off to the end of the queue, a mirror that defines their identity, which is really that of a heterogeneous and diverse majority, simply in terms of a homogenizing and narrow minority.*” Esteva further notes that since then development has connoted an escape from an undignified condition called underdevelopment and concludes that for someone to conceive the

possibility of escaping from a particular condition it is necessary first to feel that one has fallen into that condition. The real tragedy of the pursuit of development since then has been the acceptance of that view by the leading economists of the developing countries and hence, development as the search for the way of life of the West begun!

It is enlightening then to take a quick look at the journey that followed so that we are well positioned to avoid repeating what we have done before and now expect different results. In the first decade of international development after the Second World War, development was conceived purely as economic growth in average GNP per capita. Issues of distribution, inclusion, equity, and job creation were not considered. Unsurprisingly, social problems remained and in many cases increased and as a result the next decade focused on social development. But that only led to the realization that development required both economic growth and social development - one was not possible without the other. Thus, socio-economic development as a more integrated approach was adopted. When this approach did not seem to work as well as expected, a shift from a focus on the development of things to a development of people occurred, and the human development paradigm was born. A decade later it was observed that the human development approach was not delivering as well as imagined, leading to the development community deciding that it would focus only on the basic needs and dimensions of human development. That approach too did not produce the desired outcomes as was hoped for, but influenced a shift on how development took place. It ushered in participatory and endogenous approaches to counter the top-down and outside driven approaches. In parallel was the rise of another approach to development influenced by concerns over environmental pollution issues. Attention turned to the sustainable development paradigm which sought to achieve development objectives without damaging the natural environment.

SUSTAINABLE DEVELOPMENT

The concept of sustainable development (SD) was introduced in the policy making literature at the global level in 1980 as part of the global conservation strategy of the International Union for the Conservation of Nature (IUCN). It is of course considered to have been brought into the mainstream international policy and political debate by the Brundtland Commission which started its work as the World Commission on Environment and Development in 1982. The IUCN launched its landmark report, "Our Common Future", in 1987, which provided the

most commonly used definition of SD as one which meets the needs of current generations without compromising the ability of future generations to meet theirs. It was perhaps the most brilliant political consensus ever achieved in the UN, between northern pre-occupations with increasing environmental concerns and southern concerns with increasing poverty. It was not that ecological degradation was not present in the countries of the south; but their overriding preoccupation was with addressing poverty. Since the achievement of this consensus, the world has been constantly reminded that a political consensus is not necessarily a formula that lends itself to easy public policy making either in content or in process. In terms of process, SD has been subjected to more public consultations than any other development concept, from international and global forums through regional, national, sub-regional, to village and community levels. It has acquired the highest levels of “ownership” becoming a household word, more so, than any other, to all people from all corners of the planet in just about 2 decades.

In this regard, the consensus on SD must be considered to have been the subject of the most successful policy consultations ever, leading to the widespread ownership. In order to achieve this, however, the phrase had to be appropriated by each vested interest group to articulate their concerns. And so it became common place to apply the adjective “sustainable” to any noun in any context, without any regard to possible policy content and contradictions between policies. The substantive policy content in SD was earlier defined in terms of policy outcomes as economic efficacy, social equity, and ecological integrity achieved in an integrated and balanced manner. Political and cultural dimensions were soon added to this 3 pillar definition to give a more comprehensive, but not necessarily a more useful policy definition. But making public policy with these goals has remained as elusive as ever.

SOME PROGRESS BUT NOT ENOUGH

The question then, to what extent has the world succeeded in moving towards SD, during the last 2 decades is, notoriously difficult to answer. One set of reasons for this difficulty is the challenge of measuring progress towards SD. Fortunately, we have made considerable progress in this regard from the “how to” process issues which have been articulated in terms of systems thinking and post normal sciences, to indicators and indicator sets which are now in widespread use at different unit levels of analysis from cities to countries and landscapes. We also now have a range of global assessments such as the Millennium Ecosystems Assessment,

the Millennium Development Goals, the State of the World, and several others. Overall these reports present a mixed picture of progress with deteriorations in freshwater, agriculture, fisheries systems and little progress in making industrial, transportation and energy systems more ecologically sound. While poverty has been reduced, the most significant reductions have taken place in China at high ecological costs.

Even where we have been fortunate to have local level improvements; the overall planetary systems, especially the climate, atmosphere, oceans and forests linked systems are severely challenged. Every time we have a global economic downturn, action on SD becomes even more difficult. Global political leadership from the US is not likely in the near future, as the most promising leaders once in power (Al Gore as Vice President) and now Obama as the President fail to deliver in spite of their best intentions because of partisan political interest leading to gridlock in congress. The European Union would then seem to have this responsibility for global leadership on SD squarely on its shoulders, but we will have to wait and see how far it will be able to deliver especially as it now finds itself in dire financial straits. The United Nations in the meantime has been playing the role it does well, that of churning out international conferences and declarations with global political commitments to work towards SD.

PUBLIC POLICY CHALLENGES OF SUSTAINABLE DEVELOPMENT

Why is progress on SD so intransigent? A summary of the challenges or barriers to change would include lack of a collective sense of Agreement on what is to be sustained, shared Knowledge of how to solve these problems, broad access to the required Technologies, the Economic ability to pay for the changes, the other Social priorities and cultural norms that need attention and finally the Political will to take action (Trudgill 1990). In the face of these formidable barriers, we naturally turn to our democratically elected governments to show leadership and take action for change. Overcoming these barriers however need long term commitment and investments, which short term five year elected governments who will be seeking re-election and must have results to show at the end of their term, will not be motivated to undertake. Fortunately, this expected myopic behavior has been overcome in many ways, and governments have established National Environmental Protection Agencies(EPA), Wildlife Agencies signed on to international treaties of various kinds, established social safety nets and welfare programs, and when the economy is doing well have periodically shown the kind of enlightened public policy leadership

necessary for SD. As such, a slew of “command and control” policies in which pollution control or other environmental standards have been established, and are monitored and enforced to various levels of efficiency.

Similarly, a wide range of market based instruments such as tradable emission permits, or the more recent carbon trading mechanisms and markets have been established. On the other hand win-win policies that are both good for poverty reduction and for environmental conservation have been established. (UNDP, World Bank, UNEP, EU). On the side of the Private Sector, many corporations have come to see the green economy as a new business opportunity and seeking to exploit various niches in their areas of business, many are reporting on triple bottom lines going beyond profitability to include social and environmental accountability. The biggest success in SD policy making has come from heightened awareness of people from across the globe and the sharp rise of civil society activism holding both governments and private sectors accountable for their actions or their lacking in guiding the planet to a more sustainable future. So, there has been intense activity over the last 2 to 3 decades in the making public of public policy for SD. And yet it seems to many who have been involved from the beginning that nothing much has changed. In the BBC world debates (Sunday, February 28, 2010), Nobel laureate Wangari Matthai was a member of the panel when the moderator did a flashback to a speech she had given on BBC in 1982. She commented that the same speech is as relevant today.

The real challenge to democracies dealing with SD public policy dilemmas is not their short term elected office, as much as it is the interface between democratic decision making and the capitalist mode of production and distribution of goods and services and the question of which of these is dominant. In all countries of the world today the idea of progress is still measured principally by the economic growth rates which are of course driven mainly by increased consumption. Indeed, quality of life and level of consumption are considered by many to be synonymous. In the rich countries of the world, their capacity and desire to produce and consume more and more have gone completely out of control and entered a phase which Robert Reich calls “Super-capitalism” in his recent book by the same name. Gandhi had said that world had enough for everyone’s need but not enough for a single man’s greed. What we have today is a collective greed that knows no bounds.

On the other hand, the capacity of these countries to make collective decisions and public policy to achieve the things people say they value such as clean air and water, good education for their children, health care for all, more family time and less hours of work, peace and stability

and reduced poverty and inequality, is way behind. In other words, while capitalism is excelling at its role in the blind production of wealth which is increasingly concentrating in the hands of the few, democracy is failing badly to keep pace. Collective decision making and public accountability is failing badly, both within countries (be it in North America, Western Europe, China, India or Sub-Saharan Africa), and among countries in international forums, where individual country opportunities for trade benefits and wealth creation drives all else. This is the harsh reality of the world we live in where the trend is more of super-capitalism and less of collective decision making and public accountability in the other interests of society (at least in relative terms).

The relationship between democracy and development remains tenuous by most recent accounts, but cannot conclude that democracy is either helpful or necessary to development, whether defined as economic growth or more broadly, (Przeworski et al, 2000, Rueschemeyer et al 1992, Ringen, 2007). Many are prepared to say however that democracies have a much better chance than autocracies or dictatorships at promoting development. In terms of economic growth it seems that democracies are stable above a per capita income of about US \$6000; (Przeworski et al, 2000). Can we arrive at a societal consensus that per capita incomes above a certain threshold, for example US \$20,000 is economically unnecessary and maybe ecologically harmful? It is of course important to note that there are different types of democracies, including open access competitive democracies and closed access societies in which there is a rent seeking relationship between economic and political elites (North et al. 2009; Sorensen, 2008; Ringen , 2007) as there are different types of capitalism including good and bad capitalism (Baumol et al 2007). In any event it seems abundantly clear that democratic governance, as we know it today, is by itself neither going to help us significantly to generate or maintain economic growth, nor will it have a significant impact on moving us to a path towards SD. Indeed, many scholars see an incompatibility between democracy and economic growth for both economic and political reasons (Sorensen, 2008). On the other hand, it is hard to see how we will get there without some form of democratic governance. To resolve this conundrum, we will have to go below the veneer of apparent homogenous democratic societies, down to a class analysis of the rich, middle and poor segments of society, and their interests and roles in possible social transformation. A lot has been written in the poverty and sustainable livelihoods literature on the importance of poverty reduction to sustainable development. Similarly, there is ample literature on the importance of a prosperous middle class

to poverty reduction and indeed to viable democracies (Ringen, 2007). Most recently the role of the super-rich in social transformation has been described in ways that could be of significant value in the pursuit of SD (Nader, 2009; Rothkopf 2008).

MILLENNIUM DEVELOPMENT GOALS

And so here we are, after six decades of development experience - the last two of which have been in wrestling with sustainable development. Now, we are taking stock of the extent of achievement of the millennium development goals (MDG's) to which world political leaders committed their countries in 2000. The eight MDG's were to eradicate extreme hunger and poverty, achieve universal primary education, promote gender equality, reduce child mortality, improve maternal health, combat HIV/AIDS, malaria and TB, ensure environmental sustainability and develop a global partnership. Considerable success has been achieved, although much remains to be done. Notable progress has been made in poverty, health, (water, malaria), and primary education. Much more has to be done in the areas of environment, maternal deaths and HIV. To illustrate, the proportion of people living in extreme poverty has been halved at the global level. The world reached the poverty reduction target five years ahead of schedule.

Over 2 billion people gained access to improved sources of drinking water. This means that the MDG of attaining the drinking water target was met five years ahead of the target date, despite significant population growth. Remarkable gains have been made in the fight against malaria and tuberculosis. Mortality rates from malaria fell by more than 25 per cent globally between 2000 and 2010. An estimated 1.1 million deaths from malaria were averted over this period. Death rates from tuberculosis at the global level and in several regions are likely to be halved by 2015, compared to 1990 levels (MDG Report 2013). There can be reasons for optimism when one takes into account the recent star performers in multidimensional poverty that include Bangladesh, Nepal and Rwanda. However, we need to be cautious as even in countries with strong economic growth in recent years, the MPI analysis reveals the persistence of poverty. India is a major case in particular. There are more MPI poor people in eight Indian states alone (421 million altogether in Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Orissa, Rajasthan, Uttar Pradesh, and West Bengal) than in the 26 poorest African countries combined (410 million) (OPHI 2010).

POST 2015 AGENDA

While governments will meet in 2015 to determine the final shape of the post 2015 agenda, a major input will be the report entitled the *World We Want* which documents the outcome of global consultations with more than a million people. According to UN Secretary-General Ban ki Moon “*The consultations have revealed the continuing indignity of poverty, inequality, injustice and insecurity.*”

Equality and non-discrimination also stood out as a key message: people are demanding justice, participation and dignity. Inequalities and social exclusion exist particularly for poorer people, women and girls, those in rural areas and urban slums, people living with disabilities, indigenous people, migrants and displaced people, and others who are marginalized for reasons related to religion, ethnicity or sexual orientation. The insecurities they face compound each other: for instance, the lack of a decent job can leave people without access to health services and living in conditions that are unsafe.

In addition, people have said emphatically that the challenges – and indeed opportunities – they face are complex and interlinked. These point to the need to go beyond a silo approach and arrive at a future sustainable development agenda that is more integrated and holistic. The shift here, as described in detail in the next section is not so much in the ‘what’ as it is in the ‘how’, except for the new dimension of a secular spirituality to underpin the traditional dimensions. People demand that this new agenda be built on human rights, and universal values of equality, justice and security.

Better governance, of markets and of the environment, underpins many of their calls. There is also a strong call to retain the focus on concrete, measurable goals, and yet improve dramatically the way we measure progress against them. Finally they hope that a data revolution will support an accountability revolution.

The cry for this kind of world has been around forever. It must now seem as though we will never get there but we can get closer for sure. So why has progress been so slow and what can we do to accelerate it? Our quick response to this question is usually, “Let’s see what is working and do more of it.” For instance, if we look for a country that is doing well at reducing inequality and exclusion, we find Brazil is currently being celebrated. We find that what was working there includes: 1) Macro-economic stability, contractionary monetary policy and institutional reform; 2) A degree of luck in that Brazil benefited from global shifts of commodity prices, and

also increased flows of credit and FDI at just the right time, allowing for growth to blossom; 3) Growth was then combined with social policies and well-targeted programs including *public education, social security, conditional cash transfers* and a *minimum wage law*. This resulted in significant reduction in poverty and inequality. The Gini coefficient dropped 9% between 2001 and 2009!). To continue this success Brazil has an ambitious 2011 National Plan to lift 16.2 million people out of poverty.

One might conclude that what is at work here is a combination of a developmental state, sound macroeconomic fundamentals, accessing global markets, assertive social policies and some luck! But how do we replicate that in India, South Africa, Pakistan or China? The challenges and limitations quickly become obvious. And so while we should continue our lesson learning we have to be conscious of their very limited replicability. Going forward, a renewed public policy agenda will have to incorporate some radical departures from business as usual.

TOWARDS A NEW POST 2015 POLICY AGENDA

The post 2015 agenda will have to come to grips with the challenges and dreams articulated in both reports: *The Future We Want* and *The World We Want*.

How then can we make public policy for SD in today's world and indeed that of the foreseeable future? How can the democratic initiative seize the upper hand so as to put capitalism at the service of society as a whole and support sustainable development without losing its unmatched efficiency at producing wealth in the form of goods and services which people value? What kind of transformation will be required for a world that is more sustainable, just, equitable and secure? The following are some points of departure to consider:

- a) We need to reiterate what is at stake and what we want to sustain. At stake are the very planetary conditions which allow the human species to be dominant among biological species alive today and to have the potential to live in unmatched freedom, peace and stability for generations to come. What are to be sustained are diverse and resilient options of livelihoods for all. The SD enterprise is not about people having the luxury to love and protect their environment or giving charity to the poor, it is about a common human endeavor to protect the essence of human survival as we know it and to assure its future evolution. It is about what we do today to identify, nurture and sustain the options for lasting global peace, prosperity and creativity.

- b) The need for a paradigm shift from the Newtonian clockwork universe in which we would, by reductionist science, be able to explain all phenomena around us and be able to determine and achieve desirable future states of the world by the application of resources, knowledge and technology; to one which is co-evolving and self-organizing in inherently unpredictable ways, has long been articulated. The evidence and urgency for this shift has increased significantly over the last two decades and needs to be consolidated and widely communicated so that the shift can be accelerated. This paradigm shift is really a worldview shift in which, the way people make meaning of the world around them, the values they cherish, their vision of the sacred, right through to the what and how we teach in schools and universities, what is rewarded in the workplace, what constitutes a successful individual, what are the most desirable social virtues, how we make public policy and what we demand of our elected governments will shift dramatically. Kauffman, a world class evolutionary biologist and one of the fathers of complexity theory (2008) provides a comprehensive analysis of the evidence defining the limitations of the reductionist physicist's view of world and the evidence in support of a biosphere that is a co-constructing emergent whole that evolves persistently. The evolution of the universe, biosphere, the human economy, human culture and human agency and action is profoundly creative and cannot be reduced to or explained by the motion of elementary particles.
- c) Kauffman (2008) offers a profound new world view of a secular sacred that we can all share regardless of religious persuasion: "*Agnostic and atheist 'secular humanists' have been quietly taught that spirituality is foolish or at best questionable.*" (ibid p 8)... "*If we are members of a universe in which emergence and ceaseless creativity abound, if we take creativity as a sense of God we can share, the resulting sense of the sacredness of all of life and the planet can help reorient our lives beyond the consumerism and commoditization the industrialized world now lives, heal the split between reason and faith, heal the split between science and the humanities, heal the want of spirituality, heal the wound derived from the false reductionist belief that we live in a world of fact without values and help us jointly to build a global ethic. These are at stake in finding a new scientific worldview that enables us to reinvent the sacred.*"p9.
- d) Some of the consequences of this new worldview are now being teased out by current research leading to insights with important policy implications and practical applications. This includes the recent work at Harvard's Center for International Development led by Ricardo Hausmann (2008) on some new dimensions to economic growth theory

in which they reveal how the density of product and capability spaces in a country explain economic performance in a manner different from the general equilibria models in common use and builds on Kauffman's (2008) theories of webs of economic growth. The importance of this work is that it sets the stage for a better understanding of the relationships between economic and ecological systems in way that will be useful to policy makers. Work in behavioral economics, which has now become mainstream, in areas such as choice architecture, in which the way people make choices can be socially engineered (Sunstein and Thaler, 2008); and in the measurement of happiness as distinct from per capita incomes (Frey, 2008) are opening vistas of tremendous promise especially the possibility of conceptually delinking quality of life from consumption. Other recent work by Geoffrey West and his colleagues at Santa Fe Institute point to a number of similarities between all living complex systems where simple power laws explain complex connections. They are now extending this work to explain how cities grow and behave. Others have now gone even further to crafting concrete tools and guidelines for making policy in a complex, self-organizing uncertain system. Emery Roe (1998) in his book -"Making Policy in the Face of Complexity" outlines a practical tool he calls "Triangulation", in which orthogonal policy making tools such as cost benefit analysis, narrative policy making, local justice systems etc. can be used together to bring different perspectives of a complex system together. Swanson and Bhadwal (2009) have produced a primer entitled: *Creating Adaptive Policies: A guide for policy making in an uncertain world*. They suggest for example that "Adaptive policies anticipate the array of conditions that lie ahead though robust up-front design using (i) *integrated and forward-looking analysis*; (ii) *multi-stakeholder deliberation* and (iii) by monitoring key performance indicators to trigger *automatic policy adjustments*. But not all situations can be anticipated. Unknowns will always be a part of policy making. Adaptive policies are able to navigate towards successful outcomes in settings that cannot be anticipated in advance. This can be done by working in concert with certain characteristics of complex adaptive systems, including (i) *enabling the self-organization and social networking capacity of communities*; (ii) *decentralizing governance to the lowest and most effective jurisdictional level*; (iii) *promoting variation in policy responses* and (4) *formal policy review and continuous learning*. Designers and implementers of adaptive policies embrace the uncertainty and complexity of policy context, and consider learning, continuous improvement and adaptation of the policy a natural part of the policy life-cycle."p15.

- f) While the arguments above demand a radical departure from business as usual, we are where we are, and must continue to build on the success we have achieved apart from the on-going initiatives we are currently undertaking at international, national and local levels. We have, over the years developed a formidable body of international environmental law, conventions, treaties, standards, protocols, guidelines and commitments and these need to be enforced. To do this more effectively, a world environmental organization with powers similar to the WTO has been under discussion, should be established. In developing countries, national conservation strategies, poverty reduction strategies, national sustainable development plans, and local agenda 21, should be integrated in a bottom-up way and reinvigorated with adequate resources. They should now be shaped as part of the social contract between citizens and their governments in which they undertake to be mutually accountable for the welfare of the people and the environment both now and for the future. The most powerful tool available to countries and the international community in this regard is the Universal Declaration of Human Rights. The challenge here has been the weak attention given to economic, cultural and social rights. The recent work of the Commission on Legal Empowerment of the Poor has now provided a compelling synergy between human rights and markets. This has a great potential of serving to strengthen the rule of law for all and the application of human rights based approaches to development. Perhaps the greatest success that we have achieved in the field of SD over the last few decades has been the meteoric rise in awareness of environmental and SD issues. This awareness can now be combined with social media technology and appropriate leadership from youth groups and influential people such as entertainment stars, Olympic athletes, Nobel prize winners etc. to create a new wave of awareness, possibility and hope to usher in the new world view described above.
- g) To conclude, let us recognize some existing areas with the greatest potential for change towards SD. For convenience these are described at the physical, socio-economic and human levels, but it is recognized that they involve the ecological, cultural, political etc.
- At the physical level of the world - is the movement to a lower energy consumption pathway which would include but not be limited to renewable and nuclear energy options; and would extend to a way of life and use of technologies through which we actually use less energy and matter while improving the quality of life for all, but especially the disadvantaged.

- At the socio-economic level - are the movements to generate economic growth which has a smaller economic footprint and fair rather than free trade, which are more importantly in the emerging area of social enterprises and social entrepreneurs, where private sector businesses aim only at producing profits that are required to meet the costs of doing business, rather than at poverty reduction and environmental value addition. This requires changes in tax laws which will allow new integrated models of charities and businesses. Many developed countries such as Canada and the UK are examining options on the best way to do this.
- Finally, at the human level - is the movement to recognize the spiritual nature of humans, the understanding that humans are spiritual beings having a material experience, and not the reverse. A first and perhaps easy and palatable step especially for secularists and atheists is the embrace of a secular spirituality or sacredness in the ceaseless creativity of the universe which is all around us and for which scientific evidence abounds. This cuts across and has nothing to do with organized religion.

IMPLEMENTING THE AGENDA

Implementing this agenda will be difficult but doable. It will have to be embraced by both policy makers and practitioners in one camp, and, by academics and policy entrepreneurs including think tanks in the other. Policy entrepreneurs and think tanks usually build bridges between academic research and policy practice and will follow the action areas actively undertaken by practitioners and academics. Policy makers and practitioners are constrained by real politics, vested interest groups, democratic contestation over feasible options apart from time and financial constraints. They can therefore only be expected to make incremental changes and might only be able to deal with issues as outlined in point 4 above. And so any radical departures, suffering as they would from all the challenges outlined by Kuhn and Hacking (2012), would require independent and credible inquiry; disruptive thought, teaching and research; cognitive shifts and bold advocacy. For all of this, hopes are pinned on academia and in particular, the university. But only certain universities and a few academics in these institutions would be ready, and hence this call is made to them. It is likely that a smaller, newer university now building its name and pedigree will have the motivation, energy, vision, leadership and indeed naiveté to undertake this work. To make it more digestible the implementation agenda might be organized as follows:

- **For Schools of Government and Public Policy: Inclusive Prosperity**
 - *Inclusive Growth* is more than pro-poor growth, growth with equity, equitable growth, microfinance or safety nets, aiming to achieve a new framework of engagement between people's capabilities and opportunity structures including non-alienation, legal empowerment, workers as owners etc.
 - *Inclusive Governance*: New social contract between state and citizen, Rule of Law, Access to Justice, property, labor, business rights, institutional reform. Formal and Informal sectors. This is crucial because more than 80% of the population of developing countries live in the informal sector unreached by formal institutions and without being a part of the existing social contract.
 - *Making public policy in the face of complexity*: adaptive policies, beyond cost benefit analysis, narrative policy analysis, local justice systems etc.
 - *Process*: Fostering the process of self-empowerment.
- **For Schools of International Affairs: Local and Global Conflict and Security**
 - Understanding conflict as sources of shocks and stress to livelihoods and vice-versa.
 - Rebuilding livelihoods after disasters (slow and rapid onset) from humanitarian relief to recovery and further to sustainable livelihoods.
 - Use Resilience (household and institutional) as the organizing framework.
 - Rethink the international institutional framework revealing the politics at work and use insights to focus efforts on prevention and recovery from disasters and conflicts.
 - Promote more south –south and triangular cooperation.
- **For Schools of Business: Building MSME's in developing countries**
 - Focus on Small Economies: Why? Small is ugly but can be beautiful.
 - Conceptualizing Small Economies: Where are they? Formal or informal?
 - Standard business development services approach likely to be inadequate.
 - Build on what they are doing well.
 - Legal mechanisms to empower informal businesses to make it easier to do business in the formal sector (taxes, registration, services, protection).

- Capital beyond traditional microcredit.
- Role of local government in supporting MSME's at local level.
- MBA in financing MSME's.
- **For Schools of Law: Legal Empowerment of the Poor**
 - *Legal Exclusion*: 4 billion people not able to use the law to improve their lives and livelihoods. They live in the informal or extralegal sector.
 - Legal identity.
 - Access to justice and the rule of law.
 - Property rights and security of tenure.
 - Labor and business rights.
 - Making the law work for everyone.
 - Enabling law to empower street vendors, rickshaw pullers, waste pickers, taxi drivers, and 90 % of the Indian population who make their living in the informal sector.

By now the reader might be thoroughly disappointed with this business as usual agenda proposed above after all the rant about a radical departure. But this is deliberate as the strategy is to start where these traditional schools as are now and for the radical agenda proposed to be gradually infused into their curricula by a school of humanities which would address issues like those below.

- **For Schools of Humanities: Fostering some Fundamental Shifts and Re-thinking what it is to Human.**
 - From linear logical frameworks based on reductionism to complex adaptive systems based on holism: from *or* to *and*.
 - From realities which fit our theories to the reverse.
 - From power as a zero sum game (win –lose) to power as a positive (win-win).
 - From the *world as it is* OR the world as we *wished it*, to working with the emergent world.
 - From having to being, from ego-system economy to ecosystem economy (equilibrium to evolution).
 - From religion to secular spirituality (reinventing the sacred).
- **And: Rethinking what is defined to be human**
 - To be a human being before being an Indian, a Canadian, a thinker , a practitioner , a Hindu , a Muslim, a Christian etc. : peeling off

layers of imposed identities.

- Residual cosmic consciousness, that light as oneself, from which all else is derived. Having to being can then happen!
- Celebrating our oneness has been neglected in the celebration of our diversity (we are more than 99% identical).
- Can we give academic respectability to the secular sacred, natural creativity, and evolutionary economics?.
- Advance the academic struggle to give respectability to behavioral economics and happiness studies.
- The time has come for humanities and liberal arts to forge the transition to a new civilizational narrative.

CONCLUSION

The development challenges of the post 2015 era are not new. The fact that they persist require fundamentally new ways of thinking about and pursuing development. Leaders will have to reassert that development is about political mobilization of people for attaining their own objectives, that it is naive to pursue goals others have set, and yet see their challenges not in isolation but as shared with all of humanity. Governments will have to renew the social contracts with their citizens as the fundamental frame for the new transformations that are necessary.

New public policy ideas are as much the challenge as are institutional deficits, lack of systems thinking, not taking connectedness and complexity seriously and the lack of leadership to make these changes. A small step forward in the beginning to address this agenda is to train more of our people to step out of their disciplinary silo's and begin to think and work in trans-disciplinary ways, going beyond familiar attempts at multi-disciplinarily. This cannot happen without a strong leadership from the humanities.

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POLITICAL WILL AND SUB-NATIONAL GOVERNANCE REFORM IN INDIA

REFLECTIONS ON HDRS AND DEVELOPMENT POLICY LOANS

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The paper analyses the experience of post-1995 India's two major interventions that had an explicit public policy orientation on sub-national governance reform (in contrast to more sectoral programmes) – the State Human Development Reports (SHDRs) supported by UNDP and the Development Policy Loans (DPL) supported by the World Bank. It describes the context, process and some of the results of each of these interventions, and also points out their limitations or constraints. In view of the stated reform objectives and agenda of both the interventions, the paper looks at the role of political will, and the challenge of harnessing political will through institutions of parliamentary democracy in India.

INTRODUCTION

Context

India's development trajectory since the early 1990s has been marked by two major policy shifts – liberalization of the economy and decentralization of development responsibility. Of course, there are contradictions between the two trends (with Panchayati Raj seen as a countervailing force to the forces of globalization). There are constant setbacks and advances in a near cyclical mode. It is incontrovertible, though that both of these have fundamentally re-aligned the nature and direction of governance in India. The imperative of governance reform in India is to ensure that the fruits of globalization and the potential benefits of decentralization are reaped to ensure growth that is “pro-poor, pro-nature, pro-women and pro-jobs”, to paraphrase MS Swaminathan.

Globally, the concentration of poverty has shifted to middle income countries with stable political contexts. An Oxfam study (Sumner 2010)

*UNDP India Office, New Delhi

points out that almost 930 million (75 per cent of the world's poor live in Middle Income Countries (MICs) and only 25 per cent (approximately 370 million) lived in low income countries (LICs). This is in contrast to the situation in 1990 when LICs accounted for 93 per cent of the world's poor.

It has been pointed out by Oxfam that nearly 61 per cent of the world's poor are in non-conflict MICs, and only 11 per cent live in conflict-affected LICs (Sumner 2010)¹. The classical conflation of poverty and civil war or insurgency is less true than before. The persistence of poverty in such a scenario is today more due to internal inequality and poor implementation in these countries. The solution accordingly lies increasingly in addressing internal distribution and implementation capacity issues rather than reliance on Overseas Development Assistance (ODA) and other concessional aid flows which are meant for filling recipient governments' fiscal and project investment gaps. This implies that the focus is increasingly on governance reform where national governments need to be persuaded (not only through external triggers but mainly by internal public opinion and champions for reform within the government) to change or modify ways of working and create an enabling environment to trigger and sustain the reforms.

In view of the limited and shrinking amounts of ODA (as also poor levels of ODA absorption – the global average being 15 per cent of ODA pledged), the “clout” of donor funding declines and reform processes are sustained more by persuasion rather than threat of withdrawal. In other words, “impact in MICs is more about influence than money”.

The Case for Sub-national Governance Reform

In the case of South Asia, governance reform then requires influence governance at all levels, and in case of federal structures (as in India and Pakistan), “subnational reform” - at the province/ state levels - becomes more salient. The rationale for this is that governance reform requires sensitivity to local contexts, and accordingly its instruments calibrated to the diversity and disparities in human development among states in the country. Moreover, under the Eleventh Schedule of the Indian Constitution, the responsibility for key social sectors listed in the State List lies with State Governments, and the subjects listed under the Concurrent List are under the implementation domain of the State Government, while the authority to make national legislation and policy is with the Union Government.

¹ More recently the 21 April 2012 issue of the Economist noted: “In 1990 more than nine out of ten of the world's poorest ... lived in poor countries. Now, three quarters live in middle-income states such as China, India and Brazil. This is a problem for the World Bank because it mostly still lends to poor countries, not poor people”.

In the context of decentralized governance or local self-government, the role of the State Governments is even more central (pun unintended), as the national legislation is indicative rather than imperative, as indicated by the usage “may” rather than “shall” in the 73rd and 74th Constitutional Amendments. As a result, conformity legislation and implementation mechanism is very much within the domain of State Governments and their subordinate agencies. Additionally, State Governments are key financiers of development programmes – with 57 per cent of government capital expenditure undertaken by state governments; globally, India is second only to China in terms of the volume of sub-national public expenditure (Howes et al 2008).

In 2000, 57 per cent of India’s total government capital expenditure was financed by the states, as was 97 per cent of irrigation maintenance, 39 per cent of road maintenance, 90 per cent of public health expenditure, and 86 per cent of public education expenditure.² In view of the above contextual factors, governance reform at sub-national (state and below) levels becomes especially imperative in order for us to have an understanding of the extent to which the situation on the ground is affected by national reform signals and public policy.

Drivers of State level Reform

The drivers of state level reform in India, remarkable for an otherwise diverse country with varying political contours, were similar not only across states but also consistent with the drivers of reform at the national level. Just as the balance of payments crisis in the early 1990s drove the wider adoption of the economic reform agenda at the Centre, the crisis of state finances (and the ballooning of internal debt- with the decline in State Revenues to 10 per cent of GDP and increase of nearly 30 per cent in real wages for civil servants) drove the agenda of state level governance reform.

The imposition of a “hard budget constraint” entailed State Governments’ compression of expenditures (zero or near-zero fiscal deficit targets) and reliance on private capital flows and external assistance. At the same time, with the passage of the 73rd and 74th Amendments, the onus of decentralization also fell on State Governments who had to put in place new institutional arrangements such as State Finance Commissions and

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constitutionally mandated (and therefore permanent) Panchayati Raj Institutions (PRIs) and Urban Local Bodies (ULBs).

In contrast to the pre-1990s situation where policies on these issues were relatively uniform across states and driven by the Centre, the new scenario meant each state had to play its own role to attract investment, restructure its finances and local governance mechanisms. This entailed a mix of competition and cooperation between and among State Governments. A study of the World Bank's Policy Based Lending in India has highlighted two significant reasons: "... first, the big push starting in 1991 to liberalize the trade and investment regime led to increased competition between states to attract business and investment; second, the 1990s witnessed an acceleration in the decline of the once nationally-dominant Congress Party and the emergence of regional political parties"³.

State Governments also found increasing common ground vis-à-vis the Centre on issues ranging from Panchayati Raj to power sector, cooperatives, Value Added Tax (VAT) and availability of external assistance for social sectors. Of course, the imperative also meant greater focus on debt management and reform of implementation arrangements, where there was increased scope for mutual learning and "sharing of best practices". The 1990s therefore required State Government in India to increasingly design their own state specific policy agenda and evolve public policy platforms to signal their commitment reform and good governance – both to leverage external assistance required for doing business differently and assure potential private sector players that the state indeed had an enabling environment for meaningful investment. Suffice it to say that when State Human Development Reports (and Development Policy Loans) arrived on the scene in India, it was indeed a time for "markets opening to commerce and minds opening to ideas"⁴.

Political Will: the Ghost in the Machine

With Governance Reform being increasingly predicated in MICs on more on influence and persuasion rather than financial muscle, it becomes important to assay political will and the mechanisms for gaining and then exerting influence/persuading change in the direction for reform. Political will has been defined as "...commitment of actors to undertake actions to achieve a set of objectives – and to sustain the costs of those actions over time" (Brinkerhoff 2010). For students and practitioners of public policy, therefore, the role of political will in triggering and sustaining reform, as

³ Howes et al 2008

⁴ Victor Hugo's Opening Address at Paris Peace Congress August 1849

indeed it becomes salient to look at negotiation mechanisms and processes for catalyzing and sustaining the political will itself.

Within the framework of a federal democratic structure, the role of domestic politics becomes more important in triggering policy change than external leverage (Dollar, Devarajan & Holmgren 2001). When the state becomes a signaling agent for efficient markets and good governance, political leadership plays a key role in recognizing and then enabling the need for the required reforms in laws, policies and procedures. When the Government is increasingly required to provide the enabling environment and play the role of facilitator and trouble-shooter (and provider of externalities), ‘political will’ is needed to ensure a stable policy regime. Moreover, in analyses of reform and democratic governance, the fluidity of usage (as distinct from rigorous definitions) makes for increased popularity of the notion. At the same time, the concept also has the suitability to provide a cogent clubbing together of actions by a diverse range of political actors, and its ease of appropriation in popular discourse⁵.

In the context of this paper, political will is an important underpinning to institutional change (“changes in the rules of the game and its enforcement characteristics”). The paper looks at the significant public policy initiatives in India which began in the mid-1990s and focused primarily on the state level governance reform – State Human Development Reports (SHDRs) and Development Policy Loans (DPLs). It does not seek to provide a comprehensive narrative of either initiative (for the latter refer Howes et al 2008 and Kirk 2011). It reflects on their signal accomplishments and salutary lessons for analysts of public policy in post-1990 India. In addition to a common focus on the state level policy regimes and on key plan finance functions (and functionaries), the above two shared commonalities in terms of national ownership, research-driven and orientation towards improved planning, budgeting, implementation and monitoring⁶.

It is true that the initiatives – the SHDRs supported since 1998 by UNDP and the DPL by the World Bank – had somewhat different points of origin (SHDRs initiated completely by the Government of Madhya Pradesh followed by Karnataka’s in-house preparation of KHDR 1999). They covered very different areas – the former focusing on social sectors while the latter covered state budgetary support and included governance

⁵ Grindle’s (2007) practical notion of “good enough governance” becomes moot here.

⁶ The GOI-UN Joint Programme on Convergence and Gender Responsive Governance Programme are among other relevant cases that work at all three levels germane for governance reform– Macro (Policy), Meso (Training) and Micro (grassroots intervention). However, their very recent vintage precludes their detailed discussion in this paper.

reform in infrastructure sectors as well. The focus, content and scale of funds involved are very different. At the same time, the two taken together cover more ground and their juxtaposition may possibly offer insights that a discrete examination of the two may miss out. Given the reliance of both the initiatives on harnessing political will and “champions within government”, the analysis could offer an appreciation of the “binding constraints” of policy advice in India.

THE STATE HUMAN DEVELOPMENT REPORTS

The State Human Development Reports in India are possibly the world’s largest sub-national public policy initiative on social sectors – both in terms of funding (combined government and UNDP funding being USD 64 million approximately) and geographical coverage (23 states/provinces with a combined population of 0.8 billion people). In 1995, the Government of Madhya Pradesh prepared MPHDR 1995, the world’s first sub-national HDR⁷. It was funded entirely by the State Government, and peer-reviewed by leading economists and development experts (including from UNDP and UNICEF). The idea of having an objective assessment of the state of human development gathered further momentum with the National Planning Commission and UNDP coming on board, beginning with a National Consultation of State HDRs hosted jointly by the Government of Madhya Pradesh and UNDP in 1996, and a UNDP-Planning Consultation on Core Indicators of Human Development in 1998 leading to a National Programme on Capacity Building for State HDRs launched in 1998.

The Guiding principles of SHDR preparation, crystallized in 1998 were a) government ownership, b) editorial independence/ autonomy, and c) widespread Dissemination. The principal objective for a State HDR was/is the specification of Human Development strategy for the State, based on a Desk Review of status of Human Development in the State (including computation of HDI/ GDI at district level). The State HDRs were also expected to include an assessment of functioning of relevant sectoral schemes and programmes, and recommendations for “way forward”. While the SHDRs were state specific, the National Planning Commission and UNDP also laid emphasis on having a common methodology and core indicators to enable inter-state comparisons.

Between 1998 and 2008, twenty-three State HDRs were prepared and published (Manipur Report finalized in 2003 and Haryana Report finalized

⁷ In 1993 Bangladesh had prepared its National HDR, being the first NHDR globally. Sofia prepared the first City HDR. HDRs were also prepared for Palestine (1997) and the Roma people.

in 2005 have not been published till date). The Planning Commission has provided additional central assistance (INR 320 crore or USD 50 million) and UNDP (USD 14.2 million) for preparation of State and district HDRs, and follow up. All states were covered (except Goa (MOU signed 1998), J&K (MOU signed 2002, and Mizoram between 1998 and 2008). A follow up project for strengthening State Plans for Human Development was initiated in 2004 with Planning Commission ACA and UNDP technical assistance for 15 states. In view of the imperative of using public money to actually improve public welfare through research, training, outreach and focused grassroots initiatives, the credo followed was “From Analysis to Action”. This utilitarian approach also helped address cynicism about reports being “paper-friendly” rather than triggers for people-friendly public action.

Analysis of human development was of course the point *d'appui* for the State HDRs. The Madhya Pradesh HDR 1995 and then the Karnataka HDR 1999 computed district level HDI for their respective states and arrived at district income and poverty estimates. They also examined the factors behind the lags in human development and taken up institutional performance issues, not only for the functioning of departments and schemes, but also the gaps in the statistical system and use of data. The State HDRs and their follow up led to a sustained focus on the analysis of human development at the disaggregated levels (district and below), with the follow up including formulation of District HDRs (pioneered by Malda and Bankura districts in West Bengal) and consolidation of methodologies for District Income estimation (income originating approach) with India's Central Statistical Office (CSO) and small area estimation for District Poverty estimation with Indian Statistical Institute (ISI) and National Sample Survey Organization (NSSO).

As the analysis of human development had also to address issues of state finance and effective approaches to reduce human deprivation, the follow up included systematic appraisal of budgetary requirements for improving and expanding service delivery. The National Institute for Public Finance & Planning (NIPFP) collaborated with Finance Departments of participating State Governments to undertake a series of studies on financing of human development, which not only examined the trends and budgetary shortfalls, but also offered policy options to enhance funding and improve its effectiveness.

In sum, the State HDRs also triggered a program of research and analysis covering fiscal policy issues and programme effectiveness and also further disaggregated human development assessments at the district and local

levels. Successive evaluations of the State HDRs and their follow up have been conducted (beginning with evaluations under the Poverty Strategies Initiative (PSI) of UNDP. Given the skepticism about the merits of government ownership, combined with national enthusiasm for the State HDRs, evaluations were conducted almost biannually. Subsequent sections take up key points of these evaluations, what is undeniable is that these evaluations (notably Osmani-Gani and Tan 2000, Sisodiya 2000, Katoch 2003, Tadjbaksh 2005a, Tadjbaksh 2005b, Saxena 2005, Riskin 2005, and Bhattacharya 2008) themselves are a substantive corpus of research - offering analytical insights in issues of human development for the State HDRs and more effective pursuit of their recommendations.

Advocacy and outreach have been a key platform for disseminating the message of State HDRs beyond the immediate readers of the report in government and international development partners. The fact that the early HDRs were translated in the respective official language of the concerned state meant that the reports were accessible to a large audience within the state - legislators, media and civil society organisations. The critical reflections on the status of human development of course provided grist to the mill of political debate and media coverage – with the Madhya Pradesh report cited by the Leader of the Opposition in the State Assembly during a No Confidence Motion in 1996. At the same time, the effort also had to include spread spectrum strategies for mass dissemination and wider coverage of the HDRs, and more importantly the issues raised in them. The Film & Television Institute of India (FTII) collaborated with State Governments to prepare a series of films on human development which were then broadcasted in the respective states so as to reach a wider audience. In addition to the standard metrics of media coverage – number of potential viewers, State Governments then documented specific instances of impact. For instance, the issue of Devadasi in Karnataka was taken up through local cable TV operators in select low HDI districts, and triggered debate on the women's human rights and equity issues in the sites where the practice persisted. Karnataka also pioneered Interactive HD Classroom for sensitizing elected representatives on issues raised in the State HDRs, using not only the films produced, but also an educational package that simplified and made HD more germane to everyday issues confronted by elected representatives and women members of SHGs. The Argentina experience of HD road-shows was shared with the Government of Maharashtra, and inspired a sustained campaign by the State Planning Commission to address cooperative bankers' conventions, district official meetings and party workers. The outreach to an rather eclectic but very large set of interlocutors was of course subject to limitations of enthusiasm

and energy levels of the State HDR champions, but undeniably the State HDRs did manage to cover a very large constituency across India with relatively limited funding and without the high profile associated with large volumes of donor funding.

Action engendered by the State HDR was an important desideratum if the assessment of the status quo was to trigger efforts to change it. In view of the fact that the report preparation and follow up were anchored mostly in Planning Departments and at the national level in the Planning Commission, did mean that the first step in the direction would be to integrate human development concerns more centrally in the state plan documents, gubernatorial addresses, state government budgets and training strategies. Human Development Research & Coordination (HDRC) units were set up in the State Governments, with expert teams and a network of resource institutions that survived the dismantling of HDRC in the UNDP India office. Capacity building in India (and more generally in South Asia) is normally conflated with training and the follow up to State HDRs had a significant emphasis on training of planning and finance department officials, with the Reserve Bank of India's external training wing, the College of Agricultural Banking. With twelve very successful rounds of training over a three year period, and further Training of Trainers (TOTs), a cadre of human development trainers was made available to each state participating in the programme. Not only did this exercise expose state and district officials to good practices of rural development in Ralegan Sidhi and Hivre Bazaar, it also generated a corpus of training material which formed the basis for a 'TOT' manual on Human Development, jointly prepared by the RBI and West Bengal Administrative Training Institute. The lacunae of statistical systems analysed in the early State HDRs were addressed through a systematic engagement by the CSO on training state statistical cadres in computation of District Income – building on the District Income Manual and Calculator evolved with Centre of Budget & Policy Studies (CBPS), Bangalore and the Planning Commission. A technical note by NS Shastri on computing District Poverty estimates from central sample was prepared as a discussion paper, and further crystallized by Arijit Choudhuri for the West Bengal HDR and by Dipankar Coondoo and Amita Majumdar on behalf of ISI Kolkata who used small area estimation techniques. However, given the sophistication involved in these methodologies, contrasting with prior neglect of training of the statistical cadre at the state and district levels, the more successful training programme was on district level social development indicators, led by the International Institute of Population Studies (IIPS), Mumbai. The IIPS not only developed a MDG calculator for State Governments, but

also conducted series of training programmes for district level statistical officials and demographers in the State Statistical Bureaux. The statistical training programme successfully segued into the initiative by UNFPA (the UN's lead agency for Statistics) to train both data providers and data users at the state and district levels in measuring levels of development in order to integrate them more effectively in state and local level plans and budgets. The direction in the Union Budget Statement of 2005 to engender budgets through Gender Responsive Budgeting was also taken further forward with a Gender Budgeting manual prepared in Hindi for the Government of Chhattisgarh by UNIFEM resource persons. The subsequent integration of the manual in the Planning Commission Guidelines on Gender Sub-plan reflects the enabling role of national government assuming ownership in increased provenance in state governments of technical tools for social sector planning in India. Conversely, the lead role of State Governments in using State HDRs as a vehicle for further elaborating their social sector agendas and the disaggregated analysis of human development at the district and sub-district levels have also prompted greater acceptance of the HDR as a planning tool. This is most notably reflected in the 2007 Guidelines for the Backward Regions Grant Fund (BRGF) and the notification by the Ministry of Home Affairs (India's Interior Ministry) for District HDRs as successor to the erstwhile District Gazetteers.

The highlights of results from the foregoing litany of activities and their consequent outputs include, inter alia, the foregrounding of human development concepts in public policy discourse in Indian states – not only with direct interlocutors in Planning, but also more broadly within bureaucracy, NGOs and media. Reform oriented officers have looked at data in the report (catalyzed also by the discussion on comparing district HDI with the senior bureaucracy and state level politicians), and many took action; there has been greater clamor for better data and data use. The State Economic Surveys with chapters on Human Development and the emphasis on human development outcomes in State Plan documents and Planning and Finance Commissions indicate that the first generation goals of State HDRs – to specify improvement in human development as desideratum for planning and develop practical tools for action – are being realized. Ongoing measures - such as Human Development missions for low HDI districts (begun in Maharashtra with a TISS Strategy Paper for Jalna, Yavatmal and Nandurbar districts), Gujarat's Human Development Plan and the District Planning Manual including the District HDR as baseline – now need to address second generation issues of institutional development (the first generation being the specification of the “rules of the game”) in terms of sharper and more effective monitoring of results

and putting in place accountability mechanisms to report and track the changes on the ground (or the “enforcement characteristics”).

The challenge (and the opportunity) now would be to ensure greater political acceptance and use of the HDR. An assessment of the SHDRs’ continued relevance in public policy could be grounded in an assessment of: a) the actions triggered by the analysis in the reports and b) the discussion sparked off by the indices including the competition to improve the HDI. Political will, chimerical as it may be, can play a central role in this. Indeed it has been argued that it would be effective to focus further resources on building the political (and public) constituency for human development, rather than continue to define the problem in increasing sophisticated ways that are more arcane and less accessible. *“We make things so complicated that nobody but us can understand the technicalities. It keeps us in business of course but not much change on the ground and that again can keep us in business till the funds run out and public interest lags”*. Today there are many new players in development who can use the Report to define their own agenda and use it in their manner. This is not to be seen as threat to the existential purity of the Human Development concept, but as an opportunity to engage with diverse players and help ensure quality and consistency which would further benefit the users of the Report. As SHDRs can and have been used both by the ruling parties and by the opposition, the Reports have become an important document in the public domain. The task at hand now would be to ensure that political will is harnessed so that it stays on the agenda credibly by effective improvements of the actual status. Jean Dreze puts it quite inimitably – “HDRs are important but human development is more important.”

What follows as a result of SHDR preparation and its follow up has now become moot. When governments are re-elected (MP, West Bengal, Maharashtra) the public perception is that pro-incumbency is aided by investment in social sectors, decentralization and even the HDRs. There is greater focus on social sectors in state plans and budgets – with increased allocations and greater focus on targeting. Programmes are designed with and HDI and HD data is used for selection of districts (*taluks*). Even when there is a change in regime, the Reports are a platform for government to express emerging priorities. At the very least, SHDRs and Human Development Updates (such as the Rajasthan Human Development Update 2007 prepared by Institute of Development Studies) serve as “companion document” with data and analysis for the serious policy maker and planner. The protean nature of human development is an advantage for SHDR to be a vehicle for stating priorities, not only in plan documents

but also in party manifestoes and coalition agenda documents. At the same time, it needs to be recognized that State HDRs do not trigger political or bureaucratic will but are led by it. Moreover, the level of interest and the effectiveness of action taken on recommendations also vary depending on the career and professional trajectories of “HDR champions” in government and politics. The literature on political will recognizes that “norm entrepreneurs,” play a critical role in the three stages of “norm life cycle”: *norm emergence*, *norm cascade*, and *internalization* (Finnemore & Sikkink 1998). HDR champions emerged from “norm cascade” and play a key role in “norm internalization” and therefore for SHDRs to play a continued role in subnational governance reform, it is critical that the engagement with “champions” be intensified (including broadening the circle of champions beyond the reflex of sensitizing new incumbents of planning departments).

THE WORLD BANK DPLS AND SUBNATIONAL REFORMS IN INDIA

Just as the SHDRs attained eminence as a planning tool in India, the World Bank’s Development Policy (WPL) Lending - also referred as Policy Based Lending (PBL) or Structural Adjustment Lending (SAL) – became a key policy reform instrument for state finances⁸. The SHDRs were status documents intended to trigger a greater focus on social sectors. The World Bank DPLs were a policy-based incentive to trigger improvement in the overall state budget and its effectiveness. Just as the SHDRs went beyond departmental boundaries, the DPLs for states were a form of lending based on an agreed overall (not purely sectoral) policy framework. They were quick-disbursing and not earmarked for any particular sector. With nine State DPLs between 1997 and 2007 (a total fund of USD 2.1 billion), India becomes the World Bank’s largest initiative globally for subnational governance reform. This would increase further with the inclusion of DPLs with Bihar (“lagging state”) and West Bengal.

As pointed out earlier, state level fiscal reforms in India were triggered

⁸Howes et al 2008 point out, “World Bank lending comes in two forms: investment lending and adjustment (also called development policy or budget support) lending. A typical investment loan has 5-7 year duration, and it finances goods, works, and services in support of economic and social development sector projects. On the other hand, an adjustment loan has a relatively shorter duration (1 to 3 years), and it provides quick-disbursing financing to support policy and institutional reforms. Over the past two decades, adjustment loans have accounted for about 30 percent of total Bank lending.”

by increased competition (since early 1990s) for business and investment as also the end of national parties' hegemony of rule in the states and the emergence of regional / state level parties, which actually became significant power centres for the national level coalitions. Similar to the national trend in early 1990s, states' fiscal crisis in late 1990s triggered interest in state level reforms. As pointed out by Howes et al (2008): "Weak coalition governments limited political influence of Centre so "focus state strategy led naturally to State DPLs".

The highlights of the State DPLs in India include better performance of DPL states in improving fiscal parameters - from a common baseline of 6 per cent fiscal deficit in 1999-2000 to 2.8 per cent for DPL states and 4.5 per cent for non-DPL states in 2005-06. The stabilization of debt to GSDP ratio in DPL states since 2002-03 was in contrast to continued increase in non-DPL states. However, since the non-PBL states also adjusted, with a lag, it could be the case that the effect of the State DPLs was to accelerate a fiscal correction in these states that would have happened in any case.

The signifier of very large funding by the World Bank also elicited State Governments' commitment to better governance. The high level of media visibility in the states also sent signal of being "reform-minded" to attract private sector investment. Just as in the case of the SHDRs, the role of reform champions in national Ministries (MoF in the case of the World Bank) and state governments was critical. Indeed, it was useful for government interlocutors who cited the pressure of meeting commitments made for World Bank loans to counter political and bureaucratic inertia or opposition. Conversely, the high level of political visibility for the DPLs entailed criticism for "unpopular" triggers (especially in the case of "free power" lobby) that were seen as externally imposed.

The World Bank DPLs and the SHDRs have several points of intersection, given common interlocutors at the State level, and shared commitment to generate evidence for change on the ground. The World Bank triggers for the Karnataka DPL included preparation of District HDRs and putting in place a Human Development MIS. The latter was also included in the loan negotiations with Tamil Nadu. Given the sensitivity to potential criticism for agreeing to Bank conditionalities, State Governments used SHDRs as their home-grown platform for taking up these obviously critical initiatives. At the same time, the World Bank's analytical insights on reform of state government budgets (especially addressing issues such as doctor absentee-ism and burden of pension payments on the fiscal envelope) contributed to the content of HD training programme by the Reserve Bank of India (RBI) – with the World Bank even providing its in-house

experts as resource persons. At the same time, it proved difficult to enter into systematic collaboration between the initiatives on improving human development statistics and the Bank's non-lending technical assistance on strengthening statistical systems. While this may have been partly due to the nodal ministries were different in this particular case (National Planning Commission for the SHDRs and Ministry of Statistics for the Bank project), it is also an example of a "coordination failure" and a missed opportunity for effective collaboration between two like-minded (within a rather collegial environment for dialogue) governance reform initiatives at the subnational level.

LESSONS: PUBLIC POLICY AND THE LIMITS TO GOVERNANCE REFORM

As the foregoing sections indicate, both SHDRS and DPLs had several significant successes and are a good example of focused public policy initiatives to trigger good governance at the sub-national level. In order to think ahead and understand their potential for continued relevance, it would be important to assess their limitations, as pointed out earlier.

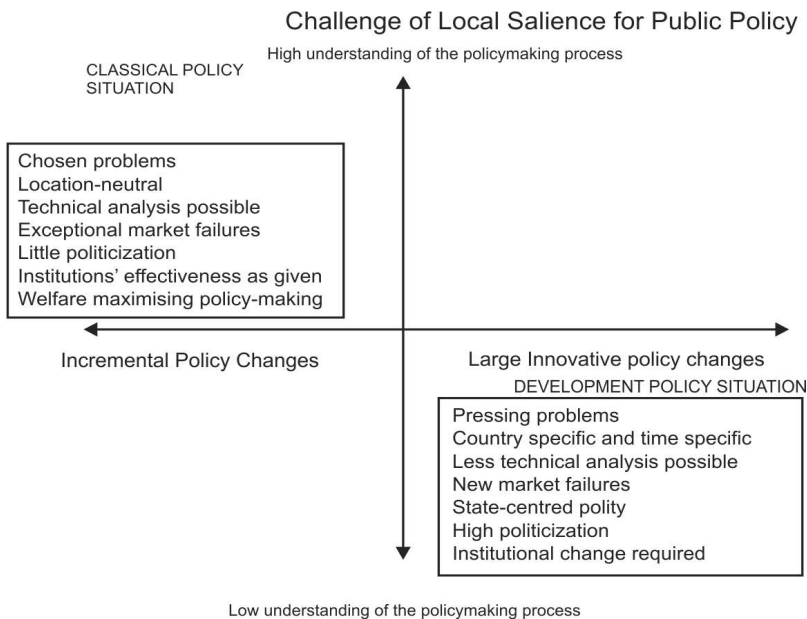
The SHDRs face the challenge of addressing skepticism about "reports". Moreover, the critique of India as a "flailing state" (Pritchett 2009) where the brain (*viz.*, policy) has a declining control over the limbs (*viz.*, implementation on the ground) may even lead to questions about the continued relevance of public policy as a basis for governance reform. It becomes critical therefore for the HDR exercise in India to resist the perils of routinization and "group-think", compounded by insufficient capacity to further innovate. The academic focus on "quality of analysis" may preclude public understanding, especially among political leadership. Excellence in analysis should therefore include simplicity of explanation and ease of communicability. The power of the HDI as crude but simple and powerful measure needs to be further harnessed to promote understanding (such as the Maharashtra Human Development Backlog) and trigger competition to improve HDI rankings.

The State DPLs also face the challenge posed by their own success – the improvements in fiscal health of states (driven also by better revenue collection) and favorable policy environment rendered the donor less effective. As in the case of SHDRs, the technical engagement with policy wonks can lead to the neglect of political engagement with elected representatives. Also, both the initiatives need to become salient in the discourse of everyday politics and debate – and for this it is important to address the lack of capacity to expand the audience/ constituency for

reform recommendations beyond secretariats and Ministers. The stage setting for the dialogue may need to change or at the very least expand beyond the current set of interlocutors for governance reform.

PUBLIC POLICY AND THE LIMITS TO GOVERNANCE REFORM: THE CHALLENGE OF LOCAL SALIENCE

The figure below (taken from IIM-Bangalore’s training programme for women politicians)⁹, maps the divergence between technical sophistication and scale of policy change.



The “classical policy situation” is one where the *problematique* is carefully selected based on academic or policy research, is easily amenable to standard research tools and is triggered by a crisis (such as a major funding shortfall or highlighting of serious gap in delivery of services). Given their high degree of technical content and interlocation with finance and planning departments (with relatively lower levels of everyday public interface), the subjects taken up are *ab initio* not subject to large-scale political controversy, especially as the overall rubric is the anodyne one of macro-level policy dialogue in line with existing commitments to increase public welfare. As large scale institutional re-ordering is not the initial point of departure for these reform discussions, the effectiveness of the interlocutors to deliver on the promises of change is also not tested. As a result the actual scope

⁹ IIM-Bangalore iWiL Programme July-September 2012

and pace of reform is incremental – characterized by a high degree of technical understanding and relatively narrow band or slow pace of policy change.

In contrast (and in the diagonally opposite segment), the larger scope and faster pace of governance reform confronts a dynamic field situation where fire-fighting is the norm, required response times are very short; the scope for sophisticated technical analysis is very limited (either due to data constraints or absence of any prior research). As governance reform has to impact delivery of services and institutional arrangements, the levels of politicization is high as existing local power relationships and patronage networks are questioned. The luxury of distant observation is less available and the urgency of addressing the concerns of a technically less sophisticated but politically more important constituency is high. Indeed, as Howes et al 2008 point out, the political implications of the reform prescriptions come out starkly when governments eager to avail the State DPLs face electoral reversals and the blame is put on loan conditionalities such as reversal of free power. Thus when an attempt is made to go beyond incremental policy change, the high degree of politicization has to be factored in, and again that requires going beyond the technocratic mode and engaging systematically with political leadership to generate support.

The grid above places the technical public policy frame of the SHDRs and DPLs squarely in the box of classical policy situations with high technical content and narrow band of policy change. On the other hand, once the technical work is completed, both SHDRs and State DPLs share common binding constraints for continued sub-national governance reform. These consist of their limited constituency of interlocutors and evanescent “political will”. In part, this is due to the structural design flaw – the distance between the location of the problem (‘the *Mofussil*’) and the expertise to solve it (located in metropolitan enclaves and institutions).

This distance – both geographical and often intellectual – undermines the ability of governance reforms to go beyond the technical papers and consultations and meaningfully change the situation on the ground. Scholars such as Pritchett (2009) have characterized the situation as one of a “flailing state” (in contrast to the international typologies of “failing”, “Failed states”). They argue that the failure of reform lies in the inability of the cerebral segment of the governance mechanism (viz., national policy) to direct the limbs of the state (delivery mechanism at the district and local levels). Given this lack of articulation between policy and implementation, the ability of governance reform initiatives to translate into change on the ground is limited. While the above approach does diagnose the constraint,

it does not question the issue whether the reform prescriptions are indeed relevant or analyze whether their formulation process has taken into account the process of generating political will. Pritchett (2009) also does not consider adequately the challenge of formulating governance reform prescriptions within a federal framework and the need to have political will drive reform rather than the other way around.

It is more fruitful to go beyond the cul de sac of “flailing state” mode and instead examine how and why public policy priorities – evidence based or derived from large scale mobilization or public demand – are often not realized due to bureaucratic neglect and political apathy, as the picture below indicates¹⁰.



“Where is that Lokpal file?”

Political will is therefore cited as the required trigger to generate the momentum for change in such a scenario. However, what is not highlighted is the mechanism for generating and sustaining political will for governance reform in multi-layered administrative set-up characterized often not only by partisan and populist politics but also by a lack of consensus and convergence within government departments and interlocutors of reform. In a democratic polity, political will is sometimes a “shape shifter”, which can be harnessed more through political engagement within and across party lines and not only by technical demonstrations of the imperatives for reform. If it is defined as a “commitment of actors to undertake actions to achieve a set of objectives – and to sustain the costs of those actions over time”, then clearly, the political engagement needs to become endogenous to the reform dialogue and the very formulation of governance reform prescriptions. Political will as a process is driven by generation of “Opinion” (framing of issues) plus “Intensity” (strength of public opinion) plus “Saliency” (relevance to public choice). As the above analysis of State HDRs and DPLs in India indicates, local saliency is often missing and therefore both these sub-national governance reform initiatives have thus far faltered on “intensity” and therefore, face the paradox of securing government ownership and yet faltering on the overall score of sustained political will.

¹⁰ IIM-B iWiL course

As ongoing public initiatives, it would be important for the HDRs and DPLs to make the link between framing of issues and relevance to public choice, by focusing on a wider constituency of interlocutors (foremost being the political stakeholders) and local salience. Thus far, there seems to a strong focus on “champions” within government – which is also a function of convenience as it is easier to deal with a smaller number of political actors. However, the career trajectories of “champions” can often determine the trajectory of governance reform. Electoral outcomes and political imperatives often impact the responsiveness to reform prescriptions. Therefore it would be critical to focus on more “spread spectrum” approaches such as mass advocacy and forums of elected representatives (national, state and panchayat level) to have a wider network of champions.

As we look at the appropriate audiences/ constituencies for policy advice, it is important to also appreciate that India’s governance reform challenge includes decline/ desuetude in routine performance of parliamentary and legislative institutions. Not only the national parliament, but also the state legislatures – which are more germane for governance reform in service delivery- meet for fewer days. As the graph below indicates, the number of transaction days per year or Lok Sabha and Rajya Sabha together has declined from 265 days in 1955 to less than 150 in 2009.

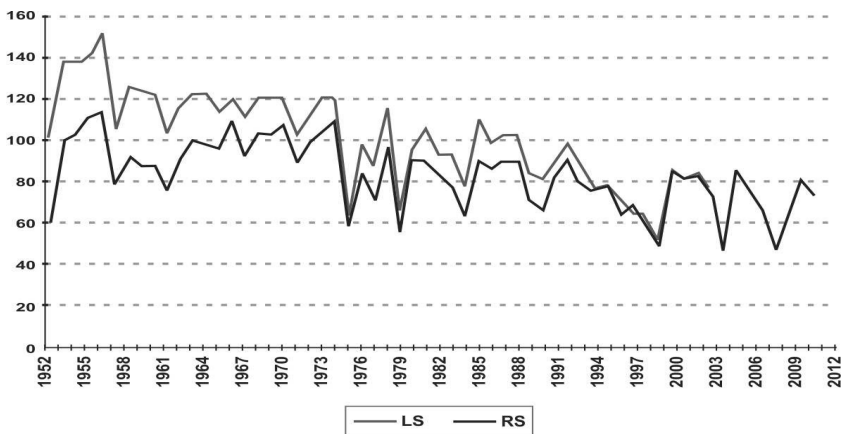


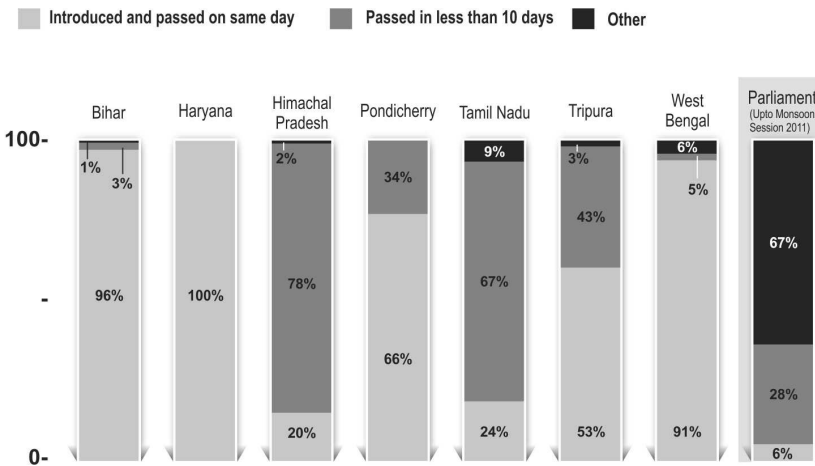
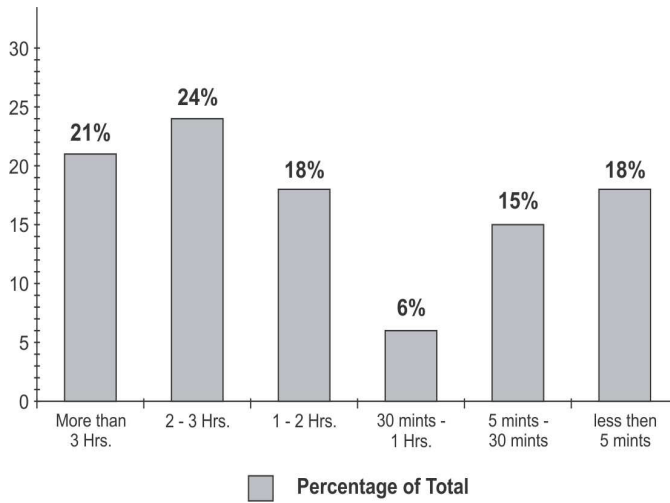
Figure 1: Parliament Meets Even Less

At the same time the average for Lok Sabha between 2000 and 2010 is 72 days per year, in contrast to 8 for Arunachal Pradesh, 14 for Haryana, 26 for Assam, 42 for Karnataka and Maharashtra and 48 for West Bengal.

Even as we speak passionately about “evidence based policy”, there is an increase in number of bills passed without more than a day’s debate (96 per

cent of bills in Bihar and 100 per cent in Haryana in contrast to 6 per cent in Lok Sabha), decline in the duration of bill passage (only 21 per cent of bills took more than 3 hours of debate and 18 per cent took less than 5 minutes).

Figure 2: Time Taken to Pass Bills in Parliament



While the 15th Lok Sabha referred 73 out of 113 bills to Standing Committee, the figure was 0 out of 74 during 2007-10 (figure 3), for Bihar, 5 out of 476 for Tamil Nadu during 2000-10 and 15 out of 237 for West Bengal during 2002-08. During 2011, the Lok Sabha passed on 4 out of 53 budget demands after discussion (49 passed through guillotine) and Haryana passed all budget demands through guillotine and without discussion.

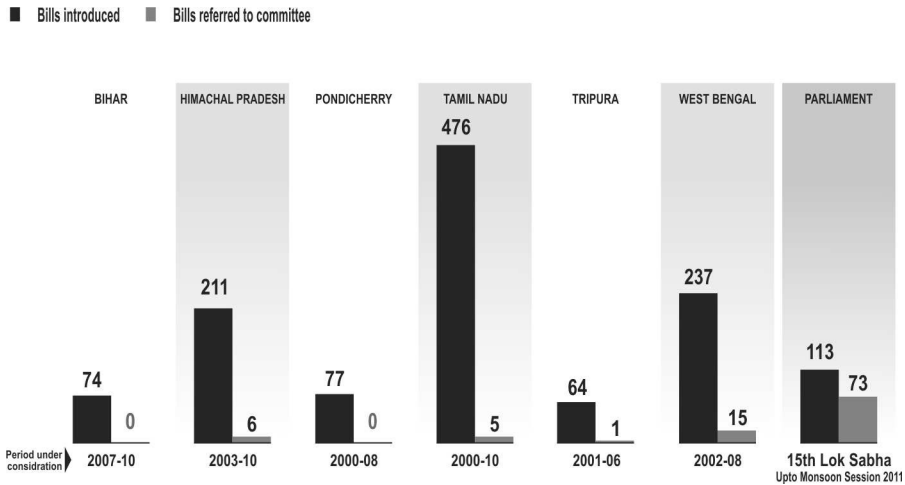


Figure 3: Bills Introduced and Bills Referred to the Committee

In sum, the challenge of harnessing “political will” for governance reform in India also includes serious engagement at the national and state levels to correct the decline in the regular functioning mechanisms of legislative functioning. It is important to ask whether we are indeed looking in the right place for political will and the right forums for this. The public disenchantment with political processes makes this task especially challenging, at a time when the youth are becoming demographically more significant but increasingly alienated from mainstream parliamentary politics. The recent upsurge in non-traditional venues for political and public debate forums is an example of this disenchantment with formal institutions of representative democracy. Accordingly, the governance reform initiatives in India also need to go beyond continued “prayer and petition” approach to gain political leverage and engage with a much larger audience, including with crowds.

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ARMED CONFLICT AND WOMEN

Sukriti Chauhan

Violence against women in conflict ridden zones has a multi-dimensional impact, not only on the woman but on her family and community as a whole. Violence against women in conflict zones is merely dismissed as a natural consequence of war, leading to impunity against the crimes, in many cases leading to gender based violations in the post conflict communities. Further, the legal characterization of crimes against woman in conflict zones as crimes of sexual violence alone and not as an attack on her 'honour' exclusively. Defining rape as a crime against honour and understanding it from a male perspective shows a failure to recognize the violent and discriminatory nature of the offence. There is a need to redefine women's rights as human rights and not as 'private' or 'cultural' rights.

INTRODUCTION

As nations focus on enhancing military strength and controlling resources, gross violations of human rights, especially women's rights continue to occur in conflict zones. Violence against women in conflict ridden zones has a multi-dimensional impact on not only women and their family and community as a whole. Women and girls suffer direct violations of their physical integrity, for example through violation of reproductive and sexual rights. Paragraph 135 of the Beijing Platform for Action states that, "while entire communities suffer the consequences of armed conflict and terrorism, girls and women are particularly affected because of their status in society and their sex."¹

The stark reality is that violence against women in various forms in conflict zones is merely dismissed as a natural consequence of war, leading to impunity against the crimes, in many cases leading to gender based violations in the post conflict communities.

The status of women during armed conflict may be seen as an extension of their status in the pre-conflict social order. Women who are considered

¹ UN Report of the Fourth World Conference on Women (17 October 1995) UN Doc A/CONF.177/20, <http://www.un.org/esa/gopher-data/conf/fwcw/off/a--2-.en>, accessed on 21 March 2013

as subordinate to men are discriminated both in society and law. They are denied the right to equality before law and the right to freedom of movement; and have unequal access to education, work, and healthcare (Jefferson, 2013).²

“Is it possible to reconstruct a post war society when those who are relied on to weave the social and moral fabric of a society, when women are themselves maimed?” (Antjie 2001) History tells us stories about men and their victories during wars, women entering only as appendages - their voices unheard, contributions forgotten, and identities erased.

This article attempts to provide a space for unheard voices of women caught in conflict zones. It aims to illustrate the apathy towards the suffering of these women, in law. It seeks to examine the strengths and inadequacies of international laws, conventions and human rights discourses in protecting women and the impact of the women’s identities and choices.

VIOLENCE AGAINST WOMEN IN COMBAT AREAS

Armed conflict may take place at the local, national or the international level with consequences including involuntary displacement of affected population within the country or them becoming refugees.

Conflicts impact the entire society but there are certain gender-specific ramifications that require special attention. Women like men, are mentally and physically tortured but they also become victims of widespread sexual violence, and much more so when displaced or rendered homeless. Rape, sexual assault, forced pregnancies and sexual slavery have often been used as war tactics to destroy women, families and communities. Be it the mass rapes and forced pregnancies by Bosnian Serbs in Bosnia Herzegovina, or uncountable rapes during insurgency in Kashmir (Fitzpatrick 1994)³, sexual violence remains one of the most extreme forms of patriarchal control which damages lives of women

The violence inflicted on women has wider ramifications for the community. Traditionally, women are perceived as being the caretakers of the family,

² La Shawn R. Jefferson, ‘In War as in Peace: Sexual Violence and Women’s Status’, Human Rights and Armed Conflict, Human Rights Watch World Report, 2004, p327, <<http://www.hrw.org/wr2k4/download/wr2k4.pdf>>, accessed on March 15, 2013

³ Joan Fitzpatrick, The use of international human rights norms to combat violence against women in Rebecca J Cook (ed), ‘*Human rights of women, national and international perspective*’, (University of Pennsylvania Press, Philadelphia, USA, 1994), p 548

especially the children and the elderly. Besides being producers of human, economic and social resources, the women are also seen as carriers of tradition and culture in communities. Therefore the woman, besides being an individual member, and citizen of a country, is also an active agent in protecting and strengthening human, family and social ties and in assaulting, raping or killing women, the combatants seek to damage all these.

Sexual violence is not the only threat faced by women. As majority of men and boys fight at frontlines, women and children are disproportionately affected by landmines. Besides they battle the threat of being kidnapped. Women are under continuous fear of losing family and even their own dignity at the hands of enemy combatants. In the 1980s Yugoslavian disintegration, Croatian and Serbian women were asked to leave paid employment to attend to 'natural' duties, an example of subordination of women and an absence of choice for them across different cultures.

Women have adopted different strategies to cope with and survive the tortures of armed conflict, including joining the conflict as combatants. A prominent example is the case of women members of The Liberation Tigers of Tamil Eelam (LTTE), considered to be a very well organized terrorist group in Sri Lanka, carrying on an armed struggle for a separate Tamil homeland. It is believed that nearly 4,000 women cadres have been killed since they actively started participating in the combat since 1985.⁴ Between 1990 and 2002, girl soldiers were among fighting forces and groups in at least 54 countries, and fought in conflicts in 36 of those countries.⁵ Many women consider fighting on the front as a method to achieve equality and escape from the torture they might face at enemy hands. However, participation in war does not give women an equal standing. More often than not, their efforts as frontline combatants are undermined. They are perceived as playing roles contrary to societal beliefs, due to which they face post conflict trauma. Ex-combatant women are expected to go back to their prewar gender roles, as mothers and wives (Moser 2001).

SEXUAL VIOLENCE A HUMAN RIGHTS ABUSE

International humanitarian law consists of both conventional and customary rules, the principal conventional instruments of relevance to the protection

⁴ *The Hindu* said on March 10, 2002, <http://www.satp.org/satporgtp/countries/shrilanka/terroristoutfits/LTTE.HTM>

⁵ Women, Peace and Security, Study submitted by the Secretary-General pursuant to Security Council resolution 1325 (2000), United Nations, accessed on 17 March 2013, p. 22 <http://www.un.org/womenwatch/daw/public/eWPS.pdf>

of victims of armed conflict being the four Geneva Conventions of 1949 and their two Additional Protocols of 1977, which deal with international armed conflicts and non-international armed conflicts respectively.⁶ These protections are to be granted equally to both men and women. Though there are articles propagating maintenance and restoration of family ties⁷ and for women to be treated with all consideration due to their sex⁸, some of these mainly discuss ‘protection’ and not ‘prohibition’ for example, Article 76 of Protocol I to the Geneva Convention⁹ stipulates that women must be “the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault.”

Article 27(2) of the Fourth Geneva Convention states that “women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.”¹⁰ The language of the law demonstrates how crimes of sexual violence are mischaracterized as an attack on ‘honour’ exclusively. Defining rape as a crime against honour and understanding it from a male perspective shows a failure to recognize the violent and discriminatory nature of the offence. No mention is made of a woman’s own right to physical integrity and how rape and other forms of sexual abuse are not ‘lesser’ crimes compared to enslavement.¹¹ Rape needs to be understood as an act of torture faced by women and not as an act undermining their ‘honour’ exclusively.

Gender based violence was recognized as late as 1993, with the UN Vienna Declaration¹², and is still frequently considered to belong to the “private domain” (Moser 2001). Sexual assault may be part of an intentional strategy to suppress civilian population, or failure of discipline in military troops; it can never be a private matter (Fitzpatrick 1994).¹³ There is a need to redefine women’s rights as human rights and not as ‘private’ or ‘cultural’

⁶Women, Peace and Security, Study submitted by the Secretary-General pursuant to Security Council resolution 1325 (2000), United Nations, , p 33, <<http://www.un.org/womenwatch/daw/public/eWPS.pdf>> accessed on 17 March 201

⁷ Geneva IV, Article 26; Protocol I, Article 32

⁸ Geneva I, Article 12; Geneva II, Article 12; Geneva III, Article 14, Protocol I, Article 76

⁹ Protocol Additional to the Geneva Conventions of 12 Aug. 1949. and Relating to the Protection of Victims of International Armed Conflicts of 8 June 1977 (Protocol I)

¹⁰ Article 27, Geneva Convention 4

¹¹ Congo- Human Rights Watch March 2005 Vol. 17, No. 1(A), *Seeking Justice: The Prosecution of Sexual Violence in the Congo War*, accessed on 22 March 2013 p. 22

¹² UN General Assembly, ‘Vienna Declaration and Programme of Action’(12 July 1993) Un Doc A/CONF.157/23, accessed on 24 March 2013

¹³ Joan Fitzpatrick, The use of international human rights norms to combat violence against women in Rebecca J Cook (ed), ‘*Human rights of women, national and international perspective*’ (University of Pennsylvania Press, Philadelphia, USA, 1994), p 548

rights. International Humanitarian Law has a duty to protect civilians and punish any perpetrator of violence in an armed conflict.

Rape, sexual assault and mutilation cause injury that goes much beyond the physical body. It may have serious long-term consequences in the form of mental illness, emotional trauma, and permanent internal and external injury, sexually transmitted diseases like HIV/AIDS, and unwanted pregnancies. These conditions may make it impossible for the women scarred during war to integrate in post combat societies. Thus, we find that while women do need the protection through laws common for both men and women, the need of special legislation at the local, national and international levels is an essential and necessary human right of women.

The UN Security Council Resolution 1325¹⁴ specifically deals with the serious damage caused to women during war. Though the resolution recognizes the importance of having a gender based perspective in peacekeeping operations and reaffirms the need to implement international humanitarian and human rights law wholly, that protects the rights of women and girls during and after conflicts, it ignores some vital concerns that arise in armed conflicts. There is a lack of explanation of the power imbalance between men and women during and after armed conflicts and in what may be done to specifically improve gender relations.¹⁵

WOMEN'S RIGHTS: PROVISIONS IN INTERNATIONAL CONVENTIONS AND LAW

The preamble of the UN Charter, 1948 assures fundamental human rights to men and women without distinction on a number of grounds, including sex. Though the Charter aims to achieve human rights and respect for all as an ideal, it does not have any mention of women specifically.¹⁶ Mainstream human rights approaches have for a long time believed that the norms of human rights are gender neutral.

Multiple discussions about human rights overlook gender specific violations and in many instances, this exclusion is usually supported by cultural or historical factors. A case in point is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979, under which the signatory states aimed to end discrimination against

¹⁴ UNSC 'Security Council Resolution 1325' (31 October 2000) UN Doc S/RES/1325(2000), <<http://www.peacewomen.org/un/sc/1325.html>>, accessed 21 March 2013

¹⁵ Amani El Jack, Gender and armed conflict, Overview Report, Bridge, p 24<<http://www.bridge.ids.ac.uk/reports/CEP-Conflict-Report.pdf>>, accessed on 17 March 2013

¹⁶ The Universal Declaration of Human Rights, Article 2

women rights in the field of civil, political, economic, social and cultural spheres. Sadly, it is also one of the most reserved conventions in the world. Though created with universal discussion and consensus, certain sections undermine these very rights the convention aims to assure to women.

Article 2 provides enough scope for modification of what may be perceived as discriminatory customs and regulations by different state parties, which may subscribe to the opinion that improvement in status of women, must not conflict with national tradition, culture or religion.

The issue of armed conflict and women has drawn the attention of policy makers for long. The year 1995 may be seen as a watershed year when there were comprehensive deliberations regarding this at the 'Fourth World Conference on Women' in Beijing. It led to the Beijing Declaration and Platform for Action¹⁷ which articulated the personal and social damage caused by armed conflict and war on women and charted out objectives and strategies to deal with these. It is significant that the conference was perceived as a forum for strengthening and reinforcing the policies announced at earlier summits¹⁸ for achieving gender equity and for creating a world free of conflicts.

The section on "Women and Armed conflict"¹⁹ in the Beijing Declaration and Platform for Action reads, "Peace is inextricably linked with equality between women, men and development." "Local, national, regional and global peace is attainable and is inextricably linked with the advancement of women, who are a fundamental force for leadership, conflict resolution and the promotion of lasting peace at all levels."

The International Criminal Tribunal for Rwanda (ICTR) made a prominent advance by treating 'sexual violence as destruction' as it believed that sexual violence did not remain limited to its victim but could lead to the destruction of the entire community. The Chambers passed the judgment that, "These rapes resulted in physical and psychological destruction of Tutsi women and specifically contributing to their destruction and to the destruction of the group as a whole." It went on to state that rape or other

¹⁷ Beijing Platform for Action, <http://www.un.org/womenwatch/daw/beijing/platform/> , accessed 10 March 2013

¹⁸ The series of UN conferences starting with the women's summit held at Nairobi in 1985, the children's issue discussed in New York summit in 1990; the human rights conference held in Vienna in 1993 and other conferences recognized the importance of redressing gender inequity for poverty reduction and ushering in a conflict free world.

¹⁹ United Nations Fourth World Conference on Women, Beijing, Platform for action, <http://www.un.org/womenwatch/daw/beijing/platform/armed.htm>, accessed 10 March 2013

acts of sexual violence inflicted “serious bodily or mental harm” on the members of the community.²⁰ It is in this case of *Prosecutor v Akayesu*²¹, where it also held that ‘Like torture, rape is a violation of personal dignity’.

‘Crimes against Humanity’ (Article 3) defines rape and sexual violence²² in much wider terms stating that, “The central elements of the crime of rape cannot be captured in a mechanical description of object and body parts ... other acts of sexual violence that do not satisfy (the) narrow definition may be prosecuted as other crimes against humanity ... such as torture, prosecution, enslavement, or other inhumane acts.” While enlisting “Crimes Against Humanity” ICTR Statute, Article 3 includes rape along with crimes like murder, enslavement and torture, stating that, “The International Tribunal for Rwanda shall have power to prosecute persons responsible (for these crimes) when committed as part of a widespread or systematic attack against any civilian population on national, political, ethical, racial or religious grounds.”²³

The ICTR included the crime of rape as a crime against humanity but it omitted rape from other categories of crimes.²⁴ It is the Rome Statute which in Article 7(g) recognizes “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity” in its list of war crimes.²⁵ Most importantly, it provides the Court with the authority to prosecute individuals charged of war crimes in national and international conflicts. Article 8(xxii) reiterates that committing any of the above mentioned crimes will also constitute “a grave breach of the Geneva Convention”.

Article 3 common to the four Geneva Conventions provides protection to citizens affected by non- international armed conflicts. The article expressly

²⁰ Human Rights Watch, Genocide, Article 2, <http://www.hrw.org/reports/2004/ij/ictr/3.htm#_Toc62641405>accessed 12 March 2013

²¹ The Prosecutor v Jean- Paul-Akayesu, 2 September 1998, Case No. ICTR-96-4-T, International Criminal Tribunal for Rwanda, <http://69.94.11.53/ENGLISH/cases/Akayesu/judgement/akay001.htm>, p 731 accessed on 22 March 2013

²² Human Rights Watch, ICTR Statute, Crimes Against Humanity, Article 3, in Para 596-598, 686-688, < <http://www.hrw.org/reports/2004/ij/ictr/4.htm>>, accessed 12 March 2013

²³ *Ibid*, a similar reference could be made to The War Crimes Chamber (WCC) in Bosnia and Herzegovina established in March 2005 in response to the winding up of the International Criminal Tribunal for Yugoslavia (ICTY).

²⁴ Amnesty International USA ‘Stop violence against women, Rape as a tool of war: A fact sheet’ <http://www.amnestyusa.org/women/rapeinwartime.html>, accessed on 25 March 2013

²⁵ International Criminal Court, ‘Rome Statute of the International Criminal Court’ (17 July 1998) Doc A/CONF.183/9,<http://www.iccpi.int/library/about/officialjournal/Rome_Statute_120704-EN.pdf>, accessed 10 March 2013

prohibits murder of any kind, along with mutilation, torture, taking of hostages and acts against the personal dignity, like the passing of sentences and the carrying out of executions without previous judgment by a proper court. In the non- international armed conflict where the application of International Humanitarian Law is limited, international human rights law in Preamble II to the Geneva Conventions becomes important in protecting women and girls from heinous abuses in armed conflict. Therefore, the Statutes and Conventions mentioned above do consider and reaffirm rape as a war crime and not just a violation of 'honour'. The clarity about the need to punish any sexual violations committed during armed combat is needed to correct the conventional acceptance of sexual violations against women during armed conflict as an inevitable outcome about which nothing much could be done.

COMPLIANCE WITH INTERNATIONAL PROVISIONS: EXPERIENCE AND REASONS

Even though International Humanitarian Law has prohibited rape during war and armed conflict, the impunity to the war time rapists has a long history (Borchelt 2005). The declarations in the various UN Summits discussed the impact of armed conflict on women as merely mothers and caregivers, without attempting to understand many other ways in which armed conflict affects women differently in comparison with men.²⁶ Women are not considered as a separate category, except in the case of pregnancy and sexual abuse, which limits their capabilities to only the reproductive and bodily sphere.

WAY FORWARD

Systematic discrimination against women in various cultures, has excluded the very experiences and voices of women from the laws created to protect them.²⁷ Even when states do take steps to provide protection to non-combatants with women being included in this category, their experiences are never used as inputs during formulation of laws.²⁸ The experiences

²⁶ Women, Peace and Security, Study submitted by the Secretary-General pursuant to Security Council resolution 1325 (2000), United Nations, accessed on 17th March 2007, p 5 <<http://www.un.org/womenwatch/daw/public/eWPS.pdf>>, accessed 17 March, 2013

²⁷ Christine Ainetter Brautigam, International Human Rights Law: The Relevance of gender in Wolfgang Benedek, Esther M Kissakye, Gered Oberleither (eds.), *Human Rights of women- International instruments and African experiences*, (Zed Books Ltd., London, 2002)

²⁸ Judith Gardam, Women and the Law of Armed Conflict: Why the Silence? *The International and Comparative Law Quarterly*, Vol. 46, No. 1. (Jan., 1997), accessed on 21st March 2013, p69 <http://links.jstor.org/sici?sici=00205893%28199701%2946%3A1%3C55%3AWATLOA%3E2.0.CO%3B2-7>

of women in combat must be treated as a valuable input while framing policies. A formal system to collect, classify and utilize such information must be created. A step in this direction can be the involvement of women organizations in conflict zones in decision-making process in addition to conducting relief or conflict-related interventions. This must be linked to the provision of services for women who are victims of violent abuse due to armed conflicts, including programmes for counseling with a focus on physical assault, as well as psychological trauma.

Peace and security are essential for economic growth, development and the empowerment of women and women need to play an equal part in securing and maintaining peace. To that end, they must be empowered politically and economically, and be represented adequately at all levels of decision-making. There is an urgent requirement to implement and enforce existing laws and policies to ensure that women have increased political representation and are closely involved is not only in decision making but also peaceful negotiations and creation of conflict resolution systems.

Most importantly, it is essential to broaden the paradigm of crime against women in conflict zone as a human right violation. This would enable us to recognize that the overall impact of armed conflicts, impoverishment and gender based violence beyond the reductionism of such violations as either private or cultural concerns. This is critical to ensure that such violations against women are counted as crime and not rationalized as natural outcomes of conflicts. Any strategy to deal with the issue of women and armed conflict must not limit itself only to the violence perpetuated against women during the combat but goes beyond it to suggest ways and means through which women caught in war could be assisted in getting integrated with society. It is equally critical to make special provisions to protect and rehabilitate women victimized and exploited by the violence unleashed in armed conflict. It is extremely important to recognize and create a woman's space within this framework, yet it is also essential to ensure that this is not completely dissociated from the need to establish peace and equality in the wider social sphere. The goal should not merely be to re establish a normal life for these women but also encourage them to play an active role in the process of reconstruction of their lives.

CONCLUSION

Any meaningful discussion regarding women and armed conflict is possible only within the wider context of the paradigm of human rights itself. It is important to understand the violations of women's rights in situations of

armed conflicts as a part of the violation of the much larger framework of fundamental principles of international human rights and humanitarian law itself.

The impact of war on women must not be limited only to humanitarian responses, appeal to conventional value systems or socially gendered roles. The issue demands a holistic understanding and legislation at both national and international levels.

Finally, one must consider the degree to which changes in gender roles during an armed conflict, which often result in the empowerment of women, can bring about lasting changes in gender relations. If the human rights of women in a community are not recognised, empowerment in conflict situations could remain a special case may be replaced with traditional gender hierarchies as soon as the conflict is over. The establishment of gender equality and equal rights is a task that will require attention for a long time to come. To bring about sustainable social development, it is key that a paradigm with the understanding of the need to rectify the deep-rooted social and cultural conditions that give rise to sexism, racism, authoritarianism, hierarchies and gender stereotypes is required.

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JGU and its Schools in Brief

O.P. Jindal Global University (JGU)

O.P. Jindal Global University (JGU) is a non-profit global university established by the Haryana Private Universities (Second Amendment) Act, 2009. JGU was established as a philanthropic initiative of Mr. Naveen Jindal, the Founding Chancellor in the memory of his father Mr. O.P. Jindal. The University Grants Commission has accorded its recognition to O.P. Jindal Global University. The vision of JGU is to promote global courses, global programmes, global curriculum, global research, global collaborations, and global interactions through global faculty. JGU is situated on a 80-acre state-of-the-art residential campus in the National Capital Region of Delhi. JGU is one of the few universities in Asia that maintain a 1:15 faculty-student ratio and appoint faculty members from different parts of the world with outstanding academic qualifications and experience. JGU has so far established five schools: *Jindal Global Law School, Jindal Global Business School, Jindal School of International Affairs, Jindal School of Government and Public Policy and Jindal School of Liberal Arts & Humanities.*

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