MAKING THE STATE SAFE FOR THE MARKET: THE WORLD BANK'S *WORLD DEVELOPMENT REPORT 1997**

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[The World Bank has played a central role in determining the government policies of those states which make use of its resources. That role has included advising governments to privatise public sector activities, cut government spending on health and education, lower minimum wages, alter existing constitutional arrangements and deregulate investment and financial sectors. The Bank's World Development Report 1997: The State in a Changing World *has been hailed as signalling a significant change in Bank policy. The 1997 Report claims to refocus on the effectiveness of the state and to provide a model of development that brings the state closer to the people. This article argues that while a reconsideration of Bank conditions and advice is overdue, the 1997 Report demonstrates little shift in the Bank's commitment to privatisation and state restructuring. The article concludes that a far-reaching redirection of Bank policy continues to be needed and considers some of the ways in which lawyers and academics might contribute to achieving such change.]*

INTRODUCTION

The World Bank and the International Monetary Fund ('IMF') have for many years played a central role in determining the government policies of those states which make use of their resources.[1] Since the 1980s, that role has included advising governments to privatise public sector activities, cut government spending on health and education, deregulate labour markets, lower minimum wages, alter existing constitutional arrangements and deregulate investment and financial sectors.[2] The World Bank's annual World Development Reports have

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1 The World Bank Group comprises a number of institutions. The term 'World Bank' usually refers to two members of the World Bank Group: the International Bank for Reconstruction and Development, and the International Development Association. No state can become a member of and receive loans from the World Bank unless it also becomes a member of the IMF and becomes susceptible to IMF conditions on, and IMF management of, economic performance. The World Bank ('the Bank') in turn regularly attaches strict conditions to its loans and will not lend to a state in breach of such conditions. See generally Susan George and Fabrizio Sabelli, *Faith and Credit: The World Bank's Secular Empire* (1994) 10–15.

2 From 1986 onward, the World Bank, under the presidency of Reagan appointee and former United States Republican Congressman Barber Conable, began to attach conditions to structural adjustment or policy-based loans requiring privatisation and trade and investment liberalisation. 'Shock therapy' stabilisation programs, designed to move states from a socialist to a market-based political and economic system, have been implemented throughout Eastern Europe since the late 1980s. The 'shock therapy' model for dealing with states in transition from communism to capitalism was espoused by Harvard economist Jeffrey Sachs in a famous 1990 article: Jeffrey Sachs, 'What Is to Be Done?', *The Economist* (London, UK), 13 January 1990, 21. For analyses of the effects of structural adjustment and shock therapy programs, see Anne Orford, 'Locating

provided a useful indication of directions in Bank policy. The Bank's latest *World Development Report 1997: The State in a Changing World*[3] ('1997 Report') has been hailed as signalling a 'surprise policy U-turn' for the Bank.[4] The 1997 Report claims to '[refocus] on the effectiveness of the state',[5] provide a guide to 'reinvigorating institutional capability',[6] and suggest ways to bring 'the state closer to people'.[7] This article argues that, while such a reconsideration of the Bank's conditions and advice is overdue in light of the effect of its policies of 'structural adjustment' and 'shock therapy', an analysis of the 1997 Report reveals little real shift in the Bank's commitment to privatisation and state restructuring.

Part I outlines the history of Bank challenges to the state through conditions attached to Bank loans, and introduces some of the criticisms that have been made of Bank policies. Part II explores the reasons that the Bank gives for seeking to build an effective state. The 1997 Report makes clear that the principal role imagined for the state is that of facilitator for private investment, and demonstrates that the Bank retains a commitment to privatisation and a minimalist model of public participation. Part III analyses the meanings given to the notion of accountability in the 1997 Report. It suggests that while the Bank supports limited accountability on the part of the state and non-governnmental organisations ('NGOs'), the 1997 Report fails to address the need for privatised agencies, investors or the Bank itself to meet standards of accountability or transparency. Part IV criticises the model of development upon which the 1997 Report is based. That model divides the world into developed and developing countries, and assumes that all developing states should have as their goal the aim of becoming more like developed or industrialised states. Any failure to achieve that goal is deemed to be the fault of local, rather than foreign, actors or entities. Part V concludes that, given the detailed analyses and critiques of the effects of Bank policies from human rights lawyers, social justice activists, environmentalists, indigenous peoples, rural groups and security experts, a far-reaching redirection of Bank policy continues to be urgently needed.[8] It considers some of

the International: Military and Monetary Interventions after the Cold War' (1997) 38 *Harvard International Law Journal* 443, 464–71; George and Sabelli, above n 1, 58–72, 79–95, 162–83; Peter Gowan, 'Neo-Liberal Theory and Practice for Eastern Europe' (1995) 213 *New Left Review* 3, 16–53; Walden Bello, *Dark Victory: The United States, Structural Adjustment and Global Poverty* (1994) 32–71; Bruce Rich, *Mortgaging the Earth: The World Bank, Environmental Impoverishment and the Crisis of Development* (1994) 25–48, 110–47.

3 The World Bank, *World Development Report 1997: The State in a Changing World* (1997).

4 Charlotte Denny, 'World Bank in Surprise Policy U-turn', *Guardian Weekly* (London), 6 July 1997, 19; Rowan Callick, 'Minimalism at Odds with Development', *The Australian Financial Review* (Sydney), 26 June 1997, 12; David James, 'Nation-States Can Still Rule the Waives', *Business Review Weekly* (Melbourne), 8 September 1997, 80.

5 1997 Report, above n 3, ch 2.

6 Ibid pt 3.

7 Ibid ch 7.

8 Criticism of World Bank and IMF policies grew during the 1980s. See, eg, Walden Bello, above n 2; Walden Bello, *Development Debacle: The World Bank in the Philippines* (1982); Jeremy Brecher and Tim Costello, *Global Village or Global Pillage. Economic Reconstruction from the Bottom Up* (1994); Susan George, *A Fate Worse than Debt* (1988); Susan George, *The Debt Boomerang: How Third World Debt Harms Us All* (1992); Bade Onimode (ed), *The IMF, the*

the ways in which lawyers and academics might contribute to achieving such change.

I BRINGING THE STATE BACK IN

The focus on 'rethinking the state' suggested by the 1997 Report is of significance due to the long and controversial history of Bank challenges to the role of the state.[9] Over the past twenty years, the Bank has joined with other institutions and investors to challenge the conception of 'what the state should do' and 'how it should do it'.[10] Conditions imposed by the IMF and the Bank have required governments to take measures that radically alter existing constitutional, political and social arrangements.[11] Those international institutions, often acting with the support of economic liberals in the governments of target states, have, for example, required countries to adopt policies of foreign investment deregulation, privatisation, cuts to government spending on health and education, labour market deregulation, lowering of minimum wages and to focus on production of goods for export rather than domestic production.[12] Such conditions are premised upon the assumption that too great a level of state activity is an interference in the operation of the market.

Earlier World Development Reports give a sense of the extent of state activity that the Bank has previously treated as properly carried out by the market. In the 1995 Report, for example, the authors argue that while in 'primary education free public education usually makes sense', for other levels and forms of education, 'free provision more often is not justified'.[13] State provision of education and training other than for primary schooling is thus an inappropriate public intervention into the economic and private life of citizens. Similarly, the 1996 Report on states 'in transition' from communism to a market economy suggests that education delivery should be improved by 'decentralization', 'diversification of supply including private suppliers' and enhancing 'individual choice'.[14] That

World Bank and African Debt: The Social and Political Impact (1989) vol 2; Rich, above n 2; David Woodward, Anthony Costello and Fiona Watson, *Human Face or Human Facade? Adjustment and the Health of Mothers and Children* (1994); Susan Woodward, *Balkan Tragedy: Chaos and Dissolution After the Cold War* (1995).

9 1997 Report, above n 3, 1.

10 Ibid iii.

11 One example concerns the former Yugoslavia, where the IMF imposed conditions during the 1980s and early 1990s that directly and indirectly required major constitutional and political restructuring. For an analysis of that restructuring and its contribution to the conditions that led to the outbreak of genocidal violence, see Orford, 'Locating the International', above n 2, 451–9; S Woodward, above n 8, 50–1, 57–74, 82, 93–6, 101, 106, 115, 129–30, 379–81. For analyses of the impact of World Bank and IMF conditions on constitutional and political systems more generally, see Jochen Hippler, 'Democratisation of the Third World after the End of the Cold War' in Jochen Hippler (ed), *The Democratisation of Disempowerment: The Problem of Democracy in the Third World* (1995) 1, 22–9.

12 George and Sabelli, above n 1, 13, 18–19; Orford, 'Locating the International', above n 2, 465–71.

13 The World Bank, *World Development Report 1995: Workers in an Integrating World* (1995) 36–40 ('1995 Report').

14 The World Bank, *World Development Report 1996: From Plan to Market* (1996) 123–6 ('1996 Report')

requires a 'major change in the role of the state'.[15] The report supports the incorporation of 'private provision of education services, particularly in higher and adult education'.[16] Similarly, decisions about policies governing health and labour markets are presented in those Reports as legitimately to be made by markets, rather than the state.[17]

The effects of the narrowed scope for state and public sector activity imposed by conditions attached to Bank loans and IMF credits have been widely criticised. First, the commitment to privatisation of state activities and to attracting foreign investment at any cost has furthered the interests of multinational corporate investors to the detriment of people living in targeted states. Such policies have been challenged by those groups and activists, particularly women, engaged in 'hardcore economic resistance'.[18] Global economic restructuring is producing increased inequality at an alarming rate, and international law and institutions such as the World Bank that require the implementation of policies that favour multinational corporate investors are closely involved in that reproduction of inequality.[19]

Secondly, the commitment to limiting the involvement of the state in areas such as health, education, industrial relations, consumer protection or financial regulation has led to a decreased capacity for public participation in decision-making over those areas of activity and policy. The dismantling of state institutions and alteration of political arrangements required by Bank policies and conditions limits the capacity of the people living in such states to influence public decision-making. The imposition of such policies demonstrates the failure of the Bank to adhere to liberal democratic principles designed to ensure that individuals have equal access, at least formally, to public goods and participation in public decision-making. By characterising most areas of activity as 'private', while even public sector activities are properly to be regulated in the interests of foreign investors and according to the dictates of international economic institutions, the Bank denies to the citizens of such states even the limited liberal guarantees of public accountability, public ownership, equality, human rights and equitable access to resources and power-sharing. The effect of conditions imposed by the Bank is to privatise much of what has been understood since the

15 Ibid 125–6.

16 Ibid 145.

17 On health policies, see the 1995 Report, above n 13, 76–8 (discussing occupational health and safety policies) and the 1996 Report, above n 14, 126–31 (discussing health policies generally). On labour markets, see the 1995 Report, above n 13, 69–104 and the 1996 Report, above n 14, 72–7. See also Orford, 'Locating the International', above n 2, 467–8.

18 Julie Stephens, 'Running Interference: An Interview with Gayatri Chakravorty Spivak' (1995) 7(2) *Australian Women's Book Review* 19, 20.

19 Statistics concerning the growing number of people living in poverty can be found in United Nations Development Programme, *Human Development Report 1997* (1997). For examples of literature analysing the responsibility of international economic institutions and multinational corporations for that growing inequality, see Philip Alston, 'The Myopia of the Handmaidens: International Lawyers and Globalization' (1997) 8 *European Journal of International Law* 435; Jane Kelsey, *Economic Fundamentalism* (1995) 1–11, 17, 24, 54, 271–96; Chakravarthi Raghavan, *Recolonization: GATT, the Uruguay Round and the Third World* (1990); George and Sabelli, above n 1; Patricia Stamp, 'Pastoral Power: Foucault and the New Imperial Order' (1994) 3 *Arena Journal* 11, 12–15.

nineteenth century as public. Indeed, for believers in state restructuring and managerialism, the demise of liberal guarantees is welcomed openly and enthusiastically.[20]

Thirdly, the social impact of Bank economic liberalisation programs has contributed to the increased levels of insecurity, authoritarianism and political destabilisation in many states.[21] In situations where the state is stripped of most of its functions except maintaining law and order, authoritarian nationalism has emerged as a response to the sense that governments are not accountable to the people, but instead to international institutions and investors.[22] As Ian Duncanson argues, the effect of 'a combination of secrecy, haste, confusion and a resort to the absolute and urgent necessity' of prioritising 'economic' values over human beings is 'losing the trust of the governed'.[23]

> In an atmosphere of reciprocal mistrust, authoritarianism becomes more likely ... In one sense it may be a healthy indication of democracy that citizens are sceptical about the justifications and authority claims their government uses; but only if it makes them watchful. If scepticism leads to cynicism, despair and non-participation, it is difficult to conceive how the process can be reversed.[24]

Perhaps most importantly, the Bank's policies have been challenged for their role in institutionalising and facilitating a destructive model of development.[25]

20 Jodie Brough and Michael Millett, 'The Axeman Cometh', *The Sydney Morning Herald (Spectrum)* (Sydney), 1 November 1997, 1. According to that article, the current Commonwealth Government 'are believers in radically smaller government, where most government services are delivered by private operators and where the "red tape" of accountability is kept to a minimum'. In particular, Max Moore-Wilton, Prime Minister John Howard's appointment as head of the Department of Prime Minister and Cabinet, has reportedly 'argued for opting out of service delivery altogether, suggesting that outsourcing would relieve the Public Service of the expensive albatross of accountability' According to one of Moore-Wilton's 'admirers', '"The thing he's got contempt for is all the regulators — auditors-general, equal opportunity, human rights commissions, all this bloody overlay that you've got to go through which really impedes people's ability to be able to be told the way things are and get on with things".' Moore-Wilton 'told a Public Service audience that he was frustrated by the maze of accountability requirements in Canberra'. John Howard has told ministers that he wants to 'get rid of as many statutory authorities as possible because they limited governments' own sphere of control and constrains the options available to them'.

21 Orford, 'Locating the International', above n 2, 451–9 (discussing the contribution of international economic liberalisation programs to the conditions leading to genocide in the former Yugoslavia); Peter Uvin, *Development Aid and Conflict: Reflections from the Case of Rwanda* (1996) 1–3, 13–35 (analysing the role of the Rwandan development process, including the implementation of a World Bank structural adjustment program, in contributing to the creation of extreme violence, and the nature and direction of a reconstruction/development process that would minimise the likelihood of such violence in the future); Hippler, above n 11, 25 (arguing that structural adjustment programs have contributed to increased insecurity in target states); Rich, above n 2, 99–100 (arguing that the World Bank's tendency to provide loans to military governments that torture and murder their subjects serves to encourage the spread of authoritarian and repressive regimes).

22 Hippler, above n 11, 1, 24.

23 Ian Duncanson, 'Unchartered Lands in an Age of "Accountability"' (1997) 3(1) *Res Publica* 3, 32.

24 Ibid.

25 For alternatives to the model of development underlying World Bank policies, see Wolfgang Sachs (ed), *Global Ecology: A New Arena of Political Conflict* (1993); Vandana Shiva (ed), *Close to Home. Women Reconnect Ecology, Health and Development Worldwide* (1994), Rosi Braidotti *et al*, *Women, the Environment and Sustainable Development: Towards a Theoretical Synthesis* (1993); George and Sabelli, above n 1; United Nations Development Programme,

'Development' as practised by the Bank operates to ensure that the interests of private, usually foreign, investors are protected, often at the expense of other diverse local interests, including empowerment or participation in decision-making, maintaining labour standards, environmental protection, self-determination, decreasing vulnerability and instability, access to information and education, equity, the maintenance of sustainable food production, or the creation of hope for the future.[26] The end result of the narrow economic model of development adopted by the Bank over the past fifty years has been an increased net capital flow from those states receiving Bank loans to those states whose governments or banks act as lenders.[27]

The central idea of developing from a state of poverty or lack to a desirable advanced state of wealth and prosperity serves to explain and justify the process of intervention conducted by international institutions.[28] After World War II, the 'perception of poverty on a global scale' was produced for the first time through the use of statistical surveys of populations.[29] In other words, using the tools of positivist scientific methodologies, people living in market societies could imagine the rest of the world as 'lacking' what they had: 'money and material possessions'.[30] The new, global 'economic conception of poverty' meant that by 1948, 'two-thirds of the world's peoples' had come to be understood as 'poor subjects'.[31] That shift in the way the world was imagined had significant effects. If 'the essential trait of the Third World was its poverty', then 'the solution was economic growth and development'.[32] That shift in perception 'accounts for the "developmentalization" of the Third World, its progressive insertion into a regime of thought and practice in which certain interventions for the eradication of poverty became central to the world order'.[33] By framing intervention in those terms, the exploitation of millions of people can be presented as charity.[34]

The relationship between the model of development sponsored by the World Bank and the unfettered exploitation of labour and resources in the interests of 'developed economies' and local elites is clearly recognised by Bank officials. The Executive Director of the World Bank, Ali Bourhane, made those links clear in his comments on 'capacity building, trade and investment in Africa':

> With low population density and low incomes, African demand for goods and services remains small. However, given its rich natural resources and cheap la-

Human Development Report 1996 (1996) 55–6; Robert Chambers, *Poverty and Livelihoods: Whose Reality Counts* (1995).

26 Uvin, above n 21, 15–17.

27 Stamp, above n 19, 14; George, *The Debt Boomerang*, above n 8, xiv–xvi; Rich, above n 2, 109–10, 175, 309.

28 Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World* (1995) 24–54.

29 Ibid.

30 Ibid.

31 Ibid.

32 Ibid.

33 Ibid 24.

34 Krysti Guest, 'Exploitation under Erasure: Economic, Social and Cultural Rights Engage Economic Globalisation' (1997) 19 *Adelaide Law Review* 73

> bour force, it represents a huge untapped production zone with the potential to export goods and services to meet the needs of developed economies ... [B]uilding human capacity will result in an indigenous, prosperous and educated middle class of entrepreneurs and professionals to support and complement global businesses in Africa.[35]

There would therefore seem to be good reason for those who have been critical of Bank policy in the past to feel buoyed by the Bank's apparent commitment to finding a role for the state. The 1997 Report at first glance appears to signal a shift away from the Bank's previous commitment to a minimal state and to the certainties of a narrow model of 'development'. In his foreword to the 1997 Report, the Bank's President James Wolfensohn states that the Report is 'devoted to the role and effectiveness of the state'.[36] While '[m]any have felt that the logical end point' of economic reforms should be 'a minimalist state', the Report aims to show 'why this extreme view is at odds with the evidence of the world's development success stories'.[37] Such success stories reveal that 'development requires an effective state'. While 'state-dominated development has failed', so has 'stateless development', suggesting that 'good government is not a luxury but a vital necessity'.[38] The 1997 Report thus purports to provide a reappraisal of the role and effectiveness of the state in a changing world: 'what the state should do, how it should do it, and how it can do it better in a rapidly changing world'.[39] The promise of the 1997 Report for those people living in states targeted by Bank conditions is that the reclaiming of the state might signal the end of the Bank's obsession with that particularly narrow form of economic rationalism. Yet before accepting that the Bank has reconsidered its commitment to furthering the interests of foreign investors at the expense of those the state theoretically represents, it is necessary to analyse the Bank's reasons for seeking a reinvigorated state in those states subject to its conditions.

II PRIVATISATION AND THE LIMITS OF PARTICIPATION

A close reading of the 1997 Report reveals that the reasons the Bank has for seeking to build a strong or 'effective' state are not the same as the reasons its critics have for wanting a more significant role for the state. As Philip Alston comments, while it would appear that '[a]fter more than a decade of leading the fight against statism, oppressive bureaucracy, and counter-productive attachments to over-regulation, the Bank has suddenly become the champion of the state', in fact '[t]he sting, as usual, is in the tail'.[40] The 1997 Report makes clear that the role of the state and public institutions should be limited to creating an environ-

35 Ali Bourhane, Executive Director, The World Bank, 'Capacity Building, Trade and Investment in Africa' (Remarks delivered at High-Level Meeting on Integrated Initiatives of Least Developed Countries, Trade Development, World Trade Organisation, Washington DC, 22 October 1997) WT/LDC/HL/22.

36 1997 Report, above n 3, iii–iv.

37 Ibid.

38 Ibid.

39 Ibid iii.

40 Alston, above n 19, 443.

ment that supports a free market and provides security for foreign investment. The Bank's understanding of the reasons for supporting a return of the state is well illustrated by the following statement:

> A clearer understanding of the institutions and norms embedded in markets shows the folly of thinking that development strategy is a matter of choosing between the state and the market ... [T]he two are inextricably linked. Countries need markets to grow, but they need capable state institutions to grow markets.[41]

The newly reinvigorated state exists to manage and to delegate: 'to build on the relative strengths of the private markets and the voluntary sector while taking into account and improving its own institutional capability'.[42] The unique capacity of the state lies in its coercive powers 'to tax, to prohibit, to punish, and to require participation'.[43] A 'capable state' is one that can require participation by delegating unnecessary services to the non-governmental or voluntary sector, while facilitating competition and investment by the private sector. According to the Bank, governments thus cannot 'choose whether, but only how best to intervene' in the market.[44] The state is to exist only as 'the facilitator for private economic initiative'.[45] The 1997 Report provides detailed instructions about how to develop 'capable state institutions' in order 'to grow markets'.

The first way in which the state can play a role in facilitating private investment is to put in place positive programs and policies that safeguard and attract foreign investors. The 'basic function' of the state in that regard is the provision of 'pure public goods': 'property rights, macroeconomic stability, control of infectious diseases, safe water, roads, and the protection of the destitute'.[46] States must also perform 'intermediate functions', such as managing 'externalities' ('pollution', for example), regulating monopolies to allow free market competition, and providing pensions and unemployment benefits where necessary.[47] Those areas fall within the realm of state responsibility and public participation, either because they are not profitable in market terms, or because to ignore them would result in the creation of unwanted restrictions and obstacles to investment and the operation of the market.[48]

Attracting foreign investment also requires lowering labour standards. In order to secure the 'economic and social fundamentals' that make it possible to attract investment, states must limit 'price distortions', such as 'unrealistic wages'.[49] According to the 1997 Report, '[l]egal minimum wages, for instance, may be set

[41] 1997 Report, above n 3, 38.
[42] Ibid.
[43] Ibid.
[44] Ibid 27.
[45] Alston, above n 19, 443.
[46] 1997 Report, above n 3, 27
[47] Ibid.
[48] Ibid 25.
[49] Ibid 41, 48.

too high, unintentionally making it more difficult for unskilled and low-wage workers to find jobs in the formal economy.'[50]

Those who are 'unrealistic' about the worth of their labour, and thus contributing to 'price distortions', are those earning low wages. Reducing the living conditions of those people apparently makes the state more attractive to foreign investors, who by implication have no interest in ensuring that those they employ live above the poverty line. After all, if such people become too desperate, the state will also have in place newly vigorous systems for protecting property rights.[51]

The second way in which the state can facilitate private investment is through privatisation, or transferring public assets to the private sector. To ensure that the newly vigorous state imagined by the Bank does not engage in unwarranted activity, the 1997 Report extols the virtues of privatisation. That policy has been enthusiastically endorsed in previous World Bank reports and policy prescriptions.[52] The Bank's 1995 and 1996 Reports indicate the areas that the Bank formerly considered to be properly dealt with by private interests rather than public institutions.[53] In those earlier reports, areas of activity such as teaching and policing, and decision-making about issues such as education, health and labour markets, are presented as properly falling within the realm of economic and private, rather than political and public, control.[54]

It is apparent from the 1997 Report that the Bank has not changed its commitment to a minimalist model of public participation and state responsibility. Indeed, it is difficult to see how any reconceptualisation of 'what the state should do' and 'how it should do it' has informed the recommendations for wholesale privatisation that are suggested in the 1997 Report. According to its authors, states have been 'overproviding a wide variety of goods and services that private markets could supply in their stead'.[55] In a weary gesture towards the long history of the twentieth century, the 1997 Report informs us that those 'private goods and services' (properly understood), including 'higher education, curative health services, and pensions and other forms of insurance', have 'in many countries ... somehow wandered into the domain of public provision'.[56] The Bank remains committed to privatisation, and thus to limiting public participation in decision-making over many issues that affect social and political life. Health,[57]

50 Ibid 48.

51 For a discussion of the similar way in which Britain came to be represented as a country with a crime problem rather than 'a class divided country in which the dominant classes were forcibly changing the rules of accommodation between themselves and the other classes in their own favour, and classifying all forms of noncompliance as criminal', see Ian Duncanson, '"Close Your Eyes and Think of England": Stories About Law and Constitutional Change in Australia' (1996) 3 *Canberra Law Review* 123, 138.

52 See, eg, Thomas Biersteker, 'Reducing the Role of the State in the Economy: A Conceptual Exploration of IMF and World Bank Prescriptions' (1990) 34 *International Studies Quarterly* 477, 485.

53 See above nn 13–17.

54 Ibid.

55 1997 Report, above n 3, 59.

56 Ibid 59–60.

57 Ibid 53.

education,[58] industry[59] and social security programs[60] are all treated as areas to be privatised.

According to the 1997 Report, services such as higher education and hospital care should be privatised on the basis that people will be so desperate for such services that wherever possible they will pay for them. For example, governments are advised not to fund the entire range of health services. Most curative (hospital) care is a '[nearly] pure private good — if government does not foot the bill, all but the poorest will find ways to pay for care themselves'.[61] A colourful diagram informs the reader that the benefits of public hospital care in Vietnam are skewed toward the 'better-off'.[62] The 'poorest quintile' of the Vietnamese population 'get only 11 percent' of total government spending on hospital care. From that example, the authors conclude that hospital care should be privatised, as government funding leads to an inequitable allocation of spending. As with many parts of the argument, there is no explanation of why the public nature of such spending is the reason for any 'skewing' of benefits towards the 'better-off'. There is no exploration, for example, of whether those in the 'poorest quintile' cannot afford the time to seek hospital care, or whether the majority of that group are in rural areas isolated from hospital care. The 1997 Report does not raise such questions nor does it seek to answer them. The example is used merely to show that public sector funding may result in social inequities, and accordingly, hospital care might just as well be privatised.

Similarly, the authors of the 1997 Report argue that higher education should be privatised. Higher education is 'heavily subsidised in relation to other tiers'. According to the 1997 Report, public funding of higher education at the expense of primary education 'entrenches social inequalities'.[63] The solution proposed by the Report is that higher education should be provided by private actors and funded by private wealth. How the privatisation of higher education will address social inequalities, or benefit those who cannot afford such education, is not explained. The implication is that somehow the privatisation of higher education will automatically enable additional resources to be spent on funding primary education. There is no analysis of the mechanisms that might be necessary to ensure that resources formerly spent on higher education are reallocated within the education sector, nor is there any suggestion that the problems faced by inadequate funding of primary education might be solved by reallocating resources from other sectors, such as defence.[64] Instead, the 1997 Report sets up

58 Ibid 52–3, 60.

59 Ibid 61–75.

60 Ibid 55–9.

61 Ibid 53.

62 Ibid.

63 Ibid.

64 The 1997 Report does refer to a mis-allocation of resources *across* sectors, such as among defence, state enterprises and social services, and it does criticise the allocation of resources in terms of the amounts given to each of these sectors. Nevertheless, the solutions focused upon by the authors of the 1997 Report in addressing the mismanagement of resources involve only the privatisation or re-allocation of resources within sectors. Ibid 52–3, 60

a competition between levels of education, with the result that privatising higher education is made to seem equitable.

The 1997 Report argues that states can better profit from investing in primary education. It suggests that '[r]eturns to education are especially high at the primary level, because universal basic literacy yields large externalities to society'.[65] The ends of education are understood purely in terms of economic return: 'public funding for basic education [is] the cornerstone of economic development'.[66] In particular, the Bank suggests that the education of girls is of great benefit for economic development, as such education is 'linked to better health for women and their children and to lower fertility rates'.[67] The Report's authors fail to take account of the critique of suggestions that the world's problems can be solved by lowering the fertility rates of women in 'developing' countries,[68] or of the argument that women are marginalised by a model of development that locates women's place 'in the private and the family, away from the political'.[69]

The 1997 Report also suggests that most social security services should be privatised. Social security 'initiatives' are divided into two categories: social insurance programs such as pensions or unemployment benefits, designed 'to support people who — for reasons of age, the business cycle, or other circumstances — are outside the wage economy for some part of their lives', and social assistance programs, designed to 'help the poorest in society, those who are barely able to support themselves'.[70] Social insurance programs should be privatised for two reasons: first, because somehow rather than 'protecting the vulnerable', such programs have 'resulted instead in transfers of resources to elite groups', presumably masquerading as elderly people (those 'outside the wage economy' for 'reasons of age') or unemployed people (those 'outside the wage economy' due to 'the business cycle').[71] Secondly, those programs have 'wrought

65 Ibid 52.

66 Ibid.

67 Ibid.

68 See, eg, Jan Pettman, *Worlding Women A Feminist International Politics* (1996) 179–81, Mira Shiva, 'Environmental Degradation and Subversion of Health' in V Shiva (ed), above n 25, 60, 76, ('[t]hat the poor and their children can be held responsible for the nation's poverty is one of the greatest economic myths of our times, it shifts the focus away from the real roots of poverty and injustice, while aggressively pushing subtly coercive policies onto Third World countries'); Braidotti *et al*, above n 25, 23, 136, 170; Gwyn Kirk, 'Women Resist Ecological Destruction' in Georgina Ashworth (ed), *A Diplomacy of the Oppressed: New Directions in International Feminism* (1995) 69, 79. For reflections 'as to why the entry into civil society is always negotiated on the bodies of women', see Gayatri Chakravorty Spivak, 'Culture Alive' (1995) 5 *Australian Feminist Law Journal* 3, 9.

69 Pettman, above n 68, 181. The assumption that the education of girls should focus on reproductive issues and their role as mothers has been criticised. See also Hilary Charlesworth, 'The Public–Private Distinction and the Right to Development in International Law' (1992) 12 *Australian Year Book of International Law* 190, 201–2 (arguing that if 'aid is provided to women, it is often to marginalise them: foreign aid may be available to women only in their guise as mothers'). For a discussion of the way in which capitalism developed 'private' spaces for women, see Jennifer Beard, 'International Labour Law and the Marginalisation of Women as Workers' (1997) 20–30 (unpublished manuscript, on file with authors).

70 1997 Report, above n 3, 55.

71 Ibid 57.

havoc with long-term fiscal policy'.[72] The 1997 Report advises that 'states can bring private participation and competition into insurance systems previously dominated by public monopolies'.[73] With the public sector 'monopolies' governing social security benefits out of the way, states are free to undertake initiatives such as contracting out public insurance programs to the private sector, or introducing 'mandatory savings accounts for unemployment insurance'.[74] In making that recommendation, the authors of the 1997 Report fail to consider any of the risks that may be caused by placing large pension or 'unemployment insurance' funds in the hands of private investment managers.[75]

Assistance programs, on the other hand, that are not profitable, and therefore cannot be sold-off, are nevertheless to be organised and administered using market-based principles. Means testing and broad-based assistance programs are to be replaced with programs that 'set the level of benefits low and build in some kind of quid pro quo', thus ensuring that even those who 'are barely able to support themselves' are made to follow market principles.[76] Programs such as food-for-work or lending for micro-enterprises in poor communities are aimed at alleviating poverty in a market fulfilling way.[77] Here again, the reader is informed that such shifts in provision of public services in fact serve the interests of those who are disadvantaged. Housing and infrastructure subsidies 'turn out to benefit higher-income households ... Food subsidies can be more effective if they are targeted toward items consumed primarily by the poor'.[78]

The role of the state envisaged by the Bank is well illustrated by two of the role models of privatising governments proposed in the 1997 Report: those of New Zealand and the State of Victoria.[79] Those two examples are used to demonstrate the appropriate level of 'competition in the provision of public goods and services'.[80] According to the 1997 Report, '[b]uilding an effective public sector' means 'opening up core government institutions, to improve incentives in areas that the public sector has long monopolized'.[81] Victoria is applauded for its

72 Ibid.

73 Ibid 58.

74 Ibid.

75 For an insider's account of the risks taken by aggressive managers of pension and superannuation funds, and the losses subsequently incurred by those whose funds they are managing, see Frank Partnoy, *F.I.A.S.C.O: Blood in the Water on Wall Street* (1997). According to Partnoy, these managers regularly subvert United States government regulations requiring low-risk investments by trading in complex derivatives created by Wall Street investment bankers. Those derivatives are designed to hide the nature of the risk involved in the instrument created.

76 1997 Report, above n 3, 59.

77 Ibid 55–9.

78 Ibid 59. Presumably the authors of the 1997 Report feel confident that states will be able to determine or imagine the nature of food 'items consumed primarily by the poor'. They note that in Tunisia, the rationalisation of food subsidies was achieved by 'eliminating all subsidies on goods consumed disproportionately by the nonpoor'. That example is representative of what counts as 'rationalism' in the 1997 Report.

79 Ibid 9–10. Other examples given of states that have achieved goals of improved 'efficiency' and 'greater managerial accountability for outputs or outcomes' include the United Kingdom, Brazil, Bolivia, Uganda, Singapore, Jamaica, Colombia, Mexico and Argentina.

80 Ibid 9.

81 Ibid.

enhancement of competition by 'contracting out services through competitive bids and auctions', while New Zealand provides a 'dramatic example' of the growing trend 'to set up focused, performance-based public agencies with more clarity of purpose and greater managerial accountability for outputs or outcomes'.[82] The choice of those two cases as examples of states who have achieved the appropriate level of privatisation demonstrates the problems with the limited vision suggested by the 1997 Report's recommendations. The support for the process undertaken in New Zealand and Victoria ignores the criticism made by human rights and pro-democracy groups that in each case a democratic deficit has resulted from the pursuit of economic goals at the expense of accountability, participation and democracy.[83]

III THE USES OF ACCOUNTABILITY

The model of the state proposed in the 1997 Report reduces government accountability to citizens through the privatisation of services.[84] Reconceptualising aspects of the public sphere as private means that decisions concerning such newly privatised issues are no longer susceptible to public scrutiny or control.[85] Claims against the state based on notions of citizenship, equitable resource allocation or power sharing appear not to apply to privatised public sector activities and institutions. According to the 1997 Report, the role of the state with respect to privatised agencies becomes that of a 'partner and facilitator', regulating markets and enforcing contracts. As a result, the government is left accountable for privatised services only in terms of 'setting hard budget limits, implementing budgets and other policies as approved, making the flow of resources predictable, instituting accountability for the use of financial resources and curbing rampant political patronage in personnel decisions'.[86] In the Bank's formulation, the 'accountability' of newly privatised public agencies is limited to ensuring that such agencies demonstrate 'greater managerial accountability for outputs or outcomes'.[87]

The 1997 Report does recognise the need for regulation of privatised utilities, but the reasons given for such regulation do not include accountability to the polity.[88] The Report's authors give as reasons for regulating privatised utilities first, that regulation can facilitate competition, and secondly, that competition alone 'may not suffice to insure private investors against "regulatory risk": the danger that decisions by regulators or other public agencies will impose new and

[82] Ibid 9–10.
[83] For a critical analysis of the New Zealand example, see Kelsey, above n 19. For a critique of the effect of privatisation in Victoria, see Duncanson, 'Unchartered Lands in an Age of "Accountability"', above n 23, 11.
[84] 1997 Report, above n 3, 97.
[85] For an analysis of the uses of accountability more broadly, see Duncanson, 'Unchartered Lands in an Age of "Accountability"', above n 23.
[86] 1997 Report, above n 3, 97.
[87] Ibid 9–10.
[88] Ibid 65.

costly demands some time down the line'.[89] Accordingly, potential investors need the 'reassurance' of 'a well-designed mechanism that commits the regulator to a clearly defined course of action'.[90] Accountability to citizens is discussed with respect to environmental regulation, but there citizens are described in terms of the need to balance 'citizen pressure' with science and economics.[91] The 'political incentives' of the 'community' can 'foster ambiguity and negotiated outcomes rather than predictable and consistent implementation'.[92] The 1997 Report admits that in such a climate, 'purely technocratic approaches to environmental regulation have little hope of success', and as a result, states should rely on 'public information and citizen participation'.[93]

While privatised agencies may be accountable in a limited sense to new shareholders, the formerly broad requirement that such agencies be accountable to the polity is destroyed by privatisation. As Ian Duncanson argues of privatisation more generally:

> Governments which have most often wielded the term [accountability] ... have simultaneously reduced the extent to which agencies whose activities affect citizens' lives must publicly justify their actions and 'give an account' to citizens of the reasons for their decisions ... The sale and contracting out of hitherto government functions to commercial enterprises has meant that what had been intra-governmental activity subsequently takes the form of contracts between government and business, which are closed to scrutiny by reference to 'commercial confidentiality'. Taxpayers' money will have been spent, in other words, but they cannot be told for what purpose; an ironic reversal of the story they are asked to believe about greater accountability.[94]

The 1997 Report applies more stringent standards of accountability in its treatment of the role of voluntary and non-governmental organisations. The 1997 Report notes that 'in most societies, democratic or not, citizens seek representation of their interests beyond the ballot: as taxpayers, as users of public services and increasingly as clients or members of NGOs and voluntary associations'.[95] NGOs play a role in providing the services that are abandoned by the state but are not attractive to private investors, such as health, education, microcredit, vocational training, professional services, research and civic education.[96]

Unlike the providers of privatised services, NGOs are expected to be accountable to citizens. The 1997 Report criticises such organisations for 'poor quality of service, inadequate community participation, and weak accountability'.[97] According to the Report's authors, 'there are no guarantees that these organizations are adequately addressing citizens' needs or that they are genuinely con-

[89] Ibid 65–6.
[90] Ibid 66.
[91] Ibid.
[92] Ibid.
[93] Ibid.
[94] Duncanson, 'Unchartered Lands in an Age of "Accountability"', above n 23, 11.
[95] 1997 Report, above n 3, 113.
[96] Ibid 113–8.
[97] Ibid 115.

cerned with promoting the public interest'.[98] The authors appear convinced that there are no similar questions to be raised concerning the commitment of foreign investors providing newly privatised services to 'adequately addressing citizens' needs' or their genuine concern with 'promoting the public interest'.

The accountability of the state itself is discussed in the 1997 Report in two contexts: first, with respect to the state's accountability to the people, and secondly with respect to accountability to investors. The 1997 Report is concerned that the state should be brought 'closer to people' through mechanisms of accountability and participation.[99] The state bureaucracy should 'encourage debate and consultation among all stakeholders' and 'create more points of access for feedback from firms and the people who use public services' in order to 'generate external pressures for better performance'.[100] Those mechanisms are considered necessary in order to improve the state's 'effectiveness' and to 'enhance' the supply of public goods and services.[101]

While the 1997 Report adopts the language of accountability and participation, there seems little recognition that collective participation in decision-making means more than participating as a 'stakeholder' or consumer of public services. The Report's authors do not recognise that people should be able to participate in determining the nature of the political, and thus the economic, system under which they live. There is no discussion, for example, of the possibility that the people of target states might wish to choose forms of economic or social arrangements that differ from the models imposed by the Bank. Popular decision-making about many issues is foreclosed by a model that assumes that much public policy is appropriately developed by economic experts. The 1997 Report fails to consider, for example, that people might choose to participate in state decision-making by nationalising all private investment, or might want the state to guarantee full public funding for food, health, education or social security. Questions about whether people want to be treated as consumers of privatised or corporatised public services, rather than as the collective owners of those services, do not appear to be open to popular debate. By characterising people in limited economic terms, as stakeholders or consumers, the 1997 Report ignores all the forms of political agency that are ruled out by the economic model. In this model, decisions are characterised as economic and are made safely out of the public realm.

The Bank's narrow vision of the extent to which people may participate in decision-making about the conditions that affect their lives can be compared to the broader duty of accountability understood to be owed by the state to investors. Investors and, in particular, foreign corporations, are the principal constituency to whom the state must be accountable for its policy decisions.[102] According

98 Ibid.

99 Ibid 110.

100 Ibid 97.

101 Ibid 110.

102 See also Duncanson, 'Unchartered Lands in an Age of "Accountability"', above n 23, 14 (making a similar argument with respect to forms of accountability practised by economically rational governments).

to the 1997 Report, the role of governments is to 'establish sound rules of the game', to 'make sure those rules are enforced consistently' and to ensure that 'private actors — business, labor, trade associations — can have confidence that the rules will not be changed overnight'.[103] The broader meaning of accountability used with respect to private actors is demonstrated clearly by the addition of the opinions of foreign investors — the only outside voices introduced directly into this report on development to disturb the flow of expert advice.[104] In order to facilitate the understanding of 'institutional capability', the Report's authors surveyed foreign investors to gain 'hard evidence' of '[h]ow good ... governments are at providing credible rules that will nurture the development of markets'.[105] The 1997 Report notes that '[t]he best way to understand the problems holding back private sector investment is to ask entrepreneurs directly'.[106] In contrast, the 1997 Report does not ask citizens or subjects of states about the problems holding them back from goals that matter to them. Even before entrepreneurs are given voice in the Report, 'problems' are defined only by reference to private sector investment. The responses of 'entrepreneurs' revealed that 'in many countries private investors give the state very poor marks for credibility indeed'.[107] 'Credibility' is thus defined explicitly as 'how private investors perceive the state'.[108] No such surveys are taken to determine to what extent people perceive the state, or indeed the World Bank or investors, as having 'credibility'.

The 1997 Report's survey of over 3600 firms operating in 69 countries indicates strong disapproval of the extent to which the Bank and its private sector clients are not consulted over decisions made by governments. One of the findings of the survey, for example, was that 'entrepreneurs' reported the large extent to which they 'have to cope with unexpected changes in rules and policies *about which they have had no say*'.[109] The survey revealed that 'entrepreneurs in some parts of the world live in constant fear of policy surprises'.[110] The 1997 Report thus evidences a concern for the plight of these entrepreneurs who have not been adequately consulted about government decisions. There is no similar expression of concern about whether or not the citizens of those states 'live in constant fear of policy surprises', particularly those surprises initiated by the Bank's conditions. The deference shown by the mere fact of that survey, and its inclusion and treatment in the analysis, reveals more clearly than perhaps any other feature of the 1997 Report, the way in which its authors understand the meaning of development. The aim of development is to produce growth and productivity, measured in terms of an increase in wealth and profits, often of foreign investors. The confidence of 'private actors' is a vital measure of the

103 1997 Report, above n 3, 34.
104 Ibid 34–8.
105 Ibid 34.
106 Ibid
107 Ibid.
108 Ibid.
109 Ibid (emphasis added).
110 Ibid.

likelihood of that project succeeding. The confidence or sense of security of the human beings living in such states appears of little, if any, interest, except to the extent that those human beings have some capacity to vote or to protest, thus affecting the 'confidence' of investors or the ends of economic development.[111]

Accountability for the Bank thus appears to be a one-way street, used as a way of explaining the value of shifting the boundary between public and private, but demanded principally of non-governmental and voluntary organisations. Privatised state agencies and industries are not expected to provide the same degree of accountability and transparency, except to the extent of accounting to investors about profits. The result is an odd combination of philosophies: liberal notions of accountability are demanded of the voluntary sector of charitable and non-governmental organisations, while governments and international organisations privatise activities in order to limit the need to ensure accountability. There is little consideration of the possible need to constrain the power of the new market-oriented state,[112] nor is there any reference to the need to ensure that private actors be subjected to ongoing requirements to account to the people of a particular state once public sector activities have been privatised.[113] It is as if the power that was held by the state, once privatised, becomes automatically benign, and no longer needs to be constrained. We are simply to assume that all those who act in the private sector automatically make decisions for the greater good of the general public. Such an assumption is premised upon faith in the efficient and benign operation of the market.

The 1997 Report, then, is a guide for states who want to attract foreign investment by creating conditions that make private actors feel 'confident'.[114] In order to attract investment, a state must be stable, free from corruption, keep crime against people and property at a minimum, and provide for a predictable and stable system of rules about which investors have been consulted.[115] According to the 1997 Report, such a strategy will allow a state to prove its credibility and its accountability, not to its own citizenry, but to the international economic institutions that measure its value and to all-important foreign investors.

111 Ibid See the discussion of 'the number of times a country has changed its government' as one potential indicator of 'the degree of uncertainty about market rules' (at 34), and the discussion of the 'lawlessness syndrome' which occurs when there is inadequate protection of business activity from 'theft, violence, and others acts of predation' (at 41). In chapter 7, the 1997 Report does discuss the need to bring the state closer to people and proposes electoral participation, management of ethnic differences, reliance upon non-governmental and voluntary organisations to represent the interests of people and development of 'social capital' as measures to increase accountability through participation. The reasons it gives for doing so are not in order to increase the sense of security or confidence of those people. Rather, increased participation and transparency in decision-making may serve to 'raise the state's effectiveness by improving the monitoring of public goods and services' and 'enhance' the supply of public goods and services (at 110).

112 But see the limited discussion of accountability and participation, ibid ch 7.

113 See above Part III.

114 Anne Orford, 'The Uses of Sovereignty in the New Imperial Order' (1996) 6 *Australian Feminist Law Journal* 63, 76.

115 1997 Report, above n 3, 116–8

IV THE LOCAL–INTERNATIONAL DICHOTOMY

The 1997 Report is based upon a concept of development that has been subjected to detailed critique.[116] The basic premise of development discourse is that all states should aim to 'progress' to the standard of industrialised states, and that in order to do so, states must adopt policies of economic liberalisation, globalisation and foreign investment.[117] Since the 1950s, issues as diverse as poverty, environmental degradation, hunger, disease and unemployment have been attributed to a failure of states to adopt such policies. Despite the failure of development policies to address those problems once applied, development itself, and the need for it, goes unquestioned.[118] The division of the world into developed and underdeveloped, or First World and Third World, by implication divides the world into those who are capable of achieving progress and maturity, and those who are not. Such a world view suggests that those countries that remain underdeveloped either have not complied with the appropriate techniques or policies for achieving development, have not followed the necessary economic rules, or have failed to implement dutifully the advice and conditions of the 'experts' of institutions such as the World Bank or the IMF.

The 1997 Report clearly adopts the basic premise of development discourse: that any failure to achieve those goals deemed necessary for development is the fault of local, rather than foreign or international, actors or entities. At the same time, the Bank makes no reference to its own responsibility for the current situation in the states that have been subjected to its conditions. The Report presents the major shifts that have occurred in the policies of countries subjected to Bank conditions as if those shifts were guided by an invisible hand. One example of that tendency is the introductory discussion of the evolving role of the state.[119] The 1997 Report notes that the dismantling of the Soviet Union led to a major change in development strategy.

> Governments began to adopt policies designed to reduce the scope of the state's intervention in the economy. States curbed their involvement in production, prices, and trade. Market-friendly strategies *took hold* in large parts of the developing world ... As often happens with such radical shifts in perspective, *countries* sometimes tended to overshoot the mark. Efforts to rebalance government spending and borrowing were uncoordinated, and the good was as often cut as the bad. To meet their interest obligations, *countries* mired in debt squeezed critically important programs in education, health, and infrastructure as often as — or more than — *they* cut low-priority programs, bloated civil service rolls, and money-losing enterprises.[120]

For those who have followed the adventures of the World Bank since the 1970s, that description of the history of policy-development during the 1970s and

[116] See above nn 2, 8, 25, 68 and 69.

[117] Daniel Tarullo, 'Logic, Myth and the International Economic Order' (1985) 26 *Harvard International Law Journal* 533.

[118] See, eg, Escobar, above n 28, 5.

[119] 1997 Report, above n 3, 19–28.

[120] Ibid 23 (emphasis added).

1980s is quite extraordinary. It is true that many parts of the developing world adopted 'market-friendly strategies', but such strategies were generally adopted at the behest of the Bank or the IMF. Similarly, cutting education, health and infrastructure was not a policy choice that was simply dreamt up by countries 'mired in debt'. As late as the *World Development Report 1996,* the Bank was advising countries to cut spending in these areas.[121] Critics of the Bank have long campaigned against the conditions imposed by the Bank, arguing precisely that these conditions tended to 'overshoot the mark'.[122]

The discussion of industrial policy provides a second example of the 1997 Report's focus on state governments as the source of problems in fact caused, at least in part, by the policies of the Bank and other international agencies.[123] The 1997 Report notes that many of 'today's oldest industrial economies used various mechanisms to spur the growth of markets in their early stages of development'. These mechanisms included the strategic use of subsidies, special infrastructure initiatives, and 'other mechanisms of market enhancement'. The authors refer disapprovingly to the policy choices of developing countries, noting that 'ill-considered trade, credit and industrial policies can and have cost countries dearly'.[124] There is no discussion, however, of the extent to which decisions about the use of 'mechanisms of market enhancement' have for many states been governed by conditions imposed by the IMF and the World Bank.[125]

The effect of the Bank's determined focus on the mistakes made only by states and their governments is that the policies and advice of the international economic institutions, and the economic principles which underlie those policies, do not come into question. Yet it is those policies, and the economic principles which underlie them, that have determined the policies of governments in states subjected to loan and aid conditionality. Although the failure of those policies has begun to be recognised, institutions such as the World Bank are not altering their approach in a substantive way. Rather, the Bank is refashioning old policies into a new and superficially more attractive version of development economics. The 1997 Report makes clear that there has been no shift away from basic neo-classical economic principles of liberalisation or massive restructuring. The state is brought back in to the development equation, not to protect human beings from the laissez faire, individualistic aspects of the market, but in order to protect markets and investors from the lawlessness of the poor, social protest, capital flight and the ballot box.[126]

V CONCLUSION

For those who hold out hopes that the heralded return to the state by the World Bank means an end to restructuring based on a contested version of economic

121 See above Part I.
122 See above nn 2, 8.
123 1997 Report, above n 3, 6.
124 Ibid.
125 See above nn 1–8 and accompanying text.
126 1997 Report, above n 3, 38.

theory, the World Bank's 1997 Report is profoundly disappointing. While the state does make a return, it is as a very chastened and constrained entity, promising little in terms of public accountability or participation in decision-making as to its role. Human beings appear in the pages of the Report as 'high-return investments',[127] as the 'clients' of service providers,[128] as one group of 'stakeholders' in decision-making processes,[129] or as factors in the 'lawlessness syndrome'.[130]

The fact that the Bank is reconsidering the role of the state is a useful development, in that it means that those activists and non-governmental organisations which have been arguing for changes in the Bank's policy do at least have some common ground upon which to proceed. It is important, however, that all those who seek to engage with the Bank on that basis understand the very limited nature of the shift in its policy that is indicated by the 1997 Report. It is premised on the notion of a minimal state largely accountable only to foreign investors, with little scope to represent interests that diverge from those of investors. In that respect, the Bank continues on a collision course with other internationally agreed human rights, labour standards and environmental principles.[131] The promise of public participation continues to be limited to the small range of decisions considered appropriately to be made in the public sphere. Notions of accountability, equity, participation, democracy and human rights have a limited role to play in the Bank's version of statehood.

The 1997 Report illustrates the broader argument made by Arturo Escobar that development discourse functions as a means of producing the Third World in order to control and exploit it.[132] Development continues to be understood by the World Bank simply in terms of increased investment and economic growth.[133] Despite the glib assertion that '[p]eople are the means and ends of development', the Report demonstrates that the subject or reference point of development is not the 'people', but foreign capital. The authors of such reports form a community with those who work for multinational corporations, treasury and finance

127 Ibid 52 (describing children in the context of education).

128 Ibid 113.

129 Ibid 97.

130 Ibid 41.

131 See also above n 8.

132 Escobar, above n 28.

133 1997 Report, above n 3, 31, for a particularly good example of the extent to which the Bank focuses on capital or investment as the subject or reference point of development. The 1997 Report refers to the need for the state to set 'the right incentives for efficient economic activity', provide the 'infrastructure — property rights, peace, law and order, and rules — that encourage efficient long-term investment' and ensure 'the provision of basic education, health care, and the physical infrastructure required for economic activity'. For a useful discussion of the extent to which the logic of political economy is premised upon a peculiar notion of 'productivity', see Karl Marx, *Capital* (first published 1867, 1976 ed) vol 1, 990, 1014, 1045. Marx argues that labour is treated as 'productive' to the extent that it produces the one product: capital. The labour process of producing money is thus 'no more than the instrument' of the 'self-valorization of capital', that is, the process by which 'surplus value' is created. A productive worker is thus one who produces capital, while an unproductive worker is one who does not produce capital — 'in the one case his work is a factor in the self-valorization process of capital and in the other it is not'. Those insights help explain the logic of development economics: an economy is apparently productive, growing or developing only to the extent that it produces capital.

bureaucrats and certain economics experts: they speak to that community, use the language of neo-classical economics, understand themselves as accountable to that community and indeed, often move between the World Bank, the private sector and government.[134] The effect of the 1997 Report is to re-authorise a particular form of economics as the answer to the world's problems, to recreate the image of the World Bank as a development body, and to legitimise a means of facilitating and securing multinational investment by strictly limiting the role of the state.

Those seeking to resist the imposition of such economic models will need to continue to monitor the effects of the conditions imposed by international economic institutions, and to submit the claims made in such policy documents to greater scrutiny. The extent to which law can offer tools for resisting changes imposed by international organisations is not clear. The destructive effects of the activities of international economic institutions such as the World Bank pose a challenge to the areas of international law that have been developed to protect individuals against abuses of the forms of power exercised by states. To date, international legal processes have provided few mechanisms for constraining the power of international organisations and bodies.[135] International human rights law, for example, may provide citizens with the means to challenge the implementation of World Bank or IMF policies by the state. Yet the far-reaching nature of the conditions imposed by those organisations, the speed with which change occurs as a result and the impact of those conditions on many aspects of life, mean that under-resourced human rights bodies are not well placed to resist such change. While outlining the strategies which might be developed by lawyers to combat the activities of international organisations has not been the focus of this article, we see the analysis of the policies prescribed by those organisations as a necessary first step in developing such responses. More work needs to be done by international lawyers to develop new mechanisms and bodies to redress the current imbalance between the rights of human beings and those of corporations.

International lawyers may play a role in the broader struggle to effect change in the behaviour of international economic institutions by analysing and publicising the detailed mechanisms by which international legal instruments and fora are used to facilitate and maintain the model of economic restructuring advocated by the Bank.[136] As David Korten comments, '[t]o counter the economic, social and environmental devastation being wrought nearly everywhere by the realization of [the] corporate colonial vision, we must learn to recognize its message and the

[134] See, eg, Michael Pusey, *Economic Rationalism in Canberra: A Nation-Building State Changes its Mind* (1991) 88, 133.

[135] Indeed, the fact that there are mechanisms for protecting human rights, labour standards and the environment from the actions of states, but not from the actions of unaccountable international organisations, may be a reason that corporations have looked to those organisations to further the interests of foreign investors. See further David Korten, *When Corporations Rule the World* (1995); Chakravarthi Raghavan, *Recolonization. GATT, the Uruguay Round and the Third World* (1990); Guest, above n 34, 79–82.

[136] Institutions and organisations facilitating economic restructuring or investment liberalisation include, in addition to the World Bank and the IMF, the World Trade Organisation, the Organisation for Economic Cooperation and Development ('OECD') and regional trade associations.

methods of its propagation'.[137] Lawyers are particularly well placed to make those methods visible, given the extent to which the 'corporate colonial vision' is furthered through legal mechanisms, practices and dispute settlement bodies at the international level. Discussion of the forms of law that facilitate economic globalisation can assist in showing that globalisation is not an unstoppable or inhuman force that will inevitably overtake all states. Rather, economic restructuring is a social process, carefully and systematically constituted through the actions of those people working for states, corporations and international institutions. Legal analysis can contribute to the project of re-characterising globalisation as a political, public and contestable process, rather than purely an economic, private and natural one.[138]

The 1997 Report paints a picture of a world in which the World Bank's policies serve the interests of all people, and in which intervention on the part of international institutions is both necessary and benign. We have argued that Bank policies and conditions have destructive effects, and that far from recognising the mistakes it has made in the past, the World Bank's 1997 Report indicates that all is business as usual. As more and more states become subject to the 'discipline' of the World Bank and its partner the IMF in the era of globalisation,[139] the need for reassessment of these models becomes more urgent. Such a focus is necessary in order to resist the destructive effects on conditions of life and rapid changes to political, social and constitutional arrangements that are already being experienced by those subjected to the logic of economic restructuring.

137 Korten, above n 135, 121.

138 Many NGOs and activists have a detailed knowledge of the mechanisms by which economic globalisation is being effected, and have developed sophisticated strategies for ensuring that those mechanisms are treated as political rather than purely private issues. See Guest, above n 34, 77 (discussing the struggle by feminist networks of the South to place economic globalisation, the power of transnational corporations and the effects of international institutions and agreements at the centre of any attempts to achieve goals of governance, peace, human rights or security).

139 1997 Report, above n 3, 49 (arguing that 'foreign capital inflows … impose discipline on policymakers').