

**Africa in the Twenty-First Century: Which
Way Forward?**

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ABSTRACT

During colonialism, most Africans believed that their poverty and underdevelopment was due primarily to European exploitation and the presence of laws and institutions that made it virtually impossible for them to engage in welfare enhancing activities. Thus, independence was seen as an opportunity for Africans to rid themselves of European exploitation and at the same time establish institutional arrangements that would enhance their ability to maximize their values. It has been more than forty years since many African colonies began to gain independence. Unfortunately, living conditions for the majority of Africans have either not improved or have done so only marginally. Most research on African political economy has blamed the region's relatively high levels of poverty on policy mistakes made by well-intentioned but poorly educated, inept and incompetent policymakers. This article argues, however, that most of the policy mistakes committed in the African countries during most of the post-independence period have actually been deliberate programs designed and implemented by opportunistic-but not necessarily poorly informed or unskilled-politicians and bureaucrats seeking ways to enrich themselves at the expense of the rest of the people. The laws and institutions that many of the new African countries adopted at

independence failed to effectively constrain the state and minimize the ability of civil servants and politicians to engage in opportunism (e.g., corruption and rent seeking). Thus, the primary constraint to development in Africa has been the absence of institutional arrangements that (1) appropriately constrain the state; (2) enhance indigenous entrepreneurship and the creation of wealth; and (3) improve the ability of Africans to live together peacefully. Thus, to enhance sustainable development in the new century and beyond, Africans must arm themselves with the appropriate laws and institutions.

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I. INTRODUCTION

In its May 13-19, 2000 issue, *The Economist* (London) called Africa the "hopeless" continent and further argued that "[t]he new millennium has brought disaster than hope to Africa. Worse, the few candles of hope are flickering weakly." Today, continues *The Economist*, "[a]t least 45% of Africans live in poverty, and African countries need growth rates of 7% or more to cut that figure in half in 15 years." Unfortunately, few countries in the region have the productive capacity to achieve such a growth rate. In addition to the fact that most countries on the continent lack the basic infrastructure to generate enough wealth to meet their rising needs, a significant amount of their most productive labor resources is being decimated by AIDS. The latter is killing the very people (15-49 years old) who are expected to initiate and implement the continent's economic and political renaissance.

During more than forty years of independence, most African countries have failed to significantly improve the living conditions of their citizens (see, e.g., UNDP, 1997, 1998; Mbaku, 1989). Independence was supposed to enhance the

ability of African governments to provide the enabling environment for rapid economic growth which, could generate the resources that each society needed to deal with poverty and other devastating effects of colonialism. For, during the colonial period, state structures were used to oppress the African peoples, exploit the resources of each colony for the benefit of the metropolitan economies, and generally impede the advancement of Africans socially, economically and politically. Thus, many indigenous groups in the colonies looked at independence as an opportunity to rid themselves of what they considered was the most important source of their poverty—European colonial exploitation. Independence, then, was supposed to abolish the despotic and exploitative colonial state and establish governance and economic structures that maximized African values, enhanced the participation of popular forces in governance and development, and improved the peaceful coexistence of ethnic and other social cleavages.

As Brett (1995, p. 200) has argued, there has been widespread political and economic failure in post-independence Africa. In addition to the fact that millions of Africans have lost their lives as a result of destructive ethnic conflicts, including civil wars, many people have been tortured, displaced and forced to flee their own countries. The construction of economic policies in many

countries in the continent has been dominated by elites in Washington, D.C. and implemented relatively poorly by national governments that are not accountable to the governed. As a consequence, little remains of the optimism and vision for autonomous and progressive democratic state systems which gave legitimacy to the decolonization projects in the 1950s and 1960s (Brett, 1995, p. 200).

A. Africa's Failure to Develop

Why did Africa fail to develop? Economic failure in Africa has been examined by several researchers (see, e.g., Ergas, 1986; Mbaku, 1989; OAU, 1981; World Bank, 1981). Variables identified as constraints to development in the continent include bureaucratic and political corruption, political violence and destructive ethnic conflict, unmanageable external debts, continued dependence on primary commodities and on the economies of the developed industrial countries, pervasive military intervention in national politics, excessive population growth, the economic policies of the developed countries, shortage of both physical and human capital, and racial intolerance. Additionally, it has been argued that pervasive poverty in the continent is due either to mistakes made by well-intentioned policymakers or to the ineptitude and incompetence of poorly

educated and unskilled civil servants and politicians. As a result, there has been emphasis on the recruitment into the public services of African countries, new leaders who are better trained and educated, have higher skills, are more honest and disciplined, and have higher levels of integrity.

*B. Recent Research and the Causes of
Poverty in
Africa*

Recent research, however, has determined that a significant number of the so-called policy mistakes committed in the African countries during the last several years were actually deliberate programs designed and advanced by opportunistic—but not necessarily poorly informed or unskilled—politicians and civil servants seeking ways to enrich themselves at the expense of the rest of society. How were these elites able to successfully undertake these perverse “development” programs—the bulk of which generated significant benefits for them but imposed enormous costs on greater African society? Since independence, institutional arrangements in the African countries have failed to effectively constrain the state and minimize the ability of civil servants and politicians

to engage in political opportunism (e.g., corruption, rent extraction and rent seeking). In fact, the laws and institutions that most African countries adopted at independence endowed the new leaders with significant discretion, allowing them to misuse government agency for their own benefit. For example, those indigenous elites who captured the evacuated structures of colonial hegemony were able to use the state regulatory powers to redistribute income and wealth in their favor. Many of these leaders eventually promoted economic policies that stunted indigenous entrepreneurship and subsequently, wealth creation but generated significant benefits for them. Thus, the *primary* constraint to development in Africa during the last several years has been the *absence of institutional arrangements that* (1) appropriately constrain the state; (2) enhance entrepreneurship and the creation of wealth, through, for example, the constitutional guarantee of economic freedom; and (3) improve the ability of all Africans to participate in national development. It is true that many African countries, during the last several years, have been plagued with poor leadership, poorly developed economic infrastructures, and a shortage of both human and physical capital. However, the availability of resources such as skilled and well-educated individuals and physical capital are a necessary but not sufficient condition for economic

prosperity. In order for the African economy to create the wealth that it needs to deal with poverty and deprivation, it not only has to have the necessary resources, but it must have the appropriate institutional environment. For, without the appropriate institutional arrangements, rent seeking and corruption are likely to be pervasive and civil servants and politicians will use their public positions to enrich themselves at the expense of the population. Evidence from the last forty years has confirmed, in the case of Africa, the proposition that if not properly constrained, politicians and bureaucrats will engage in opportunism, promote perverse economic policies in an effort to generate extra-legal compensation for themselves, and in the process, stunt entrepreneurship and wealth creation. Thus, economic growth and development require both a well constrained state and structures (e.g., well-specified and enforceable property rights) that enhance entrepreneurship and thus, wealth creation. The main cause of poverty in Africa has not been "poor leadership but weak and inefficient rules, non-viable institutions, and incentive systems that have encouraged and rewarded (very generously) opportunistic behaviors" (Mbaku, 1998a, p. 318).

Brett (1995, p. 200) argues that the main causes of economic failure in Africa during the last forty years "are clearly

structural rather than contingent, since breakdown is almost universal and cannot simply be attributed to particular national circumstances. Instead, they must stem from the nature of institutional arrangements developed under colonialism and hastily modified during the political transition of the 1950s and 1960s." As North (1981, p. 59) has argued, "it is the successes and failures in human organization that account for the progress and retrogression of societies." The institutional arrangements which the Africans inherited from the colonialists were "transformed" in the post-independence period. However, such transformation failed to improve on the institutions' ability to serve as effective constraints on the behavior of public servants (bureaucrats and politicians). The laws and institutions that have governed socio-political interaction in the African countries during the last several years have encouraged financial mismanagement, rent seeking, rent extraction, corruption and other forms of opportunism. The single most important job for Africans, as they enter the new millennium, is to replace these laws and institutions with more appropriate ones—those that force public servants to perform their jobs effectively (that is, to serve the public interest instead of their own).

*C. Enhancing the Welfare of Society:
General Case*

Development theorists argue that the welfare of a society can be enhanced by creating institutional arrangements that operate more efficiently than those being replaced. Since the collapse of socialism in Eastern Europe and the cessation of superpower rivalry, emphasis has been placed, around the world, on creating governance structures characterized by efficient merit-based civil services, professional and properly constrained legislatures, free market economies, etc. According to Brett (1995, p. 202), in countries in which these "progressive modern capitalist structures" were "suppressed or only partially introduced" they "emerged ... out of a long and violent process strongly resisted by those with a vested interest in the older order. However, their superiority to existing forms was such that they were forced into existence by previously excluded social groups—notably the modern bourgeoisie—and then came to be accepted by the majority of the population."

*D. Enhancing the Welfare of Society:
The Colonial and Immediate Post-
Independence Experience in Africa*

But what about Africa where these principles have not yet been consolidated? Although the process of development in Africa has been governed,

to a certain extent, by "forces unleashed by the Western capitalist revolution, its evolution as a dependent offshoot of external interests produced institutional distortions which have yet to be overcome" (Brett, 1995, p. 202). The capitalist mode of production was brought to Africa by individuals and groups that were not particularly interested in helping Africans improve their living standards. Slave traders, mercantile companies, plantation owners, missionaries and other adventurers were interested primarily in maximizing their own objectives and thus brought with them a brand of capitalism that enhanced their ability to exploit the Africans and their resources for the benefit of the Europeans. As mentioned already, the colonial state was designed to provide a formal and efficient framework for the maximization of European objectives in the colony. Thus, the capitalist structures that accompanied colonial state creation often placed significant impediments in the way of indigenous entrepreneurship and according to Brett (1995, p. 203), "reinforced many of the regressive characteristics of traditional institutions." Abrogation and reassignment of property rights, including the creation of huge monopolies, safeguarded the interests of private European mercantile firms, while the new bureaucratic structures denied African elites participation in or access to the managerial levels of the colonial

capitalist economy. At independence then, Africans inherited dualistic institutional arrangements that posed significant problems for governance in the post-independence society. First, although most ethnic groups had managed to keep their traditional practices, many of these had been "contaminated" through contact with the dominant modern sector introduced and sustained by colonialism. Second, the economic and political systems inherited from the colonial state favored those who controlled the apparatus of state and placed at a significant disadvantage, the interests of the majority of the people. Finally, although many African countries attempted to engage in institutional reforms after independence, the results were not institutional arrangements that enhanced the ability of all citizens to participate in both political and economic markets. Instead, the new institutional arrangements produced "hierarchical capitalist systems dominated by institutions which bore little resemblance to the liberal and competitive models described by the orthodox texts" (Brett, 1995, p. 203).

Today, Africans are engaged in transition to new and more democratic governance structures. The latter are supposed to enhance peaceful coexistence and sustainable development, while at the same time minimize political opportunism, including such things as corruption and rent seeking. Unfortunately, throughout

most of the continent, transitions have been limited to *political liberalization* and *elections*. Part of the objective of this paper is to emphasize the fact that sustainable economic growth and development and, peaceful coexistence of ethnic and other social cleavages in the African countries can only be achieved if institutional reforms are undertaken which provide each country with transparent, accountable and participatory governance structures, and economic systems that guarantee economic freedoms and thus, enhance entrepreneurial activities and wealth creation. Of course, multiparty elections are important. However, they should be viewed as only a part of the procedural practice of democracy. A core part of the transition in each African country must be to reconstruct the post-colonial state through proper constitution making to provide a dispensation that is more relevant to the lives of the African peoples.

At independence, as has been mentioned already, Africans inherited from the Europeans institutional arrangements that were never designed to maximize their values. Post-independence institutional reforms were carried out opportunistically (see, e.g., LeVine 1997) creating institutions which, like their predecessors, did not adequately constrain the exercise of government agency. In addition, these new structures, including the one-party state

which had been adopted by many governments in the continent, remained important obstacles to indigenous entrepreneurship and wealth creation. The results were high levels of poverty, corruption, political violence, including destructive ethnic conflict, marginalization of many groups and communities, suffocation of civil society, etc. Today, as Africans prepare for the new millennium, they face the same collective choice that they did at independence: how to arm themselves with proper laws and institutions. They must, therefore revisit the choice that they made (or was made for them, as was the case in many of these countries) at independence and design more appropriate political and economic structures—those that minimize political opportunism, promote peaceful coexistence of groups, enhance entrepreneurial activities and generally improve the participation of the people in governance and national development.

The collapse of socialism in Eastern Europe and the subsequent disintegration of the Soviet Union have made liberal democracy and the market economy the choice of many of the countries that are currently involved in transitions. Throughout the continent of Africa, pro-democracy and pro-free market groups have been gaining new strength and now publicly proclaim that the new post-Cold War dispensations that would govern development and coexistence in the new

millennium must be "democratic" and that the market must be the basis for resource allocation. Unfortunately, many of these African countries have not been able to proceed in their democratization effort past the election stage. Most of the efforts to transform the economic systems and provide structures that enhance wealth creation have been limited primarily to privatization. In this paper we go beyond elections and examine the ways in which democracy and democratization can be deepened in the African countries. In addition, we also argue that privatization is not enough; Africans must establish, through proper constitution making, economic infrastructures that enhance entrepreneurship and wealth creation, minimize rent seeking and other forms of political opportunism and generally enhance the ability of individuals to engage in national development.

II. IMPROVING MACROECONOMIC PERFORMANCE IN THE AFRICAN COUNTRIES: PRIVATIZATION IS NOT ENOUGH

A. Privatization and Post-Cold War Economic Performance: Problems and Prospects

In an effort to provide their post-Cold War societies with more efficient economic infrastructures, many African policymakers have placed significant

emphasis on privatization. Restructuring local economies in order to make resource allocation more dependent on the market has translated in many countries to privatization. A few approaches have been employed. These include: (1) liquidation of state owned enterprises (SOEs); (2) contracting; (3) joint ventures (between the public sectors in the African countries and foreign private firms); and (4) public-private partnerships. The latter have enhanced the ability of the private sector to participate in the provision of goods and services that had been organized exclusively by the public sector. In many of these countries, privatization is being used to make the economy more market friendly and increase the involvement of the private sector in the allocation of resources. Unfortunately, this approach to improving the efficiency of economies in Africa has many problems. First, in many countries in the continent, as a result of pervasive corruption, privatization has degenerated into another avenue for politically dominant groups and individuals to extract extra-legal income for themselves. In fact, in some countries, many of the SOEs have been "sold" to influential civil servants or to consortia controlled by them or members of their extended families. Second, many citizens can no longer have access to several state functions which have recently been privatized. Third, the privatization process appears not to have

had any significant positive impact on macroeconomic performance, especially since many of the new owners of the SOEs have been unable to operate them efficiently, either because they never intended to or do not have the skills to do so. Finally, and perhaps, more important is the fact that African policymakers failed to approach privatization in a systematic and predictable way. Throughout most of the continent, privatization is being undertaken reluctantly, not as part of a well-thought out plan to restructure national resource allocation systems and improve their efficiency, but as an effort to satisfy foreign donors and continue to receive additional resources. In fact, many privatization programs have been imposed on several of the African economies by the World Bank and the IMF as part of the SAPs. In order for privatization to be effective (that is, improve macroeconomic performance and resource allocation), it must be considered part of the overall effort to reconstruct or restructure national economies and make them more efficient, more friendly to entrepreneurial activities, and thus, must be seen as a process that improves the overall allocation of resources. As a consequence, the first step in the privatization process must involve the following:

- provide the private sector with an appropriate role in the social and economic transformation of society;
- determine the appropriate role for the state in economic and social development; and
- determine what regulatory powers should be granted the state (by the people through the constitution).

African countries, thus, should not rush into privatization. Instead, they should start the process with the reconstruction of the post-colonial state through proper constitution making to determine and/or define a desired role for the state. As has been argued by Mueller (1991), the most effective way to begin the development of a market system is to first determine the role to be played by the private sector and then surrender to the public sector, only those functions that cannot be undertaken efficiently by the private sector. Mueller (1991, p. 239) states that "benefits from free markets are so pervasive that the best way to proceed in establishing a market system is, as with the freedom to contract, to presume that all services and productive activities are to be organized by the market and then make explicit exception for those activities that will be controlled by the state." Undertaking this important exercise would enhance the ability of policymakers to determine, in a more consistent and predictable manner, which SOEs should be

sold or privatized and which should be retained under public management. We must reiterate that privatization is only part of the overall effort to make the economy more efficient. In addition to determining appropriate roles for the state and the private sector and elaborating these in the constitutional compact, it is important that economic freedoms and the rights of individuals to engage freely in exchange be constitutionally guaranteed.

B. Privatization and the State in Africa

1. Benefits of Privatization

Given the fact that privatization implies that the state will have to give up some of its functions and transfer them to the private sector, the process has significant impact on governance. In this section, we examine the changes posed by the transfer of certain state functions to the private sector and how such a process can affect governance in the African countries.

In addition to using privatization to make the economy more market-friendly, many African countries are also using it to generate income for the public sector. According to the *Privatization Yearbook, 1997* (edited by H. Gibbon), for example, between 1990 and 1996, economies around the world derived more than \$400 billion from public offerings and private sales. In 1996, the total value of assets

privatized amounted to about \$88 billion and according to the OECD, that number is expected to rise to more than \$100 billion in 1997 (see Zarocostas, 1997, p. 3A). According to a recent World Bank (1995) report, there has been virtually no change in the share of employment in SOEs in the developing countries between the early 1980s and the mid-1990s. As a consequence, a large number of SOEs in the developing countries, including Africa, are still available for sale to the private sector (also see Rondinelli, 1998).

What kinds of benefits do Africans expect from privatization? The latter should provide Africans many benefits. First, privatization should reduce the burden of the SOEs on the public budget. For example, by the mid-1980s, subsidization of SOEs had become so significant a burden on the public budget in Cameroon that when the government sought assistance from the IMF to deal with its external debts, the international financial institution insisted on privatization as part of the SAPs (see, e.g., Jua, 1998; van de Walle, 1994). Economists at the IMF argued that privatization would eliminate the enormous subsidies that were required to keep these highly unprofitable enterprises afloat.

Second, privatization was expected to reduce the public debt of many African countries and generate resources that could be used to provide public services.

In many of these countries, where public revenues have been falling but government financial obligations have been rising, the sale of government-owned businesses has become a very attractive way to generate needed revenues. It is estimated that in sub-Saharan Africa alone, more than seventeen countries plan to divest, while fifteen others have already initiated or are in the process of initiating sales of SOEs (Rondinelli, 1998, p. 154). Although pressure from the IMF and the World Bank is behind most of these privatizations, a great number of African countries have recognized the opportunities to "earn" additional revenues which can be used to service their debt. Many of these countries hope that the sale of these "white elephants" will result in a significant reduction in public expenditures since the government will no longer be required to subsidize them.

Third, many advocates of privatization believe that the process can be used effectively by transitional and developing economies to finance investment in important economic infrastructures (e.g., water, road, environmental, telecommunications, transportation, and other utilities) (UNCTAD, 1996, pp. 19-29). According to the *Privatization Yearbook, 1997*, the majority of the SOEs sold in 1996 in the developing countries were in telecommunications, rail, and electricity sectors. These privatizations have

expanded and significantly improved public utilities in Brazil, Colombia and many other developing countries. Although African countries have not yet undertaken divestments at such massive levels, the process is underway in several of them. If undertaken efficiently and at "arms-length", it could result in significant macroeconomic gains.

Finally, it is argued that privatization can increase the participation of the private sector in the production and distribution of essential social services. Right now, most of the privatization that has taken place in Africa has been limited to the sale of SOEs to the private sector. However, the concept covers a broad range of activities. Some of them include opportunities for civil society groups (e.g., business firms, private voluntary agencies, and other non-governmental agencies) to participate in the production and distribution of social services (see, e.g., Rondinelli and Iacono, 1996). During the last several decades in Africa, when the state became irrelevant to many groups and communities, especially the rural areas, most of the social services were provided by churches, trade unions, women's groups and other non-governmental agencies. Education (especially at the primary and secondary levels), health care, nutrition programs for women and infants, and shelter and food for refugees, have in many instances, been provided by the

non-governmental sector (see, e.g., Kamaara, 2000, pp. 165-176). As a result of increased levels of corruption, rent seeking and other forms of opportunism in the post-independence society, the delivery of public services in many African countries has been capricious, selective and extremely inefficient (see, e.g., Jua, 1998; Stepanek, 1999, pp. 37-61). In many countries throughout the region, only individuals who could pay the required bribe or were "close" to the incumbent government, were able to have access to essential services such as electricity, modern health care, education (especially at the university level) and police protection. The poor and highly marginalized groups were forced to seek help from non-governmental organizations. In Cameroon, for example, many churches maintain hospitals, dispensaries, maternity clinics, and operate schools at the elementary and secondary levels which significantly improve access to education and health care for many people, especially the poor. These facilities usually provide essential services that the poor are unable to secure at what is more often than not, an overcrowded, poorly equipped, and ill-managed public facility. Unfortunately, many churches and other private sector providers do not have the resources to meet the needs of all the people who come to them for help. Privatization is expected to relieve some of the pressures placed on the NGOs by

increasing the capacity and capability of the private sector to participate fully and effectively in the provision of social services. According to Rondinelli (1998, p. 156), "privatization policies provide financial assistance and guarantees for private partnerships, and allow government agencies to contract with private organizations to manage social services." Many of these new privatization policies are based on the belief that certain goods and services, especially those which are directly paid for by consumers, can be "produced and delivered more efficiently and effectively by private firms and non-governmental organizations than by SOEs or government agencies" (Rondinelli, 1998, p. 157). As part of the overall effort to improve macroeconomic performance, governments are also pushing the remaining SOEs (that is, the ones that have not been sold to the private sector) to become more efficient. It is hoped that increased competition from the private sector will force these state enterprises to improve operating efficiency or face liquidation (World Bank, 1997).

2. Additional Benefits Depend on How Privatization is Undertaken

If carried out properly and as part of the overall plan to reconstruct the post-colonial state, privatization can offer many benefits. In addition to those

already examined, it (1) can contribute significantly to the overall goal of increasing the participation of the private sector in the allocation of resources and forcing the economy to reduce its dependence on the state; (2) can help the country develop a more market-friendly economy; and (3) can make the domestic economy more competitive and more efficient, reduce state subsidies, increase wealth creation, and enhance indigenous entrepreneurial activities.

By reducing the activities of the state in the economy and increasing those of the private sector, a significant level of discretion is taken away from the civil service, making it much more difficult for bureaucrats to extort bribes from entrepreneurs. Thus, if privatization is undertaken as part of a comprehensive institutional reform effort, it can contribute significantly to improved governance through higher levels of efficiency in the public sector and more participation by the people in policies that affect their lives.

Although privatization promises many benefits for the African countries, realization of these benefits has been hampered by the fact that the process was either carried out poorly or intentionally mishandled by opportunistic politicians and bureaucrats seeking ways to "earn" for themselves extra-legal income. According to Rondinelli (1998, p. 157), "[e]xaggerated expectations, poor misunderstandings of the process,

ineffective assessment of the technical and financial implications, corruption in government, and strong political pressures often undermined privatization and weakened its potentially beneficial impacts" (also see Priebjriat and Rondinelli, 1994).

3. Corruption and the Allocation of the Benefits of Privatization

High levels of bureaucratic corruption have allowed the proceeds of privatization in many countries (e.g., Nigeria, Cameroon) to be siphoned off to the secret foreign bank accounts of influential politicians and civil servants (including, especially in Nigeria, military officers). In addition, many of these state enterprises have literally been given to foreign entrepreneurs through non-transparent, secret deals between the foreign entrepreneurs and high-ranking civil servants and politicians in the African countries. The primary beneficiaries of these clandestine, non-transparent deals are the domestic elites and the foreign businesses—the former are paid bribes and the latter receive seriously and intentionally undervalued assets that can be exploited for monopoly profits virtually in perpetuity. In addition to venality, the privatization project in Africa suffers from other problems. The most important of these is the fact that domestic policymakers have not placed

privatization in its right context. It must be viewed as part of the overall effort to reconstruct the post-colonial state, redefine a socially-acceptable role for the state, especially in economic growth and development, constitutionally guarantee economic freedoms, minimize state intervention in private exchange, and provide each economy with structures that enhance indigenous entrepreneurship and wealth creation. Thus, privatization is not expected to succeed if it is undertaken within the present political dispensation. Characterized by bloated, parasitic bureaucracies, and governments that are not accountable to the people, present political dispensations in all but a few African countries, have been turned into instruments of plunder. For privatization to succeed, it must either be taken as part of the reconstruction of the state or only after the latter process has established more efficient institutional arrangements.

III. SEARCHING FOR A MORE RELEVANT MODEL OF GOVERNMENT

A. *The State and the Welfare of Society*

The government has the potential to add significantly to national wealth through

the production and distribution of those goods and services that cannot be organized efficiently by the private sector. This potential, however, can only be realized within the framework of the appropriate model of government. Existing institutional arrangements must be capable of effectively constraining the state and its agents, so that the latter do not engage in opportunistic behaviors to maximize their self-interest at the expense of the public interest. As has been apparent in many African countries during the last forty years, what the conceptual models suggest African governments do to enhance the wealth of their societies, protect individual liberty, promote social, economic and political development, and advance peaceful coexistence, is not necessarily what governments will do. First, the government may not have the skilled manpower to perform its constitutionally assigned functions efficiently. Thus, the state may be willing to carry out its functions but because of the absence or shortage of well-educated, skilled and competent staff, may not be able to do so properly. Those who see the African state as handicapped by human capital shortage, believe that poor economic performance in the region is due primarily to this handicap. Second, the state may be unable to perform its duties efficiently because national elites do not want to do so, even if the public sector is well endowed with skilled and competent personnel.

Civil servants, for example, may intentionally pursue perverse economic policies (that is, intentionally operate inefficiently) in an effort to generate for themselves, extra-legal income.

1. Failure of the State to Enhance National Welfare in Post-Independence Africa

In examining post-independence political markets, one can argue that the failure of the state to perform its traditional roles has been due to either (1) a shortage of skilled and competent administrators and regulators; or (2) the absence of appropriate incentive structures in political markets. Public choice theory argues that incentive structures determine the behavior of traders in both political and economic markets and as a consequence, determine market outcomes, including the choices made by post-independence African leaders. According to Gwartney and Wagner (1988, p 6), "[t]he central point of departure taken by these scholars [i.e., public choice scholars] is that the incentives contained within a particular system of government will determine whether or not government's power to tax, spend, and regulate is used as envisioned by the normative justifications." The incentive structures provided market participants by the nation's institutional arrangements will determine the extent to which the state will

perform the functions assigned it by the constitution. Thus, even if the state has both physical and human capital to properly carry out its duties, it may still not do so if existing institutional arrangements do not adequately constrain the exercise of government agency. In the absence of the appropriate constitutional constraints, politicians and civil servants are likely to turn state structures into instruments for their private capital accumulation activities. Thus, state capacity must include the *quality* of a nation's institutional arrangements.

A nation's market incentive structures are determined by its institutions. Consequently, the latter represent important constraints on the behavior of individuals who participate in economic and political markets and thus, determine public policy outcomes. During constitution making, citizens can define and elaborate the power of the different levels of government, provide structures for the peaceful resolution of conflict, and decide on the type of economic system they desire. Since the constitutional compact determines the type of incentive structures that will regulate the activities of market participants, to make certain that the state performs its functions properly and efficiently, each nation should arm itself with a *constitutionally limited government* and an economic system that minimizes

corruption, rent seeking and other forms of opportunism.

2. Economics and the Role of the State in Development

In the economics literature, the government is assigned two traditional roles—"to maintain law and order and to provide public goods" (Gwartney and Wagner, 1988, p. 5). It is expected that the government will enforce the nation's laws and maintain the appropriate incentive structures for markets, enhancing the ability of entrepreneurs to create the wealth that society needs to meet its needs (also see Gwartney, Holcombe and Lawson, 1998). During constitution making, the people may grant the government the power to monopolize the use of legitimate coercion so that it can protect citizens from harming each other and from outside aggression, and impose taxes on society to generate revenues to provide public goods and services. According to Gwartney and Wagner (1988, p. 5), the appropriate structures for mutually beneficial exchange and wealth creation must "include the enforcement of contracts and the avoidance of restrictions, regulations, and differential taxes which restrain exchange." In addition to maintaining law and order and providing entrepreneurs with the enabling environment to create wealth, the state must also be able to "enhance the wealth

of their members through undertaking productive activities that cannot be organized efficiently through market transactions" (Gwartney and Wagner, 1988, p. 5). As the evidence from the last forty years has shown, post-independence African governments were either unable (i.e., they did not have the capability) or unwilling to perform these duties effectively. In addition to the fact that most governments in sub-Saharan Africa failed to provide the private sectors of their economies with an enabling environment (that is, one in which economic freedoms are guaranteed and protected; political opportunism is minimized; entrepreneurship is enhanced and wealth creation maximized) for wealth creation, government regulatory activities were excessive and proved to be quite ruinous to productive economic activities. As a consequence, the development of indigenous capitalism and the emergence of a viable African entrepreneurial class were stunted in many of these countries. Instead of functioning as an agent of positive economic and social transformation, the post-colonial state became an instrument of plunder used to generate benefits for a few politically dominant individuals and groups.

B. The Appropriate Model of Government

The appropriate model of government is one that is consensual and secured by voluntary agreement of members of the polity. In this type of political system, the laws and institutions are designed by the relevant stakeholder groups for their mutual betterment and not imposed externally. As already mentioned, the institutional arrangements that the African countries adopted at independence were not designed through a bottom-up, participatory and inclusive constitutional making process in which the relevant stakeholder groups were enfranchised and provided the facilities to participate fully and effectively. In several cases, the laws and institutions were inherited from the colonial government with the hope that after independence and capture of the apparatus of government by indigenous elites, the new leaders would engage the people in state reconstruction through proper constitution making to provide more appropriate governance structures—those that reflected African values, aspirations, customs and expectations. Unfortunately, it was rare to find an African country that had engaged in proper constitution making, forcing the people to live within polities whose governance structures were undemocratic, exploitative, and not designed to maximize the people's values. The institutions, instead, enhanced the ability of the ruling elites to advance their own interests, impeded the creation

of wealth and contributed significantly to ethnic strife (see, e.g., Young, 1994).

1. Appropriate Model of Government and Pluralism in African Societies

It is important to note that an appropriate government is one that adequately minimizes political opportunism (e.g., corruption and rent seeking), enhances entrepreneurship and wealth creation, and provides structures for peaceful coexistence of groups. Of course, one can argue that such a definition does not reflect social contestations, economic inequality, hierarchies of power and status. In addition, one may also argue that the discussion treats "society" as some kind of unitary actor, or more appropriately that constitutionalism is assumed to imply a process of deliberative negotiation among all the members of society presumed to have equal capacity to speak, bargain and accept compromise. First, we recognize that African societies are not homogenous, but consist of many diverse groups, each with varying negotiating abilities. Second, public choice theory recognizes the fact that there is always a politics to the business of determining a regime arrangement. In other words, distinct social groups within the society are likely to attempt to use the constitution making process to design rules favorable

to their values. Public choice theory argues that these problems can be minimized by first establishing a competitive constitutional environment—one that grants each participating party a significant threat of exit, before deliberations can begin. The existence of such an exit option minimizes the ability of some groups (especially those with greater endowments of political and economic resources) to engage in opportunism and attempt to secure outcomes that favor them and place other participants on the disadvantage. As argued by many public choice theorists, the process through which the constitution is chosen will determine the extent to which the rules selected meet society's needs and aspirations. First, the individual must be made the source of all value. Second, all members of the society should be treated as "moral equivalents, as individuals equally capable of expressing evaluations among the relevant options" (Brennan and Buchanan, 1985, p. 22). Such an approach to constitutionalism, however, does not reject societal influences on the individual. Such influences enter the analysis through their modification of the values which, the individual expresses. In deliberations to select rules for the society, all individuals are treated equally, enfranchised, and allowed to participate in the process. As argued by Trubek and Gallanter (1974), efficient constitutional rules (that is,

those that produce mutual gains for all members of society), can only be obtained from a negotiating process in which no individual or group is allowed to dominate or control rules selection, and no special characteristics (e.g., race, ethnicity, wealth, religion, educational attainment, and geographic location) grant any person or group systematic advantages or disadvantages in the constitution making process.

Of course, it has been suggested that high illiteracy rates among Africans make it very difficult for the people to articulate and effectively communicate their ideas. In these arguments, illiteracy is usually defined in terms of the ability to speak and write some European language (e.g., French and English). The experiences of the main opposition leader in Cameroon, Ni John Fru Ndi, who in the early 1990s, launched a successful nation-wide campaign to introduce multiparty politics in the country using *pidgin-English* show that students of African political economy may want to reconsider their definitions of illiteracy. In fact, during the entire presidential campaign, Fru Ndi who is not fluent in French (one of Cameroon's national languages), addressed the people and received questions from them in *pidgin-English*. Of course, Cameroonians literate in *pidgin-English* and other traditional African languages are usually not considered literate by most students of Cameroon political economy.

Third, all individuals should be enfranchised and provided facilities to participate fully and effectively in the constitutional process. Fourth, all members of the society, regardless of their educational levels, resource endowments, etc., should elect representatives who will meet in conference to put together the set of political principles which will become the foundation for the nation's constitution. The process through which such political principles are to be selected should be designed to maximize participation by all members of society. To enhance such participation, for example, facilities should be provided to citizens who need assistance in elaborating their objectives. For example, elected representatives can return to their constituencies and hold public hearings in which constituents prepare and submit their ideas for debate and inclusion in the political principles. At the village level, such discussions can be held in the local language. In addition, the people's representatives can be assisted by technical experts (e.g., language experts and those skilled in translation; lawyers, etc.) who can help translate these ideas into text. Fifth, representatives can then meet in conference and debate the political principles and subsequently present the people with a final draft for approval. The constitution will then be based on

these principles (see, e.g., Brennan and Buchanan, 1985; Mbaku, 1997).

2. The Failure at Independence to Properly Transform the Critical Domains and Create the Appropriate Model of Government

In late 1950s and early 1960s, many of Africa's new indigenous leaders (e.g., Tanzania's Julius Nyerere, Cameroon's Ahmadou Ahidjo, Ghana's Kwame Nkrumah, Malawi's Kamuzu Banda, and Guinea's Sekou Touré) argued that the state structures inherited from the colonial government were not appropriate for regulating socio-political interaction in the post-independence society. No effort, however, was made to engage the African people in reconstructing these structures through proper constitution making to provide the people with more effective dispensations. On the other hand, the ruling elites engaged in opportunistic institutional reforms that significantly strengthened their ability to monopolize political power and resource allocation (see, e.g., LeVine, 1997; Young, 1994; Joseph, 1987). Many of these leaders argued that what their societies needed were unitary political systems with strong central governments so that the several ethnic groups within each country could be kept together and the necessary environment provided for wealth creation (Decalo, 1992). At the time, part of the argument in support of what would eventually

become the one-party political dictatorship was that rapid economic growth could only be undertaken within the framework of the one-party political system and a resource allocation system that emphasized state ownership of productive resources and government regulation of private exchange. Many African leaders claimed at the time that the multiparty political system would turn into a vehicle for the politicization of ethnic and other social cleavages, and consequently become a constraint to development. The market-centered resource allocation systems inherited from the colonial government were considered major obstacles to rapid economic growth and development in the new countries (Nyerere, 1966; Krueger, 1992).

In the francophone African countries, national elites engaged in three major "reform" efforts during the post-independence period. They "amended" national constitutions, enacted restrictive laws and created elaborate "security" structures that were later used to prevent the participation of popular forces in political markets. According to LeVine (1997), the result of several of these so-called reform projects was a presidency that was much more powerful than that expected of the Gaullist model. By the spring of 1963, reinforced presidencies had been installed in nine francophone African countries. De Lusignan (1969, p. 83)

states that all the constitutions adopted in the francophone African countries "had one thing in common—they all led to the establishment of strongly authoritarian regimes." Although many of the legislatures inherited from the colonial governments were not destroyed, legislators or parliamentarians served primarily as prebends and not policymakers in the true sense. National assembly members did not have the power to pass laws; instead, they served to rubber stamp legislation demanded by the head of state (as evidenced in Cameroon, Senegal, Côte d'Ivoire, Guinea, and Mauritania in the 1960s and 1970s). In some cases, legislatures were dissolved and the legislators sacked, the constitution abandoned or suspended, allowing the government to rule by presidential decree. In those countries in which the military had captured the government through a coup, most national institutions were destroyed and governance was by decree (LeVine, 1979, pp. 125-154; also see LeVine, 1997; Joseph, 1987; Mbaku, 1997). According to LeVine (1997, p. 190), military intervention in the politics of African countries epitomized "the low estate to which constitutionalism had fallen during the 1963-89" period in Africa. He added that

[n]ot only did [these military elites] commit acts which in themselves amply spoke to their

disdain of the rule of law, but after taking power, they frequently suspended or discarded existing constitutions, to be removed from sight as offensive remnants of previous régimes, and then (more often than not in order to help legitimize their own rule) proceeded to write new ones to suit themselves—for example, Nigeria, 1967, 1976, 1984; Dahomey/Benin, 1968, 1977; Upper Volta/Burkina Faso, 1970, 1977; Congo People's Republic, 1973; Mali, 1974; the Central African Empire, 1974; Mauritania, 1978, 1981 (LeVine, 1997, p. 190).

In the last forty years, then, military elites in many African countries have rejected constitutionalism as a basis for organizing societies in Africa and resolving conflict between groups. Given the fact that military elites have, during a significant part of the last four decades, been notorious for unconstitutionally seizing political power in many countries in the continent, they have rejected the idea that the African peoples (i.e., the relevant stakeholder groups) be allowed to determine their own institutional arrangements. Additionally, military elites have either been unable or unwilling to accept the constitution as the basic foundation on which to build the nation's institutions. Instead, many

of them have seen the constitution as a political tool that can be manipulated to secure benefits for those who control the apparatus of government.

In Africa, the one-party political party, which according to Julius Nyerere of Tanzania was expected to represent "all streams of opinions and societal groups" (quoted in Decalo, 1992, p. 10), dominated political economy until the advent of the pro-democracy reforms of the early 1990s. Since the late 1980s, Africans have engaged in transitions to more democratic governance systems. Unfortunately, as already mentioned, most countries' transition projects have not progressed past the election stage.

3. The Most Important Part of a Transition to Democratic Governance

The most critical part of the transition must involve a national debate on the constitution, in an effort to reconstruct the post-colonial state and provide each society with what public choice theorists call a productive and protective state. Such a state:

- effectively minimizes political opportunism by government agents (i.e., civil servants and politicians);
- constrains the ability of interest groups to capture state structures and use them as instruments for their capital accumulation activities;

- upholds the constitution and maintains law and order;
- enforces contracts, but refrains from all activities that restrain trade or free exchange;
- enforces laws against theft, fraud, etc.; and
- provides public goods and services efficiently and equitably.

How can such a state be provided each African country? According to public choice theory, only the relevant stakeholder groups (that is, those whose lives would be governed by the rules selected) should be allowed to develop such a state through proper constitution making. If, on the other hand, constitutionalism is monopolized by center elites and their foreign benefactors (as was the case in most African countries during the decolonization process), these countries will fail to construct the appropriate model of government. As already mentioned, a bottom-up, people-driven, participatory and inclusive constitution making process should be used to select each country's constitutional rules, in order to make certain that the people are provided effective and full representation. For, unless such an approach is employed, the outcome will be inefficient and non-viable laws and institutions, which are not likely to reflect the desires, aspirations and values of the people and as a consequence

will fail to serve the people well (see, e.g., Buchanan and Tullock, 1962; Gwartney, Lawson and Block, 1996; Mbaku, 1997).

IV. SECURING THE PROTECTIVE STATE

A. *What is a Protective State?*

According to public choice theory, the protective state is one which provides society with an enabling environment to create the wealth that can be used to deal with poverty. A state of this type can accomplish this objective by providing society with a "framework of security and order" (Gwartney and Wagner, 1988, p. 5), implying the enforcement of laws against illegal activities (e.g., theft and fraud). During constitution making, as was mentioned earlier, the citizens may grant the government the power to monopolize legitimate force. The latter is employed to protect citizens and their property. In addition to protecting citizens from harm, the protective state is also expected to maintain a framework of rules within which individuals can freely engage in trade and in the process, create the wealth that society needs. As has been argued by Gwartney and Wagner (1988, p. 5), such a government guarantees *economic freedoms*, maintains a trade regime of low marginal tax rates, and as a consequence,

provides an environment that enhances entrepreneurship and wealth creation.

1. Protective States in Post-Independence Africa

Very few countries in Africa can boast of having maintained such a government during the last forty years. Evidence from the continent shows that rather than being protective, most post-independence African governments became instruments of plunder, exploitation, and torture to provide benefits for a few individuals and groups. Although one can say South Africa was unique because of apartheid's obsession with race, the white minority nevertheless used state structures to oppress and exploit the black majority in order to create and sustain privileges for the former. During more than fifty years of official apartheid, the government's framework of security and order was employed effectively to control the lives of Africans and enhance the ability of the country's white population to monopolize political power and resource allocation. The government's redistributive powers were employed to redistribute income and wealth in favor of whites, forcing the African majority to live in poverty (Magubane, 1979; Mbaku, 1993; Hutt, 1964; Doxey, 1961; Williams, 1989; Fredrickson, 1981). Instead of protecting all the people from external and internal aggression, the state became the source of a significant

part of the violence directed at the African peoples of South Africa. As a consequence, the state failed to perform its protective function, making it difficult for Africans to engage in entrepreneurial activities or create the wealth that they could have used to meet their needs.

2. Political Opportunism in Post-Independence Africa Not Limited to Apartheid South Africa

Of course, South Africa's infamous apartheid regime was not the only government in Africa whose governance structures had been turned into instruments of violence against citizens. Throughout most of the last forty years, ruling coalitions failed to provide their countries with the enabling environment to create wealth. Instead, governmental structures became the most important source of violence against the people as the incumbent ruling elites struggled to monopolize political space and the allocation of resources. In many countries, the institutions that make up the state's framework of security and order (e.g., the national judiciary, the police, and the civil service) were either destroyed or corrupted and made subservient to the interests and objectives of the politically dominant

groups. Studies of Zaire under Mobutu Sese Seko, for example, uncovered evidence that shows that he had turned the structures of government into instruments for his personal capital accumulation activities. During his long term in office as president of Zaire, civil servants regularly engaged in illegal taxation of economic activities to extract extra-legal income for themselves; judicial officers abused their positions to benefit themselves and their friends; etc. (Gould, 1980; Gould and Mukendi, 1989).

V. THE PRODUCTIVE STATE

According to public choice theory, the state is also expected to enhance the national welfare by undertaking those activities that cannot be organized efficiently by the private sector. In its productive role, the government is expected to provide those goods and services which, citizens acting in their separate and individual capacities, cannot organize efficiently. Economists have developed a theory of public goods which explains why it may be necessary for the government to produce and distribute certain goods and services. Where externalities are present, for example, the government has the opportunity to enhance the national welfare by engaging in the affected activities (see, e.g., Holcombe, 1995,

1996). Given Africa's post-independence experience with government intervention in private exchange, it is important to caution that the productive state must not undertake those activities that can be organized efficiently by the private sector.

After more than four decades, it is now apparent that statist development programs have failed to improve, in a significant way, the living conditions of most Africans. In the present transition, it is necessary that Africans redefine the role of the state in the economy, keeping in mind some very important objectives—creation of wealth and efficient and equitable allocation of resources. As argued by public choice theorists, wealth creation will be maximized if economic freedoms are constitutionally guaranteed and the state is restricted to the production and distribution of those goods and services which, the private sector cannot organize efficiently.

VI. THE CONSTITUTIONALLY LIMITED GOVERNMENT

A. Enhancing the Efficiency of Government

To enhance the ability of the government to be both productive and protective, the state should be limited constitutionally. According to Brennan and Buchanan (1985),

the design of rules comes before any trade can commence in either the economic or political arenas. Such rules include the "definition of the rights of persons, [which] can be legitimately derived only from the agreement among individuals as members of the polity" (Brennan and Buchanan, 1985, p. 26). The government does not define the rights of individuals. Instead, members of society establish governments to guarantee and protect their rights as defined, agreed upon, and elaborated in the constitutional compact. Where states have already been established (e.g., through colonialism), they can be reconstructed through a negotiated change in rules. Thus, African states, the majority of which have institutional arrangements that were inherited from the Europeans, can be reconstructed through a negotiated change of existing rules.

1. Minimizing Post-Constitutional Opportunism

Wagner and Gwartney (1988, p. 30) argue that government should be a "consensual arrangement designed for the mutual betterment of all." As has been argued in this paper, the government should protect the lives, liberties, and properties of its citizens from both foreign and domestic aggressors. Unfortunately, most post-independence governments in Africa have been pervaded by political opportunism and as a consequence have

failed to perform their functions properly. Public choice theory suggests constitutionally limited states as an effective way to minimize opportunism and improve governmental efficiency. Although many Africans desire constitutional rules that will effectively prevent civil servants and politicians from engaging in corruption and other forms of opportunism, it is important to realize that once the rules have been adopted and a government established, there is a strong incentive for those who have captured the apparatus of government to cheat. Individuals who cheat can generate or garner for themselves benefits and privileges above and beyond what they would have received otherwise. Even though such opportunism can generate significant income and wealth for a few politically dominant individuals and groups, it generally produces a lot of losers and imposes enormous costs on the rest of society. Without constitutional constraints, rent-seeking interest groups and opportunistic public servants will be able to exploit society for their own benefit. During the last several years, as has been determined by many researchers (e.g., Bates, 1981; Mbaku, 1997, 2000), well organized urban interests in Africa, for example, have been able to successfully exploit the poorly organized rural agricultural sectors, thanks to laws and institutions that have granted the urban-controlled

state virtually unlimited power to intervene in private exchange.

2. Minimizing Political Opportunism in Africa: The Substantive Constraints Approach

How can Africans make sure that post-constitutional opportunism will be minimized? It has been suggested that what are called *substantive constraints* be incorporated and elaborated in the constitution. These constraints limit the ability of legislatures to pass fiscally discriminatory laws (that is, those that redistribute income and wealth in favor of special interest groups) and enhance the ability of individuals within society to freely engage in trade and at the same time, protect private property from all kinds of "redistributors", including the government. The country's Supreme Court can then be granted the authority by the people through the constitution to enforce compliance to the rules. The second strategy to minimize political opportunism is called the *procedural design approach*, and involves the establishment of "political institutions and procedures which reduce the likelihood that governmental policies plundering some for the benefit of others will be adopted" (Wagner and Gwartney, 1988, p. 37). Under the latter approach, the country establishes what public choice theorists call a *self-enforcing*

constitution, making constitutional maintenance an internal process.

The substantive constraints approach has several problems. In most countries in Africa, the Supreme Court cannot be considered at this time to be an independent agency, but one that serves at the pleasure of the incumbent head of state and the ruling party. Except in a few cases, judiciary officers in many countries in the region are neither elected by the people nor appointed by their elected representatives. On the other hand, judiciary officers are political appointees who owe their allegiance and their stay in office to national rulers and the ruling political party. The country's chief executive officer uses the judiciary as an instrument to control civil society and enhance the regime's ability to continue to monopolize political space. Since those who serve on the courts are appointed by the ruling coalition and not elected by the people, the latter have no power to punish opportunistic and poorly performing judicial officers. As a consequence, the Supreme Court, at least at this time, is not an appropriate agency to enforce compliance to the rules in these countries.

In the U.S. and several other democratic countries, judges are chosen by the people (or appointed by the people's elected representatives). However, the judiciary system is still subject to significant pressure from

interest groups. In fact, under the majoritarian democratic system, interest groups can actually manipulate the Supreme Court, allowing the former to subvert the laws and generate benefits for themselves. For example, some public choice theorists (see, e.g., Wagner and Gwartney, 1988, pp. 40-41) argue that in response to pressure from interest groups, the U.S. Supreme Court, through interpretation, may have actually engaged in extra-constitutional amendment of the nation's constitution, effectively usurping the right of American citizens to change their own rules. In the process, the Supreme Court produced institutional arrangements that made it easier for legislators to pass special-interest legislation (i.e., fiscally discriminatory laws) and produce benefits for the interest groups that support them through campaign contributions, etc.

If a country grants its Supreme Court the power to enforce compliance to constitutional rules, such a court must be able to withstand pressure from interest groups, as well as from the executive branch of government and the legislature or national parliament. Except for those of a few countries (most likely post-apartheid South Africa), the majority of Africa's Supreme Courts are not independent enough to successfully resist the power of the presidency and the ruling party and enforce the laws without prejudice. As of this writing, incumbent political leaders in the

African countries continue to usurp the powers of the courts and promote their own agendas at the expense of the rest of society. Where the government is controlled by military elites (e.g., Democratic Republic of Congo), the question of judiciary independence is academic. As far as establishing judiciary systems that can enjoy enough independence to be able to serve as an effective counteracting agency, the majority of African countries still have a long way to go.

3. Minimizing Political Opportunism in Africa: The Procedural Design Approach

Since constitutional maintenance through the Supreme Court does not appear feasible, another way must be found to minimize post-constitutional opportunism. Public choice theory suggests the design and adoption of a self-enforcing constitution. A self-enforcing constitution produces mutual gains that are easily recognizable by all parties to the contract, making it beneficial for them to cooperate. Many self-enforcing rules have been known to evolve spontaneously, requiring no enforcement by a third party. As an example, Niskanen (1990, p. 58) argues that the desire by individuals to maintain a successful trading relationship may be enough to minimize or completely eliminate shirking. In addition, North (1990) has determined that in repeat transactions, a

trader's reputation evolves into an asset whose value must be protected, forcing individuals in such a situation to refrain from engaging in opportunism for fear of damaging their long-term reputations.

One way to make the constitution self-enforcing is to introduce and sustain competition into both political and economic markets in the post-constitutional society. In addition, the power of the central government should be significantly restricted in favor of increased political autonomy to regional and local governmental jurisdictions. Making the political environment competitive requires that the polity be divided into as many autonomous political jurisdictions as possible and the right of individuals to migrate freely between political units constitutionally guaranteed. This implies the establishment of some form of *constitutional federalism*. According to Wiseman (1990, pp. 121-122), a federal system with many autonomous political jurisdictions, each with a given level of constitutionally protected power, should effectively constrain the ability of governments, at all levels, to exploit citizens. In addition, a federalist constitution embodies the kind of diversity and pluralism that is characteristic of African societies (see also Mbaku, 1998b, 1997; Wildavsky, 1990).

Such a constitutional arrangement as described above, enhances the ability of citizens to escape exploitative political jurisdictions, constraining the ability of civil servants, for example, to become exploitative. If citizens can migrate freely and at relatively low cost, to competitive political jurisdictions, then the ability of local governments to oppress citizens would be severely diminished. If more people are allowed to take part in or provide input into the design and implementation of public policies that have a direct impact on their lives, they will be in a better position to produce programs that maximize their interests. Since individuals at the local level have more time-and-place information than the bureaucrats at the center, decentralization of public provision should improve government and bureaucratic efficiency. Additionally, competition between political jurisdictions for tax-payers should encourage or force governmental units to improve the quality of the fiscal packages that they provide their constituents. If the power of the central government is significantly constrained by the constitution, interest groups will be less likely to invest in rent seeking since such outlays are not likely to prove profitable. If the constitution provides for free internal migration and political plurality, this will help establish and maintain a competitive

post-constitutional environment (Anderson and Hill, 1986; Congleton, 1994; Wildavsky, 1990).

The ability to migrate freely is very important to the proper functioning of voluntary arrangements, such as those being proposed for the African countries. In societies where individuals are guaranteed, by the constitution, the right to migrate freely, determining the type of political structure that the individual wants becomes a matter of exiting one political jurisdiction and entering another. However, one must consider the fact that the costs of migration can be quite high. According to Congleton (1994), since the majority of political jurisdictions are geographical, exit implies that one has abandoned one's previous geographic residence in favor of a new one, and that can involve significant social, as well as economic costs. In the African countries, migration involves not only the abandonment of one's geographic residence, but can also include the loss of important ethnic and family affiliations.

Transaction costs associated with migration between political jurisdictions is a measure of the ability of each local governmental unit to exploit citizens. The greater the costs associated with exit, the easier it is for the government to coerce its residents. Thus, oppressive governments can improve their ability to exploit citizens by raising migration

costs. One way to constrain the ability of a governmental jurisdiction to be oppressive is to reduce the costs of exit. Constitutional design can significantly lower migration costs, for example, through the creation of several autonomous political jurisdictions within the polity. The larger the number of such political units, the shorter the geographic distance between jurisdictions and the lower the costs of exit.

In Africa, the costs of exiting political jurisdictions must include problems that arise from a multiplicity of languages, cultures and traditions. In Cameroon, for example, a citizen who migrates from one local government unit to another is likely to face a new language, culture, and customs. Available evidence shows, however, that language and customs have not been very severe constraints to migration in the country, especially among young people searching for opportunities to advance themselves economically. During the colonial period, many people from the relatively less developed parts of the territory migrated freely to the coastal regions to seek employment in the former German plantations, and in colonial institutions in Buea, Yaoundé, Douala and other urban areas. How cultural and language differences affect migration must be examined on a country-by-country basis (see, e.g., Bederman, 1968; Clignet, 1976).

As already mentioned, the greater the costs of exit, the easier it is for governmental units to oppress their citizens. Congleton (1994, pp. 16-17), however, argues that the creation of many political jurisdictions within the polity reduces geographic or physical distance associated with migration and in the process, lowers the costs of moving from one political unit to another. In addition, the existence of a larger number of political jurisdictions reduces the possibility that one would radically change one's lifestyle. For example, in Cameroon, migration from one village to another is not without significant transaction cost, but is cheaper than migrating across the country or to Nigeria. In the case where the individual can choose from several political jurisdictions, exit can be viewed as a change of *neighborhood* without significantly sacrificing one's extant lifestyle. As Congleton (1994) has argued, one can actually retain one's job and continue to have relatively easy access to family and friends. The only real change would be in governmental jurisdiction. In conclusion, Congleton (1994, p. 18) states that "the smaller governmental jurisdictions are, the more likely it is that affiliated individuals receive positive net benefits from local governments." If the constitution grants citizens the right to migrate, and the migration costs are relatively low, then citizenship in a political jurisdiction

is voluntary, and individuals will live in a given political jurisdiction only if all other alternative political units, net of the costs of migration, are less welfare-enhancing.

The ability to migrate allows citizens to veto those government policies that threaten their welfare or impose taxes that are considered by them to be punitive. They can then exit and enter political jurisdictions which provide them with the opportunities to maximize their values. Thus, the ability of individuals to vote with their feet (that is migrate to alternative political jurisdictions) is an important determinant of the efficiency of government and the bureaucracy. Governments that continue to provide citizens with poor service can lose their taxpayers to migration. As a consequence, the ability of citizens to migrate actually improves public provision and creates opportunities for individuals to advance their values. In other words, governments, afraid of losing tax-paying citizens, are most likely to provide fiscal packages that reflect the needs of citizens or serve their interests. Through exit, individuals with unique needs, desires, and aspirations can congregate in a political jurisdiction that offers programs that cater to their interests, forcing government to become more responsive to the people.

Greater levels of decentralization should be preferred to less, as long as

multiple political jurisdictions do not have a significant negative impact on the cost of providing public goods and services. It has been suggested that larger governmental systems may be more efficient at providing public goods than smaller ones, since the former can more effectively exploit technological economies of scale. Available evidence, however, shows that relatively small political units such as Sweden, Denmark, the Netherlands, Hong Kong, and Switzerland have been just as efficient as larger political jurisdictions as the U.S. Small countries, as well as small political jurisdictions within countries, are capable of fully realizing economies of scale in government service, including the production and distribution of goods and services (Congleton, 1994).

Public choice theory's approach to constructing the self-enforcing constitution is based, partially, on the ideas of Knut Wicksell (1967 [1896]). Many years ago, Wicksell suggested a more effective way to constrain the legislature and achieve consensus government. He suggested that membership in each legislative chamber be based on proportional representation and that legislators be subjected to a rule of *approximate unanimity* instead of *majority rule*. He argued that if the legislature is required to obtain consensual or supra-majority approval of all its members (e.g., 75% of its membership) before laws can be enacted, then interest

groups will find it very difficult to subvert national laws to their advantage. Such a supra-majority rule can minimize rent seeking and rent extraction and the passage of fiscally discriminatory legislation (Wagner and Gwartney, 1988).

The preceding discussion points to the adoption of highly decentralized federalist structures for the African countries. The exact mix of institutions, however, will have to be determined by the relevant stakeholder groups during constitutional deliberations since they have access to the time-and-place information needed. A decentralized governmental system is more responsive to the interests and values of both large (dominant) and small ethnic groups than is tenable under majoritarian democratic systems. Unfortunately, unless the right to migrate freely between political jurisdictions is granted, a decentralized system will degenerate into a series of small unitary governments, with each one monopolizing political power in its geographic region and burdened with the problems of centralized political systems.

VII. CONSTRAINTS TO PROPER CONSTITUTION MAKING IN AFRICA

A. Is Africa Unique?

Some critics are likely to argue that the type of constitutionalism and state

reconstruction described above can only be undertaken in societies with characteristics and traits that are not present in African societies. They would argue that in Africa, the ability of the ordinary African to make choices is constrained significantly by political and economic monopolies, limited information, and an absence of trust in national laws and institutions, as well as in the nation's leaders. Thus, Africans, in general are subjected to a form of "bounded rationality" (Brett, 1995, p. 203).

In Western societies, the management of modern institutions requires complex information. Those who manage these institutions (e.g., bureaucrats and business executives) have to have acquired the highly technical skills needed to understand the complexities of these organizations. In addition, these managers (whether operating in political or economic markets) are constrained by stakeholders who understand their rights, are willing to enforce them and have the facilities to do so. This, of course, assumes there exist, first, a properly functioning educational system to educate both managers and the relevant stakeholder groups and provide them with the necessary skills; and second, mass media, to expose any opportunism on the part of managers (including bureau executives); and third, systems that enhance the ability of managers to have

access to the information that they need to manage their organizations properly.

What is the situation in Africa? First, most African laws and institutions were based on those brought to the colonies by the European colonialists and managed by a foreign economic and political class with values alien to those of Africans. The institutions were despotic, exploitative and not designed to enhance the welfare of Africans, but to help Europeans maximize their objectives in the colonies. As a consequence, managers of these institutions intentionally refused to inform Africans about the true nature of their activities. Second, when independence came, they did not exist in many of the new countries, an African managerial and entrepreneurial class, since the colonial government had stunted their development. Third, most of these countries did not have an independent mass media—the few mass media structures that existed in the new countries were owned and controlled by the government. Fourth, most people were illiterate. According to these critics, “[n]either effective management nor democratic control is possible in such circumstances” (Brett, 1995, p. 204).

B. How Different is Africa?

It is true that the absence of properly functioning mass media structures have made it very difficult for Africans to remain informed about the functioning of their governments. However, the absence of modern media structures such as televisions and newspapers in many African countries does not mean that the people have remained completely in "darkness." In fact, such an analysis ignores traditional forms of information transmission. During the time Ahmadou Ahidjo was president of Cameroon (1960-1982), there was no television and the mass media was reduced to a national radio station and one or two government-owned and controlled newspapers that reported only "news" cleared by state authorities. In addition, foreign newspapers were severely censored. However, Cameroonians were not completely in the dark about political happenings in the country. Informal structures were developed and traditional ones transformed to provide people with news about what was happening in government as well as outside the country. In addition to underground newspapers, rumor mills provided relatively accurate information about such things as bureaucratic corruption and public malfeasance. During the pro-democracy riots of the late 1980s and early-to-mid 1990s, "side-walk" radio, and informal communication structures, became a very important tool for keeping people informed of the goings-on in the political arena. The

fact that the government occasionally threatened to prosecute individuals caught spreading such rumors, is testament to their effects on the operations of the state.

It is true that literacy is critical to the practice of democracy. However, most data on literacy in Africa refer primarily to the ability of Africans to read and write some European language (e.g., French and English). In Cameroon, for example, while most people in the rural areas can neither speak nor write French or English, the country's two national languages, many of them can communicate quite well in pidgin English. In fact, in the large cocoa, palm kernel, and rubber plantations of the South West Province of the country, for example, pidgin English is the language of communication for most of the thousands of workers who come from all over the country to work in the plantations. Ni John Fru Ndi, Chairman of Cameroon's main opposition party—the Social Democratic Front, is not fluent in French but has communicated very effectively with Cameroonians through pidgin English. In fact, during nation-wide campaigns for presidential elections in the early 1990s, Fru Ndi addressed large crowds and answered questions from them in pidgin. Yet, all these Cameroonians would be considered illiterate and therefore incapable of participating effectively in democratic discourse.

Today, fax machines, cell phones and the internet have changed the ability of national governments to control the media. In fact, presently many Cameroon journalists who have been forced underground by government censors are no longer able to print and distribute their newspapers but have not gone out of business. Many of them maintain websites from which they publish their papers almost without interruption.

VIII. AFRICA: WHICH WAY FORWARD?

As we have argued in this paper, availability of skilled, honest and competent managers is a necessary but not sufficient condition for the efficient management of political and economic markets. Unless the appropriate incentive structures exist, individuals are likely to engage in opportunistic behaviors. Thus, even if African countries manage to secure the necessary skilled manpower, development is not likely to be the outcome in the absence of accountable, transparent and participatory governance structures.

Will rational self-interest be able to drive constitutionalism and provide Africans with the appropriate institutional arrangements? We have argued in this paper that most people's behavior will be governed by self-interest and that given the opportunity, they are likely to engage in opportunism

to advance that self-interest even if doing so reduces the welfare of others. The purpose of proper constitution making, according to public choice theory then, is to provide society with institutional arrangements that prevent individuals from engaging in opportunism. But, will self-interested individuals be willing to engage in the construction of institutional arrangements that will "level the playing field" and constrain their ability to engage in, for example, corruption? Given existing institutional arrangements in many African countries, which as we have discussed earlier, allow some individuals and groups to enrich themselves at the expense of the rest of society, any attempt to introduce a new dispensation (even if it promises to allocate resources more efficiently and equitably) will be opposed by incumbents who now benefit from the existing structures. However, as the overthrow of apartheid in South Africa and the fall of several dictatorships in other African countries has shown, it is possible to overcome opposition from entrenched groups and engage the people in proper constitution making.

Critics argue, however, that "rational self-interest must transcend the short-term calculations of market theory, and recognize the collective obligations and self-sacrifice required to create the social movements which will campaign for institutions based on freedom and competition" (Brett, 1995, p. 205). In

other words, people must be willing to set aside "self-interest and demonstrate high levels of altruism where they can be made to recognize the need for and possibilities of collective solutions to problems of social breakdown through institutional reform" (Brett, 1995, p. 213). Can rationally self-interested individuals engage in proper constitution making to provide their societies with the appropriate laws and institutions? Public choice theory will answer in the affirmative. In fact, it is to the benefit of such an individual to operate in a market governed by predictable and efficient rules than in one characterized by a significant level of uncertainty.

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