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THE CONSTITUTIONAL FOUNDATIONS OF DEVELOPMENT

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The Constitutional Foundations of Development

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Abstract: The constitutional foundations of development can refer to a given political framework within which economic growth or social progress is to be engineered, or it can concern itself with the manner of composition and constraints which, through building up the rules of interaction among individuals in society, can enhance the potential for greater well-being. The first interpretation, as taken up in the Orthodox Development literature, refers implicitly to a model of the State. The second, examined here, set out how systems of collective action can be designed and conditioned to enable individuals in association with others to realize each their adaptive potentials.

Building Institutional Potential for Adaptive Well-being

A disquisition on the constitutional foundations of development can refer to the given political framework within which economic growth or social progress is to be engineered, or it can concern itself with *how the way in which the rules of society are composed and built up can enhance the potential for greater well-being*. These differing interpretations can be drawn out from the definitions of the terms "constitution" and "development." By its everyday meaning¹, the word "constitution" refers to both the laws determining the fundamental principles of government, *as well as* the way in which something is composed or formed. In turn, "development" refers variously to progress (in the manner of growth, elaboration, or gradual unfolding) from an earlier to a later stage of maturation, *as well as* to a realization of the potential of an entity.

The first interpretation takes the constitutional order as given. Indeed, discussing development from within this bounded framework is in many respects more tractable. However, as Feeny (1993, 175) points out, "by taking the constitutional order as given, the investigator is invited to invest intellectual effort in providing better answers to less important questions." This chapter takes up the greater challenge implied in the dynamic

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¹ Definitions are drawn from *Webster's Revised Unabridged Dictionary*

second interpretation of constitutional development. This endeavor is worthwhile since much of what we identify as underdevelopment is rooted in poor constitutional design. The failures in collective action they engender inhibit the realization by members of such collectivities of their adaptive potential.

Adaptive well-being is grounded in the ability of each of us to solve more readily the many complex problems we recognize in our particular environment. Indeed, problem-solving is a core and constant activity of human beings. The extent to which we are successful, whether in addressing these problems alone or in concert with others, reflects on our developmental acquirement. The strategies we employ to enhance our developmental prospects are in turn bounded by the way in which the constitutional rules of society are built up and maintained. We therefore need to concern ourselves with how constitutional design affects the prospects for development.

Indeed, the potential to foster improved prospects for adaptive well-being through conditioned collective action in ordering human interaction is forestalled when prevailing institutional capacities do not sufficiently address problems of coordination and cooperation. Societies are prone to be at war with themselves when problems of collective action remain unresolved. "While such conflicts sometimes take the form of a flaring civil war, it is manifested more pervasively, as in V.S. Naipaul's phrase, in a *million mutinies*. A core focus of the theory and practice of the science of development accordingly should relate to building such potential for self-governance in fragmented societies. The art and science of development is intrinsically associated with the art and science of association.

Yet, these constitutional foundations of development remain poorly understood. Although there are discussions ongoing on the institutional foundations of development, this dialogue remains rooted in the concept of the State as *the* agent for advancing the human and economic dimensions of development through its exclusive prerogatives in collective problem-solving. By contrast, we seek to reorient this discourse towards the constitutional design of systems of collective action as a foundation for building the adaptive potentials of its membership.

We do this by contrasting the *State*, as represented in the Orthodox development literature, with *Constitutionally Constrained Governance* as alternate *Systems of Collective Action*. The State belies an implicit model of governance where a constitution forges the authority of government. The constitution vests this responsibility upon the agents of the State to

augment the developmental status of the its subjects through the specialized formulation and application of appropriate policies².

The alternative, Constitutional Governance, represents a framework of incentives and constraints for engaging citizens directly in processes of problem-solving. Opportunities for citizens to realize their adaptive well-being is enhanced when, through resolving conflicts pertaining to certain types of cooperation and coordination, the form of constitutional constraints, as relevant to local exigencies, enables a greater use of knowledge dispersed in society. When mediated processes of political and economic exchange incorporate such knowledge, individuals can be better equipped to address the adaptive needs of each other. In turn, development is realized.

Tracing these arguments more closely, we first summarize the orthodox interpretation of the role of the State in development. Next, we see how Constitutional Governance can be built up to enable citizens to enhance their adaptive potential. In this, the limitations of the State and the potential for Constitutional Governance are illustrated with the modern experience of the Somali people. We end with some thoughts on whether the concept of the State unduly constricts how we may think about the role that *systems of collective action* play in development.

Orthodox Interpretations of the State in Development

Orthodox theories of development are based on the idea that countries mature from developing to developed status. The two are distinguished by comparing characteristic patterns of order found in each. Countries graduate from the former to the latter group through a process of *growth*. This process itself remains mystical.³ Development economists have however identified numerous factors associated with rapid growth. The strategy for development relates to assembling these factors as preconditions in the expectation that growth will occur and the desired set of outcomes will result. The role of the State is to formulate and implement policies to foster this growth.

² This charge has been augmented to reflect that development has to take place without affecting the long-term viability of the environment and other resources. The is the idea behind the motto 'Sustainable Human Development.'

³ "Economic growth is notoriously the blackest of many black boxes in economics" (*The Economist* 1999,72)

Development as a Closing of Gaps

The division of countries, between those that are more developed and those that are less developed, is a central organizational feature of orthodox models of Development Economics⁴. This division is traditionally based on comparing and sorting countries based on statistical economic aggregates such as Gross National Product, as well as on indices of human development⁵. Turn to the back of any issue of the World Bank's *World Development Report* or the United Nations Development Programme's *Human Development Report* and you will see sovereign states graded respectively on the basis of their GNP and Human Development Index.

Broadly, development is confirmed to have occurred when a poor country's macroeconomic and social indicators approach those of a rich one. Aggregate measures are therefore central to orthodox interpretations of economic development. Accordingly, the task of the development economist and practitioner is to provide theoretical and practical advice to the agents of the State to enable them to facilitate the transition from an earlier to a later stage of economic and social maturation.

The State's mission in the Orthodox Development paradigm is to generate growth in order to achieve this transition to developed country status. Early neoclassical approaches considered growth to be a mechanical process, wholly determined by the accumulation of certain factors of production and the laws of production. Solow's (1956) influential model of growth conceived national output in a closed economy to be a function of homogenous human labor and homogenous physical capital; per capita output was determined by the capital to labor ratio. It was argued therefore that returns on physical capital would be higher in the developing world where this factor was scarcer in relation to labor and natural resources. In order to foster development, the argument went, existing gaps in capital accumulation would first have to be bridged.

⁴ This takes various forms: North versus South, First World versus Third World, Advanced economies versus Backward ones, etc

⁵ The study of how to improve the characteristics of poor countries is the focus of Orthodox Development Economics. Texts, such as Ghatak's (1995) *Introduction to Development Economics*, begin by identifying these characteristics.

Later advances in endogenous growth⁶ theory stressed the relevance of improvements to productivity from innovation and investments in human capital as essential preconditions for development. Consequently, such disparities as those in education, skills, gender equality, infrastructure, and so forth were identified and added to the list of gaps to be filled as a prelude to development.

Fran Market Failure to Government Failure

Orthodox economics views the rectification of *market failures* as the preeminent function of the State. Disparities observed between the developing and developed worlds were understood to reflect such market failures. The pervasive pathologies of the developing world—poverty, illiteracy, malnourishment, and so on—are taken to imply a failure of market capitalism (as generically defined) to close on its own the observed gaps between the developed and underdeveloped worlds⁷. The goal for Development Economics *is* then to help governments of Third World States to close gaps in standards of developmental progress through implementation of appropriate policies and programs to set right these market failures⁸.

As such, Development Economics remains strongly influenced by democratic socialism, Keynesianism, and the Leontief-style economic planning models of the mid-twentieth century⁹. These models assume that a cadre of learned economists will develop policies, and that a ruling elite, selflessly dedicated to improving the public welfare, will administer them. Accordingly, the role of governance is associated with the considered invocation and faithful execution of policy prescriptions. Orthodox Development

⁶ See for example Romer (1994)

⁷ Orthodox Development Economics as articulated in the mid-twentieth century also relies upon an earlier philosophic tradition—associated with thinkers as varied as Hume, Rousseau, Bentham, Ricardo, and Mill—which regarded the poverty of the working classes as a natural result of the competitive processes in market capitalism and which considered how this freedom of contract could be constrained by the government in the public or general interest.

⁸ This role for the State can be traced back to Friedrich List who, in 1885, argued that "artificial means" were required for "less advanced nations" to catch up to those more advanced and that it was the role of the State to "accomplish the economic development of the nation and to prepare it for admission into the universal society of the future" (175).

⁹ It also continues to reflect the works of such writers as Rosenstein-Rodan, Nurske, Scitovsky, and Hirschman who emphasized the intervention of governments, in the face of market-failure, to control the allocation of resources and to guide investment.

Economics relies on the State as the principal instrument to bridge gaps in capacity needed for economic growth and human development.

Following on this logic, the role of foreign aid is to transfuse from rich donor countries, the financing, physical capital, training, and advice found missing in poorer recipient countries. Official development assistance has been channeled either on a State to State basis or through multilateral development agencies that deal with the agents of Third World governments.

This conception of the State's role in development persists despite the attention that has long been drawn to its limitations. Starting from the early 1960's Public Choice economists warned the academic community that the bureaucrats and public officials that inhabited their models might not be any less self-serving than the general population (Buchanan and Tullock 1962; Niskanen 1975). More, they pointed out that competition for control over the instruments of coercion needed to implement development, as monopolized by the State, could lead to significant welfare losses associated with rent-seeking behavior (Kreuger 1974, Tullock 1967).

Recognition of these theoretical arguments as well as mounting real-world evidence of the failure of traditional approaches to development, culminated in the World Bank's admission in 1997 that "foreign aid to developing countries has had no net impact on either the recipients' growth rate or the quality of their economic policies."¹⁰ This reflected a realization on their part that if the role of the State is to identify, strategize, and implement policies to set up the conditions necessary for growth, then it often lacked the capacity to do this; the notion of *government failure* is therefore interpreted as a reflection of the insufficiency of means within the governments of developing states to actualize development by overcoming market failures.

Paradigm Preservation

As such, the orthodoxy's response to this challenge to the role of the State in development has been paradigm-preserving. Most Development economists now acknowledge that agents of the State are far from perfect and that the operating mechanisms

¹⁰ While there were earlier acknowledgements of the role of governance in sustainable development, the Bank's statement is significant in that it represents an admission of failure from the largest institutional actor in the science and practice of development.

of the State do not function as theorized. Given this, the task of the development theoretician and practitioner is now cast as either strategizing in order to move policies past political and bureaucratic hurdles (Meier 1991) or to educate and sensitize policy-makers and administrators to more faithfully carry out their policy prescriptions". As such, the basic model of the State as a centralized problem-solver is left unaffected. Whereas previously, the State was taken as an omniscient and benevolent agent ushering developmental maturation, it is now considered as an imperfect agent for social and economic change, but one which can be accounted for in theoretical elaboration and improved through training in policy analysis and administration.

Indeed, the so-called *Good Governance* initiative reflects this attitude. The approach taken up by the World Bank (1997) and the United Nations Development Programme (1998) seeks to identify the overt elements associated with effective governance in the polities of developed countries and to strengthen the institutional capacity of developing nations in each of these respects. This is to be achieved mainly through training policy analysts, policy makers, administrators and the judiciary. In short, what we may coin as an *institutional gap* has been added to the long list of developmental clefts to be filled as a prelude to growth.

Development Economics continues to view the State as a conveyance for developing and implementing policy. The State is still viewed as a means for putting into place, program by program, through deliberate policies, overt characteristics associated with growth¹². Institutions here are taken as structured arrangements for performing specific tasks and the failure of development to materialize *is* understood as the weakness of these arrangements to set in place the elements demanded by neoclassical theories of growth.

In sum, the constitutional foundations of development, as understood by the orthodoxy, would refer to the mechanisms of a unitary State to set in place the social and economic characteristics needed for growth to take off. This activity proceeds within the implicit constitutional framework of the State as an entity possessing monopoly prerogatives

¹¹ As such, this formulation places faith in the judgment and benevolence of experts in the field of development economics to diagnose and rectify the gaps in a nation's economic and social attainment. I have earlier questioned the beneficence of policy-analysts in the nexus of the market for policy. (See Shivakumar 1998.)

¹² Most recently, this has taken the form of creating an enabling environment for private-sector led growth.

over collective problem-solving and conflict resolution. Rulership here continues to be vested with the authority to set right observed market failures, if necessary, by force.

The Orthodox perspective thus fails to appreciate that the features that we associate with advanced societies, and find wanting in less developed ones, are the results or manifestations of processes of interaction and, moreover, that only changes in these patterns of interaction can produce alternatives to those now experienced. Strategies for economic and social development continue to rely on the poorly understood notion of growth. Growth remains mystical since it is merely a label for a process of transformation that is inherently catallactic. The foundations of Orthodox Economics, as based on an allocation/maximization paradigm, cannot successfully grapple with the creation of value rooted in processes of exchange within constraining institutions. Understanding the foundations of development requires the elaboration of an alternate catallactic/institutional world-view.

Constitutional Artifacts and Developmental Order

In contrast to the Orthodox concept of development as a process of maturation within an implicit framework of authority relations, we consider now a constitutional alternative where development is taken as a realization of potential enhanced through the sensitive design of systems of collective action. In drawing out this distinction, we elaborate what we mean by 'realization of potential' before discussing how we may develop systems of collective action that further this aim.

Building up Action Potential

Development occurs when humans are able to improve their welfare by being adapted better to address the problems posed by their environment. We each confront complex circumstances and seek to adapt to them both through our individual efforts and through our collective efforts. The degree to which we are able to problem-solve successfully, whether individually or collectively, reflects on our individual well-being and adaptive success. Problem-solving at the cognitive level is addressed through strengthening or discarding competing mental models as they variously represent our environment. (Hayek, 1952, Holyoak et al. 1989). Similarly, problem-solving through instrumentalities of collective

action is also subject to competitive evaluation. The extent of our developmental acquirement therefore rests on how the range of facilities—from informal covenants, to local bodies politic, to more encompassing formal structures—condition the frameworks within which choice among modes of collective problem-solving in the quest for adaptive improvements take place.

In our quest to adapt, each of us strive constantly to exploit and to reorganize the structures of both real and institutional resources we control in order to improve, as we may imagine, our future adaptive prospects¹³. Indeed, this motivation to adapt is a fundamental driving force of human behavior. Hobbes (1651/1960, 56) refers to this striving in his essay *Of Man*, observing that "the POWER (*fa man*, to state it universally, is his present means, to obtain some future apparent good." More, Hobbes (*ibid.* 64) observes as "a general inclination of all mankind, a perpetual and restless desire for power after power, that ceaseth only in death."

Power, in the sense in which Hobbes employs the term, refers to the adaptive action-potential of individuals. Against this, we can understand development as a process of promoting the realization and use of such potential. As social scientists, this leads us to consider how we may build upon present institutional resources, as found in various rule communities, to improve the prospects for development—as in a realization of adaptive potential—of citizens in each of these many diverse societies. In contrast to viewing institutions as devices for setting in place characteristics associated with the growth of societies identified as being 'developed,' we here regard institutions as devices facilitating the realization by each of his or her adaptive well-being through integrated systems of conditioned collective action.

Development as a Process and as an Order

Considering development as a *process* by which individuals in society can enhance their adaptive well-being, by exploiting their present means for future adaptive benefit, clearly distinguishes it from its conception as an *order* whose characteristics are to be steadfastly reproduced. As we have noted, the State is traditionally viewed as a means to set in place characteristics associated with economic growth and human development. Here, the process of growth is itself is a 'black box.' As such, this track fails to appreciate that the

features that we associate with advanced societies, and find wanting in less developed ones, are the results and manifestations of processes of interaction, and that only changes in these patterns of interaction can produce outcomes alternative to those now experienced; assembling these outward characteristics associated with developmental growth without appreciating the internal dynamics of the black box will not yield sustainable results.

The distinction between process and order is most notably elaborated by Friedrich Hayek(1973, 36). His definition of an order is

a state of affairs in which a multiplicity of elements of various kinds are so related to each other that we may learn from our acquaintance with some spatial or temporal part of the whole to form correct expectations concerning the rest, or at least expectations which have a good chance of proving correct.

Such orders, notes Hayek(ibid.), can be of deliberate or of spontaneous provenance. As such, he further distinguishes between *taxis*, which are deliberate institutional arrangements, and *cosmos*, which is the spontaneous result of individuals interacting within a structure of such arrangements, whether deliberately created or not.

Whereas, Hayek notes, deliberately constructed orders are limited in scope to the imagination of the mind that conceives it, spontaneous orders make fuller use of knowledge in society. Indeed, spontaneous orders are created through the actions and interactions of individuals making use of the knowledge that they each possesses of their own time and place. Here, each remains rational with respect to the bounds he or she faces and each is motivated by a desire to augment his or her adaptive potential within these constraints. These interactive processes yield complex phenomena. In turn, we may impute patterns from these complex phenomena as discerned through our theory-guided perception. However, the notion that these complex and knowledge-laden spontaneous orders can somehow be deliberately manufactured is, as in Hayek's (1988) phrase, a "fatal conceit."

An analogy from the field of optics may further clarify the distinction drawn between process and order as it pertains to development. Diffraction patterns form upon the scattering of a stream of x-rays passing through some given crystalline material. A scatter pattern— an interference effect— is formed when these particles are deflected as they interact with fields of the material's molecular structure. Different spectra are associated with different materials and substances can be categorized on this basis.

¹³ Whether we invest or merely exploit our real and institutional resources depends in part on our time horizon.

We can likewise think of individuals—driven by the motive to adapt and passing through the confines of some institutional medium—unwittingly creating complex patterns of order. The ways in which institutions variously constrain the actions and interactions of individuals so engaged is revealed in the different patterns of social order that we observe. These show up, in part, in measures of national wealth, income distribution, birthrates, literacy, and so on. Should we make the normative determination that one set of patterns is superior to the other, the most obvious way to bring this about is to modify the institutional medium that affects our patterns of association.

Yet, Orthodox Development Economics overlooks this simple insight. Traditional strategies for development, to invoke the analogy from optics again, seek to accomplish the equivalent of setting up, *ad hoc*, a series of mirrors to deflect the rays streaming out of a given diffracting substance to bend them to mock the pattern of another that is sought after. It is concerned with reallocating the results of complex systems of interaction to conform to some considered ideal; coercive action by the State is needed to rewrite the spontaneous outcomes created by participants of markets and other public economies.

Constitutional Artisanry

In contrast to the Orthodox world-view, a Constitutional Political Economy approach to development would apply itself to modifying the character of spontaneous social orders through considered changes in the frameworks within which individuals act and interact. It correlates to determining, as Vanberg (1986) puts it, the conditions under which the problem-solving activities of individuals in a given society can generate patterns of social outcome deemed desirable. Indeed, we cannot know *a priori* precisely what forms of order will emerge from changes in the institutional medium. However, based on experience and analyses of various systems of collective action, we can develop an informed speculation in this regard.

To this extent, the constitutional position asserts that the bounds within which we seek to adapt are capable of 'improvement' through the deliberated choice and arrangement of rules. Institutions that guide social interaction and problem-solving are as such artifacts—man-made creations—capable of being designed, crafted, and modified. In turn, the manner in which human relationships are bound—the ways in which solutions to problems of

coordination and cooperation are constructed—refer to a type of artisanship (Ostrom 1997, Ch.8).

As such, there is room for improvement in the design and construction of rule structures that condition collective action. This optimism is rooted in the American experience, which, as Buchanan (1979, 107) notes, "perhaps unique in history, has embodied the attitude that we *create* the institutions within which we interact, one with another, that we construct the rules that define the game that we all must play."

If we seek to craft institutions for guiding human interaction in the furtherance of development, how might we approach this task? What principles of constitutional design may we be guided by, and how do we go about bringing it about¹⁴? Let us take up these issues in turn.

Given that a constitution for governance refers to a complex of rules that condition human interaction, considerations for its design must refer both to the system of the rules as well as the nature of the rules. In designing the arrangement, we have a choice between the ideals of *unitary* and *polycentric* systems of governance. Unitary governance is implied in Orthodox analysis. Here sovereignty is vested in an apex authority that proclaims its competence and willingness to settle all issues of collective action facing the society. As we have noted in the previous section, this constitutional design vests in the State the preclusive prerogatives in problem-solving.

In contrast, polycentric designs for governance stress processes of self-coordination among multiple, independent, and overlapping problem-solving units, with each capable of making adjustments to other such units, *as coordinated through a general system of rules* (Ostrom, 1971) In such a system of polycentric governance, the various arenas of problem-solving competence—ranging in scale from local community organization to more encompassing jurisdictions—are each formed about the resolution to some relevant collective action problem. This affords problem-solving units within a polycentric system greater discretion to solve local problems locally. As such, each unit in a polycentric system, is capable of marshalling more knowledge from the members of the relevant problem-solving community.

¹⁴ "A basic question, then, is whether people can learn to use the language and theory of authority relationships to undertake the pooling, rearranging, and compromising of existing interests in crafting authority relationships for working out engineering solutions... to diverse forms of artisanship-artifact relationships existing in human societies, including the craft of designing institutional arrangements as authority structures" (Ostrom 1997,211).

Further, as single rather than a multi-purpose problem-solving entities, such units can realize gains in efficiency from improved oversight and specialization.

Even more, by providing local forums for innovation, systems of conditioned polycentric governance encourage public entrepreneurs, as a way of enhancing their own potential through improved cooperation and coordination with others, to visualize and to initiate improvements to existing institutional solutions to problems of collective action. Using their knowledge of local resources and ways of doing things, such entrepreneurs may propose reconfigurations or modifications to local institutional arrangements, as a way of realizing along with others, an increased actualization from these resources. Appropriately conditioned polycentric governance can thus permit a fulfillment of adaptive potential through the rearrangement of institutional constraints; it enables all, through the ushering of new patterns of actions and interactions, to attain in more robust terms of some future apparent good from presently given resources.

These capacities can be brought out, however, only within certain conditions. Complementing the prototype of polycentric design are complexes of conditioning rules providing coherence to such systems of collective action. If polycentricity represents a design concept, the realization of its benefit rests on the how the multiple elements in the layout of such an order relate to each other.

Required then is a framework within which particular problem-solutions may emerge as well as the parameters by which such alternatives can be gauged. Rules overseeing a polycentric system of governance must set out the contexts for innovation, selection and replication, both *within* relevant problem-solving contexts as well as *among* them. Indeed, such rule-complexes or *institutions* determine, as problem-solving devices, the conditions within which alternative approaches to collective action problems can be invoked. More, they set out as well those arrangements which deal with the assessment of these alternatives themselves. Finally, they tackle how these institutional frameworks may be developed and appraised.

Constitutional design thus refers not only to the development of plural and overlapping problem-solving arenas, but also to the rules by which the fitness of their problem-solving capabilities are to be maintained and to the bounds within which each is rationalized with respect to the other. In each instance, conditioning rules—specifying the

commitments and constraints within which problem-solving alternatives are to be defined and evaluated—represent claims about the desirability of surviving patterns of order.

Systems of *conditioned polycentric governance* (a) more fully encompass the knowledge of individuals of their own time and space contingencies, (b) provide for parallel modes of constitutional learning through trial and error among alternative conjectured institutional approaches and varied practical solutions to collective action problems, and (c) encourage and systematize processes of institutional innovation of alternative collective arrangements within which prospects for development may be advanced. Appropriately constrained polycentric systems of collective action therefore constitute a superior foundation for development.

A unitary system of collective action—as is the State—relies by contrast on collected information (i.e., aggregated data) that is knowledge-poor. Such a system is constrained to learn through serial experimentation where possible failures are egregious and disruptive. A unitary system of collective action also discourages problem-solving through local initiatives in public entrepreneurship. Indeed, rather than animate innovations in collective problem-solving, systems where decision-making is concentrated foster a wasteful competition, *qua* rent-seeking, to secure the instrumentalities of coercion. Even if the design for a unitary system of public choice refers to democratic control, this safeguard is inadequate to constrain the tyrannical use of power by a majority. All these arguments notwithstanding, it is not so much that this constitutional form is necessarily doomed to fail; the argument rather is that the design implicit in polycentric forms of governance permit greater opportunities for development through building-up conditioned forums of exchange.

Building-up a Constitutional Order

If we achieve development through building potentials for self-governance of societies at war with themselves, how, as a practical matter, might we go about it? We simply cannot leave the constituting of systems of collective action to combinations of accident and force.

Where then do we start? If development rests with the adaptation of the individual to his or her surroundings, and if the potential for such adaptation is heightened through the development of institutions that promote innovation in coordination, cooperation and exchange, then we have to deal with such institutions as they exist. In doing so, we have to

'start from here.' Indeed, as social scientists and putative public entrepreneurs charged with improving the welfare of individuals in diverse social/cultural settings, we have to look with a critical eye at what institutions are present. We have to gauge their problem-solving capabilities with respect to the issues confronted. Only then, might we suggest institutional alterations conjectured to improve problem-solving capabilities and hence the adaptive potential of individuals in society.

In looking around to see what is present, we would confirm our suspicions that various autochthonous communities have each evolved their own distinctive decision-making arrangements to address recurrent collective action problems faced by the membership. These formulae pose to some extent alternate or equivalent solutions to problems of collective action encountered by many societies. One community may choose to drive on the left of the road while another may pick the right side, to take a pithy example. Still other institutions may reflect indigenously developed locally relevant solutions to peculiar problems of cooperation. Various distinctive institutions as have evolved may thus reflect problem-solving wisdom attuned to unique local conditions

Often however, these institutional inheritances are the product of unconditional evolution. As such, it is quite likely that aspects of local institutions foster development of patterns of order which are at variance with what the normative standards that members of a given community or other observers might wish to see. We must be careful therefore not to assume that what has evolved through the sieve of time and trial is necessarily efficient or valid with respect to a particular environment, nor must we accrue institutional features to existing systems without thought to how they may impact on the sustainability of existing problem-solving routines.¹⁵ Existing rule structures serve as both points of departure and points of reference.

Improving the developmental prospects of individuals in a given community thus begins with an assessment of local conditions as patterns of order. It then goes to appraising the active rules and institutions in play—that is to say, the cultural, religious, and legal constraints as actually constrain the behavior of individuals in their own actions and in their

is The limits to our knowledge and imagination ensure that we cannot fully succeed on this score. This makes it all the more important that we pose any institutional innovation within an experimental context where the individuals who are to benefit are posed to pass judgment through appropriate expressions of collective decision-making.

interactions with each other. Finally, it leads to a consideration of available constitutional provisions through which to initiate institutional changes.

To employ fully institutional innovations, they must be understood and accepted as a part of the active rules-in-force in the community. This is vital since such institutional reforms seek to address the very ways in which individuals are to integrate their actions. Depending on the way reforms are introduced, they can reinforce or even undermine mutual faith in resolutions to cooperative problem-solving. In order for institutional reforms to be fully applied, such rules as introduced must be legitimated—that is to say, they have to be adopted using the locally accepted facility for making and amending their problem-solving constitution—such that they form a part of the behavioral constraints that condition the participation of the individual actors in the community. Flawed though we may consider extant institutions to be, institutional innovations have to be elaborated from existing meta-rules, conventions, and laws.¹⁶

If such provisions are inadequate or non-existent, the first step in building up a constitutional foundation for development rests in setting up the rules and expectations regarding the process of rule change. If we are to proceed, there needs to be, in the relevant society, a shared community of understanding about what the rules are by which they are to choose the rules by which they will live by.

As such, if at least at a theoretical level, the creation of a broad acceptance of very general constitutional rules to generate this community of understanding poses no serious obstacle. Since such rules set out how subsidiary rules are to be negotiated and adopted, there will exist a motivation to be fair at this level of rule making. Indeed, the more general the level of rules are, and the longer the period over which they are expected to prevail, the less certain individuals will be about how proposed rules will affect them; the *veil of uncertainty* grows more opaque and as a result unanimous acceptance of general constitution framework of rules can be realized (Buchanan and Vanberg 1989).

To recapitulate, the first step in crafting a constitution for development is to assess the problem-solving potential of existing 'rules of the game' while the second involves identifying the mechanisms by which changes to those rules can be made to be understood

¹⁶ Opportunities for bold large-scale change do exist but are rare. They require situations when the membership of the affected rule unit are willing to collectively jump to a new institutional regime. Such constitutional moments are extraordinary.

by all the players. Given that constitutions are complexes of rules nested within rules, the next steps focus attention on institutional strengthening through a refurbishment of the form and context of each of multiple local units of collective problem-solving.

Constitutional design based on polycentric principles favors the creation of multiple, possibly overlapping, arenas of problem-solving competence, each formed about the resolution of some relevant collective action problem. The constitutional design challenge therefore is to strengthen the problem-solving capacity of each polycentric unit while, at the same time, placing these elements within an appropriate context as regards the others in its vicinity.

If the relevant problem-solving unit is formed about a common pool resource (such as, for example, a forensics laboratory shared by various police departments in a metropolitan area or a water point used by nomadic herdsman in a desert) the rules for its shared use and maintenance have to be crafted. Whether setting up new formalities or fortifying existing units of collective action in this regard, we can be guided by the principles of association that characterize long-enduring common-pool resources. Elinor Ostrom (1990, 90) provides just such a list: It includes a need for clearly defined boundaries and rights to access, a congruence between appropriation and provision rules as per local conditions, provisions for monitoring use and sanctions for violations by the appropriators as based on the severity of the infraction, and low-cost methods for local adjudication of disputes.

Principles characterizing sustainable development of common resources also importantly include legislative mechanisms for the affected community to change the rules in operation. Such systems of rules for common pool resource management, notes Elinor Ostrom, are invariably posed in a nested structure.

Constructing a constitutional foundation for polycentric development then rests in building or encouraging such local capacities in problem-solving through identified modalities for institutional innovation and change. It also rests crucially in setting up the constraints conditioning these multiple and overlapping systems. This ensures that the locus of problem-solving is attuned to the relevant problem of collective action.

These posed solutions to collective action, set in competition with respect to other possible conjectured responses, necessarily derive from within an overall representation of the problem environment. In turn, this framework itself must be evaluated in competition

with other available or imagined alternatives, as based on the usefulness of the types of solutions they engender. As such, these *nested* layers of rules both support as well as set out the bounds within which the relationships among alternate problem-solving activities in each of the multiple arenas of collective action are rationalized with respect to each other.

Constitutional Models and Constitutional Design

Rules, whether setting up the constraints within which particular solutions to collective action problems are generated or the bounds within which alternative institutional constraints are evaluated, reflect conjectured evolutionary claims as to the properties of the order they generate. As such, they set up the criteria of legal and economic feasibility for initiatives in public entrepreneurship. If we accept that polycentric systems afford a greater likelihood for the realization of adaptive potential among problem-solving individuals, then the needed feasibility constraints have to be conditioned according to the following constitutional design principles:

First, evaluations among alternate solutions to collective action problems have to be arranged within constitutionally legitimated venues. Shifts to alternatives among solutions to problems have to refer to the rules that condition this comparison. If these rules are themselves inadequate, we have to consider how these framework representations may themselves be modified within the scope of the relevant community of understanding. Second, rule innovations should first be considered at the level of the corresponding collective action problem. In this way, solutions can be more sensitive to the particular contingencies faced. Third, rule changes should not help one group at the expense of others, and fourth, the scope for one coalition to take over rule-making prerogatives should be limited. As such, the assessment of alternatives implied in these principles of constitutional design are to be based on the evaluations of the particular individuals involved¹⁷.

These normative guidelines for constitutional design reflect such well-known principles as the rule of law, democracy, federalism, liberty, and the need for checks-and-balances to contain the tyranny of a majority. Indeed, these principles are reflected in

¹⁷ Normative Individualism is a meta-theoretical principle that attempts to judge the goodness of socio-economic situations through the evaluations of the relevant individuals; considering individuals as sovereign in matters of such choice is the foundation of a liberal social order. "In accordance with this premise, the legitimacy of social-organizational structures is to be judged against the voluntary agreement of those who live or are living under the arrangements that are to be judged" (Buchanan 1991, 227).

various constitutional models. Examples of federative systems range from the Swiss to the Malaysian to the American, and so on. However, we must take care to distinguish these models from the principles that constitute them. As such, particular configurations of rules, while appropriate to the problem-solving contexts of a particular polity, may not enhance the developmental capacities of another. We see, for example, that transplanting the American model of constitutional design has not produced similar results in the Philippines and similarly, that the British Parliamentary model has fared poorly in Kenya.

Building-up systems of collective action within adaptive constraints must start with the language by which individuals in each locus of collective action order the behavior of each with respect to the other. Language here serves crucially as an instrument for conceptualizing and relating elements and relationships central to coexistence among a particular group of individuals.¹⁸ Accretions to such institutional resources— rules— must be elaborated from and by the terms by which the thoughts and actions of each member of this society is made intelligible to the other.¹⁹ If we are to 'improve' the institutional framework, then we have to deal with the regulative words, concepts and grammar that form the language of the community.

These observations point out forcefully the need to build systems of collective action from the bottom-up, guided at each stage by the alluded to principles. Crafting a constitutional foundation for development pertains to strengthening the problem-solving capacities of groups formed about the resolution to issues of collective action, and as well as to forming the bounds that condition the evolution of such systems. These bounds also serve to rationalize the multiplicity of problem-solving approaches characteristic of polycentric governance.

¹⁸ "Since human beings are unable to directly read each other's minds, the task of developing a method for ordering behavior in relation to one another requires a recourse to language. Language now becomes the basis for stipulating rules, so that disparate individuals can act with expectations that others will behave in accordance with those rules" (Ostrom 1997, 136).

¹⁹ "Communication depends on shared communities of understanding. This means that the use of language always occurs in the presence of the reciprocal exercise of human intelligibility" (Ostrom, 1997, 154).

Somali Society, the State, and Development

Development Economics stresses the role of the State in directing the progress in poor societies. Implied here is a centralized form of governance based on models of parliamentary democracy. Such constitutional models for Third World governments, copied (usually) from imperial prototypes, often do not derive from or support endogenous problem-solving institutions. As such, they may exacerbate conflict rather than resolve problems of collective action.

A striking example of this contingency is found in the experiences of the northern Somali pastoralists in the Horn of Africa. They occupy the land area of the erstwhile British Protectorate of Somaliland and neighboring regions. In examining the character of their land, and their peculiar resolutions to problems of collective action, we can see how western preconceptions of what a democratic state should look like have failed to link with their indigenous problem-solving routines. Moreover, we can also see how the centralized State has provoked prolonged civil conflict and human misery. The potential for the adaptive realization of the northern Somali pastoralist through constitutional development is then considered.

A Pastoral Democracy

The harshness of the physical landscape of Somaliland forges the character of local institutions.²⁰ The natural landscape of much of Somaliland is scrub desert with brush vegetation supporting the grazing of livestock—the main economic activity. Rain is limited in terms of both measurement and frequency. These conditions place stress upon available underground water sources and land for grazing.

The terrain supports the pastoralist activities of Somalis as organized within nomadic clan groups. In turn, as the anthropologist IM. Lewis (1961; 1994) points out, the clan social structure has evolved to enable the survival of these pastoralists in their harsh environment. Ranging far and wide, alone with his herd of camels and flock, the Somali is fiercely independent and relies on his own resourcefulness for survival. As pastoral nomads, Somalis

²⁰ Our exposition is inspired by Tocqueville "who, in *Democracy in America*, draws out the landscape and customs of the people of the United States as a prelude to his analysis

have no tradition in centralized government. Indeed, nomadic pastoralism in vast barren terrain inhibits the formation of stable territorial polities. Rather, the Somali derives his identity from his clan association, a patrilineal system where each member can trace his lineage to a founding father. Clan identity provides for the security of its members as well as collectively enforces the relevant property rights of its members.

Clans are broken into units are based on the *dia*, or blood compensation system. This is a mechanism to resolve conflicts arising among members of different clans. For example, the compensation for taking a man's life is one hundred camels and fifty camels for a woman's. Individual social units are accordingly based on the security formed through pooling livestock so as to form a *dia*-paying group (as this in effect forms a threat to take the life of a member of another clan.)

The members of a *dia* group are pledged to support each other in collective political and jural responsibility. For example, properties of members of a clan are secured against seizure by those of other clans through threats of retaliation by the male members of the clan of the aggrieved party. *Inter-dia* discipline is supervised by the elders, where these elders are heads of families and other respected figures. Rules for self-governance within these units are adopted on the basis of unanimous consensus among the elders. Discipline within clan units has been and continues to be well-maintained. It is as such that Lewis refers to the Somali system of governance as a pastoral democracy.

Xeer or covenants as may be variously established govern relations among members of different clan units, particularly with respect to the sharing of common pool resources such as grazing land and water sources. There are typically strong sanctions for violating these *xeer* with monitoring and enforcement controlled by the *Guurti* or inter-clan Council of Elders. These *xeer* are developed as and when they are needed to cope with the presence in the proximate rangeland of other nomadic *dia* groups. Even so, conflict has always been the leitmotif of inter-clan relations as the temptation to raid the other group's cattle is always present while monitoring such behavior is very difficult.

As such, the judicial, administrative and political procedures central to western conceptions of government are alien to the Somali pastoralist. Despite this lack of administrative unity, Somalis are culturally similar and as such may be said to constitute a 'nation.' This cultural integration may well have resulted from the norm for Somali men to

many outside their clan group. The Somali political economy is not so much a decentralized as a non-centralized democracy.

A Somali State?'

Before colonization, there was no Somali State. Even after the Horn of Africa was divided among Italian, British, and French colonizers, there was no deep interest on their part in the welfare or patterns of association of the natives, other than that needed to maintain a modest presence. The Italians, based in Mogadishu in the southern Horn had their eyes on Ethiopia, while the British and the French in the northern Horn were mostly interested in the strategic waterway of the Red Sea. The Republic of Somalia was formed in 1960 by joining, under the auspices of the United Nations, British and Italian Somalia. As such, a democratic model of a state, centered in Mogadishu, was conceived, complete with a National Assembly, a Prime Minister, and an elite bureaucracy. Given the tradition of clan-based loyalties however, political associations immediately developed along clan lines; majority coalitions were realized by provoking disputes with other clan groups as a way of forming unity among one's own sub-clans.

Following nine years of fratricidal clan party politics, the army under General Siad Barre seized power in October 1969. Siad Barre proceeded to develop a highly centralized state along totalitarian lines. Gans and clan behavior were officially banned under the new 'Scientific Socialism.' An all-pervasive state machinery, inspired by that of North Korea, ruled directly through officials personally appointed by Siad Barre. Barre himself presided over a revolutionary council composed of members from his, his mother's and his son-in-law's clans. He used tactics of divide and rule to stay in power, arming one clan group against the other. At the same time, he also sought to forge pan-Somali unity by invading the Ethiopian Ogaden in 1975. Although initially successful, the tide of the war turned and the retreating Somali army was followed by three quarters of a million Ogadeni Somali refugees.

Even as the Ogaden war was seriously destabilizing the Somali State, the Soviet Union, eyeing a greater prize in Ethiopia, abandoned Somalia as its client state. Barre desperately turned to the West and, claiming that he was now fighting Communism, sought their weapons, foreign aid and humanitarian assistance. Despite massive quantities of aid, first from the Soviets and next from the Americans, no effective development was

measured; indeed, even though Somalis received per capita more aid than any other country, Somalia gained the reputation as a graveyard for aid.

The Somali State finally collapsed in 1991. The Ogaden war, the practice of arming clans to fight other clans, and a civil rebellion by the nomadic clan groups in Somaliland, upset in part at not having received their share of aid dollars, all led to the fragmentation of the State. The humanitarian disaster that accompanied this prompted a military intervention by UNOSOM. Again, attempts by the United Nations to reestablish a center of power belied a basic ignorance of local systems of collective action—with disastrous consequences, not least, for some American Rangers.

Rebuilding Somaliland's Institutions

The effects of inter-clan conflict, exacerbated, first, by the requirements of majoritarianism and, next, by the divide-and-rule tactics of the Barre dictatorship, continues to afflict the potential for cooperation *among* Somali clans.²¹ Centralized governance has also undermined traditional forums through which accommodations *among* clan units were secured. More, efforts by Barre to outlaw clans and stamp out clan behavior debilitated the traditional mechanisms for securing order *within* particular clan units. Nonetheless, nomadic Somali clans of the northern Horn, on account of their remoteness and itinerant ways, retained a level of cohesion within their *dia* groups. With the collapse of the Somali State, they have reverted to their traditional forms of self-governance even though a legacy of distrust and animosity among rival clan groups in the area remains.

Following the collapse of the Republic of Somalia, some former officials of the Mogadishu regime fled to Hargeissa, the capital of the former British Protectorate of Somaliland, and proclaimed the Republic of Somaliland²². However, their activities are viewed by the general population as predatory and their writ does not carry in the provinces. Meanwhile, elders from various clans have come to see a need to systematize relations

²¹ The prevalence of automatic weapons makes this antagonism all that more deadly

²² The government in Hargeissa has festooned itself with the trappings of a State. It does such things as print a currency, collect taxes, and stamp your passport. The Somaliland shilling has rapidly devalued due to oversupply. Transactions are conducted in American dollars for otherwise stacks of the local currency are required. The government of Somaliland, led by President Egal, collects taxes at roadblocks and at ports from across the territory. Spending is however concentrated on the more settled agriculturists of the western part of the territory, which incidentally forms the 'government's' power base. This has alienated the nomadic pastoralists of the east.

among clan units and to improve their well-being through the joint development and management of common pool resources. However, they have not as yet thought through how this is to be effected. On the other hand, the elite of Hargeissa sees a resolution to the conflict and devastation in setting up a strong centralized state. They see this as prerequisite to Somaliland's international recognition.²³ Such recognition would make available official foreign aid assistance which, as accredited agents of the people of Somaliland, they could in part direct.

Developing the potential of Somaliland's citizens rests less in winning recognition for its statehood than in building potential for self-governance. In this society at war with itself, this process involves recognizing, enhancing, and building upon existing institutional structures to deal with encountered problems of collective action. How might we approach this task? An outline can be sketched out as follows:

The first step in setting out the constitutional foundations of development is to evaluate the existing institutions for problem-solving. In 'starting from here,' we accept the clan system as the basic unit of collective action.²⁴ Any elaboration or enhancement of the potential for collective action has to take into account that which cements existing associations.

As noted, the institution of the *dia* offers security to the Somali pastoralist through the threat of collective retribution while the *xeer* provides a traditional form of compacting among clan units as they may encounter each other. As evolved, these institutions have proved to be of adaptive use to the nomadic pastoralist. They accommodate the need for independent decision-making by the pastoralist on the range and set out the formalities through which cooperation between particular units can be developed as and when needed. As required for a nomadic population, these institutions, as based on agnatic kinship, transport well.

²³ These impressions were formed upon meeting with elders from the province of Saraag, and with senior officials and parliamentarians of the Somaliland government in Hargeissa in June 1998.

²⁴ "What values or prejudices does a social scientist bring into his or her evaluation of the competence of existing institutions to solve problems of collective action? The framework for analysis suggested here, in constituting the setting within which the individuals involved can better realize their adaptive potentials through developing appropriate institutional arrangements, aims to be value free. As such, we are interested in those aspects of systems of rules that foster patterns of association and the manner in which these are subject to evaluation by those directly affected by them. We are less concerned about whether that which is valued by the individuals involved corresponds with our own preferences.

On the other hand, such systems of collective action fare poorly when sustained cooperation among different clan units is required. Minor torts can escalate to clan on clan warfare. More, the *xeer* as such is not adapted to foster the joint development and shared use of resources on a regular basis. Clan institutions that are internally democratic and adapted well to ensure the survival of a nomadic herdsman are ill suited when placed to cope with recurrent contact and durable cooperation.

Given that processes for conflict resolution within the clan unit are well established and provide substantial cohesion, building potential for self-governance in this society rests in strengthening cooperation and coordination among clan units. In doing so, we have to rehabilitate and enhance existing modes of forming social compacts—namely the *xeer*—while taking the *dia* groups as our starting unit.

Strengthening the capacity to address jointly problems of collective action has to focus on the particular types of collective action problems faced by the groups. Among the Somali pastoralists, these relate primarily to the maintenance of their herds: In this instance, inter-clan cooperation *is* called for in the joint development, maintenance, and sharing of water sources and in provision of veterinary care. The establishment of and maintenance of institutional formalities within which these tangible common pool resources are to be created and run can be addressed in terms of the principles for governing the commons discussed by Elinor Ostrom. As already reviewed, these principles set out the bounds of behavior and constrain the ways in which conflicts that may arise can be resolved.²⁵ Building the capacity to resolve problems of collective action with attention in each instance to the particular problem and the collectivity in question provides the basis for a polycentric system. As such, it is core to a constitutional foundation for development.

Even as the rules as developed refer to particular conjectured approaches to solving collective action problems, there is also need for these arrangements to adapt to the evolving needs of their appropriators. As such, there is need for institutional mechanisms (as conditioned evolutionary claims about working properties that emerge from a set of rules) to set out the terms by which proposed alterations or alternatives to problem-solving routines can be evaluated. There is as well a need to set out the overall bounds within which particular resolutions to problems may be sought. Can two neighboring clans, for example,

cooperate in raiding the cattle of a third? Thus, these institutional mechanisms need to include sets of rules circumscribing the scope and interrelationships between problem solutions.

Given that these broader issues—dealing with the extent of and correspondence among conjectured responses to collective action problems in a polycentric order—vary according to the geographical and cultural topography, this level of institutional setup is often associated with the notion of regional government. It is worth emphasizing that this tier of institutional arrangement backstops local solutions to problems of collective action while conditioning their scope and behavior.

If "particular approaches to solving collective action problems refer to the creation and care of tangible common pool resources, the formation of systems of regional governance represent the composition of a type of intangible common pool resource. As such, the constituting of such institutions refer to the same set of principles characterizing the sustainability of 'real' common pool resources. If these systems are to realize fully the adaptive potential each member of the relevant population, they must also refer at each instance to the normative guidelines for constitutional design set out earlier. In turn, alternatives in the institutional design of regional governance structures and their relationship to each other also need to be couched in terms of an overall constitutional framework.

Tiers in a structure of governance therefore refer to the formation, sustenance, and bounds of innovation within which real or institutional common pool resources are nested. Each serves to constrain and condition the problem-solving capabilities of individuals in such ways as to encourage the integration their present resources through joint action to realize future adaptive benefits.

This outline for the constitutional development of Somali pastoralists is necessarily a rough sketch. It requires the individuals on the spot to come together to develop their own responses to the issues of collective action faced. At the same time, this sketch provides guidelines and cautions as to the contexts within which these responses are to be initiated, tried out, evaluated, maintained, strengthened, and lastly, replicated or discarded. It points out that principles of democracy, federalism, and liberalism have to be incorporated at each

²⁵ Indeed, institutional building along these lines to foster development through conditioned interaction has already been undertaken by the non-governmental organization ActionAid-Somaliland, with considerable

stage of the process of constitutional design if such arrangements are to enhance the developmental potential of each.

Beyond the State

Development Economics, orthodox versions or otherwise, asks "what *is* the main thing governments must do to spur economic growth?" It holds tacitly to a concept of the State as *the* agent to set in place the elements that will spur growth. This approach has neither been able to guide nor explain patterns of development. In response, analysts have broadened their concepts of what preconditions are needed for growth as well as recognized the limitations of governance in bringing these conditions about. Nevertheless, the core notions of the State and of growth remain.

This chapter has attempted to set out an alternate world-view. Rather than understanding development as a material metamorphosis of whole societies through a mystical process of growth that is ushered by the agents of a State, we think of it as a realization of potential of individuals through building capacities for self-governance in societies at war with themselves. As such, we move beyond the State to the notion of systems of collective action, polycentric in nature, and bound by constraints conjectured to improve the ability of humans in each of their social and environmental contexts to exploit and organize the structures of both real and institutional resources in order to improve future adaptive prospects.

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