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Good Governance and the Marketization of Human Rights: A Critique of the Neoliberal Normative Approach

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Abstract

A novelty of the current neoliberal development approach is its recognition of human rights as a precondition for constituting successful economic reforms. The good governance approach mainstreams this agenda, and departs from previous approaches, which had overlooked the social, structural and human aspects of economic reforms. Good governance now shapes the impact of human rights through the normative weight it attaches to markets. It is now common to find rather controversial arguments that consider the market economy as a prerequisite for human rights. Not surprisingly, the approach has attracted the criticism that it reduces human rights to a narrowly conceived market-friendly concept. This market-oriented view is frequently articulated in opposition to the state, given that the latter is generally mistrusted by the market. The arguments against the state are, of course, not without merit, given that the phenomenon of state failure is real and not imagined. The problem with these perspectives is that for the market pessimist or the state sceptic, there is little or no space for alternatives that allow a change in thinking, something that is so badly needed in human rights terms. At the moment, the language of state and market seems to dominate discussions about human rights. The market is considered as the only viable alternative to the state, so is the state considered as the only alternative to the market. This article rejects this commonly held view. It outlines and defends the possibility of an alternative in the idea of community, a concept that has suffered from the hegemony of the state and market. The potential of community, it is argued, cannot continue to be ignored, given that it can provide a significant framework, through which a number of supporting relationships can be built, especially to encourage the most deprived in society to develop abilities of democratic organization, ownership and autonomy over the processes of securing their human rights.

Keywords

Author's Note

1. Introduction

The significance of community cannot sufficiently be understood without, first of all, considering the general lines in which human rights operate in the Third World. Human rights have not only been structured by the United Nations (UN) framework, but also (as considered here), shaped by the policy formulations of the Bretton Woods Institutions (BWIs). The concept of good governance provides a valuable point of entry. Good governance very broadly refers to the ensemble of policies, discourses, initiatives and institutions that seek to transform the practices of development in the Third World. This is usually achieved through processes of *de-centring* of the traditional responsibilities of the state, and as a consequence, enhancing the role of markets to take part or even take-over the basic functions of the state in securing development. As a result, market concepts like privatization, liberalization and deregulation are now also considered as prerequisites for human rights. Human rights seem to have been taken-over by the dominant market rationality, which has led to what is referred here as the *marketization* of human rights.

The good governance vis-à-vis market argument is rhetorically powerful only because of the general nature of the failure of state institutions. The rise of good governance no doubt thrives on the complete failure, neglect or utter incompetence of the state in handling these problems in the first place. Notwithstanding, experiences of Third World states have varied considerably, since good governance emerged. Some states have certainly performed well, whilst not much has changed in others. There are some explanations for the persistence of state failure, which for reasons of space cannot be sufficiently dealt with here. One reason, though, is perhaps that good governance deals with these issues quite superficially, and in ways that are incapable of addressing the limits of the state. The World Bank's (the Bank) approach to good governance gives a misleading impression of political neutrality, which has a consequence of depicting "development without politics" (Santiso 2002:11) or the efficiency and not the 'equity of the economic system' (Santiso 2002:11). It does not confront the 'legitimacy of the power structure' (Santiso 2002:11) in many countries. As such, it is not difficult to conclude that in this context, these political and multi-dimensional issues are reduced to questions of economic and perhaps, social governance. Part of the explanation why good governance is conceived in such apolitical terms is that the Bank is constrained by the limitations imposed by its Articles of Agreement (IBRD Articles of Agreement 1969, Article IV, s.10). It is well known that the Articles of Agreement prevent the Bank from interfering in political affairs of its member countries. As a consequence, decisions and activities of the Bank are restricted to economic affairs. The difficulty here is that the separation of "economic affairs" from the "political" and the focus on technocratic improvements of bureaucratic institutions is a fickle response to the deep seated problems of the political economy of governance. .

The consequences of state failure and the exclusions of markets (as conceived) have made the search for alternatives an inevitable objective. In this article, I consider one such possibility – that is, the potential of the concept of community to provide such alternative mechanism for human rights. It is argued that beneath the community lies a thicker moral framework, through which human rights can be achieved. It offers an ethos of solidarity from which a number of supporting relationships can be built, not only to develop collective solutions, but also to address specific problems relating to specific human rights. A community-oriented human rights approach offers a significant opportunity to build the capacities of the poor to attain satisfactory levels of ownership and autonomy over the processes of their human rights.

In spite of this potential offered by community, it remains one of the most neglected aspects of human rights discourse . The good governance agenda constitutes an exception as it partly recognizes a role for the community. Even so, the community remains ill-defined especially concepts of market and state. The community is used quite instrumentally, and in ways that does not sufficiently respond to problems of the most deprived in society. The point here is that one cannot isolate the persistent problems of human rights in many parts of the Third World from the absence of a more defined role for community. The goal of this article as such, is two-fold; first, it primarily raises questions about the exclusivity of the state and market in relation to human rights and secondly, it makes a case for a more prominent role for the community.

2. Good Governance

Good governance[1] is certainly a pervasive concept in development discourse. It is a phrase touted as the central orthodoxy and one that naturally draws its meaning from the generic sense of the term *governance*. Broadly speaking, governance refers to the various institutions or forms of authority, which structure the way certain public and private processes are managed. The Bank seems to describe it in two distinct but related contexts. In the first instance, the Bank draws a strong relationship between governance and the quality of government (World Bank 1992).[2] This is, of course, the more traditional or hierarchical understanding of governance – that is, as the manner in which power is exercised in the management of a country's economic and social resources

for development. This dimension of governance can further be broken down into three related contexts. First, governance refers to the 'form of the political regime' (Weiss 2000: 795), which invokes the second dimension – that is, processes through which political 'authority is exercised in the management of economic and social resources of a country' (Weiss 2000: 795). Thirdly, governance also refers to 'the capacity of governments to design, formulate, and implement policies and discharge functions' (Weiss 2000: 795). Seen this way, the primary concern for good governance is the 'system of national administration' (Weiss 2000: 795) or the 'state of being governed' (Weiss 2000: 795), or thirdly 'the method of government or regulation' (Weiss 2000:795) within a given country. This context explains why the Bank pays particular attention to bureaucratic and institutional improvements of government processes, especially in relation to its specific policy proposals on transparency and accountability of decision-making procedures, amongst other things. In the very basic sense, therefore, the Bank's concept of good governance can primarily be understood as 'the creation of a government which is, amongst other things, democratic, open, accountable and transparent, and which respects and fosters human rights and the rule of law'(Anghie 2004: 248). Good governance (as demonstrated in the next part), attempts to achieve this goal under the auspices of international human right law or more accurately, specific human rights norms that have been privileged at the end of the Cold War.[3]

In its second and perhaps most influential context, the act of governance is alienated from government, establishing a framework, through which a variety of non-state regulatory regimes flourish. The transition from state to market governance can partly be explained from the rise of economic-globalization, which has no doubt had an effect on limiting the hegemony of state-centred modes of governance (Weiss 2000:795). The move is consistent with the prevailing neoliberal economic orthodoxy, which largely distrusts the role of the state in participating in the economic affairs of countries. It is no surprise that good governance operates within this mindset, quite apart from being alert to the changing dynamics of the globalized world. The global economic order is, after all, symptomatic of networks of global or regional institutions and transnational corporations (TNCs), especially with their self-regulatory frameworks that challenge traditional regulatory notions of state sovereignty. Ideas about good governance cannot, of course, be isolated from those that seek Third World countries to participate in the global economy (Commission on Global Governance 1995). This is perhaps the most visible link between this aspect of governance and the state-centred context as noted above. This relationship will become clearer much later in this article given that it is the state that facilitates the transition to the market through proposals for good bureaucratic practice and enlightened decision-making. Another mode of governance promoted by the orthodoxy, however, is the notion of third-sector governance which exists as a subset of these market initiatives. The most visible distinction, however, is that it is a mode of governance dependent on the range of actors that constitute civil society. Given that this has implications for the role of community, this aspect of good governance will be discussed in more detail in the fourth part of this article.

2.1. The Governance Fetish

It will be helpful at this point to step back and consider the rise of good governance from a different standpoint – that is from the ideological perspective from which it draws its meaning. This is, of course, a mindset that connects the very meaning of development to the quality of governance. Good governance as such, cannot be addressed in isolation of what I call the *governance fetish*. The term 'fetish' (Collins, 1982: 95-96) is used in the mode of Karl Marx thesis on commodities. For him, fetishism involved the propensity to reduce various aspects of social life into a single conceptual framework. More specifically, *commodity fetishism* reduces the multiple or vibrant forms of human activity into the production and sale of commodities. Carrying this logic forward, the governance fetish I describe works in quite a similar way; it reduces the multiple dimensions of 'development' to a simple question of the lack of governance. The pervasiveness of such arguments emerges from the moral appeal for *good* governance, especially in the Third World replete with corruption and other symptoms of bad governance. True enough that there is a predilection towards such type of argument but, it is argued that, there are other ways of thinking of these problems. Though many of these problems do exist as a consequence of governance, they also occur through circumstances quite unrelated to it.

The governance fetish can partially be explained through the work of Arturo Escobar (1995). His work, after all, usefully explains the tendency to characterize Third World only through images of development or, as it were, the lack of it. Escobar depicts development as the phenomenon that represents or even obscures all forms of social reality in the Third World. A useful way to understand exactly what Escobar means can be grasped from his use of the term 'discourse'. Here, Escobar (1995) follows on from Foucault and conceives discourse as a process where social reality is determined or shaped by expressions of 'knowledge and power' (1995: 39). What Escobar wants to suggest is that development is a particular kind of discourse that only serves the purpose of validating others. For Escobar, development is discursive because it has the effect of instantiating discourses or representations that manage or circumscribe social reality the effect of which is the exclusion of other possible representations of reality. Escobar's point is quite similar to Edward Said's (1978) notion of *orientalism* which

famously describes 'the corporate institution of dealing with the Orient – dealing with it by making statements about it, authorizing views of it, [or even] describing it…' (Said 1978: 3) amongst other things.

My point is indeed very similar. Apart from succeeding development, the concept of good governance functions in exactly the same way. Problems of hunger, poverty, illiteracy, disease, democracy, human rights, corruption, war or inadequate social services are understood only in terms of the absence of good governance. One cannot deny the authoritative power that the governance argument has over development in the Third World. Good governance now determines what counts as development and what does not. It is not only a criterion for validating the processes of establishing development, but also the manner in which members of Third World societies perceive it. In doing so, it seems to exclude other possible ways of speaking and thinking about development. A further and useful illustration of the governance fetish can be developed through the work of Jeffery Sachs (2005: 311-315). [4] He expresses a similar view quite well even as his justifications or purpose is quite different from mine. Sachs takes a typical economic reading of governance, the absence of which is explained by comparisons between the rates of economic growth and the levels of governance. Looking specifically at Africa, he argues quite convincingly that good governance should not be seen as the means but as the consequence of development. Sachs' thesis is developed in response to the governance fetish. He argues that it is a view that holds corruption and poor governance as "Africa's venal sin" (2005:311). Most accounts of African poverty are expressed in similar terms. This view has an appeal amongst Africans and non-African social, economic and political commentators.

Whilst he does acknowledge that the quality of Africa's governance is undoubtedly lacking, 'the focus on corruption and poor governance' (2005: 312) exaggerates its effect on 'Africa's laggard growth' (2005: 312). His reasoning is influenced by an economic argument that suggests the level of a countries income often translates to the quality of its governance. According to this view, good governance would ordinarily correlate with improved levels of economic growth. This is for two simple but very contestable assumptions. First, the watchdog role of society is better enhanced by a literate and affluent populace. In other words, he is saying that a more enlightened society is better able to keep its government honest. Second, affluent societies are capable of making investments that can improve the quality of governance such as a highly professionalized bureaucracy, that is, an educated civil service, freedom of information and a specialized public administration.

As plausible as this illustration seems, Sachs argument still needs some unpacking. To begin with, Sachs argument seems to misleadingly conflate economic growth with development, a point that is now well documented that is not often the case. This is exactly the point of Amartya Sen's (1999: 1-11) influential thesis on 'development as freedom', which is now widely used in international development circles. Sen's work demonstrates that growth of gross national product (GNP), industrialization or personal incomes does not translate into the *end* of development. Rather, these are a *means* through which people enhance the quality of their lives. As such, '[a]n adequate conception of development must go much beyond the accumulation of wealth and the growth of gross national product and other income-related variables' (Sen 1999: 14).

For the sake of argument, if one accepts Sachs' view that economic growth does at all translate into development, it is not clear how improvements in economic growth would always translate into good governance. Sachs' view seems a better explanation for how governance does not lead to economic growth than how governance is itself catalyzed by economic growth. Admittedly, Sachs acknowledges that the relationship between 'growth rates and the quality of governance' (2005: 315) is not always precise. More specifically, comparing growth rates and governance in the context of Africa is not always helpful. For instance, the average African country grows at a lower rate in comparison with other developing countries, especially those with the same level of income and quality of governance. This is even the case with similar countries with comparative levels of corruption. Other developing countries simply do better than those of Africa. A more persuasive argument for understanding Africa's problems, then, is possibly its adverse geography or deficient infrastructure. These are, of course, not entirely questions of governance.

These issues obviously raise questions on the need for specific epistemological approaches to enable understanding of these issues, not only on their own merits, but also through their distinctive causes. For instance, there is the obvious need to think beyond narrow articulations of governance which only seem to reduce these diverse problems into economic or bureaucratic difficulties. In this context, it might be useful to once again refer to Escobar's interpretation of 'discourse analysis' as a means of approaching this question. Discourse analysis achieves this by unpacking the specific sources of distinctive problems. It is a useful way of understanding the specific causes and effects of different problems. This, perhaps, leads to a further effect of discourse analysis – that is, it is a helpful way of perceiving dominant concepts in totally new forms. It functions as what one may call a detached discourse which de-familiarizes concepts from their dominant normative, theoretical and practical perceptions. One must acknowledge that achieving such a task would not be easy, not

the least because of the possibilities of co-option – and perhaps, the ways in which dominant aspects of prevailing concepts reify themselves. Nonetheless, discourse analysis is at least a starting point; it not only provides the basis for re-thinking dominant perceptions of governance or development, but also provokes other social and cultural expressions of these concepts. Without such a radical possibility, we may not be able to understand what 'good' governance really means.

3. The Marketization of Human Rights

"The IFIs have embraced human rights…because they are now an official end of development; because they contribute directly to good economic outcomes; because they protect the interest of civil society groups and serve as a counterweight to the power of the State; and because they form part of the political climate necessary to attract investment and ensure growth" (Rittich 2004: 221).

Human rights are a very significant, influential, and even pervasive aspect of the concept of good governance. Human rights are important to good governance for at least two distinct reasons. First, the normative language of human rights can arguably be seen as a means of nurturing, shaping, determining or validating governance and ultimately, the practice of development itself. This is again not only typical of the framework of BWIs, but also the UN normative framework of the Millennium Development Goals (MDGs), for instance. Human rights seem to have been embraced as part of an attempt to articulate an independent normative source of values for the work of these institutions and the practice of development in general. The inclination towards human rights can be interpreted as part of the attempt to provide a moral standard of attentiveness to ameliorate the severities of neoliberal economic reform especially in the aftermath of the failed Structural Adjustment Programmes (SAPs). As such, human rights have increasingly become the standard for measuring the ethicality of the various development initiatives in the Third World, especially as the moral structure that stands above all government processes, and governance itself.

It is also possible to consider the resort to human rights from a different standpoint, one that is explained in much detail here. This perspective suggests that the various initiatives and practices of governance sustain the plurality of meanings and values of human rights and not the other way round. To recall from the outset, it is now common place to argue that in constituting the free market economy – deregulation, devaluation and privatization – are now regarded as the key source of normativity of human rights. Advocates of this view argue that the ethical character of markets – such as liberty, autonomy, freedom and welfare – can contribute to the enjoyment of human rights. Markets are not only a good source of human welfare, but also democracy, freedom as well as the most effective means of distributing society's resources.

The market view is not isolated from criticism, prominent among which is that markets distort the true and proper meaning of human rights as provided by the Universal Declaration of Human Rights (UDHR). Markets are, after all, determined by the pursuit of self-interest and not necessarily concerned with social, moral or ethical goals. For instance, the market argument leads to the articulation of human rights in an unhelpfully narrow sense. They are reduced to mere basic rights which simply means that certain rights that can facilitate the operation of markets are prioritized over others. One of the consequences of this is that it re-enforces the hegemony of civil and political rights over socio-economic and cultural rights. For instance, property rights, freedom of expression, association, participation, non-discrimination, equality and such other rights that are necessary for the operation of the market are promoted ahead of others. This is does not however, mean that the market view does not have a role for socio-economic rights. It does so, but quite selectively. For instance, education and healthcare are sometimes referred to within the neoliberal framework but not always as human rights (Alston and Bhuta 2005: 1-12) quite apart from the fact that there is sometimes a discrepancy between the reference to these rights and their actual concretization in institutional policies.

There is still another sense in which human rights can be understood in this context. It springs from the previous point that human rights can, of course, be selectively deployed in ways that are compatible with or even supportive of neoliberal market discourse. As just seen, the argument in favour of civil political rights is often used in favour of market activities or participation. It is not difficult to see how freedom of expression, and association, equality and anti-discrimination can be deployed in supportive ways to market participation. Similarly, property and contractual rights are also a crucial element of the framework of market rights. The BWIs are amongst other economic actors that have adopted this type of language, the effect of which is a distorted picture of what human rights really are. This is perhaps the direct consequence of the inherent malleability of human rights. Apart from meaning different things to different people, it is common knowledge that human rights can serve a variety of interests, not the least the interest of markets. This is perhaps one of the reasons for the suspicion of human rights in the Third World amongst other places (Williams, 2006: 132, 157). The malleable character of human rights is one of the reasons for their capture by market interests. One of the

most eloquent explanations of the market capture of human rights can be understood through the work of Upendra Baxi (2002: 132). He argues of the existence of a distinctive trade-related, market friendly (TRMF) human rights paradigm – which is subtly replacing the paradigm of UDHR. It mainly achieves this through the promotion and protection of collective rights of global capital in ways which justify their corporate well-being and dignity – of course, against the dignity of individuals and communities.

There are a number of ways of understanding how the UDHR human rights discourse is being replaced by the TRMF human rights, one of which is the already noted point about the rise of economic globalization.[5] The processes of the subtle replacement of the UDHR are intricately linked with the emergence of a borderless economy now made possible by the free flow of finance, trade, production, and to some extent, labour (Sklair 2002: 8). One of the more pervasive dimensions of economic globalization is the emergence of a 'new international division based on the globalization of production carried out by transnational corporations, which are more prominently than ever, the agents of the new world economy.' (Santos, 2002: 167). These TNCs have increasingly dominated various aspects of the economy. Human rights have been no exception from the influence of TNCs, and economic globalization in more general terms. The corporate appropriation of human rights arises from the fact that TNCs, not only enjoy legal personality, but also their capability of bearing contractual, property, and in some instances, constitutional rights. Quite apart from that, TNCs increasingly invoke the language of human rights in defense of their interests. Anna Grear's (2007: 511) important analysis of Baxi's (2002) work explains that the adoption of human rights by TNCs is typical to the invocation of humanity. After all, humanity is the only normative basis for full enjoyment of human rights. Following on from Baxi, she notes that, there is a moral inscription of humanity that lies at the heart of all human rights claims. As such, humanity is what TNCs invoke by the use of human rights.

The processes of the appropriation of human rights are only made possible through the emergence of a distinct political economy often referred to as the "market-oriented development model" (Santos 2002; Stallings 1992: 3). Without question, the wide ranging impact of the work of TNCs is indeed facilitated by the neoliberal model. Its distinctive features can be summed up as follows:

> …national economies should be open to trade, and domestic prices should conform to international market prices; fiscal and monetary policy should be prudently directed to the maintenance of price and balance-of-payments stability; private property rights should be clear and inviolable; state-owned productive enterprises should be privatized; private decision making, guided by undistorted prices, should dictate national patterns of specialization, resource allocation and factor returns, with minimal government regulation or sectoral policy; the residual government budget should directed to targeted education programmes and social policy (Santos 2002: 167).

These are familiar prescriptions that those in the Third World have come to know so well, often under the banner of 'neoliberalism'. One might understand the embrace of the neoliberal political economy as a direct consequence of the influence of the BWIs. Their policies have provided the foundation for TNC activity and the market-friendly view of human rights (Garcia 2007: 461-481). The entire Bretton Woods framework composed of the World Trade Organization (WTO) treaty regimes (Garcia 1999: 51; Alston 2002), as well as international financial institutions (IFIs) – the Bank and the International Monetary Fund (IMF) – have served as missionaries of neoliberalism and inevitably, the marketization of human rights. It is not surprising that the BWIs, for instance, have promoted this image of human rights. After all, the BWIs are quite sympathetic to the relationship between economic globalization and human rights. They are sympathetic to the view that finds economic globalization as the means through which human welfare can be improved and poverty reduced (Anghie 2000: 1-5). The Bank, in particular, seems to find human rights as fully supportive of the policies associated with the rise of economic globalization (World Bank 1998). For them, human rights are not only fully supportive but benefit from these policies. That is to say, human rights do not merely structure the normative content of development, but neoliberalism now shapes the content of human rights.

As such, economic globalization and markets are increasingly conceptualized as prerequisites for the fulfillment of human rights. As Baxi (2002) himself puts it, 'the promotion and protection of human rights become possible only when the order of human rights for global capital is fully recognized' (2002: 148). The UDHR Human rights discourse is not only supplanted, but also an 'unintended consequence' of the market economy. Markets would remain ubiquitous and determine everything including, for instance, the very resources for the promotion of human rights. This is, of course, a reading of what is described as the emergence of 'human rights markets' (Baxi 2002). This is understood as the competition for resources by various human rights activists or groups within the logic of the market. He uses terms, such as human rights investors, producers and consumers as metaphors to describe this unique process of marketization.

One of the main limitations to the approach is that it exaggerates the ability of markets to deal with the extensive levels of poverty and inequality that has accompanied the process of globalization. This is something that the market protagonists have failed to adequately address as prominent in recent poverty indicators, which reveal that nearly three billion individuals worldwide are poor, especially with 'more than one billion people' living 'on less than one dollar a day. In total, 2.7 billion struggle to survive on less than two dollars per day' (UN Development Group 2002-2006). Indeed, this view of poverty is very broad in its interpretation. It includes the lack of water or the prevalence of disease and other issues as indicators or factors of poverty. These grim figures obviously cast a shadow over the arguments in favour of markets and economic globalization.

With particular reference to human rights part of the problem is that economic globalization has influenced the rise of many private market actors (Steiner and Alston 2000: 940) and inter-governmental organizations (including the BWIs) who cannot be held accountable under international human rights law. This is perhaps the most critical challenge that economic globalization and the role of markets present to human rights. Initiatives to make non-state economic actors accountable have proved inadequate. Economic globalization and the role of TNCs have called the traditional human rights framework into question. Historically the UDHR discourse has always operated as a state oriented discourse with domestic states carrying all legal obligations and responsibilities for human rights. However, the state-centred human rights discourse is rapidly becoming obsolete in the face of economic globalization, given that the powers of the state are constantly being outsourced to non-state actors. This is one of the enormous problems that are still debated amongst many scholars and activists, who are divided on how best to deal with the human rights violations of non-state actors. TNCs, for instance, have continued to resist attempts to operate within a framework of human rights as notably proposed by the UN (Baxi 2005).[6] Instead, TNCs opt to be bound by their self-regulatory norms of Corporate Social Responsibility (CSR).

The insufficiency of the state human rights model has also had other far reaching consequences quite apart from these questions of accountability of non-state actors. Generally speaking the TRMF paradigm of human rights has had the effect of de-centering the redistributive role of the state. One of the challenging consequences of economic globalization has been the inability of states to assert their political and legal sovereignty over their different territories. Baxi (2002) offers a variation of this argument to explain the continuing loss of state control over social welfare. This is, in part, connected to the significant powers wielded by 'regional international economic arrangements, international financial institutions, multinational enterprises, and the network of NGOs' (Baxi 2002: 135). These institutions in various ways profoundly impact on the overall achievement of human rights. He argues that the combination of these factors have succeeded in distorting the state's regulatory competence. No longer is the state the central organizer of '…national economic development, the owner of capital and other means of production, an active participant in the production of goods and services, and the proactive regulator of patterns of corporate behaviour' (Baxi 2002: 135) – the state now enthusiastically promotes the virtues of the free-market. Whilst the UDHR assigns responsibilities on states for the realization of human rights, especially 'to construct, progressively and within the community of states, a just social order, national and global, that will at least meet the basic needs of human beings (Baxi 2002: 135) – the emerging paradigm departs for the very fact that it challenges this redistributive role or ethic of the state. Deregulation or privatization facilitates the deliberate assault on the distributive capacity of the state.

In spite of the merits of the following arguments, there is perhaps another significant problem that seems to have been overlooked by such criticisms of markets. Whilst it is true that markets may present problems to human rights, such problems cannot also be isolated from the role of the state. The postcolonial state has been a major culprit as it has also served as one of the major sources of human suffering. Baxi's thesis doesn't adequately highlight this problem – at least not in this context. Whilst the state is logically the appropriate medium for achieving human rights, it is not difficult to see that is has failed to live up to this responsibility.

Moreover, the experiences of the Third World continue to raise serious doubts over the viability of the state. The reasons and causes of state failure in the Third World – especially corruption, poor governance, and elitism – are well documented and need not be restated here. The postcolonial state has colonized all segments of social and economic life to a fault; take Africa again as an example. One of the most influential explanations of this is that of the state's artificial construction – that is, postcolonial African states are, after all, an outgrowth of the colonial state. At the risk of conflating all of Africa's problems with colonial rule, my suggestion is that, because the postcolonial state succeeded the colonial state, it not only inherited it's functions, but also like it, 'lacked any grounding in the expectations or concerns of the indigenous societies of the territories on whom it imposed its order' (Chibundu 1997). What this means is that one must be cautious on thinking about solutions in favour of the state. Like the market as such, the postcolonial state has its various limitations. This danger of over-romanticizing with the idea of the state is something that Balakrishan Rajagopal (2003) summarizes quite well:

> … [t]he crises over development in many countries has arisen largely because of the failure of the state to 'do development' in a socially and environmentally responsible manner. It would then be problematic to return to the state under the rubric of human rights, when it stands thoroughly discredited in the eyes of civil society in many developing countries (2003:230).

The uniqueness of this position not merely lies in the question of state failure, but also that it demonstrates the way in which opinions of neoliberal advocates and their critics are not so far apart. For advocates and critics of neoliberalism alike, the state has been the problem for both human rights and development. For critics of neoliberalism, however, their grievances are structured around the way in which the state serves as an instrument in the hands of market interests, particularly, the way in which it reifies interests and values of global capital. The state is articulated as a means of protecting the interests of the prevailing global political, economic and social order. A useful explanation, here, is to recall the arguments by Karl Polanyi (1957: 65-68) about the significance of the enormous state efforts to constitute markets. This is a point that market enthusiasts often overlook. Advocates of markets ignore the intense institutional processes that often go towards establishing the market economy, as well as the enforcement essential to preside and sustain it. For him, markets cannot emerge spontaneously, without extensive planning, centralization and deliberate state action.

This specific issue brings one of the most important (but neglected) aspects of the work of Adam Smith (Muller 2002: 76-79) to mind. It is not often acknowledged that Adam Smith also dedicated a lot of his time to analyze the importance of the state in the economy of the nation. Smith believed that the state had an important role in enforcing tariffs, wage rates, and restrictions on trade. For him, the size of government would have to complement the growth of the market economy. He considered the maintenance of the market as an expensive task and one dependent on a big government for purposes of defence, public facilities, civil justice and a functioning tax system. As such, the state was critical to the flourishing of liberty, reason and happiness. Though he acknowledged that maintaining the state would always prove to be expensive, the wealth generated from a well-functioning market economy would be sufficient enough to sustain it. It is relevant to note that there is a more accommodating attitude towards the state in neoliberal discourse. The state is not treated with the kind of suspicion as it was in the past (Trubek, 2009: 28-32).[7]

A more crucial difficulty with these arguments is that the market pessimist is left with no other alternative but the state. Similarly, the state skeptic has little or no option but the market. One of the greatest fallacies (especially in human rights and development discourse) is exactly this point – the state or market are both considered as the only alternatives for human rights and development. Critics of markets often fall into the trap of believing that the only alternative to markets is defending the state, in spite of its vast limitations. Advocates of neoliberalism even go on to suggest that though markets may sometime violate principles of equity, the market proves to be the only way of expanding services to the poor. The moral argument for markets is that though the choice is hard, or very often painful, it is still the less significant of evils. At the extreme point of this logic – as perhaps some market advocates would argue – is that it doesn't seem explicitly clear that markets violate any principles of social justice or human rights. On the contrary, it is often said that human rights can themselves profit from markets. These sorts of views, however convincing they may seem, are strongly rejected in this article.

4. Beyond the State and Market

The search for an alternative framework for human rights has become imminent given the limitations of the state or the exclusions of markets discussed above. The possibility of alternatives has been a constant theme amongst many recent commentators who have either proposed or provided empirical examples of certain activities that might constitute such valid alternatives. Quite apart from the proposals for 'alternative development' (Escobar, 1995) for instance (which have no doubt provoked changes in agenda of the major international development institutions) the work of Balakrishan Rajagopal (2003) and Boaventura de Sousa Santos (2002; 2006) are quite succinct in this respect. These authors have offered the most convincing theoretical and practical arguments about the possibility of alternatives to mainstream discourses. Without really getting involved in a detailed analysis of their views, they both seem to speak about alternatives that exist beyond the realm of state and market. Rajagopal, on his part, argues that social movements offer a cutting-edge alternative even as he is quite sceptical about their use of human rights as the sole discourse of resistance. For him, such belief in human rights has adverse consequences on grasping the novelty of entire social movement discourse. The best way to describe the social movement discourse is that they lay claim to rights akin to but not necessarily identical with those found in the institutionalized texts. As such, he prefers to think of social movement discourse as an alternative to human rights but not as an alternative framework through which human rights can be articulated. Social movements achieve this mainly through acts of resistance, which have in turn, provided the momentum for changes in the agendas of international law and institutions. He notes, however, that these alternatives often

get co-opted by these dominant discourses through an interesting dialectic of resistance and the renewal of international human rights and development strategies. It explains the tendency of the international institutions to embrace, and at the same time, reconstruct such grievances into something totally different.

Santos' (2002; 2006) thought is much wider than this, through his seminal theory of subaltern cosmopolitanism. Subaltern cosmopolitanism also refers to social movements but it goes further to cover a wider spectrum of groups all of which are united against the rise of global capitalism. Whilst subaltern cosmopolitanism is not directly framed to deal with human rights, it nonetheless offers potential insights on alternative mechanisms through which individuals and groups may realise their human rights. Locating these within the context of the argument in this article, the authors above do not offer a theory of community, even as communities might form groups within either social movements or a subaltern cosmopolitan network. Referring to Santos, in particular, the community may be implied only to the extent that it forms part of a local, national or global coalition that challenges global capitalism. Even so, Santos (2006: xxxvii-xxxviii) seems to disapprove of approaches that prioritize the community for the very reason that they isolate it from such national, regional or global coalitions. Similarly, the community is often implied in proposals that recognize the existence of an informal economy, the effect of which is that it succeeds in creating a cleavage between the formal and informal economy, a move that alienates the poor from the mainstream economy. Santos is quite right with these suggestions but I think he exaggerates the degree to which the emphasis on community is distanced from national, regional and global struggles. Santos' thesis of subaltern cosmopolitanism can be criticised for the opposite reasons. It focuses too much on the global sphere at the expense of the local.   The emphasis on community does not necessarily mean that it is divorced from any progressive coalitions at the national, regional or global level. No coalition can be built without a local starting point.

Having said that, not many of these proposals for alternatives have focused on human rights specifically. Rather, they are concerned with different ways of thinking of the economy and this is perhaps indirectly linked to alternatives in human rights terms. After all, it is through the economy that human rights like water, healthcare, or education can be realized. As such the alternatives offered by some these perspectives undoubtedly have a bearing on the possibility of a different institutional framework through which human rights can be provided. Given that the community has received very little attention in many of these perspectives I consider in the following sections the extent to which it can provide one of such alternatives through which human rights can be provided. To begin with, what do I mean by the community? It means nothing more complex than a normative ideal that exists within a small geographical unit – be it in a city or small village – where individuals are united by values and relationships, which are, of course, quite different from the typical instrumental relationships of the state or market. Being mindful of the dangers of describing the community in such simplistic terms (and quite outside questions of homogeneity) I nevertheless hold onto the view that the community, for present purposes, cannot be properly appreciated outside the notion of locality. This understanding of community is undoubtedly necessary for purposes of practicality, given that this proposal implies the concrete task of empowering individuals within such spheres to claim ownership of their human rights. As will be shown in the next part of this article the creation of Community Forums within neighbourhoods is one way that this can be realized. At the same time, this very practical objective cannot exist without a degree of philosophical justification. Indeed, without the appreciating the philosophical side of things, one cannot properly understand what makes the community not only distinct, but also what gives it much purchase. This task is one of constructing a normative model of community, which can inform the practice of human rights. Before specifically considering how communities can take part, it is useful to pause for a moment to understand why the community can serve as a valuable alternative.

4.1. The Morality of Community

If there is an important and universal characteristic of community, it is that it embodies relationships defined by certain values and principles. More specifically, the community embodies values of solidarity, friendship, reciprocity and care for others. Whilst the degree to which these values exist will obviously vary from community, it is certain that all communities are shaped by certain values, and this is irrespective of the level of homogeneity within it. To include this dimension to the definition of community above would mean that the community is not just be about locality but also a place where common values, attachments and principles are forged. These attributes are what make community unique and a place where non-instrumental relationships are constituted.

There is a long tradition of this aspect of community especially in literature on political theory, political philosophy or philosophy in general (McIntyre 1984). A perfect way of illustrating the values and principles of community can be understood from African philosophy and political philosophy. The Southern African concept of *ubuntu* is the most popular example of this view point (Le Roux 2000; Blankenberg 1999; Venter 2004).

Ubuntu represents the expressions of compassion, reciprocity, and dignity, or such other virtues that underpin morality. *Ubuntu* is also an expression of interdependence, common humanity and the responsibility individuals have to one another. If it is understood in this way then *ubuntu* is perhaps in the first instance a cosmopolitan philosophy, given that it is founded on values of shared humanity and not necessarily territory, ethnicity or politics. These values have a broader reach, especially beyond the boundaries of culture, ethnicity, and religion. *Ubuntu* is, a principle of reciprocity that exists in different cultures or religions not necessarily in Africa. Few would dispute the rhetorical power of *ubuntu* and the potential it holds for building a society on the basis of reciprocity, tolerance, cooperation and trust. Mutuality, compassion and belongingness, have always been a pivotal part of the life in Africa, even as this view might be a bit of a generalization. One of the most important aspects of *ubuntu,* however, is that individuals are incomplete without others; without communion with family and community, individuals are nothing. The community is the basis in which self-definition begins; it is only through such kinds of acts of togetherness that individuals fully understand the meaning of life. As such, the philosophy of *ubuntu* is primarily concerned with the role of community in building the most basic human relationships and thereby enhancing human value, trust and dignity. It presupposes that social cohesion or harmony cannot be understood apart from the overlapping and interwoven relationships shared with others. Individuals never exist in an absolute isolation – they co-exist with each other. This is in essence the strength of the John Mbiti's (1969: 108) much cited words – 'I am, because we are, and since we are therefore I am'. It is important to understand *ubuntu* as a vision of the kind of society we strive to achieve and one that can surely enrich the practice of human rights.

One must not get too carried away with the following values of community, and overlook that it also has a negative dimension. The community is a Janus-faced concept and definitely has a dark side. Those extreme bonds of unity are not often extended beyond the boundaries of a particular community. There is a great deal that can be said in this context about the difficulty of ethnic, tribal, kinship or religious tribal affiliations in various Third and non-Third World country contexts. The moral appeal of community often understates the sense of its complexity and plurality within it. Quite apart from that, there are negative consequences of the undeniable tension between individual and collective autonomy – especially the profound implications of the lack of differentiation within community. One of the profound limitations of the concept of community is that it tends to exclude plurality, amongst other things. The community is well known for its tendency to totalize differences in such a way that reduces such differences into some sort of unconditional unity.[8] It is a common theme that the individuals within such communities are more often than not unintelligible outside this framework; he or she seems only recognizable as a constitutive part of the group. This has far reaching implications on the plurality and diversity of our humanity itself. Moreover, the implications seem further reaching than this; individuals are not only capable of disappearing, but it is also possible for the community to be absolved into the individual (Bankowski 2001: 18-22). This is often witnessed in patriarchal societies, religious sects or political parties where the plurality within the community is reduced into the leader's individual and charismatic features.

It will be important to emphasize that in spite of these limitations the community still offers more potential than harm to human rights. The concept of community can, of course, be articulated in ways that are not susceptible to the problems of parochialism illustrated above.[9] Besides, there is no better way to deal with the problems of exclusion or the lack of access to human rights than through a framework driven by care and compassion as the very basis of belongingness (Gyekeye 1992). This is if we recognize the value of individual duties of care, especially for the less privileged as the organizing principle of any political, social and economic framework. These duties may be understood as the *public goods*, conducts or functions we are morally obligated to perform to others. Duties and responsibilities to the other arise from an appreciation of our shared humanity which enables us to recognize our responsibility to assist others in times of misery.[10] It is not difficult to see how the proposals for a human rights framework can benefit from the community and its institutions. This will entail a number of things, particular how we design our institutions to allow those in communities demonstrate such humane gestures of reciprocity. Before specifically looking at how this might be achieved, it will first of all be important to briefly consider how the prevailing human rights discourse deals with the question of community.

4.2. Community in Human Rights Discourse

In spite of its potential the role of community has not been fully appreciated in human rights discourse. Whilst there are many reasons for the failure of human rights in different parts of the world, the argument here is that there is a profound connection between these problems and the absence of an actual prescription of the role for community in the human rights corpus. Reasons for the failure of human rights will always vary in context and one must not make too many generalizations. Nonetheless, the profound deficit in participation which is experienced differently in different countries cannot be separated from reasons why human rights have continued to elude millions of the poor. Even as the value of community participation is now recognized in neoliberal

development discourse a similar response is lacking in traditional human rights discourse.[11] Human rights remain a state-centred discourse even as its hegemony is now threatened by markets.[12]

The closest attempt to establish a role for community in human rights discourse can actually be read in the light of the increasing overlap between the fields of human rights and development. Not only is development now recognized as a human right, but human rights are now also believed to shape the practice of development. The overlap between these fields is shaped by the emergence of Declaration of the Right to Development, the Millennium Development Goals ("MDGs"), the second-generation reforms of the BWIs and most distinctly, the Rights-Based Approaches to Development, which all encourage the international development institutions to draw on the normative principles of international human rights law to regulate the practice of development.

Given that the role of community is inscribed in the practice of development, a plausible argument can be made that the community is now by extension part of the practice of human rights. After all, theories and practices of community participation are almost as old as development itself,[13] and it only follows that such ideas are now implied in human rights discourse. There is however an ambiguity with this argument if this suggestion is looked at from the point of view that it is human rights that normatively structures the practice of development and not the other way round. It begs the question of the extent to which human rights can perform a normative role for the community in development when it does not conceive of a role for the community in its own regime. After all, international human rights law has not specifically engaged with, or offered a theory of community. What I mean is that, none of the foundational documents, declarations, treaties or theories that underpin human rights, formulate or propose a role for community. Even the Right to Development which precedes the Rights Based Approaches to Development also suffers from a definitional ambiguity given that it fails to tell us what the community really is or how it can take part in matters that affect human rights.

The use of community has varied in relation to the actual interpretation of the Rights-Based Approaches to Development by the major international development institutions. Looking specifically at the Bank, the community features as part of the proposals for third sector governance and in response to the exclusions of the previous reforms (such as the SAPs). Participation has become a voguish term in this discourse and seen as a means to bring decision-making processes closer to the poor. The second generation reforms as it is otherwise called and good governance, in particular, are part of the attempts to respond to some of these questions. It is part of the attempt to create a new order which includes the state, markets, and civil society by the BWIs. Good governance attempts create a non-hierarchical ordered society that solicits the participation of all. In doing this, however, it suffers the criticism of constraining agitations for inclusive participation by conceiving civil society in narrow market related or friendly terms. This definition of civil society is quite distinct from republican conceptions of civil society, in that it allows business entities to thrive as both market and social actors. Unsurprisingly, instead of creating a framework of inclusive participation, it produces a framework of selective participation (Santos, 2005: 35-37). Participation is based on a principle that selects certain actors, interests or voices, whilst failing to attach the same level of importance to the most deprived of voices. Participation is to say the least instrumentalized and not far-reaching in its articulation. As a result, the voices of the poor in many parts of the Third World continue to go unheard.

The role and definition of community in the Bank's framework is best understood within the climate described above. Not surprisingly, the neoliberal argument almost exclusively understands the community in market-friendly terms (World Bank, ongoing). The community is not promoted on its own merits but because it adds value to the success of the market economy. Whilst it is impossible to exclude instrumental relationships from aspects of community life, there is a danger that in articulating the community in such narrow terms, it might create exploitative relationships such as those that exist in many communities today. This is perhaps what distinguishes a community from a mere association. An association is formulated in pursuit of an instrumental economic agenda (Little 2002: 61-62). Most associations, are usually defined by instrumental gain and thus exclusive to those who participate. Membership of an association is never open to all and participation is tied to a precondition which could either be the payment of a membership fee or some other condition. For the community, however, the organizing principle is not any notion of instrumentality. It is not (and should not be) about the pursuit of profit.

The antecedents of this instrumental view of community can be linked to Robert Putman's (1993: 167; 2002) ideas about social capital, which is now interpreted by the BWIs outside its original intentions. In its original form, social capital refers to the networks of trust within and between communities and its effects on improving societal efficiency. It is the ability of individuals to create relationships both within and between other communities. In the neoliberal reading of it, social capital is the bundle of values from which people can draw upon to improve their incomes and which can be constructed to facilitate economic growth and development. The work of Francis Fukuyama (1996) is succinct in this context and tries to show how social capital can build

trust which will inevitably lead to economic growth in society. Social capital and trust are defined by the traditional values of cooperation, integrity, reciprocity that exists within community. It dwells on the pervasiveness of trust in that it is created through cultural mechanisms such as religion, culture or tradition in a particular society. These are indeed very persuasive arguments that cannot simply be dismissed. The problem, however, begins with the unproblematic conflation between social capital, trust and the market economy. What Fukuyama succeeds in doing is instrumentalizing the community by linking it with the success of the market economy. This view doesn't seem to recognize the contradictions between market values and the ethos of solidarity inscribed in community. It even goes to the extent of regarding the market as the source of such values of solidarity in community.

The market-friendly conception of community is not the only difficulty with the Bretton Woods approach. The community emerges as an ill-defined concept within the agenda. The concept of community is arguably the most weakly defined concept in the agenda, especially when compared with the state and market. This perhaps explains why the role for community has not been thought out in a programmatic way and because of this it is circumscribed to 'projects' which are limited in scope, time or scale. These small or local projects are alienated from the wider reform initiatives that are established on the national or country wide scales. It succeeds in creating a cleavage between the national and local economy, a development that relegates the value of community. As such, the strategies for the community are different from those for the regional state or a national policy. The following is indeed the major limitation of the Community–Based Development (CBD) and Community Driven Development (CDD) (Masuri and Rao 2004).[14] Ironically, despite the various proposals for participation and the transfer of power onto a local scale these second-generation reforms have on the broad scale failed to define what the community really is.

Looking specifically at the definition of community, the CBD, and CDD interprets it as a culturally or politically homogeneous entity – a village or urban neighbourhood – or an administratively defined territory. Quite apart from that, the Bank also recognizes 'specific common interest group, such as herder's associations, irrigation associations, or associations of street vendors' (Binswanger- Mkhize et al. 2009: 3) as community. An initial difficulty is perhaps this point (which has already been highlighted) the Bank seems to conflate the understanding of common interest associations with community. Associations can become communities constituted of groups driven by other values apart from the pursuit of economic gain (Hirst 1994: 49-59).[15] This characteristic is, however, not the case with all associations and it is difficult to see how associations would be constituted by the same sort of virtues that exist in community. As will become clear in the next sub-section it is difficult to conceive a regime of ownership or management of human rights on the basis of common interest groups or associations especially given the importance of territory to such a proposal.

This difficulty highlighted above only leads to a further problem with the Bank's view of community – that is to say, its depiction of community in homogenous terms. The community is defined as an internally cohesive administrative unit, either in a village or metropolis. Whilst it is true that a village may be constituted by groups with very similar identities, such as ethnicity, tribe, language or culture, a metropolitan community on the other hand cannot always be understood in such terms. Rather, a metropolitan community is usually constituted by members with multiple communal identities and relationships. The internally cohesive community the Bank imagines does not make sense where relationships within such boundaries do not reflect homogeneity. Evidence of the Bank's practice reveals a profound disconnection between the theory and practice. Most empirical illustrations of the Bank's community development framework seem to indicate that the use of community is restricted to the village or rural area (Binswanger- Mkhize et al. 2009). Apart from questions of homogeneity the point in raising this is that the Bank's practice of community development seems to create a cleavage between the rural and metropolitan economy in its proposals for the involvement of communities.

4.3. Community Forums as Processes of Reclaiming Human Rights

Having examined the absence of a comprehensive approach to community in human rights discourse, in the final part of this article, I sketch out how the involvement of communities can be established in concrete terms. This is because even as communities exist in most societies the very act of participation in services that guarantee the delivery of human rights needs to be oriented through specific policies and institutions. In other-words, there must be a synthesis between the philosophical and the practical dimensions of the proposals here for community participation. Thus, a lot depends on the ability to create the right social and institutional environment where individuals can become more accustomed to dealing with matters concerning their continued existence including collective needs, norms and institutions. The aim as such, should be to encourage suitable social arrangements that orient the values of community to the success of human rights. It entails institutionalizing processes where values of kinship, solidarity, cooperation, reciprocity, sympathy and trust can be strengthened and furthermore channelled to the processes through which human rights are provided. Institutionalization is a way of building

stronger civic friendship since it creates the environment for people to establish relationships outside family structure and also distinct from the relationships that constitute either markets or state. Much of the literature on institutional design which elaborates on the importance of institutions in shaping the capacity of agents to acquire different kinds of habits and dispositions is also relevant in this context (Dreyfus 1992: 111-113). There is no reason why the community cannot be understood as an institution that orients the behavioural activity of individuals within the environment in which they have inhabited. Institutionalization may also have a further effect of increasing normative content of democracy by localizing it and promoting ideals of participation, equality, empowerment or, in this case, human rights. The community and participation would be a useful way of contesting the narrow domain of politics, which is often restricted to political parties or public institutions.

Before looking at this, it is important to first of all note that these issues above call the standard relationship between community and state into question. The discussions presented so far can so easily be misconstrued as a statement for the community as an exclusive alternative. This is only partly correct, in that the community does not necessarily have to be articulated in oppositional to the state. Even as the impetus for participation may develop spontaneously from community, the state must play an important role to provide the legal and institutional environment, through which communities can take part. Communities cannot do this own their own, especially if it is not permissible in law. Nonetheless, communities can initiate the processes of change through various mediums to press forward their claims for the creation of this environment. Communities can also achieve this by law or politicizing such claims through various avenues one of which may include resorting to the languages of human rights as a means articulating such claims. There are many examples to follow from communities around the world who have succeeded in claiming ownership over matters that affect their lives.

Proposing a role for community challenges the exclusivity of the state over the production of human rights. Similarly it contests the increasing influence of markets in ensuring entitlements to human rights. To this end it calls the practice of the dominant market view into question by proposing alternative models that are built on values of solidarity. The strength of the argument, however, lies in its weakness. The community must rely on the state (regional or local government's) to devolve its powers onto community. As already noted, this will entail a number of things, one of which is the need to devise policies and programmes that would enable communities participate in public affairs. Specifically, these would vary from budgetary allocations, training and recruitment of community workers and most importantly, it would entail the creation of what might be called 'Community Forums' within neighbourhoods through which decisions over the provisioning of certain human rights can be subjected to democratic scrutiny. Given that this is an important component of this argument what follows is a more elaborate explanation.

Firstly, the Community Forum is an idea that originates from an article co-authored article with Maksymillian Del Mar even as, it is used quite differently here (Del Mar and Onazi 2009: 361-362). In that article, 'Community Forum' schemes were proposed to create a critical space for reflection on the limitations of our normative languages and economic institutions in seeing and acting to suffering and vulnerability. It was conceived as a space, through which 'the particularities of suffering and vulnerability within a specific community can be recognized and communicated in a multiplicity of ways' (Del Mar and Onazi 2009: 361). In doing so, the schemes were proposed to serve as a main resource for policy-making in relation to different problems including those in relation to public goods in such communities. The Community Forum schemes were to be composed of representatives of local communities, government and international economic institutions as well as local and external persons with scholarly and artistic specialization. The inclusion of this element was an attempt to give a more comprehensive depiction of various forms of suffering and vulnerability, especially through media and other forms of representations. It was an attempt to understand and at the same time move away from a dependency on the dominant modes of representation, especially statistical, economic and political forms of expression. This was consistent with the central thesis in that article, one of the insufficiencies of relying too much on any one of such dominant modes of representation. In general terms, the article sought to provide a general theory to assess and improve the moral quality of work of international economic institutions by rejecting the compartmentalization of behavioural values – that is to say, those that involve either rules or forms of institutional design. The article called for a more integrated approach where normative resources could appeal to different behavioural capacities in ways that reconcile rules with forms of institutional design. There was also a further element to this theory and this focused on the ability of experts in international economic institutions to come into terms with the limitations of their ways of seeing and acting. The Community Forums schemes partially responded to this aspect; it was conceived (with the work of international economic institutions in mind) to create a space to encourage a variety of ways for actors within those institutions to see and react to problems.

Without in any way diminishing the rhetorical power of those ideas, the Community Forum here is framed quite differently even as, there are certain aspects of the initial proposal that are retained. The first is the normative

function of the Forum. It is necessary retain this aspect for compassion especially as a means of encouraging critical (and reciprocal) reflection on common problems, and collective democratic action. This cannot succeed outside an environment of friendship, cooperation, mutual understanding and most importantly, a space where the limitations of seeing and acting can be understood collectively. The Community Forum can, serve other purposes for instance encouraging social activities to strengthen solidarity and friendships within a particular community. In terms of its composition, membership of the Community Forum would include all members of the community, representatives of the state, local government councils, and whosoever the community might deem necessary to participate.

The second aspect of Community Forum that is retained from its original context is the policy making component – in this case however, as resource for decision-making in matters concerning human rights. The Community Forum here takes the view from below as its point of departure. It is interested in maximizing the quality of interactions and the agency of community to instigate social change. It is in this respect ultimately interested in creating opportunities for self-determination, self-reliance and self-governance. The capacity for self-governance would obviously vary from community or context; some communities would obviously have better decision-making capabilities than others. This does not mean that this proposal should in any way lose any appeal; it just means that weakly organized communities need to be encouraged in ways that they can reach their potential. This could also be achieved by retaining aspects of the initial proposals on the role of the state, scholarly (and indeed artistic) experts. In this case, the role of experts will primarily be focused on facilitating dialogues and nurturing the environment for collective decision-making. The Community Forums will ultimately serve as the main institutional framework for organizing participation within neighbourhoods, as well as building solidarity around common problems, and democratic decision-making in relation to particular human rights.

One should be clear though that as plausible as this proposal may seem, it is still a bit overly romantic. It is plausible to see the community as the impetus for change through processes of critical reflection, solidarity and collective action. Furthermore, creating spaces where individuals in community can make the connections through aggregate personal experiences in trying to deal with collective problems has a valuable appeal. The importance of dialogue cannot be overstated, especially to enable individuals to ascribe their own meanings and solutions to such problems that affect them. Having said that, these are issues that have no simple answers. This clearly needs a lot of patience, listening and shared understanding of collective problems. There will always be differences in how these problems are understood given the diversity of culture, history and social status that make up a particular community. Communities (as already argued) are not always homogenous. Urban or metropolitan communities, for instance, will always be characterized by hierarchies and divisions. It is quite predicable that communities may be united around a particular problem but disunited by attempts to find solutions. For instance, it is very possible that the rich or more privileged classes would not be opposed to solutions like privatization. A speculative response to this proposal might be that it may be rejected by the poor in community. What is shared in common – whether values or problems – is not necessary a precondition for dialogue or unity. One must not forget that, even in the most egalitarian or homogeneous of communities, exclusion, discrimination, unreasoned decision-making, conflict, and disagreement cannot totally be eliminated. It poses a difficult question, one that cannot be sufficiently deal with within the scope of this article. It is a question of how can these potential differences be defended without necessarily destroying the harmony in community. This is obviously a difficult question, one that has no easy answers.

5. Conclusion

The article has sought to illustrate the limitations of the resort to human rights by the BWIs. Using the concept of good governance as a framework of analysis, the article has sought to illustrate how such processes have led to the marketization of human rights. This has simply meant that the market economy now serves as a precondition for human rights. Admittedly, the resort to markets has been in reaction to the failures and disappointments of the state in the Third World. The prognosis has generally been correct but the solutions are questionable. The article has sought to encourage new ways of thinking about how human rights can be realized, particularly beyond the realms of the state and market. In keeping with this objective, the article has presented a case for the community, a concept not quite appreciated in human rights discourse. It has defended the community as a framework that can encourage supporting relationships, which can in turn assist the most deprived in society to develop abilities of democratic organization, ownership and autonomy over the processes of securing their human rights. The community has been defined by the requirement that it will be a place where several values, principles and solidarities are built, even though this will not always be the case. The existence of such values will vary from community to community, and this will also depend on certain practices and institutions that allow them to be forged. One way of encouraging shared values and participation in community is through the creation of Community Forums. Community Forums have been proposed as a new institutional space from

which decisions relating to particular human rights can be reached. Community Forums are not only proposed as a framework for democratic dialogue for members of community, but also to enable the community dialogue with representatives of the state or such other agents concerned with human rights. The importance of dialogue cannot be overstated in this context. Community Forums cannot function without mutual relationships with state institutions and agents. It must be understood that each of these entities have a role to play in human rights discourse and thus, deserve mutual respect from each other. The article has tried to show how the voice and autonomy of the community can be enhanced in human rights discourse.

Endnotes:

[1] The focus, here, is on the notion of good governance as articulated by the Bretton Wood Institutions ('BWIs'). It is distinct from the perceptions of good governance that emerge from the United Nations and its inter-governmental agencies, as well as the African Union. The similarities and differences between these conceptions are well beyond the scope of this article.

[2] Apart from the Bank, other organizations that have conceptualized good governance as such include, the International Monetary Fund ('IMF'), the UNDP, the Organization for Economic Cooperation and Development ('OECD'), the African Development Bank ('ADB'), the Asian Development Bank ('ADB'), the Danish Development Agency ('DDA') and the United States International Development Agency ('USAID').

[3] Good governance is usually part of a package that includes human rights, the free market economy and liberal democracy.

[4] Here, one can draw similarities with Arthur Goldsmith who following on from Adam Smith, argues that, the good governance thesis tends to be hugely exaggerated. For him, it overlooks other equally important factors that make a country's economy unproductive. For instance, it conflates factors, such as '[s]carcity of capital, backward technology, unequal trading relationships, harsh climate, lack of natural resource, remote location, anti-commercial cultures, and poor human capital', with the lack of governance. The point is that, improvements in the quality of a country's governance must go hand-in-hand with changes in these factors. Whilst it may relatively easy to alter the way in which a country is governed, the difficulty, however, is altering the landlocked nature, or other geographical factors that may also impede a countries development.' (Goldsmith 2007: 165-186).

[5] Economic globalization cannot be understood outside globalization in generic terms, which according to Giddens is 'the intensification of worldwide social relations which link distant localities in such a way that local happenings are shaped by events occurring many miles away and vice versa' (Giddens, 1990:64).

[6] One such example is the recalcitrance towards the 'UN Norms on the Responsibility of Transnational Corporations and other Business Enterprises with regards Human Rights'.

[7] The more accommodating view towards the state in the neoliberal discourse has been coined as the 'new developmental state'.

[8] Hardt and Negri's concept of the multitude is also a partial reaction to the limitations of community, as well as concepts of people, which connote some form of moral homogeneity. As such, the multitude is different from these because of their multiplicity of which the individuality or the singularities cannot be reduced to a single identity (Hardt and Negri, 2005: 204).

[9] In the philosophical context, Giorgio Agamben's idea of "*the coming Community*" readily comes to mind. At the risk of oversimplification, the coming community is one that has no condition of membership. It is open to all (Agamben, 1993).

[10] A very recent example of this argument can be found in the justifications for the new Bill of Rights and Responsibilities in the United Kingdom. The Bill raises a lot of comparable concerns about individualism around questions of terrorism and security. The proposed British Bill of Rights and Responsibilities is aimed at balancing the individual rights and responsibility in community is a specific case in point. The bill suggests, that it seeks to 'end the me society in which an unbridled focus on our individual rights and liberties overtaking our collective security' (*The Guardian* 2009). . According to the green paper, responsibilities exist within British Law, it is usually never expressed the effect of which is 'a selfish and aggressive assertion of rights in a way which may damage others enjoyment of their own rights'. (*The Guardian* 2009). The point in raising UK bill of rights and responsibilities runs much deeper than that of pointing out the compatibility of rights and responsibility. It is also useful in showing the compatibility between rights and community. The green paper traces this relationship to a number of sources, including the ideas of Aristotle in Ancient Greek philosophy on individual responsibility, virtue, community and civic friendship. The green paper also makes references to contemporary communitarian thought, especially the work of Amitai Etzioni who characterizes individual responsibility as a civic virtue. Interestingly, it makes a passing reference to African philosophy, where the

fulfillment of duties to community is not only a condition of membership, but also the critical to the attainment of human dignity (Ministry of Justice 2009: 14-15).

[11] By traditional human rights discourse, I mean 'international human rights legal discourse', and not the human rights scholarship from fields, such as sociology and political theory where some attempts have been made to draw a relationship with community.

[12] The lack of interest in community is reflected in the leading international human rights law texts. (Steiner and Alston 2000*).*

[13] One can draw parallels to the way it has been embraced by the UN normative framework and its development agencies; participatory decision-making has been a core feature of their development work. This is not surprising, since community development has itself had a long history in the UN system, one that precedes the rights based approaches to development. Even so, such rights to participate in development projects have remained process rights and not rights to veto such projects. As such, the extent to which they have not conferred real ownership or empowerment to communities is still questionable. Admittedly, this point needs to be made on a case to case basis, as some projects are more likely to have stronger degrees of ownership than others.

[14] The CBD are projects that involve the beneficiaries at the stages of design, which CDD are projects that beneficiaries have control more control over key decisions, such as the management and investment funds.

[15] Paul Hirst's thesis on 'communities of choice' is an illustration of how an association can become of a community.

References

Anghie, A. (2000) 'Time Present and Time Past: Globalization, International Financial Institutions, and the Third World', *New York University Journal of International Law and Politics* 32, pp. 243 - 257.

Anghie, A. (2004) *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press).

Alston, P. (2002) 'Resisting the Merger and Acquisition of Human Rights by Trade Law: A Reply to Petersmann', *European Journal of International Law* 13(4), pp. 815-844.

Alston, P. and Bhuta, N. (2005) 'Human Rights and Public Goods: Education as a Fundamental Right in India', *Centre for Human Rights and Global Justice Working Paper Economic, Social and Cultural Rights Series*.

Bankowski , Z. (2001) *Living Lawfully: Law in Love and Love in Law* (Dordrecht: Kluwer).

Baxi, U. (2002) *The Future of Human Rights* (Delhi: Oxford University Press).

Baxi, U. (2005) 'Market Fundamentalisms: Business Ethics at the Altar of Human Rights'*, Human Rights Law Review* 5, pp. 1 - 26.

Binswanger- Mkhize, H. P. *et al.* (eds) (2009) *Scaling up Local and Community Driven Development: A Real World Guide to its Theory and Practice* (Washington: World Bank Group).

Blankenberg, N. (1999) 'In Search of a Real Freedom: Ubuntu and the Media', *Critical Arts* 13(2), pp. 42–65.

Chibundu, M. (1997) 'Law in Development: On Tapping, Gourding and Serving Palm-Wine', *Case Western Reserve Journal of International Law* 29(1), pp. 167-261.

Commission on Global Governance (1995) *Our Global Neighbourhood* (Oxford: Oxford University Press).

Collins, H. (1982) *Marxism and Law* (Oxford: Oxford University Press).

Dreyfus, H. (1992) 'What is Moral Maturity? Towards a Phenomenology of Ethical Expertise', in Ogilvy, J. (ed) *Revisioning Philosophy* (Albany: State University of New York) pp. 111-123.

Del Mar, M. and Onazi, O. (2009) 'The Moral Quality of Work in International Economic Institutions: Resisting Complacency'*, International Journal of Law in Context* 4(4), pp. 337-372.

Escobar, A. (1995) *Encountering Development: The Making and Unmaking of the Third World* (Princeton: Princeton University Press).

Fukuyama, F. (1996) *Trust: The Social Virtues and the Creation of Prosperity* (London: Penguin).

Garcia, F. (1999) 'The Global Market and Human Rights: Trading away the Human Rights Principle', *Brooklyn Journal of International Law* 25, pp. 51-97.

Garcia, F. (2007) 'Global Justice and The Bretton Woods Institutions', *Journal of International Economic Law* 3, pp. 461-481.

Gyekye, K. (1992) 'Person and Community in African Thought' in Wiredu & Kwame (eds) *Person and Community: Ghanaian Philosophical Studies* (New York: Council for Research in Values and Philosophy).

Grear, A. (2007) 'Challenging Corporate Humanity: Legal Disembodiment, Embodiment and Human Rights', *Human Rights Law Review* 7(3), pp. 511-543.

Giddens, A. (1990) *Sociology* (Oxford: Oxford University Press).

Goldsmith, A. (2007) 'Is Governance Reform a Catalyst for Development?' *Governance: An International Journal of Policy, Administration, and Institutions* 20(2), pp.165-186.

Hardt, M. and Negri, A. (2005) *Multitude: War and Democracy in the Age of Empire* (New York: Penguin Press).

Hirst, P. (1994) *Associative Democracy: New Forms of Economic and Social Governance* (Amerherst: University of Massachusetts Press).

Le Roux, J. (2000) 'The Concept of '*Ubuntu*': Africa's Most Important Contribution to Multicultural Education?' *Multicultural Teaching* 18(2), pp. 43-46.

Little, A. (2002) *The Politics of Community: Theory and Practice* (Edinburgh: Edinburgh University Press).

Masuri, G. and Rao, V. (2009) 'Community-Based and Driven- Development: A Critical Review', *World Bank Policy Research Pape*r *3209* (Washington: World Bank).

Muller, J. (2002) *The Mind of the Market: Capitalism in Modern European Thought* (Knoff: New York).

 McIntyre, A. (1984) *After Virtue* (Notre Dame: University of Notre Dame Press).

Mbiti, J. (1969) *African Religions and African Philosophy* (Oxford: Heinemann).

Ministry of Justice (2009) *Rights and Responsibilities: Developing our Constitutional Framework* (United Kingdom: Ministry of Justice).

Polany, K. (1957) *Great Transformations* (Massachusetts: Beacon Press).

Putman, R. (1993) *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton: Princeton University Press).

Putman, R. (1995) 'Bowling Alone: America's Declining Social Capital', *Journal of Democracy* 6, pp.65-78.

Putman, R. (ed) (2002) *Democracy in Flux: The Evolution of Social Capital in Contemporary Society* (Oxford: Oxford University Press).

Rajagopal, B. (2003) International *Law from Below: Development, Social Movements and Third World Resistance* (Massachusetts: Cambridge University Press).

Rittich, K. (2004) 'The Future of Law and Development: Second generation Reforms and the Incorporation of the Social', *Michigan Journal of International Law* 26, pp. 199 - 243.

Sachs, J. (2005) *The End of Poverty* (London: Penguin Books).

Said, E. (1978) *Orientalism* (New York: Vintage Books).

Santiso, G. (2002) 'Governance Conditionality and the Reform of Multilateral Development Finance: The Role of the Group of Eight', http://www.g8.utoronto.ca/governance/santiso2002-gov7.pdf 13 September 2008.

Santos, B. (2002) *Towards a New Legal Commonsense: Law, Globalization and Emancipation* (London: Butterworths LexisNexis).

Santos, B. and Rodriguez, G. (eds) (2005) *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press).

Santos, B. (ed) (2006) *Another Production is Possible: Beyond the Capitalist Cannon* (London: Verso).

Stallings, B. (1992) *Sustainable Development with Equity in the 1990s Policies and Alternatives* (Madison: Global Studies Research Program).

Sklair, L. (2002) *Capitalist Globalization and its Alternatives* (Oxford: Oxford University Press).

Sen, A. (1999) *Development as Freedom* (Oxford: Oxford University Press).

Steiner, H. and Alston, P. (2000) *International Human Rights in Context: Law, Politics and Morals* (Oxford : Oxford University Press).

Trubeck, D. (2009) 'The Political Economy of the Rule of Law: The Challenge of the New Developmental State', *Hague Journal on the Rule of Law* 1, pp. 28-32.

UN Development Group (n. d.) Fast Facts: The Faces of Poverty http://www.unmillenniumproject.org/resources/fastfacts_e.htm 10 April 2009.

Venter, E. (2004) 'The Notion of Ubuntu and Communalism in African Educational Discourse', *Studies in Philosophy and Education* 23, pp.149-160.

Weiss, T. (2000) 'Governance, Good governance and Global Governance: Conceptual and Actual Challenges', *Third World Quarterly* 21(5), pp. 795- 814.

Williams, A. (2006) 'Human Rights and Law: Between Sufferance and Sufferability', *Law Quarterly Review* 123, pp. 132-157.

Wintour, P. (2009) 'Jack Straw Hails Bills of Rights to End the 'me' Society', *The Guardian*, 24 March 2009.

World Bank (1992) *Governance and Development* (Washington: World Bank).

World Bank (1998) *Development and Human rights: The Role of the World Bank* (Washington: World Bank).

World Bank (n. d.) Community Driven Development http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALDEVELOPMENT/EXTCDD/0,,menuPK:430167~pagePK:149018~piPK:149093~theSitePK:430161,00.html 18 June 2009.