What Does the Somali Experience Teach Us about the Social Contract and the State?

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ABSTRACT

Since 1991 the international system has struggled and failed to recreate a state on the territory of the former Somalia. Proto-state systems have been formed by Somalis themselves in Somaliland and Puntland and alternative forms of governance and order exist in other parts of Somalia, but none enjoys international recognition. The polities of Somalia offer important lessons concerning our general theories about social contract, the role that states play in creating wealth, indigenous systems of governance, and the failure of existing international approaches to state reconstruction. Contemporary Somali politics is re-explored here to extract these lessons. The article explores the assumptions embedded in the works of the classic Western social contract theorists in the light of Somali experience in order to show that the underlying conceptual structure of international state reconstruction work needs to be rethought. We conclude that it frequently is better to allow for bottom-up, organic, disjointed negotiation of indigenous governance solutions (even though they probably will not conform to Western ideas of liberal democracy) than for the international system to impose top-down answers. The former more closely tracks the history of state formation in Europe and the latter is troubled by the inconsistent and not necessarily benign interests of the international actors involved. Indigenous, local political systems are changed by the stresses of violent conflict, so prompt action to employ them in a post-conflict situation is indicated.

INTRODUCTION

When Westerners think about collapsed states — be it Afghanistan, Congo, Iraq, Liberia, Sierra Leone, Somalia or Yugoslavia — Thomas Hobbes is usually lurking in the background. This great seventeenth century English philosopher wrote in the midst of his country's civil war and comes to mind, first, because of his argument that without the state, there is war 'of every man against every man', making life 'nasty, brutish and short' (Hobbes, 1939 [1651], Ch. 13: 159–62). But he is invoked as well because he saw the legitimacy of the state as grounded in an unwritten social contract between it and the governed. Thus those educated in Western philosophy and social sciences assume both that the state is necessary to human welfare and that its secure establishment requires some kind of social contract (Beichman, 2008; Winter, 2004; for a related observation, see Hagmann and Hoehne, 2009: 45). These assumptions and attendant ones about how a social contract is established implicitly guide most international efforts to deal with collapsed states. Whether or not they are valid therefore is hugely important.

In this article the modern experience of the Somalis with states and social contracts is examined in order to amend the assumptions the international community brings to state reconstruction — not only in the Horn of Africa but elsewhere.[1] The facts presented will be familiar to specialists on the Somalis; the article's contribution instead lies in the lessons drawn from them. In the same vein, philosophical work on the social contract goes well beyond Hobbes, stretching from Ibn Khaldun in the fourteenth century (Mohamed, 2007: 239–43) though Kant at the time of the French Revolution (Kant, 1970) to John Rawls in the present (Rawls, 1971, 1999). The purpose here is not to contribute to our understanding of these philosophers themselves. Instead a revision is sought of the ways in which these social contract theorists are *used* in response to present-day collapsed states. In this regard the disagreements between Hobbes and Jean-Jacques Rousseau, another great social contract theorist, will be particularly highlighted (Rousseau, 1992 [1755], 2001 [1762]).

The 'social contract' is a thought experiment, whereby we ask when people would agree to cede authority (i.e., the obligation to obey) to a governing body in return for the social order and other benefits it might provide. Ultimately, then, the 'social contract' is a tool for considering what form of governance will be accepted as legitimate by a group of people — with the consequence that it has moral authority over them and will attract some degree of voluntary compliance beyond what coercion or direct material inducement might provide. The classic social contract

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1. The lead author did brief periods of fieldwork in the Mogadishu and Bay regions of Somalia in 1980 and in Somaliland and Puntland in 2006 and those interviews are used in this article. He does not speak Somali, however. Thus the article also relies on the insights of the co-author, upon what Somali elites (in and out of the country) say about their society and upon the remarkably rich literature produced by scholars who have dedicated their careers to Somalia.

theorists (Grotius, Hobbes, Locke, Rousseau, Kant) did not posit that such an agreement was an historical act (although the US Constitution subsequently involved something very close to it). Rather, the 'social contract' as they used it was simply a philosophical device. Nonetheless, as we have noted, the different classical versions of the social contract are based on quite clear assumptions about how humans behave, on what would lead them to consider authority legitimate, and thus on the principles from which a stable political order would need to be (re)constructed.

Hobbes is explicit in considering the state as the only form of governance that can deliver an acceptable level of social order. Locke, Rousseau and Kant implicitly assume the same (Dunn, 1984: 53, 55; Locke, 1967 [1689]; Scruton, 2001) and this assumption has been carried over into contemporary efforts to rebuild 'failed states'. However, late twentieth century political anthropologists (also using the social contract as an heuristic device) demonstrated that other forms of governance could achieve the same result under certain conditions (Evans-Pritchard, 1940; Lewis, 1999 [1961]).

Thus we must separate the concept of 'governance' from that of the 'state'. David Easton argued that it is most useful to conceive of a political system 'as those institutions through which values are authoritatively allocated for a society' (Easton, 1965: 21). This then means that we are looking at a set of rules or practices whereby a social group makes effective and morally persuasive decisions about how conflicts over goods and behaviour are to be resolved. These systems of governance might be states but the contemporary reality of the Somalis alerts us to the fact that they also could be much smaller than the colonial 'states' were and in addition could be based on contractual agreements between kinship groups (*xeer*) or decisions of Islamic courts applying *sheria*. This article seeks to explore the significance of these non-state systems of governance, what their limitations may be, and their implications for global attempts to create order for the Somalis as well as for the international system itself.

We will demonstrate, as others already have, that social order and economic growth can be delivered by non-state forms of governance. But we will also indicate that some of these political alternatives may be more difficult to pursue the longer conflict has persisted and patronage has infiltrated what had been more egalitarian and consensual kinship structures. Also, alternative governance systems may be less effective than *some* states in delivering certain forms of economic development and aspects of social welfare. Nonetheless the fixation of the international community on state governance has inhibited the development of other, more feasible, forms of governance (which, even if imperfect, would be better than the collapsed states). We will suggest that effective governance is more likely to emerge in Somali-like conditions if it is built from the bottom up in irregular forms and with imperfect coverage, rather than imposed from above. These forms of local 'social contract' will be rooted in collectivities, rather than being pacts among individuals (as the classic contract theorists posited). And, even when they are broadly egalitarian and participatory, they are likely to be

resistant to a 'liberal' form of democracy, which assumes individual (rather than group) rights.

We also conclude that for the Somalis Islamic *sheria* courts offer the most likely prospect for *territory-wide* governance. Furthermore, we will suggest that one way for the international community to escape the conceptual trap into which its fixation with the state has thrown it is for the Transitional Federal Government to cease being a contestant for political power and instead be restructured as a *non-residential trust* through which aid and loans can be passed to effective Somali governance units of any size and composition.

THE POLITICAL SYSTEMS OF THE FORMER SOMALI DEMOCRATIC REPUBLIC

At least six contiguous political entities are dominated by citizens of So-mali ethnicity: the Transitional Federal Government of Somalia (TFG), Puntland (which nominally acknowledges the TFG but effectively sets its own policies), Somaliland (whose claim of sovereignty has not been rec-ognized internationally), Djibouti (which includes people of Afar as well as Somali ethnicity), Region V of Ethiopia (the 'Somali National Regional State'), and the North-Eastern Province of Kenya. In addition, Islamist move-ments (successors of the Union of Islamic Courts, which was overthrown by Ethiopia on behalf of the TFG in 2007) have regained control of much of southern and central Somalia (Gettleman, 2010; Hagmann and Hoehne, 2007). Since Somali herders and traders move constantly across the bound-aries of these entities, there is significant economic and social continuity across them. This article will focus on the political economy of the sys-tems that occupied in 2010 the territory of the former Democratic Republic of Somalia[2] but will place that analysis in the context of the larger set of authorities and social practices that govern the Somali people.

Somalia has not met the standard textbook definition of statehood since President Siad Barre fled the country in 1991 (Montclos, 2001). Max Weber famously defined the state as an organization that is able to exercise a monopoly over the *legitimate* use of force within defined territorial bound-aries (1947: 156) and over the last twenty years no claimant to the mantle of succession of the Democratic Republic of Somalia has met those criteria. Instead the territory has been dominated by fragmentation and conflict. The larger part of the country has been controlled by clan-affiliated warlords and their privately financed militias, who were backed by individual big busi-nessmen, and fought one another for control of the places from which they could extract 'economic rents' (Bradbury, 2008: 70; Lewis, 2002).

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2. The internationally-recognized designations are: the Somali Republic (1960–1969), the Somali Democratic Republic (1969–1991) and now the Transitional Federal Government of Somalia.

Somaliland is in the northwest of what was Somalia and declared itself independent in 1991 (WSP International, 2005: 14). It has the organizational structure of a state in Awdal, Woqooyi Galbeed and Togdheer Regions but is still contesting sovereignty over Sool and Sanaag[3] in its east with Puntland and as yet has not been able to conduct elections there (WSP International, 2004: 22; also Interviews, 2006: 39, 96[4]). In fact, armed conflict over this contested territory has broken out again since late 2007 (Hagmann, 2007). Puntland is in the northeast and established a weak state structure in 1998 (WSP International, 2001: 11). It has reasonable command of Bari and Nugaal Regions but in late 2006 was fighting the Union of Islamic Courts (UIC) to retain control of Galkayo and the territory to its south in Mudug. Today the latter control is challenged by pirates who are using it as a base.

In 2006 the UIC controlled Mogadishu and had expanded its control to the coastal southern areas of the country, but it had yet to create an organizational apparatus for state functions beyond its military and the Islamic courts. After an interim period of Ethiopian occupation from 2007, competing Islamic groups (al Shabab and Ahlu Sunna Wal Jamaa) once again control most of the south and centre but have only partially developed governance structures. (A third Islamist group, Hizb al Islam, merged with al Shabab in December 2010 [Associated Press, 2010b].)

The Transitional Federal Government (TFG) was formed out of negotiations in Kenya in 2004 (WSP International, 2004: 2) and on its behalf Ethiopia reversed the advances of the UIC in January 2007. Nominally the TFG holds the allegiance of all of former Somalia, save Somaliland. In practice it is largely a group of former warlords and their delegates sitting as ministers, with a moderate Islamist from the now-fractured UIC as its president (Sheik Sherif Sheik Ahmed). In late 2006, it controlled only the territory around Baidoa (Baydhabo, Bay Region), and Puntland was backing it. It has *formal* authority over all the south but Islamist forces and others successfully contest its writ, particularly in Kismaayo and most of Mogadishu (Muqdisho) (OCHA, 2007). Since this contest is militarily active it is subject to constant change of detail, but the broad picture of TFG weakness remains.

It is unlikely that the particular victor in the grand geopolitical contest over sovereignty in the former Somalia matters very much for the welfare of most Somalis. Obviously peace would be hugely positive and in that sense it matters whether or not a final, stable outcome is reached. As and when secure state structures emerge to govern the Somalis, the transaction costs and risks of engaging in livestock and other forms of trade, which is fundamental to Somali incomes, will diminish quite significantly (Interviews, 2006: 5, 13, 20, 33). Roads, health and education services also are likely to improve, and

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3. Administrative divisions of Somalia before the civil war began in 1991. See <http://en. wikipedia.org/wiki/Regions_of_Somalia>.
4. Confidential interviews conducted by lead author.

investment in fixed capital assets will be more viable. All the contending entities offer such peace benefits, however.

Furthermore, most of the territories occupied by Somalis are arid or semi-arid. Only in the area between the Juba and Shebelle Rivers in the south of Somalia is there a substantial amount of sedentary agriculture. The Somali livestock production system is overwhelmingly transhumant, with pastoralists moving their stock to access seasonal pastures and water points. Because the nature of these resources varies from year to year, as does the need for them, and because they are left unoccupied for substantial periods between uses, conflicts over access to them can be common and sometimes deadly. While a herder is away, lands he is accustomed to using could be occupied by other herders or farmers and in a bad year it may be a matter of life or death whether or not he is able to reclaim them (Devereux, 2006: 11, 15, 106–10; Hagmann, 2007: 40).[5] When it comes to stopping violent conflict over water and grazing on the savannah, none of the contenders for power are likely to be able to deliver dramatic changes, however, for neither the colonial powers in the past nor Kenya in the present (whose 'stateness' is unquestioned) established an effective monopoly of force in the pastoral hinterland (Hagmann and Hoehne, 2009: 47–52; Menkhaus, 2006: 87). The Somalis have developed non-state structures for governing their relationships in the pastoral pasturelands and we will see that these have been reasonably successful.

HOW IS 'EVERYDAY ORDER' CREATED IN 'CHAOS'?

It is an error to conclude that just because the state of Somalia is no longer functioning and because there are warlords and various types of factions in control of much of its territory, that anarchy therefore reigns. In industrialized states there are very few governance institutions between the individual and the state, so that for them the collapse of the state really does threaten anarchy. But in Somalia the reach of the state was never complete and governance institutions that pre-existed it have continued to persist or have been resurrected in the years since 1991. These 'traditional' institutions have been stressed and changed by the persistence of violent conflict in much of the territory the Somali people occupy (Samatar, 1992). But they continue to impart a powerful frame for human behaviour and re-emerged after 1991 to provide order to most rural Somalis (Hagmann, 2005: 529).

Even in fragile states surprising levels of local potential for constructive governance survive conflict (Manor, 2007: 3–15). Local institutions may be damaged by conflict but they do better than national ones. As Kant

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5. Devereux's research was conducted in the Somali Region of Ethiopia, but as these herders also graze their stock in Somalia proper and trade through its ports, the observation applies more generally.

emphasized, no new state entity ever creates its governing institutions from a *tabula rasa* (Scruton, 2001: 115); it must instead respond not only to patterns of individual interests but also to persisting structures of non-state governance as well. Peasant societies more generally have usually fought to provide their own, local systems of civil and social order and to maintain their autonomy from the over-arching authority of states. Until the late eighteenth century village communities in Europe provided their own social and civil order locally (Magagna, 1991).

Peasant communities *do* suffer when their countries descend into civil war — but it is not from the breakdown of order locally but from the warring and predation of state claimants over the top of them. Generally these peasant communities would like most simply to be left alone. Certainly this has been the experience of most rural Somalis before and after the collapse of the state in 1991 (Hagmann, 2007; Little, 2003: 153, 168; Menkhaus, 2006: 22). Thus if we are to understand the political economy of the present and future political entities of the Somalis, these persistent, local structures must be presented, analysed and weighed.

The Basis of Sociability

Hobbes assumed that the universal (cross-cultural) and primary (coming before all others) motive of human beings is personal survival. However, this fundamental assumption of his analysis was not empirically rooted, but derived and modified from the philosophic work of Grotius (Tuck, 1989: 68–74). Rousseau challenged the Hobbesian axiom by insisting that it was too individualistic (O'Hagen, 1999: 101; Wokler, 2001: 54, 56, 74). In this Rousseau followed Aristotle, as did Ibn Khaldun before him (Mohamed, 2007: 242), asserting that sociability is fundamental to humanity as well, that the generation of wealth requires collective, not just individual activity, and that humans have a natural propensity for empathy toward others when it doesn't conflict with their direct self-interest.

Evans-Pritchard's monograph on the Nuer provided the first colonial-era data on behaviour in a stateless society. Contrary to the Hobbesian expectation he did not find a 'war of all against all'. This classic piece of social anthropology concludes that pervasive inter-group conflict among the Nuer is avoided through the negotiating prowess and religious authority of the (non-state) 'leopard skin chiefs' (Evans-Pritchard, 1940). Robert Bates has provided a reinterpretation of the Evans-Pritchard data and asserts that order instead is provided by the mutual deterrence of 'tit-for-tat' retaliatory behaviour by kinship groups (Bates, 1983: Ch. 1: 7–20).

We also have the observations in I.M. Lewis's classic *A Pastoral Democracy* (Lewis, 1999 [1961]: 6, 28, 163, 168–70, 228–32) on statelessness among the Somalis in colonial British Somaliland. Lewis's research doesn't fit either Hobbes or Rousseau perfectly — the state probably does protect

urban dwellers from violence better than do other forms of political organization, but neither colonial nor contemporary states in the Greater Horn of Africa have done an adequate job of protecting pastoralists in the savannah (see also Menkhaus, 2006: 89). In the absence of effective security from states, Somalis have not engaged in a 'war of all against all' but instead have sought protection through kinship groups. Lewis's findings are less optimistic than those of Evans-Pritchard (even though he was taught by him), nor do they confirm Bates' thesis about the universal efficacy of tit-for-tat retaliation as a solution to inter-group conflict. According to Lewis the payment of 'blood money' by Somali dia-paying [*mag*] groups may prevent the escalation of conflict when that is what most of a segmentary lineage wants instead of revenge. But it doesn't stop either the existence of considerable inter-personal violence in the system nor the callous disregard by dominant lineages of 'blood money' demands from weaker ones.

Rousseau's assertion of the fundamental sociability of humanity is more useful, at least in Africa, than the 'methodological individualism' of Hobbes. In the absence of the state and civil order people do *not* seek to maximize their personal chances of survival or of individual wealth. Childless young men, who should be the most self-interested, are the least cautious about their own lives and seem to be highly oriented toward their immediate social groups in their fighting and material accumulation strategies. Military sociologists have long told us that soldiers generally do not risk their lives for God (an abstract ideology), country (another social abstraction) or glory, but out of solidarity with, and to maintain the respect of, their peers in their immediate fighting units (Janowitz, 1960). Similarly sociologists and anthropologists studying Africa tell us that people seek wealth, at least in the first instance, in order to meet the social obligations to their kin that they accumulated while growing up and that they subsequently use it to purchase status in their communities (Berry, 1993; Marie, 1997: 416).

Thus wealth is not particularly valuable in its own right but instead is an instrument for extending, consolidating and gaining status within one's social network. And survival, which certainly is highly valued, will often be put at risk for the sake of this same network. Indeed, as Elias has observed, in most of the developing world and certainly in Africa, the kinship group and locality are not in conflict with personal survival but are seen as the basic units through which it is achieved (Marie, 1997: 415).

The question, then, is not whether humans are primarily social animals, but what is the fundamental character of the social network to which they owe their allegiance. The general evidence tends toward 'social construction' of identity, but under conditions of great stress, when survival is most threatened, the *metaphor* (although most often not the strict substance) of kinship is operative.

The large literature on race and ethnicity, not to speak of nationality, demonstrates that these superficially kinship-based claims to identity are as much or more cultural than biological constructs (Fearon and Laitin,

2000; Leonard and Straus, 2003: Ch. 1: 1–20). In southern Somalia the structures of intra- and inter-clan governance had been seriously eroded by Italian colonialism (less so by the British in the north-west) (Besteman, 1999; Huliaras, 2002: 158). Clans seemed to survive largely as 'socially constructed' identities — real in their social consequences but for a great many Somalis in the south of the country of more limited significance and not expressing the realities of descent. Nonetheless when the Somali state collapsed and people were threatened with lives that were 'nasty, brutish and short' (as Hobbes would have it) the segmentary lineage system of clan governance re-emerged throughout the country as one of the fundamental organizing principles for attempts at civil order.

The preceding statement of Somali reversion under great stress to kinship must be qualified. First, even a segmentary lineage system (one which builds units of loyalty outward from the nuclear family on the basis of degree of biological relationship) is *socially* constructed in Somalia, for it is based on only *patrilineal* descent. Since Africa also has matrilineal descent systems (e.g., in southern Ghana and Malawi) it is clear that this way of defining and qualifying lineage is a product of culture. The family as a motivating force thus seems to be more of a metaphor (Lakoff, 2002) and a socially constructed ideology for motivating behaviour, with a powerful but only loose association with the instinct to protect one's kin. In this way, although rooted in the *concept* of kinship, 'clan' has been flexible enough to change over time and in response to circumstance. For example, Bernhard Helander asserts that a majority of the Hubeer clan in the inter-riverine area of southern Somalia probably are members by adoption, not descent, but that this does not alter their adherence to the clan (Besteman, 1996: 50–51).[6]

The Somali segmentary lineage system is based on various breaks in the line of male descent. Its advantage over 'neighbourhood' for a transhumant pastoral system is that identity is defined by kinship and not locality, so that membership is clear even when different groups are present in the same area (Battera, 1998: 189). Some Somalis are said to be able to trace their patrilineal line for up to thirty generations. The broadest lineage grouping is the clan family, which has symbolic and political significance but no organization. One progresses to ever-smaller groupings — the clan, the sub-clan, the sub-sub-clan and finally the dia-paying group (which typically counts around 100 adult male members). The last is the unit that handles claims for and payment of compensation for injuries. I.M Lewis provides the classic and authoritative description of the social functioning of these lineage groups among the Somali and there is no need to reproduce his account here (Lewis, 1999 [1961]).[7]

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6. See also: Besteman (1999: 17, 20–23); Gundel and Dharbaxo (2006: 48, 51); Hagmann (2005: 532); Höhne (2007); Little (2003); Samatar (1992).
7. See also Hagmann (2005: 532; 2007); Höhne (2006, 2007); Luling (2006: 471); Mohamed (2007: 226).

Clan Governance

There is frequent reference to the 'clan elders' in Somali politics but the meaning of the term varies by level (Hagmann, 2007: 33–4). At the dia-paying rung it simply denotes the collection of adult male members. At clan level it designates an *ugas*, 'sultan', *beeldaajie* (in Puntland) or other hereditary, more or less honorary leader, who rarely plays a political role. In between are people, such as a *nabadoon* in the south or still lower a *samadoon* (in Puntland), selected by the community to negotiate peace between lineage groups, to administer customary law (*xeer*),[8] or to preside over the assembly of elders. Those chosen to represent the lineage in some kind of representative function generally will be designated simply as 'elders', even though that is also the title of those for whom they speak. Such representative elders need not reside in the community proper and might even be self-made businessmen or from the international diaspora. Also these roles are facilitative rather than authoritative. Unless the holder's standing has been eroded by too partisan an involvement in politics, these positions usually have enough influence to secure the acceptance of judgements. But this is due to persuasion and legitimacy, not control of force (Bradbury, 2008: 16–17; Gundel and Dharbaxo, 2006; Mohamed, 2007: 227–30; also, Interviews, 2006: 76).

A system of governance organized around segmentary lineage provides a social structure for negotiating relationships and social contracts (*xeer*) within and between groups, although it has its limits (Brons, 2001: 120; Farah and Lewis, 1997: 353; WSP International, 2005: 51). It can give relationships regularity and reduce violence by creating structures of deterrence. Commerce does extraordinarily well, using the clan system and Islamic *sheria* courts with agility to build trust and enforceable contracts, even across clans (Bradbury, 2008: 245; Hagmann, 2005: 528; Little, 2003: 8–9, 124; also, Interviews, 2006: 33, 51).

The dia-paying [*mag*] group is the most important operational unit. It provides collective insurance against torts, for it makes payments for violent deaths, injuries, etc. If payments are not made or accepted, then vengeance will be taken against *any* member of the offender's dia-paying group. Although Somalis are conscious of and frequently heavily influenced by kinship ties beyond the dia-paying group those obligations are much more flexible. So social control is exercised only within the primary group and contract (*xeer*) enforced by tit-for-tat and Islamic oath provides for order between them. If the dia-paying group becomes engulfed with internal conflict or too big to be manageable it is likely to sub-divide along more primary kinship lines (Gundel and Dharbaxo, 2006; LeSage, 2005; Little, 2003: 12).

First in Somaliland and then in Puntland, the end of civil war and the creation of new constitutions were negotiated through clans (or more usually,

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8. For a detailed discussion of this important institution, see Mohammed (2007).

sub-clans). The clan elders in the sense of representatives and conciliators (the *guurti*) are responsible for the success of Somaliland today. They sold the idea of disarmament to the clans and negotiated the representation of other clans. They played a similar but lesser role in Puntland, where clan negotiations took place under the dominance of a single, Ethiopian-supported warlord (Battera, 1998: 179; International Crisis Group, 2009: 4; Höhne, 2009). In circumstances in which it was very difficult and divisive to hold elections, legislative representatives in both authorities were designated in clan proceedings. The dominant lower house in Somaliland moved on in 2005 to representatives elected directly by the citizenry but in Puntland clan representation is still used (Bradbury, 2008; Bradbury et al., 2003; Doornbos, 2002; Hansen and Bradbury, 2007; Samantar, 2009; also, Interviews, 2006: 52, 77–8, 95).

Note that the social contracts negotiated in the *guurti* by the clans in the northern Somali polities are different from the ones hypothesized by Hobbes and Locke. They established contracts among groups, not individuals (Bradbury, 2010), and thus differ from the philosophical foundations of the western liberal state (Gundel and Dharbaxo 2006: iii; Lucy, 2007: 20). They do come closer to Rousseau's general will, in that they emerged from a collective consensus. Even there, the parallel is imperfect, however, for the sense of being a group precedes rather than follows the formation of the social contract. This feature that order and the social contract are created by kinship or locality groups is shared by the Nuer (Bates, 1983; Evans-Pritchard, 1940) and may be general to stateless societies, at least in metaphorical form. It also characterizes the base, rural, local level in most African states (Mamdani, 1996).[9] It is very different from the Western liberal democratic foundation on votes by autonomous individuals.

Nonetheless, despite their importance, the clans are weak at *imposing* order, especially on those who are willing to ignore or abuse the system. Clan governance is weaker in urban areas and seems attenuated among the more fundamentalist Islamists (International Crisis Group, 2010; Marchal, 2009). Where it is used among the Somali, however, all adult males participate in the base level of clan deliberations and decisions are made by consensus. Even where the clan structures are strong, as in the north, north-east and Belet Weyne, it is difficult to impose burdens for the collective good that do not command nearly universal consent (Oker and Habibullah, 2010). And, of course, clan governance is a weak instrument for dealing with supra-clan problems.

Especially in the south, as the political significance of clan institutions has become clear, they have been penetrated by the patronage of warlords and big businessmen, thus harming their integrity and effectiveness, particularly on issues beyond the local level (Menkhaus, 2009). Thus the authority of southern clan elders has been eroded by their being co-opted into partisan

9. Corroborated by multiple field observations throughout Africa by the authors since 1963.

political combat (Bakonyi and Stuvoy, 2005; Gundel and Dharbaxo, 2006; Lewis, 2004; LeSage, 2001; Little, 2003; Samatar, 1992; also, Interviews, 2006: 45, 78). Many believe that the clans were manipulated and bought in the creation of the TFG, compromising its legitimacy. On the southern coast clans have been able to develop governance systems for smaller towns and rural areas but they were able to do no more than create truces between warlords in places where major 'rents' could be collected and have shown limited ability to resist either the warlords or the Islamists when attacked (Gettleman, 2010).

In the north and north-east legislative representatives had been nominated from the sub-sub clan, and then selected at a more contested, higher, senior elder level. This is still true for Puntland and the TFG. In Somaliland the selection of legislative representatives has moved from sub-clan consensus to citizen secret ballot, and in doing so the coherence of the lineages has weakened (Terlinden, 2009). Individuals from different parties represent the same clan in the elected lower house in Somaliland. Although there certainly is an element of clan underlying political allegiances, the parties in the legislature are mixed by clan, demonstrating that the clans *as bodies of collective decision making on matters of national politics* now have somewhat diminished significance (Abokor et al., 2006: 9–21; Menkhaus, 2009; also, Interviews, 2006: 52–3, 77–8, 98). From this we can conclude that clan elders can be highly effective at conciliation and at representation on issues that are not internally divisive (Bradbury, 2010), but that the effectiveness of the institution breaks down if it is used for partisan competition or to impose (rather than negotiate) settlements. Clan elders can help to negotiate consensus on issues of common interest but they don't act by majority rule and they can't impose a decision on an organized group.

THE GENERATION OF WEALTH

Hobbes felt that the state is a prerequisite to the creation of property and wealth (Hobbes, 1939 [1651]: Ch. 13: 159–62). Locke felt that at least monetary exchange is *not* dependent on the state (Dunn, 1984: 46) and Rousseau hypothesized instead that states were formed in order to *protect* wealth and inequality (Wokler, 2001: 51). Although most social theory has sided with Hobbes in seeing civil order as a prerequisite to capitalist growth (North, 1990), the experience of the Somalis has been closer to Rousseau's expectation. The state under Siad Barre was extraordinarily predatory (Besteman and Cassanelli, 1996), a possibility that Locke emphasized (Dunn, 1984: 52–60). When the Barre state collapsed Somali businessmen exploded into prodigous income-seeking efforts. The general populace has been impoverished in the major urban areas by the conflicts of the warlords, but certain types of businessmen have prospered from the removal of state controls on

their endeavours (Bradbury, 2008: 245; Hagmann, 2005: 528; Little, 2003: 8–9, 124, 152).

Of course, the extreme *laissez-faire* environment of Somalia makes some forms of capitalist expansion easy at the expense of others. Those who have done best are those who engage in various forms of export and import trade, turning the whole country into a kind of duty-free port. Business growth also may have been facilitated by the ability to 'park' capital in other, secure states, but seems to have reached its limits now. (Parking was achieved literally by Dallo Airlines, a successful, Somali-owned, private enterprise, which kept its aircraft overnight on the Saudi peninsula.)

Although Somali trade did extremely well when freed from the 'economic repression' of Barre, it seems now to have reached the limits of what pure *laissez-faire* can deliver (even if *laissez-faire* also includes the unregulated purchase of warlord power). Investments in fixed assets and production in Somalia proper are less common (save for mobile phone towers) (Menkhaus, 2006: 82; Pham, 2009; Webersik, 2006). Even in the export livestock trade, the sanitary standards demanded by the Gulf states required collective action among traders which they were unable to deliver in the absence of more effective states (Interview, 2006: 32). Even the proto-state political systems of Puntland and Somaliland had a difficult time enforcing regulations on this group. The strongest pressures on them to do so came from the competition of another Somali system — Djibouti — which developed a livestock inspection system cooperatively with the Kingdom of Saudi Arabia (with its vastly profitable market for goats for the *haj*) (Brass, 2007). It almost certainly was this competition which led to the acceptance in Somaliland and Puntland of Saudi veterinary inspection at their ports. In the end the Saudis themselves have taken on the function of veterinary inspection at the Somali ports of livestock shipments to their country.

Despite these qualifiers about economic growth post-Barre, however, any simple assumption that statelessness is 'bad for business' cannot be sustained from the Somali evidence (Little, 2003).

Patronage

Freed from the regulatory and predatory repression of the Barre regime, Somali business has undergone explosive growth, so that Somalis are the dominant traders in the region and control major finance and transport systems as well. Far from being at the mercy of the warlords in the disintegrated Somali state, traders have frequently emerged as their patrons (Bradbury, 2008). If the states in Somalia are an outgrowth of 'organized crime' (Tilly, 1992), it is the big businessmen who are financing the predatory efforts of the warlords. Both may be preying on society but we don't see warlords being terribly effective in taking advantage of rich traders. Politics within the Somali political systems is heavily influenced by those individuals who

are able to use their resources to purchase protection, personal consideration, elected offices and policy attention. Their hand could be seen in the debates about the new Veterinary Code in Somaliland and they control the port of Bosasso (Boosaaso) in Puntland (Interviews, 2006: 50, 57, 87). On the other hand, traders are not a unified block — they compete intensely with each other, and as international markets shift and reward different sets of personal connections, new traders become dominant. This is seen most dramatically in the reversals in fortune between livestock traders with the shifts in access to the Saudi market (Interviews, 2006: 85).

Extreme inequalities in wealth pose large challenges to the ability of extended family/community systems to define and defend their 'general will', as expressed through the consensus of the assembly of adult males. Of course, inequality is a basic feature of pastoral societies, but this wealth is expressed in cattle, the holdings of which vary considerably over an individual's lifetime. The current patterns of inequality are not rooted in livestock production and are much greater. They can stimulate predation — not on the rich, who can hire others to defend their wealth, but on the ability of people at the bottom to identify and pursue their common interests, distorted as they come to be by patron–client relations (Besteman and Cassanelli, 1996).

The wealthy can provide jobs (including as militia), handouts and discrete benefits to individuals or small groups, thereby using patronage to command their support and leading them to sacrifice their collective interests (such as higher prices or peace) for the sake of (ultimately less valuable) personal ones (Bates, 1981; Leonard, 2006, 2010; Migdal, 1974). Thus the political actions of this trader group and of the Somali diaspora politicians are well described by a patron–client model of politics. Once established, this patronage can and does weaken clan unity (Bradbury, 2008: 206–9; Gundel and Dharbaxo, 2006: 17; Pham, 2009; Terlinden, 2009).

Of course the longer a conflict persists, the more likely it is that the businesses that are damaged by it will fail and will no longer have the resources to press their interests very effectively. The corollary is that businesses that do well in a conflict environment will grow in strength and, the longer such an environment persists, will be likely to exert an influence that makes the resolution of the conflict more difficult.

ISLAM

With the inability of the clans to bring peace to the south of Somalia, we saw in 2006 the emergence of the Union of Islamic Courts (UIC), which made a very powerful ideological claim on society. The UIC had the ability to impose greater order than *any* secular social structure seemed able to create and was easily the most important instance of state-creation in the centre and south of the country since the fall of Barre. A commonplace among sociologists of

religion (confirmed by our field observations in several instances in Africa) is that when death seems to become random and without regular cause, people have a strong need for spiritual beliefs and practices that will explain the inexplicable and give them some psychological tools for controlling the uncontrollable. Thus religious systems of order may be a natural part of the deep structure whereby people seek to bring environments of extreme danger under control and to create extra incentives for sociable behaviour.

Religion and other ideologies serve to reinforce social behaviour that considers entities beyond the extended family. The nature and boundaries of that social behaviour are defined by the particular, socially constructed ideology used. The incentives generated by these ideologies may be less powerful than those of the extended family but are strong enough that they must be considered in models of human behaviour. Among the Somalis, kinship is the first and foremost focus of socialization, but Islam comes close behind and has the virtue, at least as much as language does, of being a historically unifying and nationalist force for them.

With the weakening if not disintegration of state courts in most parts of the former Republic, Somalis have turned to *sheria* ones, as they always did for family law matters in any case. Together with the clans, these religious courts have provided an important element of order and through the enforcement of contracts have facilitated business, not only within the former Somalia but throughout the Muslim world. A Muslim oath can be adjudicated in any Islamic court and a *good* Muslim would neither break his/her oath nor refuse the order of such a court, even though it lacked any enforcement power other than moral suasion. Thus a Muslim doing business with Somalis will have much greater trust in a transaction if his/her counterpart appears to be a devout Muslim. Religion is good for business among the Somalis and *vice versa* (Gundel and Dharbaxo, 2006; LeSage, 2001, 2006). Business finance for Somalia's various Islamic court initiatives provides strong confirming evidence (Marchal, 2009: 385–86).

It is plausible that the emergence of Islam as a major factor in Somali regime politics is a direct consequence of the transformation of internal clan governance during twenty years of conflict. The clan councils (*shirs* and *guurti*)[10] are no longer egalitarian structures but instead now are frequently instruments of the particular interests of patrons. The warlords and major patrons 'representing' them in negotiated structures like the Transitional Federal Government are largely motivated only by offers to advance their own interests, which leaves governance without the stability and staying power that an endorsement by an egalitarian clan structure would have provided. Islam enters as the only other force in Somali society that can cause warlords and patrons to honour their commitments, look to the long run, and serve some kind of 'general interest'.

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10. *Shir* stands for any meeting (of elders and others), while *guurti* is the highest level council of elders.

Islamic courts therefore were a natural rallying force as disdain for the warlords and disappointment at the stalled progress of the TFG grew in 2006. What made the UIC controversial (even in Somaliland and Puntland, where it never prevailed) was not *sheria* itself but the questions of which interpretation of *sheria* would be used (WSP International, 2001: 68; 2004: 7) and who would control the adjudication. *Sheria* courts are the primary forum for justice in *all* the Somali polities, even in the TFG after the Ethiopians reversed the Islamist UIC.

Since the departure of the Ethiopians and the agreement made in Djibouti to install one of the moderate leaders of the UIC, Sheik Sherif Sheik Ahmed, as president of the TFG, the remaining Islamist movement has split. The most radical group is al Shabab, much of whose finances are thought to come from Wahabi fundamentalists and an important minority of whose members hip is allied with al-Qaeda. Hizb al Islam was less extreme and more willing to compromise with clan politics. But in late 2010 it merged with al Shabab after losing local battles to it. Ahlu Sunna Wal Jamaa is the most moderate Islamist movement; it is congenial to Somalia's sufi orders and often supports Sheik Sherif in the TFG (Associated Press, 2010b; International Crisis Group, 2010; Marchal, 2009). Somalis, particularly rural ones, are largely Sufis, a form of Islam held in disdain by the fundamentalist Wahabis. The question of whether the *sheria* courts run even by al Shabad could remain fundamentalist or would become more traditional and tolerant therefore has seemed open to many observers. In addition, al Shabab is led by members of the Hawiye clan family and so far has been successful in gaining control only of territories in which that clan is predominant. Now that clan politics (quite probably with Western encouragement) have merged with Islamist politics the ability of any of the contending movements to gain control of the whole country may be more doubtful. It is nonetheless true that Islam offers a greater prospect of generating cross-clan identities among the Somalis than nationalism or democracy. Stability for the south and centre of Somalia under a unified moderate Islamism seemed possible to many observers in 2006. Obviously the TFG and its Ethiopian and American allies instead became persuaded that the fundamentalists and those allied with al-Qaeda were predominant, leading them to unite in a military operation to overthrow the UIC. This decision threw Mogadishu (and occasionally Kismayu) into civil war again (Barnes and Hassan, 2007; Marchal, 2004, 2007a, 2007b; Menkhaus, 2007).

As the military supporters of the TFG — Ethiopia, Kenya, Uganda and the US — are all predominately Christian, they were unlikely to prevail against a resurgent Somali Islamic nationalism; and they did not (International Crisis Group, 2010; Marchal, 2009). In 2009 the TFG and its allies surrendered to reality and through a conference in Djibouti did what many observers thought they could have done more advantageously in 2006 — turned to the leadership of the moderate wing of the UIC in the person of President Sheik Sherif Sheik Ahmed (Marchal, 2007b; Pham, 2009). So far the radical wing

of the old UIC, led by al Qaeda-allied al Shabab, has been able to keep the TFG on the defensive — although it has been unable to establish suzerainty (Gettleman, 2009). The civil war continues, but with the initiative lying with the Islamist factions and the TFG holding onto only a small piece of real estate with African Union support. Some form of Islamism (hopefully a more moderate one) seems to us to offer the only prospect of peace and stability in most of the south and centre of the country. (Somaliland and Puntland are viable, as they are as separate entities.)

THE ROLE OF OTHER STATES IN INHIBITING LOCAL SOCIAL CONTRACTS

Since the Democratic Republic of Somalia collapsed in 1991, the international community has been struggling to recreate a state in its territory. Twice this involved the presence of significant foreign troops on Somali soil — first from 1993–5 by the UN with US leadership and second in 2007 and 2008 by the African Union, spearheaded by Ethiopia and implicitly backed by the US. For a period, the UN attempted to establish district-based political authorities in the country, hoping to be able to assemble them into a national confederation, but failed because of inadequate involvement of clan elders (Menkhaus, 2009: 37). Djibouti later attempted to broker the creation of a Transitional *National* Government. This was followed in 2004 by a prolonged conference in Kenya, at which considerable international effort produced the formation of the Transitional *Federal* Government. And another Djibouti conference in 2009 led to the appointment of an Islamic moderate as TFG president. None of these efforts has ever resulted in effective control of more than a portion of Somali territory or anything that meets the Weberian definition of empirical statehood.

The rhetoric surrounding international efforts to recreate the state of Somalia consistently concerned the well-being of Somalis and the need to re-establish order in order to assure it. However, other, less benign international motives have been evident as well for at least the last decade. As noted above, the population of Ethiopia's Region V (the Ogaden) is Somali, and Siad Barre led Somalia into an irredentist war in 1977–8 in an attempt to incorporate it. Ethiopia is determined that this not happen again, which led to its support for Abdullahi Yusuf Ahmed in the creation of Puntland, subsequently for his election as president of the TFG, and then for the invasion of the country in 2007. Eritrea, which fought a bloody and poorly resolved war with Ethiopia, supports Islamist rebels in Somalia as a way to counter Ethiopian hegemony. Kenya too has a significant Somali population and suppressed its irredentism in its first decade of independence. Its concern to protect itself from Somali incursions was manifested most recently when it denied the TFG (which it otherwise supports) the right to deploy to Mogadishu ostensible TFG troops Kenya has helped to train (Associated

Press, 2010a). The actions concerning Somalia by the United States, which focuses its military activities in Africa only on terrorism and drugs, are driven by the presence of an al Qaeda associate (Bagayoko-Penone, 2003). And the Kingdom of Saudi Arabia has been concerned with establishing a veterinary inspection system for livestock exports from which its traders can benefit. Many of these bilateral interests are quite legitimate, but even those that are not remain real factors shaping attempts to recreate political authority in the former Somalia. These strong, external national agendas are being imposed on a set of Somali polities that have a very weak ability to define and defend their own interests (International Crisis Group, 2010; Marchal, 2009).

At the multinational level, the African Union's stance on Somalia is driven by the strong commitment of African states to the inviolability of the continent's ex-colonial borders, hence denying recognition to Somaliland (which, with Djibouti, is the most state-like of any of the Somali political entities). Further, the international system created after World War II is based on the assumption that all the world's territories can be dealt with through diplomatically-recognized states. The UN system and the World Bank need a 'post box' for Somalia to legalize their efforts to provide humane assistance to its residents. And finally, there is the problem of Somali piracy on the high seas. A coalition of navies has taken over the patrol of the sea lanes, but in the absence of a state it is difficult to prosecute and punish the captured pirates (Thompson, 2010). They are coming from the territory of Puntland, which is one of the two polities within the former Somalia that is most like a state. But the economic power of the pirates is now so great that Puntland's government would collapse if it attempted to try the pirates' leaders (Samantar, 2010). Various bodies adopt quite ingenious methods to get around these multinational constraints, but they are still constraints on the ways in which Somalis themselves can define and construct their own political authorities.

By now it is evident that Somalis *are* able to make social contracts, establish order and create political authorities. The international system wishes to create a new state from the top down, following accepted international norms and legal forms and imposing it onto the boundaries that preceded the collapse of the Barre state. But state building among the Somalis is approached from the bottom up, evolving in an organic and irregular manner and using existing Somali social and religious institutions (Menkhaus, 2009).

Somalis have made social contracts to create political order in Somaliland, Puntland and Belet Wein, as well as other localities. They grew out of the clan system, required intensive and extensive *local* consensus building, using Somali conceptions of contract (*xeer*). The Somaliland and Puntland political authorities have received a reasonable amount of attention (Bradbury, 2008; Doornbos, 2002; Samantar, 2009), but the other local efforts seem to have been documented only by Interpeace (previously War-Torn Societies Project–WSP International) and best conceptualized as a non-state 'governance' approach by Kenneth Menkhaus (Menkhaus, 2010;

Menkhaus et al., 2010; also see, Bradbury, 2010; Bradbury and Healy, 2010; Oker and Habibullah, 2010).

The results of the indigenous Somali efforts at establishing and maintaining a social contract and political authority do not translate into even a 'post box' that resembles the old Somalia. They are irregular in territorial coverage and political form, being built out of local negotiations; they do not cover the whole of the territory of the old Somalia; and they couldn't readily be combined into something that could take Somalia's place in the international system. Some of them may even come to be Islamic in ways that the US would oppose. But they are functioning and viable, and they have the potential for further organic growth through negotiation.

Ironically the greatest threat to these variously-sized local attempts at 'governance' probably is the struggles over which entity is to capture the 'post box' designation for a Somalia state and all the international resources (spoils?) that go with it. In our view the international attempt at 'state building' for Somalia, after nearly twenty years of abject failure, should be abandoned. In its place whatever individual entities have established effective order and governance for themselves should be rewarded with international development assistance. In order for the international community to get around the conceptual trap of 'stateness' it has set for itself, the Transitional Federal Government might be turned into a non-residential *trust* for the Somali people and serve not as a state, but as a surrogate for the receipt and onward transmission of aid to deserving governance structures (with strict limits on the percentage of funds it can keep for 'administration'). In this way incentives will be created for other Somali communities and regions to undertake the lengthy process of establishing viable governance systems and peace for themselves, which will also enhance peace between these entities (Menkhaus, 2010). Meanwhile the process of recreating a Somali state, if it ever occurs, can be left to the same kinds of vagaries of history, inter-unit competition and even warfare that characterized the processes of state formation elsewhere in the world.

CONCLUSIONS: CREATING ORDER AND STATES

The Somali experience restructures much of what we thought we knew about the absence of states. Statelessness does not automatically mean disorder. Structured interactions (contracts and tit-for-tat balances of power) through extended families (or localities), not anarchy, are an alternative to the state.

Consistent with the expectations of Hobbes, Locke, Rousseau and Kant, humans do use a contract to find order in the face of conflict. Nonetheless, in conditions such as those prevailing among the Somalis, the social contract is forged by groups, not by self-regarding individuals, and therefore imparts a different kind of philosophical foundation than that provided for the Western liberal state by the classical social contract theorists. This means that rights

and representation will be conceived of first in group terms, rather than individual ones, and this will make the achievement of rights for the latter (as imagined in the UN Universal Declaration of Human Rights) more difficult — in the Somali case particularly for women. This sacrifice (at least temporarily) of individual to group rights would have disappointed Kant (although probably not Rousseau) (Scruton, 2001: 118–20). But Kant would have approved the more minimal, regulative conception of what a good system of governance should be, one that permits a diversity of historically contingent governance forms rather than imposing a UN-approved template of the state (ibid.: 114–15). Among the Somalis intra-group governance operates more by consensus than either hierarchy or democracy; but the form would differ in other polities in Africa and elsewhere.

Nor is statelessness necessarily completely bad for business. Some economic interests prosper in these conditions. The foundation for the livelihood of the average Somali is pastoral livestock production. As we noted at the outset, there are seven Somali polities (if we include the insurgent al Shabab) and Somali herdsmen and traders constantly move across their boundaries in search of pastures and markets. Sheep and goats move out of the Somali region of Ethiopia through Djibouti, Bosasso in Puntland, and Berbera in Somaliland to markets throughout the Middle East, as they always have. Somali cattle from north-eastern Kenya and southern Somalia used to go out of Mogadishu and Kismayu to these same Middle Eastern markets, but the urban demand of Nairobi, Kenya is now such that they mostly move there overland instead. In return duty-free products from Dubai, Oman, etc. move back the other way through the same Somali ports and trade routes.

Disorder *is* bad for fixed capital investments, but non-state forms of governance may nonetheless be able to provide adequate security for many of them, as is evidenced by the Somali mobile phone networks. A state *could* be better for economic growth but, given the record of severe state predation under Siad Barre, we must acknowledge that it also could be much worse. Such a nuanced view is closer to Locke's than to that of Hobbes.

Much of Somali herding and trade was never adequately governed by states, even in the colonial era. Thus the fact that Somali clans, dia-paying groups and Islamic *sheria* courts are maintaining some degree of order and facilitating and enforcing contracts is not new. The role of these other institutions has expanded, however, and adapted to the much greater instability that now plagues the Somali people. Traders sometimes now turn to *sheria* courts in the Saudi peninsula to arbitrate their business disputes. And we have seen that the great wealth of the traders who finance warlords in order to gain control over key ports and the lesser wealth of the many successful Somalis in the diaspora has shifted the formerly egalitarian dynamic of sub-clan institutions into patron–client ones instead. It may surprise some to see patron–client relations dominating politics even in non-state systems, but patronage really depends only on inequalities in the distribution of

life-sustaining resources and the need of elites for some kind of support from the less advantaged in return.

In some ways, the Somali polities with sea ports resemble the city-states of the Italian renaissance, but their authority is more fragile and life in them is sometimes more violent. These polities find it difficult to enforce policies for the common good against the interests of individual members of the economic elite. This made it very difficult for them to develop disease control and inspection systems that give Somali livestock secure access to Middle Eastern markets (Leonard, 2007) and ultimately they had to accept the Saudi imposition of its own inspection regime.

In addition those elites who have built militias to fight one another to monopolize key resources — in Somalia most often the ports and the highways that transport livestock to them. The violent conflict that ensues is largely between the contestants for these monopoly powers — not against citizens — but the predation that is necessary to support these militias, and that follows from the establishment of a monopoly, can be a substantial burden to anyone who generates an income. The latter is exemplified by the cumulative US$ 1,000 collected at roadblocks from each cattle truck on the road running along the western border of Somalia to the northern ports. Thus, states do have benefits to offer to the Somalis.

The longer statelessness persists, however, the stronger and more influential the interests that benefit from it become. Most producers and traders would benefit from the kinds of peace a state could provide, but those interests wane in strength and influence as conflict endures and those activities produce less income.

Under extreme stress the effectiveness even of kinship units of survival will erode and be subject to the allied manipulations of the force of warlords and the patronage of big businessmen. It then becomes more difficult to mobilize either individual or kinship interests on behalf of state forms of social order. We have argued here that the best way to counter the extractions of patronage politics and of those who benefit from war is to provide the rewards of access to international development assistance to those governance entities that are effective and sustain order, no matter how small and out of conformity to strict international norms they are. We suggest that this would be facilitated by reforming the TFG into a kind of non-residential trust for the Somali people, through which aid to non-state governance entities could be funnelled.

Otherwise, when the politics of greed is no longer tolerable and the limits of the politics of kinship become evident, society is fertile soil for the implantation of ideologies that can promise civil order. In the case of Somaliland, those ideologies were a new nationalist identification with the polity forged under British colonialism, followed by democracy. For the southern part of the former Democratic Republic of Somalia, purely local clan-based governance systems have instead been the path to order. In that region the only other ideology that so far has proved able to rise above

narrow sub-clan loyalties is Islam and its *sheria* courts. In the modern world it is hard to imagine any forces other than kinship, nationalism or religion out of which governance could be indigenously forged in the short term. Only the last two of this trilogy would produce a state for the Somalis and territorial nationalism carries little force outside the two northern Somali polities. The real choices then are local governance through kinship or an Islamist state.

In the twenty-first century it is very difficult for any external actor to mobilize either nationalism or religion in order to create a state where it has ceased to exist empirically. The collective power of international actors seems a tempting alternative, but it is naïve to assume that the various national and multinational interests of the actors who would be involved are all either consistent with one another or congenial to a domestically viable state-building project. If one accepts a more gradual creation of political order and a more organic and unsystematic growth in size, however, indigenous forms of governance that pre-exist, parallel or compete with state suzerainty offer a viable path. They may very well not conform to Western ideas of the liberal state (although the lack of democracy would not have troubled Hobbes, and Rousseau would have liked the 'general will' that emerges from clan deliberations). But such a liberal state can grow out of state collapse only if it has indigenous roots and the 'best' should not be allowed to foreclose a 'satisfactory' peace.

Since the Treaty of Westphalia in 1648 the international system has been based on states, which recognize one another and are presumed to control and be able to act on behalf of the territories they nominally occupy. This foundation for international relations does not fit the reality of 'collapsed states' and is a barrier to the reconstruction of political order within them by alternative governance systems. Somehow the international system has to find a way, on the one hand, to give empirical (if not juridical) standing to non-state political authorities, learning how to deal with them effectively and supportively, and, on the other hand, to empower international surrogates that can act as trustees for the interests of the 'citizens' of the non-existent states.

In reaching these conclusions, we have perused the great modern social contract theorists. We do not suggest that one was more 'right' than the others. Instead we have sought to show that each of these men made assumptions about the social contract (albeit different ones) that fit poorly with the realities of the Somalis. The treatment of their thinking here elucidates the weighty conceptual baggage that those trained in the West bring to the Somali crisis and the need for the international system to be ready to reconceptualize the social contract for a different people and a different age.

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