Fall 1999

Does the "Good Governance Policy" of the International Financial Institutions Privilege Markets at the Expense of Democracy?

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I. INTRODUCTION

"Good governance" policy has played a central role in the attempt by the "Bretton Woods" international financial institutions (IFIs)[1] – the International Monetary Fund (IMF) and the World Bank[2] – to address the problem described in the title of this panel – "Political Corruption in Third World Market Democracies." The objectives of this essay are twofold: first, to describe the good governance policy that has become increasingly relevant in the operations of these institutions, and, second, to discuss how this policy fits into longstanding debates over the proper role of the IFIs in development, particularly with respect to the link between democracy and distributive justice in poor countries. In addressing corruption in "Third World market democracies," the IFIs have focused primarily on corruption in which public office is abused for private financial gain. This focus has obscured corruption of the political process and the consequent repression of popular demand for distributive justice.

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1. Other international financial institutions not discussed here include regional development banks such as the African Development Bank, the Asian Development Bank, and the Inter-American Development Bank. Good governance policy has also been embraced by the donor arms of many governments such as the U.S. Agency for International Development. Excluded from this discussion are the activities of "private" financial institutions with international operations, such as some banks, insurance companies, mutual funds and brokerage firms.

2. "The original Articles of Agreement of both the IMF and its sister organization, the International Bank for Reconstruction and Development (the World Bank), were adopted at Bretton Woods, New Hampshire (U.S.A.), on July 22, 1944." *See* BASIC DOCUMENTS OF INTERNATIONAL LAW (Stephen Zamora, et al. eds., 1990); Articles of Agreement of the International Monetary Fund, T. I. A. S. No. 1501 (1945); Articles of Agreement of the International Bank for Reconstruction and Development, T.I.A.S. No. 1502 (1945). The agreements creating the IMF and World Bank were ratified by Congress in the Bretton Woods Agreements Act, 59 Stat. 512 (1945), codified as amended at 22 U.S.C. §§ 286 - 286gg.

II. A BRIEF DESCRIPTION OF GOOD GOVERNANCE POLICY

Good governance policy began to move towards the center of the IFIs' policy regime in the early 1990s.[3] The IFIs have defined good governance as the elimination of corruption through the establishment of the rule of law and through efficiency and accountability of the public sector.[4] The IMF focuses on two goals in particular: first, to "improv[e] the management of public resources" through reforms to key public sector fiscal institutions such as the treasury, central bank, and official statistics function; and, second, to support the "development and maintenance of a transparent and stable economic and regulatory environment conducive to efficient private sector activities," involving price systems, exchange and trade regimes, and banking systems and related regulations.[5] The IMF has resolved to incorporate these issues into both its general, periodic consultations with member governments[6] and into its lending function through the requirement of prior actions, performance criteria, benchmarks and conditions for completion of review.[7]

The World Bank has established through its Economic Development Institute a series of Anti-Corruption Programs that seek to support reforms of the type required by the IMF by providing training to government officials in public service delivery, particularly with respect to regulatory efficiency and to judicial independence and enforcement.[8] The World Bank is developing a broad range of training courses and workshops that focus on everything from building judicial and administrative skills, to changing civil servant "mindset," to improving data collection.[9] The Bank has also set up a series of workshops that attempt to strengthen means of participation in government by civil society in borrower countries.[10]

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3. *See, e.g.,* WORLD BANK, GOVERNANCE AND DEVELOPMENT (1992).

4. *See* INTERNATIONAL MONETARY FUND, DECLARATION OF PARTNERSHIP FOR SUSTAINABLE GLOBAL GROWTH (1996) (declaring the importance of "[p]romoting good governance in all its aspects, including by ensuring the rule of law, improving the efficiency and accountability of the public sector, and tackling corruption.")

5. *See* Michel Camdessus, Address to the United Nations Economic and Social Council (July 2, 1997) (transcript available at <http://www.imf.org/external/pubs/ft/exrp/govern/govindex.htm>).

6. These consultations are provided for under Article IV of the IMF's Articles of Agreement, *supra* note 2.

7. *See id.*

8. *See* WORLD BANK INSTITUTE, ANTI-CORRUPTION PROGRAMS (available at <http://www.worldbank.org/edi/gac/anticor.htm>).

9. *See id.*

10. *See id.* Uganda, for example, has been seen by many as a trendsetter in this new wave of policy. In 1992, Uganda embarked on a comprehensive Civil Service reform program that involved significant decentralization of the public sector as well as reduction of public employment sector jobs by more than half, through streamlining procedures and privatization measures; as well as by engaging in a number of training workshops for public sector officials and "transparency workshops" with

One commentator has remarked that "[i]nternational financial institutions . . . are increasingly basing their funding decisions on considerations about governance."[11] The connection between good governance and funding is formally enabled by the policy of "conditionality," under which an IFI "approves financial support on the condition that the member make an explicit commitment to a set of policy measures aimed at correcting its economic and financial imbalances . . . ."[12] The IFIs developed conditionality as a response to the debt crises of many developing countries in the 1980s.[13] Since IFI decision-makers believed that the primary causes of the debt crisis lay in wrongheaded economic policies of debtor governments,[14] the explicit conditioning of funds on reform of these policies seemed the best available way to move debtor governments out of crisis and onto the path

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members of the press and anti-corruption NGOs. *See* ECONONOMIC DEVELOPMENT INST., PETTER LANGSETH ET AL., GOOD GOVERNANCE IN AFRICA: A CASE STUDY FROM UGANDA 9-17 (1997).

11. Celia Taylor, *Good Government and Law: Legal and Institutional Reform in Developing Countries*, 25 DENV. J. INT'L L. & POL'Y 137 (1997). The IMF provides short-term funding to correct temporary balance-of-payments difficulties, although such difficulties and therefore such lending are often chronic. The World Bank funds longer-term projects aimed at developing some concrete aspect of the economy, such as infrastructure or agricultural production.

12. *See* INT'L MONETARY FUND, IMF SURVEY: SUPPLEMENT ON THE FUND. For a discussion of the interplay of conditionality policies as applied by the IMF and the World Bank, see THE IMF AND THE WORLD BANK IN AFRICA: CONDITIONALITY, IMPACT, AND ALTERNATIVES (1987) and Nicholas Kremmydas, *The Cross-Conditionality Phenomenon – Some Legal Aspects,* 23 INT'L L. 651 (1989).

13. The doctrine of conditionality formally began with a decision of the IMF Executive Board dated March 2, 1979, entitled "Access to Resources from the Fund and Use of Stand-by Arrangements." In this decision, the IMF gave "teeth" to consultations that had occurred between IMF member governments and IMF staff under Article IV of the IMF Articles of Agreement, which, "[r]ecognizing that . . . a principle objective [of the international monetary system] is the continuing development of the orderly underlying conditions that are necessary for financial and economic stability," provided that "each member undertakes to collaborate with the Fund and other members to assure orderly exchange arrangements and to promote a stable system of exchange rates." Articles of Agreement of the International Monetary Fund, Art. IV, 60 Stat. 1401, T.I.A.S. No. 1501, 2 U.N.T.S. 39 (1947). The IMF's 1979 decision strengthened the connection between this underlying obligation and the ability to obtain financing by providing that the Fund "discuss with members adjustment programs, including corrective measures, that would enable the Fund to approve a stand-by arrangement." The leading scholar of the IMF has described IMF conditionality as consisting of "four strands":

> First, to qualify for the use of the Fund's resources in order to deal with a balance of payments problem, a member must be prepared to pursue policies that are designed to overcome its problem. . . . Second, the policies must be consistent with the purposes of the Fund. . . . Third, the policies must be designed to overcome the member's problem within a moderate ("temporary") period. Fourth, the policies must be likely to result in augmenting the member's monetary reserves so that it will be able to repurchase its currency from the Fund.

SIR JOSEPH GOLD, FINANCIAL ASSISTANCE BY THE INTERNATIONAL MONETARY FUND: LAW AND PRACTICE 13-23 (2d ed. 1980). For a discussion of the World Bank see *supra* note 10.

14. *Cf.* THE WORLD BANK, WORLD DEVELOPMENT REPORT 6 (1989) ("The prospects for growth in the developing countries . . . depend primarily on their own actions").

of economic growth.[15] In exchange for IFI funding, governments agreed to pursue[16] both macroeconomic policy reforms[17] and deeper, "structural" reforms such as privatization and trade liberalization.[18] In the 1990s, good governance reform has joined this "structural adjustment" policy framework.[19]

Good governance policy appears to have arisen primarily out of increasing wariness on the part of IFIs of the inefficiency with which their funds were being applied in many countries. While some of this "inefficiency" was attributable to import substitution and statist policies that defied the liberal prescriptions of IFI advisors, some resulted from actual theft. Governmental siphoning of funds prolonged the suffering of countries from global economic volatility, heavy indebtedness and balance-of-payment difficulties, as well as from corrective economic austerity measures often imposed by the IFIs themselves. In Bolivia, for example, the World Bank attempted to stem the resort to coca production by farmers suffering global recession by supplying funds for the purchase of food staples and for improved production. These funds rarely made it

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15. Most heavily indebted governments owed their debts primarily to private lenders - but IFIs played an important intermediary role.

16. Defenders of conditionality stress that it operates only provisionally, rather than as a legally binding mechanism. With respect to the IMF, for example, Sir Joseph Gold has stressed that neither the IMF member's letter of intent declaring a commitment to pursue reforms, nor the funding arrangement worked out between the member and the IMF are intended to contain formally binding obligations. Thus, a failure by a member to comply with "performance criteria" is not regarded as a "violation of obligation." *See* GOLD, *supra* note 13.

Beyond pointing to the non-legal nature of the arrangements worked out between IFIs and borrower countries, IFI staff often insist, with some level of exasperation, that notwithstanding the contrary opinions of some, they exercise very little control over borrower governments. The following passage from an IMF publication is indicative:

> Contrary to widespread perception, the IMF has no effective authority over the domestic economic policies of its members. . . . It can, and often does, urge members to make the best use of scarce resources . . . . Unfortunately, members can, and often do, ignore this well-intentioned advice. In this case, the IMF can only try, through rational argument, to persuade members of the domestic and international benefits of adopting policies favored by the membership as a whole. There is no question of forcing a member to adopt any policy.

DAVID D. DRISCOLL, INT'L MONETARY FUND, WHAT IS THE INTERNATIONAL MONETARY FUND? (1998) (available at <http://www.imf.org>). There is likely some important truth to these objections. It must be recognized, however, that while conditionality might not be a legally binding rule, and members might not be "forced" to change their policies, the IMF will suspend funding if the IMF member is not in compliance with performance criteria. *See* GOLD, *supra* note 13. For a discussion of the World Bank see sources cited in *supra* note 10.

17. *See* DRISCOLL, *supra* note 16.

18. *See id.*

19. *See, e.g.*, Michel Candessus, Address at the 1997 National Banks Convention, Buenos Aires (May 21, 1997) (congratulating Latin American countries on their efforts in macroeconomic and structural reform, but exhorting them to embark on a "second generation" of reforms including commitments "to establish a simple, transparent regulatory system" and "to uphold the professionalism and independence of the judicial system.")

to the farmers themselves.[20] More broadly, the perpetuation, in some cases, of the "kleptocratic" state continuously burdened governance and economic policy. The Zairian government led by Mobutu Sese Seko, for example, reportedly allocated more to Mobutu's personal salary in 1989 than to education, health and social services combined.[21] The emergence of the "transition" economies in the former Soviet bloc no doubt drew attention to the fact that both these governments and the traditional Third World clients of the IFIs faced difficulties in managing public sectors that could co-exist with, let alone encourage, a thriving private sector.[22] As a result, both the IMF and the World Bank incorporated good governance into the repertoire of policies on which they expect movement by borrower governments in return for funds.

Many critics have objected to the adoption by IFIs of policies such as good governance on the grounds that these policies unacceptably interfere with the right of a sovereign government to determine its own economic regime.[23] More specifically, the sovereigntist objection charges that good governance policy aims not to eliminate theft, but rather to facilitate changes in policy orientation. By extending conditionality, good governance is an example of the insidious encroachment by the IFIs into a position of total dominance over developing-country governments.

While the impulse underlying this objection resonates, its emphasis on sovereignty may be misplaced, for two reasons. First, the objection uncritically accepts the claim by developing-country governments to represent the interests of their citizens against those of the industrialized world. While there is much support on that front, people in developing countries also suffer at the hands of self-interested local elites.[24] For development policy to provide any measure of justice to people in

20. *See* THE MONEY LENDERS (Richter Productions 1992).

21. *See* Jennifer M. Hartman, *Government by Thieves: Revealing the Monsters Behind the Kleptocratic Masks*, 24 SYRACUSE J. INT'L L. & COM. 157 (1997). The former Zaire is now the Congo Republic.

22. *See generally* SUSTAINABLE DEVELOPMENT AND GOOD GOVERNANCE (Konrad Ginther et al. eds., 1995).

23. This right is expressed in the International Covenant on Economic, Social and Cultural Rights as the right to self-determination. *See* Art. 1, cl.1, ICESCR ("All peoples have the right of (ICESR) self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.") It was also stated as "[t]he right of every country to adopt the economic and social system that it deems the most appropriate for its own development" in Para. 4, cl. (d) of the United Nations General Assembly Declaration on the Establishment of a New International Economic Order (NIEO). A/Res 3201-3202 (S-VI) May 1, 1974.

24. *See, e.g.*, Amy Chua, *The Privatization-Nationalization Cycle: The Link Between Markets and Ethnicity in Developing Countries*, 95 COLUM. L. REV. 223 (1995).

developing countries, the dichotomy between the North and the South must be unpacked.[25]

Second, the juridical concept of sovereignty has eroded even for rich and powerful countries. In our pre-millennial, proto-global era – the era of the European Union, of the World Trade Organization, of the North American Free Trade Agreement – it appears that reality has trounced realpolitik, which had admonished that sovereignty is indivisible.[26] Sovereignty appears increasingly less unified and more divisible, and virtually all states, not just developing countries, have partially ceded some important aspects of their powers to govern.[27]

These conclusions, however, do not fully protect good governance policy from criticism. If governments have partially ceded their sovereignty to the international order, then the question becomes which rules should constitute the international order. For example, in the wake of the recent financial crises in Southeast Asia, even conservative commentators found fault not only with the domestic financial policies of the governments in crisis, but also with an international financial environment that failed to control currency speculation.[28] Consequently, international talks have begun on the possibility of a new "international financial architecture." A similar concern, and one that requires a return to the question of good governance, is the extent to which democratic

25. *See* Chantal Thomas, *Causes of Inequality in the International Economic Order*, 9 TRANSNAT'L L. & CONTEMP. PROBS. (1, 12-13 (1999)).

26. Hans Morgenthau, for example, argued in 1973 for a "realist theory" of the international order that would recognize that "the conception of a divisible sovereignty is contrary to logic and politically unfeasible." HANS J. MORGENTHAU, POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE 320 (5th ed. 1973). Morgenthau continued: "The doctrine of the divisibility of sovereignty makes it intellectually feasible to reconcile not only what logic proves to be incompatible – to give up sovereignty while retaining it – but also what experience shows to be irreconcilable under the conditions of modern civilization – national sovereignty and international order." *Id.* at 325.

27. *See generally* Stephen D. Krasner, *Pervasive Not Perverse: Semi-Sovereigns as the Global Norm*, 30 CORNELL INT'L L.J. 651 (1997). In developing countries in particular, of course, the sovereigntist objection sounded in the 1970s has fallen wayside in the wake of significant IMF and World Bank involvement in many of these countries in the 1980s and 1990s. A third reason is more particular to developing countries - in the last quarter century, we have seen that the juridical concept of sovereignty is flimsy support against the powerful currents of international economic flows. It was, ironically, private commercial banks lending to developing-country governments in the late 1970s who mistakenly assumed that loans to sovereigns were by definition relatively low risk, and, therefore, little attention needed to be paid to the internal workings of the state. The debt crisis proved this concept wrong for most of the Third World. More recently, the financial crises in the miracle zone of Southeast Asia proved the concept wrong even there.

28. *See, e.g.*, David E. Sanger, *As Economies Fail, the I.M.F. Is Rife with Recriminations*, N.Y. TIMES, Oct. 2, 1998, at A1 ("Once, the I.M.F.'s critics were largely found in Africa and South Asia, were [sic] the fund was often viewed as arrogant; today they include Wall Street's biggest players and top officials in the most powerful economies of Asia and Europe.")

politics in developing countries are seen as defying, rather than accepting, the liberal international economic order.[29]

III. MARKETS VS. DEMOCRACY IN GOOD GOVERNANCE POLICY

The assumption abounds in much development literature that markets and democracy are synergistic and mutually reinforcing. Yet many commentators have observed that it is precisely those states that insulate themselves from democratic politics that are able to implement the policies of macroeconomic and structural austerity that the IFIs and the international capital markets require.[30] The recent arrest of Augusto Pinochet in Britain brings to mind the stark example of Chile.[31] When democratic politics brought the left-leaning Salvador Allende into power in 1973, General Pinochet's coup overturned Allende's government and established martial rule together with a program of economic liberalization. Rather than decrying Pinochet's bloody upset of a democratically elected government,[32] the World Bank and IMF supported Chile's transformation, ultimately holding Chile up as a success story for other developing countries.[33] The response of the IMF to the Asian crisis provides a more recent example. To receive financing from the IMF, the Korean government eliminated labor protections that Korean unions had won through the political process in the 1980s, and the Korean government has repressed subsequent protest by those unions.[34] From a

29. *See* Jonathan Cahn, *Challenging the New Imperial Authority: The World Bank and the Democratization of Development*, 6 HARV. HUM. RTS. J. 159 (1993).

30. *See, e.g.*, Amy L. Chua, *The Privatization-Nationalization Cycle: The Link Between Markets and Ethnicity in Developing Countries*, 95 COLUM. L. REV. 223 (1995); David M. Trubek, *When is an Omelet? What Is an Egg? Some Thoughts on Economic Development and Human Rights in Latin America*, 67 AM. SOC. INT'L L. PROC. 198 (1973).

31. *See* Anthony Faiola, *Britain Arrests Pinochet at Spain's Request*, WASH. POST, Oct. 18, 1998, at A1.

32. A particularly strong critique of the IFI practices generally can be found in WALDEN BELLO, DARK VICTORY: THE UNITED STATES, STRUCTURAL ADJUSTMENT, AND GLOBAL POVERTY (1999). In focusing on Chile, Bello pointed to the tendencies of structural adjustment policy to suppress democratic reforms. As part of Bello's critique of the IFIs' relationship with Chile, Bello points to misgivings even by relatively conservative voices such as the Organization for Economic Cooperation and Development, citing to an OECD study of Chilean adjustment that "concluded by posing the question: 'Would this type of adjustment have been feasible in a democratic regime?'" *Id.* at 45.

33. *See* JUAN GABRIEL VALDES, PINOCHET'S ECONOMISTS: THE CHICAGO SCHOOL IN CHILE 2 (1995).

34. *See* James Neely, *IMF Chief Backs S. Korea Labor Reform*, UNITED PRESS INT'L, Jan. 13, 1998 (available in Lexis/Nexis News Library.) ("Labor groups have recently threatened strikes and held small protests, angered over a pending session of the National Assembly where lawmakers are expected to legalize layoffs in the debt-ridden financial sector. Such restructuring is called for under conditions of the $57-billion IMF bailout negotiated last month.") The precise terms of arrangements between the IFIs and member governments in exchange for financing are generally kept confidential. The IFIs do release statements containing a general description of agreed reforms. In its "Summary of

fiscal standpoint, this policy move sought to improve investor confidence and reduce inflation. From a political standpoint, the policy arguably antagonized democracy in Korea.[35]

The problem, of course, is that in any country, but even more so in a poor country, the majority will often prefer economic policies that are redistributive and therefore constrain the market.[36] To liberalize the market, the IMF and World Bank are often in the position of supporting governments that may constrain the political process. Thus, notwithstanding the claim by IFIs to value both markets and democracy, they may be predisposed to value the former, not just over, but also at the expense of the latter. In applying their good governance policies, the IFIs have arguably been too careless about the extent to which they deprivilege the democratically expressed voices of the citizenries of their members.

I would like to distinguish this point from those made by my co-panelists. I agree with James Gathii that the IFIs have neglected some substantive notions of democracy (such as economic democracy),[37] but I would go further and argue that even procedural notions of democracy have been discounted, because in any country but particularly in poor countries, procedural democracy can lead to strong demands for substantive redistribution. I also agree with John Ohnesorge that the definition of good governance posited by the IFIs is a culturally specific

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the Economic Program" devised under its Stand-By Arrangement with the Republic of Korea released December 5, 1997, the IMF noted, under the heading "Labor Market Reform," that "[t]he capacity of the new Employment Insurance system will be strengthened to facilitate the redeployment of labor, in parallel with further steps to improve labor market flexibility." (available at <www.imf.org.external/np/oth/korea.htm>). In a news release, the World Bank noted that in exchange for release of the second tranche of its agreed loan, the Korean government would have to demonstrate achievement of progress, satisfactory to the Bank, on enhancement of labor market flexibility. *See* News Release No. 99/1977/EAP, "Korean Reforms Boosted with Further US$2 Billion in World Bank Aid" (available at <www.worldbank.org/html/extdr/extme/1977.htm>). In Globalization and Human Rights (Public Television Broadcast, Oct. 28, 1998), a Korean union organizer argued that the IFI-induced reforms would jeopardize labor protections.

35. The policy arguably antagonized human rights as well. One set of rights centers around the economic right to "just and favorable conditions of work." *See* art. 23, Universal Declaration of Human Rights art. 7 U.N. Doc. A/811 (1948), *in* BASIC DOCUMENTS ON HUMAN RIGHTS 111 (Ian Brownlie ed., 1971) [hereinafter Declaration of Human Rights]; International Covenant on Economic, Social and Cultural Rights (1966), *in* BASIC DOCUMENTS ON HUMAN RIGHTS 199-210 (Ian Brownlie ed., 1971). The Covenant also includes the right to form and join trade organizations of one's choice, and the right of trade unions to "function freely" and to strike. *See id.* at 202. Another set of rights revolves around the civil and political right to freedom of association. *See* International Covenant on Civil and Political Rights, *in* BASIC DOCUMENTS ON HUMAN RIGHTS 207 (Ian Brownlie ed., 1971) ("Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.")

36. *See* Chantal Thomas, Democracy in the Fast Lane: The Debate over Fast-Track Trade Legislation (manuscript on file with author).

37. *See* James Gathii, *Corruption and Donor Reforms: Expanding the Promises and Possibilities of the Rule of Law as an Anti-Corruption Strategy in Kenya*, published concurrently in this volume.

one,[38] but would go further and argue that even if we accept the definition of good governance provided by the IFIs, that definition is compromised to the extent that the IFIs are willing to tolerate anti-democratic governance tactics in order to promote preferred economic reform policies. "Accountability of the public sector," a popular definition of good governance, on its face includes both fiscal and political accountability.[39]

The tendency of the IFIs to favor markets at the expense of democracy arises from this phenomenon (regretted by some and welcomed by others), according to which a well-functioning democratic process will often lead to redistribution away from a minority of dominant market actors;[40] it will therefore thwart IFI policies designed to favor such actors in the interest of generating economic growth. Diane Hunt has called the classical liberal policies employed by the IFIs the 'expanding capitalist nucleus" paradigm.[41] The IFIs' resistance to redistributive political dynamics is facilitated by two additional factors that often operate as tropes in policy literature. The first is the trope of the unfortunate but necessary "trade-off" between economic growth and policies designed to ensure some brand of social justice, whether in the form of human rights, environmental preservation, or economic redistribution through labor rights and social services.[42] The second is the notion that international economic law is wedded to "private law," with relatively little responsibility for "public law."[43]

The first trope, though still operative, has retreated in prominence following the implementation on a global scale of structural adjustment policies in the 1980s and 1990s that demanded a sharp tradeoff between

38. *See* John Ohnesorge, *"Ratch"eting up the Anti-Corruption Drive: Could a Look at Recent History Cure a Case of Theory-Determinism?*, published concurrently in this volume.

39. *See supra* note 4.

40. This juxtaposition of majority will against individual rights is of course a classic conundrum of constitutional democracy. Some constitutional theorists have argued that it was concern for the economic minority of the wealthy that produced the fear of "tyranny of the majority" that vexed the Federalists in drafting the U.S. federal constitution. *See* Charles A. Beard, AN ECONOMIC INTERPRETATION OF THE UNITED STATES (1929).

41. *See* DIANE HUNT, ECONOMIC THEORIES OF DEVELOPMENT: AN ANALYSIS OF COMPETING PARADIGMS (1989).

42. *See, e.g.*, Sylvia Ann Hewlett, *Human Rights and Economic Realities: Tradeoffs in Historical Perspective*, 94 POL. SCI. Q. 453 (1979); Robert E. Goodin, *The Development Rights Trade-Off: Some Unwarranted Economic and Political Assumptions*, 1 UNIV. HUMAN RTS. 31 (1979); *Economic Development and Human Rights: Brazil, Chile and Cuba*, 67 AM. SOC'Y INT'L L. PROC. 199 (1973).

43. This manifests itself both in the rejection of certain "public" issues, such as international environmental law, international labor law, sanctions for human rights violations, as outside the proper scope of international economic law institutions. *See* David Kennedy, *The International Style in Postwar Law and Policy*, 1994 UTAH L. REV. 7 (1994); Daniel K. Tarullo, *Beyond Normalcy in the Regulation of International Trade*, 100 HARV. L. REV. 546 (1987).

economic austerity and other government policy goals. By the early 1990s, the IFIs had moved significantly towards publicly and explicitly recognizing that basic individual and social needs could not be ignored without serious jeopardy to economic goals, since doing so eroded the infrastructural and human capital needed to drive any economic paradigm.[44] The second trope has begun to diminish, but only modestly, in the face of the increasingly broad scope and authority of the Bretton Woods institutions, as it becomes incongruous for them to ignore concepts traditionally raised elsewhere in the international order. Ignoring or discounting areas of public international law such as human rights, often described as necessary for democratic governance,[45] not only offends basic concepts of social justice but also may generate serious costs to the legitimacy of the Bretton Woods institutions in many member countries.

As it stands, however, the IFIs have paid attention primarily to ending financial corruption, rather than to corruption of the political process. The IMF defends its position by arguing that, as an institution that is primarily concerned with the monetary policy of its members, paying attention to democratic politics, and to the pressure for social justice that they often bring, falls outside its mandate.[46] The World Bank has paid more attention to democratic politics by discussing the importance of building civil society, that is to say the participation of various groups in the decision-making process. Yet so far the programmatic emphasis is on aspects of governance that are more important to investors, such as ensuring judicial enforcement of property and contract rights, and eliminating corruption in procurement and licensing. Thus, many charge that for the World Bank good governance has come to mean liberal

44. *See, e.g.*, INTERNATIONAL MONETARY FUND, SOCIAL DIMENSIONS OF THE IMF'S POLICY DIALOGUE (1995) (Pamphlet Series No. 47) (prepared for the World Summit for Social Development, in Copenhagen, Denmark, March 6-12, 1995) (recognizing that the structural adjustment "experience has shown the need for protecting vulnerable groups during the adjustment period . . . "); WORLD BANK, STRUCTURAL AND SECTORAL ADJUSTMENT: THE WORLD BANK EXPERIENCE, 1980-92 (1995) (Report no. 14691) (noting that "[t]he integration of the social dimensions of adjustment in the design of adjustment operations has been a major step toward addressing the transitory adverse impacts of adjustment on the poor").

45. Article 21 of the Universal Declaration of Human Rights proclaims "the right to take part in the government . . . directly or through freely chosen representatives." *See supra* note 35 at 110. It also states that "[t]he will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures." *See id.* For a leading discussion of this issue, including a consideration of the complexities surrounding the notion of an international legal entitlement to democratic government see Thomas M. Franck, *The Democratic Entitlement,* 29 U. RICH. L. REV. 1 (1994); Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L L. 46 (1992).

46. *See* Camdessus, *supra* note 5 at 3. ("The IMF is primarily concerned with macroeconomic stability, external viability, and orderly economic growth in member countries. Therefore, the IMF's involvement in governance should be limited to economic aspects of governance.")

governance.[47] This is true even though a recent study by Daniel Kaufman, sponsored by the World Bank, showed virtually no correlation between corruption and political ideology.[48] Kaufman found that a government with a left-leaning ideology was not more likely to be financially corrupt, and, in fact was somewhat less likely, than one with a right-leaning ideology. Despite this, the IMF and World Bank have in the past supported governments which suppress democratic rights and liberties in favor of implementing a certain brand of policies, now including a narrow view of anti-corruption. If they continue to do so in the wake of their own call to good governance, the IFIs may risk further damage to their legitimacy as supervisory international institutions.

To conclude: financial corruption is a heavy tax on economic growth and social welfare which should be redressed wherever it occurs. However, if the IFIs are to embrace an anti-corruption mandate, they must then also take care not to compromise democratic accountability in purportedly democratic governments.

A few objections to this conclusion should be recognized before closing. The first and most obvious is institutional competence – that is, whatever the larger implications, the IFIs are limited by their charters to financial functions. But by disbursing funds based on a wide range of criteria including those related to governance, the IFIs have themselves already punctured any narrow parameters that might have defined their original mandate and have become policemen outside their original jurisdictions. A second, and somewhat different concern would be that, once a member government's fidelity to its own democratic process is incorporated into IFI lending decisions and consultations, that process might become vulnerable to indirect manipulation by IFI staff. However, this potential for manipulation arguably already exists.

Finally, one might argue that domestic reforms pursuant to IFI funding criteria simply proceed in the same way that governments often undertake international obligations, even if those obligations are unpopular at home. Yet because IFI criteria do not constitute binding obligations under international law, they often are not approved through the political channels of borrower governments in the way that treaties or formal international agreements would be. Given the constant and central

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47. *See* Celia Taylor, *Good Government and Law: Legal and Institutional Reform in Developing Countries*, 26 DENV. J. INT'L L. & POL'Y 137, 138 (1997).

> 'Good government' came to mean non-intrusive government – one that supported the growth of a market. The prime focus of aid to developing countries is now the imposition of policy and institutional changes designed to advance the imperatives of the market in the hope that this in the long run would lead to greater equality and empowerment for all. *Id.*

48. *See* Daniel Kaufman, *Challenges in the Next Stage of Anti-Corruption*, *in* NEW PERSPECTIVES ON COMBATING CORRUPTION 139, 145 (1998).

role these institutions play in the governance of many developing countries, for the IFIs to disregard or discount political demands for redistribution seems ill-advised. Whatever the answer is to the question whether the IFIs are responsible for *ensuring* democracy in member governments, it seems clear that they should not *antagonize* democracy in these governments by endorsing policy changes that overturn democratically selected policies, unless those changes are similarly ratified.