

SPVs	Special Purpose Vehicles
UNDP	United Nations Development Programme
WGI	World Governance Indicators
WTO	World Trade Organization

## Introduction

“Law and Development” is a term used to describe attempts to understand the relationship between legal systems and legal institutions and a wide variety of development outcomes. Hence, this book will mostly focus on the question of what kind of law and legal arrangements are perceived (correctly or not) to produce development. Before that, however, it is necessary to understand what we mean by development, a topic that has generated heated academic and policy debates. Different conceptions of development are discussed in the first chapter. The following chapters turn to a discussion about causal connections between legal and non-legal variables and development outcomes. The first chapter sets the context for a detailed analysis of the design of political, bureaucratic, private and international legal institutions, inquiring into when and how they may be relevant for development.

The book is inspired by our previous joint work, *What Makes Poor Countries Poor? Institutional Determinants of Development* (Edgar, 2011). Indeed, the structure of the book largely follows the structure of our previous publication. There are, however, important and substantive differences between the two.

First, this book does not try to propose an argument or take sides in certain academic debates. Instead, it provides a concise map of the field for a reader who has little to no familiarity with the topic and is searching for an accessible introduction. This should make the book very useful as a textbook for courses and seminars, especially if complemented by the more in-depth coverage of the academic literature and policy debates addressed in our previous book.

Second, our analysis is significantly more concise in this volume, providing for a quicker read. The cost of such conciseness is, of course, the inevitable and necessary simplifications and omissions. Therefore, we recommend our other book as a useful complement to this short volume.

Third, the book has significantly more material on gender and development than our previous work. This is not only an important topic in the field, but it is probably the topic that poses some of the biggest challenges for institutional conceptions of development. Thus, we have decided to address the omission in our first volume by adding a chapter on this topic.

In writing this book, we gratefully acknowledge the research assistance of Lindsey Carson, Susannah Leslie, Joanna Noronha and Kristen Pue, and the logistical assistance of Nadia Gulezko.

## PART I

### CONCEPTUAL FOUNDATIONS

# 1

## Defining development

What is development? In some respects, this question is related to philosophical debates of what constitutes the good life and dates back at least to the ancient Greeks. It is not the purpose of this chapter to provide an intellectual history of moral and political philosophy from the ancients onwards, or to espouse and defend any fully elaborated conception of the good life. Instead, this chapter identifies some prominent strands in post-war debates over the ends of development.<sup>1</sup>

### 1.1 Development as economic growth: GDP (or GNI) per capita

Development has been historically associated with wealth, in other words, the richest countries would be viewed as more developed than poor ones. Under this conception, wealth is measured by a country's gross domestic product (GDP) or gross national income (GNI). These measures indicate the total amount of resources a country has, and allows us to compare the size of countries' economies. For instance, the United States and China are the largest economies in the world if measured by their GDPs.<sup>2</sup>

The GDP alone is not enough to classify countries as developed or developing, however. The aggregate level of wealth in a country can be a significant amount of money or not, depending on the size of its population. For instance, China is the second largest economy in the world, after the United States. Current predictions indicate that China is likely to surpass the United States in the next few years, becoming

<sup>1</sup> See generally H. W. Arndt, *Economic Development: The History of an Idea* (Chicago, IL: University of Chicago Press, 1989); G. Meier, *The Biography of a Subject: An Evolution of Development Economics* (Oxford University Press, 2004).

<sup>2</sup> World Bank, "GDP (current US\$)", available at <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD> (accessed 11 October 2013).

then the largest economy in the world. However, if we divide the GDP of each country by their population, we find that the United States is significantly richer than China, with US\$49,965 of GDP per capita, compared to China's US\$6,168.<sup>3</sup> This is why a country's wealth is often measured by the GDP per capita.

GDP per capita has been central to much thinking in development economics in the post-war period, as reflected in the World Bank classification of countries into four income tranches: high income, middle income, low-middle income, low income. Low-income countries are defined as having a per capita gross national income in 2012 of US\$1,035 or less; lower-middle income countries have incomes between US\$1,036 and US\$4,085; upper-middle income countries have incomes between US\$4,086 and US\$12,615; and high-income countries have incomes of US\$12,616 or more.<sup>4</sup>

This measurement reflects a particular concept of development, centered around economic wealth, and it is also associated with policies designed to promote economic growth. There has been much resistance to such a conception of development and to growth policies, as we discuss in the next section. Even if one embraces such criticisms, however, economic growth should still be regarded as relevant in a development context, if the data is accurate.<sup>5</sup> To illustrate this point, it is useful to differentiate economic growth from two related concepts: poverty and inequality.

To understand the relationship between economic growth and poverty, take the case of the Democratic Republic of Congo (DRC), with a GDP per capita of US\$272 in 2012.<sup>6</sup> This is one of the poorest countries in the world, despite its enormous mineral wealth. Similarly to other countries, such as the United States and Brazil, in the DRC income is not equally distributed: some people are extremely rich (for example,

the former long-time ruler, now deceased, Mobutu), whereas 46.5 per cent of the population lives in poverty.<sup>7</sup> However, even if internal incomes were somehow equally distributed, the average per capita income would still be US\$272. This means that each citizen would live on less than a dollar a day, despite the fact that the country would no longer face inequality problems. This extreme example shows that increasing GDP per capita by promoting economic growth can be an important instrument in eliminating poverty and therefore promoting economic development. Asian countries, especially China, offer illustrative examples of how economic growth can help reduce poverty. It is estimated that more than 500 million people were lifted out of poverty in China in the last three decades, due to high rates of economic growth.<sup>8</sup>

This raises an important policy question: could we eliminate poverty by simply giving poor people money coming from other countries? Many believe that this type of external redistributive programme (known as Official Development Assistance, or Foreign Aid) can help solve the problem of poverty in developing countries. However, as we will discuss in greater detail in Chapter 14, there are reasons to be sceptical. One reason is that the amount of aid currently allocated to developing countries is not remotely sufficient to eliminate poverty. For instance, the total amount of aid sent to developing countries in a year is normally a little above US\$100 billion.<sup>9</sup> This is the annual expenditure budget of one single Canadian province, Ontario. Today there are around 1 billion people in the world living in absolute poverty, while there are around 13 million people living in Ontario. Thus, it is hard to think aid will solve the problem unless the amount of these transfers was dramatically increased.

The concept of poverty should not be confused with inequality. A country can have high rates of inequality while maintaining low levels of extreme poverty. An illustrative example is the United States. There

<sup>3</sup> World Bank, "GDP per capita (current US\$)", available at <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD> (accessed 11 October 2013).

<sup>4</sup> World Bank, "Country Classification: Data and Statistics", available at <http://data.worldbank.org/about/country-classifications> (accessed 11 October 2013).

<sup>5</sup> M. Jensen, *Poor Numbers: How We Are Misled by African Development Statistics and What to Do about It* (Ithaca, NY: Cornell University Press, 2013). (Showing that many African nations lack the capacity to produce reliable data. As a consequence, policies guided by these numbers can be misguided.)

<sup>6</sup> World Bank, "World DataBank", available at <http://databank.worldbank.org/data/views/reports/tableview.aspx> (accessed 25 October 2013).

<sup>7</sup> World Bank, "World DataBank, Poverty headcount ratio at national poverty line (percentage of population)", available at <http://databank.worldbank.org/data/views/reports/tableview.aspx?issharred=true&ispopular=series&pid=16> (accessed 11 October 2013). (This figure is for 2011.)

<sup>8</sup> World Bank, "China Overview", available at [www.worldbank.org/en/country/china/overview](http://www.worldbank.org/en/country/china/overview) (accessed 11 October 2013).

<sup>9</sup> World Bank, "Net bilateral aid flows from DAC donors, Total (current US\$)", available at [databank.worldbank.org](http://databank.worldbank.org) (accessed 25 October 2013). Net bilateral aid flows from DAC donors are the net disbursements of official development assistance (ODA) or official aid from the members of the Development Assistance Committee (DAC).

are cases, however, in which the inequality exists alongside (and may be one of the causes of) extreme poverty. For instance, Brazil has a high rate of inequality,<sup>10</sup> with the richest 20 per cent of the population accruing around 60 per cent of Brazil's income compared to only 3 per cent by the poorest 20 per cent.<sup>11</sup> This means that the GDP per capita indicated earlier is far from representing how the income is distributed among the population. Moreover, 6.1 per cent of the Brazilian population lives in extreme poverty.<sup>12</sup>

While economic growth can help increase GDP per capita, as illustrated by the example of the DRC, it may not help reduce poverty, as exemplified historically by the Brazilian case. That country had spectacular rates of economic growth in the 1960s and 1970s (averaging 7.33 per cent).<sup>13</sup> However, this economic growth was not distributed to the lower echelons of the population, being largely concentrated in the upper classes. This means that GDP per capita increased during this period, but both inequality and absolute poverty increased as well. Therefore, one may say that there was growth without development. China has recently started to see a rise in economic inequality, which may raise similar concerns.

Due to these limitations (and other criticisms not discussed here), in recent decades dissatisfaction with such a narrow conception of development has been strongly manifested in a number of quarters. At a conceptual level, the primacy of per capita income as an index of a country's state of development and maximization of rates of economic growth (and hence per capita income) as the primary end of development has been challenged by Amartya Sen, Nobel Laureate in Economics, as we discuss in section 1.3 below.

<sup>10</sup> See World Bank, "Inequality and Economic Development in Brazil" (Washington, DC: The World Bank, 2004), available at [http://www-wds.worldbank.org/servert/WDSCContentServer/WDSP/IB/2004/1/0/05/000012009\\_20041005095126/Rendered/PDF/301140PAPERInequalityBrazil.pdf](http://www-wds.worldbank.org/servert/WDSCContentServer/WDSP/IB/2004/1/0/05/000012009_20041005095126/Rendered/PDF/301140PAPERInequalityBrazil.pdf) (accessed 28 April 2014).

<sup>11</sup> World Bank, "World DataBank", available at <http://databank.worldbank.org/data/views/reports/tableview.aspx#> (accessed 25 October 2013).

<sup>12</sup> World Bank, "Poverty headcount ratio at \$1.25 a day (PPP) (percentage of population)", available at <http://data.worldbank.org/indicator/SP.POV.DDAV/countries> (accessed 11 October 2013). (These figures are from 2009).

<sup>13</sup> R. Adrigue, M. Cerisola and G. Gejos, "Brazil's Long-Term Growth Performance – Trying to Explain the Puzzle" (2006) IMF Working Paper WPI/06/282 at 3.

## 1.2 Development as lack of poverty: the Multi-dimensional Poverty Index

Recently, there has been an increased focus on poverty. This new focus has had its merits, but it has also had its shortfalls. One is the fact that poverty has been primarily defined in economic terms. Absolute poverty, for example, is currently defined by the World Bank as an individual living on less than 1.25 dollars a day.<sup>14</sup> This narrow definition raises the same type of concerns directed at the aggregate measures of a country's wealth, such as GDP per capita. For instance, an individual whose income is less than a dollar a day may live in a country where there is an active welfare state with a vast network of support services. This stands in sharp contrast with an individual whose income is similar to the first one, but s/he is also deprived of any type of governmental assistance.

In an attempt to capture these other dimensions of poverty that are not captured by measurements of individual income, the Oxford University's Oxford Poverty and Human Development Initiative (OPHI) joined the United Nations Development Programme (UNDP) Human Development Report Office to create a new index to indicate the nature and quantify the extent of poverty. It is called the MPI, or Multi-dimensional Poverty Index.<sup>15</sup> The MPI examines a range of deprivations by using ten indicators at the household level (such as child mortality, years of schooling, and access to water, sanitation and electricity). This multi-dimensional approach to poverty reveals not only how many people are poor but also the nature and intensity of their poverty, which is relevant for policy design.<sup>16</sup>

The percentage of people living in poverty according to the MPI is higher than the percentage of people living on less than US\$2 a day in 43 countries and lower than those living on less than US\$1.25 a day in 25 countries. For example, in Ethiopia, 90 per cent of the population are MPI poor compared to 39 per cent classified as living in extreme

<sup>14</sup> M. Ravallion, S. Chen and P. Sangraula, "Dollar a Day Revisited" (Washington, DC: The World Bank, 2008), available at [http://www-wds.worldbank.org/external/default/WDSCContentServer/IB/3P/IB/2008/09/02/000158349\\_20080902095754/Rendered/PDF/wps4620.pdf](http://www-wds.worldbank.org/external/default/WDSCContentServer/IB/3P/IB/2008/09/02/000158349_20080902095754/Rendered/PDF/wps4620.pdf) (accessed 28 April 2014).

<sup>15</sup> This new index has featured in the UNDP, Human Development Reports since 2010. See 2013 UNDP Human Development Report, available at [http://hdr.undp.org/en/media/HDR\\_2013\\_EN\\_complete.pdf](http://hdr.undp.org/en/media/HDR_2013_EN_complete.pdf) (accessed 28 April 2014).

<sup>16</sup> S. Aikre and M.E. Santos, "Acute Multidimensional Poverty: A New Index for Developing Countries" (2010) OPHI Working Paper No. 38 at 7.

poverty; on the other hand, in Tanzania, 89 per cent of people live in extreme income poverty but only 65 per cent are MPI poor. This index captures access to key services such as sanitation and water in a more direct fashion, so the picture of deprivation seems to be a more accurate one: in some countries, services are available for free, while in others they are out of reach even for working people with an income.<sup>17</sup>

### 1.3 Development as freedom: Human Development Index

In a widely celebrated book, *Development as Freedom*, Amartya Sen accepts that policies and institutions that increase per capita incomes by increasing economic growth are instrumental in promoting development. However, he argues that economic growth is not the ultimate end of development. In his view, the ends of development should be focused on promoting individual freedom, in the sense of enhancing the ability of individuals to choose to live lives that they have reason to value.<sup>18</sup>

For Sen, freedom in various dimensions (political freedoms, economic facilities, social opportunities, transparency guarantees and protective security) constitutes both the means and ends of development. These freedoms are complementary, mutually reinforcing, and promote more robust forms of individual agency and expand human capabilities, opportunities and functioning. In this context, economic growth is important for what it enables individuals, and the communities and societies of which they are members, to achieve. However, economic growth is not the only means of promoting development.

Sen shows that one's choices and possibilities are not only limited or reduced by lack of money, but they can also be reduced by a shorter lifespan, for example. A comparison between the life expectancy of African-Americans in the United States, and citizens of the state of Kerala, in India, and China is illustrative. African-Americans have a higher GDP per capita, but a shorter life expectancy than their counterparts in these other countries. The example illustrates that it is not

fully clear whether being richer, but having a shorter life would be everyone's preferable option. Everyone would prefer to be richer, if everything else was held constant. Conversely, we all would prefer to live longer, all else equal. However, choice becomes much more complicated if the price for greater wealth is a shorter lifespan; or if living longer implies living with chronic destitution and suffering.

Partly reflecting Amartya Sen's concept of development, the UNDP, in an annual series of Human Development Reports dating back to 1990,<sup>19</sup> has constructed a Human Development Index (HDI) based on three ends of development: longevity, as measured by life expectancy at birth; knowledge, as measured by a weighted average of adult literacy and mean years of schooling; and standard of living, as measured by per capita income.<sup>20</sup> While there is a strong positive correlation between per capita income and health and education status, this correlation is not perfect or tight. Rankings of developing countries often change significantly, either upwards or downwards, when health and education variables are incorporated along with a per capita income variable in this index.

Despite moving away from a strictly economic concept of development, the HDI is mostly based on quantifiable variables, which can be measured periodically, and allow frequent comparison between different countries and their levels of development. In this respect, it is similar to income measures of GDP per capita.<sup>21</sup> The difference is that the multiplicity of variables in this index makes it harder to draw clear-cut lines that distinguish developed from developing countries, such as the lines drawn by the World Bank between low, middle and high income countries. For example, Vietnam, Chile and Cuba fare better on health and education (and in the overall HDI ranking) than other countries with the same level of income, whereas Bahrain, Angola and the United States do worse on health and education rankings than other countries with the same level of income.<sup>22</sup>

<sup>19</sup> UNDP, "Origins of the human development approach" in *Human Development Reports*, available at <http://hdr.undp.org/en/humandev/origins/> (accessed 15 May 2009).

<sup>20</sup> UNDP, "The Human Development Index (HDI)" in *Human Development Reports*, available at <http://hdr.undp.org/en/statistics/indices/hdi/> (accessed 15 May 2009).

<sup>21</sup> For a critique of these measures as the basis for an agenda for public policy-making, see K. Ritchie, "Governing by Measuring: the Millennium Development Goals in Global Governance" in H. Ruiz-Fabri, R. Wolfrum and J. Gogolin (eds), *Select Proceedings of the European Society of International Law*, Vol. 2, 463 (Oxford, UK: Hart Publishing, 2010).

<sup>22</sup> UNDP, "The Human Development Index (HDI)" in *Human Development Reports*, available at <http://hdr.undp.org/en/reports/> (accessed 28 April 2014). These discrepancies have

<sup>17</sup> S. Alkire and M.E. Santos, "Multidimensional Poverty Index: 2010 Data. Research Brief" (July 2010) Oxford Poverty and Human Development Initiative, available at <http://www.ophi.org.uk/wp-content/uploads/OPHI-MPI-Brief.pdf> (accessed 28 April 2014), at 4.

<sup>18</sup> A. Sen, *Development as Freedom* (New York, NY: Knopf, 1999). See also M.C. Nussbaum, *Creating Capabilities: The Human Development Approach* (Cambridge, MA and London: Belknap-Harvard University Press, 2011).

## 1.4 Sustainable development

Another example of efforts to use more comprehensive measures to assess a country's level of development is exemplified by the eight Millennium Development Goals (MDGs) adopted in September 2000 by 189 members of the United Nations. The goals include eradication of extreme poverty and hunger, gender empowerment, and sustainable development among others.<sup>23</sup> In addition to defining these eight goals, the member countries of the United Nations also committed to a set of targets to be achieved by 2015 and defined indicators to monitor progress in achieving each of these goals.<sup>24</sup> For example, goal number one is to eradicate extreme poverty and hunger, while the target is to halve the proportion of people living on less than 1 dollar a day and those who suffer from hunger by 2015.

Like measures of GDP per capita, the MDGs are also embedded within a concept of development – one that might be multi-faceted and less simplistic than GDP per capita, but still reveal a notion of what is development. The MDGs have at least two novelties: a concern with gender equality, and a concern with environmental sustainability. These are two concerns that have gained a great deal of prominence in

the development field recently, and we will dedicate an entire chapter to the former,<sup>25</sup> while discussing the latter here.

Preserving the environment can be conceived as an end in itself, but in the development field it is often conceived as a means to protect the interests of future generations. While the use of natural resources may promote growth and help current generations, if such use causes the depletion of such resources, it will deprive future generations of basic sustenance, condemning them to live in poverty. This concern is often captured in the concept of sustainable development, which is “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”<sup>26</sup> The idea of sustainable development has been captured by a new measurement of wealth, called Green GDP. This index accounts for economic growth, but it discounts the environmental costs of such growth by discounting loss of biodiversity and costs caused by climate change from the conventional GDP.<sup>27</sup>

In an attempt to address the environmental sustainability challenge, a series of achievable environmental goals were established in 1992. Agenda 21, formulated during the United Nations Conference on Environment and Development (Rio Summit), is a non-binding action plan to promote sustainable development and it has been adopted by international and multi-lateral organizations, as well as national governments.<sup>28</sup> Despite these efforts, sustainable development still seems to remain a formidable challenge. Jeffrey Sachs offers alarming predictions if the current rates of population and economic growth are maintained. The global population is likely to rise to 9.2 billion in 2050, an increase of 40 per cent. If the world's average income per person rises four-fold over this period, the gross world product will increase 6.3 times. This increased economic activity will require even more resources in what Sachs considers “an already crowded planet.”<sup>29</sup>

persisted since 1990. See also UNDP, “Defining and Measuring Human Development”, *Human Development Report* (1990) at 14–16, available at [http://hdr.undp.org/en/media/hdr\\_1990\\_en\\_front.pdf](http://hdr.undp.org/en/media/hdr_1990_en_front.pdf) (accessed 28 April 2014).

<sup>23</sup> These goals are: 1. Eradicate extreme poverty and hunger. 2. Achieve universal primary education. 3. Promote gender equality and empower women. 4. Reduce child mortality. 5. Improve maternal health. 6. Combat HIV/AIDS, malaria and other diseases. 7. Ensure environmental sustainability. 8. Develop a global partnership for development.

<sup>24</sup> The 2015 Targets are 1. Halve the proportion of people living on less than 1 dollar a day and those who suffer from hunger. 2. Ensure that all boys and girls complete primary school. 3. (Target for 2005) Eliminate gender disparities in primary and secondary education (preferred). (Target for 2015) Eliminate gender disparities at all levels. 4. Reduce by two-thirds the mortality rate among children under five. 5. Reduce by three-quarters the ratio of women dying in childbirth. 6. Halt and begin to reverse the spread of HIV/AIDS and the incidence of malaria and other major diseases. 7. (General target) Integrate the principles of sustainable development into country policies and programmes and reverse the loss of environmental resources. (Target for 2015) Reduce by half the proportion of people without access to safe drinking water. (Target for 2020) Achieve significant improvement in the lives of at least 100 million slum dwellers. 8. Develop further an open trading and financial system that includes a commitment to good governance, development and poverty reduction – nationally and internationally. Address the special needs of the least developed countries and those of landlocked and small-island developing states. Deal comprehensively with the debt problems of developing countries. Develop decent and productive work for youth; in cooperation with pharmaceutical companies, provide access to affordable essential drugs in developing countries; in cooperation with the private sector, make available the benefits of new technologies – especially information and communication technologies.

<sup>25</sup> See Chapter 8.

<sup>26</sup> *Report of the World Commission on Environment and Development*, G.A. Res 42/187, UN Doc. A/RES/42/187 (1987).

<sup>27</sup> J. Stiglitz, A. Sen and P.J.-P. Fitoussi, “Report by the Commission on the Measurement of Economic Performance and Social Progress” (2008) Commission on the Measurement of Economic Performance and Social Progress, available at <http://www.stiglitz-sen-fitoussi.fr/en/index.htm> (accessed 28 April 2014).

<sup>28</sup> “Agenda 21: Programme of Action for Sustainable Development” UN GAOR, 46th Sess., Agenda Item 21, UN Doc A/Conf.151/26 (1992), available at <http://sustainabledevelopment.un.org/index.php?page=view&nr=23&type=40&menu=35> (accessed 28 April 2014).

<sup>29</sup> J. Sachs, *Common Wealth* (New York, NY: The Penguin Press, 2008) at 22–3.

Independent of the accuracy of these predictions, the 2003 World Development Report shows that the current use of natural resources is already creating strains for people around the world, and the problem has been particularly acute in developing countries. First, many cities already have unhealthy levels of air pollution. The World Bank estimates that in 1,445 cities in the world the population suffers from exposure to concentration of dust particles, or total suspended particles (TSP) above traditional guidelines of 90 micrograms  $\mu\text{g}/\text{m}^3$ . Second, fresh water is also growing increasingly scarce. The World Bank estimates that one-third of the world's people live in countries that are already experiencing moderate to high water shortages due to rising consumption. Moreover, excess nitrogen (from fertilisers, human sewage, and combustion of fossil fuels) has created excess nutrients in lakes, rivers, and coastal waters and reduced soil fertility. Third, soil degradation has caused productivity losses. The extent of such degradation, according to the World Bank, is significant: "nearly 2 million hectares of land worldwide (23 per cent of all cropland, pasture, forest, and woodland) have been degraded since the 1950s. About 39 per cent of these lands are lightly degraded, 46 per cent moderately degraded, and 16 per cent so severely degraded that the change is too costly to reverse". Fourth, the stock of forests, biodiversity and fisheries is in rapid decline. Deforestation is concentrated in developing countries, which have lost nearly 200 million hectares of forest between 1980 and 1995. In contrast, forest cover in industrial countries is either stable or increasing. Deforestation has a negative impact on biodiversity, but so do other types of human activity. For instance, some suggest that 20 per cent of all endangered species are threatened by non-native species introduced by human activity. As to fisheries, "about 58 per cent of the world's coral reefs and 34 per cent of all fish species are at risk from human activities. 70 per cent of the world's commercial fisheries are fully exploited or overexploited and experiencing declining yields". Climate change poses especial risks to low-lying developing countries from rising sea levels, and other developing countries from prolonged droughts, torrential rains, tsunami and other extreme weather events. In sum, the world's current use of natural resources is not consistent with sustainable growth over the long term.<sup>30</sup>

What are the possible solutions? While some have suggested that economic growth is antithetical to preservation of environmental resources, in 2010, two high-profile publications argued that growth and environmental protection can be reconciled.

In *The Plundered Planet*, Paul Collier argues that the exploitation of natural resources is often conceived of as antithetical to the interests of future generations who will be deprived of those resources. However, he argues that if these resources are used to promote growth and benefit society at large, the exploitation of those resources can actually be in the interest of both current and future generations. This is what Collier calls "pragmatic environmentalism": sometimes it is better for resources to be preserved, but sometimes it is better for them to be explored and used to promote development. For this to be achieved, he suggests using foreign aid to finance surveys to assess what these countries have (to avoid selling natural resources without knowing) and a natural resources charter with strong rules to guarantee that the exploitation of natural resources will benefit the entire population of a developing country (as opposed to benefiting a small local elite and multinational corporations).<sup>31</sup>

Along the same lines, the 2010 World Development Report, entitled *Development and Climate Change* advocated incorporating environmental concerns in policies to promote economic growth. The political battles around the signature of the Kyoto protocol, however, may suggest that there will be strong political resistance to this agenda. Developing countries claim that the current developed countries have accumulated wealth by depleting resources, and are responsible for most greenhouse gases. Thus, it would not be fair to countries that are currently developing their economies to be deprived of similar benefits from economic growth.<sup>32</sup>

## 1.5 Development as quality of life: the National Happiness Index

A movement to redefine development based on well-being supported the development of the Gross National Happiness (GNH) Index.

<sup>30</sup> World Development Report 2003, "Sustainable Development in a Dynamic Economy" (Washington, DC: The World Bank, 2003), available at [www.dynamicsustainabledevelopment.org](http://www.dynamicsustainabledevelopment.org) (accessed 28 April 2014).

<sup>31</sup> P. Collier, *The Plundered Planet: How to Reconcile Prosperity with Nature* (London: Allen Lane, 2010).

<sup>32</sup> M. Trebilcock, *Dealing with Losers: The Political Economy of Policy Transitions* (New York, NY: Oxford University Press, 2014).



Spearheaded by the King of Bhutan, the index includes nine domains: psychological well-being, health, education, time use, cultural diversity and resilience, good governance, community vitality, ecological diversity and resilience, and living standards. These domains are considered conditions of a "good life" and are measured by 33 indicators.<sup>33</sup>

While initially supported only by a few academics and the government of Bhutan, the concept has gained international attention recently. In 2011, the United Nations approved a resolution entitled "Happiness: Towards a Holistic Approach to Development".<sup>34</sup> Sponsored by Bhutan, the resolution states that "happiness is [a] fundamental human goal and universal aspiration; that GDP by its nature does not reflect the goal; that unsustainable patterns of production and consumption impede sustainable development; and that a more inclusive, equitable and balanced approach is needed to promote sustainability, eradicate poverty, and enhance well-being and profound happiness". This resolution was followed by two World Happiness Reports, published in 2012 and 2013, which measured the overall happiness in different countries and ranked them against each other.<sup>35</sup> Alongside its recognition at the United Nations, in 2013 the Organisation for Economic Co-operation and Development (OECD) issued guidelines for an international standard for the measurement of well-being, largely subscribing to the concerns that have driven the creation of the happiness index.<sup>36</sup>

Despite increasing recognition, the concept and the index have not been immune from criticisms. One is that it is not possible to measure people's happiness, as it is a volatile emotion that is constantly changing through the day. This would challenge not only the feasibility but also the usefulness of measuring happiness. The authors of the World Happiness Report promptly dismiss these concerns by indicating that they are capturing people's satisfaction with their lives overall, which, according to them, is more stable and permanent, than a person's mood on a particular day.

33 The Centre for Bhutan Studies, "Bhutan GNH Index", available at <http://www.grossnationalhappiness.com/articles/> (accessed 28 April 2014).

34 G.A. Res. 65/309, UN Doc. A/RES/65/309, (2011).

35 J. Halliwell, R. Layard and J. Sachs (eds), *World Happiness Report* (New York, NY: Earth Institute, 2012) commissioned for the United Nations Conference on Happiness (April 2012); J. Halliwell, R. Layard and J. Sachs, *World Happiness Report 2013* (New York, NY: Earth Institute, 2013).

36 OECD, "OECD Guidelines on Measuring Subjective Wellbeing" (2013), available at <http://www.oecd.org/statistics/guidelines-on-measuring-subjective-well-being.htm> (accessed 28 April 2014).

Another criticism pertains to the methodology used to collect this data. Robert and Edward Skidelsky in a book entitled *How Much is Enough? Money and the Good Life* argue that the material conditions for the good life already exist in our world (health, respect, friendship, leisure and other non-material goods), but the continuous and blind pursuit of economic growth has been an obstacle to achieving it. Despite subscribing to the concerns that informed the creation of the GNH Index, they express considerable scepticism as to the robustness of methodologies for measuring happiness and for making comparisons across societies.<sup>37</sup>

## 1.6 Cultural relativism: challenging the notion of development

So far, we have discussed conceptions of development that reflect different interpretations of what is required to achieve human well-being. Despite their divergences, these conceptions have one thing in common: they assume that there is a universal conception of the good life (the ends of development). In contrast to the views presented here, some authors argue that societies have diverse, culturally defined conceptions of "the good life" and how one goes about achieving it. This perspective asserts that different societies have different values and these differences should be respected: there are no grounds for judging that the values of some societies are better than others.

The most radical versions of this argument claim that everything is culturally defined, questioning the validity of the entire development enterprise. For example, Arturo Escobar argues for the preservation of indigenous culture and against the use of Western (or any) standards as a benchmark, and claims that the imperialistic nature of the development discourse makes it comparable to discourses of colonization.<sup>38</sup> The idea that there is an incompatibility between Western and other cultures may assume a static and perhaps immutable view of culture, which presupposes that we cannot intentionally and purposefully change culture. A stronger version of this argument claims that

37 R. Skidelsky and E. Skidelsky, *How Much is Enough? Money and the Good Life* (New York, NY: Other Press LLC, 2012).

38 A. Escobar, "Introduction: Development and the Anthropology of Modernity" in *Encountering Development: The Making and Unmaking of the Third World* (Princeton, NJ: Princeton University Press, 1995) at 3–20.

“culture is destiny”, that with or without intentional attempts to do so, culture will not change.

In contrast to those who use a concept of culture to challenge conceptions of development, there are theorists who question the notion of culture as defined in the development literature. Scholars such as Tatsuo question Western representations of the First and Third Worlds that try to establish clear lines to separate them. Tatsuo claims, for instance, that most of the debate about development and culture is built upon false dichotomies that separate Western cultures from other cultures.<sup>39</sup> If we abandon these dichotomies, Tatsuo argues, the tension and incompatibility between liberal democracy and “Asian culture” largely disappears. A similar argument is developed by Amartya Sen in his book *Identity and Violence*.<sup>40</sup> According to him, identities have been often defined by singling out one aspect of a person’s life, such as religion, when in fact a person may identify more strongly with other aspects of his or her character. Sen claims that the miniaturization of identities has created polarization between different ethnic and religious groups, and has been a source of ethnic and religious conflict around the world.

### 1.7 Conclusion

Focusing narrowly on economic growth as an end in and of itself – abstracting from what it enables members of a society, individually or collectively, to achieve (perhaps, as Sen would argue, in terms of enhanced human capabilities and functioning) – would be to accord economic growth a primacy in the conception of the ends of development that it cannot sustain. Nevertheless, it is important to recognize the opposing danger: the ends of development may become so diffuse that “one sometimes wonders whether it now stands for anything more substantial than everyone’s own utopia.”<sup>41</sup>

## 2 Determinants of development

While the previous chapter discussed the ends of development, this chapter will focus on the means to achieve those ends, in other words, what causes development. Debates about the means of development have often reflected as much diversity of viewpoints as debates over the ends. In this chapter we provide a brief overview of a wide variety of theories regarding the means of development. At the risk of oversimplifying their differences, we have grouped these theories under three major headings: (1) economic theories, (2) cultural theories, and (3) geographic theories.

While these theories offer different and often conflicting explanations about why certain societies became rich, while others have remained or become poor, they have one common feature: they ignore or reject the idea that institutions are important for development (an idea that will be explored at greater length in Chapter 3). Ignoring or rejecting the idea that institutions matter for development challenges the idea that law or legal institutions can help promote certain development outcomes. To counter this argument, at the end of this chapter we offer a critical analysis of the often ignored institutional dimensions of these theories, which are often embedded in their policy implications.

### 2.1 Economic theories of development

Over the post-war period, various schools of thought concerned with economic growth have come into and out of favour, including: capital fundamentalism; *dirigiste* central planning; neo-Marxist dependency theory; the Washington Consensus (the neoclassical model or market fundamentalism); endogenous growth theories; and eclectic combinations of all of the foregoing.

According to theories known as “capital fundamentalism” or the “linear stages of growth approach”, countries need to mobilize domestic savings

<sup>39</sup> I. Tatsuo, “Liberal Democracy and Asian Orientalism” in J. Bauer and D. Bells (eds.), *The East Asian Challenge for Human Rights* (Cambridge, UK: Cambridge University Press, 1999).

<sup>40</sup> A. Sen, *Identity and Violence: The Illusion of Destiny* (New York, NY: Norton, 2006).

<sup>41</sup> Arndt, *supra* note 1, at 165.