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ENTITLEMENT AND DEVELOPMENT
An Institutional Approach to the Acquirement Problem

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'Do not attempt to do us any more good.
Your good has done us too much harm already!'
Sheikh Mohammed Abduh
(An Egyptian in London, 1890)

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I INTRODUCTION

Life, in an economic/juridical sense, is a matter of making and receiving claims. Thus, we may start our working days claiming access to a bicycle or motorcar (usually with a little key) or to a train (usually with a ticket). We may then claim access to a building (an office or factory), and so forth. Apart from making such claims, we also have to accept claims. Usually these claims are undisputed. But in case of dispute people have to show that their claims are legitimate, i.e. based on entitlement.

Entitlement is the possibility to make legitimate claims, i.e. claims based on rights. It is a function of both power and law. Power means opportunity, actual command. Law legitimizes and hence protects in case of dispute.

A right without power is not complete. The owner of a car, for example, becomes rather helpless once her vehicle has been stolen. Of course she may go to the police but as long as the command over her car has not been returned to her, she lacks a means of private transportation. Whether her entitlement materializes depends on certain additional arrangements (e.g. insurance) and the relative strength of law in that society.

Illegitimate power does give the possibility to claim but it lacks acceptability within the community one lives in and with that security. This is the position of the car thief. One might also think here of situations in which positive law is based purely on power. As an example Nicolae Ceauscescu, the Romanian dictator, could be mentioned. Nobody in Romania could claim to like him; everything and everybody in the country lay open to his claims. This power was based, however, on oppression (tyranny) rather than on a public-political process of legitimization. Once that power was challenged he could no longer claim anything, not even his own life. Apparently there are processes which can turn legality into illegality. We shall also touch upon processes of an opposite nature.

Naturally, claims may get into conflict with other people's rights. Behind different rights there are different interests. Rights legitimize claims only

insofar as there are corresponding obligations on the part of others to respect these rights. This depends on the relative strengths of the respective rights. In a society that tries to settle conflict through law, the conflicting interests are weighed against each other by some institution or person not part of the conflict, on the basis of norms (values).

It is the combination of law and power that makes entitlement such a precious affair. Even more than the occasional claim, the entitlement situation as such is an object of great desire. We all try to improve our entitlement continuously. Hence, more than a given state of affairs, entitlement is a process. It is part of general socio-economic processes in society. Actually there always exists an interrelationship between rights and obligations and their socio-economic context.

The focus of this paper is entitlement within the framework of development. Development means change and change produces conflicts in terms of rights and obligations. Entitlement analysis is a way of getting insight into such disputes.

In his Poverty and Famines: an Essay on Entitlement and Deprivation Sen tackles the problem of development and entitlement in regard to food. He explains some specific cases of famine by pointing at entitlement failure, rather than a decline in food availibility (Sen, 1981).

Indeed, a limitation to the calculation of aggregate food production per capita does not appear to bring us very far. Entitlement can offer a helpful approach in explaining for instance the failure of policies on intensive development zones, implying a change in Sen's terminology from production-based entitlement to trade-based entitlement within the framework of growing dependency on a new class of bureaucrats. Yet such an analysis would go a little beyond the framework of Sen's book. Sen tends to identify entitlement with legal rights deriving from state-law concepts such as ownership and contract. In Africa, however, where traditional systems of tenure still play a significant role, entitlement is a much more complex phenomenon. Entitlement is not simply entitlement. There is a great difference between the type of entitlement derived from membership of a clan or tribe and that which goes with citizenship of a modern nation state. The point may be clarified with reference to the Wollo-famine in Ethiopia to which Sen devotes a whole chapter. He points to the general availability of food in Ethiopia at the time of the famine and concludes

'the inability of Wollo to command food from outside was the result of the low purchasing power in that province'. Hence, in terms of policy, it would follow that Wollo should have received either money or food from other parts of the world. Is he aware of the new types of marginalization which systems of food distribution through modern means of charity might create?

In Mauritania, for example, during the drought of 1973, thousands of Nomads came to Nouakchott on the promise of free assistance. Many of those who were supplied with free food are still there, now not only poor but also dependent. In my view, Sen is much nearer the point when he remarks that the pastoral population, belonging to nomadic and semi-nomadic groups, 'were affected not merely by the drought but also by the growth of commercial agriculture, displacing some of these communities from their traditional dry-weather grazing land, thereby vastly heightening the impact of the drought'. In other words, Wollo's productive capacity had been reduced. Obviously, food availability and food entitlement cannot be rigidly separated, at least not in Africa. Sen appears to look at Africa with Asian eyes.

Generally, commercialization of agriculture based on the opening of new markets tends to be accompanied by modernization of the legal system. The emphasis usually falls on a modern system of private law, credit (connected with negotiable securities), foreign investment and land law (land as property).

Thus, in processes of modernization there is a tendency to move from collective institution-based entitlement (the individual derives his possibilities of claiming from his relation to a certain institution) towards private entitlement on a direct resource base (property, for example, or a labour contract). In such processes some people tend to fall out of the general system while getting marginalized. Another question is the general efficiency of modern systems of entitlement and dispute settlement in developing countries. These systems cannot be simply implanted, they require some time to get their institutional roots into society.

In development theory processes of entitlement tend to be neglected. Here we will try to present a general framework for entitlement analysis. Our approach is institutional in the sense of focusing on the relative strength of institutions from which entitlement may be derived.

First, we shall discuss different sources of entitlement and the nature of the acquirement problem.[1] Next, we shall try to relate our findings to

different ways of studying the development problematique. Finally, some conclusions will be drawn.

II AN INSTITUTIONAL APPROACH TO ENTITLEMENT

2.1 The nature of rights and obligations

Rights enable us to participate in processes of production, distribution and consumption of goods and services. Economic rights represent 'the abstract acknowledgement of the legitimacy of claims to income and to participation in resource allocation' (Samuels 1974, 118). The problem with rights is their relativity. One individual's rights are limited by another person's rights. Ownership, for example, is not to be regarded as an absolute right to 'use and abuse' a person's property but rather as a general presumption of entitlement on the part of the owner. Whether the owner's claims, indeed, will be respected depends also on other people's interests and the possible protection of these interests through rights.

Because of the general uncertainty as to the acceptance of a person's claims Samuels argues that rights cannot be regarded as pre-existing: 'The economic reality is that rights which are protected are rights only because they are protected; they are not protected because they are pre-existing' (Samuels, 1974, 118-19). Here he confuses rights and claims, as becomes further apparent in the sentence: 'Each present right is only one successful claim or expectation among others which did not materialize...' If, however, a claim does not materialize it does not mean that the person (A) concerned had no (pre-existing) right. There was just something lacking in the conditions necessary for the materialization of his claim. The problem may have been, for example, the existence of a conflicting claim by another individual (B) whose right had to take precedence.[2]

Actually, law is a process rather than a product; it is a process of continuous change in the way in which human behaviour is ordered through making and applying rules and settling disputes. Inevitably, legal rules are imprecise, requiring a non-mechanical application. This, for example, makes it impossible to determine in a normative and predictable manner which types of loss or injury

to private persons should be compensated. The compensation problem, in other words, is theoretically insoluble (Samuels, 1974, 1978, 1980).

Legal anthropologists have taken great trouble in trying to describe real types of legal order in terms of different distributions of rights and duties among individuals and groups. Such attempts are, however, bound to be frustrated by the radical indeterminacy of any type of legal order. The existence of preexisting rights does not imply a preexisting legality since, as was pointed out already, one person's rights may collide with another person's rights or with the public interest. Hence, Sally Falk Moore has proposed a conceptual framework which takes indeterminacy as the theoretical basis of social, cultural and legal relationships, an indeterminacy which individuals either try to exploit through 'processes of situational adjustment' or to combat through 'processes of regularization' (Falk Moore, 1983, Ch. 7).

In Sen's approach the entitlement of a person stands for 'the set of different alternative commodity bundles that the person can acquire through the use of the various legal channels of acquirement open to someone in his position' (Sen, 1987, 8). A person has to starve, Sen continues, 'if his entitlement set does not include any commodity bundle with enough food' (Sen, 1987, 8). Such formulations are, however, too static in character. Factual analysis of 'alternative commodity bundles' is not quite possible. Besides, people may well react to failure to acquire goods through use of their human rights. 'Men', Keynes once remarked, 'will not always die quietly. For starvation which brings to some lethargy and a helpless despair, drives other temperaments to the nervous instability of hysteria and to a mad despair' (Keynes, 1920, 213). Entitlement, in other words, may become a struggle.

Our approach is to concentrate on sources of entitlement rather than 'alternative commodity bundles'. It is the institutions of society that merit attention.

2.2 Sources of entitlement

Sen's approach to the acquirement problem is based on individual entitlement while focusing on ownership:

> In an economy with private ownership and exchange in the form of trade (exchange with others) and production (exchange with nature), E_i [the entitlement set of person i in a given society, in a given situation] can be characterized as depending on two parameters, viz. the endowment of the person (the ownership bundle) and the exchange entitlement mapping (the function that specifies the set of alternative commodity bundles that the person can command respectively for each endowment bundle). For example, a peasant has his land, labour power, and a few other resources, which together make up his endowment. Starting from that endowment he can produce a bundle of food that will be his. Or, by selling his labour power, he can get a wage and with that buy commodities, including food. Or he can grow some cash crops and sell them to buy food and other commodities. There are many possibilities... (Sen, 1981, 45-6).

What Sen describes here is the whole field of socio-economic relations governed by private state law (principally property and contract). He neglects, however, the extent to which social order in society is based on interaction in and among organizations (Falk Moore, 1983, 23). The acquirement problem cannot be studied satisfactorily without a corporate focus. Individuals are members of various corporate groups. A corporate analysis is necessary to escape 'from the conventional Western juristic categories, which though very useful for some purposes, are more often than not narrowly addressed to a particular kind of property, a particular category of transaction, or a particular category of relationship, rather than to a social milieu in the round' (Falk Moore, 1983, 25). Besides, a focus on the whole social environment reveals that people have not only rights but obligations as well, not only freedom but responsibility.

We discern four different sources of entitlement:

1. Affiliation to institutions
2. Direct access to resources
3. Arrangements by the State
4. The international legal order (human rights)

We shall first discuss each different basis of entitlement and then, in the next chapter, confront our analysis with processes of development.

2.2.1 Institution-based entitlement

As sources of entitlement, institutions may be seen as 'semi-autonomous social fields'. An institution is autonomous in the sense that it possesses its own rule-making capacities, and the means to induce or coerce compliance. It is only semi-autonomous as it is part of a larger social matrix which may invade into its autonomy (Falk-Moore, 1983, 55-6).

An obvious example of a 'semi-autonomous social field' is the tribe which allocates access to the land and rights to the fruits of its exploitation to its members - usually through the chief's authority - while expecting the fulfilment of various obligations on their part. But modern complex society, too, is full of such institutions. The enterprise, for example, is much more than just an employer while a job means more than merely labour contract. The job commits the 'employee' to more than a number of fixed working hours while it entitles him to much more than a specified income.

Other institutional bases of entitlement are political parties, trade unions, schools, universities, sports clubs and churches. People derive their security from belonging to such institutions. Dispute settlement within institutions tends to be of a rather particularistic nature, i.e. it defines an individual's place in the system not on the basis of general rules, but according to her own relative authority within the organization and the particular nature of the relationships in which she finds herself.

For different categories of people, peasants for example, in a certain area, or workers in a certain industry or people in the informal sector in a certain town, analysis might be made of their entitlement basis. This is, to a large extent, a matter of organizations, their relative power and their external and internal arrangements. In her paper on Law and social change: the semi-autonomous social field as an appropriate subject of study Falk-Moore presents such an analysis of the production of expensive readymade woman's dresses in New York:

> The key figures in this part of the dress industry are the allocators of scarce resources, whether these resources are capital, labor, or the opportunity to make money. To all of those in a position to allocate the resources there is a flow of prestations, favors, and contacts, producing secondary gains for individuals in key positions. A whole series of binding customary rules surrounds the

> giving and exchange of these favors. The industry can be analyzed as a densely interconnected social nexus having many interdependent relationships and exchanges, governed by rules, some of them legal rules, and others not. The essential difference between the legal rules and the others is not in their effectiveness. Both sets are effective. The difference lies in the agency through which ultimate sanctions might be applied. Both the legal and the non-legal rules have similar immediately effective sanctions for violation attached. Business failures can be brought about without the interventions of legal institutions. Clearly, neither effective sanctions nor the capacity to generate binding rules are the monopoly of the state (Falk-Moore, 1983, 79).

Thus, an analysis of institutions as bases of entitlement and commitment should focus not so much on rules but rather on the sources of the rules and the sources of effective inducement, coercion and claiming. This appears to be largely a matter of networks and people's position within these. In this connection, marginalization may be regarded as a process of outplacing people in the sense of disconnecting them from effective networks.

2.2.2 Direct resource-based entitlement

The key-word in entitlement positions which are based on a direct access to resources is the adjective own: my own labour, my own skills, my own knowledge, my own land, my own shop, my own car, my own house, my own bicycle, etc. On the basis of such ownership people may engage in arrangements of rights and obligations with others. Indeed, property and contract constitute the juridical basis of such entitlement positions.

Here it is not membership of an institution but law that provides security. It is the function of private law as guaranteed by the state, to provide security in the sense of 'the predictive states of mind, the expectations, that result from assurances given by the law of property and contracts' (Karst and Rosenn, 1975, 637). Thus a person who owns a piece of land may expect to use the fruits of it because society protects property, and a person who sells something under contract may expect payment because organized society has provided a regularized means of enforcing contracts. It is the law that enables individuals to make legitimate claims.

Unlike institutions which have a 'real' existence in the sense of forming part of social reality, no matter their legal status, property and contract are not real things but legal constructions, conceptions created by law. As Bentham has put it: 'Property and law are born together and die together. Before laws were made there was no property; take away laws and property ceases' (De Gaay Fortman, 1982b, 79).

Taking away laws would actually mean leaving allocation of resources and dispute settlement to the institutions as they have grown in reality while increasing the autonomy of the 'semi-autonomous social fields'.

The major principle of private law is individual freedom as a vehicle for the realization of private self-interest. Indeed private law is the field of rights rather than obligations. One person's interest, as protected by his rights, may conflict, however, with other people's interests as protected by their rights. Private law has developed mechanisms for weighing various different interests against each other on the basis of universal rules. Thus it constructed a law of torts. Where other people's interests are harmed, even an owner may act unlawfully and hence be condemned to restoration or at least compensation. Yet there remain many cases of damages without compensation because the action concerned was not considered to be unlawful ('damnum absque iniuria').

Direct resource-based entitlement is typically connected to a market economy based on freedom of enterprise and consumption and free exchange through a system of prices and markets. In such an economy there tends to be continuous change of which individual A, through the use of his rights, may benefit more than individual B. Thus, some people may see their wealth growing while others get into a state of poverty. It is not the primary function of private law to correct this. Beside freedom, though, it does accept equality as a legal principle. This takes, first of all, a formal character (both partners in a contract are 'equal' before the law). Through concepts like 'abuse of law' and 'undue influence' there has also been a growing attention for material inequality in the sense of inequality following from an unequal distribution of power. Principally, however, private law is not particularly well equipped to prevent substantial socio-economic inequality from arising, nor to tackle the relative poverty resulting from such conditions.

The debate in the British parliament in the early nineteenth century on the abolition of slavery presents an interesting example on the dichotomy between private law and public justice. While some members maintained that the masters must be compensated for the loss of their slaves Benjamin Pearson argued that 'he had thought it was the slaves who should have been compensated'. Samuels, who discusses this example in the framework of his analysis of the compensation principle, sees it as an indication 'of the need, in advocating public policy, of an ethical system, of a concept of justice' (Samuels 1974, 126 note 29). Although to some extent a 'socialization' of private law may well take place (De Gaay Fortman 1982a, 477-8) this type of law remains rather unrelated to social justice (Meijknecht 1987, 451). Its essence lies in the old Justinian precept suum cuique tribuere (giving everyone his due) in the sense of respecting existing rights rather than guaranteeing to people the entitlement that morally should be theirs.

Modern systems of private law are of a 'universalist' rather than 'particularistic' nature. It is the market with its impersonal relationships, which calls for rules formulated in such a manner that they can be applied to everybody in a more or less predictable way. In case of dispute the idea is primarily to apply the rules pertaining to the case rather than restoring harmony. It is not so much the two individuals A and B (plaintiff and defendant respectively) but society as a whole that should be able to live with the decision in the case between A and B. For this purpose disputes are brought to a judiciary whose independence and impartiality is considered to be essential. It is one of the tasks of lawyers to assist their clients in such a way that economic relations are embedded in a proper juridical setting. Thus, the functioning of direct resource-based entitlement in society requires much more than just a set of laws with jurisprudence.

2.2.3 State-arranged entitlement

Today, access to health-care, education, police protection and other collective goods is largely regulated by the State. State law produced for this purpose tends to be of an instrumental character in the sense that it is supposed to support and promote policies for collective action. The process of

socio-economic collectivization is based on interdependence in modern economies (De Swaan, 1988, 13).

The State gives and takes, through collective action and taxation respectively. Thus, it rearranges entitlement. Policies for this purpose are not always easily accepted. People may try to circumvent laws by changing the facts on which their treatment by the State were to be based. In response to taxation, for example, they may increase their deductable costs. One might call this 'fiscalization' of behaviour. It results in side law (ius obliquum) in the sense that not the intended effects of instrumental law but rather unintended effects dominate. A similar situation may arise in cases of subsidization. People try to fall into the category that would entitle them to a subsidy although clearly this subsidy was not intended for the likes of them. As an example we may mention subsidized housing of which people in higher income categories manage to benefit. The opposite occurs when people in the lower income categories do not succeed in using subsidies intended for their benefit. Indeed, non take-up of benefits is a well known problem in the literature on the welfare state.[3]

Indeed the modern State does not restrict itself to provision of collective goods, it also tries to implement policies on income distribution. To this end citizens are classified into different categories such as 'minimum incomes' or 'people living below the poverty line'. For administrative purposes such classifications have to be translated into legal categories. For reasons of distributive justice the definition of one social category leads to definitions of other categories that would otherwise get into an unfair position. Thus in the Netherlands in the 1980s thirteen different categories of 'social minima' had been defined. Schaffer speaks in this regards of 'the irony of equity' (Schaffer and Lamb, 1981). A bureaucratic measure in order to achieve equity results itself in new inequity that is corrected with a new bureaucratic measure, etc. Apart from financial problems - a high degree of taxation requires strong government and even then there will be increasing attempts at circumvention - bureaucratization constitutes a major constraint to state-arranged entitlement. There appear to be clear limits to the effectiveness of central administration.

Instrumentalist policies tend to be faced with not just side-effects and attempts to 'circumvent' intended entitlement reductions but also with a simple

reluctance to obey the law. Thus, apart from a formal (official) sector and an informal ('circumventing') sector, an evading sector (black market) comes into existence. As a result it becomes rather difficult to analyse, let alone direct, processes of entitlement.

A general problem with state-arranged entitlement is its subsidiary nature. People usually prefer primary entitlement in the sense that they have access to resources and rights to goods and services on the basis of their integration into the community rather than as compensation for dis-integration.

Subsidiary entitlement may be easily affected by the socio-political culture as expressed in the spirit of the time (der Zeitgeist). Thus, in practice there are no 'acquired rights' in the sense of a permanent and standing guarantee of entitlement by the state. New notions such as 'no-nonsense', 'deregulation', 'privatization' and the like may result in new policies with direct effects on the entitlement situation of certain categories of people. Indeed, state-arranged entitlement makes people dependent on those who are in a position to use (or manipulate) state-power. This becomes particularly problematical in situations of a corruptive nature in the sense that the whole process of declaring and enforcing State-law and settling disputes is misused for purposes other than their public-political aims. Where the distribution and organization of power is of a highly personal nature - networks of patron-client relationships - the introduction of new authority for public officials might merely promote corruption. Corruption, in a general way, may be defined as the misuse of office. In terms of legal sociology it may be regarded as the combination of universalism in theory with particularism in practice. This way of putting things makes clear that some degree of corruption is bound to exist everywhere.

To prevent corruption or, worse, tyranny, state power has to be depersonalized. The binding of all power, including that of the state, to law - 'not might but right' - is a first principle of the 'Rechtsstaat' (a state ruled by law). Other such principles are democracy in the sense of accountability and substitutability of those executing state power, and a judiciary independent from the executive.

In a 'Rechtsstaat' administrative law takes three different forms: law legitimizing the execution of state power, instrumental law aiming at certain policy effects and law guaranteeing the rights of citizens in processes of

collective action. Often these three different aspects can be found in the same Statute. As an example we may mention the field of environmental protection. The State should have power in this field, that power ought to be used for certain specified purposes and where it is used there should be guarantees for residents whose entitlement in terms of rights to health and well-being would be affected. Generally, in such an area of public policy, entitlement is arranged through a specification of duties including certain obligations on the part of the State. In a state ruled by law citizens may request that these be maintained.

2.2.4 Human rights as a source of entitlement

Human rights are based on the general principles of freedom, equality and solidarity (brotherhood). Their specification in the Universal Declaration of Human Rights as well as various covenants, protocols and conventions of the United Nations may be seen as an attempt to bind power, including the power of the national state. Civil and political rights - the 'basic freedoms' - imply a restraint on state power while social and economic rights require the state to take affirmative action.

A supranational process to guarantee human rights to individuals effectively exists only in Europe. It is true that states are under a general obligation to respect and promote human rights but procedures to enforce their realization by unwilling governments are of a political rather than judicial nature. In terms of individual entitlement people are dependent primarily on particularization and positivization by the legislative, the executive and the judiciary as institutions of their national state. Hence, those who lack citizenship - refugees, for example, or stateless people - are in a particularly weak position to enforce realization of their human rights.

This is not to say that as a source of entitlement human rights are insignificant. First, it is not only the State but other institutions as well which may threaten human rights. Binding the execution of power to a common (universal) morality constitutes the essence of human rights. Wherever power is executed and disputes arise, human rights may influence such processes as well as their outcome. 'The language of human rights', Justice Bhagwati has observed, 'carries great rhetorical force... At the level of rhetoric, human rights have an image which is both morally compelling and attractively uncompromising'

(Bhagwati, 1989, 1). It is, particularly, the judiciary which may play an important part in translating this rhetoric into normative decisions. Judges tend to reason in an evaluative manner, not so much oriented towards goals but rather towards norms (Graver, 1989, 60). They judge facts in the light of set norms while balancing various values against one another (e.g. social justice versus economic effectiveness, equity versus legal security). In processes of evaluating different interests in the light of norms human rights may play an important part. In his speech to a human rights seminar in the Caribbean in 1989 Justice Bhagwati cited several cases in which human rights have been positivized by the Indian judiciary (e.g. free legal aid for criminal defendants, as a result of interpreting Articles 2 (3)(a) juncto 14 (3)(d) of the International Covenant on Civil and Political Rights).

Judicial activism in the positivization of human rights is possible only where the judiciary is independent, creative and committed to human rights. But even then these rights will not lead to actual entitlement if law does not rule. It appeared to be difficult, for example, to implement the Indian Supreme Court's condemnations of bondage in outlying areas in which feudal landlords rather than the law were in control.

More important than the formulation and judicial positivization of human rights is their incorporation in day to day decision-making. Human rights play their most important part in conscientization: in making people aware of the need to fight for social justice. As Judge Learned Hand once put it:

'I wonder whether we do not rest our hopes too much upon the Constitution, upon laws and upon Courts. These are false hopes. Liberty lies in the hearts of men and women. When it dies there, no Constitution, no laws, no Courts can do much to help it. While it lives there, it needs no Constitution, no law, no Court to save it'. (Learned Hand, 1958, in Bhagwati, 1989, 10).

The basis of human rights is in the hearts of people. This gives these rights a substantial role in processes of entitlement despite their dependence on the State when it comes to particularization and positivization.

III AN INSTITUTIONAL APPROACH TO DEVELOPMENT

The term 'development' has the connotation of improvement. Improvement of what? We discern three different meanings:

(1) The development problematique is of an economic nature. Development implies improvement of the economic structure, restructuring the economy in such a way that with available resources at least people's basic needs can be satisfied. The constraint is lack of productivity.

(2) The development problematique is of a political nature. What should be improved is the economic order, i.e. the distribution and way of control of economic power. The constraint is dependency, both internationally and within the national economy (a dominant private sector).

(3) The development problematique is of a socio-cultural nature. What should be improved is the social order, particularly the opportunities for people to achieve better living conditions through their own decisions and their own efforts. The constraint is lack of emancipation.

We shall now discuss each of these three notions of development while paying special attention to questions of entitlement.

3.1 Development as increasing productivity

In the industrialized countries productivity has increased greatly through division of labour and specialization with technological advancement based on the exploitation of economies of scale. A process of intensification of agriculture, industrialization and urbanization has resulted in significant increases in average living standards. Even when it is admitted that there appears to be no automatic trickling down process ensuring the elimination of poverty, the first challenge in this view remains to increase the cake before trying to share it fairly.

In practice this results in a development strategy based on free enterprise, open competition and a market economy. It implies, as we saw, direct resource-based entitlement within the framework of a universalist legal system.

In their case book on Law and Development in Latin America, Karst and Rosenn show the problems arising with the introduction of a universalist legal system in a society with a predominantly particularistic legal culture (Karst and Rosenn, 1975, 638-9). In Latin America it appears to be difficult for the

universalist system to find any proper place at all, since personal connections still tend to triumph over a system of rules. This situation has its roots in the way the rules were introduced and applied in the colonial period. In a study of the colonial heritage of Latin America, Stein and Stein conclude that 'To the elite law became a norm honored in the breach. To the unprivileged, law was arbitrary and alien, therefore without moral force' (Karst and Rosenn, 1975, 701).

The institutional requirements of a market-oriented development strategy should not be underestimated. It implies a general transition from production-based to exchange-based entitlement. This requires a stable currency so that both in calculation and in actual exchange entrepeneurs stand on firm ground which demands a high degree of independency on the part of the Central Bank.[4] Besides, there should be a properly trained and independent judiciary making sure that disputes - likely to increase with a transition from a subsistence to an exchange economy - are settled in such a way that society can live with it. Of course, the freedom of the market economy cannot be a freedom to reap another person's harvest or to transfer another person's harvest to one's own stores. It is a freedom within the boundaries of the law. In implementing this law, society is more reliant on general respect for law and order than on the establishment of courts and bailiffs. Indeed even the market economy requires much more than just a set of laws; there has to be a mentality of professional honesty and integrity. This applies particularly to bookeepers, auditors and managers, who constitute an especially significant group in the market economy.

In terms of entitlement some more problems are likely to arise. Specific attempts to modernize the economy often fail because traditional structures of entitlement have been neglected (Schott, 1980). Where the entitlement structure changes from institution-based to direct resource-based entitlement, processes of marginalization of the weaker members of the community are likely to take place. Generally, processes of direct entitlement are characterized by a structural inequality. People may easily loose their access to land and/or capital goods while getting into the position of 'the unprotected worker' (Harrod, 1987). In Latin America this has been the fate of the indigenous population in processes of agricultural commercialization: from subsistence farmers to subsistence workers. In India the introduction of green revolution technology has seriously affected the entitlement position of the weaker groups

in society. Subsidiary entitlement in the form of food coupons distributed by the State cannot be regarded as a satisfactory compensation (Ramprasad, 1990).

It is generally accepted today that in reality automatic 'trickling-down processes' do not operate. Seers, for example, has thoroughly explained why GNP can grow rapidly without resulting in any reduction of poverty, unemployment, and inequality, while certain types of growth may actually cause social crises and political upheavals (Seers, 1972, 22). In his study of development strategies and the rural poor Saith came to the conclusion that 'if the required employment and food balances are violated, the process of growth in any egalitarian institutional environment is likely to have regressive distributional consequences' (Saith, 1989, 43). There appear to be substantially negative consequences of a process of continuous marginalization of traditional (customary) law. On the other hand we do come across situations of what may be called a small capitalistic nature in which peasants use new market opportunities while their entitlement basically remains within the sphere of traditional law (De Gaay Fortman, 1990, 240).

With a change in the entitlement structure people have to be made aware of their new rights. (The loss of old rights will be evidently noticed.) A second problem is their access to a new system of settling disputes. Those who often profit from the imposition of centralized universalist law are the legal and paralegal professionals. 'Those who often suffer are the preliterate, the illiterate, the common people closest to urban centers - people whose indigenous systems of law are sabotaged under pressures of modernization' (Nader and Todd, 1978, 2).

3.2 Development as reducing dependency

Dependency is viewed primarily in an international context. As Dos Santos has put it:

> By dependence we mean a situation in which the economy of certain countries is conditioned by the development and expansion of another economy to which the former is subjected. The relation of interdependence between two or more economies, and between these and world trade, assumes the form of dependence when some countries (the dominant ones) can do this only as a reflection of that expansion,

which can have either a positive or a negative effect on their immediate development (Dos Santos, 1971, 271).

Efforts to correct this situation by creating a New International Economic Order (NIEO) have not met with much success. Significant changes in the distribution of power are rarely achieved at the conference table. Within the national economies of the newly independent countries a remedy was sometimes sought in control of the dominant sectors (the export oriented enclaves) by the state. Indeed, state-oriented development strategies were regarded as necessary in the struggle against 'neo-colonialism' and 'neo-imperialism'.

In attacking the power of the Transnational Corporations (TNCs) such strategies have not been very successful. Usually, the TNCs could maintain their power (including the possibility of expatriating profits) through management contracts. The creation of state corporations and parastatals did, however, affect processes of entitlement. A new type of institution-based entitlement came into being: membership of the ruling political party or other forms of affiliation to the institutions of the State that entailed special forms of access to collective goods and services.

A state-oriented development strategy may not only transfer a major part of the economy to the collective sector, it may also manifest itself in price manipulation through taxation, subsidies, incomes policies and price control. For agricultural commodities, prices are often set directly, using monopoly marketing boards. Of course these policies directly affect entitlement. Those who benefit are mostly the urban consumers possessing as they do certain possibilities of creating political trouble; those who suffer tend to be the rural producers. The latter are bound to react either by avoiding the law or by 'lumping it' (Galanter). Where producer prices are subeconomic a lot of produce will tend to be sold in black markets.

Tanzanian land reform after independence presents an interesting example of avoidance of new laws rearranging entitlement. As early as 1962 President Nyerere expressed his concern with freehold tenure: 'The government of the one-party state must go back to the traditional African custom of land-holding. That is to say a member of society will be entitled to a piece of land on condition

that he uses it. Unconditional or 'freehold' ownership of land [which leads to speculation and parasitism] must be abolished' (in Rosen, 1978, 19).

The new policy resulted in a new land law in which title was dependent on appropriate land use, defined to mean cultivation by the fifth year of occupancy of five-eights of the land leased. In order to avoid losing their titles, absentee land-owners now planted long-term crops such as coffee and citrus but then left them untended, thus failing to increase local food production.

Under the new law land could still be sold, but with the consent of the government, and Valuation Officers had to establish the value of the improvements. Those officials were, however, also responsible for the collection of transfer taxes. Since these taxes increased with the value of the land, there was a constant tendency to upgrade that value with little regard for actual improvements. Rosen analyses this situation in his review of law as an instrument of development and concludes that:

> ... despite the claim that private ownership would be brought to an end, the rights of Tanzanian landholders probably remain as great after the passage of the new land laws as before. Landholders still have the right to develop their land through the use of wage labor and to sell that land for profit. The new laws may have decreased the farmers' security in the land but their ability to transfer land has changed less than have the procedures for alienating it. (Rosen, 1978, 20-1).

The reason for this legal reform was the fear that the continuation of freehold after independence would result in the formation of a class of African landlords. Instead, another elite has emerged: the new bureaucrats. (Ergas, 1979).

The problem with public officials in Africa is that their attachment to their office is often in terms of personal entitlement rather than legal and moral obligations. The term 'personal' should not be understood as 'individual' here. These civil servants live in constant awareness of their communal obligations but those are not the same as civil duties (Jackson and Rosberg, 1985, 52).

Indeed, most African states can be described as marginal in the sense of lacking internal legitimacy. 'The national realm of open, public politics that usually existed for a brief and somewhat artificial period before and

immediately after independence has withered and been supplanted by personal power, influence, and intrigue in most sub-Saharan countries' (Jackson and Rosberg, 1985, 52). The problem is not just the 'softness' of state institutions but their total lack of relevance except in regard to entitlement for those instrumentally attached to them. In societies in which knowing one's rights matters less than knowing one's friends state-oriented strategies for development are bound to fail in terms of both productivity and equity.

The tragedy for most developing countries is that they are trying to construct their national states in a time in which their economies tend to be more and more internationalized. 'Thus, whereas the political consolidation of the national states in the presently developed societies during the nineteenth century was well in harmony with the economic integration of the various local markets that occurred at that time, the LDCs of today try to achieve a political consolidation on a national level in a situation where markets and firms tend to 'explode' over the borders of the national state' (Lindbeck, 1975, 36).

3.3 Development as emancipation

In socio-economic policies three different notions of poverty may be discerned. First, poverty is regarded as abnormality, as a deviation from the 'normal' pattern, as a disturbance of law and order. Hence, poverty would have to be isolated from the rest of society. The poor are the rebels, actual or at least potential. In former ages this view resulted in the construction of 'poor-houses' or 'work-houses', where the poor were kept away while being forced to work. Today we may think of certain suburbs and shanty-towns that have got the character of ghettos. Because these places cannot be completely cut off, the rich feel they also have to isolate their wealth from the poor by big walls, dogs and guards. On an international level this is done by a rigorous visa policy combined with a thorough protection of the borders ('fortress Europe').

A second way of looking at poverty is to regard it as need. The poor are the needy, the destitute. They should be helped. Of course, they should themselves cooperate in the process of 'aid to the poor'. Thus, poor people should concentrate on their basic family needs. In the thirties this view led to quite some discussion on the question of what poor people really needed. Naturally, the first change in their own consumption pattern should be to avoid

pubs. Beer is not good, but also newspapers are not really necessary, and what about birthday presents? Some relief workers felt these should also be avoided, others regarded birthday celebrations as part of basic needs.

The point is that in this second view poverty is regarded as a phenomenon of an absolute nature. Why do we sometimes see television antennaes in slum areas with undernourished children? Because television is part of modern society and needs are of a social rather than individual nature. This insight results in a third way of viewing poverty: as social injustice, as a consequence of socio-economic equality. Poverty is relative, rather than absolute. The poor are victims of unequal patterns of distribution of power. Poverty, basically, is a matter of inadequate sources of entitlement. An unequal distribution of power is rarely corrected from above, as a kind of favour. It can be rectified only through emancipation of the poor themselves or, in other words, 'development from below'.

In a country like Brasil the bottom 20% of the population get only 2% of GDP while the top 20% are receiving 67% : a ratio of more than 33:1. (In comparison, for Taiwan the figures are 9% for the bottom 20% against 36% for the top 20%: a ratio of 4:1.) As long as the roots of this basic inequality are untackled, policies for development are bound to result in inflationary spirals, with negative effects in terms not only of equity but productivity too (Sachs, 1989).

Entitlement, as we saw, is a matter of both power and rights. Since power is unlikely to be properly distributed from above, it has to be acquired from below, through cooperative action by those who lack entitlement. Karst and Rosenn's discussion of Bolivian land reform in 1952-53 is entitled Land Reform First, Then Law. 'Effective land reform in Bolivia occurred when the campesinos occupied the great estates, ejecting both owners and administrative foremen' (Karst and Rosenn, 1975, 650). This land reform was followed by a great deal of legal activity arising out of the peasants' desire to stabilize the situation by acquiring proper titles.

Thus, emancipation-oriented strategies for development primarily aim at social rather than legal change. In a first stage of this process the action may well go against positive law. For those involved in such types of coercive or 'self-help' action it is important that they can base themselves upon a universally accepted morality. It is here that human rights may play an

important part, especially social and economic rights such as the rights to work, food, health, education, clothing and housing.

Social and economic rights are usually regarded as instructions to governments rather than subjective rights (see above p. 13). A particularization and positivization of these rights, however, would not be something completely new. In most legal systems, starting with Roman law, we find the rule 'Quod non est licitum lege, necessitas facit licitum' (What is illegal according to the law, necessity may render legality) and in positivizing the term necessity or need, social and economic rights have played a role. In nineteenth century France, for example, Judge Malinvaud ('le bon juge') used to accept force majeur whenever it was evident that a person accused of theft of food had been in a state of hunger (De Monchy, 1905). Naturally, with the acceptance of the International Covenant on Economic, Social and Cultural Rights legal practice should now aim at a realization of social and economic rights.

In Roman law we find a specification of an economic right in the rule 'Nemo de domo sua extrahi debet' (Nobody should be ejected from his own house). Acceptance of the right of squatters to occupy an empty house goes a great deal further in positivization of a right to housing. Thus, economic and social rights may have an impact beyond the policies of the state while influencing social and economic relations among people. This is termed their 'horizontal operation'.[5]

A first step in any entitlement-oriented development strategy remains conscientization in the sense of promoting people's awareness of their human rights. But the real challenge is to build institutions in which realization of these rights finds its guarantees, in the first place through unionization of the poor. Emancipation requires a thorough grounding of entitlement in well-functioning institutions.

IV CONCLUDING OBSERVATIONS

In development policy the three different views on development as described above cannot be clearly separated. Particularly a combination of growth (of productivity) and redistribution (Jolly, 1975) is regarded as a major challenge.

Redistribution, however, is usually regarded as a matter of correcting the outcome of the economic process as it would have taken place without intervention. It is, in other words, a matter of justice in the sense that the conflicting interests in society are accommodated in a tolerable manner.

For Dworkin the essence of law as a way of legitimizing, binding and regulating power is integrity, which he divides into three component virtues: fairness, justice and due process: 'Justice ... is a matter of the right outcome of the political system: the right distribution of goods, opportunities and other resources. Fairness is a matter of the right structure for that system, the structure that distributes influence over political decisions in the right way. Procedural due process is a matter of the right procedures for enforcing rules and regulations the system has produced' (Dworkin, 1986, 404-5).

Rather than on justice, the institutional approach to entitlement and development taken in this paper focuses on fairness in the sense of proper institutions for decision-making and on procedural due process in the sense of proper functioning mechanisms for adjudication. In all four sources of entitlement which we examined, institutions play a central role. Thus, even in direct resource-based entitlement it is institutions, such as an independent, well trained and optimally impartial judiciary, which guarantee stable processes of making and receiving claims.

In his well known article Why the 'haves' come out ahead Galanter has pointed to four factors explaining practical inequality in a society based on the principle of legal equality: the different strategical positions of parties, the role of lawyers, institutional facilities and characteristics of the legal rules themselves. In developing countries those who lost their traditional access to the law while not knowing how to manipulate the law system will be particularly active in 'lumping' the law (Nader and Todd, 1978,8). 'This is done all the time by "claimants" who lack information or access or who knowingly decide gain is too low, cost too high (including psychic cost of litigating where such activity is repugnant)'(Galanter, 1974, 124-5).

Although in a process of continuous marginalization, traditional institution-based entitlement is not always irrelevant. Schott, for one, has given a number of examples of failures in development projects in Ghana due to ignorance of traditional entitlement structures (Schott, 1981). It is important

to regard customary sources of law not so much as possible constraints to processes of modernization but rather as guarantees against growing inequality and marginalization. If traditional institutions really have to go, then they should be replaced by new entitlement processes, also rooted in firmly built institutions. In regard to institutions it would be wise to follow Cardinal de Lavigerie's advice on traditional customs. When his White Fathers went out to Africa he told them never to attempt prohibiting a local custom unless two conditions were fulfilled: one, it should be absolutely certain that a continuation of the custom concerned would be incompatible with their cause (in their case spreading the Christian faith); and two, together with the local people they should find a way to a new custom that could effectively replace the old one.

In developing countries the marginalization of traditional institutions has generally resulted in a vacuum in the sphere of 'meso-structures' or to use a revived expression, 'civic society'. There is a lack of strong, properly functioning institutions in between the macro-bureaucracies of states and giant corporations and the micro-structures of more or less extended families. In development processes in the sense of attempts to increase a country's productive potential, the transition is often from institution-based entitlement to direct resource-based entitlement. To prevent a growing inequality and resulting patterns of poverty, development policy might rather attempt to find transitions from traditional institution-based entitlement to entitlement processes rooted in new institutions. Since institutions cannot be satisfactorily imposed upon people from above, this implies more participatory types of development. Reference may be made, in this respect, to the United Nations resolution on the right to development (UN Resolution 41/128 of 4 Dec. 1986). The only new element which this resolution adds to already existing international 'development law' is participation, the right for people to participate in decision-making on processes of development which affect their own lives. As it was already stated in an old regula iuris: 'Quod omnes tangit, debet ab omnibus approbari' (What touches all, has to be approved by all).

In modern society state-arranged entitlement is, of course, inevitable. A general problem in socio-economic processes involving state-arranged entitlement is, however, that rights and obligations are not as closely connected within the same structures as is usually the case in other entitlement

sources. Usually there is a separation of benefits and contributions. This drawback is likely to be of lesser significance when the supply of collective goods is truly based on processes of collective action (De Swaan, 1988). In developing countries, however, such goods are often imported in the same way in which individual goods get to the local market. While colonial rule meant rather thinly spread administration (Killingray, 1986, 413), the marginal state inherited at independence has now got overburdened with tasks for which it never received the proper political, legal, economic, social and cultural equipment. Particularly in Africa, this constitutes a major constraint to development.

Where development policies result in undesirable effects on primary entitlement often the reaction is not to rethink development but rather to look for compensation in state-arranged schemes of subsidiary entitlement. With a relatively strong state such schemes may meet with some degree of success (see, for example, Kohli 1989 on a 'Food for Work Programme' in West Bengal) but marginal states are bound to fail in achieving both efficiency and equity in this way.

In relation to the marginality of some states in developing countries two different tendencies may be observed. The first is a 'structural adjustment programme' as requested by international financial institutions such as the World Bank and the International Monetary Fund. Deregulation and privatization, however, require not a soft but a strong state, as experience in Western industrialized countries has demonstrated. This is less paradoxical than at first sight it might seem to be since, as we have already observed, a market-oriented development strategy implies a number of important institutional demands. If deregulation is simply regarded as a return to nineteenth century capitalist Gesellschaft-types of law it would merely 'help to legitimate a legal order based on social and economic inequality' (Hepple, 1988, 165). As Hepple continues:

> The common future of the modern trends to deregulation is not that state intervention is made to disappear so as to revive a lost ideal of the 'pre-intervention' state. It is rather that the priorities of an interventionist state, and its methods have been changed. Instead of giving priority to state policies such as the protection of tenants or of individual employees, the overall objective of the state has been redefined as being the revitalisation of the profit-based market economy. Business men and others are being forced from legal responsibilities which might prevent them from responding

> effectively to changes in the market. The return to markets of freely contracting individuals responding to the price mechanism (generally on the basis of private ownership) does not mean an absence of legal intervention. On the contrary, it means an unprecedented increase in the regulation of society by the mechanisms of private law (Hepple, 1988, 165-6).

A second type of reaction to the paradox of the overburdened marginal state has been the replacement of state-arranged entitlement by new frameworks administered by non-governmental development organizations. The snag here has been clearly noticed by Saith, in relation to rural poverty:

> Arising from an increasing awareness of the inability of the official delivery systems to reach the poor, who have virtually no representation in them, there has been a general drift towards reliance on the institutional form of the non-governmental development organisation as a device for affecting this transfer of official or other resources. Bootstrap operations and self-help schemes abound and are intended to provide an appropriate institutional framework for generating a reoriented pattern of development. However, these schemes even collectively constitute a very minor change... In addition, virtually all such NGDOs carefully circumvent most structural issues to do with the organisation of labour as a collective countervailing force, or to do with access to laws (Saith, 1989, 53).

Although the last observation might be regarded as an exaggeration, Saith certainly has a point here. Where processes of entitlement require collective action for the provision of collective goods, NGDOs tend to be poor substitutes for state institutions. Often the sphere in which they operate is one of particularism, with power rooted in relations to foreign donors rather than in social relations directly involving the 'target groups'. The typical role for NGDOs is in the construction of civic society (the 'meso-structures') in an economy in which division of labour, specialization and exchange gradually take the place of subsistence production. Thus they would, indeed, contribute to institution-building albeit of a different nature than in the provision of collective goods and services.

The decline and fall of marginal states remains a cause for concern as long as effective supranational authorities based on processes of marginalization have not been formed. In Zambia, for example, a policy of Zambianization in state institutions is now being replaced by de-Zambianization. The former

policy, just after independence, was based on the need for nation-building, the latter is a reaction to the exodus of capable Zambians to the private sector. In both instances we have to do with rather marginal reactions to the problems of institution-building.

In order to find development strategies oriented towards emancipation of the poor, proper analyses of the constraints in present entitlement processes are essential. More than in any other field this has been done in relation to women's rights, particularly with regard to access to land and the satisfaction of basic family needs. While for Africa such studies have demonstrated, generally, the drawbacks in substituting processes of direct resource-based entitlement for traditional institution-based entitlement, Wazir's study of the Asian context shows that traditional processes of entitlement should certainly not be romanticized (Wazir, 1987).

It is particularly in emancipation struggles that human rights may play a significant role. This requires, in the first place an increased participation of those engaged in such struggles (women, ethnic and other types of minorities, indigenous peoples) in established judicial processes regarding the implementation of these rights (De Gaay Fortman, 1989, 34). Secondly, human rights form a basis for policies of conscientization. When these two aspects are combined in the sense of using concrete cases to increase a general awareness of basic rights we may speak of 'structural legal aid' (De Gaay Fortman, 1990, 240).

Where attempts to participate in established processes of entitlement and adjudication appear to be fruitless - in the case of a totally corrupt or even 'terrorist' state, for example - polarization becomes inevitable. In that situation human rights constitute a weapon not just to correct the execution of power but to change existing power structures radically. In this way, combining conscientization with polarization, human rights have functioned in Eastern Europe in the revolutionary year 1989. It is interesting to note that participation of the Eastern European States in the CESC process (the 'third basket' of the Helsinki declaration) provided the polarizing forces with a legitimization of their struggle.

It is in the institutions of society that human rights find their protection. In the area of civil and political rights it is now widely acknowledged that one should not expect their realization in political structures of a dictatorial, let alone tyrannical nature. But economic and

social rights, too, are more than just 'instructions' - whatever, in a juridical way, that may mean - to national states. These rights are not simply a matter of subsidiary arrangements by the state; they may play their part in all processes of entitlement. What is the meaning of a right to food or a right to housing, for example, in relation to property rights? In his Poverty and Famines Sen relates how during a famine in West Bengal people were starving on the pavement of well-stocked food shops (Sen, 1981, ..). Police protection was used here to prevent rather than promote a realization of the right to food. The law, as Anatole France observed, prohibits the rich and the poor alike to beg on the streets and to sleep under the bridges.

In the same way in which civil and political rights have to be rooted in a political order, economic and social rights would have to acquire institutional protection in an economic order. By the 'economic order' we mean the distribution and way of control of economic power in a society. However, in operationalizing economic and social rights in terms of institutions, values and methods of valuation we are still at the beginning of a long process. Advanced as development science may be in techniques of cost-benefit analysis, in entitlement analysis it is still in a rather primitive stage.

Human rights, in their Western historical context, suffer from a rather one-sided anthropocentric focus. This becomes quite clear when we look at the necessity of respecting and protecting nature. The Experts Group on Environmental Law of the World Commission on Environment and Development has proposed a number of 'legal principles for environmental protection and sustainable development'. 'The first and keystone principle', they state, 'is the fundamental right of all human beings to an environment adequate for their health and well-being' (Munro and Lammers, 1986, 2). Naturally, there is a close relationship between health and well-being and the quality of nature as the 'victims of development' (Khor Kok Peng, 1984) have often experienced. But would this imply that (wo)man is free to cause serious damage to nature as long as negative effects on the health and well-being of other human beings cannot be proven?

What then should we speak of? The rights of nature? Juridically that would be rather meaningless since nature is in no position to claim enforcement of its 'rights'. What it all amounts to is the obligations of (wo)man towards nature. The United Nations approach to human rights tends to be rather rights-oriented.

In the more community-centred approach of the African Charter we find a much stronger emphasis on obligations. Indeed, human dignity is unthinkable without obligations. In an eco-centred approach - as usually taken by the indigenous peoples in North and South America - this becomes quite clear too.[6]

Of course a code of conduct specifying human obligations towards nature will not be enough. The present exploitation of nature is based on externalization of costs by enterprises looking for 'profitable' opportunities to invest. The internationalization of economics is insufficiently balanced by an internationalization of the economic order that provides an institutional protection of 'the environment', including proper mechanisms for adjudication.

Development appears to be, first and foremost, a matter of institution-building and institution-strengthening. In the first period of development cooperation - the fifties and sixties - this view used to have a certain influence on policies of international agencies such as the World Bank. During the later seventies and the eighties 'no-nonsense politics', 'the new realism' and 'supply-side economics' resulted in significant changes in development policies. Entitlement analysis may bring development policy back to its core: institution-building.

Notes

1. The term 'acquirement problem', as used by Sen, is to be understood here as the problem of getting access to the necessary resources and acquiring the goods and services needed. Indeed, Sen speaks of 'legal channels of acquirement' (Sen, 1987, 8). See also Sen 1986, p. 2 ff. on 'Economics and the Acquirement Problem'. 'The Acquirement Problem', Sen states, 'is often neglected not only by non-economists, but also by many economists, including some great ones' (Sen, 1986, 5).

2. Samuels' view comes down to the belief that all subjective rights are merely fictions. This view was taken by Bentham who stated: 'The word right is the name of a fictitious entity: one of those objects, the existence of which is feigned for the purpose of discourse, by a fiction so necessary, that without it human discourse could not be carried on. A man is said to have it, to hold it, to possess it, to acquire it, to lose it. It is thus spoken of as if it were a portion of matter such as a man may take into his hand, keep it for a time and let it go again' (as quoted in Olivier, 1973, 50). Today this view is taken by legal positivists, who refuse to discuss law in normative terms. Sen's approach, too, is descriptive rather than normative.

3. A citizen who wishes to make use of her rights to a subsidy or welfare allowance has to cross at least five different barriers:
   1. She should know that there is such a scheme.
   2. She should know where to get information about that scheme.
   3. She should overcome any embarrassment in collecting the information.
   4. She should be able to understand the information - the brochure - and to apply that to her own situation.
   5. She should fill in the forms while going through the whole bureaucratic procedure.

   One particular cause of trouble arises during the moment of applying. In an investigation into take-up of benefits in the Netherlands, Filet found that no less than 30% of the respondents were of the opinion that they had submitted a formal request for social welfare while the civil servants concerned felt they had just supplied information (Quoted in Van Oorschot, 1989, 9).

4. Remarkably in Eastern Europe the independence of the Central Bank appeared to be one of the first priorities in the process of restructuring the economy (perestroyka). In the USSR, for example, the President of the Central Bank is no longer a member of the Politburo, responsible to the CPSU.

5. For a horizontal functioning of social and economic rights, those who claim on the basis of these rights clearly have to take action. Through action first, and acquiescence to the new situation later, a pre-existing illegality may be turned into legality. An example of such a process in international law is the phenomenon of humanitarian intervention. Although any type of military intervention has been declared illegal, the interna-

tional community (as represented by the UN and the Security Council) may well acquiesce to an intervention that was carried out for humanitarian purposes (e.g. India in 1972 in the case of East-Pakistan which later became Bangladesh).

6. Obligations on the part of states have already been proposed by the Experts' Group on Environmental Law that was connected to the Brundlandt Commission, in a Universal Declaration of Human Obligations towards Nature. These obligations would have to be supplemented by obligations on the part of companies and other productive agents (e.g. farmers) and obligations on the part of consumers. See Munro and Lammers, 1986.

Bibliography

Almond, G.A. and S. Verba (eds) (1989) The Civil Culture Revisited. London: Sage.

Bernhardt, R. and Jolowicz J.A. (1987) International Enforcement of Human Rights. Berlin: Springer Verlag.

Beukes, E.P. and Fourie, F.C. v.N. (1988) 'Economic Rights in a Charter of Human Rights in South Africa?', The South African Journal of Economics. 56 (4): 298-316.

Bhagwati, P.N. (1989) Address to the Caribbean, Human Rights Seminar, Jamaica, September 1989 (not published).

Biesheuvel, M.B.W. and Flinterman, C. (eds) (1983) De rechten van de mens. Amsterdam: Meulenhoff Informatief.

Burkens, M.C. (1989) Algemene leerstukken van grondrechten naar Nederlands Constitutioneel recht. Zwolle: Tjeenk Willing.

Dworkin, R. (1977) Taking Rights Seriously. London: Duckworth.

Dworkin, R. (1986) Law's Empire. London: Fontana.

Engels, J.W.M., et al. (eds) (1989) De rechtsstaat herdacht. Zwolle: Tjeenk Willing.

Ergas, Z. (1979) 'La politique des villages Ujamaa en Tanzania: la fin d'un mythe', Revue Tiers Monde (Jan-March): 169-86.

Falk Moore, S. (1983) 'Law as Process'; an Anthropological Approach. London: Routledge & Kegan Paul.

Fitzpatrick, P. and A. Hunt (eds) (1987) Critical Legal Studies. Oxford: Blackwell.

Gaay Fortman, B. de (1982a) 'Parlement en hercodificatie', Weekblad voor Privaatrecht, Notariaat en Registratie. No. 5617: 474-8.

Gaay Fortman, B. de (1982b) 'You Cannot Develop by Act of Parliament: Rethinking Development from the Legal Viewpoint', B. de Gaay Fortman (ed.) Rethinking Development. The Hague: ISS.

Gaay Fortman, B. de (1989) 'La obtención de los derechos indios', M. Jansen (ed.) La Visión India'; Tierra, Culture, Lengua y Derechos Humanos. Leyden: Musiro.

Gaay Fortman, B. de (1990) 'The Dialectics of Western Law in a Non-Western World', in J. Berting et al. (eds) Human Rights in a Pluralist World - Individuals and Collectivities. Westport: Meckler.

Graver, H.P. (1988) 'Norms and Decisions', Scandinavian Studies in Law 4-32: 49-67.

Griffiths, J. (1989) 'Bestaat de Rechtsstaat?', in J.W.M. Engels et al. De Rechtsstaat herdacht. Zwolle: Tjeenk Willing.

Harrod, J. (1987) 'Power, Production and the Unprotected Worker'. New York: Columbia University Press.

Heijde, L. Leijken, J., Mertens, Th. and Vermeulen, B.P. (eds) (1989) Begrensde vrijheid. Zwolle: Tjeenk Willink.

Hopking, M. and Hoeven, R. van der (1983) Basic Needs in Development Planning. Aldershot: Gower.

Jackson, R.H. and Carl G. Rosberg (1985) 'The Marginality of African States', in G.M. Carter and P. O'Meara (eds) African Independence: The First Twenty-Five Years. London: Indiana University Press.

Netherland International Law Review, 31 (1984)2: 149-82.

Jolly, R., (1975) 'Redistribution with Growth?', in Bulletin of the Institute of Development Studies: 1-28.

Jong, L. de and Olivares, J. (1989) Het gevecht om water in Lirima. The Hague: Solidaridad.

Killingray, D. (1986) 'The Maintenance of Law and Order in British Colonial Africa', African Affairs, July: 411-37.

Kohli, A. (1989) 'The State and Poverty in India'. Cambridge: University Press.

Lindbeck, A. (1975) 'The Changing Role of the National State' in Kyklos, Vol. 28 - 1975: 23-46.

Meij - van Bruggen, R. (1989) Grondrechten als dilemma van overheidsoptreden, HRWB Report, The Hague, October.

Monchy, S.J.R. de, (1905) De Nederlandsche Wetgever tegenover de armoede: 31-2.

Munro, R.D. and J.G. Lammers (eds.) (1986) 'Environmental Protection and Sustainable Development: Legal Principles and Recommendations'. London: Graham & Trotham.

Olivier, P.J.J. (1973) 'Legal Fictions: An Analysis and Evaluation', Doct. Diss. Leyden: Beugelsdijk.

Oorschot, W. van and Kolkhuis Tanke, P. (1989) Niet gebruik van sociale zekerheid: Feiten, Theorieën, Onderzoeksmethoden. Report voor Ministerie van Sociale Zaken en Werkgelegenheid, Commissie Onderzoek Sociale Zekerheid, No 16A, The Hague, March.

Pearse, A. (1980) Seeds of Plenty, Seeds of Want: Social and Economic Implications of the Green Revolution. Oxford: Clarendon Press.

Ramprasad, V. (1990) 'The Hidden Hunger - Food Policy in India and its Impact on Entitlement'. Penang, Malaysia: Third World Network.

Rosen, L. (1978) 'Law and Social Change in the New Nations', Comparative Studies in Society and History (1978): 14-32.

Sachs, J.D. (1989) 'Social Conflict and Popular Policies in Latin America, NBER Paper no. 2897, Washington DC.

Saith, A. (1989) Development Strategies and the Rural Poor. Working Paper Series No. 66. The Hague: ISS, November.

Samuels, W. (1974) 'An Economic Perspective on the Compensation Problem', Wayne Law Review 21: 113-34.

Samuels, W. and Mercuro, N. (1977) 'The Role of the Compensation Principle in Society', Research in Law and Economics I: 210-45.

Samuels, W.J. and Mercuro, N. (1980) 'The Role and Resolution of the Compensation Principle in Society: Part Two - The Resolution', in Research in Law and Economics 2: 103-28.

Santos, Th. dos (1971) 'The Structure of Dependence', K.T. Fann and D.C. Hodges (eds), 'Readings in U.S. Imperialism'. Boston: Porter Sargent Publisher.

Schaffer, B.B. and G.S. Lamb (1981) 'Can Equity be Organized?' Equity, Development Analysis and Planning'. Farnborough: Gower.

Schott, R. (1981) 'Law and Development in Africa', Law and State 24: 30-41.

Seers, D. (1972) 'What are we trying to measure?', Nancy Baster (ed.) 'Measuring Development: the role and Adequacy of Development Indicators. London: Frank Cass.

Sen, A. (1986) 'Food, Economics and Entitlements', World Institute for Development Economics Research of the United Nations University, February.

Sen, A. (1987) 'Hunger and Entitlements', World Institue for Development Economics Research of the United Nations University, Helsinki.

Sen, A. (1988) Poverty and Famines. An Essay on Entitlement and Deprivation. Oxford: Oxford University Press.

Swean, A. de (1988) In Care of the State: Health Care, Education and Welfare in Europe and the USA in the Modern Era. Cambridge: Polity Press.

Veld, R. in 't (1989) De verguisde staat. The Hague: VUGA.

Wazir, R. (1987) Women's Access to Land as Owners and Workers: a Stocktaking for Five Asian Countries, Paper for ESHL/FAO, Rome, October.

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