

# POST-BREXIT: A CONTINUUM FOR STATE SOVEREIGNTY

## U.K.'S CHALLENGE TO BALANCE LEGITIMACY, CAPITAL DEVELOPMENT AND HUMAN NEEDS

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I. INTRODUCTION .....	1
II. WHY A NEW TYPOLOGY FOR STATE SOVEREIGNTY? .....	9
III. A CONTINUUM OF SOVEREIGNTY BASED ON LIBERTY .....	17
IV. CONCLUSION .....	24

### I. INTRODUCTION

Both sides of the Brexit campaign were very nationalist in their outlook suggesting that profitable preservation of a capitalist economy was paramount based on a conservative sense of nationalism and sovereignty.<sup>1</sup>

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1. John Browne, *U.K.'s Minister Commits to Successful Brexit*, TOWNHALL FINANCE (August 5, 2016, 12:01 AM), <http://finance.townhall.com/columnists/johnbrowne/2016/08/05/U.K.s-prime-minister-commits-to-successful-brex-it-n2201876>; see also Danica Kirka, *U.K. Central Bank Tries to Soften Brexit Shock on Economy*, AP: THE BIG STORY (August 4, 2016, 1:24 PM), <http://bigstory.ap.org/article/1f1f6bc759e945f0b366f5c7e4b74cdc/U.K.-central-bank-help-economy-through-brex-it-stimulus>.

The ongoing debates concerning the United Kingdom's (U.K.) future relationship with the European Union (EU) continue amidst the rapid cabinet changes and the political rhetoric of newly appointed U.K. public officials.<sup>2</sup> The post-Brexit campaign analysis shows that both the Leave (Brexit) and Remain campaign relied on widespread publicly disseminated negative scare tactics rather than on positive arguments for solidarity or for sharing in support of each respective side on the actual issues. Both sides were rigidly nationalistic in their outlook, relentless in their agnosticism of the facts, and persistent in demonizing the opposition.

Analysis of voters' demographics and news-consuming habits offer potential clues as to why Brexit passed.<sup>3</sup> Those who supported Brexit were

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While cheaper money will help households and companies, the cost of loans is already very low and is not their primary concern right now, economists say. Businesses in particular are worried about whether to make investments or hire in Britain without knowing what the country's trade relationship with the EU will be.

Nives Dolsak & Aseem Prakash, *Here's What Many Journalists Missed When Covering the Brexit Vote*, WASH. POST (August 4, 2016), <https://www.washingtonpost.com/news/monkey-cage/wp/2016/08/04/heres-what-many-journalists-missed-when-covering-the-brexit-vote/> (Welfare states have policies that help free trade's losers. The political scientist John Ruggie called this system for cushioning blows from the international economic system "embedded liberalism" arguing that the interventionist domestic welfare state made possible today's liberal trade order. But these kind of policies are eroding. Winners aren't compensating losers. In fact, firms like Apple that have gained enormously from globalization are using complex financial arrangements to escape taxes. Wealthy individuals are doing the same. Economic inequality is increasing dramatically in a "winner-take-all" society. Mainstream media coverage that focuses on racism and xenophobia rather than economic loss and inequality may not be taking these shifts adequately into account. Larry Summers famously insisted in 2005 that financial markets cannot fail. Yet more recently he noted the Brexit vote should be a 'wake-up call for elites everywhere' on the need to 'design an approach, approaches to economic policy that hear the anger that's being expressed in this vote.'" The real issue in BREXIT was "what did the British average voter get, when and how from EU integration?").

2. See *United Kingdom*, NEW WORLD ENCYCLOPEDIA (last updated July 28, 2016) [http://www.newworldencyclopedia.org/entry/United\\_Kingdom](http://www.newworldencyclopedia.org/entry/United_Kingdom) (explaining that the United Kingdom is constituted, or composed of four constituent governmental entities, England, Scotland, Wales and Northern Ireland which together make up the United Kingdom of Great Britain. With the Brexit vote now, this governance arrangement would continue as one nation State or if the arrangement would be discontinued for the U.K., internally as several sovereigns. This article presupposes this arrangement will continue. If it were discontinued, then it must be presumed that the United Kingdom would, as a unit of governance, have to dissolve into these constituent governmental entities which then, in turn, would either become independent nation-states in their own right and elect to join the EU, or else reconfigure a different and perhaps new arrangement with "Mother Britannia.").

3. Will Youmans, *The Brexit Vote and the Crisis of Sovereignty*, GULF NEWS (June 25, 2016, 5:19 PM), <http://gulfnews.com/opinion/thinkers/the-brexit-vote-and-the-crisis-of-sovereignty-1.1852328> (Brexit is a sort of martyrdom in the name of a restored state sovereignty. This is of course a matter of perception. How much sovereignty did Great Britain actually sacrifice? Euro-sceptics trotted out a litany of grievances, often to mock

older and as a general observation, less educated formally. Brexit voters tended to earn less money and where significant numbers appeared to work in non-skilled trades, many lacked formal job qualifications. In other words, these voters were not able to compete in a global economy that had “trickled down into” the U.K. over the last forty years.<sup>4</sup> According to some reports, these voters appeared to be reluctant to adapt to rapid social changes that integration into the global economy often requires as domestic markets shift rapidly.<sup>5</sup> Domestic labor markets and work opportunities

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the over-specificity of EU regulations. It would be hard to accept that the U.K.'s fate was actually much worse or unable to navigate the global economy as a result of its belonging. Those mystified by the vote show contempt for the Brexit decision. Some deride it as a demonstration of one of the major shortcomings of democracy, namely when uninformed electorates make crucial decisions which affect those to be governed. Referenda are among the most democratic means of direct, collective decision-making. There are rightful concerns that public deliberation beforehand was confused, media coverage was agnostic to facts, and mistrust of expertise was absent. Either way, Brexit produced a confused desire by the majority of Brits for fortifying state sovereignty. It will not fix the underlying problems of economic stratification, withered public safety nets and a national pride injured by its lost investments in imperialism and colonization. The State model in general has failed to address the increasingly transnational problems of the world today, including a growing global economic inequality, mass migration, climate change and the whimsical destruction wrought by the transnational finance networks. It is easy to pin these on the institutions like the EU, but many border-defying problems are the direct result of past State actions—the same powers of national sovereignty Brexit supporters seek to bolster.”).

4. *Id.*

(the neoliberal premise of free trade bringing about wealth creation for all did not manifest. Ordinary working people are left to feel they paid the cost of U.K. national honor—of which the State is the protector—for questionable, partial, material benefits, which were disproportionately distributed to those who were already well-off. The riches of Brussels went to those who profit the most from trade, banking, finance and so on. Social and economic stratification has such reproductive tendencies, and only further cement resentment. The rising sense of national pride, one ridden by angst about the state of the changing world, might appear irrational. But it betrays the underlying reason. An observer might miss it if they value the outcome in economic terms and political outcomes alone).

5. S.A. Ramirez, *Taking Economic Rights Seriously After the Debt Crisis*, 42 LOY. U. CHI. L. REV. 713 (2011); *see generally* DANI RODRIK, *THE GLOBALIZATION PARADOX: DEMOCRACY AND THE FUTURE OF THE WORLD ECONOMY* (W.W. Norton & Co., Inc. 2011); MURRAY MILGATE & SHANNON C. STIMSON, *AFTER ADAM SMITH: A CENTURY OF TRANSFORMATION IN POLITICS AND POLITICAL IDEOLOGY* (Princeton Univ. Press 2009); PAUL KRUGMAN, *TRADE AND WAGES RECONSIDERED* (Princeton Univ. Press 2008); PHILLIP MCMICHAELS, *DEVELOPMENT AND SOCIAL CHANGE* (Sage Pub. 2008); PETER NOLAN, *CAPITALISM AND FREEDOM: THE CONTRADICTIONARY CHARACTER OF GLOBALIZATION* (Anthem Press 2008); INO ROSSI, *FRONTIERS OF GLOBALIZATION RESEARCH: THEORETICAL AND METHODOLOGICAL APPROACHES* (Springer Pub. 2008); RAWI ABDELAL, *CAPITAL*

change because of decisions made in corporate boardrooms rather than by national legislatures and in parliament through a democratic and public debate process. Brexit voters had concluded they were being left behind by both the economic pressures and the social ramifications [e.g., immigration mandates] of U.K.'s European Union membership.<sup>6</sup> Adding up these interconnected demographics, it is not difficult to understand that Brexit reflected a larger, more deep-seated citizen angst about the fragile state and legitimacy of U.K. sovereignty.

The public perceptions that influenced the urban Brexit voting patterns carried with it some immediate and interesting mandates, not the least of which will be substantive in terms of addressing U.K. security followed shortly thereafter by significant internal planning and parliamentary review of the U.K.'s sovereign obligations that accompany its global contractual partnerships, Common Market participation, international trade agreements, and international treaties on human rights.<sup>7</sup> Transition in how exactly the

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RULES: THE CONSTRUCTION OF GLOBAL FINANCE (Harvard Univ. Press 2009); RONALD FINDLAY & KEVIN O'ROURKE, POWER AND PLENTY: TRADE, WAR AND THE WORLD ECONOMY IN THE SECOND MILLENNIUM (Princeton Univ. Press 2009); BARRY K. GILLS & W. R. THOMPSON, GLOBALIZATION AND GLOBAL HISTORY (Routledge 2006); JOHN BOGLE, THE BATTLE FOR THE SOUL OF CAPITALISM (Yale Univ. Press 2005); CHAMSY EL-OJEILE & PATRICK HAYDEN, NEW CRITICAL THEORIES OF GLOBALIZATION (Palgrave Macmillian 2006); JAN AART SCHOLTE, GLOBALIZATION: A CRITICAL INTRODUCTION (PALGRAVE MACMILLIAN 2005); JURGEN OSTERHAMMEL & NIELS PETERSSON, GLOBALIZATION: A SHORT HISTORY (DONA GEYER, TRANS.) (Princeton Univ. Press 2009); RICHARD H. ROBBINS, GLOBAL PROBLEMS AND THE CULTURE OF CAPITALISM (Pearson 3d ed. 2005); ROBBIE ROBERTSON, THE THREE WAVES OF GLOBALIZATION: A HISTORY OF DEVELOPING GLOBAL CONSCIOUSNESS (Zed Books 2002); BARRY SMART, ECONOMY, CULTURE, AND SOCIETY: A SOCIOLOGICAL CRITIQUE OF NEO-LIBERALISM (Open Univ. Press 2003); JOSEPH STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS (Norton 2003); PETER A. HALL & DAVID W. SOSKICE, VARIETIES OF CAPITALISM: THE INSTITUTIONAL FOUNDATIONS OF CAPITALISM (Oxford Univ. Press 2001); MARTIN KOHR, RE-THINKING GLOBALIZATION: CRITICAL ISSUES AND POLICY CHOICES (Zed Books 2001); MOHAMMED A. BAMYEH, THE ENDS OF GLOBALIZATION (Univ. of Minnesota Press 2000); DEAN BAKER, GERALD EPSTEIN, & ROBERT POLLINS, GLOBALIZATION AND PROGRESSIVE ECONOMIC CHANGE (Cambridge Univ. Press 1998); CHRISTOPHER CHASE-DUNN, GLOBAL FORMATION: STRUCTURE OF THE WORLD ECONOMY (Rowman & Littlefield Pub. 1998); JOHN M. KEYNES, GENERAL THEORY OF EMPLOYMENT, INTEREST AND MONEY (Create Space Indep. Pub. Platform 2011).

6. Youmans, *supra* note 3.

(sovereignty is the passionate almost personal concern of nationalists, patriots and ordinary citizens everywhere. The notoriously irresponsible British tabloids agitated for such sentiments over the past four decades. Sovereignty, as the highest political authority, was a key word in the Brexit debate, especially for those calling for Leave votes. This is odd. What does national sovereignty mean for average people who have no command of the state's instruments and are not of an economic class to determine how the state works? This presumes a rational basis).

7. *Id.*

U.K. plans to meet these global mandates will simultaneously raise considerable *domestic pressure* by U.K. citizens for more elected official transparency as the State reviews how it proposes to integrate its available *capital resources* [both public and private] once the U.K. begins to function outside its EU partnership.<sup>8</sup>

After almost a half-century of being part of a different vision, the U.K. now plunges into a new period of political transition, uncertainty, and public contestation. But now, the necessity of securing legitimacy with its own citizens, U.K. lawmakers and public officials are confronted with somehow redefining the operation of U.K.'s sovereignty while they simultaneously negotiate an amicable EU separation and divorce settlement under Article 50.<sup>9</sup> The operative mandates for this “re-legitimization”

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(the bargain underpinning the EU is that compromises in national sovereignty through accession to regulatory compliance will bring economic and social benefits. Creating a common economic market that could rival the American economy would be a boost to lift all boats. Yet while greater access to markets and labor migration accelerated within the EU, public austerity measures produced cutbacks in domestic-level social programs, education and health. These public austerity measures are now at the forefront of domestic political review. For many working people, the benefits of EU membership did not appear to outweigh the stagnation in quality of life they experienced, combined with the loss of security).

8. Steven Swinford, *Theresa May Pledges to Fight Injustice and Make Britain 'A Country That Works For Everyone' In Her First Speech as Prime Minister*, THE TELEGRAPH (JULY 13, 2016, 8:53 PM), <http://www.telegraph.co.uk/news/2016/07/13/theresa-mays-pledges-to-fight-injustice-and-make-britain-a-count/>.

(BREXIT supporters continually cited a number of reasons for leaving the EU including independence and injuries to British national pride that Brussels routinely imposed on the United Kingdom so much so that this over-regulation from outside the borders of Great Britain appeared to prioritize foreign corporate interests while forcing Britain to take particular refugees, especially from Syria and Eastern Europe, that created a general fear about cultural and religious disharmony).

(note that these essential capital resources are currently available to the U.K. as its rights and benefits of EU membership but will need to be analyzed and carefully discussed precisely because the public spectrum of Brexit citizen political demands are significant and dominantly focused on creating measurable and concrete *domestic-based solutions* that address access to education, employment and healthcare).

9. See Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Dec. 13, 2007, 2007 O.J. (C 306) 1, <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-European-union-and-comments/title-6-final-provisions/137-article-50.html> [hereinafter Treaty of Lisbon] (noting that any Member State may decide to withdraw from the Union [EU] in accordance with its own constitutional requirements so long as the Member State notifies the European Council of its intention. This notice triggers a set of guidelines from the European Council to negotiate an agreement with that State for arrangements of the withdrawal and is to also take into account the framework for the future relationships of that State with

process is reflected in the Brexit vote by U.K. citizens who somehow felt that British sovereignty was manipulated, bruised, or perhaps even surrendered unnecessarily.

A brief glimpse into the political enormity of this transition for the U.K. appeared in the early statements by the new Prime Minister Theresa May. May essentially provided reassurances that she would heal the nation's divisions and build bridges to help the least privileged. She publicly stated that her government would deliver Brexit and refocus its priorities on people whose needs were greatest: "[w]hen we make the big calls we will think not of the powerful but you," she said. "When we pass new laws, we will listen not to the mighty but to you. When it comes to taxes, we will prioritize not the wealthy but you. When it comes to opportunity, we won't entrench the advantages of the fortunate few—we will do everything we can to help anybody, whatever your background, to go as far as your talents will take you."<sup>10</sup> Obviously, with the Brexit vote

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the EU. The final agreement must have majority approval of the European Council members and the consent of the European Parliament. The Treaties between the parties cease from the date of entry of the negotiated agreement (Article 218(3) or failing an agreement, two years after Article 50 notification is given by the State, unless the European Council unanimously decides to extend this time period.); *see also* Nick Barber, ET AL., *Pulling the Article 50 'Trigger': Parliament's Indispensable Role*, U.K. CONSTITUTIONAL LAW ASSOC. (June 27, 2016), <https://U.K.constitutionallaw.org/2016/06/27/nick-barber-tom-hickman-and-jeff-king-pulling-the-article-50-trigger-parliaments-indispensable-role/> (arguing that the Prime Minister alone is unable to trigger withdrawal from the EU under TEU; Prime Minister must be authorized to do so by statute in order that the declaration is legally effective under domestic law and complies with the preconditions of triggering Article 50); Miranda Butler, *The Implications of Brexit: Who Is Sovereign Now?*, SOLICITORS JOURNAL (July 26, 2016), <http://www.3sharecourt.com/assets/asset-store/file/MBBrexitSJ.pdf> (discussing what Brexit vote entails for U.K. parliamentary sovereignty and for U.K. influence in international issues; considers whether U.K. constitutional law requires not only government's use of 'crown prerogative' but also a parliamentary vote in favor of leaving EU; looks like increased participation of Scotland and Northern Ireland in U.K. decision making and future of U.K. as sovereign State in international law; citing case *R. v Secretary for the Home Department EX.P Fire Brigades Union* [1995] 2 A.C.513, Independent [April 6, 1995]).

10. Toby Helm, *Theresa May's First Pledge as PM Was for A "One-Nation Britain."* *Can She Deliver?*, THE GUARDIAN (July 16, 2016, 6:45 PM), <http://www.theguardian.com/politics/2016/jul/16/theresa-may-one-nation-britain-prime-minister> (suggesting that the core problem is that, as yet, no one in it [new British cabinet] knows what Brexit means, and what it will entail. May's cabinet is split between the likes of Hammond, who insists that whatever happens the U.K. must retain as much access to the single market as possible, and others, such as Davis and Johnson, who seem to believe the U.K. can thrive outside the single market if it has to, and this is the price the country has to pay to extricate itself from the EU's commitment to free movement of labor in order to control immigration); *see* Swinford, *supra* note 8 (noting that Theresa May has directly addressed working-class Britons who are "just managing" to cope with life as she vowed that her Government will not "entrench the advantages of the privileged few." In a searing speech outside Downing Street May pledged to "fight against the burning injustices" of poverty, race, class and health and give people back "control" of their lives; she vowed to "prioritise" tax cuts and legislation for working-class voters rather than the "mighty"; Her

behind her government, Theresa May will be in a unique position to foster a more structured plan that intentionally re-defines the role and function of State government within its overall domestic operation.<sup>11</sup>

Her early comments suggest there will be a quasi-public debate that takes a long view and will be framed by widespread domestic program development. May speaks of marshalling various capital resources and domestic programs around economic marketplace issues, social safety networks, labor issues, job creations, and individual capability development as the country strives to fight against burning social injustices. The balance espoused by Ms. May points to a much more deliberate approach in the State's development and utilization of economic capital,<sup>12</sup> social capital,<sup>13</sup>

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speech, setting out her vision as a "One Nation conservative", marked a clear attempt to distance herself from David Cameron's premiership and appeal directly to disenchanted Labour voters. She said that for an "ordinary working class family" life is "much harder than many people in Westminster realise" as she sought to heal the national divide after the EU referendum. Her speech highlighted her clear intention to reach out to Labour voters who feel alienated by Jeremy Corbyn in a move which could put the Tories in power for a decade. After arriving in Downing Street, May said that her "mission" as Prime Minister will be to make Britain "a country that works for everyone". She also vowed to "forge a bold new positive role" for Britain outside the European Union).

11. See Karen A. Cecilia O'Rourke, *The Crossroads of Globalization, Human Rights, and Rule of Law: Creating A Legal Culture of Human Rights Designing A Geonomos Model for the State* (2012) (unpublished S.J.D. dissertation, Washing College of Law, American University) (on file with the American University Library system) (the irony of Brexit as a historical event, is that contrary to public anecdotal comments that Theresa May is a "new Thatcher", Prime Minister May is thankfully not Margaret Thatcher, and hopefully does not feel compelled to bear the Thatcher political standard. Recall that it was Margaret Thatcher [U.K.] and Ronald Reagan [U.S.A.] who created, embraced and implemented the neoliberal paradigm [c.1980-2010] for global capitalism [better known as "trickle-down economics" or The Washington Consensus] which has proven to be disastrous to State sovereignty, domestic program funding, and State oversight of the private sector capital movement both in domestic markets and in the global economy).

12. See Glyn Holton, *Economic Capital*, GLYN HOLTON (August 11, 2016), [https://www.glynholton.com/notes/economic\\_capital/](https://www.glynholton.com/notes/economic_capital/). (economic capital is the quantum of risk capital, assessed on a real basis, which an enterprise requires to cover the risks that it is running or collecting as a going concern, such as market risk, credit risk, legal risk, and operational risk) (it is the amount of money which is needed to secure survival in a worst-case scenario. Firms and financial services regulators, i.e., representing the nation-state should then aim to hold risk capital of an amount equal at least to economic capital. Typically, economic capital can be calculated by determining the amount of capital that a firm needs to ensure that its realistic balance sheet stays solvent over a certain time period with a pre-specified probability. Therefore, economic capital is often calculated as value at risk. The balance sheet, in this case, would be prepared showing market value (rather than book value) of assets and liabilities and thus economic capital is distinguished in relation to other types of capital which may not necessarily reflect a monetary or exchange-value. These forms of capital include natural capital, cultural capital and social capital, the latter two represent a type of power or status that an individual can attain in capitalist society via a formal education or through social ties. O'Rourke, *supra* note 11, at 278-79).

and human capital<sup>14</sup>—three essential resources that every nation State including the U.K. already possesses. The post-Brexit appeal made by May seeks to shape a different foundation for the twenty-first century U.K. as she speaks about a social contract between government and those it seeks to govern that represents a more flexible *continuum for State sovereignty*—one that secures public decision-making, individual liberty, citizen opportunity and economic stability. Every one of these espoused efforts moves the public debate for defining the operative scope of British sovereignty on to a twenty-first century continuum—a continuum that is more relational in the domestic sector and more actively functional in the international sector. It is an effort that strives to meet the modern demands

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13. See Paul S. Adler ET AL., *Social Capital: Prospects for a New Concept*, 27 THE ACAD. OF MGMT. REV., 17–40 (2002), [http://www.csee.wvu.edu/~xinl/library/papers/social/social\\_capital.pdf](http://www.csee.wvu.edu/~xinl/library/papers/social/social_capital.pdf) (the term Social Capital generally refers to (a) resources, and the value of these resources, both tangible (public spaces, private property) and intangible ("actors," "human capital," persons and people) but is in the GeoNOMOS<sup>®</sup> to be distinguished from human capital, (b) the relationships among these resources, and (c) the impact that these relationships have on the resources involved in each relationship, and on larger groups. The focus of social capital is generally as a form of capital that produces public goods for a common good); see also P. BOURDIEAU, *OUTLINE OF A THEORY OF PRAC.* (Cambridge University Press, 1972); L.J. HANIFAN, *The Rural School Community Center*, 67 ANNALS OF THE AM. ACAD. OF POL. AND SOCIAL SCIENCE 130–138 (Sage Publications, Inc., 1916); L.J. HANIFAN, *THE COMMUNITY CENTER* (Boston: Silver Burdett & Company, 1920); JANE JACOBS, *THE DEATH AND LIFE OF GREAT AM. CITIES* 138 (Random House Inc., 1961) (stating that “If self-government in the place is to work, underlying any float of population must be a continuity of people who have forged neighborhood networks. These networks are a city’s irreplaceable social capital. Whenever the capital is lost, from whatever cause, the income from it disappears, never to return until and unless new capital is slowly and chancily accumulated.”); James Coleman, *Social Capital in the Creation of Human Capital*, 94 AM. J. OF SOCIOLOGY SUPPLEMENT S95–S120 (1988), [http://courseweb.ischool.illinois.edu/~katewill/for-china/readings/coleman 1988 social capital.pdf](http://courseweb.ischool.illinois.edu/~katewill/for-china/readings/coleman%201988%20social%20capital.pdf); Barry Wellman & Scott Wortley, *Different Strokes from Different Folks: Community Ties and Social Support*, 96 AM. J. OF SOCIOLOGY 558–88 (1990), <http://www.behr.ufl.edu/sites/default/files/Wellman%20and%20Wortley%20-%201990%20-%20Different%20Strokes%20from%20Different%20Folks%20Community%20.pdf>; Samuel Bowles & Herbert Gintis, *Social Capital and Community Governance*, 112 THE ECON. J. 419–36, <http://tuvalu.santafe.edu/~bowles/SocialCapital.pdf>.

14. See Michael Spence, *Job Market Signaling*, 87(3) Q. J. OF ECON. 355–74 (1973), <http://www.econ.yale.edu/~dirkb/teach/pdf/spence/1973%20job%20market%20signalling.pdf> (human capital is a term popularized by Gary Becker, an economist from the University of Chicago, and Jacob Mincer that refers to the stock of knowledge, habits, social and personality attributes, including creativity, embodied in the ability to perform labor so as to produce economic value. In the alternative, human capital is understood as a collection of resources—all the knowledge, talents, skills, abilities, experience, intelligence, training, judgment, and wisdom possessed individually and collectively by individuals in a particular and defined population. Such resources are the total capacity of the people that represents a form of wealth which can be directed to accomplish the goals of the nation or state or a portion thereof); see also Michael Spence, *Signaling in retrospect and the Information Structure of Markets*, 92 AM. ECON. REV. 434–59 (2002), <http://classes.maxwell.syr.edu/ecn611/spencenobel.pdf>; Gary Becker, *Human Capital*, THE CONCISE ENCYCLOPEDIA OF ECON. (September 29, 2016), <http://www.econlib.org/library/Enc/HumanCapital.html>.

of the nation State without a retrenchment to an older view of an absolute sovereign autonomy of the Westphalian model of the nation State that prevailed before and after World War II. As a recognized global leader, the U.K. is in an unusual position in the next few years to design this new *continuum of sovereignty* and to model its operation both domestically for its citizens and internationally with a more effective set of economic organizing principles that balance the ongoing global expansion of capitalism.

## II. WHY A NEW TYPOLOGY FOR STATE SOVEREIGNTY?

The world in relation to the operation of sovereign States has changed dramatically in the last half of the twentieth century as demonstrated by the end of traditional colonialism—*de jure*, if not also *de facto*—and the sheer number of newly emerging nation States claiming and being accorded sovereignty.<sup>15</sup> Traditional notions of sovereignty established by the Treaty of Westphalia (1648)<sup>16</sup> are simply no longer fully applicable or realistic as the State legitimizes its function in the twenty-first century. States, including the U.K., have *voluntarily agreed* to cooperate in the interests of global capitalism, human rights, and world peace across a variety of global partnerships by signing charters, private and public sector investment contracts, and a wide variety of public treaty agreements.<sup>17</sup> As a result, a recognizable and functional international “community of States” has been established and the U.K. is fundamentally a part of that community in addition to its membership in the EU regional configuration of States; a community which it cannot “leave,” no matter what, but a community which it may be able to influence and re-shape more productively and going forward in time through more active and engaged participation.

Furthermore, as global economic organizing principles have also changed over time, the ongoing function of State sovereignty was altered even into the early twenty-first century.<sup>18</sup> As part of this dynamic process, dominant States such as the U.K., continued to give up parts of the traditional scope of State sovereignty in exchange for what was perceived

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15. See generally O'Rourke, *supra* note 11.

16. See *Treaty of Westphalia*, YALE L. SCH. (August 15, 2016), [http://avalon.law.yale.edu/17th\\_century/westphal.asp](http://avalon.law.yale.edu/17th_century/westphal.asp) (the Treaty of Westphalia originally was signed in 1648 to stop the religious wars of the seventeenth century by securing a domestic jurisdiction and a defined geographic boundary for emerging nations, thus offering protection for nation States); O'Rourke, *supra* note 12, at 236; Aloun A. Preece, *The Rise and Fall of National Sovereignty*, 8 INT'L TRADE AND BUSINESS L. REV. 229 (2003), <http://www.austlii.edu.au/au/journals/IntTBLawRw/2003/9.html>.

17. See O'Rourke, *supra* note 11, at 9, 11.

18. See generally O'Rourke, *supra* note 11, at 2.

as the ongoing mutual benefits of these economic market partnerships in both the public and private international arena.<sup>19</sup>

The idea that how sovereign States conduct themselves is a dynamic phenomenon in constant flux requires a parallel consideration that there will be another set of transitions required in this century as the defined role, legitimacy, responsibility and operational function of a sovereign State continues to change. The changing global realities of the last forty years point to the evolution of a *continuum of State sovereignty* for this century, one that coordinates cooperation both in addressing the legitimacy of its citizen's concerns and in designing a new global market paradigm.

As nation States entered the early twenty-first century, two predominant debates ensued. The first debate included a cadre of global politicians and world order scholars arguing that the dominance of international organizations and their scope of authority meant the nation State was "dead." World governance would soon become inevitable in a cosmopolitan sense of global political and legal evolution.<sup>20</sup> Traditional notions about State sovereignty would simply merge into a world governance model. Others suggested that State was not dead but would remain a viable architect of world order well into the twenty-first century.<sup>21</sup> The second debate presented new typologies for State sovereignty suggesting an evolution in the expression of State sovereignty was emerging. This second debate relied on State collaboration and

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19. See *Understanding the WTO Basics*, WORLD TRADE ORG. (September 29, 2016), [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact4\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm) (the basis of a "common law of humanity" emerged after the end of the Cold War in the 1980s followed the emergence of independent States in Eastern Europe who were active in the United Nations and demanded equity and fair access into the global marketplace and international finance as well. The World Trade Organization was created in 1995 as an evolution of the multilateral General Agreement on Tariff and Trade of 1948. These global trading contractual agreements between States coupled with many regional trade agreements in the late twentieth century continued to erode the Westphalian notion of an absolute form and unilateral expression of State sovereignty. However, while cooperative behavior increased between sovereign States and seemingly eroded the authoritarian and more traditional Westphalian model of sovereignty, the endorsement of equality among sovereign States is also foundational to the United Nations Charter and other global institutions such as the International Monetary Fund, the World Bank, and the World Trade Organization); see O'Rourke, *supra* note 11, at 82, 237.

20. See MICHAEL HARDT & ANTONIO NEGRI, *EMPIRE* (Harvard University Press, 2000); see also Peter Hay, *Supranational Organizations and United States Contract Law*, 6 VA. J. INT'L L. 195 (1996); Patrick Tangrey, *The New Internationalism: The Cessation of Sovereign Competency to Supranational Organizations and Constitution Changes in U.S. and Germany*, 21 YALE J. INT'L L. 395 (1996); HAROLD JONES, *INT'L MONETARY COOPERATION SINCE BRETTON WOODS* (2000) (explaining how IMF as one international organization has loan terms requiring a country engage in trade liberalization under neoliberal paradigm as well as in various domestic budget and credit restraints); JEREMY RABKIN, *LAW WITHOUT NATIONS?: WHY CONS. GOV'T REQUIRES SOVEREIGN STATES* (Princeton University Press, 2005).

21. See O'Rourke, *supra* note 11, at 343, 410–11.

interdependence that would require a more interactive and relational definition of how States expressed their sovereignty. New functional typologies for the State could no longer simply be based on a traditional Westphalian authoritarian exercise of unilateral power.<sup>22</sup>

In the last decades of the twentieth century, numerous recommendations for a new sovereign State typology were presented. Jack Donnelly proposed a new typology (a four sectioned rectangular box) that balanced State authority and State capabilities with sovereign rule and the State's scope of domination as it intersected effective components of formal sovereignty and material/normative weaknesses.<sup>23</sup> Francis Deng and Helen Stacey suggested two different typology arrangements for *sovereignty as responsibility*<sup>24</sup> and *relational sovereignty*.<sup>25</sup> Deng's typology analyzed a range of both internal and external State factors and then, correlated these factors with a new international standard of *responsible sovereignty as an irreversible process*.<sup>26</sup> Helen Stacey suggested that a new typology of *relational sovereignty* was emerging where the sovereign would be judged by how well and by what means the State concretely and continuously "cares" for its people.<sup>27</sup> A fourth typology by Julian Ku and John Yoo discussed a *popular sovereignty* based on the idea that people in a sovereign State govern themselves through Constitutional structures and institutions.<sup>28</sup>

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22. GIANLUIGI PALOMBELLA & N. WALKER, RELOCATING THE RULE OF L. (Hart, 2009); see Rebecca Bratspies, *Perspectives on the New Regulatory Era*, 51 ARIZ. L. REV. 575 (2009); see also Eric Engles, *Transformation of the International Legal Order*, 23 QUINNIPIAC L. REV. 23 (2007); James Rosenau, *Three Steps Toward a Viable Theory for Globalization*, in FRONTIERS OF GLOBALIZATION RESEARCH: THEORETICAL AND METHODOLOGICAL APPROACHES 307–15 (Inno Rossi ed., 2007); Elke Krahmman, *National Regional and Global Governance: One Phenomenon or Many?*, 9 GLOBAL GOVERNANCE 323 (2003), <https://stackofideas.files.wordpress.com/2013/04/national-regional-and-global-governance-one-phenomenon-or-many-elke-krahmann.pdf>; Brad Roth, *The Enduring Significance of State Sovereignty*, 56 FLA. L. REV. 1017 (2004); Paul Kahn, *The Question of Sovereignty*, 40 STAN J. INT'L L. 259, 260–68 (2004); PAUL KAHN, PUTTING LIBERALISM IN ITS PLACE (Princeton University Press 2005); Clair A. Cutler, *Critical Reflections on the Westphalian Assumptions of International Law and Organization: A Crisis of Legitimacy*, 27 REV. INT'L STUD. 133 (2001); MICHAEL FOWLER & JULIE BUNCK, LAW, POWER AND THE SOVEREIGN (Routledge 1995) (for historical notions of sovereignty); THOMAS HOBBS, LEVIATHAN: PARTS ONE AND TWO (Bobbs Merrill Co., 18th ed. 1958); THOMAS HOBBS, LEVIATHAN (Penguin Books, 1st ed. 1968); JOHN LOCKE, SECOND TREATISE OF GOV'T (Prentice-Hall, 1st ed. 1953).

23. Jack Donnelly, *State Sovereignty and Human Rights* 3–4 (June 2004) (forthcoming paper prepared for working papers).

24. Francis Deng, *Frontiers of Sovereignty*, 8 LEIDEN J. INT'L L. 249 (1995).

25. Helen Stacey, *Relational Sovereignty*, 55 STANFORD L. REV. 210 (2009).

26. Deng, *supra* note 24, at 250–77.

27. Stacey, *supra* note 25, at 218–22.

28. Julian Ku & John Yoo, *Globalization and Sovereignty*, 31 BERKELEY J. INT'L L. 210, 211 (2013) (noting that sovereignty is in decline but the decline in national sovereignty is not desirable since

In this construct, the State can legitimately share sovereign power with its citizens without compromising the whole system.<sup>29</sup>

The typology presented in this article builds on concepts noted above and points to yet another evolution in how sovereign States function in this century. It is an interactive typology called a *continuum for sovereignty*, one that is based on a *framework of liberty* and ensures the State remains the primary architect of world order.<sup>30</sup> The GeoNOMOS<sup>®</sup> operates interactively on two levels as a State secures its legitimacy within a geographic boundary for the very people it is trying to govern and then, shapes the global market partnerships that it intentionally seeks to undertake. [See diagram below]. This typology offers sovereign stability, operational flexibility and addresses the two primary functional components of any twenty-first century State, including the U.K.: (i) one component redefines how the sovereign State functions to create and sustain a civil society within its own *domestic sphere* (vertical axis) by addressing the specific needs of its populations who will live and work most of their lives within the geographic boundary of that State, and (ii) one component that seeks to redefine how the sovereign State functions and engages within its own *international sphere* (horizontal axis) by engaging with the public and private sector global marketplace and foreign investment sector, public sector international institutions, and an international community of States.<sup>31</sup>

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State maintains decision-making and individual liberties. Suggesting a new form of popular sovereignty with shift away from Westphalian models to the right for people to govern themselves through institutions of the Constitution and its structures. Popular sovereignty is flexible to maintain national sovereignty and assumes State can share sovereign power without giving up entire system; popular sovereignty can co-exist with globalization and governance issues in ways that the rigidity of Westphalian system could not. State turning automatically to international organizations inconsistent with reliance and continued power of nation States; by referring to structural provisions of Constitution, e.g. separation of powers, promotes state level democratic governance and incorporates the gains of international cooperation).

29. *Id.* at 218.

30. O'Rourke, *supra* note 11, at 212 (noting a continuum is referenced as the basis of this new typology for sovereignty because it represents a more flexible set of options given the range of possibilities in terms of how an individual State interacts with some sense of legitimacy on behalf of the people it is governing and interacts as a member of the international community of States; there is no limit to the possibilities offered as part of this proposal for a continuum of State sovereignty so long as it operates within a framework of liberty. See diagram and discussion detailed in this commentary. See definition of *continuum* at <http://merriam-webster.com> (last visited Oct. 15, 2016)).

31. *Id.* at 15 (stating without a doubt, the rapid and uncontrolled movement of private sector global capital and public sector capital and domestic finances in and out a State's legal boundaries also bear witness to these relational components of State sovereignty within the *international sphere* of the equation. The same flexibility of global movement never seemed to occur on the side of development or utilization of social and human capital. While economic capital was and remains highly mobile and unregulated, most human labor (human capital) is bound by State geographic boundaries and people's life circumstances and citizenship rights are dictated by those State boundaries. This is the *domestic re-*

Often the functional role and legitimacy of State sovereignty lies dormant until a conflict like Brexit emerges. Then the sovereign powers as well as State legitimacy or State authority arise, are challenged, and need to be redefined. As with the Brexit vote, these demands are now made not upon a set of elected individuals but upon the U.K. *in toto* and acting as a sovereign nation State. This legitimacy crisis cannot be ignored. In fact, given the charged atmosphere around the Brexit vote, there appears to be a growing sense of *citizen entitlement* just as the U.K. strives to determine the proper balance of sovereign accountability for building a different kind of civil society that May defines as “one Nation conservative” apart from the European Union. An expanded level of U.K. legitimacy will need to secure a new set of global market organizing principles that move beyond the neoliberal paradigm (c.1980–2010) notion of “trickle-down” global economics.

The typology for a *continuum of State sovereignty* presented here contributes to support this ongoing conversation concerning the post-Brexit dialogue and the U.K. secession process by suggesting the premise that the U.K. as a nation State must remain a primary architect in shaping not only its own civil society but also in modeling a new world order for this century. A civil society inspired by Prime Minister May will be more economically inclusive, one hopefully based on a new paradigm for global capitalism that does not leave large groups of U.K. citizens out of its intended benefits; one that supports a sense of equity in sharing tax burdens from all sectors within the State; and one that provides opportunity, access to education and advancement in jobs for all.<sup>32</sup>

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*balancing* that appears to be in demand as a result of Brexit vote in the U.K. and that is espoused by Theresa May’s ideal of “one Nation conservative.” There is an imbalance expressed and experienced by the U.K. citizenry active in the Brexit campaign that the benefits of economic capital development have not *trickled down* to the social settings and human capital development in places where most U.K. citizens live every day).

32. *Id.* at 74–75 (this neoliberal paradigm (c.1980–2010) of global capitalism routinely required tremendous State reductions in domestic program development, public services, and public sector program funding as a calculated cost for continued access to global market development, foreign direct investment programs, and participation in world financial institutions that provide necessary access to public and private economic capital. Ms. May will be in a unique position to soften some of the past structural damage done domestically in the U.K. by this neoliberal paradigm (c.1980–2010) and has a citizen mandate to do so now as evidenced by the Brexit vote—by her own statements, May appears willing to address damages that have accumulated over time from the neoliberal economic paradigm of the 1980s, the benefits from which apparently have not “trickled down” to regular U.K. citizens who in Brexit challenged State legitimacy and demanded broader State commitments to domestic concerns, programs, and citizen quality of life issues. The balance that needs to be struck between U.K.’s domestic program design and U.K.’s international obligations and global market participation is daunting but possible to address if the underlying basis of U.K. sovereignty can be re-configured prior to the completion of Article 50 negotiations on a transition agreement).

Rodrik argues that the blind spot of the capitalist globalization process in the neoliberal era (c.1980–2010) consisted of deep and rapid integration in the world economy coupled with the idea that the required institutional underpinnings could catch up later at the domestic level of the State.<sup>33</sup> With respect to how (in what manner) the U.K. might develop and utilize its considerable economic capital which is part of the proposed *continuum of State sovereignty*, Rodrik supports a basic principle that markets always require other social institutions (domestic level) to support legal arrangements and global market stabilizing functions so there can be fair redistribution, taxation, safety nets, and social insurance.<sup>34</sup> As the U.K. adjusts its legal arrangements and market functions in the post-Brexit period, careful review of several basic principles could be beneficial in several ways.

First, the singular neoliberal focus of the past era that relied on global market development to support concentrated economic growth and/or to secure private sector foreign direct investment inside the State should raise caution in the U.K. as well given the widespread documentation of the uneven implementation and results of the neoliberal paradigm (c.1980–2010) within the capitalist globalization process.<sup>35</sup> This issue is evidenced in the general dissatisfaction with notions of “trickle down” benefits to U.K. citizens that have not predictably or consistently occurred and is certainly one of the problems underlying the Brexit vote.

Second, Rodrik concludes a State has the right to protect its own institutions, social arrangements, and regulations so that *globalization becomes an instrument* for achieving the goals that a society seeks: prosperity, stability, freedom and quality of life.<sup>36</sup> It has been the uneven

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33. RODRIK, *supra* note 5, at 231–42, 245 (discussing a dominant role for the nation State in relation to the principles of democratic decision-making which is the foundation for the international economic architecture; noting that when States are not democratic this scaffolding collapses and one cannot presume a country’s institutional arrangements reflect the preference of its citizens); *see generally* MILGATE, *supra* note 5.

34. RODRIK, *supra* note 5, at 240 (setting out a series of statements in support of a State’s right to protect their own social arrangements, regulations and institutions; and suggesting that trade is a means to an end, not an end in itself so that globalization should be an instrument for achieving the goals that a society seeks: prosperity, stability, freedom and quality of life).

35. O’Rourke, *supra* note 11, at 1 (The legitimacy of the neoliberal paradigm [c.1980-2010] for the globalization process has increasingly been challenged as the 2008 global recession continues and as global financial institutions are still forced to wrestle with the regulatory boundaries of a global market, the growing/ongoing financial and political instability of State governments (Greece, Italy, Spain, Egypt, Ireland, Portugal and more), equity issues in the global political economy, and the growing demands to create a more humane paradigm for capitalist globalization.).

36. RODRIK, *supra* note 5, at 241 (setting out a series of statements in support of a State’s right to protect their own social arrangements, regulations and institutions; and suggesting that trade is a means to an end, not an end in itself so that globalization should be an instrument for achieving the

application of the neoliberal paradigm (c. 1980–2010) that has tragically limited State sovereignty in a variety of contexts as reflected in the U.K. Brexit vote, and now will require a re-balancing process in terms of global trade as a means to an end and not an end in and of itself.<sup>37</sup> This re-balancing process within the U.K. points directly to a debate on its domestic social arrangements and its use of globalization as a blunt tool to achieve prosperity, stability, freedom and quality of life. A structured but more transparent internal U.K. functional review could witness a major nation State prioritizing a new definition and role for State sovereignty in the twenty-first century—a *continuum for sovereignty* operating within a *framework of liberty*.

Third, the proposed GeoNOMOS<sup>®</sup> typology designs a *single core function* for the State both in relationship: a) to its citizens (vertical axis) from whom it seeks legitimacy in order to govern, and, b) to its engagement in the global marketplace (horizontal axis) from an intentionally crafted long term strategic and sustainability perspective. Applying the new typology proposed here suggests that the U.K. would be better positioned to develop a flexible Article 50 transition strategy and a new set of economic organizing principles that consistently balance all the three capital resources (economic, social and human capital) needed for the sustainability of the State's institutions, social arrangements, and State regulations.<sup>38</sup>

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goals that a society seeks: prosperity, stability, freedom and quality of life); O'Rourke, *supra* note 11, at 279 (noting that when States are not democratic this scaffolding collapses and one cannot presume a country's institutional arrangements reflect the preference of its citizens; concluding that non-democratic States must play by a different, less permissive set of rules in the global marketplace).

37. RODRIK, *supra* note 5, at 241; *see generally* JOHN GRAY, *FALSE DAWN: THE DELUSIONS OF CAPITALISM* (1998) (providing a detailed step-by-step review and analysis from the State's perspective outlining how a neoliberal set of global economic organizing principles functioned to destroy domestic level public sector budgets by transferring assets wholesale to the private sector as a pre-condition for market access, locked out democratic legislative oversight through private sector contracts, and more. These dramatic restructuring to align neoliberal constructs shifted priorities for short term economic wealth not long term legal arrangements and market regulations that would support nation States goals of fair distributions, taxation, safety nets and social insurance. In other words, globalization was not a means to an end as Rodrik has suggested it should be, it was the end game—rule of law chased after globalization instead of the other way around—A new emphasis re-balancing process could design State level rule of law legal arrangements first, and out of that process, then position the State to design a new set of economic organizing principles).

38. Holton, *supra* note 12; Adler, *supra* note 13, at 17–40; BOURDIEAU, *supra* note 13; HANIFAN, *supra* note 13, at 138; JACOBS, *supra* note 13, at 138; Coleman, *supra* note 13, at S95–S120; Wellman, *supra* note 13, at 558–88; Bowles, *supra* note 13, at 419–36; Spence, *supra* note 14, at 355–74, 434–59 (forms of Capital, in this commentary for references and very brief definitions of three forms of capital noted in this new typology; this commentary suggests that every State has these three forms of capital and the differences in how States define their function is directly related to the amount of each form of capital that the State manages and oversees as a sovereignty entity).

From the opening statements of Theresa May, it appears there will be significant future emphasis on “one nation for all” and not just the rich and powerful.<sup>39</sup> There will be public and private resources and opportunity to redefine how the State relates to its citizens in more concrete and practical ways.<sup>40</sup> It is the hypothesis of this article that all this, when and if it occurs, can only occur and be successful within that which the GeoNOMOS<sup>®</sup> seeks to describe below more fully and to define schematically. Embracing a *continuum of sovereignty* based on a *framework of liberty* while working to secure a *single core function* as the diagram outlines prior to completing Article 50 negotiations, would provide the U.K. with the flexibility to manage its political and economic risks within both its *domestic sphere* and *international sphere* where the U.K. must continue to operate in this century. This typology could embrace both the best of U.K. history and the challenges of a workable EU exit strategy.<sup>41</sup>

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39. *Theresa May's Tory leadership launch statement: full text*, INDEPENDENT (June 30, 2016), <http://www.independent.co.uk/news/uk/politics/theresa-mays-tory-leadership-launch-statement-full-text-a7111026.html>.

40. *Id.*; see generally O'Rourke, *supra* note 11 (in the tradition of political thought *sovereignty is conceived as a social contract*. In democratic states both parties, the state on the one side and its citizens on the other, are bound to this bargain. In return for giving up power to the State, as citizens, we are conferred rights, which prevent States from abusing this power that we have given them. This social contract, then, involves two parties—people the State seeks to govern and the State).

41. See generally ANATOLE KALETSKY, CAPITALISM 4.0: THE BIRTH OF A NEW ECON. IN THE AFTERMATH OF CRISIS (Public Affairs, 2010) (an extensive literature review has informed the development of the proposed continuum of State sovereignty including the State's single core functions as outlined and its direct partnership with its people as part of the radical transformation of the twenty-first century State. This cumulative literature search to support the creation of a continuum for State sovereignty includes but is not limited to the following work); see Steven Menashi, *Ethno-nationalism and Liberal Democracy*, 32 U. PA. J. INT'L L. 57 (2012); GIANLUIGI PALOMBELLA & NEIL WALKER, RELOCATING THE RULE OF LAW (Oxford Hart Publishing, 2009); Timothy William Waters, *The Momentous Gravity of the State of Things Now Obtaining: Annoying Westphalian Objections to the Idea of Global Governance*, 16 IND. J. GLOBAL LEGAL STUD. 25 (2009); Peer Zumbansen, *Law After the Welfare State Formalism, Functionalism and the Ironic Turn of Relexive Law* 56 AM. J. COMP. L. 796 (2008); IVAN MANOKHA, THE POLITICAL ECONOMY OF HUMAN RIGHTS ENFORCEMENT (Palgrave 2008); James Rosenau, *Three Steps Toward a Viable Theory for Globalization*, in FRONTIERS OF GLOBALIZATION RESEARCH: THEORETICAL AND METHODOLOGICAL APPROACHES (Inno Rossi ed., 2007); SASKIA SASSEN, A SOCIOLOGY OF GLOBALIZATION (W.W. NORTON, 2007); Eric Engles, *The Transformation of the International Legal Order*, 23 QUINNIPIAC L. REV. 23 (2007); John Alan Coahan, *Sovereignty in a Postmodern World*, 218 FLA. J. INT'L L., 907–08, 913 (2006); Tanja A. Borzel & Thomas Risse, *Public-Private Partnerships: Effective and Legitimate Tools of International Governance*, in EDGAR GRANDE & LOUIS W. PAULY, COMPLEX SOVEREIGNTY: RECONSTITUTING POLITICAL AUTHORITY IN THE TWENTY-FIRST CENTURY (University of Toronto, 2005); Paul Kahn, *The Question of Sovereignty*, 40 STANFORD J. INT'L L. 259, 260–68 (2004); ANNE-MARIE SLAUGHTER, A NEW WORLD ORDER (Princeton University Press, 2004); Brad R. Roth, *The Enduring Significance of State Sovereignty*, 56 FLA. L. REV. 1017 (2004); Eric A. Engle, *The Transformation of the International Legal System: The Post-Westphalian World Order*, 23 W. L. R. 23 (2004); Krahmann, *supra* note 19, at

### III. A CONTINUUM OF SOVEREIGNTY BASED ON LIBERTY

The GeoNOMOS<sup>®</sup> represents a graphic schematic depicting the next evolution for State sovereignty because it differentiates three important principles. One, it posits conceptually that for all human activity, enterprise and undertakings at the level of the State, liberty represents the outer boundary [dotted line box] of any and all such endeavors.<sup>42</sup> Beyond this *framework of liberty* nothing can, nor does exist, and all activity with the State falls within the four corners of this frame defined by liberty as the State's outer boundary. Two, the GeoNOMOS<sup>®</sup> distinguishes, in contrast to other models which seek to develop an economic/legal model, or some other models for nation States from times long past, that the nation State and the nation State alone can function as a legal guarantor. It alone can vouchsafe liberty both toward the individual and also toward other nation States and supranational organizations who operate with semi-governmental character. The nation State alone can hold supranational organizations accountable to some form of law and legal process. It is the nation State alone that can protect individual human rights against the onslaught of global commerce and the overreach of global international and inter-governmental networks. It is the nation State alone that can exercise jurisdiction legitimately. Three, the GeoNOMOS<sup>®</sup> remains dynamic and ever evolving through the intense interaction of three forms of capital (e.g., social capital, human capital and economic capital) as the *single core function* and purpose of the nation State. It is the State consistently functioning at the center of these three forms of capital that will secure a balance between these three essential resources to the benefit of the individual (those persons the State seeks to govern) as it stabilizes its *domestic function* (vertical axis) and its *international function* (horizontal axis). All of this activity occurs and is grounded within the *framework of liberty*.<sup>43</sup>

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323; see Richard Falk, *Revisiting Westphalia, Discovering Post-Westphalia*, 6 J. ETHICS 311, 320–45 (2002); A. Clair Cutler, *Critical Reflections on the Westphalian Assumptions of International Law and Organization: A Crisis of Legitimacy*, 27 REV. INT'L LAW STUD. 133 (2001); STEPHEN KRASNER, COMPROMISING WESTPHALIA IN D. HELD & A MCGREW, THE GLOBAL TRANSFORMATION READER (Polity Press, 2000); Eric M. Ulsner, *Producing and Consuming Trust*, 115 POL. SCI. Q. 569 (2000); MICHAEL FOWLER & J.M. BUNCK, LAW, POWER, AND THE SOVEREIGN (Routledge, 1995); LESTER THUROW, THE FUTURE OF CAPITALISM (Brealey Pub, 1996); James S. Coleman, *Social Capital and the Creation of Human Capital*, AM. J. SOC. S. 95 (1988); Leo Gross, *The Peace of Westphalia*, 42 AM. J. INT'L L. 20 (1948); JEAN BODIN, THE SIX BOOKS OF THE COMMONWEALTH (1932).

42. O'Rourke, *supra* note 11, at 312 (to be distinguished as “freedom from” factors like oppression, slavery, prejudice and racism, and from “Liberty” as the quintessential element which enables where freedom does not).

43. *Id.* at 107 (in this typology, a failed nation-State can be described as a nation-station where the boundaries of the three forms of capital have become disconnected, i.e., the nation-state has been

Liberty is that quintessential element necessary in human existence which is the fertile ground to allow the most productive, creative and mutually beneficial human endeavors and interactions to flourish and to bring benefits to all, and the absence of which tends to dampen the manifold expressions of all those truths people collectively hold to be self-evident. It is grounded in the rule of law, to be distinguished from freedom,<sup>44</sup> and requires a steadfast juxtaposition and weighing of individual and communal rights, benefits, obligations and privileges without which no human civil society can function. In the GeoNOMOS<sup>®</sup>, the existence of liberty further forms a steel-belt of support and reassurance to all of human community and its guarantor can only be the nation State, for both individuals and supra-national entities (international institutions and transnational corporations) lack the necessary legitimacy to guarantee liberty's existence.

There is no doubt that liberty in this framework will be a highly contested topic and hotly debated not unlike rule of law is, and it should be so both nationally, regionally and transnationally.<sup>45</sup> T.H. Green defines liberty as the capacity to do things, not the mere absence of restraint and, thus, liberty actively includes a moral value and certain social elements that are enjoyed in common with others.<sup>46</sup> While there is no agreement even among the many schools of republican legal thought, liberty here is defined primarily as non-domination by the State, and includes human rights, civic virtue and the creation of a common good.<sup>47</sup> These basic characteristics of a liberal republican theory are incorporated within the GeoNOMOS<sup>®</sup> as part of the participatory government, supported by an interventionist State whose *single core function* continuously reflects and balances the

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forced into one or the other circle, but cannot be in all three circles. More importantly, such a State has become unable to keep and preserve the necessary areas of overlap between these three forms of capital. An exemplification of a more successful nation State would be reflected by a highly dynamic and ever evolving tri-circular area where the State exists at the core of these three overlap areas which it times grow and at times shrink, but always remain connected throughout the passage of time based on other socio-political and legal developments).

44. *Id.* at 312 (to be distinguished as “freedom from” factors like oppression, slavery, prejudice and racism, and from “Liberty” as the quintessential element which enables where freedom does not).

45. *Id.* at 365.

46. DAVID MILLER ET AL., THE LIBERTY READER, 23 (2006).

47. SAMANTHA BESSON & JOSE LUIS MARTI, LEGAL REPUBLICANISM IN NATIONAL AND INTERNATIONAL PERSPECTIVES 3 (2009); NEIL MACCORMICK, INSTITUTIONS OF LAW, AN ESSAY IN LEGAL THEORY (Oxford 2007); DAVID MILLER ET AL., THE LIBERTY READER, 224–25 (2006); SAMANTHA BESSON & JOSE LUIS MARTI, LEGAL REPUBLICANISM IN NATIONAL AND INTERNATIONAL PERSPECTIVES 3 (2009); ISAIAH BERLIN, TWO CONCEPTS OF LIBERTY, FOUR ESSAYS ON LIBERTY 121–22 (Oxford Univ. Press, 2002); DAVID MILLER ET AL., THE LIBERTY READER, 224–25 (2006).

development and utilization of all its essential capital resources. This participatory function at the core of the State includes a rule of law that reflects the principles of mutual benefit, liberty and human dignity.

The proposed *continuum of sovereignty* reflects a social and highly interactional process based in part on the Law Merchant in a society of economic traders, and espouses that the 'rule of law' will have meaning only from within the social context reflected by the interaction of institutions, procedures, and values depicted at the core of the GeoNOMOS<sup>®</sup> where the *single core function* of the State is secured and secure.<sup>48</sup> The social context of a liberty framework is intentionally created to protect the *continuum of sovereignty* since there can be no State legitimacy and no State-related activity conducted outside the *framework of liberty*.

The manifestations or functioning of liberty are influenced by four cornerstones: choice, capability and resource development, justice, and equity, and by the constant and continuing interaction of three forms of capital: economic, social, and human capital. These forms of capital are found to exist in every form of human society, or human association, albeit to differing degrees and at different levels of development, but can be discerned and even measured to be present and functioning in a state of association and in a state of flux.

From within this global *framework of liberty* and moving along this *continuum of State sovereignty*, each State secures its *single core function* (sovereign capacity) to manage a wide range of possibilities because all domestic and international actors must also function within the State's framework of liberty.<sup>49</sup> The *framework of liberty* is anchored by four corners, two on the lower end of the diagram depicting equity and justice and two on the upper end of the diagram depicting elements that support the principle of human dignity—individual autonomy/choice and individual capability/resource development (see diagram). It depicts an actual relationship that can be measured along the continuum between the State and the people it seeks to govern. This exists because quantitative measurable outcomes for the qualitative work the State undertakes at its *single core function* designs a more accountable and transparent expression of its State sovereignty.

The *continuum for sovereignty* depicted systematically as the GeoNOMOS<sup>®</sup> shows the U.K. at its *single core function* of the State consistently balancing the essential three capital resources. The U.K. already has possession of all these capital resources and it has the authority and stability to engage with the integrated vision espoused by Prime

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48. See generally O'Rourke, *supra* note 11.

49. *Id.* at 331.

Minister May. The operational components of a *continuum of sovereignty* align with the driving force behind the Brexit vote and point to a public citizen mandate for the U.K. to secure “one Nation conservative” as Theresa May has proposed.

The U.K. initiates this dynamic process with a thorough, hard-nosed, and unvarnished review of all of its capital resources and the various stages of development and utilization. It begins to secure an integrated *single core function* for the State by subsequently combining with the principles of liberty and human dignity to form a new typology which the GeoNOMOS<sup>®</sup> represents. The *continuum for sovereignty* is designed to reflect more accurately the nature, needed flexibility and new functionality for the U.K. as it seeks to balance consistently its domestic role and its international role within its Article 50 transition. The opportunity for the U.K. in modeling this continuum of State sovereignty places emphasis on upholding the rule of law so that economic and global market participation follow the law and not the other way around where law chases after and reacts to economic organizing principles.

The *continuum for sovereignty* proposed above also follows Rodrik’s insight by suggesting that the State must simultaneously integrate and balance all three forms of its essential capital resources as its single core function as a matter of legitimacy.<sup>50</sup> Functioning from within a *framework of liberty*, the State operates along a vertical axis (representing U.K.’s domestic function) and along a horizontal axis (representing U.K.’s international function) (see diagram). The U.K. is in a position to design and implement a strategy for the post-neoliberalism era that supports its domestic stability (vertical function) and its international market participation (horizontal function).

In this manner, the U.K.’s *single core function* engages at the center of three overlapping circles (three forms of capital) and the center of the intersection of a vertical axis and a horizontal axis inside the GeoNOMOS<sup>®</sup> Model.<sup>51</sup> (See diagram attached). This *single core function* incorporates three essential building blocks that belong to every nation State—economic capital, social capital, and human capital—all of which must remain interconnected and continuously balanced in order for the State to maintain legitimacy as sovereign as to its function.

A very brief explanation follows on these three essential building blocks that form the State *single core function*. Economic capital can be defined as the amount of risk capital assessed on a realistic basis which a nation State requires in order to remain solvent over a period of time.

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50. RODRIK, *supra* note 5, at 242.

51. JULIAN KU & JOHN YOO, *supra* note 28, at 210–11.

Economic capital can be calculated.<sup>52</sup> It is an open question whether rigorous risk analysis is or can be a necessary and required function of government. Yet, it can be reasonably presumed that it is part and parcel of any and all economic and commercial enterprise.<sup>52</sup> Governments have no business to function and act as commercial enterprises just as much as business and commercial enterprises lack and perhaps should lack the legitimacy and authority to act and function as a government (quasi-government).

Social capital is understood as a stock of resources that *an individual* can control by how they invest their time in community organizations, educational institutions, religious organizations and neighborhood networks.<sup>53</sup> It represents a *form of trust and reciprocity* that is developed within social networks in any given culture. Economic capital and human capital are also forms of capital but they are generally more fungible in the sense that these two forms of capital are linked to private goods. Social capital which has an individual characteristic tends to aggregate and represents a *collective or public good* as part of a civil society. Human capital is a hybrid consisting of both quantitative and qualitative aspects. Human capital in this schematic focuses first and foremost on the individual and, then, on how that individual reaches maximum levels of capabilities/resource development and individual autonomy in order to contribute to society in ways that the individual actually can choose to develop his or her human capital.

If a State disconnects the economic capital function from the core function of the development and utilization of human capital or social capital, the State essentially implodes; it fails.<sup>54</sup> Likewise, if a State concentrates only on human capital development without a balanced program for economic capital development and utilization, it is out of balance and more likely than not, will also fail. The key parameter here is

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52. *Id.* at 278.

52. *See generally* O'Rourke *supra* note 11.

53. *See generally* Bratspies, *supra* note 22; RICHARD SANDBROOK ET. AL., *SOCIAL DEMOCRACY IN THE GLOBAL PERIPHERY: ORIGINS, CHALLENGES, PROSPECTS* (Cambridge University Press 2006); PAUL COLLIER, *THE BOTTOM BILLION, WHY THE POOREST COUNTRIES ARE FALLING AND WHAT CAN BE DONE ABOUT IT*, 52-61(Oxford University Press 2007); James Q. Wilson, *Bowling with Others*, *Commentary Magazine* (last visited Oct. 15, 2016), <https://www.commentarymagazine.com/articles/bowling-with-others/>; Janos Berok, *Managing Conflicts of Interest in the Public Sector*, 64-70 ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT [OECD] (2005); ERIC M. USLANER, *THE MORAL FOUNDATIONS OF TRUST* (Cambridge University Press 2002); Joel Sobel, *Can We Trust Social Capital*, 15 J. OF ECON. LITERATURE 139, 139-45 (2002); ROBERT PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* (Simon & Schuster 2000); PIERRE BOURDIEU, *THE FORMS OF CAPITAL*, 47 (W.W. Norton, 1986).

54. O'Rourke *supra* note 11, at 283.

balancing the forms of capital within the *framework of liberty* because the four corners of the liberty framework as described anchor the State in perpetuity.

What might take place in conditions when all the three forms of capital become disjointed and lose connection, instead of remaining interconnected as the GeoNOMOS<sup>®</sup> model suggests that they are? In essence, we are describing failure of a nation-State, although it is conceivable that, at times, one form of capital may separate from the other two forms (even if temporarily, and for a short or extended period of time).

When social capital dis-associates, the nation State ceases to function as nation State, waste and attrition in every form tend to increase because of a decrease in a common and shared consciousness for a collective or public good. Such conditions tend to push human existence and with it the human condition to the very fringes of human association (or, in this case, *disassociation*) and all human activities whether driven by Individual Choice, Capability and Resources, Justice, or Equity [all four corners which are proposed as anchors for the *framework of liberty*] of the GeoNOMOS<sup>®</sup> tend to be severely challenged and strained.

When economic capital disassociates, such *disassociation* usually occurs at costs which can be quantified and measured, and the metrics compared. Economic capital tends to be risk averse, but also risk-dependent. When stress and strain bring about conditions of risk such that a disassociation of economic capital occurs, we tend to speak of capital flight, and because the entire global market place has evolved financially in a global network also, money quietly can move at a blink of the eye and with relative ease.<sup>55</sup> The absence of money and economic capital tends to cause markets to contract and the impact of heightened, unsustainable risk tends to cause unrest, shortages and deprivation of every kind within a nation State—such developments push the nation-State rather quickly to the brink of complete, societal collapse beyond the framework designed to protect liberty, choice, capability/resource development, justice, and equity.

Human capital is the realm where *disassociation* is perhaps felt the most as the decline and absence of both quantitative and qualitative aspects of this form of capital tend to cause humans to flee from strife, war, and civil unrest to seek a chance at opportunity. It also affects citizens in States who seek to re-define liberty and to re-establish a measure of functional stability, to find job opportunities or new job skills through education, and to re-build and sustain communities and social networks.

By definition, all three forms of capital as understood against the backdrop of liberty are co-equal in value which can result in communal activities from an aggregation of distinct individual pursuits. But without

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55. See O'Rourke, *supra* note 11.

community and social networks, the context for such activity fails and such activity tends to become fragmented, opportunistic and focused inward at a time when its focus ought to be outward, directed toward community and to giving shape to such community for the benefit of protecting individual rights.

The intentional and consistent integration and balance between all forms of capital is required so State level public sector institutional development and utilization reflects strong economic capital but also simultaneously addresses aspects of social capital such as trust, mutual benefit and reciprocity. This integration creates the *continuum for State sovereignty*. The integration at the *single core function* of the State operates in tandem with human capital and with mandates for individual choice as well as individual capability/resource development, e.g., employment, education, human rights, and opportunity. All these interrelated factors are functionally and politically tied to the four anchors of the *framework of liberty*.<sup>56</sup>

As noted earlier in this text, the neoliberal paradigm (c. 1980–2010) developed so rapidly that it left many domestic level institutions unable to maintain their functioning much less adapt to the rapid and crushing changes that occurred in the global marketplace and in their domestic economy. The *continuum for sovereignty* secures the operational role of the State and from within its *single core function*, all capital resources remain interrelated and interactive as well. Ongoing decision-making processes made from within the core function of the State reflect issues from within the domestic and international spheres (intersecting axis) of State activity but are also secured within the *framework of liberty* in support of a rule of law that secures justice, equity, and the principles of human dignity [individual choice as well as capability/resource development]—the very principles that Prime Minister May espouses in the Brexit transition.

The four anchors on the *framework of liberty* reflect a standard of conduct that together support the principles of human dignity, reciprocity, and mutual benefit. (See diagram attached). Finally, since it is axiomatic in this Model that nothing can exist outside the framework of liberty, the U.K. is in a very unique position in history to redefine how actors from private and public sectors intersect with its national interests. In this *continuum of sovereignty*, all actors, whether domestic or international, private or public, must function from within the *framework of liberty*, and all State and non-State actors must function in accordance with the conduct standards that support the *framework of liberty*.

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56. *Id.*

## IV. CONCLUSION

Now that Pandora's Box has been opened, two dominant questions have surfaced related to the post-Brexit aftermath:<sup>57</sup> (i) What new form of British sovereignty will be redefined, recreated, resurrected under its negotiated Article 50 transition; and, (ii) What market form of economic organizing principles for global capitalism will be advanced under the banner of U.K.'s new form of sovereignty? In the U.K., where a nation State seeks to address new levels of citizen frustration, public disapproval, and civic engagement, the operational definitions from the 1940–1990s regarding the legitimacy and the expression of national sovereignty are outdated and perhaps no longer adequate for how the State must function in the twenty-first century.

The complexity of U.K. inaugurating the actual secession process through the invocation of Article 50 would hopefully reflect matters of best practices and follow a structured period where a more transparent but internal dialogue process, cost-benefit analysis, and necessary political contestation had already occurred. The Brexit campaign itself cannot alone fulfill this domestic-level dialogue process and planning obligation since it was conducted mostly on the perceptions of people with a general agnosticism of the facts. This interim transition period cannot merely be about the shift in political parties at Downing Street either. It will need to be a well-reasoned and detailed fleshing out of a political-legal and socio-economic vision, one that is mapped out long before the secession agreement package is negotiated by the U.K. and presented to the European Council and European Parliament for approval.

If there is a positive light at the end of this tunnel for U.K. transition under Article 50, it is the realization that the post-Brexit context is ripe for the creation of a new twenty-first century *continuum for State sovereignty*. The U.K. could choose not to fall back on the out-dated, but persistent Westphalian notions of how a nation State "ought" to organize and operate in the world today and step onto a *continuum for State sovereignty* based on using all of its core capital resources to secure liberty. The U.K. could intentionally move beyond the neoliberal paradigm (c.1980–2010) of global capitalism by defining a more "humanizing" paradigm based on a new set of economic organizing principles akin to those proposed by Rodrik and others. In doing so, the U.K. steps forward as a world leader espousing a *framework of liberty* that redefines and secures the *single core function* of the nation State in the twenty-first century: to ensure participatory democracy and individual rights.

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57. *Id.*

**The GeoNOMOS Model:  
The Core and Enterprise of State Functions**

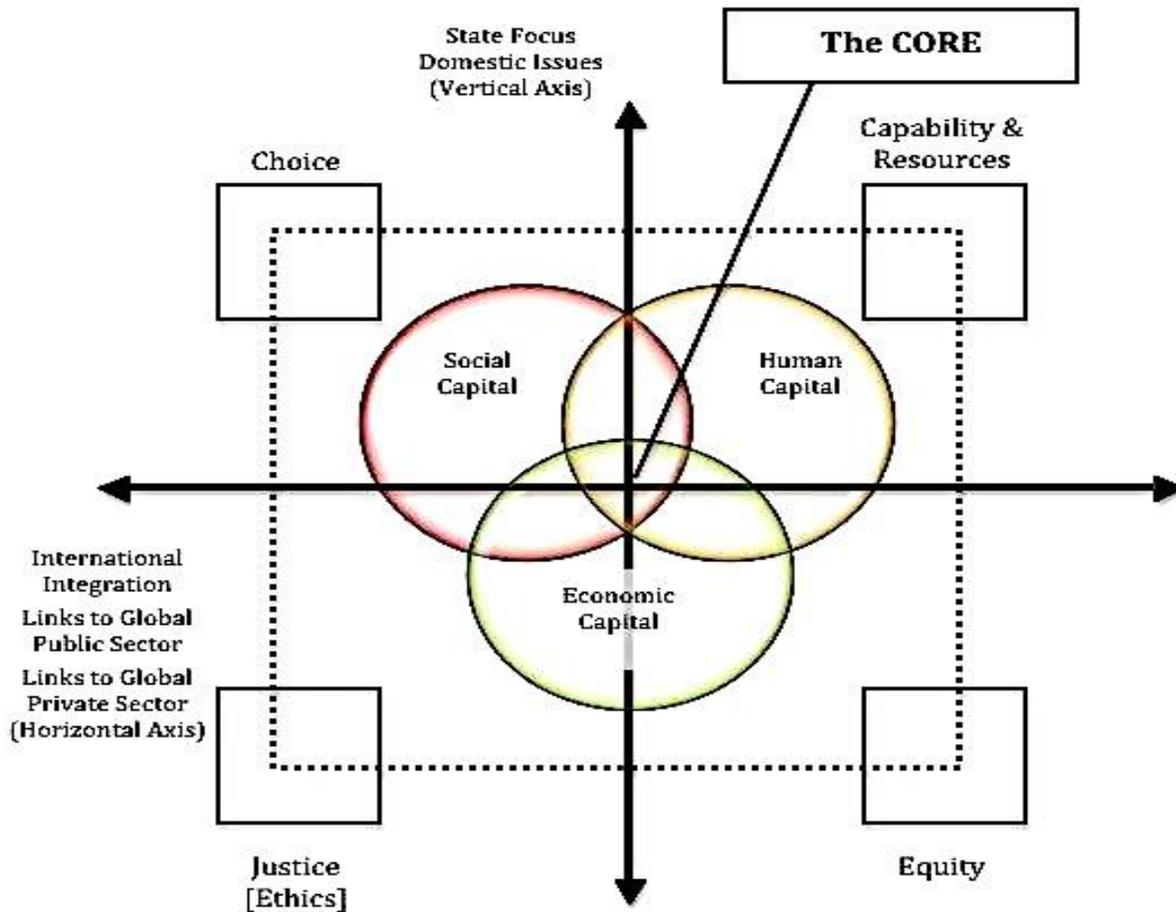


DIAGRAM 06

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