Colonialism and Institutional Distortions: Rethinking African Development Predicaments

Godfrey E. Sansa[1]

Abstract
Did colonialism lock Africa into a perverse institutional path of development? Why African countries remain in a jungle of development predicaments? What are alternative theoretical explanations of Africa's continuing inability to move forward with the rest of the world? Numerous development analyses that the Continent has received since 1960s have tried to give answers to the presented questions. Focus has been on ideas, interests and struggles for resources between political leaders and bureaucrats at the expense of the continent's development; ill-informed and unrealistic policies as well as strategies; anti-development behaviour of peasants together with their conservatism plus resistance to modernity; weak incentive structures of the economy; political disorder and chaos, which make development impossible; and colonial pre-emptive tendencies to the continent's modernity. But why these regressive-development behaviours are predominant in Africa? This paper argues that the problem lies on distortion of the institutional foundation of African development processes.

Key words: *colonialism, development, governance, institutional distortion, institutional theory,*

Introduction

Since independence from late 1950s and early 1960s, Africa has remained in a jungle of development predicaments. The central question has always been: why has the continent failed to liberate itself from these predicaments? Numerous development - analyses the continent has received have tried to give answers to this question. Focus has been on ideas, interests and struggles for resources between political leaders and bureaucrats believed to be taking place at the expense of the country's development; and ill-informed as well as unrealistic policies and strategies (Fieldhouse, 1986; Hodd, 1988); anti-development behaviour and tendencies of peasants together with their alleged conservatism including resistance to modernity (Hyden, 1980); and weak incentive structures of the economy (Lipumba, 1995). Apart from these reasons, there has been a widespread view that Africa, in which Tanzania is part, is in a state of disorder as well as chaos and therefore, development is impossible. For instance, Chabal and Daloz (1999) described widespread development failure as a result of political disorder and chaos that are engineered as well as used by political leaders together with other key actors as political instruments for personal benefit. These views are shared by Bayart, Ellis and Hibou (1999), who argued that the 1980s and 1990s' institutional and policy reforms in Africa were nothing but "a return to the heart of darkness" where deviation from tradition and criminalization of the state and economies are the order of the day. For Reno (2000), Africa is a continent of "shadow

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[1]University of Dodoma, Email: godysansa@gmail.com or godfreysansa@yahoo.com.

states," dominated by systems of personal rule with the authority, based upon decisions and interests of an individual rather than the law.

Taken together, these scholars seem to suggest that African countries are not only helpless victim of criminal and riotous State, but also captives of political and economic actors who (in seeking to maximize their return from the state of confusion, uncertainty and chaos) are conducting their business with unlimited impunity. But the question is: why are these regressive-development behaviours predominant in African countries? Most scholars seem to have focused on *the content* rather than *the context* of development processes. In other words, a proper understanding of the current development problems in Africa has to take into account the character and dynamics of the historical institutional context in which economic conditions, struggles together with policy initiatives emerge and take place. The main thesis of this paper is that the enduring development predicament is a result of distortion of the foundation of the African modern institutions through both, colonial institutional reforms and post-independence reactions to colonial legacies.

The colonial institutional reforms disrupted the normative principles of African customary institutions and imposed partial as well as distorted Western institutions. That is, while in their *physical* sense they resembled those of modern western institutions, their functioning logics were contrary to socio-economic and political settings of Western society. Since the original functions of these institutions - which in the Western context sought to promote the producers' autonomy and protection from undue interferences of the state - could not serve the colonial purpose, they were to be reversed. The reversal fitted well with the logics of colonialism because its purpose was to enforce compliance of the Africans to colonial interests and limit mechanisms for advancing grievances against the system. The consequence of this was inculcation into the minds of people, distrust and negative feelings against functions of these institutions. At independence, the same institutions were adopted to serve society while still distorted. That had great impact on the process of construction of the post-colonial state and its capacity to organize production as well as mobilize collective initiatives. Thus, African society suffers from historical institutional distortion and development disorientation. In order to provide empirical content to experiences of distortion and disorientation, I shall illustrate the raised issues with examples from Tanzania.

Colonialism and African development
In rethinking the impact of colonial institutional reforms on the functioning of Modern (post-colonial) state in Africa, Olufemi (2010: 3) argues, "… the relationship between colonialism and modernity should once again come under the searchlight in the contemporary period for many reasons." According to him, many problems that afflict various African countries at the present time with differing degrees of intensity are frequently traced to the lingering effects of colonialism (*ibid*.). Particular emphasis is on nature and characteristics "of many of the institutions left behind by colonialism," which are judged to be modern as opposed to traditional African institutions (*ibid*.).

Key problems that bedevil Africa and are traced back to colonialism, he adds, "can almost without exception, be conceptualized in terms of Africa's relation to, experience of, and engagement with modernity" (*ibid*.). So, the question is, what was abortive in colonial state architecture, which continues to inflict the functioning of modern state institutions with failure? He insists on the need to isolate "the specificity of the colonialism that predominated in Africa aborting the implantation of modernity" (*ibid*.). In his analysis of the colonial philosophical profile, Olufemi (2010: 21) posed the question: What do Canada, the United States of America (the United States), South Korea, Nigeria, India, Australia, and the Republic of South Africa have in common as "former colonies?" Why Canada, the United States, and Australia are obviously modern states with thriving economies built on intense industrialization and systems of rule of law (and South Korea, India, and the Republic of South Africa are not far behind), while the same cannot be said about Nigeria or the rest of the former colonies in Africa? Why many African countries, while they are now ostensibly under representative democracies, few will deny that they are nowhere near modern polities? According to him, "Colonialism is often cited as the principal cause of Africa's continuing inability to move forward with the rest of the world' and he believes that colonialism truly is a causal factor of Africa's failure and therefore, circumstances in the current Africa's 'historical conjuncture compel a reconsideration of its foundation" (*ibid*.) He insists:

> "… divergences in the career paths of countries that generically are all former colonies give us pause as we establish the etiology of Africa's underdevelopment in colonialism. But these divergences are not the only reason that we need to renew the foundations of our explanatory schema. To the extent that it is correct to speak of the United States, Canada, and Australia as former colonies, it cannot be the case that colonialism per se is a hindrance to the growth of healthy polities in its aftermath. And if this be denied, then we have to say that what the United States and Canada experienced at their founding was either not really colonialism or that it was a different kind of colonialism. When we turn our focus to Africa, the same is true. We either have to say that there is something peculiar about Africa and its peoples that makes them incapable of breaking the bonds of colonialism-induced underdevelopment or that colonialism may not have been as uniform in its evolution as accepted wisdom seems to have held for so long."

Olufemi (2010: 24) rejects the first alternative explanation that probably there is something peculiar about Africa and its peoples that makes them incapable of breaking bonds of colonialism-induced underdevelopment because to do that is to condone racist view of Africa and to see the continent including its phenomena as if they were *sui generis*. He accepts the second alternative view that colonialism may not have been as uniform in its evolution as advocated by accepted wisdom of the past African historical literature. It is this second alternative, he argues:

> "… forces us to take very seriously the differential experience of colonialism in diverse places that we usually lump together under the rubric of "former colonies" and the qualitative differences in the historical evolution of the phenomenon of colonialism in different places at different times."

He argues, though rather sceptically, that contrary to the dominant ways of looking at the African development crises in terms of what colonialism did to the continent, it may be highly instructive to focus on what colonialism did not do and the consequences of those omissions. But what Olufemi seems to forget is the fact that, in essence, colonialism was a political rule. The most important instruments of execution of political rule included the policy carrying the spirit of that rule and from which a particular set of institutional order is created to influence behaviour and organize socio-economic as well as political life in favour of the interest of that political rule. In policy science, we learn that a policy is a composite set of decisions, which a particular political rule chooses to do or not to do. Thus, even choosing not to do is in fact an act of doing. Logically, studying what colonialism did not do, as Olufemi (2010) suggests, is actually studying what colonialism did by not doing.

Most African political historians acknowledge that African polity is dominated by 'repressive tendencies' of the executive. Olufemi (2010: 169 insists that questions should be, why such tendencies are prevalent in Africa? Besides, why democratic polity is such an unattractive option for African rulers? He argues that the answer to these and other hosts of similar questions are found in the political history of African State, particularly the ways and extent to which "… the attitudes of both judges and executives have been conditioned by the dominant political theories and forms of colonial political socialization." This is fundamental in understanding the historical context in which African administrative and legal systems have evolved and fail to work the way they are supposed to, from the perspective of the functional logics of western political institutions and their attendant political behaviour of executives.

I agree with Olufemi's (2010: 169) argument that administrative and legal institutions were not the outgrowth of a system of interrelated organic African institutions but as tools, weapons in the arsenal of the colonial authorities for the purpose of keeping the colonies safe for the colonizers and the natives in their place. And that they were part of coercive institutions fabricated by the colonial state to secure its rule over unruly natives. But his argument that administrative and legal institutions were not introduced as 'part of a program of general colonial social transformation' is controversial. It flows from his earlier skepticism of *what colonialism did not do*. It is difficult to believe that colonialism initiated African society into a political system that reproduces repressive executive tendencies without subjecting it to a general colonial social transformation. To accept this line of thinking is to condone another racist argument that there is something peculiar about Africa and its peoples from which repressive executive tendencies of African States mimic. Therefore, the question is not about what colonialism did not do, but what it actually did in the course of colonial social transformation, which have continued to reproduce repressive executive tendencies of African States.

In his book, "How Europe Underdeveloped Africa," Walter Rodney (1973) grapples with the same fundamental question of African development[1] predicaments from another angle. One of important questions he raises in his struggles for answers is, "Why Africa has realized so little of its potential?" In his continental development historical analysis, Rodney sees African development predicament as a result of its integration into world capitalist market economic system through trade, colonial domination and capitalist investment (*ibid.*). According to him, throughout the period that Africa has been integrated and participated in the world capitalist economy, two factors have brought about underdevelopment: the grabbing, by the capitalist countries of Europe, of the wealth created by African labour and from African resources; and restrictions placed upon African capacity to make maximum use of its economic potential, which is the essence of development (*ibid.*). He concludes his argument by insisting that the operation of the imperialist system bears a major responsibility for African economic retardation by draining African wealth and by making it impossible to develop more rapidly the resources of the continent (*ibid.*). Therefore, "using comparative standards," he reiterates his point on African present position of underdevelopment relative "to Europe and a few other parts of the world, has been arrived at, not by the separate evolution of Africa, on the one hand, and Europe, on the other, but exploitation" (*ibid.*). He reminds us that, "Africa has had prolonged and extensive contact with Europe, and one has to bear in mind that contact between different societies changes their respective rates of development" (*ibid.*).

At the heart of Rodney's African underdevelopment thesis is the belief that before its contact with Europe, Africa had its own path or route to and rate of development (*ibid.*). The African path and rate of development were distorted by its contact with Europe (*ibid.*). The following quotation summarizes the thesis: "Before even the British came into relations with our people, we were a developed people, having our own institutions, having our own ideas of government" [J. E. Casely-Hayford, 1922. African (Gold Coast) Nationalist quoted by Rodney (1973)]. It is neither the intent of this paper to replicate Rodney's African underdevelopment thesis nor to condone his accusatory aphorism against Europe. But like similar African development historians, economists and political analysts who have attempted to find answers to African development predicament conundrum, he provides an analytical baseline for understanding the genesis of the problem: *the colonial restriction* placed upon African capacity to make maximum use of its economic potential.

However, in the analysis of the "reconstruction of the nature of development," which took place in Europe before and during colonial expansion and that of Africa before and during colonialism, Rodney paid very little attention to nature of the institutional

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[1] Development implies advancement, improvement or progress associate with increasing capability of a society to master its environment, increasing material production, and adapt to change, cope with new problems and demands, to select and attain collective goals. See also Morehouse, Thomas (1986*). The meaning of Political Development in the North*. Institute of Social and economic Research University of Alaska Anchorage.

foundation of development of societies from both continents. Besides, his analysis of what he called Europe's contribution to Africa's "underdeveloped state" never considered institutional distortions associated with colonial restrictions to African development capacity. It is the nature of *the colonial restriction* and Rodney's analytical oversight on that issue that deserve special attention.

Elsewhere in the world, for a very long time, historians have been studying the origins and implications of important historical events. Later on, economists and political scientists joined the wagon after realizing the importance of incorporating these insights into their research agenda. Using cross-disciplinary approaches, they have managed to examine influence of historical events on various aspects of the economy and polity; the aim being to seek an understanding of deep factors shaping economic and political development across countries. One interesting aspect, and which aroused my interest, is a renewed emphasis on the need for understanding colonialism and has contributed to the large and growing variation in economic as well as political development together with performance around the world. According to Michalopoulos and Papaioannou (2017), efforts to draw insights from history with which to shed light on economic and political questions have gained currency since early 1990s. Moreover, more room has been provided for a deeper understanding of the impact of important historical events such as colonization and attendant institutional changes on long range socio-economic and political development (*ibid.*).

Understanding origins of initial conditions of current development is naturally rooted in historical conditions of a particular country. In their most influential work "Colonial origins of comparative development," Acemoglu and colleagues (2001, 2002, 2005) put forward the thesis that the type of colonial policy, strategy and early colonial institutions *influenced* on subsequent economic and political development. According to them, important causes of large differences in income per capita across countries are *the differences in institutions and property rights* (*ibid.*). Countries with better institutions, more secure property rights and less distortionary policies will invest more in physical as well as human capital and will use these factors to achieve a greater level of income (*ibid.*). This is what explains divergent development paths of ex-colonies of North America, Canada, Australia, North and South Korea (*ibid.*). While it is quite possible that institutions do not have a causal effect on national income, they argue, "*rich countries simply choose or can afford better institutions*" (*ibid.*).

To estimate the impact of institutions on economic performance, researchers needed a source of *exogenous variation in institutions* and used a *theory of institutional differences* among countries colonized by Europeans to derive a possible source of exogenous variation. According to this theory, different types of colonization policies created different sets of institutions. At one extreme, there are *"extractive state institutions,"* which, instead of guaranteeing protection for private property, providing checks and balances against government expropriation, they were extractive, exploitative and expropriative institutions undermining property rights as well as institutionalized government expropriative tendencies. In other colonies, particularly settler colonies,

European powers *replicated* European institutions, with strong emphasis on private property and checks against government power. A more or less related argument provided by La Porta, Lopez de-Silanes, Shleifer, and Vishny (1998) in their work, "The law and finance" alluded that, "legal origins *transplanted* during colonization have a significant bearing on contemporary contractual institutions and finance." A similar conclusion is provided by Engerman and Sokoloff (1997) who argue that, "*colonial-era inequality*, shaped by the type of colonial strategy employed, explains the divergent development paths of Southern and Northern America."

Although little thought was given, by the cited works, to nature of colonial institutional transfer in their institutional analysis, the concept *replication* and *transplantation* suggests *use* or *application* of European institutions in their original form and functioning logic, while the concept "*extractive*" represents *distortion* of the same institutions. Therefore, while it is true that important causes of large differences in economic and political development across countries included *the differences in institutions,* such differences cannot simply be explained by the country's ability to make choices of *better institutions* or creation of *extractive institutions.* The explanatory power of colonial institutional legacy lies on *the mode of application of European institutions:* That is, replication or distortion. They are legacies of the mode of application of these institutions, which can also explain precolonial economic and political institutional legacies.

An interesting observation is also provided by Tabellini, Guido (2010), whose research found out that formal and legal institutions were the same inside the European countries for 150 years or more. Focusing on specific indicators of individual values and beliefs measured in terms of trust, respect for others, confidence in the link between individual effort and economic success, they argue that these indicators of culture are strongly correlated with *the functioning of government institutions*. Historically, more-backward regions measured partly by worse political institutions, tended to develop specific cultural traits and behavioural tendencies inimical to economic development: less generalized trust, less respect for others, less confidence in the individual and government institutions. Codes of good conduct, honest behaviour and generalized morality were divorced from public service. Because of lack of generalized morality, individuals developed negative economic and political behaviours such as cheating on public resources and offices. Therefore, institutional distortions affected the quality of institutions and created negative mentality as well as behaviours of the human factor in development process.

Based on the presented explanations, one is tempted to believe that there must be something strange about consequences of colonialism in Africa. According to Cooper (2005: 3), colonial historical intellectualism has been mostly captivated by possibilities of understanding modernization and development for people whom colonialism excluded from the march of progress. He insists that, "colonial past is invoked to teach a lesson about the present, serving to reveal the hypocrisy of Europe's claims to provide models of democratic politics, efficient economic systems, and a rational approach to

understanding and changing the world" (*ibid*.). In due regard, such concerns led me to examine thoughtfully, the complex ways in which Africa was reconstructed by colonial rule into a continent, whose people are excluded from the march of progress through institutional distortions. The presented literature review, brings us to the search for a theoretical view capable of explaining institutional distortion.

The Institutional Distortion Theory
An institutional distortion is any policy driven change to the original functional utility and instrumentality of an institution[2] (formal or informal), violating its basic normative assumptions of rationality. It results into creation of a non-ideal relationship between intended institutional functional utility and resultant human mentality as well as behavioural orientation. Institutions are understood in development economics and politics as instruments of socio-economic development management and actors' behavioural regularity. In this sense, institutions have policy originality and implications. Thus, institutional distortion is not a generic institutional error or failure. It is policy -imposed and an institutional development scenario that occurs when there is change in the original functional logic and instrumentality of a given institution by an intervention from a governing body. The intervention may take the form of policy decision, strategy or action. Institutional distortions create institutional errors or failures, which negatively affect three roles of an institution: legitimating, prospective, and ordering or regulatory roles.

From an institutionalist perspective, institutional legitimacy is quality of rightful regulation, or in other words, an acceptance of a particular institution as the regulating mechanism of social relations in society. So, a legitimate institution is one, whose society accepts its right to regulate social relations. The basic way an institution may become legitimate is either by emerging as consent of endogenic social forces or by perceived development utility or instrumentality. Since in Africa modern institutions were imposed from Europe, the only legitimating factor was to be applied in their original functional utility and instrumentality.

From its prospective role, an institution represents the ideals and specific social actions. Its physiology seeks to win social actors to accept those ideals as standards of social conduct, and induce those whom it has an immediate interest to carry out their social roles in accordance with those ideals. Thus, to the extent it has currency, an institution may hasten realization of the ideals and social actions it sets forth. Recognition of the prospective role is important in understanding what social actors intend to do and receive from actions of others. Therefore, the development role of an

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[2] Institutions are the sets of rules governing the behavior and actions of individuals and organizations in socio-economic and political engagements. They include both formal rules and procedures of social conduct and informal patterns of behavioural regularities. Formal institutions are those established and constituted by binding laws, regulations and legal orders which prescribe what may or may not be done. Informal institutions are constituted by norms, values and accepted ways of doing things in the society and are embedded in traditional social practices and culture.

institution is reflected in its prospective role. A belief that an institution is going to play a prospective role is one of reasons where for social actors accept its adoption. When an institution is distorted, it contradicts its prospective role and attracts negative behavioural response to its stimuli due to perceptual distortion. In due regard, it is lack of correspondence between the way an institutional stimulus is originally perceived and the way an individual perceives it under distorted institutional conditions.

In its ordering or regulatory role, an institution provides role realization arrangement, which tends to lessen disputes over the internal functioning of society and thus, facilitating division of labour by defining roles of each social group. Therefore, the physiology of an institution creates separation of roles in society by providing each group a specific role and associated privileges including sanctions thereby making some matters relating to duties and responsibility in society easily resolved without reference to the popular reaction and will. Again, institutional distortion contradicts this role and induces negative behavioural orientations as well as increases disputes over the internal functioning of society.

The institutional distortion theory of African development predicament demonstrates that the historical perversion of the original functional utility of development institutions has created in Africa, an enduring negative development behaviour of development actors. It has developed a decision culture in which people systematically violet the original normative assumption of rationality intended by those institutions. The result is development error feature by miscalculation of development probability and making choices between competing options based on non-rational criteria. Therefore, institutional distortion affects the cognitive reference of the decision thinking process of an actor and creates a non-ideal relationship between institutional functional utility and behavioural orientation. Because of distorted or wrong cognitive reference, the possibility for choosing the right development option based on western development thinking is next to impossible.

Colonial Rule: *The Genesis of Distortion*
A history of African socio-economic and political development is fundamentally a history of the impact of institutional development associated with imposition and consolidation of colonial rule as well as post-independence reactions to colonial legacies. With imposition of colonial rule, institutional conditions for socio-economic and political changes were also established and wrought in material conditions of society. In turn, such changes created conditions out of which the force of both anti-colonialism and development struggles emerged to challenge the colonial rule itself, and later on, its structural impact on socio-economic development. However, processes of modern institutional transformation began with initiation of African society into distorted institutional logics, which not only subjected people to distorted behavioural patterns, but also inculcated into their minds, negative impressions about the role of modern institutions in public, civic and private development initiatives.

The hallmark of distorted institutional order began with formation of "colonial administrative systems" based on doctrines of "direct rule" and "indirect or dependent rule." Processes of modern institutional transformation began with imposition of direct rule of Germans, French, Portuguese and Belgians. The direct rule was designed to replace chiefs and African elders of the tribal administrative systems, which were felt by the colonial administration to be obsolete. On the other hand, direct rule was applied by the British through *native administrative system aiming at r*estructuring and reconstituting the state, economy and society to meet colonial interests. While Mamdani (1996: 17) was right in his observation that organization of the colonial state was a response to the native question of how could "a tiny and foreign minority rule over an indigenous majority," the most important aspect of it, was how the indigenous majority could be institutionally orientated to limit their resistance to colonial exploitation (an institutional shield against protest resulting from repressive socio-economic and political changes). Whether the system was direct or indirect, the answer to this question was establishment of a distorted institutional order in form of "a native administrative system."

Native Administrative System: A Tripartite Institutional Order
The native administrative system was about incorporating Africans into a state-enforced distorted administrative system consisting of three institutional spheres: the civil institutional sphere (CIS), native institutional sphere (NIS) and tribal institutional sphere (TIS). The nature of the native administration was influenced by the doctrine of indirect or dependent rule, which sought a solution on the problem of how to develop political and socio-economic institutions that will organize and orientate Africans' social life on both tribal and colonial lines at the same time continue to organize as well as serve the non-Africans, particularly Europeans, on European lines. Using European institutions in their original sense, functioning logics and benefits would mean teaching Africans to claim benefits and demand freedom including equality just like Europeans. Similarly, to apply tribal institutions in their original sense and functioning logics would mean doing injustice to non-Africans by subjecting them to primitive, childish and barbarous institutions. It would also mean reinforcing and justifying Africans' resistance against colonialism and its associated institutions. The following quotation illustrates this dilemma:

> "We may rightly claim that our British race has to its credit an unrivalled record as rulers of primitive and semi-barbarous peoples...So long as we can treat such people as children, all the best qualities of our race, our instincts of justice and fair play, our natural kindliness, our sense of responsibility as trustees of the material welfare of those committed to our care, find free and congenial scope. Our difficulties begin when these children grow up, and claiming the benefits of everything that we have ourselves taught them, ask to be released from our leading strings and to be treated as equals" (Chirol, "Outward Bound" Oct., 1923 in Lugard, 1928: 2-Footnote No. 1).

To deal with this dilemma, a Native Administrative System (NAS) was adopted. It consisted of three institutional spheres: *the civil institutional Order (CIO)*, *native institutional order (NIO)* and *tribal institutional order (TIO).*

The civil institutional order (CIO

The civil institutional order (CIO) comprised received institutions such as European administrative regulations, common laws and civil laws, which regulated the civil and market-oriented relations mostly in urban areas or enclave economic zones where the non-African population was large. Such areas constituted the "civil society" - a society supposed to be governed by the so called the "best qualities of European white race" such as instincts of justice, fair play, natural kindliness and responsibility. This was a sphere where culture and political forms of the civilized world were to be found. The rights of free association, publicity and political representation (Mamdani, 1996: 18-19) were regulated by this order. The functioning logic of the CIO was based on the principle of "institutional differentiation." The central aim was to check concentration of power, protect individual civil rights and ensure effective administration of justice in this "civil society" (Mamdani, 1996: 18-19).

The tribal institutional order (TIO)

The tribal institutional order (TIO), on the other hand, constituted customary laws that regulated non-civil and non-market relations in rural and semi-urban areas. Its main concern was regulation of socio-economic and political life in the "tribal society."[3] Issues of land ownership and use, protection of traditions, customs and community rights were regulated as well as enforced by this order. The functioning logic of the TIO was institutional fusion and autonomy. The central objective was to ensure unitary authority capable of protecting communal life and culture (Mamdani, 1996: 18). Some African anthropological literature informs that the functioning logic of tribal institutional order enabled members such as kin groups to defend their communal property such as land, from being turned into private property. Their variations, notwithstanding, mechanisms to check the centralizing tendencies and despotic behaviour of leaders existed within the framework of customary laws and principles to ensure accountability as well as commitment to collective engagement and communal ownership. Despite the seemingly fusion of power, tribal leaders were subjected to traditional checks as embodied in customary law and practices of peer restraints and popular constraints. From anthropological studies, the office of a tribal chief was based upon a composite foundation made up of hereditary eligibility, religious sanctions, popular choice, and something having significance of a social contract, or a coronation oath between chief and people.

As seen in the foregoing discussion, the two institutional orders (the CIO and TIO) were based on different and contradictory institutional logics. Their evolution intended to serve different societies and thus, different institutional orientations. Allowing the

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[3] The notion of tribe, argues the historian John Iliffe, lay at the heart of indirect rule in Tanganyika. According to a 1930 Native Administration Memorandum on Native Courts, tribes were cultural units possessing a common language, a single social system, and an established customary law (Iliffe, History of Modern Tanganyika, pp.323-324-see also Mamdani, 1996, p.79)

two orders to exist unaltered would mean subjecting the minority members of the foreign order (the CIO) to defensive revolt of the majority members of the indigenous order (the TOI). This, in turn, would make realization of the colonial interest virtually impossible. The tendency to distort both tribal and civil institutions spring from two facts: first, a great dissimilarity between the two societies in contact as to make mutual comprehension or co-operation extremely difficult (Perham, 1967:100) and second, the need to conform to colonial logic, subordination and exploitation. Thus, a new institutional order was to be created to deal with this problem.

The native institutional order (NIO)
The native institutional order (NIO) was responsible for organization of the colonial State. It consisted of distorted institutions from the two competing orders (the TIO and CIO). The functioning logics and purposes of both received institutions (such as Western administrative regulations, common laws and civil laws) and the tribal institutions (like customary regulations and laws) were inverted to serve the colonial interest. These tendencies were apparent in the administration of authority, justice, and resources.

Administration of Authority: *A syncretistic leadership*
The central administrative unit under the NAS was the chief who either stood alone or became a paramount chief with sub-chiefs under him. However, the "native authority" introduced by colonialists differed from the tribal authority. While the exercise of tribal authority was carried out through a hereditary *tribal chief* or a group of councillors, the native authority was subjected to a *statutory chief* who was an appointee of the colonial government. While the tribal chief received tributes and services from people as part of some kind of reward for their service to society, the native chiefs received payment in form of annual stipend and salary for their administrative responsibilities (collection of tax and maintaining law and order) to colonial government (Taylor, 1963: 49). Since the native chief could not co-exist with the tribal chief; the former had to play the role of the latter too. The consequence of this was introduction of what Miller (1970: 267) called "*a syncretistic*" local leadership featured by duality of response on part of the native chief. Caught between needs of his tribal society and that of the colonial authority, such chief was forced to respond to similar problems with different answers. Besides, he could carry out a series of activities and decisions, which were supposed to be acceptable to the most isolated ethnic groups and to the colonial administrator. Such kind of dual responsibility led, on one side, to speculation or apathy and, on the other, to autocracy.

Moreover, introduction of native authority accompanied destruction of the internal power balance in the tribal communities. According to Bryceson (1990: 81), many of the authority figures who had imposed checks on local leaders, particularly the chiefs, were not accorded legitimacy. The monetarisation of chiefly wealth made the commitment to material security personal and divorced them from any moral obligation towards people (*ibid.*). Due to lack of internal accountability mechanisms, remoteness of the native administrative divisions, and contradictory co-existence

between customary law and the colonial state laws as well as policies, the colonial chiefs could engage in what she called the "extra-legal" or "non-bureaucratic" exercise of the native authority offices for prestige aggrandizement (*ibid.*). They included non-execution of formal duties, discretionary decision-making in public office, appointment of relatives to native authority posts, and financial irregularities in form of fraud, privilege and embezzlement (*ibid.*). According to her, while all of these activities were considered to be abuses of office by the colonial state, the chiefs saw them as part of a logical and often requisite behavioural pattern (*ibid.*).

Administration of Justice: *Subordination of legal institutions*
The native administrative system was also characterised by a dual legal system consisting of English common law and indigenous customary law (Allott, 1984: 58). A native court system based on customary law was established but subordinated to English High Court system (Bierwagen and Peter, 1989) and administrative regulations. So, native courts and customary laws were recognised as an essential part of the apparatus of colonial administration rather than legal instruments of the native population. Besides, they were left with considerable freedom to function in a traditional way. However, the customary courts were gradually integrated in the regular territorial court system and steadily, brought into line with English ideas of common law, justice and procedures and hence, reiterating the prevailed system of separate jurisdiction. On one side, there were traditional native tribunals supervised by administrative officers; and, on the other side, the English-orientated system of courts for white population - the district magistrates' courts, the resident magistrates' courts and the High Court (Allott, 1969: 13; Bierwagen and Peter, 1989: 398).

There were two distortions on the legal system: subjection of legal institutions, in general and customary laws and native courts, in particular, to administrative authorities and regulations; and subordination of the customary law and native courts to English (common law) legal procedures and morality. In Tanzania, for example, the original court Ordinance of 1920 made all courts subordinate to the High court though placed under supervision of political officers. The change effected in the Ordinance Number 5 of 1929 withdrew the Native courts from the judicial control of the High court. The Ordinance put the courts under control of Provincial Commissioners and provided for an appeal from a native court to a superior native court, thence, to a District Officer, from him to the Provincial Commissioner and finally, to the Governor. British authorities appointed special officers within the administration to supervise and advise the work of the native courts. In all legal relations and cases in which Africans were parties, courts were: (a) to be guided by customary law in so far as it was applicable, and it was not repugnant to justice as well as morality or inconsistent with any Order in Council or Ordinance; and (b) to decide all such cases according to substantial justice without undue regard to technicalities of common law procedures (Bierwagen and Peter, 1989: 398). In other words, application of customary law was only acceptable if it conformed not to African, but to British standards of humanity, justice and morality (Allott, 1984: 59).

Repugnancy clauses gave administrators and legal officials the power to modify the customary laws in favour of colonial interests and not to safeguard interests of the native population or justice and morality as implied in the customary law. The Ordinance not only deprived the natives of the territory of the power of appeal to British high justice but also, set in motion the distorted system of administration of justice in the country. For example, Native Courts were placed under administrative control by High Administrative Authority rather than High Judicial Courts. Revision or appeals of cases heard by Native Courts were vested entirely in administrative officers rather than judicial officers. As a result, there was an establishment of two unequal systems of justice: the British system under control of judicial officers of the High Court and Native justice under administrative officers of the Native Authorities.

Resource Control: Administrative or Legal Regulation?
The British land reforms in African continent were influenced by their territory's status in international law such as colony, mandate or trust territory. Tanganyika was a mandate and later on, trust territory. The British colonial policy was to develop the territory as a plantation/peasant economy (as opposed to a settler colony like Kenya), producing essentially for cheap agricultural raw materials. It was the need to resolve tension between land interests of peasants and plantations sector, which underpinned much of the colonial land reforms and policies. Article 8 of the UN-Trusteeship Agreement reiterated[4] that: "… in forming laws relevant to the holding or transfer of land and natural resources, the Administrative authority should take into account native laws and customs and respect the rights and safeguard the interests of both peasants and future of the native population." No native land or natural resources was supposed to be transferred except between natives, and no real rights over native land or natural resources in favour of non-natives could be created except with consent of the competent authority (URT, 1994: 10). This provision played an important role in shaping land reforms during British rule.

The British adopted the Land Ordinance, the major land legislation, in 1923. However, the Ordinance did not safeguard interests of the native population as the Administrative Authority was obliged to under the Trusteeship Agreement. Just like the Germans did during their direct rule, the Ordinance declared all lands, whether occupied or unoccupied, as public lands, vested under the control and subject to the disposition of the Governor to be held for use and common benefit, direct or indirect, of the natives. The British established dual rights of occupancy with different legal statuses: the deemed (customary) rights of occupancy, including the title of a native or a native community lawfully using or occupying land in accordance with native law and customs (customary law); and granted (statutory) rights of occupancy granted to non-natives and protected by laws rooted on common laws (URT, 1994: 10, 11; Shivji,

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[4] This article was equivalent to Article 6 and 7 of the Mandate under the League of Nations Agreement. The provisions of these Articles were reiterated in the Preamble of the Land Ordinance of 1923. But in legal traditions a preamble is not part of the law, and therefore less binding on the part of the authority drafted it.

1998: 3). The deemed rights of occupancy lacked legal security enjoyed by the statutory rights of occupancy. It was subjected to the shifts of administrative regulations and land alienation policies to save the colonial economic interests. Moreover, by vesting the radical title in the state, as a way of allowing colonial authority control over land, the Ordinance reiterated the German's fusion of the sovereignty (state power) and property (the land). Furthermore, the conception and declaration of "all land" as "public land" expressed *an administrative rather than* legal relation between the state and public lands (Shivji, 1998: 3&4; URT, 1994: 12).

The distinction between legal and administrative relations underlay the practice of the state in respect of land rights of the indigenous population. It allowed the government to have full powers to deal with land according to whatever administrative policy was adopted. That suited the colonial political economy. So long as the state desired peasant production, the occupants would be considered to have deemed or permissive rights. But when land was needed for the purpose of alienation, the Governor would withdraw his consent and alienate it on a granted right to a settler. Thus, to avoid being bound by law in matters concerning customary land rights, the colonial authority subjected it to administrative regulations while alienation was left to legal institutions (URT, 1994: 12-13). The approach to land reform and management led to administrative subordination of legal institutions on land management in the country.

In general, throughout colonial period, organization of the State, economy and society was subjected entirely, to administrative institutional order. The most notable feature of the system was subjection of modern legal institutions and customary laws to administrative authorities as well as regulations. Such legal institutional inferiority accompanied by inequality in legal procedures and moral obligations disoriented Tanzanian society. Instead of rectifying the situation, the post-colonial reforms committed similar mistakes.

The Post -Colonial Reforms: The perpetuation of the problem
The African institutional development, immediately after independence, was complex and rapid. Most African countries inherited the colonial administrative machinery, predominantly controlled by colonial expatriates. As a result, the government faced pressure for its Africanization to make it look more African and, to change its negative colonial image as well as restore public faith and support for its development tasks. Under these circumstances, the administrative machinery began to expand in structures, manpower and functions. Given the historical context of the administrative supremacy, it came to dominate socio-economic and political development in the respective countries. Essentially, just as colonial rule was by nature and functions administrative (Holmquist 1979:133) so, was the independent African rule. For example, Tanzania was created as a country organized and regulated by administrative institutional order and its dominance in socio-economic as well as political development during colonialism informed similar desires and tendencies after independence.

The Dilemma of Legal Institutional Reforms

In terms of administration of justice, Tanzania inherited a legal system based on English Common law. However, legal reforms took place quickly to repeal some of legal institutions and praxis inherited from the colonial system. However, one challenge faced by leaders was to redefine the role of customary legal institutions. Customary law as a decentralized and separately administered set of institutions seemed unfit to serve the needs of a Western-educated urban elite and increasing economic specialization. There was also fear that diversity of customary institutions would create ethnic factionalism and act as a disincentive for numerous tribal groups to remain loyal to the nation if incorporated into an unreformed legal system. This led to unification and codification of the country's sets of customary law, which resulted in the Local Customary Law Declaration of 1963 - an "*indigenous common law*" reflective of the country's diverse traditions (Chirayath *et al.*, 2005: 14; Allott 1969: 15, 1984:57; Bierwagen and Peter, 1989: 400). Furthermore, the government passed the Magistrate Courts Act of 1963 to incorporate formerly native courts into the national judicial system and later on, a legislation requiring that "lay judges" consult with at least two "assessors" drawn from the local pool of village elders. This put to an end the common colonial tendencies of administrators' involvement in adjudication of cases. The government also did away with the separate court system established by the colonial authority on the basis of colour of the litigants by introducing a single three-tier court system composed of the primary court at the bottom, followed by the District Court (which included the Resident Magistrate's Court), and the High Court at the top. Hence, the subject of the suit and not the colour of the litigants became the determining factor in deciding, which court to apply to for relief (Bierwagen and Peter, 1989: 400).

However, while unification and codification of customary law partially resolved community concerns, judges still retained ultimate control over rendering judgments, and as a result, the new legal institutions were often rejected or avoided by local communities, which established informal mechanisms of dispute resolution based on traditional practices (Chirayath *et al.*, 2005: 14). The people's disapproval of the formal (Western based) judicial system and consequent growth of informal (African customary) dispute resolution systems forced the government to pass an additional law, establishing village Arbitration Tribunals for reconciliation mostly run by elders faithful to the local party. In a climate of liberalization and increasing lawlessness in the mid-1980s, the Arbitration Tribunals were placed under the control of local administrative officials and renamed Ward Tribunals. They were managed by district-level government administrators and they were not part of the judiciary, though cases could be appealed to the primary courts. So, just as during colonialism, customary courts were subjected again to administrative control. Moreover, by adopting the republican constitution in 1962, the government introduced a civil law system, forcing it to coexist with the common law and customary law system. Thus, it created a kind of "*a hybrid-tripartite legal order*" composed of three competing legal traditions.

From the foregoing discussion, one can argue that it was the Civil law tradition, which appealed more to leaders than Common laws. The negative feelings against the common law created by colonialism, its inherent logic of competitive wealth maximization through free market, adversarial trial system, litigation costs and less inclination to administrative control were added disadvantages in eyes of leaders.

Resource control and organization of production
The government inherited, virtually unaltered, the legal framework on land tenure from the colonial period. All lands declared to be public lands were vested in the President in place of the Governor. The statutory control of resources (land) reached its climax in the first half of 1970s following the adoption of Villagisation Policy, which not only changed profoundly the legal framework of land tenure in rural areas but also, entrenched even deeper the administrative control of land. The system removed land tenure from the domain of customary law by assimilating it in the statutory rights of occupancy under the supervision of administrative organs of the government. People's perceptions and practices on land tenure embedded in their customary systems and their associated rights were disregarded (URT, 1994: 42-44; Shivji, 1998: 6&13). According to Shivji, in effect, villagization meant expropriation of customary rights and compulsory acquisition of land under customary law, implying that customary occupiers did not occupy land as a matter of their rights but as a favour through Presidential (administrative) discretions under the slogan "*land is the property of the nation.*" These reforms reiterated legalization of administrative based accessibility to land without ownership and struggles between common, statutory and customary legal practices of land resource control.

Conclusion
This historical exploration of institutional development in Africa, through Tanzania's experience, shows that throughout colonial and post-colonial periods, the organization of the State, Economy and Society was subjected entirely to administrative institutional order. The most notable feature of the system is subjection of modern legal institutions and customary laws to administrative authorities as well as regulations. This legal institutional inferiority accompanied with inequality in legal procedures and moral obligations weakened the allegiance of African society to modern institutions. While seen as important means for socio-economic advancement, their historically inherent distortive functional logic always provokes people's negative feelings and makes compliance to their demands highly costly. This weakens the government capacity to organize production and mobilize people in development processes. Thus, the problem is not simply adoption of modern institutions, which seem to be alien to African society, but distortion of their functions and consequent disorientation.

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