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The Journal of Modern African Studies, Vol. 24, No. 1. (Mar., 1986), pp. 1-31.

Stable URL:

http://links.jstor.org/sici?sici=0022-278X%28198603%2924%3A1%3C1%3ASAUJSI%3E2.0.CO%3B2-J

The Journal of Modern African Studies is currently published by Cambridge University Press.

Sovereignty and Underdevelopment: Juridical Statehood in the African Crisis

by ROBERT H. JACKSON AND CARL G. ROSBERG*

WHEN we speak of 'the state' in Tropical Africa today, we are apt
to create an illusion. Ordinarily the term denotes an independent
political structure of sufficient authority and power to govern a defined
territory and its population: empirical statehood. This is the prevailing
notion of the state in modern political, legal, and social theory,[1] and
it is a fairly close approximation to historical fact in many parts of the
world – not only in Europe and North America, where modern states
first developed and are deeply rooted, but also in some countries of
South America, the Middle East, and Asia, where they have more
recently emerged. The state is an inescapable reality. The military
credibility of Argentina during the Falklands war, when it was by no
means certain that Britain would prevail against its air force, is an
indication of the reality of the state in some parts of the Third World
today.

NOMINAL STATES

In Tropical Africa, many so-called states are seriously lacking in the
essentials of statehood. They are ramshackle régimes of highly personal
rule that are severely deficient in institutional authority and organis-
ational capability. The writ of government often does not extend to all
parts of the country, and where it does is observed irregularly and
without obligation or fear in many quarters – including even state

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a paper delivered at the International Political Science Association World Congress, Paris, 15–20
July 1985. The authors gratefully acknowledge the comments of the late James S. Coleman to
whom this article is dedicated.

[1] See, for example, Thomas Hobbes, *Leviathan*, edited by Michael Oakeshott (Oxford, 1946);
John Austin, *The Province of Jurisprudence Determined*, edited by H. L. A. Hart (London, 1954); and
Max Weber, *The Theory of Social and Economic Organization*, edited by Talcott Parsons (New York,
1964).

agencies themselves. The language of the state may be little more than a façade for the promotion of personal, familial, communal, and other private interests by people who are only nominally soldiers, policemen, judges, bureaucrats, or members of some other official category. Many African states are not only internally deficient; they are also externally weak. Perhaps the best illustration of this fragility is the military and economic vulnerability of Southern African states to white South Africa, which can both invade its black neighbours with impunity and hold their fragile economies to ransom. Most African states are also, of course, highly dependent on the external world for the material aid needed for their development. Millions of Africans in more than a few countries are dependent on food aid for survival. In short, many states in Tropical Africa are as yet far from credible realities.

The independence and survival of African states is not in jeopardy, however, because their sovereignty is not contingent on their credibility as authoritative and capable political structures. Instead, it is guaranteed by the world community of states, especially as embodied in the United Nations, whose egalitarian international norms are universally accepted. This world-wide community has not only hastened the independence of many of these states, but has also collaborated with them to maintain their independence in spite of their disorganisation and fragility.[1] Legal recognition has been far more important than material aid in their emergence and survival to date. Therefore, rather than claiming sovereignty by a demonstration of inescapable reality, most Tropical African states exist primarily by means of international legitimacy.[2] Their sovereignty derives far more from right than from fact.

In general this juridical foundation of statehood is a reversal of the classical historical pattern in which external recognition is based on empirical statehood, usually achieved in alliance with other statesmen under strenuous conditions of international rivalry. For example, credibility and competition – often under conditions of war – was the historical context for the formation and development of states in Europe. Moreover, it was the inability of the rulers of traditional Africa to demonstrate and defend their statehood that resulted in the almost complete colonisation of the continent by Europe in the final decades of the nineteenth century. In Europe, national governments historically have been driven by the competitive pressures and dynamics of the

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[1] We have elaborated on this point in 'Why Africa's Weak States Persist: the empirical and the juridical in statehood', in *World Politics* (Princeton), 35, 1, October 1982, pp. 1–24.

[2] We follow Martin Wight's definition: 'By international legitimacy I mean the collective judgment of international society [i.e. sovereign states] about rightful membership of the family of nations', in Hedley Bull (ed.), *Systems of States* (London, 1977), pp. 114–16.

international system to bring about political and economic development to retain their statehood. In post-colonial Tropical Africa, however, governments are not obliged to develop politically or economically in order to become independent or to remain independent. The prevailing norms of international legitimacy that affect them are collaborative and liberate them from the competitive pressures of the classical states-system. We believe that the separation of juridical from empirical statehood and the institution of a collaborative states-system in Tropical Africa, and some other parts of the Third World, marks a revolutionary change that has significant (and as yet largely unexplored) implications not only for state-building today, but also for the theory of the state.

EMPIRICAL STATEHOOD IN THE CLASSICAL EUROPEAN STATES-SYSTEM

The determining rôle of international legitimacy in the creation and survival of African states is sharply at odds with our usual expectations about the priority of empirical over juridical statehood – our preference for the political realism of Machiavelli, Hobbes, and Lenin over the constitutional idealism of Grotius, Kant, or Woodrow Wilson. It is no surprise that political science for the most part is positivist, realist, and materialist: it is informed predominantly by the history of modern Europe, in which organised power is the basic political arbiter, states are substantial entities, and international law and morality are secondary factors, at most. The classical European state, which is the model for all modern states, is defined by Max Weber as a government that has a monopoly of legitimate force over a territory and its population – a monopoly which (John Austin would add) is acknowledged and respected by other governments of a similar kind.[1] In this model, statehood is determined by territorial power, sovereignty is a manifestation of that power, and international recognition is an effect and not the foundation of statehood.[2]

The realist theory offers an explanation of European state-building and imperialism. It sees statehood as rooted in conditions and institutions that make territorial control possible – armed forces, courts and magistrates, police forces, systems of public finance, bureaucracies, and so forth.[3] These are developed as power becomes centralised and consoli-

[1] Weber, op.cit. p. 154; Austin, op.cit. p. 194.
[2] C. A. W. Manning, 'The Legal Framework in a World of Change', in Brian Porter (ed.), *The Aberystwyth Papers: international politics, 1919–1969* (London, 1972), p. 307.
[3] Charles Tilly (ed.), *The Formation of National States in Western Europe* (Princeton, 1975).

dated in a country. The modern states of Europe, and their successors elsewhere, were built with the use of force under strong pressures for disintegration – both domestic and international.[1] Even after internal consolidation and the subordination of regions to the centre, external pressures from other states remain. Such a theory of state-building is reminiscent of social Darwinism and late nineteenth-century social and political theory. Behind the modernisation of Europe, according to E. L. Jones, is a centuries-old competition for political and economic advantage among rival states and alliances in an interlocking system. States are forced to modernise because those which fall behind are in danger of losing their independence:

The states of Europe...were surrounded by actual or potential competitors. If the government of one were lax, it impaired its own prestige and military security...The states system was an insurance against economic and techno-logical stagnation...A large part of the system's dynamic was an arms race.[2]

The classical international system of Europe was, therefore, both a system of countervailing power and of developing statehood. Only effectively organised states – and alliances – could survive in this system, and the current political map of Europe is a reflection of the latest (perhaps the last) round of competition. Over several centuries the number of independent political entities has been markedly reduced by force, or by threats of force, as weaker states have been incorporated into stronger ones. The number decreased from over 200 in 1648 to less than 50 in 1900, at which time the world community consisted of 'a European core of twenty [states], another twenty in the separate American system, and a doubtful fringe of two or three Asian states [which] were not yet generally regarded as belonging to the family of nations'.[3] It was regulated to a great extent by balance-of-power politics, and international law consisted of rules, practices, and usages created by statesmen and respected by them as long as it was to their countries' mutual advantage. The law of nations complemented the balance of power, but was never a substitute for it.

It was the competitiveness of the European system, according to realist theory, that catapulted Europe over the older civilisations of Asia,

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[1] E. L. Jones, *The European Miracle* (Cambridge, 1981); R. G. Wesson, *State Systems* (New York, 1978); and Youssef Cohen, Brian R. Brown, and A. F. K. Organski, 'The Paradoxical Nature of State Making: the violent creation of order', in *The American Political Science Review* (Washington, D.C.), 75, 4, December 1981, pp. 901–10. For a modern statement of this classical view, see Ludwig DeLio, *The Precarious Balance: the politics of power in Europe, 1494–1945* (London, 1963).

[2] Jones, op.cit. pp. 118–19.

[3] Martin Wight in Hedley Bull and Carsten Holbraad (eds.), *Power Politics* (Harmondsworth, 1979), p. 106.

the Middle East, and Africa to the forefront of global development during the modern era. In effect, European imperialism was a reflection of rapid western development rather than significant decline elsewhere. Many western states – bursting with confidence, vigorous, disciplined, and armed with new technology – found outlets for their energies and rivalries in the commercial and (later) the political penetration of the non-European world. By the end of the nineteenth century, most of Asia, much of the Middle East and North Africa, and almost all of Tropical Africa were under the political sway of European powers, while the Americas were controlled by European settlers who had acquired sovereignty at the expense of the native peoples. In Asia, only Japan, Thailand, Afghanistan, and Persia were successful in maintaining themselves against western encroachments. In the Middle East, Turkey was the only power recognised as a sovereign state, and in Africa only Ethiopia and Liberia escaped direct domination by a European state, and the latter was a *de facto* American colony.

The global European imperial order was legitimated by international law that was rooted in the dominant power of the European states at the turn of the century. During the latter half of the nineteenth century, European power had increased dramatically in relation to non-western peoples, and Europeans had become convinced of their cultural superiority and their manifest destiny to rule the world. During earlier periods of contact with non-Europeans, when differences in power and technology were not as great, there was a disposition to treat with non-western governments on a basis of rough equality. However, after about 1850, international law came to reflect the new world-wide cleavage, and to embody Euro-centric concepts of sovereignty and standards of civility as conditions for the recognition of states.[1] Consequently, many non-European governments failed to qualify for full membership in the international system and became vulnerable for European colonisation. Virtually all of Africa, consisting of hundreds of weak political systems, was put in this position.

THE SUBSTANCE OF AFRICAN COLONIES

African states are direct successors of the European colonies that were alien entities to most Africans. Their legitimacy derived not from internal African consent, but from international agreements – primarily

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[1] Ian Brownlie, 'The Expansion of International Society: the consequences for the law of nations', in Hedley Bull and Adam Watson (eds.), *The Expansions of International Society* (Oxford, 1984), pp. 359–61, and Philip D. Curtin, *The Image of Africa*, Vol. 1 (Madison, 1964), p. 280.

among European states – beginning with the Berlin Conference of
1884–5. Their borders were usually defined not by African political facts
or geography, but rather by international rules of continental partition
and occupation established for that purpose. Their governments were
organised according to European colonial theory and practice (tempered
by expediency), and were staffed almost entirely by Europeans at
decision-making levels. Their economies were managed with imperial
and/or local colonial considerations primarily in mind. Their laws and
policies reflected the interests and values of a European imperial power,
and these usually included strategic military uses, economic advantages,
Christianisation, European settlement, and so forth. Although the
populations of the colonies were overwhelmingly African, the vast
majority of the inhabitants had little or no constitutional standing in
them. Africans lived in colonies that were essentially European enclaves.
A major political problem since the time of independence has been that
of Africanising bureaucracies, and other public institutions staffed by
Europeans during the colonial era, without undermining their
performance.

Most sub-Saharan colonies were not substantially developed either
politically or economically. The levels of development reached by the
end of the colonial era were noteworthy in a number of cases – especially
in British West Africa – but the emerging states of Tropical Africa were
none the less among the least-advanced political economies in the world.
As colonies they had been subordinate and marginal territorial units
within an empire controlled by an imperial state, and they needed only
sufficient strength to dominate weak and underdeveloped African
societies.

The European layer of domination was remarkably thin throughout
sub-Saharan Africa during the entire colonial era.[1] The administrative
hierarchy typically contained not more than three or four levels in
subordination to a governor, and most colonies were ruled by only a
few hundred European officials. One political officer, with possibly one
or two African assistants, might rule a territory the size of Wales with
a population of perhaps 100,000.[2] In the 1930s, at the peak of the
colonial period, all of French Africa had a population of more than 18
million ruled by about 4,500 colonial officers; the Belgian Congo, with

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[1] A. H. M. Kirk-Greene, 'The Thin White Line: the size of the British colonial service in Africa',
in *African Affairs* (London), 79, 314, January 1980, pp. 25–44.
[2] G. H. T. Kimble, *Tropical Africa*, Vol. 2 (New York, 1962), pp. 292–3, and Margery Perham,
The Colonial Reckoning (London, 1963), p. 95. See also Michael Crowder, 'The White Chiefs of
Tropical Africa', in L. H. Gann and Peter Duignan (eds.), *Colonialism in Africa, 1870–1960*, Vol.
2, *The History and Politics of Colonialism, 1914–1960* (Cambridge, 1970), pp. 320–50.

a population of about 9 million, was ruled by 2,500; and Nigeria, with
20 million people, was governed by fewer than 1,400.[1] Following World
War II, the total complement of colonial-service posts was expanded
dramatically in response to the new era of 'welfare colonialism'.
However, Sudan, the largest colonial territory in Africa, with a
population of about 9 million at the time of independence (1956), had
a political service of 7,000, of whom only 1,000 were British, while
Ghana, with a population of some 4 million at the time of independence
(1957), in an area the size of Oregon, never had more than 2,500 British
officials, of whom only about one-tenth were commissioners and police
officers.[2] In the Belgian Congo in 1960, the 'density of government' was
somewhat higher, but there were only about 10,000 Belgians in
administration, magistrature, and the military.[3]

Substantial governments and economies were not necessary for
purposes of imperial control in Tropical Africa. Colonial governments
did not have to be equipped for territorial defence against their
neighbours because a general *Pax Europæa* had existed among the
imperial powers since the Berlin Conference.[4] Their small military forces
were directed inwards at Africans as protection against rebellion or riot.
Even between 1880 and 1914, when Europe established its dominion
over almost all of Africa, 'the conquering forces were miniscule' and
many of the conquests 'were completely bloodless'.[5] The reason why
is not particularly difficult to find: most of the continent was previously
divided among hundreds of small, weak, and extremely undeveloped
political systems, making it possible for very modest external forces to
penetrate and dominate, often by means of divide-and-rule tactics.
The colonial governments that were subsequently established were
comparable not to states but, rather, to small provincial, county, or
municipal governments in European countries – except that they were
overseas and accompanied by tiny military establishments (backed up
by much larger imperial forces). In addition, colonies had simple dual
economies, with a wide subsistence agricultural sector and a narrow
monetary sector, consisting of a few cash crops or mineral commodities
for export. Even at the time of their independence they remained
extremely underdeveloped, and as late as 1964 most had an annual

[1] Robert Delavignette, *Freedom and Authority in French West Africa* (London, 1968), p. 18.
[2] Kimble, op.cit. pp. 291–2.
[3] Crawford Young, *Politics in the Congo* (Princeton, 1965), p. 10.
[4] The *Pax Europæa* was disrupted and broke down only during World War I when there were
some minor skirmishes between British and German forces in East Africa, and during World War
II by the British-Italian conflict in Ethiopia.
[5] Roland Oliver, 'Initiatives and Resistance', in *The Times Literary Supplement* (London), 8
August 1985, p. 867.

G.D.P. *per capita* estimated at $100 or less.[1] They were typically specialised peripheral subdivisions, usually of no great weight, within far larger and more highly diversified imperial or international economies.

In many colonies the governments played a socio-economic, 'statist' rôle, especially during and after World War II as they mirrored the growing shift towards the welfare state that was occurring in most European metropoles.[2] However, colonial administrations usually remained far more limited in their activities than their metropolitan counterparts, and they rarely imposed significant burdens on local economies. The doctrine that colonies 'must pay their own way' restrained the growth of government – at least in the British territories – but where the apparatus of administration was more substantial (as in the Belgian Congo), this was supported by the colony. In imperialist systems, some of the burdens of colonial government are borne, either directly or indirectly, by organisations in the metropole (often created for that purpose). Consequently, governments in the colonies did not have to be as substantial as those of independent states.

Many African colonies were not readily perceived as obvious candidates for statehood, certainly not within the foreseeable future. Even immediately prior to their independence it was not yet clear that virtually all would soon become sovereign states. The imperial powers were convinced as late as the 1950s that they would remain in parts of Africa for many years to come. In 1954 a mission of the U.N. Trusteeship Council reported that Tanganyika (Tanzania) could be independent in 20 years; it achieved this status in 1961. In the mid-1950s, Guinea, Côte d'Ivoire, Upper Volta (Burkina Faso), and the other territories that comprised French West Africa were conceived by a leading scholar as emergent *local governments* rather than candidates for sovereign statehood.[3] Until 1956 the French African territories were moving towards integration within the French empire; they became independent only four years later. A progressive Belgian administrator shocked his contemporaries in 1956 by proposing that the Congo (Zaïre) could be independent in 30 years; sovereignty was transferred in 1960.[4] The political imagination did not easily visualise colonies as states, certainly not all of them, and independence came as a surprise to many. Portugal as late as the 1960s was defying 'the winds of change' and intensifying colonisation rather than decolonisation. To speak of 'colonial states' rather than colonies or colonial governments – as many students

[1] William A. Hance, *African Economic Development* (New York, 1967), p. 3.
[2] See J. M. Lee, *Colonial Development and Good Government* (Oxford, 1967), ch. 3.
[3] L. Gray Cowen, *Local Government in West Africa* (New York, 1958).
[4] A. A. J. van Bilsen, *Vers l'Indépendance du Congo et du Ruanda-Urundi* (Brussels, 1956).

of African politics and history are inclined to do – is to obscure the surprising character of decolonisation and to provoke the historical fallacy of retrospective determinism.

Traditionally the granting of independence had been regarded as contingent upon capacity to govern, but by the late 1950s, under increasing international moral and political pressures, the juridical right of self-determination had been separated from the empirical capacity for self-government in decolonisation. The 1960 United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples confirmed what was rapidly becoming a new doctrine of international legitimacy: 'Inadequacy of political, economic, social or educational preparation should never serve as a pretext for delaying independence.'[1] The British were the first to realise that the transfer of sovereignty could no longer be made to depend upon the successful apprenticeship of Africans in self-government, and that the latter now took precedence over good government.[2] Decolonisation became separated from the capacity for both self-government and political development in the plans of the Colonial Office.[3] The change began in British West Africa in the 1950s and spread fairly rapidly under the pressure of international opinion to other parts of the continent. The independence in one year (1960) of most of the French African empire, which included many colonies at very different levels of development – from politically sophisticated Senegal to virtually stateless Chad and Mauritania – was a dramatic reflection of the new ideology of global political rationalism. Eventually it became possible for even the least adequately equipped micro-colonies to become sovereign states within the newly egalitarian and extremely accommodative international community.

JURIDICAL STATEHOOD IN THE AFRICAN STATES-SYSTEM

Decolonisation therefore marked a revolutionary change in the basis of statehood – most dramatically in Tropical Africa. African leaders acquired rights of sovereignty regardless of the political or socio-economic conditions or prospects of the colonies they inherited. Nominal sovereignty and normative international law replaced substantial sovereignty and positive international law in the relations of states. The international system, and particularly the United Nations, collaborated to establish and preserve a large number of new and empirically marginal states.

[1] *Everyman's United Nations: a complete handbook* (New York, 1968), pp. 370–1 and 396–9.
[2] Cf. David Kimble, *The Machinery of Self-Government* (Harmondsworth, 1953).
[3] Lee, op.cit. pp. 280–1.

A sea-change occurred in the years following World War II, during which colonialism first became anomalous and then illegitimate as an international institution. It had been intimated earlier in doctrines of self-determination and trusteeship promoted by the League of Nations, and beginning in the late 1940s, with the independence of the Philippines, India, Pakistan, Indonesia, Sri Lanka, and a few other Asian states, a world-wide movement for the independence of all colonies gathered momentum.[1] It was increasingly orchestrated by the U.N. General Assembly, which became preoccupied with the concerns of the new ex-colonial states and a rival to the Trusteeship Council.[2] The democratic colonial powers – Britain and France, in particular – eventually were unable to defy this international revolution in which both the United States and the Soviet Union played a prominent rôle.[3] The most compelling force was a moral conviction that Africans and other colonised peoples could no longer be denied self-government, even if the territories they stood to inherit were poorly developed or offered little promise of development when independent. Once colonialism lost its legitimacy, the movement for independence could not stop until all colonies that desired it became self-governing – including even the tiniest statelets. Very few colonies lacked a desire for independence.

The international community centred in the United Nations came to replace colonialism as the moral, legal, and material aid structure that maintained Africa.[4] Moral and legal support has been more essential to the preservation of African states than material assistance, which has always been scarce. The Organisation of African Unity, which was formed in 1963 primarily to preserve the territorial jurisdictions inherited from the colonial era, reinforced the external supporting structure of international legitimacy by forbidding the use of force and subversion to undermine the independence of member states – in language almost identical to that of the U.N. Charter.[5] Since independence the political map of Africa has remained virtually unchanged, despite the arbitrariness of many territorial jurisdictions and the obvious incapacities of many newly formed governments.

The preservation of their juridical statehood does not mean that

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[1] D. A. Low, 'The Asian Mirror to Tropical Africa's Independence', in Prosser Gifford and Wm. Roger Louis (eds.), *The Transfer of Power in Africa: decolonization, 1940–1960* (New Haven and London, 1982), pp. 1–29.

[2] H. G. Nicholas, *The United Nations as a Political Institution* (London, 5th edn. 1975), pp. 154–6.

[3] Wm. Roger Louis and Ronald Robinson, 'The United States and the Liquidation of the British Empire in Tropical Africa, 1941–1951', in Gifford and Louis (eds.), op.cit. pp. 31–55.

[4] Ian Brownlie (ed.), *Basic Documents on African Affairs* (Oxford, 1971), p. 3.

[5] See Frederick H. Gareau, 'The Impact of the United Nations Upon Africa', in *The Journal of Modern African Studies* (Cambridge), 16, 4, December 1978, pp. 565–78.

Tropical African countries are free of serious political conflict. On the contrary, in many there have been recurring invasions, occupations, problems with refugees, border incidents, and other international clashes since independence. Examples are: Tanzania's invasion of Uganda to overthrow the régime of Idi Amin during 1978–9; Morocco's forcible occupation of large areas of Western Sahara since 1976; a prolonged war between Somalia and Ethiopia over a disputed region; invasions of southern Zaïre in 1977 and again in 1978 by separatists in an apparent attempt to seize political control of the copper-rich Shaba Province. Some governments have serious difficulty exercising control over their territorial jurisdictions in the face of external and internal adversaries. The writ of the centre has not run very far in parts of Angola, Chad, Ethiopia, Mozambique, Sudan, Uganda, Zaïre, and other countries with rebels or local warlords, or where there is no effective authority.

However, though rebels can carve out territories under their *de facto* control, this is not enough by itself for sovereignty to be exercised by them under normative international law. They must first be recognised, and neither the O.A.U./U.N. nor the major world powers will do this, unless the rebels have received the prior recognition of the sovereign government(s) being challenged.[1] For this reason the latter in Tropical Africa have little fear that anarchical regions will be seized by foreign powers, or that rebels will succeed in establishing independent jurisdictions. Tanzania was severely criticised by the O.A.U. and many African statesmen for its invasion of Uganda, and Morocco has failed completely in its attempt to secure international recognition for its occupation of Western Sahara. Somali irredentists and Eritrean separatists in Ethiopia have also failed to obtain recognition, despite having gained control of substantial territories – in Eritrea for a quarter-century – while the Government of Zaïre was not only supported by the O.A.U., but was also assisted by major foreign powers in repulsing the Shaba invaders.

This precedent in African international law was established during the Nigerian civil war when Biafra failed to gain international recognition as an independent state against the wishes of the Federal Government. At the time of writing (August 1985), the *União Nacional de Independência Total de Angola* is making efforts to be incorporated into the Angolan Government on an equal basis with the ruling *Movimento Popular de Libertação de Angola*, rather than seeking juridical independence.

Non-African military intervention in Africa has generally been in

[1] See James Mayall, 'Self-Determination and the OAU', in I. M. Lewis (ed.), *Nationalism and Self Determination in the Horn of Africa* (London, 1983), pp. 77–92.

conformity with O.A.U. rules – i.e. it occurs only if requested by
sovereign governments. Thus the United States, the Soviet Union,
France, Great Britain, Belgium, and Cuba have all adhered – at least,
more or less – to this principle.[1] On the other hand, South African forces
have unilaterally invaded Angola and penetrated Mozambique, and
there is no question of their capacity to occupy areas of other neigh-
bouring black African states with relative impunity. But demonstration
of substantial control by South Africa over such territory would not
secure recognition under current normative international law. It would
merely add to Pretoria's universal opprobrium.

The O.A.U. rules have been observed by African leaders in large part
because of the weakness of African states – as we have argued elsewhere.[2]
Lacking solid foundations of empirical statehood, and presiding over
multi-ethnic countries that offer many incentives and opportunities for
subversion and annexation, African rulers are obliged to co-operate
with one another. The O.A.U. rules are observed by them out of a sense
of mutual vulnerability and shared interests. The O.A.U. has been
aptly – and somewhat sardonically – referred to by Julius Nyerere of
Tanzania as 'the trade union of the current Heads of State'.[3] The need
of a 'brotherhood' for mutual protection is evident in the remark of an
African official to an American journalist: 'We cannot intervene in the
internal affairs of another country. We will not serve the critics of Africa
by highlighting the faults of an African brother.'[4]

Counter-factual analysis is useful at this point.[5] Were it not for
juridical statehood, it seems likely that the political map of Africa would
be significantly different from what it is today. After a quarter-century
of independence, the combination of deep ethnic divisions, weak central
governments, loosely attached political peripheries, poorly defended
borders, and so forth, would almost certainly have produced substantial
political change. The distribution of power unrestrained by international
legitimacy would have politically rearranged Africa to some extent:
some central governments would have gained territory at the expense

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[1] France has on occasion intervened in the continent, but these involvements have apparently
been either by previous *accords* with the governments concerned (e.g. Gabon, 1964), or by
solicitations from other African states (e.g. Central African Republic, 1979). See our analysis in
'Pax Africana and Its Problems', in Richard E. Bissell and M. S. Radu (eds.), *Africa in the
Post-Decolonization Era* (London, 1984), p. 176.

[2] Ibid. pp. 157–82.

[3] Quoted in Colin Legum (ed.), *Africa Contemporary Record: annual survey and documents, 1980–1981*
(London and New York, 1982), p. A69.

[4] Quoted in David D. Newsom, 'African Tragedy', in *Christian Science Monitor* (Boston), 18 April
1984.

[5] On the value of counter-factual analysis in African political studies, see John Dunn (ed.), *West
African States. Failure and Promise: a study in comparative politics* (Cambridge, 1978), pp. 214–16.

of others; some separatists or irredentists would have secured inter-
national recognition on the grounds of positive international law; some
new or substantially different countries would have emerged. More
powerful states would have expanded at the expense of weaker neigh-
bours, and non-African powers might well have become involved by
taking sides in conflicts instead of supporting the juridical *status quo*.
Some African states might have been reduced legally to semi-colonial
clients of outside suzerain powers. Indeed, some colonies might have
reappeared, bringing to an end the era of universal independence.
However, nothing resembling this has happened, or appears likely to
happen in the foreseeable future, owing primarily to the international
legitimacy of the jurisdictional *status quo*.

What are the limitations on juridical statehood in Tropical Africa,
according to current international practice? Apart from the general
requirement to respect the rules of the O.A.U. and the U.N. that forbid
outside interference with ex-colonial jurisdictions, there are probably
just two restrictions. First, only colonial populations have clearly
recognised rights of self-determination. Nationalities or ethnic groups
within or across ex-colonial boundaries cannot claim such rights
without the consent of the sovereign governments involved. In practice,
governments are sovereign – not peoples and certainly not ethno-nations.
Second, government officials must be recruited from among the
populations of their jurisdictions. Non-Africans can no longer legiti-
mately rule Africans, and more importantly, Tanzanians or Kenyans
cannot govern Ugandans. On the other hand, and from an international
but certainly not necessarily a domestic point of view, Acholi can
legitimately rule Gandans – both are ethnic groups within Uganda.
The rules of the O.A.U. are basically elaborations of these limitations,
designed to maintain the ex-colonial jurisdictions and the international
legitimacy of the African governments that preside over them.[1]

Under current international law, juridical statehood in Tropical
Africa is not conditional on empirical statehood. As already indicated,
the continent would be a substantially different place politically if it
were. African governments are under no compulsion to enforce their
te itorial jurisdictions, either alone or in alliance with others, for fear
that otherwise they might lose their sovereignty. Juridical statehood
provides them not only with general legitimacy, but also with specific
freedom from acts and threats of foreign intervention – negative sover-
eignty. On the other hand, it cannot provide them with much capacity

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[1] These conditions are examined by Wight in Bull (ed.), *Systems of States*, pp. 168–72, and
Mayall, loc.cit. pp. 77–92.

for self-government – positive sovereignty – apart from foreign aid, which is a privilege but not a right under current international law.[1]

In 1960, it was already possible for John Plamenatz to observe that 'there are many countries now independent which are not free [in the positive sense], and no one would suggest that they ought to be deprived of their independence in order to be made capable of freedom'.[2] (This had, of course, been a basic tenet of European colonialism in Africa and elsewhere.) Moreover, it has usually been assumed that negative sovereignty will eventually contribute to the development of empirical statehood. This has become a prevailing international opinion. However, there is nothing to guarantee that the consequences will only be desirable or beneficial. Juridical statehood, like any concrete political institution, is bound to have some unintended and unwelcome consequences. The historical fact of the matter in Tropical Africa is that independence has been followed by the deterioration of civic and socio-economic conditions in many countries. And while other factors, such as international economic conditions, are undoubtedly involved, juridical statehood should not be overlooked.

In the following two sections we outline some of the most important linkages between negative sovereignty and political underdevelopment in contemporary Tropical Africa.

JURIDICAL STATEHOOD AND NATIONAL AUTHORITY

As noted earlier, Tropical African governments need not feel compelled to establish systems of national authority throughout their territories for fear that not to do so would endanger their sovereignty. They are not driven by competitive international pressures to integrate their political jurisdictions, or to acknowledge the independence of uncontrollable peripheries and build up that which they control. Current collaborative norms of international legitimacy free them from these pressures, and also from the imperatives and disciplines that state-building entails.

African governments may attempt to strengthen their empirical state out of ideological conviction at the urging of, for example, the United Nations. These reasons should not be underestimated, but they are certainly not the same as the necessity of international survival. They might develop their national authority out of fear of losing control over

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[1] The distinction between negative and positive sovereignty is explored in terms of 'freedom' by Isaiah Berlin, Four Essays on Liberty (New York, 1970), ch. 3.

[2] John Plamenatz, On Alien Rule and Self-Government (London, 1960), pp. 22–3.

important populations, organisations, or territories. This is a real danger to governments that depend on the wealth of particular regions. It cannot endanger their sovereignty, however, and by knowing that international bodies, foreign powers, and even private firms are likely to respect their *de jure* claim to such regions, non-sovereigns who are in *de facto* control of them may be prevented from benefiting fully from their material exploitation. In short, such reasons do not seem to compel state-building to the same extent as a competitive states-system.

Independence eliminated any compelling international pressures for the development of national authority in Tropical Africa. The transfer of sovereignty rarely put in place a substantial indigenous structure of national authority, and the new African rulers were not obliged to establish this on a state-wide basis in order to acquire power. They usually got what they wanted either by winning pre-independence elections and/or by obliging the colonial régime to withdraw, neither of which usually necessitated anything approaching total territorial control. The new African states were not defined by the political bases of the new rulers, which in most cases were less (and sometimes *far* less) extensive than the jurisdiction of the country. They were defined by political boundaries that were originally determined by European imperialists – whose territorial claims were made in relation to one another and not traditional African rulers. There was no general desire or serious attempt by the new élites to change the boundaries to make the jurisdictions coincide with their political authority. On the contrary, since some surviving traditional rulers still desired this, any meddling with boundaries was seen by the new leaders as a recipe for instability and possibly chaos, which further reinforced the pattern of juridical statehood.[1]

Decolonisation typically involved the adoption of an independence constitution to provide an institutional framework for the new state. This was almost always modelled, often faithfully and sometimes slavishly, on the constitution of the metropolitan power or, in the case of some English-speaking African countries, on what worked in other Commonwealth states. However, they were usually abandoned in the decade following independence in the face of rising civilian and military authoritarian régimes. Why they failed to become institutionalised is a complicated question beyond the compass of this article. Suffice it to say that they were alien frameworks from European cultures that had little meaning for most Africans who were expected to live under them.

[1] See Zdenek Červenka, *The Organisation of African Unity and Its Charter* (New York, 1969), pp. 92–4.

They rarely embodied indigenous political cultures, which – in any case – were difficult to adapt to the requirements of the ex-colonial states. They had usually been established too late in the colonial period to become a familiar part of the political landscape after World War II. African rulers who had accepted them in order to gain independence were not necessarily prepared to stick by them at the risk of losing power afterwards. Their opponents also had little more than an instrumental attitude to them. In short, they lacked real legitimacy.[1]

In addition, most nationalist parties organised under independence constitutions to afford African leaders opportunities to compete in elections failed to become enduring foundations of national authority. Most observers had expected them to succeed.[2] Such leaders did not establish parties primarily to provide indigenous structures for ex-colonial states, but they usually did so only to compete in elections for the chance to acquire control over the newly independent government. Once they gained control of the new state they had no further need for the electoral apparatus. Thus nationalist parties were usually not deeply rooted in the loyalties of Africans, and it became evident soon after independence that even some which appeared to command substantial popular support – Nkrumah's Convention People's Party, Touré's *Parti démocratique de Guiné*, Houphouët-Boigny's *Parti démocratique de la Côte d'Ivoire* – really commanded much less.[3]

Most new African rulers were preoccupied with controlling power, and accordingly they revised, revoked, or simply disregarded the democratic independence constitutions that gave birth to their parties.[4] Rarely did competitive democracy last as long as a decade after independence, and in only three countries has it been retained (Botswana, The Gambia, and Zimbabwe),[5] while in one it has been revived (Senegal). But each of these countries is dominated by a ruling party, its government has never changed hands, and the opposition presents no real electoral threat. Elsewhere nationalist parties have been

  [1] We address this issue at greater length in *Personal Rule in Black Africa: prince, autocrat, prophet, tyrant* (Berkeley, Los Angeles, and London, 1982), ch. 7, and 'Personal Rule: theory and practice in Africa', in *Comparative Politics* (New York), 16, 4, July 1984, pp. 412–42. See also B. O. Nwabueze, *Constitutionalism in the Emergent States* (London, 1973), ch. 6, and Sir Alan Burns (ed.), *Parliament as an Export* (London, 1966).

  [2] See Thomas Hodgkin, *African Political Parties* (Harmondsworth, 1961), and Ruth Schachter Morgenthau, *Political Parties in French-Speaking West Africa* (Oxford, 1964).

  [3] Aristide R. Zolberg, *Creating Political Order: the party-states of West Africa* (Chicago, 1966).

  [4] See our 'Democracy in Tropical Africa: democracy vs. autocracy in African politics', in *Journal of International Affairs* (New York), Winter 1985, pp. 293–305.

  [5] It is too early to determine how long Zimbabwe will retain its 1980 independence constitution. Recent remarks by Prime Minister Robert Mugabe, and statements issued by the ruling party, suggest that it will be replaced by a new one-party constitution after 1990.

destroyed by a *coup d'état* or abandoned or absorbed into the one-party systems that have been established by some military or civilian régimes. But ruling parties are institutions of popular legitimacy in very few countries, the majority being auxiliary instruments of personal power rather than authentic organisations of public opinion.

Most of the African rulers who acquired sovereignty through wars of liberation – against the Rhodesians in Zimbabwe, and the Portuguese in Angola, Mozambique, and Guinea-Bissau – subsequently had no more substantial authority than those who acquired it by constitutional means. Before independence the armed liberation movements were often united only by a common colonial enemy, but were divided by leadership, organisation, ethnicity, social status, and so forth. That they often became bitter enemies in a struggle to control the state after the departure of the colonialists is scarcely surprising. Today the governments of Zimbabwe, Angola, and Mozambique are no closer to establishing national authority than those of many other African countries of comparable size. Armed opposition has not been experienced, however, in tiny Guinea-Bissau, where the extent of control from the centre has not been substantially less than the total jurisdiction.

In most African countries traditional authority cannot be used as the foundation of the post-colonial states. Few of them have a single, predominant tradition. Most have many different traditions, but none which can be accepted as national by even a majority of the population. Traditional and ex-colonial jurisdictions are usually in conflict. In Botswana, Swaziland, Lesotho, Rwanda, Burundi, and Somalia, there are predominant traditions, but only in the first two have these served effectively as the foundation of the post-colonial state. In Lesotho, the weight of tradition could not prevent a *coup d'état*. In Rwanda and Burundi, traditional caste systems have collided with modern democratic ideas to produce intense political strife and ethnic oppression verging on genocide.[1] In the Horn of Africa, where the traditional Somali community is more extensive than the ex-colonial state of Somalia, significant numbers of Somalis live in bordering regions of Ethiopia, Djibouti, and Kenya, creating intensive irredentist pressures. In most other countries, where tradition is less extensive, it creates the more typical problem of internal ethno-regional conflict.[2]

Most Tropical African countries are multi-ethnic empires. They consist of an assemblage of culturally distinct, territory-based groups of

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[1] Leo Kuper, *Genocide* (Harmondsworth, 1981), ch. 9.
[2] We address the relation of juridical statehood to these problems in 'Popular Legitimacy in African Multi-Ethnic States', in *The Journal of Modern African Studies*, 22, 2, June 1984, pp. 177–98.

varying size and significance which are related to government – if at
all – by patronage ties with political leaders.[1] The mode of authority
in these empires is usually personal rather than institutional.[2] African
rulers, civilian or military, typically stand in a patronage relationship
to leading politicians and other 'big men', with linkages repeated as
far downwards as necessary for them to remain in authority – always
uncertain in a personal régime. When the system is genuinely represen-
tative, the mode of representation is usually 'virtual' rather than
'electoral': political leaders and other 'big men' act as fiduciaries who
bring the concerns of ethnic groups to the government's attention while
endeavouring to maintain their support. The territorial extent of such
patronage empires is not usually the whole country, and many politically
marginal groups may be left out. Indeed, most of the population may
be excluded.

   The empirical state in most of Tropical Africa is less extensive than
the territorial jurisdiction. Control of the former usually does not
require anything like control of the latter. If a leader commands the
government apparatus and patronage, and is supported by key ethnic
leaders, with luck this will usually suffice for him to control the state.
And if the presidential palace, army barracks, radio station, airport,
railway terminals, major roads, and other strategic locations in and
around the capital – which is what the empirical state in Tropical Africa
usually consists of – can be controlled, then so probably can the
government. Diplomatic recognition is usually automatically extended
to the leaders who are in command of the government but not
necessarily the country. Soldiers and other ambitious leaders quickly
grasped this political principle, and the basic method of changing
governments soon became the military *coup d'état*. When this began to
occur in the early-to-middle 1960s, there was a brief period of uncertainty
about recognising military usurpers. However, with eight such coups
in 1966 alone, recognition was granted out of necessity.[3] Since that time
military usurpers have gained automatic international recognition
almost without exception.

   [1] For an excellent survey of political clientelism in Africa and elsewhere, see Steffan W. Schmidt,
James C. Scott, Carl Lánde, and Laura Guasti (eds.), *Friends, Followers, and Factions: a reader in
political clientelism* (Berkeley, Los Angeles, and London, 1977).
   [2] Guenther Roth, 'Personal Rulership, Patrimonialism, and Empire-Building in the New
States', in *World Politics*, 20, 2, January 1968, p. 203, argues that 'one of the major reasons for
the predominance of personal rulership...in the new states seems to lie in a social, cultural, and
political heterogeneity of such magnitude that a more or less viable...pluralism of the Western
type, with its strong but not exclusive components of universality, does not appear feasible.'
   [3] Pat McGowan and Thomas H. Johnson, 'African Military Coups d'État and Underdevelop-
ment: a quantitative historical analysis', in *The Journal of Modern African Studies*, 22, 4, December
1984, pp. 633–66.

In contemporary Africa it is established international practice to recognise governments however they came to power, or remain in power, and to acknowledge their ex-colonial jurisdictions regardless of the actual extent of their empirical control – providing they comply with O.A.U. rules in their external conduct. Juridical statehood is not conditional on the national authority of governments and can do little to promote it. Whether or not such an asset is created depends primarily on internal politics, and particularly the actions of governments. African rulers are free to develop national loyalties and identities as they see fit; they are not obliged by international law to do so. However, by eliminating the compulsion of rulers to develop national authority for fear that their international recognition and status might be jeopardised, juridical statehood can negatively affect state-building.

JURIDICAL STATEHOOD AND GOVERNMENT CAPABILITY

The current African crisis is increasingly seen as rooted primarily in government incapacity and mismanagement. A recent report of the World Bank, referring to 'the systemic weakness in African governmental institutions', identifies poor management as 'a major – in some countries, the major – cause'.[1] A new awareness of the political causes of the African crisis is entering into our analysis of the problem, but the links between juridical statehood and government incapacity have not been acknowledged, even though they are not hard to find. The problem goes back to independence when, as we have indicated, amid the greater concern about the universal rights of self-determination, the question of the readiness and capacity of the colonies for self-government was bypassed. Even in British colonies, where great attention was paid to 'preparation' for self-government, the time of independence arrived before plans for instituting successor African states could be effectively implemented.[2]

Juridical statehood was originally considered by many of its advocates to be necessary for development: it would give Africans greater control over their countries. For example, General Principle XIV of the 1964 United Nations Conference on Trade and Development (UNCTAD I) declared that 'complete decolonization...is a necessary condition for economic development and the exercise of sovereign rights over natural resources'. However, this assumed that the indigenous capacity for

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[1] The World Bank, *Toward Sustained Development in Sub-Saharan Africa* (Washington, D.C., 1984), p. 20

[2] Lee, op.cit. pp. 280–1; also see Sir Charles Jeffries, *Transfer of Power* (London, 1960), ch. 15.

exercising control already existed or could be rapidly developed, which was seldom the case. Indeed, the opposite frequently happened: government capability declined after independence.

One very important reason was the rapid indigenisation of government personnel which occurred in most Tropical African countries during and immediately after decolonisation. As already indicated, prior to independence, colonial governments consisted almost entirely of European officials at crucial decision-making levels – and of their imperial reinforcements abroad. Independence involved not only a severing of most imperial ties, and consequently a loss of this reserve pool of governing expertise, but also a replacement of local expatriate officials by less experienced – often inexperienced – Africans who probably had close ties in the immediate surrounding community.[1] Increased incompetence as well as impropriety were the usual result. States that Africanised over a longer period under strong rulers were able to resist political demands for rapid indigenisation – Côte d'Ivoire, Malawi, Botswana – or which emerged much later after sufficient numbers of indigenous personnel had by then been trained (Zimbabwe), did not incur administrative adversities to the same extent. But in most countries sovereignty demanded rapid indigenisation. Hesitancy or delay was difficult, not only because of the strong domestic demand for government jobs, but also because it looked like a political equivocation about sovereignty itself and a continuation of colonialism.

At the same time that African state and parastatal organisations were indigenising their personnel, they were also enlarging their staffs, which further diluted their administrative expertise. Most of this growth of government was related to independence. Sovereign governments are inherently more complex than colonial régimes, which – like their economies – are specialised units within an imperial system. Because independence involved the separation of the ex-colonial from the imperial government, the necessary functions of expatriates had now to be provided by the new state. This entailed the recruitment of new African staffs and the formation of substitute organisations. This is most clearly seen in external relations and defence. As a direct result of independence, a foreign service and a new or expanded military force must be established. Moreover, independent governments are usually confronted by political demands for the creation of more jobs than can be satisfied by indigenisation. In underdeveloped Tropical African

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[1] According to Elizabeth Colson, 'Competence and Incompetence in the Context of Independence', in *Current Anthropology* (Chicago), 8, 1–2, February–April 1967, p. 93: 'Not only are new men in the official positions; they have brought with them an entirely new set of unofficial linkages by which they can bypass official channels.'

countries, where the private sector is very small, the public sector inevitably becomes the chief source of highly prized employment.

Independence fostered the nationalist concept of African countries as embryonic *national* economies based on an internal division of labour, while discouraging the colonial notion of them as specialised units of an external system of production and exchange: an international division of labour. Colonial economic policy was often aimed at making colonies more self-supporting in a desire to avoid drawing upon the metropolitan treasury, but the long-range aim was not economic independence. Rather it was economic imperialism based either on mercantilism (in French and Portuguese Africa) or free trade (in British and, to a lesser extent, Belgian Africa). In both models the colony was a specialised, usually very small unit of a much larger overseas economy of which the industrialised metropole was the centre. The continuation of economic specialisation after independence was therefore regarded by many African governments as the perpetuation of colonialism.

However, the creation of a national economy required internal reorientation and diversification. This could not occur 'naturally', because market forces were externally oriented – precisely what had to be changed in the view of economic nationalists. It necessitated state involvement in the economy – typically, planned industrialisation by import substitution under the guidance of an enlarged *dirigiste* state. Frequently it also involved expanded government participation by means of new parastatal organisations. The result was a further proliferation of state organs and dilution of managerial capital.

In their desire to create national economies, African governments also encountered the limits of growth presented by the ex-colonial jurisdictions which were adequate for economic colonialism but not usually for economic nationalism. There have consequently been many attempts at regional economic integration, but none has proved particularly successful. The inherited political borders are higher barriers than was originally believed. Most African rulers are extremely jealous of their sovereignty and are reluctant to share it with others, even if their countries would benefit in the long run. Politics is not usually a long-term activity, and most African politicians evidently would rather monopolise and enjoy what they have today. The East African Community was built on pre-independence co-operation between the colonial governments of Kenya, Uganda, and Tanzania, but it could not be carried forward after independence and finally disintegrated in 1977, largely for this reason.[1]

[1] See Reginald Herbold Green, 'The East African Community: death, funeral, inheritance', in Legum (ed.), *Africa Contemporary Record, 1977–1978*, pp. A125–37.

There is usually little complementarity between ex-colonial African economies and thus no substantial basis for intra-African trade. Though many governments subscribe to the view that economic development will begin once intra-continental commercial trade is stimulated, they remain preoccupied with building their own overseas export markets. They need foreign currency to purchase the goods necessary for modernisation – neither of which can be provided by other African states.[1] In many places, economic infrastructures which reflect European colonial dominance would have to be reoriented, which would require huge investments far beyond the limited finances of African countries. This is the problem faced by the Southern African Development Co-ordination Conference in attempting to reduce the dependence of the black states of Southern Africa on the transportation system of white South Africa.[2]

The practical consequences of post-independence statism have been adverse to empirical statehood in most African countries also because of the vulnerability of the state to the particularistic norms of the surrounding multi-ethnic society. As governments have been enlarged and indigenised, 'private' interests rooted in personal ambitions and patron-client ties of African officials have intruded to a far greater degree than before independence, when governments were much smaller and dominated by Europeans with few obligations to the surrounding society. Personal influence and connections increasingly competed with official duties and regulations in the behaviour of officials. Administration became 'commercialised' as officials engaged quite freely in the sale of their authority. Increased state involvement in the economy reduced or pre-empted private enterprise, but this did not necessarily increase public economic control. It led instead to another, less desirable form of private enterprise: black markets.[3] Consequently, many African states reversed the usual state-building sequence postulated by Max Weber and other modernisation theorists: they were transformed from ration-legal bureaucracies to patrimonial organisations as a result of independence.[4]

[1] Kenneth J. Twitchett, 'African Modernization and International Institutions', in *Orbis* (Philadelphia), 14, 4, Winter 1971, p. 873.

[2] Michael Clough and John Ravenhill, 'Regional Cooperation in Southern Africa: the Southern African Development Coordination Conference', in Clough (ed.), *Changing Realities in Southern Africa: implications for American policy* (Berkeley, 1982), pp. 161–86.

[3] See Richard A. Joseph, 'Class, State and Prebendal Politics in Nigeria', in *Journal of Commonwealth and Comparative Political Studies* (London), 21, 3, November 1983, pp. 21–38; Richard Jeffries, 'Rawlings and the Political Economy of Underdevelopment in Ghana', in *African Affairs*, 81, 324, July 1982, pp. 307–18; and Victor T. LeVine, *Political Corruption: the Ghana case* (Stanford, 1975).   [4] Weber, op.cit. pp. 346–58.

Patrimonialism in new states often produces a political economy based upon 'spoils', in which corruption becomes the *modus operandi* of government. Personal rulers can easily appropriate public funds for private use, and their families, friends, allies, associates, and clients are well situated to do the same. The political class can acquire a luxurious standard of living sustained in large measure by bribes paid by foreign businesses in exchange for commercial advantages. In Zaïre, President Mobutu and several members of his family reportedly withdrew $150 million in foreign exchange from the Bank of Zaïre for their personal use between January 1977 and March 1979, according to testimony given in Washington to the Sub-Committee on Africa, U.S. House of Representatives[1] – and this figure does not include payments by western businessmen to senior government officials for permission to operate in Zaïre. These monies are often 'paid by deposit in banks in Europe or the United States before the money goes on the books of the Bank of Zaïre', and consequently cannot be traced.[2] In Nigeria, under the nominally democratic government of President Shehu Shagari (1979–83), it has been estimated that between $5 to 7 thousand million was personally appropriated by leading public servants and is now held in foreign private accounts.[3]

Even large, relatively wealthy states like Zaïre and Nigeria cannot easily withstand such huge financial losses. Private banking regulations enforced by international law make it extremely difficult for successor governments to recover any misappropriated funds after personal régimes have been overthrown, and the possibility of a repetition of the cycle is high.

At the time of independence, national sovereignty was generally considered essential for African development. It was assumed that international aid could enhance the capabilities of the new African states and provide substitutes for any resources and supports previously furnished by the colonial powers. Thus, the elaborate United Nations structure of international assistance, as well as the numerous aid organisations of developed countries which came into existence following the end of colonialism, can be understood as reinforcing the international legal order that upholds the independence of African states. Although

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[1] 'Political and Economic Situation in Zaire – Fall 1981', *Sub-Committee on Africa, Committee on Foreign Affairs, U.S. House of Representatives, 97th Congress, 1st Session, 15 September 1981* (Washington, D.C., 1981).

[2] Jonathan Kwitny, 'Where Mobutu's Millions Go', in *The Nation* (New York), 19 May 1984, p. 607. Mobutu's Belgian landholdings are estimated at $100 million and his Swiss bank holdings at $143 million, according to loc. cit. p. 606.

[3] Larry Diamond, 'Nigeria in Search of Democracy', in *Foreign Affairs* (New York), 62, 4, Spring 1984, pp. 911–12.

the quantity of material aid provided is only a tiny fraction of the wealth of the developed nations, it is very important to the often desperately poor African economies. Many of them are highly dependent on such aid, and a few – such as Tanzania – are virtually mendicant states.

The potential of international aid to enhance the socio-economic capabilities of African states is distinctly limited by their juridical statehood and the ineffectiveness of their governments, however. A classic example of a donor's powerlessness in Tropical Africa is the relationship of the International Monetary Fund and the World Bank to the mercenary government of Zaïre. In the late 1970s a senior representative of the I.M.F. – Erwin Blumenthal, a retired German central banker – was seconded to the Bank of Zaïre and the Ministry of Finance in order to ensure that the Mobutu régime complied with the terms of its western loans. He and his team were thoroughly frustrated and thwarted by the régime. Afterwards he concluded that

the corruptive system in Zaire...[and] its mismanagement and fraud will destroy all endeavors of international institutions, of friendly governments, and of the commercial banks towards recovery and rehabilitation of Zaire's economy. Sure, there will be new promises by Mobutu, by members of his government..., but no (repeat: no) prospect for Zaire's creditors to get their money back in any foreseeable future.[1]

Presumably western creditors and other international financial organisations are now forewarned about their limited capacity to intervene if sovereign governments are either unwilling or unable – in the case of Zaïre, undoubtedly both – to co-operate.

Only where an African country has become utterly dependent on foreign aid, and when foreign donors have abandoned their diffidence to African sovereignty, is it possible to dictate terms to African governments – as apparently happened in the case of Tanzania, which can only survive economically by massive transfusions of western aid amounting to about $100 million annually. One unnamed aid official made the following revealing comments in an interview with the African correspondent of a Canadian newspaper:

The donor community has become the loyal opposition in [one-party] Tanzania and all donors here are hardening their positions...The power of the money we're spending gives us influence, and we can't not use it...The Tanzanians know it's very easy for us to cut them off...my job is to make sure

¹ Quoted in Thomas M. Callaghy, 'External Actors and the Relative Autonomy of the Political Aristocracy in Zaire', in *Journal of Commonwealth and Comparative Political Studies*, 21, 3, November 1983, p. 75. Also see his 'Africa's Debt Crisis', in *Journal of International Affairs*, 38, 1, Summer 1984, p. 68.

our taxpayer's money is spent well. We cannot simply sit idly by and keep signing cheques.

Another diplomat remarked: 'It's an interesting development in the aid business. A portent of things to come, I think. Aid donors are going to become involved in setting African policies.'[1] This is about as close to a public questioning of the international legitimacy taboo underlying African independence as has yet been made by a western official.

Whether the Tanzanian case is definitely a portent of things to come we cannot yet say. Donors still cannot legally dictate the terms of their aid, or independently establish their own organisations in African countries to ensure efficient and equitable distribution. Humanitarian intervention is illegel by current international law.[2] Donors can, however, influence the policy pronouncements of African governments affecting aid, and they might even pre-empt the relevant policy-making process. Recent African criticisms of the I.M.F. for attempting to impose fiscal and monetary policy on defaulting borrower countries are a reflection of this possibility. One African Finance Minister is reported as saying: 'My country is now a colony of the I.M.F. I am not making a judgement, merely stating a fact.'[3] On the other hand, the concrete influence of western donors on the use of their aid by African officials beyond general fiscal or monetary policy, such as official exchange rates, is probably not as great as this implies. Influence on policy-making alone cannot eliminate the mismanagement and misappropriation of aid caused by personalism and corruption in African governments. This is only possible if the donors' staff occupy not only policy-making levels but also key executive and administrative posts in those governments. If this were to happen – which seems very unlikely – a new colonialism definitely would have been created and African independence would be at an end.

JUDICIAL STATEHOOD AND NEO-INSTITUTIONAL THEORY

The new international institution of juridical statehood has definite implications for contemporary political theory. The 1985 World Con-

[1] Michael Valpy, 'Tanzania's Aid Donors Wield Growing Influence in Economy', in *The Globe and Mail* (Toronto), 27 September 1985.

[2] Jack Donnelly, 'Human Rights, Humanitarian Intervention and American Foreign Policy: law, morality and politics', in *Journal of International Affairs*, 37, 2, Winter 1984, p. 314.

[3] Quoted in Richard Hall, 'The Paymasters Who are Africa's New Colonialists', in *The Observer* (London), 31 July 1983. For an excellent analysis of 'international debt effects', see J. Haynes, Trevor W. Parfitt, and Stephen P. Riley, 'The Local Politics of International Debt: sub-Saharan Africa', Annual Conference of the [British] Political Studies Association, University of Manchester, April 1985.

gress of the International Political Science Association was devoted to the theme 'The Changing State and Its Interaction with National and International Society'. However, only a small proportion of the papers dealt with 'sovereignty', 'international law', 'human rights', 'self-determination', or other topics traditionally associated with the existence of the state. Likewise, the academic idiom of institutional theory – the classical theory of the state – was nearly a foreign language at the conference. Juridical statehood has passed almost entirely unnoticed by contemporary political science, and particularly by American students of international relations and comparative politics.[1]

In our concluding paragraphs we offer some methodological reasons for this oversight. At this point, however, it may be helpful to summarise the argument in order to tease out its theoretical implications.

Among the major institutional casualties of World War II and its democratic global aftermath was that of colonialism, by which a number of mainly European states had previously dominated vast territories and populations of the underdeveloped, non-western world. However, what began in Asia under pressures of war came to an end in Tropical Africa and Oceania primarily because of an ensuing new doctrine of universal self-determination effectively promoted by the U.N. General Assembly. Most African empires were deliberately dismantled by the Europeans, and only the rule of the Portuguese and of Ian Smith's outlaw régime in Rhodesia were brought to the verge of collapse by their African adversaries. Consequently, all but a few new African states were formed by a largely uncoerced transfer of negative sovereignty.

This essentially democratic international revolution constituted a radical break with a centuries-old tradition in which sovereignty was based on demonstrable capacity, on positive fact, either of countries individually or in alliance: empirical statehood. A state was a credible entity that existed as such, whether recognised or not, and whose inescapability required recognition sooner or later. Classical international law, therefore, was the child and not the parent of states. In Tropical Africa today, however, the new international law of the U.N. is precisely the parent of many countries which acquired sovereignty before they were necessarily states in positive, inescapable reality. We wonder how many would exist in the absence of juridical statehood?

[1] In Britain, Martin Wight and others maintained an interest in juridical statehood and related topics. See, for example, Wight, in Bull (ed.), *Systems of States*, Michael Donelan (ed.), *Reason of States* (London, 1978), James Mayall (ed.), *Community of States* (London, 1982), and Bull and Watson, op.cit.

A new dual states-system has been instituted which contains two fundamentally different foundations of statehood. The first is the traditional power foundation of the competitive states-system which persists in many parts of the world and can only be extended by development. International standing within it is determined primarily by military power and alliances, socio-economic resources and capabilities, internal institutional authority, and similar long-established constituents of empirical statehood. The second is the novel moral-legal foundation of the collaborative states-system which has emerged in many parts of the ex-colonial world – particularly Tropical Africa – where extreme underdevelopment still prevails, empirical statehood frequently has yet to be achieved, and independence is determined primarily by an unqualified international right of self-determination. It is very unlikely that the states-system could have been extended as far or as fast as it was in the decades following World War II without this new doctrine of international legitimacy.

Within the collaborative states-system numerous extremely marginal states have been created which survive primarily by juridical statehood and possess very limited internal substance or credibility. Chad is the paradigm case: a state which is virtually devoid of civic or socio-economic concreteness, and which survives almost entirely by external recognition and support. Concurrently, a vast new supporting international superstructure, centred on the United Nations but extending to most of the more developed countries, has had to be created to maintain these marginal states, primarily by legal accommodation and, to a lesser extent, by material aid. This unprecedented superstructure is a necessary component of a global society of states which is premised on the legal equality of members, but which must accommodate enormous socio-economic inequality among them.[1]

The most immediate consequence of juridical statehood in Tropical Africa is, as the term implies, to preserve ex-colonial jurisdictions regardless of their potential for development. Since many of these are empirically very unpromising, the effect is often to obstruct state-building. A closely related consequence is to guarantee the rights of sovereign rulers, whomever they might be, against foreign intervention regardless of their internal governing actions or omissions. In more than a few countries, sovereign rights have been purchased at the expense of human rights. The new international democracy is often disclosed, somewhat ironically, as a democracy for rulers only.

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[1] See Werner Levi, *Law and Politics in the International Society* (Beverly Hills, 1976), and Robert W. Tucker, *The Inequality of Nations* (New York, 1977).

Moreover, there are few if any compelling international pressures on governments to engage in state-building – to unite voluntarily to create more promising jurisdictions, to pool scarce resources, to rationalise and economise governing practices – in order to avoid losing juridical statehood. On the contrary, in so far as it will not cost them their sovereignty and the significant privileges and perquisites which go with it, they are at liberty to neglect development. This is a privilege unknown either to traditional European statesmen or to the advanced governments of the Western and Eastern blocs today. One major effect has been to create a new international underclass of mendicant states which have come to depend very heavily not only on legal recognition but, increasingly, on foreign aid as well. Tanzania is the paradigm case: a country seemingly hooked on external assistance.

If our analysis has validity, and we obviously believe it does, it forces us to reconsider the significance of moral, legal, and political institutions – the superstructure – and the theory behind such phenomena in political science. Juridical statehood is a formal-legal rather than an informal-social phenomenon. This makes it appear insignificant from those perspectives of sociology and economy which have heavily influenced contemporary political science. Juridical state-hood is not merely a formality, however. On the contrary, it is a constituent element of the new post-World War II global society of states, and an independent variable in its own right: it has had a profound impact on the civic and socio-economic conditions of millions of people in those areas where it has been extended and is maintained. And contrary to expectations at the time of independence, its impact has frequently been more adverse than favourable. We are not saying that juridical statehood provides a fully adequate explanation of under-development in Tropical Africa – if that is possible. However, it is a significant partial explanation that has hitherto gone largely unnoticed.

Perhaps the most important methodological reason why this has been the case is, as we have already intimated, the current divorce between legal and sociological theory, and the concentration of most political scientists on the latter. In the United States, the divorce can conveniently be demarcated by the 1950s 'behavioural revolution'.[1] Since about that time, students of international relations and comparative politics have largely abandoned institutional analysis of the kind associated with the classical theory of the state. Legal theory – including, *inter alia*,

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[1] The change can be identified with the publication of David Easton's modern classic, *The Political System: an inquiry into the state of political science* (New York, 1953). In comparative politics perhaps the most influential representative of the new behavioural approach was G. A. Almond and James S. Coleman (eds.), *The Politics of the Developing Areas* (Princeton, 1960).

jurisprudence, constitutionalism, and international law – has been left almost entirely in the hands of academic lawyers or very old-fashioned political scientists, with the unfortunate consequence that the social context of institutions has often been neglected, resulting in a loss of analytical realism.

As far as political science is concerned, the divorce was probably the result of a naïve tendency of many traditional studies – although by no means all – to take a narrow, legalistic view of the correspondence between rules and official behaviour, and to assume that the latter can be predicted by a knowledge of the former – or can even be ignored.[1] However, official behaviour is only predictable where rules and regulations are highly institutionalised. This is more or less the case in Western Europe and North America where, for example, electoral conduct is shaped in predictable ways by highly legitimate democratic institutions. In the United States, we can safely predict that a President or member of Congress will resign if he loses an election, and that votes will be freely cast and accurately tabulated. This is not usually the case in Tropical Africa, however, where electoral systems – if they exist – are likely to be insubstantial and manipulable or evadable by politicians, especially those with power.[2]

On the other hand, we can get a fairly good indication of the probable international conduct of African governments in areas where its rules apply from an analysis of the O.A.U. Charter – which is an important constituent of juridical statehood in Africa.[3] However, whether institutions are strong or weak, substantial or nominal, we cannot understand behaviour very adequately without making reference to them. Politics is to a very significant extent an activity of conceiving, making, accepting, changing, enforcing, defying, ignoring, evading, avoiding, and currupting rules which seek to prescribe behaviour.

The behavioural revolution brought about a paradigm shift in political science from narrow legalism to broad sociological theory which tended to obscure this conceptually. At the time a leading functionalist wrote: 'We are not simply adding new terms to an old vocabulary, but rather are in the process of developing or adapting new ones.'[4] For example, 'rules' and 'offices' would henceforth be replaced by 'rôles' and 'structures'. In another very important study written in a similar idiom, the term 'institutions' acquired a distinctive sociological

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[1] The best traditional institutional studies avoided such a view. See, for example, Carl J. Friedrich, *Constitutional Government and Democracy: theory and practice in Europe and America* (Boston, 1950 revised edn.).
[2] This is the major theme of our *Personal Rule in Black Africa*.
[3] See our 'Pax Africana and Its Problems', loc. cit.   [4] Almond and Coleman, op.cit. p. 4.

connotation as 'stable, valued, recurring patterns of behaviour'.[1] 'State' was replaced by 'political system' in the writings of many functionalists who were influenced by the use of the latter term in political anthropology.[2] While 'state' was not abandoned by neo-Marxists, it understandably had a decidedly socio-economic character – particularly as an agency of class domination rooted in relations of production.[3] However, functionalist sociology and neo-Marxist political economy share a sociological view of politics that has shaped our thinking about the third-world state. In African political studies, for example, functionalist conceptions of the unleashed and disruptive forces of modernisation, and neo-Marxist arguments concerning the manipulations and constraints of international capitalist structures, dominate our understanding of the current state crisis.

The idioms of law and sociology are different and cannot be equated or substituted. For example, 'office' and 'rôle' are not identical: the former is an institutional position defined by specific obligatory rules, while the latter is an expectation and pattern of behaviour which may be in violation of the rules of an office – as in the case of political corruption. Expectations and obligations, therefore, point to different facets of political behaviour, both of which are essential for an adequate analysis. The argument that sociology (including political economy) is essential requires no further justification. Without a legal concept, however, it is difficult if not impossible to ascertain the extent to which political behaviour conforms with institutional requirements. For example, it is hard to analyse personal rule – which is precisely a pattern of behaviour that does not conform with such requirements. The same can be said of juridical statehood – which is an explicitly legal condition – and the distinction between a colony and a sovereign state is obscured. 'In this sense the legality of the state is still fundamental to the world polity.'[4] In short, sociology without law in political science is probably as blind as law without sociology.

[1] Samuel P. Huntington, *Political Order in Changing Societies* (New Haven and London, 1968), p. 12.

[2] The term 'political system' was particularly appropriate to anthropologists precisely because their objects of analysis were lacking in the specific institutional characteristics – sovereignty, international law, etcetera – of states. The comments of A. R. Radcliffe-Brown on this point are quite explicit in Meyer Fortes and E. E. Evans-Pritchard (eds.), *African Political Systems* (London, 1940), p. xxi.

[3] Debates within Marxism over the significance of the state are extensive, but the socio-economic character of the state is not usually at issue. See Nicos Poulantzas, *Political Power and Social Classes* (London, 1973).

[4] W. J. M. Mackenzie, *Politics and Social Science* (Harmondsworth, 1967), p. 279: 'There have been...independent outbreaks of reaction in different fields against the distinction between formal and informal, between law and practice, between what "the book" says and what we actually do. The second member of each pair was for a while treated as being the reality studied by social science...[but] neither law nor practice is intelligible alone'.

In political analysis involving the state, as M. J. C. Vile puts it, 'both institutional and behavioural studies are essential...The study of politics must...very largely consist of the examination of the ways in which...political institutions and...social forces...interact.'[1] Vile is recommending what we call a neo-institutional approach to the state which considers both the juridical and the empirical, the civil and the socio-economic, and their interaction. It is ironic that at the moment juridical statehood was emerging as a significant historical phenomenon in the 1950s, many political scientists were abandoning the theoretical tools necessary to perceive it.

[1] M. J. C. Vile, *Constitutionalism and the Separation of Powers* (Oxford, 1967), p. 314. The distinction between 'convention' and 'nature', 'social institutions' *versus* 'sociological laws', is analysed in characteristically brilliant fashion by Karl Popper in *The Open Society and Its Enemies*, Vol. 1 (London, 1962), ch. 5.