GROWING CONSTITUTIONS

Ruth Gordon*

"Constitutionalism is the end product of social, economic, cultural, and political progress; it can become a tradition only if it forms part of the shared history of a people."1

INTRODUCTION

I come to the topic of constitutions as part of a larger study of “failed” or “collapsed” states in sub-Saharan Africa.2 The demise of central governing institutions may present societies with fresh opportunities to completely refashion governing constitutions.3 Accord-

---

* Professor of Law, Villanova University School of Law. New York University, B.A. (1977); New York University School of Law, J.D. (1980); London School of Economics and Political Science, LL.M. (1987). The University of Pennsylvania Journal of Constitutional Law symposium “Contextuality & Universality: Constitutional Borrowings on the Global Stage” was a brilliant and provocative two day session which proved to be invaluable. Extra special thanks are due to Professor Maxwell Chibundu of the University of Maryland School of Law and Professor Kendall Thomas of Columbia University School of Law. Professors Chibundu and Thomas carefully reviewed an early draft and spent several hours helping me think through the very complex themes contained in this article. Their assistance was indispensable and their time and effort much appreciated. This article would not have been possible without the generous support of summer scholarship assistance from Villanova University School of Law or my excellent research assistants, Melissa Halperin, Edward Hoffman, Gina Scamby and Diane Slifer. Finally, as always, I would like to acknowledge the warm and constant support and encouragement of my family and friends.

1 H.W.O. Okoth-Ogendo, Constitutions without Constitutionalism: Reflections on an African Political Paradox, in CONSTITUTIONALISM AND DEMOCRACY: TRANSITIONS IN THE CONTEMPORARY WORLD 65, 80 (Greenberg et al. eds., 1993) [hereinafter CONSTITUTIONALISM AND DEMOCRACY].


3 There have been recent attempts to replace long-governing autocrats through elections in States which have not been labeled “failed.” These efforts have been termed “democratization.” See generally ECONOMIC CHANGE AND POLITICAL LIBERALIZATION IN SUB-SAHARAN AFRICA (Jennifer A. Widner ed., 1994) [hereinafter ECONOMIC CHANGE]. While attempts at democratization may not present such pristine prospects for institution building, such attempts operate in a similar vein in that they serve as an attempt to remold institutions that do not currently meet the needs of the people they were meant to serve. Attempts at building democracy in Africa have produced mixed results. For example, professor Young notes that the coalescence of forces demanding democratization is so powerful, and the residual legitimacy of incumbent autocracies so shallow, that in nearly
ingly, this paper will explore the possibilities of reconstructing societies in a context where central governmental institutions are largely defunct. An example of this mode of institution building may currently be taking place in Somaliland, an unrecognized entity that is emerging from the ashes of what was once northern Somalia. Since unilaterally declaring its independence from the Republic of Somalia, Somaliland has rebuilt institutions on the basis of Somali cultural norms. While this process has not rigidly adhered to the international legal community's recent exhortations regarding democracy, it appears to be an attempt to forge institutions that are firmly grounded in twenty-first century Somali culture and, therefore, are more accountable to the Somali people.

The process unfolding in Somaliland challenges the international community to expand its concept and understanding of democracy, which is currently understood to embody merely periodic elections, separation of powers, judicial review and the promotion of the rule of law. It raises the question of whether the international legal comm-

---

Crawford Young, *Democratization in Africa: The Contradictions of a Political Imperative*, in *ECONOMIC CHANGE*, supra, at 230, 241. Young notes that while military take-overs are not new, what has changed is that armies from the periphery have succeeded in overturning incumbent regimes in Ethiopia, Eritrea, Uganda, Rwanda, Chad, and now, Zaire. *See id.* On May 25, 1997, a military coup d'etat in Sierra Leone overthrew the elected democratic government. *See Cesar Chebula,* *Automatic Shunning Could Deter Military Coups*, NEWSDAY, June 10, 1997, at A42. "After 34 years of independence, three new constitutions, and half a dozen military coups, Nigeria has yet to develop a stable system of government..." *Well-oiled, but Still Cracking*, THE FIN. TIMES, July 14, 1994, at 24. An army captain led a coup in Gambia in 1994, rebels invading from Uganda took over Rwanda that same year, and rebels overthrow the government of Zaire, renaming it Congo, in 1997. One West African opposition politician stated that he was afraid "that the lesson to be drawn from Zaire [Congo], Rwanda, and Gambia is that violence works - that it's the only way to change these pseudo-democratic regimes." Ben Barber, *Clinton Accentuates the Positive in Africa Policy; U.S. Supports New, Democratic Leaders*, WASHINGTON TIMES, June 20, 1997, at A1.

*See infra* notes 282-297 and accompanying text. The disintegration of Somalia may be attributed to a number of factors, but the immediate cause was the culmination of a prolonged and particularly cruel civil war that destroyed the major apparatuses of government. *See, e.g.*, Hussein M. Adam, *Somalia: A Terrible Beauty Being Born*, in *COLLAPSED STATES: THE DISINTEGRATION AND RESTORATION OF LEGITIMATE AUTHORITY* 69 (I. William Zartman ed., 1995).


Professor Franck formulates a modern view of democracy, which takes into account common deviations from absolute democracy: "Absolute democracy... is a condition of power-
Communities' universalist view of democracy should be broadened and whether constitutions, which provide the structure for democracy, might be viewed from more diverse and expansive perspectives. With these objectives in mind, I would like to pose the idea of "growing constitutions." Constitutions can flourish and succeed only if they are firmly planted in the cultural soil from which they gain legitimacy. Thus, growing constitutions embodies the not so novel idea that constitutions and laws should reflect and be derived from the cultural norms in which they must endure. Constitutions that are

validation which no society — not even cantonal Swiss plebiscitary governance — embodies totally, to the exclusion of all counterveiling considerations. Every democracy compromises democratic theory in socio-political practice." Id. at 4. Democracy and "democratic entitlement" represent a "rebuttable presumption" that is satisfied so long as deviations from the norm are standards which are commonly accepted as necessary and proper in a free society (i.e., restrictions in time of war or other public emergency). See id. at 5. "[T]he democratic entitlement creates a presumption in favor of governance by the free, equal, and secret expression of popular will." Id. (italics in original). "Democracy," etymologically speaking, is all about the role of people in governance. It is about the right to be consulted when political choices need to be made. It is an idea as old as the Athenian polis, or the gathering of African elders around the village Baobab tree." Id. at 6.

7 The language of modern constitutionalism was designed to exclude or to assimilate cultural diversity and to justify uniformity. See JAMES TULLY, STRANGE MULTIPLICITY: CONSTITUTIONALISM IN AN AGE OF DIVERSITY 58 (1995). The modern constitution is presumed to emulate the following pattern: At the center is a sovereign people who exist prior to the constitution. "By a self-conscious act of reflective reason and agreement, the people give rise to a constitution which 'constitutes' the political association. The constitution lays down the fundamental laws which establish the form of government, the rights and duties of citizens, the representative and institutional relation between government and governed, and an amending formula." Id. at 59. Tully cites Rene Descartes as inferring "that it would be 'unreasonable for an individual to plan to reform a state by changing it from the foundations up and overturning it in order to set it up again.' He therefore concludes that in politics it is better to accommodate the assemblage of customs and ways of the people than to radically reform them." Id. at 102.

8 Professor Tully defines "constitution" as follows: "A modern constitution is an act whereby a people frees itself (or themselves) from custom and imposes a new form of association on itself by an act of will, reason and agreement. An ancient constitution, in contrast, is the recognition of how the people are already constituted by their assemblage of fundamental laws, institutions and customs." Id. at 60.

Professor Nwabueze posits that "[n]ormally, a constitution is a formal document having the force of law, by which a society organises a government for itself, defines and limits its powers, and prescribes the relations of its various organs inter se, and with the citizen." B.O. NWABUEZE, CONSTITUTIONALISM IN THE EMERGENT STATES 2 (1973). The liberal concept of constitutionalism rests on two assumptions: limited government and individual rights. Other concepts, such as accountability of government through periodic elections, separation of powers and the rule of law, ultimately revolve around these foundational concepts. See Issa G. Shivji, State and Constitutionalism: A New Democratic Perspective, in STATE AND CONSTITUTIONALISM: AN AFRICAN DEBATE ON DEMOCRACY 27, 28 (Issa G. Shivji, ed. 1991).

9 Professor Chibundu contends that the relevance of law for development must be grounded in the experiences of the society under study and in ways giving form and meaning to those experiences by their institutionalization, not through internationalizing the societies, nor through a universalist or global conception of procedural mechanisms or substantive rights and duties.

Chibundu, supra note 5, at 171. Professor Tully adds that [a] constitution should be seen as a form of activity, an intercultural dia-
not firmly grounded in the cultural mores of the society in which they operate are destined to fail, become irrelevant, or be reshaped and adapted to meet the needs of the culture and society in which they are situated. Indeed, most postcolonial constitutions in Sub-Saharan Africa have largely succumbed to irrelevance and debacle.10

Home-grown constitutions are not a call for a return to idealized and romantic preconceptions of culture or what is sometimes termed "tradition."11 Cultures are extraordinarily complex, are in constant flux, and change as they interact with and are affected by other cultures and peoples. Consequently, the impact of colonialism, in its various guises, on the myriad indigenous African cultures that were encountered by Europeans cannot be ignored or denied,12 and the concomitant distortion of "tradition" by colonial rulers and their...
Nor can we negate the impact of the modern world, where advances in communication and transportation connect communities in heretofore unimaginable ways, or deny cultural adaptations of concepts that have helped societies organize and govern themselves. Nevertheless, the insistence that only Western frameworks are legitimate and that certain constitutional and institutional structures are superior and applicable to all societies, albeit with some tinkering around the fringes, is problematic at best and disastrous at worst. Constitutions, laws, and institutions are best created from the bottom up rather than the top down.

At the bottom of a culture are the complex norms and relationships that bind people together, and through which they function as a society. It is at this level that we should begin to grow any constitution.

In examining this question, I will begin by very briefly exploring the idea of State collapse and how and why it transpired in Somalia. While the immediate cause of the collapse of central institutions was civil war, this paper will explore whether other systemic causes, grounded in postcolonial systems, ultimately proved unsuitable to meet the needs and demands of the Somali people and thus, ultimately were responsible for collapse. Accordingly, the discussion will begin with a general examination of colonial governing structures in sub-Saharan Africa and the extent to which they continued to be utilized in the postcolonial era to mold and develop postcolonial institutions, constitutions and political systems. The intermeshing of colonial and postcolonial institutions and how postcolonial leaders operated within these institutions will then be analyzed.

This inquiry reveals that constitutionalism has had a troubled history in sub-Saharan Africa, in part because the postcolonial order was usually built on foreign paradigms that had little or no foundation in the myriad cultures of the peoples they were to govern. Postcolonial institutions were prescribed on top of the still-existing coercive and anti-democratic structures of the colonial era. When considered
alongside the immense poverty and meager economic prospects inherited at decolonization, postcolonial constitutions, in retrospect, appear to have been doomed to fail from the outset. Finally, I will turn to how we might grow constitutions that are firmly planted in the cultural soil within which they must grow and flourish. It is from there, I believe, that viable constitutions begin and endure. To the extent possible, Somalia and Somaliland will be used as the backdrop to this discussion.17

I. "FAILED STATES" AND THE BREAKDOWN OF CENTRAL AUTHORITY IN SOMALIA

The concept of failed, collapsed or disintegrating states is a relatively new and contested phenomenon in international legal discourse.18 It can be defined as a situation where the government is unable to discharge basic governmental functions with respect to its populace and its territory. Consequently, laws are not made, cases are not decided, order is not preserved and societal cohesion deteriorates.20 Basic services such a medical care, education, infrastructure maintenance, tax collection and other functions and services ren-

---

17 Somaliland has yet to be recognized by any State or by the organs of the United Nations, although the Republics of Djibouti and Ethiopia are considering recognition which would forge and strengthen growing trade links. See Saad S. Noor, The United States should recognize Somaliland's Independence, WASHINGTON TIMES, Feb. 14, 1998, at D6. While attention has continued to focus on famine and violence in the rest of Somalia, conditions in Somaliland have attracted little attention. There is a paucity of current information on Somaliland and it has been difficult to obtain data and statistics. Whether this is because it is unrecognized (and thus, non-existent) for many agencies, or because outside organizations are being denied access, is unknown.


20 See Gordon, Saving Failed States, supra note 2, at 913-16 (defining "failed states"). Interestingly, state collapse has not been alleged with respect to the external functions of states deemed "failed." See Chibundu, supra note 5, at 230 (noting the capacity of postcolonial states to manage their external relations).

21 See id.
dered by central governing authorities cease to exist or exist only in limited areas.22 State collapse may come in the wake of civil war, widespread genocide24 or simply a steadily-disintegrating ability to provide basic needs in such fundamental areas as nutrition, housing, medical care and education.25 Other theories explaining state collapse in Africa have focused on unsustainable borders and polities, created in the wake of decolonization, and the myriad deficiencies of newly-decolonized states.26 In Somalia, the immediate cause of disintegration was undoubtedly a prolonged and bloody civil war waged against the regime of Mohammed Siad Barre, which eventually degenerated into a civil war between clan-based rebel groups.27 Loss of the Ogaden War in 1978 led to a huge influx of refugees,28 an upsurge in clan tensions, and the beginning of an armed insurrection against Siad’s regime.29 By the end of the decade, the official econ-

22 See Gordon, Some Legal Problems, supra note 2, at 306-07.

24 In Rwanda, approximately 500,000 people out of a total population of 7.8 million were killed in ethnic massacres. Another 2.6 million were displaced within Rwanda and another 2.6 million fled to Zaire, Tanzania and Burundi. See Gordon, Humanitarian Intervention, supra note 19, at 44 n.7.
26 See Gordon, Saving Failed States, supra note 2, at 917-18 (discussing the shortcomings of newly decolonized states).
27 See Eckert, supra note 19, at 283 (noting that the 1991 collapse of Siad’s regime plunged Somalia into anarchy, civil war, and violence). “Siad played upon divisions within Somali society to solidify his authority.” Id. He manipulated clan loyalties, repressed political opposition and supported blatant corruption for two decades. “Eventually, inter-clan rivalry, corruption within the regime, and weariness of Siad’s repressive dictatorship erupted into civil war.” Id. at 284.
29 The armed insurrection against Siad Barre’s regime began with an abortive coup by predominantly Mijerteyn (Darod) officers in April, 1978. The Mijerteyn opposition formed the Somali Salvation Democratic Front (SSDF), while the Isaq clan formed the Somali National Movement (SNM). Id. The war in the northeast and northwest regions was carried out largely from bases in Ethiopia. The north was increasingly subjected to harsh military rule as Siad bribed and armed “friendly clans to attack his enemies.” Id. at 105. Pressure from human rights activists, who were “appalled at the ferocious suppression of northern dissidents,” led to the termination of most aid by 1990. Id. The fighting eventually eroded the strength of Siad’s forces, which increasingly came to be dominated by his own clansmen. Id.
omy, which was based largely on the export of livestock from the North, was disintegrating and the civil service had virtually ceased to function. By the time Siad Barre was finally dislodged from Mogadishu, Somalia had already disintegrated into its traditional clan segments. "The bitter fighting with modern weapons which wrought death and suffering on a scale never experienced in the past, and the scale of ensuing clan-cleansing in Mogadishu and elsewhere was unprecedented." Power sharing proved to be impossible, and a protracted bloodbath followed in Mogadishu. Fierce fighting outside Mogadishu spread devastation and starvation throughout southern Somalia. In sum, Somalia, as Somalia, ceased to exist.

Yet, perhaps civil war was only the last chapter in a long chronicle toward Somali statelessness. The demise of Somalia may have begun with the colonization of Somalia in the 1880s, and the penultimate

50 "The official economy, based primarily on the export of livestock from the war-torn north was collapsing," while banana exports from southern plantations had already "dwindled into insignificance through a mixture of incompetence and corruption. Still paid at essentially the same rates as in the 1960s, before the years of hyperinflation, the civil service had virtually ceased to function by the end of the decade." Id.

51 Siad was dislodged by USC forces of the Hawiye clans, led by General Aideed. Id. The Hawiye had lived in relative peace with Siad Barre's regime until the formation of the United Somali Congress (USC) in March, 1989. The Hawiye clan was the mainstay of the Mogadishu business community, and was the largest clan in Mogadishu. This business community desired a new government, "as the economy spiraled towards total collapse." JAMA MOHAMED GHALIB, THE COST OF DICTATORSHIP: THE SOMALI EXPERIENCE 193 (1995). As the Barre regime degenerated, a caucus of Hawiye elders was secretly established in Mogadishu in early 1988. It began to organize, both in and out of the country, with the goal of preparing Hawiye sub-clans for insurrection and a bid for power. See id. In 1989, Siad Barre's regime began to disintegrate as international pressure mounted and economic aid dwindled. Id. at 201. USC forces began closing in on Siad's forces in December, 1990 and fighting did not cease until Siad Barre fled on January 26, 1991. See id. at 210-11.

52 The volatile relationship between clan republics emanated primarily from Darod hegemony. After Siad Barre fled, his son-in-law, Ahmed Sueiman, struggled to organize a Darod-based armed civilian militia. He encountered some success among Dolbanate, Mijertein and related clansmen, although the Ogaden and other Darod refused to fight on the side of the dying regime against the USC. Id. at 211. Unfortunately, this triggered a phase in the civil war that led to Darod-Hawiye ethnic retribution, which ultimately had serious and far-reaching consequences. See id.

53 Siad's huge arsenal, which largely fell into the hands of various clan militia, was supplemented by equipment from the demobilized Ethiopian army across the border, and by continuing arms imports from Kenya. See Lewis & Mayall, supra note 28, at 106.

54 Id. at 105-06.

55 These conditions also led to massive intervention by the international community under the auspices of the United Nations and the United States. See Gordon, United Nations, supra note 19, at 553. Although the United Nations did succeed in preventing mass starvation, the broader aims of this intervention were ultimately unsuccessful. See id. at 556-57.

56 See, e.g., TERRENCE LYONS & AHMED I. SAMATAR, SOMALIA: STATE COLLAPSE, MULTILATERAL INTERVENTION, AND STRATEGIES FOR POLITICAL RECONSTRUCTION 11 (1995). The British first occupied the port of Aden in Yemen in 1839-40 and signed formal agreements with representatives of a number of major kin groups to make northern Somalia an official protectorate in 1886. The French arrived around the same time as the British, and the Italians formally established their colony in 1893. Id.
chapter in its collapse may have begun with attempts to make Somali political culture fit within the Western image of modern government. This effort was typical of colonial and postcolonial rule in sub-Saharan Africa. Indigenous cultures and institutions were largely ignored as parliamentary-style democracy was thrust upon newly-emerging nations. Moreover, the underlying legacy of colonial institutions and mechanisms, which would ultimately undermine nationalist efforts, remained. Thus, perhaps it is here that the international community should begin to understand the problem and propose solutions.  

II. COLONIAL INTENTIONS, PRETENSIONS AND INSTITUTIONS

A. Introduction

Any discussion of the impact of the colonial state on postcolonial governance must acknowledge the difficulties inherent in such an expansive enterprise. The diverse nature of Africa's colonial experiences, and "the extraordinary diversity of Africa's peoples and its cultures" makes quantifying the colonial state both complex and difficult. Sub-Saharan Africa's colonial experience has been classified by one scholar as encompassing three broad categories: colonial trade economies, concession mining colonies, and settler plantation colonies. Each of these models confronted different cultures and

37 This author has advocated basing solutions within the culture and mores of those people that the international community is trying to assist. See Gordon, Saving Failed States, supra note 2, at 971-74.
39 Id. at 163 (quoting Samir Amin, a "leading African political economist and director of the Third World Forum").
40 Colonial possessions such as the Gold Coast (present day Ghana) were part of the colonial trade economy. Tropical agricultural products (i.e. cocoa, palm oil, and coffee) formed the basis of an export-oriented agricultural economy that was primarily concentrated in West Africa, where mineral reserves were believed to be insignificant. For these colonies, with agricultural cash crops as an integral part of the economy, government financing became a matter of appropriating agricultural surpluses. After independence, production was not nationalized. Marketing was effected through such mechanisms as national marketing boards that had been purchasing and trading monopolies and supervised state extraction of money from the agricultural economy. "In theory the surplus generated by this monopsony was to be used to finance development; in practice it went to the cities." Id.
41 French-speaking Central Africa, now present day Gabon, the Central African Republic, Congo, and Zaire, where limited populations and difficult climates made agricultural production unlikely, was dominated by concession-owning companies. Id. Concessionary companies that dealt in timber, rubber, and ivory practiced a particularly brutal form of exploitation. Investing as little as possible in these colonies insured that there were no local surpluses and little in the way of Western education for native populations. (For example, at independence there were three Africans among the top 4700 civil servants in Zaire). Id.
42 The "Africa of the labor reserves" included "the settler plantation economies of German Tanganyika, Kenya, Rhodesia, and the whole of Africa south of Zaire. . . In these areas societies
left varying legacies. European penetration varied both within and between communities, and the extent to which European cultural norms intruded upon and changed indigenous African cultures is both complex and widely contested by scholars. Thus, to the extent this paper generalizes about “Africa,” it must be acknowledged that this analysis must to some extent be flawed. While the focus on Somalia is intended to ameliorate this weakness, it must nonetheless be

were radically disrupted by the institution of new, massive, and not-always-voluntary migration to the mines and plantations. The availability of African labor was crucial, and virtually all operations, both agrarian and mineral, were labor intensive. In parts of Senegal, Upper Guinea, the French Soudan, and Niger, as well as northern Nigeria, the proportion of slaves in the populations was very large—a third or more. Early administrators were well aware their corvee requisitions would not be met without accepting the provision of conscripts who were in reality slaves. Richard L. Roberts, Warriors, Merchants, and Slaves: The State and the Economy in the Middle Niger Valley, 1700-1914 at 174 (1987). “Most local administrators were convinced that the end of slavery would mean economic and political chaos.” Id. at 173-74. The cultural life of most of black Africa remained largely unaffected by European ideas until the last years of the nineteenth century, and most cultures began their own century with ways of life formed very little by direct contact with Europe. Id. at 173. “Deliberate attempts at change (through missionary activity or the establishment of Western schools) and unintended influence (through contact with explorers and colonizers in the interior, and trading posts on the coasts) produced small enclaves of Europeanized Africans. But the major cultural impact of Europe is largely a product of the period since the First World War.” Id. at 174. With respect to the institutions introduced by colonialism,

[i]ncredible as it may sound to many, the colonialists did not really introduce any new institutions into Africa. What they introduced were merely the more efficient forms of already existing institutions—both good and bad. It was probably for this reason that colonialism lasted for nearly a century. Had it introduced institutions which were diametrically antithetical to the existing ones, the demise of colonialism would have come sooner.


[i]n the appearance of colonialism in East Africa meant that another set of political institutions was superimposed on the traditional arrangements. While the new set was in many ways distinct from the old in the sense that Africans, even in the later years, had only very limited participation in the political system, the new institutional arrangement did affect the traditional system. In the first place constraints were imposed which reduced the political power and freedom of the tribe. Second, the political organization of the tribe was often utilized to administer and enforce decisions which were in fact made by colonial authorities. Finally, and as a result of the first two points, the African felt less and less a participant in the political process and naturally resented the imposition of outside authority.


Given the diversity of the precolonial histories of the peoples of Africa and the complexities of the colonial experience, it is difficult to discern what is “African” and the extent to which we can discuss “Africa.” See Affiah, supra note 38, at 24-26 (noting the diversity of African cultures and communities, and the varied nature of colonial regimes).
admitted that generalizations by definition do not always conform to the particular. Nonetheless, there are enough similarities in the African colonial and postcolonial experiences to support some generalizations. 46

Decolonization was generally the end result of negotiations between African elites and colonial governments47 rather than a consequence of revolution or armed struggle.48 This had a direct impact on the institutions left standing at independence and on subsequent obstacles to forging a “nation,” an entity which generally emerges from the shared experience of fighting for independence or from a sense of a shared history or culture.49 In much of Africa, however, “the transition to independence was generally smooth and unevent-

46 The meaning of the term “postcolonial” has been the subject of ongoing debate. See ANIA LOOMBA, COLONIALISM / POSTCOLONIALISM 7 (1998).
47 As the colonial state began to slowly contemplate decolonization, it became apparent that chiefs — “however faithful they had been as executors of the colonial will” — could not be the leaders of the states that would emerge. CRAWFORD YOUNG, THE AFRICAN COLONIAL STATE IN COMPARATIVE PERSPECTIVE 199 (1994). By the end of the Second World War, colonial offices presumed that new forms of local government would be required. These new forms of government would be based on elected councils that would offer access to a younger generation with some education who, by this point, were uncomfortable with customary institutions. Id. “The new policy was applied with energy, particularly by a new generation of district officers not tied by habit and inclination to their chiefly allies and auxiliaries.” One British report noted that

all the District Councils made it plain that they [were] bent upon reaching the status of a native state ... [which] aim[ed] [for] Home Rule .... Moreover, it seem[ed] to them that this [was] the logical development of past administrative policy. A civil society was taking form, with which state agents had to relate through a political process rather than a command hierarchy.

Id. at 200.

48 See Chibundu, supra note 5, at 232 (“What is remarkable about most post-colonial African states is not the level of ... violence, or political strife ... but the relative absence of these elements.”). Exceptions include the liberation movements against Portuguese rule in Mozambique, Angola, and Guinea Bissau, and of course the struggle against Apartheid in South Africa. See generally HARGREAVES, supra note 10, at 228, 244. There were few preparations made by the Portuguese government to terminate their colonial control prior to the Portuguese revolution in 1974. By that time, however, the liberation movements in Mozambique, Angola, and Guinea Bissau had made impressive progress. Id. Paradoxically, the process of nation-building simultaneously revived ethnic identities because the “revolutionary consciousness of local communities could only be raised from within their traditional culture and by people who spoke their language ....” Id. at 232.

8 See Mutua, supra note 10, at 1114-15. The concept of self-determination necessitates identifying groups entitled to exercise this right.

In sub-Saharan Africa ... these groups are not now, and never were, accurately identified by the borders drawn by European colonial powers .... The artificial nature of these boundaries contributes substantially to “internal” conflicts now taking place in many sub-Saharan countries. Moreover, even as the colonial boundaries planted the seeds for much of the present “internal” conflict, they did much to destroy, or at least to retard, the efficacy of the indigenous local and regional systems and institutions — economic, political, and legal — that might have been bases for sustained development.

Sylvester, Sub-Saharan Africa, supra note 25, at 1319.
Indeed, colonial administrators helped shape independence constitutions and national institutions, thus raising questions regarding their legitimacy and later, their acceptance by both the elites and the population as a whole. These instruments incorporated some of the demands of nationalist leaders but also imported foreign ideals and models. Consequently, independence did not portend a complete break from colonial political values any more than it simply continued those interests. This dichotomy partly accounts for the attempt to superimpose liberal, western constitutional values, which were themselves foreign and only half-heartedly accepted, over highly undemocratic and bureaucratic administrative structures left over

---

Where the notion of African self-rule was contested (Iusophone Africa, the settler societies of Kenya, Zimbabwe, Namibia, and Algeria), the quest for liberation took on violent forms that were usually accompanied by fragmentation within the national liberation movements. In these instances, the internal struggle for power coincided with the continued contestation with recalcitrant imperialist powers.

Id. at 44. For a discussion of the harsh nature of decolonization in East Africa where there were large settler communities, see BASIL DAVIDSON, MODERN AFRICA: A SOCIAL AND POLITICAL HISTORY 142-54 (1994) [hereinafter DAVIDSON, MODERN AFRICA].

51 See Dore, supra note 10, at 1304 ("[T]he architects of post-colonial governments in Africa were the very same colonial authorities who had maintained nondemocratic governments there."). Professor Dore questions whether colonial authorities who were illegitimate rulers could organize a tenable transition to a democratic form of government. He notes that "[t]he imperfections of post-colonial constitutions were in part a reflection of the fact that those who prepared the colonies for independence were themselves not democratic and largely ignorant of or insensitive to the prevailing social and cultural dynamics of the societies they had colonized." Id.

52 See YOUNG, supra note 47, at 209-10 (discussing the emergence of democracy as an instrumental preference during decolonization).

53 See CHAZAN ET AL, supra note 50, at 43. Similarly, Davidson notes that at the heart of Africa's institutional crisis was the very nationalism, or nation-statism, which the pioneers of anti-colonial liberation had used as their necessary instrument of change. Instead of building new states from the foundation-culture of Africa's pre-colonial states, Africa had tried to build new states from the foundation-culture of colonial states, a very different thing. So independence had not been able to join Africa to its own history and tradition. Independence, in practice, had come to mean a continuation of Africa's subjection to others, it had come to mean another period of alienation from Africa's living roots and self-belief.

This structure of ideas and of power-distribution was easy to see and define. It consisted in the kind of state that had emerged from the colonial state at the time of independence: a kind of state that claimed to be an African independent state but was, in practice and in power-distribution, closely modelled on the colonial state. . . . [T]he fifty-odd colonies into which the imperialist powers had divided Africa became, after these powers withdrew or were driven out, fifty-odd African states within the same frontiers as before, and governed, often and essentially, in the same ways as before: except, of course, that the governors now were no longer European, but African.

DAVIDSON, MODERN AFRICA, supra note 50, at 262-63.
from the colonial era. Ultimately, the imported democratic ideals were discarded in favor of concentrating power in an executive who also controlled the administrative apparatus.

Imperialist policies compelled nationalist leaders to seek independence within existing political units, i.e., within extant colonial borders, rather than a “more rational or historically logical territorial unit.” With that concession, any subsequent reorganization of the territorial map became difficult, if not completely impossible. Moreover, the colonial administrative units had been created in a haphazard fashion and “lacked the social solidarity or consensus necessary to engender a sense of nationhood.” It is questionable whether these units actually constituted nations when they emerged as sovereign states. At independence, it is more likely that Europe

54 The essence of terminal colonial politics was the implanting of fragile graffings of a constitutional polity onto the robust trunk of colonial autocracy. In most countries the experimental life of a truly civil polity prior to transfer of sovereignty was too brief to override the more enduring heritage of the colonial state, its bureaucratic autocracy animated by its vocation of domination. YOUNG, supra note 47, at 217.

55 See infra notes 161-69 and accompanying text.

56 BASIL DAVIDSON, THE BLACK MAN’S BURDEN: AFRICA AND THE CURSE OF THE NATION-STATE 183 (1992) [hereinafter DAVIDSON, THE BLACK MAN’S BURDEN]. Some leading national movements, such as the Pan-African Freedom Movement of East and Central Africa, which sought independence and then federation, argued for regional or sub-regional configurations, but nothing came of these visions. Id. at 183-84. See also Mutua, supra note 10, at 1113-19.

57 See DAVIDSON, THE BLACK MAN’S BURDEN, supra note 56, at 184 (discussing failed nationalist movements). Similarly, Hargreaves notes that

[the French grouped some of these building-blocks into quasi-federations, and the British made some attempts to do likewise; African leaders, with more passion, advocated wider, even continental unities; but with a few local exceptions (Tanzania, Somalia, Cameroun), colonial boundaries proved to have hardened prematurely into state frontiers. Decolonizers undertook to build nations to fill these matrices; African leaders eagerly accepted the challenge, hoping to use their local ‘political kingdoms’ as steps towards visions of continental freedom. The outcome of this dialogue was to legitimize the independence of more than forty nation-states, and to pass the responsibility for ‘nation-building’ from European to African hands. There is little evidence of conspiracy by the former rulers to “balkanize”; small, weak states would not necessarily prove effective or easily manageable agents of post-colonial influence. But given the eagerness of African leaders to secure and exercise power in their immediate political theatre, even regional regroupings would have required a stronger closing exercise of imperial authority than any European government was prepared to make.

HARGREAVES, supra note 10, at 250.

58 Dore, supra note 10, at 1304.

59 Perhaps “[t]he jubilant crowds celebrating independence were not inspired by a ‘national consciousness’ that ‘demanded the nation’... [but] by the hope of more and better food and shelter.” DAVIDSON, THE BLACK MAN’S BURDEN, supra note 56, at 185. Popular loyalties to the new state did not emerge from the urban or rural supporters of the new nations. In the end, the populace appeared to be seeking food, shelter, health care, and schools rather than a flag or anthem. Id.
left Africa with states looking for nations. Constitutions, however, do not operate in a cultural vacuum. The lack of a shared sense of sociopolitical identity meant that people at the grassroots level did not believe that the institutions created by their constitutions would promote justice within their communities. In addition, “[o]nce the national sovereignties were declared, the arena was fixed for rivalry over the resources within that arena...” Postcolonial tribalism flourished in part because the separatist nation-state model “gave full rein to elitist rivalries.” Moreover, with separate and rival independent states, social interests ceased to prevail over the national interest within the postcolonial dynamic.

In the immediate postcolonial era, new governments were confronted with pressures from myriad directions, and these demands were accompanied by greatly heightened expectations. Governments were expected to provide social services on a grand scale while maintaining order in the face of strikes, demonstrations and spontaneous actions. Their economic role was magnified because governments were the gate keepers between external resources and internal processes. Furthermore, “anti-colonial activists and militants demanded some tangible returns for their political support during the crucial years of decolonization.” To meet these multifaceted challenges, most leaders opted to concentrate powers in their own hands and proved to possess little commitment to upholding the precepts of independence constitutions.

A synthesis of factors determined how government institutions

---

60 See AFRICA, supra note 38, at 162. Once the opposition to the British ended, the cohesion that the resistance required became difficult to maintain. The reality of African differences had been easily hidden due to the level of generality at which Africans opposed the Europeans. The issue had always been framed in quite general terms: black versus white, ex-subjects versus ex-masters, traditional versus modern, communitarian versus individualistic, rich versus poor, and other dichotomies. See id.

61 Dore, supra note 10, at 1305.

62 Id.

63 DAVIDSON, THE BLACK MAN’S BURDEN, supra note 56, at 185.

64 Id. at 185.

65 See, e.g., Chinedu Reginald Ezetah, International Law of Self-Determination and the Ogoni Question: Mirroring Africa’s Post-Colonial Dilemma, 19 LOY. L.A. INT’L & COMP. LJ. 811, 820-21 (1997) (describing the Ogoniland situation wherein ethnic groups joined to oppose the government and protect their joint interests, but the government termed it tribal infighting, which then led to divisions within what had been a united effort).

66 See CHAZAN ET AL., supra note 50, at 46.

67 Id.

68 Id. See also Steven R. Ratner, Drawing a Better Line: UTI Posidretis and the Borders of New States, 90 AM. J. INT’L L. 590, 595-96 (describing how African and European elites mutually agreed to replace European rulers with specific indigenous ones). Some postcolonial leaders, however, would reveal themselves to be as anti-democratic as their European predecessors. See id. at 610. “The people’s overall right to political participation remained the stated position of the international community,” but whether this objective was genuinely accepted by postcolonial leaders is questionable. Id.

69 Some new leaders sought to legitimize their claims to power, while others were more concerned with perpetuating their authority at any cost. See Dore, supra note 10, at 1305-06.
were reconfigured in most of Africa during the immediate postcolonial era. This reconfiguration was accomplished by two methods: impedance and facilitation. Participatory institutions inherited from the colonial and decolonization period were weakened or eliminated (impedance), while acquired bureaucratic structures were strengthened and enlarged (facilitation). Constitutions were changed to permit permissive amendment, so that government-sponsored political and economic changes could be implemented and legal safeguards standing in the way of firm control could be discarded. The next two sections will explore the constitutions and political structures that were adopted and then largely discarded, as well as the institutions that were inherited and ultimately retained and expanded upon.

B. The Postcolonial Political Order

English-speaking Africa adopted modified versions of the Westminster model, complete with bicameral legislatures, separation of powers, judicial review and a Bill of Rights. In French-speaking Africa, governments adopted tripartite constitutions that were developed in the 18th century by Montesquieu. While these institutions were democratic in the western liberal sense, they were not based on the values and beliefs of the people they were to govern, nor were they based upon the values of the elites who were to operate within their framework. Rather, they were colonial creations that were adopted by the African elites as the colonial powers withdrew. Rarely were constitutions established with even a modicum of public participation, such as by referendum or through an assembly elected specifically for this purpose. Because the populace had little input in designing or approving these constitutions, the resulting documents did not command the loyalty, obedience and confidence of the people. "Having been designed abroad, there was a fundamental mismatch between the values of the people of Africa and the western values which inspired the drafters of the new constitutions." This

70 CHAZAN ET AL., supra note 50, at 47.
71 See id. at 49 (noting that there was a clear message that legal safeguards impeding firm central control were unacceptable and would be eliminated).
72 Okoth-Ogendo, supra note 1, at 70. For an extended discussion of the Westminster model in Nigeria, see NWABUEZE, supra note 8, at 55-79.
73 Okoth-Ogendo, supra note 1, at 9.
74 Id. at 71.
75 Id. Constitutions were also adopted by local legislatures, set up by colonial powers, or approved under the authority of laws enacted by colonial governments. Even after independence, legislatures created by the colonial power retained the authority to enact constitutions and did so in many commonwealth countries in one guise or another. NWABUEZE, supra note 8, at 23.
76 NWABUEZE, supra note 8, at 23.
77 Dore, supra note 10, at 1504-05. Professor Dore continues: These socioeconomic values had deep historical roots and evolved only
misguided attempt to immediately incorporate ideas that had slowly evolved in foreign cultures was largely unsuccessful. This cultural disconnect made post-independence constitutions seem contrived and distant from the everyday lives of most people. Moreover, having had no input in adopting these instruments, they were seen largely as irrelevant by the general populace.

The Africans who helped draft these constitutions were themselves cultural subjects who half-heartedly accepted “the values of democracy, free elections, multi-party politics and capitalism... without understanding the values of their own tribal societies.” Elites generally viewed these legal arrangements as pragmatic compromises agreed upon to hasten the transfer of power. Accordingly, after independence, constitutions and the complex structures they contained were discarded with impunity as they appeared to be conspicuous impediments to an efficient government. In reality, the “Westminster-style model or the more presidential francophone counterpart offered few answers to the very real dilemmas of the time.” By focusing on the loci of power, these constitutions “failed

over a long period, as western societies went through several phases of social and economic development. The successful constitution is one which obtains legitimization by the popular will. Since western values were never properly assimilated at the grassroots levels of African society, the various constitutions that represented these values never gained legitimacy.

Id. at 1305. Professor Nwabueze notes that the ideas underlying most post-independence constitutions originated in Roman law and Greek philosophy that had been assimilated throughout Europe. Postindependence constitutions were not part of indigenous cultures which he believes have “yielded nothing relevant to the organisation of the central government of a modern complex society.” Nwabueze, supra note 8, at 24. He believes, therefore, that there were no other sources to draw upon and the task was to legitimize foreign ideas through a process of popularization. People could be made to identify with constitutions by being involved in the process of their making. Id. at 24-25.

See Nwabueze, supra note 8, at 56-58 (discussing the failed attempt to separate the head of state and head of government in Nigeria, based on the British tradition of the Monarch as head of state and the Prime Minister as head of government).

Id. at 25. Professor Nwabueze believes this problem could have been ameliorated by subjecting the contents of the constitution to public discussion. Thus, the body drafting the constitution could invite views from the public in the form of articles, memoranda, and the like. This body could also travel throughout the country and talk with people individually and in groups. Proposals could be published and submitted to the people at a plebiscite. Theoretically, the constitution would thereby become the property of the people and would win their confidence and eventually their respect and loyalty. This process of constitution-making could have been a major symbol in the formation of a new state. Id. at 25-26.

Dore, supra note 10, at 1305.

See Chazan et al., supra note 50, at 47.

Id. There is little doubt that the problems faced spanned many arenas and were considerable. For example, with respect to education, Tanganyika, Uganda, and Kenya had education systems that were ill-adapted to the task of supporting viable states. None possessed fully integrated state-wide educational systems, but rather inherited sub-systems catering separately to each ethnic group. See J. W. Tyler, Education and National Identity, in Tradition and Transition, supra note 44, at 163-64. Many of the “decolonizers” were themselves ill-equipped. As Professor Davidson notes,
to resolve the important ideological issue of how to locate people's expectations and aspirations within its compass. Moreover, because there was little experience in adapting general rules to the particular situation of given countries, alternative options were not readily available to be explored.

The drive to adopt centralized governing frameworks was framed in the rhetoric of development. Fragmented power structures made central planning, financial coordination and the formulation of policies on important matters such as health, education and welfare more difficult. Hence, concentrating power in one person or in a bureaucracy could easily be rationalized as a more direct way to achieve rapid development and advance the general public welfare. This utilitarian argument justified the quest for control by "suggesting that curtailing personal liberties was a necessary sacrifice to fulfill broader notions of the public good." African rulers could also claim

an administrative apparatus pledged to "nation building," and to the instruction of Africans on "how to do it," should have been content with its political incompetence. Yet those in control of the "transfers of power" were in practice precisely those least able to measure the dangers ahead, and to advocate alternatives that might avoid such dangers or diminish them.... [P]olitical incompetence on the European side has as much a part in the story of decolonization as anything that can be attributed to the African side.

DAVIDSON, THE BLACK MAN'S BURDEN, supra note 56, at 174. Developing a national identity also proved to be elusive. Among the masses of rural and urban supporters of anti-colonial movements, there was little indication of developing loyalties or attachment to the colonies that were emerging as nations. See CHAZAN ET AL, supra note 50, at 47-51.

Elites also argued that the constitutional order frustrated the goals of equity and the delivery of services. Id. See also NWABUEZE, supra note 8, at 6. Some priorities were almost universal. For example, improving roads, railways, deepwater ports, and building dams to produce electricity were deemed essential to expanding the production of wealth. In this realm, real progress was made. See DAVIDSON, MODERN AFRICA, supra note 50, at 233. Yet Africa's initiative to modernize its infrastructure, and to build new economies of wealth, was complex and contradictory. See id. at 234.

85 CHAZAN ET AL, supra note 50, at 47. See also Maxwell O. Chibundu, Law and the Political Economy of Privatization in Sub-Saharan Africa, 21 MD. J. INT'L L. & TRADE 1, at n.52 and accompanying text (1997). "Invoking the motif of centralized planning of the national economy, African governments deluded themselves with the illusion that the central government could effectively manipulate the economy to yield specified results during identified periods of time." Id. See also NWABUEZE, supra note 8, at 6.

86 CHAZAN ET AL, supra note 50, at 47. See also Okoth-Ogendo, supra note 1, at 72.

87 Id. at 72. See also NWABUEZE, supra note 8, at 6. The search for appropriate regimes in Africa must be understood within the context of the deterioration in the state-society relationship since independence. "For a time, it appeared that the independence bargain between the colonial authorities and various local interests and the resulting pact among a number of those elites would nurture progress toward constitutional governments." Donald Rothchild, Structuring State-Society Relations in Africa: Toward an Enabling Political Environment, in ECONOMIC CHANGE, supra note 5, at 202-03. After independence, new ruling coalitions moved swiftly to expand colonial institutions — such as the executive, civil service, police, and army — that were viewed by elites as avenues to enhance their managerial capacity. Institutions that were regarded as constraints on the power to control society — such as multiparty elections, legislative autonomy,
that discarding foreign pluralist institutions advanced the process of Africanization,\textsuperscript{90} thus resulting in governing frameworks that were more faithful to traditional values.\textsuperscript{91}

In reality, economic exploitation of the masses continued unabated, and the burgeoning bureaucracy facilitated that quest.\textsuperscript{92} Most countries had not developed a strong independent middle class during the colonial period, and the postcolonial state was seen by emerging elites as an avenue for the attainment of wealth and status.\textsuperscript{93} In the absence of a strong private sphere for the accumulation of capital, this conclusion was not totally inaccurate, although it has led to disastrous consequences.\textsuperscript{94} Having witnessed the departing colonial elite’s conversion of the national economy into a private estate, any notion of a withering away of state power was viewed by African elites as undermining their prerogatives.\textsuperscript{95} In the final analysis, independ-
ence constitutions operated as mechanisms to entrench interests that had accumulated as a result of the exploitative nature of the colonial process.96

Ethnic identification also had a profound impact on the resulting postcolonial political framework. During the colonial era, ethnic identities were bolstered and then manipulated as part of a divide and rule strategy.97 Religious, regional, and ethnic identities were reconfigured;98 ethnic tensions were exacerbated;99 ethnic groups were

some restrictions on their movements and places of residence in some colonies.

Aiyittey, supra note 44, at 432.

[T]he turning point came after independence. Support services and infrastructure were not provided. Rather, the economic freedom of the peasants was wrenched from them by 'Swiss bank socialists,' while their economic prosperity was taxed and squandered by vampire elites through a series of edicts, state controls, and decrees.... In many other African countries, the natives were squeezed out of industry, trade and commerce where the state emerged as the only, if not the domineering, player.... Other African governments also adopted price controls and various legislative instruments for the systematic exploitation of the peasants. Prices of agricultural produce were fixed to render food cheap for the elites - the basis of political support for African governments. The prices peasants received for their produce were dictated by governments, not determined by market forces in accordance with African traditions.... [U]nder an oppressive system of price controls administered by the elites, Africa's peasants came to pay the world's most confiscatory taxes.

Id. at 434-5.

96 See Demsko, supra note 93, at 158-62 (discussing the extent to which the demise of the formal colonial system involved an apparent relinquishment of political control but assured continued imperial control over colonial economies). "Political independence did not dramatically change the economic landscape.... Once Europeans recognized the inevitability of political independence, however, they realized they could assure 'continuing effective control' over the colonies through economic domination." Id. at 159 (internal citations omitted). Indirect exploitation was achieved by encouraging the unequal trade relations that had taken root during the colonial era. See id.

Even today, with overwhelming empirical evidence of the failure of the post-colonial state, African elites insist on clinging to this fiction of European creation to the bitter end.... There are several reasons for this resistance to an imagination of political life without the post-colonial state. The simple explanation is that alienated elites (who have more in common with, and harbor aspirations of, elites in industrialized countries than with their teeming masses of rural and urban poor) are loath to give up the privileges which come from control of the state. Since their lavish lifestyles stem from the state as organized, it would be suicidal for the leaders to participate in changing it. Even when the state is not effective (or on the brink of collapse) elites will still defend it.

Mutua, supra note 10, at 1119.

97 Before the advent of colonialism, most Africans moved in and out of multiple identities, defining themselves at one moment as part of this clan, and at another moment as an initiate in that professional guild. Rather than possessing a single tribal identity, these overlapping networks of association and exchange were the norm and extended over wide arenas. Terence Ranger, The Invention of Tradition in Colonial Africa, in The Invention of Tradition 211, 248 (Eric Hobsawm & Terence Ranger eds., 1983).

98 Julius O. Ihonvbere, The "Irrelevant" State, Ethnicity, and the Quest for Nationhood in Africa, 17 Ethnic and Racial Studies 42, 52 (1994). Professor Ihonvbere points out that prior to the
incited to challenge each other; and nascent political leaders were given ethnic labels and regarded as ethnic leaders. In the final stages of colonialism, colonial governments attempted to create a highly-fractionalized political culture that institutionalized conflict and strengthened centrifugal forces. Political parties then “entered the constitutional process as purveyors of irredentist ideologies,” and ethnic identification permitted elites to acquire and retain “spheres of interest while advancing their personal, class and occasionally, community interests.” In effect, “ethnicity [became] a mask for class privileges,” and this divisive rivalry was termed “tribalism.” While in the colonial context factionalism was an aspect of divide and rule, “in the postcolonial state it enhanced the power of the bureaucracy.”

While in the colonial context factionalism was an aspect of divide and rule, “in the postcolonial state it enhanced the power of the bureaucracy.”

While in the colonial context factionalism was an aspect of divide and rule, “in the postcolonial state it enhanced the power of the bureaucracy.”

While in the colonial context factionalism was an aspect of divide and rule, “in the postcolonial state it enhanced the power of the bureaucracy.”

While in the colonial context factionalism was an aspect of divide and rule, “in the postcolonial state it enhanced the power of the bureaucracy.”

While in the colonial context factionalism was an aspect of divide and rule, “in the postcolonial state it enhanced the power of the bureaucracy.”

While in the colonial context factionalism was an aspect of divide and rule, “in the postcolonial state it enhanced the power of the bureaucracy.”

While in the colonial context factionalism was an aspect of divide and rule, “in the postcolonial state it enhanced the power of the bureaucracy.”

While in the colonial context factionalism was an aspect of divide and rule, “in the postcolonial state it enhanced the power of the bureaucracy.”

While in the colonial context factionalism was an aspect of divide and rule, “in the postcolonial state it enhanced the power of the bureaucracy.”

While in the colonial context factionalism was an aspect of divide and rule, “in the postcolonial state it enhanced the power of the bureaucracy.”

While in the colonial context fraction
The policy of impedance focused "directly... on the fragile and fluid political organs constructed at independence." A range of policies were utilized to consolidate single-party dominance and to centralize power. Postcolonial institutions, such as political parties, that "perpetuat[ed] formalized rivalr[ies] with the ruling coalition were reshaped or eradicated, whereas those that enhanced the central leadership were sustained and elaborated." The ruling party circumscribed and limited opportunities to oppose its authority, and dismantled constitutional protections designed to protect opposition. New leaders denounced regionalism as divisive. They emasculated "quasi-federal provisions," eliminated "regional political bases" of power, and placed local governments "under the aegis of central institutions." They also outlawed rival opposition political groups that were "based on particularistic, sectarian or ethnic interests." The fusion of opposition and ruling parties was encouraged, "legal means were employed to make it essentially impossible for opposition parties to subsist,... [o]pposition leaders were harassed[,]" and other efforts were made to forcefully stifle opposing voices. In other venues, leaders simply assumed that the electorate would not support weak parties. Membership in the ruling party was required for political recruitment at all levels (local, municipal and parliamentary), thereby fostering the transition to the one party state. With alternative power bases officially crippled, "opposition parties were on tenuous ground when they sought to mobilize support or criticize government actions."

These methods of thwarting the opposition had a profound impact on participatory and representative institutions. National assemblies and parliaments, packed with supporters of the ruling party, increasingly became decree-sanctioning bodies instead of legislatures. Parliamentary debates degenerated into opportunities to express support or to bargain; "[t]hey rarely permitted real engagement in policy formulation or even constructive commentary on the direction of government policies." A rising bureaucracy and the personalization of power accompanied the demise of formal pluralistic insti
tutions. The end result was a strong emphasis on the state and bureaucratic structures. This bureaucracy was largely a holdover from the colonial order that was at the base of an often coercive administrative system, and it concentrated and entrenched power in non-accountable hands.

C. The Colonial Administrative Legacy

The institutional basis of the postcolonial state was the colonial state, because the institutions created upon decolonization were adapted into the only legacy that appeared to be available: a colonial legacy. Yet this legacy was invariably authoritarian, centralist, bureaucratic and concerned above all else with top-down forms of governance. As decolonization proceeded, colonial paradigms were often elaborated upon rather than transformed, and thus political independence did not substantially change many of the basic features of the African state. While administrative functions were “Africanized” when feasible, the fundamental organization of the State in

---

119 Id. at 42.
120 BASIL DAVIDSON, THE SEARCH FOR AFRICA: HISTORY, CULTURE, POLITICS 249 (1994) [hereinafter DAVIDSON, THE SEARCH FOR AFRICA]. The formal agencies that were actually transferred to the Africans upon decolonization were “alien in derivation, functionally conceived, bureaucratically designed, authoritarian in nature, and primarily concerned with issues of domination rather than legitimacy.” CHAZA ET AL., supra note 50, at 43. Given their objectives and mission during the colonial era, this is hardly surprising.
121 See Chibundu, supra note 5, at 248-49. Like their Western counterparts, the African elite viewed law as instrumental for development. See id. at 241-42. “What the ‘nation builders’ of the British Colonial Office understood as a duty was the need to ensure ‘continuity’” as Africa moved towards self-government. DAVIDSON, THE BLACK MAN’S BURDEN, supra note 56, at 178. They assumed that they understood the needs of any future African state better than the Africans, and that the reconfigured British empire would still make substantial contributions to the motherland. The first assumption fed the second, and constitutional reform in the colonies made colonial rule more effective, in some respects, instead of hastening its demise. Rather than creating the conditions for Africans to participate directly in government, British colonial service recruitment increased by more than fifty-nine percent between 1947 and 1957. Until the eve of decolonization, “the prospect of independence for each and every territory was quite remote.” Id.
122 See SEIDMAN & SEIDMAN, supra note 106, at 32.

At various phases in the evolution of the colonial period, there emerged in the colonial countries at different times, an educated elite. This elite demanded changes within the colonial administration and, eventually, an end to colonization itself.... The goal was, somewhat paradoxically, to emulate the life style and institutions of the metropolitan power, and to demand parity with its citizens. This translated into the creation of governmental structures and legal systems for Africa that were rather similar to those which existed in the colonizing power itself.

Dore, supra note 10, at 1304. While the elite shared the desire for modernizing “law and legal institutions such as the administrative and judicial machinery of the state... they also articulated two other fundamental purposes for law: Its unification and its Africanization.” Chibundu, supra note 5, at 183. The elite expressed a desire to integrate traditional, local, or customary practices with the law left behind by the colonial rulers. “This reflected a belief that the result would be the emergence of African Law, law that in its benign incarnation would reflect
independent Africa was to a great extent a structural continuation from the colonial period.\footnote{Mamdani, The Social Basis of Constitutionalism in Africa, 28 J. MOD. AFR. STUD. 359, 364.}

The method and institutions of governance imposed by colonial rule were generally unknown prior to colonization.\footnote{Mutua, supra note 10, at 1145 (citations omitted).} Accordingly, the colonial state lacked a foundation in the experiences and concerns of the indigenous peoples over whom it governed.\footnote{Chibundu, supra note 5, at 247.} These institutions were then superimposed on traditional African institutions which had been changed, but not necessarily destroyed.\footnote{Dore, supra note 10, at 1304-05.} While some nationalists may have understood the political and moral impli-

---

\footnote{Hansen has identified the crisis of the African state in its failure to transform the colonial state. He argues that though formally independent, African states are still conceptually colonial entities, heavily reliant on the structures of the colonial state. There is little doubt that the only significant changes at the independence was not the restructuring of the state but the changing of the guard, the replacement of white by black faces in the state house. It fell on the new rulers to bring legitimacy to the colonial state, now labeled the post-colonial, black ruled state.}

\footnote{Mutua, supra note 10, at 1115 (citations omitted).}

\footnote{YOUNG, supra note 47, at 279-80 (internal quotations omitted).}

\footnote{Chibundu, supra note 5, at 247.}

\footnote{See id. The seeds for the ensuing crisis of legitimacy were sown during the colonial period when colonial administrative units were created in an arbitrary fashion and, therefore, lacked the social solidarity or consensus necessary to engender a sense of nationhood. They were subsequently incapable of functioning as states after independence. This lack of a common sociopolitical identity was accompanied by the belief at the grassroots level that the institutions created by the new constitutions were unlikely to foster justice in their communities.

"Having been designed abroad, there was a fundamental mismatch between the values of the people of Africa and the western values which inspired the drafters of the new constitutions."}

\footnote{Dore, supra note 10, at 1303-05.}

Unlike their European counterparts, African states and borders are distinctly artificial and are not "the visible expression of the age-long efforts of [indigenous] peoples to achieve political adjustment between themselves and the physical conditions in which they live." Colonization interrupted that historical and evolutionary process. Since then Africa has attempted, often unsuccessfully, to live up to and within these new formulations; all too frequently the consequences have been disastrous.

\footnote{Mutua, supra note 10, at 1115 (citations omitted).}

\footnote{Dore, supra note 10, at 1903.}
cations of the colonial legacies they were inheriting, many nonetheless joined in building a new oligarchy of power and privilege. Few thought traditional institutions were at all relevant in building a modern state.

1. The Colonial Governing Apparatus

The colonial order was inherently undemocratic and was concerned primarily with authority and domination. Political and administrative functions were concentrated in the hands of the colonial civil service; hence, governing structures did not separate the roles of decision making and decision implementation. Control and coer-

---

127 Davidson, The Black Man's Burden, supra note 56, at 181-82. An informed assessment of future prospects for these emerging entities may have been difficult because of a lack of information from their colonizers. Moreover, there may have been dearth of analysis and long-term thinking on the part of nationalists. Id.

128 Seidman & Seidman, supra note 106, at 152.

129 Dore, supra note 10, at 1304-05. A leading Nigerian economist and reformer, Adebayo Adedeji, has postulated that

[is]o great and pervasive has been the down-thrusting of colonial rule that many Africans and most non-Africans have persistently denigrated the pre-colonial historical achievements of the continent — its arts, customs, beliefs, system of government and the art of governance. Indeed, the tragedy has been that when the opportunity came to cast aside the yoke of colonialism, no effort was made to reassert Africa's self-determination by replacing the inherited foreign institutions and system of government, and the flawed European models of nation-states, with rejuvenated and modernised indigenous African systems that the people would easily relate to and would therefore be credible .... There can be no doubt that Africa needs a new political order which breaks the umbilical cord from its unenviable colonial inheritance.

Davidson, The Search For Africa, supra note 120, at 251.

130 Chazan et al., supra note 50, at 42. “The colonial state was sharply divided between colonisers and colonised and... between rural and urban areas.” Mfandani, supra note 123, at 364. In cities and towns, European populations were the subjects of liberal bourgeois states that had clear demarcations between the administrative, judicial, legislative and executive branches of government. In the absence of white settlers, this liberal colonial regime was gradually extended to immigrant minorities and finally, in the later stages of colonialism, to the indigenous middle classes. Id. “Autocratic centralism” characterized the colonial state, with all real power of policy and decision making embodied in a supreme governor appointed in a remote foreign capital and operating at a distance. Davidson, The Search For Africa, supra note 120, at 248-49. “From this autocracy, in colonial times, there had derived a more or less total alienation of governors from governed, intellectually and morally, and in all customary attachments of everyday life.” Id. at 249.

With the African subject thus firmly constructed in the official consciousness of the colonial ruler as a savage child, systematic exclusion was the essence of statecraft. In those intermediary roles where African participation was necessary — above all, the apparatus of native administration — firm tutelage was indispensable. Even in areas where doctrines of scientific colonial management appeared to vest the greatest degree of responsibility in the African rulers recognized as anointed intermediaries — the British territories where indirect-rule ideology was most thoroughly applied — the inner spirit of administration was pervasively autocratic, and chiefs were viewed foremost as stewards of British rule.
cion were at the center of the colonial legal order, and this pattern of organization was reinforced by a well-developed coercive establishment. Despotism was decentralized, however, and the daily violence of the colonial system was often carried out by native authorities in the local state rather than by the civil power at the center. Appointed indigenous rulers were sustained and supported by colonial administrations. Consequently, even as indigenous institutions were retained and redefined, colonial rule superimposed a new administrative edifice on these social and political orders. Local leaders exercised expansive powers over indigenous populations that generally translated into boundless discretion.

In rural areas, colonialism ushered in command by elders over land allocation, marriage transactions and political office. There were forced crops, sales, contributions, land enclosures and forced labor; in effect, it was a system designed to regularly and systemati-

---

131 Okoth-Ogendo, supra note 1, at 69.
132 CHAZAN ET AL., supra note 50, at 42.
133 A basic territorial grid of regional administration, staffed by Europeans, was indispensable. This required a coercive underpinning from a military force directly controlled by the colonial state; however, only a small cadre of European officers was needed, to train, discipline, and command forces whose basic ranks were filled with locally recruited (or conscripted) soldiers. Effective occupation could only be mediated through an array of collaborating indigenous intermediaries.
134 Young, supra note 47, at 76. "[B]elow the bottom echelon of European regional administration an array of African chiefs were recognized, and vested with the authority of the colonial state, in addition to whatever title they enjoyed on their own. Furthermore, the colonial state insisted that those chiefs it recognized were the sole authority holders within the reconfigured political space subject to its design." Id. at 107.
135 CHAZAN ET AL., supra note 50, at 43.
136 Id. at 42-43. "The political cultures and state ideologies of the colonizing polities were not identical. They produced somewhat different underlying perspectives concerning the value of African institutions, even if in the early phases all were equally compelled by the stringent circumstances of constructing hegemony to seek, where available, the collaboration of indigenous rulers." Young, supra note 47, at 107-08.
137 See Seidman & Seidman, supra note 106, at 159. The power possessed by indigenous elites was non-existent vis a vis colonial personnel, who held absolute power over all local leaders. While ultimate power resided in colonial administrators, local "power" was exercised by chiefs.
138 Chiefs "enumerated the property of their subjects, assessed and collected their taxes, heard the appeals of those who felt they had been unfairly assessed, and arrested / jailed those who failed to pay their taxes." Mamdani, supra note 123, at 365. "The chiefs were generally given a commission on the taxes collected, which doubtless often exceeded state demands." Young, supra note 47, at 128. "Material incentives by no means sufficed to ensure vigorous tax collection by the chiefs. Revocations, imprisonment, and public whippings of chiefs were frequent in the early period for derelict performance in fulfilling tax and labor demands of the administration. The chiefs were ordered to collect taxes; the means used were up to them, so long as the revenue was delivered." Id. at 129. In many parts of Africa, this exploitation has intensified in the postcolonial era. "Under the guise of ideological purification[,] ... [s]tate authority has been redefined as state-party authority and its ... representative renamed a 'cadre' as opposed to a 'chief' ... ." Mamdani, supra note 123, at 365.
139 See Mamdani, supra note 123, at 365. All of the colonial powers employed forced labor in one form or another although, after the 1920's, many utilized indirect means such as imposing
GROWING CONSTITUTIONS

While this paradigm was partly rationalized as a continuation of "traditional" precolonial governance, an examination of clan and administrative authority in most precolonial systems reveals that this claim is erroneous. Rather, there was a poll tax that had to be paid in cash. See Davidson, The Search for Africa, supra note 120, at 187. Cash could be earned by working for whites. Direct forms of forced labor diminished except in Portuguese colonies. There slavery, which was formally abolished before 1900, gave way to the use of forced labor by means of a "contractual" system, where Africans were deemed to be working only when they worked for wages, and thus, they worked overwhelmingly for whites. In Angola, employers who needed forced labor had only to apply to the governor-general who allocated contrados according to a theoretical calculation of the probable number of adult males available. Id. Approved demands for forced labor were then sent to local administrators and the chefe de posto. Id. at 138.

Colonial rule destroyed old, and often prosperous, regional networks of trade and imposed quite different ones. "[C]olonial networks were designed, primarily, to make African labour and land serve the interests and profit of the colony-owning powers." Davidson, Modern Africa, supra note 50, at 198. The colonial governments used force to achieve this objective, and they also employed divide-and-rule policies that have been termed 'colonial tribализm' by Professor Davidson. African agriculture was directed into export-crop production, which simultaneously assured income for head-tax payment and export taxes. See id. at 220.

Thus, the colonial state developed agricultural services to promote and if need be enforce cultivation of crops with an external market .... Local administrators drew up an 'agricultural program' for their territory, consisting of minimum surface areas for cash and some food crops. Failure to exhibit such cultivated acreage on the visit of the agronomist was prima facie evidence of contravention of the obligatory cultivation ordinance and exposed the offender to fines, beatings, or prison. Local administrators... were informed... that the 1917 ordinance equipped them with 'the means necessary to induce cultivators to expand their crops.' These means... 'were nothing other than, military or police occupation.' The dominant view was: 'The sole way to improve native agriculture is to force the blacks to place their crops following the principals indicated by competent agents.' At this time, only the territorial administration, backed by armed force, can achieve this goal, and even this only temporarily.

Relying on "tradition" to justify this system was to rely on a "tradition" that was largely created by Europeans. The most far reaching inventions of tradition took place when Europeans believed they were respecting tradition. Customary law, land rights, political structures and other precepts were formulated in colonial codifications; these "traditions" invariably favored elders, and men. Africans manipulated this invented custom and participated in creating it. "[T]he boundaries of the 'tribal' polity and the hierarchies of authority within them did not define conceptual horizons of [most] Africans" to the extent pressed by Europeans. Id. at 248.

[Nineteenth century Africa was not characterized by lack of internal social and economic competition, by the unchallenged authority of the elders, by an acceptance of custom which gave every person - young and old, male and female - a place in society which was defined and protected. Competition, movement, fluidity were as much features of small-scale communities as they were of larger groupings.

For example, studies have shown that women in select societies constantly found themselves trying to find new niches for themselves. It was in the twentieth century that the dogmas of customary security and immutably fixed relationships developed, and societies appeared to possess an ujamma-style solidarity. See id. at 248-49. ("Ujamma" is a Swahili word meaning togetherness or neighbourliness). In 1967, the Tanzanian government used the policy of ujamma to bring the interests of village people into line with the interests of townspeople, and to develop Tanzania without dividing it. Therefore, ujamma villages were created that provided for primary
conscious determination by colonial authorities to establish order, security and a sense of community by defining and reinforcing the European version of "tradition."  

2. Decolonization

The colonial model of domination and coercion was generally preserved in most independence constitutions and became the foundation of administration in the postcolonial state. The judicial branch, which administered this coercive order, was retained and it saddled new states with a jurisprudence based on force. Most post-independence constitutions also retained the colonial legal order as the residual law of the new state. Administrative institutions were for-
tified, and enforcement agencies such as the army and police grew.\textsuperscript{144} Armies and military expenditures increased exponentially,\textsuperscript{145} and paramilitary structures such as presidential guards proliferated.\textsuperscript{146} The expansion of the coercive branch of government led to the formation of a highly-organized group with distinct professional and corporate interests,\textsuperscript{147} and contemporary police forces and the military have been the only true challengers to state power in the post-colonial era.\textsuperscript{148}

Colonial economies were managed economies that were to expropriate and expatriate surplus value from colonies to metropolitan centers, and these functions were accomplished through the civil service.\textsuperscript{149} Independence expanded the role of the state in economic matters and it has remained at the center of most economies as an owner or manager of the means of production, or through such entities as marketing boards, parastatals and public utilities.\textsuperscript{150}

3. Facilitation

The institutional readjustment process focused on measures designed to augment the power apparatus.\textsuperscript{151} This strategy concentrated on three critical systems: administration, security and the executive. At independence, the administrative apparatus was the major reser-
voir of skilled personnel and was critical to devising and implementing economic policies and maintaining order. Consequently, leaders sought to remold these bodies to better promote their interests. Africanization was the norm, and “[s]ervice ministries such as education, health, and community welfare were greatly expanded.” Most nations also established planning bureaus and state-owned corporations (parastatals), as the number of administrative bodies multiplied. The chief executive was usually given appointive and dismissal authority over all officers in the public service.

“[E]xpansion of the administrative apparatus also proved to be a crucial means for personal advancement.” The facilitation of bureaucratic institutions allowed select individuals to gain direct access to state resources and to the considerable privileges associated with administrative office. Hence, the requirements of governance dovetailed quite well with the personal interests of technocrats, the educated bloc, and party militants. Association with the state complex emerged as the key avenue to social advancement and class differentiation. Diminishing political prospects alongside blossoming administrative and coercive institutions led to the same institutional imbalance that characterized the colonial period.

To reign in a growing bureaucracy that had no clear political affinities, governments began to use the party to supervise the bureaucracy. Party functionaries were lodged in the civil service, police, army and local government, thereby politicizing these entities. Eventually the boundaries between party and government began to collapse, and these entities began to overlap in myriad fashions. In

---

152 See id. at 46-50.
153 Id. at 50.
154 See id. at 55.
155 Okoth-Ogendo, supra note 1, at 74.
156 CHAZAN ET AL., supra note 50, at 51.
157 Id. at 49. Efforts at “reform” meant moving local citizens more quickly and effectively into the existing hierarchical structure or expanding structures laterally to assume new developmental functions. Id. at 51 (quoting DAVID B. ABERNATHY, BUREAUCRATIC GROWTH AND ECONOMIC DECLINE IN SUB-SAHARAN AFRICA (1983)). That the top civil servants earned at least forty times more than the per capita gross domestic product of the country was never seriously questioned. See id.
158 See id.
159 See id.
160 See id.
161 See id.
162 Id. In Tanzania, for example, political leaders proclaimed the party to be the preeminent public institution even though the division between the party and the state was not always apparent. The party always had a hand in policy formulation. See id. The single party state elsewhere in Africa did not tolerate any opposition. With power moving to the party leader and the executive (as in Malawi, Kenya and Ghana) lines of accountability of the executive and the party to the legislature became blurred. The legislature existed in name only, with both it and the constitution retained as a façade to provide legitimacy to the ruling elite. Dore, supra note 10, at 1307.
some nations the party absorbed state structures, while in others, the
growth of the administrative apparatus had the opposite effect of
subordinating the party to government institutions. Whatever the
precise pattern of the party-state relationship, there were political
party elements that generally intruded into the decision-enforcing in-
stitutions of government. The party became the channel to the ad-
mnistration, thereby “making the administrative apparatus subject to
particularistic political demands.” This scenario also muddled the
locus of decision-making, which was not firmly located in administra-
tive units, government decision-makers or the party.

Finally, the state power apparatus was concentrated in the hands
of individual leaders. “The personalization of decisionmaking was a
concomitant of the overall trend toward centralization.” Leadership
became a substitute for regularized channels of policymaking,
and consequently even when other agencies were involved, it was the
president who had the final say. While presidential decisions were
perhaps influenced by the opinions of others, there were no institu-
tional restraints on this decision-making capacity, nor was it subjected
to “organized pressures from below.” The paradigm that developed
was a neo-patrimonial state where relationships to a person, rather
than to an office holder, thrived within a purportedly rational legal
administrative system. The state was characterized by a political plu-
rnalism that was limited to minuscule enclaves, a “strong emphasis on
statism and bureaucratic structures,” politicized administrative insti-
tutions and “personalistic forms of decisionmaking.” Although it
was monopolistic, however, the postcolonial state’s power and legiti-
macy were tenuous and its authority limited; while centralization be-
came a means of consolidation, it did not necessarily mean full con-
trol.

The shift toward statism made politics an important means to ma-
terial advancement and a “key criterion for social differentiati-

The growth of the bureaucracy engendered additional profound ine-
quities and “new lines of social cleavage and tension.” “The diffi-
culties that accompanied Africanization and the spread of the bu-
reaucratic apparatus were compounded by the tendency of

---

162 See CHAZAN et al., supra note 50, at 51-52 (detailing state absorption into the party in Mo-
zambique and Angola, and the opposite trend in Cote D’Ivoire and Kenya).
163 Id. at 52.
164 Id.
165 Id. at 53.
166 Id.
167 Id. Party officials, personal advisors, technical experts, senior bureaucrats and specific
local and perhaps foreign interests may have weighed in, but there were few if any institutional
restraints on the exercise of power. Id.
168 Id.
169 See id.
170 Id. at 55.
171 Id.
governments to strengthen existing public corporations inherited from the colonial period, and to establish state enterprises of their own (parastatals). The weakness of indigenous enterprises and the paucity of domestic capital led many leaders to set up their own corporations to deal with particular undertakings in the areas of production and distribution.

Thus, Africa emerged from colonialism with states that were not nations, and with foreign democratic systems that were not rooted in African cultures. Elites only half-heartedly accepted the democratic structures that overlay a legal and administrative apparatus that was the antithesis of democracy. Government largess and foreign aid became sources of wealth in poor nations where there were few other means to amass funds. This confluence of difficult conditions resulted in constitutional irrelevance, coup d'états, and the general failure of many postcolonial states. While it is not certain that modes of governance within local frameworks would have avoided these problems altogether, it surely would have alleviated them and probably would have resulted in wider participation and accountability. The story of Somalia is unique, yet typical, and fits within the paradigm examined thus far.

III. SOMALIA

A. Pre-Colonial Somalia

Most Somalis are nomadic herdsmen who have grazed camels, sheep, goats and cattle over the plains of the Horn of Africa for centuries. Before European colonization in the late nineteenth cen-

---

172 Colonial governments had created some such organizations, most notably utility companies and export commodity marketing boards. At independence, these institutions were transferred as part of the colonial legacy. See id. at 56 (discussing expansion of administrative control in African institutions).

173 Id. at 55.

174 See id. at 53. The growth of parastatals in the post-independence era was phenomenal. Some dealt specifically with the extraction and sale of agricultural products, while others dealt with industry and manufacturing. See id.

175 See Lewis & Mayall, supra note 28, at 101. Much of Somalia is semi-arid and suited for little beyond livestock production. Thus far, pastoralism has proven to be the most efficient means to exploit semi-arid climates; experts project that Somali livestock production can only be improved by, at most, ten percent. See ANNA SIMONS, NETWORKS OF DISSOLUTION: SOMALIA UNDONE 29 (1995). See also Jarat Chopra, Achilles-Heel in Somalia: Learning from a Conceptual Failure, 31 TEx. INT'L L.J. 495, 504 (1996) (noting that the semi-arid climate of Somalia necessitates a pastoral way of life for most Somalians). Conflicts within this context were more likely to be over access to pasture land and water, rather than for the myriad reasons that later prompted the civil war. See Lewis & Mayall, supra note 28, at 104. Agricultural production is largely limited to the relatively fertile region of the Shebelle and Juba Rivers in Southern Somalia, where Italian colonizers established banana and sugar plantations. The Southern region, and its population, has long been over-exploited. See SIMONS, supra. Some Somalis migrated to coastal towns where they co-existed with Persian, Arab and Swahili traders, acting as middlemen, guides, interpreters and protectors, and as trade links to the interior. See id. at 33.
tury, the Somali people were not organized into a state despite a strong sense of linguistic, religious and cultural identity. Rather, a decentralized political system comprising an elaborate succession of clans and sub-clans governed political life. Within this political system, "political identity and loyalty [were] determined by genealogical closeness and remoteness." Lacking a centralized government, Somali politics were a way of securing diverse kinship loyalties between clans.

Genealogy is at the center of the Somali social system, and the "ideology of kinship had two central elements: blood-ties and heer." Blood-ties were based on "genealogical connections reinforced by a patrilineal system rooted in a real or invented common origin or ancestor." Heer was comprised of an unwritten but widely adhered to code of conduct which "emphasized the values of interdependence and inclusiveness and thus formed the basis for social order." This society, structured without a governing head, was both egalitarian and democratic, but susceptible to internecine feuds. Production, which was small in scale and coterminous with consumption, took place within the household. Political norms and cultural values were

---

176 See Chopra, supra note 175, at 503-04. Pastoral herders developed an ideal of nomadic independence, despising agricultural cultivation, government, authority, and hierarchy. See id. (discussing pre-colonial Somalia). Despite this nomadic ideal, "Somalis share a common language (Somaale), religion (Islam), physical characteristics, and pastoral . . . customs and traditions." See Adam, supra note 4, at 70. Somalis converted to Islam after long contact with Persian and Arab immigrants who had established a series of coastal settlements. The large-scale conversion of Somalis to Islam took place from the eleventh to thirteenth centuries. SOMALIA: A COUNTRY STUDY 5-6 (Helen Chapin Metz, ed. 1993).

177 See Lewis & Mayall, supra note 28, at 101. The Somali populace consists of six major clan families: Hawiye, Daarod, Issaq, Dir, Rahanwayn, and Digil. See SOMALIA: A COUNTRY STUDY, supra note 176, at 71. The first four families are overwhelmingly pastoral nomads, while the last two are primarily farmers. See id. Each major clan family is subdivided into at least six clans, and each clan is further divided and subdivided all the way down to the "tor," or household. See Adam, supra note 4, at 69; Lyons & Samatar, supra note 36, at 8. "The clan structure was further reinforced by communal access to the range and family ownership of the herd, the principal economic asset." Id. at 8-10. There has been a serious debate about the origins of Somali clans and clan families, but, despite this uncertainty, migration seems to have been a major factor in inter-clan and inter-family politics. See Simons, supra note 175, at 32. "The number and size of clans within a clan-family varied; the average clan in the twentieth century numbered about 100,000 people. Clans controlled a given territory, essentially defined by the circuit of nomadic migration but having unspecified boundaries, so that the territories of neighboring clans tended to overlap." SOMALIA: A COUNTRY STUDY, supra note 176, at 74-75.

178 See Lewis & Mayall, supra note 28, at 101. Political anthropologists have classified this system as a "segmentary lineage system." Id.

179 See id. at 102.

180 SOMALIA: A COUNTRY STUDY, supra note 176, at 71.

181 Lyons & Samatar, supra note 36, at 8.

182 Id. The common ancestor is Samaale, to whom a great majority of Somalis trace their genealogical roots. See SOMALIA: A COUNTRY STUDY, supra note 176, at 71.

183 See Lyons & Samatar, supra note 36, at 10. While this code of conduct did not eliminate conflict, it did offer a workable way of handling such discord. "The combined meaning of these elements constituted the milieu in which the private and the public were defined." Id.

184 See id.
linked to economic structures through the ideology of kinship, which created "an interlinked web of social, economic and political institutions." Somalis possess a powerful sense of ethnic exclusiveness, notwithstanding their myriad internal divisions, and their contact with the outside world has frequently been confrontational. Needless to say, they resisted colonialism.

B. Colonial Somalia

1. Colonial Rule

Four states colonized Somolia, and divided the land into five territories. Colonization began after the British occupied the port of Aden in Yemen in 1839-1840, in order to meet its needs in India. Aden’s needs eventually led to northern Somalia becoming a British protectorate by 1886. France arrived in the region at about the same time as Britain, purchased concessions, and eventually made full claim over what became known as French Somaliland and is now Djibouti. The Italians arrived in Southern Somalia in the late nine-

---

115 Id. at 8.
116 Lewis & Mayall, supra note 28, at 102.
117 See infra notes 188-240 and accompanying text.
118 British Somaliland (north central); French Somaliland (northwest); Italian Somaliland (south); Ethiopian Somaliland (the Ogaden); and what came to be called the Northern Frontier District (NFD) of Kenya. See SOMALIA: A COUNTRY STUDY, supra note 176, at 3.
120 See CHAZAN ET AL., supra note 36, at 11. The need for meat and other supplies at the Aden coaling station, and northern Somalia’s abundance of sheep, goats, camels, and cattle brought Somalia to London’s attention. Aden had few resources of its own, so it relied on Northern Somaliland for its supply of meat. See id. at 10-11. The first formal treaties were signed with the British government in the nineteenth century, as the Somalis sought political protection from Britain in exchange for the export of Somali livestock to the Aden coaling station. Muusa Bihi Cabdi, Independent Somaliland, in CRISIS MANAGEMENT AND THE POLITICS OF RECONCILIATION IN SOMALI (M. A. Mohamed Salih & Lennart Wohlgemuth eds.). Britain retained a laissez-faire attitude towards its Somali colony, content to rule from afar as long as fresh supplies of cattle continued to sail into Aden. Since the tenth century, the coastal zone of Somalia had been a passageway between the “pastoral Somali hinterland and regional commercial centers in southeastern Africa, Egypt, coastal parts of Arabia, Persia, and even faraway China.” Lyons & Samatar, supra note 36, at 10.
121 See LYONS & SAMATAR, supra note 36, at 11 (seeking Ethiopian resources and a port of call, the French “bought concessions and eventually made full claim over [Djibouti]”). It also wanted to infiltrate the British zone of influence that spanned from Cairo to Cape Town, and counter high duties imposed on French goods at the port of Aden. Accordingly, France purchased the port of Obock from the Afar in 1862 and established the Somaliland protectorate.
teenth century and formally established a colony in 1893. While Britain established indirect rule, Rome sent a significant number of Italian settlers to its colony, imposed a more direct administration and eventually introduced elements of fascism. Ethiopia expanded to the east in the late nineteenth century and asserted sovereignty over the Somali-inhabited Ogaden region. Finally, British colonial authorities claimed territory inhabited by Somalis in northeastern Kenya. Given the divisive nature of colonial conquest, early Somali nationalists organized in opposition to colonial rule and partition, and sought to unite the five territories into a single state.

The impact of European colonization partially corresponded to

LEWIS, supra note 189, at 41. Although their holdings were relatively small, the scope of French influence within the region soon matured to be vast and impressive. French and Ethiopian interests were joined both figuratively and physically. There was a constant Franco-Ethiopian friendship in the region before and after World War II, due to economic interdependence. A railroad between Djibouti and Addis Ababa crossed Ethiopian territory, providing both nations with foreign trade opportunities that were unavailable to other nations. VIRGINIA THOMPSON & RICHARD ADLOFF, DJIBOUTI AND THE HORN OFAFRICA 104-05 (1968).

A relative latecomer to colonial conquest, Italy was initially distracted by its own national unification which was not completed until 1870. As inexperienced imperialists, the Italians moved cautiously and slowly, often staking out territory only where confrontation with other colonial powers could be avoided. This strategy brought them to Somalia, where they acquired their first territory in 1888. See generally, SOMALIA: A COUNTRY STUDY, supra note 176, at 11; ROBERT HESS, ITALIAN COLONIALISM IN SOMALIA 177 (1966). Italy acquired a southeastern protectorate in 1889, later seized the Banaadir coast from the Zanzibaris, and formed the colony of Italian Somaliland in 1893. SOMALIA: A COUNTRY STUDY, supra note 176, at 11. There were three primary motivations for Italian expansion: "to 'relieve population pressure at home,' to offer a 'civilizing Roman mission' to the Somalis, and to increase Italian prestige through overseas colonization." Id. at 14.

LYONS & SAMATAR, supra note 36, at 11. Italy developed an administrative plan for its colony with intentions to establish a settler community and commercial enterprises in the region between the Shabeelle and Jubba rivers. SOMALIA: A COUNTRY STUDY, supra note 176, at 14.

Rajendra Ramlogan, Towards a New Vision of World Security: The United Nations Security Council and the Lessons of Somalia, 16 HOUS. J. INT’L L. 213, 217 (1993). Emperor Menelik II of Ethiopia emerged as a regional power during the colonial era. He prevented European encroachment in Ethiopia and successfully challenged the Europeans for control of Somali inhabited territories in the Ogaden. SOMALIA: A COUNTRY STUDY, supra note 176, at 12-13. In the late 1890s, Ethiopia defeated Italy at the Battle of Adowa which ensured Ethiopians continued control over their own destiny as well as the destiny of the Ogaden. SIMONS, supra note 175, at 35. During the late nineteenth century, Ethiopians descended upon the lowlands of the Ogaden and Haud to raid Somali livestock. The frequency and virulence of these raids partly prompted the creation of a resistance movement led by Siad Mohammad, a Muslim cleric. Indeed, after France, Great Britain, Italy, and Ethiopia carved up Somali lands at the end of the nineteenth century, this fundamentalist sheik proclaimed a holy war against the Christian colonizers, which lasted for twenty years. Known as the Dervish resistance movement, this campaign spurred a nationalist resistance campaign against all invading colonial powers, which did not end until 1920 when advances in military technology allowed Anglo-Ethiopian forces to crush and level Dervish towns. This protracted anti-colonial rebellion, retrospectively viewed by Somalis as a proto-nationalist movement, survived four major British military expeditions and the first use of air strikes in colonial Africa, before it collapsed in 1920 upon the demise of Siad Mohammed. Lewis & Mayall, supra note 28, at 102.

LYONS & SAMATAR, supra note 36, at 11. This became known as the Northern Frontier District.

Id.
the imperial aspirations of each of the colonial powers. In general, the greater the desire to colonize the area, the more complex the colonial legacy. While all three European colonies lacked sufficient resources in areas such as education and health care, and none posited Somali self-government, there were differences in the resources devoted to these and other spheres. Britain sought only to provide supplies for its coaling station in Aden and was, therefore, reluctant to commit resources to its Somaliland Protectorate.\(^{197}\) French aspirations stemmed from a desire to penetrate the British sphere of influence, and consequently its ambitions were also limited in scope.\(^{198}\) Italy, however, arrived in Somalia intending to create a full-fledged colony, and thus, more resources were committed to its colonial endeavors.\(^{199}\) Attempts were made to develop the Somali economy for the benefit of the motherland,\(^{200}\) and resources were devoted to constructing an infrastructure to support this economic activity.\(^{201}\) Southern Somaliland progressed towards decolonization with a permanent infrastructure, some educational facilities, an economy based

\(^{197}\) Occupied with other recent acquisitions and restrained by parliamentary demands to limit spending, Britain remained reluctant to colonize the Horn of Africa.

\(^{198}\) Like Britain, France was content with the establishment of a prosperous port for trade and supplies, although France attached extreme importance to the port of Djibouti throughout the colonial period. Lewis, supra note 189, at 181. France, however, was not zealous or optimistic with regards to colonial governance of its protectorate, and was satisfied that the colony bisected potential east-west expansion across Africa by Britain. See id. at 136-38; 181.

\(^{199}\) Italian imperialists envisioned a place in the sun for Italy — with an influx of settlers and the development of colonial plantations along the Shebelle and Juba Rivers in the South. See id. at 92.

\(^{200}\) Initially hampered by problems with labor recruitment and the outbreak of a series of conflicts between Ethiopia and Somalis, the Italian settlement scheme evolved slowly. The arrival in Somalia of new technology for tropical agriculture, however, and the commencement of the fascist governorship of Governor De Vecchi (between 1920 and 1929), brought a renewed sense of commitment to Italian colonial aspirations. De Vecchi brought new modes of oppressive colonial rule to Somalia, which replaced the paternalist policies that characterized the first eighteen years of Italian rule. Hess, supra note 192, at 149-180. After World War I, Italian Somaliland began to reflect the imperialist visions that inspired its founding. The Societa Agricola Italio-Somalia (SAIS) was an agricultural consortium that produced cotton, sugar, bananas and soap. SAIS was established after previous attempts at plantation farming failed and the prospects of settling a large number of Italian farmers in Italian Somaliland dimmed. Lewis, supra note 189, at 93. It initiated new ways to acquire land and labor by contracting directly with Somalis rather than going through the colonial administration. The resulting system was a co-operative ‘collaboration’ whereby each worker was allocated a section of land; half was for his own use, and half was to be worked for the Company. The Italians still faced labor shortages, however, and often resorted to forced labor, which was bitterly resented by the Somali people. Id. at 94-95. SAIS’s success led to its methods being imitated throughout Italian Somaliland and this resulted in new patterns of trade. Banana exports soon became the most important product, rivalling such traditional mainstays as hides and skins. Id. at 96.

\(^{201}\) The makings of a permanent infrastructure began to take shape. The Italians built routes between plantations, eventually covering 6,400 kilometers. A small diesel railway system was established that linked two of the larger plantations with the capital and port of Mogadishu. Lewis, supra note 189, at 96. A badly needed well-drilling scheme to aid the nomadic sector of the economy was initiated. One hundred and fifty wells were built and a series of irrigation works were undertaken to improve the traditional subsistence cultivation economy. Id.
on agriculture, and an administrative system rooted in Italian fascism. \(^{292}\) It emerged from colonialism as a poor country, but nonetheless in a position of economic and educational superiority vis-a-vis its northern neighbor. This imbalance led to considerable tensions and antagonisms upon the union of the two colonies. \(^{293}\) In what is now the Republic of Somaliland, the situation was quite different. \(^{294}\) Few resources were devoted to matters such as education, \(^{295}\) health care, facilitating the existing economy, \(^{296}\) or building and maintaining an infrastructure. Indirect rule emerged as the preferred method of governance, \(^{297}\) and local authorities were relied on to carry out imperial edicts locally. \(^{298}\) Little changed until after the Second World

---

\(^{292}\) The colony was divided into seven provinces or 'Regions', which contained thirty-three Districts and was presided over by a Resident. See Hess, \textit{supra} note 192, at 149-56. The administrative system of Italian Somaliland was bureaucratic, highly centralized, and directed by the Governor and his subordinates and secretaries in Mogadishu; Somali participation was almost non-existent. In the Districts and Provinces, government officials (Residents) were assisted in an advisory capacity by chiefs who were given a government stipend and were known as ‘Capos.’ Capos served as vehicles for directives and instructions. Occasionally ‘Capos’ who proved loyal and co-operative were granted colonial decorations and financial rewards. The Civil Service as a whole included approximately 350 expatriate Italians, and 1,700 Somalis and Arabs, employed in a variety of subordinate positions. Italian direct rule, when implemented, resembled a version of indirect rule, which evolved by necessity. The number of personnel stationed in the colony was limited, and therefore, the Italians were content to limit their influence in many Districts to putting a stop to inter-clan warfare. \textit{Id.} at 180-81.

\(^{293}\) See CHAZAN ET AL., \textit{supra} note 50, at 50.

\(^{294}\) British Somaliland is now the Republic of Somaliland. The British engaged in twenty years of dervish warfare in the North beginning in 1899; although they eventually prevailed, it was expensive and they were left with a hostile and distrustful population. The British government then had to make additional funds available to develop some form of infrastructure. LEWIS, \textit{supra} note 189, at 101. During the ten-years after the Dervish war, British input into the colony consisted of opening an agriculture and veterinary office, initiating a limited well drilling scheme to assist the pastoral economy, and providing a few medical services. \textit{Id.} at 101-02.

\(^{295}\) Lack of funds made developing an educational system difficult. Although there were plans to open six elementary schools and an intermediate school, it was to be financed by implementing a direct tax on livestock. This measure was abhorrent to Somalis and had to be abandoned. \textit{Id.} at 103. Widespread opposition to precepts that contradicted Muslim scriptures further complicated efforts to impose western education. Consequently, proposals to institute such systems had to await British reoccupation in 1941 after the Italians were expelled. The upheavals of World War II had a considerable impact upon the Somali population. After the war, there was appreciably less hostility to secularization and other forms of social change. \textit{Id.} at 132.

\(^{296}\) With no input from the British, the Somali community gradually adopted sorghum cultivation in the western part of the territory. Elsewhere, the nomadic economy prevailed and sheep, goats and skins were exported. \textit{Id.} at 102-103.

\(^{297}\) Somali culture made it possible to administer the colony with a relatively light hand. \textit{Id.} at 104. Despite the presence of only a small group of expatriate British officials aided by Indian and Arab clerks, the Somali clan genealogical system provided a framework through which effective indirect rule could be established. Partly because of the deep antipathy it held towards the Somalis (for not respecting British imperial might), Britain did not formulate a plan for its colony. Instead, the Administration's only goal was to maintain law and order. \textit{Id.}

\(^{298}\) \textit{See id.} at 105-06. The territory was divided into six districts and ruled from the seat of government at Berbera. Poor communications and long distances between stations and the capital meant district commissioners wielded a great deal of authority. In contrast, clan elders who demonstrated loyalty were given nominal authority and small stipends. For the most part, how-
War, when trade and commerce were reestablished and efforts were made to introduce secular education, to establish health and veterinary services, and to improve the agricultural sector by digging more wells. Britain decided to focus more attention on the interior and moved the capital from Berbera to Hargeisa. In the political realm, a Protectorate Advisory Council met, with delegates representing most public interests. Meanwhile, indigenous political interest swelled in regard to the future status of the Protectorate and other Somali territories. Nonetheless, an undercurrent of antagonism and resistance to change remained, manifesting itself in riots in 1944 and 1945. The administrative establishment remained inadequate, and the population remained uneducated and uninvolved in many technical realms, although they did retain ancient nomadic skills. Thus, as British Somaliland moved towards independence and unification with Italian Somalia, the North lagged behind the South in infrastructure development, education, health care, and participation in formal political processes. Other potential problems loomed. While Somalis are homogeneous in many respects, they make a number of distinctions between themselves both within and between clan families, and many of these differentiations are tied to migration. Other distinctions include those between pastoralists, ever, all effective power remained with District commissioners who also acted as magistrates. From the end of the Dervish period until after the East African campaign during the Second World War, this scenario described the general character of life in the Protectorate — Somalis wanted to maintain the status quo and the British were in basic agreement. Id. at 106.

With the outbreak of World War II, Italian East African forces invaded and ousted the British from northern Somalia in August 1940. SOMALIA: A COUNTRY STUDY, supra note 176, at 15. The Italian victory was short-lived, however, and the British returned in March, 1941 to reoccupy British Somaliland. Both the Somalis and the British emerged from the Second World War with new perspectives and different ambitions. Britain was ready to abandon its policy of maintenance in favor of more progressive policies, and Somali leaders were more open to what was termed social progress and to secular change. As a result of these sentiments, the British military forces that administered the Protectorate from 1941 to 1949 instituted greater political and social changes than any of their predecessors. Id. at 15-16.

There was a concerted radio and mobile cinema campaign to win support for educational services. LEWIS, supra note 189, at 133. The public response was favorable. By 1945, seven elementary schools, with more than four hundred students, and two intermediate schools, were functioning. Public health services were extended and a school to train Somali nurses was opened in 1945. Id. at 132-33.

Id. at 128 (explaining that this decision followed from the new policy to extend administrative and social services throughout the Protectorate). See also SOMALIA: A COUNTRY STUDY, supra note 176, at 16-17.

LEWIS, supra note 189, at 134. This council first met in 1946. Id.

Id.

In 1944 and 1945, locust infestation resulted in severe land devastation. The government initiated protective measures which the Somali population interpreted as a deliberate attempt to kill Somali camels. Riots ensued, and highlighted the need for improved public relations. Id.

Id. Five Commissioners ran six Districts and only one was able to speak Somali.

Id.

See SIMONS, supra note 175, at 32-33.
inter-riverine agriculturalists, and those Somalis who migrated to coastal towns.\textsuperscript{218} Undoubtedly, socioeconomic differences existed in Somalia before Europeans arrived.\textsuperscript{219} Yet the European "introduction of indirect rule, their obsession with preventing conflict, and their desire to enmesh Somaliland in economic interdependencies meant that local migrations, local boundary disputes, and differences in local modes of production were made contestable in new ways."\textsuperscript{220} The effects continue to have repercussions today in terms of class relations, economic dependency, agrarian underdevelopment, and environmental degradation.\textsuperscript{221} The powerful forces of the international market, and imperialism, corroded the old Somali moral order, and as the colonial period ended, Somalis were left with a growing divergence between the internal logic and demands of a social structure suited to a decentralized, pastoral setting on the one hand, and the artificial, alien state and externally oriented world market system on the other.\textsuperscript{222}


The different colonial experiences of British and Italian Somaliland were also reflected in the varying methods by which these territories prepared for decolonization. A United Nations trusteeship

\textsuperscript{218} Id. Pastoral clans make up approximately seventy percent of the population, and the southern agricultural pastoral clans make up about twenty percent. SOMALIA: A COUNTRY STUDY, supra note 176, at 73. These clan-families evolved differently as they adapted to different physical environments. Pastoral Somalis considered themselves superior to settled Somalis, and lineage remained the focal point of loyalty for pastoral nomads. The southern groups developed a more heterogeneous society that accorded status to different groups on the basis of origin and occupation. Group cohesion developed a territorial dimension among the settled agriculturalists. Id.

\textsuperscript{219} SIMONS, supra note 175, at 33.

\textsuperscript{220} Id. Simons gives the following example:

[C]olonial officials sought to curtail pastoral sources of conflict through more clearly defining which grazing grounds and water sources belonged to which groups. At the same time, the very process of mapping clear lines of usership led to intense jockeying among rival groups of Somalis before control could be established and then, once it was, over whether the new rules were just.

Id.

Indirect rule by colonial administrations meant a variety of positions became available that were to be staffed by Somalis. Competition over appointments exacerbated differences between factions of Somalis. As Simons explains,

\textsuperscript{221} Id.

\textsuperscript{222} See generally LYONS & SAMATAR, supra note 36.
was established in the South, and the Italian Trust Administration was formed to administer it.\textsuperscript{223} Advancements were achieved on the educational front,\textsuperscript{224} while efforts to transform the economy were largely unsuccessful.\textsuperscript{225} Both efforts dovetailed with “Somalization” in the political realm, which proceeded through a variety of mechanisms, such as the creation of various administrative bodies and eventually elections at various levels.\textsuperscript{226} Political parties proliferated before finally

\textsuperscript{223} \textit{LEWIS \& Mayall, supra note 28, at 102-03.} When the Allies defeated Italy in 1941 the Italian, Ethiopian, and British colonies were brought under British military administration. Somalis would be governed within a single state and prepared for self-government. This plan was soon abandoned, however, and Somali territories resumed their former colonial status, while the Italian colony was placed under UN trusteeship to be administered by Italy under a ten-year mandate (1950-60).\textit{ Id.} The trusteeship system imposed obligations on trustees that were overseen by the United Nations. \textit{See generally, Gordon, Some Legal Problems, supra note 2, at 302.} Italy was obligated to “foster the development of free political institutions and to promote the development of the inhabitants of the territory towards independence.” \textit{LEWIS, supra note 189, at 139} (internal quotations omitted). Somalis were to be granted increasing responsibility for political and administrative functions, under the watchful eye of the Trust Administration and a U.N. Advisory Council created to sit in Mogadishu. The ten year Trusteeship was scheduled to terminate with Somali independence on or before December 2, 1960. \textit{Id. at} 139-40.

\textsuperscript{224} Student enrollment increased; politically specialized schools, as well as technical and commercial institutes, were opened; and an ambitious program for overseas study was established. \textit{Lawrence Finkelstein, Somaliland Under Italian Administration: A Case Study in United Nations Trusteeship} 16 (1955). These developments provided a stronger base in the administrative and political realms for the ensuing transfer of authority. \textit{LEWIS, supra note 189, at 144.}

\textsuperscript{225} There were, however, modest improvements in some spheres, such as infrastructure development. Between 1950 and 1955, an annual subsidy of more than three million Italian lira was devoted to improving roads, communications, and other public works. \textit{LEWIS, supra note 189, at 142.} In 1954, a Seven Year Development Plan was launched to increase agricultural and livestock development. Initial results were encouraging, with modest gains in the production of cereals, cotton and sugar cane. The principle export remained the banana, however, and production increased five fold over the pre-war years. \textit{Id. at} 143. The emphasis on the banana industry allowed Italy to dominate the Somali economy. \textit{Jan M. Haakonsen, Scientific Socialism and Self-Reliance: The Case of Somalia’s “Instant” Fisherman} 52 (1984). Italy, however, was not profiting from the monopoly it held in the banana industry and Italian consumers paid inflated prices. Haakonsen asserts that Italy wanted to retain economic control in Somalia because it believed oil would be discovered there. \textit{Id. at} 53. Of all the private and public investment between 1954 and 1957, nearly half went to oil prospecting. The heavy emphasis on the banana industry meant other agricultural sectors that could have helped to make Somalis self-sufficient in food production by the time of independence were not developed. \textit{Id. at} 52. Instead, Somalia remained poor and continued to run at a serious deficit. \textit{LEWIS, supra note 189, at 143.} A World Bank mission in 1957 concluded that exceptional financial assistance would probably be needed for twenty years after independence. \textit{Id. at} 143-44.

\textsuperscript{226} A national Territorial Council was created in 1950, and this political body proved to be an active participatory forum. \textit{Id. at} 144. Between 1950 and 1955, the council considered approximately 100 ordinances, covering a wide range of topics. These draft ordinances and government decrees were forwarded to the Trust Administration for scrutiny and discussion. Legislative committees, offices, and local governmental bodies were created. In 1954, the first municipal elections were held; seventy-five percent of the male-only electorate voted and sixteen parties proffered candidates. Elected membership in rural councils was introduced in 1955, and by 1956 there were 48 Municipal Councils representing towns and provinces. In 1956, the Somali Territorial Council was transformed into a legislative assembly with seventy seats and full statutory power over domestic affairs. The head of the Italian Trust Administration, however, retained the right of absolute veto. In the Assembly, the Italian and Arabian
consolidating into five parties by 1956. The 1956 elections demonstrated the dominance of the Somali Youth League (SYL), which won the election, formed a government and began to tackle constitutional questions and other issues. As southern Somalia proceeded towards independence, the issue of Pan-Somalism moved to the forefront, and steps were taken towards the eventual unification of British Somaliland and the Somali Trust Territory. British Somaliland came to unification by a different route. Absent a certain date for independence, preparations evolved at a much slower pace, and the eventual demise of colonial rule unfolded in a kind of controlled chaos that might have been avoided if preparations had begun ear-

Id. at 145. Upon returning to Somalia, the Italians initially deployed strong military forces to quell potential anti-Italian uprisings. Id. at 140. The most vocal anti-Italian sentiment arose from the Somali Youth League (SYL), a political movement founded to promote Somali independence. E. Silvia Panthurst, Ex-Italian Somaliland 175-84 (Greenwood Press 1969) (1951). The SYL established commercial and agricultural companies, anti-disease control boards, language classes and other programs to benefit the Somali people. Panthurst, supra, at 177. The British Protectorate preferred the SYL. Id. And, after some initial enmity, the Italian Administration also found itself encouraging those elements of the SYL which it considered to be moderate. See Lewis, supra note 189, at 146.

Id. at 189, 146. In the 1956 national election, the SYL won 43 of the 60 available seats. Lewis, supra note 189, at 146. It was called upon to form a government under 'Abdilahi Ise. Id. The SYL retained its political preeminence, winning 416 of 663 seats in the 1958 municipal elections, and twenty-two of the twenty-nine contested seats in the 1959 national elections. In the 1958 election, women finally were permitted to vote. Id. at 158-60.

Constitutional questions generated political objections both inside and outside of the SYL. The SYL favored a unitary state with a high degree of centralized authority, while other parties sought a type of federal relationship that would permit a high degree of regional autonomy. A break-away section of the SYL formed the Greater Somali League (GSL) which pushed for a more militant stance with regard to the Pan-Somali issue. Id. at 157-58.

A number of vexing questions faced the Ise government in the years leading to independence, and measures were inaugurated to combat perceived problems. Attempts were made to separate secular and religious jurisdictions, and numerous provisions were enacted to weaken the continued vitality of collective clan solidarity. Id. at 155-56. Statutes prohibited political parties from bearing tribal names and judicial procedures were modified to place a stronger emphasis on individual rather than collective punishments. Somali District Commissioners were granted temporary judicial powers to enforce legislative measures. The government also faced the task of preparing a constitution for the independent state, and a decree passed in September, 1957 set up two committees to study the problem. One committee was political and the other, which included Italian advisors, was technical. African states that had already achieved independence were to serve as models. Id.

Id. at 161. Following the 1959 election, Ise moved the Pan-Somali issue to the forefront of his party's program. In December, 1959, the U.N. adopted a resolution terminating Somalia's trusteeship status as of July 1, 1960, which was several months ahead of the previously set date. Id. at 162. This announcement intensified the clamor for independence and unification with the North. Informal talks between Northern and Southern leaders were transformed into formal agreements in 1960 when Somalia's constitution was completed. Id. at 163. The Republic would be a unitary state with one flag, one president, one parliament, and one government. It was agreed that an elected president would serve as head of state, and that the state would be governed by a prime minister and council of ministers who were responsible to a legislative assembly. The administrative, judicial and economic systems of the two territories would continue to function separately until integration. Id.
Local and national politics developed slowly, and political activity in the Protectorate remained dormant until Britain relinquished control of the Ogaden to Ethiopia in 1956. This led to an upsurge in political activity and mounting demands for autonomy. The Protectorate's first legislative council was formed in 1957 and reconstituted to include elected Somali representatives in 1959. Calls for unification with the Southern Trusteeship led to a resolution requesting immediate independence and union with Somalia; the British willingly complied. Independence finally came on June 26, 1960. Five days later, British Somaliland became independent and united with Somalia. The new Republic's constitution was to be

---

232 Id. at 148. Moreover, valuable collaborative opportunities between the Italian and British were not possible because unification was rushed. Id. On the other hand, it also has been argued that had preparatory negotiations between Italy and Britain been held, they would have led to a clash of diverse interests, and thus might have inhibited unification. See generally SAADIA TOUVAL, SOMAL NATIONALISM: INTERNATIONAL POLITICS AND THE DRIVE FOR UNITY IN THE HORN OF AFRICA 111 (1963).

233 The Local Authorities ordinance enacted in 1950 allowed the governor to appoint local authorities to serve as a link between district commissioners and the people. LEWIS, supra note 189, at 149. Town and district councils were initiated, and those in Berbera and Hargeisa quickly acquired a measure of financial responsibility. At the national level, an Advisory Council met twice a year to discuss a widening range of issues. Id. at 150.

234 Id. at 150-151. Numerous Somalis live, and graze and water livestock, in the Ogaden. The Ogaden, or Haud, is a contested region between Somalia and Ethiopia. Id.

235 One response was the formation of the National United Front, which was supported by both the SYL and the Somali National League (SNL). Id. at 151. It sought recovery of the Haud and independence for the Protectorate. In 1956, the British Government responded to nationalist calls for political participation by announcing that the pace towards self-government would be accelerated and representative government would gradually be introduced. The British government also indicated that it would not stand in the way of the eventual union with Somalia. Id.

236 Id. at 152-53. The Council contained twelve elected members, fifteen nominated official members, and two nominated unofficial members, with the governor serving as President. Id.

237 In 1959, delegates from all the parties and political groups in British Somaliland met in Mogadishu to form the National Pan-Somali Movement. Id. at 155.

238 The Legislative Council unanimously passed the resolution on April 6, 1960. Id. at 162. The Prime Minister announced in the House of Commons five days later that his government was sympathetic to the Somali request, and on May 4, 1960, the Colonial Secretary announced arrangements that would allow the Protectorate to become independent by July 1, 1960. Hence, the British took full advantage of the opportunity to rid itself of one of its least rewarding possessions. Id. at 162-63. Britain also feared that if independence was delayed, southern Somali dominance would be further strengthened once the North finally gained independence. See TOUVAL, supra note 232, at 111.

239 LEWIS, supra note 189, at 164.

240 Id. In 1960, Britain relinquished its sovereignty over British Somaliland, creating the Independent State of Somaliland, which merged with the UN Trust Territory of Somalia. Cabdi, supra note 190, at 83. The territories united on the basis of their previous agreements and met in a joint legislative session at Mogadishu to officially create the Republic of Somaliland. The two legislatures merged into one National Assembly of the Somali Republic with Aden Abdulla Osman as provisional President of the Republic. Osman was a prominent leader of the SYL and former President of the Legislative Assembly of Somalia. See TOUVAL, supra note 232, at 112. Six days later, Jama Abdullahi Galib, a leading member of the northern SNL party, was elected President by the Assembly. Forming a government, however, proved to be more difficult. Three weeks after Galib's election, the new Somali Republic had a government which repre-
ratified by a national referendum to be held a year later. Amid an atmosphere charged with nationalistic and patriotic fervor, the new government turned to the Republic's many problems.

C. The Somali Republic 1960-1967

The Somali Republic began its existence with a constitution and political structure that were typical in new African Republics. The President was to serve as head of state and commander in chief of the armed forces, the National Assembly was vested with legislative power, and the judicial branch was to be independent of the other two branches of government. The constitution included an extensive bill of rights and created local municipal and district councils. Nonetheless, the south soon emerged as the dominant region and northern discontent and resentment escalated. Northern soldiers quickly, albeit unsuccessfully, rebelled and the national government presented a reasonable balance of northern and southern interests. Ministerial positions were allocated to parallel closely the ratio of northern (33) and southern (90) seats in the National Assembly. After a complex political struggle within the SYL, Abdirashid Ali Shermarke, a southern opposition leader within the SYL, was named Prime Minister. See generally Touval, supra note 232, at 113; Lewis, supra note 189, at 165-66.

The constitution, however, was not without controversy. Northerners manifested their discontent and resentment in the national constitutional referendum held on June 20, 1961. The northern SNL party organized a boycott which resulted in a total vote of just over 100,000 in the North, half of which were negative. In the south, more than 1.5 million people voted in favor of the constitution, and only slightly more than 100,000 against it. Lewis, supra note 189, at 165-66.

232 Christian P. Potholm, Four African Political Systems 188 (1970). The National Assembly chose the President for a six-year term, with a limit of two consecutive terms. The President was given the authority to summon and dismiss Parliament, call and retire the Cabinet, and ratify treaties. The National Assembly consisted of 123 members who were elected for five-year terms by universal adult suffrage. Although legislative authority was vested in the Assembly, bills could also be introduced to the legislature by the President or a group of 10,000 voters. The Prime Minister and the Council of Ministers were responsible to the National Assembly. The constitution intentionally kept the judicial branch independent of the executive and legislative branches. This branch consisted of a Supreme Court that possessed civil, criminal, administrative, and accounting jurisdiction. Id. See generally Paolo Contini, The Somali Republic: An Experiment in Legal Integration 16-19 (1969).

243 See Potholm, supra note 242; Contini, supra note 242.

244 See Haakonsen, supra note 225, at 54. Because the population was larger in the south, it held a majority of the parliamentary seats. Southerners also had more experience administering a modern state because Britain did not allow political parties in governing councils until 1959. Id. Thus, politicians from the south took most of the new government posts. These posts included the president, prime minister, more than two-thirds of the senior cabinet posts, and the two top posts in the military and police forces. Lyons & Samatar, supra note 36, at 12. The north also sacrificed more than the south upon unification. Hargeisa was reduced from the status of capital to that of a provincial headquarters, thus initiating a flow of business and prosperity towards the new capital in the south. This economic impact was further aggravated by a marked increase in unemployment in the north which accompanied the withdrawal of prominent British officials after independence. I. M. Lewis, Integration in the Somali Republic, in African Integration and Disintegration: Case Studies in Economic and Political Union 273 (Arthur Hazlewood ed., 1967).

245 Some northerners felt betrayed by the actions of southern politicians after independence.
made efforts to include the north in the new nation in a more meaningful way. Changes in the political realm led to the channeling of northern resentments more directly into the political arena and the formation of an organized opposition party. Joining two different administrative, judicial and economic systems proved to be a more formidable task, however. Besides problems of distance and communication, difficulties emerged in merging bureaucracies, consolidating fiscal and accounting procedures, unifying judicial procedures, and combining police and military forces. Linguistic differences and feared that their region would now become a neglected outpost, especially when the northern capital of Hargeisa was nearly one thousand dirt road miles from the capital of Mogadishu. Lyons & Samatar, supra note 36, at 12. A group of northern soldiers arrested their southern superiors in a military coup in 1961. The fact that the coup did not receive strong sympathy in the north or the south indicates that nationalistic sentiment dominated regional resentment. Although the people of the north wanted change, destruction of the Republic went too far. While the coup was technically a failure, it finally succeeded in prompting a sluggish government into action. Lewis, supra note 189, at 173-74.

Personnel in all branches of government service were more often posted on a national basis, and the government enacted a Civil Service Law unifying salaries and conditions of service. This resulted in pay increases for many northern civil servants. See Lewis, supra note 189, at 174. The government adopted new fiscal and accounting procedures, based on northern prototypes, and numerous development projects and industries for the north, including modernizing the Hargeisa airport, constructing hospitals, and introducing mechanized wheat and sorghum farming schemes. The Assembly passed legislation extending universal suffrage to the north and unified regulations governing municipal and rural district councils. By the end of 1963, the government completed the monumental task of establishing a uniform legal code. See id. at 175, 178.

A more organized and powerful parliamentary opposition party, the Somali National Congress (SNC), emerged. Northerners channeled their resentment directly into the political arena through this party. The SNC wanted to bring down the SYL, but not to divide the Republic. Because the integrity of the Republic was not in serious jeopardy after three years of independence, Somali officials could turn their attention to another Somali political objective — bringing all Somali nationals living outside of the Republic into the national fold. See id. at 175-79.

The distance between the capital, Mogadishu, and the administrative center of the Northern Region was approximately 530 miles. For many months after unification no direct telephone link connected them and there were only two flights each week. By automobile, the trip took about three days and was frequently impossible because of poor road conditions. Touval, supra note 232, at 114.

Civil servants in the north had less experience in senior posts then those in the south; however, they were better trained, received higher salaries, and were able to avoid the politics and corruption that reportedly plagued their southern counterparts. Id. Although integration required accommodations from both sides, the many Italian and British officials remaining in the country after independence as technical experts were opposed to changing their administrative systems and tended to hinder rather than facilitate compromise. Lewis, supra note 189, at 171. The judiciary presented a different set of problems. Unification did not pose many difficulties at the lower levels, but new forms of appellate review were necessary to replace colonial High Courts. The legal system in the north was based primarily on English common law and statutes and the Indian Penal Code, while in the south, it was based on Islamic law. See Touval, supra note 232, at 115. Merging fiscal and accounting procedures was equally complex because of vastly divergent procedural differences. Combining the police and military forces was difficult because of differences in equipment and training traditions. All of these changes were accomplished despite the fact that previously, the Somalis had never been united into a single state, were economically weak, and did not possess a national script. See Colin Legum & Bill Lee, Conflict in the Horn of Africa 31 (1977) (discussing the roots of Somali nationalism).
and lack of a national script also aggravated attempts at integration. 254 Moreover, all of these changes had to be attained in a new and economically weak state.

Ultimately, parliamentary democracy proved to be a failure in Somalia. While a detailed assessment of the events leading to the ultimate downfall of the Republic is beyond the scope of this paper, it is possible to postulate that a combination of factors led to its demise. Clanism assisted in mediating between the government and the people, but also led to the espousal of narrow political interests. 272 The burning desire of Somalis to unite all Somalis in one country and under one flag was overwhelming and drove many political decisions. 275

559 Somali is a spoken language, and each region used a different written language; English in the north and Italian in the south. Touval, supra note 232, at 114. These linguistic differences, and the lack of a national script, aggravated attempts at integration in all spheres of activity. No civil servants and few senior officials and politicians were bilingual. Consequently, letters, memoranda, and other documents were not comprehensible from region to region without the aid of a competent translator. Unfortunately, translators and interpreters were virtually impossible to find. Lewis, supra note 189, at 171. Business transactions between regions, already complicated by differences in currencies and tariffs, were made even more difficult by the inability to provide adequate documentation. Moreover, Somalia lacked the binding influence that a national language and script creates among a people and a nation. Id. at 170-71. Professor Laitin suggests that language policy often has an important impact on the level and degree of political participation, as well as on political thought and culture. See David D. Laitin, Politics, Language and Thought 3 (1977). Unfortunately, attempts to choose an official language or a national script engendered heated opposition, and the issue was shelved. Somali politics and the society as a whole paid dearly for not designating a national language and script. Id. at 222 (discussing the consequences of choosing a national script).

521 The economies of the two territories were competitive rather than complimentary, and less than one percent of either region's trade was with the other. Tariff and currency differences further restricted movement of goods and services between regions. See generally Legum & Lee, supra note 249, at 31; Touval, supra note 232, at 116.

272 Lewis, supra note 244, at 257-59. Clan organizations were pressure and interest groups, and provided vital feedback between the central government and society as a whole. Somali society could afford particular and local attachments given the overall societal homogeneity and general agreement on the goals of the political system. Somalis were also quite nationalistic, which would prove to be invaluable in overcoming differences and focusing attention on national goals. See Potholm, supra note 242, at 207-08.

This is not to say, however, that these two factors were always complimentary or mutually exclusive. "Clanism" sometimes blocked effective national unity. At other times, nationalism directed government military policy and forced the depletion of valuable resources in the struggle to free all Somalis. There were Somalis in French Somaliland (present day Djibouti) in the Northern Frontier District of Kenya, and, as has been previously mentioned, in the Ethiopian Ogaden. See id. at 209. In the end, the traditions that helped unify Somalia would one day tear it apart.

275 Pan-Somalism greatly influenced the new nation's course and permeated every sector of Somali society. From the outset, one of the primary objectives of the Somali government was to bring Somalis living outside the Republic into the national fold and the Republic's very formation "was celebrated as a only a partial victory in the pursuit of full nationhood." Legum & Lee, supra note 249, at 31. The flag had five stars that represent the five regions that Somali nationalists wished to join under one nation. The constitution included an article which read: "The Somali Republic shall promote, by legal and peaceful means, the union of Somali territories...." Lewis, supra note 189, at 269 n.17. This keen national consciousness can be attributed to several factors. One was resentment of alien governments, whose rules and regulations often placed incomprehensible burdens upon the Somali's nomadic way of life. Islamic religi-
On the one hand, Somali nationalism proved to be a unifying force, while on the other, it ultimately proved to be futile and led to ill-advised foreign forays, a burgeoning military, and explosive tensions with neighboring countries. The failure of these foreign ventures directly affected political policies and fortunes back home.

There were also grave difficulties with post-independence institutions and the men who led them. "Many [leaders] of the generationious beliefs were a second factor which made acceptance and allegiance to non-Muslim rule humiliating. TOUVAL, supra note 292, at 61-62. Finally, common language and ancestry created a Somali homogeneity that reinforced the not unreasonable Somali belief that they are all descendants of a common clan and should be united in a common nation. LEWIS, supra note 244, at 257-59.

25 During the 1960's, Somalia expanded its armed forces at a rapid rate. It received substantial military aid from the USSR, after a disastrous encounter with Ethiopia in 1963-1964, and built its military to a standing army of 20,000. LEGUM AND LEE, supra note 249, at 32. Somalia received more aid than any other country in the Horn, and had a higher military budget than almost any other country in Africa. See PAUL B. HENZE, THE HORN OF AFRICA FROM WAR TO PEACE 95-100 (1991).

255 Somalis in French Somaliland, Ethiopia and the Northern Frontier District (N.F.D.) in Kenya were not in a position to unite with the Republic. France was determined not to make concessions on sovereignty and regarded the Pan-Somali movement as a threat to be resisted as firmly as possible. General de Gaulle announced in 1959 that France attached extreme importance to the port of Jibuti and had no intention of relinquishing control over it. France was also allied with Ethiopia. LEWIS, supra note 189, at 181. In the Ethiopian Haud and Ogaden regions, there were no avenues available to express Somali nationalist aspirations. Party politics were prohibited and overt expressions of Somali nationalist sentiment were dealt with firmly. There were an escalating number of rebellious incidents and this tense situation was further exacerbated when Ethiopia and Somalia failed to reach an agreement on a mutual frontier. After 1961, the Somalis established the Western Somali Liberation Front and recruited Somalis living in Ethiopia for military training. LEGUM & LEE, supra note 249, at 33; LEWIS, supra note 189, at 182.

Additionally, because Britain willingly facilitated the union of British Somaliland and the Italian Trusteeship, the Republic assumed Britain would do the same with its Somali subjects in the Northern Frontier District in Kenya. See LEWIS, supra note 189, at 185. When the ban on political organizations was lifted in Kenya in 1960, Somalis immediately mobilized within the N.F.D. for unification with the Somali Republic. The government abided by the principles laid down in the Republic's constitution and limited their actions to peaceful diplomacy with the British, although the general populace clamored for more decisive action. The British ordered a study of the problem by a N.F.D. Commission and gave the impression it would honor its findings. Nonetheless, when the commission determined that the overwhelming majority of the people in the N.F.D. wished to be united with the Republic of Somalia, Britain decided that it would not support any claim that would effect the territorial integrity of French Somaliland, Kenya or Ethiopia. In the face of angry public opinion and mounting opposition in the government, Somalia formally severed relations between the Republic and Britain in 1963. The Pan-Somali struggle left Somalia politically isolated in Pan-African affairs. The desire to move from nationhood to statehood ran counter to the process of nationalism in other African states, where elites were passionately attached to colonially defined boundaries. The Pan-Somali movement threatened Somalia's neighbors' territorial sovereignty, and, as a result, Kenya and Ethiopia signed a mutual defense agreement in 1964. Id. at 185-99. Somalia's goals set it at odds with its neighbors and allies in the West, and led to a potential alliance with the East. LEGUM & LEE, supra note 249, at 32. Moreover, with each failed attempt to bring one of the stars back into the fold, the Republic experienced political discontent and economic ramifications at home. Id.

256 The government was accused of not providing strong leadership on the Northern Frontier District and doing a poor job managing domestic affairs. LEWIS, supra note 244, at 275.
that brought independence to Somalia were men who grew up under the shadow of British and Italian colonialism. These leaders viewed the independence enterprise as an opportunity to individually profit in the emerging state. Constructing public institutions to address the immense challenges confronting them was an afterthought at best. As members of the regime and their cronies made a rush for individual gain, the post-independence political landscape failed to address the interests of the Somali populace as a whole. "Mesmerized by the ease with which they were able to generate foreign aid to mitigate deficits and support development plans, few gave much consideration to the productive sectors of the economy or to the plight of the average Somali."

Because the state was seen as the most strategic source of private wealth, myriad political parties were created to gain membership to the regime. In the chase for spoils, national and local issues were rarely debated. On the contrary, to ensure attention and victory, candidates identified their campaigns with sub-clan interests. These tactics accelerated the demise of kinship and Islamic strictures, and encouraged the rise of clanism. Consequently, clan allegiance was sharpened, rather than diminished, by allowing clan participation in a centralized state that, in turn, provided a new and enlarged arena for clan competition and conflict. Thus, while early elections indicated a growing unity within Somalia and seemed to indicate the relative success of parliamentary democracy, factionalism, the political machinations of the elite to retain power, and

\footnotesize

\textsuperscript{257} Lyons & Samatar, supra note 36, at 12.
\textsuperscript{258} See id.
\textsuperscript{259} Id.
\textsuperscript{260} Id. at 12. Parties multiplied before elections and then disappeared; few had national standing. For example, eighteen parties took part in the first post-independence national elections of 1964, which were accompanied by sharp accusations of corruption and fraud. Only three parties (the Somali Democratic Union (SDU), the Somali National Congress (SNC), and the Somali Youth League (SYL)) had any national standing. The SYL emerged as the victor, winning sixty-nine out of 123 seats. In an attempt to gain favor with the ruling party, twenty-one deputies from competing parties joined the SYL soon after the National Assembly convened. In the 1969 election, more than sixty parties supported more than 1,000 candidates to vie for 122 seats. Fearful of a splintering vote, the regime openly raided the treasury to buy votes and pressured the chief of the National Police Force to put his troops and logistics at the disposal of SYL party faithful. Finally, in order to suit the ruling party's interests, electoral rules were changed from proportional representation to a winner-takes-all model. Id.
\textsuperscript{261} Id.
\textsuperscript{262} Id.
\textsuperscript{263} Lewis & Mayall, supra note 28, at 103.
\textsuperscript{264} There was strong participation by the opposition party in the 1963 and 1964 elections. These elections also indicated how far Somalia had come in resolving the north-south division. The new prime minister was from the south, but a third of those whom he invited to join his cabinet were northerners. But see Lyons & Samatar, supra note 36, at 12 (indicating that northerners were dissatisfied with their limited representation in the new government).
\textsuperscript{265} The re-emergence of small group factionalism coincided with growing public frustration over the failed Pan-Somali struggle and with the search for economic independence. The insurgency in the Ogaden and the Northern Frontier District failed to move either closer to union with Somalia, and the Pan-Somali movement left the Republic as an exile in African affairs.
widespread corruption and disregard for the needs and desires of the
general populace ultimately contributed to the demise of the Repub-
lic.

The first nine years of independence did not create a state that
was accountable and responsive to the challenges facing Somali soci-
ety. Despite the veneer of nationalism that witnessed its birth in
1960, the postcolonial state remained quagmired in the odious prac-
tices and characteristics of its colonial predecessors. The institu-
tions inaugurated in 1960 gave play to the rivalries of a clan-
structured society and incited these rivalries with new methods and
resources. Consequently, within a few years of independence, Soma-
lia possessed no fewer than 60 parliamentary parties, none of which
was, or in reality could become, more than a mask for clan rivalries.
Massive corruption unavoidably followed. After a decade of par-
liamentary democracy, the seething tensions of antagonistic clans
provided the setting for the military coup of October 1969, led by
army commander Mohammed Siad Barre.

D. The Regime Of Siad Barre

After coming to power, Siad Barre proceeded to consolidate his
personal power and build an autocratic regime. Relying on the
concept of "scientific socialism," Barre outlawed all clan behavior.
Yet, his power base was firmly rooted in various family clans within
the Darod clan family, and this clan eventually came to dominate the

Moreover, the immense military budget completely stagnated the government and the econ-
omy. See TOM. R. FARER, WAR CLOUDS ON THE HORN OF AFRICA 90-110 (1976). Prime Minister
Igal decided to shift strategies and pursue a more conciliatory form of diplomacy. Although
meetings with Kenyan and Ethiopian leaders opened new trade routes that would assist with
economic difficulties, Igal was denounced as a traitor at home, and he and other government
officials decided to utilize every legal and illegal resource at their disposal to insure victory in
the 1969 elections. See LEWIS, supra note 189, at 203 (discussing Igal's conciliatory policies);
GHALIB, supra note 31, at 65-88 (discussing the downfall of Somalia's last civilian government).

Scientific socialism was a Marxist ideology that outlawed all forms of clannish behavior.
LEWIS & MAYALL, supra note 28, at 103.
Somali state to an extent that was unprecedented in Somali history. Barre launched mass organizations to mobilize young people, women, and other social sectors in support of the new nationalism and the new government. Urban and rural literacy campaigns were launched, programs to educate girls were established, and laws were passed in the mid-seventies that recognized women as fully competent legal persons. Expanded health and education services were offered and self-help community projects were encouraged. At the same time, however, civil society was repressed in the name of suppressing clan activity. "The era of creative sociocultural experiments lasted until 1977-1978, the year of the Ogaden war with Ethiopia, the abrogation of the USSR/Somali Treaty of Friendship, and the search for a Somali-American alliance." It was also the beginning of the end for the Barre regime and the launch of Somalia's long descent into statelessness.

IV. THE BIRTH OF SOMALILAND

Siad Barre was driven from power in 1991, and after his defeat, the Somali National Movement (SNM) began administering what was once British Somaliland. In May 1991, the SNM declared that this territory would henceforth be known as the independent Republic of Somaliland. Somaliland has yet to be formally recognized by

---

273 Id. at 103-04. The clans were his own clan (Darod), his mother's clan (Ogaden) and the clan of his brother in law, who was commander of the secret police. These three clans all belonged at a higher segmentary level to the Darod clan-family which had hijacked the Somali state and now dominated all of the other clans. Id.

274 Somalia became independent in 1960. For nine years it enjoyed a stable democratic government. "In 1969, after allegations of fraud by the elected government, Major General Mohammed Siad Barre came to power through a military coup...." Eckert, supra note 19, at 283.

275 Adam, supra note 4, at 70.

276 At the same time, however, the paramilitary "Victory Pioneers" were repeatedly implicated in the rape of women. Id.

277 Id. at 71.

278 This included political undertakings and labor organization.

279 Id. at 70 (citation omitted).

280 See id. at 71-76 (highlighting the main factors that led to the collapse of the Somali state).


282 The independent Republic of Somaliland is commensurate with the former colonial territory of British Somaliland as it existed prior to its independence and subsequent union with Italian Somaliland in 1960. It is bordered by Djibouti to the West, Ethiopia to the South, and Somalia to the East. See id. at 1-2.

283 When the SNM took control of Somaliland in 1991, public opinion was split on independence. After years of genocidal policies emanating from Mogadishu, and Ali Mahdi's accession to power, popular sentiment began to lean towards cutting ties with the south. See Amina Warsame & Maria Brons, Somaliland: A State in Pursuit of Peace and Stability, in CRISIS MANAGEMENT AND THE POLITICS OF RECONCILIATION IN SOMALIA: STATEMENTS OF UPPSALA

---
any other States or by the various bodies and agencies of the United Nations. The new nation was faced with rebuilding a country that had been devastated by war, and devising a government that would direct that reconstruction. At the Burao conference, where the Somaliland Republic was born, a two year transitional government was established to govern while a constitution was drafted. Representatives from all clans attended the conference, and unanimously de-

FORUM, 17-19 (January 1994). Somalilanders had long been dissatisfied with the economic, political and cultural bias that generally disfavored the north since union of the north and south in 1960. Chris Searle, Agony and Struggle in Northern Somalia, 34 RACE & CLASS 2, 2 (1992). The Republic of Somaliland possesses all of the indicia of statehood, including a permanent population and territory, the capacity to engage in international relations, and a government. Somaliland has declared independence; adopted a constitution and a flag; repeatedly sought diplomatic recognition; adopted a coat of arms and a national anthem; consolidated its national territory; elected a national assembly and a head of state; and issued currency, stamps, and passports. Bali, Somaliland: An Introduction, supra note 281. In addition, it has a functioning administration, a police force, a civil service, and an army. See Holding on in Somaliland: Four Years After Independence, International Recognition is Still Lacking, AFR. CONFIDENTIAL, Mar. 31, 1995 at 6 [hereinafter Holding on in Somaliland]. Finally, it has a busy port at Berbera with substantial livestock exports that are the backbone of its struggling economy. See Julie Flint, Somaliland: Struggling to Survive, AFR. REP., Jan.-Feb. 1994, at 38.

The United Nations Development Programme has set up four offices in the north and one in the south . . . . [A]most of the European countries (including Italy, which has tended to side with Somalia) are giving assistance to Somaliland through voluntary aid agencies. Somaliland has also established very good relations with the new Ethiopian government and has offered the use of its Berbera port . . . .

Somaliland has achieved a degree of “acceptance” and, as a result, does get a little aid, including from Britain and Germany. Recognition, though, remains improbable. Britain, for example . . . , is not strongly opposed to recognition, it just isn’t interested enough to do more than “accept” the situation. Like the UN, the United States still talks in terms of national unity.

Holding on in Somaliland, supra note 283, at 6. Despite the lack of international recognition, Somaliland has maintained firm and watchful, but generally peaceful, relations with its three historically hostile neighbors, Djibouti, Ethiopia and Somalia, and it continues to play a role in the Horn of Africa. Recognizing the probable permanence of Somaliland, the United States has established a full-time desk officer at its embassy in Djibouti. See Bali, Somaliland: An Introduction, supra note 281, at 25.

The northern-Somali population who paid most in death and suffering when the government responded to the rebellion by bombarding the North, leaving Hargeisa and Burao in rubble. The wells used by the northern-Somali pastoralists were poisoned, the fruit plantations uprooted and agricultural equipment looted. More than 50,000 people died as a result of the government bombardment of towns and massacres committed by ground forces taking revenge against the Isak population. Another 500,000 fled to neighbouring Ethiopia, where UNHCR installed eight refugee camps. The whole country, and especially towns such as Hargeisa and Burao and important trading routes, were systematically strewn with anti-personnel mines. The mines killed and disabled thousands of people, often children who were not aware of the danger.

Warsame & Brons, supra note 283, at 23 (citations omitted).

Bali, Somaliland: An Introduction, supra note 281, at 18.
decided that the SNM would lead the provisional government, with Abdurahman Ahmed Ali at the helm. As SNM guerillas began to establish a government, clan rivalries within the Issaq federation made the exercise of authority problematic. Leadership then reverted to clan elders who employed traditional diplomacy to initiate a series of peace conferences that gradually restored a relative peace throughout the region. Resorting to traditional peace-keeping methods, the Guurti, religious leaders, politicians, intellectuals, social groups, and business communities, representing every clan, met in a series of conferences to explore the possible mechanisms to end conflicts that had been exacerbated by years of clan manipulation under Siad Barre. Peaceful dialogue was mandated, in lieu of force, as a means to settle disputes; increased responsibility was laid upon those committing acts of violence; and legal contracts, which presently define political and socioeconomic relations between clans in northern Somalia, were promulgated. Elders, garads, and sultans played a vital role in preventing the political process from disintegrating, and proved to be sources of guidance to their constituents. In addition they served as important counsel to both political leaders and SNM commanders. Nonetheless, clan fighting resurfaced one year after

---

287 See id.
288 During the conflict between the SNM and the forces of Siad Barre, the SNM forces were structured in such a way that each regiment belonged to a certain clan and operated in its home area. This is how the liberation struggle could be pursued without salaried fighters; the militia were supported by their kin. . . . Most of the armed militia have been brought under control by the elders and peace committees of their respective communities, but there are still some armed gangs, known as “dayday,” which pose a threat to public safety.

Warsame & Brons, supra note 283, at 26.
289 Cabdi, supra note 190, at 84. However, security problems posed by freelance armed gangs continued. See Warsame & Brons, supra note 283, at 26.
290 The “Guurti” is the Council of Elders. See Bali, Somaliland: An Introduction, supra note 281, at 15.
291 Warsame & Brons, supra note 283, at 24 (discussing initiatives taken by Somaliland’s clan elders to foster stability in the post-war state).
292 Id.
293 Cabdi, supra note 190, at 84.

The indispensable role of the Guurti in maintaining the stability of the post-war state is evident in the share they take in running the country’s affairs. According to Article 10 of the National Charter, which was endorsed on 25 April 1999 by the participants of the Borama Conference, the state structures of Somaliland are composed of:

1. Golaha Guurtida (Council of Elders or first chamber)
2. Golaha Wakiillada (Constituent Assembly or second chamber)
3. Golaha Xukuumadda (Government, or executive power)

In case of circumstances preventing the state bodies from performing their national duties, the Council of elders has full authority to convene a conference, representing all the communities of Somaliland, to decide on political measures to solve outstanding problems. . . . [T]raditional legitimacy . . . gives the Council of Elders a central role in Somaliland’s present and future political structure.
the interim president, Ali Mahdi Mohamed, assumed power, as each clan sought to attain its share of very limited resources. In February 1991, a conference was convened to promote peace between rival factions. At this meeting, a group of elders was selected to resolve future disputes before they erupted into violence. This meeting proved to be a turning point in the search for national peace and in the attempt to organize the country at its center. In early 1993, representatives from the Isaaq clan, minority clans, and members of the government met at a gathering of the national Guurti. Their goal was to design a form of government that would prevent political groups from engaging in violent conflict. At a June, 1993 conference in Borama, clan elders negotiated a peace agreement to end the civil war in Somaliland. They also devised constitutional guidelines that included a two-tier government, a Supreme Court, and an independent judiciary. The new government elected the former premier of Somalia, Mohamad Haji Egal as President. This transitional government was given until May of 1995 to organize a referendum and establish a commission to prepare a draft constitution. In mid 1996, the Council of Elders permitted new political parties to register, in anticipation of the assumption of power in the fall by a transitional government, and in preparation for a national conference on the country's constitutional future. The conference convened in October and voted to make itself a sovereign body whose decisions would be binding and not subject to government approval. The Constitution was drafted in February, 1997. It provided that the whole power of the state shall be derived from the people and shall be asserted both directly and through the bodies established by the Constitution: the Council of Elders, the Parliament, and the Cabinet.

Warsame & Brons, supra note 283, at 24.

Bali, Somaliland: An Introduction, supra note 281, at 15.

Adam, supra note 4, at 82.

Id. at 83-84.

Id.

Clan elders also negotiated a peaceful settlement of the civil war within Somaliland and it is "mainly to the Guurti's credit that peace was maintained throughout the transitional period." Warsame & Brons, supra note 283, at 24.


See id. at 6.

Bernard Helander, Somaliland: Example or Exception?, in NEWS FROM NAI (visited Apr. 1, 1999) <http://www.antro.uu.se/bh/somaliland.htm>. No constitution was prepared in 1995, however. The persistence of deep clan rivalries resulted in an eighteen-month civil war which broke out in October, 1994. During this time, energy was spent eliminating the undercurrents of discontent.

Bali, Somaliland: An Introduction, supra note 281, at 21. In September, the Guurti announced that elections would be held and legislation was introduced to repeal the emergency decree of November, 1994 which suspended the Borama Charter when civil war broke out in October, 1994. In January, the Council of Guurti announced that legislation would be drafted for the adoption of a new constitution. Id. at 21-22.

Id. at 27.

The Council of Elders will deal with clan conflicts, seek reconciliations, and retain peace.
the most important indicators of a sustainable state in Somaliland was
the initiative taken by Somaliland’s clan elders to broker peace be-
tween the different communities living in the country. The council
of elders has full authority to convene conferences, representing all
of the communities of Somaliland, and to decide on political mea-
sures to resolve outstanding problems. A central administration has
been established to supervise and encourage autonomous regional
and district authorities, and parliament passed laws governing these
local institutions. Regions were given time to hold indirect elec-
tions at the district level, prior to forming Regional and District
Councils. Each district has its own police force that is sustained solely
by the payment or issuance of rations, since neither the government
nor the Regional or District Councils have generated sufficient reve-
nues to pay wages.

Thus far, the political process has demonstrated the positive side
of clanship and stands in sharp contrast to the high-profile, extremely
expensive, and much less successful peacemaking effort, of the
United Nations and other foreign organizations in southern Soma-
lia. In proceedings that continued for three months, the Guurti
confirmed that it would formally transform itself into an upper legis-
late body in 1997, when the transitional regime was due to expire.
The Guurti drafted a transitional national charter and appointed an
interim Parliament and Supreme Court. This acceptance of plural-
ism and dissent has continued to influence this still developing polity.
There are authoritative checks on the executive in Somaliland. The

504 "Many believe this collaboration between ancient and modern forms of government could
provide a model for other parts of Africa." Flint, supra note 283, at 37.
505 Warsame and Brons, supra note 283, at 24.
506 Id.
507 Thus far it appears that a constitution has yet to be drafted and fully implemented. The
Borama Charter, drafted in 1993, was suspended in 1994 during the civil war. This suspension
was repealed in 1998, but a conference in October, 1998 announced the dissolution of the na-
tional assembly. The events unfolded as follows:

[T]he national was conference convened on October 10; subsequently, the
conference voted to make itself a sovereign body, whose decisions were to
be binding and not to be subject to government approval. In mid-January,
the conference announced that legislation to be drafted for the adoption
of a new constitution and the dissolution of the national assembly, several
national institutions and regional bodies. A legislative council of the re-
public was to supervise the implementation of the conferences’ decisions,
pending the adoption of the constitution and the holding of legislative and
presidential elections. As in the Borama Charter of 1993, the principle of
separation of powers is prescribed and provided for the legislature, execu-
tive, and judicial functions of the government to be divided among three
separate branches. That is, one branch functions to formulate and enact
laws, another to see that the laws are carried out, and a third to determine
whether the laws are in agreement with the constitution.

508 See generally Gordon, United Nations, supra note 19; Gordon, Humanitarian Intervention, su-
pra note 19.
powerful clans are an independent and diffused loci of potential resistance to the state. The national Guurti has proven to be a match for the head of state and the ruling party's central committee, creating a genuine balance of power. As an organization which encompasses all of the nation's clans, the Guurti collectively stands for interests that transcend narrow preferences. Those who serve in the Guurti are both traditional agents and leaders, although their selection is almost invariably based on a process that western constitutionalists would not identify as strictly democratic. A more complete resurgence of civil society can be seen in the creation of directly representative civic organizations over the past two years.

In its eight years as a nation, Somaliland has successfully staged three national elections. The last of these elections, when the president and the legislature were elected for five-year terms, was held in May, 1997. Somaliland has sought to learn from the failed state of Somalia by avoiding the consolidation of power in one particular clan, and since Egal's election, no clan has enjoyed a clearly hegemonic position. Instead, the creation of indigenous political and economic structures are encouraged in order to promote grassroots self-determination. Egal has established a government and has begun to build an administration with a large clan base that also includes SNM leaders. In addition, subgroups have relatively clear boundaries, and communities have more or less preeminent secular and religious leaders.

Although the modernization of Somaliland is the goal, the total remaking of civil society is not envisioned. The acceptance of most forms of traditional social organization means clan autonomy will largely be recognized, as will the authority of local leaders. Consequently, the regime will not have to impose its will by force. "The role of 'traditional' elders (both secular and religious) has been both visible and positive." However, it may also mean a lesser commitment to confront gender inequality. The condition and status of

---

309 In Somaliland, clans and their leaders are not civil society; they are merely autonomous reproductions of the state on a smaller scale. Since each clan jealously guards its sovereignty and separateness, cross-clan interest coalitions are seldom formed, except to confront powerful alliances of other clans. Bali, Somaliland: An Introduction, supra note 281, at 3-4.

310 See Warsame & Brons, supra note 283, at 24-25 (discussing the benefits of the Guurti).

311 The SNM leadership has also acquiesced to the Guurti.

312 See Flint, supra note 283, at 37-38.

313 See Noor, supra note 17, at D6.

314 See Adam, supra note 4, at 87 (noting that a decentralized power structure is most compatible with the history of Somalia and will likely be the best course for maintaining stability).

315 Id. at 80.

316 For example, there were reports of armed men demanding that women either pay protection money or hand over property. Displaced women without the protection of nearby male kinsmen are especially at risk of being raped and abused. Somali women's groups have continued to respond to such lawlessness by denouncing incidents of violence, through public protests, and by demanding inclusion at all levels to ensure the government takes appropriate action against the perpetrators. Dale Bricker & Leah Leatherbee, Consensus and Dissent in the Horn
women may be foreshadowed by the recent expansion of Islamic fundamentalism in Somaliland, and pockets of Islamic fundamentalism among fighters in most of the clan-based liberation movements.

Somalis have made inroads in rebuilding their society on other fronts. For example, company and investment laws have been drafted. Yet even apart from the effect of such laws, commerce has resumed. Entrepreneurs imported electric generators, reconditioned them, and used them to supply streets and homes with electricity at reasonable rates. External telephone and fax facilities are available via satellite; an internal telephone system for Hargeisa has been reconditioned, and overhead lines have been installed.

Many professionals, such as doctors and nurses have remained in the country, while teachers have begun to revive rudimentary forms of schooling in urban areas. Although only a few Somalis in the public sector can be paid wages because of the limited revenue available to the government, there appears to be a spirit of self-help and a determination to be self-reliant. There remains a need for a broadcasting system, which would assist in disseminating information to check rumors and lies, and to assist in explaining new governing structures. Urgent issues include the demobilization and training of Somalis in the Horn of Africa (visited Apr. 1, 1999) <http://www.sas.upenn.edu/african_studies/hornet/bricker.htm>.

315 In January 1993, a local demagogue in Hargeisa incited a gang of young men and boys to stone five women to death for prostitution. Other individuals have appointed themselves to police community morals and they denounce women's increasing involvement in commerce, an area previously within the exclusive province of men. Unfortunately, many women are war widows with no other basis of support. Bricker and Leatherbee, supra note 315.

317 Adam, supra note 4, at 81. The clan element tends to check more radical Islamic elements; however, while clan affiliation divides, Somali's religion unites. Consequently, some Islamists have argued that fundamentalism can prevent the chaos of the south. Nonetheless, other Muslims have been alarmed by the growth in fundamentalism. Id.

319 Cabdi, supra note 190, at 84.

321 Id.

322 Id. The system is operating commercially, with the prospect of new investments to extend the system via Djibouti for overseas calls.

323 Adam, supra note 4, at 80. Thousands of students, girls and boys of all ages, sit on empty milk-powder cans, while qualified teachers use home-made blackboards for instruction. There is such demand for English and arithmetic, and computer training for the older students, that schools operate on a shift system. School fees are around $7-10 a month for each student; about one-third of the students are usually unable to pay, but they are not turned away from the classroom.

324 Cabdi, supra note 190, at 85. In Somali hospitals, Somali doctors and nurses care for patients for little or no compensation. Id.

325 Id.

326 Elders have had to travel hundreds of kilometers to deliver a speech which could have been broadcast. Id.

327 Id. This would include explaining how regional and district councils function; the importance of revenue collection; constitutional proposals; and the building of new institutions, both public and private. Id.
of the approximately 50,000 SNM and clan Mujaahidiin,\textsuperscript{325} and the need for mine-sweeping.\textsuperscript{326} There are still 500,000 refugees living in Djibouti, Ethiopia, Europe, and North America, and assistance is needed to reintegrate them into society. Micro-rehabilitation has been the focus of international and local NGO, with some assistance from UN agencies. No major reconstruction or macro-development projects have been initiated by donor countries, however, and the IMF and World Bank refuse to take any action until the Republic of Somaliland is internationally recognized.\textsuperscript{327} Thus, for the time being, Somalilanders are in charge of their own destinies.

CONCLUSION

Postcolonial constitutions and the institutions and governing structures that they created were, almost uniformly, inadequate in sub-Saharan Africa. The administrative system at the foundation of most new States was coercive, highly centralized, and led to a burgeoning, unaccountable bureaucracy. The political institutions layered over this edifice did not grow out of the cultures and experiences of those they were meant to govern. In retrospect, this strategy appears to have been doomed to irrelevancy from the start, and indeed, that has been the fate of most postcolonial Africa constitutions, and the institutions and structures they wrought.

This scenario should give pause to those who continue to blindly assert the continued validity of these institutions. The example of Somaliland portends a possible different path; a path where constitutions are built upon the culture, knowledge, and experiences of the people who will breathe life into them and make them living documents that truly \textit{matter} in the lives of those whom they will govern. Without any international assistance or input, the Somali people are attempting to build institutions that address their needs, and that respond to their cultural values and requisites. While the ultimate success of their undertaking remains to be seen, surely it is a better course than the disappointing outcome of most African postcolonial efforts. Moreover, Somaliland suggests what might happen in the absence of our assistance and perhaps tells us something about how we might shape international assistance. In short, the global community might try to help people build on what they are, instead of trying to shape them into what we believe they should be.

\textsuperscript{325} Id. The author describes a pilot program at a camp at Mandera for 6,000 ex-Mujaahidiin. Some underwent training as police recruits, while others were trained as carpenters, masons and in other vocational skills. The men were also given spiritual counseling and adequate medical treatment. "This disarmament was not carried out by force or even by threat of force, but through dialogue and persuasion." \textit{Id}. The remaining Mujaahidiin will be demobilized in a similar fashion. \textit{Id}. at 86.

\textsuperscript{326} Id. An estimated two million mines need to be removed. \textit{Id}.

\textsuperscript{327} Id.