

CONSTITUTIONALISM, PLURALISM AND DEMOCRACY IN AFRICA

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Introduction

Since the Second World War the many new states of the South have been afflicted, so to speak, by an epidemic of constitution-making. In Africa, this epidemic was initiated and has been maintained by the forces unleashed by decolonisation. These constitutions have taken many forms and sought to address a range of social, political, ethnic, tribal and regional problems, suggesting the existence of a high degree of pluralism.

The concept of legal pluralism was summarised in John Griffiths' seminal article in 1986. Griffiths argued that legal pluralism is "a concomitant of social pluralism; the legal organisation of society is congruent with its social organisation". As a result, "Law" is present in *every* 'semi-autonomous social field', and since every society contains many such fields, legal pluralism is a feature of social organisation" (Griffiths 1986: 38). A situation of legal pluralism is therefore "one in which law and legal institutions are not all subsumable within one 'system' but have their sources in the self-regulatory activities of all the multifarious social fields present, activities which may support, complement, ignore or frustrate one another" (Griffiths 1986: 39).

On this argument, African societies are amongst the most pluralist in the world, comprising as they do a diversity of tribal, ethnic, cultural and religious groups, different traditions, and people divided along urban and rural lines. It would therefore appear to follow that African states would manifest a healthy legal pluralism reflecting this diversity - but reality demonstrates that this is not necessarily a logical conclusion. Indeed, I argue that there is a cleavage between social pluralism and rules which it generates on the one hand, and constitutional

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pluralism on the other.¹

This is predominantly due to the form of insertion of African states into the global political economy during the past two decades, a process that has produced an illusion of pluralism, particularly since the end of the Cold War. Imperialism aside, my argument is that, whatever their apparent diversity, African constitutions are increasingly mere variations on a western theme and, as such, appear to encourage pluralism while producing its exact opposite. From a theoretical perspective, I argue that the confusion of form and content, what I describe as 'constitutional fetishism', and the persistence of more fundamental problems such as that of the African state, make this illusion more cruel.

In 1970, Ghai and McAuslan argued that constitutional law and lawyers appeared to be "almost irrelevant in much academic discussion of political and economic development in Africa". Twenty-five years on little has changed, not least because of the "absence of authoritative or any rigorous analysis, even by social scientists, of the relationship between power and law in Africa". Indeed, during the 1970s and 1980s "scholars from other disciplines abandoned altogether any attempt to examine African constitutions on the grounds that they bore but an obscure relation to governance and politics in the continent" (Okoth-Ogendo 1991: 3).

Africa, Democracy and Constitutional Traditions

The history of democracy in Africa is not a happy one. If, with Post (1991: 36), we understand democracy to mean the "ineffable right of all of us as human beings, without distinction of gender, race, nation, or class, to control the decisions that determine our daily lives and future prospects",² it is apparent that there is a large

¹ I concentrate in this paper on the constitutional orders of Sub-Saharan Africa for reasons of knowledge, space and a focus on democratisation. The significant changes taking place in North Africa with the spread of Islamic fundamentalism are ignored - despite the important implications these have in pluralist terms - primarily because of their more specific history but also because to me they do not appear to be a path towards democracy.

² Post's definition is not dissimilar to Green's (1989: 45) description of the role of pluralism as being "to increase the probability that persons - especially poor persons - will be able to organise themselves to act, to influence the actions of others and to hold other major actors to account".

democratic deficit in Africa. But the culpability of Africans themselves must be assessed in light of the destruction wrought by external agencies.

More than ever before there is a widespread tendency to equate democracy with liberal capitalism in a way that reinforces the cultural imperialism to which the developing world has long been subjected. Individualism thus takes precedence of the more communal histories of African societies, with civil and political rights accorded priority over social, economic and cultural rights.³ Many in the West have tended to view recent changes in Africa as the natural triumph of the liberal democracies in the Cold War. Fukuyama (1992), for one, argued that we have come to the end of history because liberal capitalism is the only viable path remaining open to the peoples of the world.

The emergence of a 'New World Order' marked by unipolar dominance in the political sphere and tripolar dominance in the economic, has been accompanied by a neo-conservative orthodoxy that has severely circumscribed the scope for action of Africans themselves. The West's insistence on structural adjustment and 'good governance', conditionality in the granting of aid, and the persistence of structural inequalities in the global political economy have regularly rendered redundant the wishes of millions of Africans. 'Liberalisation' is often a cipher for the imposition of modernisation in a contemporary form, and the manner in which it robs Africans of genuine choice and control over their own lives is but a new form of imperialism (see Adelman and Paliwala 1993). This confusion of form and content diverts attention from enduring and intransigent national, regional and international problems concerning Africa, such as class inequalities, corruption, the relationship between the state and civil society, the legitimacy of the state, the role of external agencies in economic and social policy, and the continuing colonial heritage in ethnic and tribal conflict. More significantly for the purposes of this article, it also straitjackets constitutional debate by circumscribing the possibility of local, pluralist responses to the crisis.

Benin was an early example of transition from single party rule to multi-party politics, achieved through high levels of popular urban mobilisation in 1989-90. However, the new regime was severely limited in its policy choices by debt and a structural adjustment programme, and rapidly distanced itself from the workers and students who brought it to power (see Allen 1992). Botswana, often cited as a model of democratic stability in a continent renowned for authoritarian one-party states, has been beset by economic and class differences in recent years. The economic package

³ The concept of rights, and of individual rights in particular, is problematic in that it springs from a liberal perspective that is at odds with the history of Africa.

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that Angola was forced to adopt deregulated the economy in a way that inevitably widened that gap between rich and poor. At the same time, the West has condemned the country to savage violence at the hands of its Cold War puppet, Unita.

The significance of external influences on actual or putative processes of democratisation and constitution-making in Africa cannot be overemphasised. The confluence of neo-conservative ideology and enormous levels of indebtedness (see Adelman 1993) throughout the South during the 1980s laid the foundations for the imposition of a new orthodoxy that is asserted to be the basis for democracy in Western eyes but merely perpetuates the history of top down control instituted by the colonial powers. Those powers corrupted and destroyed local customs and traditions while reinforcing cleavages between rural and urban Africans, leaving vacuums that their clients and compradors sought to fill by transplanting the contradictions of liberal democracy or the illusions of Marxism-Leninism into infertile soil. They violently disrupted prevailing social relations and reconstructed them as a customary law that bore little relation to African history. The plight of dependency was emphasised by the resort to socialism, itself an ideology of Western origin that was very different to the communalism of African societies.

After decolonisation African states followed one of three basic paths. Some worked within the liberal constitutional framework inherited from their colonial masters.⁴ Others adopted the Soviet-inspired non-capitalist path to development (Shivji 1986), which reinforced the tendency to developmentalism. In between were those, like Tanzania under *ujamaa*, which adopted a socialist/statist position ostensibly rooted in African authenticity (see, for example, Nyong'o 1987). The liberal conception of democracy rests on two main pillars, namely limited government and individual rights. But the colonial state has been widely characterised as despotic and its legacy lived on beyond the liberal form that was ostensibly bequeathed. In either case,

the deeper structures of the colonial legal and political order were inherited or, in some cases, reorganised, to reinforce despotism

⁴ By constitutionalism I refer not only to constitutions themselves, but to a much broader aggregation of legislation, doctrine, conventions and non-state law which significantly affects the structure, powers, administration and accountability of all important organs of the state and affect relations between the state and the citizen. This reflects the existence of a culture of constitutionalism that is greater than the sum of its parts and is a crucial determinant in how power will be exercised in any particular state.

in the post-independence period. The independence constitutional order was therefore, as it were, an excrescence. (Shivji 1991: 29)

It was regularly argued - by Julius Nyerere for example - that Western constitutionalism represented a foreign element which had no place in African history, tradition or practice and that notions of individual rights or the separation of powers were incomprehensible to the African masses. Certainly those countries that adopted Marxism-Leninism as state ideology argued that liberalism was incompatible with their developmental needs, for which a strong state was required. Developmentalism thus provided a handy rationale for statism, and developmentalism prevailed over democracy as the state assumed responsibility for virtually every aspect of social, political and economic life. In their least malign forms one-party states represented an attempt to reconcile African social relations with the ethnic, tribal and nationalist legacies of colonialism. Nonetheless, grassroots activity was circumscribed or proscribed, the dead hand of bureaucracy thrived, while capitalist development strategies deepened dependence on foreign markets and foreign capital, and exacerbated inequalities. Such was the economic incompetence, corruption and mismanagement that by the end of the 1980s the Western powers and their financial institutions became the source of economic support on terms that gave them political powers almost on a par with those of colonialism. Similarly, with the collapse of the Soviet Union those countries that had followed a socialist path were left with no alternative but to embrace Western conditions in return for economic rescue. By the 1980s Africa was a continent in crisis, with underdevelopment, maladministration, conflict and corruption endemic. Deprived of its own history but unwilling or unable to come to terms with exogenous state forms, Africa was ripe for the new orthodoxy. Economically weakened and politically unstable, African states were summarily informed that their continued participation in the global economy was contingent upon the acceptance of forms of political economy that met the West's collective conception of liberal democracy and free markets.

The problem with the liberal constitutional perspective is that Africa is not and never has been a continent of liberal states. Not only might it be argued that liberalism is at odds with African culture and tradition, but a major legacy of colonialism was the unlimited state whose tentacles reached into every corner of the social structure, the very antithesis of the liberal model. The experience of Westminster-style constitutions reveals that many of the assumptions that underpinned them (such as cabinet government, parliamentary sovereignty, etc.) were not, in the African context, grounded in experience and institutionalised patterns of behaviour, nor indeed in an adequate framework of laws: they were 'flawed' (Paul 1988: 14). Independence constitutions usually bore little relationship to popular political

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discourse and the rhetoric of politicians who led independence movements. Liberty often meant freedom from alien, racist, rulers - not freedoms of the people from the state secured by constitutionalism.

In constitutional terms, the prevailing orthodoxy demands adherence to the rule of law, multi-party systems with regular elections, and cabinet government (apparently acceptable even under strong presidentialist regimes) under a separation of powers. Increasingly, bills of rights are viewed as an important means of securing respect for human rights. There may be nothing inherently objectionable in such a list, and there does not appear to be any major western objection to a choice between bicameral, federal, confederal or unitary systems. Rather, the fundamental problem is the assertion that liberal constitutional forms will inevitably give rise to solutions to intractable ethnic, tribal or regional problems, and that it will facilitate development - which can only take place through undiluted market forces. This path to development may have been appropriate within the liberal ideological context of the West but is much more problematic in societies with different histories. The result is that constitutional pluralism is largely illusory because, whatever the local approaches that are adopted, they are required to conform to a mode of development that owes little to constitution-making.

The South African experience is instructive for several reasons. The protracted constitution-making process produced an interim document that is quintessentially liberal. This is a great step forward after the long dark night of apartheid repression, but it also limits the options open to majority government to deal with the legacy of institutionalised racism by severely circumscribing the ideological, and hence the practical room for manoeuvre of that government. This, in turn, raises the vexed issue of constitutionalism itself: the widely prevalent notion, consistently reinforced by liberal lawyers and social scientists, that the adoption of the appropriate constitution is a *sine qua non* for development. It is this faith that I refer to as constitutional fetishism. Africa should be more wary than most of falling into the trap of believing that the 'right' constitutional framework is anything more than a necessary but insufficient means of securing democratic development. The continent's history of coups, military regimes and authoritarian government demonstrates the fallacy of the argument - particularly when, to take but one example, Nigeria's military rulers have demonstrated how easily corrupt and repressive rule sits with apparently liberal constitutions specifically designed to preclude such regimes.

The African state was therefore a fertile breeding ground for developmentalism, the idea that the state must preside over every aspect of the development process in the absence of other viable actors and, crucially, that development must take precedence over democracy. Sub-Saharan Africa states

originated as products of colonial intervention, invention and imposition; their post-colonial evolution was significantly affected by the incongruence between the supposedly democratic constitutions hastily imposed on the eve of independence and the realities of post-colonial political economies (where so much potential power and wealth lay in control of the state) and post-colonial politics (which often centered on efforts by political elites to gain and retain control of the state) (Paul 1988: 4).

Insofar as it goes, this description is adequate but incomplete in that it fails to reflect the importance of the relationship between national elites and their external masters and, equally importantly, the form of Africa's integration into the global economy.⁵ The result has been a tendency towards presidentialism, authoritarianism and military rule, whatever the form of the constitution. If Kenya's Daniel Arap Moi chose to echo the pretensions of another autocrat, his claim that 'L'état, c'est Moi' would not be too far off the mark.

Traditional Constitutional Orders

The period in which African constitutional orders might be argued to have genuinely displayed a significant pluralism was prior to and, to a more limited extent, during colonial rule. A wide range of traditional structures existed, and attempts were made to incorporate these into post-colonial constitutional orders. It is difficult to establish the extent to which such traditional structures survive *de facto*, at least at local levels, as institutions and a body of shared beliefs or customs still used by people to regulate their lives and their relations with the state. It is therefore difficult to

⁵ I do not want to suggest that Africa is merely the victim of external forces. While there may, for example, be a link between the actions of these forces and widespread corruption, I want to emphasise Africans' own responsibility for the chaos of their continent. There can be little doubt, however, that external intervention did much to destroy African culture, tradition and social relations and thereby undermined the ability to develop African responses to questions of power, government and constitutionalism. This was, after all, precisely what colonialism was designed to achieve. This problem is perpetuated by the well-meaning but limited response of people like Paul on the basis of their essentially liberal understanding of constitutionalism. This is revealed, for example, by his insistence that constitutions are concerned with 'universal' rights (1988: 2), a position entirely at odds with respect for any form of pluralism.

establish the extent to which culture, tradition and the rules they have spawned can be articulated as a democratic ideology reflecting pluralist aspirations in contemporary African societies. What is clear is the vibrant social pluralism in which traditional factors (ethnic, territorial, family, religious and occupational) remain important aspects in the construction of personal identity and social norms that are often of greater relevance to people's lives than the rules of state law (for example, in spheres such as land, inheritance and gender roles).

Whatever the democratic content of daily life in the pre-colonial period, it is clear that Africa's integration into the global political economy undermined the organic development of democratic structures. As Shivji (1991: 27) has put it, "the process of the political consolidation of the African state went hand in hand with the political and economic marginalisation of the African masses" so that constitutionalism was never a part of the colonial legal and political order. The result, as Green (1989: 48) has put it, is that

African states have constitutional orders. In respect to breadth of base (or more accurately narrowness), predictability of decisions, stability of procedures and scope or reach of the constitutional order, many are objectively weak and/or are eroding.

Weak and illegitimate states and constitutions existing in an altered global context have generated demands for change. This has manifested itself in a range of diverse, pluralist responses throughout the continent, and it is to this that I now turn.

Contemporary Constitutionalism, Pluralism and Democracy

Because of the diversity of countries in which change is occurring it is difficult to impose a clear pattern on the various transitions, most of which are far from complete. What they appear to have in common, however, is resistance from the bottom up by a wide range of social groupings such as students, trade unionists, professionals, intellectuals, certain business interests, the media, women, the urban poor, small farmers and religious forces, who are challenging ruling groups and their internal and external allies. Under pressure from within and without, African regimes have been seeking to re-establish credibility with external creditors, and have tinkered with or radically changed their constitutions to reflect demands for liberalisation. Thus we have witnessed the demise of Kenneth Kaunda in Zambia in a process that is still state dominated, but also the continued authoritarian rule of Daniel Arap Moi in Kenya despite strong external pressures.

The nation-state has long been recognised as a problem in Africa (see, for example, Davidson 1992). Among the myriad reasons for this is overwhelming dominance of the state over society. Unlike the interventionist state of liberal cosmology in which a separation between the state and civil society is presumed, in Africa the former has tended to obliterate the latter. In addition to its usual regulatory functions in the legal, political and economic spheres the authoritarian state has spread its tentacles throughout every facet of social relations. The organising principle of the organs of the state has the concentration of power in the executive, the military or personalised rule, rather than the separation of powers decreed by liberalism.

The result is that

autonomous organisations of the people, whether civil or political, are ruthlessly suppressed or coercively co-opted. This further delays the process of the political constitution of civil society. Ideologically, the dominant ideology of the ruling class and the state is developmentalism. It centres on the terrain of economics where both law and politics are superseded. There is thus effective *depoliticisation* of large sections of the population (Shivji 1991: 30).

The liberal democratic form has been tried repeatedly in Africa and has totally failed - and it is for this reason that South Africa's future is being so keenly watched, not only because of its economic power, but because of the ideological implications of a successful liberal democracy in Africa. Time will tell whether that country's essentially liberal constitution will suffer the same fate as that of Nigeria's 1979 constitution, which failed to prevent conflict between central government and the states, rigged elections and a military coup. This raises an important point, namely that the imposition of liberal constitutions or liberal institutions that do not reflect prevailing social relations is likely to result in renewed crisis and conflict. There is really very little point in seeking to construct beautiful liberal constitutions with guarantees of freedom and justice for all on a continent in which the state itself has become such a barrier. Mistaking form for substance, western insistence on liberal constitutionalism merely serves to exclude more fundamental political and economic issues from discussion.

If the postcolonial nation-state has become a shackle on progress, as more and more critics in Africa seemed to agree by the end of the 1980s, the prime reason could appear in little doubt. The state was not liberating and protective of its citizens, no matter what its propaganda claimed: on the contrary, its gross effect was

constricting and exploitative, or else it simply failed to operate in any social sense at all. (Davidson 1992: 290)

The 'New World Order' has thrown into sharp relief the absence of a coherent democratic alternative anywhere in Africa.⁶ Robbed of the failed option of Marxism-Leninism and sundered from indigenous alternatives through the failure of ideologies such as *ujamaa* and the colonial destruction of African culture and tradition, the continent is left with Hobson's choice, namely to embrace a liberalism that has historically proved to be totally at odds with prevailing social relations. On the surface, therefore, Africa appears bereft of any democratic alternatives - and it is for this reason that I argue that constitutional pluralism is an illusion.

While documents like the African Charter claim to take into consideration the virtues of Africa's "historical tradition and the values of African civilisation", they tend to reinforce a statist conception of development and human rights at odds with democracy. The incorporation of the continent into the global political economy sits uneasily alongside these traditions and values and makes it difficult to develop a coherent explanation of how they might inform democratic struggle. In spite of widespread debate within South Africa about the role of nationalisation in addressing the legacy of apartheid, the ANC government has tacitly acknowledged the impossibility of securing foreign investment from Western controlled institutions which view public ownership as a form of socialism. This democratic deficit is externally imposed, regardless of the wishes of the majority. Despite intense debates within the country about the form and nature of post-apartheid democracy during the prolonged negotiations that produced the interim constitution, what emerged was a document that did no more than doff its metaphorical hat in the direction of alternative forms of democracy. There was much talk of extensive social, economic and cultural rights, but little of substance in the interim constitution. There was much discussion about the role of state involvement in production, but when Nelson Mandela travelled the world seeking foreign investment there was no talk of nationalisation as a means of addressing the massive inequalities of apartheid - one of the greatest men of the century would have been sent home with a flea in his ear.

Identifying nation-states originating in the 'logic' of colonialism as the problem, Davidson controversially and perhaps impractically argues that what is required is "the invention of a state appropriate to a postimperialist future" (Davidson 1992:

⁶ The only coherent alternative, which can hardly be described a democratic, is the wave of Islamic fundamentalism sweeping through North Africa.

321). The path to this vision lies, he argues, through regional decentralisation - despite the unfortunate history of regional organisations elsewhere in the continent (Davidson and Munslow 1990). This *may* provide a solution to the problem of the state in the long term, but as Davidson himself recognises, short term solutions to the question of democracy must be found within existing lines on the map, however illogical these may be.⁷ In turn this means addressing the problem of the state from within and more particularly its relations with civil society.

Post argues that “the essential preconditions for democracy are established by the nature and level of organization in civil society and the ways in which these conditions impinge on the state” (Post 1991: 36). For Post, the three central concepts in any democratic system are access, representation and control⁸ and this means that the relationship between the state and civil society must be recast. The key, I would argue, is to understand civil society as that sphere of social relations which, though it is influenced to a greater or lesser extent by the state, is nonetheless autonomous of it. This immediately raises problems in an African context because the state, in the form of the party, has regularly been the major constituent of these social relations. Thus, for example, the reach of CCM in Tanzania is so extensive that any transition to multi-party politics involves what is tantamount to a peaceful revolution. Nevertheless, there is ample evidence in Tanzania and elsewhere of the emergence of social movements such as students whose activities are not contingent upon the state in any form. What we are witnessing is the resurgence of the kind of mass popular politics that underpinned liberation struggles throughout the continent, the resurrection of politics after its destruction by the state.

Alternative political structures are most likely to emerge in times of crisis, when the grip of the state is sufficiently loosened to open a space for initiatives from below. In

⁷ Recent tragic events in Rwanda and Burundi are the latest illustration of how incompatible the modern nation-state of liberal tradition has been in a continent whose primary form of social organisations has been and largely remains tribal and/or ethnic.

⁸ Similarly I have argued that autonomy, empowerment and participation are the key elements in promoting democracy and that these can only emerge from the bottom up rather than from the top down (Adelman 1994). At the same time, and perhaps paradoxically in light of this chapter, I also argued for a strong central state in a post-apartheid South Africa in order to meet the centrifugal forces of a highly divided society.

such periods Africans have attempted to construct fundamentally different democratic forms. Street committees in South Africa (Levin 1987); resistance committees in Uganda under Museveni's National Resistance Movement (Mamdani 1988); and defence committees in Ghana in the wake of Rawlings' second coup (Hansen 1987) are probably very rough reflections of aspirations of popular masses and possibly pointers of *new* democratic forms (Shivji 1991: 37).

The difficulty with these forms is precisely the fact that they tend to emerge at times of upheaval. As a result their practices are more appropriate to times of crisis and revolution than 'normal' social relations, and it is difficult to formalise and extend them. Taking South Africa as an example, the ANC's call in the mid-1980s for the townships to be made ungovernable proved highly successful and highly contradictory. It was successful in that it tapped into the seething resentment of the black majority and to the extent that it promoted political forms independent of and entirely antagonistic to the apartheid state. It was contradictory for several reasons. First, it is one thing to resist but another thing entirely to build, and the ANC failed to provide the vision or leadership necessary to transform street committees into ongoing disciplined political structures. The transition away from apartheid has therefore been marked by intense violence in which it has often been difficult to discriminate between committed political activists and lumpen criminals. Second, once the immediate goal has been achieved - in this case the removal of the apartheid regime - what remains is a large group of disaffected people who find great difficulty in acclimatising to a culture of legality and prefer the gun to the courts as a proven means of achieving their goals. Moreover, even those who eschew violence as a primary means of politics find difficulty in adjusting to a system in which local taxes must be paid rather than boycotted if the vision they fought for is to be more than a chimera.

Similarly, Olaka-Onyango (1989) questioned the prospects of the National Resistance Movement in Uganda. The NRM formed a broad-based government of national unity incorporating a wide range of political tendencies and interests, but the involvement of the masses in government remains marginal. Crucially, he points to the relationship between social and economic relations in Uganda on the one hand and the structure of governance on the other as an explanation.

Museveni's *perestroika* is a direct response to the crisis of neocolonialism at its most intense. However, because it does not strive to alter social relations of production, based on exploitation of peasant and working classes, it can only act as a stop-gap measure, if that... This illustrates in bold relief that the notion of grassroots democracy in Uganda has in fact been stillborn.

(Olaka-Onyango 1989: 478)

Whatever their deficiencies, these popular organs constitute embryonic democratic alternatives - and it is at the grassroots rather than the level of the constitution that pluralism is relevant in Africa. (Indeed, it is the gap between grassroots aspirations and constitutional documents that is, arguably, part of the problem).

First, they come about as a result of initiatives from below. Second, they reflect the yearning for direct democracy as opposed to some remote, representative form. Third, they emerge at workplaces, residences, villages and schools, at levels where people actually live and work. Fourth, their organising principle is exactly opposite of that denoted by separation of powers. They are executive, legislative and judicial at one and the same time. Organs of justice - popular courts and tribunals, etc. - invariably accompany the formation of such committees. Fifth, they establish constant accountability to the people, negatively by showing distrust in periodic elections, political parties, etc. and positively by incorporating principles of recall in one form or another (Shivji 1991: 37).

The emergence of such structures from within civil society constitutes a rejection of parliamentarism in the form in which it has been practised in Africa and, in particular, a rejection of the liberal democratic model. They reflect the desire of ordinary people to exercise control over their lives and to construct forms of governance that originate at the grassroots rather than the top. More significantly, they constitute attempts to engage in a politics that reflects actual social relations. While it is impossible to return to precolonial social relations, African culture, history and tradition still inform people's lives as we head towards the twenty-first century; rather than seeking to return to a mystical communality, these groups are striving towards a form of democracy rooted in Africa - and this implies a rejection of liberalism's obsession with the individual.

I have argued elsewhere in relation to South Africa that:

the vibrancy of civil society provides the greatest safeguard against centralised bureaucratic caprice and the most effective form of control over the actions of administrative agencies. Maximum participation by local communities, the provision of information and the reasons for decisions should be a requirement of all administrative agencies whose actions affect those communities. While the range of administrative law principles

referred to earlier can assist in the promotion of a democratic culture, there is a need to go beyond the law and promote participative structures (Adelman 1994: 326).

Contemporary debates about and transitions to democracy in Africa suggest that viable democratic alternatives can emerge only with the consent of the African masses and the legitimacy that this thereby confers on both the state and the democratic process. But since the class structure and authoritarian nature of many African states (Kenya being a good example) is antithetical to the kind of political liberalisation that would provide protections for grassroots activity, the first step must be to create the kind of space in which such groups can function. It is here that the blindness of Western policies becomes apparent. Demand for good governance, protection of human rights and political liberalisation are directly undercut by external debt and the imposition of structural adjustment programmes that batter the poorest members of society and impair their ability to organise.

Conclusion

Liberal democracy is always better than authoritarianism and despotism because it usually brings with it some degree of human rights and the rule of law. It is therefore difficult to argue against it, especially in a continent that has witnessed such systematic oppression and exploitation. But liberal democracy is often not very democratic and it has generally proved a failure in Africa.

To argue that liberal democracy might be viewed as a stepping stone on the path to a more genuine, African, democracy is to miss the point. First, liberal democracy is exclusive rather than inclusive. Second, it is at odds with Africa's history, traditions, culture and social relations. These may have been bastardised by colonialism and difficult to identify, but this does not undermine the saliency of the argument that it is only from the grassroots, from the bottom up that democracy can emerge. The lesson of colonialism is surely that we cannot impose democracy from without. But this raises a third aspect, namely that talk of liberalisation and 'good governance' is not about empowering the African masses but rather an ideology and a means of incorporating them into a wider capitalism in the interests of the West. The dogmatic nature of neo-liberalism calls to mind that of Trotskyism, another ideological blueprint from which Africa has suffered.

In a hostile international environment any transition to democracy is likely to be painful and contradictory - as Finther (1989: 104) has argued, "For better or for

worse, developing constitutional orders in [Africa] cannot escape the impact of their global environment". Unable to ignore the power of external agencies, Africans must seek to exploit the contradictions inherent in their policies. Similarly, they are embracing the paradox of seeking alternative ways in which to create a strong state, but a strong state that is also democratic. As Davidson has put it,

democratic participation would have to be 'mass participation'. And 'mass participation', patiently evolved and applied, would be able to produce its own version of a strong state: the kind of state, in other words, that would be able to promote and protect civil society. (Davidson 1992: 294-95)

The upshot has been that contemporary debates about democratisation have tended to focus on the formal, institutional level, promoting multi-party systems, liberal institutions and the role of civil society while continuing to ignore fundamental issues like development, class and poverty. It was Marx who said that people always make history within a given context, and the context bequeathed to those struggling for democracy in Africa leaves little room for alternatives to a liberal constitutionalism that is at best only tangentially relevant to contemporary circumstances. In constitutional terms, pluralism is a chimera.

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