

EARLY AMERICAN CONFLICTS AND MODERN AFRICAN PRACTICES: A COMPARATIVE COMMENTARY ON CONSTITUTIONALISM

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I am most honored to introduce this panel titled African Countries at the Crossroads of Human Rights Development, the Rule of Law, and Economic Priorities. Africa is often unfairly viewed as a monolith, when, in reality, it is the home of numerous distinct peoples and cultures. Africa's place in the history of mankind as the foundation of civilization is clouded by the brutal conflict, neglect, and economic disaster that has taken place there over the past decades. This panel will focus on the status of human rights conditions, economic obstacles, and constitutional achievements in particular African countries.

However, to truly begin such a discussion regarding Africa, we must first address the tacit comparative analysis between Africa and America which takes place all too often. This introductory essay asks the question: Are we fair in our assessment of Africa? This question is asked because it appears that too many scholars have forgotten America's early history when analyzing Africa's current political, social, and economic circumstances. It is easy to provide an international assessment of Sub-Saharan Africa, as a region prone to violence and devoid of the Rule of Law. But, this paper proposes that the present image of America held stable by its adherence to the Rule of Law, i.e. constitutionalism, may not be a historically accurate one by which emerging African nations should be judged.

The modern African conundrum has been of war and deprivation both natural and otherwise juxtaposed with great potential and rich resources. After a devastating period of economic, social and political colonialism, African countries emerged as independent states. One imagined that as Ghana, the first Sub-Saharan country to demand and receive independence from its colonial power marked its independence in a bloodless transition in 1959, other African nations would follow suit in similar manner.¹ History has shown that this was

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1. For a discussion of Ghana's independence, see F.K. BUAH, *A HISTORY OF GHANA* (MacMillan Education Limited: London and Basingstoke 1998).

not to be the case. For any number of valid reasons, war and conflict have haunted Africa's emerging nations.

These countries gained independence with constitutions utilized for the purpose of guidance and protection. Initially, the constitutions of the colonial powers fell away to amendments which were scrapped for new constitutions drafted to recognize the unique experience of the emerging nation state. Yet, violence continued. It is assumed that a constitution acts as a shield and buttress against civil war, economic depression, international conflict, political oppression, human rights abuses, corruption, and coups.

In this post-cold war era, America's global influence has been to pronounce the Rule of Law as a goal for all countries seeking international respect. The Rule of Law is most often evidenced in a document deemed a constitution setting forth governmental responsibilities, individual rights, and societal protections. The document would also contain the basic structure and procedures for addressing grievances. It is not unusual for a newly independent country to inherit the constitution of the existing colonial power or have it foisted upon it. America was no different. Political conflicts lead to the scrapping of the old document in favor of a new constitution which takes into account such issues as lessons learned: protections for political minorities and institutional checks and balances. Newly emerging African nations followed this well-established constitutional path.² Yet, abuses continue: war, man-made famine, economic upheaval, political oppression, and corruption have come to describe modern Africa. Adherence to the Rule of Law has become analogous with western economic and political stability. Once the constitution is in place prosperity will soon follow. However, the simplicity of the image belies the economic upheaval, civil war, and racial oppression that remain a part of America's relatively short history. Multiple wars, political strife, riots, assassinations, uprisings, and international consternation are often ignored in the face of America's present day success. Even in this country of overlapping constitutional protections, the history of America is a bloody one. The economic success of this country along with the longevity of its Constitution has overshadowed the turbulence that remains a part of American history.

Early America adopted much of its laws from English common law as well as the laws of other former colonial powers such as France, Spain, and The Netherlands. It was not until 1787 that representatives of the thirteen independent colonies met in Philadelphia, Pennsylvania, to draft a constitution. After two years of struggling over language, structure, and the intricacies of shared power, the United States Constitution was ratified in 1789. That Constitution and its ten Amendments, ratified in 1791, were greatly influenced by power struggles between the colonists and Britain's King George. The Articles of the

2. GHANA CONST. (1992).

United States Constitution set forth the structure of powers of the legislative, executive, and judicial branches. The ten Amendments to the Constitution were drafted to protect individuals suspicious of government. This Bill of Rights provides for the freedom of speech, the press, assembly, religious practices, and of protest against governmental actions real and imagined. The Fourth, Fifth, and Sixth Amendments provide for protections of individuals in criminal proceedings against unreasonable government searches and seizures, double jeopardy, and self-incrimination. Trials are a public affair. An individual has a right to confront witnesses, consult counsel, and receive effective representation at no cost if one is unable to afford an attorney.

Each state of the United States has its own constitution. Each individual state constitution sets forth individual rights and protections in further detail. For nearly two centuries the United States Supreme Court would apply the protections of the Bill of the Rights only to the federal government. The states protected its citizens as each state saw fit to do so. The United States Supreme Court incorporated the protections and freedoms found within the Bill of Rights into the due process and equal protection clauses of the Fourteenth Amendment thus extending these provisions to the states. Yet, the courts' dockets are brimming with cases claiming constitutional violations.

The present image of American stability belies a history of conflict. America did not gain its independence from British rule in a bloodless transition. The war for American independence from Great Britain took place between 1776 and 1783. Following on the heels of the War for Independence, America fought the British again in the War of 1812 during which the capital city was burned to the ground. Although there were skirmishes with outside nations, American expansionism brought wars with Native American nations which would ultimately result in the loss of over half of the Native American population in North America.

The Mexican-American War was fought between 1846 and 1848 during which the United States believed that an expansion into Mexico was justified as part of a Manifest Destiny or divine ordination. The Civil War, 1861-1865, remains the bloodiest of all American wars. This war between the states was fought to define the future economic, political, and social control of this nation. More American lives were lost during this war than all of the wars from colonial times to present. Two hundred thousand lives were lost in a single battle.

The economic structure of the American South was destroyed during the Civil War. Atlanta, a prized city today, was burned to the ground in 1864. One should examine post-war reconstruction with an eye towards the American South. Decades of economic struggle were required before the South began to recover from the devastation of war. Even today, the American South lags behind the North in certain areas of advancement such as public education. Southern rebel cities such as Charlotte, Memphis, and Birmingham, once

centers of racial conflict, are thriving in the new millennium. However, these economic and political changes have taken well over a century to occur. Race riots and rebellions against racial oppression have taken place in America's North as well as the South for over two hundred years. The most recent one in Michigan in 2003.

America is comprised of many different ethnic groups, religious beliefs, and nationalities. However, the melting pot theme of American co-existence has been challenged even at its inception. Africans were introduced to the English colonies as early as 1619. The Africans in America were reduced to slavery as an economic measure first and foremost. The early Americans required labor to produce tobacco and other crops. Europeans attempted to enslave the Native Americans. The Native Americans could not withstand the diseases brought by the Europeans. While the African withstood the European's diseases, they found it difficult to hide in foreign terrain familiar to the escaped Native American. The African in America remained either enslaved or without the rights of the white man.³ The Civil War brought a close to slavery in America.⁴ However, the racial oppression of Blacks was not condoned by culture. An interpretation of the Constitution by our United States Supreme Court would institute racial apartheid in America for nearly fifty years.⁵ The terrorist organization known as the Ku Klux Klan was formed in 1868; the same year Blacks were given equal protection under the laws.⁶ Blacks received the right to vote in 1870. However, racial terrorism preventing them from exercising their political rights for nearly a century.⁷ Approximately 5,000 Black men, women, and children have been murdered in the United States by lynching (hung, burned alive, shot, dismembered).

Federal, state, and local governments would enact laws to relegate Asians to a non-citizen labor class. The United States Supreme Court upheld the placing of persons of Japanese descent into internment camps during World War II, 1942-1946, based on fears of disloyalty following the bombing of Pearl Harbor by the Empire of Japan.⁸ The information forming the basis for this imprisonment was found, decades later, to be untrue. Prisons and jails are filled with a number of Blacks and Latinos disproportionate to their population. Over

3. *Dred Scott v. Sandford*, 60 U.S. 393 (1856).

4. U.S. CONST., amend. XIII (slavery ends).

5. *Plessy v. Ferguson*, 163 U.S. 537 (1896) (separate but equal is upheld by the United States Supreme Court); *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954) (racial separation in public schools is inherently unequal).

6. U.S. CONST., amend. XIV (1868) (equal protection under the law was given to all persons).

7. Black males were given right to vote. U.S. CONST., amend. XV (1870).

8. *Korematsu v. U.S.*, 323 U.S. 214 (1944).

two million people are incarcerated in America's prisons and jails.⁹ America is the only industrialized Western nation with a death penalty, a disproportionate number of whom are people of color. As of this writing, there are approximately 3,700 people on death row awaiting a sentence that may include death by lethal injection or the electric chair. Such a death sentence is sanctioned by the United States Constitution. Yet, the world squirmed upon hearing that Ms. Amina Lawal of Nigeria had been sentenced to death by stoning.

The argument in this essay is quite simple. A constitution may offer guidance and a level of security, but, it cannot prevent sin. Mistakes, horrible actions, greed, murder, and willful destruction will take place. However, it is not inevitable. The frequency with which it takes place undermines any optimism to the contrary. Nation-building takes time. The first English settlement in North America was formed in 1620 in Jamestown, Virginia. Too many people have fought, died, or were sacrificed for the nation the world has come to know as the United States of America. It is a country that continues to struggle with its rule of law, minority rights, economic challenges, and political forces. The United States Constitution is under siege following the events of September 11, 2001. The American response to this act of terrorism was disappointingly common—as common as any emerging nation.

The youth of African governments and their constitutional ambitions should be viewed in historical context that takes into consideration these important factors. Additionally, the centuries of displacement wrought by the slave trade must be considered. One must be mindful of the deeply rooted influence European colonial powers played in African colonies concerning all areas political, economic, and cultural development.¹⁰ The relatively short time frame in which African countries have gained independence must be considered. One must also take into account the continued influence of American, European, and South African leaders in newly formed African countries. Events that are indeed brutal and perplexing are, unfortunately, not unique to Africa. Sadly, it may be part of a natural post-independence experience. One need only look at the American post-independence experience to at least consider the possibility of such a premise.

9. Press Release, *Bureau of Justice Statistics, Nation's Prison and Jail Population Exceeds 2 Million Inmates for First Time* (Apr. 6, 2003), available at <http://www.ojp.usdoj.gov/bjs/pub/press/pjim02pr.htm> (last visited Jan. 29, 2004).

10. For an examination of the influence of Europe on Africa from a pre-colonial period through the initial stages of African independence, see WALTER RODNEY, *HOW EUROPE UNDERDEVELOPED AFRICA* (1982).