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Immigrant Remittances

Ezra Rosser
American University Washington College of Law, erosser@wcl.american.edu

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Article

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EZRA ROSSER

Remittances, the sending of money from immigrants back to their home countries, are the newest anti-poverty, development activity of the poor to be applauded by international institutions and economists. Exceeding foreign aid and private investment to many developing countries, remittances are being hailed as a new, untapped resource with powerful poverty alleviation and potential development attributes. After presenting the poverty, developmental, and economic characteristics of this new transnational connection between immigrants and their loved ones, as well as the dangerous effects of excessive remittance regulation, this Article argues that remittances should be understood as an anti-poverty tool, but not as a route to development.

ARTICLE CONTENTS

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EZRA ROSSER*

I. INTRODUCTION

The global poor can solve the problem of poverty. So long as the right institutions are in place, poverty can be eradicated through development insights from the third world. This is the message of three economic ideas and activities—micro-lending, land-titling, and remittances—that have captured the imagination of international institutions and policy makers. These three economic phenomena share many attractive features, from their bottom-up global origins to their reliance on capitalist mechanisms to their ability to empower the poor, but driving their popularity in the West is the selfish hope that global poverty can be dealt with costlessly.

This Article focuses on remittances—"the money that migrants send home to their families"[1]—for their own sake and as a window on the incorporation of economic ideas by Western societies (explored at the end of this Article through law and development literature). Remittance transfers globally exceeded $230 billion in 2005, perhaps by as much as fifty percent if all informal remittances were counted.[2] In some recipient

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1 Paul Wolfowitz, *Foreword* to WORLD BANK, GLOBAL ECONOMIC PROSPECTS 2006: ECONOMIC IMPLICATIONS OF REMITTANCES AND MIGRATION, at vii (2006) [hereinafter WORLD BANK]. *But see* José de Luna Martínez, *Workers' Remittances to Developing Countries: A Survey with Central Banks on Selected Public Policy Issues* 7, n.3 (World Bank Policy Research, Working Paper No. 3638, 2005) ("There is no universally accepted definition of remittances."). This Article focuses on a single remittance type, worker remittances; other remittance types are beyond the scope of this Article.

2 MANUEL OROZCO ET AL., CTR. FOR FIN. SERVS. INNOVATION, CARD-BASED REMITTANCES: A CLOSER LOOK AT SUPPLY AND DEMAND 3 (2007), *available at* http://www.cfsinnovation.com/document/card_based_remittances.pdf. As the World Bank reports, "[r]emittances transferred through informal operators or hand carried by travelers are unlikely to be captured in official statistics, although they may represent a substantial addition to remittances sent through official channels." WORLD BANK, *supra* note 1, at 91; *accord* BIMAL GHOSH, INT'L ORG. FOR MIGRATION, MIGRANTS' REMITTANCES AND DEVELOPMENT: MYTHS, RHETORIC, AND REALITIES 15 (2006), *available at* http://www.antigone.gr/listpage/selected_publications/eu/071127.pdf (noting that actual remittances to developing countries far exceed amount officially recorded).

countries, remittances "can account for as much as a third of GDP."[3] Remittances to Latin America and the Caribbean "exceed, by substantial margins, such other flows [of capital] as portfolio investment, foreign aid, and government and private borrowing."[4] These vast sums have elevated remittances to near celebrity status in the last ten years.[5] Leading economists, international development organizations,[6] and even the popular press[7] have all jumped on the remittance bandwagon. Yet the crucial questions—whether to increase or decrease regulation, whether to attempt to direct the use and benefits of remittances or remittance flows, and whether remittances are a development tool—remain unanswered.

In this Article, I argue that remittance transaction barriers ought to be lowered but that remittance sending and receiving countries should not focus their "third world" development goals on this phenomenon. Though the legal community has yet to expressly tackle remittances, existing institutions and rules shape the scale and significance of remittance flows. Though rarely forced to acknowledge the contradiction inherent in

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[3] COMM. ON PAYMENT & SETTLEMENT SYSTEMS, WORLD BANK, GENERAL PRINCIPLES FOR INTERNATIONAL REMITTANCE SERVICES 1 (2007), *available at* http://www.bis.org/publ/cpss76.pdf?noframes=1.

[4] INTER-AMERICAN DIALOGUE, MAKING THE MOST OF FAMILY REMITTANCES: SECOND REPORT OF THE INTER-AMERICAN DIALOGUE TASK FORCE ON REMITTANCES 3 (2007), *available at* http://www.thedialogue.org/PublicationFiles/family_remittances.pdf.

[5] As a World Bank report begins, "[a] booming interest in the topic of workers' remittances has developed over the past few years on the part of academics, donors, international financial institutions, commercial banks, money transfer operators, microfinance institutions, and policy makers." Guillermo Perry, *Foreword* to PABLO FAJNZYLBER & J. HUMBERTO LÓPEZ, CLOSE TO HOME: THE DEVELOPMENT IMPACT OF REMITTANCES IN LATIN AMERICA, at v (2007), *available at* http://siteresources.worldbank.org/INTLACOFFICEOFCE/Resources/ClosetoHome.pdf [hereinafter CLOSE TO HOME]; *see also* Samuel Munzele Maimbo & Dilip Ratha, *Remittances: An Overview*, *in* WORLD BANK, REMITTANCES: DEVELOPMENT IMPACT AND FUTURE PROSPECTS 1, 3 (Samuel Munzele Maimbo & Dilip Ratha eds., 2005) [hereinafter REMITTANCES: DEVELOPMENT IMPACT AND FUTURE PROSPECTS] (noting the "recent revival in interest in migrant remittances"); Susan Pozo, *On Remittances and Risk*, *in* BEYOND SMALL CHANGE: MAKING MIGRANT REMITTANCES COUNT 71, 72 (Donald F. Terry & Steven R. Wilson eds., 2005) (noting that "until recently, policymakers and researchers have paid little attention to international remittances"). For overviews of remittance scholarship, see Eve Hamilton, *The State of Remittance Research: An Overview*, *in* INTER-AMERICAN DIALOGUE, INTER-AMERICAN DIALOGUE CONFERENCE REPORT: RESEARCH ON REMITTANCES TO LATIN AMERICA AND THE CARIBBEAN 10–18 (2007), *available at* http://www.thedialogue.org/PublicationFiles/Conference%20Report,%20Research%20on%20Remittances%20to%20LAC%20FINAL.pdf, and DOVELYN RANNVEIG AGUNIAS, MIGRATION POLICY INST., REMITTANCES AND DEVELOPMENT: TRENDS, IMPACTS, AND POLICY OPTIONS: A REVIEW OF THE LITERATURE (2006), *available at* http://www.migrationpolicy.org/pubs/mig_dev_lit_review_091406.pdf.

[6] For example, in the past two years "the flagship publications of the International Monetary Fund (IMF), the World Bank, and the United Nations Development Program (UNDP) have all addressed the growing importance of migration and remittances and their impact on development efforts." CLOSE TO HOME, *supra* note 5, at 1.

[7] *See, e.g.*, Rory Carroll, *Emigrants from Latin America Sent Home £32bn Lifeline: Record Sum Dwarfs Foreign Direct Investment and Aid*, GUARDIAN (LONDON), Mar. 19, 2007, at 24; Jason DeParle, *A Good Provider Is One Who Leaves*, N.Y. TIMES, Apr. 22, 2007, § 6 (Magazine), at 50 (noting the attention now being directed at remittances); *The Importance of Remittances*, ECONOMIST, July 31, 2004 (noting that in 2006 remittances "exceeded the combined flow of aid and foreign direct investment" to Latin America).

formally closed borders and look-the-other-way economic reliance upon undocumented workers, remittances attest to both the porous nature of our borders and the perpetually subordinate position of many remittance-sending immigrants. Poor workers' ability to care for loved ones with money earned in developed countries creates families that transcend national borders. Celebratory or permissive stances towards remittances indict our immigration policy by drawing attention to the contrast between officially closed borders when it comes to labor and open borders when it comes to capital flow, even when earned by those thought of as "illegal aliens."

With remittances no longer relegated to the "errors and omissions columns in international financial reports,"[8] the rules that give shape to the remittance phenomenon can be tweaked in a way that improves on their power to reduce poverty in recipient countries. But, supporting and exposing remittance benefits does not diminish the significance of the challenges of a globalized market in a world of great inequality across countries. As is true of microcredit and land-titling, remittances need to be understood as an anti-poverty tool, not as a development tool. Remittances, though perhaps buying time, do not excuse governments and institutions in the developing or developed world from their shared responsibility to meet the challenge of inadequate and unequal growth dynamics. Remittances, albeit generated through personal sacrifice, can alleviate some of the hardships families face because of a lack of local opportunities in their home countries. Ultimately, while remittances are "hot" in development circles, remittances are by their very nature better suited to reducing poverty than fuelling lasting development.[9]

My argument proceeds in three stages. In Part II of this Article, I present an in depth description of remittances in terms of their impact on poverty, consumption, and national development. Such a detailed description, though somewhat at odds with the broad theoretical structure of typical law review articles, is a requisite for my later critique of remittances as a development tool. Furthermore, given that this is the first

[8] MULTILATERAL INV. FUND, INTER-AMERICAN DEVELOPMENT BANK, SENDING MONEY HOME: LEVERAGING THE DEVELOPMENT IMPACT OF REMITTANCES 1 (2006), *available at* http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=823579.

[9] Recipient country awareness of the power of remittances preceded the current attention being given remittances by international development organizations and sender countries. And given the fickle nature of popular and intellectual attention, and the way discussion is disproportionately driven by the gaze of developed countries, recipient countries will no doubt be dedicated to remittance issues long after the current general remittance emphasis has dissipated.

Though development experts are paying attention, scholars in other areas of the law have not yet focused on the phenomenon. Remittances should not be so relegated; rather, as Professor Lucy A. Williams argues regarding anti-poverty advocates, an identifier I would self-embrace, there is a need to explore connections *between* areas of law in order to "provide a fuller picture of legal structures that perpetuate poverty." Lucy Williams, *Towards an Emerging International Poverty Law*, *in* INTERNATIONAL POVERTY LAW: AN EMERGING DISCOURSE 1, 12 (Lucy Williams ed., 2006).

law review article on remittances, a fully descriptive presentation of remittances is valuable in and of itself as an introduction of the phenomenon to the legal community. Though remittances have been important throughout human history and such transfers are a global practice, Part II uses the recent remittance experience of Latin America and, in particular, of one country, El Salvador, as a case study.[10] In Part III, I shift my focus to the regulatory and tax-based policy challenges that threaten to hem in future remittance transfers. As such, Part III is part description and part argument regarding the importance of low transactions and regulatory costs. In Part IV, I critique the "institutionalization" of remittances and remittance dialogue by Western institutions. My conclusion—that the love demonstrated by transnational families ought to inform remittance and development policy—requires the injection of a degree of realism regarding the role remittances play in recipient countries. A sound international policy on remittances is one that does not use paternalistic and instinctively critical observations regarding the downsides of remittances to limit them, but instead requires that we stop thinking of remittances as a phenomenon to be manipulated like other development tools.

II. SCALE, IMPACT, AND ECONOMICS OF REMITTANCES

In the week before Christmas, paired lines—separated by vast distances and national borders—form at money transfer companies and in the offices of banks whose Spanish names reflect their Latin American roots. Just north of Washington, D.C., along University Boulevard in Silver Spring, Maryland and next to the "La Union Mall," named for a Salvadoran town in the heart of D.C.'s Salvadoran immigrant community,[11] *hermanos lejanos* (the Salvadoran name for Salvadoran expatriates, literally "far away brother") line up at Banco Cuscatlan to transact the only sort of business possible at that branch: they send money

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[10] El Salvador is not a random choice; rather it is a country with a rich remittance experience. Remittances represent a significant fraction of El Salvador's GDP (*see* Part II.A) and many families in the country rely upon remittances, making "the Salvadoran economy . . . highly dependent on remittances." Jessica Sabine et al., *Remittances and Human Development: The Case of El Salvador* 6 (Maastricht Graduate School of Governance, Working Paper No. 2005/1) (emphasis omitted), *available at* http://www.capabilityapproach.com/pubs/925MGSoGWorkingpaper2005-1.pdf; *accord* Congressional Research Services, *Central America and the Dominican Republic in the Context of the Free Trade Agreement (DR-CAFTA) with the United States* 35 (CRS Report No. RL32322, Oct. 24, 2005) *available at* http://fpc.state.gov/documents/organization/57870.pdf.

Finally, the choice to focus on El Salvador is personal: I am married to a Salvadoran. I first became interested in this topic when I realized that a vast gulf existed between Salvadoran knowledge and experience with remittances and that of most Americans, even highly educated ones, who have trouble even defining "remittances."

[11] For more on Washington, D.C.'s Salvadoran immigration, see Terry A. Repak, *Labor Recruitment and the Lure of the Capital: Central American Migrants in Washington, D.C.*, 8 GENDER & SOC. 507 (1994) (focusing on gendered aspect of migration to D.C.).

to their relatives living in El Salvador.[12] Thousands of miles south, lines extend to the sidewalk outside remittance dispersal locations; in Usulután, El Salvador, people of all ages crowd into Western Union's downtown storefront, fighting their way to the counter to collect money sent only hours before by their U.S.-based relatives.[13] And while remittance activity reaches a crescendo before Christmas and other holidays, such as Mother's Day,[14] remittances play a significant role for *hermanos lejanos*, the family members they support, and Latin American countries year round.

A. *Remittance Growth and Scale*

According to the president of the Inter-American Dialogue, "it is hard to exaggerate" the importance of remittances on Latin America and the Caribbean, and remittances are perhaps "Latin America's most important resource."[15] This significance is becoming recognized not simply because the international glance has turned to them, but because the scale and growth of remittances has made these "dynamic flows of money" stand out.[16] Latin America, and the Caribbean countries in particular, feel the effects of remittances; they are "at the top of the ranking . . . of remittances-receiving regions," in the aggregate and on a per capita basis.[17] U.S. Latino immigrants send "upwards of $50 billion a year" to their home countries.[18] This $50 billion reflects a tenfold increase in remittances to Latin America in real terms over the last two decades.[19] Extending the

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[12] Banco Cuscatlan is one of many options; Western Union is located in the same shopping center and not far away there are other Salvadoran banks.

[13] The crowd at the Western Union can disrupt traffic traveling along the Pan-American Highway through Usulután.

[14] *See* Krissah Williams, *To Latina Mothers, With Love: A Refrigerator From America*, WASH. POST, May 10, 2007, at D1 (reporting that Mother's Day—which occurs a few days prior to the U.S. holiday—is "one of the biggest gift-giving holidays" for Latinos and that "Western Union says money transfers are spiking").

[15] Peter Hakim, *Preface* to INTER-AMERICAN DIALOGUE, ALL IN THE FAMILY: LATIN AMERICA'S MOST IMPORTANT INTERNATIONAL FINANCIAL FLOW: REPORT OF THE INTER-AMERICAN DIALOGUE TASK FORCE ON REMITTANCES 1 (Jan. 2004), *available at* http://www.iadialogue.org/publications/country_studies/remittances/all_family.pdf.

[16] OROZCO ET AL., *supra* note 2, at 3. *But see* Ester Hernandez & Susan Bibler Coutin, *Remitting Subjects: Migrants, Money and States*, 35 ECON. AND SOC'Y 185, 189 (2006) (questioning the 1990s reported remittance growth by asking "whether the amount of money transferred actually increased or whether reforms simply permitted banks to record a larger percentage of these transactions").

[17] CLOSE TO HOME, *supra* note 5, at 2; *accord* OROZCO ET AL., *supra* note 2, at 4 ("The relationship between Latin America and the U.S. constitutes the highest volume remittance market in the world.").

[18] INTER-AMERICAN DIALOGUE, *supra* note 4, at 3. This paper focuses on South-North migration and remittance flows, but it should be noted that remittances also are important in South-South migration. For more on such remittances, see Dilip Ratha & William Shaw, *South-South Migration and Remittances* (World Bank, Working Paper No. 102, 2007), *available at* http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTDECPROSPECTS/0,,contentMDK:21154867~pagePK:64165401~piPK:64165026~theSitePK:476883,00.html.

[19] CLOSE TO HOME, *supra* note 5, at 1. Given the split between documented, measured flows and informal methods of sending remittances, it can be hard to separate the increase in counted remittance

time frame expands the remittance increase multiplier to more than twenty times the level of remittance sending to Latin America in 1980.[20] The growth in remittances to the region is replicated in El Salvador's impressively expanding remittance receipts, now accounting for fifteen to eighteen percent of the country's GDP.[21] Officially counted remittances—a count which does not include remittances sent through informal channels—to El Salvador more than doubled from 1999 to 2007, with remittances increasing from $1.4 billion to $3.7 billion.[22]

Driving the growth in the size of the U.S. remittance market to Latin America is U.S. Latino population growth.[23] "Immigrants in the U.S. represent a large and *growing* market for financial institutions,"[24] and "[a]s the immigrant population has grown, the volume of remittances has increased dramatically."[25] Latin American migrants in the United States almost doubled between 1990 and 2000, from 8.6 million to about 16 million.[26] The number of Salvadorans living in the United States by the tail end of a nearly decade long civil war in El Salvador was 565,081 in 1990, but by 2004 had nearly tripled to 1,449,051.[27] Latino in-migration is

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increases into increases due to more money actually being sent and increases due to better measurement of flows or the prior flows now entering formal channels. *See* Dilip Ratha, *Leveraging Remittances for Development*, MIGRATION POL'Y INST. POL'Y BRIEF, June 2007, at 1–2, *available at* http://www.migrationpolicy.org/pubs/MigDevPB_062507.pdf (discussing the differences between the measured amount of remittances and the true amount).

[20] Pablo Acosta et al., *Remittances and Development in Latin America*, 29 WORLD ECON. 957, 958 (2006).

[21] Given the undocumented nature of some remittance transfers, estimates of the GDP percentage share of remittances naturally vary slightly depending on the study and source, but the fifteen to eighteen percent share seems to be a standard accepted range. *See* Ricardo Hausmann & Dani Rodrik, *Self-Discovery in a Development Strategy for El Salvador*, 6 ECONOMIA: J. LATIN AM. & CARIBBEAN ECON. ASS'N 43, 70 (Fall 2005) (fifteen percent of GDP on average from 2000 to 2004); CLOSE TO HOME, *supra* note 5, at 4 (seventeen percent of GDP in 2004); INTER-AMERICAN DIALOGUE, *supra* note 4, at 5 (eighteen percent of GDP in 2005).

[22] Banco Central de Reserva de El Salvador, http://www.bcr.gob.sv/estadisticas/se_remesas.html.

[23] Though the discussion that follows emphasizes that more immigrants equals increased remittances, the relationship between remittances and migration is not necessarily unidirectional; remittances can help people "remain in their home country . . . discourag[ing] future immigration." Eli Coffino, Note, *A Long Road to Residency: The Legal History of Salvadoran & Guatemalan Immigration to the United States with a Focus on NACARA*, 14 CARDOZO J. INT'L & COMP. L. 177, 206 (2006).

[24] Marianne A. Hilgert et al., Banking on Remittances: Increasing Market Efficiencies for Consumers and Financial Institutions 33 (July 11, 2005) (emphasis added) (paper presented at Federal Reserve System Community Affairs Research Conference: Promises and Pitfalls: As Consumer Finance Options Multiply, Who is Being Served and at What Cost?, Apr. 2005), *available at* http://www.chicagofed.org/cedric/files/2005_conf_paper_session3_hogarth.pdf.

[25] *Issues Regarding the Sending of Remittances: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs*, 107th Cong. 2 (2002) (opening statement of Sen. Paul S. Sarbanes, Chairman, S. Comm. on Banking Housing and Urban Affairs), *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_senate_hearings&docid=f:86402.pdf.

[26] CLOSE TO HOME, *supra* note 5, at 10.

[27] PROGRAMA DE NACIONES UNIDAS PARA EL DESARROLLO, PNUD, EL SALVADOR, INFORME SOBRE DESARROLLO HUMANO EL SALVADOR: UNA MIRADA AL NUEVO NOSOTROS, EL IMPACTO DE LAS MIGRACIONES ch. 2, figs. 2.1 & 2.2 (2005) [hereinafter UNA MIRADA AL NUEVO NOSOTROS],

part of the general global trend the World Bank observed of accelerated migration to high-income countries, a trend that may even increase.[28] "Pull" factors generated in developed countries have great explanatory power regarding macro trends in migration levels.[29] Additionally, societal out-migration—fueled by a civil war,[30] natural disasters,[31] and limited economic opportunities[32]—has helped create a Salvadoran transnational community for which remittances are an important part of the relationship between expatriates and their relatives back home in El Salvador.[33] Moreover, the expansive growth of Salvadoran migration arguably reflects the government of El Salvador's role "in encouraging and managing the flows of people and remittances."[34] Whether reflecting war, natural disasters, relative economic opportunities, or simply over-population of the country (El Salvador is the most densely populated country in Central America),[35] explosive migration to the United States has helped increase the demand for, and use of, remittance services.[36]

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available at http://hdr.undp.org/en/reports/nationalreports/latinamericathecaribbean/elsalvador/el_salvador_2005_sp.pdf.

[28] WORLD BANK, *supra* note 1, at 26–29.

[29] *See*, *e.g.*, Mary De Ming Fan, *Disciplining Criminal Justice: The Peril Amid the Promise of Numbers*, 26 YALE L. & POL'Y REV. 1, 40 (2007) (noting that migration increases "when economic times are good and jobs are plentiful in the United States and ebb when the economy weakens and job availability slackens"); Francine J. Lipman, *The Taxation of Undocumented Immigrants: Separate, Unequal, and Without Representation*, 9 HARV. LATINO L. REV. 1, 11 (2006) (crediting the U.S. economy's "demand for millions of essential workers" with luring immigrants to the country).

[30] *See*, *e.g.*, Palma Torrisi, *Salvadorans' Remittances as Unique Consequences: The Place for Salvadorans' Remittances in the Determination of the Extreme Hardship Requirement of the Nicaraguan Adjustment and Central American Relief Act*, 9 TOURO INT'L L. REV. 87, 89 (2001) ("The violence which characterized the civil war, in which one of every hundred Salvadorans was killed (they were mostly civilians and were often tortured), coincided with the massive outflow of one of every six Salvadorans to the United States.").

[31] *Id.* at 139 (citing as examples Hurricane Mitch and three earthquakes in 2001). The damaging effects of the 2001 earthquakes include loss of life, destruction of housing, and infrastructural damage. Pan American Health Organization, *Earthquakes in El Salvador*, 22 EPIDEMIOLOGICAL BULL., Mar. 2001, at 1, *available at* http://www.paho.org/english/sha/be_v22n1-cover.htm.

[32] Sabine et al., *supra* note 10, at 2.

[33] Manuel Orozco explains, "[t]he economic context of a typical family with bi-national or transnational obligations include sending of remittances, keeping in touch through telephone or visits home or from relatives, buying home country goods, or property." MANUEL OROZCO, THE SALVADORAN DIASPORA: REMITTANCES, TRANSNATIONALISM AND GOVERNMENT RESPONSES, 2 (2004). There are non-familial remittances, "*collective transfers*, for instance through a hometown association, usually directed towards a collective beneficiary," but the bulk of remittances "are the classical *intra-family transfers* that are usually associated with the word remittances." Jørgen Carling, *Policy Options for Increasing the Benefits of Remittances* 7 (Univ. of Oxford Ctr. on Migration, Policy & Soc'y, Working Paper No. 8, 2004), *available at* http://www.compas.ox.ac.uk/publications/papers/WP0408.pdf.

[34] Sarah Gammage, Exporting People and Recruiting Remittances: A Development Strategy for El Salvador 11 (May 2005) (unpublished manuscript, on file with author).

[35] LET'S GO CENTRAL AMERICA 252 (Benjamin Krutzinna ed., 9th ed. 2004).

[36] According to a 2002 report, forty-seven percent of Latino remitters have arrived in the United States over the last ten years, a statistic that emphasizes the importance of recent immigration on remittance growth. Dulce C. Benavides, *The Pew Hispanic Center/Kaiser Family Foundation National Survey of Latinos: A Demographic Portrait of Latino Remittance Senders in the United States*, *in*

Given the amount of money entering Latin America, it is important to consider the linked ways, beyond scale alone, that remittances impact Latin American countries: (1) consumption and poverty reduction, and (2) macro-economic effects and long-term national development. While these particular issues will be treated separately, their connectedness should not be forgotten. Remittances existed prior to their current popularization; they simply were "hidden in plain view," relegated to the "errors and omissions columns in international financial reports."[37] Bringing out the importance of remittances is an ongoing process and, thus, requires a note about figures and conclusions. Much is now known about remittances, but the recent flurry of research, programs,[38] and interest in remittances cannot disguise the fact that this is a nascent, and consequently very fluid, area of research.[39]

As the paired Washington and Usulután lines illustrate, remittance transfers are a consequence of transnational families. Mr. Remittances, Manuel Orozco,[40] defines a transnational family as "a unit with household members across borders that stay in regular contact to maintain their bonds and responsibilities."[41] Though their sacrifices are not often noted, such family bonds persist in the face of the many challenges of separation, distance, and often poverty within both the United States and Latin American parts of the family. "At the simplest level, remittances reflect the profound emotional bonds and constant interaction," Roberto Suro

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BILLIONS IN MOTION: LATINO IMMIGRANTS, REMITTANCES AND BANKING 19 (2002), *available at* http://pewhispanic.org/files/reports/13.pdf. Yet, "[e]ven though, the money flow drops off among those with longer tenure, a substantial proportion of immigrants (23 percent) who have been away from home for 20 to 30 years still send money back to their relatives." ROBERTO SURO, MULTILATERAL INVESTMENT FUND & PEW HISPANIC CTR., REMITTANCE SENDERS AND RECEIVERS: TRACKING THE TRANSNATIONAL CHANNELS 5–6 (2003), *available at* http://pewhispanic.org/files/reports/23.pdf.

[37] MULTILATERAL INV. FUND, *supra* note 8, at 1.

[38] *See e.g.*, Earth Inst. at Columbia Univ. Ctr. on Globalization & Sustainable Dev., Program on Remittances and Development, http://www.earthinstitute.columbia.edu/cgsd/remittances/index.html (last visited July 13, 2008) (program at Columbia University); Ctr. for Int'l Dev. at Harvard, Remittances and Migration, http://www.cid.harvard.edu/remittances/index.html (last visited July 13, 2008) (five research projects at Harvard University); Inter-American Dialogue: Remittance Project, *available at* http://www.thedialogue.org/page.cfm?pageID=80.

[39] *See* WORLD BANK, *supra* note 1, at xi (noting that "basic data on migration and remittances are lacking, so predicting the impact of policy changes can be problematic"); Richard H. Adams, Jr. & John Page, *Do International Migration and Remittances Reduce Poverty in Developing Countries?*, 33 WORLD DEV. 1645, 1660 (2005) (arguing that "more accurate data" is needed on unofficial remittance flows); Hernandez & Bibler Coutin, *supra* note 16, at 193 (noting the unreliability of calculating remittances).

[40] Title used by Peter Hakim, President of the Inter-American Dialogue, to introduce Manuel Orozco at the release of the Second Report of the Inter-American Dialogue's Task Force on Remittances, Dirksen Senate Office Building, May 1, 2007.

[41] MANUEL OROZCO, TRANSNATIONAL FAMILIES: LIVES ON THE EDGE BUT IN PURSUIT OF CHANGE 2 (2006), *available at* http://www.remittances.eu/component/option,com_docman/task,doc_download/gid,27/ (last visited July 13, 2008).

explains, "between relatives separated by geography and borders."[42] Academic over-conceptualization of the choices made by migrants and households in developing countries[43] risks hiding, even diminishing, the hard work and love that underlie remittance sending.[44] Many remittance-sending migrants have braved long distances, *la migra*, and cultural loss, and intellectualizing these often painful decisions can lead to failure to understand the sacrifices involved.[45] Generally speaking, remittances have a simple explanation: "Workers leave their home countries for higher paid jobs abroad and, through a combination of hard work and thrift, send a portion of their earnings back home to support their families."[46]

B. *Consumption and Poverty Reduction*

Remittances are, in many respects, a form of consumption by each remitting immigrant, albeit consumption of a particular sort. Immigrants spend eighty-five percent of their money in the United States, with the

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[42] Roberto Suro, *A Survey of Remittance Senders and Receivers*, *in* BEYOND SMALL CHANGE: MAKING MIGRANT REMITTANCES COUNT 21, 22 (Donald F. Terry & Steven R. Wilson eds., 2005).

[43] *See*, *e.g.*, Mariano Sana & Douglas S. Massey, *Household Composition, Family Migration, and Community Context: Migrant Remittances in Four Countries*, 86 SOC. SCI. Q. 509, 510 (2005) (emphasizing that "an implicit or explicit contractual arrangement between the family and the migrant" is a "necessary condition" for migration according to the new economics of labor migration).

[44] *See* Ezra Rosser, Letter to the Editor, N.Y. TIMES, May 6, 2007, § 6 (Magazine), at 12 (highlighting love as the foremost aspect of remittances and transnational families); Torrisi, *supra* note 30, at 127 (defining remittances as monies sent by " the alien" to "loved ones left behind in the alien's country of origin"); *see also* MULTILATERAL INV. FUND, INTER-AMERICAN DEV. BANK, REMITTANCES 2005: TRANSFORMING LABOR MARKETS AND PROMOTING FINANCIAL DEMOCRACY, STATISTICAL COMPARISONS 2 (2005), *available at* http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=639199 ("[T]he driving force behind [remittances] remains a fundamentally human connection: a commitment to family values lies at the core of these flows."). Ester Hernandez and Susan Bibler Coutin critique the focus on the connection between love and remittances as overlooking the labor underlying remittances. Hernandez & Bibler Coutin, *supra* note 16, at 190. Yet while Hernandez and Bibler Coutin are right to note that immigrants earn their money through hard work, the choice to send that money to family members reflects love.

[45] Sana and Massey break the familial decision to migrate and remit into two possible explanations, the first focused on risk diversification and the search for investment capital, and the second "based on need," defined as being less carefully planned and aimed to ensure family subsistence when home country opportunities are lacking. Sana & Massey, *supra* note 43, at 512. Inadequate or wrong information can distort both the first and second categories identified by Sana and Massey by, for example, falsely glorifying the job opportunities in the destination country. *See* WORLD BANK, *supra* note 1, at 61 (highlighting the effect distance and language differences can have on migrants' knowledge, potentially lessened by diasporas already established in origin countries). *But see* GORDON H. HANSON, COUNCIL ON FOREIGN RELATIONS, THE ECONOMIC LOGIC OF ILLEGAL IMMIGRATION 12 (2007), *available at* http://www.cfr.org/content/publications/attachments/ImmigrationCSR26.pdf (noting the "responsiveness of illegal immigration to [actual] economic conditions").

[46] Donald F. Terry, *Remittances as a Development Tool*, *in* BEYOND SMALL CHANGE: MAKING MIGRANT REMITTANCES COUNT 3, 4 (Donald F. Terry & Steven R. Wilson eds., 2005); *see also* WORLD BANK, *supra* note 1, at 35 (presenting the choices of a fictional couple contemplating their household income in their home country versus their income if one member migrates to a higher income country). Risk diversification, in addition to high/low-income country wage differentials, may provide additional migration incentive. *Id.* at 59.

remaining fifteen percent of their earnings sent to their country of origin.[47] Remittances are typically "earmarked to assist with specific household expenses."[48] Initially, such a split in local versus distant purchases may seem to make remittance purchases categorically distinct from "consumption." Yet, perhaps tellingly, in *The Economic Consequences of the Peace*, John Maynard Keynes described the privilege of the Englishman who felt it "normal" that he could purchase goods from all over the world.[49] Currently, immigrant purchases of goods—through remittances—for their household members still living in their homeland are accomplished through their family as agents and are not seen as "normal." Nevertheless, to the extent that consumption is the end result, the Englishman's (and implicitly the average American's) purchases are in many ways analogous to those of the Salvadoran immigrant.[50]

The fact that the Salvadoran's family members do not live in the same house should not necessarily force a definitional re-characterization of remittances as a "gift" rather than a purchase.[51] For while in American law there is a preoccupation with the household as the unit of analysis,[52] is there really a qualitative difference between an Englishman purchasing school books for his child and a Salvadoran doing the same simply because the Salvadoran's purchase is accomplished through an aunt or uncle acting as his agent? Just as spending on education positively impacts the performance of children of non-immigrants in the United States, so too can Salvadorans sending remittances expect improved educational achievement by their family members.[53]

1. *Remittance Purchases*

An argument remains that despite similar goals, there is a fundamental difference in "remittance" and "normal" purchases, namely that remittance

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[47] Manuel Orozco & Nancy Castillo, *Latino Migrants: A Profile on Remittances, Finances, and Health* 6 (2008) (on file with *Connecticut Law Review*).

[48] JERONIMO CORTINA & RODOLFO DE LA GARZA, TOMÁS RIVERA POLICY INSTITUTE, IMMIGRANT REMITTING BEHAVIOR AND ITS DEVELOPMENTAL CONSEQUENCES FOR MEXICO AND EL SALVADOR 1 (2004).

[49] JOHN MAYNARD KEYNES, THE ECONOMIC CONSEQUENCES OF THE PEACE 11–12 (1920).

[50] As Ester Hernandez and Susan Bibler Coutin explain: "Remittances are part of a broader circulation of money and, in some cases, are very much like regular expenses that individuals assume (e.g. the upkeep of one's home, the maintenance of one's family members), with the key difference that, given the dispersal of household members, payments cross national boundaries." Hernandez & Bibler Coutin, *supra* note 16, at 195.

[51] *But see id.* at 194 (describing remittances as "products and gifts").

[52] For a recent example, see Robert C. Ellickson, *Unpacking the Household: Informal Property Rights Around the Hearth*, 116 YALE L.J. 226, 229 (2006).

[53] Alejandra Cox Edwards & Manuelita Ureta, *International Migration, Remittances, and Schooling: Evidence from El Salvador*, 72 J. OF DEV. ECON. 429 (2003) (finding that remittances have a positive impact on schooling, especially in rural areas); Ratha, *supra* note 19, at 6 ("Studies based on household surveys in El Salvador . . . find that children of remittance-receiving households have a lower school dropout ratio and that these households spend more on private tuition for their children.").

purchases require an agent.[54] After all, whereas the Englishman or the American goes directly to Tesco or Wal-mart respectively, *usually* a family member of the Salvadoran migrant collects the remitted money and then makes the household purchases. That the purchases occur through an agent and in a separate country can affect incentives to work and the cost of goods in the recipient country,[55] but family member reliability minimizes the need to consider the traditional agency concern that the agent will not follow desires of the principal. Surveys of remittance senders and recipients asking senders why they sent money and asking recipients how they actually spent the remittance attest to the trustworthiness of recipients. As Orozco explains, there is "very little dissonance between what the senders think they are sending aid for and what their relatives said they are spending it on."[56] For those migrants concerned relatives will not put their money to the use preferred, migrants in bigger cities can pick particular products out of catalogues or store displays, and relatives can then pick up the goods at traditional stores in El Salvador.[57]

Remittance senders are "primarily motivated to contribute to family maintenance" of those still in their home country,[58] and, accordingly, most of the money sent is "used for basic needs, such as food, medicine and shelter."[59] There is no single bundle of goods purchased with remittances that holds across all countries or years, but looking at how remittances are spent in two countries can provide a snapshot of remittance use:[60]

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54 Hernandez & Bibler Coutin, *supra* note 16, at 197 ("[T]he benefits that remittances may provide to poor families may be undermined by a 'moral hazard problem' created by the distance between remitters and recipients.").

55 *See infra* notes 118–28 and accompanying text.

56 OROZCO, *supra* note 41, at 1, 8 (reporting on the results of a survey of twenty-two families).

57 Indeed, one such company, Unicomer, has a showroom within the Salvadoran consulate's office complex in Houston. Jenalia Moreno, *Store Makes Long-Distance Gifts Easy: Customers Order Items for Delivery to Their Relatives in Latin America*, HOUSTON CHRON., Aug. 20, 2006, at 1 (Business); *see*, *e.g.*, Deborah Belgum, *Special Delivery: Company Helps Immigrants Care for Relatives Back Home by Providing U.S. Outlet for Buying Appliances That Can Be Received Across Border*, L.A. BUS. J., Oct. 7, 2002, at 21 (allowing immigrants to select items from a catalog for delivery to their families in Mexico); de Luna Martínez, *supra* note 1, at 29 ("[E]ven some retail stores in El Salvador offer migrants the option to purchase goods that are delivered to their relatives in their home countries."); Derek Reveron, *La Curacao Cashes In*, ADWEEK'S MARKETING MEDIOS, May 1, 2006, http://www.marketingymedios.com/marketingymedios/magazine/article_display.jsp?vnu_content_id=1002425665 (affording immigrants the opportunity to build credit histories).

58 CORTINA & DE LA GARZA, *supra* note 48, at 21; *see also* Torrisi, *supra* note 30, at 104 ("The alien subjectively believes that, without her continued remittances, her family in the homeland will suffer acute economic hardship . . . .").

59 Krissah Williams, *Immigrants Sending $45 Billion Home*, WASH. POST, Oct. 19, 2006, at A9.

60 Table based upon CORTINA & DE LA GARZA, *supra* note 48, at 28 tbl.6 (based upon 2003 figures, numbers rounding explains deviation from one-hundred percent).

Total Value of Remittances by Expenditure Type

Type	Mexico % of Remittances	El Salvador % of Remittances
Family Maintenance	**79**	**80**
Food/Basic Consumption	67	69
Education	2	5
Health	9	6
Familial Investment	**6**	**3**
Build a Home	2	1
Improve Family Home	3	0
Buy Land	1	1
Initiate/Expand Business	0	1
Familial Leisure	**3**	**2**
Familial Debt	**1**	**1**
Don't Know the Purpose	**12**	**14**
Total	**100**	**100**

With food and basic consumption amounting to over two-thirds of remittance use in Mexico and El Salvador, one might think that it would be easy to claim that remittances have a net positive impact on poverty and inequality in recipient countries. For, while migrants also send remittances to buy land or for special events that fall outside of narrow understandings of "need," such as weddings or *quinceañeras*,[61] it seems almost definitional—more money is flowing in—that remittances lower the poverty rate in recipient countries.[62] To the question, "do remittances reduce inequality and poverty?" a World Bank report on Latin American remittances notes, "[i]n theory, given that in many cases remittances go to poor households and that remittances directly increase these households' level of income, an unequivocally positive answer could be expected."[63]

2. *Remittances' Impact on Poverty*

Given the conclusion of the last paragraph, it is probably not surprising that the impact of remittances on poverty and inequality is less than straightforward. After noting that "very little attention has been paid to analyzing the poverty impact of these financial transfers on developing countries," a recent study on global migration and remittances tentatively concluded, "on average, a 10% increase in per capita official remittances will lead to a 3.5% decline in the share of people living in poverty."[64]

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[61] Mariano Sana, *Buying Membership in the Transnational Community: Migrant Remittances, Social Status and Assimilation*, 24 POPULATION RES. & POL'Y REV. 231, 239 (2005) ("Community rituals such as weddings, baptisms or funerals offer ideal venues for migrants to display spending power, claim status, and have it valorized. Migrants pay for rounds of drinks and multiple expenses tied to local festivities, including musicians' fees. Together with gifts packed in heavy suitcases, migrants use these spending displays to assert their success in the United States.").

[62] After all, "the flow of familial remittances necessarily increases GDP per capita of those who receive them, clearly making them better off." CORTINA & DE LA GARZA, *supra* note 48, at 33.

[63] CLOSE TO HOME, *supra* note 5, at 12.

[64] Adams, Jr. & Page, *supra* note 39, at 1645, 1660. *But see* CLOSE TO HOME, *supra* note 5, at 15–16 (arguing that the Adams & Page study is "likely to underestimate the poverty effects of remittances" and fails to highlight variation across countries).

While "[r]emittances are not a panacea for poverty reduction,"[65] they do play an important role, albeit one that is highly contextual and varies across countries.[66]

Poverty reduction findings are reassuring for those who emphasize the importance of remittances. It appears migrants are managing to send sufficiently high remittances to make up for their losses of income associated with local jobs held prior to departing their home country.[67] Drawing attention to the scale of remittances alone, without acknowledging the loss in income from work done prior to migration, risks exaggerating the impact of remittances.[68] A recent study found that forty-four percent of remittance senders had a full-time job before coming to the United States.[69] In some instances, remittance effects should be discounted by loss of pre-emigration income; yet, some situations call for an approach that does not consider loss in pre-migration income when doing so is inappropriate given the cause of the migration. In such circumstances, migration is "treated as exogenously given."[70] Arguably, Salvadoran migration motivated (necessitated?) by the civil war falls into this migration category, in which case remittance effects should not be lessened by pre-migration wages.

Looking at El Salvador's experience reveals both the tremendous promises and potential pitfalls of a poverty-centered approach to understanding remittances. First, a note on terms, from economist Jeffrey Sachs:

> Extreme poverty, defined by the World Bank as getting by on an income of less than $1 a day, means that households cannot meet basic needs for survival. . . . Moderate poverty, defined as living on $1 to $2 a day, refers to conditions in

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[65] INT'L DEV. COMM., HOUSE OF COMMONS, MIGRATION AND DEVELOPMENT: HOW TO MAKE MIGRATION WORK FOR POVERTY REDUCTION, 2003-4, H.C. 79-I, at 61 [hereinafter HOUSE OF COMMONS], *available at* http://www.publications.parliament.uk/pa/cm200304/cmselect/cmintdev/79/79.pdf.

[66] Given migrant population differences along education, class, and opportunity lines, as well as differing recipient-country characteristics, the impact of remittances on poverty and inequality is highly country-specific. WORLD BANK, *supra* note 1, at 91 ("One of the challenges of understanding remittance flows is that their characteristics, costs, and channels vary widely from one bilateral corridor to another (and also widely from different locations within each country).").

[67] *But see* Hernán Rozemberg, *Drawback to Money Sent to Mexico?*, SAN ANTONIO EXPRESS-NEWS, Mar. 30, 2007, at 5B (suggesting that some immigrants from rural parts of Mexico earn more prior to emigrating to the United States).

[68] CLOSE TO HOME, *supra* note 5, at 14; Ratha, *supra* note 19, at 5.

[69] INTER-AMERICAN DEV. BANK, MULTILATERAL INVESTMENT FUND, PUBLIC OPINION RESEARCH STUDY OF LATIN AMERICAN REMITTANCE SENDERS IN THE UNITED STATES 12 (2006), *available at* http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=826095 [hereinafter PUBLIC OPINION RESEARCH STUDY].

[70] WORLD BANK, *supra* note 1, at 118.

which basic needs are met, but just barely.[71]

Remittances have cut extreme poverty in three countries—Mexico, the Dominican Republic, and El Salvador—by more than thirty-five percent and moderate poverty by an average of nineteen percent, according to a World Bank estimate.[72] Furthermore, El Salvador's "progressively distributed . . . remittances are associated with significant reductions in both inequality and poverty."[73]

For a country where between twelve and eighteen percent of the population still lives in extreme poverty (depending on whether you use a nationally defined line or a U.S. $1/day line),[74] these poverty and inequality reduction figures attributable to remittances are striking. El Salvador is still recovering from its long civil war which lasted twelve years (1980–1992) and retarded economic growth. The country has yet to reach pre-civil war per capita levels; the World Bank estimates that, if the current growth trend continues, the economy will take until 2015 to reach the country's 1978 levels.[75] And while the period immediately following the war was marked by a faster growth rate and saw poverty reduced by twelve percent,[76] since 1995, the growth rate under post-Cristiani presidents has fallen.[77] For the Salvadoran poor, remittances in some respects made up for the economic slowdown. It was remittances, not economic growth or other pro-poor development policies of the government, that instigated gains in progressive income distribution and in equaling reduction after 1995.[78]

The welfare-improving effect of remittances is strikingly overlooked through a narrow focus on poverty headcount figures alone. Most Central American recipients are using remittances primarily to meet their basic food needs and, therefore, still need additional income in order to meet other necessities.[79] This fact suggests that rather than remittances being properly subject to critique for not being tied to a greater percentage decrease in poverty, remittances should be seen as a very effective

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[71] Jeffrey D. Sachs, *The End of Poverty*, TIME, Mar.14, 2005, at 42.

[72] CLOSE TO HOME, *supra* note 5, at 13.

[73] *Id.* at 15. The report notes a Salvadoran Gini coefficient equality improvement of 2.1% driven by remittances. *Id.* at 13.

[74] PROGRAMA DE LAS NACIONES UNIDAS PARA EL DESARROLLO, PNUD, EL SALVADOR, CUADERNOS SOBRE DESARROLLO HUMANO 16 tbl.2 (May 2007), *available at* http://www.pnud.org.sv/2007/content/view/27/83?id_publ=74 (follow hyperlink to pdf document).

[75] WORLD BANK, REPUBLIC OF EL SALVADOR COUNTRY ECONOMIC MEMORANDUM 12 (2003) (Background Studies Report No. 26238) [hereinafter EL SALVADOR ECONOMIC MEMORANDUM].

[76] *Id.*

[77] Alfredo Cristiani was the El Salvadoran president who signed the country's peace agreements on behalf of the government. UNA MIRADA AL NUEVO NOSOTROS, *supra* note 27, at ch. 3 fig.3.2; *see* EL SALVADOR ECONOMIC MEMORANDUM, *supra* note 75, at 18 (noting a decline of economic growth from 11% to 1.5% during the 1990s).

[78] EL SALVADOR ECONOMIC MEMORANDUM, *supra* note 75, at 13–16.

[79] OROZCO, *supra* note 41, at 2.

mechanism for reaching migrant family members in need. This is true whether the need is ongoing—income support to meet basic food needs—or the result of an adverse income or welfare shock. Remittances not only raise recipient consumption levels, they "may play a significant role in smoothing consumption."[80] For example, remittances rose in the wake of devastating hurricanes that hit Central America.[81] Such increases are not temporary guilt-based gifts, but an increase that can be tracked over the five year period following hurricanes.[82] Finally, even where the shock is purely economic, there is the strong possibility that remittances are counter-cyclical, providing additional resources when the home country's economy is not doing as well.[83] In addition to disaster response, counter-cyclical sending further demonstrates that remittances provide both for necessary items, such as basic food, and invaluable recipient income-smoothing.

Remittances are typically a very personal—family member to family member—exchange. However, collective remittances, primarily through hometown associations, can also help lessen the effects of poverty, primarily, but not exclusively, through economic development projects. Collective remittances, defined as "groups' initiatives to finance and carry out projects to benefit their communities of origin,"[84] to Latin America are predominantly channeled through hometown associations (HTA). "[T]he hometown association has a long and familiar history," Orozco explains.[85] "[The HTA] draws together people from the same town or state in the migrant-sending country, enabling them to retain a sense of community as they adjust to the United States."[86] Participation in hometown associations is "a way [for immigrants] to validate their identity,"[87] and, perhaps, help ensure social standing in their home community.[88] Hometown associations do everything from organizing social events in the United States, to helping maintain North-South connections between members of a particular town, to sending collectively raised money and resources to their

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[80] WORLD BANK, *supra* note 1, at 122.

[81] Ratha, *supra* note 19, at 3.

[82] WORLD BANK, *supra* note 1, at 123 ("In cross-country data, a dollar's worth of hurricane damage leads to roughly $0.13 in additional remittances in the year of the hurricane and $0.28 cents over five years.").

[83] Ratha, *supra* note 19, at 3.

[84] Luin Goldring, *Re-Thinking Remittances: Social and Political Dimensions of Individual and Collective Remittances* 6 (York Univ. Ctr. for Research on Latin Am. and the Caribbean, Working Paper Series, 2003).

[85] *Id.*

[86] Manuel Orozco, *Latino Hometown Associations as Agents of Development in Latin America*, *in* SENDING MONEY HOME: HISPANIC REMITTANCES AND COMMUNITY DEVELOPMENT 85, 87 (Rodolfo O. de la Garza & Briant Lindsay Lowell eds., 2002).

[87] Manuel Orozco, *Central American Diasporas and Hometown Associations*, *in* DIASPORAS AND DEVELOPMENT 215, 221 (Barbara J. Merz et al. eds., 2007).

[88] Sana, *supra* note 61, at 239.

town of origin for infrastructure and poverty-reduction projects.[89]

The paired impact of migration and hometown associations is strikingly evident in El Salvador's Intipuca City.[90] Intipuqueños, Salvadoran migrants from Intipuca, maintain a strong connection with their native city. Intipuca—with signs primarily in English and a more elaborate infrastructure than other similarly sized towns—is full of reminders that, while the war led to a massive migration to the Washington, D.C. area, many Intipuqueños still consider Intipuca home.[91] The city reflects both familial remittances—allowing a level of housing construction quality that is unusual for such a rural town—and collective efforts of the United Committee for Intipuca, which, together with matching funds from the Salvadoran government, has helped build projects such as stadium fields and septic systems.[92] Indeed, in El Salvador, Intipuca is sometimes called either "city of dollars" or "gringo city."[93] What remains true for HTAs, as well as for familial remittances, is that "although remittances to families and donations to communities are channeled primarily to the poor, these resources *alone* do not constitute a solution to the structural constraints of poverty."[94] The transnational Intipuca City community reflects tremendous efforts on the part of the home and migrant populations and is not simply the product of an infusion of money.[95] Collective remittances impact poverty, and, by bringing migrants together, might do so in ways that traditional remittances may not. Moreover, collective remittances reflect the connection that *hermanos lejanos* have not only to the family members they left behind but also to their communities.

Understanding the impact of remittances on poverty requires

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[89] *See* Rafael Alarcón, *The Development of Hometown Associations in the United States and the Use of Social Remittances in Mexico*, *in* SENDING MONEY HOME: HISPANIC REMITTANCES AND COMMUNITY DEVELOPMENT 101, 108–12 (Rodolfo O. de la Garza & Briant Lindsay Lowell eds., 2002) (detailing the HTA range of activities and the many ways HTA target matters that particularly affect the poor in origin country hometowns).

[90] *See, e.g.*, Hernandez & Bibler Coutin, *supra* note 16, at 199 (reporting that their "interviewees marvelled at the town of Intipucá, which has become known as a modern, highly Americanized community supported almost entirely by remittances").

[91] The Intipuca City's unofficial website, www.intipucacity.com, is a catalogue of stories of *hermanos lejanos* who have done well in the United States but still feel a close connection with their city of origin.

[92] Orozco, *supra* note 86, at 92.

[93] David Pedersen, *The Storm We Call Dollars: Determining Value and Belief in El Salvador and the United States*, 17 CULTURAL ANTHROPOLOGY 431, 433 (2002) (also identifying "town of thieves" as a third name given to the city following the collapse of Banquito, an unofficial remittance transfer operation and bank).

[94] Manuel Orozco & Katherine Welle, *Hometown Associations and Development: A Look at Ownership, Sustainability, Correspondence, and Replicability*, *in* NEW PATTERNS FOR MEXICO 157, 157 (Barbara J. Merz ed., 2005).

[95] These efforts are driven by the requirements of self-identity and should not be reduced by the diminutive label "nostalgia." As Professor Anupam Chander writes, "[a]t times hope—and at other times fear—compels many people to leave their homeland and settle abroad. But leaving home does not necessarily eliminate one's regard for that land or its people." Anupam Chander, *Diaspora Bonds*, 76 N.Y.U. L. REV. 1005, 1098 (2001).

considering the relative class position of both recipients and senders. In testimony before the Senate regarding remittances, Illinois Congressman Luis Gutierrez captured the income-smoothing and consumption aspects of remittances but did so from the standpoint of migrants: "These are hard-working people, doing the hardest jobs, the longest hours, for the worst pay. And what they are doing is helping their family members back in their countries of origin, many times in moments of crisis."[96] At the same committee hearing, Former Maryland Senator Paul Sarbanes noted in his introduction that the "[p]eople sending remittances tend to be low-wage earners with modest formal education."[97] According to a recent survey of remittance senders, "more than three-fifths of remittance senders can be considered 'working poor' or 'lower middle class' with annual incomes of less than $30,000," and at least thirty-five percent of remittance senders have a household income under $20,000.[98]

To understand why the United States is still considered a land of opportunity for many Central American migrants, the salaries received in the United States must be placed in context. According to the same survey noted above, "[t]he average salary of the—*first job* of Latin American immigrants in the U.S. was $900 a month—six times the amount they were earning in their country."[99] Thus, two things seemingly in conflict are true. The first truth is that, ultimately, both senders and recipients are families living on the edge of poverty.[100] The second is that remittance senders are able to send money back to their home country because they make tremendous sacrifices for their family members.[101] Additionally, being poor in the United States and being poor in Latin America does not mean the same thing. This sentence risks being misread, so it is worth clarification. I do not mean to diminish the hardships involved in being

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[96] *Issues Regarding the Sending of Remittances: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs*, 107th Cong. 4 (2002) (statement of Rep. Luis V. Guiterrez) [hereinafter *Hearing*]; *see also For Love or Money?*, ECONOMIST, May 20, 1995, at 78 ("[A] migrant worker, struggling to make ends meet in a foreign country, sends a big slice of his pay packet back to his homeland.").

[97] *Hearing*, *supra* note 96, at 2 (opening statement of Sen. Paul S. Sarbanes, Chairman, S. Comm. on Banking, Housing, and Urban Affairs). In fact, migrant education level and remittance sending are negatively correlated: "the higher the education level of migrants relative to the population in their home countries, the lower the amount of money sent home." Yoko Niimi & Çağlar Özden, *Migration and Remittances: Causes and Linkages* 10 (World Bank Policy Research, Working Paper No. 4087, 2006).

[98] PUBLIC OPINION RESEARCH STUDY, *supra* note 69, at 3, 9. Remittance senders from Central America are also young, with over half aged 18 to 34. *Id.* at 6. Manuel Orozco puts the percentage earning less than $20,000 at "[a]bout half of both men and women." OROZCO, *supra* note 41, at 3.

[99] PUBLIC OPINION RESEARCH STUDY, *supra* note 69, at 11.

[100] Torrisi, *supra* note 30, at 133.

[101] Writing about Salvadoran immigrants living on Long Island and sending money back to El Salvador, Professor Sarah Mahler observes, "Salvadorans make sacrifices. Sometimes they deprive themselves of comforts . . . . The strain can be overwhelming . . . ." SARAH J. MAHLER, SALVADORANS IN SUBURBIA: SYMBIOSIS AND CONFLICT 104 (1995).

poor in the United States, nor do I wish to suggest, as the Heritage Foundation has, that the U.S. poor are not poor.[102] Yet, if remittance senders were suffering under absolute poverty of the sort captured by the World Bank's definitions of "extreme" or "moderate" poverty, remittance senders would not have money to send back to their family members who did not migrate with them. This does not mean they are not struggling, but it does demonstrate the inspiring commitment that remittance senders—prioritizing sending their money over paying their own bills—have to their family members.[103]

C. *Macro Effects and National Development*

Remittances impact not only recipient families but also, in the aggregate, have important and potentially negative consequences for the economies of remittance-receiving countries. While the sacrifices of immigrants and those left behind when an immigrant leaves make it inappropriate to characterize remittances as a "windfall" to recipient families, at the national level remittances arguably are a form of "unearned" national income. This has possible positive and negative consequences for recipient-countries. In this Part, the impact of rational remittance windfalls will be explored along three central economic avenues: (1) pricing of goods, (2) bank and national borrowing, and (3) work incentives.

Remittances can distort the pricing of even the most basic goods and can lead to inefficient remittance-driven, rather than growth-driven, use of resources. Additionally, remittances can exacerbate problematic class dynamics, creating a division between those who are poor and do not receive remittances and those who are remittance recipients. Even a seemingly unambiguously positive consequence of large remittance flows—the ability of local banks and recipient countries to get cheaper loans through the securitization of remittance flows—must be examined closely. Positively, thousands of small transfers can reduce the national cost of capital, which in turn can help with both debt payments and with economic development. But, despite the fact such securitization is driven by the assets (the predictable and substantial flow of money) of the people, *la gente*, and not of wealthy elites, there is the danger that international

[102] *See, e.g.*, Robert Rector & Kirk A. Johnson, *Understanding Poverty in America*, BACKGROUNDER: EXECUTIVE SUMMARY (Heritage Found., Washington, D.C.), Jan. 5, 2004 (noting that material hardship—lack of food, housing, and clothing—does exist in the United States, but that "it is quite restricted in scope and severity").

[103] Three-fourths of remittance senders in one recent survey reported so ordering their finances. Suro, *supra* note 42, at 25. As one participant in Suro's survey reported, "Before anything, I send them the money because they count on it . . . . Then afterwards I pay my bills, my rent, but the first thing I do is send it." *Id.*; *accord* Torrisi, *supra* note 30, at 134 (noting that remittances "exacerbate [senders] own household economic problems").

banks and local elites will succeed in capturing the value associated with the securitization based reduced cost of capital. Remittances can reduce the incentive of recipient families to work, leading to remittance dependence and harming national growth. Finally, while remittances typically are sent family member to family member, collective remittances can fund home country improvement and development that would not take place without such *hermano lejano* support.

1. *Price of Goods*

Sudden riches can create many problems for an economy, and remittance-driven gains are no exception. Remittances are foreign-earned money that can raise the cost of goods in the recipient-country. The recipient country has not increased production, yet there is more money in circulation owing to the remittances; hence, prices rise. If the nation-state is seen in isolation, then such price increases owe themselves not to any improvement in the economy, but to an exogenous—arguably *false*—increase in purchasing power.[104] Recipient economies flush with remittance money become vulnerable both to inflation, particularly harmful to those not receiving remittances, and, through labor reduction, to falling exports as the economy reacts to the increased remittances. It is consequently clear that countries ignore at their own peril the economic challenges inherent when an economy is injected with extra capital divorced from national production.

The export and price effects of remittances can be illustrated through El Salvador's remittance experience. Following the 1992 peace agreement that ended the country's civil war, El Salvador experienced a period of rapid growth. The high consumption that marked the period "was to some extent facilitated and reinforced by the massive inflow of workers' remittances." Yet, these remittances were also "associated with an expansion of the money supply, higher domestic credit and high inflation until 1995."[105] Dollarization of the Salvadoran economy linked their

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[104] As is the case with sudden natural resource wealth (discoveries of gold or oil), "'Dutch disease's effects of remittances . . . [are] likely to be large in small economies." Ratha, *supra* note 19, at 7. Furthermore, remittances generally are unlike many other exogenous shifts in that they tend to "grow gradually over long periods," thus reducing Dutch disease effects. WORLD BANK, *supra* note 1, at 86.

[105] EL SALVADOR ECONOMIC MEMORANDUM, *supra* note 75, at 12. While El Salvador experienced higher domestic credit and inflation, even purely consumptive use of remittances "may stimulate development, especially if [remittances] are spent locally." *Outward Bound—Emigration*, ECONOMIST, Sep. 28, 2002, (Special Report), at 1. Consumptive remittance use will have a multiplier effect on the economy when it makes up for "insufficient demand" in the economy. WORLD BANK, *supra* note 1, at 124. Consumption driven commercial development often surprises visitors to San Salvador who are unprepared for the wealth on display in several of the newer shopping centers. The newest and most extravagant, La Gran Via and Multiplaza, opened in 2005, complete with extensive marble floors and upscale restaurants, and they join Galerias, a mall built around an existing mansion, as the high-end shopping centers. Tourists need to be mindful that "capital accumulation diverted to

inflation to our own,[106] but, arguably, remittances have played a role in reducing the international competitiveness of traditional agricultural exports.[107] With the receipt of remittances, rural Salvadoran families can choose *not* to work on large coffee and sugar *fincas* (large farms/plantations), forcing *finca* owners to rely upon Honduran immigrant labor.[108] Prices for goods also rise through remittance receipts. Dramatically, towns far removed from the capital city are able to support Western fast-food restaurants such as Pizza Hut, but less dramatically, remittance-backed demand can push up the costs of even basic supplies and food items.[109] For a country which only recently began to implement a very limited welfare system for the truly needy,[110] to the extent that remittances do not have a trickle-down effect, those who do not receive remittances are harmed by their relative worsening position compared to remittance-receiving families.[111]

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build ostentatious cities may lead to incorrect economic analyses in comparisons of the wealth of cities." PAUL BAIROCH, ECONOMICS AND WORLD HISTORY: MYTHS AND PARADOXES 108 (1993).

[106] El Salvador's transition from a local currency to U.S. dollars was facilitated by remittance-receipts which provided needed hard currency for the switch to a dollar economy. *See El Salvador: Dollars and Debts*, ECONOMIST, Apr. 8, 2000 (noting the hurdles of transitioning from local currency to U.S. dollars). For more on El Salvador's adoption of the dollar, see *El Salvador Learns to Love the Greenback*, ECONOMIST, Sep. 28, 2002.

[107] Remittances, by facilitating stronger bonds between *hermanos lejanos* and their family still living in El Salvador, may however simultaneously play a role in creating a new export market in "nostalgic goods." *The Role of Remittances in Leveraging Sustainable Development in Latin America and the Caribbean: Hearing Before the Subcomm. on Domestic and International Monetary Policy, Trade and Technology of the H. Comm. on Financial Services*, 110th Cong. (2007) (statement of Manuel Orozco), *available at* http://www.house.gov/apps/list/hearing/financialsvcs_dem/htorozco030707.pdf (testimony presented on March 6, 2007). The sale of such goods, whether in the form of Fernando Llort prints, artwork from La Palma, or La Alianza soccer jerseys, is on the rise and is another reminder of the continued importance *hermanos lejanos* give the country they left behind.

[108] Sarah Gammage, *El Salvador: Despite End to Civil War, Emigration Continues*, COUNTRY PROFILES, July 2007, http://www.migrationinformation.org/Profiles/display.cfm?ID=636; WORLD BANK, PROSPECTS, SOUTH-SOUTH MIGRATION AND REMITTANCES, http://econ.worldbank.org WBSITE/EXTERNAL/EXTDEC/EXTDECPROSPECTS/0,,contentMDK:21154867~pagePK:64165401~piPK:64165026~theSitePK:476883,00.html (follow hyperlink "(1) Bilateral Migration Matrix").

[109] Luis René Cáceres & Nolvia N. Saca, *What do Remittances Do? Analyzing the Private Remittance Transmission Mechanism in El Salvador* (IMF, Working Paper, 2005), *available at* http://www.imf.org/external/pubs/ft/wp/2006/wp06250.pdf.

[110] El Salvador's welfare program, Red Solidaria, was established in March 2005. CAROLINA ÁVALOS & CECILIA GALLARDO, SECRETARÍA TÉCNICA DE LA PRESIDENCIA, PROGRAMA RED SOLIDARIA, PROGRAMA SOCIAL DE ATENCIÓN INTEGRAL A LAS FAMILIAS EN EXTREMA POBREZA DE EL SALVADOR: DOCUMENTO TÉCNICO RED SOLIDARIA, app. 1 (2007), *available at* http://www.redsolidaria.gob.sv/especiales/cd/ (follow "documento" hyperlink). For more on Red Solidaria, see Tatiana Britto, *Conceptual and Operational Features of El Salvador's CCT Program* (United Nations Development Program, Working Paper Powerpoint, 2007), *available at* http://www.undp-povertycentre.org/paper-seminar/MissionTatiana.pdf.

[111] The remittance-receipt split in purchasing power is most dramatically evident in the classified ads for housing published by both *La Prensa Grafica* and *Diario Del Hoy*, both of which regularly feature numerous ads targeted explicitly at remittance-receiving families or at visiting *hermanos lejanos* seeking to provide for their parents or other family who they came to El Salvador to visit. Remittances "benefit particular households and communities which receive remittances, and—unless they generate significant multiplier effects—may lead to heightened inequality between remittance–rich and remittance–poor households." HOUSE OF COMMONS, *supra* note 65, at 61.

2. *Bank and National Borrowing*

For remittance-receiving countries, remittances are primarily a personal matter between senders and recipient families. However, by treating the predictable flow of remittances as an asset,[112] recipient country banks and governments can leverage remittances as collateral, reducing the cost of borrowing.[113] As the World Bank notes, "remittances are widely dispersed, . . . and for the most part, remittances avoid the government 'middleman.'"[114] Leveraging remittance flows enables governments and banks to benefit from the flow of many small transfers:

> For some recipient countries, remittances are large enough to have broader macroeconomic implications. By generating a steady stream of foreign-exchange earnings, they can improve a country's creditworthiness for external borrowing, and through innovative financing mechanisms (such as securitization), they can expand access to capital and lower borrowing costs.[115]

Remittance leveraging relies on the quantity and predictability of small transfers to provide loan collateral.

From the perspective of remittance senders and recipient families, there is nothing inherently wrong with the securitization of remittance flows, whether such remittance-backed borrowing is undertaken by recipient country banks or even governments.[116] Such borrowing could,

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Latin America's poor are bifurcated by remittances in ways that reveal the hard choices families make when considering emigration. In *Enrique's Journey*, based on a feature story series for which she won a Pulitzer, Sonia Nazario followed the footsteps of a Honduran boy as he crossed Mexico to reach his mother in North Carolina. SONIA NAZARIO, ENRIQUE'S JOURNEY: THE STORY OF A BOY'S DANGEROUS ODYSSEY TO REUNITE WITH HIS MOTHER (2007). The protagonist's mother had been forced to abandon her own children to seek work in the United States because in Honduras she did not make enough to feed or educate her children. *Id.* at 3–4. Work in the United States translated into remittance money for food, schooling, and even toys, but the most heart-breaking aspect of Nazario's reporting are the effects that growing up without their parents had on the children left behind. *Id.* at 11–12. And it is not limited to emotional damage; Nazario suggests that the gang problem plaguing many Central American countries is fueled in part by the hidden costs created by the effect of the departure of remittance-providing family members on children left behind. *Id.* at 24. Yet, by presenting the dramatically different housing quality that remittances enable, Nazario also shows the hardship faced by those not supported by family members who emigrated to the United States. *Id.* at 17.

[112] *See* Alvaro Lima & Peter Plastrik, *Leveraging Immigrant Remittances for Development*, NEW ENG. COMTY. DEVS. 2006, at 1, 3 (Federal Reserve Bank of Boston, Boston, Mass.) (explaining that customer loyalty and the fact that remittance flows "are not severely affected by economic downturns" make "banks . . . attracted to remittance flows").

[113] For more on securitization, see Suhas Ketkar & Dilip Ratha, *Development Financing During a Crisis: Securitization of Future Receivables* 21 (World Bank Policy Research Working Paper Series, Paper No. 2582, 2001) (discussing the securitization potential of global remittances using 1998 figures).

[114] WORLD BANK, *supra* note 1, at 105.

[115] *Id.* at 86; de Luna Martínez, *supra* note 1, at 29.

[116] For a technical explanation of how remittance cash flow securitization works, see Heather Hughes, *Understanding Securitization of Worker Remittances, in* MOBILISING CAPITAL FOR THE

for example, be directed towards pro-poor policies and programs. Even reducing the cost of national debt through remittance backing can help the remittance sending and receiving communities by allowing countries to keep more money for social programs. Thus, using remittance flows to lower debt payments arguably steers clear of the weak criticism that the government is using people's assets in a non-beneficial way. However, a stronger version of this critique focuses not only on how the leveraged borrowing is used, but also on the process by which such decisions are made. The argument: since the money underlying remittance flow belongs to remittance senders and recipients, the benefits that derive from the scale and predictability of remittances flows belong in some way to the community of senders and receivers. Yet, as Professor Heather Hughes observes, regarding remittance securitization:

> A tension exists between, on the one hand, any effort to pro-actively structure transactions to achieve certain collective, substantive ends and, on the other hand, respecting the results of market transactions entered into by developing region banks as necessarily representative of local interests as they define them. But at the same time it is not necessarily clear whose interests any given originating bank represents.[117]

Remittance transmitting banks, and the governments that use such banks, have a colorable argument that because they are facilitating such transfers they have a claim on the benefits from these flows. As will be discussed in Part III.A, remittance senders have seen the cost of sending remittances fall remarkably over the past decade, and, to the extent that banks are using gains from remittance-backed borrowing to pay for the reduction in cost to remittance consumers, banks have a corresponding claim on how remittance flows are leveraged.

3. *Work Incentives*

For receiving families, by making work less necessary and distorting the perceived return from work, remittance income can and does diminish the attractiveness of work. As the *Economist* observed, "[t]here may also be economic costs associated with reliance on remittances. Like any unearned wealth, they may foster idleness among those who benefit."[118] For Latin American countries, where the effect of work incentive data is available, "remittances have the effect of reducing the number of hours worked per week."[119] Income and substitution effects drive remittance-

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POOR—WHAT CAN STRUCTURED FINANCE CONTRIBUTE? (Ingrid Matthäus-Maier & J.D. von Pischke, eds., forthcoming 2008).

[117] *Id.* at 8.

[118] *The Importance of Remittances*, *supra* note 7.

[119] CLOSE TO HOME, *supra* note 5, at 31.

based work reductions:

> Remittances may tend to reduce the supply of labor provided by remaining household members, who may take a portion of the remittance gain as leisure. This *income effect* is generally not a concern, because it represents part of the welfare gain from remittances. By contrast, remittances may change the return to supplying labor, for example, if the migrant conditions the remittance on low household income. Such a *substitution effect* will reduce the welfare gain from remittances by distorting household labor decisions.[120]

While the income effect is a welfare gain to remittance-receiving families, the income effect *is* a concern from a national and community development concern. Remittance recipient "supplemental" leisure lowers national production (subject to offset by increased spending made possible by the remittances) and, by reducing the demand for employment, can lead to elevated wages—relative to the wage-rate absent remittances—that narrow the range of business types that can earn a profit.

Suppose a remittance recipient family is fortunate and receives $500 monthly from their *hermano lejano*. Family members quite rationally might decide it is not worth working for a mere $185 per month—their standard of living without accounting for leisure would be better if they worked, but once leisure is taken into account, for some it can make sense to rely solely on the remittances.[121] The disincentive to work can be exacerbated where the remittance sender is motivated to make sure basic needs are met for family members back home. In turn, this would reduce remittance sending were remittance-recipients able to meet some of their needs through their own labor. Seen negatively, the substitution effect is a case of recipient family members free-riding off the work of the remittance sender. But such "free-riding" arguably reflects shared family values. If a remittance sender is in a country where $185 can be earned through a few days work and receivers would have to work all month for the same amount of money, though the *hermano lejano* ultimately becomes the burdened family member, this household labor distortion might be the optimal ex ante, pre-emigration, allocation of labor. Even though the *hermano lejano* conditions remittance sending on family need and would lower the amount sent if need fell, the remittance sender may support the decision of family members not to work in the home country's lower

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[120] WORLD BANK, *supra* note 1, at 123–24 (footnote omitted).

[121] In some misleading respects this is similar to the problematic aspects of welfare Charles Murray dramatized through his depiction of the choice to work and marry for his hypothetical couple, Harold and Phyllis. CHARLES MURRAY, LOSING GROUND 154–62 (1984). Such an analogy, however, is misleading because remittance income is being "earned" by a member of the family, albeit one working in another country.

paying labor market.

Yet worthy of note, the intangible consequences of remittance-driven work disincentives are hard to capture quantitatively. Work disincentives do not simply lower the amount produced by recipient countries; reduced need to work can alter the social fabric in countries where a large percentage of people receive remittances. "[A] number of development practitioners have noted the negative social implications associated with the fact of important segments of the younger generation becoming used to receiving steady flows of remittances without any effort on their part," a trend which can impact work incentives and life choices.[122]

The Salvadoran government faces a youth gang problem that not only is a destabilizing force in the country but also is another connection between El Salvador and the Salvadoran expatriate community.[123] Mara Salvatrucha, "The Most Dangerous Gang in America" according to *Newsweek*, operates across the United States and Central America, with a strong connection to El Salvador.[124] While MS-13, as it is also known, is more a byproduct of limited opportunities and ripple effects from the Salvadoran civil war, remittances may play a role in acculturating youth to not working traditional jobs to earn a living. While gang membership undoubtedly reflects much more than an effect of remittances, an exaggerated culture of consumerism is a likely offshoot of high remittance receipts.

In considering the *potential* work disincentives associated with remittances, perspective must be maintained regarding the relative scope of the problem and the room for leisure choices in recipient countries. Though remittance-recipients are subject to work disincentive concerns, the effect of such disincentives are rarely raised when another group, *hijos de papi* (Salvadoran slang for the children of the rich who live off the largess of their parents), are considered. The exclusive examination of the income of the poor remittance-recipients and simultaneous lack of examination of the income of the wealthy should not be surprising, but should also not distort how the choices facing remittance-recipients are understood.[125] The many effects remittances can have make it impossible to closet the impact of remittances to a given set of inevitable consequences. Thus, in the same recipient-country, some families' remittances will help put food on the table, while, for others, remittances may lead to voluntary underemployment or excessive consumerism. It is, however, important not to conflate limited or theoretical remittance ills

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[122] CLOSE TO HOME, *supra* note 5, at 2.

[123] *See* Coffino, *supra* note 23, at 203 (noting that "criminal violence continues to wreak havoc" in El Salvador).

[124] Arian Campo-Flores, *The Most Dangerous Gang in America*, NEWSWEEK, Mar. 28, 2005.

[125] Ezra Rosser, *Obligations of Privilege*, 32 N.Y.U. REV. L. & SOC. CHANGE 1, 2 (2007).

with actual rejection of work or rampant consumerism. "In Central American countries, remittances may help households cope beyond meeting their basic food needs, but they will still need additional income in order to meet other necessities."[126] Manual Orozco estimates that "the cost of living in Latin American countries is at least two or three times the average amount received in remittances."[127] As one Salvadoran quoted in the *Nation* stated, "I completely disagree that *remesas* make bums out of us."[128] Even with remittances, most remittance-recipients are struggling to provide for the basic needs of their family and are not in a position to make an effort–leisure trade-off because of remittances.

D. *Ownership of Remittances*

The danger when considering the anti-poverty or development potential of remittances is that researchers, and, more importantly policy makers, might forget that remittances are more than simply monetary flows; that remittance transfers belong to each migrant and recipient family. So far this paper has highlighted the scale and anti-poverty aspects of remittances—an emphasis that follows from the existing research on remittances globally. For though there is variation country-to-country,[129] generally, "[w]hile the impact of remittances on growth is unclear, remittances do play an important role in reducing the incidence and severity of poverty (with no significant effect on income inequality)."[130] And while the focus is about to shift to structural impacts of remittances and development potential, it is important to approach such considerations from the right perspective. In thinking about remittances, it is the effect of "personal flows from migrants to their friends and family" being discussed, and, as such, remittances "should not be taxed or directed to specific development uses."[131] As a World Bank remittance overview states:

> In policy circles it is often debated whether there may be ways to encourage the use of remittances for more productive purposes than for consumption or for purchasing land and houses. While such a question may be appropriate for official aid flows, it is not entirely appropriate for personal remittance flows.[132]

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[126] OROZCO, *supra* note 41, at 2.

[127] *Id.*

[128] Peter Davis, *Letter from El Salvador: At the Edges of Empire*, NATION, July 11, 2005, at 18.

[129] For example, in El Salvador, remittances do reduce inequality. *See supra* note 73 and accompanying text.

[130] WORLD BANK, *supra* note 1, at xiii.

[131] Ratha, *supra* note 19, at 1. It is worth noting that the argument that remittances themselves should not be taxed or directed to specific uses does not necessarily undercut the argument that the financing attendant to the remittance flows *should* be directed to specific development uses.

[132] Maimbo & Ratha, *supra* note 5, at 7.

And from the Inter-American Dialogue Task Force on Remittances:

> In addressing these issues, the task force started with a central premise—that the sending of remittances is unambiguously a private matter and that the basis of any constructive public policy or program is acknowledgment of the private nature of these flows. Every member of the task force agreed that remittances should not be taxed. They also agreed that remittances should not be directed to government programs . . . .[133]

Given the amount of money being sent North to South, from one developing country to another, as well as the increasing recognition of the scale of these remittance transfers, the temptation to attempt directing these flows to better uses is ever-present.[134] But with the determination of "better use" by definition not following the sender's priorities (except perhaps in the case of money sent by hometown associations), the paternalism that underlies this temptation ought to be troubling. Attempting, to direct remittance use, now that the power of remittances is receiving attention, may have the perverse effect of diminishing remittances or at least driving remittance sending underground. More fundamentally, directing remittance use is like mandating that purchasers *must* buy apples instead of oranges. For, just as the decision between apples or oranges is rightly understood as being within the province of the purchaser, how migrants and their family members use their remittance money is equivalently their call.

III. REMITTANCE COSTS, REGULATION, AND TAXATION

Remittance awareness has led to a number of remittance policy challenges which owe themselves to rent-seeking efforts by money transfer organizations and politicians. The primary challenges facing remittance growth and effectiveness are lowering transfer costs and dealing with regulatory threats. Through transfer costs and burdensome regulation, businesses and governments seek to take a bite out of the money being sent by immigrants to loved ones.

"Rent-seeking" describes efforts by individuals or institutions to capture the value created by an activity in a way that does not add value. This can be contrasted with "profit-seeking" activities which also seek to capture returns or rewards, but do more than simply skim off value.

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[133] INTER-AMERICAN DIALOGUE, *supra* note 4, at 4.

[134] WORLD BANK, *supra* note 1, at xiii ("Despite the prominence given to remittances from developed countries, South-South remittance flows make up between 30 and 45 percent of total remittances received by developing countries, reflecting the fact that over half of migrants from developing countries migrate to other developing countries.").

Financial intermediaries in the transfer of money from senders to recipients seek to capture supra-normal profits through information asymmetries and other market failures. Similarly, politicians seek to use the choice of immigrants to send money to loved ones as an opportunity to extract a tax from the immigrant population. In this Part, transfer costs and regulatory effects are explored in turn.

Financial intermediaries stand in the middle of the remittance relationship, charging a wide range of fees to deliver money (or remitted goods). The range in fees suggests more is at play than simply market differentiation. Market failure, or at least market opportunism, seems to play a significant—though declining—role in preventing a decline in remittance costs. If there is not a competitive remittance market, the question becomes whether a laissez-faire approach emphasizing the power of the invisible hand, market intervention, or legal regulation protective of *hermanos lejanos* is the appropriate response to the anti-competitive forces affecting the remittance market.

A. *Remittance Transfer Costs*

According to Adam Smith, the community benefits from the individual self-interested actions of each individual, leading to socially optimal outcomes solely through the workings of the market. Faith in the power of the market is more justified when the market reflects competitive pricing:

> An industry in which there are so many firms that no one of them can influence the market price by its individual decisions and in which there are so many consumers that the individual utility-maximizing decisions of no one consumer can affect the market price is called a *perfectly competitive industry*.[135]

Were the remittance-sending market perfectly competitive, ignoring for the moment forms of product differentiation such as time to delivery, the observed differences in cost of sending remittances should collapse to a single price point that could be expected to be at or below the current lowest remittance-sending fees.[136] This is clearly not the case. However,

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[135] ROBERT COOTER & THOMAS ULEN, LAW AND ECONOMICS 33 (4th ed. 2004).

[136] Assistant Treasury Secretary Wayne A. Abernathy argued in testimony before Congress that discussion that focuses on cost alone can be incomplete:

> [R]emittance providers compete for business in many ways. Cost is one factor. Other factors are speed, reliability, security, and convenience. Some distribution services have a higher price than others. But they differ in other ways. They may be offering more services. For example, some non-bank services charge more than banks, but they may be more convenient to use, especially for the recipients. In some countries, banks simply do not have branches in rural communities. Using a bank might cost the sender less, but it might require the recipient to walk several miles to the nearest bank, rather than to the nearest

on both the "firm" and "consumer" sides of the supply-demand curves there are some promising reasons to believe that the remittance-sending industry has become, and will continue to become, more competitive.[137]

The size of the U.S. outbound remittance market has dramatically expanded. By 2002, sending from the United States through remittances was thirty-five times as large as it was in 1970, based purely on official balance of payments statistics.[138] According to a U.S. Federal Reserve study, "[t]he remittance market is increasing rapidly in volume and international importance," and in 2004 included over $30 billion sent from the United States to Latin America.[139] Even with a more narrow focus on the remittance market to El Salvador, the increasing volume of the market is impressive.[140]

Just as demand has soared, additional organizations and companies have stepped into the remittance market, constraining through their presence the power of the earlier intermediary firms to dictate the market price for sending remittances. In 2000, Manuel Orozco wrote an informative article that marched through the various mechanisms for sending remittances and the charges for sending $100, $200, or $300 using each mechanism.[141] Orozco presented the advantages/disadvantages and

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> distribution agent of the non-bank. Which costs more? Hard to say just by looking at the price of the transmission in isolation.

Remittances: Reducing Costs, Increasing Competition, and Broadening Access to the Market: Hearing Before the H. Comm. on Financial Services, 108th Cong. 2 (2003) (statement of Wayne A. Abernathy, Assistant Treasury Secretary); *see also Remittances: Access, Transparency, and Market Efficiency—A Progress Report Hearing Before the S. Comm. on Domestic and International Monetary Policy, Trade, and Technology of the H. Comm. on Financial Services*, 110th Cong., 10, 65 (2007) (statement of Mark Thompson, Western Union Company) (arguing that "[p]rice is not the sole factor considered by consumers" and that "too often remittances are viewed by policymakers as a commodity").

[137] Price competition could inspire service competition, and vice versa, ideally with the winning mix of firms offering a range of price points that allow remittance senders the ability to select their preferred mix of service and expense.

[138] Dilip Ratha, *Workers' Remittances: An Important and Stable Source of External Development Finance*, *in* REMITTANCES: DEVELOPMENT IMPACT AND FUTURE PROSPECTS, *supra* note 5, at 19, 26 fig.1.7; *see also* Acosta et al., *supra* note 20, at 958 (finding that "remittance flows to Latin America have increased twenty-fold since 1980").

[139] Hilgert et al., *supra* note 24, at 2.

[140] On the supply side, the fees for remittances reflect both the broader and more narrow markets as some remittance intermediaries operate solely with the Salvadoran community and others deliver to many other countries as well.

[141] Manuel Orozco, *Remittances and Markets: New Players and Practices* (Inter-Am. Dialogue and The Tomás Rivera Policy Inst., Working Paper, 2000), *available at* http://www.microfinancegateway.com/files/21609_remit_and_market.htm [hereinafter *Remittances and Markets*]. In 2002, Orozco came out with another report, studying nearly eighty remittance companies, again finding sending costs were too high. MANUEL OROZCO, MULTILATERAL INVESTMENT FUND, THE INTER-AMERICAN DEV. BANK, ATTRACTING REMITTANCES: MARKET, MONEY AND REDUCED COSTS (2002) [hereinafter ATTRACTING REMITTANCES], *available at* http://www.rree.gob.sv/sitio/img.nsf/vista/documentos/$file/market%20money%20and%20costs.pdf. For more on IRNet and the efforts credit unions have made to enter the remittance market, see ANNA CORA EVANS & JANETTE KLAEHN, WORLD COUNCIL OF CREDIT UNIONS, INC., A TECHNICAL GUIDE TO REMITTANCES: THE CREDIT UNION EXPERIENCE (Brian Branch ed., 2004), *available at* http://www.woccu.org/functions/view_document.php?id=remittances_techguide.

costs charged by Western Union, MoneyGram, the U.S. Postal Service's Dinero Seguro program, Gigante Express, a selection of courier agencies, and IRNet, a credit union alternative to sending remittances that channels money through Citibank.[142] Since 2000, in addition to the money transfer operations (MTO) which Orozco surveyed, "a new crop of options has sprung up, offering more choices and often lower prices."[143] These new options must compete with both formal and informal ways of remitting money.[144] In addition to the effect this has on *hermanos lejanos*, as Sarah Gammage, an Economic Policy Institute research associate, recently observed, "[t]he proliferation of remittance transfer agencies is also changing the financial landscape in El Salvador."[145]

The combined effect of these demand and supply changes has made "sending money across borders . . . much cheaper and more accessible than it used to be."[146] "[I]ncrease in competition in the remittance market has resulted in a decrease in the cost of sending remittances from the United States."[147] The U.S. Government Accountability Office continued in a November 2005 report on remittances, "the average cost of sending $250 [to LAC countries] has fallen from 12.5 percent in 2003 to 7 percent in 2005."[148] Despite the report's next sentence caveat that "price reductions have leveled off recently,"[149] this rapid change, arguably reflecting the power of the invisible hand, deserves to be celebrated! As Donald Terry, Manager of the Multilateral Investment Fund, stated in a *San Francisco*

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[142] ATTRACTING REMITTANCES, *supra* note 141, at 3–9; *Remittances and Markets*, *supra* note 141.

[143] Carolyn Said, *Remittance Market Draws Major Players: Banks, Cards, Credit Unions Enter the Fray*, S.F. CHRON., July 16, 2006, at F3. The U.S. Government Accountability Office, in November 2005, released a report that both updates Orozco and describes new remittances mechanisms by type. U.S. GOV'T. ACCOUNTABILITY OFFICE, INTERNATIONAL REMITTANCES: INFORMATION ON PRODUCTS, COSTS, AND CONSUMER DISCLOSURES (2005), *available at* http://www.gao.gov/new.items/d06204.pdf.

[144] For a history and comparison of different global informal money transfer systems, see U.N. Econ. & Soc. Affairs, *Discussion Paper: Informal Money Transfer Systems: Opportunities and Challenges for Development Finance*, 13, U.N. Doc. ST/ESA/2002/DP/26 (Nov. 2002) (*prepared by* Leonides Buencamino & Sergei Gorbunov) [hereinafter *Informal Money Transfer Systems*]; *see also* Sarah Gammage, *Viajeros y Viajeras en El Salvador: Connecting Worlds, Cementing Ties* (2003), *available at* http://www.rci.rutgers.edu/~migrate1/ResearchPapers/GammageWorkingPaperNo.2.pdf (discussing the informal couriers serving the Salvadoran community).

[145] Gammage, *supra* note 34, at 8.

[146] Patrick K. Barron, First Vice President and Chief Operation Officer, Fed. Reserve Bank of Atlanta, Speech at the Sumaq Summit, International Business Strategies in Latin America: Lowering Barriers to Cross-Border Payments (May 5, 2004), *available at* http://www.frbatlanta.org/invoke.cfm?objectid=5573C526-DDA4-D25C-A89690CFD9D07A37&method=display.

[147] U.S. GOV'T. ACCOUNTABILITY OFFICE, *supra* note 143, at 22. Given the scale of remittance sending, the amount saved through cost declines is also substantial. For Latin America these cost reductions meant that the "amount saved in transfer fees in 2005 alone was approximately $5 billion—far exceeding total foreign aid to the region that year." INTER-AMERICAN DIALOGUE, *supra* note 4, at 5.

[148] U.S. GOV'T. ACCOUNTABILITY OFFICE, *supra* note 143, at 23.

[149] *Id.*

Chronicle article, remittance "[c]osts used to be outrageous; now they're simply too high."[150]

Market forces may lower remittance costs still further. As reported in the *Economist*, "not so long ago banks steered clear of remittances . . . . Today big banks, hungry for new growth areas, are clamouring to offer wire-transfer services to immigrants."[151] Eager to attract new clients, banks have even offered zero-cost remittance sending,[152] a move which if replicated across all the markets would undermine the claim—such as that made in an English white paper on the topic—that, "the market for remittance services is not working efficiently."[153] Tellingly, the English white paper on remittances, after noting the remittance market inefficiency, nevertheless concluded that "[c]ompetition amongst service providers is the best way of reducing transactions costs."[154]

B. *Remittance Regulation*

Before concluding that the market alone will adequately lower remittance costs, it is worth exploring the government's role in determining remittance costs. At the 2004 Summit of the Americas of the Organization of American States, "the presidents of the hemisphere declared the need to reduce remittance transaction costs by 50 percent in the next five years."[155] Such a declaration begs the question, what is the proper role for government in tackling remittance costs? Even if it is accepted that there is "lack of competition" in the remittance market and that high costs "act as a type of regressive tax on international migrants,"[156] it does not necessarily follow that government should actively seek to lower remittance costs. The role of the state is complicated where remittances are concerned because remittances, by definition, involve two governments, and therefore, if the state is going to play a role in reducing costs, "[c]ooperation between financial authorities in sending and recipient

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[150] Carolyn Said, *Costs of Remittances Strains Latinos: Sending Cash to Relatives Back Home is a Process Filled with Fees and Hassles*, S.F. CHRON., July 16, 2006, at F1; *accord* de Luna Martínez, *supra* note 1, at 30 ("[F]ees paid by senders and recipients of remittances are still high.").

[151] *Into the Fold: Americans Without Bank Accounts*, ECONOMIST, May 6, 2006.

[152] *Id.* ("Some banks try to woo the unbanked by offering free remittances."). Banks that reach out to remittance-sending communities are likely to find a client base with unmet needs for a wide range of financial products, from home loans to insurance, that "financial institutions can take advantage of." OROZCO, *supra* note 41, at 18; *see also* Lima & Plastrik, *supra* note 112, at 1 (noting that some observers argue that the remittance market could be "one way to draw immigrants into the financial system"). For more on lowering barriers that the poor face in accessing financial services, see Michael S. Barr, *Banking the Poor*, 21 YALE J. ON REG. 121 (2004).

[153] HOUSE OF COMMONS, *supra* note 65, at 58.

[154] *Id.* at 59.

[155] MANUEL OROZCO, ORGANIZATION OF AMERICAN STATES, REMITTANCES TO LATIN AMERICA AND THE CARIBBEAN: ISSUES AND PERSPECTIVES ON DEVELOPMENT 1 (2004), *available at* http://www.frbatlanta.org/news/CONFEREN/payments04/orozco.pdf.

[156] Adams, Jr. & Page, *supra* note 39, at 1660.

countries is required."[157] According to José de Luna Martínez:

> Given the multiple components of remittances fees, it is clear that efforts in developing (recipient) countries alone will not be sufficient to address the high remittance costs that senders and beneficiaries still pay. Efforts are needed in both sending and receiving countries in order to bring down remittance fees. A common approach and coordination between authorities of sending and recipient countries is needed to overcome factors that may hinder fees reduction, such as low competition among service providers, poor information disclosure for senders and recipients, poor payment system infrastructure that discourage [sic] migrants from using formal financial institutions to send money home, restrictions for cross-border operations, lack of trust of senders and recipients with financial institutions, etc.[158]

What is clear from de Luna Martínez's call for coordination is that remittance costs are impacted by a large number of policy choices and implicitly that an isolated regulatory change will not be sufficient by itself. Simple changes—such as allowing recipients to accept remittances in U.S. dollars and hold them until they can find the best exchange rate rather than being dependent on the remittance transfer operator[159]—are a start. So too is encouraging those who have a stake in remittance costs to become involved in helping ensure market strength is brought to bear on high-cost remittance firms by educating remittance consumers of their options when choosing how to send money to loved ones.[160]

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[157] de Luna Martínez, *supra* note 1, at 31.

[158] *Id.* at 18.

[159] According to Yoko Niimi & Çağlar Özden, "money transfer fees and the presence of dual exchange rates reduce remittances." Niimi & Özden, *supra* note 97, at 3 (reporting the results of a study by Freund and Spatafora (2005)). By allowing recipients to hold U.S. currency, a market for remittance currency exchange can be created; without such allowance, recipients are subject to remittance operators setting exchange rates. *See* de Luna Martínez, *supra* note 1, at 19 (noting that allowing U.S. currency to be held has been advocated by those looking for ways to lower remittance costs but also noting that "in practice most developing countries already allow their citizens to open accounts in U.S. dollars or any other major international currency").

[160] A number of initiatives aimed at low-income individuals outside the remittance context have tried to reduce the amount the poor are paying for goods or services by providing low-income purchasers with additional information in an effort to increase market transparency. Matt Fellowes, *Making Markets an Asset for the Poor*, 1 HARV. L. & POL'Y REV. 433, 453 (2007). With remittances, as José de Luna Martínez argues, NGO-driven education can be particularly important on the sending side:

> Because information is critical for competition in the marketplace, authorities, but also NGOs in other developing countries could consider playing an active role in collecting, comparing and disseminating information on a regular basis about the fees of different money transfer products. This may help migrants—in particular those that do not speak the language of their host country—to make better informed choices.

Overshadowing such piecemeal changes is the larger challenge of balancing anti-money laundering, anti-terrorist finance goals with appropriate and realistic regulation of remittance sending. Remittances naturally raise concerns of money-laundering and even terrorism. Growing awareness of the scale of remittance sending, and of the multitude of mechanisms available to send remittances has raised concerns that besides immigrants sending money to family members, others are using the same channels to launder money or finance terrorist activities.[161] In the wake of 9/11, the United States and other governments became more interested in tracing international transactions and began cracking down directly or indirectly (through banks) on informal remittance operations.[162] Such regulation threatens to not only raise market costs, but also to make tracking small international monetary flows such as remittances harder, not easier.[163]

Post-9/11 regulation and regulatory enforcement imposes a one size (large) fits all model on licensed remittance operators, who are required to keep costly records and be well capitalized.[164] One perspective is that of Donald Terry, Manager of the Multilateral Investment Fund at the Inter-American Development Bank. Terry believes that the United States "decided that we have to fight terror with error."[165] According to a survey of formal sector remittance firms, regulations are having a negative effect on their business:

> The four largest obstacles to doing business are related to the regulatory regime in the U.S., either directly or indirectly. The largest problem is getting access to maintaining or

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de Luna Martínez, *supra* note 1, at 19.

[161] Such terrorism concerns need not correspond with true dangers; according to Mary De Ming Fan, "[j]uxtaposing undocumented immigration with terrorism produces an illusory correlation," negatively effecting national policy towards immigrants. Mary De Ming Fan, *The Immigration-Terrorism Illusory Correlation and Heuristic Mistake*, 10 HARV. LATINO L. REV. 33, 33, 46 (2007).

[162] *Informal Money Transfer Systems*, *supra* note 144, at 1 (noting that after 9/11 informal money transfer systems "have come under intense scrutiny by domestic and international law enforcement authorities").

[163] This dual danger of rising costs and remittances pushed to informal channels through heightened regulations should not be overstated; paradoxically the post-9/11 regulations have been coupled with simultaneous significant remittance price decreases. Nevertheless, even non-libertarians should bear in mind presidential candidate Ron Paul's written statement given at a recent House remittances hearing: "[t]he worst thing Congress could do is intervene in an overly forceful manner and undo all the good things that have been done so far." *Remittances: Access, Transparency, and Market Efficiency—A Progress Report: Hearing Before the Subcomm. on Domestic and International Monetary Policy, Trade, and Technology of the H. Comm. on Financial Services*, 110th Cong. 24 (2007) (opening statement of Rep. Ron Paul, Member, Subcomm. on Domestic and International Monetary Policy, Trade, and Technology) (submitted as a written statement).

[164] Nikos Passas, *Terrorism Financing Mechanisms and Policy Dilemmas*, *in* TERRORISM FINANCING AND STATE RESPONSES 21, 35 (Jeanne K. Giraldo & Harold A. Trinkunas eds., 2007).

[165] Donald Terry, Remarks at American University Law Review's 2007 Symposium: A World on the Move: Legal Perspectives on a New Era of International Migration (Feb. 15, 2007) (notes on file with author).

> opening accounts with U.S. banks. Banks are the only way for remittance firms to access payment and settlement systems and to maintain transaction accounts and as such a crucial component in a remittance system.[166]

Such an industry position may not be surprising, but in this case may not be that far from the mark. In a chapter entitled, "Terrorism Financing Mechanisms and Policy Dilemmas," Nikos Passas argues American "regulation is missing its target" because by imposing excessive regulatory burdens, small corner stores and other informal remitters are forced underground through this "de facto 'criminalization' of informal remitters."[167] Remittance businesses typically collect money from immigrants and disperse money either directly or indirectly through an agent to recipients, doing so by grouping individual transfers using business accounts in major banks. Directly, "[t]ighter regulations and compliance with new anti-money-laundering legislation have raised MTO costs of doing business."[168] Indirectly, money transfer organizations, also face "a significant increase in the regulatory scrutiny of banks that provide services to MTOs, [with] a growing number of banks . . . choosing not to do business with MTOs rather than absorb the higher management costs and increased risk."[169] When commercial banks lock out formal sector remittance business accounts "in response to tight anti-money laundering regulations and fear of bad publicity,"[170] competition in the sector can decline, harming remittance businesses and remittance senders.[171]

The greatest impact of heightened regulation may not be on price, but on efforts to prevent terrorist financing and money laundering. The ability of governments to identify and track suspicious international transactions depends on those transactions taking place through channels the government is monitoring.[172] By raising the cost and hassle of sending money through banks or licensed money transfer organizations, regulations which are overly burdensome, drive remittance senders to use informal

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[166] OLE E. ANDREASSEN, REMITTANCE SERVICE PROVIDERS IN THE UNITED STATES: HOW REMITTANCE FIRMS OPERATE AND HOW THEY PERCEIVE THEIR BUSINESS ENVIRONMENT 9 (World Bank Financial Sector Discussion Series, 2006) (survey excludes Western Union and Moneygram).

[167] Passas, *supra* note 164, at 35.

[168] INTER-AMERICAN DIALOGUE, *supra* note 4, at 8.

[169] *Id.*; *see also Remittances: Access, Transparency, and Market Efficiency—A Progress Report: Hearing Before the Subcomm. On Domestic and International Monetary Policy, Trade, and Technology of the H. Comm. on Financial Services*, 110th Cong. 6 (2002) (testimony of Tom Haider, Vice President and Chief Compliance Officer Moneygram International) (citing the challenge of securing and retaining a bank account as a "pressing issue" for remittance firms).

[170] de Luna Martínez, *supra* note 1, at 24 n.19.

[171] ANDREASSEN, *supra* note 166, at 15 (describing the "large efficiency loss due to the regulatory regime" that can come from excessive regulation).

[172] *See* Passas, *supra* note 164, at 35 (noting that regulations imposing "unmanageable burdens" result in "evasion and non-compliance").

mechanisms which do not report their activities to regulatory agencies.[173] As Nikos Passas describes, "unmanageable burdens for private entities or the government agencies that regulate them" lead predictably to "evasion and non-compliance."[174] Passas captures the idea that not only can regulatory burdens be unmanageable for businesses, but also for the agencies with oversight authority.[175] There are alternatives: for example, Passas suggests that "intelligence-led and risk-based" regulation and enforcement, of the sort practiced by Great Britain, could improve targeting "without driving everyone underground."[176] Intelligence-led enforcement is particularly important given the impossibility of "[a]pplying know-your-customer rules to millions of tiny [remittance] transactions."[177] While a laissez-faire approach to the remittance market is not appropriate, neither is an approach which undoes the market's success in lowering remittance costs.[178]

Those who support remittance-promoting policies—motivated by poverty reduction or development potential, or simply fighting for the rights of migrants to care for their loved ones—need to frame their critiques of the current regulatory environment as a matter of degree and implementation rather than a rejection of all oversight. Given the ease with which money-launderers and terrorists (there are important differences, but regulation is generally targeting both groups simultaneously) can manipulate the "formal and informal global financial system,"[179] policymakers "arguably should refrain from over-committing efforts to areas with diminishing returns."[180] According to a survey of remittance organizations, there is "a strong dissatisfaction with what is perceived as close oversight of formal remittance firms but no oversight or

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[173] *See Informal Money Transfer Systems*, *supra* note 144, at 8 ("Overly harsh government interference in the remittance process could lead migrants to send a higher share of remittances through informal channels, the opposite of the original initial intent."); Andreassen, *supra* note 166, at 10 ("[I]f being formal entails major obstacles to doing business, then informal competitors gain even more of an advantage."); HOUSE OF COMMONS, *supra* note 65, at 55 ("Migrants' reasons for preferring informal channels include considerations of cost, speed, ease of making and receiving the transfer, coverage within the home country, and greater confidence and trust in the service provided.").

[174] Passas, *supra* note 164, at 35.

[175] *See* INTER-AMERICAN DIALOGUE, *supra* note 4, at 8 (noting that enforcement of legitimate businesses wastes resources of regulators, raises business costs, and causes costs to rise for low-wage immigrants sending remittances).

[176] Passas, *supra* note 164, at 35.

[177] *The Importance of Remittances*, *supra* note 7.

[178] *See* Passas, *supra* note 164, at 21 ("Financial controls are an essential and indispensable counter-terrorism tool . . . .").

[179] Jeanne K. Giraldo & Harold A. Trinkunas, *The Political Economy of Terrorism Financing*, *in* TERRORISM FINANCING AND STATE RESPONSES 7, 11 (Jeanne K. Giraldo & Harold A. Trinkunas eds., 2007).

[180] Raphael Perl, *Anti-Terror Strategy, The 9/11 Commission Report, and Terrorism Financing: Implications for U.S. Policy Makers*, *in* TERRORISM FINANCING AND STATE RESPONSES 247, 258 (Jeanne K. Giraldo & Harold A. Trinkunas eds., 2007) (noting the "increasing financial and technological sophistication of our adversaries and the multiplicity of fund transfer methods").

attempts to regulate informal firms, which is perceived to prevent a level playing field and create a competitive disadvantage to the firms that are appropriately licensed."[181] Industry dissatisfaction must be taken with a grain of salt considering its self-serving nature. Nevertheless, overly burdensome regulations can move the remittance market underground,[182] imposing a range of costs on those families connected in part by remittances.[183]

C. *Taxation of Remittances*

The greatest potential regulatory threat to remittances is remittance taxation. Just as overly burdensome regulation of licensed remittance firms can drive remitters to seek informal channels, taxation of remittances, by either sending or receiving countries, would have the same effect. Taxing remittances is attractive to politicians in sending countries because such taxation targets "others" and not constituents.[184] Proponents of remittance taxation gloss over the many ways immigrants contribute to the country where they work.[185] They fail to see that such taxation does not merely ensure immigrants pay their fair share for services and benefits received from their, albeit somewhat reluctant, host country.[186]

1. *Fiscal Impact of Immigrants*

My focus is remittances and not taxation, but given the amount of disinformation (and arguably xenophobia) regarding use of government services by immigrants relative to their payment of taxes, unfortunately it

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[181] ANDREASSEN, *supra* note 166, at 10 (survey excludes Western Union and Moneygram).

[182] *Informal Money Transfer Systems*, *supra* note 144, at 5 (arguing that regulatory deficiencies such as "extensive government intervention" and "repressive financial policies" are the "primary reasons for leakages from formal to informal channels").

[183] HOUSE OF COMMONS, *supra* note 65, at 60 (arguing, in the context of informal mechanisms, that governments ought to "ensure that regulatory solutions are proportionate to the risks and sensitive to the possible impacts on those who rely on remittances").

[184] Because the "others" in this case are often—but not always—non-citizen immigrants, taxes not only can target "others" but also disfavored immigrants. Mary De Ming Fan, writing generally about immigrant-targeted regulation, explains, "[i]n legislative dialogue, there is a danger that heuristics of mistrust and fear will be deployed against those who are unrepresented or underrepresented because there is not the typical voter check to induce more careful constructs." De Ming Fan, *supra* note 161, at 46.

[185] *See, e.g.*, *Issues Regarding the Sending of Remittances: Hearing Before the Subcomm. on Banking, Housing, and Urban Affairs*, 107th Cong. 3 (2002) (statement of Rep. Luis V. Gutierrez) ("These people came here seeking a better way of life and, indeed, they are making life better for all of us.").

[186] *See*, *e.g.*, Brenda Walker, *Should Immigrants Be Taxed?*, WASH. TIMES, Dec. 2, 2002, at A19 (proposing a remittance tax to fund U.S. hospitals near the U.S.-Mexico border, arguing "[t]axing remittances 10 percent to 15 percent per transaction would be fair because the cost would fall on those who benefit"); *see also* Sue Kirchhoff, *Immigration Debate Squeezes Some Businesses; Cities, States Passing Rash of Laws on Illegal Aliens*, USA TODAY, Mar. 13, 2007, at 1B (reporting on a remittance tax proposal introduced before the Texas legislature under the theory that not raising such tax money would not be "fair to everyone").

is worth briefly highlighting that immigrants do pay more than their fair share. Professor Francine J. Lipman introduces her recent study on the topic:

> Many Americans believe that undocumented immigrants are exploiting the United States economy. The widespread belief is that "illegal aliens" cost more in government services than they contribute to the economy. This belief is demonstrably false. "[E]very empirical study of illegals' economic impact demonstrates the opposite . . . : undocumenteds actually contribute more to public coffers in taxes than they cost in social services."[187]

Later in the same article, after contrasting the many taxes undocumented immigrants pay[188] with legal limitations on the ability of undocumented immigrants to take advantage of government programs (which the rest of us take for granted),[189] Lipman observes, "undocumented immigrants provide a fiscal windfall" to American citizens.[190] Lipman's conclusions echo those of nearly every other study that similarly concluded that the benefits to native-born Americans of

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[187] Lipman, *supra* note 29, at 1–2 (footnotes omitted) (quoting an earlier study by Peter L. Reich, *Public Benefits for Undocumented Aliens: State Laws Into the Breach Once More*, 21 N.M. L. REV. 219, 244–46 (1991)).

[188] Lipman, *supra* note 29, at 5 (footnotes omitted) ("[E]ach year undocumented immigrants add billions of dollars in sales, excise, property, income, and payroll taxes, including Social Security, Medicare and unemployment taxes, to federal, state and local coffers. Hundreds of thousands of undocumented immigrants go out of their way to file annual federal and state income tax returns."); *see also* Nina Bernstein, *Tax Returns Rise for Immigrants in U.S. Illegally*, N.Y. TIMES, Apr. 16, 2007, at 1 (explaining how undocumented immigrants without social security numbers can file taxes using IRS assigned individual taxpayer numbers).

[189] Lipman, *supra* note 29, at 5.

> [U]ndocumented immigrants are barred from almost all government benefits, including food stamps, Temporary Assistance for Needy Families, Medicaid, federal housing programs, Supplemental Security Income, Unemployment Insurance, Social Security, Medicare, and the Earned Income Tax Credit (EITC). Generally, the only benefits federally required for undocumented immigrants are emergency medical care, subject to financial and category eligibility, and elementary and secondary public education.

Id. at 5–6.

[190] *Id.* at 7. A study by the National Research Council is illustrative of the challenges involved in accounting for the fiscal costs of immigrants: the study found an annual immigration fiscal impact of $232 per native household. NAT'L RESEARCH COUNCIL, THE NEW AMERICANS: ECONOMIC, DEMOGRAPHIC, AND FISCAL EFFECTS OF IMMIGRATION 292 (James P. Smith & Barry Edmonston eds., 1997). The study then noted the limitations of such annual snapshots, arguing that the study's figures should be adjusted because for "changing demographics" such as the fact that today's children who consume services will become taxpayers in the future. *Id.* at 294. The study ultimately concluded that in the long-run current immigrants had an "overall positive" fiscal impact on the United States. *Id.* at 353. For a review of a number of fiscal impact studies, see GEORGES VERNEZ & KEVIN F. MCCARTHY, THE COSTS OF IMMIGRATION TO TAXPAYERS 5–18 (1996). *See also* Eduardo Porter, *Illegal Immigrants Are Bolstering Social Security With Billions*, N.Y. TIMES, Apr. 5, 2005 at A1 (noting that undocumented workers are "providing the [Social Security] system with a subsidy of as much as $7 billion a year").

immigration exceed the costs.[191] Therefore, though many Americans believe that immigrants "use more social services than they pay for through taxes,"[192] given that this is a misconception, the argument that sending-country remittance taxation is justified as a way to capture otherwise unpaid tax obligations is not convincing.[193]

2. *Remittance Taxation*

A remittance tax imposed by sending countries would not be an income tax, but would instead be analogous to cigarette or other "sin taxes." Such tax proposals seek to discourage or punish bad behavior, in this case the choice to send remittances rather than spend money locally. Yet, as a consumption tax, remittance taxation would be crude and regressive, diminishing the ability of migrants to help provide support for family members left behind. Given the qualitative difference between typical products subject to "vice" taxes and remittances, anti-immigrant sentiment probably explains taxing proposals more than supposed fairness grounds for remittance consumption taxes.

The incentives for receiving countries to tax remittances are arguably less problematic, though how such taxation is felt is similar. For recipient countries with weak economies, it can be a challenge for governments to identify sources of collectable tax revenue. Remittances that pass through formal channels not only can be traced but, if taxed, can be collected immediately upon the money entering the country. If the tax is seen as a tax on recipients, then the government is taxing those who, depending on the country, do have the power to voice their opposition politically. But arguably, the incidence of a tax on remittance-receiving countries, like taxes imposed on remittance sendering countries, would impose a tax on those who may not have a meaningful vote in either their home country or their new country.[194] It is money earned by remittance senders that would

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[191] COUNCIL OF ECON. ADVISORS, IMMIGRATION'S ECONOMIC IMPACT 1 (2007), *available at* http://www.whitehouse.gov/cea/cea_immigration_062007.pdf (concluding "that immigration has a positive effect on the American economy as a whole and on the income of native-born American workers," adding as a key finding that "[c]areful studies of the long-run fiscal effects of immigration conclude that it is likely to have a modest, positive influence").

[192] Eric S. Rothman & Thomas J. Espenshade, *Fiscal Impacts of Immigration to the United States*, 53 POPULATION INDEX 381, 381 (1992). It must be acknowledged that some studies suggest that American intuition plays a role at a local level. *Id.* at 410 ("The results at the state level are more mixed: some show immigrants are fiscal burdens; others indicate they are net benefits. Only at the national level is there a paucity of evidence indicating that immigrants impose net costs on other residents.").

[193] A focus on immigrant tax-take versus the fiscal expenditure risks obscures the many other benefits immigrants provide the United States. *See* Doris Meissner et al., *Immigration and America's Futures: A New Chapter*, 5 GEO. J.L. & PUB. POL'Y 473, 474–77 (2007) (citing the role of immigrants filling labor market gaps, being entrepreneurial, helping with innovation and science).

[194] Many countries do continue to afford emigrants the right to vote, but practical constraints such as the cost of returning home (and the related cost of returning to the United States, especially if the emigrant is an undocumented worker) limit voting by *hermanos lejanos*. For more on dual nationality,

be taken by the tax, and to some extent remittances have fewer labor costs to remittance-recipients. Thus, if senders and recipients are viewed as a single family unit and the unit pays the tax, senders likely would "feel" and "pay" such taxes more than their family members whose experience with the tax would be more analogous to their limited experience with fees imposed by remittance firms.

Remittance taxation would lead to a deliberate movement away from formal channels towards informal remittance channels, regardless of whether the tax is imposed by remittance-sending countries or remittance-receiving countries. Since taxation relies upon government knowledge of remittance transactions, transactions that occur through unlicensed, informal remitters would not be subject to remittance taxes, or rather, to remittance tax collection.[195] As is the case with burdensome regulation generally, taxation driven "informalization" of the remittance transmitting market would threaten to undo the progress that has been made in lowering costs.

More fundamentally, proposals to tax remittances mischaracterize the phenomenon, transforming remittances from what they are—"personal flows of money from migrants to their friends and families"—to something they should not be—a flow of money to be taxed or used only for specific purposes by governments.[196] When considering possible regulation of remittances, whether accomplished by overly constrictive market rules or by direct taxation, the starting point for "any constructive public policy or program is acknowledgment of the private nature of these flows."[197] Unless there is acknowledgement of the private aspect of remittances, the recently "discovered" scale and importance of remittance activity invites rent-seeking by politicians, eager to score anti-immigrant points in sending countries or to tax an observable revenue stream in receiving countries.

D. *Concluding Regulatory Thoughts*

Many goods and services are associated with known prices, or at least with a relatively stable, and—critically—known range of acceptable prices.

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see Michael Jones-Correa, *Under Two Flags: Dual Nationality in Latin America and Its Consequences for Naturalization in the United States*, 35 INT'L MIGRATION REV. 997, 997 (2001). Despite practical difficulties in voting, dual citizenship rights do serve to strengthen the tie between *hermanos lejanos* and their home country. In close elections, those who can afford to and who have strong feelings about the election outcome will return home to vote, and those who cannot afford to return often follow the election results. *See, e.g.*, Claudia Nuñez, *Elecciones al Aire*, EL DIARIO DE HOY, Mar. 21, 2004 (providing information for *hermanos lejanos* on how to follow the 2004 Presidential elections results).

[195] While laws may require tax be paid on all remittances, regardless of mechanism, given limited enforcement capabilities of most receiving countries, tax evasion and non-reporting would likely dwarf voluntary reporting and hold down government collection (similar to the familiar problems in the United States of under-reporting of tips or earnings from spot labor or from the informal economy).

[196] Ratha, *supra* note 19, at 1.

[197] INTER-AMERICAN DIALOGUE, *supra* note 4, at 4.

Remittance transfer services have not yet reached that stage of market definition, though market forces are driving firms towards a narrowing band of acceptable charges for sending money to particular countries. When I go to a Taco Bell in Cambridge, I expect to be charged roughly the same as I would be charged by a Taco Bell in Durango, Colorado, and I "know" I am not getting a good deal if the price of a bean burrito is above one dollar.[198] The same can be said for my purchases of socks, notebooks, and even Ipods. Remittance costs are only beginning to take on a similar characteristic. Given the market's success since 2000 in driving down transfer costs, it is premature to impose a solution to the still too high, though much lower, costs.[199] Remittances reflect a division between earners from spenders, with the consumption taking place overseas. But, the fact that consumption takes place overseas does not preclude the benefit from reaching remittance-sending countries.[200] *Hermanos lejanos* and the rest of American society benefit, albeit in different ways, from the income generated to send remittances, as well as the actual sending of remittances. Consequently, while it is premature to seek a governmental solution to lower remittance costs, now is the time to reject proposals to heighten regulation or taxation of remittances.

IV. THE APPEAL AND LIMITS OF REMITTANCES

By demonstrating the potential of markets and by giving recognition to the work of the poor, remittance scholarship and attention on remittances escapes easy identification as being essentially the domain of "conservative" or "liberal" politicians or academics. The same can be said

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[198] For the role of retailers in helping to establish perceptions regarding appropriate pricing of goods, see CHARLES FISHMAN, THE WAL-MART EFFECT 115–16 (2006) (arguing that Wal-Mart, by deeply discounting their sales relative to independent dealers, changes our understanding of the proper price of a lawn mower).

[199] Information gaps are likely to allow the greatest room for upward pricing by remittance businesses located in areas where immigrant populations are lower. For example, a city such as New Orleans with a sizable Honduran population may have low cost mechanisms available, known to the community for sending money to Honduras. However, smaller immigrant communities from other countries in the same city may know and share less about inexpensive mechanisms and consequently may have to pay more to send money home. Efforts by government entities and non-profits to disseminate comparative cost information to immigrant communities can be valuable when the community is too small to accomplish this independently.

[200] Professor Raquel Aldana observes that remittance money spent in El Salvador might not be that different from money spent in the United States to the extent that remittance-based purchases are of U.S. products; in such cases, the trickle down purchase effect flows in part to the recipient country and in part to the sending country. Email from Raquel Aldana to author (Dec. 20, 2007) (on file with *Connecticut Law Review*); *see also* GHOSH, *supra* note 2, at 78 (noting that when remittances entail "conspicuous consumption, with excessive expenditure on foreign luxury products and sophisticated household appliances to show off the newly found wealth, this may not only contribute to social division but may also lend an enhanced prestige value to foreign products, alongside a psychological downgrading of domestic goods"). *But see* Torrisi, *supra* note 30, at 130 (arguing that "[r]emittances are recycled within the local economy in El Salvador").

of micro-lending and land-titling initiatives.[201] Navigating around ideological capture paradoxically risks coloring our view of remittances in a way that wrongly elevates remittances from what they represent—a way for immigrants to reduce the effects of poverty on distant family members—to what we want remittances to be, a path to development. A first step in properly contextualizing remittances is to resist the first-world capture of remittance dialogue threatening to transform our understanding of remittances from an economic phenomenon of transnational families into a form of North-South development aid.[202] A South-North orientation,[203] rather than a Washington down approach, prioritizes the lived experiences of those communities most dependent on and affected by remittances, who rely on unimpeded transfers.[204] Understanding how remittances fit into "chastened neoliberalism," characteristic of current law and development thought, helps explain the rhetorical success that remittance advocates have had.[205] However, the price of remittance emphasis is not minimal; focusing on remittances alone risks overlooking the many background rules (from immigration law to employment practices to gendered relations) that drive remittance practices. Finally, global development requires more from both sending and receiving countries than merely reaping remittance benefits.

The work remittances do lessening the effects of poverty for recipient families in the developing world relies upon a more fluid global labor market than is formally incorporated in our immigration law. Even as we applaud the ability remittances have to provide resources to those who need them, we must not turn a blind eye to the development stagnation of many remittance-recipient countries. American responsibility to help with the development of the third-world is not and will not be met through remittances. The same can be said with regard to developing countries and the responsibilities that their governments bear. Indeed, full recognition of the role of remittances for developing countries may require remittance

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[201] *See*, *e.g.*, Sasha Polakow-Suransky, *Giving the Poor Some Credit: Microloans are in Vogue. Are They a Sound Idea?*, 14 AM. PROSPECT, May 2003, at A19, *available at* http://www.prospect.org/cs/articles?article=giving_the_poor_some_credit (noting that microcredit "is one of those ideas that attracts both liberals and conservatives").

[202] Although perhaps altruistically motivated, policy analysts and politicians arguably seek advancement by transforming remittance knowledge into the language and culture of developed countries without giving proper credit to the wealth of relevant experience possessed by remittance receiving countries.

[203] A South-North orientation might be overly optimistic, but arguably it would be an improvement to "face" South and "open" up the conversation to include those from the South. *See* Lucie White, *On the Guarding of Borders*, 33 HARV. C.R.-C.L. L. REV. 183, 186 (1998) (arguing for opening up the dialogue with those outside our borders in the immigration context).

[204] By locating the remittance dialogue in countries such as El Salvador, the Philippines, and Haiti, a presumption in favor of open remittance channels is established, enabling recipient countries and transnational families to more effectively draw upon human rights and equitable principles to resist the tax and regulatory interests of sending countries.

[205] *See infra* notes 238–62 and accompanying text.

isolating mechanisms. Otherwise, there is a danger that remittances will allow politicians in the developing world to avoid the hard choices that national level development requires.

Looking forward, as the remittance phenomenon moves from being a favorite topic in development circles to being a focus of political and legal attention, the existing structure of rules and practices that have enabled the growth in remittances will undoubtedly change. In a globalizing world, this change will take place, and, as it does, it is important not to miss the opportunities presented by the phenomenon. Policies should respect and emulate the love transnational families demonstrate with their remittances; this means, at the most basic level, enabling and facilitating remittances. But, more ambitiously, it means seeing remittances as an aspect of the relationship between the developed and developing world, but not as the way for the developed world to satisfy its geo-political and moral obligations to the developing world.[206] Remittances ultimately reflect the love that transnational families have despite the barriers and hardships they face, not because of American policies. Because remittances are an anti-poverty tool and not the route to development, we must do more to meet the obligations of love inherent in the recognition of our shared humanity with those who struggle with underdevelopment.

A. *The Appeal*

Remittance advocates—scholars, politicians, and a number of non-profits—do more than study remittances—they "help to define" remittances and remittance potential.[207] Such advocates have succeeded in appealing "both to proponents of neoliberal economic policies and to analysts and advocates interested in grass-roots empowerment."[208] By advocating a "third way" approach between welfarism and remorseless capitalism,[209] remittance advocates have managed to get bipartisan support for their work and for their policy proposals.[210] Yet there is danger, rarely

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[206] In 1970, Nobel laureate Gunner Myrdal wrote, "commercial and financial policies of the developed countries toward the underdeveloped countries are, like all other crucial policy problems, at bottom *a moral issue*." GUNNAR MYRDAL, THE CHALLENGE OF WORLD POVERTY 310 (1970).

[207] Hernandez & Bibler Coutin, *supra* note 16, at 186.

[208] *Id.* at 192 (emphasis omitted).

[209] *Id.* (internal citations omitted).

[210] As the National Council of La Raza acknowledged in a 2005 brief on remittances, Republicans and Democrats have both introduced pro-remittance legislation, supporting a 2004 commitment made by President Bush to lower remittance costs. BEATRIZ IBARRA, NAT'L COUNCIL OF LA RAZA, REFORMING THE REMITTANCE TRANSFER MARKET 2 (2005), *available at* http://www.nclr.org/content/publications/detail/31291. Additionally, the Federal Reserve has gotten involved in remittances through both the Mexico-U.S. Automated Clearinghouse System and by giving banks Community Reinvestment Act credit for reaching out to remittance senders. *See* Elizabeth McQuerry (Fed. Res. Retail Payments Office); *Opportunities & Obstacles for Banks in Remittance Market* (Powerpoint presented at Florida International University, June 4, 2005) (on file with *Connecticut Law Review*); Press Release, U.S. Rep. Joe Baca's Office, Rep. Baca Seeks CRA Credit for Financial

acknowledged by advocates, that the fetishization of remittance studies will inspire exaggerated accounts of the scope of remittance sending and of the poverty alleviation and development potential of these money flows. Given the popularity of remittances, as shown by the profusion of remittance conferences, reports, and publications, a natural question to ask is whether this popularity is based on fundamental principles or on misleading characterizations and exaggerations.

Perhaps the best way to answer this question is by considering two economic ideas—micro-lending and land-titling—that entered the spotlight before remittances. Appreciation of micro-lending, land-titling, and now remittance effects crosses ideological lines. All three draw their strength from capitalism and depend on regulatory changes, gaining the support of conservatives leery of programs that smack of global welfarism. Neoliberals love that micro-lending, land-titling, and remittances originated not from Washington, D.C. but from bankers, intellectuals, and families of the developing world.[211] By empowering the poor, or stated differently, by recognizing the dynamic potential located in the poor themselves, these economic activities escape the usual political traps that derail standard anti-poverty measures such as development aid. Now that the Bretton Woods institutions, the World Bank, and the International Monetary Fund receive external and internal skepticism from anti-poverty and international growth advocates, models of growth that do not rely upon large Washington-led institutions resonate.

1. *Proven Rhetoric: Microcredit and Land-titling*

Muhammad Yunus and the Grameen Bank won the 2006 Nobel Peace Prize for "their efforts to create economic and social development from below."[212] Yunus, and the Grameen Bank which he founded, extended very small loans to groups of women in Bangladesh, lifting more than half of all borrowers out of poverty.[213] By showing that the poor could repay uncollateralized loans and that a bank serving the poor could turn a profit, the Grameen Bank captured the imagination of the many who wanted the

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Services Institutions Offering Remittance Services (June 4, 2004) (on file with *Connecticut Law Review*).

[211] *See*, *e.g.*, Rashmi Dyal-Chand, *Reflections in a Distant Mirror: Why the West has Misperceived the Grameen Bank's Vision of Microcredit*, 41 STAN. J. INT'L L. 217, 217 (2005) [hereinafter *Reflections in a Distant Mirror*] (noting that international interest in micro-lending "might seem encouraging" to "those who had always thought that the 'First World' could learn a few things from the 'Third World'").

[212] Ole Danbolt Mjøs, Chairman, Nor. Nobel Comm., Presentation Speech for the 2006 Nobel Peace Prize (Dec. 10, 2006), *available at* http://nobelprize.org/nobel_prizes/peace/laureates/2006/presentation-speech.html.

[213] Muhammad Yunus, Nobel Peace Prize Laureate 2006, Nobel Lecture (Dec. 10, 2006), *available at* http://nobelpeaceprize.org/eng_lect_2006b.html. For more on Yunus' formation of the Grameen Bank and the bank's growth, see MUHAMMAD YUNUS, BANKER TO THE POOR: MICRO-LENDING AND THE BATTLE AGAINST WORLD POVERTY 117–30 (2003).

poor to be able to participate in market economy without having to continually provide welfare payments.[214] As Professor Rashmi Dyal-Chand reports, micro-lending or microcredit, "enchanted" development communities, politicians, and the media.[215] One reporter noted, "Yunus has pulled off the remarkable feat of appealing to policymakers across the political spectrum. There has hardly been a murmur of dissent. Yunus must be the most widely admired moneylender in history."[216]

Microcredit has been tried in a number of countries and has been the subject of countless academic studies, many of them critical.[217] A reliance on women's networks of jointly responsible borrowers is a characteristic of many microcredit operations, a feature seen by some as empowering women and by others as doing the opposite.[218] Part of the attraction of solidarity lending practices that spread responsibility among borrowers is its "bottoms-up" model.[219] Yet, there are reasons for concern. First, for microcredit to be successful, borrowers have to be supported by a market for their goods, and that might not always exist.[220] Additionally, microcredit program take-up and success differs across countries.[221] Microcredit program growth is constrained by limited donor and perhaps

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[214] *See Reflections in a Distant Mirror*, *supra* note 211, at 230 (describing support for the importation of the micro-lending model to U.S. inner cities by members of the Community Economic Development movement)*; see also* Muhammad Yunus, Grameen Bank at a Glance (May. 2008), http://www.grameen-info.org/index.php?option=com_content&task=view&id=26&Itemid=175 (last visited July 29, 2008) (providing an overview of Grameen Bank activities).

[215] *Reflections in a Distant Mirror*, *supra* note 211, at 220. Grameen Bank microloans were even featured in Gerry Trudeau's *Doonesbury* on May 13, 2007. The comic can be viewed at http://www.grameen-info.org/index.php?option=com_content&task=view&id=182&Itemid=199. For more on microcredit, see Kenneth Anderson, *Microcredit: Fulfilling or Belying the Universalist Morality of Globalizing Markets?*, 5 YALE HUM. RTS. & DEV. L.J. 85 (2002).

[216] Tom Bethell, *Micro Man*, AM. MAG., May–June 2007, http://www.american.com/archive/2007/may-june-magazine-contents/micro-man (last visited July 29, 2008).

[217] *See* Jonathan Morduch, *The Microfinance Promise*, 37 J. ECON. LIT. 1569, 1569 (1999) (surveying the literature and comparing different countries' experiences).

[218] *Compare* Rachel Errett Figura, Note, *An End to Poverty Through Microlending: An Examination of the Need for Credit by Poor, Rural Women and the Success of Microlending Programs*, 8 NEW ENG. INT'L & COMP. L. ANN. 157, 169–70 (2002) ("[M]icrocredit development programs have an empowering effect on women . . . [and] old repressive, patriarchal ways become less relevant."), *with* Farhad Hossain, *Small Loans, Big Claims*, 13 DEV. IN PRACTICE 414, 414 (2003) (reporting on studies finding that Grameen Bank lending is associated not with empowerment of women in Bangladesh but with domestic abuse and gender conflict).

[219] Morduch, *supra* note 217, at 1570; *accord* Jameel Jaffer, *Microfinance and the Mechanics of Solidarity Lending: Improving Access to Credit Through Innovations in Contract Structure*, 9 J. TRANSNAT'L L. & POL'Y 183, 206 (1999). *But see* Michael Woolcock, *Social Capital and Economic Development: Toward a Theoretical Synthesis and Policy Framework*, 27 THEORY AND SOC'Y 151, 183–84 (1998) (contrasting the "bottom-up" nature of rotating savings and credit associations versus the "top-down" nature of group-based microfinance institutions such as the Grameen bank).

For an analysis of the design components that determine the success of differing solidarity programs, see Denise Anthony, *Cooperation in Microcredit Borrowing Groups: Identity, Sanctions, and Reciprocity in the Production of Collective Goods*, 70 AM. SOC. REV. 496 (2005).

[220] Martha Brant, *Where Credit is Due*, NEWSWEEK, Feb. 17, 1997 (reporting on the concerns of microcredit "agnostics").

[221] *Id.*

capital dollars.[222] Most fundamentally, even in Bangladesh, Yunus' home country, microcredit has only had a "modest effect on lowering aggregate poverty rates," and the country "remains persistently and acutely poor."[223]

While he has yet to win a Nobel Prize, Peruvian economist Hernando de Soto seems destined to receive one for recognizing the power that granting formal rights, such as land title to the poor, could have on the poor.[224] Through his non-profit, Instituto Libertad y Democracia, de Soto asserts that poor countries ought to formalize the property held by the poor and that doing so will enable them to "pull themselves out of poverty."[225] Formal property has many advantages over informal property—such as the ability to obtain loans tied to such property[226]—that mean, according to de Soto and former U.S. Secretary of State Madeleine Albright, that "when governments grant people legal means to control their assets, they empower them to invest and plan for their future."[227] At the heart of de Soto's push for land titling is the idea that "after some initial governmental intervention in the form of registration of property rights, the market will solve the market failures that prevent the poor from accumulating wealth."[228] Institutions ranging from *The Economist* to Yale University to

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[222] Mark Sappenfield & Mark Trumbull, *Big Banks Find Little Loans a Nobel Winner, Too*, CHRISTIAN SCI. MONITOR, Oct. 16, 2006, at 1 (noting that the shortfall in donor dollars requires the involvement of the capital markets in microcredit work).

[223] Howard Kargar et al., *The Challenge of Community Work in a Global Economy*, 34 J. SOC. & SOC. WELFARE 69, 77 (2007).

[224] Rashmi Dyal-Chand, *Exporting the Ownership Society: A Case Study on the Economic Impact of Property Rights*, 39 RUTGERS L.J. 59, 59–62 (2007) (noting that de Soto has already been considered for a Nobel Prize). Though here I focus on land-titling, de Soto's work more broadly pushes for formalization of other informal work of the poor. *See* Jane Kaufman Winn, *How to Make Poor Countries Rich and How to Enrich Our Poor*, 77 IOWA L. REV. 899 (1992) (reviewing HERNANDO DE SOTO, THE OTHER PATH (1989)).

[225] Instituto Libertad y Democracia website, http://ild.org.pe/en/home (last visited July 29, 2008) (according to which the Mission of the ILD is: "To provide governments with the technical assistance—and the local capacity—to furnish all their citizens with the crucial legal tools to gain access to the market and thus pull themselves out of poverty: inclusive property systems to hold and leverage their assets, legal forms to organize their businesses, devices to identify themselves and operate in expanded markets."). *See generally* HERNANDO DE SOTO, THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE (2000) (demonstrating that an inability to produce capital can prevent a country from enjoying the benefits of capitalism).

[226] *See* DE SOTO, *supra* note 225, at 49–62 (listing six effects of formal property: "Fixing the Economic Potential of Assets," "Integrating Dispersed Information into One System," "Making People Accountable," "Making Assets Fungible," "Networking People," and "Protecting Transactions").

[227] Madeleine Albright & Hernando de Soto, *Giving the Poor Their Rights*, TIME., July 5, 2007, *available at* http://www.time.com/time/magazine/article/0,9171,1640435,00.html.

[228] Dyal-Chand, *supra* note 224, at 62. The irony should not be lost: by converting informal title, which the poor acquired most often by ignoring formal title (through adverse possession), into formal title, the poor are supposed to acquire greater ownership security. *See* Christopher Woodruff, *Review of de Soto's* The Mystery of Capital, 39 J. ECON. LIT. 1215, 1218 (2001) (asking whether such systematic recognition of adverse possession might not lead to an increase in invasions of property). By not paying attention to the uncompensated nature of the redistribution inherent in his ideas, de Soto opens his land-titling proposal to criticism. *See* Gary D. Libecap, Book Review, 61 J. ECON. HIST. 1166, 1168 (2001) (reviewing HERNANDO DE SOTO, THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE (2000)).

The Cato Institute have bestowed awards upon de Soto, and de Soto and the ILD have been praised by world leaders ranging from Ronald Reagan to Vicente Fox to Kofi Annan.[229] Tellingly, Bill Clinton described de Soto's work as "[o]ne of the most promising anti-poverty initiatives in the world."[230]

Unfortunately, in many ways de Soto's ideas regarding the power of land-titling to empower the poor and to in turn spur development have not lived up to their hype. Titling has not opened up private credit markets to the poor who earlier had only informal title to their property.[231] Credit itself is but a precondition of the larger goal of meaningful investment-driven income made possible by the formalization of title; without such investment, many of the supposed advantages of titling will not materialize.[232] And of course, despite the promise that "the key to prosperity lies in . . . unlocking hidden wealth that already exists," land titling does not help those who did not have informal rights to property to begin with, therefore, disregarding the most poor.[233] Although in 2001 the *Economist* supported the idea that developing countries could solve their poverty by following de Soto's advice, by 2006 the magazine acknowledged that "although land titling is certainly a good thing, it does not provide a single theory of development."[234] The problem with de

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[229] *See* Instituto Libertad y Democracia, Awards, http://ild.org.pe/recognition/awards (listing awards de Soto has received); Instituto Libertad y Democracia, World Leader Recognition webpage, http://ild.org.pe/en/image/tid/14 (listing recognition de Soto has received).

[230] William J. Clinton, Remarks to the World Congress on Information Technology, Adelaide, Austl. (Feb. 27, 2002), transcript available at http://www.clintonfoundation.org/022702-ts-cf-gn-gl-aus-ts-remarks-to-world-congress-on-information-technology. For more on the potential of de Soto's ideas, see Bernadette Atuahene, *Land Titling: A Mode of Privatization with the Potential to Deepen Democracy*, 50 ST. LOUIS U. L.J. 761 (2006) (highlighting the role land-titling can play in deepening democracy, with an emphasis on Peru's experience); Bernadette Atuahene, *Legal Title to Land As an Intervention Against Urban Poverty in Developing Nations*, 36 GEO. WASH. INT'L L. REV. 1109 (2004) (providing a review of the literature and focusing on land titling in urban areas).

[231] Erica Field & Maximo Torero, Do Property Titles Increase Credit Access Among the Urban Poor? Evidence from a Nationwide Titling Program 2, 6 (March 2006) (unpublished manuscript, on file with author), *available at* http://www.economics.harvard.edu/faculty/field/files/FieldTorerocs.pdf (reporting on lending to those who received formal property titles through a Peruvian land-titling program, based on a survey of 536 program participating households and 1180 households in the control group).

[232] Woodruff, *supra* note 228, at 1219; *see also* Jonathan Manders, Note, *Sequencing Property Rights in the Context of Development: A Critique of the Writings of Hernando de Soto*, 37 CORNELL INT'L L.J. 177, 193 (2004) (contrasting de Soto's expectations regarding property owners' use of their property with the observation that Latin American property owners "have routinely hoarded the wealth yielded by their property"); Sebastian Galiani & Ernesto Schargrodsky, Property Rights for the Poor: Effects of Land Titling (Aug. 9, 2005) (unpublished manuscript, on file with author), *available at* http://economics.uchicago.edu/pdf/Galiani_022706.pdf (finding limited effects of an example of Argentinean land-titling on access to credit and no effects on labor income).

[233] Jeremy Clift, *Hearing the Dogs Bark: Jeremy Clift Interviews Development Guru Hernando de Soto*, FIN. & DEV., Dec. 2003, at 8, 10.

[234] *Of Property and Poverty; Development*, ECONOMIST, Aug. 26, 2006. *But see No Title: Want to Make the Poor Less Poor? Give Them Proper Title to What They Own*, ECONOMIST, Mar. 31, 2001 (presenting a celebratory account of de Soto's ideas).

Soto's land-titling idea is not the idea itself, but the pervasive "notion that the key to progress can be found in one factor of development."[235] Despite de Soto's effort to make property rights "the center of everything," his "silver bullet" theory of development through land-titling strains reality.[236]

2. *Concerns Regarding the Sell*

The uncritical political and intellectual acclaim microcredit and land-titling received helped pave the way for the global development community's similarly enthusiastic reaction to remittances. Over the last ten years, remittances boomed, costs fell, and migrants made use of formal transfer mechanisms. Remittance advocates similarly have benefited as opportunities to present their work, and funding for such work, have expanded over the same period with international organizations choosing to focus on remittances. Given the powerful role remittances have on recipient countries and the importance of remittances for transnational families, only the most cynical academic would engage in "remittance critique," right?

Perhaps, but let me nevertheless explore one concern I have—the potential crowding-out effect of remittances. Remittance fixation and cross-ideological celebration threatens to have a crowding-out effect on calls for other anti-poverty efforts, especially efforts that demand more radical change. After all, if through remittances the poor can help themselves, do we really need to concern ourselves with their poverty? In her study of de Soto's work on asset formalization of the poor, Professor Dyal-Chand concludes by asking, "Is de Soto naïve about the complexities of poverty alleviation or sophisticated in his engagement with the Washington Consensus?"[237] I have the same question regarding remittance advocates.

B. *Chastened Neoliberal Thought*

Remittance advocates have succeeded to a remarkable extent in elevating the study and by focusing on remittances by powerful institutions.[238] The rhetoric employed by savvy advocates arguably explains the reception remittances have enjoyed, but to understand that, it is important to know the audience. Current law and development thinking

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[235] Manders, *supra* note 232, at 179 (critiquing de Soto's proposal as relying on an overly simplistic view of development).

[236] Robert J. Samuelson, *The Spirit of Capitalism*, 80 FOREIGN AFF. 205, 208 (2001) (reviewing HERNANDO DE SOTO, THE MYSTERY OF CAPITAL: WHY CAPITALISM SUCCEEDS IN THE WEST AND FAILS EVERYWHERE ELSE (2000)); *accord* Manders, *supra* note 232, at 198 (arguing that "by holding property rights as the key to progress rather than simply a factor in development, [de Soto] exaggerates their true importance").

[237] Dyal-Chand, *supra* note 224, at 109.

[238] *See supra* notes 5–7 and accompanying text.

has been characterized as "chastened neoliberalism" by Professor David Kennedy.[239] "Chastened" policy makers continue to rely upon neoliberal market notions to form their "baseline common sense," but they now recognize that "[o]ne size does not—or need not—fit all."[240] The "retreat from one-size-fits-all neo-liberalism," according to Professor Kennedy, led to an emphasis on understanding development through particularities, which has made institutions and institutionalism central.[241] Professor Kennedy credits Amartya Sen with best articulating the normative perspective of the current law and development mainstream. Sen argues that governments "should avoid limiting freedom—by violating human rights or obstructing markets—but should also aim to expand human freedom, by providing security and promoting the fulfillment of basic human needs."[242] Though this perspective seems to break new ground from plain vanilla neoliberalism (sometimes referred to as the Washington Consensus), with its sole focus on maximization of economic performance or efficiency,[243] laissez-faire law and development ideas have not disappeared.

The "softer gentler development" ideas that have coalesced into a sort of "muddy consensus," as described by Professor Kennedy,[244] are struggling to develop the intellectual tools needed to resist market-centered ideologies. Thus when the World Bank incorporated institutionalism into its 2002 World Development Report, the focus and the potential for reversion was clear from the title, *Building Institutions for Markets*.[245] As

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[239] David Kennedy, *The "Rule of Law," Political Choices, and Development Common Sense*, *in* THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL 95, 150–66 (David M. Trubek & Alvaro Santos eds., 2006) [hereinafter *Political Choices*].

[240] *Id.* at 150, 154.

[241] David Kennedy, *'Laws and Developments,' in* LAW AND DEVELOPMENT: FACING COMPLEXITY IN THE 21ST CENTURY 17, 18 (John Hatchard & Amanda Perry-Kerraris eds., 2003) [hereinafter *Laws and Developments*].

[242] *Political Choices*, *supra* note 239, at 157. Kennedy bases his summary, quoted above, on AMARTYA SEN, DEVELOPMENT AS FREEDOM (1999). Sen's capabilities approach was explicitly made the basis for the World Bank's conception of poverty in 2000. *See* Asuncion Lera St. Clair, *How Can Human Rights Contribute to Poverty Reduction? A Philosophical Assessment of the* Human Development Report 2000, *in* INTERNATIONAL POVERTY LAW: AN EMERGING DISCOURSE, *supra* note 9, at 14, 21–27 (discussing Sen's views contained in the Report); U.N. DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 2000, at v (2000), *available at* http://hdr.undp.org/en/media/hdr_2000_en.pdf (crediting Sen with providing the "conceptual framework for the Report"); U.N. DEVELOPMENT PROGRAMME, WORLD DEVELOPMENT REPORT 2000/2001: ATTACKING POVERTY 15 (2001), *available at* http://siteresources.worldbank.org/INTPOVERTY/Resources/WDR/English-Full-Text-Report/ch1.pdf (explaining that the report's "broader approach to deprivation, by giving a better characterization of the experience of poverty, increases our understanding of its causes").

[243] *Political Choices*, *supra* note 239, at 129. For a definitional overview of the Washington Consensus, see the Center for International Development at Harvard's Global Trade Negotiations Home Page overview, http://www.cid.harvard.edu/cidtrade/issues/washington.html.

[244] *Laws and Developments*, *supra* note 241, at 19.

[245] WORLD BANK, WORLD DEVELOPMENT REPORT 2002: BUILDING INSTITUTIONS FOR MARKETS (2002), *available at* http://www.worldbank.org/wdr/2001/. Though the 2002 report focuses on

the tension in the 2002 World Development Report's focus attests, law and development thinking seems to be proceeding down a similar (thin?) path President George W. Bush walked in his 2000 Presidential campaign when he popularized the notion of "compassionate conservatism."[246] In 2001, Professor Peter Edelman asked "[d]oes compassionate conservatism have a heart?"[247] The same question could be asked of compassionate neoliberalism. According to Professor Kerry Rittich, the answer is "yes" . . . and "no."

Introducing it as "[o]ne of the most significant events in the field of development in recent years," Professor Rittich describes the change in thinking on law and development as an "effort to incorporate social concerns into the mainstream agenda of market reform and economic development."[248] Like Professor Kennedy, Professor Rittich credits Amartya Sen with much of the change in thinking[249] and argues the "inclusion of the social" has sufficiently progressed so that it "has now been substantially normalized within the frame of development."[250] Professor Rittich switches gears however by noting that rhetorical changes need not necessarily translate into new development strategies, implicitly suggesting that the social may still have a ways to go before it is meaningfully integrated with, or changes, the "old (and enduring) imperative of promoting economic growth."[251] Though Sen's suggestion that states should pay attention to freedom and human fulfillment served as intellectual fuel for rhetorically distinguishing "chastened neoliberalism" from earlier law and development thinking,[252] Professor Rittich writes that "despite the inclusion of the social . . . the conception of the State's role has not fundamentally shifted."[253] Professor Rittich observes, "the fact that the development agenda has been reformulated to include the social is

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institutions supportive of markets, developing countries have a lengthy history of attempting to structure markets in ways that help the poor. *See* Pranab Bardhan, *Efficiency, Equity and Poverty Alleviation: Policy Issues in Less Developed Countries*, 106 ECON. J. 1344, 1345 (1996) ("[T]he governments in many poor countries have heavily interfered in the market in the name of helping the poor.").

[246] For sympathetic perspectives on compassionate conservatism, see MARVIN OLASKY, COMPASSIONATE CONSERVATISM: WHAT IT IS, WHAT IT DOES, AND HOW IT CAN TRANSFORM AMERICA (2000); Press Release, Office of the White House Press Secretary, Fact Sheet: Compassionate Conservatism (Apr. 30, 2002), *available at* http://www.whitehouse.gov/news/releases/2002/04/20020430.html.

[247] Peter Edelman, *Poverty & Welfare: Does Compassionate Conservatism Have a Heart?*, 64 ALB. L. REV. 1073, 1079 (2001).

[248] Kerry Rittich, *The Future of Law and Development: Second Generation Reforms and the Incorporation of the Social*, 26 MICH. J. INT'L L. 199, 199 (2004) (focusing primarily on how social concerns have been incorporated by international finance institutions).

[249] *Id.* at 202.

[250] *Id.* at 203.

[251] *Id.* at 203–04.

[252] *See supra* notes 238–43 and accompanying text.

[253] Rittich, *supra* note 248, at 234.

almost completely unreflected in the core legal and institutional reform project."[254]

1. *An Idea with a Ready Audience*

Remittances arguably fall within the space separating socially inclusive rhetoric and market-centered traditional neoliberal reforms, a positioning that, given the audience, helps explain the attention being paid to remittances. Such "touchy, feely capitalism with a heart" positioning is shared by microcredit and land-titling.[255] Politicians get excited by proposals that offer "the prospect of alleviating poverty while providing incentives to work" and that reflect a shared "general suspicion of ongoing subsidization."[256] By originating out of the poor and owing their power to the long-distance connections between separated family members, remittances *feel* socially inclusive.[257] Quite literally, remittances bridge the North-South divide,[258] efficiently delivering needed support to family members who rely upon income generated in more developed countries.[259]

Remittance advocates seek to highlight that, in line with current mainstream law and development thought, remittances involve both the social and the economic agendas of sending and receiving countries. Rhetorically, remittances are interesting, and, better yet, from a political popularity perspective, improving on them does not seem to require a shift away from the old focus of ensuring a laissez-faire capitalist structure and preventing government interference in these familial transfers. If Professor Kennedy is right that law and development is in an era of "chastened neoliberalism," then remittances seem to allow policy makers to return to their common-sense, market-friendly approaches.[260] At the risk of

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[254] *Id.* at 224.

[255] Madeleine Bunting, *Fine Words, Flawed Ideas: Economist Hernando de Soto Is Hailed as a Saviour of Poor Countries. But He Is Nothing of the Kind*, GUARDIAN (London), Sept. 11, 2000 (discussing de Soto and arguing that his ideas have benefitted from "semi-hysterical spinning").

[256] Morduch, *supra* note 217, at 1570 (focusing on the support microfinance has received).

[257] Microcredit enjoys this same advantage: "[m]icrocredit programs are a paradigm example of a trickle up approach to poverty alleviation and . . . . are extremely popular . . . [among] the development community." Celia R. Taylor, *Microcredit as Model: A Critique of State/NGO Relations*, 29 SYRACUSE J. INT'L L. & COM. 303, 317 (2002).

[258] According to Professor Reuven S. Avi-Yonah, "[t]he most important social problem facing humanity at the beginning of the 21st century is the yawning divide in standards of living between the rich nations of the global North and the poor nations of the global South." Reuven S. Avi-Yonah, *Bridging the North/South Divide: International Redistribution and Tax Competition*, 26 MICH. J. INT'L L. 371, 371 (2004).

[259] As Professor Williams writes: "Anti-poverty legal policies are not generally formulated within a transnational perspective . . . . It is by now clear, however, given the steady integration of the world economy, that poverty cannot (if it ever could) be understood, let alone contested, solely within national borders." Williams, *supra* note 9, at 2 (identifying the transnational aspect of poverty as one of two reasons for expanding the boundaries of poverty law discourse).

[260] That market driven "common sense" gives social welfare a secondary position is nothing new. *See* Thomas M. Franck, *The New Development: Can American Law and Legal Institutions Help*

sounding trite, remittances as social and economic institutional policy allow merely "chagrined neoliberalism" to stand in for more meaningful socially inclusionary policies.

Remittances seem to have notable rhetorical advantages over alternative development or poverty solutions: they fit with notions of neoliberal capitalism that emphasize a minimal role of the state and the power of people acting independently to improve their own situation. Rather than being "top-down," with the industrialized countries providing direct foreign aid, remittances seem to promise that things will work out if the state sets up the right institutions and gets out of the way. Such a limited role for the state, contained for example in this paper's advocacy to restrict regulations that unduly target remittances, resonates powerfully given the baseline common-sense acceptance of capitalism as the primary development tool.[261] Post-Reagan and especially post–Soviet Union, ideas which rely upon the power of the market—here the power of the poor to help themselves if given the opportunity—seem to benefit from the sense of inevitable improvement characteristic of societal views of capitalism.[262] Remittances can be viewed as either a transnational extension of first world capitalism's benefits to distant, needy, family members or as a form of transformative development. But this either/or perspective exists precisely because of the power that the ideology of capitalism has to erase the distinguishing marks of potentially divergent activities such as remittances, that bridge "[t]he great distance that exists between the lives of the poor and the abstract world of economic theory."[263] In the same way, the troubling effects of remittance-focused development are swept aside and remittance practice is characterized as a reaffirmation of neoliberal capitalist development.

Remittances are a reflection of global inequality and, by being generated only through hardships experienced by transnational families, differ in significant respects from traditional development efforts focused on particular nations.[264] Compelled by necessity rather than choice, many immigrants violate formal immigration laws, putting their lives at risk as

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Developing Countries?, 1972 WIS. L. REV. 767, 781 (arguing that lawyers "will respond to market forces by gravitating" away from "social welfare" and towards "unity" and "industrialization").

[261] *See supra* notes 154–97 and accompanying text.

[262] Land-titling is a clear example of this: de Soto's "appeal lies in large part because he doesn't challenge the status quo; he accepts capitalism is the only economic system on offer." Bunting, *supra* note 255; *see also* Jeffrey D. Sachs, *Twentieth-Century Political Economy: A Brief History of Global Capitalism*, 15 OXFORD REV. ECON. POL'Y 90 (1999) (discussing the rise of global capitalism and dismissing the Great Depression and the rise of Hitler and Stalin as improbable historical accidents).

[263] Muhammad Yunus, *Alleviating Poverty Through Technology*, 282 SCI. 409, 409 (discussing his own recognition of this distance in Bangladesh's 1974 famine).

[264] For an introduction to global inequality, measurement issues, and its importance, see Branko Milanovic, *Global Income Inequality: What It Is and Why It Matters*, *in* FLAT WORLD, BIG GAPS: ECONOMIC LIBERALIZATION, GLOBALIZATION, POVERTY AND INEQUALITY 1, 1 (Jomo K.S. & Jacques Baudot eds., 2007).

they clandestinely travel north and enter a society that denies them the most basic of citizenship rights.[265] Local "get tough on illegal immigration" measures force those who had begun to form a life in one of the states to move even though the state is itself dependent on immigrant labor.[266] Husbands are separated from their wives and vice versa, children grow up without their parents or take on grave risks in traveling north to reunite with loved ones.[267] The familial costs of separation differ across families and across genders, making it impossible to define a single set of transnational family experiences, other than perhaps a denial of what should be basic rights: the right to return to see a loved one when they are sick, the right to be able to leave work to visit family during holidays, the right to be seen as a contributor rather than a parasite.[268] If remittances are going to be celebrated, rightly or wrongly, then remittance policy needs to account for, and hopefully diminish, these human costs.

2. *The Alternative(s)*

What would an alternative look like? For those who ascribe to the current socially inclusive orthodoxy, the alternative is indeterminate. In their introduction to *The New Law and Economic Development: A Critical Appraisal*, Professors David M. Trubek and Alvaro Santos note that all but one of the essays presented in their collection discuss, albeit using diverse terminology, what they label as the "Third Moment" in law and development.[269] The indeterminacy of the Third Moment, Professors Trubek and Santos explain, is a consequence of the doctrine embracing "broad notions" that encompass "a great range of options."[270] The

[265] *See*, *e.g.*, JIMMY BRESLIN, THE SHORT SWEET DREAM OF EDUARDO GUTIÉRREZ (2002) (portraying one anonymous immigrant's hardships and eventual death from a work accident).

[266] Randal C. Archibold, *Arizona Seeing Signs of Flight by Immigrants*, N.Y. TIMES, Feb. 12, 2008 (discussing the effect tough immigration enforcement is having on Arizona's economy).

[267] *See*, *e.g.*, NAZARIO, *supra* note 111 (vividly portraying such separations and hardship through the story of one family).

[268] In this Article, I focus on family rather than gender-specific costs. One could come up with gendered accounts of remittance effects, pointing to hardships women face when their men leave them for another country, and inevitably some of these observations would be true for some groups of transnational families. *See* Sarah J. Mahler, *Transnational Relationships: The Struggle to Communicate Across Borders*, 7 IDENTITIES 583, 585 (2001) (using the fact that men can withhold remittance payments to punish infidelity of wives left in El Salvador and that women's actions are policed by neighbors, gender does not work neutrally in transnational communication, rather it "exacerbates existing asymmetries between men and women"). But given the diversity of remittance experiences, for example, whether typically men emigrate or women emigrate, gendered accounts are bound to have powerful counter-narratives, and I leave it to others to more fully explore the gender aspects of remittances.

[269] David M. Trubek & Alvaro Santos, *Introduction: The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice*, *in* THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL, *supra* note 239, at 1, 8 n.3 (identifying "chastened neoliberalism," "incorporation of the social," "Rule of Law II," "post Moment," and the development of the World Bank's Comprehensive Development Framework as all reflective of a shared understanding that law and development thought has entered the Third Moment).

[270] *Id.* at 8.

vagueness, *a priori*, of Third Moment prescriptions is not unique to law and development; rather it is a trait common to institutional approaches. In an earlier paper I explored, with regard to a particular development challenge, economic institutionalism's openness to a range of alternative policy options.[271] A central element of new institutional approaches important in my earlier exploration and important here is what Professor Elinor Ostrom observed in her seminal work on the commons, namely that "many solutions exist to cope with many different problems."[272]

Though not a complete list, some solutions to a few of the problems presented by remittances are suggested by the nature of the hardships transnational families face. Countries such as the United States that rely on immigrants can and should change the background rules in ways that will close the distance between transnational family members. Normalizing the status of immigrants could allow remittance-sending immigrants to return to their homelands and their family members more frequently, without risking the possibility they may not be able to return to the United States. Directing U.S. Citizenship and Immigration Services (U.S.C.I.S.) to speed up their review of immigrant petitions, and providing U.S.C.I.S. with additional funding to hire more employees, could help reunite citizens with distant family members seeking to move to the United States.[273] Changing policies and norms to better incorporate immigrant workers into mainstream employment could help ensure they receive on-the-job protections that U.S. citizens take for granted and enable immigrants to better take advantage of work opportunities.[274] Fundamentally, if the developed world is going to rely upon imported labor, such remittance senders deserve acknowledgment as contributors to their host country.

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[271] *See* Ezra Rosser, *This Land Is My Land, This Land Is Your Land: Markets and Institutions for Economic Development on Native American Land*, 47 ARIZ. L. REV. 245, 278–311 (2005) (discussing a range of policy improvements suggested by New Institutional Economics (NIE) to the underdevelopment found on Indian reservations). For more on institutional economics, see DOUGLASS C. NORTH, INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE (1990). A recent law review note conducts a useful side-by-side analysis of Sen's capacity approach and NIE, applied to "Rule of Law" development rhetoric. Thom Ringer, Note, *Development, Reform, and the Rule of Law: Some Prescriptions for a Common Understanding of the "Rule of Law" and its Place in Development Theory and Practice*, 10 YALE HUM. RTS. & DEV. L.J. 178, 200–07 (2007).

[272] ELINOR OSTROM, GOVERNING THE COMMONS 14 (1990).

[273] Currently, naturalization applications "may take approximately 13–15 months to process." U.S. Citizenship and Immigration Services, *Advisory on Processing Times*, U.S.C.I.S. website, http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=af237de128ce5110VgnVCM1000004718190aRCRD&vgnextchannel=54519c7755cb9010VgnVCM10000045f3d6a1RCRD) (last visited July 30, 2008).

[274] Recent changes in immigration law have tended to have the opposite effect, making immigrants less protected from unscrupulous employers. *See* Raquel E. Aldana, *The Subordination and Anti-Subordination Story of the U.S. Immigrant Experience in the 21st Century*, 7 NEV. L.J. 713, 720–22 (2007) (discussing the effect of the Immigration Reform and Control Act of 1996 on immigrant worker protections).

Solutions to the remittance-related challenges facing developing countries are in some respects the opposite of those facing developed countries: reducing their dependence on *exporting* labor.[275] If developing countries can provide those who are destined to emigrate with the tools or resources they will need, such policies may be an appropriate form of recognizing the transnational nature of their citizenry.[276] But above all else, developing countries must make it realistically possible for potential emigrants to earn a decent living in their homeland. The circularity of such a proposed "solution" is obvious: adequate growth will allow families to stay intact and avoid the hardships that precede and run concurrently with most remittance sending, but such a "solution" reads as mere avoidance, defining away the problem. Yet there may be room for policies that separate remittances from the national economy, at least for accounting purposes. Doing so would help citizens better understand both the strengths and weaknesses of their elected leaders (a fact likely to make a full accounting of remittances difficult politically) and the side effects of remittances. How to solve the development problem of remittance-recipient countries is perhaps the big unanswered question,[277] but imposing the tremendous costs of emigration and family separation on the populous through economic policies that in practice require the exportation of a large percentage of the population cannot be the development solution.

While some degree of indeterminacy is a natural element to a law and development era that has moved beyond a simple one-size-fits-all approach, indeterminacy does not foreclose the critique that a given direction narrows the range of possibilities. Remittance advocates, by taking advantage of the space between inclusive rhetoric and traditional neoliberal market approaches, use the existing limits on converting socially inclusive rhetoric into practice in a way that both elevates remittances within the current institutional structure and risks reaffirming the more traditional elements of those same institutions. To prevent such capture by less repentant neoliberals, or by ideologically conservative members of the

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[275] Judge Posner's concerns regarding foreign aid, that "[r]eceipt of money enables a government to avoid grappling with the political, social, and economic conditions (cultures, institutions) that are impeding economic development," also apply to remittance dependence. Posting of Richard Posner to Becker-Posner Blog, http://www.becker-posner-blog.com/archives/2007/01/should_the_unit.html (Jan. 21, 2007, 22:36 EST).

[276] One example is Mexico's Matrícula Consular card, providing Mexican nationals with an identity card for use in the United States. Secretaría de Relaciones Exterior de México, *Certificado de Matrícula Consular*, *available at* http://www.sre.gob.mx/servicios/consulares/certificmatricula.htm; *see also* Kathryn Lee Holloman, Note, *Anti-Terrorism Banking Issues: The New Identity Crisis: USA PATRIOT Act Customer Identification Programs and the Matricula Consular as Primary Identity Verification for Mexican Nationals*, 7 N.C. BANKING INST. 125 (2003) (examining the implications of the Patriot Act "on banks' decisions to accept the Matricula Consular . . . as a primary form of identification for purposes of opening a banking account").

[277] *See*, *e.g.*, Hausmann & Rodrik, *supra* note 21 (exploring the mystery of El Salvador's stagnant growth even with seemingly strong economic policies).

Third Moment[278] of the remittance phenomenon, and to provide a direction, if not a set prescription for future remittance work, it is best to focus once more on understanding remittance flows.

C. *Capturing Love*

Remittances, collective and individual, are the most tangible expression of the connection between migrants and their home country. For El Salvador, remittances are "at the heart of claims about the significance of the expatriate Salvadoran community . . . ."[279] "Given the size of the flows, the potential impact of these remittances on sending countries' economic development is significant. For this reason, sending countries' governments are increasingly involved in actively maintaining ties to their expatriate communities."[280]

Language, symbols, and programs all seek to maintain expatriate ties to the Salvadoran community. A several story concrete welcome dedicated to the *hermano lejano* who sits on the airport road; state-funded matching funds for collective remittances;[281] a separate newspaper section in *La Prensa Grafica* dedicated to Salvadoran expatriate communities (the section is entitled Departmento 15—a half-serious label that transforms the United States into an additional region of El Salvador). All serve as a daily reminder of the connection between the country and *hermanos lejanos*.[282] Yet, Salvadorans seem to know that their country's development and the poverty in the country demands much more than what can be accomplished through remittances alone.[283]

The U.S. government, by attempting to opportunistically characterize remittances as official U.S. aid,[284] has highlighted the danger inherent in the capture of the remittance dialogue by developed countries, as well as the problematic way in which a remittance emphasis might diminish calls for more radical—meaning in this context more demanding of developed countries—anti-poverty measures.[285] As a *Washington Post* editorial

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[278] Though this sounds oxymoronic given the Third Moment's emphasis on incorporation of the social, what I mean by this is capture by conservatives who are comfortable manipulating the intellectual tools of the Third Moment.

[279] Hernandez & Bibler Coutin, *supra* note 16, at 187 (reporting on observations from their trip to El Salvador).

[280] Jones-Correa, *supra* note 194, at 1009.

[281] Hernandez & Bibler Coutin, *supra* note 16, at 202.

[282] *Id.*

[283] Unfortunately, this is the perspective of an outsider looking in, based on conversations during my many visits to El Salvador over the last five years.

[284] Editorial, *Counting Aid Dollars; A Half-Successful Attempt to Improve U.S. Standing*, WASH. POST, Apr. 16, 2006, at B06.

[285] This arguably is already occurring. According to one law review article, "remittances benefit the United States economy by taking the place of taxpayer dollars in the provision of foreign aid." Coffino, *supra* note 23, at 205–06; *see also* Torrisi, *supra* note 30, at 129–30 (using a decline in foreign

argued, migrant remittances, while accounting for a large percentage of the money flowing from the United States to developing countries, should not be confused with development aid.[286] Though some scholars have "equat[ed] remittances with aid,"[287] doing so diminishes the sacrifices of transnational families[288] and exaggerates the role of sending countries in generating remittances.[289] While immigration generally does reflect the better opportunities available in developed countries, remittance sending is a choice by migrants to send money to loved ones or to their communities, and this choice is often made in the face of, rather than because of, policies in sending countries.[290] As 1974 Nobel laureate Gunnar Myrdal explained more generally: "As the poverty in the underdeveloped countries cannot be conjured away, the reader should expect in the field of aid *a twist of the statistics so as to show aid to be larger than it really is*."[291] When developed countries or their policy analysts inflate their aid figures using remittance figures, the choices of individual migrants are conflated with national foreign aid.[292] Normally, foreign aid is determined by elected representatives; the fallacy of treating remittances as aid can be seen by the fact that remittance senders choose to spend more on personal consumption in the United States, and this counts *against* U.S. aid figures.

Capture of the remittance phenomenon, obvious in the equating of aid with remittances, can occur more subtly through the incorporation of "remittances" into the government and non-profit bureaucracy of the developed nations. The initial work done by remittance advocates has been largely to inform policy makers and international bodies of the scope of the remittance phenomenon. By asserting that the legal community ought to pay attention to remittances as the economists have, this Article fits at the tail end of that work. In moving beyond this initial period, it is

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aid and simultaneous rise in remittances to argue that "remittances are de facto taking the place of American foreign aid in stabilizing the government and social order of El Salvador").

[286] Editorial, *supra* note 284. *But see* HOUSE OF COMMONS, *supra* note 65, at 53 ("Roger Ballard of the Centre for Applied South Asian Studies at the University of Manchester suggested—optimistically equating remittances with aid—that migrant workers are now by far the largest suppliers of development aid to their communities of origin, and the Africa Foundation for Development argued that Africans, Asians and Latin Americans are, through their diasporas, their own biggest aid donors.").

[287] *See* HOUSE OF COMMONS, *supra* note 65, at 53 (referring to Roger Ballard of the Centre for Applied South Asian Studies at the University of Manchester).

[288] Hernandez & Bibler Coutin, *supra* note 16, at 186.

[289] This is not to deny that there can be real autonomy benefits for remittance senders and recipients over "unearned" aid. Williams, *supra* note 9, at 6.

[290] *See*, *e.g.*, DAVID K. SHIPLER, THE WORKING POOR: INVISIBLE IN AMERICA 106 (2005) (describing the tough choices faced by an immigrant family who "tried to send $100 every two weeks to their relatives in Mexico").

[291] MYRDAL, *supra* note 206, at 315.

[292] *See*, *e.g.*, Bruce Bartlett, *The "Stingy" Attack*, NAT'L REV., Jan. 3, 2005 (arguing that remittances should be credited as a form of U.S. aid by those who critique low per capita U.S. official foreign aid relative to per capita aid by other developed nations). Notably, the Organisation for Economic Co-operation and Development (OECD) does not include remittances in its definition of aid. David E. Pozen, *Hidden Foreign Aid*, 8 FLA. TAX REV. 641, 645 (2007).

crucial that remittance advocates and remittance receiving countries insist upon a South-North perspective when looking at remittances. Remittances are not uniquely a flow of money from developed Northern countries to their Southern neighbors.[293] Even when considering only money sent by migrants to the United States, it is important to resist "obscuring the relationship between the [migrant] and the place she left behind, as well as the importance to her new country of that continuing relationship."[294]

Remittances should matter to both remittance-sending and remittance-receiving countries, but are likely to matter more for the latter,[295] and therefore, the perspective of communities in such countries should be heavily weighted. Long before the global institutions based in Washington took an interest and before they reached the cover of *The New York Times Sunday Magazine*, countries in Latin America have been aware of remittances. In some ways the first stage of remittance research has been about telling the North (and the international institutions headquartered in developed countries) what the South already knew: migrants are sending a lot of money home and remittances are important.

For Latino transnational families, remittances are but one aspect of a complex cross-border relationship. For many migrants, the "Latin American Dream" of making enough money to build a retirement home in their home countries has replaced the "American Dream." El Salvador, through a program, "Vivienda Cercana," created by El Fondo Socia para la Vivienda, offers credit to Salvadorans living in the United States for use towards the purchase of a house in El Salvador.[296] Unlike the United States, a country for which remittance outflows are a tiny fraction of the national economy, there are tremendous incentives for recipient countries to create remittance policies—including the development of remittance-based financial products—that facilitate rather than impede the goals of transnational families linked through remittances. Whether through state sponsored mortgage programs for migrants or through dual nationality policies that seek "to foster ties between expatriates and countries of origin" in the "hope these ties will pay off in terms of current remittances

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[293] "South-South remittance flows make up 30–45 percent of total remittances received by developing countries . . . ." WORLD BANK, *supra* note 1, at 85.

[294] Chander, *supra* note 95, at 1008 n.13.

[295] This can be seen in the difference in remittance awareness among the people of recipient countries compared to that found among people in sending countries.

[296] Lorena Baires, *¿Cómo Comprar una Casa en El Salvador?*, EL SALVADOR.COM, Apr. 5, 2007, *available at* http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=2968&idArt=925668# (noting that legal residents pay a five percent down payment and undocumented Salvadorans in the United States pay a fifteen percent down payment); *see also* Sana & Massey, *supra* note 43, at 510–11 (citations omitted) ("A common theme in the literature is that motivation to remit, at least partially, is based on the expectation of inheriting land or other wealth, yielding the concept of 'tempered altruism' or 'enlightened self-interest,' which posits both altruism and individual gain as motivations to remit when the migrant's return is likely.").

and future investments,"[297] receiving countries are likely to be a more reliable source of pro-poor, pro-development remittance policies than sending countries.[298]

A South-North perspective cautions against regulatory roadblocks on remittances. It is beyond the scope of this Article to critique U.S. immigration policy or the current global limitations on the free flow of labor;[299] however, remittance policies must be developed in a way that recognizes the rights of transnational families to express their love across national borders. Love is perhaps the one true universal, and remittance regulations or policies that stand in the way of this most basic of human rights ought to be looked at and rejected. Immigration to the United States is "a regular part of the life cycle for large numbers of men and women in many parts of Latin America, [and] sending money back to relatives at home has developed into a *moral* obligation."[300] The *moral* underpinnings of remittance practices must be protected against regulatory practices or taxes that raise the cost of sending money to loved ones.

A South-North perspective on remittances also cautions overly optimistic accounts which would transform remittances into a "silver bullet" for the developing world.[301] Undoubtedly, part of the attraction to remittances comes from its "bottom-up" aspect; that the South was aware of remittances before the North seems to add to the credibility of remittance driven proposals. Politicians have not yet devised programs that take into account the dynamic nature of remittances, a fact strikingly evident in the diplomatic context. As de luna Martinez states, "despite the large amount of remittances developing countries receive every year, the topic of remittances has not yet become an important public policy issue in the bilateral agenda between governments in sending and recipient countries."[302] Remittances are the international development community's new infatuation, seeming to offer a world of possibilities. As the newest "new idea" to come up from the developing world, the reception of

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[297] Jones-Correa, *supra* note 194, at 1008.

[298] However, much still needs to be done in this regard. de Luna Martínez, *supra* note 1, at 20 ("[L]ack of a bank account prevents remittances beneficiaries in developing countries from using the remittances funds they receive regularly to access other financial products that may help them to improve their living conditions, such as consumer loans, mortgages, life and non-life insurance products, pension plans, etc.").

[299] *See* Howard F. Chang, *The Economics of International Labor Migration and the Case for Global Distributive Justice in Liberal Political Theory*, 41 CORNELL INT'L L.J. 1, 11 (forthcoming Spring 2008) ("Once we recognize any moral obligation to reduce poverty abroad and to reduce global inequality, we must confront the significant economic harm we inflict on those we exclude under our restrictive immigration laws.").

[300] Eduardo Porter, *Flow of Immigrants' Money to Latin America Surges*, N.Y. TIMES, Oct. 19, 2006, at A24 (emphasis added).

[301] As one development expert has said regarding microcredit, "[t]here is no stand-alone answer to poverty." Paul Lewis, *Small Loans May Be Key To Helping Third World*, N.Y. TIMES, Jan. 26, 1997, at 4 (quoting Ben Rogaly, now a senior lecturer at the University of Sussex).

[302] de Luna Martínez, *supra* note 1, at 31.

remittances mirrors the hype surrounding microcredit and land-titling.

Belief in the power of remittances comes as a natural product of the larger distrust of "top-down" development and anti-poverty solutions, but to understand remittances, their poverty alleviating aspects must be decoupled from the idea that remittances are a route to development. For those with an interest in the success of Latin America, remittances seem to offer an escape from the policy requirements to which the region has been subjected.[303] Import-substitute industrialization followed by financial austerity led to yet another top-down policy imposition of institutional convergence, with little deviation allowed from the mono-institutionalism of the North.[304] By insisting on the primacy of the actions and possibilities of the world's poor, remittances appear to reverse the relative position of the South regarding development priorities. Developing countries, benefiting from the "transnational ties of [their] diasporas, especially their concern for their homeland,"[305] seem to have a greater ability to independently direct their own growth.[306]

Unfortunately, remittances come with potential work disincentives, price inflation, and limited, unproven effects on recipient-country national development. Though they support the national income levels of many countries with large remittance inflows, growth has been in single digits for much of Latin America despite these inflows. Just as microcredit and land-titling have not been the development solutions for countries with decades of experience with those ideas, so, too, have remittances failed to lead to sustained development. Remittances are worthy of our attention, not as the path to development, but because of the important role they play in alleviating poverty.

Remittances demand very little from the developed world and from countries in the developing world, but we should demand more from ourselves. Comfortable in the knowledge that the poor can help themselves (albeit through personal sacrifice that affects entire families), more radical proposals that highlight the need to expand international obligations to the poor[307] can be swept aside in favor of the politically

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[303] For a detailing of various global initiatives and ideas that failed to produce promised growth, see WILLIAM EASTERLY, THE ELUSIVE QUEST FOR GROWTH 21–137 (2001) (presenting various "Panaceas That Failed").

[304] *See*, *e.g.*, Trubek & Santos, *supra* note 269, at 5–6 (describing this in terms of the First and Second Moment in law and development thinking).

[305] Chander, *supra* note 95, at 1008.

[306] Investing in education that helps emigrant earnings, making sure second-generation emigrants feel connected to departure countries, and facilitating diaspora investments have been advocated as a way for land-locked countries to develop. PAUL COLLIER, THE BOTTOM BILLION: WHY THE POOREST COUNTRIES ARE FAILING AND WHAT CAN BE DONE ABOUT IT 61 (2007).

[307] *See* Avi-Yonah, *supra* note 258, at 372 (identifying the key cause of the North-South divide as "the reluctance of people in rich democracies to support foreign aid").

possible.[308] Or if not swept aside, advocates of a more full recognition of our shared humanity and the consequent expanded duty-of-rescue requirements risk getting crowded out by the attention paid to "costless" poverty solutions that rely on the poor to help themselves.[309] The irony is readily observed. Transnational families demonstrate, perhaps more than most other relations, that people, in the words of Professor Jedediah Purdy, "need one another to *survive*, to *prosper*, and to *flourish*."[310] The attention economists have given remittances ought to be supplemented by attention by legal academics and policy makers who are only now becoming aware of remittances. But in doing so, care must be given that the dynamics of remittances are not overstated. Much is at stake in remittance policy; remittance-sending migrants are motivated primarily to make sure that the family members they left home survive and perhaps prosper a little bit. Global flourishing will require that the countries do more than not impede the poor from entering the market; fundamentally, global flourishing requires recognition that the poor should not be fighting by themselves what should be *our* war on global poverty.[311]

V. CONCLUSION

Money sent by immigrants to their loved ones back home provides food and basic necessities for their families and plays a significant role in many Latin American economies. The indifference of the legal community to remittances is surprising, not only because the growth in remittances over the last decade has captured the attention of the major development institutions, but also because remittances potentially impact many areas of law. Besides the more obvious fields of law and

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[308] This is not to suggest that anti-poverty advocates disregard politics or that anti-poverty proposals do not take into account the political feasibility of the proposals. *See* Raj M. Desai, *The Political Economy of Poverty Reduction: Scaling Up Antipoverty Programs in the Developing World* 25 (Wolfensohn Ctr. for Dev., Working Paper 2, 2007), *available at* http://www.brookings.edu/papers/2007/11_poverty_desai.aspx (arguing that in order for antipoverty programs to scale up, they may need to change their target groups slightly to gain middle class support).

[309] Costlessness is, for example, one of de Soto's land-titling points. He has espoused "turning away from foreign aid programs." Manders, *supra* note 232, at 181. Similarly, "[a] major attraction of microcredit is that it can be accomplished without taxing the rich." *Microcredit and Myth*, STATESMAN (India), June 17, 2007. The microcredit "fad" arguably comes "at the expense of other development projects" that take the "form of direct aid to poor communities." Polakow-Suransky, *supra* note 201.

A more radical proposal worth considering comes from Professor Timothy A. Canova who urges an increase in development assistance to Mexico, *a la* the Marshall Plan, contrasting such a growth-based strategy for curbing illegal immigration—termed by Professor Canova as a "Marshall Wall"—with closed border immigration politics. *See* Timothy A. Canova, *Closing the Border and Opening the Door: Mobility, Adjustment, and the Sequencing of Reform*, 5 GEO. J.L. & PUB. POL'Y 341, 385–95 (2007) (describing the need for such an aid plan).

[310] Jedediah Purdy, *People as Resources: Recruitment and Reciprocity in the Freedom-Promoting Approach to Property*, 56 DUKE L.J. 1047, 1092 (2007).

[311] The "war on poverty" as a concept has lost its power to motivate, but I think it is time we once again focus on *this* battlefront.

development and immigration law, remittances deserve consideration from experts in trade law, business law, family law, international human rights law, and tax law, to name a few.

In this Article I introduced remittances, presenting the anti-poverty possibilities of these flows as well as the potential negative impacts of remittances on recipient countries. How threats to remittances—from undue regulatory burdens to overt taxation— are dealt with going forward will determine whether the formalization and lower cost of remittance transfers characteristic of the past decade continue.

These are important practical concerns, and ones that the paper explored in detail, but the well-being of recipient families and recipient countries in the long term will depend on how remittances fit into larger law and development thinking. If remittances are called upon to assume too many of the development responsibilities of "chastened neoliberalism," as the extent of their celebration by global institutions rightly or wrongly suggests, remittances will undoubtedly fall short.