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SUB-SAHARAN AFRICA: ECONOMIC STAGNATION, POLITICAL DISINTEGRATION, AND THE SPECTER OF RECOLONIZATION

*Jon H. Sylvester**

I. INTRODUCTION

In 1992 I was awarded a Fulbright scholarship to teach in the Law School at the University of Nairobi during the 1992-1993 academic year. Since returning to the United States, whenever I am asked to describe the year and some of my experiences, I am torn between doing a travelogue and doing the report of a (very informal) fact-finding mission.

The dilemma is this: On one hand, this was and could easily remain the adventure of my life—complete with breathtaking sights, endless anecdotes about people, local food, cultural idiosyncracies, and funny (some not-so-funny) things that happened. On the other hand, I genuinely care about development in what used to be called the third world.¹ In particular, I have a long-standing concern for conditions of human life in sub-Saharan Africa. In this regard, my overall observations were, at best, disheartening—so much so that talking about animals and local foods seems frivolous.² So usually, I end up doing a little of each: describing the adventure and “thinking out loud” about how bad conditions are, how much worse they could get, and what might result. That is what I will attempt to do in this Essay: describe my trip, make some observations, and express some serious concerns.

More specifically, after a brief sketch of my adventure, I will compare what I observed on a previous trip to Africa, attempt to describe the

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1. Those of us who care about the third world need a new name for it, as there is no longer much of a “second world.” The term currently favored by academicians and aid workers is “LDCs”—for “less developed countries.” Despite the new term’s accuracy, it clearly fails to capture the historical and political drama of “third world.”

For a suggestion that “[t]he third world needs new thinking, not a new label,” see *South, the Concept*, *ECONOMIST*, Aug. 25, 1990, at 17, 17.

2. For a sensitive, detailed, and nonfrivolous travelogue, I recommend EDDY L. HARRIS, *NATIVE STRANGER: A BLACK AMERICAN’S JOURNEY INTO THE HEART OF AFRICA* (1992).

magnitude of the economic crisis gripping most of the continent, and outline the shape of certain international policies affecting Africa. Finally, I will identify and discuss some current proposals to solve the crisis. The last few sections of this Essay simply raise some questions to which, I acknowledge in advance, I do not have answers.

Parts of this Essay may seem so focused on problems in sub-Saharan Africa that they ignore the significant extent to which those problems are attributable to world events—coincidental and otherwise—beyond African control. Those who believe that any discussion of sub-Saharan Africa should be primarily devoted to denouncing colonialism, neocolonialism, and imperialism may think that failure to do so is tantamount to “blaming the victim”—especially when my observations are negative. However, it is not my aim here to analyze the origins of sub-Saharan Africa’s impoverishment and political instability.³ Rather, I hope simply to describe the magnitude and urgency of the crisis and raise some concerns about the near-term future. Additionally, I have used this Essay as an opportunity to report both personal observations and data collected by others.⁴

II. THE ADVENTURE OF A LIFETIME

I arrived in Nairobi in early September to begin the 1992-1993 school year. Within a week, the Dean of the Law School at which I was to teach had been “sacked” after a dispute with the University administration. This promised to complicate matters for me, as this was the Dean with whom I had corresponded for months, and who had arranged the terms of my participation in the Faculty of Law. But I need not have worried. Faculty and student protests followed the sacking, and the entire University closed for most of what was to have been the fall semester.⁵

Not being able to teach was frustrating. I even felt a little guilty for awhile, but only a short while. Then I began to take full advantage of

3. I have attempted elsewhere to accomplish some part of that task in connection with the specific matter of sub-Saharan Africa’s external debt. See Jon H. Sylvester, *Impracticability, Mutual Mistake and Related Contractual Bases for Equitably Adjusting the External Debt of Sub-Saharan Africa*, 13 NW. J. INT’L L. & BUS. 258 (1992).

4. My approach to citation in this Essay is to direct readers to additional information on some of the points and issues I raise, not to document every assertion. In many instances I am extrapolating from my experiences and observations, but only when such extrapolation is supported by generally available data.

5. The fall closure was not entirely attributable to the dispute between the Dean and the Administration. Much of it was officially blamed on concerns about student demonstrations as national elections approached.

what was almost certainly a once-in-a-lifetime opportunity. With incomplete but adequate maps and a fledgling grasp of Swahili, I took to the countryside—driving on the left and all. Sometimes I had a destination, sometimes I just explored. The frequent breakdowns of my very-used four-wheel-drive vehicle afforded abundant opportunities to meet the locals in the most remote locations. More than once I had to leave my Daihatsu, hitchhike back to Nairobi, and return by cross-country bus with precious, imported spare parts. Often, there was a considerable wait for the parts.

Undaunted—indeed, enjoying even the “hardships”⁶ for the most part—I visited nearly all of Kenya’s regions, lakes, and parks and saw nearly all of the many types of animals that attract most foreign tourists to East Africa. I found the countryside quite beautiful and the terrain and vegetation much more varied than the limited images most outsiders get.

The simplicity of life in the countryside has an almost magical appeal for travelers who, like me, enjoy the outdoors. This is particularly true for travelers who come from places like Los Angeles. The African countryside is dusty roads; huts made of mud or cinder block with corrugated metal roofs; clothes, dishes, and bodies washed outside with water fetched from a community well or tap; and a few skinny chickens usually somewhere nearby. For the international passer-through, these are the readily romanticized images of a wonderful adventure. For the permanent residents of the African countryside, however, they are the realities of rural poverty.

Kenya is roughly the size of California and is directly on the equator. The Kenyan coast, on the Indian Ocean, is similar to the Caribbean. Inland terrain varies from near-desert to forested mountains that look like the high Sierras. There is no jungle—that kind of terrain is further south and inland. The capital city, Nairobi, is well developed, having adequate telecommunications, big hotels and office buildings, and consumer goods for those who can afford them. But the infrastructure had clearly deteriorated since my first visit to Nairobi twenty years earlier. Also, urban poverty is increasing and, with it, the crime rate. Poverty plagues the countryside too, but poor people in rural areas seem to get by

6. Some of these experiences taught me a deeper appreciation for “resourcefulness.” For example, I now know how to make a head gasket out of milk cartons, and how to patch a radiator with soap. More importantly, I know that these “hardships” were, at most, minor inconveniences. Some of the students I taught lived far from Nairobi and, with each of the University’s frequent openings and closings, had to *walk* 20 to 30 miles from their homes to the nearest bus stops, carrying their books and belongings.

with less loss of human dignity.⁷

When the University closed, the official word was always that it would remain so "until further notice." This meant we had to check the daily newspaper or listen to the radio to find out when school would reopen, because when resumption of classes was announced, it would, in theory, be almost immediate—that is, probably the next day. Meanwhile, the students, who with each closure were given a couple of hours to vacate the campus and the residence halls, were required to go home and report to their town or village officials twice weekly. This was an effective effort by an insecure government to keep the principal source of political activism—university students—out of the capital in times of perceived crises.

By October, I began to realize that the University might be closed for a long while and that, even when the announcement of reopening came, actual resumption of classes would not be immediate, despite the Administration's intentions. So I travelled to Tanzania and Zanzibar. In Tanzania, I found the University of Dar es Salaam dormitory where I stayed twenty years earlier. I did not make it to Zanzibar in 1972, so I made it a point to get there this time. Heavy Arab influence over the centuries and Zanzibar's relative isolation as an island make it easily the most distinct place I visited in East Africa.⁸ Apparently, the people on Zanzibar like it that way because one needs a passport to enter the island from the mainland of Tanzania. This would not seem odd, except for the fact that Zanzibar is part of Tanzania.⁹

7. In places where the weather is mild—and this includes nearly all of Kenya—most people in the countryside are involved in subsistence farming, even if they also have regular or occasional jobs elsewhere. They are also more likely to live in functioning family groups, and to have mutually supportive relations with neighbors. All these factors make it easier to get through hard times. Poor people in the cities, however, are often recent arrivals from the countryside who come alone and with no relevant skills. There is not even the pretense of a welfare "safety net" in Kenya, so some people in the cities turn to begging, theft, and prostitution as means of support.

8. Zanzibar's people look different from the people on the mainland. They also sound different—even when they are speaking the same language. The architecture is also different. The first Arabs to take up residence on Zanzibar built a walled city of stone buildings and streets too narrow for anything but pedestrians and pack animals. Stonetown, as it is now called to distinguish it from the larger city that has grown up around it, still functions much as it must have all along. Electricity has been added to many—but not all—places, and bicycles and motorbikes have replaced most of the pack animals. Most of the stone, however, is original.

9. Tanzania and Zanzibar are the same country—but only technically. The political alliance has always been fragile, and the people and cultures of the two places have always been far more different than the narrow strip of Indian Ocean between them would suggest. To visit Tanzania and Zanzibar is to take two very different trips.

After a couple of weeks on Zanzibar, I was beginning to think there would not be a fall semester, so—thanks to a very inexpensive ticket purchased through a friend who worked at a travel agency—I went to India and was fortunate enough to get into and out of Bombay before the violent religious conflict erupted.¹⁰ I left India and returned to Kenya.

Then, in mid-November, school finally started. I taught Sales and Agency, a basic commercial law course, to about 160 sophomores¹¹ and International Economic Law to six graduate students in a seminar format. The single biggest difference between teaching law here in the United States and teaching it there was that Kenyan students did not expect to participate actively in the classroom process: They were accustomed to straight lectures.¹² This made it especially important to negotiate the language barrier: They spoke English and I, American. Once I learned how to ensure that I would be understood, we got off to quite a good start.

The University of Nairobi is the country's premier institution, and the admissions process is highly competitive.¹³ The students were receptive, very bright, and diligent. Although a degree from the University of Nairobi is no longer a virtual guarantee of a government job, education is still regarded as the surest means of achieving upward mobility in Kenya—usually from rural poverty to the middle class—so these students were neither killing time nor trying to “find themselves.” Most came to each class meeting with many pages of notes and materials copied by hand from the assigned reading. Textbooks and other course materials were placed on reserve in the library because there were never enough books for all the students and, even if there were, most students could not afford to buy them.¹⁴

10. See *The Hindu Upsurge*, *ECONOMIST*, Feb. 6, 1993, at 21, 21.

11. Law is an undergraduate major in Kenya, as it is in most countries other than the United States.

12. This was consistent with my experience teaching Chinese students at the University of International Business and Economics in Beijing, and is consistent with every report I have heard from U.S. law teachers discussing this point.

13. As at most schools, a few students were said to have been admitted through “connections,” but the overwhelming majority were selected primarily on the basis of their scores on a standardized national test administered near the completion of high school.

14. Before leaving the United States, I bought 50 copies of the text I assigned for the sales and agency course and had them shipped directly to the University from London. Kenya's law is basically British; in sales and agency it is exclusively so. When I found out I had 160 students I was, of course, concerned about the shortage of books. Then I was informed of the library reserve plan. I was also assured that 50 books for 160 students was not a shortage but an abundance: The students were accustomed to much, much lower ratios.

In early December, after barely three weeks of classes, the University closed again, in anticipation of Kenya's first multiparty elections since gaining independence from Britain about thirty years earlier. Hundreds of people had been killed in preelection violence, and there were widespread predictions of a general breakdown of order. Happily, these predictions did not prove true and, despite some allegations of "rigging," the election itself came and went without major bloodshed. It also came and went without me. I took the opportunity to visit some other countries, including Ethiopia—just in time for Epiphany, celebrating the baptism of Christ—Tanzania (again), Zimbabwe, and South Africa. The drive from Cape Town to the Cape of Good Hope passes some of the most beautiful scenery imaginable. Most amazing to me about South Africa, however, was how much it looked and felt like the United States.¹⁵

Classes resumed in late January for about four weeks to complete an abbreviated fall semester. I gave and graded exams, and then prepared for the next semester which, as it turned out, did not start until April. This time the delay was attributed to administrative problems.¹⁶ I travelled to West Africa—Côte d'Ivoire, Ghana, and Nigeria—then back to Ethiopia, Zanzibar, and Madagascar, where a friend and I toured the remote Isle St. Marie on motorbikes. By now I had filled my passport and gone to the U.S. Embassy to have more pages added.

I was generally well received and well treated in all of the countries I visited.¹⁷ The experience was, of course, much richer in those places

15. I do not mean simply that South Africa is different from the other African countries that I visited. I mean that from the shopping malls to the fast food to the freeways and freeway signs, South Africa looks like the United States. Johannesburg looks more like Detroit or many other United States cities than any European city or any other African city. Perhaps I was subconsciously expecting the pass system that restricted the mobility of black South Africans to remain in effect and for white South Africans to exude the evil of apartheid. Since the "whites only" signs have come down, however, racial segregation is primarily a function of economics, as it is in the United States.

16. It is not uncommon for the University of Nairobi to be closed more than it is open. It was closed for several months the year before my visit. In the year following my visit, University lecturers went on strike on November 29, 1993. By March 1994 the situation had still not been resolved, according to one of my former students, who wrote me that

we reported back for 2nd semester this year on 24th Jan. but no learning took place at all. However the University was not closed and we 'officially completed' the year on 11th March, having not learned a thing and sitting no exams. That means we may have to repeat the whole year. . . . [a]t this rate I might never finish my course, considering that our lot enrolled in 1990 and we've still not completed our 3rd year in '94.

Letter from University of Nairobi Student to Author (Mar. 14, 1994) (on file with author).

17. I except from this general statement the widespread petty corruption that seems to arise naturally in most poor and overly bureaucratized countries. My introduction to bureaucracy and bribery in Kenya began when, within days of my arrival, I went to the international freight terminal at Jomo Kenyatta International Airport to collect the books I had purchased

where I had the time or contacts to be more than an "ordinary tourist." Even in places where my stay was relatively brief, I tried to get off the beaten path. Usually, I had a local name or two, given to me by someone I had met in a previous town or country. In some places, I was fed and lodged in the homes of strangers. Even without advance contacts, it was easy to find journalists, professors, lawyers, and government officials interested in the development-related topics I am interested in, so I was able to set up meetings, speaking engagements, and informal seminars. Interest in development-related issues is great, perhaps because there is so little development going on.

Poverty is widespread in all of the countries I visited. Dependence on foreign aid is high. National economies are, in several cases, essentially stalled. Conditions are bad and, in many cases, getting worse. This was particularly apparent to me in Kenya and Tanzania, where I had spent some time twenty years earlier. These two countries are representative, in many respects, of problems across the continent.

III. TWENTY YEARS OF PROGRESS?

*Throughout the continent roads and bridges are wearing out and rotting away; elementary schools are jammed with children but have no blackboards, books, or paper; villagers crowd into festering shantytowns around the cities, joining the growing numbers of unemployed who scrape out a bare survival. In many places, the average citizen is worse off than he was twenty years ago.*¹⁸

I have read a great deal about sub-Saharan Africa and try, in general, to stay reasonably well-informed about African affairs. My only direct, personal basis for comparison and evaluation of what I was seeing in my recent travels, however, was a trip I made to East Africa in 1972. It had been twenty years to the month. Most of the cities I visited in both 1972 and 1992 were noticeably more crowded¹⁹ but otherwise, on

and shipped for use in my classes and as a donation to the University. The process was exasperatingly slow and dumbfoundingly inefficient: sixteen steps—several of them precisely redundant—to be completed in three different buildings. And most of the clerks and officials with whom I dealt had their hands out for *chai* money—*chai* means tea in Swahili. One customs official asked for money to fill the tank of his car with petrol. I finally got the books after eight hours and about \$50 in *chai* money. Locals I got to know later told me I had done very well because I had a University connection and some names to drop. Apparently, many people simply run out of money, will, or both and abandon their shipments after weeks of visiting the freight terminal day after day.

18. JENNIFER SEYMOUR WHITAKER, *HOW CAN AFRICA SURVIVE?* 14 (1988).

19. I learned only after returning to the United States that

the surface, they looked pretty much the same. There were, of course, a few new buildings here and there, and some roads had been repaved—while others had deteriorated to the point of impassability.

The more striking difference, however, is not so readily measurable. It is my general sense that in most of the places I visited on both trips, things are worse than they were two decades ago. This requires definitions of “things” and “worse.” By “things,” I mean the material conditions of human life. I am aware that there is a wide variety of opinion regarding what “development” means—even if it is agreed that we are talking about *economic* “development.” I am also aware that the relationship between economic development and social justice is not necessarily a direct and proportional one.²⁰ In other words, it is quite possible for a national economy to produce increasing amounts of wealth, and for the general population to experience no benefit because the economic gain has been wasted or usurped. There can be no doubt, however, that in extremely poor countries, increasing the availability of material resources, such as food, is an indispensable prerequisite to progress—whatever one means by “progress.”²¹

By “worse,” I mean that many African economies have stalled and are failing, and the political structures that depend on those economies—and, to a lesser extent, vice versa—are failing. Economists and development specialists measure these phenomena in terms such as gross domestic product, per capita income, rates of literacy, number of hospital beds per thousand of population, number of miles of paved roads, and degree of dependence on external aid. All of these indicia show a bad and deteriorating situation throughout sub-Saharan Africa.²²

[t]wice as many people live in [African] cities now than at the time of Independence, and urban areas may increase another five times by the end of the century. In Kenya, where population is growing faster than anywhere else on the continent or the world, migration into the city could bring the equivalent of 15 more Nairobis in the next 30 years.

Id. at 20.

20. Indeed, some would argue that, at least at certain stages of economic development, the reverse is true. See, e.g., IAN ROBINSON, CANADIAN CENTRE FOR POLICY ALTERNATIVES, NORTH AMERICAN TRADE AS IF DEMOCRACY MATTERED: WHAT'S WRONG WITH NAFTA AND WHAT ARE THE ALTERNATIVES? 11 (1993).

21. Those who think there must first be agreement on such broad philosophical questions as the meaning of “progress” simply do not understand the magnitude and urgency of the crises besetting sub-Saharan Africa. Between 1965 and 1990, per capita food production increased in every region of the world (by 40% in Asia)—except in Africa, where it fell by 20%. John Bongaarts, *Can the Growing Human Population Feed Itself?*, SCI. AM., Mar. 1994, at 36, 40.

22. “‘On the basis of all economic projections we have seen so far, Africa in the year 2000 will not be in the ditch it is now. It will be in the bottom of a deep, black hole.’” Christine A. Bogdanowicz-Bindert, *Sub-Saharan Africa: An Agenda for Action*, 16 J. WORLD TRADE L.

Even more disheartening than the lack of physical development—or even the substantial deterioration of the infrastructure in some places—was the general public's lack of confidence that these issues could and would be effectively addressed. Also conspicuously absent—in comparison to my recollection from twenty years ago—was a believable commitment by the political leadership to make a priority of improving the quality of the daily lives of the general population.

In 1972 most of the countries of sub-Saharan Africa had been independent for only about ten years.²³ The nationalism that had fueled independence struggles was still very much in evidence, and average people on the street were using phrases like “nation building.” In 1972 the heads of most newly independent African states were the former leaders of—or, at least, significant participants in—successful independence movements. Whatever the shortcomings of these leaders in terms of statesmanship or administrative skills, they were, for the most part, genuine patriots with broad and deep support among their individual countries' populations. Twenty years later, most of these countries are into their second or third generation of national leadership, and, in too many cases, incompetence and corruption loom large, while patriotism gets lip service but in fact has given way to tribalism²⁴ or religious conflict.²⁵

283, 283 (1982) (quoting Development Assistance Committee of Organization for Economic Cooperation and Development from 1980).

23. Ghana gained independence on March 6, 1957; most other sub-Saharan countries had followed suit by 1964. The notable exceptions were Angola, Mozambique, and Guinea-Bissau—where the Portuguese held out for roughly an additional decade—and Namibia, which gained independence from South Africa in 1990.

24. Some view the terms “tribe” and “tribalism,” when used in reference to Africa, as inherently pejorative and, therefore, offensive. Adherents to this view prefer the term “ethnic group” to “tribe,” and terms like “inter-ethnic hostility” or “subnationalism” instead of “tribalism.” One writer suggests that “the word ‘tribe’ itself is an invidious term of colonial vintage that denigrates African ethnic groups.” Michael Chege, *Remembering Africa*, 71 FOREIGN AFF. 146, 150 (1992). It is, indeed, noteworthy that the term “tribe” is never used in reference to Europeans: They are simply, for example, “Serbs” or “Croatians,” and the news media have never suggested that the bloody conflict between those two groups is the result of “tribalism.”

By whatever name it is called, however, inter-group conflict within the borders of certain sub-Saharan countries continues to take an enormous, bloody toll. In Burundi, one day in March of 1994, 200 people were killed with knives and bullets. The next day, another 100 people were killed in revenge. This brought the death toll to more than 100,000 in the preceding six months of ethnic fighting in the tiny east African country. *Blood, Bullets and Chinese Beans*, ECONOMIST, Mar. 12, 1994, at 50, 50.

A month later in Rwanda—Burundi's equally tiny and equally poor neighbor to the north—wholesale ethnic violence erupted after the presidents of the two countries were killed in a suspicious airplane crash while returning from peace talks in neighboring Tanzania. This round of violence began on March 6, 1994, and in less than a week an estimated 20,000 had

Tanzania does not fit this pattern precisely, but is an interesting case. Tanganyika gained independence in 1961, Zanzibar gained independence in 1963, and the two formed the United Republic of Tanzania in 1964. The first president of Tanzania was Julius K. Nyerere, called *Mwalimu* ("Teacher" in Swahili) by a generally adoring public. President Nyerere made Swahili²⁶ the national language, so as to simultaneously make a show of rejecting colonialism and to mitigate the division that can result when the people of one nation speak several different languages. President Nyerere also proclaimed a series of five- and ten-year plans for economic development based on "African socialism,"²⁷ and successfully negotiated the mine field that was international diplomacy for third world countries during the cold war.²⁸ There was tremendous patriotic fervor and national confidence in the future. However, the development plan was not successful;²⁹ President Nyerere announced his

been killed in fighting between the Hutu majority and the Tutsi minority. William E. Schmidt, *Foreigners Evacuated From Battle*, N.Y. TIMES, Apr. 11, 1994, at A4.

25. The reemergence of ethnic conflict was, perhaps, inevitable. The problem results from the way national borders in sub-Saharan Africa were drawn by the European colonial powers. Depending upon whom you believe, the boundaries were drawn either without regard to, or deliberately so as to exacerbate, historical animosities among local ethnic groups. In any event, three-quarters of Africa's people live in countries with fewer than 10 million inhabitants, and the continent has more than 1000 ethnic groups who speak a total of more than 2000 languages. The resultant problems may be insoluble in the context of present national boundaries. See *infra* part VII.

26. Swahili is not the language of one ethnic group, but a regional dialect that arose in East Africa and has historically been used for inter-group and trade-related communications.

27. The popular slogan was *Ujamaa*, which means "collective work and responsibility" in Swahili.

From the dawn of African independence, such slogans as Senghor's Negritude, Nkrumah's Consciencism, Kenyatta's Uhuru, Nyerere's Ujamaa, Mobutu's Authenticité, and Kaunda's Humanism have symbolized African leaders' search for cultural legitimation of their political and economic objectives and strategies. Often the slogans were rationalizations for preconceived ideas and practices adopted from foreign prototypes and dressed up in local garbs, but they nonetheless expressed a genuine yearning for building on the culture of the people.

Francis M. Deng, *Africa and the New World Dis-Order: Rethinking Colonial Borders*, BROOKINGS REV., Spring 1993, at 32, 34; see also Albert Venter & Michele Olivier, *Human Rights in Africa: Nyerere and Kaunda*, 10 INT'L J. ON WORLD PEACE 21 (1993).

28. See *infra* part V. Although this Essay has focused thus far on the situations within certain African countries, it is the relative powerlessness of individual LDCs, generally, in an international economy that makes them so politically vulnerable and so economically fragile.

29. The best known symbol of the development scheme's failure—a huge fiasco in the form of a cement plant outside of Dar es Salaam—remained nonfunctioning in 1992, as it was in 1972.

The failure of Tanzania's rather ambitious economic development scheme is almost certainly not the fault of President Nyerere. Soviet and Chinese development plans failed as well; it just took a lot longer because their economies are much larger and less fragile. One basic and self-evident problem that some economic development specialists are only now beginning to acknowledge is that although there will always be room for the occasional individual success

resignation, and called national elections to choose a successor who could lead—or at least promise to lead—the country toward a shared vision of progress.³⁰

Most leaders of other African states with marginal or failing economies have not been so gracious. Many have seen difficult economic times as opportunities to consolidate power and move their respective political structures in more authoritarian directions.³¹ Meanwhile, it seems that entire populations have simply “lost the faith”: People no longer believe in the future in light of three decades of disappointment.

The biggest difference between the Africa I saw in 1972 and the one I saw in 1992 is the conspicuous absence of the “can do” spirit and, worse yet, the absence of any apparent basis for such spirit. An author writing about Nigeria, which I visited only briefly, described the situation in that country as follows:

Nigeria’s capital, Lagos, runs down slowly, shedding layers of modernity it can no longer afford. Overseas telephone service fades out without warning, perhaps for days; air conditioning and refrigeration flickers off as the equatorial sun blazes; cars fall to scrap and potholes widen; factories idle and shut down; clinics dispense advice but little medicine; at the nearby University of Ibadan, long Africa’s finest, salaries of professors arrive late or not at all.³²

story, it is simply not possible for the “bottom,” as a whole, to move up to the top or even the middle. This is inherent in hierarchy, and as long as “the rich get richer” (and there is abundant evidence that this is true on the international scale), the gap will continue to grow.

30. See *New Tanzanian President Receives 92 Per Cent of Vote*, Reuters, Ltd., Nov. 1, 1985, available in LEXIS, News Library, Arcnws File (reporting Oct. 27, 1985 election of Ali Hassan Mwinyi as President); see also Hunter R. Clark, *Making a Graceful Exit: Nyerere’s Peaceful Departure Ends an Era in African History*, TIME, Nov. 4, 1985, at 43, 43 (describing Nyerere’s vision of Tanzania as a “prosperous, egalitarian society”).

31. Recently, the international lending community, led by the International Monetary Fund (IMF), has used its considerable clout to pressure some African leaders to hold multiparty elections as in Kenya in 1992. It is not clear that such pressure will be effective in all sub-Saharan countries. Also, this sudden insistence by the major world powers on multiparty democracy and human rights in the third world looks somewhat hypocritical, insofar as they did not seem to care much while the cold war was raging. See George Munda Carew, *Development Theory and the Promise of Democracy: The Future of Postcolonial African States*, AFRICA TODAY, 1993 4th Quarter, at 31; Ernest Harsch, *Structural Adjustment and Africa’s Democracy Movements*, AFRICA TODAY, 1993 4th Quarter, at 7; Sanjeev Khagram, *Democracy and Democratization in Africa: A Plea for Pragmatic Possibilism*, AFRICA TODAY, 1993 4th Quarter, at 55.

32. WHITAKER, *supra* note 18, at 13-14. Nothing has changed in the few years since Whitaker wrote that description of Lagos:

The Apada docks at Lagos, normally one of Africa’s busiest ports, are almost empty. Nobody is shipping anything in, because nobody is getting paid. Since mid-December the government has supplied no foreign exchange to importers. Since Jan-

Nigeria is admittedly an extreme case because it was so extensively overbuilt in the early 1970s when the country was awash in oil revenue. Massive public works projects—such as buildings and roads—were undertaken and many were successfully completed. However, as these buildings and roads deteriorate for want of maintenance, they serve only to highlight the failure to follow through. For this reason, Nigeria is a particularly dramatic example of the backward slide, but the phenomenon is replicated on various scales in many other African countries. “For sub-Saharan Africa the 1960s was a decade of political awakening, economic growth, and social advancement. In the early 1970s the efforts in the region focused on consolidating that progress. However, by the end of the decade . . . the dynamics of development were moving backwards.”³³

IV. JUST HOW BAD IS IT?

*“Economically speaking, if the entire black Africa, with the exception of South Africa, were to disappear in a flood, the global cataclysm will be approximately nonexistent.”*³⁴

In nearly all of sub-Saharan Africa’s forty-five countries, most of the population subsists in abject poverty.³⁵ The Institute for International Economics puts it simply enough: “Sub-Saharan Africa presents the world today with its most difficult development challenge.”³⁶ Because this assessment is merely comparative, however, it sounds as though Africa is developing, albeit more slowly than some other countries. This fails to convey the magnitude of the crisis and the fact that many of the region’s countries are actually experiencing “negative economic growth.”³⁷ The failure of economic development throughout most³⁸ of

uary 11th it has frozen foreign-exchange transactions until it works out how to allocate currency, and to whom. . . .

. . . .

. . . Inflation, businessmen reckon, is running at 100% a year.

Nigeria Marches Backwards, ECONOMIST, Feb. 26, 1994, at 43, 43.

33. Bogdanowicz-Bindert, *supra* note 22, at 283.

34. Chege, *supra* note 24, at 148 (quoting ranking French diplomat, writing under pseudonym in *Le Monde*).

35. See A.W. Clausen, *Financing Development in the Third World*, BANKERS MAG., May-June 1985, at 12, 12.

36. Carol Lancaster, *African Economic Reform: The External Dimension*, INST. INT’L ECON., June 1991, at 1, 1.

37. *Remembering Africa*, ECONOMIST, Aug. 31, 1991, at 33, 33.

38. Notable exceptions to the dismal economic picture include Botswana, Cameroon, and Mauritius. Lancaster, *supra* note 36, at 2.

sub-Saharan Africa is well documented.³⁹ The myriad of statistics detailing this problem can also complicate and obscure the simplicity of the big picture. For sub-Saharan Africa, the big picture is simple: Most of the region's countries are lagging far behind in world economic competition, and they are falling farther behind all the time. One author put it this way:

Africa is out of phase with the times. Before they have even begun their own industrial revolutions, the countries of sub-Saharan Africa find themselves hurtling toward the high-tech world of the twenty-first century. They have neither the money nor the skill to play with the others around the table, yet there is no other game in town. . . . [T]here is no way to escape the modern world, but no easy way to join it either.⁴⁰

As pessimistic as it sounds, there is no escaping the truth of the above assertion. The single most distinctive characteristic of change in the modern age is its accelerating rate.⁴¹ Whether or not this phenomenon is solely the result of technology, it is clearest on the technological front. For example, once the computer has been invented, it can be programmed to improve upon, to redesign, and, in effect, to reinvent itself at a higher level. How can a society whose technology is several generations behind ever hope to "catch up"? The problem is compounded by a general lack of resources and incentives.

So in sub-Saharan Africa there are really two problems. One is that, even as market integration and the mass media continue to shrink the planet, most of sub-Saharan Africa is falling ever-farther behind the rest of the world. The second and more urgent problem is that, as an objective matter, most sub-Saharan economies fail to provide their populations even the most rudimentary standard of living in terms of nutrition, housing, medical care, and education. When an economy fails so completely, the failure of government cannot be far behind. Much can be said about perseverance and the human spirit, but there is no getting around the fact that many countries in sub-Saharan Africa are dangerously close to the

39. See Pierre Landell-Mills, *National Perspective Studies in Africa: A Vision of a Better Future*, FIN. & DEV., Dec. 1993, available in LEXIS, News Library, Mags File (discussing history of failed attempts to spur economic development); *Tokyo Meeting to Pursue Innovative Approaches*, UN MONTHLY CHRON., Sept. 1993, available in LEXIS, News Library, Mags File (noting that 30 years of economic support have had little impact).

40. WHITAKER, *supra* note 18, at 14.

41. See ARTHUR M. SCHLESINGER, JR., *THE CYCLES OF AMERICAN HISTORY* at ix (1986) ("[A] cumulative increase in the rate of change has been decisive in the making of the modern world.").

kind of collapse that occurred in Somalia: economic failure resulting in loss of government authority resulting in disintegration of society.

Nothing being done now shows any promise of reversing the current momentum toward collapse. The most common proposals for solution of sub-Saharan Africa's problems are based on substantial increases in international assistance of the traditional sort.⁴² Traditional international assistance, however, has achieved mixed results at best. Equally important, it is far from clear that in the world's richest countries there exists the political will to embark on such a costly venture for reasons other than immediate self-interest. Consider the policy towards Africa of the sole remaining superpower.

V. UNITED STATES POLICY TOWARD AFRICA

Before the collapse of the Soviet Union, U.S. policy toward sub-Saharan Africa was governed almost entirely by cold war geopolitics. Initially, the United States competed with the Soviet Union to befriend the greatest possible number of newly independent African states—with special attention afforded to those having significant natural resources or strategic ports or locations for air bases. Some African states sought, with varying degrees of success, to avoid taking sides in the cold war. This was the basis of the “non-aligned movement” and the original meaning of the term “third world.” Eventually, however, most African states went on the foreign aid rolls of either the United States or the Soviet Union.

Once these patron-client relationships were established, the only criterion for continuing aid was that the receiving state remain “friendly” to its respective superpower patron.⁴³ During the cold war, most U.S. foreign aid was military aid, and most African heads of state were military men. The prevailing belief was that new states required “strong” leader-

42. There have even been calls for a Marshall Plan for Africa, but “like most familiar phrases, the ‘Marshall plan’ has gradually grown vaguer and vaguer. Today it tends to mean a bold initiative that involves spending lots of money. This scarcely reflects why the original Marshall plan worked, or in what circumstances a new one might work again.” *The Marshall Plan: Doing Well by Doing Good*, *ECONOMIST*, June 15, 1991, at 30, 31.

43. [G]eostrategic considerations informed America's relations with Kenya's authoritarian leader Daniel arap Moi in the 1980s and the repressive regime of Somalia's Mohamed Siad Barre; both leaders actively supported the U.S. rapid deployment force with Indian Ocean bases after the 1979 Soviet invasion of Afghanistan. Neither leader cared to consult local opinion on those decisions, any more than did the late president of Liberia, Samuel K. Doe, caretaker of the hub of the U.S.-African communications network in Monrovia. Doe's government blatantly rigged that country's 1985 elections and routinely abused civil rights, all the while earning \$550 million in American aid throughout the 1980s, most of which was promptly embezzled.

Chege, *supra* note 24, at 159.

ship, and the United States was all too willing to ignore consistent and extreme human rights abuses committed by its "friends." As a result, the United States ended up supporting—and, indeed, helping to create—some of the worst dictators in Africa.⁴⁴ Then the cold war ended.

In 1991, resurgent democratic movements in sub-Saharan Africa sensed a surprising shift in Bush administration policy. . . . For the first time since the Kennedy administration's support for anticolonial African nationalism, crowds yearning for freedom, this time from domestic tyranny, cheered statements from the U.S. State Department as it distanced itself from the autocratic and unpopular leaders it once supported.⁴⁵

The new buzz words in U.S. policy toward Africa are "free markets," "democratization," and "human rights." But this time the United States is not "putting its money where its mouth is"—at least not to the extent that it did during the cold war. Since the collapse of the Soviet Union, U.S. aid to Africa has been sharply curtailed. Indeed, the United States Agency for International Development is planning to close some sub-Saharan posts. So, even if the new advice from the United States is both well-intended and substantively correct, it looks suspiciously like a pretext for withdrawal. Some have called it "cynical disengagement."⁴⁶

It is not surprising that official U.S. interest in Africa has diminished in direct proportion to strategic U.S. interests there. The high costs and extreme difficulty of U.S. intervention in Somalia will almost certainly push public opinion even further in the same direction.⁴⁷ However, even as the United States seems inclined to prefer withdrawal from an active policy toward sub-Saharan Africa, some are calling for an approach that could involve a substantially larger commitment.

44. *See id.*

45. *Id.* at 146.

46. *See, e.g.,* William Minter, *Africa's Urgent Human Crises*, 52 CHRISTIANITY & CRISIS 355, 356 (1992).

47. *See, e.g.,* Marguerite Michaels, *The Perils of Good Intentions*, TIME, Feb. 7, 1994, at 44, 44. However, both the official position and public opinion conveniently ignore the extent to which past U.S. policy contributed to, for example, the crisis in Somalia. The violent disintegration of Somalia followed the fall of its long-term dictator, Mohamed Siad Barre. Without substantial and consistent U.S. backing, however, there would probably have been no long-term Barre dictatorship. And without the cold war, Somalia would not be awash in firearms. *See* Boutros Boutros-Ghali, Global Development Cooperation, Address at the Carter Presidential Center's Conference on Global Development Cooperation (Dec. 4, 1992), in 7 EMORY INT'L L. REV. 1, 9-10 (1993).

VI. THE ROLE OF THE UNITED NATIONS AND THE SPECTER OF RECOLONIZATION

Among the calls for a different approach is the following:

For more than 30 years the international community has been treating symptoms, not causes. The basic cause is obvious but is never publicly admitted: Some states are not yet fit to govern themselves. Their continued existence, and the violence and human degradation they breed, is a threat to the stability of their neighbors as well as an affront to our consciences. There is a moral issue here: The civilized world has a mission to go out to these desperate places and govern.⁴⁸

Historian Paul Johnson, the author of the above passage, says Africa is obviously the primary candidate for attention. He proposes that "states not yet fit to govern themselves" be assigned to individual "civilized" countries who would serve as trustees. This he unabashedly calls "a return to colonialism." Johnson's tone—and particularly his use of the word "civilized"—will surely be so offensive to some that one might wonder whether perhaps he is simply trying to shock readers into recognizing the magnitude of the crisis. Perhaps not.⁴⁹

Quite apart from the Johnson proposal, there is preliminary evidence of the United Nation's willingness to intervene.⁵⁰ In a recent

48. Paul Johnson, *The Case for a Return to Colonialism*, SACRAMENTO BEE, Apr. 25, 1993, at Forum 1, Forum 2.

49. Aside from Johnson's tone, however, his idea is a bad one. Even if the international community does establish some type of trusteeship system to assist or assume the responsibilities of failing governments, the "trustee" certainly should not be an individual "mother country." This would literally constitute a return to colonialism of the thoroughly discredited sort. The relationship would, from the outset, be one massive conflict of interests. Economic exploitation inheres in bilateral relationships where there is fixed hierarchy—indeed, it is probably inaccurate to characterize the relationship as "bilateral" when one party actually administers the other. The idea that the "mother country" will embrace and champion the colony's interests is simply inconsistent with human history since the rise of the nation-state. See Antony Anghie, *"The Heart of My Home": Colonialism, Environmental Damage, and the Nauru Case*, 34 HARV. INT'L L.J. 445 (1993).

50. U.N. efforts in Somalia and Bosnia-Herzegovina have done little to inspire public confidence in the United Nation's ability to achieve consensus around a clearly defined set of objectives and then get the job done. In different ways, U.N. involvement in Bosnia and Somalia demonstrates the magnitude of the change in what is expected of the United Nations. In the cold war era, U.N. peace-keeping meant U.N. troops would place themselves between opposing forces that had agreed to stop fighting and asked that their ceasefire be monitored and enforced. However, peace cannot be kept where it does not exist. See Walter C. Clemmens, Jr., *Can Outsiders Help? Lessons for Third-Party Intervention in Bosnia*, 48 INT'L J. 687 (1993). The cold war is over, and, ironically, without the backdrop of cold war tensions, local and regional conflicts are less readily stabilized. See Warwick J. McKibbin, *A New Military Equilibrium? Preventing Regional Conflicts in the Developing World*, BROOKINGS REV., Fall

speech, U.N. Secretary-General Boutros Boutros-Ghali acknowledged this radical change in the role the United Nations is expected to play:

When governments are not able to exercise authority over their territory, U.N. officers must deal with irregular forces and their leaders.

. . . .

. . . [O]perations undertaken by the United Nations must include civilian police, electoral personnel, human rights experts, information specialists, and a significant number of political advisory staff.

U.N. operations may now involve nothing less than the reconstruction of an entire society and state.⁵¹

Undertaking the "reconstruction of an entire society and state" raises a couple of obvious questions. One is, "Reconstruction in whose image?" Some will dismiss this question as rhetorical; others will see in it the very root of the all too frequent failure of international aid programs. The second question contains two parts: how to determine when it is time to leave and how, in fact, to disengage. The issues raised by this pair of questions lead one to wonder about the precise distinction between the United Nations (or any other "outsiders") undertaking the "reconstruction of an entire society and state," and simply going in and running the place on an indefinite basis.⁵²

Former U.S. Ambassador Gerald Helman and Steven Ratner, an official of the U.S. State Department, have made a proposal for *Saving Failed States*. It is more substantively refined and more diplomatically articulated than Johnson's proposal, but some critics might nevertheless see it as a call for a return to colonialism:

1993, at 43. Worse yet, there are more of them. The United Nations has undertaken more peace-keeping missions in the last five years than it did in the previous 43 years. See H.E. Boutros Boutros-Ghali, *Beyond Peacekeeping*, Remarks at Conference at New York University School of Law on the Future of Collective Security (Jan. 22, 1993), in 25 N.Y.U. J. INT'L L. & POL. 113, 114-15 (1992).

51. *Id.* at 114. For an extensive argument that the end of the cold war presents historic opportunities that can best be taken advantage of if the United Nations is restructured, see Thomas M. Franck, *United Nations Based Prospects for a New Global Order*, 22 N.Y.U. J. INT'L L. & POL. 601 (1990).

52. A number of authors have begun to address this cluster of issues. See, e.g., Jack Donnelly, *Human Rights, Humanitarian Crisis, and Humanitarian Intervention*, 48 INT'L J. 607 (1993); Robert H. Jackson, *Armed Humanitarianism*, 48 INT'L J. 579 (1993); Robert Pastor, *Forward to the Beginning: Widening the Scope for Global Collective Action*, 48 INT'L J. 641 (1993).

The international community should now be prepared to consider a novel, expansive—and desperately needed—effort by the U.N. to undertake nation-saving responsibilities.

The conceptual basis for the effort should lie in the idea of conservatorship. . . .

It is time that the United Nations consider such a response to the plight of failed states. The undertaking would flow logically from its historical efforts in non-self-governing territories

. . . .⁵³

Helman and Ratner have coined the phrase “newly non-self-governing territories” to describe failing or failed states in a way that is semantically consistent with the authority they argue exists in the U.N. Charter.⁵⁴

Helman and Ratner go on to describe three different modes or levels of U.N. participation in the governance of failing or failed states: governance assistance by the United Nations, delegation of certain governance functions to the United Nations, and direct U.N. trusteeship.⁵⁵ Under the first and second scenarios, U.N. participation would be only at the invitation of the government to be assisted.⁵⁶ Yet conflicts could easily arise regarding the way the United Nations provides requested assistance or performs the tasks it has been delegated, even though the terms “assistance” and “delegation” at least suggest the continuing primacy of the assisted or delegating state. The third scenario,⁵⁷ however, presents several threshold questions having to do with the concept of sovereignty.⁵⁸ It is unlikely that any government will ever ask the United Na-

53. Gerald B. Helman & Steven R. Ratner, *Saving Failed States*, FOREIGN POL'Y, Winter 1992-93, at 3, 11-12.

54. *Id.* at 17.

55. *Id.* at 13.

56. Under the first scenario, “governance assistance would build upon existing technical assistance programs but be far more expansive. . . . U.N. personnel would help administer the state, although the final decision-making authority would remain with the government.” *Id.*

Under the second scenario, the failed state would delegate certain governmental functions to the United Nations. These might include supervision of specific government departments or ministries, or even outright control—including the authority to replace personnel, issue directives, and so on. *Id.* at 14.

57. Under direct U.N. trusteeship, “the United Nations would act as the administering authority, although a group of states might also perform that function, such as the European Community with respect to Bosnia.” *Id.* at 16.

58. Helman and Ratner acknowledge some legal difficulties with their proposal, but argue that the plan is consistent with the spirit of both the United Nations Charter and public international law. *See id.* at 17; *see also* James H. Anderson, *New World Order and State Sovereignty*, FLETCHER F. WORLD AFF., Summer 1992, at 127 (presenting recommendations for U.N. Charter reform and guidelines for formulating intervention criteria); Louis W. Goodman, *Democracy, Sovereignty, and Intervention*, 9 AM. U. J. INT'L L. & POL'Y 27 (1993) (argu-

tions to assume responsibility for running a country in which that government claims to be the sole legitimate authority. The United Nations might make its own determination, but the call for intervention would more likely come from opposing factions within the country, or from neighboring countries flooded with refugees or suffering violence at their borders. What then? A U.N. coup?⁵⁹

There is also a more mundane problem. All of this would cost a lot, and one wonders whether the international community has the political will to make and sustain such a commitment of resources. This may be particularly difficult if, in the sole remaining superpower, public opinion and government interest lean in the opposite direction. Assuming, however, that a conservatorship or trusteeship system could be put into place, should it be put into place?

VII. IS A TRUSTEESHIP⁶⁰ SYSTEM IN AFRICA'S BEST INTEREST?

Framing the issue as I have above skips one question and begs another. The question skipped is whether a trusteeship system should perhaps be imposed even if it is not in Africa's best interest. More delicately phrased, the first question is whether the decision should be based on some other criteria: world stability, broadest possible integration of markets, and so forth. The question begged is—assuming Africa's best interest is relevant—“what is Africa's best interest?”⁶¹ My answer to the first question is that the good of the governed should be the primary criterion in making the decision whether to establish a trusteeship system. I hope the merit of this position is self-evident. I will not, in any event, elaborate a defense of it here. The second question requires some discussion.

ing sovereignty is relatively new concept that can be used in twentieth century to organize individuals and groups against threats).

59. Helman and Ratner seem a little unclear on this point. They say that “no state should be the unwilling object of a U.N. trusteeship,” but they also say that “if the forces in a country cannot agree on the basic components of a political settlement . . . and accept administration by an impartial outside authority pending elections, then the U.N. Charter should provide a mechanism for direct international trusteeship.” Helman & Ratner, *supra* note 53, at 16.

60. In this part of this Essay, I use the terms “trusteeship” and “conservatorship” interchangeably, because the issues I discuss here do not turn on the legal technicalities that distinguish the two arrangements.

61. The question “What is in the best interest of Africans?” carries with it the further question “How will this be decided?” I think those to be governed should determine their own best interests. If there is not a mechanism for such a determination (for example, no effective government in the territory, which would be the reason this set of questions would arise), then the determination should be made by referendum or whatever means seem best calculated to accomplish a true assessment under the circumstances.

By "Africa's best interest" I mean what is best for the ordinary people, rural and urban, who comprise the vast majorities in every country—what some ideologues used to call "the masses."⁶² These millions of people have both short-term and long-term interests. Their short-term interest is in obtaining the adequate nutrition, housing, medical care, and education that most in sub-Saharan Africa do not receive.⁶³ Their long-term interests, it seems to me, are in sustainable economic growth, social justice, and political stability. This is where the discussion gets complicated, because these long-term objectives, however easily stated, subsume a host of value-based judgments. Values are at the core of culture, and cultural units, although difficult to define, are at the very core of the concept of self-determination.

The concept of self-determination is more important than ever when the question is whether to relinquish sovereignty—even conditionally or temporarily. Even if the above stated short-term objectives would be served by a trusteeship system, such a system would inevitably and immediately undercut the long-term objectives—if self-determination is deemed relevant. This conceptual conflict between the short term and the long term is manifest, as a practical matter, in the question "How does the trustee go about 'growing' an indigenous government?"

Professor Ruth Gordon expresses serious concerns about any trusteeship system operated by the United Nations and based on the U.N. Charter.⁶⁴ She points out that "[c]olonialism was an integral part of the international political system in 1945,"⁶⁵ and suggests that "the fundamental philosophy underpinning this system was that certain human beings, primarily black and brown people, were simply incapable of governing themselves."⁶⁶ She warns,

62. Here I specifically mean to exclude individuals and classes of individuals who might experience some personal gain or loss because of some special relationship to the failing or failed government or to the trusteeship apparatus.

63. I do not assume that all the poor countries on the planet want to, or should, emulate the "developed" countries. Moreover, it is not possible for everyone on the planet to have the material standard of living enjoyed in the world's richest countries because those countries achieve that standard of living by consuming a radically disproportionate share of the planet's resources. One does not need to resolve these issues, however, to agree that nutrition, housing, medical care, and education are indispensable prerequisites to quality life under virtually any view of the world and virtually any definition of "quality."

64. See Ruth Gordon, *Saving Failed States: Sometimes a Neocolonialist Notion* 4-9 (Feb. 16, 1994) (unpublished manuscript, on file with author). See generally Dorinda G. Dallmeyer, *National Perspectives on Intervention: From the Outside Looking In* (unpublished manuscript, on file with author) (examining criticism of U.N. Security Council when it intervenes in domestic affairs of developing nations).

65. Gordon, *supra* note 64 (manuscript at 5).

66. *Id.* (manuscript at 5).

“we” are so accustomed to viewing certain peoples as “them”, as “different”, as the “other” who is incapable, whom we must civilize, develop, and bring up to our level, that we unconsciously ascribe our solutions to problems rather than listening to “their” story or view of their own situation. Our view is simply “universal” and obviously correct and should be imposed. This is especially true with respect [to] a system such as trusteeship or when contemplating intervention to effect self-determination in the form of Western style democracy.⁶⁷

Professor Gordon suggests that policy makers who are genuinely interested in examining their own biases and assumptions, and in understanding the people they would assist, should study contemporary scholarship in the Critical Race Theory genre.⁶⁸

The concept of self-determination also requires an identification of the groups that are going to determine things for themselves. In sub-Saharan Africa, it is clear that these groups are not now, and never were, accurately identified by the borders drawn by the European colonial powers at the Berlin Conference in 1894 and 1895.⁶⁹ The artificial nature of these boundaries contributes substantially to “internal” conflicts now taking place in many sub-Saharan countries.⁷⁰ Moreover, even as the colonial boundaries planted the seeds for much of the present “internal” conflict, they did much to destroy, or at least to retard, the efficacy of the indigenous local and regional systems and institutions—economic, political, and legal—that might have been bases for sustained development.⁷¹ Some observers say borders in sub-Saharan Africa are losing their rele-

67. *Id.* (manuscript at 6 n.17).

68. *Id.* (manuscript at 9-10). For an example of scholarship in this genre, see John O. Calmore, *Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World*, 65 S. CAL. L. REV. 2129 (1992).

69. See BASIL DAVIDSON, *MODERN AFRICA: A SOCIAL AND POLITICAL HISTORY* 5 (2d ed. 1989).

70. [T]he colonial nation state . . . brought together diverse groups that it paradoxically kept separate and unintegrated. Regional ethnic groups were broken up and affiliated with others within the artificial borders of the new states, with colonial masters imposing a superstructure of law and order to maintain relative peace and tranquility.

. . . .

It can credibly be argued that the gist of these [current] internal conflicts is that the ethnic pieces put together by colonial glue and reinforced by the old [cold war] world order are now pulling apart and reasserting their autonomy.

Deng, *supra* note 27, at 34.

71. [B]ecause colonial institutions had divested the local communities and ethnic groups of much of their indigenous autonomy and sustainable livelihood and replaced them with a degree of centralized authority and dependency on the welfare state system, once control of these institutions passed on to the nationals at independence, the struggle for control became unavoidable.

vance as economic and political conditions there deteriorate.⁷² It is plausible that over the long term many borders will, in effect, redraw themselves.⁷³ Indeed, it may be that some realignment, perhaps major, is inevitable. Meanwhile, however, any system under which a government assumes responsibility for a certain territory and its inhabitants requires borders. For the near term, therefore, the colonial boundaries must either be redrawn or, in effect, reaffirmed. If they are to be redrawn, then by whom? Certainly not “outsiders” again.⁷⁴

Any trusteeship system that seeks, at the outset, to redraw national boundaries will almost certainly be politically paralyzed for decades to come. Thus, efforts to respond to the crisis with the urgency it warrants will have to function within the context of colonial borders. This approach would effectively reaffirm the colonial borders, however, and all progress made toward developing indigenous government structures would only “build in” the problems discussed above.

Id.

George B.N. Ayittey, a Ghanaian economist, says the failure to build on the indigenous was the principal failure of post-independence leadership: “After independence, it was the responsibility of African nationalists and elites to build upon these indigenous institutions, not only for cultural but pragmatic reasons as well. . . . [Their] dismal failure . . . to do so in a large part explained Africa’s debilitating economic crisis.” GEORGE B.N. AYITTEY, *INDIGENOUS AFRICAN INSTITUTIONS* 478 (1991). Ayittey’s book comprises a detailed description of certain pre-colonial African systems, severe criticism for most of Africa’s post-colonial leaders, and an appeal for new governance and development strategies based on Africa’s indigenous institutions.

72. “[A]s refugee flows increase and as peasants continue migrating to cities—turning them into sprawling villages—national borders will mean less” Robert D. Kaplan, *The Coming Anarchy*, *ATLANTIC MONTHLY*, Feb. 1994, at 44, 60. “It is impossible to be certain that the political boundaries created under colonialism will, in the end, prove sustainable.” Helman & Ratner, *supra* note 53, at 5.

73. Specific predictions vary widely. Ali A. Mazrui, Director of the Institute of Global Cultural Studies at the State University of New York at Binghamton, predicts that “[i]n the 21st century France’s West African sphere of influence will be filled by Nigeria—a more natural hegemonic power. . . . Nigeria’s own boundaries are very likely to expand to incorporate the Republic of Niger (the Hausa link), the Republic of Benin (the Yoruba link) and conceivably Cameroon.” Kaplan, *supra* note 72, at 52.

The U.S. State Department’s Bureau of Intelligence and Research, on the other hand, says Nigeria is more likely to split apart:

“The country is becoming increasingly ungovernable. . . . Ethnic and regional splits are deepening, a situation made worse by an increase in the number of states from 19 to 30 and a doubling in the number of local governing authorities; religious cleavages are more serious [T]he will to keep Nigeria together is now very weak.”

Id. (quoting U.S. State Department’s Bureau of Intelligence and Research).

74. The Organization of African Unity would seem the appropriate body to undertake such a task, but it is difficult to imagine a timely process with an outcome satisfactory to even a majority of those affected.

Prevailing assumptions about borders and sovereignty and nationhood are under close scrutiny by scholars in political science, public international law, and other relevant disciplines.⁷⁵ The nation-state is being questioned for two different, even opposite, reasons. One is the fragmentation of states in Africa and elsewhere, such as the former Yugoslavia.⁷⁶ The other is the trend toward overriding national boundaries—at least for certain purposes—as in the development of the European Economic Community. Even as sub-Saharan Africa confronts the problem of meaningful political boundaries, perhaps it can benefit from redrawing its economic boundaries.

VIII. SOUTH AFRICA: THE CONTINENT'S "LAST CLEAR CHANCE"?

*By reason of their sizes and geographic locations, the vast majority of African countries will remain economically unviable if they do not cooperate and coordinate with one another, particularly with their neighbors.*⁷⁷

The importance and potential of economic cooperation on a regional or even continental basis has not been lost on Africa's post-independence leaders. There have been many attempts at economic cooperation in the past, and many such efforts are ongoing.⁷⁸ The collective failure of these efforts to reverse sub-Saharan Africa's economic decline is attributable to many factors.⁷⁹ Not least among these factors is the reality that even combined in regional groups, most African economies south of the Sahara remain relatively small: Sub-Saharan Africa accounted for just 1.1% of total world trade in 1991.⁸⁰

Conspicuously absent from past and present efforts at regional and continental economic cooperation has been the strongest economy south

75. See, e.g., J. Samuel Barkin & Bruce Cronin, *The State and the Nation: Changing Norms and the Rules of Sovereignty in International Relations*, 48 INT'L ORG. 107 (1994).

76. See Robert H. Jackson, *Juridical Statehood in Sub-Saharan Africa*, 46 J. INT'L AFF. 1 (1992); Tatiana Vorozheikina, *Left Behind: The Developing World in Russian Foreign Policy*, in ALTERED STATES: A READER IN THE NEW WORLD ORDER 196 (Phyllis Bennis & Michel Moushabeck eds., 1993).

77. Boutros-Ghali, *supra* note 47, at 5.

78. Presently existing are the Lome Convention, African Economic Community, Central African Customs and Economic Union, West African Economic Community, Economic Community of West African States, Economic Community of Central African States, South African Customs Union, and Southern Development Coordinated Conference. For a list of the organizations and their respective member states, see Joseph Brand, *The New World Order of Regional Trading Blocks*, 8 AM. U. J. INT'L L. & POL'Y 155, 171-81 (1992).

79. See Sharon Bowden & Martin Elling, *In the Shadow of 1992: Developing Country Efforts at Economic Integration*, 32 HARV. INT'L L.J. 537 (1991).

80. Scott Sandell, *In Sub-Saharan Africa, Reform Efforts Aim to Lure Investment, Trade*, L.A. TIMES, Mar. 16, 1994, at D6.

of the Sahara: South Africa's. This, of course, was because of the international boycott which resulted from South Africa's apartheid policy. With the transition to majority rule, however, it is possible that South Africa can act as an economic locomotive for its region, or even the continent.⁸¹

The transition to majority rule, however, will not be easy. There is ongoing domestic violence.⁸² Some foreign investors will wait until post-transition government policies are seen and proven.⁸³ It could be many years before reinvestment in South Africa matches the effective disinvestment during the international boycott.⁸⁴ Meanwhile, some South African whites, afraid of the future, are smuggling out large amounts of money.⁸⁵

Nevertheless, many international investors still consider it a good market due to its "[solid] infrastructure and . . . sophisticated financial sector."⁸⁶ Moreover, South Africa has renewed access to financial institutions. The World Bank has indicated that it will extend \$1.1 billion in long-term loans, and the IMF has agreed to grant an \$850 million loan.⁸⁷ Finance Minister Derek Keyes believes that post-transition South Africa can emulate the U.S. rise to prosperity from the Great Depression.⁸⁸

81. South Africa has a sophisticated, modern economy based on manufacturing, mining, and agriculture. Although moderate in size by world standards, South Africa's economy is by far the largest and most advanced in Africa south of the Sahara. It has an efficient, well-developed infrastructure, a fully developed financial structure, and a large commercial sector. For a detailed discussion of the economy of South Africa, see AFTER APARTHEID: RENEWAL OF THE SOUTH AFRICAN ECONOMY (John Suckling & Landeg White eds., 1988); JILL NATRASS, THE SOUTH AFRICAN ECONOMY (1981); J.B. Knight, *A Comparative Analysis of South Africa as a Semi-Industrialized Developing Country*, 26 J. MOD. AFR. STUD. 473 (1988).

82. On March 28, 1994, with scheduled elections less than a month away, at least 31 people were killed in Johannesburg when a demonstration seeking an independent Zulu state apparently was fired upon by snipers; violent chaos ensued. See Jon Qwelane, *South African Democracy, and Its Price*, N.Y. TIMES, Mar. 29, 1994, at A23.

83. Rory Channing, *South African Economy on Mend*, Reuters, Ltd., Jan. 7, 1994, available in LEXIS, News Library, Wires File.

84. For example, of the nearly 200 U.S. companies that pulled out during the sanction period (1986-1991), only a handful had returned as of late 1993. See Marshall Loeb, *Returning to South Africa*, FORTUNE, Oct. 4, 1993, at 18; Suzanne L. MacLachlan, *Investors Warm to New Era in South Africa*, CHRISTIAN SCI. MONITOR, Nov. 26, 1993, at 8.

85. *South Africa: High Flying Whites Get Money Out as SA Faces Acid Test*, GUARDIAN, Feb. 18, 1994, available in LEXIS, News Library, Guardn File (reporting over 3 billion pounds flowed out of 70-billion-pound economy in 1993).

86. Bill Berkeley, *Fragile Consensus*, INSTITUTIONAL INVESTOR, Sept. 1993, available in LEXIS, News Library, Curnws File (arguing that South Africa is more alluring than either Eastern Europe or China primarily for these reasons).

87. *Id.* at 2.

88. *S. Africa Urged to Learn from US Rise to Prosperity*, Reuters, Ltd., Jan. 5, 1994, available in LEXIS, News Library, Wires File.

It would be easy to conclude this Essay on an optimistic note about a majority-run South Africa, but there are at least two problems with the "South Africa as savior" view of the continent's future. One is that it puts "all the eggs into one basket," even though it is far from clear, as of this writing, that the transition to majority rule will be smooth enough to prevent substantial damage to the country's infrastructure and facilitate economic stability and growth.⁸⁹ The second problem can be posed as a question: "If black South Africans take over the country's government as a turn-key operation, how different is this from what happened at the end of colonialism in the rest of sub-Saharan Africa?"

One possible difference is that those leaving power may, nonetheless, remain personally committed to the country's future well being. Modern South African whites do not see themselves as colonizers with a "home country" to which they can return; some will leave, but many will stay. Ironically, South Africa could actually become an example of pluralism and genuine power sharing, rather than simply another "cut and run" episode with the inevitable setback for those assuming power.⁹⁰

IX. CONCLUSION

Theoretically, the fundamental choice to be made by, for and about sub-Saharan Africa is a stark one. One option is immediate and massive assistance—saving lives and reducing suffering at the long-term cost of undermining self-determination and retarding indigenous solutions. Another option is to let events run their course without outside interference. This will ensure an indigenous solution at the short-term cost of human misery and suffering on an exponentially expanding scale.

Anything in between will almost certainly fail to meet both the short- and long-term needs of sub-Saharan Africa. This "in between" course, however, is the one most likely to be taken by the international community. Lack of political will to commit the required resources will prevent the former course of action. Institutional inertia and the political clout of the international aid industry—bolstered by fluctuating popular sympathy or guilt in the developed countries—will prevent the latter.⁹¹

Meanwhile, journalist Robert D. Kaplan writes that

89. Moreover, even if South African blacks could simply "slip into the driver's seat," a significant problem remains: How to make an economy that formerly served the 14% white minority at the expense of the majority expand to accommodate the entire population.

90. See Hermann Giliomee, *Hope in South Africa*, CONST., Spring 1994, at 10.

91. For a broad indictment of official international aid as a self-interested industry consisting of "a group of rich and powerful bureaucracies that have hijacked our kindness," see GRAMHAM HANCOCK, *LORDS OF POVERTY* at xiii (1989). Hancock carefully exempts the private international relief organizations from his attack, and saves the harshest criticism for the

West Africa is becoming *the* symbol of worldwide demographic, environmental, and societal stress, in which criminal anarchy emerges as the real "strategic" danger. Disease, overpopulation, unprovoked crime, scarcity of resources, refugee migrations, the increasing erosion of nation-states and international borders, and the empowerment of private armies . . . [and] security firms . . . are now most tellingly demonstrated through a West African prism. West Africa provides an appropriate introduction to the issues, often extremely unpleasant to discuss, that will soon confront our civilization.⁹²

Kaplan's thesis is that "scarcity, crime, overpopulation, tribalism,

World Bank and the U.S. Agency for International Development. *Id.* The book begins with the following poem, attributed to Ross Coggins:

The Development Set

Excuse me, friends, I must catch my jet—
I'm off to join the Development Set;
My bags are packed, and I've had all my shots,
I have travellers' cheques and pills for the trots.

The Development Set is bright and noble,
Our thoughts are deep and our vision global;
Although we move with the better classes,
Our thoughts are always with the masses.

In Sheraton hotels in scattered nations,
We damn multinational corporations;
Injustice seems so easy to protest,
In such seething hotbeds of social rest.

We discuss malnutrition over steaks
And plan hunger talks during coffee breaks.
Whether Asian floods or African drought,
We face each issue with an open mouth.

We bring in consultants whose circumlocution
Raises difficulties for every solution—
Thus guaranteeing continued good eating
By showing the need for another meeting.

The language of the Development Set,
Stretches the English alphabet;
We use swell words like 'epigenetic',
'Micro', 'Macro', and 'logarithmic'.

Development Set homes are extremely chic,
Full of carvings, curios and draped with batik.
Eye-level photographs subtly assure
That your host is at home with the rich and the poor.

Enough of these verses—on with the mission!
Our task is as broad as the human condition!
Just pray to God the biblical promise is true:
The poor ye shall always have with you.

Id. at vi.

92. Kaplan, *supra* note 72, at 46.

and disease are rapidly destroying the social fabric of our planet,"⁹³ and that Africa—especially West Africa—is simply at the leading edge of this destructive process.⁹⁴ Proceeding in part from anecdotes about African travel experiences to which I can readily relate, Kaplan paints a picture of global apocalypse, complete with Hegel's and Fukuyama's *Last Man*, Hobbes' *First Man*, and the revenge of the poor. Basically, Kaplan writes off Africa—except to the extent it provides a warning to the rest of the world: "[W]e ignore this dying region at our own risk."⁹⁵

The challenge for those of us who care about Africa's future is to ensure that Africa's role is not simply that of negative exemplar. It is difficult, however, to be optimistic about the near-term future of sub-Saharan Africa. History should make us very wary of externally developed and imposed "solutions." Current events afford little basis for confidence that indigenous solutions are forthcoming.

93. *Id.* at 44. For a detailed discussion of population growth and food production on a global scale, challenging, in part, the assertion of Kaplan and others that the world's population will soon be unable to feed itself, see Bongaarts, *supra* note 21.

94. *Id.* at 46. "Sierra Leone is a microcosm of what is occurring . . . throughout West Africa and much of the underdeveloped world: the withering away of central governments, the rise of tribal and regional domains, the unchecked spread of disease, and the growing pervasiveness of war." *Id.* at 48.

95. *Id.* at 76.

Africa's immediate future could be very bad. The coming upheaval, in which foreign embassies are shut down, states collapse, and contact with the outside world takes place through dangerous, disease-ridden coastal trading posts, will loom large in the century we are entering. . . . Precisely because much of Africa is set to go over the edge at a time when the Cold War has ended, when environmental and demographic stress in other parts of the globe is becoming critical, and when the post-First World War system of nation-states . . . is about to be toppled, Africa suggests what war, borders, and ethnic politics will be like a few decades hence.

Id. at 54.

