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**7th Global Forum on Reinventing Government:
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**The institutionalisation of trust in African governance: From one fits all to social engineering of political formulas
A theoretical perspective**

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**The institutionalisation of trust in African governance: From one fits all to social engineering of political formulas (Mosca):
A theoretical perspective**

« Confier le commandement à quelqu'un c'est faire un pari : seule la confiance est capable d'exorciser la crainte qu'il inspire » Julien Freund, *L'essence du politique*, 2004, 2^{ème} édition, 1965), Paris, Dalloz, 115

«Auctoritas non veritas facit legem » Thomas Hobbes, *Leviathan*, Chapitre 19.

«Trust and tact are more fundamental and binding features of social interaction than is the cynical manipulation of appearances. Thus people routinely shore up or “repair” the moral fabric of interaction, by displaying tact in what they say and do, by engaging in “remedial practices” and helping others save the face. If day to day social life is a game which may be on occasion turned to one's advantage, it is a game into which we are all thrust and in which collaboration is essential” (A.Giddens, *Social Theory and Modern Sociology*, Cambridge, Polity Press, 1988, 113)

The consolidation of democracy and of a stabilized social and political order is certainly not such an easy issue to address. All over the world, in former Eastern Europe as in Africa or South Eastern Asia, democratic transitions and consolidations are still very much at stake. Although those countries are following widely different paths, all of them are confronted to the same question: how can extensive sets of imported institutional techniques and

governance principles be tuned (or adapted) to the « mood », the « political culture », the social and political capacities and capabilities of rulers and ordinary citizens? State building, democratic consolidation or the enforcement of good governance principles and techniques are not only about techniques and « savoir faire » or about top down decision processes. They are also, and above all, about the establishment of shared rules of the game as F.Bailey (1971) or S.Milacic (2003) used to put it. They supposed that clear political, legal and social strategies are being displayed or worked upon in order to enshrine those techniques into the local knowledge of ordinary people (Geertz, 1985), into the local society social making (*fabrique sociale*). Only if those technical innovations manage to make sense for ordinary people can they be accepted and can they attract the obedience and allegiance of those people thus turned into full citizens.

Human societies have always been built on the global project to fight disorder and resist any social activity threatening the existing, enforced and accepted social and political order. Anthropologists and political scientists have consistently shown that in any society, techniques, mechanisms and processes supporting and creating to a certain extent an institutionalised order and channelling natural expressions of disorder and anti-institutions or anti-establishment activities are to be found. In their vast diversity, those techniques, mechanisms and processes maybe called regulation processes or rules of the political and social game (Belley, 1971). They allow human beings in a specific area to agree around a number of principles and regulations they come to see as normal and legitimate, or to put it in a nutshell, accepted. Those principles are thus at the very same time agreed upon by ordinary people and enforced upon them both by rulers and themselves. This double move of enforcement and acceptance binding together rulers and ordinary citizens is the only way to turn human beings into full citizens.

Those mechanisms may be highly specialized and differentiated or on the contrary undifferentiated (Inuit's song contests). One will identify them both in so called anarchic societies (where no chief can be identified) and in those societies in which the chiefs are stripped of the monopoly of physical or symbolic violence, to use Weber's words. In those societies, there exist social mechanisms and processes organising what anthropologists call « immediate social control » (Lapierre, 1977, 290). In those cases, plain collective physical violence, strict control of the authorized speech, or specific rituals may stand as clear expressions of the legitimate power or order. Initiation mechanisms and any other identification rituals which contribute to turn ordinary people into proper citizens are thus qualified by classical anthropologists as mechanisms of *imagination removal* (Lapierre, 1977,

344) or *social inhibitors* (Luckman and Berger, 1966). As such they contribute to force upon people a certain order, to lay down the limits of what is correct or possible, and to exclude any other choice by labelling them as improper, evil... They have no way to think of any other type of order and keep on understanding any other alternative, not as an alternative to order but as a disorder.

However it is quite clear that neither sheer physical violence nor a huge range of regulation techniques (such as laws, sets of rules, regulations, customs, principles...) are sufficient as such to establish an accepted order or a regulation process on to a human societies. Lucy Mair used to write that there are no societies where people are naturally keen to abide by the law (1962). Whatever the forms and shapes it may take this social and political order attract the obedience of ordinary people, to such a point that they come to long after it (Legendre 1988; Berger and Luckman, 1966).

This means that social and political orders do not rely on violence only. Strength and the constant threat of its use are always at the core of power relationship and violence or what is called "power" is certainly much needed to impose a political order. However to turn a group into a « *politische verband* » or into a group of citizens, violence is not enough. Trust, confidence or legitimacy, are much required. A measure of reciprocal process of enforcement by rulers (whoever they maybe) and acceptance by ordinary people, i.e. what it is today quite fashionable to call ownership, is at the very core of any political society making process.

This is a way to put to the test current constitutive or institutive public policies in the field of institutional development and governance. In spite of a fairly recent but clear interest paid to « ownership » and « appropriation » processes, those policies are still mainly top-down policies, consisting in exporting one fits all institutions models or standard. The "reinventing government" agenda is still mainly set from the top. By and large, it ignores the will, capacity and values of local societies and people. Those policies are about institutional and technical transfers. They are not about the capacity of reception of such innovation by local people and local social organizations, not to say their capacity to innovate in the field of governance. They do not pay interest, except for lip service, to ordinary people, although the poor and their access to service delivery, to law and the state are supposed to be at the very core of those processes they work on. No trust is to be built if ordinary people do not invest themselves into the order and the domination techniques forced upon them by rulers. No stabilised and efficient political and social order is to work if ordinary people refuse to act as citizens. As all classical authors, including Machiavelli have consistently shown, rulers cannot rule without people accepting to be ruled by them.

Contemporary political upheavals in a number of African countries and on the contrary political stabilisation and the establishment of some kinds of political order in a number of other ones, must lead us to pay a new look to what has been happening in the African continent for the last forty years. Indeed the notions of trust, social capital (Putnam), sense of solidarity, legitimacy...are central to such questioning. “A *basic degree of mutual societal trust*”, as wrote Till Förster, is at the core of major questions in Africa today: Why is political order still fledging in a number of African societies? Why has political order been experiencing such a constant decay from the end of the 70s rather than right from the beginning of decolonization? Why are such important differences in term of efficiency of political regulations available in Sub-Saharan Africa, let’s say between South Africa, Senegal, Mali, Uganda, and Zimbabwe?

Examining governance policies and particularly institutional and state building policies in Africa allows one to remind some basic universal principles about power building and state building on the one hand. On the other hand, it gives a chance to compare or confront those well-known principles to the different sets of institutional engineering policies undertaken since the 1960’s. And finally it opens up a good opportunity to discuss ways to give a better share to local social and political fabrics in order and state-building.

I Political order and Trust in government in classical analysis

In any societies, whatever their organisation, « *Command and obedience relations based upon the collective consciousness that human beings cannot live a social existence without accepted and acknowledged rules of behaviours and without a clear direction of common goals* » (Lapierre, 1977, 70) are to be found ⁽¹⁾. An effective power is clearly necessary in order to allow an administrative direction to successfully claim in the implementation of regulations, the monopoly of the organized force, as Weber used to write. However, and according to mainstream political sociology, this is clearly not enough. No sustainable political order, whatever forms it may take, can be « imported » or « projected » by a limited group of people over the rest of the population through mere violence and oppression. Democratic order (Sartori), totalitarianism (Arendt) and Authoritarianisms (Linz), can not succeed or at least last on the mere ground of rulers’ violence capacity. This is increasingly

¹ « *des rapports de commandement / obéissance fondés sur la conscience collective que l’existence sociale est impossible à l’espèce humaine si des règles de conduite ne sont pas reconnues et respectées, si la coopération à des activités communes n’est pas dirigée conformément à des objectifs communs* »

clear in a modern global world. African political trajectories during the last twenty years are clearly supporting this trend. It is extremely expensive (in terms of money, international alliances, political resources...) to maintain a political domination through mere violence. By and large, such political system does not exist in Africa today because no single country is having enough financial and human resource to sustain such an order through mere violence. Zimbabwe may be today's closest case. The cost to be paid for such a negative experience is indeed excessively high and condemns this experience to fail. Furthermore, in such a type of « order », ordinary or subjugated people will never accept this order. They will submit to violence but will try their best to escape this illegitimate and abhorred order. They will act as subjects and never as citizens. This means that they will consistently refuse to contribute to their own domination by voluntarily abiding to the law and order. Quite the contrary, they will keep on acting against the enforced order either openly (voice) or by bypassing laws and state regulations through exit options (Hirschman) and tortuous and informal strategies and tactics (De Certeau, 1990). Instead of supporting the social and political order by complying on a daily basis with accepted and shared rules, subjugated people will continuously carry on undermining the so called order. Interestingly enough, rulers will have to come to an agreement with those very same people they wanted to subjugate. They will develop parallel and sometimes mafia style relations with local leaders and people and will accept to have their order partly eaten up by local strategies, so that at the end of the day, their position of rulers be guaranteed. The so called order will then be nothing more than a large network of private style and personalized relations far away from the formal order it is supposed to be. This is precisely what has been happening for the last 40 years or so in a number (but clearly not all and with major differences between them) of African countries where the formal imported order has never been shared by a large majority of the population, compelling it to organized a parallel system of regulation partly by developing unlawful tactics and strategies and by corrupting the formal order. As J.J Rousseau used to write it: *“The stronger is never strong enough to subsist as the master if he fails to turn its force into law and obedience into duty and obligation”* (1943, 67), ⁽²⁾.

The willingness of people to obey is the only way to lay down the basis of an institutionalisation process and a sustainable political order. Political order means that the relations between the rulers and the « ruled » ones are always organised around a double

² « *Le plus fort n'est jamais assez fort pour être toujours le maître s'il ne transforme sa force en droit et l'obéissance en devoir* J.J.Rousseau

movement: domination / Subjugation; Command / Obedience (Lapierre). Classical political philosophers, make a clear link between political power and acceptance of domination by those who are dominated. Hobbes links the birth of the « Republic » to the consent of people to the new ruling power. He wrote : *« Ce n'est pas la victoire qui donne le droit de la domination sur le vaincu mais son accord (covenant). Il n'est pas obligé parce qu'il est soumis mais parce qu'il vient lui même faire sa soumission au vainqueur »*. La Boetie, keeps on showing that the power in itself is nothing if it does not benefit from the support of the people it subjugate. He wrote: *“There is no need to fight against this isolated tyrant not to say to defend oneself against him. He will collapse by himself provided the country does not consent to servitude. It is not about stripping him from power, but refusing to give him anything »* (1978, 179), ⁽³⁾. Deprived from this obedience « the king is naked » and the political order is nothing else than a pure convention. Fragile states maybe defined as those states which fail or refuse to fulfil their international duties and internal duties. They could include those states which are unable to produce any sustainable political and social order for lack of trust and links of confidence with the majority of their ordinary citizens. This is why there is a clear connection between fragile states and fragile societies (Châtaigner & Magro).

Any sustainable order is supported by the consent of citizens to their own subjugation. What Max Weber used to call domination is founded upon both « *macht* » and « *herrschaft* » i.e. some kind of game associating the threat of the use of violence on the one side, and an acceptance by the weakest ones of this power of constraint on the other hand. The violence is no longer perceived as external to the people and enforced on to them. It is perceived as necessary and profitable to ordinary people who will then not only abide by the law but will be the law themselves, will do what is expected from them without any orders but simply because they understand this order as what they themselves wish and need. Rulers and citizens are to establish a relation of mutual respect and dependence. Ownership is at the core of this very process, provided this word is being given its full meaning. Ownership means at the same time that the people accept the values, principles and techniques of a given order as theirs and that in a quasi Foucault's interpretation they embody or incorporate the power. To use Mamhood Mamdani's seminal analysis (1996), this is precisely then that subjects are turned into citizens. In short, they are citizens because they are fully involved in the

³ « ...ce tyran, seul, il n'est pas besoin de le combattre, ni même de s'en défendre ; il est défait de lui-même, pourvu que le pays ne consente point à la servitude. Il ne s'agit pas de lui rien arracher, mais seulement de ne lui rien donner »

production of the order they accept to comply with. They no longer are stowaways which occasionally use some opportunities arising from the collective agreement to their own individual advantage. They contribute to the order on a daily basis and are the best producers of it because they keep on reproducing it in all respects. The clear and obvious division between rulers and ordinary citizens is blurred by this « incorporation » which turns the dominated into their own master. This understanding of power relations can be read today in Anthony Giddens major contributions (1984; 1988) or with a more domination focus in Pierre Bourdieu's analysis (1984; 1992).

Constructivists analysis in their wide diversity, have been consistently advocating that a political order is produced by agents which are themselves embedded or enshrined into the global order which they keep on maintaining and building. One could say that the political order look like a coin whose head and tail would respectively be made by rulers and citizens. Both sides of the coin are clearly different but the coin cannot exist without their entanglement in such a way that it is impossible to separate the two sides without destroying at the same time what is the coin and what are the head and the tail. Anthony Giddens keeps on showing how this entanglement works. He writes: *“Trust might seem to be primarily a personalized relation of confidence between individuals and so often it no doubt is. However, if trust means the possibility of relying upon another individual or group of individuals regularly to produce responses which can be relied upon to meet certain criteria, then it is entirely consistent with impersonal rules of procedures”* (1988, 165).

In a sense, Pierre Bourdieu and Loïc Wacquant in a fairly different style, agree with Giddens in their analysis of symbolic violence. Bourdieu writes: « The symbolic power....achieves itself in and by a specific relationship which confirms the beliefs in the legitimacy of the words used (in this relation) and of the people who use them. It only works if those who are subjugated to it acknowledge those who hold it” (1992, 123) ⁽⁴⁾. Bourdieu ends his point with a brilliant definition of the word « legitimate: *“What legitimate may mean? Is legitimate, any institution, action or way of doing things which is dominant and unknown as such, i.e. tacitly acknowledged”* (1984, 95), ⁽⁵⁾

⁴ « Le pouvoir symbolique..... s'accomplit dans et par une relation définie qui crée la croyance dans la légitimité des mots et des personnes qui les prononcent et il n'opère que dans la mesure où ceux qui le subissent reconnaissent ceux qui l'exercent. »

⁵ « Que veut dire légitime ? Est légitime une institution, ou une action, ou un usage qui est dominant et méconnu comme tel, c'est-à-dire tacitement reconnu.»

The political order is founded around what Gaetano Mosca used to call « a political formula » which clearly states that rulers are entitled to enforce the law while limiting the sphere of domination to what citizens accept. The secret, if ever there is one, of a sustainable political order lies precisely in this « formula » whose paradoxical effects manage to strengthen the existing order and allow its legitimate contestation. This relation goes beyond the classical distinction between forms and principles, and is very close to the distinction Giddens makes between rules and rule (Giddens, 1987, 65-74) ⁽⁶⁾. It explains the entanglement of the individual and the global or structural. Julien Freund writes in a brilliant synthesis: “*As a rule, command may give any order which pleased it, as absurd it may be. However if it is not implemented or obeyed, it is nothing more than a flatus vocis. To be efficient, a command needs to enter into the existing order and find the obedience which will accept and achieve it. This means that a consensus based on confidence or fear is wrapped into the dialectic of command and obedience* » ⁽⁷⁾, (217). In short, a political order rises up when a wish to rule and a wish to be ruled or to obey meet around a common political formula. Freund gives us in this quotation the substance of a sustainable political order. Philippe Braud, supports this understanding when he writes: *One may conclude, that in a given society, the mode of production of coercion and legitimating mechanisms are linked to local dominant cultural frames, are associated. Political power precisely stands at the very knot of this articulation, as a producer of socially legitimate injunction* ⁽⁸⁾, (T.382).

This basic understanding is widely shared in the general literature of sociology. However, it is more often than not either ignored by people involved in capacity building, good governance and institutional development in under developed countries and particularly in Africa, or unknown to them.

⁶ Freund gives a very close interpretation of this relation between social and legal rules. « *La légalité n'est pas non plus imposée originellement par de simples décretsmais elle résulte de croyances spontanées et de représentations sur lesquelles elle prend appui pour ainsi dire par récurrence. Toute légalité se développe à partir d'un contexte existant qu'elle élabore, codifie et ensuite complète, renforce ou explicite selon les nécessités de l'évolution de la collectivité.....* » Freund, 262-263

⁷ « *En principe, écrit-il, le commandement peut donner l'ordre qui lui plaît, fut-il absurde, mais s'il n'est pas exécuté, il n'est rien d'autre qu'un flatus vocis. Pour être efficace, il lui faut pénétrer dans l'ordre existant et trouver l'obéissance qui l'accomplira. Cela signifie que la dialectique du commandement et de l'obéissance enveloppe un consensus, lui-même fondé sur la crainte ou la confiance. Celle-ci n'est possible qu'à la condition que les décisions du commandement...aient aussi la valeur de normes continues de l'action, à défaut, s'inspirent d'une tradition, de coutumes, ou d'une genre de vie commun à la collectivité* »

⁸ « *Ainsi peut-on conclure que, dans une société donnée, le mode de production de la coercition se trouve toujours associé à des mécanismes de légitimation variables évidemment selon les schèmes culturels dominants. C'est au nœud de cette articulation que se situe précisément le pouvoir politique, producteur d'injonctions socialement légitimes* »

The project to build a sustainable political order from scratch, by importing a large set of techniques of management and regulation without paying any attention to legitimating processes and issues or to what may be called local social and political dynamics is simply doomed to fail. There is no question about it. A sustainable political order – once again whatever the forms it may take – exists because it is founded over a formula of legitimacy – whatever it is and the form it takes – on which rulers and citizens agree. This is precisely what J.W.Lapierre writes : « *The political relation binding together command and obedience cannot work without an ideology of legitimacy : To obey a command or a rule, one could ignore with impunity, one needs to believe in the legitimacy of this command or rule and share this belief with the rest of the political community one belongs to* » (1977, 54) ⁽⁹⁾. Trust suggests that there exist a binding link which attaches together on the one hand rulers and ruled ones and on the other hand all citizens, to form a political community. This link, whatever you call it, gives both rulers and citizens a clear sense of community allowing them to act not as enemies but as partners contributing as such, from different positions, to the same shared goals through shared and accepted rules and processes. At the same time that this link produces an order, it contributes to the rejection of any other alternative order, and political formula, unifying the community around a clear compact. It does not mean that citizens understand fully what is at stake, that they know at any moment of their routine activities what they do for the political order as a whole and that they share the same understanding of what is at stake.

It means that in their daily life, their routines, their practical consciousness contributes to the framing and finally merging of their activities toward the consolidation of what they are, i.e. the political order they are enshrined in and is enshrined in them (Giddens). Citizens can then be different, pursue different individual goals and objectives, have different values, social understanding and way of living, they will all share this Compact and will all contribute through their individual industry to the general sustainability of the political order. Quite clearly, institutions and rules contribute to this compact. But they cannot be substituted to it. When, as in the vast of majority African countries, such a compact does not exist, a massive importation of sets of techniques - which furthermore keep on changing with the time – will not managed to established one. People will be carrying on with their own industry without trusting any type of common set of rules or values spread by the state, which stands as the

⁹ *La relation politique de commandement-obéissance implique toujours une idéologie de la légitimité : pour obéir à un commandement ou à une règle alors qu'on pourrait impunément désobéir, il faut croire en la*

only formal legitimate power today. Individuals will use and abuse of the formal rules but will not support the order or trust it. The state is « suspended » over the society. The only way to bind it to the rest of the society is to develop illicit, unlawful, and informal relationships that contribute at the same time to weaken even more the formal order proposed to the people. This is precisely what has been happening in a large number of African countries since the independence.

II The Anti politics temptation (Ferguson): The ideology of progress or how a technical perspective was substituted to slow and unpredictable societies and state making processes.

Forty years ago or so, it was clearly much easier to work on such a topic as “governance in Africa”. As a matter of fact, nobody then used such a complex and rapidly evolving word, favouring rather other words such as “political development” (.....), “modernisation” (.....) or for a few authors “institutionalisation” (Huntington, 1965; 1968). It was widely believed that a clear trend was at work, framing all societies within the mould of the so called and then much acclaimed “modernity”. Government techniques as inherited or to be more accurate as imported from former colonial powers and the Western world after independence, or later on from the socialist block, were supposed to embody the very model of a universal modernity, which will ultimately force African societies and African people into a brave new world of civilisation. Imported, not locally generated social and political institutions and techniques were thus supposed to take roots in those African societies. This massive institutional transplantation was supposed to transform local societies and give birth to a new type of order which was to be spread over the entire population. Principles rooted in the newly imported political order were not to be discussed. Daily management of societies may still follow other regulations techniques provided they were not found unacceptable to the new order (remember the repugnance and indirect rule principles). They were to wither away as the population became educated, “civilisée”, or “assimilados”. Simply stated, a massive transfer of laws and government techniques, and the mere reproduction (aping, mimicking...) of Western systems of government, were perceived as clear solutions to defeat underdevelopment, to foster political development, and produce in the shortest possible time a much wanted political order. Both trust between people of different background, cultures and

social organisations and trust in a new political order were to be the natural offspring or fruits of such imported techniques (¹⁰). To put it bluntly, laws and any other techniques of modern government as imported from the Western world were to produce the society and not the other way round. It was to be a top down exercise from rulers to subjects and not a two way street. Law and other kinds of government techniques and processes from Western origin were to be both the instruments and the results of modernisation. In such a context, governing societies was a mere exercise in law enforcement and domination through techniques and processes of indirect rule or assimilation, resulting finally in violent destructions of any other existing alternative regulation systems. Massive importation of rules, techniques, and worldviews borrowed from other societies etc...was not supposed to be opposed or resisted one way or the other (resistance, avoidance, interpretation, derogation...), by local populations or only as rearguard actions or as fading signs of folklore. In short, institutional import was to produce a new political community (and not the other way round), while the local society and political order making processes were supposed to stop producing the regulation processes, techniques and mechanisms they knew to produce. It was not considered that those local social and political making processes could start reacting to the new imported techniques, could jump on the band-wagon and could soon start producing principles and mechanisms of regulations by mixing different sets of norms, blurring even more the political landscape(¹¹). In an amazing inversion of process, trust in politics was to be the result of new techniques imported from the West, while those techniques in the West were nothing but the results of strong negotiations between social forces involved in interactions to progressively secure the agreements they had reached. This belief is still very much present today among specialists of governance or institutional building. They carry on relying on techniques and processes perfected in Western societies to enhance or improve governance in developing countries. While it is quite clear that such techniques are not only helpful but essential to improve governance, it is equally clear that techniques mean nothing as such without the social dynamics which allowed them to be created and to work. The concept of « projected societies » was coined in order to qualify those particular societies which are supposed to start producing a type of political compact they have consistently failed to produce by importing massive regulation and management institutions and techniques they do not produce themselves.

¹⁰ Ces conceptions sont nées de l'idéologie du progrès et de la rencontre de deux de ses expressions : d'une part la conception du *rechtstaat* affirmant que toute autorité politique se réduit à l'autorité de la loi parce que celle-ci est l'expression même de l'activité politique ; et le développementalisme venant consacrer la supériorité intrinsèque des techniques de gouvernement occidentales.

These understanding of development gave no room for discussion around the notion of trust in politics, simply because the ideology of progress clearly states that trust is to be born from the natural modernization trend of societies. Such plagues as social disruptions, political instability, weak and inefficient institutions were not supposed to express the inadequacy of imported techniques and institutional patterns to the social and political capacities of local societies. They merely expressed isolated accidents on the road toward development and the already assumed backwardness of populations unable to cope with proper formulas and techniques of governance as highlighted by and in developed societies. The seemingly endless succession of coups d'états of the 60s and the 70s, numerous violent upsurges, civil wars, and the spread of Authoritarianisms all over the African continent (as epitomized by Idi Amin Dada, Bokassa, Macias Nguema ...) were seen as necessary steps or « crisis » (Lucien Pye 1967) leading developing societies to their new state of modernized societies. They were not analysed as major issues witnessing a fundamental lack of trust between citizens on the one hand and between citizens and the political order on the other one, but as temporary technical problems the lapsing of time was to solve. Clearly a vast literature focused on the “suspended state”, the “dual society”...to underline that there were very few links or social and political bondage between the Western-tailored modern state and political order on the one hand and the rest of the society. However authors and political leaders from Africa and from the rest of the world altogether genuinely thought that the writing was on the wall: a modern society fed with modern values was soon to rise out of moribund traditional societies.

There were few questions about it. Problems might arise but they were to be solved by mere adjustments or one should rather write by mere fitting (ajustage). There was nothing political in it, only technical matters. It was a sure recipe for failure but I am afraid it is still our way of thinking today even though we have tried to take distance with modernisation theories.

Some political scientists warned that this trend could be more complex that one could believe or expect (See: Riggs, Huntington, Balandier). But in the whole there was a sort of consensus. Political crisis, coups d'états, civil wars, inefficiency, corruption and nepotism, upsurge of tribalism and nationalism, political instability, external intervention were quite common in that time. They were not exposed as major problems but merely as unavoidable hardships, or what Lucian Pye called “crisis” which were to wither away on the road to progress.

¹¹ On retrouve ici tout le paradigme développementaliste libéral ou marxiste, telle que fondé sur l'idéologie du progrès (Berger et als, 1978 ; Rist, 2001 et 2002).

The economic, financial and political crisis which spread over the majority of African states from the end of the 1970s was a clear signal of failure of the modernization perspective. Corruption, neo patrimonialism, violence and criminalization of state management, weak state capacity, low level of delivery by state, inefficient management, privatization of states, jellyfish like social movements and civil societies and a lack of accountability of rulers are but a few issues underlined by international organizations and particularly the World bank. Those criticisms clearly discuss the relevance of a massive importation of techniques and models of management to produce from the outside a modern society, reduce poverty, support capacity building and foster a sustainable political order and regulation system. Their review of thirty years or so of Western style techniques spreading since the independence was clear: Reforms have failed to produce a robust state, a sense of citizenship, a willingness of people to obey a power they cannot trust because they cannot understand it and incorporate it.

Quite amazingly such a well-taken acknowledgement of failure led up to a paradoxical conclusion which is not far from a blind alley.

- On the one hand clear and necessary moves have been made: the ideological background used to select imported techniques, mechanisms, processes has been changed to the benefit of a much more liberal and managerial one (Jobert, 1994; Stiglitz, 2002). New leading actors have been rising up such as the World Bank, UNDP, social organizations from both the developing and the developed world. New perspectives have gained momentum such as the governance issue, capacity building, institutional backing, accountability... Classical techniques and principles have been earmarked as non negotiable ones : democracy, division of powers, rule of law (rechtstaat), selection of leaders by free, fair and competitive elections... All this show that new interests are being paid for the connexion between formal institutional power structures including the state and the actual regulation processes produced by local societies. It sounds very much as if the techniques, perspectives and the theories of public action and public policy analysis were now used jointly to study development issues and elaborate policies. Those are clearly good news.
- However, on the other hand, it looks as if lessons from general anthropology, sociology and political science have not been learnt. The change in ideology described above does not address the real issue. In other words the changing of techniques, models, mechanisms and processes fails to address the real issue at stake and to answer to the implacable acknowledgement of failure of development. The focus is not put over the production of regulation processes, political order and to put it in a word trust, by the developing or

unsteady societies themselves – however difficult it may be. The focus is once again on the finding of new universal, modernizing and more efficient techniques, mechanisms... which could produce the society and political order we all long for, by bypassing local social dynamics. In other words, the same error which drove development politics to a failure in Africa has been made again. And this is the bad news. New sets of techniques supporting individual initiatives rather than institutional activities and aiming to strengthen state capacities and citizens rights and protections have been favoured. However the very same modernizing top-down, from the outside approach and beliefs, have been kept. This is quite clear when one considers what has been happening to such innovations as governance and NPM: they have rapidly been turned into a range of recipes and blind techniques among which experts and leaders from the South and the North pick up « at random ». This is the best way for them at the time to legitimate their positions by using the most recently pre legitimate and widely acclaimed techniques while depoliticizing their choice. Once again the issue of legitimacy has been left over, together with the question of trust building between citizens and the state and the production of citizens. Fair enough all those new techniques are necessary to help, support, enhance the production of citizens, trust, etc... They are much more adapted to the tasks to fulfil than the former sets and they must be used. However, they cannot be used as substitute to the actual social dynamics they are supposed to support. Unfortunately, once again this substitution is happening...

How come then is it so hard to consider trust between rulers and citizens as the core of any exercise in political development? Three major reasons can be advanced:

- On the one hand, the ideology of progress is still very strong – and may be stronger than ever – and it convinces people that the massive use of new sets of “depoliticized” techniques (Ferguson 1994; Darbon 2003) is the surest way to make major breakthroughs in development.
- On the other hand, there exist a strong conviction among specialists of development, governance and public administration that those topics are too serious and technical to be left to local illiterate people initiatives. This perspective may be arguable. However it fails to remember that there is no efficient administrations or governance or political order without a participative population and some kind of « ownership ». One can always change the population...but it is a bit more difficult and a bit witty...This experts perspective is objectively but unofficially supported by a number of African leaders who

can take advantage of the « backwardness » of a part of their population to comfort their own claim to power as representative of the modernizing elites in an ocean of backwardness.

- Finally, there exists a practical explanation. It is certainly neither easy nor comfortable to embed development techniques and processes within local social dynamics. Such a move means that techniques...are going to be « eaten up » by unpredictable ownership processes, and be turned into what elusive actors will want i.e. certainly into what was not planned by experts at the beginning. It means that both political leaders and rulers and experts enter into the world of the unknown, of instability and confusion. It is definitely easier and more comfortable to use mere techniques as substitute to social processes. The result will be fairly poor (but better than nothing). However, the process will be much easier to control, than when one genuinely tries to enshrine one's technique into social dynamics, into social games in which actors are not well identified and keep on playing “crazy” strategies. To any expert, consultant or political leader mere importation of techniques meets absolute rationality in the short run (Darbon, 2003), while in the medium term it may spread fire and violence as shown by Chua (2002).

A few authors have paid special interest for local social and political dynamics including Samuel Huntington in the 1960's (1963; 1968), Goran Hyden in the 1980's (1983) or Jean François Médard, Peter Geshiere, Christian Coulon and Denis Martin in the 1980s-1990s (1991). A number of authors who have been interested by social dynamics have quite often ignored formal institutions they considered as void, formal, and ineffective in the social process except as resources (Bayart). Discussion in this field is seen as a mere exercise in futility, because it has no direct operational function, or because it is plagued by a culturalist bias and aims at such at comforting relativist perspectives and revivalist feelings (¹²). As a matter of fact, working on socialisation processes at local levels and the invention of politics by ordinary people, following Bayart, Martin, 1988 ; 1997), Geshiere...may sound worthless. However it is the only way to understand the type of social contract which is established between rulers and between rulers and citizens as shown by Cruise O'Brien and Coulon in Senegal or by.....in Botswana.

The lack of discussion in political philosophy in the academic or intellectual world is doubled by a lack in a majority of African countries, of production of discourses on the state and its

¹² See, Africa (London), January 2007.

missions and actions. Of course there exist numerous productions in Africa in Zambia under Kaunda, Tanzania under Nyerere, Senegal under Senghor, Kenya under Kenyatta and particularly in present day South Africa where both the Freedom Charter and the African Renaissance discourse contribute to the coming out of a true philosophy of the state allowing those countries' rulers to negotiate with external powers the type of political and institutional organisations they want.. However, by and large, little effort is being made to produce state-building and nation building ideology or « grand récit », to support political negotiations and processes with convincing state or public institutions oriented discourses produced by academics, or senior civil servants or political leaders. There is nothing comparable, except in South Africa, to what clerics produced during the middle-Age period in Europe, or civil servants wrote in India, China or Indonesia at the same period of time or earlier (Strayer (1979), Bourdieu, Christin et Will (2000), or Skinner (2001), or to what did authors of the Federalist papers in the USA. Works dedicated to political philosophy or to attempt to produce a state doctrine are fairly rare in Africa (Mbembe, 2000; Bidima, 1997; Mamadani 1996; Samkange, 1980). We are far away in Africa from the Asian and particularly Indian, Chinese and Indonesian experiences whereby, local elites succeeded in confronting their own historical experience of power and political order building with Western style innovations and in producing their own « mixture » of the different philosophy and techniques (Jaffrelot, 2005; Bertrand, 2006). The contrasting results of massive importation of institutions in different parts of the world open up interesting field of research and fascinating hypothesis. The conjunction of a pre-colonial state or state like political practices and of strong political elites in a position to bridge the old order and the imported one seems to make the production of a sustainable political order easier. In Africa, the South Africa, Botswanese, Mauritian and Senegalese cases maybe the nearest expressions of this hypothesis.

Of course, all over Africa, political formulas and legitimating resources are being produced. They share three common weaknesses:

- On the one hand, those formulas are by and large borrowed from the former colonial power or produced in relation to what is at stake in the dominant developed countries, because the legitimacy of those government comes partly from the outside world ;
- On the other hand, this type of dependence is of mutual interest for rulers of the two part of the world. African rulers thus benefit from a stronger support from the outside world, thus comforting their own power at home, while the second secured a short term order even though it fails to address the basic needs of the people in an efficient manner.

- Finally in the long term such a double bind formula is not sustainable. The formula rests over a lack of mutual respect between rulers and subjects, a lack of proper citizens which reduces the state opportunities. This will lead to a progressive elapsing of institutions.

Amazingly enough in spite of their external origins and their lack of intellectual proximity with local traditions, during the first two decades of independence (60s and 70s) political formulas were fairly successful. First, these legitimacy formulas were quite successful in convincing international leaders that the modernisation process was on track and that a new order founded on trust and shared values between citizens, leaders and the ordinary people was on its way. Second, in a number of African countries in spite of rampant political instability (embodied in coups d'états...) it seems that a reasonable part of the population was genuinely convinced that the new power was legitimate. The imported formula managed to attract the obedience of a number of citizens. Julien Freund reminds us that *"il n'y a de chances pour le nouveau pouvoir que s'il répond à des dispositions et à des désirs souvent inavoués du peuple..."* (219). This new power demanded obedience but they were reasonable bet because they were embodied by "the sons of the land". The failure of this power to deliver condemned it to become marginalized. It literally shrunk to fit only a few official people and areas, and started to develop informal relations of negotiations with the rest of the social fields, resulting not in one sustainable political order but in a collection of personalized political orders. In other words, the modern imported state, manages to survive by reorganizing its relations to its subjects according to a neopatrimonial state, in such a way that it is both soft and hard (Sindjoun, 2002) being thus a projected state in a projected society (Darbon, 2003).

III Using locally produced political formulas

In spite of many failures and loopholes, some kinds of political orders and management systems have managed to develop in a number of African countries. In some countries, it seems clear that leaders have been successful to convince people on the long term that they were "citizens", and that the official-state power is "highly desirable", is "natural"? How such leaders as Senghor in Senegal, Seretse Kama in Botswana, Mandela in South Africa... managed to convince people to give their allegiance to the state ruled political order and to become obedient? In other countries, some rulers managed in spite of shrinking capacities and confidence to maintain a reasonably – if neither sound nor efficient - national system of regulation (Cameroun, Ghana, Gambia, Namibia, Niger, Mali...)? How can such a state as

Cameroon, plagued by widespread corruption and administrative inefficiency, produce a type of sustainable political regulation (Sindjoun, 1999)?

Such questions cannot be addressed by technical answers. Governance perspective and public policy analysis focusing on processes, negotiations between policy networks and alliances of interests allow to pay a stronger interest to the actual construction of evolving interests and social and cognitive framings rather than to rely on institutional and theoretical mechanisms. What is at stake is no longer a linear interpretation of modernisation whereby central actors would impose their model over peripheral ones, but an interpretation of development based on complex strategies and alliances between groups of actors, mixing actors from the north and from the south, and confronting their worldviews and understandings of things, their goals and influences.

From the 1960s to the 2000s, a number of scholars including Jacques Vanderlindern, Anthony Allot, Von Benda Beckman, Roderick MacDonald, Sally Falk-Moore, Raymond Verdier, Laura Nader, Etienne Leroy etc...to name but some of them, have been producing new analysis of the law. They have shown that human societies were less homogeneous and more pluralistic than what was initially thought and that their legal regulations were all the same (Vanderlinden, 1996a ; 1996b) ; Allot, Alliot, Von Benda Beckman, MacDonald , Verdier, Le Roy (1999), Nader...). Western style law was neither an absolute and ultimate tool of modernisation, nor the clear result of the modernisation process. Quite the contrary; law became a major problem in non Western societies. The concept of legal pluralism was coined to deal with those societies where different legal, beliefs, and representations systems were clearly at odd and where the state sponsored legal system was unable to overcome other legal systems or to tame them. A classical definition of legal pluralism states: *“Legal pluralism is the coexisting structure of different legal systems under the identity postulate of legal culture in which three combinations of official and unofficial law, indigenous and transplanted law , and legal rules and legal postulates are conglomerated into a whole by the choice of a socio-legal entity”* (Chiba.M, 1998). It means that there is no difference of nature between those sets of laws accepted by the state on the first hand and those sets of law which are produced out of any control by the state. All of them participate in the structuring of parts of the national community and as such are to enter into contact and conflicts in the general process or order making.

Law or more precisely, the establishment of a coherent and comprehensive system of legal regulations became a major problem to be addressed particularly in non Western formerly

colonised societies. On the one hand, legal capacities, institutional development, institutionalisation processes failed to gain much ground in a number of countries and were unable to improve the access of the poor to law and to create a “rechtstaat”; on the other hand, nowadays imported legal systems cannot be ignored by people, including those who try to bypass them. Finally, other legal systems or normative structures the state was supposed to tame, not only did not withered away but for some of them grew even stronger, and in extreme situation, became alternatives to the state itself (Mourides in Senegal, or warlord domination in RDC, Sierra Leone, Liberia, Uganda...). In a number of African societies, imported Western legal systems have failed to eradicate other legal systems, to create a rechtstaat or to improve the access of the poor to law. Locally based legal systems are consistently used in a number of fields (family law, commercial law...) as alternatives to modern law. (Mourides du Sénégal, RDC, warlords, Cameroun (Fisiy, 1992; **Mikano** Kiye, 2007; Gueye, 1999). This approach is fairly consistent with K.Schmitt famous quotation saying that « *la règle ne prouve rien ; l'exception (au sens de droit d'exception ou de situation d'exception) prouve tout* ». In Africa the permanency of the exception demonstrates that the project to build a legal and political order from the outside is a clear failure.

This capacity of locally produced legal systems coupled with the production of politics by local people at grassroots level opens up new perspective to what we could call legal a normative pluralism approach (Martin, 1997; Coulon, 2000). Normative pluralism means that there exist a plurality of sets of norms, that these coexisting systems may or may not merged into a single hierarchically organized structure, that actors are likely or liable to opt out or to indulge in “norms shopping”, or to blend different sets of rules, or to pile them up. This notion confirms a number of analyses elaborated by anthropologists (Balandier, 1967; Olivier de Sardin, 1998; Birschenk & Olivier de Sardin) and political scientists (Tidjani Alou, 2001). It stands as a realist perception, based on daily social practices or routines i.e. on what actually happen in given societies and not on what should happen if things were working as they should be working. It is a way to address the topic of political trust without any connection with the ideology of progress and the theories of modernization and development, or culturalism. Daily derogations to the formal norms, adaptation, accommodations, transformations, arrangementsstand at the core of the analysis, not only as unacceptable infringements of law (what may be the case) but as actual ways of negotiating temporary orders or deals. Those derogations are clearly highly problematic to organize a global

regulation and partly contribute to generalized corruption and unlawful practices. However they show how actors in the society manage to cope with normative pluralism and to organise some sort of parochial orders. Furthermore, they remind us that a sustainable and predictable political order is doomed to fail if some kind of adaptation is lacking. J.Freund shows the complex relation between rigidity and flexibility in his discussion of the Weberian bureaucratic organisation. He writes « *Croire que celle-ci (l'administration) sera plus équitable et plus impartiale en appliquant à la lettre la loi, c'est aller à l'encontre d'un des buts des services publics. Leur rôle est, certes, d'exécuter et d'appliquer les décisions de l'autorité publique, mais en les adaptant aux situations concrètes et en corrigeant la rigueur qui vient de leur généralité et de leur rationalité. Parce que l'administration est le bras du commandement elle dispose nécessairement d'une latitude discrétionnaire, car le strict légalisme la rendrait tyrannique, souvent inhumaine, donc injuste. Il lui faut donc éviter les abus de la justice purement legaliste et ceux de la souplesse discrétionnaire* » (Freund, 2004, 242). Such an equilibrium needs first a strong state machinery made of well trained civil servants and well funded agencies and secondly a clear understanding of the political formula which prevails in the country. Both conditions are generally lacking in Africa. The point is then to accept a measure of flexibility without emptying the existing formal order of its meaning and to enforce law without driving so called citizens into the world of the informal. Up to now in Africa those two pitfalls have been systematically cumulated: formal institutions and informal mechanisms to use Balandier's words (Balandier, 49) which contribute to the building of an order do not fit together. They borrow to different framings or system of representation and beliefs their understanding of rights and duties. No effort is being made to make them compatible, allowing subjects to escape from them by playing the one against the other. Violence and endemic corruption find their roots in this lack of effort to have the different sets of norms merging toward a single common understanding of the political order. « *...le recours à la violence,ou la menace du recours à la violence....caractérisent, au contraire, un régime qui n'a pas encore ou qui n'a plus à son actif le minimum de consensus sur les règles du jeu qui permettrait un règlement des conflits par la négociation et la discussion. La violence ne se manifeste jamais autant dans la vie politique que pendant les crises de légitimité* » écrit Lapierre (1977, 352-353).

The state and other official bodies in charge of producing the dominant state law are not the single actors to produce political and legal norms in Africa. Other non state and non official bodies produce in certain areas or social fields their own sets of regulation, sometime with

more efficiency than the state machinery itself. They can act as well as “honest brokers” to give legitimacy to state regulations (mourides in Senegal, Lamido of Rey Bouba in Cameroon...). The concept of « *semi autonomous social field* » proposed by Sally Falk Moore (1973) is highly operational to explain how the regulation processes work in a number of African countries. It shows that a number of social groups may produce their own normative systems and order, and enter into competition with the so called dominant normative system and political order, namely the state. It means that in societies where normative pluralism prevails, each group (occupational, traditional, interest groups, relatives, residents, tax payers, associations...) shares a specific understanding and its own system of beliefs and representations including on what is social order, what law means and what is lawful and unlawful. Law can no longer be seen as a pure technique making sense for every single citizen but as a social product founded on different beliefs and imagination and as such allowing for different interpretations. It is then highly unlikely that different human and social groups living in different environments will give birth to the same kind of law. This issue of ideas and systems of beliefs, what we call cognitive issues are of a particular importance when policy makers are confronted to widely different groups of population. As Roderick MacDonald writes: “*Governance implies the idea of orienting oneself and one’s intentions and behaviours by reference to an external point of reference*” (in JV, 2004, 11). This point of reference may not be the same for every group of people in a single country.

In South Africa, in a small number of economic or social sectors such parallel normative systems and organisations compensate for the lack or the complexity of state norms. Thus, Hlela writes that « *there exist protection rackets which oblige informal traders in the streets of Johannesburg to use uneconomic transport, storage facilities and bulk supply networks* (2003). Thulare does confirm the existence of such parallel systems in his research on street policing in the country (2004). Godfrey Chesang shows how in Kenya and South Africa parallel systems of refugees management exist which act as global regulators in this sector (2007). However, in South Africa, the state order and its capacity is always strong enough to stand as the referring actor. It may allow some sense of flexibility but will not accept a challenging order. The surest way to failure is to ignore those parallel types of regulation which will either proliferate if the state is not strong enough to tame them, or which will not provide the state apparatus with an easier and more profitable way of controlling societies by proxies. S.Friedman writes about South Africa « *But where people underpin their economic activity with a set of rules, values and behaviours which are obstructions to effective*

government, a hasty approach which does not stop to listen and observe carefully the beliefs and deeds which will decide whether or not a policy succeeds is a sure route to rapid failure” (2003, 15).

In this context, the political and social order as an actual regulation process can no longer be perceived as uniform all over the territory and the sectors of social activity. It is made of the federation of different semi autonomous social fields and of different worldviews and beliefs systems which can merge or not. Governance or policy framing is then not longer an issue of orders and obedience alone. It is a question of articulating and aggregating different sets of rules and beliefs under a global policy frame. Governing through regulations for instance supposes that the state can rely on a strong constraint machinery which is generally not the case in African countries, or can associate both repression capacity and “winning heart and mind” campaigns based on bargaining, adaptation of regulations to local ways of doing it. Or governance can be reached through generalized bargaining ending by improbable agreements in which rulers of the modern state machinery will negotiate everything including their monopoly upon the legitimate violence with social leaders of importance in order to guarantee their hold over general power. The relation between the Cameroonian state and the lamido of Rey Bouba (whose son is a state minister) is a shining example of such deals opening up bizarre political orders. One could take similar examples in Senegal with Touba, in Nigeria or in Uganda.

In African countries, where the state apparatus is generally weak and inefficient, it is useless to believe that the state normative system and political order will prevail. Rather a systematic system of negotiation takes place and stands at the very core of governance in Africa. This negotiation may concern specific objectives or means but also basic principles of good governance and state sovereignty. The refusal of development projects to consider those social and political practices as illustration of how things actually work, has led to the clear gap between a formal official order restricted to international negotiations and elites meetings and informal political practices and order dealing with the vast majority of the population through social leaders. This gap is the best road towards corruption, inequality, poverty and discrimination. It leads to discretionary power and justice denials. The priority of governance could precisely lay on the construction of a new normative order founded on the exception, i.e. on daily social practices which show what type of regulations and order African societies may produce as they incorporate and adapt non negotiable techniques of governance tailored to support the coming out of trust in government.

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15 mai 2007, Bordeaux.

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