ABSTRACTS

Regional Integration versus National Sovereignty: A Southern African Perspective

By *Ilyayambwa Mwanawina*, Mafikeng

The 21st Century has presented a myriad of challenges to the world including terrorism, economic meltdown, poverty, unemployment and demands from the governed such as better living conditions and respect for human rights. These challenges have prompted a change in global governance trends. It has become evident that a state can no longer exist in isolation; there is a greater demand and advantage in entering into regional or international agreements in order to be able to survive in an increasingly interdependent world. However states are faced with a dilemma as to how far they have to shed their ability to control and dictate the internal affairs of their countries in favour of the international agreements that they have voluntarily entered into. This paper will bring into perspective the experience in Southern African Region and illustrate the conflict between municipal and international obligations, a conflict which can only be eradicated if a regional body has the constitutional prowess to influence domestic policy.

Pre-Commitment in contemporary constitution making? The South African and Kenyan Experiences reviewed

By *Dan Juma*, Harvard

Constitution making remains one of the most important events in a country's history. The paradigmatic process of contemporary constitution making follows an extraordinary political event, and may entail several stages such as agenda setting, public mobilization, consultation, negotiation, deliberation, ratification and promulgation. As the axiom goes, the process of making a constitution is as important as its outcome. Yet, in reality, constitution making has often been fraught with the problems of self-dealing by political actors and elite groups, and even obstruction by incumbents.

This paper examines the problems of structuring constitution making in contemporary polities and explores the potential use of pre-commitments, that is, self-binding devices to constrain constitution makers. In deploying insights from pre-commitment theory, the paper reviews the application of constitutional pre-commitment as a means of dealing with some of the problems of constitution making in South Africa and Kenya. The paper's approach is more analytical and descriptive than normative, eschewing deeper normative issues which are beyond its scope. In its conclusion, the paper claims that although constitutional pre-commitment can be used as a check on the pathologies of fundamental constitutional change, it is beset by challenges such as partisan interests, limited public participation and

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difficulties of negotiating the pre-commitments. Similarly, such an imaginary is by no means an insurance on specific normative outcomes of constitution making.

The Rule of Law in DR Congo, Burundi and Rwanda: Economic Aspects of Constitutional Law and Public International Law

By *Hartmut Hamann / Anne Schroth*, Stuttgart

Constitutional law and public international law set the framework for commercial and economic activities. Therefore the principle of the rule of law has considerable economic importance. Public international law measures also have an impact on the economy. This paper examines the connection between constitutional law, the principle of the rule of law and economic development with Democratic Republic of Congo, Burundi and Rwanda as examples.

The paper briefly describes for each country the provisions of the constitution on the rule of law, human rights, independence of judiciary and decentralised structure. It then points out the economic and political situation, the implementation of the constitution and the economic development. This comparative study is followed by the description of economic aspects of major public international law measures in these countries, such as regional integration, UN missions, World Bank activities and Economic Partnership Agreements.

The paper raises questions on how the realisation of rule of law structures could have a positive effect on economic development, and on how funds and development aid instruments as well as public international law measures could be used more efficiently to achieve this. It also proposes initial answers to these questions as a starting point for discussion.

The "Revitalization of National Government Organization" in Japan

By *Atsushi Takada*, Osaka

One of the biggest changes in administrative law in Japan since the 1990s concerns the restructuring of national government organization, based on increasing criticism of administrative practice in public debate. The article analyzes the "Reform" in the 90s and the "Revitalization", which started in 2009, under two perspectives, namely the theory of social systems as well as criteria of normative logic. Reform and Revitalization had different political backgrounds, but also show common features and a certain similarity and also continuity. Both concern the role of prime ministers and the cabinet as well as political leadership in general, both aim at the goal of transparency and refer to a concept of openness. Both had their roots in transformational processes of Japanese society, resulting in

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more complex structures than they existed before. Both are based on an emphasis on the idea of self-determination of the people ("kokumin").

Not only the Reform, but also until today the Revitalization lack an adequate theoretical reflection under terms of sociological as well as normative theory. Therefore they could not offer appropriate and fully convincing solutions. Such reflection is still needed and a big challenge for the future development of the science of public law in Japan.

Institutional and legislative starting points for the return of the Rule of Law in Zimbabwe

By *Benedict Bartl*, Hobart

During the 1980s Zimbabwe was widely acknowledged as a role model for Africa with an agricultural system recognized as the breadbasket of Africa, a government free of corruption and a relatively harmonious relationship between the indigenous majority and the white minority. Thirty years later Zimbabwe is a shadow of its former self with hunger, poverty and illness widely dispersed and a weakened population struggling under the brutal rule of Robert Mugabe and his cronies. Particularly over the last decade the international community has attempted to find solutions out of this crisis, solutions which have firmed into three concrete transitional justice measures. These measures include a Truth and Reconciliation Commission and a Hybrid Criminal Court, judicial institutions that can play a significant role in facilitating reconciliation and punishing those convicted of crimes against humanity. Secondly, the implementation of Land reforms including first and foremost the establishment of a Land Commission. And finally the establishment of institutional reform which will act as a safeguard against excessive Presidential powers. The ongoing discussion about Zimbabwe's future is particularly timely with more than 700,000 Zimbabweans having recently participated in a consultation process for a new Constitution. Despite public support for a two-term presidential limit this article submits that the final draft Constitution will continue to support Robert Mugabe's rule. For this reason it is argue that the Opposition, including non-governmental organizations, should focus their attention on ensuring that the necessary checks and balances are enshrined in the draft Constitution which will both act as a brake on excessive Presidential power and ensure that Zimbabwe can look with optimism into the future.

In the Middle of nowhere. Tristan da Cunha – or: A Social Contract became reality

By *Wolf-Dieter Barz*, Karlsruhe

Tristan da Cunha is an archipelago in the South Atlantic, between Capetown and Buenos Aires and is inhabited today by not more than three hundred people. In 1816 it was an

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outpost of the British colonial empire and had no native inhabitants. It is still a part of the British overseas domains and enjoys relative independence. A very particular legal structure was developed there since 1817 on the basis of a treaty between the inhabitants themselves. Its framework has close similarities to communist inspired social systems. The legal situation and civil traditions of the inhabitants still bear the imprint of this document. Was it a sort of "Contrat Social", a rudimentary, elementary form of the island's constitution, a contract to found a commercial firm?

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