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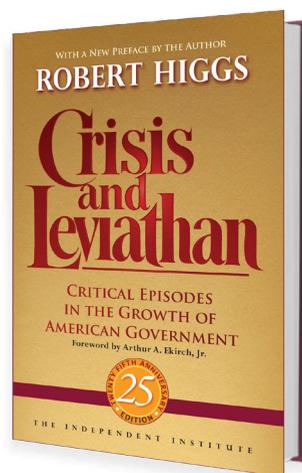
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Constitutional Engineering and the Transition to Democracy in Post–Cold War Africa



JOHN MUKUM MBAKU

In the early 1990s, many of Africa's dictatorships (both military and civilian) collapsed, giving Africans the opportunity to establish more transparent, participatory, and accountable political and economic systems. In addition, the demise of apartheid in South Africa has given a significant boost to the continent's efforts to establish more participatory governance structures. Although the transition appears to be progressing well in a few countries (Mbaku and Kimenyi 1995), little progress has been made in most of the continent.

In fact, in some countries (e.g., Nigeria, Algeria, and Cameroon), the transition has been hijacked by incumbents determined to continue monopolizing power. In addition, in countries where the transition seems to be progressing without major obstacles, policy reform has not progressed past the election stage. The elections were supposed to choose transitional governments that would engage the people in constitution making and provide a framework for the reconstruction of the neocolonial state. But many of these new governments have not taken the job of designing new rules seriously; they have become repressive and in many instances have continued to suffocate civil society while making it very difficult for opposition parties to function. In some countries, elections simply legitimized incumbents and allowed them to continue their brutal and exclusionary policies.

Cameroon is a good example. According to two of the nation's most respected independent newspapers, the incumbent president, Paul Biya, has manipulated elec-

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tions to make certain that his party, the CPDM, continues to control the country's political system. Opposition groups claim that the electoral code for the 1992 legislative elections was written by the CPDM specifically to ensure its victory. The code contained clauses ensuring that the election would not be free or fair but skewed in favor of CPDM candidates. (See, for example, the Cameroonian periodicals *Cameroon Life*, March 1992, 15–17; *Le Messenger*, 28 October 1992; and *The Herald*, 26 October 1992. For a summary of transition events in Cameroon, see Finn 1994.)

At independence in the 1960s, the African people had an opportunity to choose new laws and institutions that would provide the enabling environment for national integration, peaceful coexistence, and development in the post-independence society. Unfortunately, this opportunity was usurped by opportunistic indigenous urban elites (the continent's new leaders) who proceeded to impose inappropriate laws and institutions. After more than thirty years of independence, it is now evident that the opportunity made possible by the end of colonialism was never effectively utilized to design laws and institutions that could have provided for peaceful coexistence of ethnic and social groups, enhanced the ability of entrepreneurs to create wealth, and maximized individual participation in development. Instead, the institutional arrangements that many of the African countries adopted at independence were weak, inefficient, and not particularly viable. They were easily subverted by political coalitions interested in maximizing their own welfare at the expense of the rest of society. As a result, public policy in the continent in the last thirty years has been characterized by political opportunism.

Today, Africans have another opportunity to reconstruct the neocolonial state and provide themselves with more appropriate governance and economic institutions. Despite the euphoria over elections as an important part of the transition, a constitution is the critical factor in any properly effected transition to more effective governance structures. Without *efficient* and *self-enforcing* constitutions, African countries will continue to suffer from the opportunism so apparent in the first experiment at post-colonial nation building. For African countries, with their highly plural societies, effective constitution making represents the only true basis for building a common society.

Of course, as the eminent South African constitutionalist Denis V. Cowen (1961, 80–81) has remarked, a constitution, no matter how well designed, can neither solve all of society's problems nor guarantee social stability. People must be willing to live peacefully together in a community. However, if people have decided in favor of peaceful coexistence, an effective constitution can provide significant benefits, including the opportunity for individuals to maximize their welfare, effective procedures for the peaceful resolution of conflict, and the framework for constructing institutions such as an efficient judiciary, a professional and neutral military, independent news media, and other institutions essential for maintaining the rule of law in the country (Cowen 1961, 83–84).

Why Has Africa Failed to Develop?

Several studies have examined the causes of Africa's failure to develop. Variables identified as obstacles to economic growth in Africa include bureaucratic and political corruption, excessive population growth, political violence, racial intolerance and destructive ethnic conflict, nonviable economies, unmanageable debt, poor natural-resource endowments, scarcity of both human and physical capital, protectionist trade policies, and several external constraints, including the economic policies of the industrial market economies (see, for example, Ergas 1986; Mbaku 1989; World Bank 1981; and Ayittey 1992 and 1997). Recently, however, it has become evident to many researchers that the incentive system has a significant effect on the behavior of market participants and consequently on their ability and willingness to engage in wealth-creating activities.

The laws and institutions of a society determine that society's incentive system. Thus, one can argue that the constraints to economic growth listed above for Africa are actually manifestations of poorly designed and inefficient institutional arrangements. Evidence indicates that economic progress depends on secure property rights, effective and reliable enforcement of contracts, and constitutional guarantees of economic freedoms (Shughart 1990). To provide the appropriate environment for development in post-Cold War Africa, efforts must be made to reconstruct the post-colonial states and provide each country with the types of laws and institutions that sustain this environment and minimize rent seeking and political opportunism.

At independence the African countries adopted constitutional rules that were neither efficient nor self-enforcing. Many African countries chose statism as their development model. Besides emphasizing state ownership and control, this development approach severely limited the functions of the market system (Mbaku 1994a). Many African states intervened frequently in private exchange, making it difficult for citizens to engage freely in exchange and contracting. Insecurity of property rights discouraged entrepreneurs from engaging in wealth-creating activities. Instead of managerial expertise, innovation, and competition, state subsidies, discretionary tax relief, and other forms of intervention became the main sources of profits for business owners. As a consequence, corruption, rent seeking, and other methods used to influence the political system came to dominate public policy. For example, in Ghana during the government of Kwame Nkrumah, entrepreneurs seeking an import license were usually expected to pay a bribe that ranged from 5 percent to 10 percent of the face value of the license to the bureaucrat in charge of issuing the permits (Leith 1974; LeVine 1975). Of course, Ghana is hardly unique. Corruption and other forms of post-constitutional opportunism became common in virtually all the countries in the continent (for a recent review of the literature, see Mbaku 1996). Thus, the lack of significant improvement in the quality of life in Africa during the post-independence period can be traced to the opportunism of the leadership, fostered by (1) weak, inefficient, and

nonviable constitutional rules and (2) the absence of efficient institutions (e.g., an independent judiciary) to provide the enabling environment for economic growth.

Most of Africa's post-independence laws and institutions were not designed with the active participation of all relevant stakeholders, nor did they reflect local realities, needs, traditions, or aspirations. From the start, these social contracts lacked legitimacy, which comes from the "understanding and voluntary acceptance of the constitution by the people as the prescription for settling conflict within society" (Sundhaussen 1991, 108). Several of the African constitutions were based on European political models, did not significantly constrain the ability of the state to intervene in private exchange, prescribed majoritarian voting rules in the legislatures, and offered few protections for the rights of minority groups. Basically, these constitutions failed to guarantee economic freedoms and provide the appropriate environment and incentive system for entrepreneurs to engage effectively in wealth creation. As a result, after the new states were established, coalitions of interest groups came to totally dominate politics and resource allocation (Mbaku 1994a, 1994b).

Inappropriate Constitution Making: The Case of Cameroon

Like most other Africans, the people of Cameroon failed to utilize the opportunity offered by decolonization and independence to design and adopt appropriate institutional arrangements for their new post-independence society. In preparation for independence in 1960, a Consultative Committee was created by Law No. 59-56 of 31 October 1959 in the UN Trust Territory of (French) Cameroons. This group was given the task of writing the constitution for the soon-to-be-independent territory (Enonchong 1967, 80).

Ideally, membership in the group charged with selecting the country's constitutional rules would reflect the character of the society to be served by those rules. The people would be enfranchised and provided with facilities that would enable them to participate effectively in the selection of the rules that would regulate their sociopolitical interaction. (For example, they could be provided with public hearings and language experts.) Membership in the rules selection committee, then, would consist of individuals representing the major political parties and other groups (e.g., traditional village councils) in the society as determined by nationwide elections. If participation in rules selection is dominated or controlled by a group of elites, the outcome of the negotiations will not be an efficient and viable constitution (Brennan and Buchanan 1985).

Constitution making in the UN Trust Territory of (French) Cameroons, unfortunately, was not conducted in the appropriate manner. For example, the Union des Populations du Cameroun (UPC), the territory's largest and most significant indigenous political party and the only one at the time that represented a significant part of national political opinion, was denied participation in the constitutional deliberations by the colonial government.

It is usually considered cost-effective to have a representative group of individuals meet in convention to draft the rules for a society. However, to make certain that the outcome is a viable constitution, members of the constitutional committee must be truly representative of the society to be governed. The constitutional committee must actively seek input from all members of the society, making certain that individuals are provided with facilities that will enable them to participate effectively in the process—that is, to articulate, elaborate, and transmit to the committee their opinions about constitutional issues and the political and economic systems.

During the construction of the first constitution for what would become the République du Cameroun, the process was controlled and dominated by the colonial government, the French business and commercial class in the colony, and a few indigenously urbanized elites, the majority of whom had been educated in France and had accepted French culture. The nonelite indigenous people of the colony were denied *effective* participation.

The constitution that the Consultative Committee produced and presented to the people for ratification was virtually a copy of the constitution of the French Fifth Republic. When the committee submitted the draft report to the people for ratification by referendum on 21 February 1960, opposition groups, mainly the banned UPC, encouraged Cameroonians to reject it, arguing that the document was alien and not designed to allow Cameroonians to maximize their values. The results of the nationwide vote on the draft constitution appeared to support the opposition's claim that the process of rules selection had been skewed in favor of French interests and those of a few indigenous elites and that the new constitution would establish an autocratic, repressive, and puppet state.

One could argue that Cameroonians, like many other oppressed people, were eager to gain their independence and as a result may have been willing to forgo proper constitution making in order to accelerate the process of decolonization and create a new sovereign nation. After independence and the capture of the apparatus of government by the indigenous people, proper constitution making would be undertaken and the neocolonial state would be reconstructed to provide appropriate governance and economic structures for the new society. Some members of the Consultative Committee argued at the time that adopting the French constitutional model was partly to satisfy Ahmadou Ahidjo (the first president of the République du Cameroun), who wanted to provide the territory with a new constitution without devoting much time to a national debate. Several indigenous opinion leaders also indicated that independence had the top priority and that issues such as proper constitutional discourse could be attended to after the establishment of a sovereign nation. Thus, many of these individuals saw the first constitution as a product of political exigency rather than one of effective constitution making. Unfortunately, the new leaders failed to perceive the dangers inherent in establishing a new country with a poorly designed and nonviable set of rules.

For the other African colonies prior to independence, most of the constitutional negotiations were carried out in Europe. The interests of the Africans were usually represented by elites from the urban areas, most of whom were educated in Europe and had been “captured” by European culture. These elites lacked time-and-place information, had objectives that differed significantly from those of the rural peasants, and often represented narrow interests within the colonies. In colonies with significant populations of settlers (e.g., South Africa), the constitution-making process was dominated and controlled by these farmers and industrialists, the bulk of whom planned to remain in control of the post-independence economy. Thus, the rules adopted at independence imposed on the African people governance systems unsuited to their unique circumstances.

The ability of post-independence interest groups to subvert the rules and generate benefits for themselves should have been constrained by constitutionally limiting the state’s power to regulate private exchange. A proportional representation system, for example, can ensure that membership in the nation’s legislative bodies reflects the preferences of voters more accurately. In addition, a voting rule should limit the ability of logrolling political coalitions to engage in rent-seeking activities. For example, a supermajority voting rule can significantly reduce the tendency of legislators to enact special-interest and fiscally discriminating legislation. The adoption of majoritarian voting systems throughout the continent allowed certain political coalitions to dominate political systems and resource allocation in many of these countries.

Many African countries attempted to undertake institutional reforms after independence. Unfortunately, a few urban elites still dominated the process; the masses were not enfranchised and provided with opportunities to participate effectively in the design of the rules. As a result, many of the institutional arrangements produced by these latter-day reform efforts were inefficient and produced Leviathan states whose redistributive powers were regularly used by the politically dominant groups to amass wealth for themselves. Of many examples, two will suffice.

In 1972, the ruling elites in Cameroon hurriedly put together a constitution that abolished the country’s federal system and made Cameroon a one-party dictatorship. Later, many Cameroonian intellectuals argued that the 1972 constitution was adopted illegally and that under the conditions of the 1961 reunification, the process should have been undertaken differently. The decision to abolish the federal constitution was made entirely by Ahidjo without consulting the people. In an interview published in *Le Messenger* on 9 June 1992, Sengat Kuo, former secretary general of the CPDM and a former confidant of Ahidjo, admitted that he had drafted the 1972 constitution with technical assistance from French Professor Maurice Duverger and several other highly paid foreign experts. He further stated that he had constructed the document based on instructions from Ahidjo. No effort was made to consult or involve the people of Cameroon (Joseph 1978).

In 1983, the government of Pieter W. Botha adopted a new constitution for South Africa. Blacks, the largest population group in the country (accounting for more than 70 percent of the population), were not allowed to participate in the constitutional negotiations. And the nation's "colored" and Asian peoples were granted only limited participation. Thus, this reform effort produced a constitution that was both inefficient and nonviable. As many observers remarked, the adoption of the document produced the longest period of political violence and unrest in the history of the country (Williams 1989; Mbaku 1993).

Constructing the Efficient Constitution

Each African country needs to construct an efficient and self-enforcing constitution. An efficient constitution offers members of a society the opportunity to pursue their private individual interests and objectives without infringing on the ability of others to act similarly. If the constitution is efficient, members of the post-constitutional society will reap the full benefits of cooperation in that society. Public-choice theory views the design of an efficient constitution from the *contractarian* point of view. According to Geoffrey Brennan and James Buchanan (1985, 19), the "contractarian perspective is grounded in individualistic presuppositions about the ultimate sources of value and of valuation." This approach to constitution making, however, does not reject the influence of the community on the individual. The influences of society enter the analysis through their modification of the values the individual expresses. In constructing a constitution, all individuals are treated equally, are enfranchised, and are provided with facilities enabling them to participate fully and effectively in constitutional discourse.

David Trubek and Marc Gallanter (1974) argue that efficient rules can be constructed only from a process in which no person or group dominates or controls the deliberations and no special characteristics, including race, ethnicity, wealth, religion, and geographic location, give any individual systematic advantages or disadvantages. The contractarian view of politics is one of an exchange paradigm in which the members of society come together to design a mutually beneficial agreement. In what Brennan and Buchanan (1985) call a leap from Hobbesian anarchy, individuals agree to respect both the property rights and the person of others, based on definitions provided and elaborated in the social contract. The establishment of political rules and a government precedes the establishment of an economic system. States already established through colonialism or other processes can be reconstructed through proper constitution making.

According to public-choice theory, the political rules selected include a "definition of the rights of persons [and] can be legitimately derived only from the agreement among individuals as members of the polity" (Brennan and Buchanan 1985, 26). The government does not define the rights of individuals. Instead, individuals form gov-

ernments to protect and guarantee their rights as defined and elaborated in the constitutional contract. Any attempt by the government to abrogate these rights in the post-constitutional society violates the rules and invariably renders the government illegitimate. The behavior of the state, like that of the individual, must be subject to constitutional constraints.

Note, however, that the government is granted the power to monopolize the employment of legitimate force, or coercion, in order to impose taxes, provide public goods, and deal with externalities and other interdependencies. Members of society may also grant the government the power to redistribute income as insurance against unexpected changes in economic conditions. Thus, public-choice theory does not recommend a total elimination of the state's power to intervene in private economic activities. It warns, however, that redistribution based on majority-rule voting and rent seeking is inefficient and not wealth-creating, and therefore should be avoided. An effective way to minimize such inefficient redistribution is to constitutionally constrain the state's power to intervene in the economy (Lowenberg 1992).

The process of selecting rules has an important effect on whether the outcome is an efficient contract. First, the individual must be recognized as the source of all value. Second, all individuals must be treated as "moral equivalents, as individuals equally capable of expressing evaluations among relevant options" (Brennan and Buchanan 1985, 22). Third, all members of society should be enfranchised and provided with facilities that will enable them to participate fully and effectively in the selection of political rules. Fourth, all individuals should be allowed to elect representatives who meet in convention to select the political principles on which the constitutional rules will be based and translate the principles into text. Finally, a constitutional committee, whose members are representatives of the people, should meet in convention to draft a constitution based on the principles elaborated earlier. Most important is that the process of selecting efficient rules must be people-driven, not dominated or controlled by an elite group. The constitutional rules should be selected by the people themselves, based on their values, expectations, interests, and customs.

The Self-enforcing Constitution

Even if it is efficient, a constitution remains subject to subversion by individuals and groups seeking to improve their welfare at the expense of others. If the constitution is self-enforcing, however, such post-constitutional opportunism, including such activities as shirking, corruption, rent seeking, and free riding (Ostrom, Schroeder, and Wynne 1993, 43–72), will be minimized. Establishing a self-enforcing constitution requires making the post-constitutional economic and political environments more competitive and restricting the power of the central government, giving more power to local and regional political jurisdictions. To provide for a competitive political environment, the polity should be divided into as many autonomous political jurisdictions

as possible, and citizens should be constitutionally guaranteed the right to migrate freely between political jurisdictions. In short, the polity should establish some form of constitutional federalism. A federal system with several autonomous political jurisdictions, each having constitutionally protected power, effectively constrains the ability of the federal, or central, government to coerce citizens (Wiseman 1990, 121–22).

Such a constitutional arrangement enhances the ability of individuals to escape oppressive political jurisdictions through migration. If citizens can migrate to competitive political jurisdictions at low costs, the ability of local governmental units to exploit citizens will be severely limited. If more people can provide input into decisions having a direct effect on their welfare, they will be in a better position to design governmental regulatory programs that maximize their interests and values. Considering that individuals at the local level have more time-and-place information than the bureaucrats in the central government, decentralization should significantly improve governmental and bureaucratic efficiency. Also, competition between political jurisdictions for taxpayers will force these governmental units to improve the quality of their fiscal packages (Anderson and Hill 1986; Congleton 1994).

The public-choice approach to constructing the self-enforcing constitution rests on the work of James Madison—one of the framers of the U.S. Constitution—and Knut Wicksell. Madison argued that placing constraints on the legislature would help prevent government's being used as an instrument of plunder. He suggested the formation of two independent legislative chambers. He expected that the Senate and the House of Representatives would represent different interests and recommended that selection of members be based on different criteria for each chamber. Today, economists and constitutional experts argue that changes in transportation and communication have erased most of the differences between the two chambers and, as a result, Madison's approach can no longer effectively constrain legislative power (Wagner and Gwartney 1988, 46–48).

Knut Wicksell has suggested a more feasible way to constrain legislative power and achieve consensus in government. Membership in the legislature should be determined by proportional representation, and legislators should be subjected to a rule of *approximate unanimity* instead of majority rule. Wicksell argued that if a legislature must obtain supermajority approval by its membership (e.g., approval by 75 percent of its membership) before legislation is passed, then special-interest groups will find it very difficult to use the apparatus of the state as an instrument of plunder.

Guaranteeing Economic Freedom

To ensure economic competition in the post-constitutional society, economic freedoms should be constitutionally guaranteed, providing individuals with the opportunity to engage freely in exchange and contracting. Establishing secure property rights provides an incentive system encouraging entrepreneurs to create wealth. Shortly after

they gained independence, many African countries faced a choice: free-market allocation of resources or state control and regulation. In the 1960s, when many African countries gained their independence, many leading economists and social scientists espoused central planning. Thus, at independence, many African countries adopted statism as their development model. Several African governments involved themselves in the ownership and management of production facilities. Evidence now shows that over more than thirty years, statism has failed to improve the quality of life for the majority of Africans (Mbaku 1989, 1994c). Instead, statism, coupled with weak and inefficient institutional arrangements, has politicized resource allocation and increased rent seeking (Ergas 1986; Mbaku 1996). In addition, during the period 1989–1991, monumental changes in global politics exposed and confirmed the weaknesses of central planning. Today, the market mechanism enjoys nearly universal support among economists as the appropriate institution for economic growth. Thus, part of the transition to more transparent, accountable, and participatory governance systems in Africa today must include the constitutional guarantee of economic freedoms.

According to James D. Gwartney, Robert Lawson, and Walter Block (1996), a constitution can guarantee economic freedom by (a) providing the economy with a currency of stable value and allowing individuals within the country to own foreign currency and maintain foreign bank accounts; (b) maintaining a relatively small government as determined by low public expenditures and by private exchange in a competitive economy rather than regulation; (c) minimizing taking of private property and enactment of fiscally discriminatory legislation, which implies low marginal tax rates, significantly reduced governmental transfers of wealth and an all-volunteer armed force; and (d) generally imposing as few restraints as possible on international trade. The study by Gwartney, Lawson, and Block (1996) of 102 countries determined that economic freedom was highly correlated with growth in income. Restrictions on economic freedom usually generate benefits for special-interest groups, not for society as a whole. In fact, such restrictions represent the source of most of the underdevelopment that continues to plague Africa and many other poor regions of the world.

Constitution Making in Africa Today

Designing a constitution requires time-and-place information usually available only to those engaged in constitutional discourse in the society. As a consequence, the guidelines provided in this article do not include, for example, the method to be used to determine the optimal number of political jurisdictions in each African country. In addition, I am not suggesting that the number of autonomous political units within a polity be based on religious, tribal, or other social cleavages. That determination should make use of time-and-place information unique to each society.

Presently, most transition programs in Africa involve a struggle between the incumbent and several opposition parties to capture the apparatus of government and

control what are basically unitary or nominally federalist states. Throughout the continent, communal groups based on language, ethnicity, religion, and other attributes are struggling for control. In each instance, the politically dominant group is attempting to design a constitution that will legitimize its hold on power and allow it to continue to monopolize resource allocation. The experience of the last three decades has shown that most African politicians and opinion leaders do not appreciate the procedural principles of democracy, such as public debate, negotiation, criticism, and compromise. The traditions of competitive exchange, which are very important for successful constitution making and maintenance, are not thriving in modern African societies (Lowenberg 1992; Mbaku 1994d). The proper approach to constitution making in each country is to involve all relevant population groups in constitutional discourse and seek to achieve a voluntary and mutually beneficial agreement.

Most of the countries in Africa are linguistically, politically, and ethnically diverse. In addition, colonial occupation introduced Africans to many foreign institutions, such as European languages and cultures, private property rights, the exchange economy, Christianity, and Islam. These institutions have had a significant impact on pluralism in the continent and may need to be considered when determining the optimal number of political units for each country.

Several authors have made a compelling case for a return to *confederalism*, which existed in many pre-colonial African societies (e.g., the great empires of Ghana, Mali, and Great Zimbabwe). This was characterized by significant decentralization and devolution of authority to local political jurisdictions. Confederalism provided the structures for the peaceful coexistence of the various ethnic groups in Africa. Thus, some scholars have suggested that in the present transition the continent refrain from relying on European or other imported institutional models and instead return to Africa's indigenous institutions (Ayittey 1991).

Although federalism did not perform well in countries such as Nigeria and Cameroon, many writers still believe that it is the most appropriate governmental system for plural societies. Aaron Wildavsky (1990) argues that "the operational meaning of federalism is found in the degree to which the constituent units disagree about what should be done, who should do it, and how it should be carried out" (43). In a 1965 study, W. Arthur Lewis argued that the problem of political democracy in pluralistic societies is basically one of designing institutions "which give all the various groups the opportunity to participate in decision-making, since only thus can they feel they are full members of a nation, respected by their more numerous brethren, and owing equal respect to the national bond which holds them together" (66-67). Tatu Vanhannen (1991) argues that "federalism is better suited than a unitary form of state to (1) all geographically large countries, and (2) ethnically divided countries where the major ethnic cleavages are territorial by nature" (3). He also emphasizes that an electoral system offering protection of minority-group rights—for example, proportional

representation—should be adopted rather than majoritarian systems, which are most likely to result in domination of the political process by coalitions of dominant ethnic or social groups.

For countries divided along ethnic lines, the electoral system is very important. At independence in several African countries, the majority of highly educated and skilled individuals came from groups that had been among the first to embrace European institutions or had embraced them quite early in the occupation process. Many of these individuals had served during colonialism as liaisons between the indigenous peoples and the colonial governments; they were generally the ones to whom the departing Europeans handed the state apparatus at independence (Mbaku 1991; Young 1976).

The groups to which these highly educated people belonged came to dominate the post-independence public policy in the African countries. During negotiations for a new constitution, these groups, with their superior skills and organizational structures, are likely to dominate the process. Consequently, facilities must be provided for less endowed and historically marginalized groups to ensure their effective participation in constitution making. Otherwise, the outcome of constitutional deliberations will not be an agreement entered into voluntarily by all members of the society.

The Military, Entrenched Interest Groups, and the Transition

Since the 1960s, the military has become an important player in the public policy of many African countries. First, military elites have ruled several countries in the continent during most of their existence as sovereign nations. Second, the military coup d'état has emerged as an important method of regime change. Third, many civilian dictators have used the coercion provided by the armed forces to monopolize political power and the allocation of resources. As a consequence, the military has become an essential instrument in the perpetuation of one-party civilian rule in Africa. Finally, since the 1960s, the military has emerged as an important interest group in the policy arena and has had a significant impact on the allocation of resources (Mbaku 1995).

Today, the military and several other entrenched interest groups that currently benefit significantly from existing rules see the transition as a threat to their privileges. If the transition is successful, it will create institutions significantly constraining these groups from plundering the economy for their own benefit at the expense of the general populace. Thus, one can argue that the power relations existing now in many African countries cannot be obliterated simply by fiat and that, as a result, it would be impossible to engage each nation in the kind of constitution making that would produce efficient and self-enforcing constitutional rules. One cannot deny that the interest groups and incumbents that currently benefit from the status quo represent important constraints on the design of effective constitutional rules and state reconstruction.

However, opposition to policy reform by entrenched groups has been successfully and peacefully overcome in South Africa, Zambia, and several other countries in the continent. In fact, during the period 1989–1991, several long-time African dictators were forced out of office by mass demonstrations. Despite the existence of powerful interest groups in South Africa, the country engaged in proper constitution making and designed a decent constitution. In fact, South African groups, especially those representing whites in general and Afrikaners in particular, were very powerful and sophisticated and had significantly more resources than those possessed by interest groups in other African countries. During the struggle for institutional reforms in South Africa, several well-endowed groups representing the white minority did not want a change in the status quo. Yet South African society overcame the opposition of these groups and designed laws and institutions that provide a solid foundation for the country's democracy. Despite several setbacks, other African countries continue to make progress.

Why do military elites intervene in African politics? Is it to “save” the country from incompetent and corrupt leadership? Or is it to capture the apparatus of government and use it to plunder the economy for their own benefit? The evidence during the last forty years shows that military intervention in African politics has not arisen from a desire to save society from further marginalization and exploitation by incumbent leaders. The “public good,” or “public interest,” view of intervention has not held up. Instead, the military has intervened *primarily* to control resource allocation and redistribute income in its favor.

The military has had a strong incentive to intervene because, in the post-independence period, the all-encompassing African state has become the most important economic sector in each country. Designing a constitution that significantly constrains the power of the government to intervene in private exchange or control economic processes will reduce the economic returns associated with investment in military coups. Interest groups flourish because the government has the power to intervene in the economy and create special benefits for these groups. If the constitution reduces the ability of the government to intervene in the economy, then rent seeking, including military intervention, will diminish.

Determining an Appropriate Role for the Government: Remedying the Evils of the Past

Public-choice theory suggests that the power of government to intervene in private exchange be constrained constitutionally, because rational individuals are likely to seek to use the apparatus of government to redistribute wealth in their favor. However, it does not imply that the government should not be allowed to regulate economic activities. Given Africa's past experiences, in which many groups and communities have been forced to live in poverty and deprivation as a result of government policies,

the new governments must have the power to ameliorate these problems and improve the living conditions of the historically marginalized communities. However, in designing state-funded programs to assist the poor, care has to be taken to make certain that they do not become rent-seeking instruments for the benefit of a few privileged individuals and groups.

Shortly after taking office, the new government in South Africa initiated a Reconstruction and Development Program (RDP) designed to remedy the economic inequalities and inequities caused by apartheid and to improve living conditions among all of the nation's poor citizens, especially those historically deprived and marginalized. Unfortunately, the RDP has had to be abandoned because of mismanagement and poor design.

Like apartheid, the laws and institutions that many African countries adopted at independence allowed a few individuals and groups to enrich themselves while forcing the bulk of the people to live in poverty and deprivation. As these countries prepare for the new century, an effort must be made to remedy the injustices of the past and help historically disadvantaged groups and individuals become competitive. However, such programs should be constitutionally limited in time and scope; procedures should be established for their eventual elimination. Proper constitution making can allow a society to determine how it wants to deal with these problems. Specific procedures can be elaborated in the constitution to provide the state with limited authority to resolve issues associated with past injustices and provide facilities for the historically marginalized communities to become competitive.

Conclusions

I have emphasized the importance of a constitution to the transition to more transparent, participatory, and accountable political and economic systems in Africa. At independence, the African countries had an opportunity to choose laws and institutions that would provide the enabling environment for economic and human development. Due to noncompetitive constitutional environments in the pre-independence period, the laws and institutions the African countries adopted were inefficient and vulnerable to subversion by political coalitions. As a result, the post-independence period was characterized by massive opportunism in public policy and lack of significant improvement in the quality of life of most Africans.

In the late 1980s, the Cold War ended, terminating superpower rivalry and providing the African countries with another opportunity to choose new institutions. To make certain that this new transition is handled properly and effectively, Africans must pay special attention to its most critical part: the writing of a constitution. I have drawn upon public-choice theory to provide basic guidelines for developing effective and self-enforcing constitutional contracts for the African countries. As mentioned earlier, a constitution cannot solve the problems of people who do not desire to live

together peacefully. However, if people favor peaceful coexistence, an effective constitution provides major benefits. Its development should be the *first activity of a transition* to peaceful coexistence and sustainable development.

A proper constitution forms the basis for establishing the institutions to maintain and enforce the nation's laws. It should provide for the establishment of (1) a professional and neutral armed force; (2) a properly constrained police force; (3) an independent judiciary; (4) independent news media; (5) an independent central bank; (6) a professional civil service; and (7) an efficient and representative parliament. These institutions have a duty to uphold the constitution. How well they do so will determine the extent of peaceful coexistence and sustainable development.

References

- Anderson, Terry L., and Peter J. Hill. 1986. Constraining the Transfer Society: Constitutional and Moral Dimensions. *Cato Journal* 6 (1): 220–53.
- Ayittey, George B. N. 1991. *Indigenous African Institutions*. Ardsley-on-Hudson, N.Y.: Transnational Publishers.
- . 1992. *Africa Betrayed*. New York: St. Martin's Press.
- . 1997. *Africa in Chaos*. New York: St. Martin's Press.
- Brennan, Geoffrey, and James M. Buchanan. 1985. *The Reason of Rules: Constitutional Political Economy*. Cambridge: Cambridge University Press.
- Congleton, Roger D. 1994. Constitutional Federalism and Decentralization: A Second Best Solution. *Economia delle Scelte Pubbliche* (Italy) 11(1):15–29.
- Cowen, Denis V. 1961. *The Foundations of Freedom: With Special Reference to Southern Africa*. Cape Town: Oxford University Press.
- Enonchong, H. N. A. 1967. *Cameroon Constitutional Law: Federalism in a Mixed Common-Law and Civil-Law System*. Yaoundé, Cameroon: CEPMAL.
- Ergas, Zaki. 1986. In Search of Development: Some Directions for Further Investigation. *Journal of Modern African Studies* 24 (2): 303–33.
- Finn, James, ed. 1994. *Freedom in the World: The Annual Survey of Political Rights and Civil Liberties, 1993–1994*. New York: Freedom House.
- Gwartney, James D., Robert Lawson, and Walter Block, eds. 1996. *Economic Freedom of the World: 1975–1995*. Vancouver, B.C.: Fraser Institute.
- Joseph, Richard A. 1978. *Gaulist Africa: Cameroon Under Ahmadu Ahidjo*. Enugu, Nigeria: Fourth Dimension.
- Leith, J. Clark. 1974. *Ghana*. New York: NBER.
- LeVine, Victor T. 1975. *Political Corruption: The Ghanaian Case*. Stanford, Calif.: Hoover Institution.
- Lewis, W. Arthur. 1965. *Politics in West Africa*. Toronto: Oxford University Press.

- Lowenberg, Anton D. 1992. A Post-Apartheid Constitution for South Africa: Some Lessons from Public Choice. *Cato Journal* 12 (2): 297–319.
- Mbaku, John M. 1989. Patterns and Levels of Living in Sahel West Africa Since the 1960s. *Africa Insight* 19 (1): 38–47.
- . 1991. Property Rights, European Colonialism, and Rent Seeking in Africa. *European Studies Journal* 8 (1): 25–45.
- . 1993. Markets and the Economic Origins of Apartheid in South Africa. *Indian Journal of Social Science* 6 (2): 139–58.
- . 1994a. Bureaucratic Corruption and Policy Reform in Africa. *Journal of Social, Political, and Economic Studies* 19 (2): 149–75.
- . 1994b. Military Coups as Rent-Seeking Behavior. *Journal of Political and Military Sociology* 22 (Winter): 241–84.
- . 1994c. Africa After More Than Thirty Years of Independence: Still Poor and Deprived. *Journal of Third World Studies* 11 (2): 13–58.
- . 1994d. Rent Seeking and Democratization Strategies for Africa. *Internationales Afrikaforum* (Germany) 3: 274–89.
- . 1995. Military Intervention in African Politics: Lessons from Public Choice. *Konjunkturpolitik* (Germany) 41 (3): 268–91.
- . 1996. Bureaucratic Corruption in Africa: The Futility of Cleanups. *Cato Journal* 16 (1): 99–118.
- Mbaku, John M., and Mwangi S. Kimenyi. 1995. Democratization in Africa: The Continuing Struggle. *Coexistence* 32 (2): 119–36.
- Ostrom, Elinor, Larry Schroeder, and Susan Wynne. 1993. *Institutional Incentives and Sustainable Development: Infrastructure Policies in Perspective*. Boulder, Colo.: Westview.
- Shughart, William F., II. 1990. *Antitrust Policy and Interest-Group Politics*. New York: Quorum Books.
- Sundhaussen, Ulf. 1991. Democracy and the Middle Class: Reflections on Political Development. *Australian Journal of Politics and History* 31 (1): 100–117.
- Trubek, David M., and Marc Gallanter. 1974. Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States. *Wisconsin Law Review* 4:1062–1102.
- Vanhannen, Tatu. 1991. Institutional Strategies of Democratization. Paper presented at the 15th World Congress of the International Political Science Association, Buenos Aires.
- Wagner, Richard E., and James D. Gwartney. 1988. Public Choice and Constitutional Order. In *Public Choice and Constitutional Economics*, edited by J. D. Gwartney and R. E. Wagner. Greenwich, Conn.: JAI Press.
- Wildavsky, Aaron. 1990. A Double Security: Federalism as Competition. *Cato Journal* 10 (1): 39–58.
- Williams, Walter E. 1989. *South Africa's War Against Capitalism*. New York: Praeger.

Wiseman, Jack. 1990. Principles of Political Economy: An Outline Proposal, Illustrated by Application to Fiscal Federalism. *Constitutional Political Economy* 1 (1): 101-24.

World Bank. 1981. *Accelerated Development in Sub-Saharan Africa: An Agenda for Action*. Washington, D.C.: World Bank.

Young, Crawford. 1976. *The Politics of Cultural Pluralism*. Madison: University of Wisconsin Press.

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