

GOOD GOVERNANCE AS POLITICAL CONDITIONALITY

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INTRODUCTION

Good governance and political liberalization as desirable ends were imposed on African governments by external actors in response to both exogenous and endogenous factors. As disappointment with Africa's economic failure, after almost three decades of independence from Western colonial rule, set in and as Central and Eastern Europe broke loose from the bear hug of Sovietism, the search for a new foreign policy thrust to replace anti-communism took on added urgency ⁽¹⁾. This eventually resulted in the transformation of the fairly innocuous word "governance" into a contentious political conditionality, by the major Western industrial democracies, having as its focus the promotion of democracy. For most African governments and leaders this new conditionality on top of other conditionalities associated with Structural Adjustment Programs was nothing short of a time bomb ⁽²⁾. Like the poisoned gifts of Troy, this 'gift' also was the work of friends and partners! The prudent person does not lounge around to see when such a device goes off and risk getting showered with shrapnel; one flees. This is precisely what the ruling political elite has done. Even those African leaders who were genuinely committed to economic reform feared the consequences of the political conditionality being imposed from without. The conditionality promised to increase their dependence on their external benefactors even as it encouraged home-grown opposition to authoritarian regimes. The majority of them resisted with all their might while others temporized or engaged in infantile charades (such as promoting well-choreographed national conferences that resolved nothing, introducing a few cosmetic changes here and there in their constitutions that fooled no one, organizing sham elections that almost always ended up preserving the political status quo, setting up human

rights commissions while denying them the means to check and prevent violations of these rights, and so on and so forth).

The rather lukewarm reception that the campaign for good governance and democratization got from its African hosts raises a key question which this Paper sets out to confront. It is this: whether Africa's political leadership can, in good faith, produce and guarantee the political reforms necessary for good governance to flourish? It is the thesis of this Paper that because African leaders were dragged kicking and screaming into the governance and democratization reform movement, their commitment to it is, at best, questionable. They cannot, therefore, be counted on to carry through to their logical conclusion the reforms called for.

1. What is Governance?

The term first made its appearance in development circles in a much quoted paragraph on the World Bank's 1989 report: *Sub-Saharan Africa: From Crisis to Sustainable Growth*. Its recency notwithstanding, the etymological roots of the term "governance" can be traced to the Latin verb for steering a ship, *gubernare*, from which we get the root for govern, governor, government and governance. In its ordinary dictionary meaning, governance refers to the "action or manner of governing." However, in practice two distinct meanings have been attributed to the term "governance" and while distinct they nonetheless overlap in a number of essential respects. One approach conceptualizes governance as a value-neutral term whose application is limited only to economic and social dimensions while the other views governance as a normatively-laden term.

a. Governance as a Value-Neutral Term

This definition is favored by the World Bank. In its 1991 report, *Managing Development - The Governance Dimension* and again in its 1992 report, *Governance and Development*, the Bank defined "governance" in terms more relevant and appropriate for its purposes as "the manner in which power is exercised in the management of a country's economic and social resources for development." The report went on to identify three distinct aspects of governance:

- (i) the form of political regime;
- (ii) the process by which authority is exercised in the management of a country's economic and social resources; and
- (iii) the capacity of governments to design, formulate, and implement policies and discharge functions. Because of prohibitions entrenched in its Articles of Agreement ⁽³⁾, the Bank has deemed the first aspect of governance beyond the scope of its mandate and has instead focused on the second and third aspects.

b. Governance as a Normative Term

In contrast to the World Bank's value-neutral definition of governance, the second approach treats "governance" as a normatively-laden term ⁽⁴⁾ which makes it possible to draw a distinction between "Good Governance" or "Good Government" and "Bad Governance" or "Bad Government" ⁽⁵⁾. Good Governance is to be preferred to Bad Governance because it fosters strong, but sharply delimited states capable of sustained economic and social development and institutional growth. In contrast, Bad governance is a pathology to be avoided because it undermines all efforts to improve policy-making and to create durable institutions. The United Kingdom's Overseas Development Agency prefers this approach because it facilitates its use as a guide to aid allocation using criteria drawn from the political as well as economic dimensions of governance. It is an approach also favored by the Organization for Economic Cooperation and Development (OECD) and the International Monetary Fund (IMF). While using basically the World Bank's definition of governance as "the action or manner of governing," the OECD goes one step farther by emphasizing its normative character. It achieves this by linking governance with participatory development, human rights and democratization. The OECD's expansive use of governance is intended to assist its member states in calibrating the success or failure of their aid policies in the light of the objectives it set out to achieve. Hence, governance in this context focuses on such issues as legitimacy of government (degree of "democratization"), accountability of political and official elements of government (media freedom, transparency of decision-making, accountability mechanisms), competence of governments to formulate policies and deliver services,

respect for human rights and the rule of law (individual and group rights and security, framework for economic and social activity, participation).

In a similar vein, the IMF embraces the normative-laden conceptualization of governance but like the World Bank sees it through the prism of economic efficiency and sustainable growth. This preoccupation with these twin issues is underscored in a 1996 declaration on *Partnership for Sustainable Growth*. In that document, the IMF justified its embrace of good governance because it was central to the maintenance of market/private-sector confidence in member countries. The declaration also identified the promotion of good governance "in all its aspects, including ensuring the rule of law, improving the efficiency and accountability of the public sector, and tackling corruption" as an essential element of a framework within which economies can prosper. Even in this normatively-laden context, the IMF still limited its interests in issues of governance to the economic aspects of governance, i.e., macroeconomic stability, external viability and orderly economic growth in member countries.

Multilateral financial institutions were the first to wade into the governance arena and their particular interests have unwittingly shaped much of the debate on issues of governance. As lenders of last resort to financially-strapped and badly-managed economies, these lending agencies were justifiably interested in designing templates against which to assess how efficiently and appropriately resources transferred to recipient countries were utilized. Not surprisingly, therefore, their interest in governance was skewed, initially, in the direction of the economic and social dimensions of governance to the exclusion of the Political. Governance was narrowed only to those issues that have a direct impact on economic efficiency and sustainable growth. So, when these agencies spoke of fostering good governance, they meant promoting public-sector transparency and accountability, that would eventually change.

2. Governance and Democracy as Political Conditionality

From the moment major Western donor countries began the search for appropriate guidelines to assist in aid allocation, the development

assistance debate was expanded to embrace the political dimension of governance. Governance became firmly tied to democracy like two Siamese twins. Major Western countries together With the Bretton Woods institutions now began stressing the need to create a more facilitative sociopolitical context for structural adjustment in the developing world, in general, and Africa, in particular ⁽⁶⁾. As the World Bank observed:

Efforts to create an enabling environment and to build capacities will be wasted if the political context is not favorable. Ultimately, better governance requires political renewal. This means a concerted attack on corruption from the highest to lowest levels. This can be done by setting a good example, by strengthening accountability, by encouraging public debate, and by nurturing a free press. It also means fostering grassroots and nongovernmental organizations (NGOs), such as farmers' associations, cooperatives, and Women's groups. ⁽⁷⁾

In April 1990, Barber Conable, then President of the World Bank, put the case for governance and political liberalization in remarkably blunt terms": "[t]he development of many Sub-Saharan African countries", he said "has been quite unnecessarily constrained by their Political Systems."

Africans can and must tackle this issue. Indisputably, three decades after independence too many African countries have failed to produce political and economic systems in which development can flourish. People need freedom to realize individual and collective potential. Open political participation has been restricted and even condemned, and those brave enough to speak their minds have too frequently taken grave political risks. I fear that many of Africa's leaders have been more concerned about retaining power than about the long-term development interests of their people. The cost to millions of Africans has been unforgivably high. ⁽⁸⁾

Thus, governance tied to democracy became the new political conditionality for the distribution of both bilateral and multilateral assistance to developing African countries. Henceforth, financial aid and loans would be given only to countries tending toward pluralism, public accountability and human rights, and market principles. The test of democratization would be based on the presence of multiparty systems, free elections, press freedom, and an independent judiciary. On what assumptions about African societies, their value systems and the nature of their leadership did these goals rest?

a. Attaining Economic Efficiency and Growth and Good Governance

Economic efficiency and growth, on the one hand, and governance and democratization, on the other, have been treated as mutually reinforcing processes. The assumption has been that since authoritarian rule, in the main, is responsible for Africa's economic decline, democratic politics can step in to reverse the situation. One particularly astute scholar has pointed out that:

"[t]he presumption of the mutually reinforcing character of political and economic reform in Africa and elsewhere relies on an extension of neoclassical economic logic, as follows: economic liberalization creates sustained growth, growth produces winners as well as losers, winners will organize to defend their new-found welfare and will create sociopolitical coalitions to support continued economic reform." ⁽⁹⁾ This idea of simultaneous economic and political liberalization is based on faulty assumptions about cause and effect because it would appear that economic growth can be achieved even by regimes that flout the basic principles of democratic governance and who are persistent abusers of human rights. For instance, the African Development Bank (ADB) has classified governance into macro, meso, and micro-governance depending on different governance conditions at the various levels of government. Under the ADB typology, even non-democratic authoritarian regimes, particularly those that are committed to development, might exhibit good governance characteristics at the micro- and meso-levels. ⁽¹⁰⁾ It is perfectly within the realm of the possibility that so long as the preoccupation is with economic efficiency and sustainable growth, a country can qualify for a certificate

of 'Good Governance' from these multilateral lending institutions even when it fails woefully in its efforts at political liberalization.

b. Good Governance as a Casualty in the Pursuit of Economic Efficiency and Growth

An unrelenting pursuit of economic efficiency and growth could result in the complete abandonment of the principles of good governance and democratization. If the history of countries that have in recent memory successfully negotiated the rocky transition from authoritarian rule to pluralist democracy is any guide, then champions of 'Good Governance' have cause to worry about developments in Africa. It has been shown repeatedly that fundamental freedoms of free press and speech among others are usually the first to go when a country begins to experience severe economic difficulties. A fortiori, it would seem that the basic rights of speech, association and other individual liberties tend to flourish amidst economic plenty. This can be accounted for, in part, because governments are less paranoid about internal enemies and, in part, because people are no longer content with just the material things in life and want a greater say in shaping their political destiny. It would seem also that people begin to develop so-called "finer aspirations," i.e., aspirations for political and personal liberties, only after the basic necessities for survival have been met.

In *The Capitalist Revolution* (1991), Berger explains the success of the so-called "development dictatorships" in Singapore, South Korea and Taiwan by advancing the thesis that economic progress was achieved at the expense of fundamental human rights. What is interesting about this thesis is the intriguing argument that follows where Berger suggests that there was relatively little resistance from the population in the "take-off" stages of capitalist development because the latter held out the promise of a better life. Apparently, people who are escaping from a harsh economic existence and who can see a better life in the immediate horizon are less likely to be interested in issues associated with political liberalization. This comes much later. If Berger is right, then what this means for Cameroon and other similarly placed African countries is that in the short term (anywhere from five to ten years), the struggle for basic economic survival will dominate the

minds of the overwhelming majority of the people leaving little time to cogitate, much less, act on matters that are political in nature. When this mass fatigue engendered by grinding poverty is coupled with internal 'afro-pessimism' then the resistance and opposition to authoritarian rule expected from the much talked about 'civil society' will simply not be there.

3. Governance, Democratization, and African Reality

The Link Between Corruption, Governance and Economic Growth⁽¹¹⁾

When the Berlin-based anti-corruption organization, Transparency International, issued its 1998 Corruption Perceptions Index ("CPI"), its Vice Chairman Frank Vogl made the following observation:

The CPI scores, with their shocking portrayal of so many countries perceived to be home to rampant corruption will spur Transparency International to be even more aggressive in mobilizing initiatives to counter corruption worldwide. Securing democracy, alleviating poverty and human suffering, and sustaining investment and commerce, are inextricably dependent upon curbing corruption in most of the developing nations and across Central and Eastern Europe. ⁽¹²⁾

Transparency International's pronouncement was merely echoing others previously made by members of the international community in recent years. Together, they boldly underscore the universal condemnation of corrupt practices by public officials and a general interest in cooperating to suppress them. This widespread condemnation of acts of corruption is reflected in the preambles of a number of multilateral anti-corruption conventions and resolutions of international organizations. Reading through them leaves one in no doubt as to the seriousness with which the international community as a whole views the problem of corruption as a subject of global concern.

The Council of Europe's 1999 Criminal Law Convention on Corruption set out in its preamble a concise outline of the serious and varied forms of damage caused by corruption and the urgent need to combat

it through a multi-disciplinary national and international approach. The Parties to the Convention expressly acknowledge that corruption "threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society." In the 1994 Summit of the Americas' Declaration of Principles and Plan of Action, the Heads of State of 34 nations of the southern hemisphere pointedly linked the survival of democracy to the eradication of corruption. "Effective democracy," they declared, "requires a comprehensive attack on corruption as a factor of social disintegration and distortion of the economic system that undermines the legitimacy of political institutions." In the preamble to the Inter-American Convention Against Corruption which followed on the heels of the 1994 summit, again the leaders of the Organization of American States came back to the theme of corruption as a phenomenon that "undermines the legitimacy of public institutions and strikes at society, moral order and justice, as well as the comprehensive development of peoples." Acknowledging that corruption has international dimensions, the signatories of the Convention agreed on the "need for prompt adoption of an international instrument to promote and facilitate international cooperation in fighting corruption" and "the responsibility of States to hold corrupt persons accountable."

On December 16, 1996, the United Nations General Assembly, acting on an earlier recommendation of the Economic and Social Commission, adopted the United Nations Declaration against Corruption and Bribery in International Commercial Transactions. The Declaration highlights the economic costs of corruption and bribery, and points out that "a stable and transparent environment for international commercial transactions in all countries is essential for the mobilization of investment, finance, technology, skills and other resources across national borders." Member States pledge in the Declaration to criminalize bribery of foreign public officials in an effective and coordinated manner and to deny the tax deductibility of bribes paid by any private or public corporation or individual of a Member State to any public official or elected representative of another country. Corruption was also the subject of a 1997 United

Nations General Assembly Resolution entitled "Action Against Corruption". This resolution underscored the General Assembly's concern about the serious problems posed by corrupt practices to the stability and security of societies, the values of democracy and morality, and to social, economic and political development. ⁽¹³⁾ The resolution also drew a link between corruption and organized crime, including money laundering. Interestingly enough, the preamble of the Inter-American Convention also called attention to the "steadily increasing links between corruption and the proceeds generated by illicit narcotics trafficking... which undermine and threaten legitimate commercial and financial activities, and society, at all levels." ⁽¹⁴⁾ Acknowledging that corruption now has trans-border effects, the General Assembly's anti-corruption resolution recommends a multilateral approach to combat it.

a. The new face of corruption in Africa

In a 1989 piece that appeared in the *American Journal of International Law*, Professor Michael Reisman decried the preoccupation of traditional scholarship with the exploitation of the natural wealth of developing countries by transnational corporations while ignoring internal forms of wealth exploitation. As he argued, the "ritual of condemnation of foreign corporations' spoliations of the resources of developing countries and their elevation to the level of international concern have obscured the problem of spoliations by national officials of the wealth of the states of which they are temporary custodians" ⁽¹⁵⁾.

Corruption is not a new phenomenon and "it is unlikely that there has ever been a ruling class which did not exploit its political power to further its private financial interests." ⁽¹⁶⁾ But there is something extraordinary about the corruption that now blights the entire African landscape. ⁽¹⁷⁾ Three things stand out from this new generation of economic crimes of Africa's ruling elites. First, unlike past depredations where the wealth remained in the territory for recycling, the modern context is characterized by "great mobility of wealth and the capacity to hide and disguise it." ⁽¹⁸⁾ A second feature of the modern version of indigenous spoliation is the amount of wealth

involved, usually in the billions of dollars. Indeed, so stupendous are the sums involved that one commentator ⁽¹⁹⁾ was moved to describe these depredations as going beyond shame and almost beyond imagination. ⁽²⁰⁾ And, finally, the victims of these acts are, in the main, the citizens of some of the most economically impoverished countries in the world.

The men and women who have been responsible for the economic rape of entire nations continue their plunder with impunity. Even when toppled from power, they have no difficulty taking refuge elsewhere where they come under the protection of the laws of the host State. These "undesirable refugees", to use Professor Falk's apt description, have gone unpunished because the constraints of the state system and the lack of appropriate municipal law, substantive as well as procedural, have frustrated efforts to recover spoliated wealth. Against this backdrop and given the caliber of people involved in the economic plunder of their countries, one wonders whether any good governance movement can succeed in bringing these economic pirates under some kind of legal discipline. ⁽²¹⁾

Paradoxically, no serious program of political liberalization can be pronounced successful which does not rein in this practice. ⁽²²⁾ It is in the anticipation of this quagmire that this author had earlier raised the question whether Africa's political leadership can be counted on to implement necessary institutional reforms required of good governance.

b. An Unwieldy Centralized State

Governance and democratization as political conditionality presume the Jeffersonian model of the State which is premised on the belief that the best government is that which governs the least. The Jeffersonian model reposes its faith in small government which brings decision-making closer to the people and in turn involves them actively and meaningfully in their self-governance. The small decentralized state model favored by the governance movement must now contend with the Juggernaut state model that became the paradigm for post-colonial Africa. A model in which political power is monopolized at the center and where the ubiquity of, for instance, Yaounde in every

aspect of national life is felt. Let us pause for a moment and reflect on this reality: over 70 per cent of Cameroonians live a world away from the political intrigues and power struggles that go on in Yaounde. They are in the main preoccupied with their daily lives and basic economic survival. When they meet in the evenings in their matango houses or in beer parlors to reflect on the issues of governance, they do not dwell much on such constitutional niceties as the virtues of federalism over centralized presidential government. What they talk about is how to get bureaucrats in Yaounde to let them organize their lives in ways that are most appropriate, meaningful and efficacious for their circumstances. To my mind, the government that can best address these concerns is one that grows out of and reflects the local and regional experiences of these ordinary Cameroonians. For its proponents though, centralization has always been justified on the ground that only through it can national integration be achieved. The reality, however, is that after three decades of a centralized government, Cameroon is no more integrated than it was in 1961. The ethnic flare-ups that occur with increasing frequency nationwide and the now almost permanent Anglophone/Francophone schism all attest to deep social cleavages in our body politic and serve as convincing evidence that centralization has succeeded only in exacerbating these social tensions rather than defusing them.

c. The Cult of Personality Complex

Good governance and democratization are fostered by a government of institutions as opposed to one organized around personalities, especially around the so-called strongmen of Africa (the likes of the Eyademas, the Arap Moises, the Omar Bongos, the Paul Biyas, etc.) And here a word of caution. Africans should be especially wary of Western social scientists who have embarked on a worldwide search for messiahs, like the fictional Indiana Jones on a quest for the Holy Grail! These pundits have demonstrated a penchant for heaping effusive adulation on this type of African leaders and we like obedient pupils follow suit (interestingly, in their own countries they would think twice before reposing political responsibility on such individuals). Such is the nature of underdevelopment that Africans feel vindicated whenever their choices are dictated or validated externally. It is this author's

view, however, that the elevation of "strongmen" leaders to ultimate political power, as the post-colonial history of Africa has demonstrated repeatedly, leads inexorably to the rise of personality cults ⁽²³⁾ and autocratic governments. With the qualified exception of the late Mwalimu Julius Nyerere in Tanzania and now Nelson Mandela in South Africa, no such leader in post-colonial Africa has succeeded in transferring the enormous appeal of charisma into self-sustaining institutions designed to outlive their creators. Regrettably, there has been no African George Washington or Thomas Jefferson (Nelson Mandela comes closest) who would elect to forego a life presidency, freely given by his compatriots, in order to strengthen the institution of the presidency for succeeding generations. Rather, all that black Africa has managed to grow is a surfeit of leaders who have used their office to create clientelist and patronage networks to cater to the predatory needs of their families, closest associates, clans, tribes and then the rest of us, in that order.

From the Good Governance perspective, the conclusion is inescapable that these super-human beings have been disastrous for Africa's overall development. The enormous energies and resources needed to sustain the elaborate myths spun around them could and should be put to better use. Further perpetuation of this hero-worship pathology will almost certainly result in the total breakdown of this continent's tottering infrastructure, paving the way for a second wave of European colonization in the not-too-distant future.

The antidote to the cult of personality is a commitment to institution-building for institutions always outlive humans. The *Fondoms* and *Chiefdoms* of Cameroon will survive long after their present temporary occupants have passed on to the life beyond. That is the beauty of institutions; their self-sustaining power. Advocates of good governance should, therefore, be concerned about strengthening Africa's nascent democratic institutions and adding more to the stable while insisting on institutional checks on human excesses. Madison observed some two centuries ago "[i]f men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary." Therefore, in framing a government which is to be administered by men over men, Madison

advised that "auxiliary precautions" would be necessary to ensure that the government can control itself. ⁽²⁴⁾ Madison, like the other Founding Fathers of the new American Republic, saw in constitutional separation of powers, with their built-in checks and balances, as the natural defense to tyranny. Two hundred years and more of the history of the United States of America--the first new nation to break away from government by hereditary monarchy-- vindicates its founding fathers for placing their faith and trust in a government driven by institutions as opposed to one held hostage by the ambitions of a few men.

d. Fairness in and respect for the Rules of 'Engagement'

Finally, notions of procedural fairness as opposed to desired outcome are an essential part of democratic discourse, bringing me to a brief and final comment on the relationship between governance, democratization and African reality. We refer here to the absence of fairness and the lack of respect for the process by which the rules of the game are forged; but also for the rules upon which agreement has been reached. This climate of disrespect for rules engulfs whole societies but it is particularly pertinent in the governance context because it implicates the political class. Among them obligations freely entered into in arms-length political bargaining are hardly ever respected; agreements signed and sealed are honored more in the breach; good faith is devalued in political discourse and outcomes are preferred to *process*. It is in this context that one can begin to understand Africa's track record of unenforced laws, of failed elections and stolen electoral victories.

CONCLUSION

Somewhere in *The Eighteenth Brumaire of Louis Bonaparte*, Marx remarks that "[m]en make their own history, but they do not make it just as they please; they do not make it under circumstances chosen by themselves but under circumstances directly found, given and transmitted from the past. The tradition of all the dead generations weighs like a nightmare on the brain of the living." Clearly what Marx *qua* political philosopher was suggesting in this passage is that the

past provides the foundation upon which the present and future are built; it is, as it were, the prologue to any discourse on the present and the basis for any prognostications about the future. The principles of good governance and democratization will be erected on a foundation that is by no means *terra nullius*. These laudable principles will be introduced into societies that have a past, a present and, a possible future. The target or perhaps, beneficiaries is a more appropriate term, of these reforms are in the main, people in search of a life appreciably better than the one they currently find themselves in. They constitute the bulk of these societies. Those who will midwife this reformatory process comprise a small elite of political leaders and, bureaucrats. These managers of reform are, in the main, men and women motivated by social and economic interests which they will try to protect and preserve. The lives of these various actors, their interests, their goals are the factors that circumscribe the stage on which the principles of good governance and democratization will play themselves out. To ignore these variables is to imperil the reform effort itself because they ultimately weigh on its success or failure.

FOOTNOTES

1. See Thomas M. Callaghy, "Political Passions and Economic Interests: Economic Reform and Political Structure in Africa," in Hemmed in: Responses To Africa's Economic Decline 463 (Thomas M. Callaghy & John Ravenhill eds. 1993) (hereafter "Political Passions")
2. Id.
3. Article III, Section 5(b) provides that "[T]he Bank shall make arrangements to ensure that the proceeds of any ban are used only for the purposes for which the ban was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations" (emphasis added). Article IV, Section 10 provides that "[T]he Bank and its officers shall not interfere in the political affairs of any member, nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article 1." Article V, Section 5(c) provides that "[T]he President, officers and staff of the Bank, in the discharge of their offices, owe their duty entirely to the Bank and to no other authority. Each member of the Bank shall respect the international character of this duty and shall refrain from all

- attempts to influence any of them in the discharge of their duties." Identical prohibitions appear also in the constituent agreements of the International Development Agency (IDA), the International Finance Agency (IFA) and the Multilateral Investment Guarantee Agency (MIGA).
4. See World Bank, *Governance: The World Bank Experience* 5-6 (1994).
 5. Good governance is epitomized by predictable, open and enlightened public policy, a bureaucracy imbued with a professional ethos acting in furtherance of the public good, the rule of law, transparent processes, and a strong civil society participating in public affairs. Bad governance, on the other hand, is characterized by arbitrary policy-making, unaccountable bureaucracies, unenforced or unjust legal systems, the abuse of executive power, a civil society unengaged in public life, and widespread corruption.
 6. See *Political Passions*, *Supra* note 1, at 477.
 7. See World Bank, *Sub-Saharan Africa: From Crisis To Sustainable Growth*, 192, 6 (1989).
 8. See Barber B. Conable, "Address As Prepared for Delivery to the Bretton Woods Conference on Africa's Finance and Development Crisis," World Bank, Washington, D.C., 25 April 1990.
 9. See *Political Passions*, *supra* note 1, at 482.
 10. See African Development Bank, *Governance And Development In Africa: Issues, And The Role of The African Development Bank and Other Multilateral Institutions* (1993).
 11. Available empirical evidence suggest a correlation between corruption and economic growth and investment. statistically, the relationship is negative: a one standard deviation improvement in the corruption index is associated with a four percentage point increase in investment and over a half percentage point increase in the annual growth rate of per capita GDP. See GCA, *Corruption and Development in Africa: Policy Forum*, GCA/PF/N.2/11/1997, at 12. Available <http://www.gca-cma.org/epfdoc.97.htm>.
 12. See TI Press Release: 1998 Corruption perceptions index.
 13. Available empirical evidence suggest a correlation between corruption and economic growth and investment. Statistically, the relationship is negative: a one standard deviation improvement in the corruption index is associated with a four percentage point increase in investment and over a half percentage point increase in the annual growth rate of per capita GDP. See *Corruption in Africa*, *supra* note 11, at 12.
 14. In the same vein, a 1995 Resolution on Combating Corruption in Europe adopted by the European Parliament also stressed the ties between corruption and

organized crime while expressing the view that combating the latter can help to curb the former.

15. See W. Michael Reisman, *Harnessing International Law to Restrain and Recapture Indigenous Spoliations*, 83 *AH. J. INT'L L.* 56-57 (1989).
16. See European Parliament Resolution, Explanatory Statement No. 2 (b).
17. I have referred to this new form of sovereign corruption as "indigenous spoliation" or "patrimonicide" by which I mean the systematic looting and stashing in foreign banks of the financial resources of a State by its leaders, elected and appointed, in military regimes as well as civilian governments in Africa, on a scale so vast and never before seen in history. See Ndiva Kofele-Kale, *International Law Of Responsibility For Economic Crimes: Holding Heads of States and other High Ranking State Officials Individually Liable for Acts of Fraudulent Enrichment* (Kluwer Law International, 1995); See also Ndiva Kofele-Kale, *Patrimonicide: The International Economic Crime of Indigenous Spoliation*, 28 *VAND. J. TRANS'L L.* 45, 58 (January 1995).
18. See Abram Chayes, *Pursuing the Assets of Former Dictators*, in *Proceedings Of The 81st Annual Meeting Of The American Society Of International Law 395* (1987) (Michael P. Malloy Ed., 1990) [Hereinafter ASIL Proceedings].
19. Darrel Delamaide, *The Debt Shock: The Full Story Of The World Credit Crisis 60* (1984); see also Colette Braeckman, *Le Dinosaur: Le Zaïre de Mobutu* (1990).
20. "Many political leaders in countries with serious poverty have amassed extraordinary fortunes. Foreign exchange reserves have been transferred to foreign bank accounts." World Bank, *Governance And Development 16* (1992). Perhaps, a few examples will suffice to drive home this point. There can be no better example to begin with than that of Field Marshall Mobutu Sese Seko whose years as head of state remain the example *par excellence* of this novel form of *African* kleptocracy. In the 32 years that he was the incontestable ruler of the ex-Republic of Zaire (now the Democratic Republic of the Congo), Mobutu succeeded in embezzling some four billion dollars of his nation's wealth. For an excellent account of how Mobutu systematically and methodically pillaged from his nation's resources, see Colette Braeckman, *Le Dinosaur: Le Zaïre de Mobutu* (1990). Mobutu was ousted from power by Laurent Kabila and his band of loyal guerilla fighters in May 1997 and in September of the same year he died in exile in Morocco. If Mobutu's conduct was outrageous, consider that of the late General Sani Abacha of Nigeria who seized power in a *coup d'état* in 1993 and ruled Nigeria with an iron fist until his sudden death in 1998. His tenure as Head of a modern State represents, perhaps, one of the most egregious cases of corruption by a public official in this century. The depredations of Abacha expose the weakness in the restrictive definition of corruption promoted in the present international legal regime. Based on credible estimates by the respectable Times of London, Abacha is believed to have stashed in European banks more than 3.6 billion pounds sterling (approximately \$5.4 billion) during his five-year tenure as

head of state. Yet, he was not done: over a two-year period and acting under the instructions of General Abacha, his national security adviser withdrew close to \$2.45 billion from the Nigerian Central Bank ostensibly to pay back debts owed to Russian contractors for the construction of a giant steel plant at Ajaokuta. What the public did not know was that the debts owed the Russians were grossly overvalued allowing the Abacha family to pocket the difference. The fraud was uncovered by the successor government who eventually recovered some of the stolen money. But the outrage continues. According to a Government White Paper, the Nigerian government earned \$12.225 billion from sales of surplus petroleum during the 1990-1991 Gulf War. Of this amount the military generals made away with \$12 billion and only \$225 million trickled back into the national treasury!

21. This is quite a tall order because African leaders are not even willing to take responsibility for not doing anything to curb corruption in their countries. When the problem of corruption was raised during a Global Forum for Africa Plenary in Maastricht in November of 1995, many African leaders blamed the industrialized countries and their multinationals for worsening corruption in their countries! See GCA, Corruption in Africa, *supra* note 11, at 12. Or, take the case of the Cameroon Government's angry reaction to Transparency International's (TI) 1998 Corruption Perceptions Index (CPI) which ranked Cameroon as the country perceived to be the most corrupt in world in 1998 (and again in 1999). Soon after CPI was made public, the Cameroon Government went into a full court press to destroy the *bona fides* of Transparency International. TI was attacked for mischaracterization, for the motives behind the exercise, and for the methodology it employed in drawing up the perceptions index. The campaign to denigrate TI and its work was orchestrated from the highest level of Government, the Presidency no less. In a statement issued from State House, the deputy Secretary General of the Presidency dismissed the report as a "nasty political manoeuvre ... a callous manoeuvre of intoxication" intended to "tarnish the image of Cameroon and discourage investors." The report, he claimed, was a gross misrepresentation of Cameroonian realities as it ignored giant strides taken by the Government in the past decade to institutionalize a culture of accountability, transparency, and probity in public governance. The CPI, the Government claimed, cannot be taken seriously because of its flawed methodology: the surveys on which the CPI was constructed were described as the result of interviews with phantom "multinational company heads who claim to be working in Cameroon", concluding that there are no infallible instruments that have yet been found that can accurately measure corruption in any country, let alone rank countries on a scale. Worse, TI which was the brain behind this survey was accused of being "on the pay of neocolonialists" and "clusters of people at work" to undermine Cameroon's efforts to develop. A commentator on the Government-controlled state radio was equally dismissive of the CPI on grounds that it "lacks authority [and expresses] a view that is not based on any scientific basis [and being] a pure invention of its authors' imagination, entirely subjective [and established] for hidden motives." See "State radio reacts angrily to report ranking Cameroon the world's most corrupt country";

- "Cameroon: world champion of corruption, says Transparency International". www.boh.org/english/cm/1998/0923.254/n4. Ironically, a few months later, Cameroon's President Biya in a New Year Address to the Nation admitted with remarkable candor that corruption had become a serious national problem that was gnawing at the moral and economic foundations of the society! In the televised end-of-year message, the President accused his compatriots for accumulating "illicit wealth... [and for being] well versed in cheating, fraud and even swindling." See "Cameroon-politics: Biya calls for justice, security, morality and a fight against corruption". www.boh.org/english/crn/1999/0101.354/n4.html.
22. The Global Coalition for Africa found out in its study of corruption and development in Africa: "low salaries which may partly explain the existence of petty corruption and theft at lower levels... [but] it cannot be an excuse for higher-level and large scale bureaucratic corruption. Unless high-level bureaucratic corruption is addressed, it will be difficult to reduce corruption at lower-levels." *Id.*, at 1.
23. See Ndiva Kofele-Kale, "The Politics of Development and the Problem of Leadership in Africa," in Alfred de Souza, ed., *The New Leaders in India and Africa: The Politics of Change, Leadership Development and Training* New Delhi: Manohar Press, 1978, reprinted in *Cross Currents* special issue on "Learning in Africa," Vol. XXVIII, No. 4 Winter 1978-79, pp. 432-452; and _____ "The Problem of Instrumental Leadership in Contemporary African Political Systems," *the Journal of Asian and African Studies* (York University), XIII, 1-2, January-April 1978.
24. See *Federalist* No. 51. See also *Federalist* No. 48 where Madison argues that "parchment barriers" or written provisions in the Constitution delineating the powers of the three departments of government [legislative, judicature and executive] will not, by themselves, serve to prevent a "tyrannical concentration" of powers. He takes particular aim at the legislature as the most feared branch of government because it "is everywhere extending the sphere of its activity and drawing all power into its impetuous vortex." For this reason, he urges the people "to indulge all their jealousy and exhaust all their precautions" against this branch of government. Paper barricades in a Constitution will not be sufficient to rein in a rogue government, only a well-informed and vigilant electorate can effectively block any lurches in the direction of autocratic rule.