The Paradox of Free Market Democracy: Rethinking Development Policy

Amy L. Chua*

Markets and democracy are the twin pillars of prevailing development orthodoxy. Many have explored the ways—"theoretical, historical, and empirical"—in which these two pillars are said to reinforce each other. By contrast, this Article will focus on an inherent instability in free market democracy.

For a long time, leading political philosophers and economists held that market capitalism and democracy could coexist, if at all, only in fundamental tension with one another. Markets would produce enor-

* Professor of Law, Duke University. A.B., Harvard University, 1984; J.D., Harvard Law School, 1987. For their helpful comments, I would like to thank Bruce Ackerman, Ian Ayres, Christopher Bruner, William Burke-White, Owen Fiss, Gerry Gunther, Henry Hansmann, Tom Heller, Donald Horowitz, Mark Kelman, Duncan Kennedy, Gerald Neuman, Rogelio Perez-Perdono, Susan Rose-Ackerman, Jed Rubenfeld, Perer Schuck, Mark Walker, and the participants in workshops and conferences at the University of Chicago, Columbia University, Harvard University, Stanford University, and the University of Wisconsin.


2. Larry Diamond, Democracy and Economic Reform: Tensions, Compatibilities, and Strategies for Reconciliation, in Economic Transition in Eastern Europe and Russia: Realities of Reform 107, 108 (Edward P. Lazear ed., 1995); see also Peter L. Berger, The Capitalist Revolution 73 (1986) (describing the contemporaneous development of capitalism and democracy in Europe and the United States); Robert A. Dahl, On Democracy 168 (1998) (suggesting that market capitalism "creates a large middling stratum of property owners" who "are the natural allies of democratic ideas and institutions"); Diamond, supra, at 108 (observing that both capitalism and democracy rest on "fundamental principles of competition and choice" and are threatened by "excessive concentration of power in the state"); Owen M. Fiss, Capitalism and Democracy, 13 Mich. J. Int’l L. 908, 911 (1992) ("Both notions are rooted in an assumption of human rationality and self-interest, and thus rely on individual freedom and autonomy as the means for achieving their ends.").

mous concentrations of wealth in the hands of a few, while democracy, by empowering the poor majority, would inevitably lead to convulsive acts of expropriation and confiscation. In Adam Smith's words, "For one very rich man, there must be at least five hundred poor . . . . The affluence of the rich excites the indignation of the poor, who are often both driven by want, and prompted by envy, to invade his possessions." Madison warned against the "danger" to the rights of property posed by "an equality & universality of suffrage, vesting compleat power over property in hands without a share in it." David Ricardo was willing to extend suffrage only "to that part of [the people] which cannot be supposed to have any interest in overturning the rights of property." Thomas Babington Macaulay went further, portraying universal suffrage as "incompatible with property" and "consequently incompatible with civilization." From this point of view, free market democracy is a paradox, a contradiction in terms.

As it turned out, the paradox of free market democracy did not prove insuperable. On the contrary, while "[d]emocracy and market-

6. THE WORKS AND CORRESPONDENCE OF DAVID RICARDO, supra note 3, at 370.
7. MACAULAY, supra note 3, at 268.
8. I am far from wishing to throw any blame on the ignorant crowds . . . . We ourselves, with all our advantages of education, are often very credulous, very impatient, very shortsighted, when we are tried by pecuniary distress or bodily pain . . . . Imagine a well-meaning laborious mechanic fondly attached to his wife and children. Bad times come. He sees his wife whom he loves grow thinner and paler every day. His little ones cry for bread; and he has none to give them. Then come the professional agitators, the tempters, and tell him that there is enough and more than enough for everybody, and that he has too little only because landed gentlemen, fundholders, bankers, manufacturers, railway proprietors, shopkeepers, have too much. Is it strange that the poor man should be deluded, and should eagerly sign such a petition as this? The inequality with which wealth is distributed forces itself on everybody's notice. It is at once perceived by the eye. The reasons which irrefragably prove this inequality to be necessary to the well-being of all classes are not equally obvious . . . .

... And do you believe that as soon as you give the workingmen absolute and irresistible power they will forget all this? . . . In every constituent body capital will be placed at the feet of labor; knowledge will be borne down by ignorance; and is it possible to doubt what the result must be? ... What could follow but one vast spoliation? One vast spoliation! Id. at 271–72, 274.
8. Obviously, "markets" and "democracy" could be defined in such a way that no conflict exists between them. At the extreme, democracy could be "defined" to include a market economy, and a market economy could be "defined" to include a democratic politics. Such definitional gerrymandering, however, would not be particularly illuminating. For a discussion of how these terms are used in this Article, see infra text accompanying notes 28–30.
capitalism are locked in a persistent conflict,"9 this conflict has been more or less successfully negotiated throughout the developed world. Defining the terms broadly, markets and democracy have coexisted quite healthily in the United States for two hundred years, and at least a dozen other developed countries "have remained continuously capitalist and democratic for the past half-century."10 That democratic politics proved compatible with capitalism in the First World—that the electoral "power of numbers" did not overwhelm the "economic power of property"11—is one of the great surprises of modern history.12

Will the paradox of free market democracy be similarly negotiable in developing societies? Through what institutions? What face will the paradox assume in the developing world? Law and development, booming anew today,13 has systematically ignored this set of questions—a remarkable omission, given the confidence with which democracy and markets are being exported all over the Third and post-communist worlds.14

9. D A H L, supra note 2, at 173. As Dahl has noted, this conflict "can be understood in two ways: Democracy may be seen as a danger to property rights; or property rights may be seen as a danger to democracy." D A H L, supra note 3, at 68. On the first view, the concern is that "[a] majority made up of the less prosperous will be able to use their equality in the state to appropriate the property of the wealthier minority." Id. On the second view, the danger is that "a minority of rich will possess so much greater political resources than other citizens that they will control the state, dominate the majority of citizens, and emply the democratic process of all content." Id.

10. A D A M PRZEWSKI, THE NULIBERAL FALLACY, IN CAPITALISM, SOCIALISM, AND DEMOCRACY REVISITED, supra note 1, at 47.


14. The self-confidence characteristic of today's law reform efforts in the developing world contrasts jarring with the self-questioning (and in some cases self-flagellation) that accompanied the decline of the earlier U.S. law and development movement, the basic thrust of which was also to export (a progressive 1960s version of) democratic capitalism and the rule of law to the developing world. S ee, e.g., D A V I D M. T R U B E K & M A R C G A L A N T E R, SCHOLARS IN SELF-ESTRANGEMENT: SOME REFL ECTIONS ON THE CRISIS IN LAW AND DEVELOPMENT STUDIES IN THE UNITED STATES, 1974 WIS. L. REV. 1062, 1070, 1080. As a number of commentators have suggested, the angst about cultural imperialism in the 1960s and 1970s was in significant part a product of the Vietnam War. S ee, e.g., B R I A N Z. TAMA N A H A, THE LESSONS OF LAW-AND-DEVELOPMENT STUDIES, 89 AM. J. INT'L L. 470, 472 (1995) (e-
This Article makes four points. The first, a hypothesis I will try to make plausible but will not be able to prove, is that the paradox of free market democracy has been mediated in the developed world by a host of devices substantially de-escalating the conflict between market-generated wealth disparities and majoritarian politics. These devices, while varying widely across nations, generally fall into three categories: material, political, and ideological.

Materially, in all the developed nations, the less well-off have to a certain extent been "bought out," in part through market-generated material prosperity, but also in significant part through strong networks of redistributive institutions. Politically, in addition to a long history of massive exclusions from suffrage, Western nations have a variety of institutions that restrain majoritarian confiscatory impulses, including separation of powers and constitutional property protections. Finally, these "buy outs" and political restraints have been crucially supplemented by the existence of various market-compatible ideologies—belief systems that make the less well-off majority more inclined to accept or at least not to rebel against the extreme income disparities produced in a market economy. Probably the most prominent of these ideologies in the United States is that of upward mobility.

Second, these developed-world mediating devices are largely absent from the developing world, and there is no reason to assume that they will be spontaneously generated by market and democratic reforms. On the other hand, many developing countries do have one perversely effective restraint on democracy: systemic political corruption. In recent years, anti-corruption initiatives have become a major thrust of international development policy. These initiatives are long overdue and of the utmost importance, but to the extent that they succeed, they may sharpen the conflict between markets and democracy.

Third, in critical respects, the paradox of free market democracy is much more dangerous and potentially explosive in the developing world. To begin with, in terms of sheer numbers, the poor are vastly

---

15. See infra text accompanying notes 32–46.
16. See infra text accompanying notes 47–63.
17. See infra text accompanying notes 66–93. To avoid misunderstanding, I am not concerned with the origins of these mediating institutions and ideologies. For example, I am not making the functionalist claim that market-compatible ideologies emerged in the developed nations because the paradox of free market democracy somehow demanded them. My concern, rather, is with effects—in particular, with the neutralizing impact that these institutions and ideologies have had on the conflict between markets and majoritarian politics.
18. See infra text accompanying notes 95–135.
more numerous, and poverty far more entrenched, in the developing world today than in the developed world, either today or at analogous historical periods. In addition, universal suffrage is generally being implemented in the developing world on a rapid, large-scale basis that contrasts sharply with the very gradual and incremental enfranchisement characteristic of the history of Western democratization. Finally, in stark contrast to the Western nations and all the East Asian "Tigers," many developing countries have one or more ethnic minorities who, along with foreign investors, will tend under market conditions to dominate economically the "indigenous" majorities around them, at least in the near to midterm future. The existence of such market-dominant minorities, together with other conditions prevalent throughout the developing world, converts the paradox of free market democracy into an engine of potentially catastrophic ethnonationalism. In these circumstances, democracy will often mobilize majoritarian ethnoeconomic resentment into powerful nationalist movements potentially subversive of both markets and democracy themselves.

Thus, the paradox of free market democracy often has an entirely different face in the developing world. The ethnic and racialist structures of the developed world typically help defuse the conflict between markets and democracy, essentially by fracturing the poor majority. In the United States, for example, racism (together with a thriving ideology of upward mobility) arguably makes poor and lower middle class whites feel more "kinship" with wealthy whites than with African Americans or Hispanic Americans of comparable economic status. As a result, racism in the United States creates no particular threat to a market economy. On the contrary, to the extent that racism helps reconcile a great number of poor and working-class whites to the prevailing economic hierarchy (because there is a group still lower than they) and impedes political coalitions among the poor, racism helps to mediate the paradox of free market democracy.

By contrast, the distinctive overlapping of class and ethnicity characteristic of many developing countries—in which the "very rich" are (or are perceived as) ethnically distinct—tends to catalyze the paradox of free market democracy, with democracy pitting an "indigenous" majority against an economically dominant "outsider" minority. This dynamic is not present everywhere in the developing world; for example, the countries of Latin America differ widely from one another in

21. See infra text accompanying notes 139–156.
22. See infra text accompanying notes 157–164.
23. See infra text accompanying notes 86–89.
24. For the definition of "ethnicity" used in this Article, see infra note 137.
this regard. Nonetheless, the possible ethnicization of the paradox of free market democracy is a persistent, lethal reality in many developing countries, as recent events in Indonesia have once again illustrated.

Fourth, for all these reasons, it is irresponsible to promote markets and democracy in the developing world in the absence of institutions capable of mediating the conflict between them. To be sure, today's prevailing policy approach to law and development does include proposals that, if successful, would replicate some of the devices that have helped mediate the paradox of free market democracy in the developed world—for example, “social safety nets” and constitutional property protections. But these policies do not grapple with the distinctive and most dangerous aspects of the paradox of free market democracy as it presents itself in the developing world, such as the much more massive extent of poverty, the rapidity of democratization, and the problem of market-dominant minorities.

Part I of this Article will explore the material, political, and ideological devices that have helped mediate the conflict between markets and democracy in the developed world. While some of these devices will also be desirable in the developing world, others surely will not be. One of the most important challenges facing developing-world policy makers is to think much more carefully about how the developed world “solved” the paradox of free market democracy and whether these “solutions” could—or should—exist in the developing world.

Part II will show how certain conditions characteristic of developing societies make the paradox of free market democracy especially problematic and combustible. Contemporary Indonesia is offered as a paradigmatic example. Part II also discusses economically dominant minorities that existed in the developed nations during earlier (typically undemocratic) periods. Weimar Germany is then cautiously offered as a rare instance in which a Western nation pursued—with catastrophic ethnonationalist consequences—free market democracy under conditions in many respects analogous to those characteristic of many developing countries today.

Part III will turn to policy. While there can be no “one-size-fits-all” solution, every developing and transitional country pursuing markets and democracy—even countries without market-dominant minorities—will have to find ways to mediate the basic tension between these two goals. In this light, the design of all the latest reform initiatives in the developing world (including promotion of the rule of law, state-building, free and fair elections, independent judiciaries, and civil so-

26. See infra text accompanying notes 164–196.
ciety) must be reexamined. These measures are essential for the developing world. Moreover, if properly designed, they could ultimately play a valuable role in mediating the paradox of free market democracy. But if care is not taken, these measures may also inadvertently heighten the conflict between markets and democracy. For example, the main thrust of today's rule-of-law projects in the developing world is to facilitate market activity (by strengthening legislative and judicial protections of property and contract). To the extent that such initiatives succeed, they will accomplish very significant achievements, but in the process they may intensify the contest between unequal wealth and majoritarian politics.

As a small, tentative start toward working through some of these broad policy issues, I will in this Article narrow my lens and focus on the particularly destructive, ethnonationalist version of the paradox of free market democracy. Although economically dominant minorities will not be a problem in every developing country, the discussed policies nevertheless may, with some adjustment, have bearing on all developing and post-communist countries. This is because foreign investors—who tend to prosper disproportionately under economic liberalization, characteristically provoking nationalistic, anti-market sentiment—often occupy a role analogous to that of economically dominant minorities.

I. PARADOX LOST

I begin with a brief terminological note. "Market capitalism" and "democracy" are notoriously difficult terms to define. Indeed, one of the main purposes of this Part is precisely to remind us that even in the West there are many versions of "market capitalism" on which developing countries might draw; and that the process of "democratization" currently being promoted in the developing world is not the same as the one that Western countries themselves went through at analogous periods in their history. In general, however, by "market capitalism" or "market economy" I refer to economic systems based primarily on private property, contract, and price competition, with government intervention spanning a wide spectrum from laissez-faire to extensive regulation and redistribution. Similarly, while democracy can take many forms, I use the term to refer capiously to electoral, majoritarian politics. Thus references to democracy, broadly defined, will roughly track Schumpeterian criteria of electoral competition.

27. See infra text accompanying notes 197–211.
28. See JOSEPH E. STIGLITZ, WHITHER SOCIALISM? 231 (1994) (examining "socialism, market socialism, and capitalism" in terms of a "continuum" of economic roles the state can assume).
whereas references to more "complete" or "genuine" democracy will essentially track Elster's definition of democracy as "simple majority rule, based on the principle 'One person one vote.'"

Why, then, haven't poor majorities in the democratic nations used their political power to take the property of the wealthy? One answer is that they have. On this view, the political philosophers of the eighteenth and nineteenth centuries were right: Through the rise of the welfare state, democracy did indeed prove incompatible with the "right of property"—understood in its fullest libertarian sense. Still, the fact is that thriving market economies, supporting very considerable wealth disparities, coexist with democracy throughout the developed world. Thus the question remains: Why haven't the less well-off voted to equalize wealth far more than they have, to an extent that really would undermine the functioning of a market system?

At a very high level of abstraction, the answer to this question must be that in one way or another, markets have won the support of the "median voter." But this statement is more of a conclusion than an explanation, and may hide more than it illuminates. What is really needed is some account, at once sociological, political, historical, economic, and cultural, of how the developed nations have managed to avoid irreconcilable conflicts between majoritarian politics and market-generated wealth disparities. This story is, however, so complex, so various across different countries, and so difficult to verify that any observations about it necessarily involve more hypothesis than proof.

In this spirit, I will explore the following hypothesis: that the tensions between markets and democracy have been substantially alleviated throughout the developed world by institutions and devices that, while varying widely across countries, generally fall into three categories—material, political, and ideological. It goes without saying that the literatures implicated here are too vast even to be summarized in this Article, much less surveyed comprehensively. My objective is not to propose a complete theory explaining why markets and democracy have succeeded in the developed world. Rather, my goals are far more limited: to initiate reflection on the institutions and devices that have helped to overcome the paradox of free market democracy; and to suggest that the story behind the success of free market democracy in the developed world is much more complex—and in many respects much darker—than is commonly supposed.

30. Jon Elster, Introduction to CONSTITUTIONALISM AND DEMOCRACY 1 (Jon Elster & Rune Slagstad eds., 1988). Needless to say, an ideal political society would surely include more substantive principles, such as equality or human rights, but to build such principles into the definition of democracy would not be useful for this Article's purposes.

A. Material Redistribution

The most obvious accommodation made by the market economies of the developed world to the demands of the less well-off consists of material compensation. In other words, the less prosperous have to a certain extent been bought out, in part through market-generated material prosperity, but also in significant part through redistributive institutions of the kind that Jürgen Habermas refers to as “the welfare state compromise.”\(^{32}\) Notwithstanding the recent rollback of welfare programs,\(^{33}\) all the developed nations have strong networks of redistributive institutions, “modulat[ing] the inequalities of wealth produced by the market.”\(^{34}\)

The history, form, and mix of redistributive mechanisms vary across the developed world. Generally speaking, social safety net programs have been broader, governmental transfers larger, and the role of workers in corporate governance more substantial, in Western Europe and Scandinavia than in the United States.\(^{35}\) In England, for example, the British government continues to provide broad national insurance benefits for unemployment, sickness, and disability, nationalized health care, and universally free public education, although there is constant talk of “radical” welfare reform.\(^{36}\) Germany’s welfare system is supplemented by expansive pro-labor legislation.\(^{37}\) Sweden and the other Nordic countries all have extensive “cradle to grave” social leg-

\(^{32}\) Habermas, supra note 12, at 55–56. Today, in one commentator’s words, workers in the richer industrial countries are fat, pampered, and sleek. The workers in Germany or Austria have cars, television sets, and some money in the bank; they have health benefits and paid vacations; they have rights to overtime pay and unemployment compensation. Most people in the first world think of themselves as middle class . . . .


33. In recent years, the welfare state has come under intense attack, among other things for encouraging free-riding and dependency, see, e.g., David Schmidt, Guarantees, in The Welfare State 15, 19 (Ellen Frankel Paul et al. eds., 1997), perpetuating poverty and fiscal crises, and eroding “the social cement of the West.” Deepak Lal, Unintended Consequences 159, 165 (1998). For an empirically based defense of the American social welfare system, see generally Theodore R. Marmor et al., America’s Misunderstood Welfare State (1990) (discussing common fallacies about the objectives and workings of American social welfare policies).

34. Fiss, supra note 2, at 909.

35. See David W. Conklin, Comparative Economic Systems 81 tbl.3.2 (detailed welfare state expenditure as a percentage of GDP around 1980 in France, Germany, Japan, Netherlands, the United Kingdom, and the United States); Nicholas V. Gianaris, Contemporary Economic Systems 70 fig. 6.1, 71 fig. 6.2 (1993) (showing government expenditure and indirect taxes, respectively, as a percentage of national income for the European Community and the United States); id. at 74–75, 102–06; see also John C. Coffee, Jr., The Future as History: The Prospects for Global Convergence in Corporate Governance and its Implications, 93 Nw. U. L. Rev. 641, 669 (1999) (noting “the greater political power of labor across Europe and the more powerful legacy of the European social welfare state”).


37. See Gianaris, supra note 35, at 81–84.
islation, including labor codetermination, maternity and child support, and rent control. Japan’s distinctive lifetime employment system is discussed further below.

Nevertheless, the basic story is similar throughout the developed world. Starting in the nineteenth century, the explosion of market activity in the West was accompanied by the emergence of redistributive institutions of unprecedented magnitude. In virtually every developed country, these institutions include not only relief to the extremely poor, but also progressive taxation, social security, minimum wage laws, infrastructure spending, antitrust regulation, and worker safety regulation.

There are many different ways of understanding the political-economic dynamic behind redistribution in the developed world. For example, “capitalists” could be viewed as giving “labor” the smallest amount necessary to keep them from revolting or “trash[ing] the workplace.” In theory, this amount could range from very little to much more significant transfers. (It is often suggested that Bismarck, who designed Germany’s first social security system in the 1880s, did so “to entice the working class away from socialism.”) Alternatively, the democratic process might be viewed as functioning so rationally that the “decisive voter” obtains the highest amount of redistribution consistent with maximizing his wealth. Yet another account would hold that the welfare state arose out of public-spirited collective decisions about distributive or corrective justice.

38. See id. at 102–06; Xan Smiley, Happy Family? The five Nordic countries remain defiantly different from the rest of Europe—and from each other, ECONOMIST, Jan. 23, 1999, at 3. Not surprisingly, income tax rates in the Scandinavian countries are among the highest in the world. Id.
39. See infra text accompanying note 85.
40. “Politics in the Western countries, as the franchise spread, became strongly redistributive. No historical event of the past century is as important as the rise of the welfare state.” FRIEDMAN, supra note 32, at 43–44.
43. ERIC OWEN SMITH, THE WEST GERMAN ECONOMY 103 (1983); see also Ronald J. Gilson & Mark J. Roe, Lifetime Employment: Labor Peace and the Evolution of Japanese Corporate Governance, 99 COLUM. L. REV. 508, 522 (1999) (suggesting that a central motivation underlying the creation of the lifetime employment system in Japan was to reduce labor unrest and “to diminish the chance of socialist electoral success” in post-war Japan).
44. Meltzer & Rich, supra note 12, at 916, 924–25; see also DOWNES, supra note 4, at 200 (suggesting that equalization of income through redistribution does not occur because “even low-income citizens feel that the total output produced by an ultimately unequal income distribution would be much larger than that produced by an equal one”).
My concern here, however, is not with origins, but with effects. Whatever their origins, the spread of redistributive institutions in the developed world is widely recognized to have helped dampen the conflict between market wealth disparities and democratic politics.  

B. Political Exclusions and Restraints

At the same time, some would argue that the real reason the poor in the developed world have not used their political power to equalize wealth is because, trappings of democracy aside, they have never actually possessed such political power. There is more truth to this claim than many would care to admit.

First, until relatively recently, most (if not all) of the Western democracies had massive exclusions from suffrage. To take the case of the United States, after the Federal Convention of 1787, the poor were disenfranchised in virtually every state through formal property qualifications. Although such qualifications were largely eliminated by 1860, they were typically replaced by provisions denying suffrage to the very poor (for example, through tax-paying requirements and "pauper" exclusions), and throughout the country the great majority of the population, including women and most blacks and Native Americans, continued to be denied the right to vote. In the years

---

ways to see the welfare state, see Thomas C. Grey, Property and Need: The Welfare State and Theories of Distributive Justice, 28 STAN. L. REV. 877, 902 (1976).

46. See, e.g., HABERMAS, supra note 12, at 55; Fiss, supra note 2, at 909; cf. DAHL, supra note 2, at 175–76 ("In no democratic country does a market-capitalist economy exist (nor in all likelihood can it exist for long) without extensive government regulation and intervention to alter its harmful effects.").

47. The original Constitution left it to the states to determine the voting qualifications for both national and state elections. See U.S. CONST. art. I, § 2, cl. 1; id. at art. II, § 1. With the exception of Vermont, "the early states, for varying durations, retained freeholder or other property qualifications for enfranchisement." Frank I. Michelman, Possession vs. Distribution in the Constitutional Idea of Property, 72 IOWA L. REV. 1319, 1331 (1987); see also JUDITH N. SHKLAR, AMERICAN CITIZENSHIP: THE QUEST FOR INCLUSION 15–16 (1991). The property qualifications, carried over from the colonial period, varied:

[I]n New York and New England the requirement for voting for members of a colonial assembly was a freehold with a total value of $50 . . . in the colonies from Pennsylvania southward the requirement was a fifty-acre freehold, except in Virginia, where one hundred acres of unsettled land or twenty-five acres of improved land was required.


preceding the adoption of the Fifteenth Amendment, supposedly guaranteeing black males the right of suffrage,\textsuperscript{51} wealthy whites throughout the South were stricken with the fear that "the black race will be in a large majority, and then we will have black governors, black legislatures, black juries, black everything . . . . We will be completely exterminated, and the land will be left in the possession of the blacks."\textsuperscript{52} Accordingly, even after the enactment of the Fifteenth Amendment in 1870, and well into the twentieth century, blacks in the South (and to a lesser extent throughout the United States) were effectively disenfranchised, first through local violence, ballot-box stuffing, and complicated registration and voting procedures, and, especially after the 1890s, through literacy tests, poll taxes, and property qualifications, together with racially motivated redistricting.\textsuperscript{53} Meanwhile, in at least fourteen states, recipients of poor relief were deprived of the franchise as late as 1934.\textsuperscript{54}

Elsewhere in the developed world, the details differ, but the basic story is the same. "[P]olitical enfranchisement in most Western liberal democracies proceeded very gradually and in distinct stages."\textsuperscript{55} Arguably, these longstanding political exclusions were important to the success of Western nations in establishing stable free market democracies.

Even today, however, with suffrage formally guaranteed throughout the developed world, it remains open to question whether the poor can meaningfully effectuate their interests through the available political channels.\textsuperscript{56} Many have argued, for example, that in contemporary capi-

\textsuperscript{51} See U.S. Const. amend. XV, § 1 (providing that the right of citizens to vote "shall not be denied or abridged [on] account of race, color, or previous condition of servitude").

\textsuperscript{52} James Oakes, \textit{The Ruling Race} 234 (1998) (citation omitted).


\textsuperscript{54} As Lani Guinier and others have observed, however, existing voter registration requirements continue to exclude disproportionately African Americans and other minorities from the political process. See Lani Guinier, \textit{The Tyranny of the Majority} 32–33 (1994); see also id. at 41–70 (arguing that voting rights litigation and jurisprudence since the Voting Rights Act of 1965 have led to the triumph of tokenism over "full enfranchisement" of blacks).

\textsuperscript{55} Sumit Ganguly, \textit{Ethnic Politics and Political Quiescence in Malaysia and Singapore}, in \textit{Government Policies and Ethnic Relations in Asia and the Pacific} 233, 272 (Michael B. Brown & Sumit Ganguly eds., 1997). To give just a few examples, in England, a statute from 1430 provided that, in the shires, only those adult males with "a freehold estate the annual income from which was forty shillings" could elect members of the House of Commons. McDonald, \textit{supra} note 47, at 25. Forty shillings was the amount that in 1430 supposedly would "furnish all the necessities of life, and render the freeholder, if he pleased, an independent man." Id. at 25–26. In France "property and tax-payment qualifications" severely limited the franchise during the revolutionary period. Henry W. Bhrmann & Martin A. Schain, \textit{Politics in France} 199–200 (5th ed. 1992). After 1848, suffrage was extended to all males over age 21, making France "the first European country to enfranchise a mass [male] electorate." Id.

\textsuperscript{56} See, e.g., Jennifer Nedelsky, \textit{Private Property and the Limits of American Constitutionalism} 212, 214–16 (1990) (lamenting the "virtual exclusion" of the poor and low
talist countries, “highly expensive public relations campaigns on television and in other media often determine the outcomes of elections, requiring candidates to become dependent upon, or at least more responsive to, those with greater wealth.”57 On this view, “[d]espite the rhetoric of ‘one person, one vote,’ powerful economic interests are able to exert disproportionate political influence and are likely to capture the state apparatus and use it to their advantage.”58 According to Michael Walzer, “[t]he most common form of powerlessness in the United States today derives from the dominance of money in the sphere of politics.”59

At the same time, Western nations have a variety of political institutions that restrain majoritarian confiscatory impulses. Beyond the express constitutional guarantees of property—contained in the United States, for example, in the Takings, Contracts, and Due Process Clauses—a number of structural political features have the same effect. The separation of powers, for example, creates an institutional bias toward the status quo, either promoting valuable stability or inhibiting valuable change, depending on one’s perspective.60 (The disgust often expressed about government paralysis or “gridlock” is a back-handed confirmation of the effectiveness of our constitutional separation of powers.)

Indeed, there is a case to be made that in the United States the insulation of “property and inequality from democratic revision” is a calculated feature of the American form of government.62 James Madid-

---

57. Fiss, supra note 2, at 913. For empirical support for the proposition that money has “outcome-determining effects on the electoral process,” see sources cited in Samuel Issacharoff & Pamela S. Karlan, The Hydraulics of Campaign Finance Reform, 77 TEX. L. REV. 1705, 1709 n.19 (1999). On the other hand, “disproportionate influence” is hard to measure, and absent particularly nefarious patterns perhaps is defensible as an inevitable phenomenon in any real world of power.” Vincent Blasi, Free Speech and the Widening Gyre of Fund-Raising: Why Campaign Spending Limits May Not Violate the First Amendment After All, 94 COLUM. L. REV. 1281, 1282 (1994).

58. Fiss, supra note 2, at 913.


60. Compare NEDELSKEY, supra note 56, at 222 (arguing that the structure of the American “constitutional system has fostered too little experimentation with democratic control of the economy and democratic restructuring of the sources of economic power”), with BRUCE ACKERMAN, THE FUTURE OF LIBERAL REVOLUTION 16 (1992) (attributing the longevity of the American Constitution and its ability to incorporate revolutionary changes such as the New Deal to its “distinctive two-track structure”).


62. NEDELSKEY, supra note 56, at 3; see GORDON S. WOOD, THE CREATION OF THE AMERICAN
son expressly defended representative democracy across a large nation as a way of stymying the mobilization of a concerted majority party representing the poor:

Those who hold and those who are without property have ever formed distinct interests in society . . . .

. . . . Extend the sphere [of the republic] and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength and to act in unison with each other.63

C. Ideology

The preceding two Sections, exploring the “buy-outs” and political restraints that I suggest have helped stabilize free market democracy in the developed world, assume a kind of unidimensional process in which the poor want only one thing from democracy—to appropriate wealth from the rich. Although this simplified picture can be useful analytically and has been pursued in a number of different literatures,64 it is plainly incomplete. Consider the United States. To explain American voters’ tolerance for wealth disparities solely on the ground that the poor have been “bought out” or prevented from exercising their political power seems to leave out much that is distinctive about U.S. history and culture. What, for example, about “the American dream” or the “peculiarly American resistance to government”?65 What about

---

63. The Federalist No. 10, at 79, 83 (James Madison) (Clinton Rossiter ed., 1961). Needless to say, Madison’s thought was also pro-democratic in many respects. See Akhil Reed Amar, Philadelphia Revisited: Amending the Constitution Outside Article V, 55 U. CHI. L. REV. 1043, 1050 (1988); Akhil Reed Amar, The Central Meaning of Republican Government: Popular Sovereignty, Majority Rule, and the Denominator Problem, 65 U. COLO. L. REV. 749, 756–59 (1994). The exclusion of the less well-off is reflected in other aspects of the American political system as well. With respect to the judiciary, quite apart from the “counter-majoritarian difficulty,” Alexander M. Bickel, The Least Dangerous Branch 16–23 (1962), federal judges are “overwhelmingly Anglo, male, well-educated and upper or upper middle class.” Paul Brest, Who Decides?, 58 S. CAL. L. REV. 661, 664 (1985). Similarly, members of Congress are better educated, possess higher status occupations and have more privileged backgrounds than the people they “represent.” . . . It is clear that Congress is hardly the mirror of the population that Wilson and the Anti-Federalists hoped for, and that the lowest economic and status groups are virtually excluded.

64. See, e.g., Macaulay, supra note 3, at 268–76; Meltzer & Richard, supra note 12.

65. Thomas C. Heller, Modernity, Membership, and Multiculturalism, 52 STAN. HUMAN. REV. 2,
the fact that throughout much of U.S. history many of the less prosperous have actually seemed to like market capitalism, wealth disparities and all? And finally, what about the fact that lower class whites have consistently turned on lower class blacks and immigrants?

This Section suggests that certain market-compatible ideologies have helped mediate (perhaps crucially) the paradox of free market democracy in the developed world. By a market-compatible ideology, I mean a belief system that, if held with sufficient strength by sufficient numbers, makes the relatively worse-off majority more inclined to accept or at least not to rebel against the income disparities produced in a market economy. What sort of belief systems could play this role? I will identify five different market-compatible ideologies that could plausibly be thought to operate in the developed world.

I offer these five ideologies only as heuristically useful illustrations, with no pretensions to completeness or systematicity. They are not supposed each to conform to the actual belief systems of any particular developed country. The actual sociological proof of the existence of these ideologies, or of their relative strength in any particular country, would be extremely difficult and is in any event beyond the scope of this Article.

I am aware that the introduction of cultural or ideological variables raises a host of methodological difficulties, including problems of ad hoc residualism and non-falsifiability. Perhaps for just this reason, most policy-oriented political-science and economic analyses of marketization and democratization in the developing world attempt to bracket such variables. In my opinion, however, it is a far greater danger in the law and development context to ignore culture and ideology than to attempt, albeit imperfectly, to understand them. This is particularly true if the project is to export markets and democracy to the developing world. Even more so than economic and political institutions, ideologies cannot easily be transplanted from one context to another and expected to take root.

With these caveats in mind, I will now sketch out five highly abstracted market-compatible ideologies that all seem to have some purchase in developed-world societies.

1. Upward Mobility

The ideology of upward mobility holds that anyone, high or low, can move up the economic ladder, as long as he or she is talented, hard-working, entrepreneurial, and not too unlucky. This ideology is

16 (1997); see also Mirjan R. Damška, The Faces of Justice and State Authority: A Comparative Approach to the Legal Process 44 (1986) ("If ever there was a general political consensus in America, it was—and perhaps still is—an antipathy toward bureaucracy . . . .").
typically expressed in rags-to-riches narratives, proclamations of
equal opportunity, and so on. Ideally, upward mobility gives every-
one a stake in the continuing success of the market economy. At its
extreme, it teaches the worse-off that their plight is the result not of an
unfair or invidious economic system, but rather of their own
deficiencies. In both these ways, upward mobility makes the income
disparities of a market system less likely to provoke popular furor.
Among Western countries, the ideology of upward mobility has
probably been most successful in the United States.

66. Examples abound in American literature, both fiction, see, e.g., Horatio Alger Jr., Rag-
ged Dick, or Street Life in New York, reprinted in Ragged Dick and Struggling Up-
ven Millhauser, Martin Dressler: The Tale of an American Dreamer (1996), and non-
fiction, see, e.g., Benjamin Franklin, Autobiography (Vintage Books 1990) (1790);
Booker T. Washington, Up from Slavery (Doubleday 1998) (1901); Andrew Carnegie,
The Empire of Business (Doubleday, Doran & Company 1933) (1902); Young Hill Kang,
East Goes West: The Making of an Oriental Yankee (1957); Lee Iacocca & William
Novak, Iacocca: An Autobiography (1984); George Butler, Arnold Schwarzenegger:
A Portrait (1990). There is also a long history of commentary that has transformed "the ethos
of entrepreneurial success into the quintessential American dream." Jeffrey Louis Decker,
Made in America: Self-Styled Success from Horatio Alger to Oprah Winfrey xiii
(1997); see, e.g., Irving G. Wylie, Self-Made Man in America: The Myth of Rags to
Riches (2d rev. 1966); John Cawelti, Apsces of the Self-Made Man (3d impression
1972). Political figures in the United States have long drawn on "the normative power of the self-
made man." Decker, supra, at xvii; see, e.g., Theodore Roosevelt, Character and Success, 72S Out-
look 64 (1900); Clarence Thomas, Wall St. J., Feb. 20, 1987, at 21 (letter to the editor).

67. To quote one recent statement of this ideology:
America has created a system in which anyone with talent and access has access to the
financial resources needed for success. That alone won’t lead to fortune, but it pretty much
guarantees that talented people don’t fail for lack of capital.
Today banks, venture capitalists, underwriters and stock brokers here don’t much care
who your grandfather was or whether you went to a prep school or dropped out of college.
All they care about is: Can we make some bucks by backing this guy (or gal)?
This is not true in Japan. It is not true in Brazil. It is not even true in France or Germany
. . . . In Germany, Bill Gates might well have had to go to work for Siemens. In Japan,
Gates most certainly would have ended up as salaryman for Hitachi . . . .

68. Some economists describe this dynamic in terms of uncertainty. See, e.g., Downs, supra
note 4, at 200 ("[U]ncertainty allows low-income citizens to believe that someday they too may
have high incomes; hence their desire to ‘soak the rich’ is mitigated by the hope that they them-
selves will be rich.").

69. In Duncan Kennedy’s words,
[T]he culture of individualism, materialism, and philistinism combined with the appearance
of endless opportunity creates an illusion of accountability for one’s economic fate. The poor
are poor because they lack initiative or talent or because they are ethnically or racially infer-
ior, according to the popular understanding. In this way, popular culture generates self-
hatred rather than proud working-class consciousness . . . .
Duncan Kennedy, Sexy Dressing, Etc. 4 (1993). It is not entirely clear, however, the extent
to which Kennedy endorses this view or is merely describing it. See id. at 1, 10.

70. By “successful,” I do not mean that there is actually more economic mobility in the
United States than elsewhere, although there is certainly evidence for this proposition. See Peter
simply mean that the belief in the possibility that anyone, high or low, can become rich is rela-
2. Self-Reliance

The ideology of *self-reliance* holds that a person's chief concern ought to be his independence and particularly his ability to meet his own economic needs (or those of his family) without being dependent either on the state or anyone else.\(^{71}\) Perhaps the archetype of self-reliance is the "lone frontiersman" or the "yeoman farmer," but the ideology of self-reliance can also flourish among participants in a market economy: "artisans, farmers, laborers, and also merchants and entrepreneurs."\(^{72}\) In such circumstances, self-reliance gives individuals, even if they are not wealthy or even upwardly mobile,\(^{73}\) a stake in the continuing success of the market.\(^{74}\) At the same time, the self-reliant individual is less inclined to envy the rich ("riches are no proof whatever of moral worth")\(^{75}\) and may well be disdainful of poor persons who are unable to pull their own weight.\(^{76}\) Like the ideology of upward mobility, the

---


\(^{73}\) Although "individualism" is often associated with entrepreneurialism and upward mobility, see, e.g., Zuckerman, supra note 70, the main point of achieving self-reliance is neither to acquire wealth nor "to enable the individual to rise in society to a higher social position" (although these things may happen) but rather "to free the individual from the condition of servility and dependence." Davies, supra note 71, at 49–50.

\(^{74}\) For an innovative welfare reform proposal based on the premise that individualism and having a stake in the marketplace are inextricably related, see BRUCE ACKERMAN & ANNE ALSTOTT, *The Stakeholder Society* 4–9, 191–94 (1999) (proposing that each American be given a one-time grant of $80,000 upon reaching early adulthood).

\(^{75}\) SMILES, supra note 71, at 298.

\(^{76}\) For many advocates of self-reliance, "standing on one's own feet . . . means economic independence, being able to support oneself, and is therefore incompatible with being a recipient of charity or relief." Davies, supra note 71, at 44. Thus, the anti-welfare movement in the United States reflects "the implicit (sometimes explicit) competition between social welfare programs and one of America's guiding social myths—rugged individualism." MARMOR ET AL., supra note 35, at 4. In fact, Professors Marmor, Mashaw, and Harvey have argued that one of the principal aims of the American social welfare system is "to promote family independence and self-support." Id. at 125.
ideology of self-reliance, often associated with classical republican thought, has been influential in the United States. 77

3. Worker Control

The ideology of worker control operates in advanced capitalist systems that have institutionalized to one extent or another some form of industrial or workplace democracy. This kind of worker control is not to be equated with socialism or communism; it is an accommodation, within a capitalist system, of workers' demands for greater participation in the decisions that shape industrial and workplace policy. This participation can be achieved either through outright worker ownership of a firm 78 or in more moderate forms, such as corporate "codetermination" regimes 79 and "cooperative" workplace arrangements. 80 In addition to material benefits, worker control arguably gives to workers the sense of recapturing a measure of the liberty and self-governance promised to them by democracy but seemingly betrayed

77. Prominent American exponents of the ideology of self-reliance include Thomas Jefferson, see Notes on Virginia, in THE LIFE AND SELECTED WRITINGS OF THOMAS JEFFERSON 187, 280 (Adrienne Koch & William Peden eds., 1944) ("Dependence begets subservience and venality . . ."); Letter to John Jay, in THE LIFE AND SELECTED WRITINGS OF THOMAS JEFFERSON, supra, at 377, 377 (describing farmers as "the most valuable citizens. They are the most vigorous, the most independent, [and] the most virtuous"); Ralph Waldo Emerson, see Self-Reliance, in RALPH WALDO EMERSON, ESSAYS 35 (Mackmillan & Co., Ltd. 1901), and Henry David Thoreau, see HENRY DAVID THOREAU, WALDEN (1854) (Princeton Univ. Press 1971). That the ideology of self-reliance still has much potency in the United States today can be seen in the multimillion-dollar self-help industry, see Lisa Gubernick & Philippe Mao, The Happiness Hackers, FORBES, Oct. 9, 1995, at 82, and in movements as diverse as the Militia of Montana, see Mike Tharp & William J. Holstein, Mainstreaming the Militia, U.S. NEWS & WORLD REP., Apr. 21, 1997, at 24, and inner city, anti-welfare campaigns such as Ted Hayes' "self-respect" program for the homeless in Los Angeles, see The Inner Cities: Breathless Hush in the 'hood, ECONOMIST, Aug. 1, 1998, at 25.

78. Probably the most prominent example of industrial worker cooperatives in a market economy is the "well-established group of closely affiliated worker cooperatives in Mondragon, Spain." HENRY HANSMANN, THE OWNERSHIP OF ENTERPRISE 68 (1996). In the United States, employee ownership is rare in the industrial sector but "has long been the prevailing mode of organization in the service professions, including law, accounting, investment banking, management consulting, advertising, architecture, engineering, and medicine." Id. at 66-67.

79. Germany and Sweden have well-known codetermination laws guaranteeing board of director positions to worker representatives. See GIANARIS, supra note 35, at 74, 84, 103; HANSMANN, supra note 78, at 110-12. Even in these countries, however, worker representatives on the supervisory board often "serve as informational conduits" but do not exercise meaningful control over firm decision-making. Id. at 112.

by the realities of wage labor. It brings labor into the capitalist fold
and palliates in significant ways the conflict between democracy and a
market economy.

4. The Valued Employee

The ideology of the valued employee confers respectability and de-
sirability on the position of the lower-ranking, lesser-paid employee.81
This ideology may be sustained in a number of ways. In many Euro-
pean countries, apprenticeship systems for lower-echelon workers (both
blue- and white-collar) appear to foster professional pride in work and
the sense of belonging to an esteemed trade.82 In Germany, for exam-
ple, a person trains for three years to be a department store clerk and
receives certification by taking a detailed examination at the end of
this training;83 similar requirements apply to bakers, mechanics, secre-
taries, and many other vocations.84 The ideology of the valued em-
ployee can also take the form of the firm-as-extended-family. Japan's
corporate culture, in which firms promise (or used to promise) lifetime
job security, and executives routinely socialize after hours with subor-
dinates, provides an example.85 Where this ideology flourishes, lower-
paid employees feel strong corporate loyalty as well as a sense of having
a stake in the success of the economy as a whole, regardless of whether
there is upward mobility, self-reliance, or worker control.

5. Racism

Finally, in at least some developed countries the ideology of racism
has arguably been a powerful force fracturing the “lower class” and
inducing large numbers of the less well-off majority to vote in defiance
of what might be expected to be their rational economic self-interest.86

81. In the three preceding ideologies, such positions are not valued, at least not in themselves.
At best, the ideology of upward mobility regards such positions as a means toward moving up.
The ideology of self-reliance generally disdains mental, subordinate positions. The ideology of
worker control tells lower-rung employees to be satisfied with their lot only if they achieve con-

82. See FRANCIS FUKUYAMA, TRUST: THE SOCIAL VIRTUES AND THE CREATION OF PROSPER-

83. “A man American in a comparable position at JC Penney will have received three days of
on-the-job training.” Id. at 238. The German apprenticeship system is much more extensive
than that of Britain, where it exists only in certain industries like engineering, building, and
construction, or in France, where it feeds the traditional artisanal sector. Some seventy percent of
all young Germans start their working careers as apprentices.” Id. at 237. “There are apprentice-
ships in virtually all sectors, for both blue- and white-collar work.” Id.
84. See id. at 237–38.
85. See id. at 187–89. “Japanese employers are famous for taking a paternalistic attitude to-
ward the personal lives of their workers. A supervisor will attend weddings and funerals of the
people he supervises and may even act as a go-between in arranging marriages.” Id. at 189.
86. See MICHAEL GOLDFIELD, THE COLOR OF POLITICS: RACE AND THE MAINSPRINGS OF
Racism is not inherently pro-market or anti-market. But in the United States, for example, racism has likely operated in service of market capitalism in two different ways. First, like the previous four ideologies, racism (and the creation of a large racial underclass) has arguably made poor and working-class whites feel better about their relative plight, giving them a consoling sense of superiority and status vis-à-vis African Americans, Hispanic Americans, and other groups of color perceived (in many senses correctly) as "the sediment of the American stratificational order." Second, racism may hinder the formation of political alliances between poor and working-class whites on one hand, and poor and working-class minorities, on the other hand. This is consistent with the absence of a powerful working-class political party in the United States.

Elements of all five of these ideologies are probably present in all developed countries. Even in Japan, famous for its hierarchical struc-

93 (1994); see also Kimberle Williams Crenshaw, Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law, 101 Harv. L. Rev. 1331, 1374 (1988) (suggesting that "from the seventeenth century onward" the power of racism convinced non-slaveholding whites "to support a system that was opposed to their own economic interests").

87. MELVIN L. OLIVER & THOMAS M. SHAPIRO, BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY 5 (1995); see also DAVID R. ROEDIGER, THE WAGES OF WHITENESS: RACE AND THE MAKING OF THE AMERICAN WORKING CLASS (1991) (suggesting that in the 19th century racism and "the benefits conferred by whiteness made...Southern workers forget their 'practically identical interests' with the Black poor and accept stunted lives for themselves and for those more oppressed than themselves"); Crenshaw, supra note 86, at 1374 (suggesting that "racial privilege could and did serve as a compensation for class disadvantage" (citation omitted)).

88. See GOLDFIELD, supra note 86, at 30–31; FRANCES FOX PIVEN & RICHARD A. CLOWARD, THE BREAKING OF THE AMERICAN SOCIAL COMPACT 12, 29, 92 (1998). Thus, after World War II, the Congress of Industrial Organization’s (CIO) mass unionism campaign in the southern states ("Operation Dixie") failed dismally, unable to overcome "the insurmountable task of forming unified workplace movements between white workers, who attended Klan meetings after work, and black workers." MARK BARENBERG, FEDERALISM AND AMERICAN LABOR LAW: TOWARD A CRITICAL MAPPING OF THE "SOCIAL DUMPING" QUESTION, IN HARMONIZATION OF LEGISLATION IN FEDERAL SYSTEMS 93, 110 (INGOLF PERNICE ED., 1996). More generally, "[t]he 'identity politics' of white supremacy in the South...and of white ethnic parochialism in northern cities, was the glue of Democratic constituency building." PIVEN & CLOWARD, supra, at 91–92; BARENBERG, supra, at 110–11. In the 1960s,

[As newly urbanized blacks rose up and made demands for racial equity, an already fragile party coalition was sundered: the white South turned Republican, first in presidential elections and then in congressional elections, and many white working-class voters in the North responded to third party or Republican racial demagoguery by deserting the Democrats.

PIVEN & CLOWARD, supra, at 12. In recent years, not just in the United States but in many developed countries, political elites have played on racism and xenophobia, seeking to gain advantage from popular division. Thus,

Le Pen’s Front National in France, the Christian Right in the United States, the Freedom Party in Austria, the Falangists in Spain, the Lombardy League in Italy, or the Republicans in Germany where half a million immigrants arrived in 1992 alone—work to stoke the anger against outsiders. They draw popular attention away from the economic transformations underway, and try to hold or win anxious voters by directing resentment against outsiders.

Id. at 53.

89. See GOLDFIELD, supra note 86, at 30–31; PIVEN & CLOWARD, supra note 88, at 4, 91, 93; BARENBERG, supra note 88, at 111.
tures and worker loyalty, the ideology of self-reliance has had its appeal.90 Similarly, in Britain, despite its well-known class distinctions, the ideology of upward mobility flourished to a surprising extent in the late eighteenth century.91 Nevertheless, it seems safe to say that the ideologies of upward mobility and self-reliance are today more prominent in the United States than in Western Europe and Japan,92 whereas the opposite is true of the ideologies of worker control and the valued employee.

To repeat, the foregoing list of market-compatible ideologies is meant only to be suggestive. Again, I am not concerned with the origins of these ideologies (which no doubt are rooted in some unknowable combination of history, geography, culture, and serendipity).93 More specifically, I am not making the functionalist claim that a capitalist system somehow produces such ideologies to sustain itself (a claim for which Marxist theory is often criticized). On the contrary, as I have demonstrated in earlier work and elaborate further below, the volatile conjunction of markets and democracy can also yield potentially market-subversive ideologies—socialism and ethnonationalism are two prominent examples.

In sum, I have tried in this Part to make plausible the following hypothesis: The tensions between markets and democracy in the developed world have been substantially alleviated by a host of redistribu-

---

90. As Frances Fukuyama has described:
   There was in fact a tradition dating back to Tokugawa times (1603–1868) of highly mobile artisans, who moved from workplace to workplace as the mood struck them. These workers took pride in their intolerance of routine, in their rebelliousness, in their ability to sell their labor where they chose, and in their high living and frequently unconventional lifestyles, all characteristics we tend not to associate with contemporary Japanese.
   FUKUYAMA, supra note 82, at 191 (citation omitted).

91. According to David Landes, British society during the Industrial Revolution was far more open and fluid than in Europe:
   Not only was income more evenly distributed than across the Channel, but the barriers to mobility were lower, the definitions of status looser . . . .
   . . . This was a people fascinated by wealth and commerce, collectively and individually
   . . . .
   . . . Business interests promoted a degree of intercourse between people of different stations and walks of life that had no parallel on the Continent.


92. For a subtle historical discussion of the complex ideological structures distinctive of "American modernity," see Heller, supra note 65, at 13–30.

93. There may be interesting relationships between particular market-compatible ideologies and levels of redistribution. For example, one might expect that the more robust the ideology of upward mobility in a particular country, the smaller material wealth transfers will have to be. This is consistent with the fact that governmental transfers are smaller in the United States than in a country such as England with relatively rigid class structures, where arguably the absence of a strong upward-mobility ideology is compensated for by larger government transfers to the less well-off. Similarly, a flourishing self-reliance ideology might produce opposition to, or even disdain for, welfare-style redistribution among the less well-off.
tive, political, and ideological devices that vary from country to country. To be sure, it is impossible to prove that without such devices free market democracy in the developed world would not have survived. But if we believe that the cumulative effect of these devices has been to help preserve the “antagonistic symbiosis” to markets and democracy in the developed nations, this obviously has bearing on the project of exporting sustainable market democracy to developing countries. As Parts II and III will suggest, one of the most important challenges facing developing-world policy makers is to analyze candidly which developed-world “solutions” to the paradox of free market democracy could—or should—be promoted in the developing world.

II. PARADOX UNLEASHED

This Part will explain why the paradox of free market democracy is far more dangerous and potentially explosive in the developing world than in the developed world. Section A will highlight the general absence in developing countries of the material, political, and ideological mediating devices found in the developed world—an absence made especially problematic given the extent of poverty and the rapidity of democratization in the developing world. Section B will show how in many developing countries this conflict is magnified immeasurably by the phenomenon of market-dominant minorities—ethnic minorities who, along with foreign investors, tend under market conditions to dominate economically the impoverished majorities around them. This particular mapping of ethnicity onto class—common in developing societies but rare today in the developed world—converts the paradox of free market democracy into an engine of potentially catastrophic ethnonationalism. Contemporary Indonesia is offered as a paradigmatic illustration. Section C discusses developing countries without economically dominant minorities (for example, Argentina and China). Conversely, Section D discusses economically dominant minorities that existed in the developed nations during earlier (typically undemocratic) periods. In Section E, Weimar Germany is cautiously offered as a rare instance in which a Western nation pursued—with catastrophic ethnonationalist consequences—free market democracy under conditions in many respects analogous to those characteristic of many developing countries today.

94. DAHN, supra note 2, at 166.
A. The Absence of Institutions in the Developing World Mediating the Paradox of Free Market Democracy

1. Material Redistribution

Whereas the relatively less well-off in developed countries to a significant extent have been "bought out," the same cannot be said of the hundreds of millions of chronically poor throughout the developing world. The "poor" in developing countries are not an undifferentiated mass, and modest opportunities for occupational and economic mobility probably exist everywhere.95 "By virtually any objective criterion," however, the problems of urban and rural "poverty in Asia, Africa, and to a lesser degree Latin America are staggering."96

In part, the problem is one of drastically insufficient funds. Almost by definition, the poor are far more numerous (and generally speaking far poorer) in the developing world than in the developed world. The ongoing population explosion in the developing world—one of the greatest sources of pessimism for developmental economists—contrasts markedly "with the history of the presently rich industrial nations when they were in earlier phases of their development."97 For example, "in their nineteenth-century pre-industrial phase, the countries of Western Europe had a population growth that was generally less than half the rate now existing in the poor countries."98 If current World Bank projections are correct, the population in countries now classified as developing is expected to increase from roughly 4 billion today to roughly 8 billion by the year 2050.99

As a result, throughout the developing world, a minimally acceptable standard of living for the poor is far more difficult to achieve than in the developed world, because, to put it mildly, there is much less to be spread across many more. At the same time, developing-country elites are obviously resistant to redistribution,100 and the understandable focus on growth among developing-country leaders and international policy makers tends to deprioritize redistributive programs. There are some qualified exceptions. A few developing countries, for example Bolivia, have implemented genuine, large-scale, redistributive agrarian reforms.101 In India, some redistribution has occurred through

96. Id.
98. Id.
101. See Robert Barton, A Short History of Bolivia 262–66 (1968); infra note 115. But despite agrarian reform, Bolivia still "has one of the worst distributions of wealth in the Americas (the wealthiest 5 percent control 39 percent of the national income and the poorest 20 percent, only 2 percent)." Waltraud Queiser Morales, Bolivia: Land of Struggle 203.
affirmative action quotas for lower castes and tribes. Nevertheless, it remains the case that "extreme inequalities . . . largely unqualified by effective compensatory devices" are the norm throughout the developing world, including many countries in Eastern Europe and the former Soviet Union.

To be clear, buy-outs occur all the time in the developing world; they are a part of daily life. Many developing countries, for example, are characterized by extensive patron-client relationships; local and even higher-level politicians often offer important constituents "such things as hospital beds, loans, jobs, permits, places in schools, irrigation projects, roads and repairs, even train reservations." Typically, however, by far the largest pay-offs in developing countries are made by the wealthy (including foreign investors) to corrupt officials and bureaucrats in the form of bribes, speed money, kickbacks, embezzlement, extortion, or other illicit activity.

The problem, therefore, is not only that of insufficient funds. It is no secret that most developing and post-communist countries lack strong, accountable institutions capable of administering a regulatory welfare state. It was often hoped that privatization, by eliminating bloated bureaucracies and state-owned enterprises, would both substantially reduce corruption and leave behind a pared-down and better-functioning state apparatus, capable of administering regulatory and redistributive institutions. Unfortunately, to date, privatization generally has done neither. Instead, in many developing countries, the privatization process itself has been corrupted, with transfers of wealth going not to the relatively poor but rather to those rich enough to bid


102. See Kandi Bajpai, Diversity, Democracy, and Devolution in India, in Government Policies and Ethnic Relations in Asia and the Pacific, supra note 55, at 33, 53–54, 78. "Those who have benefited from reservations have tended to be a small elite within the scheduled caste and tribe communities." Id. at 54.

103. Unger, supra note 1, at 53; see Meier, supra note 97, at 23–24.


and bribe,\textsuperscript{109} to corporate insiders,\textsuperscript{110} to government officials and their families and friends,\textsuperscript{111} and, in some cases, to organized crime groups.\textsuperscript{112} Further, even when the privatization process has been relatively transparent, the main beneficiaries of state divestment—at least in the short run—tend to be foreign investors and their wealthy domestic business partners, while the losers tend to be labor and those most dependent on (inefficient) state support.\textsuperscript{113}

In sum, in the developing world today the poor are far more numerous, and poverty far more entrenched, than in the developed world, either today or at analogous historical periods. Moreover, the version of market capitalism being exported to the developing world does not, as a practical matter, include redistributive institutions of the kind that have helped mute the harshest effects of capitalism in the West.

2. Political Restraints and Political Exclusion

Similarly, it is crucial to recognize that the process of democratization that developing societies are being asked to embrace is not the same as the one that the Western democracies themselves went through. In the West, as mentioned earlier, universal suffrage emerged only gradually and incrementally.\textsuperscript{114} By contrast, in the developing world, universal suffrage generally has been or is being implemented on a massive scale

\begin{itemize}
\item \textsuperscript{111} Examples of nepotism and cronyism in developing-country privatizations abound. See, e.g., ROSE-ACKERMAN, supra note 106, at 36 (noting that "[i]n Brazil when it became clear that an ally of President Fernando Collor de Mello was in line to receive a privatized firm, others withdrew their offers"); Andrew Downie, \textit{Mexican Official Wins Fertilizer Plant Bidding; Deal Cited as Example of Corruption}, HOUSTON CHRON., Nov. 8, 1996, at 4 (describing charges of "widespread corruption surrounding former President Carlos Salinas de Gortari's privatization program"); S. Jayasankaran, \textit{Problems in Private: Malaysian Firms Hand Back Projects to the Government}, FAR E. ECON. REV., Apr. 25, 1998, at 75 (describing major privatization projects in Malaysia awarded to Prime Minister Mahathir's son and former Deputy Prime Minister Anwar Ibrahim's supporters); William Wallis, \textit{Testing Troubles Abound as Nigeria Tries to Wean Itself Off State Ownership of Industry}, FIN. TIMES (London), Mar. 30, 1999, at 5 (describing "renewed public fears" in Nigeria "that privatization is intended less as the motor of national economic growth than as a route to the further enrichment of the [ruling] generals and their cronies").
\item \textsuperscript{112} See ROSE-ACKERMAN, supra note 106, at 24.
\item \textsuperscript{114} See supra text accompanying notes 47–55.
\end{itemize}
and almost (by comparison) overnight.\textsuperscript{115} This sudden, unmediated process of democratization makes the transition to free market democracy particularly volatile and the need for other mediating devices more pressing.

To be sure, many developing and post-communist countries now have on paper various constitutional property safeguards and guarantees, in some cases copied almost verbatim from Western constitutions.\textsuperscript{116} There is nothing inherently wrong with (even verbatim) copying; there is a long history of legal institutions successfully “borrowed” from one context and “transplanted” to another.\textsuperscript{117} The problem is, however, that in most developing countries, these paper constitutional protections are uninternalized,\textsuperscript{118} unsupported by a viable institutional framework,\textsuperscript{119} and in some cases, completely unserious.\textsuperscript{120} Efforts to address the problem of “constitutions without constitutionalism”\textsuperscript{121} are of crucial importance. For the time being, however, institutions capable of giving meaningful content to paper constitutional protections remain severely lacking in the developing world.

\textsuperscript{115} A number of developing countries have had universal suffrage (at least on the books) for many decades now. India, for example, has had universal suffrage since independence. See Gurchaman Das, \textit{The Hindu-Editorial: The wise elephant}, \textit{The Hindu}, Jan. 1, 2000; see also DENNIS AUSTIN, DEMOCRACY AND VIOLENCE IN INDIA AND SRI LANKA (1994). In Bolivia, one of the first acts of the Movimiento Nacionalista Revolucionario, after taking power in 1992, was to extend universal suffrage to Indians. Shortly afterwards, estates over fifteen hundred acres were confiscated, and extensive agrarian reform undertaken. See BARTON, \textit{supra} note 101, at 263–66.


\textsuperscript{117} See, \textit{e.g.}, JOHN H. BARTON ET AL., \textit{LAW IN RADICALLY DIFFERENT CULTURES} 36 (1983) (noting that Egypt's "current judicial system ... is modeled very closely on the French pattern"); Lawrence M. Friedman, \textit{Legal Culture and Social Development}, 4 L. & Soc'y Rev. 29, 42 (1969) (observing that "Japan and Turkey are among the countries that have borrowed Western codes, lock, stock, and barrel."); Donald L. Horowitz, \textit{The Qur'an and the Common Law: Islamic Law Reform and the Theory of Legal Change}, 42 Am. J. Comp. L. 233, 267–73, 574 (1994) (describing the successful incorporation of English law into Malaysian Islamic law); Stanley Lubman, \textit{Introduction: The Future of Chinese Law}, CHINA Q., Mar. 1995, at 1, 18 (stating that China's current civil code "is closely modelled on the general part of the German Civil Code, which influenced the Civil Code presently in force in Taiwan").

\textsuperscript{118} In one commentator's words, referring to constitutions newly adopted by Malawi, Namibia, Tanzania, Zambia, and Zimbabwe, unless serious attention is paid to "internalizing the values of democracy" and to ensuring that universal principles are articulated "in a way that makes [them] accessible in indigenous discourse," "the region's liberal democratic constitutions will join the numerous white elephants which litter the African landscape like some haunting reminders of... misguided paternalism." Kanyongolo, \textit{supra} note 116, at 11.


\textsuperscript{120} See, \textit{e.g.}, Chua, \textit{supra} note 1, at 84 (noting the purely formal separation of powers in Kazakhstan).

On the other hand, many developing countries do have one perversely effective restraint on democracy: systemic political corruption. As discussed further below, even in nominally democratic countries, rigged elections, rampant bribery, and, more subtly, extensive patron-clientelism often create substantial obstacles to genuine democracy in the developing world (as of course they sometimes have done in the developed world). In recent years, anti-corruption initiatives have become a major thrust of international development policy. These initiatives are long overdue and of the utmost importance, but to the extent that they succeed, they may sharpen the conflict between markets and democracy.

3. Market-Compatible Ideologies

As market institutions are exported to the developing world, there is a tendency to assume that the generally market-supportive beliefs and cultural attitudes familiar to us in the West will be exported along with them. This assumption is deeply problematic. Ideologies do not come "attached" to institutions. State-building, as recent years have shown, is difficult enough; ideology-building is something else altogether. For example, it seems implausible that an American-style, rags-to-riches ideology of upward mobility, which does not travel particularly well even to Europe, could exist robustly amidst the chronic hunger, malnutrition, and entrenched poverty characteristic of much of the developing world. "People whose physical survival is imperiled cannot think about the future"—let alone experience an enriching sense of having a stake in the marketplace. Nor is it realistic that markets will spontaneously generate an ideology of "valued employees" (or, with one exception to be discussed momentarily, any of the other de-

122. See ROSE-ACKE_RMAN, supra note 106, at 137–38; see infra text accompanying notes 460–467.
123. See ROSE-ACKE_RMAN, supra note 106, at xii, 177, 182–84.
124. See MEIER, supra note 97, at 25–28; The Hungry Are Always with Us, ECONOMIST, Oct. 16, 1999, at 49 (describing the pervasive hunger in the developing world, as recently documented by the United Nations Food and Agriculture Organisation). Needless to say, "the developing world" is not monolithic. Several of the post-communist states (for example, the Czech Republic, Estonia, and Hungary), which are sometimes classified as part of the developing world, have much more advanced economies than other developing countries. Argentina enjoyed a period of upward mobility, both actual and perceived, in the early decades of this century, and even today arguably has more in common with the United States than with (say) Bolivia or Guatemala. See MEIER, supra note 97, at 14–16 (offering comparative statistics on "basic indicators" of development). More generally, a number of developing countries have begun to establish a substantial (if precarious) middle class, and pockets of upward mobility and economic self-reliance certainly exist. In Shanghai, the market reforms of the last decade have enabled substantial numbers of average citizens to go "from rags to riches." Unfortunately, these are the exceptions rather than the rule. In Shanghai, for example, the market reforms just mentioned also have led to thousands of other (typically older, less educated) Shanghai residents being laid off. See Women hold up half the sky, yet find no place in the sun, HINDUSTAN TIMES, Mar. 18, 1999.
veloped-world market-compatible ideologies described earlier) in societies where cheap labor has been so consistently exploited.126

To be sure, market-oriented reforms have during some periods enjoyed broad, even euphoric, enthusiasm among developing-country populations. While some of this enthusiasm may be realistic and durable, it should not be equated with what I have called market-compatible ideologies. The initial enthusiasm for free market democracy in the developing world has often been based on extremely unrealistic expectations.

In South Africa, for example, in the euphoria following the collapse of apartheid, millions—according to one poll, an 81% majority—of black South Africans hoped that the new government would "make sure that 'people like me can live like most whites.'"127 But such hopes of rapid economic empowerment, often encouraged or even generated by vote-seeking politicians, are very different from a sustained, historically rooted ideology of upward mobility. Far from being capable of maintaining support for markets among the less well-off even in the face of ongoing, market-generated, extreme income disparities, dangerously inflated expectations can be expected to do just the opposite: produce widespread disappointment, anger, and rebellion when it becomes clear that rapid riches will not come.128

On the other hand, one (and unfortunately the darkest) of the market-compatible ideologies described above does seem to have some purchase in certain developing societies. Just as racism has operated to fracture poor majorities in some developed countries, so too racism and other forms of ethnic conflict, including caste, religious, and tribal divisions, may impede the formation of class-based coalitions in some developing countries. Brazil provides a possible (and characteristically complex) example of this.

Race consciousness is much more muted, and racially based mobilization much less salient, in Brazil than in the United States.129 One view of this "low-level of racial identity consolidation," consistent with Brazil’s dominant official discourse, emphasizes the absence of racial discrimination in Brazil and the fact that most Brazilians are to some


degree “mixed” and thus equal members of the “Brazilian race.” \(^{130}\) Another view, more skeptical of Brazil’s “myth of racial democracy,” \(^{131}\) emphasizes Brazil’s evident pigmentocracy, \(^{132}\) the disenfranchisement of many poor blacks until as late as 1988 on illiteracy grounds, \(^{133}\) and the common perception that “whitening” (through miscegenation or passing) is a key route to social advancement. \(^{134}\) From this point of view, racism in Brazil has had an effect on the paradox of free market democracy highly analogous to its effect in the United States. As with poor whites in the United States, racism may encourage mulattos in Brazil to disassociate themselves from the generally “poorer, less educated, and less respected” black population, impeding social mobilization. \(^{135}\)

Frequently, however, ethnic conflict in the developing world will not mediate but rather catalyze the paradox of free market democracy. This is the subject of the next Section.

B. The Problem of Ethnonationalism

Many developing nations not only lack market-compatible ideologies, but also tend to be in the grip—or prone to the grip—of a particularly lethal and potentially market-subversive ideology: ethnonationalism.

Ethnonationalism is that form of nationalism in which the nation is “defined in terms of assumed blood ties and ethnicity.” \(^{136}\) “[M]ix[ing] facts with fiction,” and “always involv[ing] a measure of political manipulation,” \(^{137}\) ethnonationalism has been one of the most potent po-

---

130. Id. at 178–79.
131. Id. at 182.
132. The stark (but unspoken) reality in Brazil is that “[t]he top jobs in business, politics and academia are held by those with light skin.” David L. Marcus, Melting Pot Coming to a Boil: Brazilian Blurr Color Lines, But Racism Stands Out Clearly, DALLAS MORNING NEWS, Jan. 16, 1994, at 1A. By contrast, African Brazilians have historically filled “subordinate economic roles.” Marx, supra note 129, at 178–79. Meanwhile, “mulattos” or persons of “mixed-race” are generally accorded greater privileges than blacks, but fewer privileges than the “white” minority. Marcus, supra, at 1A.
133. Marx, supra note 129, at 179. Such “exclusion from full citizenship was not explicitly based on race.” Id.
134. Id. at 181.
135. Marcus, supra note 132, at 1A; see CARL N. DEGIER, NEITHER BLACK NOR WHITE: SLAVERY AND RACE RELATIONS IN BRAZIL AND THE UNITED STATES 245 (1971). Effectively, mulattos act as a buffer class between elite whites and economically exploited blacks, reinforcing a system of white dominance. See Marcus, supra note 132, at 1A.
137. Id. at 31. Ethnicity is an elusive and controversial concept that has generated considerable debate among social scientists. For purposes of this Article, I adopt a broad conception of ethnicity, which acknowledges the importance of subjective, “constructed” perceptions of identity and encompasses differences along racial lines, lines of geographic origin, and linguistic, religious, tribal, or other cultural lines. See Chua, supra note 1, at 10.
itical forces of the last two hundred years and flourishes widely throughout the developing world.

Ethnonationalism in itself, like racism, neither favors nor disfavors markets. In a given society, ethnonationalism can coexist robustly with markets. Arguably Japan, with its relatively high degree of "ethnicultural homogeneity resulting from two and a half centuries of isolation," is an instance of this. As the next Section discusses, however, ethnonationalism will, under certain conditions characteristic of the developing world, tend to be a profoundly market-subversive force.

1. Market-Dominant Minorities and the Ethnicization of the Paradox of Free Market Democracy

Although those shaping law and development today almost never acknowledge the phenomenon, historians and sociologists of the developing world have long recognized the presence of ethnic minorities who historically have dominated economically the indigenous majorities around them. These minorities, who may be economically dominant at the national or regional level, can be found throughout South and Southeast Asia, Africa, the Caribbean and the West.

138. BENEDICT ANDERSON, IMAGINED COMMUNITIES 95 (rev. ed. 1991). The "nation" in Japan has always been conceived of in strongly ethnic terms:
Citizenship law [in Japan] smacks strongly of jus sanguinis. Japanese children born to Japanese parents are citizens from birth. But it is very difficult to become Japanese; this is open only to people of Japanese ancestry. People of Korean ancestry—who number perhaps half a million in Japan—are not citizens and cannot become citizens, no matter how many generations have lived in Japan.

FRIEDMAN, supra note 32, at 161 (citation omitted).

139. See generally Chua, supra note 1, at 21-26; DONALD L. HOROWITZ, ETHNIC GROUPS IN CONFLICT 105-228 (1985). As Professor Horowitz has observed, claims of majority indigenousness are frequently highly artificial and often the product of elite manipulation. See id. at 202-09.

140. Along with many others, I have elsewhere documented the startling persistence and extent of Chinese economic power in Indonesia, Malaysia, Thailand, the Philippines, and Vietnam. See Chua, supra note 1, at 22-23. Most recently, the astounding resurgence of ethnic Chinese economic dominance in Mandalay, Burma, see Stephen Mansfield, MYANMAR'S CHINESE CONNECTION, JAPAN TIMES, May 12, 1999, has become a source of potential regional destabilization. Other economically dominant minorities in South and Southeast Asia have included Indians in Burma; Ceylon Tamils in Sri Lanka; Vietnamese in Cambodia; and within India, Bengalis in Assam, Coastal Andhras in Telengana, and South Indians in Maharashatra. See Chua, supra note 1.

Indies, in some countries in Latin America, and in parts of the former Soviet Union. To be clear, by economic dominance, I am referring not to vague stereotypes, but rather to actual, starkly disproportionate control over major sectors of the economy. In Indonesia, for example, the Chinese comprise only roughly 3% of the population, but until recently controlled up to 70% of the private economy under a number of different measures. Similarly, in South Africa, the white minority constitutes roughly 13% of the population, but, at least until recently, owned over 85% of the country’s arable land and controlled all of the country’s largest conglomerates. In Guatemala, a tiny minority of generally light-skinned elites control most of the nation’s wealth, while Mayan Indians, comprising two-thirds of the population, live in abject poverty.

In some cases, for example when a particular ethnic group owes its economic dominance in part to political favoritism or military force, market reforms might in theory be expected to undercut the minority’s politically dominant Indo-Mauritian majority. Percy S. Mistry, Mauritius—Quo Vadis?, 98 African Affairs 551 (1999). In both South Africa and Zimbabwe, whites continue to represent a starkly economically dominant minority. See Chua, supra note 1, at 49 n.262, 65.

142. In the Dominican Republic, Haiti, Jamaica, and Trinidad, the Lebanese minority continue today to dominate commerce and industry. See Chua, supra note 1, at 24 n.115. In Guyana and Trinidad, Indians generally outperform their Creole counterparts in trade and business despite repeated backlashes. See id.

143. See infra text accompanying notes 201–206.

144. Throughout the Central Asian republics, the predominantly urban Russian minorities still tend to dominate those countries’ communications, construction, engineering, electronics, science and computer technology, transportation, and industrial sectors, although such dominance may dissipate with market reforms. See Chua, supra note 1, at 26, 86–88. At the same time, in many Central Asian countries the Uzbek and the (relatively small) Korean minorities have tended to be disproportionately prosperous vis-à-vis the indigenous minorities around them. See id. at 26 n.127.

145. No reliable figures on the number of ethnic Chinese in Indonesia have been collected since the 1990 census; all later estimates appear to be based on calculations that they still represent either 3 or 4% of the total population, although even that can be only an informed guess.


146. See, e.g., Leo Suryadinata, Indonesian Policies Toward the Chinese Minority Under the New Order, 16 Asian Surv. 770, 770 (1976); A Taxing Dilemma, AsiaWeek, Oct. 20, 1993, at 57, 58 (reporting that, according to the Sakura Bank-Nomura Research Institute, in 1991 Indonesian Chinese comprised 3.5% of the population but commanded a 73% share of the country’s listed equity); see also Linda Y.C. Lim & L.A. Peter Gosling, Strengths and Weaknesses of Minority Status for Southeast Asian Chinese at a Time of Economic Growth and Liberalization, in Essential Outsiders: Chinese and Jews in the Modern Transformation of Southeast Asia and Central Europe 285, 312 n.2 (Daniel Chirot & Anthony Reid eds., 1997) (offering similar estimates); infra text accompanying notes 164–196.

147. See Chua, supra note 1, at 65. A 1994 study showed that black South Africans, representing over 80% of the country’s population, held only 3% of total jobs in management. See C. Richard Scott et al., Affirmative Action as Seen by Business Majors in the U.S. and South Africa, 63 SAM Advanced Mgmt. J. 28 (1998).

economic dominance.\footnote{An example might arguably be the Russian minorities in Central Asian countries such as Kazakhstan, whose historical economic dominance clearly reflects at least in part pro-Russian Soviet-era discrimination. See Chua, supra note 1, at 86–88. Competition law might also in some cases dissipate the economic dominance of certain groups. See Eleanor Fox, Equality, Discrimination, and Competition Law: Lessons from and for South Africa and Indonesia, 41 Harv. INT’L L. J. 579, at pt. IV (examining Indonesian competition law).} In reality, however, in part because of historical or “path dependent” reasons, most economically dominant minorities will also tend to be market-dominant—meaning that their economic dominance will not dissipate but rather persist or even increase with privatization and other market-oriented reforms, at least in the near to midterm future. There are a number of reasons for this.

To begin with, “economic liberalization naturally favors private business while reducing the role and influence of bureaucrats and the state.”\footnote{This is often the case with “entrepreneurial” ethnic groups in Africa—for example, the Bamileke in Cameroon, Chagga in Tanzania, and Kikuyu in Kenya. See, e.g., Brooke, supra note 141, at D8; Everett, supra note 141, at A48. In Indonesia, the Philippines, and Thailand, the “liberal, market-oriented economic reform programs” of the 1980s appear to have “greatly increased the wealth and relative power” of those countries’ Chinese-dominated private business communities. Lim & Gosling, supra note 146, at 295, 298, 301. Indeed, as one source has put it (perhaps a little too vividly), the “rapid regionwide economic growth” since the 1980s “has turned Southeast Asia into a ‘South China Sea’ of ethnic Chinese capital and labor movements, greatly increasing the visibility and the actual presence of both foreign and local Chinese in regional economies.” Id. at 289. More recently, economic liberalization in Vietnam and Burma has led to a resurgence of Chinese commercial dominance in the country’s urban areas. See Chua, supra note 1, at 22–23.} Thus in the many developing societies in which the private sector is overwhelmingly dominated by a particular ethnic minority, economic liberalization will likely disproportionately benefit that minority, at least in the earlier years (or decades) of marketization.\footnote{See, e.g., id. at 20–24, 26; Everett, supra note 141, at A48; Raphael Pura, Technology Guru Stands Out in Indonesia, WALL ST. J., Nov. 21, 1994, at B6D.} This will particularly be true where the economic regulations being swept away, and the state-owned enterprises being dismantled, were originally established to curtail the economic dominance of the ethnic minority in question.\footnote{See, e.g., Jose Edgardo Campos & Hilton L. Root, The Key to the Asian Miracle 131 (1996); Chua, supra note 1, at 100–01.}

Relatedly, because economically dominant minorities frequently control (or at least are disproportionately represented in) those sectors of the economy that are most attractive to foreign investors—for example, finance, technology, industry, transport, and mining and other natural resources\footnote{See Chua, supra note 1, at 48–50.}—they often are better positioned to benefit from foreign investment liberalization (for example, in the form of lucrative joint ventures).\footnote{See, e.g., id. at 20–24, 26; Everett, supra note 141, at A48; Raphael Pura, Technology Guru Stands Out in Indonesia, WALL ST. J., Nov. 21, 1994, at B6D.} Some of this market dominance may reflect “superior entrepreneurialism,” which itself can result from a number of factors, from culture to a history of political favoritism by colonial
authorities.\textsuperscript{155} At the same time, more invidiously, some economically dominant minorities may be market-dominant because, like whites in apartheid South Africa, they have oppressed the indigenous majorities around them for so long that it will be decades before education levels and entrepreneurial experience come close to being equalized.\textsuperscript{156}

The phenomenon of market-dominant minorities has sobering implications for free market democracy in the developing world. To summarize my previous work very briefly, in developing countries with a market-dominant minority, markets and democracy will tend to favor not just different people, or different classes, but different ethnic groups. Markets will tend to benefit the market-dominant minority, while democracy will increase the power of the relatively impoverished majority. In these circumstances, the combined pursuit of markets and democracy will tend to produce an ethnically charged and highly unstable situation. More specifically, as I have modeled elsewhere,\textsuperscript{157} in countries satisfying certain specified conditions, including economic underdevelopment and the presence of a market-dominant minority, marketization and democratization will tend to produce highly determinate and potentially highly destructive ethnoeconomic and ethnopolitical consequences, along the following lines.

First, by causing, maintaining, or exacerbating the disproportionate wealth of the market-dominant minority, marketization will cause, maintain, or exacerbate intense ethnic resentment among the impoverished, indigenous majority.\textsuperscript{158} Next, with democratization, this ethnoeconomic resentment will tend to be transformed into a potent ethnonationalist movement, in part because politicians will have powerful incentives to scapegoat the resented economically dominant minority and foment ethnic hatred to their advantage.\textsuperscript{159} The result of this process will often be the ethnicization of the paradox of free market democracy: the emergence of an aroused ethnonationalist majority who, perceiving markets as solely or principally benefitting a resented ethnic minority, demands policies that will end that minority’s economic dominance, so that the nation’s wealth and identity can be reclaimed by its “true owners.”\textsuperscript{160} In these circumstances, one of three non-mutually exclusive outcomes becomes highly probable: (1) an anti-

\textsuperscript{155} I have elsewhere explored in detail the causes of market dominance. See Chua, \textit{supra} note 1, at 29–33.

\textsuperscript{156} See \textit{id.} at 29.

\textsuperscript{157} I have developed a model exploring the likely consequences of pursuing markets and democracy under the following conditions prevalent in the developing world: (1) economic underdevelopment; (2) severe ethnic divisions; (3) the presence of a market-dominant minority; and (4) the presence of an impoverished majority with claims to being the “true owners of the nation” (often by virtue of their supposed “indigenousness”). See Chua, \textit{supra} note 1, at 33–63.

\textsuperscript{158} See \textit{id.} at 37–41.

\textsuperscript{159} See \textit{id.} at 42–47.

\textsuperscript{160} See \textit{id.} at 47–48.
market backlash targeting the market-dominant minority (for example through ethnically targeted nationalizations or economic restrictions); (2) actions aimed at eliminating the market-dominant minority (for example, through expulsion or atrocity); and (3) a pro-market retreat from democracy. As I have documented in detail, each of these outcomes has occurred repeatedly throughout the developing world.\textsuperscript{161}

Thus, the paradox of free market democracy often assumes a very different face in the developing world. As noted above, the ethnic and racistist structures of the developed world typically help neutralize the conflict between markets and democracy, essentially by fracturing the poor majority.\textsuperscript{162} In the United States, for example, racism (together with a thriving ideology of upward mobility) arguably makes poor and lower middle class whites feel more “kinship” with wealthy whites than with African Americans or Hispanic Americans of comparable economic status. Indeed, as many have observed, large numbers of working-class whites in the United States oppose welfare and increased government spending on social services, often voting against what might be expected to be their rational economic self-interest, and it is often speculated that racism plays a role in this pattern.\textsuperscript{163} In this sense, ethnic consciousness pulls against class consciousness in the developed world, such that the core ethnoeconomic dynamic in countries like the United States or Japan pits an economically and politically dominant racial or ethnic majority against economically and politically weaker racial or ethnic minorities. As a result, developed-world racism creates no particular threat to a market economy; on the contrary, to the extent that racism helps reconcile a great number of poor persons to the economic hierarchy (because there is a group still lower than they) and impedes political coalitions among the poor, racism in the developed world helps to defuse the paradox of free market democracy.

By contrast, the distinctive overlapping of class and ethnicity characteristic of many developing countries—in which the “very rich” are (or are perceived as) ethnically distinct—tends to catalyze the paradox of free market democracy, with democracy dangerously pitting a politically powerful but impoverished “indigenous” majority against a resented economically dominant “outsider” minority. This dynamic,
together with all three of its characteristic outcomes described above, is vividly illustrated by contemporary Indonesia.

2. Indonesia

As in all the Southeast Asian countries, the ethnic Chinese in Indonesia have long represented an economically dominant minority vis-à-vis the indigenous majority\textsuperscript{164} around them—in this case, the pribumi ("of the earth").\textsuperscript{165} Since at least the early 1910s, the Indonesian Chinese have been the frequent targets of "[v]iolent, popular anti-Sinicism."\textsuperscript{166} As many scholars have noted, the emergence of Indonesian nationalism at the turn of the century was inextricably bound up with "the sudden increased impingement of aggressively competitive Chinese entrepreneurs upon the interests of the vestigial Javanese merchant class."\textsuperscript{167} After independence, President Sukarno's sweeping na-

\textsuperscript{164} This is by no means to suggest that indigenous Indonesians are homogeneous—nothing could be further from the truth. Indonesia's "nearly 200 million people are divided into hundreds of distinct cultural groups living for the most part in regional homelands... from Aceh on the northern tip of Sumatra to Irian Jaya..." R. William Liddle, Coercion, Co-optation, and the Management of Ethnic Relations in Indonesia, in GOVERNMENT POLICIES AND ETHNIC RELATIONS, supra note 55, at 273, 274. "Typically, the members of each group speak their own language or dialect and have a strong sense of their distinctiveness..." Id. Among cultural and regional groups, "the main axis of conflict has been the relationship between the Javanese, who almost constitute a majority, and all the others, who have feared domination by the Javenese." Id. at 279. Indonesians are divided along religious lines as well. Roughly 87% of the country is Muslim. See id. at 275 tbl.7.2. "Most Hindus are Balinese, while Protestant and Catholic adherents are heavily concentrated among specific regional ethnic groups..." Id. at 274.

\textsuperscript{165} In pre-colonial Indonesia,

all foreign trade in the [Tabanan] kingdom—the main export was coffee, the main export opium—was conducted by a single wealthy Chinese called a subander, who held a royal monopoly in exchange for a suitable tribute, the remainder of the small resident Chinese population acting as his agents. Domestic trade was trifling... CLIFFORD GEERTZ, PEDDLERS AND PRINCES: SOCIAL CHANGE AND ECONOMIC MODERNIZATION IN TWO INDONESIAN TOWNS 25 (1963) (3d impression 1970). The Chinese began arriving "in large numbers only in the nineteenth and early twentieth centuries, when the Dutch colonial government offered them both economic opportunity and a measure of personal security..." Liddle, supra note 164, at 278. During the colonial era, wealthy Chinese merchants, along with Javanese aristocrats turned bureaucrats (prabu)," served as "local elite intermediaries" for the Dutch. Takashi Shirai, Anti-Sinicism in Java's New Order, in ESSENTIAL OUTSIDERS, supra note 146, at 187, 195. The main role of the Chinese was to operate for the Dutch highly profitable "revenue farms and monopoly concessions for running local markets, collecting fees, selling salt and opium, running pawnshops, and so on. The most important of these from the 1850s to the 1880s were the opium farms." Id. At the same time, Chinese moneylenders dominated colonial Java's rural credit sector. See id. at 199. The result of this "plural" colonial economic structure was the concentration of economic power largely in Chinese and European hands and the distinctly "inferior economic position of the Indonesians." FRANK H. GOLAY ET AL., UNDERDEVELOPMENT AND ECONOMIC NATIONALISM IN SOUTHEAST ASIA 115 (1969); see also id. at 113–18.

\textsuperscript{166} Shirai, supra note 165, at 187.

\textsuperscript{167} GEORGE McTURNAN KAHIN, NATIONALISM AND REVOLUTION IN INDONESIA 67 (1952); see also GOLAY ET AL., supra note 165, at 118–19. The Dutch revenue farms were dismantled in the 1890s, which caused the Chinese to seek "new investment opportunities in krestek (clove) cigarettes, batik, and other industries hitherto dominated by the native bourgeoisie. Thus they came into direct conflict with a native class for the first time in their history on the Indies."
tionalizations in the 1950s and 1960s targeted not just the Dutch but also, very explicitly, the ethnic Chinese—an instantiation of the first outcome noted above (ethnically targeted anti-market backlash). Indeed, through nationalization and other measures of economic nationalism, Sukarno "indigenized" much of Indonesia's financial, mining, import-export, rice, batik, and modern industrial sectors—all formerly dominated by Chinese and Europeans.

By contrast, the thirty-year "capitalist-style" autocracy of General Suharto is a paradigmatic example of the third outcome noted above (pro-market retreat from democracy). After seizing power militarily in 1965, "Suharto proceeded to quash rival political parties and to extinguish opposition of all types." In return for the support of the World Bank and the International Monetary Fund (IMF), Suharto adopted aggressive privatization and economic liberalization policies to encourage foreign investment and rapid economic growth. To that end, Suharto reached out to the Chinese business community. Throughout his rule, Suharto not only protected the Chinese politically, but affirmatively directed lucrative business opportunities to them. In exchange, the Indonesian Chinese, with their "business expertise, international connections, and preexisting business links with the armed forces," returned these favors, both by fueling the country's economy and by adding enormously to the personal wealth of the Suharto family.

Shiraishi, supra note 165, at 189. The Sarekat Islam, Indonesia's "first popular native nationalist movement" (born in late 1911 in Central Java), was marked by "violent anti-Sinicism." Id. at 187. For a discussion of the complex array of forces surrounding this anti-Sinicism, see id. passim.

168. See Golay et al., supra note 165, at 137, 158, 166, 194.

169. See Amy L. Chua, The Privatization-Nationalization Cycle: The Link Between Markets and Ethnicity in Developing Countries, 95 Colum. L. Rev. 223, 269 (1995) (citations omitted). Despite his "indigenization" campaign, Sukarno was criticized by ethnic Indonesians for "his protective attitude to the Chinese minority, perhaps reflecting the gradual rapprochement under Sukarno between Indonesia and the People's Republic of China." Id. at 269 n.370 (citation omitted).

170. Chua, supra note 1, at 55 (citations omitted).

171. See id. See also Michael R.J. Vatikiotis, Indonesian Politics Under Suharto: Order, Development and Pressure for Change 39–41 (1993); Liddle, supra note 164, at 300–01.

172. In 1971 an article appeared in the Bangkok Post reporting that Indonesia's Cukongs, consisting of about twenty ethnic Chinese, had "wide holdings ranging from airlines and banks to flour mills, import-export companies, tourist corporations, restaurants, shipping companies, tin exporting concessions, rice milling plants, and timber concessions." Suryadinata, supra note 146, at 773–74. The article also stated that the Cukongs had a steady inside track to government contracts and investment credits and that 90% of project aid money ended up in the hands of Cukongs. The article was translated and published in Nusantara, a leading Jakarta daily, prompting inquiries by members of Parliament. The government denied the charges, and the editor of Nusantara was prosecuted and sentenced to two years imprisonment. See id. at 774.

173. See Chua, supra note 1, at 55 (citations omitted).


175. See Chua, supra note 1, at 55 (citations omitted).
As already mentioned, by the end of the Suharto regime, Sino-Indonesians occupied a position of economic dominance wildly disproportionate to their numbers (roughly three percent of the population).\textsuperscript{176} All of Indonesia’s billionaires reportedly have been ethnically Chinese,\textsuperscript{177} and, until very recently, almost all of the country’s largest conglomerates were owned by Sino-Indonesian families.\textsuperscript{178} The major exceptions to this rule were companies owned by the children of President Suharto, which themselves “depended for their success on state favors and links with Sino-Indonesians.”\textsuperscript{179} On a smaller scale, although of course not all Sino-Indonesians were well-off,\textsuperscript{180} ethnic Chinese dominated petty trading occupations in rural areas and retail and wholesale trade in urban areas,\textsuperscript{181} as well as the country’s informal credit sector.\textsuperscript{182} Indeed, “[p]ractically every tiny town [had] an ethnic Chinese-run general store that [was] the center of local economic life.”\textsuperscript{183}

As recent events have made clear, this state of affairs provoked massive, widespread hostility among the prabumi majority. Suharto’s resignation in May 1998 was accompanied by discriminatory ethnically targeted market interventions\textsuperscript{184} and an eruption of vicious anti-Chinese violence, in which nearly five thousand shops and homes of ethnic Chinese were burned and looted,\textsuperscript{185} over two thousand people

\begin{footnotesize}
\begin{enumerate}
\item See supra text accompanying note 146 (noting that Chinese Indonesians in the New Order controlled roughly 70% of the private economy).
\item See Liddle, supra note 164, at 301.
\item Id.
\item See Vatikiotis, supra note 171, at 101.
\item Id.
\item See David Jenkins, The Business of Hatred, Sydney Morning Herald, Oct. 28, 1998, at 8. Indonesia’s rice industry provides one illustration. Until May 1998, Indonesia’s rice distribution network was dominated by ethnic Chinese traders, who operated a fairly efficient system, “despite some profiteering on their part and despite the pay-offs they had to make to an increasingly venal indigenous bureaucracy.” Id. After Suharto’s resignation, the Habibie government, in an openly ethnonationalist move supported by majoritarian sentiment, canceled rice distribution contracts with hundreds of ethnic Chinese businessmen and awarded them instead to indigenous Indonesians, some of whom had little or no experience in the field. See id. The results were disastrous, part of a food crisis in which tens of millions of Indonesians were at one time reportedly eating only one meal a day. See Indonesia’s Anguish, N.Y. Times, Oct. 16, 1998, at A26. The new state-run rice cooperatives were immediately saturated with corruption, inefficiency, and scandal (one official was accused of trying to export illegally 1900 tons of rice to Malaysia, while his own constituents were starving). Predictably, indigenous officials and businessmen began secretly to subcontract work out to Chinese traders again. See Jenkins, supra.
\item See Gregg Jones, Fear Overwhelming Indonesia’s Chinese, Dallas Morning News, Oct. 4, 1998, at 1A.
\end{enumerate}
\end{footnotesize}
died,\textsuperscript{186} and many ethnic Chinese women were raped.\textsuperscript{187} Many Sino-Indonesian families (including some of the wealthiest) left the country,\textsuperscript{188} along with massive amounts of Chinese-controlled capital, estimated at $40–$100 billion,\textsuperscript{189} making Indonesia during this period an illustration of the second (eliminationist) outcome noted above.

Recent elections brought to power a new president, Abdurrahman Wahid, widely admired for his tolerance and commitment to human rights. President Wahid supports both “democratic reforms” and IMF-dictated pro-free-market policies.\textsuperscript{190} In other words, the combined pursuit of markets and democracy is once again the prevailing prescription.

Unfortunately, the conflict between these two goals is likely to be intense and combustible. With poverty pervasive, and “its banks and largest corporations still mired in delinquent debts,” Indonesia remains “in its worst economic crisis in a generation.”\textsuperscript{191} The point of pro-market reforms is explicitly to procure the return of foreign investment and Chinese-controlled capital, without which experts agree the Indonesian economy cannot be restarted.\textsuperscript{192} But for these policies to succeed would require a degree of assurance of Chinese economic security that may not be compatible with a genuine democratic politics in a country where, just fifteen months ago, many reportedly felt that “it would be worthwhile to lose ten years of growth to get rid of the [Chinese] problem once and for all.”\textsuperscript{193}

Indonesia is not exceptional. Ethnically targeted nationalizations or confiscations have occurred in postcolonial Burma, Ethiopia, Kenya,

\textsuperscript{186} See id. Most of those who died were “non-Chinese looters trapped in burning shopping malls.” Id.

\textsuperscript{187} According to local human rights workers, “more than 168 women”—most of them ethnic Chinese—were gang-raped during the riots.” Id. The Habibie government denied these allegations, claiming that they were “exaggerated.” Id.

\textsuperscript{188} See Jay Solomon, Indonesia's Chinese Move to Increase Civil Rights After a Decade-Long Bat on Political Activists, WALL ST. J., June 9, 1998, at A14 (reporting that 110,000 Sino-Indonesian families left the country).


\textsuperscript{192} See id. at C4; see also Solomon, supra note 188, at A14; Velloor, supra note 189, at 2; Yamin, supra note 189. According to many observers, it is no coincidence that President Wahid's first official visit was to China, where one of his primary goals was to secure Beijing's blessing for the return of overseas Chinese capital to Indonesia.

\textsuperscript{193} Velloor, supra note 189, at 2. There is a widespread belief among the prabumi that New Order economic liberalization favored the “already strong” Sino-Indonesians at the expense of the “economically weak” indigenous Indonesians. Liddle, supra note 164, at 300–01. “According to this logic, the obvious cure is a new set of regulations, the reimposition of governmental regulation.” Id. at 316.
Pakistan, the Philippines, Sri Lanka, Thailand, Uganda, and Vietnam, and most recently have been championed by indigenous politicians in South Africa and Zimbabwe. Suharto-style symbiotic relationships between autocratic governments and entrepreneurial minorities have been pursued by the Nguyen emperors in Vietnam, many Thai kings, Marcos in the Philippines, and a host of rulers in Africa. Finally, economically dominant minorities have been killed en masse in, expelled from, or pressured to leave Burma, Cambodia, Kenya, the Philippines, Rwanda, Uganda, and Vietnam, and most recently many of the Central Asian republics in the former Soviet Union.

C. Developing Countries Without Economically Dominant Minorities

Although the phenomenon of economically dominant minorities is much more pervasive in the developing world than is usually acknowledged, not all developing countries have economically dominant minorities. An important case in point is China. While the market reforms of the last decade have starkly benefitted China's coastal provinces (for example, Shanghai, Guangzhou, and Fujian) and urban areas, China does not appear to have any economically dominant ethnic minorities. On the contrary, the Han Chinese in China, comprising 95% of the population, have represented an economically and politically dominant majority vis-à-vis ethnic minorities like the Tibetans, Uighers, and Miao for three millennia. Recent evidence, moreover, suggests that the Han Chinese are generally market-dominant vis-à-vis the country's ethnic minorities as well.

Nor are economically dominant minorities present today in most Eastern European countries, although (as discussed further below) such minorities existed earlier in the history of countries such as Hungary, Romania, and Yugoslavia. While virtually all countries in Africa are marked by severe ethnic divisions, a few (for example, Botswana or Sudan) do not appear to have economically dominant minorities.

Latin America presents a more complicated picture. In one commentator's words, "No part of the world has ever witnessed such a gigantic mixing of races as the one that has been taking place in Latin

194. See Chua, supra note 1, at 48–49; Novogrodsky, supra note 141.
195. See Chua, supra note 1, at 54–56.
196. See id. at 51–54.
197. See June Teufel Dreyer, Assimilation and Accommodation in China, in GOVERNMENT POLICIES AND ETHNIC RELATIONS, supra note 55, at 351.
198. See Chua, supra note 1, at 28. For purposes of this Article, I assume, along with most Sinologists, that in China the "Han" Chinese (however constructed or even mythical this category) may be viewed appropriately as a single ethnic group. See id. at 28–29 n.136. This is not to deny important differences within China along provincial, north-south, and rural-urban lines. See id.
199. See Dreyer, supra note 197, at 382.
America and the Caribbean since 1492." At the same time, the phenomenon of "pigmentocracy"—a social spectrum in which lightness of skin correlates with increasing wealth, social status, and political power—is apparent in many Latin American societies. Moreover, virtually every country in the region shares the common feature of a privileged elite class claiming European descent and defining itself through European (and later United States) cultural habits. By and large, however, this wealthy elite is not perceived as ethnically distinct from the less well-off majority.

This is particularly true in the relatively "Europeanized" countries, such as Argentina, Chile, Uruguay, and Venezuela, which today have small (and in some cases negligible) Indian populations and which saw enormous waves of immigrants from Europe earlier this century. On the other hand, in countries such as Bolivia, Ecuador, Guatemala, and Peru, where indigenous peoples continue to constitute a large portion (and in some cases, the majority) of the population, the ethnic distinguishability of the elite is much starker. Indeed, the revolutionary movements in many of these countries in the early twentieth century included a strong element of "indigenism," demanding redress for "the immense gap between the light-skinned descendants of the victors and the dark-skinned descendants of the vanquished." Nonetheless, with some exceptions, social relations in Latin America today tend to be conceptualized in terms of class, not ethnicity, and in recent decades majoritarian, nationalist movements have generally not been organized in racial or ethnic terms. Whether this will continue to be the case in the future remains to be seen.

In countries without market-dominant minorities, the paradox of free market democracy is unlikely to be ethnicized. This does not mean, however, that the conflict between markets and democracy in such countries will not be deeply problematic. Romania provides a sobering but not atypical example. In the last several years, market reforms have stalled, economic growth rates have been negative, and the coalition government that took office in 1996 has on several occasions "teetered on the brink of collapse." Among other problems, the government has had to deal with thousands of striking (and frequently violent) coal miners, who "want a pay rise of more than a third

201. Chua, supra note 169, at 271 (citing Magnus Mörner, Race Mixture in the History of Latin America 1 (1967)).
202. See id. at 274.
203. See id. at 272–74.
204. See Chua, supra note 1, at 25 n.118.
205. See id.
and the reopening of two mines closed last year." 208 Meanwhile, both the IMF and the World Bank have conditioned desperately needed assistance packages on the further shutting down or privatization of unprofitable state-owned enterprises—actions that will lead to the unemployment rate shooting up further. 209 The widespread poverty, frustration, and desperation of the past several years has led to the growing political power of Vadim Tudor, leader of the "xenophobic and protectionist Greater Romania Party," whose supporters include ex-communists, nationalists, as well as disaffected policemen and soldiers. 210 Elsewhere in the former Soviet Bloc, including Russia, persisting economic distress has led to a similar resurgence in popular support for nationalist- and Communist-dominated parties, often calling for renationalization of major industries. 211

D. Economically Dominant Minorities in the Developed World

In striking contrast to much of the developing world, economically dominant ethnic minorities generally do not exist today in the Western nations. In the United States, for example, whatever one occasionally hears about (say) Jews or Koreans, the economy is not dominated by any ethnic minority. 212 On the contrary, the core ethnic problem in the United States is one that pits an economically and politically dominant white majority against economically and politically weaker ethnic minorities. 213 The same is generally true of Australia, 214 Canada, 215 New Zealand 216 and all the Scandinavian and Western European nations. 217

208. Id.
209. See id.
210. Id.
211. See Thornhill, supra note 104, at 3. In Russia today, supporters of the Communist Party (who are disproportionately older people) talk “of redistributing Russia’s vast natural wealth by renationalising the oil, gas, and electricity industries” and of giving “everyone . . . access to free hospitals, sanatoria, and schools once again.” Id.
212. See Chua, supra note 1, at 27.
213. See id.
215. See Chua, supra note 1, at 27 n.153. Economically dominant minorities do not exist in Canada either at the national level or at the provincial level—with the important exception of Quebec, where Anglophones have historically represented an economically dominant minority vis-à-vis the Francophone majority. Quebec is discussed in detail below. See infra text accompanying notes 366–374.
217. See Chua, supra note 1, at 27 n.133. Economically dominant minorities also do not exist in the more ethnically complex countries of Belgium and Switzerland. In Switzerland, for example, while there are tremendous disparities in the distribution of wealth, both by region and by social class, these disparities cross-cut ethnic differences. There is a roughly proportional distribution of rich and poor cantons in the Francophone and Germanophone areas. Of the ten richest cantons, three are
Likewise, and in stark contrast to Southeast Asia, economically dominant ethnic minorities do not exist in the more economically advanced countries of East Asia. In all of the "Asian Tigers," the ethnic majority—the Japanese in Japan, the Koreans in South Korea, and the Chinese in Hong Kong, Singapore, and Taiwan—is economically and politically dominant.\footnote{218}

To be clear, the claim is not that today's developed countries never had economically dominant minorities. On the contrary, European history includes numerous examples of such minorities. In late nineteenth- and early twentieth-century Transylvania, for example, Hungarians represented an economically dominant minority vis-à-vis the largely peasant Romanian majority, many of whom "worked on the estates of the Hungarian great landowners."\footnote{219} In a rather different dynamic, during the interwar era Jews occupied "a commanding position" in major sectors of the economy in countries such as Romania\footnote{220} and Hungary.\footnote{221} A more complicated example is the former Yugoslav states, where, among many other dynamics, the Croats and Slovenes were for many years disproportionately prosperous vis-à-vis the more populous Serbs.\footnote{222} In the United States, whites in a number of Southern states (for example, Georgia, Mississippi, and South Carolina) represented after the Civil War a starkly economically dominant minority

---

\footnote{218} See Chua, supra note 1, at 28.

\footnote{219} Barbara Jelavich, 2 History of the Balkans: Twentieth Century 73 (1983).

\footnote{220} From 1867 to 1920, Transylvania was part of Hungary. See id. at 6, 72, 122. Transylvania became part of Romania pursuant to the Treaty of Trianon of June 1920. See id. at 122. In 1910 the Transylvanian population was 53.8% Romanian, 28.6% Hungarian, and 10.8% German. See id. at 73.

\footnote{221} Id. at 160. According to one commentator, 

[b]y the middle of the interwar era, Jews controlled the bulk of the private capital in the export, transportation, insurance, textile, leather, electrotechnical, chemical, housing, printing, and publishing industries. Though their access to the universities was restricted by statutory limitations and extralegal violence, they were also strongly represented in the legal, medical, dental, journalistic, and banking professions. Though only 4.2 percent of the total population, they constituted... 14.3 percent of the entire country's urban population. In such cities as Chișinău (Kishinev) and Cernăuți, ... where the Jews accounted for 52.6 and 44.9 percent of the population, most store signs were in Hebrew letters.

\footnote{222} See Marcus Tanner, Croatia: A Nation Forged in War 187, 192, 195–97 (1997).
vis-à-vis the newly emancipated black majorities around them. More generally, there have been periods in the history of Europe and the United States when the affluent upper classes may have been perceived (either by themselves or by others) as ethnically or racially distinct from the lower classes around them. This may have been true, for example, of the French-speaking ruling class in nineteenth-century Belgium, which used its supposed racial superiority to justify its class privileges.

But in all these cases, the countries at issue were at the time either nondemocratic or, if democratic, did not have anything close to universal suffrage. In late nineteenth- and early twentieth-century Hungary, for example, although Romanians were a “clear majority” in Transylvania, “most of them could not vote” under the highly restrictive franchise then in effect. Similarly, in nineteenth-century Belgium, the class domination of the French-speaking bourgeoisie “was buttressed by a franchise that until 1893 limited voting to the propertied classes. Even then, universal manhood suffrage was diluted by plural voting for the bourgeoisie; equal manhood suffrage only came in 1919.”

Likewise, during the Jim Crow era in the American South, blacks were...
effectively disenfranchised through violence, intimidation and discriminatory voting procedures.\textsuperscript{227}

In other words, unlike today's developing countries, the developed nations rarely have had to deal with the problem of rapid democratization pursued in the face of widespread poverty and a deeply resented, economically dominant outsider ethnic minority. The few arguable exceptions that exist, moreover, strongly corroborate the model dynamics summarized above. Quebec and South Africa will be discussed in Part III. Post-World War I Germany is discussed below.

\textbf{E. Jews in Weimar Germany (1918–1932)}

This Section will discuss Weimar Germany, a rare example of a Western nation that pursued—with catastrophic ethnonationalist consequences—free market democracy under conditions in many respects analogous to those characteristic of many developing countries today. Considerable caution is required here. The Holocaust is in some ways so singularly evil and catastrophic that no straightforward comparison can be made between Nazi Germany and any other country, at any other time.

To avoid any possible misunderstanding, I begin with three preliminary clarifications. First, the Jews in Weimar Germany were not an economically dominant minority in the sense that, say, the Chinese are economically dominant in many Southeast Asian countries. Claims that "Jews ran the German economy" were patently false.\textsuperscript{228} Second, I am distinctly not suggesting that the roots of anti-Semitism in Weimar Germany, or for that matter anywhere, were economic in nature.\textsuperscript{229} Third, Weimar Germany obviously differed in profound respects from most of today's developing countries. For example, Germany was a former imperial power, with colonies and protectorates all over Africa and a formidable naval fleet and army.\textsuperscript{230} Weimar Germans, including women, were far more educated than the average inhabitant of the developing world today.\textsuperscript{231} Commentators have described Weimar Ger-

\begin{itemize}
\item \textsuperscript{227} See infra text accompanying note 53.
\item \textsuperscript{228} DONALD L. NIEWYK, THE JEWS IN WEIMAR GERMANY 43 (1980); see infra text accompanying notes 250–256.
\item \textsuperscript{229} See infra text accompanying notes 257–260. Anti-Semitism in Germany, as elsewhere in the world, existed long before Jews were particularly successful economically. See MICHAEL GRANT, THE JEWS IN THE ROMAN WORLD 31 (1973). In addition, economic grievances cannot have been the basis of the vicious pogroms directed at poor shevtsi in Russia and Eastern Europe in the second half of the 19th century. See Vladimir M. Oks, The World of the Jewish Shtetl, in RITA OSTROVSKAYA, JEWS IN THE UKRAINE: 1989–1994, at 162, 164–65, 167 (1996). More generally, theories of economic determinism that ascribe all or most ethnic conflict to economic causes have been widely discredited (although there is often an economic dimension to many ethnic conflicts). See MILTON J. ESMAN, ETHNIC POLITICS 231, 234 (1994).
\item \textsuperscript{230} See GORDON A. CRAIG, GERMANY 1866–1945, at 119–24, 312 (1978).
\item \textsuperscript{231} See id. at 478.
\end{itemize}
many as “the cradle of modernity.” Moreover, Weimar Germany had a powerful industrial base, an impressive network of railways and infrastructure, and a highly sophisticated banking system.

Nevertheless, conditions in post-World War I Germany were more analogous to those in the developing world today than one might think. To begin with, like most of contemporary Africa and Southeast Asia, Germany in 1918 had been a unified nation-state for less than fifty years. More crucially, Weimar Germany was characterized by widespread economic deprivation and suffering, in large part because of inflation that reached catastrophic proportions in 1923. With the plunging mark “the simplest of objects were invested . . . with monstrous value—the humble kohlrabi shamefacedly wearing a price-tag of 50 millions, the penny postage stamp costing as much as a Dahlem villa in 1892.” While a few (principally industrialists and speculators) profited from the inflation, millions of working- and middle-

232. Id. at 470. Although “Expressionism in art and literature, Bauhaus architecture, the physics of relativity, psycho-analysis, and depth psychology” all had their origins before the war, these movements in the 1920s “entered into popular consciousness” and became the subject of conversation and debate among ordinary Germans. Id.


234. Germany was unified in 1871. See Craig, supra note 230, at 33. The resulting Empire was a union of eighteen German states and one administrative territory (the “Reichsländ”) comprising the newly conquered provinces of Alsace and Lorraine. See id. at 39.

235. By most accounts, the principal cause of the inflation was not reparations to the Allies, but rather the excessive national debt that Imperial Germany had incurred in financing the war. See Craig, supra note 230, at 455; Hans Mommsen, The Rise and Fall of Weimar Democracy 117 (Elborg Forster & Larry Eugene Jones trans., Univ. of N.C. Press, 1996) (1989). After the war, the expense of supporting war victims and “the demobilization of labor—particularly the need to stimulate the economy so as to provide employment for the millions of returning soldiers and former employees of war industries—contributed greatly to the German post-war inflation.” Richard Bessel, Germany After the First World War 165 (1995); see also Mommsen, supra, at 117. Meanwhile, the government’s tax policy—which fell disproportionately on wage and salary workers and “granted tax breaks to businesses and holders of capital”—did not produce nearly enough revenue to meet its obligations. Craig, supra note 230, at 450; see also Mommsen, supra, at 116. The increasingly large government deficits (11,732 million R.M. in 1923) were covered by printing new money: “By the end of 1923, 133 printing-presses had 1,783 presses running day and night to print Reichsbank notes, which had to be transported to banks of issue in large straw crates carried by armies of porters.” Craig, supra note 230, at 450.

236. Craig, supra note 230, at 450–51.

237. For those Germans, primarily industrialists, who possessed tangible as opposed to paper-mark assets, “inflation made it possible for companies and plants to pay off their debts with currency that was no longer worth as much as the currency in which those debts had been contracted.” Mommsen, supra note 235, at 117–18. Those with tangible property could also “secure credit from banks for plant expansion or investment in other properties. The investment brought profit without risk, and the loan was paid off in depreciated currency. Huge fortunes were accumulated this way.” Craig, supra note 230, at 451. At the same time, money was made by the manipulators of high finance and by the thousands of small speculators, the Raiffe and Schieber, who knew how to profit from the distress of others, who bought the treasured possessions of the desperate for a pitance and sold them across the border in Holland or Belgium, who operated skilfully on the black market, who cornered foodstuffs in short supply and sold them in adulterated form.

Id. at 452.
class Germans were left impoverished; those on fixed incomes or pensions were hit hardest. At one point, in late 1923, only 29.3% of the total German labor force was fully employed. Housing, moreover, "was an area where the impoverishment brought about by the War was most disturbingly apparent"—in 1919–20, the national "housing shortage was estimated to be as high as 1.5 million dwellings." As in the developing world, malnutrition and disease in the Weimar Republic were pervasive, particularly among children and the old; deaths from hunger were common.

Against this background, Jews in the Weimar Republic were widely perceived as an "outsider" ethnic minority wielding outrageously disproportionate economic power vis-à-vis the "indigenous" majority. The reality of the Jews' economic situation in the Weimar Republic was as follows. Relative to their numbers—Jews formed just under 1% of the total population of Germany—they were disproportionately represented in certain professions and occupations. Between 1918 and 1933, nearly three-quarters of German Jews earned "their living from trade, commerce, banking, and the professions, especially medicine and law." By contrast, only about one-quarter of the non-Jewish population of Germany was similarly employed. Thus in 1933, Jews made up around 11% of Germany's doctors and more than 16% of its lawyers and notaries public. Commerce and finance, however, were the major pursuit of most German Jews. In 1930, Jews owned 40% of Germany's wholesale textile firms and nearly 60% of the country's wholesale and retail clothing businesses. In 1932, "department stores owned by Jews accounted for 79 percent of all business done by such enterprises." Jews were also "prominent as bankers in Weimar Germany. Almost half of all private banks, the number and importance of which declined after 1920, were owned by such famous Jewish banking families as the Mendelsohns, Bleichroders, and Schlesingers."

238. See Craig, supra note 230, at 452–54; see also Mommsen, supra note 235, at 118.
239. See Craig, supra note 230, at 454.
244. See id.
245. See Grunberger, supra note 242, at 456; see also Niewyk, supra note 228, at 15. "Among university lecturers, writers, journalists and theatrical producers the Jewish proportion was about 5 per cent." Grunberger, supra note 242, at 456.
246. See Holborn, supra note 233, at 279. "More than 61 percent of all gainfully employed Jews in Weimar Germany were engaged in some form of trade or commerce." Niewyk, supra note 228, at 13.
247. See Niewyk, supra note 228, at 13; see also Grunberger, supra note 242, at 456.
249. Id. at 14. The Jewish proportion in banking was roughly 17% in 1925 (a marked decline from the corresponding figure of 37% in 1895). See Grunberger, supra note 242, at 456.
On the other hand, Jews controlled less than 1% "of Germany's more numerous and increasingly important credit banks," and "the modern big banks which financed the German industrialization were not decisively directed by Jewish interests." Although the number of German Jews "who became members of the upper bourgeoisie and acquired considerable fortunes was not small," "[t]he great majority of the Jews belonged to the middle classes," and many Weimar Jews were poor.

The economic picture of the Weimar Jews was thus a mixed one. Jews plainly did not control the Weimar economy. To the contrary, the wealthiest Germans in the Weimar Republic by and large were non-Jews: members of the nobility or landowning aristocracy, as well as powerful industrialists such as Robert Bosch, Carl Friedrich von Siemens, and Hugo Stinnes. On the other hand, almost no Jews were peasants, farmers, or members of the urban proletariat, and "the average income of Jews in Weimar Germany was 3.2 times that of the total population."

It is crucial to reiterate that the "Jewish Problem" in Germany was far more than an economic problem. As many have pointed out, anti-Semitic economic hostility "is necessarily predicated upon the antisemites' marking of the Jews as being different, identifying them not by the many other (more relevant) features of these people's identities, but as Jews, and then using this label as the defining feature of these people." The imagery and rhetoric used against German Jews was contradictory and confused. Thus "the arrogant Jew" included "the flea-market and marts-of-trade and stock-market Jew, the Press and literature Jew, the parliamentary Jew, the theatre and music Jew, the

250. NIEWYK, supra note 228, at 14. However, those credit banks "with Jewish managers included some of the largest and most successful of these financial institutions." Id.
251. HOLBORN, supra note 233, at 279.
252. Id. "In 1933 one in three Jewish taxpayers had an annual income of less than 2,400 marks and one in four Berlin Jews (31,000 out of 170,000) was receiving charity." GRUNBERGER, supra note 242, at 456 (citation omitted).
254. See id. at 63; CRAIG, supra note 230, at 451–52; MOMMSEN, supra note 235, at 474.
255. See HOLBORN, supra note 233, at 278–79. Jewish economic patterns in Germany reflected longstanding exclusions of Jews from many economic roles. According to one scholar, for many centuries [German Jews] had been deprived of the right of holding land; consequently there were no Jewish peasants and farmers. Their exclusion from the craft guilds explains the absence of Jewish artisans except in a few specialized vocations, such as diamond cutting, which they had been allowed to enter by the princes. The lack of a tradition in the crafts may also have been a cause for the relatively weak representation of Jews in the modern industries. Only in industries where they had played a role as financiers in earlier days, such as the various branches of the textile industry, did they become in larger numbers builders of modern industrial firms.
256. NIEWYK, supra note 228, at 16.
culture and humanity Jew."\textsuperscript{258} Although "materialist," Jews did not "work" but only exploited.\textsuperscript{259} Jews were both greedy "capitalists" and the "secret force" behind Communism.\textsuperscript{260}

Nevertheless, regardless of the falsity of the charges of Jewish economic dominance, there was undeniably an economic dimension to the mobilization of German anti-Semitism. The stereotype of the Jew as rich and rapacious had long existed in Germany (as in many other European countries).\textsuperscript{261} Four hundred years before Hitler capitalized on this theme, Martin Luther wrote: "They hold us Christians captive in our country. They let us work in the sweat of our noses, to earn money and property for them, while they ... mock us and spit on us, because we work and permit them to be lazy squires who own us and our realm."\textsuperscript{262} Similar rhetoric accompanied the vicious wave of anti-Semitism following the financial crash of 1873.\textsuperscript{263} Fifty years later, Jews in Weimar were widely accused, by Germans high and low, of being "uniformly prosperous,"\textsuperscript{264} "ruling" Germany financially, economically,\textsuperscript{265} and causing the nation's economic privations.\textsuperscript{266} In other words, the Jews were said to be a grossly economically dominant outsider minority, even though their actual level of economic success did not warrant this perception. As in many developing countries today, these charges of economic dominance provided a convenient spur to, and rationalization of, ethnic mobilization.

Weimar Germany shared another feature in common with most of today's developing countries: Germany after the First World War embarked on a period of intense marketization and democratization. Whereas normal market transactions had ground virtually to a halt during the war,\textsuperscript{267} Germany after 1918 saw burgeoning investment and "the influx of speculative capital from abroad,"\textsuperscript{268} new international

\begin{itemize}
\item \textsuperscript{258} Craig, supra note 230, at 153.
\item \textsuperscript{259} Goldhagen, supra note 257, at 284–85.
\item \textsuperscript{260} Pool, supra note 253, at xxxi, 79. Both Henry Ford and Hitler "believed that Jewish capitalists and Jewish Communists were partners aiming to gain control over the nations of the world." Id. at 79.
\item \textsuperscript{261} See id. at 84. "[T]he worst pogroms in pre-modern Europe—apart from the ones in the Ukraine during the seventeenth century—occurred in the Rhineland at the time of the Crusades. The German Reformation and the Peasants' Wars were also attended by anti-Jewish outrages." Grunberger, supra note 242, at 454.
\item \textsuperscript{262} Raul Hilberg, The Destruction of European Jews 16 (rev. ed. 1985) (quoting Martin Luther).
\item \textsuperscript{263} See Pulzer, supra note 221, at 145.
\item \textsuperscript{264} Grunberger, supra note 242, at 456.
\item \textsuperscript{265} Goldhagen, supra note 257, at 113.
\item \textsuperscript{266} See id. at 82.
\item \textsuperscript{267} See Craig, supra note 230, at 435.
\item \textsuperscript{268} Mommsen, supra note 235, at 125; see Craig, supra note 230, at 451. The post-war influx of foreign capital (which by early 1922 had made it possible for the government to balance the budget) came to an abrupt end in the fall of 1922. Mommsen, supra note 235, at 125.
\end{itemize}
trade opportunities,

269 a burst in industrialization,

270 an “orgy of exports,”

271 and the accumulation of huge fortunes by big business and financiers.

272 Like today’s “emerging economies,” the Weimar government undertook substantial economic liberalization, for example by eliminating import-export quotas; offering tax breaks to businesses and holders of capital (at the expense of the working class); and, after 1923, repealing significant labor-law protections, including, perhaps most strikingly, the eight-hour work day.

273 At the same time, Weimar Germany pursued intense democratization. In 1918 and 1919, over a period of barely ten months, the Wilhelmine Empire collapsed,

274 the German people elected a National Assembly, and the National Assembly promulgated a new constitution providing for universal suffrage, proportional representation in elections to Parliament, direct popular election of the Reich president, and “the wholly untried practice of popular initiative and referendum.”

275 The new constitution also enumerated, and guaranteed “as far as words were capable,” a lengthy list of fundamental human rights (Grun-drechte).

276 In other words, to a surprising extent, Weimar Germany recapitulated both the basic background conditions prevalent in many developing countries today and the basic policy paradigm advocated for these countries. In conditions of widespread economic distress with a (perceived) economically dominant minority, Weimar Germany pursued intensive market liberalization, rapid democratization, and constitutionalism. Indeed, in important respects, conditions in Weimar Germany were more propitious for the success of these policies than they are in the developing world today. For example, Weimar Germany had a much higher general level of education,

277 an impressive

269. See MOMMSEN, supra note 235, at 118, 121.

270. See CRAIG, supra note 230, at 451–52; see also MOMMSEN, supra note 235, at 117–18.

271. BENES, supra note 235, at 116. During the second half of 1919, there was an “upsurge in foreign demand for relatively cheap German products.” Id.

272. See CRAIG, supra note 230, at 451–52; see also MOMMSEN, supra note 235, at 118.

273. See MOMMSEN, supra note 235, at 116, 118, 134. The eight-hour work day and other restrictions on employers were implemented as temporary emergency measures to facilitate economic demobilization immediately after the war. See BENES, supra note 235, at 143, 164–65.

274. In October 1918, a series of laws was enacted that “not only provided for ministerial responsibility to Parliament but virtually eliminated the royal power of command over the armed forces.” CRAIG, supra note 230, at 397. The abdication of Wilhelm II was announced by the new chancellor, Prince Max von Baden on November 9, 1918. See MOMMSEN, supra note 235, at 20.

275. CRAIG, supra note 230, at 416.


277. As early as the 18th century, the German states had established elementary schools and passed compulsory attendance legislation. See CRAIG, supra note 230, at 186–87. In terms of reducing illiteracy, “Germany's record was the best in Europe,” and “by 1830, almost all Germans could read and write.” Id.
array of "social safety nets," and a much stronger legal system, whose judges, even if they "lacked a strong tradition of constitutional review," were notoriously independent (and anti-Semitic).

The fate, however, of Weimar free market democracy is well-known. In 1932 and 1933, the National Socialist German Workers' Party, as the Nazi Party was formally named, gained control of the German government through electoral means. Although historians over the last fifty years have repeatedly described the Nazi movement as self-contradictory and ideologically inconsistent—"a confused mixture of nationalistic, anti-Semitic, and pseudo-socialist demands"—the Nazi movement led by Adolph Hitler was in fact unwaveringly and quintessentially ethnonationalist, and in this diseased sense, perfectly coherent. Point Four of the twenty-five-point party program (coauthored by Hitler and promulgated in 1920) declared: "Only members of the nation may be citizens of the State. Only those of German blood, whatever their creed, may be members of the nation. Accordingly no Jew may be a member of the nation."

Like the ethnonationalist movements of the developing world, National Socialism was never truly socialist. Indeed, Nazism was more

---

278. See Besse, supra note 235, at 127-65.
279. Ackerman, supra note 60, at 102.
280. "When the German Empire came to an end and a republic was declared by a Social Democrat, it was a terrible blow to the members of the judiciary who had been loyal monarchists." Ingo Müller, Hitler's Justice: The Courts of the Third Reich 10 (Deborah Lucas Schneider trans., Harv. Univ. Press 1991). Nevertheless, "the judiciary received guarantees of continuing independence," and "those judges whose conscience would not permit them to serve the republic instead of the kaiser were offered early retirement by the government, with full consideration of their material needs." Id. Virtually no judges took advantage of this opportunity. Instead, the majority of them allied themselves with the Deutschnationale Volkspartei "at the right-wing end of the political spectrum" and "kept their distance from the republic." Id.

In June 1923, after several lower courts had found that the radical right-wing slogan "Jew republic! Shame! Jew republic!" violated the Law for the Protection of the Republic of July 21, 1922, the Supreme Court reversed, in an opinion reflecting both anti-Semitic and anti-republic attitudes:

The expression "Jew republic" can be used in different senses. It can designate the particular form of democratic republic which was "constitutionally established" by the Weimar National Assembly; it can also include the entire form of government which has existed in Germany since the violent upheaval of November 1918. It can denote the new legal and social order in Germany which was brought about in significant measure by German and foreign Jews. It can also denote the disproportionate power and disproportionate influence which, in the opinion of many citizens, a small number of Jews, relative to the total population, actually wields. The sense in which the accused used the expression "Jew republic" is not precisely established. It has not even been specifically determined that the accused vilified the constitutionally established form of government of the Reich, but only that they vilified the presently existing form of government.

Id. at 18 (citation omitted).
281. See Craig, supra note 230, at 543; Mommsen, supra note 235, at 158.
283. Goldhagen, supra note 257, at 85.
284. The Nazis never undertook to abolish the institution of private property nor to eradicate all economic classes. Indeed, Hitler repeatedly made overtures to big business, see Mommsen,
anti-Communist than it was anti-capitalist—in either case with the same anti-Semitic thrust. 285 Precisely because its principal commitment was to ethnonationalism, there was little need for an economic policy. (Once heard at a Nazi gathering: “We don’t want higher bread prices! We don’t want lower bread prices! We don’t want unchanged bread prices! We want National Socialist bread prices!”)286 Far more than any of its rivals, the Nazi Party was successful in “overcoming social cleavages and . . . transcending class divisions”287—from industrial magnates to farmers, but above all the middle class288—in its call for a once-again powerful Germany for “true Germans” and the destruction of Germany’s “enemies” at home and abroad.

Once Hitler was in power, “the destruction of the Jewish race in Europe” became a guiding principle of official state policy. 289 More specifically, there unfolded between 1933 and 1945 increasingly extreme expressions of the ethnonationalist outcomes noted above: ethnically targeted confiscations, employment discriminations, and of course ethnic eliminationism. Hitler began with a series of laws depriving Jews (through stringent racial qualifications) of their positions in the state bureaucracy, the judiciary, universities, and the professions, 290 and later dictated the wholesale expropriation of Jewish property and businesses. 291 Nazi eliminationism began by stripping Jews of their citizen-

supra note 235, at 345–46, and the Nazi movement was supported by many wealthy Germans, including industrial magnates and aristocrats, see Pool, supra note 253, at 107–14, 152, 501–05.

285. See Mommsen, supra note 235, at 346–47. According to Mommsen, “[O]rganized labor was not taken in by the [Nazi]’s anticapitalist rhetoric,” “which carried a distinctly anti-Semitic flavor with its polemics against big capital and stock market speculation.” Id.

286. Craig, supra note 230, at 550 (citation omitted).


288. See Craig, supra note 230, at 353, 355; Puhl, supra note 221, at 281.

289. Craig, supra note 230, at 637.

290. See id. at 633–34.

291. See id. at 635–36. Following the enactment of a fundamental Decree regarding the Reporting of Jewish Property (April 1938),

Aryanization of Jewish businesses began in earnest in June; a month later Jewish physicians were notified that they must liquidate their practices within three months; in September Jewish lawyers were given until 30 November to do the same; and in October Goering announced that it was necessary for the Jews to be completely ‘removed from the economy.’ [Following Kristallnacht] Jews were ordered to pay a collective fine of one billion R.M., in addition to the cost of the damages to their own property (which the state collected by confiscating their insurance payments). On the same day that Goering levied this excission, he issued a Decree on Eliminating the Jews from German Economic Life, which excluded Jews from retail stores, mail-order firms, independent crafts, sales, service, and management . . .

. . . [Goering] insisted that Jewish property belonged to the Reich. In reality, however, . . . the chief beneficiaries had, from the beginning, been the giant enterprises that rounded out and extended their holdings by buying out Jewish firms that were under pressure. . . . Between 1932 and 1939 the number of German banks decreased from 1,350 to 520, and most of those that were swallowed up were Jewish houses . . .

Id. (citations omitted).
ship and political rights and ended with the "final solution": the extermination between 1941 and 1945 of an estimated six million people, most of them Jews.

Once again, I am making no claims here about the immediate or ultimate causes of the Holocaust. The point is simply that Weimar Germany stands as a somber warning against excessive confidence in applying the reigning law-and-development policy paradigm to ethnically divided societies. Obviously, the parallels between Weimar Germany and the developing world should not be overdrawn. Nevertheless, Weimar Germany marketized and democratized with a steadiness that would make most of today's international policy makers proud. Yet in Germany after World War I, this combination of free market democracy with the familiar social-welfare and rule-of-law institutions of a liberal activist state did not prevent—and indeed may have contributed to—an ethnonationalist conflagration of precisely the kind that today threatens much of the developing world.

III. FROM PARADOX TO POLICY

The paradox of free market democracy, once fully recognized, demands serious rethinking of current development policy. It suggests a number of broadly applicable policy observations, and it opens up a number of major avenues for future policy research. Consider the following:

(i) All developing and transitional countries pursuing markets and democracy will have to find ways to mediate the basic conflict between market-generated wealth disparities and majoritarian politics. Needless to say, there can be no "one-size-fits-all" solution. Some countries are much farther along than others in the marketization or democratization process; each will have to find a balance of mediating institutions appropriate to its history and political economy.

(ii) The design of all the latest reform initiatives in the developing world (including promotion of the rule of law, state-building, free and fair elections, independent judiciary, and civil society) must be reexamined in this light. All these measures are of great importance for the developing world. Moreover, if properly designed, they could ultimately play a valuable role in mediating the paradox of free market democracy. But if care is not taken, these

292. Id. at 633–34.
293. See id. at 750. Thousands of non-Jews died in the camps as well, including almost all of the gypsies in Europe. See id.
294. Ideally, for example, rule-of-law initiatives can strengthen the rights and position of the less well-off; anti-corruption measures can help dislodge oligarchic, plutocratic control. Both can help legitimize the state. "The public perception that law is legitimate constitutes a social re-
measures may inadvertently heighten the conflict between markets and democracy. For example, the main thrust of today's rule-of-law initiatives in the developing world is to facilitate market activity (by strengthening legislative and judicial protections of property and contract). To the extent that such initiatives succeed, they will accomplish very significant achievements, but in the process they may intensify the contest between unequal wealth and majoritarian politics.

(iii) There are many different forms that a market economy can take. Ironically, the version of capitalism being exported today to many developing countries more closely resembles the relatively laissez-faire regimes characteristic of the developed world during an earlier period when property qualifications and other stringent suffrage limitations were in place. This anachronism is especially questionable given the much more pervasive poverty and political instability of the developing world.

(iv) Similarly, there are many different forms of democracy. Taking universal suffrage as a given, democratization can vary along a large number of axes relevant to the paradox of free market democracy: to name a few, presidentialism versus parliamentarism; "first-past-the-post" versus proportional representation; and starting locally versus starting nationally. Much more consideration needs to be given to the question of what kind of democracy is suitable to particular developing nations in light of the tensions that will inevitably arise between markets and majoritarian politics.

(v) As to ideology, are the poor of the developing world really to be expected to support a market economy, with its phenomenal wealth disparities, out of a belief in rags-to-riches upward mobility? If not, are they expected to support it because they are rational maximizers of society’s long-term gross national product? It should not be assumed that any of the developed world’s market-compatible ideologies will spontaneously come into being with market reforms in the developing world. The question, then, is how the poor in the developing world can be given a genuine, sufficient stake—material, political, and psychological—in a market economy.

As a small, tentative start toward working through some of these extremely broad questions and observations, I will in the remainder of this Article narrow my lens and focus on the specific problems of market-dominant minorities and the particularly destructive, ethnonationalist version of the paradox of free market democracy.

Source of incalculable value . . . . It invites people to broaden their conception of what their interests are and perhaps to identify them with the interests of others. Peter H. Schuck, The Limits of Law: Essays on Democratic Governance 442 (2000).
There are a number of policy "solutions" to this problem that will not be considered in this Article. For example, autocracy would in principle eliminate the paradox of free market democracy altogether (by eliminating democracy). Similarly, communism would also in principle eliminate the paradox (by eliminating markets—or perhaps by eliminating both markets and democracy). At the same time, countries with an economically dominant minority could eliminate the special problems they face by expelling or exterminating that minority. All of these "solutions" will be assumed off the table in what follows. In other words, the normative premises underlying this policy section are: that some form of market-generated growth offers the best hope for developing countries; that some form of democracy with constitutional constraints offers the best political hope; and that avoiding ethnic oppression and bloodshed should be a constant priority.

Even within these normative premises, however, I will also assume the infeasibility or unacceptability of a number of the devices that, as described above, have helped defuse the conflict between markets and democracy in the developed world. For example, most developing countries simply will not be able to establish broadly redistributive Western-style welfare states in the foreseeable future. Similarly, a robust ideology of upward mobility cannot simply be transplanted into developing countries—or expected to blossom spontaneously with market reforms. Finally, although racism arguably has helped mediate the conflict between markets and democracy in some developed countries, I will assume that responsible developing-world policy makers will not consciously pursue such a strategy.

Section A explores the possibility of redressing ethnoeconomic imbalances by identifying and correcting the underlying causes of economic dominance in particular cases, for example by expanding education and promoting opportunities for disadvantaged groups or by strengthening "social capital." This strategy turns out to have a number of serious limitations that will be discussed. Section B proposes policies to address more directly the fundamental and potentially explosive conflict between markets and democracy in developing countries with market-dominant minorities. These policies will roughly track the three categories used above: material redistribution, political exclusions and restraints, and the formation of market-compatible or market-subversive ideologies.295

295. While the paradox of free market democracy will not be ethnicized everywhere in the developing world, the policies discussed in this Part may, with some adjustment, have bearing for all developing and post-communist countries. This is because foreign investors—who tend to prosper disproportionately under economic liberalization, characteristically provoking nationalist, anti-market sentiment—often occupy a role analogous to that of economically dominant minorities.
A. Addressing the Causes of Economic Dominance: On Human and Social Capital

To address the distributional and ethnondistributional problems of the developing world, it would be logical to begin by isolating and, where appropriate, changing the conditions that cause the economic dominance of certain groups. For example, if superior education accounted for the disproportionate economic power of a certain minority, then corrective education policies for the disadvantaged majority would be the obvious policy response. Similarly, if a particular minority owed its economic dominance solely or principally to political favoritism, then policies designed to “level the playing field” (anti-discrimination and anti-corruption measures) would be the solution.

The problem, however, is that in reality the underlying causes of economic dominance are rarely clear, and even if they are, they will rarely prove tractable. Research suggests, for example, that merely equalizing student-teacher ratios, teacher experience, dollars spent per student, and even total years of education would eliminate a much smaller percentage of ethnoeconomic disparities than might be expected. Likewise, while political favoritism has clearly contributed to the enormous wealth of some economically dominant minorities (historically in the form of colonial divide-and-conquer policies or more recently in the form of culkong or patronage relationships), treating such favoritism as the explanation of economic dominance begs the question of why those in power have chosen repeatedly to collaborate with certain ethnic groups. The decision of so many indigenous power-holders in Southeast Asia and Africa to enter into lucrative, symbiotic commercial arrangements with immigrant groups such as the Chinese or Indians is not fortuitous, but rather reflects, at least in important part, the longstanding success of these groups as wealth-generating “middleman” minorities.

Sociologists and anthropologists have been trying for years to understand the economic success of certain groups. Many have argued that

296. See, e.g., Robert Klitgaard, Adjusting to Reality 214–15 (1991); Harry Anthony Patrinos, Differences in Education and Earnings Across Ethnic Groups in Guatemala, 37 Q. Rev. Econ. & Fin. 809 (1997); infra text accompanying note 318; see also John E. Chubb & Terry M. Moe, Politics, Markets, and America’s Schools 87–88, 101, 105–06 tbl. 4–2, 143–44 (1990) (concluding on the basis of an empirical study of American schools that relatively immutable factors such as student ability and family resources exert the largest impact on educational performance); James S. Lieberman, Voice, Not Choice, 101 Yale L.J. 259, 266, 293–95 (1991) (noting the central importance of interrelated factors such as parental socioeconomic status, classmates’ socioeconomic status, and student, family, and peer “tastes” for education in determining academic achievement).


298. See Anthony Reid, Entrepreneurial Minorities, Nationalism and the State, in Essential Outsiders, supra note 146, at 33, 58. Although scholars had noticed the phenomenon of entrepreneurial minorities long before the modern era,
cultural factors—for example, group differences in work habits, savings propensities, or attitudes toward education, commerce, and wealth—explain differentials in group economic performance.\textsuperscript{299} According to some, religion is crucial in explaining the economic success of certain groups.\textsuperscript{300} Thus, Weber famously argued that Protestantism was more conducive to capital accumulation than Catholicism,\textsuperscript{301} whereas Werner Sombart saw the Jewish Torah as embodying a more positive attitude toward wealth than the Christian New Testament.\textsuperscript{302} Confucianism, meanwhile, has appeared on both sides of the ledger: Viewed by Weber as inhibiting "the acquisitive drive,"\textsuperscript{303} Confucianism has lately been touted as wealth-promoting—at least until the recent Asian financial crisis.\textsuperscript{304} It is probably safe to say that the relationship between religion and economic success is inconclusive. More recently, a growing literature (adumbrated by de Tocqueville and popularized by Robert Putnam)\textsuperscript{305} focuses on the importance of "features of social organization, such as trust, norms, and networks"—often described as "social capital"\textsuperscript{306}—in explaining the economic success of certain groups.

Comparative theories began to be developed by European (chiefly German) social scientists during the late nineteenth century. The Jews of Europe were, naturally, the central example for these writers, but even as early as Roscher (1875), analogies were made to the Chinese in Southeast Asia. Most influential were the theories of Werner Sombart and Max Weber.\textsuperscript{307} Sombart's views have been less quoted than Weber's, probably because of his later sympathy for Nazism.\textsuperscript{308}

\textit{Id.} at 35 (citations omitted).


\textsuperscript{300} See, e.g., David S. Landes, \textit{The Wealth and Poverty of Nations} (1998); Weber, supra note 299 at 35–46.

\textsuperscript{301} See Weber, supra note 299, at 35–39, 155–83.

\textsuperscript{302} See Werner Sombart, \textit{The Jews and Modern Capitalism} (M. Epstein trans., The Free Press 1951) (1911).


\textsuperscript{306} Putnam, supra note 305, at 167. As usually conceived, [like other forms of capital, social capital is productive, making possible the achievement of certain ends that would not be attainable in its absence].

\textit{\ldots} For example, a group whose members manifest trustworthiness and place extensive trust in one another will be able to accomplish much more than a comparable group lacking that trustworthiness and trust.

To the extent that cultural factors play a significant role in producing the economic dominance of certain groups, the appropriate policy implications are by no means clear. Even if there were a demonstrable relationship between certain religions and economic success, an effort to instill "the impulse to acquisition" through, say, group conversions to Protestantism (or Judaism or Confucianism, depending on the theory) would seem unpromising. Further, while developing-country elites frequently have urged their peoples to "emulate the more successful minorities in their midst" and to become "diligent" and "acquisitive," governmental "cultural revolutions"—attempting to change culture and social norms by "top-down" legal mandates—have not been famously successful.

Somewhat more hopeful are the growing efforts at the local level to promote voluntary formation of social capital among impoverished groups. For example, a number of nongovernmental, nonprofit microcredit organizations, such as the Grameen Bank in Bangladesh, which engage in group lending to poor villagers (backed by peer pressure and collective incentives), have succeeded impressively in promoting small-scale entrepreneurship in developing-country villages.

It remains to be seen whether micro-level, voluntary initiatives of this kind can be implemented on anything like a comprehensive scale. In some localized contexts—for example, inner cities in the United States—innovative approaches to build social capital may be extremely useful. At the same time, their prospects for equalizing ethno-

308. Thomas Sowell, Preferential Policies: An International Perspective 45 (1990). For example, Malaysia's Prime Minister Mahathir has often urged his Malay constituents to model themselves on their more "hardworking" and commercially "astute" Chinese counterparts. Klitgaard, supra note 296, at 188; see Horowitz, supra note 139, at 173.
309. In the 1970s, for example, influential Malay intellectuals authored a well-known book called Revolusi Mental, criticizing "Malay economic ethics in contrast to those of the Chinese." Klitgaard, supra note 296, at 190. While Malays were "easily contented" and lacking in "persistent effort in work," the Chinese were self-reliant, diligent, and marked by "acquisitive drive." Id. "Thus progress could only be achieved through a revolution in mental attitudes." Id. Such calls for cultural change must be understood in light of the condescension of the British colonial government, which held that native Malays were inherently "lazy," "dirty," and unsuited for hard work. James V. Jesudason, Ethnicity and the Economy: The State, Chinese Business, and Multinationals in Malaysia 38–39 (1989) (quoting colonial officer Frank Swettenham); see also Ganguly, supra note 55, at 239 (describing colonial education as aimed at making the Malay better farmers and fishermen).
310. Schuck, supra note 294, at 422.
313. See Robert C. Ellickson, New Institutions for Old Neighborhoods, 48 Duke L.J. 75, 83–84
economic inequalities should not be overstated. With respect to re-
dressing the economic dominance of “entrepreneurial” minorities, it is,
at a minimum, ironic for governments to try to establish through legal
means the informal social relationships and networks that are said to
constitute the social capital of some groups but not others. Still, as usu-
ally conceived by social capital theorists, the economic value of
informal, trust-based exchange relations lies precisely in the extent to
which they substitute for the costly mechanisms of legal monitoring
and enforcement.

Apart from the issue of feasibility, there is also the question of the
proper objective of development. Cultures obviously change over time,
and cultural generalizations are always suspect. Still, in any effort to
engineer social change “from above,” there is “a certain danger of
treating culture purely as an obstacle.” Even assuming that it is pos-
sible to transform every developing-world villager into a consumer
entrepreneur, it is hardly obvious that this ought to be the goal of
development.

At least one point remains clear. The arguments against “cultural
engineering,” substantial as they may be, should not be allowed to
excuse the enormous inequalities of opportunity that prevail through-
out the developing world and that contribute, at least to some degree,
to the economic dominance of certain minority groups. Anti-
corruption initiatives, anti-discrimination policies, and liberalized
credit reforms are needed throughout the developing world. Moreover,
education is also crucial. In South Africa, for example, expanding edu-
cational opportunities for blacks—relegated for decades to inferior
Bantu schooling and generally inhumane conditions—is an appropria-
te national priority and should be vigorously supported by the inter-
national community. At the same time, it should be recognized how
difficult it will be to eliminate disparities in educational opportunity.
Given the powerful correlation between educational performance and
socioeconomic status (both of one’s own family and of one’s classmates)
genuinely equalizing educational opportunities may well require not

---

314. See Janet T. Landa, A Theory of the Ethnically Homogenous Middleman Group: An Institu-
tional Alternative to Contract Law, 10 J. LEGAL STUD. 349 (1981).
315. See id. at 349.
316. Many have wryly recounted the 1903 “expert” assessment of the Japanese by an Aus-
tralian guest of the Japanese imperial government:

My impression as to your cheap labour was soon disillusioned when I saw your people at
work. No doubt they are lowly paid, but the return is equally so; to see your men at work
made me feel that you are a very satisfied easy-going race who reckon time is no object. When
I spoke to some managers they informed me that it was impossible to change the habits of
national heritage.

T.N. Snivisasan, Democracy, markets, governance, and development, 3 REV. DEV. & CHANG 177, 197
317. Friedman, supra note 117, at 41.
merely expenditures on schooling, but deep-seated socioeconomic reforms.\textsuperscript{318}

More critically, attempting to redress ethnoeconomic disparities through education assumes a horizon of social stability that many developing countries may not have. Policies to expand education and promote equal opportunity, while comforting and uncontroversial, do not directly address the pressing, potentially explosive problems of ethnodistributional imbalance, ethnoeconomic resentment, and ethnionationalist hatred that threaten so many developing societies. Indeed, the relationship between education and ethnionationalism is by no means straightforward.\textsuperscript{319} To address these problems, it is essential in the developing world—as it was in the developed world—to try to devise measures and create institutions negotiating the conflict inherent in free market democracy. To such measures and institutions we now turn.

\textbf{B. Negotiating the Paradox of Free Market Democracy in the Developing World}

This Section will propose policies to negotiate the paradox of free market democracy in its ethnionationalist form. As Part I suggested, the conflict between market-generated wealth disparities and majoritarian politics has been substantially alleviated in the developed world by three categories of mediating devices: material, political, and ideological. In what follows, I will use the same organizational framework.

1. Material Redistribution

In all countries that pursue both markets and democracy, and particularly where the wealthy consist largely of an “outsider” group, some form of material compensation to the less well-off majority will be essential. Ideally, such compensation should be directed as broadly and visibly as possible.

What form should such compensation take? I will consider two basic, nonexclusive approaches. The first—trickle-down supplemented by tax-and-transfer—is rooted squarely within today’s dominant policy paradigm. The second—what I will call interethnic stakeholding—is not, and I will treat this range of possibilities at greater length.

a. Trickle-Down Plus Tax-and-Transfer

The dominant school of development thinking today holds that the best hope for the impoverished majorities of the developing world is to

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{318} See Liebman, supra note 296, at 293.
\item \textsuperscript{319} See Anderson supra note 138, at 119–33.
\end{itemize}
\end{footnotesize}
generate as much total wealth as possible, to let such wealth "trickle down" to the less well-off, and to supplement this trickle-down approach with "social safety nets" and other tax-and-transfer programs. The basic policy package implied by this approach is relatively straightforward. Economic growth is the primary objective, and to that end developing countries should strive to maximize their appeal to domestic and especially foreign investors by establishing well-functioning, efficient market institutions. Important policies would thus include all the familiar marketization measures: privatization, liberalization of capital and regulatory restrictions, rationalization of property law regimes, simplification of commercial codes, and the strengthening of commercial courts or other institutions assuring the enforceability of contract rights. To these reforms would be added tax-and-transfer measures benefitting the least well-off.

Within this basic paradigm, considerable variations are possible. Some scholars and policy makers favor marketization as quickly as possible, while others resist this "shock therapy" approach, preferring "gradualism." Some advocate as little governmental redistribution as possible and hence support only minimal "social safety nets" for the "truly needy," while others favor more aggressive measures, often based on Western-style social security programs.

Unfortunately, the realistic redistributive potential of trickle-down plus tax-and-transfer policies in most developing countries is extremely limited, at least in the near to midterm future. To put it bluntly, the basic problem is that there is not nearly enough to tax, and nearly no one who can be trusted to transfer.

320. See Douglas Webb, Legal System Reform and Private Sector Development in Developing Countries, in ECONOMIC DEVELOPMENT, FOREIGN INVESTMENT AND THE LAW 45, 46 (R. Pritchard ed., 1996); see also Mariano Tommasi & Andrés Velasco, Where Are We in the Political Economy of Reform?, 1 POL'Y REFORM 187, 192 (1996) (describing the "Washington Consensus"). There are hundreds of recent legal articles advocating market-oriented policies along the lines mentioned in the text. For a recent general survey of the literature on marketization, see Chua, supra note 1, at 14–16.


322. Tommasi & Velasco, supra note 320, at 204; see also, e.g., A. Caplin & J. Leahy, Business at Usual, Market Crashes, and Wisdom After the Fact, 84 AM. ECON. REV. 548 (1994).

323. Deepak Lal & H. Myint, The Political Economy of Poverty, Equity, and Growth: A Comparative Study 394 (1996); see also id. at ch. 9; Lal, supra note 33, at 159.


325. Gunnar Myrdal made this point 15 years ago:

In underdeveloped countries ... redistribution of income cannot, however, be carried out by taxing the rich and transferring money to the poor via social security schemes and other such measures to raise their levels of living. The poor are so overwhelmingly many, and the wealthy so relatively few—and tax evasion among them so common.

Gunnar Myrdal, International Inequality and Foreign Aid in Retrospect, in PIONEERS IN DEVELOP-
While Westerners take sophisticated tax systems for granted, establishing the institutions and practices necessary to effectuate tax-and-transfer programs is immensely difficult in countries where the state is weak and corruption is pervasive. 326 More fundamentally, a trickle-down plus tax-and-transfer strategy does not respond to the ethnodistributitional and ethnonationalist problems of developing countries with market-dominant minorities—not surprisingly, given that this strategy emerged in the West, where such problems generally have not existed.

The ethnic "neutrality" of trickle-down and tax-and-transfer policies may seem a virtue to many Western observers. But as I have shown above, the Western perspective on ethnic conflict is not so easily transferable to the developing world. 327 In many developing countries, a trickle-down plus tax-and-transfer strategy will not be sufficient to give significant numbers of the majority a stake in an interethnic market economy. On the contrary, if history is any guide, such a strategy may well result in vastly disproportionate wealth, together with the economic symbols of national identity—major conglomerates, banks, utilities, national forests, oil fields, copper, silver, and gold mines, and technology—being held almost exclusively in the hands of foreign investors and "outsider" minorities. 328 This state of affairs has repeatedly triggered potent nationalist and ethnonationalist reactions among "indigenous" developing-world majorities. 329 The reality is that a redistribution strategy of trickle-down plus tax-and-transfer will leave markets and democracy in open, ethnonationalist conflict in much of the developing world.

b. Interethnic Stakeholding

The real task, therefore, in countries with a market-dominant minority, is to confront the ethnodistributional and ethnonationalist dimensions of free market democracy and to formulate policies capable of grappling decisively with these problems. The starting point of this

326. Indeed, today's international "state-building" and anti-corruption initiatives are directed at precisely these problems. See, e.g., ROSE-ACKERMAN, supra note 106, at 225–29; ASIAN DEVELOPMENT BANK, LAW AND DEVELOPMENT AT THE ASIAN DEVELOPMENT BANK 2–5 (1999).

327. See supra text accompanying notes 97–135.


329. See Chua, supra note 1, at 37–38.
effort has to be a recognition that, in such countries, to the extent that markets and democracy are successful, leaders will be under great pressure to intervene in the market in an attempt to redress ethnoeconomic imbalances; to initiate eliminationist policies; or, if they want to ignore majoritarian ethnonationalist sentiment, to suppress democracy itself.\textsuperscript{330} Within this realistic option set, the first choice—governmental intervention into the market—would appear to represent the lesser of evils.

The difficulty of implementing effective interventions of this sort should not be underestimated. Government intrusions into the market always carry risks of inefficiency and corruption. Moreover, there is a danger of unrealistic goals and excessive expectations. "Law is most vulnerable when it takes on the ambitious task of social reconstruction, for here the gap between its promise and its performance is widest."\textsuperscript{331} Finally, when such governmental intrusions are ethnically targeted they carry the additional risk of exacerbating the ethnic conflict that they are supposedly intended to address.\textsuperscript{332} Nevertheless, the actual experience with ethnically based market interventions in the developing world does not justify rejecting this strategy outright.\textsuperscript{333} Rather, it is crucial to examine the kinds of measures that developing governments have pursued in the past to deal with their ethnodistributorial problems in order to learn from past mistakes, to profit from past successes, and to chart a course toward future innovations. As will be explained more fully below, the overarching historical lesson here is that interventions oriented toward monoethnic solutions have failed, while those promoting interethnic solutions have been considerably more successful.\textsuperscript{334}

The form of ethnically targeted market intervention most commonly pursued in the developing world has probably been nationalization, typically targeted at assets or businesses considered central to national identity and even more typically targeted at assets or businesses controlled by economically dominant minorities and foreign investors.\textsuperscript{335} Generally speaking, nationalization regimes have been colossal economic failures, characteristically leading to fiscal crisis and economic stagnation.\textsuperscript{336}

\textsuperscript{330} See supra text accompanying notes 160–161.
\textsuperscript{331} SCHUCK, supra note 294, at 442 (footnotes omitted).
\textsuperscript{332} I address this concern below. See infra text accompanying notes 407–409.
\textsuperscript{333} I discuss below the widely varying experiences of Malaysia, Nigeria, Quebec, South Africa, Sri Lanka, and a number of Indian states, all of which have pursued ethnically based market interventions. See infra text accompanying notes 365–413, and notes 407, 409.
\textsuperscript{334} See infra text accompanying notes 365–413.
\textsuperscript{335} See Chua, supra note 169, at 223–84.
Another form of market intervention all too common in the developing world has been ethnically targeted exclusions—laws or policies that ban specific minorities from working in certain occupations or participating in certain economic sectors. As a general matter, such exclusionary policies have also backfired. On the one hand, they have had drastically negative economic effects. "On the other hand, ethnically based economic exclusions have proven notoriously ineffective; economically dominant minorities have managed to frustrate such restrictions consistently through evasion (e.g., bribery or use of indigenous frontmen) or sheer indispensability."

Instead of nationalization or exclusion, recent developments argue in favor of exploring a very different approach: narrowly tailored programs to promote interethnic stakeholding. I will discuss three contexts in which such programs might be pursued: (i) interethnic corporate ownership, (ii) promotion of an interethnic middle class, and (iii) worker participation.

i. Interethnic Corporate Ownership

Monoethnic corporate structures are characteristic of many developing societies, whether in the form of closely held, nontransparent private companies (often controlled by single families belonging to an economically dominant ethnic group) or in the form of public companies with shares traded on an exchange in which extremely few members of the general population participate (as in South Africa, where blacks still control only 6.8% of the Johannesburg Stock Exchange’s total market capitalization). If this state of affairs could be changed—if large numbers of the “indigenous” population had an ownership stake in the society’s capital markets—the benefits might be considerable, both politically and economically. In one commen-

---

337. In many Eastern European countries during the 1930s, for example, occupational licensing laws and the rules of various “professional associations excluded Jews from many occupations.” Sowell, supra note 299, at 267. After World War II there was not a country in southeast Asia “where the Chinese could pursue their callings or commercial preferences without disapproval or interference. In Thailand, Chinese aliens were excluded from twenty-seven occupations, in Cambodia from eighteen.” Lynn Pan, Sons of the Yellow Emperor 217 (1990).

338. In the Philippines, for example, the Retail Nationalization Act passed in 1954 banned Chinese residents from “engag[ing] directly or indirectly in the retail business.” Golay et al., supra note 165, at 66–67 (quoting Retail Nationalization Act of 1954).

339. Chua, supra note 1, at 51.


341. See Nicol Degli Innocenti, Johannesburg “marches backward” from black control: Black empowerment on the JSE is faltering, says Nicol Degli Innocenti, Fin. TIMES, Mar. 25, 2000, at 18.

342. Japan’s evolution is interesting on this point. “Japanese industrial organization was first dominated by the family owned and managed zaibatsu groups in the uncertain property rights
tator’s words: “Encouraging equity markets to develop and encouraging dispersed ownership may . . . imply not only efficiency gains but also a more open society, one less dominated by banks” and “crony capitalism” and “more attractive to entrepreneurship.”

The difficulty, however, is that substantial obstacles impede the achievement of this goal in the developing world. Given the “uncertain property rights environment” of most developing countries, the regulatory apparatus necessary to implement and monitor “an Anglo-American style system of capital-market oriented,” “dispersed, non-family ownership” is typically lacking. At the same time, there is far too little money in the hands of general developing-world populations to make equity purchases by these populations a realistic capital-raising scenario, and forced popular equity distributions would require highly inefficient reorganization restrictions to deal with the problem of rapid ownership reorganization.

Nevertheless, this goal is much too important to be dismissed as hopeless, and recent global developments offer grounds for at least limited optimism. In the last decade, the creation (or expansion) of stock markets in emerging economies has been a focus of economists and policy makers all over the world, and there have been considerable successes. In Greece, for example, the Athens Stock Exchange has exploded over the last decade, with a surprising number of privately held companies “going public,” and the number of local citizens holding shares increasing from just “an elite circle” to roughly 20% of the population. In China, the Shanghai Securities Exchange has given large numbers of urban Chinese a stake in a market economy and is widely viewed as a source of upward mobility. “[T]o play it,” according to one participant, “one needn’t be hired . . . One needn’t cultivate one’s official connections . . . Indeed, for the moment, one need not even pay taxes on one’s earnings. All one needs to become rich . . . is a small bag for a pencil and notebook . . . and a brain.”

Moreover, the extraordinary privatization experiments in the former Soviet republics and satellites provide an enormous fund of new data

---

environment of nineteenth-century Japan. The zaibatsu gradually opened up to non-kin investors and professional managers as property rights institutions became more secure in the early part of this century.” Curtis Milhaupt, Property Rights in Firms, 84 Va. L. Rev. 1145, 1179–80 (1998) (citation omitted). Post-war efforts to further “dismantle the zaibatsu,” however, were only partially successful, in part because of the legacy of regulatory relations between political and private economic agents in Japan.” Id. What ultimately emerged was an “intermediate form of network-based joint production”: “the bank-centered keiretsu.” Id.

345. Brian Murphy, Investors Flocking to Greek Exchange, Times Union, Mar. 19, 1999, at E5.
347. Id.
and innovative techniques for dealing with problems of broad-based 
corporate ownership dispersal. The use of financial intermediaries, 
voucher programs, foreign monitors and consultants, and so on, may 
with modifications prove instrumental in developing-world contexts as 
well. To be sure, there may be as yet few, if any, unequivocal success 
stories in the former Communist bloc, but it should be recalled that 
the positive transformations that have occurred in those countries 
would have been almost unimaginable just a decade ago.

More concretely, there are, in fact, promising developing-world ex-
amples of corporate ownership reforms addressed to problems of ethno-
economic dominance. South Africa, for example, is currently pursuing 
redistributive policies designed to redress the extreme dominance of 
white ownership in the corporate sphere, but the results at this time 
are largely incipient.\textsuperscript{348} Malaysia, on the other hand, has pursued for 
the last thirty years an ethnically based corporate restructuring agenda, 
which has included some considerable successes and may serve as a 
valuable model.

Following the 1969 race riots in Kuala Lumpur, which were similar 
in many respects to those that recently erupted in Indonesia, the Ma-
laysian government adopted the New Economic Policy (NEP), aggres-
sively seeking to achieve "national unity ... expressed as the im-
provement of economic balances between the races."\textsuperscript{349} Malays, at that 
time representing roughly 62\% of the population,\textsuperscript{350} "owned a mere 
1.5\% of capital assets of limited companies."\textsuperscript{351} Moreover, foreigners 
and the Chinese community "control[led] large-scale commercial agri-
culture and all forms of non-agricultural enterprises."\textsuperscript{352}

To redress these extreme imbalances in the corporate sector, the 
Malaysian government in the early 1970s initiated large-scale pur-
chases of corporate assets on behalf of the Malay majority\textsuperscript{353} and 
adopted ethnically based quotas on corporate equity ownership.\textsuperscript{354} Af-

\textsuperscript{348} See, e.g., Kanya Adam, The Politics of Redress: South Africa Style Affirmative Action, 35 J. 
MOD. AFR. STUD. 231 (1997).

\textsuperscript{349} Chua, supra note 169, at 246 (citation and inner quotations omitted) (quoting the NEP). 
Promulgated in 1971, the NEP was replaced in 1990 by the National Development Plan (NDP), 
which, despite its strategic shift to privatization, embraces the NEP's fundamental objectives. 
Ganguly, supra note 55, at 257 n.70. Thus, consistent with the original targets of the NEP, the 
benefits of privatization are to be directed principally toward Malays, with redistributive goals 
receiving even "greater emphasis" under the NDP than under the NEP. \textit{Id.}

\textsuperscript{350} The ethnic composition of Malaysia is roughly as follows: 62\% Malay, 27\% Chinese, 8\% 
Indian, and 3\% other. See Ganguly, supra note 55, at 234 (citing 1995 census by the Government 
of Malaysia).

\textsuperscript{351} \textit{Id.} at 261.

\textsuperscript{352} \textit{Id.} at 251.

\textsuperscript{353} Jesudason, supra note 309, at 72. "The[s]e assets 'were to be held in trust for the Malays 
and other indigenous groups until such time as they [were] in a position to acquire these shares 
on their own.'" \textit{Id.} (citation omitted).

\textsuperscript{354} See \textit{id.} at 137.
ter 1976, under what was effectively compulsory corporate restructuring, many Malaysian Chinese companies were required to set aside 30% of their equity for Malay interests (typically with no choice about the Malay recipient of such equity). At the same time, the government “invest[ed] heavily in publicly owned corporations that were operated and managed by Malays”; it also “created a number of incentive schemes to attract private Malay investment to these enterprises.” More recently, privatized entities, and companies seeking to list on the Kuala Lumpur stock exchange, are generally “required to have a Bumiputra shareholding of at least 30%.”

The results of these corporate restructuring measures have been impressive. Along with significant redistributive advances in all other sectors of the economy (discussed below), in the corporate sector the Bumiputra ownership share of corporate stock at par values jumped from 1.5% in 1969, to 15.6% in 1982, to 20.6% in 1995. The effect of this redistribution has been to give Malays a stake not only in the market as a whole, but also, more specifically, in the success of Chinese-controlled businesses.

Early on, the NEP suffered from notorious circumvention problems, principally in the form of “Ali-Baba” arrangements in which Chinese businessmen collude with Bumiputra front men who “have no role beyond collecting a fee for the use of their name.” In recent years, however, the Malaysian Government has taken steps to “eliminate the ‘Ali-Baba’ practice as well as promote expertise and technology-sharing between Bumiputeras and non-Bumiputeras,” for example by establishing the Council for the Promotion of Genuine Partnership, which since 1996 has set up 53 interethnic joint ventures. Ali-Baba arrangements appear to be far less common today than they were in the early years of the NEP. More crucially, even when ethnically targeted corporate restructuring programs like the NEP are operating imper-

355. See id. at 137, 141; Chua, supra note 169, at 247; Donald L. Horowitz, Causa and Consequence in Public Policy Theory: Ethnic Policy and System Transformation in Malaysia, 22 Pol'y Sci. 249, 266–68 (1989). After heated protest by Chinese business interests, the Malaysian government amended its laws so that “firms with fewer than twenty-five workers” and “firms with less than $500,000 in fixed investments” were not subject to equity quotas. Jesudason, supra note 309, at 141.


357. Steve Glain, Malaysia’s Grand Social Experiment May be Next Casualty of Asian Crisis, WALL ST. J., Apr. 23, 1998, at A15; see Chua, supra note 169, at 249 (citations omitted).

358. Jomo, supra note 303, at 244.

359. See id. at 244–45; see also Mah Hui Lim, Affirmative Action, Ethnicity and Integration: The Case of Malaysia, 8 ETHNIC & RACIAL STUD. 250, 268 (1985) (citing evidence that the NEP has increased collaboration among Chinese and Malay businessmen, often through joint ventures).

360. Horowitz, supra note 139, at 666.


362. See Horowitz, supra note 139, at 666; Lim, supra note 359, at 259–64.
fectly, they still may perform important redistributive functions. For example, an Ali-Baba circumvention of the NEP’s ownership restrictions still involves a member of the Malay majority being “compensated” by an ethnic Chinese entrepreneur.

The accomplishments of the NEP should not be overstated. It is unclear how well the NEP would have fared in the absence of the extraordinarily dynamic growth rates of the 1970s and 1980s.364 State-assisted Bumiputra businesses, including many large conglomerates, “have been especially hard hit” by the recent recession.364 Nevertheless, the experience of the NEP suggests that narrowly tailored, interethnic corporate restructuring may be a realistic goal in developing societies with a market-dominant minority.

ii. Promoting an Interethnic Middle Class

Many observers have emphasized the central importance of creating a middle class in developing societies, which historically have been marked by a juxtaposition between massively wealthy elites and impoverished general populations.365 This need is especially urgent in developing countries with a market-dominant minority, where giving significant numbers of the “indigenous” majority a stake in an interethnic economy may be critical to mediating the paradox of free market democracy. There is some evidence from countries with economically dominant minorities that concerted efforts to promote an interethnic middle class can be effective to a limited extent. In Quebec, for example, starting in the 1960s, aggressive affirmative action policies appear to have played a substantial role in raising the economic status of the severely economically disadvantaged French Canadian majority vis-à-vis the economically dominant English-speaking minority.366 Historically, French-Canadians, who comprise roughly 80% of Quebec’s population, ran the government of Quebec and the church in the French language, while “[t]he modern economy—banks, insurance companies, trading and manufacturing firms—was dominated by English speakers.”367 “As rural Quebec became overpopulated, impoverished French Canadian peasants moved to urban areas,” where they became an undereducated, “industrial proletariat,” typically working “in firms owned by Anglo-Canadians, British, or Americans and operated at management levels in English.”368

363. See Ganguly, supra note 55, at 265.
365. See, e.g., Fiss, supra note 2; Tommasi and Velasco, supra note 320.
367. Id. at 396.
368. Id.
In what has been called the Quiet Revolution, the Quebec government sought "to put an end to the ethnic division of labor" and "to insure the full participation of French Canadians in a modernized economy."369 Along with aggressive language policies,370 the Quebec government embarked on a vast expansion of public francophone education at all levels and adopted measures promoting French-speaking firms and entrepreneurs "by facilitating their access to capital, by preferential purchasing practices, and by helping them to locate export markets."371 In recent years, "French speakers have gained an expanding beachhead" in Quebec's private sector, both "in higher level employment and to a lesser extent in the ownership of assets."372 As of 1987, French-Canadians occupied 58% of all senior management positions, as compared with approximately 14% in 1964.373 Moreover, "several large-scale French-owned enterprises have emerged in banking, construction, and manufacturing, complementing the large number of new francophone enterprises and services, such as advertising, information processing, and small-scale manufacturing."374

Similarly, in South Africa between 1948 and 1976, aggressive governmental intervention almost certainly assisted in transforming Afrikaners from a rural, economically "backward" community (vis-à-vis the British) to one with a salient role in the modern private sector. The Afrikaners, descendants of Dutch and French Huguenot settlers in the seventeenth century, were traditionally farmers and cattle raisers. As late as 1910, 90% of the Afrikaner labor force worked in agriculture, while "the lucrative gold and diamond industries, manufacturing, finance, commerce, and senior positions in the civil service were in the hands of the British and other English speakers."375 In 1910 Afrikaner per capita income was one-third of that of the British.376

After taking power in 1948, the Afrikaner-based Nationalist Party "greatly expanded technical, vocational, and professional education for Afrikaners in the Afrikaans language" and fostered Afrikaner participation in the private sector by directing substantial capital and government supply contract opportunities to Afrikaner entrepreneurs.377 The government also created a number of state-owned enterprises expressly intended to help advance the economic position of the Afrikaners. By 1976, the income gap between the Afrikaner "majority" and the Brit-

369. Id. at 397.
370. The government "overturned the two centuries old practice of language parity and elevated French to the status of sole official language." Id. at 411.
371. Id. at 399.
372. Id. at 400.
373. Id. at 401.
374. Id.
375. Id. at 406–07.
376. Id. at 407.
377. Id. at 408–09.
ish “minority” had been closed, and the “colonial mentality . . . among Afrikaners that they were culturally unequipped to be successful in modern economic roles” had been largely eroded.

Obviously, conditions in Quebec and South Africa forty years ago were in many ways more propitious than those currently prevailing in the developing world. Once again, therefore, the case of Malaysia may be more relevant. Under the NEP, in addition to restructuring corporate ownership, the Malaysian government also implemented strong affirmative action programs for the Bumiputra majority in sectors such as education, business, employment, credit, and civil service administration.

After 1969, the Malaysian government introduced a number of sweeping educational reforms, including “preferential quotas and scholarships for the Bumiputra, as well as generous scholarships and bursaries for pursuing higher education abroad.” At the secondary school level, elite boarding schools were set up exclusively for Malays. In late 1995, close to 64 percent of the available positions at the university level were reserved for Malays” (roughly proportional to their percentage of the population). At the same time, the government established state-run banks to provide financial services to Malays. “Quotas were set for the employment of Malays in commercial and industrial firms.” In addition, non-Malay firms, including foreign corporations, “were asked to devise plans for the training and promotion of Malays to more skilled and upper management positions.”

378. Id. at 410. Until the 1980s, “the nonwhite majority, including blacks, coloreds, and Indians and comprising roughly 80% of the population, was effectively disenfranchised.” Id. at 407.
379. Id. at 408–09. In South Africa, as in Quebec, however, ownership and control of the private sector remain predominantly in the hands of English-speaking minorities. Id. at 400, 409.
380. Quebec had the advantage of being a unit within a prosperous, industrialized country, and the recipient of generous federal funding: The Canadian government contributed significant funds to Quebec (viewed by the Ottawa elites as a “have not” province), in part “to avert the growth of secessionist sentiment in Quebec.” Id. at 399. In South Africa, until the 1980s, Afrikaners (along with English-speaking whites) profited enormously from “the availability of a mass of impoverished and powerless nonwhite workers” to occupy inferior niches in a split labor market. Id. at 409–10. Indeed, both Quebec and South Africa were able dramatically to expand educational opportunities for their disadvantaged “majorities” without “diminishing existing educational opportunities for the economically-dominant English-speaking minorities.” Id. at 410. This will not be possible in most developing countries in the absence of enormous international financial assistance.
382. Ganguly, supra note 55, at 259; see Horowitz, supra note 355, at 259. As a result, many (if not most) Chinese Malays sent their children to universities abroad, where ironically they often received a superior education. See id.
383. Ganguly, supra note 55, at 259.
384. See id. at 262.
385. Id. at 260.
386. Id.; see Jesudason, supra note 309, at 137.
It is safe to say that the NEP has failed to achieve some of its most ambitious objectives. Despite inflated official claims, for example, the NEP has not succeeded in eradicating poverty, one of its major goals. Moreover, even after decades of sustained governmental intervention, the Chinese minority generally remains economically dominant vis-à-vis the Bumiputra majority.

Nevertheless, if the goal of the NEP is seen not as achieving “economic parity between the races” but rather as promoting interethnic stakeholding and thereby helping to negotiate the paradox of free market democracy in the face of a resented, market-dominant minority, then the NEP may well have been extremely successful. While the NEP has not lifted the great majority of Malays (particularly in the rural areas) out of poverty, it has helped to create a substantial Malay middle class. Between 1970 and 1992, the percentage of Malays occupying the country’s most lucrative professional positions went from 6% to 32%. Specifically, over roughly the same period, “the proportion of bumiputra doctors rose from 4 to 28 percent, dentists from 3 to 24 percent, architects from 4 to 24 percent, engineers from 7 to 35 percent, and accountants from 7 to 11 percent.” “There is no possibility that market mechanisms could have produced such results.”

By creating a small but visible Malay economic elite and by bringing Malay participation into important economic sectors—for example, the construction, rubber, tin, shipping, banking, and communications sectors (all formerly dominated by foreigners or Chinese and Indian Malaysians)—the NEP has helped to promote a sense

---

387. See Sowell, supra note 308, at 48–50; Jill Eyre & Denis Dwyer, Ethnicity and Industrial Development in Penang, Malaysia, in ETHNICITY AND DEVELOPMENT 181, 182–83 (Denis Dwyer & David Drakakis-Smith eds., 1996). According to official figures, poverty in the Malay peninsula fell from 49% in 1970 to 15% in 1993. See Jomo, supra note 303, at 244. “Much of this was made possible by the extraordinary dynamism of the Malaysian economy in the 1980s and early 1990s.” Ganguly, supra note 55, at 263. Further, these aggregate statistics conceal the much higher incidence of poverty in rural areas. See, e.g., S. Husan Ali, Development, Social Stratifications and Ethnic Relations: The Malaysian Case, in ECONOMIC DIMENSIONS OF ETHNIC CONFLICT 96, 109 (S.W.R. de A. Samarasinghe & Reed Coughlan eds., 1991) (noting that in 1984 the incidence of poverty was over 57% among rice farmers and over 43% among “rubber smallholders”).

388. See Jesudason, supra note 309, at 159–60; Klitgaard, supra note 296, at 192–93; Jomo, supra note 303, at 244–45.

389. See Ganguly, supra note 55, at 261; see also Esman, supra note 366, at 405 (noting that “[t]he NEP has…spawned an increasingly confident managerial bourgeoisie with middle-class incomes and a modern urban lifestyle, plus a small group of politicians, members of royal families, and retired civil servants who have accumulated economic assets, in large measure due to their connections with the government”).

390. See Jomo, supra note 303, at 244.


394. See Chua, supra note 169, at 247; Horowitz, supra note 355, at 264.
among the Bumiputras that a market economy can benefit indigenous Malays and not merely foreign investors and entrepreneurial "outsiders." Even if the benefits of the NEP are not spread as widely as they should be, the NEP serves a crucial symbolic function. As Malaysia’s Prime Minister Mahathir put it, conceding that the NEP in its early years may have "enrich[ed] a select few" Malaysians:

if these few Malays are not enriched the poor Malays will not gain either. It is the Chinese who will continue to live in huge houses and regard the Malays as only fit to drive their cars. With the existence of the few rich Malays at least the poor can say their fate is not entirely to serve rich non-Malays. From the point of view of racial ego, and this ego is still strong, the unseemly existence of Malay tycoons is essential.396

Today, in addition to the many Malay "tycoons," "[s]ome of the best medical specialists, lawyers and architects in Malaysia today are Malay"—a fact acknowledged even among the Chinese, who in the 1960s "viewed the Malays with condescension at best, scorn at worst."397

Malaysia’s NEP highlights two final points about the prospects of ethnically targeted market interventions in developing societies with economically dominant minorities. First, in assessing the efficiency costs of such programs,398 everything depends on "specifying the right

395. As critics of ethnically based preferences often point out, the NEP has tended to benefit privileged and politically connected Malays (including members of the former aristocracy) far more than the poorest of the population. See, e.g., Sowell, supra note 308, at 48–49. On the other hand, the studies usually cited to show that the NEP has benefited only "the Malay elite—in the name of the masses" are somewhat outdated (from the 1970s or early 1980s), see, e.g., id. at 49; Lim, supra note 359, at 269–70; Mavis Puthucheary, Public Policies Relating to Business and Land, and the Impact on Ethnic Relations in Peninsular Malaysia, in FROM INDEPENDENCE TO STATEHOOD 147, 165 (Robert B. Goldmann & A. Jayaratnam Wilson eds., 1984), whereas the most substantial gains of the NEP have taken place over the last 20 years.

396. Sowell, supra note 308, at 49 (citation omitted). Along these lines, there is some evidence that middle and lower class Malays have more favorable, even loyal, attitudes toward "Malay tycoons" than might be expected. Jesudason, supra note 309, at 108. As one commentator has written, the presence of such tycoons may suggest to ordinary Malays that they too "can be economic achievers"—that perhaps "their chance will some day come." Id. at 109.


398. There is no question that the NEP entailed short-term efficiency costs, by increasing official discretion and often promoting corruption and patronage. See Jomo, supra note 303, at 249. Moreover, after the enactment of the NEP, many of the largest Chinese companies in Malaysia diversified their investments abroad, most commonly to Singapore, Hong Kong, and Australia. See Jesudason, supra note 309, at 154. Some of this "internationalization" almost certainly would have occurred anyway, even without the NEP. See id. Finally, many believe that the NEP has encouraged Chinese Malays to pursue within Malaysia strategies of short-term profit maximization ("guerrilla capitalism") contrary to the country’s long-term interests: "Not surprisingly . . . Chinese capital has gravitated toward finance and real estate, investments that offer fairly rapid, attractive returns and relatively easy exit." Jomo, supra note 303, at 248–49.
counterfactual.”\textsuperscript{399} If one assumes that in the absence of the NEP there would have been perfectly efficient, optimal investment and allocations, then the NEP has by hypothesis hindered Malaysia’s economic growth and development. But this is almost certainly an unrealistic assumption.\textsuperscript{400} Indonesia provides a useful counterpoint. The massive capital flight, violence, and social dislocations recently suffered by Indonesia contrast sharply with the situation in Malaysia, where, since the financial crisis erupted two years ago, there has been no anti-Chinese reaction or ethnic rioting,\textsuperscript{401} no discriminatory ethnically targeted market intervention,\textsuperscript{402} and very little capital flight.\textsuperscript{403} The comparison between Malaysia and Indonesia has its limits: The two countries differ in important respects,\textsuperscript{404} and there can be no proof that an NEP-style program in Indonesia would have led to different results in recent years. Nevertheless, most contemporary analysts agree that Malaysia’s systematic interventions over the last thirty years helped “integrate and harmonize a potentially volatile population.”\textsuperscript{405} The increased Burniputra stake both in the overall economy and in Chinese-run business ventures almost certainly helped dull the appeal of ethnonationalist, anti-market extremism. In one observer’s words,

There’s a general feeling that people have a lot at stake in the country . . . . Ethnic divisions are not as clear as they were before, when you had Malay peasants, Chinese and Indian workers, the

\textsuperscript{399} Tommasi & Velasco, supra note 320, at 211.
\textsuperscript{400} Goh Ban Lee, Restructuring Society in Malaysia: Its Impacts on Employment and Investment, in ECONOMIC DIMENSIONS OF ETHNIC CONFLICT, supra note 387, at 74, 90–91.
\textsuperscript{401} Hiebert & Jayasankaran, supra note 397, at 45.
\textsuperscript{402} During the recent financial crisis, Mahathir took pains to praise the Chinese community for contributing to the strength of the national economy with their “wisdom and efficiency.” Adeline Ong, Be Disciplined to Ensure Growth, Bus. TIMES (Malaysia), Mar. 8, 1999, at 2. On the other hand, Mahathir blamed Malaysia’s economic problems on foreign “‘rogues,’ ‘morons,’ ‘neo-colonialists’ and an imagined conspiracy of Jewish currency traders.” Seth Mydans, Hard Times Weaken a Malaysian Powerbroker, N.Y. TIMES, Oct. 23, 1997, at A12.
\textsuperscript{403} The capital controls imposed by the Malaysian government in September 1998 did “not unleash the troubles many people initially feared. No blackmarket . . . emerged and capital flight [was not] a problem.” S. Jayasankaran, Malaysian Return of Optimism, FAR E. ECON. REV., Mar. 18, 1999, at 61.
\textsuperscript{404} For example, Malaysia has a much smaller absolute population than Indonesia. At the same time, the Chinese community in Malaysia comprises a much larger percentage of the total population (roughly 30%) than that in Indonesia (roughly 3%). There is also a large Indian community in Malaysia, comprising about 10% of the population. See Lee Kam Hing, Malaysian Chinese: Seeking Identity in Wawasan 2020, in ETHNIC CHINESE AS SOUTHEAST ASIANS, supra note 340, at 72, 74. It should not automatically be assumed that the relatively large Chinese population in Malaysia has been a factor ameliorating ethnic conflict. As Horowitz has suggested, the relatively large size of a particular ethnic minority can also be a factor contributing to ethnic conflict, to the extent that large groups are more likely than small groups to be perceived as constituting a political threat. See DONALD HOROWITZ, RIOTS (forthcoming 2000) (manuscript at 25–35, on file with author) (discussing 1969 riots in Malaysia and ethnic politics in Fiji).
\textsuperscript{405} Glain, supra note 357, at A13.
Chinese in business, Malays in government and all the rich were exclusively Chinese. They now cut across ethnic lines.406

Indeed, Mahathir's recent reelection (which dismayed many Western observers, because of his abysmal free-speech record) is significant in a number of respects. Polls suggest that most Malays approve of Mahathir's ethnic policies. Moreover, Mahathir had the support of large numbers of Chinese Malays, including many influential members of the business community.

From this point of view, it becomes much harder to conclude that Malaysia's NEP has been inefficient or “growth-retarding.” On the contrary, to the extent that ethnically based market interventions help reconcile poor majorities to the inequities of a market economy, providing a horizon of social stability for the implementation and oscillations of a market system, they are arguably a way not only of reconciling democracy and markets, but also of promoting long-term investment and economic growth.

Second, Malaysia's NEP, together with the affirmative action programs pursued on behalf of the francophones in Quebec and Afrikaners in South Africa, suggest that ethnically based governmental interventions need not entrench, but can instead ameliorate, ethnic division. Granted, the dangers inherent in all ethnic preference programs should not be taken lightly. There is a risk that such programs will increase ethnic conflict.407 Specifically, measures aimed (whether explicitly or not) at eliminating or “shutting out” an economically dominant minority—whether from the economy as a whole or only from certain sectors—should be rigorously avoided.408 Indeed, this may be the real

406. Hiebert & Jayasankaran, supra note 397, at 45.
407. Thomas Sowell has argued that in Nigeria and a number of states in India, ethnically based preferences for “backward” majorities have tended to increase group polarization and violence. See Sowell, supra note 308, at 15, 53, 57, 62, 74–75. Similarly, Myron Weiner and Mary Fainsod Katzenstein, in a number of well-known studies, suggest that in Bombay, Andhra, and Assam, ethnically based employment preferences may have “aroused more ethnic conflict than they assuaged.” Horowitz, supra note 139, at 671; see Myron Weiner & Mary Fainsod Katzenstein, India's Preferential Policies: Migrants, the Middle Classes, and Ethnic Equality 147 (1981); Mary Fainsod Katzenstein, Preferential Treatment and Ethnic Conflict in Bombay, 25 Pub. Pol'y 313 (1977). It is important to note that in all these cases, ethnic tensions, ethnic resentment of the economically dominant minority, and ethnic violence all predated the implementation of preferential programs, making it extremely difficult to assess the extent to which these programs contributed to ethnic conflict. See Horowitz, supra note 139, at 244 (describing recurring ethnic violence, dating to at least 1945, involving the economically dominant Ibo in northern Nigeria); Sowell, supra note 308, at 57 (describing ethnic riots and arson in Assam in the 1950s, before the enactment of preferential policies); id. at 62 (describing violence in Maharashtra leading up to and accompanying calls for pro-Maharashtrian employment preferences). More important, the particular forms of preferential policies pursued in these countries increased the likelihood that they would result in inflamed ethnic conflict. See infra text accompanying notes 408–409, and note 409.
408. See Horowitz, supra note 355, at 268–70 (observing and critiquing the practice in Malaysia in the early 1970s of reserving entire economic sectors for Malays).
lesson to take from the negative experiences of Nigeria, Sri Lanka, and
certain states in India. Instead, the operative goal in every case
should be to maximize interethnic economic cooperation. Idealy,
preference programs should be limited to a discrete time frame and
implemented in such a way as to allow the market-dominant minority
to continue to exercise its wealth-producing skills while giving mem-
bers of the majority a real stake in the market-dominant minority’s
economic success.

Moreover, every effort should be made to sever preferential programs
from ethnonationalist rhetoric and instead to root them in an ideology
consistent with an inclusive, “liberal” multiethnic state. Democratic
South Africa thus far provides an emulable model. Rising far above its
apartheid predecessors, the current government (first under Mandela
and now under Mbeki) has not wavered from its commitment to a
multiracial democracy, even as it implements strong, ethnically based
redistributive policies, including educational and employment prefer-
ces, ethnically based restrictions on privatization, nationalization of
water, and limited restrictions on land ownership. Some might ob-
ject to the use of race-conscious measures in a country where over-
coming a racist past is the national challenge. But it is naive to think
that “race-neutral” policies could eliminate the race consciousness of
South African society, and it is imperative for South Africa’s govern-
ment, if it is to maintain popular support for its commitments to a
multiracial democracy, to address in a visible and significant fashion
the egregious racial disparities in wealth that persist there.

409. The ethnic preferences pursued by Maharashtra and Nigeria in the 1960s were not de-
dsigned with interethnic objectives in mind. On the contrary, the thinly veiled (and sometimes
express) purpose of these measures was to shut out the economically dominant minority as much
as possible, in the name of “Maharashtra for Maharashtrians” and (in the case of Nigeria) “North-
ernization.” The same was true in Sri Lanka, where the “Sinhala Only” campaign begun in the
1950s—including radical expropriations of land and industry as well as blatantly anti-Tamil
educational and language policies—provoked a “cycle of violence and revenge” that continues
even today. Amita Shastri, Government Policy and the Ethnic Crisis in Sri Lanka, in GOVERNMENT
POLICIES AND ETHNIC RELATIONS, supra note 55, at 129, 154; see id. at 141–48, 162; Chua,
supra note 1, at 44–45. By contrast, the governmental interventions adopted on behalf of the
Quebeois, Afrikaners, and Bumiputra imposed limits on, but still strongly encouraged, com-
mercial activity by the “entrepreneurial” minority. The NER, for example, generally permits
Chinese Malaysians to own 70% of business concerns, and at least in recent years, the government
has vigorously sought to promote “genuine partnerships” between Bumiputra and non-
Bumiputra entrepreneurs. Hamisah Hamid, Second Phase of Genuine Partnership To Be Launched in

410. See Horowitz, supra note 355, at 270.
411. See Chua, supra note 1, at 68–71.
412. In the words of South Africa’s Minister of Justice:

The apartheid state inculcated a culture of violence and divisiveness that is also our legacy.
The stark contrast between the opulence in which some few people lived and the poverty
and degradation of millions produced bitterness and hatred. . . .

. . . . The privileges of the apartheid state are deeply embedded. Those who enjoyed them
during the apartheid years continue to enjoy most of those privileges today. Despite our commit-
The recent cases of Malaysia and South Africa suggest that ethnically based preferential programs are not necessarily, and need not be presented as, a way of "shutting out outsiders."413 In fact, they can also be understood as part of a liberal program: as a way of correcting longstanding historical inequities (e.g., colonial divide-and-conquer policies, apartheid), reducing poverty among groups where it is most acute, promoting equal opportunity, and creating the necessary preconditions for a progressive, multiethnic state.

To be clear, I am not recommending ethnically based preferences for all developing societies (not even for all developing societies with an economically dominant minority). But where democracy pits an impoverished, self-proclaimed "indigenous" majority against a deeply resented, market-dominant "outsider" minority, such preferences should not be off the table. They may be the best "second-best" solution available.

iii. Worker Participation

Workplace relations are another obvious context for promoting interethnic stakeholding in the marketplace. The challenge here is to formulate strategies that do not exacerbate ethnic confrontation but rather realign interests toward, and create incentives for, interethnic cooperation.

Along these lines, what Mark Barenberg has described as the recent "revival" and "spread" in industrialized countries of "cooperationist" labor-management arrangements may provide fruitful models.414 Another possibility might be the promotion of worker participation reforms, perhaps patterned on the E.U. requirement "that all transnational corporations include mechanisms for consultation with worker
representatives.  If implemented successfully, such reforms would have the potential not only to achieve redistributive gains, but also to give workers belonging to an economically disadvantaged majority a greater voice and stake in the market system.

There is one danger here to be noted. In certain circumstances in ethnically divided societies, unionization or other forms of labor organization can become a vehicle for highly polarized ethnic confrontation. In Indonesia, the early 1990s saw the rapid growth of the Serikat Buruh Seabtera Indonesia (SBSI), “an independent labor union that challenged the monopoly of the [Suharto] government’s own corporatist union.” The Suharto government suppressed the SBSI “after a massive labor protest in Medan, North Sumatra, in April 1994 turned into a riot against the Sino-Indonesians.” Where relevant, these considerations point away from U.S.-style “adversarial” collective bargaining models toward European-style codetermination strategies or more innovative workplace collaboration proposals.

2. Political Checks and Ethnic Imbalances

As with Western-style redistributive institutions, the political institutions that have helped mediate the tension between markets and democracy in the developed world may be unsuitable or inadequate in the developing world. I certainly do not mean to discourage efforts to promote an independent judiciary, effective constitutional review, the rule of law, and human rights protections in developing and post-socialist countries. But these familiar institutions of liberal democracy must be tailored, and supplemented with other measures, in order to deal with the often starkly different ethnoeconomic and ethnopolitical conditions of the developing world.

The case of India—a rare example of stable democracy in the developing world—is suggestive. The Indian government’s remarkable (but by no means unqualified) success in preserving democracy, markets, and national unity over the last fifty years, despite its extraordinary ethnic diversity and pervasive poverty, is often attributed to its “liberal constitutionalism.” It is crucial to remember, however, that India’s

415. Moberg, supra note 126, at 23.
416. Liddle, supra note 164, at 518.
417. Id. Even after the SBSI was suppressed, “the number of localized wildcat strikes, particularly against companies producing for export, continued to grow.” Id.
418. Barenberg, supra note 45, at 1495. In the United States, “management has historically been unionization as a secular source of distrust and polarization.” Id. at 1484. Barenberg has argued that this “adversarial psychology” on the part of American management, which is “traceable in part to certain tightly intertwined historical institutional patterns,” id. at 1495, is just the opposite of [Robert] Wagner’s expectations of collective bargaining.” Id. at 1484.
419. See supra text accompanying notes 78–85, 415.
420. See Bajpai, supra note 102, at 33, 41, 79, 81; see, e.g., Ackerman, supra note 60, at 50 (noting that “the framing and adoption of the Constitution of India has, up to now, played a
Western-style liberal constitutionalism has been supplemented by a number of not-so-Western measures, including, for example, education and employment quotas for India’s lower castes and tribal groups and other “backward” classes; a complex language policy, including a flexible “three-language formula” for secondary education and civil service examinations; the reorganization of the country’s major states along linguistic lines; and power-sharing arrangements based on group rights and devolution of authority to lower levels of government. The point is not that all of these institutions have had beneficial effects. Rather, the point is that in finding its way to these policies, imperfect though they are, India had to deviate from Western models and adapt the institutions of liberal constitutionalism to its distinctive religious, caste, tribal, linguistic, and regional divisions.

While India certainly has its share of ethnic conflict and violence, its demographic profile offers “one source of stability: the absence of a nationwide cleavage along ethnic lines.” Most ethnic crises in India tend to be localized and thus more easily contained by the central government. By contrast, the dynamic in many developing countries

positive role in sustaining a liberal democratic order”).

421. Of course, this may reflect a U.S.-centric view of what is “Western.” Consider the ethnically based language and other policies that Belgium has pursued. See Van den Berghe, supra note 217, at 201–04.

422. See Bajpai, supra note 102, at 53–55. India’s reservations policy has been plagued by a number of familiar problems. Its effect “on social attitudes has not been impressive. Violence against and social stigmatization of the scheduled castes and tribes remain rampant.” Id. at 54. Moreover, those within the scheduled caste and tribe communities who have benefited from the reservations have tended to be a small, self-perpetuating elite. Id. Once again, however, the main benefits of India’s affirmative action system “have been psychological and political: there is a growing sense of personal and communitarian efficacy among these groups.” Id. at 78. Nevertheless, the extreme material deprivation of the lower castes and tribes and the so-called “other backward classes,” which together constitute at least 70% of India’s population, remains a serious source of political upheaval, particularly in light of the increasing political mobilization of all three groups. See id. at 53.

423. Id. at 59–60. In 1961 the Indian government adopted a three-language formula in secondary education, under which students would be taught (i) the regional language and their mother tongue if it was not the regional language; (ii) Hindi, or in Hindi-speaking areas, another Indian language; and (iii) English or any other modern European language. Id. at 59. In 1967 the Official Languages (Amendment) Bill added two other features: a two-language policy for official business and a three-language policy for government public service examinations. Id. at 60. According to many, India’s flexible national language policy “has contained one of the country’s most explosive ethnic challenges.” Id. On the other hand, language has continued to figure prominently in the bitter ethnic politics of a number of Indian states, where politically dominant indigenous groups—e.g., Assamese or Maharashtrians—demand that their language be given “its rightful place,” by which they mean exclusive official status. Horowitz, supra note 139, at 219.

424. See Bajpai, supra note 102, at 61–63.

425. See Horowitz, supra note 139, at 614; Bajpai, supra note 102, at 63–65.

426. For example, Kashmir, Punjab, and the Northeast States continue to suffer violence, rebellion, and secessionism, sometimes exacerbated by government counterinsurgency operations. See Bajpai, supra note 102, at 63–74, 79.

427. Id. at 38.

428. See Horowitz, supra note 139, at 37–38; Bajpai, supra note 102, at 38.
(including, for example, India’s democratic neighbor Sri Lanka) is one that pits a national self-proclaimed “indigenous” majority against an economically dominant ethnic minority.\(^{429}\) In these cases, the formidable challenge will be to devise political mechanisms capable of forestalling the cascading formation of ethnonationalist movements\(^{430}\) and blocking the worst expressions of ethnonationalist hatred directed at a disproportionately wealthy “outsider” minority.

Along these lines, I will address two broad topics, both potentially controversial: (i) the limits of state-building; and (ii) the question of universal suffrage.

a. The Limits of State-Building: Against Ethnocracy

In many developing countries, including those with economically dominant minorities, there is a powerful tendency toward what scholars have called an “ethnocratic state,” which acts as the agent of the majority ethnic group with respect to ideology, social policy, and resource distribution.\(^{431}\) In an ethnocracy, all the principal arms of the state—the executive, legislature, judiciary, civil service, police, armed forces, etc.—are controlled by a single dominant ethnic group and used to reinforce that group’s monopolization of power.\(^{432}\)

In this light, today’s programs for the reform of political institutions in developing societies may have to be rethought or at least supplemented. As already suggested, the basic thrust of current political reform in the developing world is democratic constitutionalism coupled with rule of law, state-building, judicial reform, and anti-corruption initiatives. These efforts are obviously essential. But without attention to ethnic issues, the very success of these reforms could inadvertently create a powerful engine for ethn nationalism. To begin with, competitive democratic elections can facilitate the emergence of ethnonationalist politics.\(^{433}\) To cite only the most recent of examples, in the non-Russian republics of the former Soviet Union, elections virtually

\(^{429}\) As already mentioned, India does have economically dominant minorities at the regional or state level. See supra note 140. Resentment and retaliation against these minorities persist in the states of Assam and Maharashtta and in the Telangana region. See Chun, supra note 1, at 23, 39, 45.


\(^{432}\) See Brown, supra note 431, at 35–37.

\(^{433}\) See Horowitz, supra note 355, at 249, 255–56; Fareed Zakaria, The Rise of Illiberal Democracy, 76 FOREIGN AFF., Nov./Dec. 1997, at 22, 35. As many have recently observed, in divided “societies without strong traditions of multiethnic groups or assimilation, it is easiest to organize support along racial, ethnic, or religious lines.” Id.; see Donald L. Horowitz, Democracy in Divided Societies, 4 J. DEMOCRACY 18, 19 (1993).
without exception have been accompanied by slogans like "Estonia for Estonians," "Georgia for the Georgians," "Kazakhstan-for-the-Kazakhs," "Latvia for Latvians," "Moldavia for Moldavians," and "Uzbekistan for Uzbeks." In all of these cases, leaders from the majority ethnic group have won the election.\(^{434}\)

Once this kind of ethnopolitics begins, state-building becomes a more dangerous proposition. All the institutions associated with state-building can serve as vehicles for ethnocratic entrenchment, exclusion, and even brutality. "The Third World is littered with the bloody handiwork of strong states."\(^{435}\)

It is tempting to think of constitutionalism, an independent judiciary, and the rule of law as solutions to this problem. But a constitutional state can still be an ethnocratic state—depending on what is in the constitution. The barely concealed thrust of all the Central Asian constitutions, for example, notwithstanding "a litany of democratic affirmations," "is to ensure the political pre-eminence of the titular" ethnic group vis-à-vis non-titular groups, including, most prominently, Russians.\(^{436}\) Moreover, a well-functioning, noncorrupt judiciary could still be an ethnically chauvinist judiciary.\(^{437}\)

Finally, even if a liberal constitution is initially enacted, the combination of a strong state with the ethnopolitical dynamic just described can easily lead to the sweeping away of minority-protective guarantees through constitutionally legitimate processes. This is more or less what happened in post-colonial Sri Lanka. Upon achieving independence in 1947, Sri Lanka adopted a liberal constitution, containing important minority-rights protections.\(^{438}\) The electoral system was supposed to assure significant Tamil representation in parliament (up to 40% of the lower house), and "an independent judiciary was supposed to rule on the constitutionality of all legislation."\(^{439}\) Over the next twenty years, legislation passed by the majority-Sinhalese parliament and upheld by the Sri Lankan judiciary and the British Privy Council

\(^{434}\) Chua, supra note 1, at 46 (citations omitted). In Africa, too, "[o]pposition movements, armed rebellion, and coups . . . have often been directed against ethnically based regimes, many of which came to power through elections." Zakaria, supra note 433, at 35–36.

\(^{435}\) Zakaria, supra note 433, at 32.

\(^{436}\) Graham Smith et al., Nation-Building in the Post-Soviet Borderlands 147, 148 (1998). Article 55 of Turkmenistan's constitution stipulates that the president of the country must be a citizen "from amongst the Turkmen." Id. at 148. Achieving essentially the same effect (at least thus far), the other Central Asian constitutions require that the president "have a fluent command of the state language." Id.

\(^{437}\) According to Horowitz, most studies do not show elites to be less ethnocentric than non-elites, and some studies suggest that ethnocentrism actually increases with education. See Donald L. Horowitz, Self-Determination: Politics, Philosophy, and Law, 39 NOMOS 421, 457 n.31 (1997).

\(^{438}\) See Shastri, supra note 409, at 137. These protections included an explicit constitutional provision "prohibit[ing] the passage of any measure discriminatory to members of a particular ethnic group." Id.

\(^{439}\) Id.
(appeal to which was provided for in the 1947 constitution) gradually undercut the electoral rules that worked to maintain Tamil representation in parliament. At the same time, genuinely contested elections led the two principal Sinhalese parties “into a pattern of competitive bidding for the support of the Sinhalese community” and of mounting anti-Tamil rhetoric and ethnnonationalist polarization.

In 1970, the radical populist United Front (UF) won a two-thirds majority in parliament. With this majority, and in accordance with the rules governing constitutional amendment, the UF promulgated in 1972 a new constitution, giving Buddhism a “foremost place” in the country’s religious hierarchy and making Sinhala the country’s sole official language. Under the new constitution, the unicameral, Sinhalese-dominated legislature became even more powerful, and the judiciary was subordinated “to the majority will as expressed by the legislature. In 1974, the legislature proclaimed that it would have the right to interpret the meaning of its own laws. The constitutional provision that had explicitly prohibited discrimination against racial or ethnic groups was done away with.”

Thus in Sri Lanka, highly competitive, majoritarian elections, coupled with a strong state apparatus, assisted the formation of an ethnocratic takeover. Moreover, Sri Lanka’s well-articulated constitutional procedures did not prevent this result; on the contrary, they too may have facilitated the emergence of ethnocracy by legitimizing constitutional change. In any event, the case of Sri Lanka shows that “state-building”—crucial for developing countries in so many other ways—does not as such address the problem of ethnnonationalism.

Thus it is a grave mistake to think of ethnic conflict as a problem to be addressed after the process of state-building is successfully completed. Rather, the challenge is to try to structure developing-country political institutions in such a way as to avoid ethnocracy to the extent possible. In accordance with the previous Section, the effort must be to promote interethnic solutions and institutions everywhere possible.

The question, of course, is how. One controversial possibility is affirmative action for the economically privileged minority. This idea may be counterintuitive, but affirmative action in the political sphere (for a politically dominated minority) may be as important in the de-

440. See id. at 138–41. Among the first measures passed by the parliament in newly independent Sri Lanka were the Ceylon Citizenship Act of 1948 and the Indian and Pakistani Residents (Citizenship) Act of 1949. These laws, upheld by the Privy Council, effectively disenfranchised most Upcountry Tamils, greatly undermining the political position of the Tamil community as a whole. See id. at 138–39.
441. Id. at 139–41.
442. See id. at 146.
443. Id. at 147.
444. Id.
veloping world as is affirmative action in the economic sphere (for an economically dominated majority). Affirmative action in the political sphere can take a number of different forms, may be largely symbolic or more substantive, and would translate differently in different parts of government.

Ethnic "consociational" and "power-sharing" arrangements, which may be constitutionally or statutorily mandated, are the starkest form of ethnically based political resource allocation. Ethnic power-sharing involves the allocation of certain government positions on the basis of ethnicity. Consociationalism typically includes power-sharing, but goes much further. It is

a form of consensual democracy, in which all major groups are represented in governing grand coalitions in proportion to their numbers, in which elections are conducted by proportional representation in order to insure ethnic proportionality, in which major decisions are made by consensus (and so groups are accorded vetoes over them), and in which matters of concern to only one group are delegated for decision to that group.

With respect to the executive, both power-sharing and consociationalism usually mean that certain key cabinet-level positions must be held by members of certain ethnic minorities. South Africa's much criticized interim constitution (1994–1997) contained such requirements, which the new constitution has discarded. Similar requirements at the legislative level might call for a certain percentage of

445. There are a number of different approaches to power-sharing. Horowitz, for example, has advocated an incentive-based approach, distinct from consociationalism, that "aims at majoritarian decisions made by a moderate, interethnic center .... The objective is to make multietnic participation and compromise rewarding to all the participants who practice it." Donald L. Horowitz, Constitutional Design: An Oxyoron?, NOMOS (forthcoming July 2000) (1998) (unpublished manuscript at 8, on file with the author).


448. In the words of South Africa's Minister of Justice, The Honorable Abdullah Omar:

Under the Interim Constitution, any political party enjoying a minimum percentage of support had the right to be part of the executive of the country. The National Party (NP) and the Inkatha Freedom Party (IFP) both participated in the National Unity Government. The NP of F.W. de Klerk withdrew at the time the new Constitution was ratified, because it could not accept majority decision making in the cabinet. The IFP remains in government. But with the next elections, this boast called "Government of National Unity" will come to an end and the majority will have the right to form the executive of the country.

Omar, supra note 412, at 10–11 (explanatory footnote omitted).
parliamentary or congressional seats to be allocated on an ethnic basis. Fiji's new "multiracial" constitution, which stipulates that the Parliament be made up of 46 ethnically designated seats (23 Fijian, 19 Indo-Fijian, and 4 others) and 25 "open-race" seats, recently resulted in the historic selection of Fiji's first prime minister of Indian descent. With varying degrees of success, ethnically based legislative reservations have also been tried in Lebanon and elsewhere.

Affirmative action in the political sphere can also be accomplished, however, without mandated quotas or ethnic "slotting." At the executive level, multiethnic cabinet representation can be achieved through presidential or prime ministerial discretion. At the legislative level, the ethnically conscious engineering of electoral systems may serve to promote interethnic coalition-building without the use of explicit ethnic classifications or the reservation of designated ethnic seats. Among the many strategies that have been debated (and in some cases tried) are certain forms of proportional representation, alternative voting systems, and the ethnically conscious redrawing of electoral districts.

I will not pursue here a more detailed inquiry into the management of ethnic conflict through the design of political systems, which is the subject of an impressive, interdisciplinary, and often contentious literature. The appropriateness of any given strategy, of course, will be highly context-specific. Instead, I want to highlight three points that have received less attention.

First, the debate over ethnic gerrymandering and proportional representation may be of relatively little importance in some of the countries discussed above, where the economically dominant minority forms a tiny percentage of the population. In Indonesia and the Philippines, for example, where the Chinese make up only about three percent of the population, proportional representation would do little to affect the balance of ethnopolitical power, unless it were accompanied by the creation of a "Chinese veto power," which, in addition to being utterly unrealistic, would be indefensible and might even trigger a majoritarian, ethnonationalist reaction. Thus, in some of the coun-

449. See Chandra Sivran at Fiji's First Indian PM, EVENING POST (Wellington), May 19, 1999, at 7. Mahendra Chaudhry was elected prime minister in May 1999, after years of military rule and ethnic conflict between "indigenous" Fijians and the economically dominant Indo-Fijian community. See Guyon Espiner, Constitution Works Well for Fiji—Sir Paul, EVENING POST (Wellington), May 18, 1999, at 2.
450. See Horowitz, supra note 139, at 633, 625, 647.
451. See, e.g., id. at 639–42, see generally Guinery, supra note 55.
452. See, e.g., Horowitz, supra note 139, at 639–42.
453. See, e.g., id. at 628–29.
454. See id. at 628–42.
455. The same holds in many of the countries of East Africa, for example, where economically dominant South Asian minorities often comprise less than 2% of the population. See Yash Tan-
tries most vulnerable to the ethnonationalist version of the paradox of free market democracy, ethnic gerrymandering of the electoral system may not be the place to focus reform energies.

Second, with respect to ethnic relations and ethnic conflict, the importance of symbolism should not be underestimated. In Indonesia, for example, newly elected President Wahid has admirably included in his cabinet members of traditionally unrepresented ethnic and regional groups, including a Sino-Indonesian minister "to oversee economic policy."\(^5\) Similarly in newly democratized Fiji, the recently elected Indo-Fijian prime minister, Mahendra Chaudhry, appointed two Fijians as his deputy prime ministers, affirming his commitment to interethnic political coalition-building.\(^6\) Needless to say, tokenism is no answer to ethnic conflict. But because ethnonationalism necessarily rests in part on the appropriation of political symbols, national gestures that begin as merely symbolic may ultimately have substantial effect.

Finally, in thinking about affirmative action in the political sphere, it is important to focus not only on the "commanding heights" of executive and legislative power, but also on the lower echelons of the power structure.\(^7\) There are obvious dangers if, for example, the military, police, judiciary, and civil service in a particular country are exclusively staffed by members of a politically dominant ethnic group. Many developing countries that Western consultants and practitioners are helping to democratize and marketize come close to demonstrating this trait.\(^8\)

b. Universal Suffrage: Against Hypocrisy

One of the reasons that Western law-and-development policy makers tend not to see the fundamental instability inherent in free market democracy is because democracy in the developing world is so often a sham. In Mexico, for example, for over 50 years, democracy notoriously consisted of pre-ordained victories by the PRI in essentially uncontested elections. Even in less egregious cases, the great majority of the impoverished electorate often do not have a substantial political voice, whether because of the lack of "access to informational or decision-making networks" or because the wealthy control the political process through lobbying or corruption.\(^9\) "As in other aspects of life, the

---

\(^ {5} \) Nisid Hajari et al., Everybody Happy? Indonesian President Wahid puts together a cabinet that is representative, but vastly untested, \textit{Time}, Nov. 8, 1999, at 18.
\(^ {6} \) See Fiji Faces Tough Test, \textit{New Straits Times} (Singapore), May 22, 1999, at 72.
\(^ {7} \) \textit{Smith et al.}, supra note 436, at 152, 154; see Eisman, \textit{supra note 229}, at 228.
\(^ {8} \) See, e.g., \textit{Smith et al.}, supra note 436, at 154; see also Liddle, \textit{supra note 164}, at 309.
\(^ {9} \) Tommasi & Velasco, \textit{supra note 320}, at 220.
poor are usually too poor to be politically important."461 This is true even of "success stories" such as the Philippines, where, despite impressive strides toward democracy in the last twenty years, it remains the case that a few landowning, dynastic families, along with powerful Chinese business interests, dominate the political process.462

In other words, Western triumphalism about democracy in the developing world rests in part on a certain hypocrisy. If universal suffrage were a reality rather than a sham, one might wonder whether most of today's marketizers, foreign investors, and international organizations would be supporting it. Indeed, even today, there are many within the international development community who, at the first sign of a possible trade-off between markets and democracy, make clear that their first commitment is to the former.463 Occasionally the anti-democratic argument is made on economic grounds: Democracy will stifle crucially needed economic reforms.464 Occasionally it is made on cultural relativist grounds: Democracy is a Western value that should not indiscriminately or ethnocentrically be imposed on the developing world.465 Most often, the anti-democracy argument is expressed more palatably as a matter of "sequencing": Market reforms must come first, and democratization will naturally or more easily follow thereafter.466

It is arguably better to be an open advocate of the priority of markets than to be a self-congratulatory advocate of sham democracy. But a genuine commitment to democracy would be much more serious about making universal suffrage a reality rather than a formality and much more attentive to providing the poor majorities of the developing world with an effective political voice.467

---


462. See Florian Coulmas, Democracy in Asia?, SWISS REV. WORLD AFF., Apr. 1997, at 5–6 (stating that most voters in the Philippines are uneducated tenant farmers who are dependent on large landowners and who do not have the necessary political awareness to vote for their own interests); see also PAUL D. HUTCHCROFT, BOOTY CAPITALISM: THE POLITICS OF BANKING IN THE PHILIPPINES (1998); The Old Firms, ECONOMIST, May 11, 1996, at S10 (describing the political influence in the Philippines of a few powerful Chinese, Filipino, and Spanish families).

463. See, e.g., Arnold, supra note 191, at C4 (quoting a J.P. Morgan currency strategist as saying that democracy is not "necessarily the most efficient form of government").

464. See, e.g., Lal, supra note 33, at 164.


467. Public campaign financing, for example, is often suggested as a reform. The lack of funds and an accountable regulatory framework in most developing countries present tremendous obstacles. Even in the United States, some have argued that public money might "be better spent on a concerted official effort to encourage full political participation by making registration and voting easier and by providing voters with opportunities for obtaining better information about candidates, their supporters, and their records." Issacharoff & Klarman, supra note 57, at 1736. For a lucid discussion of political campaign finance reform including the developing world, see Rose-
On the other hand, there is some truth in the warnings issued by those concerned with the dangers of overly rapid democratization in countries with limited democratic experience. The recent elections in Cambodia and arguably the referendum in East Timor may be examples.\textsuperscript{468} If the commitment to democracy—on the part of both the "democratizing" government and the international community—is not real, the result of free and fair elections may be disastrous: the release of "a myriad of long-suppressed demands by aggrieved groups," political destabilization, and perhaps ultimately even "the reimposition of authoritarian rule."\textsuperscript{469}

3. Ideology: Ethnic Conflict in a Market Culture

This Section will address the ideological dimensions of the paradox of free market democracy in the developing world. I will first discuss briefly the possibility of fostering market-compatible ideologies. I will then turn to the more urgent challenge of forestalling potentially market-subversive and ethnonationalist reactions against economically dominant outsider minorities.

a. Market-Compatible Ideologies in the Developing World

The difficulties inherent in all top-down efforts at "ideology-building" have already been mentioned,\textsuperscript{470} but the phenomenon of economically dominant minorities raises special problems. For example, it is especially difficult to believe in an ideology of upward mobility if you and everyone around you are mired in intractable poverty and the only wealthy people in the country appear to be from a different ethnic group. For this reason, the ethnically based preferences discussed above have bearing here as well. If enough members of the poor majority see more people of "their own kind" profiting from the market, it is possible that they would feel more of a stake in the market system, which might in turn foster the hopes and beliefs necessary for an ideology of upward mobility.

On the other hand, other market-compatible ideologies might turn out to have more genuine purchase in developing countries. For example, ideologies associated with self-reliance or worker participation.


\textsuperscript{469} Liddle, supra note 164, at 319.

\textsuperscript{470} See supra Part II.A.3.

\textsuperscript{471} See Dorf & Sabel, supra note 80, at 305–06 (noting that contrary to cultural-determinist

HeinOnline -- 41 Harv. Int’l. L. J. 371 2000
might be more realistically appealing—and less likely to foster dangerously inflated expectations—than a (highly American) rags-to-riches ideology.

Ultimately, even if some of the market-compatible ideologies from the West do take hold in the developing world, they are likely to have a different face. By far, however, the more pressing challenge for ethnically divided developing countries pursuing free market democracy is not promoting market-compatible ideologies, but forestalling or breaking up the potentially market-subversive ideology of ethnonationalism. This is the subject of the next Section.

b. Forestalling Ethnonationalist Retaliation Against Economically Dominant Minorities

One of the ironies about economically dominant minorities is that they are very often perceived as “draining away the [nation’s] wealth” or posing a “menace” to the economy when in fact they are usually a crucial source of national economic vitality and growth. This irony makes the problem of economically dominant minorities a special case of ethnic conflict, presenting both distinctive obstacles and opportunities. The obstacles stem from the overlap of class and ethnic division: In addition to all the usual problems of ethnic hatred, economically dominant minorities face the specific problem of ethnoeconomic resentment, often associated with stereotypes of greed, selfishness, disloyalty, and exploitativeness. The opportunities stem from the reality that economically dominant minorities have the skills and resources to contribute to economic growth and development.

In these circumstances, the challenge is to grapple with these obstacles and take advantage of the opportunities. In what follows, I will explore two questions relating to this challenge. The first question—often left out of policy discussions—is whether the economically dominant minority engages in objectionable practices that reinforce or exacerbate negative stereotypes. The second question is whether there are affirmative measures that might be taken, whether by the state, international actors, or the minority itself, to foster the reality and the per-

472. Chua, supra note 1, at 38–39 (citations omitted).


474. See Chua, supra note 1, at 37–41.
ception of the economically dominant minority as a positive contributor to the economy and the nation more generally.

i. Objectionable Practices

It should be stressed at the outset that there are some economically dominant minorities who are no doubt victimized solely because of their ethnic difference and their (perceived or actual) disproportionate wealth. It should also be stressed that even where objectionable practices by these minorities can be identified, they in no way justify or excuse the kinds of violence and human rights abuses often inflicted on them. On the other hand, it is unfortunately often the case in the developing world that some members of economically dominant minorities engage in practices—such as bribery, discriminatory lending practices, and violation of workplace regulations—that not only are illegal or otherwise objectionable in themselves, but also reinforce invidious ethnic stereotypes. Although there is no guarantee that eliminating these practices would improve ethnic relations, it seems important nonetheless, given the special dangers associated with economically dominant ethnic minorities, to identify such practices and take measures to curb them as much as possible.

Corrupt patronage relations between members of the indigenous ruling elite and members of economically dominant minorities have a long history in the developing world and invariably fuel bitter resentment among the indigenous majority.475 To return to the example of Indonesia, the intense anti-Chinese violence that erupted in May 1998 was inseparable from the association of a few Chinese magnates (such as Liem Sioe Long and Bob Hasan) with the Suharto regime’s “crony capitalism.”476 As is sadly often the case, violent popular reaction unleashed itself not on the relatively few wealthy Chinese who were actually complicit (and who used their wealth to go into hiding abroad), but rather on ordinary, struggling, middle-class Chinese-Indonesians, whose shops were burned and looted.477 What has been written of Southeast Asia is applicable to the developing world more generally: “As political liberalization and pressures for greater democracy increase . . . the willingness of [economically dominant minorities] to ally with

476. See VATIKIOTIS, supra note 171, at 14, 41, 45, 50.
477. See supra text accompanying note 185.
and support corrupt authoritarian regimes becomes both better known and less tolerable to the general population."^{478}

It is not only the wealthiest members of economically dominant minorities who engage in illicit practices; the problem is often more general. Throughout Southeast Asia, many Chinese-controlled firms routinely violate tax laws, banking laws, including restrictions on self-lending and discriminatory lending,^{479} and "laws concerning overtime regulations, workers' compensation and protection, occupational health and safety requirements, and building codes."^{480} Similarly, allegations that foreign multinationals—who again often occupy a role analogous to economically dominant ethnic minorities—expose local workers to hazardous and exploitative conditions are all too familiar; Nike, for example, has recently come under attack.^{481} To be sure, members of the "indigenous" business community may also be violating these laws, and "indigenous" political elites often tolerate such violations in exchange for bribes or kickbacks. But the perception among an economically disadvantaged majority that a disproportionately wealthy minority disregards the country's laws and exploits the indigenous population can only exacerbate ethnic resentment.^{482}

What to do about such illicit practices is less obvious. To begin with, there is usually a collective action problem. The likely effect of any single firm deciding to comply with workplace and other regulations—if its competitors do not—is to put the compliant firm out of business. Thus, calling on individual businesses to take corrective measures is unlikely to have much effect. On the other hand, looking to the state is not a complete answer either. One obvious problem is that the governmental actors who would have to implement reform are often the same ones corruptly benefiting from the violations.^{483} Less obviously, in many developing countries, governmental "anti-corruption" campaigns can provide a convenient excuse for state scapegoating and confiscation of assets. One possible example occurred in Kenya in late 1998, when, following charges of corruption, Kenya's "Central Bank took over three banks majority-owned by Asians [of Indian and Pakistani descent], including Trust Bank, the seventh-largest in Kenya."^{484}

Similarly, in 1993, when the Ramos government in the Philippines

\footnotesize

478. Lim & Gosling, supra note 146, at 292.
479. See Venticinis, supra note 171, at 41.
480. Jomo, supra note 303, at 252.
482. See Lim & Gosling, supra note 146, at 292.
483. See Mark Landler, Baligate and Why It Matters: Indonesia's Recovery, and Democracy, Tested by Standoff, N.Y. TIMES, Sept. 29, 1999, at C1; see also Rose-Ackerman, supra note 106, at 226.
undertook an anti-tax evasion campaign, its six targets were all ethnic Chinese.\footnote{485}{See Lim & Gosling, supra note 146, at 302–03.}

Because of these and other problems, anti-corruption campaigns for the developing world, even those supported by major international institutions, cannot be expected to have immediate transformative effects. An as yet unexploited resource here may be the surprisingly strong intra-ethnic organizations, both commercial and social, that many economically dominant minorities already have in the developing world.\footnote{486}{See, e.g., Gregory, supra note 473, at 26–36 (describing intra-ethnic commercial and social organizations in East Africa); Lee Kam Hing, supra note 404, at 92–93 (describing similar organizations in Malaysia).}
The success of these organizations in overcoming collective action problems in a variety of commercial contexts—through a combination of “trust” and superior monitoring capacities—has been widely observed.\footnote{487}{See supra text accompanying notes 305–306, 314–315.}

If leaders of the minority communities in a given developing country can be persuaded of the importance of, and overall gains to be had from, eliminating corrupt or illicit business practices, these organizations may have the right set of incentives and capabilities to play a significant role. In the context of the illegal importation of cheap labor, these organizations could be very useful.

For example, in Southeast Asia there have been complaints about the influx, particularly in Thailand and the Philippines, of “tens if not hundreds of thousands of illegal migrant workers from the PRC, most of whom are likely to be employed in small, Chinese-owned enterprises.”\footnote{488}{Lim & Gosling, supra note 146, at 293.}

As in the developed world, “local workers resent the competition [from illegal immigrants] and the resulting downward pressure on their wages.”\footnote{489}{Id.}

Indeed, in Indonesia, where roughly six million working-age Indonesians (almost all prihuni) were unemployed in 1996, the violent protest that erupted when a Chinese conglomerate imported 1000 illegal workers from China seems understandable.\footnote{490}{See Leah Makabenta, Indonesia: Ethnic Chinese Economic Success Fuels Racial Tension, INTER PRESS SERV., Mar. 25, 1993.}

Surely a better model for economically dominant outsider groups can be found in the example of the Madhvanis, owners of “the largest industrial, commercial, and agricultural complex in East Africa,” who not only “provided education, health, housing, and recreational facilities for [their] African employees,” but also “employed Africans in top management” and initiated a number of wealth-sharing schemes.\footnote{491}{Gregory, supra note 473, at 55.} Factory workers, for example, were offered the right to purchase “non-voting but high-interest-bearing shares” in the Madhvari companies, while agricultural employees could participate in an “outgrowers’
scheme’ providing loans, training, and encouragement for Africans to produce cane for the sugar factories.” 492

Finally, and most difficult, economically dominant minorities sometimes engage in behavior that indigenous majorities find “objectionable” but for reasons that may themselves be suspect. For example, economically dominant minorities are often criticized for acting “insularly,” for indulging in “conspicuous consumption,” or for “ flaunting” their ethnic pride. 493 Relatedly, such groups often establish institutions—e.g., private schools, religious institutions, philanthropic organizations, social clubs—for members of their own ethnic group. To a considerable extent, social mores are beyond the effective reach of policy engineering. Moreover, it is hardly clear that forced assimilation and acculturation, even if it were possible, would be desirable. Nevertheless, as will be discussed in the next Section, there are important constructive measures that economically dominant outsider groups might take to counter the dangerous perception (justified or not) of their insularity and indifference to the welfare of the nation.

ii. Affirmative Measures

Those with disproportionate economic power—especially if they are “outsiders,” as economically dominant ethnic minorities and foreign investors are often perceived to be—should be encouraged to make significant, visible contributions to the local economies in which they are thriving. Although such efforts to date have been extremely few and by no means always effective in promoting goodwill, some valuable models can be found. In East Africa, powerful families of Indian descent—not only the Madhvanis but also the Aga Khans, Mehtas, and Chandarias—made immense contributions to their local communities, often concentrating heavily on indigenous African welfare and development. 494 Prominent was “the Asians’ role in creating the Uni-

492. Id.
493. Lim & Gosling, supra note 146, at 292. A few years before Suharto’s resignation, Dewi Fortuna Anwar, a prabumi political scientist with the Indonesian Institute of Sciences, suggested, “For the Chinese to enjoy long-term security, they must open up their society and side with the Indonesian middle class . . . . The Chinese who aren’t doing business, like the badminton stars, are very much accepted. It’s only when they become crony capitalists they are hated.”

Peter Waldman & Jay Solomon, As Good Times Roll, Indonesia’s Chinese Fear for Their Future, WALL ST. J., June 5, 1997, at A18. According to an ethnic Chinese economist from the same institution,

I see the problem through the eyes of my prabumi friends: I see the shopping malls, the posh restaurants, the hotels and lavish weddings, full of young Chinese who don’t seem to have any interest in national problems. These people don’t know they’re living on a time bomb. They don’t mix with native Indonesians, so they don’t know how much they’re envied and resented.

Id.

iversity of Nairobi, East Africa's first nonracial institution of higher education." In Mexico City, foreign multinationals played a crucial role in funding the building of El Papalote, one of the world's outstanding children museums. Roughly five thousand poor and lower-middle class children from all parts of the country visit the museum each day and, rightly or wrongly, associate the prominently displayed names of Hewlett-Packard and Proctor & Gamble with the beneficial dispersion of science and education.

Ideally, such contributions would be highly visible and directed at large numbers of ordinary members of the disadvantaged majority. To be sure, any material redistribution effected by these contributions would itself be desirable, but as a practical matter the more important consideration may well lie in their symbolic implications. As noted above, a principal focus of nationalist and ethnonationalist anti-market reactions in the developing world has been the domination by "outsiders" of the nation's economic symbols: oil wells in Latin America, gold mines in South Africa, forests in Burma and Indonesia, Lomonosov porcelain in Russia, or other sectors that have come to be associated symbolically with national identity. Contrary to conventional wisdom, ownership restrictions in these nationally prized sectors may be strongly advisable. But for present purposes, the point is that the symbolic dimension of how economically dominant groups use their wealth may be deployed constructively as well.

For example, although they may have come too late, the Suharto-supported proposals in late 1995 and 1996 that Indonesia's largest companies (apparently both Chinese- and foreign-owned) set aside two percent of their net profit for indigenous welfare projects were well-conceived. Another way to approach this problem might be to ask whether there are, in a given developing country, important national sectors or symbols to which economically dominant minority business communities could make visible, valuable contributions. Thus, such communities might learn from the recent example of a number of wealthy businesspeople in the United States, who, in several highly publicized gestures, have donated tens of millions of dollars toward scholarship funds for inner-city children. Along similar lines, it might be an important demonstration of national solidarity for an econom-

495. Id. at 205.
498. I have made this argument at greater length elsewhere. See Chua, supra note 169.
cally dominant "outsider" group—almost always urban-centered—to fund rural development projects. Major conspicuous contributions to infrastructure providing tangible benefits to ordinary citizens are another possibility.

Given the extraordinary needs and deficits of developing societies, the opportunities for building interethnic goodwill are plentiful, and there is considerable room for creativity. For example, many have observed the tremendous unifying power of sports, across both class and racial lines, in countries ranging from the United States and France to South Africa and the countries of Latin America. Odd or trivial as it may seem, contributions by "outsider" groups to a national sport or team—whether by funding the acquisition of a star soccer player or by donating athletic facilities—may be a way of deploying the power of national symbols constructively. Mandela's unifying gesture, five years ago, in embracing South Africa's largely white rugby team is noteworthy here, and economically dominant minorities throughout the developing world might do well to consider the wisdom and power of his example.

IV. CONCLUSION

In many respects, markets and democracy mutually reinforce each other. Indeed, it is in part because markets and democracy appear, at least at first glance, so luxuriously compatible throughout the developed world that the neoliberal consensus has such grip. But there is also a deep tension inherent in free market democracy. Part I of this Article suggested that in all the developed nations this tension has been alleviated by a host of material, political, and ideological institutions and devices, not all of which have been admirable, and many of which may not be transplantable. These mediating devices and institutions have included not just the welfare state (in its widely varying forms) and constitutional rule-of-law protections, but also racism and, historically, massive exclusions from suffrage.

Part II addressed the developing world. Although rarely acknowledged by international policymakers, the conflict between markets and democracy in the developing world is real, combustible, and sometimes lethal. The mediating devices found in the developed world are generally absent from developing societies—an absence made especially problematic given the extent of poverty and the rapidity of democratization in the developing world. Moreover, in some developing countries, free market democracy faces an additional, formidable struc-

tural problem: the problem of market-dominant ethnic minorities. This distinctive mapping of ethnicity onto class—generally not seen in the developed world today—pits an impoverished “indigenous” majority against an economically dominant “outsider” minority, converting the paradox of free market democracy into an engine of potentially catastrophic ethnonationalism.

Part III turned to policy. While there can be no “one-size-fits-all” solution, all developing and transitional countries pursuing markets and democracy—even countries without market-dominant minorities—will have to find ways to mediate the basic tension between these two goals. In this light, the design of all of the measures comprising today’s prevailing development paradigm must be reexamined. For example, today’s rule-of-law, anti-corruption, and free-and-fair-election initiatives are aimed principally at facilitating market activity and promoting democratic accountability. To the extent that such initiatives succeed, they will accomplish tremendous achievements, but if care is not taken, they may in the process intensify the contest between unequal wealth and majoritarian politics. Problems of ethnic conflict, moreover, complicate many of today’s institution-building initiatives. In ethnically divided societies, it is entirely possible for a strong state to be an ethnocentric state; for an independent judiciary to be an ethnonationalist judiciary; for a thriving civil society to be an ethnically mobilized civil society.

As we enter the new millennium, some of the optimism about the immediate prospects of markets and democracy in the developing world has worn off. The Asian financial crisis, turmoil in Russia and other post-Soviet states, and heightening ethnic conflict the world over have made plain that merely privatizing and holding elections will not turn developing societies into “developed” ones. But rather than facing up to the painful, often awkward realities of the developing world, the international community has tended instead to grasp for new cure-alls and buzzwords. There is no question that rule-of-law, anti-corruption, civil-society, and other reforms will be essential in the developing world. Indeed, if properly designed, all these reforms could ultimately play a valuable role in mediating the paradox of free market democracy. The challenge for law and development today is to think candidly and creatively about reconciling the realities of market-generated extreme wealth disparities with the aspirations of democratic politics.
How Should Human Rights and Development Respond to Cultural Legitimization of Gender Hierarchy in Developing Countries?

Celestine I. Nyamu*

INTRODUCTION

Human rights and development are the two fields of international law that have addressed gender and culture in developing countries. Human rights scholars and practitioners have invoked domestic and international human rights standards to eradicate certain Third World cultural practices, particularly with regard to women. Similarly, the field of development has predominantly treated culture as an obstacle to women's full participation in society. These approaches have highlighted specific negative cultural practices such as female genital surgeries. Human rights and development have, however, made minimal contributions to building a dialogue balancing the goals of gender equality and cultural identity. As long-term strategies, the approaches of these two fields are limited in their ability to address forms of gender hierarchy that cannot be easily characterized as cultural oppression. In this Article, the specific issue of gender hierarchy in property relations will be used to evaluate and critique the approaches of these two fields. Emerging approaches—as opposed to the conventional approaches—will be used to suggest more effective ways of conceptual-

* S.J.D. Candidate, Harvard Law School; LL.M., Harvard Law School, 1995; LL.B. Univ. of Nairobi, 1993; Advocate of the High Court of Kenya. The author thanks Martha Minow, Sally Falk Moore, Joseph Singer, Diane Otto, Ruth Gana Okediji, Balakrishnan Rajagopal, Helena Alviar, James Gathii, Antony Anghie, Peter Rosenblum, and Hani Sayed for insightful comments on earlier versions of this Article. She also thanks the American Association of University Women (AAUW), Margaret McNamara Memorial Fund, Ford Foundation, and the Harvard Law School Graduate Program for valuable financial support during her S.J.D. that made this and other projects possible.

1. For purposes of this Article, I use the term “Third World” to refer collectively to countries that are usually targeted by development policies of multilateral and bilateral development agencies. I have adopted this definition from Sue Ellen Charlton, Development as History and Process, in The Women, Gender and Development Reader 7, 8–9 (Nalini Visvanathan et al. eds., 1997) [hereinafter Reader].