

# Reconstituting Democratic Governance Arrangements in Liberia: Re-examining A Framework of Peace-building

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## Abstract

This study stressed that the Liberian civil wars were the outcome of grievances that arose over historical poor governance arrangements. Upon foundation, constitutional rules made it possible for Liberia to drift towards an over-centralist state and the establishment of a unitary president-centred structure of government that gave the president sweeping powers over all matters of government. This eventually translated to tyranny and domination of the executive over the ordinary citizens that provided a fertile ground for a 14 year civil war in the country. This research work therefore argues that political stability and by extension sustainable post-war reconstruction in Liberia would very much depend on ideal governance arrangements that is deeply rooted in the interests and values that define the daily life of the Liberian people or a governance arrangement that is compatible with Liberia's political institutions and socio-cultural formations. This can be achieved when the formulation of the country's constitution and craft of governance arrangements is done through the process of constitutional choice. My argument hints that the outcome of the process of constitutional choice is a government with limited constitutional authority, which will lead to a viable "democratic self-governing" political order in Liberia. I argued that through such process, the country would become a self-governing society rather than state-governed society.

## 1. Introduction

The Liberian state was established by the American Colonisation Society (ACS) for the purpose of resettling the repatriated blacks from the United States. That was after the abolition of slavery and slave trade during the 19<sup>th</sup> Century. At its foundation, the settlers' experiences as former black slaves, reinforced by rapid European expansion in Africa, spurred the country to seek to maintain its autonomy as a black Western society (Sawyer 1992: 1). However, since the early establishment of the state, accounts surrounding the country's governance order and/ or social order have been that of an admixture of positive and negative controversies.

Some of the focuses of analysis on the country's governance arrangements and social order have revolved around issues of over-centralised governance and settler dominance – that is, the issue that over-centralised

governance has aided the domination of Liberia's settler society over the indigenous African communities. Other accounts have it that over-centralisation is the end result of settler dominance over the indigenous communities. Since its independence in 1847, this has remained the central issue in the Liberian society. Such dominance is viewed as a form of colonial cast system that could be likened to European colonial domination over African states (Akpan 1973, 1968). Yet other scholars have variously referred to the existing social order in Liberia as class structure reinforced by elements of ethnicity (Brown 1981), or as a system founded on ethnic consideration that also possess features of class system (Jones 1962; Liebenow 1969).

To Sawyer, any study of the evolution of the Liberian social order has to involve consideration of such external issues as the pre-existing and ever-evolving African social setting, the West African slave trade, the institution of slavery in the United States, European colonialism in Africa, and the rise of African nationalism and independence movement – some of which are extant in Liberia, and vital in understanding how the Liberian social order has evolved (Sawyer 1992: 2). Going by the foregoing analysis, the establishment of a settler dominated social order in the 19<sup>th</sup> Century among numerous African communities in Liberia amidst a rapidly changing African social setting was unique to the country and therefore has proved to be controversial.

However, the overwhelming consensus among Liberian scholars, civil societies, activists and the ordinary Liberian citizens is that the absence of governance has been responsible for the political crisis that culminated in a two phased civil war that lasted for 14 years. Some of the causes of the political crisis and civil wars are deep rooted in the history of the country – having to do with the manner in which the country was established, ruled, and the dynamics of its internal contradictions. These brought about distrust, violations of human rights, lack of participatory democratic governance, gross disregards for the rule of law and accountability, general weaknesses and failures of supportive and institutional systems for the provision of services, for the protection of citizens' rights, the distribution of benefits, and the consolidation of peace and harmony in the society.

In this regard, it is essential that the ordinary citizens and those who exercise governmental prerogatives become familiar with the principles and ethics of democratic good governance. Most especially, as the cause of the country's long civil war that brought about the violent collapse of the country's civil authorities has a bearing on poor governance pattern that was founded on over-centralisation. It therefore becomes absolutely important that those with the task of promoting democratic governance in the country be sensitised to the principles and institutions of democratic good governance and their practical application to the Liberian post-conflict environment. The civil war and the exigencies of post-conflict situation has provided Liberians with the opportunity to reflect on their past predicament, rethink the future and collectively work together for better Liberia.

I therefore focus our interest in investigating on how the country's governing order can be reconstituted. This study therefore aims to throw insights into the institution of governance or governance arrangements in Liberia and the social processes that characterised the constitution of social order since the country's independence in 1847. However, the study did not attempt imposing a theory on the Liberian governance order, rather is aimed at suggesting an appropriate theory for the constitution of governance order in Liberia, given the violent collapse of the country's governing institutions during the 1990s. I therefore, have tried to show how the process of constitutional choice can be employed in the reconstitution of governance order in the country.

Given the indispensable place occupied by the settler society in the constitution and breakdown of the Liberian governing order, this study therefore aims to re-examine the past, covering from the early period of the establishment of the Liberian state in 1847, through the two phased civil war that terminated in 2003. This would enable us to envision a new Liberian nation in which every Liberian is a proud stakeholder and therefore takes ownership and responsibility for this rebuilding process. This study shall therefore, constitute the foundational

basis for my further investigation into the country's on-going governance reform and democratisation process, which started in 2005. In this regard, I therefore ask the following research questions. What was the cause of the breakdown of Liberia's governing institutions? How can Liberia reconstitute governance order? Are there alternative constitutional arrangements by which solid foundations for sustainable peace and support for a viable democratic self-governing political order – that is a government with limited and distributed political authority, and shared constitutional powers can be constituted in Liberia?

The organisation of this study runs as follows; In Chapter Two, I will discuss the theory of constitutional choice. Chapter Three will be devoted to a brief analysis of the historical connection between the United States and Liberia. Chapters Four and Five shall seek to analyse how settler domination of the indigenous peoples transcended to over-centralised governance in Liberia, which resulted in the 1980 military coup provide a fertile ground for the 14 year civil war that engulfed the country. Chapters six and seven shall seek to analyse alternative approaches to the construction of governance order in Liberia. And chapter eight shall form the conclusion of this study. In all, the study explored the prospects of or possibilities for establishing the democratic self-governance in Liberia, alternative to over-centralised governance that has repeatedly failed the country.

## **2. Theory of Constitutional Choice in the African Context**

The constitution is a system for governance, often 'codified' as a written document that establishes the rules and principles of an autonomous political entity. Thus, in any viable democratic society the constitution is the instrument for articulating the design of governance arrangements, and is expected to be formulated on the basis of "reflection and choice", with recourse to political institutions and socio-cultural formations of the people in a society. Therefore the development and craft of governance arrangements which provides opportunities for a people to express their agreements and disagreements can be conceptualised as constitutional choice. Constitutional choice is simply a choice of decision rules assigning decision-making capabilities among a community of people for making future decisions in the conduct of public affairs (V. Ostrom 1974: 66). Vincent Ostrom argued that "the concept of a constitution implies several distinctions that are essential to the political theory of a compound republic" (V. Ostrom 2008: 49). The prospects for stable political democratic government would very much depend on democratic political consensus, and such consensus in the crafting of governance arrangements can only be reached through the process of constitutional choice.

One of the indispensable features of the process of constitutional choice is that such process demands that many of the ideas adopted by constitutional framers in framing the constitution for a people must have been part of the culture and experiences of the people. Cultural and social circumstances play significant roles in shaping institutions and defining their place in the life of a community. Religion and cultural values constitute factors that undergird norms and affect the making and application of rules. Such are the attributes that influence how individuals and groups identify themselves in relation with others (Sawyer 2005: 116).

Variations in physical and social environment, as well as material and cultural conditions define the uniqueness of special contexts and thus have a significant bearing on the possibilities of making choices in processes of social ordering (Sawyer 2005: 117). Thus placing special consideration on the diversity of contexts is a necessary prerequisite in the crafting and implementing of governance arrangements. There is no society without challenges that are embedded in its political institution and socio-cultural diversity. Therefore, a good understanding of this diversity of contexts and the functioning of local conditions is fundamental in constructing appropriate institutions for addressing local challenges. The understanding of local conditions and practices is indispensable in process of constitutional choice. In order to involve every segment of a society, the process of

constitutional choice needs to accommodate local knowledge and make for a true understanding of the context within which governance institutions are to be designed (*ibid*).

The theory of constitutional choice lays emphasis on the prescribed authority of individuals and the government. The process ensures the distribution of governing powers among diverse decision structures in the polity as it entails that all segments in the society would have a say in the governing affairs of their society. Through this process it will assign both powers and limits to the exercise of powers while specifying the conditions for the direct and indirect participation of people in the powers exercised by the different structures of governance. Such participatory roles of the citizens would be specified through rules assigning the authority of citizenship to participate in establishing limits upon the authority of government, in specifying the means by which citizens participates directly or indirectly, in the processes of government, and in other processes of constitutional choice. The theory also suggests that people would as well be effectively precluded from taking operational decisions through constitutional decision-making processes. This development as well suggests that the people, just like the government, have a limited authority through process of constitutional choice (V. Ostrom 2008: 50).

The distinction between the authority of the government and the people suggests that the organisation of constitutional decision-making requires a process of deliberation before choices of policy decisions are made. The theory of constitutional choice suggests that the basic decision rule for such deliberations and ratification of proposed constitutional rules should get a unanimous assent of all the units of government and social groups in the society. Understanding the diverse political institutions and socio-cultural formations in a society is an indispensable task of constitutional discourse in the processes of constitutional choice. The theory of constitutional choice emphasizes strong respect for the principle of separation of powers with effective checks and balances and places limits upon legislative, executive, and judicial authorities. According to the theory, it is through multiple units of government within effective limits that the capacity of citizens for a “self-governing society” is realised.

Another incentive of constitutional choices in the construction of governance order in complex societies is that it will enable citizens to make choices by creating and occasionally reforming the constitutional order at their own initiative. This, however, involves much more than obtaining the “consent of the governed” as such process is an arrangement that would directly tap the creative potentials of citizens in the organisation of governance affairs. The principle also allows those most directly affected by local public problems to proffer solutions to such problems, rather than petitioning “the government” for solutions to those problems. Through such a process the citizens can literally create their own government (Oakerson and Parks 1999: 317).

Nevertheless, African states with their legacy of colonialism quite often drafted constitutions to create governance arrangements without recourse to the political institutions and socio-cultural contexts of its people. Their constitutions were handed down to the people by their colonial regimes while they shun the diverse socio-cultural contexts that constitute the various political entities in the region. And the numerous constitutional reviews since the de-colonisation of the region have been done in the rather selfish interests of their political entrepreneurs. In African societies, ethnic, cultural and social circumstances determine the bases upon which a people are organised for collective action. And principles of organisation associated with ethnic groups do promote or hinder their interactions with other groups. This observation underscores the important place occupied by the process of constitutional choice in the formulation of constitutional rules and design of governance arrangements in order to ensure that every segment and social group in a society is well represented in the crafting of their governance arrangements.

Various inquiries into the causes of wars in Africa have shown cases where the central state ceded property rights in natural resources to private companies without placing consideration on the negative effects of

exploitation activities of the resources on the locals and/ or communities. Quite often the affected communities, either by themselves or in collaboration with international institutions, have organised institutions of problem solving, aimed at addressing such natural resources externalities. Such situations have frequently led to tensions and violent conflicts. Considering such situations underscores the importance of understanding patterns of established governing orders and the outcomes they produce over time. This should be achieved through the process of constitutional choice.

### **3. The Historical Character of the Constitution of the Liberian Unitary Sovereignty**

“Our capital is named after your President Monroe. Our flag is a replica of yours. Our laws are patterned after your laws. We in Liberia have always considered ourselves “stepchildren” of the United States. We implore you to come help your step children who are in danger of losing their lives and freedom.” (quoted in Adebajo 2002: 43).

The above pathetic plea, quoted in the *Washington Post* in August 1990, which was made by Samuel Doe of Liberia to President George Bush during the early phase of the first Liberian civil war, underscores the historical connection between the United States and the republic of Liberia.

During the nineteenth century when the ACS came to resettle the first Americo-Liberians in the area that is today known as Liberia, they came with them an agreement on some governing rudiments, otherwise known as the Plan of Government or the compact. The tenets of the ACS’s Plan of Government were; each repatriate agree that he would be governed by rules of the ACS. The settlement and its occupants, including the indigenous peoples of Liberia and the liberated slaves from slave ships, would be administered and ruled by its agents. The Americo-Liberians must be obedient and have respect for all the rules and regulations set down by the ACS. That English common law as in force in the United States would form the basis of law regulating behaviour in the settlement, and that there was to be no slavery in the colony (Dunn et al. 2001: 83, Huberich 1947, Vol. 1: 145). In view of this Plan of Government, the Board of Managers of the ACS adopted a more formal document that was called the Constitution of the Government of the African Settlement. This document was transformed into the constitution of 1820.

It is important to understand that the ACS was not subject to the 1820 constitution that was drafted with codified rules and regulations tailored to the principles and requirements of the United States legal system. It is also necessary to understand that the 1820 constitution was meant to regulate conduct in a territorial area that was yet to be acquired, as the Liberian state was established in 1822. The implication is that the 1820 constitution had a limitation to the possibilities for the constitution of governance order through the process of constitutional choice which entails “reflection and choice”, with recourse to political and socio-cultural formations of the indigenous peoples living in the area, prior to the acquisition of the area. The attendant clashes between the ACS and freed peoples of colour, repatriated from the United States and the fourteen year civil war in Liberia following some gross deficiencies embedded in the formulation of these constitutions were all manifestations of the difficulty in transition from slavocracy to republican government for freed peoples of colour in Africa.

The 1820 constitution had as well granted the United States government extraterritorial rights in the territory yet to be obtained. Article 9 of the constitution specified that no agency, including ACS, has the right to interfere with the “jurisdiction, rights, and claims of the agents of the United States over the captured Africans and others under their care, and control, so long as they shall reside within the limits of the settlement.” The implication of the provision of Article 9 in the 1820 constitution is that the United States government was seriously involved in

the ACS's colonising mission of freed peoples of colour on the African continent. Other notable provisions of the 1820 constitution can be found in Article 1, which specified that the "rights and privileges" of citizenship that was likened to those enjoyed by the citizens of the United States were bestowed on all the emigrants from the United States into the settler colony or were born in the colony. This provision stripped the indigenous Africans they were going to meet on the area of such rights and privileges.

There was also a noticeable flaw prevalent in the constitution as the existing contradiction between "rights and privileges" of citizenship and the placement of sovereign authority out of the reach of citizens was not treated by the drafters. This was to provoke some negative consequences in Liberia starting from the late 1980s. Sawyer referred to the 1820 constitution as an unequal contract between the ACS in the United States and an African territory, (Sawyer 1992: 73). This observation points to a legal deficit prevalent in the constitution. The ACS representative in charge of the African colony was said to have acted as a U.S. agent of a foreign power and the body obtained a charter from the state of Maryland in 1831. But its continued exercise of authority over the African territory lacked legal backing in public international law, although it was never challenged, (Huberich 1947, Vol 1: 25, 150). The lack of legal backing of the ACS administration of the colony, the provision of the constitution which reads "there was to be no slavery in the colony" coupled with the politics of exclusion exercised by the ACS over the settlers spurred the latter into challenging the authority of the ACS in the colony.

The ACS's rule over the colony represented an epitome of arbitrary and colonial rule and a source of frustration for the settlers who were poised at resisting any kind of slavery on the African soil. The subsequent clashes between the ACS and the settlers which at that time were threatening to erupt into violent challenge of the authority of the ACS in the colony, made the managers of the philanthropic body to concede to some constitutional reforms by making some adjustments in the 1820 constitutional order. These adjustments manifested in the "Plan for the Civil Government of Liberia" and the "Digest of the Laws", which were adopted as the 1824 constitution by the ACS and promulgated in the colony (Dunn et al. 2001: 83; Huberich 1947, Vol. 1: 145). The constitution of 1824 which was then known as the Plan for Civil Government of Liberia made a few concessions for the inclusion of the settlers in the governance of the colony.

However, both the "Plan for Civil Government of Liberia" and the "Digest of the Laws", which constituted the operating laws of the colony, were both formulated by the ACS after the fashion of the United States constitutional order and handed down to the settlers. Therefore the formulation of a constitution without the participation of a people it was meant to guide also represents a clear manifestation and gross negation of the process of constitutional choice in the construction of governance order of a people by a people. It is important to note that the good intentions that the framers of the United States' constitution had in mind crafting a constitutionally limited government through the process of constitutional choice were subverted by the ACS and the settlers for their political and economic aggrandisement. The craft and ratification of a constitution through the process of constitutional choice captures Alexis de Tocqueville's contention that constitutional framers had been wise in maintaining and adapting institutions of government to fit the civic culture and experience of their polity (Allen 2005). This represents a critical area where the Liberian constitution framers have faltered.

At independence the mode of governance as was construed from the constitution was uncritically tailored after that of the United States. Its declaration of independence read like the American Declaration of Independence. And, as in the American original, no native African Liberian was signatory to the document of the declaration of independence. The republic's constitution defined "Liberians" as "originally the inhabitants of the United States of America." Its motto reads: "The love of liberty brought us here", (Mgbeoji 2006: 5). Thus the indigenous Liberians who originally inhabited the Liberian geographical and cultural space who were not "former inhabitants of the United States" were not deemed to be Liberians." Mgbeoji's argument is underscored by a 26 paragraphed

declaration of independence document. For instance, paragraph 4, of the document reads: “We, the people of the Republic of Liberia were originally inhabitants of the United States of North America.” Paragraph 13, reads: “Under the auspices of the American Colonization Society, we established ourselves here on land, acquired by purchase from the lords of the soil.” Paragraph 23, reads: “No desire for territorial aggrandizement brought us to these shores; nor do we believe so sordid a motive entered into the high consideration of those who aided us in providing this asylum. Liberia is an asylum from the most grinding oppression.”

From the foregoing it is clear that the settlers considered themselves not only as citizens of the United States, who were forced out of their “motherland”, but also that the territorial area where they came to settle was purchased by them from the locals and therefore should remain their exclusive property. All these were brought to bear on the formulated constitution. At independence, citizenship and citizenship rights were restricted. Only the migrants from the United States and those who were born there were considered citizens as the indigenous Liberians were merely referred to as “aborigines.” Amongst some obnoxious provisions of the 1847 independence constitution, is seen in Article V, Section 14, which reads: “The purchase of any land by any citizen or citizens from the aborigines of this country for his or their own use, or for the benefit of others, or estate or estates in fee simple, shall be considered null and void to all intents and purposes.”

#### **4. A Legacy of Governance: Over-centralisation and Settler Domination in Liberia**

An appreciation of the cause of the fourteen year civil war in Liberia which resulted in the violent collapse of the country’s governing institutions is important in understanding how order can be reconstituted in the country. The 1847 independence constitution promulgated a unitary, president-centred structure of government as the governance framework. This invariably made post-independence Liberia focus on a policy of over-centralised state as the driving engine for political development and as a means of promoting political liberty. However, because political participation remains the exclusive right of the settler elites, over-centralisation therefore represented a sure means of perpetuating settler oligarchic rule over the indigenous peoples. Before the 1980 military coup participation by the indigenous Liberians in the country’s governance process was constrained and constricted. The excessive centralisation of administrative authority no doubt had some consequences of establishing institutions of elite abuse and predatory rule which eventually eroded political legitimacy, social trust, and human development.

Thus the state in Liberia never served as an inclusive political and economic community due to the fact that the settlers had hijacked the state and appropriated the country’s resource revenues. Therefore, the prevailing agitations in Liberia were on how to reconstitute a viable democratic government headed by a president but not an absolute presidency. And there was also the impression that issues of governance affairs require the active involvement of the people. This ushered in a period of popular agitations for the establishment of governance arrangements that would provide opportunities for greater participation by the people and accountability of public officials to the people rather than to the presidency. The prevailing governance order set a period of grievances against the Americo-Liberian oligarchy, given its characteristic cumulative legacies from violence and impunity that have deeply entrenched fear and distrust in the Liberian society and communities. The resulting violence from efforts to redress the ethnic balance in the state apparatuses led to the 1980 military coup.

The grievances which led to the stiff opposition that eventually toppled the Americo-Liberian oligarchy started in the 1970s when the Liberian chapter to the Pan African Movement for Justice in Africa (MOJA) and the Progressive Alliance of Liberia (PAL) were established. MOJA, a body formed by students and lecturers at the University of Liberia, was initially dedicated to the liberation struggle in South Africa. However, MOJA could not

effectively focus its attention abroad while it was faced with such problems at home. It therefore got increasingly concerned on such local issues that bothered on an over-centralised and predatory regime of the settler oligarchy and issues of civil liberties and equal socio-political and economic opportunities for all Liberians. PAL, on its part, was founded in 1975 by Liberians resident in the United States. Its activities were mainly geared towards ensuring social justice in Liberia. At the establishment of its Liberian office in Monrovia in 1978 it immediately captured the attention of both the unemployed and underemployed youths. However the emergence of these two movements speaks well of the existing dissatisfaction of the settler dominated leadership of the Liberian polity.

During the 1980 military coup, masterminded by Samuel Doe, an indigenous African, from the Krahn ethnic group, President William Tolbert and 13 senior members of his government were eliminated. Thus the military coup was the first explosion and clear demonstration of the gravity and warning signal of impending collapse of the central state of Liberia, while the 1990s civil wars and the consequent state failure was the end result. It is noteworthy that such state failure was a manifestation of the concentration of authority structure in the centre by which political and economic exclusion of the ordinary citizens were perpetrated. In Liberia failures of political and economic institutions also contributed significantly to the opportunity structure that made violent challenge militarily feasible. The military coup of 1980 on its own part generated grievances from Liberians and Liberia's neighbouring countries of Cote d'Ivoire and Burkina Faso. Some Liberians were welcomed of the military coup, while believing that an end to the settler elite rule would equally mean an end to Liberia's political and economic exclusion that were properties of the over-centralised state. They however got disenchanted and grossly resented the regime of Samuel Kanyo Doe. They not only turn authoritarian and increasingly repressive but also recreated the settler elite form of predatory order and political and economic exclusion, therefore the fourteen year civil war. In fact Doe's regime in reference to the settler regime was symbolised by the notorious slogan "same car, different driver", (Cleaver and Massey, 2006: 197).

Some analysts may tend to argue that Liberia maintained reasonable stability for more than a century of the Americo-Liberian regime when authority structure was increasingly concentrated in the centre, as well as during the country's current democratisation efforts and political reforms under President Ellen Johnson-Sirleaf. They may erroneously justify such excessive centralisation of power as necessary governance framework for rapid recovery and sustainable peace-building. Indeed such views failed to grasp the fact that such overcentralist-statist which had defined and legitimated the Liberian governance since independence was only a self-serving rhetoric to provide a platform for non-democratic and anti-democratic regimes. Moreover, such governance strategy was unable to support the country's earlier democratic institutions. Thus the collapse of the Liberia's governing authorities in the face of such over-centralisation, compounded by severe economic crisis and political conflict that transcended to two devastating civil wars and the fragile peace in its current post-war reconstruction and peace-building, suggests that the pattern must be dropped as a governance strategy for an alternative constitutional arrangements.

The international community in conjunction with the current democratic government headed by President Ellen Johnson-Sirleaf have been acclaimed and thus being praised for embarking on real governance reforms. However, it will be of immense importance to understand that such reforms have been largely re-establishing the rules and procedures of liberal democratic governance at the centre. Thereby re-fixing the country on an overly powerful presidency that had earlier entrenched the old order's patron-client relationships governance model between the centre and its sub-national units. This was, however, what invited the violent conflicts that began in late 1980s. The rule of law which is manifesting in the form of general fundamental freedoms of the Liberian people, and multi-party political system, and elections that are embedded in lesser degree of electoral fairness are being put in place, however, these reforms are remarkably recreating the institutions and procedures that were in

place in the country before the civil wars.

It is common knowledge that problems of governance institutional weaknesses and failures in the governance arrangements could not be corrected by recourse to such governance arrangements and processes which their serious limitations were responsible for such failures. Thus such reforming bias is presently triggering perverse incentives in the entire governance processes in Liberia. To ensure sustainable post-war reconstruction in the country the reforms should be made to be deeply rooted in the interests and values that define the daily life of the Liberian people, through a governance model that is organised in multiple layers of mutually cooperative relationships between actors, nested within the formal and informal arenas.

## **5. Governance Over-centralisation, Predatory Rule and Presidential Autocracy in Liberia**

Sawyer argued that the persistent centralisation of political authority and the concentration of the prerogatives of government in the hands of the president brought the personalisation of governmental authority to fruition. Through such process the Liberian presidency thus became a self-sufficient personal domain and therefore became the avenue for the emergence of presidential autocracy in Liberia, (Sawyer 2005: 105-106; 1993: 298-300; 1992: 10). As pointed out in the theoretical discussion in chapter two, such pattern was made possible given the fact the Liberian unitary constitution was never formulated with recourse to the political and socio-cultural context of the Liberian people and thus presented for the recognition of the existence of only a Supreme Central Authority with preference for an overwhelming political authority and constitutional powers for the president in the exercise of prerogatives of government. For instance, Article III Section 1, of the 1847 independence constitution reads: "The Supreme Executive Power shall be vested in a President who shall be elected by the people and shall hold office for a term of eight years ..." Thus, the enormity of the powers of the Liberian presidency was made possible by the country's unitary constitutional structure that recognises the executive or presidency as the Supreme Authority in all matters of government.

Therefore, the prevailing political relationships between those who exercise governmental prerogatives and the citizens makes it possible for enforcing constitutional laws against the citizens rather than for constitutional laws being applied to both those who exercise the prerogatives of government and the citizens alike. In such a condition, citizens are conceived as mere subjects, who lack the constitutional authority to partake in the governance processes as rulers. This observation hints on the fact that in Liberia, the prevailing institutional system was exploited by the political elites, which was however, the reason for articulating such institutional system. The consequences of such overly powerful presidency which erupted in a devastating 14 year civil war demands the process of constitutional choice for crafting a government with limited constitutional authority in the country's current democratisation process.

Thus, the Liberian state is characterised as over-centralised through a variety of structural measures. The domination of the sub-national levels of government – counties, districts, and local communities by the central state has remained a defining feature and has represented a most enduring characteristic of autocracy in Liberia (ibid). The appointment of all sub-national leaderships of county, and district by the president rather than being elected, and their accountability to the president rather than to the people (Sawyer 2005: 59; 1992: 3), the management of state resources by the presidency. The juridical weakness of sub-national governments given their process of appointment, the weaknesses of the judicial and legislative arms of government, informed by the attendance of legislative meetings by the vice president, (Sawyer 1992: 3-4) can be seen in this regard. And the absence of competitive politics could be seen as valid indicators. In his analysis on the role of the three arms of government Sawyer and Liberty argued; the judiciary "is very much the third branch of government." They posit

that it has always been that way. Compared with the presidency and legislature, the judiciary in nineteenth-century Liberia was an inferior institution. Rather than being an institution that interprets the law and resolve constitutional disputes, the judiciary has been effective only in minor disputes and matters that involves individuals of lower social status, and has often been used as a sinecure for political opponents who needed to be appeased (Liberty 1977; Sawyer 1992: 269).

There is the integration of authority structures under a single centre of Supreme Authority in Liberia with complete neglect of the contributions of the ordinary people in their diverse political institutions and socio-cultural formations and managerial dimensions. Such a governance arrangement was, however, presumed to be the only way to create democratic government responsible for peace, liberty, and justice. And General well-being of the people can be sought while maintaining rural dominance. However, such a governance absurdity ended up creating potentials for what Alexis de Tocqueville referred to as “democratic despotism”, (Tocqueville 1945), and Madison’s tyranny of the majority, which might as well be viewed in Vincent Ostrom’s terms as “sickness of governments”, (V. Ostrom 1997: 17), characterised by autocratic and tyrannical democratic rule of a few political elites over the majority or the common people.

With such governance arrangements the potentials for self-governing societies became eroded as a governance process bearing on strategies of dominance are put to use. Starting from Doe’s 1980 military takeover up to present day Liberia, the costs in lives and destructions characteristic of revolutionary and counterrevolutionary associated with Reform Movements to reform the patterns of governance in Liberia was a colossal. The aftermath of the Liberian governance pattern strongly reflects on Vincent Ostrom’s notion, that “when key decisions pertaining to the potential use of force in governance affairs are subject to secrecy as a strategic consideration and when control over the instruments of coercion are themselves subject to strict secrecy, conditions for open public inquiry and contestation among rivals are seriously compromised” (V. Ostrom 1997: 216). These were essential characteristics of Liberia under the True Whig Party (TWP) that ruled Liberia for well over a century, Samuel Doe’s National Democratic Party (NDP), and Charles Taylor’s National Patriotic Party (NPP), when the government was tyrannical and autocratic and led by the afore-mentioned political parties. In such condition the Liberian democratic institution became impervious to popular opinion and therefore became more vulnerable to corruption, coup d’etat, and revolutionary struggles. Throughout the three political regimes afore-mentioned, politics was neither for local needs nor of local importance.

Thus in pre-war Liberia, while the capacity of the citizens to engage in collective diverse action and discourses were reduced, the concentration of constitutional power and political authority in the hands of the executive president was increased thereby grossly removing every available channel through which the Liberia people could participate in the governance process. These tendencies were what called for the civil wars that brought about the state’s failure. And is as well responsible for the country’s inherent political tensions in its current democratisation process, and the process of working through this current tension is integral to the consolidation of peace in Liberia. This however, calls for;

- the curtailment of the political role of the central state through the devolution of responsibility and authority of choosing all the sub-national and national political representatives to the Liberian people through the inclusive and active participatory role of the citizens.
- opening up the political space to the greater participation of the Liberian people through their political institutions and socio-cultural formations.
- opening up the political space to accommodate the influence and activities of civil society organisations (CSOs), voluntary associations and other professional trade union organisations and religious bodies.

Indeed the over-centralised governance strategy has drastically removed the levers available to citizens' participation in the Liberian governance process and taken part in building a stronger, better, prosperous and democratic nation through their participation in the process of constitutional choices in constitutional decision-making. Such over-centralisation has thus represented a gross administrative error in the country's political and economic development policies. That such governance pattern has had some erosive effects on the economy and people coupled with tyrannies of the political elites in their attempt to cling to power is common knowledge in Liberia. The two phased devastating wars were clear testimonies of the negative effects of such democratic anomaly. Due to Liberia's unitary president-centred government, supported by a critical analysis of the Liberian political process, reveals that the domination of the executive over the governance processes in the country and the domination of the president over central government has remained a characteristic feature in the history of Liberian governance processes.

## **6. Governance Reform through Constitutional Choices in Liberia**

Democratic self-governance can be characterised as "constitutional choice" that applies to all the units of government, and social groups in a society, where each has a participatory role in the makings of constitutional rules and each is bound by such rules. This is consistent with the constitution of political arrangement for a self-governing society in which, a society governs itself for itself. Such a political system can as well be conceived as a consociational democratic system in which governance arrangement is based on the consensus or the unanimous assent by the diverse social groups in the society.

The Liberian constitution presented a governance structure that was based on unlimited unitary sovereignty in which the recognition of a sovereign president transcended into presidential autocracy and efforts at addressing this presidential dictatorship and/ or tyranny always preceded some form of tragic consequences for the Liberian people. Thus crafting appropriate governance institutions for post-war Liberia to respond to the vigorous failure of its old governance order is of immense necessity, especially when the prevailing governance arrangements was what called for the violent collapse of the country's governing institutions. The country's unitary constitution presented the recognition of only a single centre of authority and the state in a system of vast patronage of the patrimonial executive (Sawyer 2005: 11-21). The presidency is overly powerful. And because such a presidential characteristic has a bearing on the provisions of the constitution underscores the special significance of constitutional level analysis in reconstituting a new democratic order for Liberia. It is obvious that the country's terms and conditions of government specified a system of rules that applies to the exercise of political authority by the presidency.

Thus a different concept of political order that would usher in the recognition of multiple centres of authority with some degree of autonomy at each level of government in Liberia is necessary. Rather than presuming the existence of a single source of law, it is important to presume that individuals in their diverse political institutions and socio-cultural formations can participate in the constitution of order. This pattern will entrench a complex multilayer polity that would reflect different design principles. Instead of authority stemming from one source alone it would rather be dispersed within the body politic where authority relations would be interpreted on a bottom-up fashion. Thus, the Liberian unitary structure presented constitutional rules that encouraged predation and exploitation. Article V, Section 15 of the 1847 independence constitution, miscellaneous provisions, states: "The improvement of the native tribes and their advancement in the acts of agriculture and husbandry, being a cherished object of this government, it shall be the duty of the President to appoint in each county some discreet person whose duty it shall be to make regular and periodical tours through the country for

the purpose of calling the attention of the natives to these wholesome branches of industry, and of instructing them in the same, ...”

Under such condition the broadly based cooperation and exchange are replaced by withdrawal from economic, political and social relationships. This observation demonstrates that political stability and sustained development cannot be expected from obnoxious rules or rules that encourage indiscriminate coercion or predation. The point here is that such situation cannot but call for stiff resistance by the citizens as the case of Liberia clearly demonstrates. Political stability could be rightly considered as an offshoot of political development. It is a creative process which insofar remains sustainable as the people choose to sustain it. Therefore, how rules are made and implemented strongly influences the behaviours of a people having such rules, the ways they organise, and their ability to undertake complex social endeavours that calls for team work, cooperation, trust, forbearance, restraint, etc. Rules which centralise absolute authority in the hands of a single individual or a few individuals will definitely entrench the exploitation of others which may result in fragmentation, political and economic conflicts, and ultimate decline in development (Wunsch and Olowu 1995: 11). And violent conflict that arises in such an environment may be difficult to resolve.

Thus there must be covenantal approach to the formulation of constitutional rules which organise political relations and there must be commitment to such an approach. Such rules must be framed to sustain broad self-organisation, enhance complex relations, and must not only be framed to protect people within the social interdependencies and vulnerabilities. It must also be framed to establish special reference to all the constituent units and social groups that made up the polity. This pattern will not only curtail presidential powers, it will as well present a governance arrangement that reflects limited central government authority while increasing the relevance or the autonomy of the peripheral units as well as the authority of persons in the governance process. This pattern can correctly be conceptualised as a basic commitment to a federal system of governance, especially as pertaining to autonomous multiple units of government and decision-making processes.

The Liberian constitution that provides and functions in an over-centralised governance arrangements that effectively concentrate political authority in the hands of the president works against this. The case of Liberia has demonstrated that governance arrangements founded on Supreme Authority of the executive or the excessive concentration of political authority in the hands of one or a few persons encourages predation, exploitation, self-centeredness, and protectionist behaviour by that person(s). The question is how can such constitutional rules be framed? Who makes or design such constitutional rules, and for whom? Indeed the pathway to sustainable post-war stability is the entrenchment of a democratic self-governing society in Liberia. This however, lies in Liberians themselves.

Today the main challenge that is confronting post-war Liberia in its governance processes is how to craft an appropriate governance institutional framework that could encourage moderate behaviour in such a society with deep rooted social cleavages and how to constitutionally curtail presidential powers in governmental affairs. As has been variously pointed out, constitutional provisions in Liberia represented gross democratic anomaly. It has followed Thomas Hobbes' Leviathan model, which stressed on the recognition for a supreme authority of a sole sovereign representative – the “LEVIATHAN”, and of such sole sovereign's accountability to God rather than for the sovereignty of those and accountability to those who were being represented, (Hobbes, 1962). In Liberia, as elsewhere in Africa, parliamentary debates on how to check presidential powers and balance political authority has always focus on strengthening the judicial and legislatives arms of government to enable them to effectively act as checks and balance the excessive presidential powers rather than reducing presidential powers.

This study observes that the Liberian civil war was basically caused by historical poor governance. Therefore any meaningful resolution that is expected to usher in enduring political stability in the country must be

done through constitutional choices. In constitutional choices emphasis is on dialogues, negotiations, press reports, consultation through public hearings, and intense national debates in forums such as convening of Sovereign National Conference (SNC), or constitutional convention or assembly where the people could assemble to discuss and draw up an appropriate governance framework for the nation. Drafting a new constitution through this process will not only make the citizens have a sense of ownership of the government, it is as well expected to meet public desire for greater accountability of leaders.

The above observation is consistent with (Hart 2001) argument that where conflicts arise over questions of governance with respect to diversity of cultures and peoples, the people must be included in the search for solutions, through constitution-making, rather than partaking in the “division of spoils” between factions as the case of the 1996 Liberian National Transitional Government (LNTG) constituted in Abuja, Nigeria, clearly exemplified. In line with Hart’s argument, Adekanye (1998) posits that power is not “solely an inter-elite matter, and limited to purely geo-ethnic and institutional aspects.” For the ongoing post-war reconstruction in Liberia to be enduring, there is the need for the governance framework to be more inclusive; one that would build upon broader participation of the Liberian people in the peace process.

## **7. The Rudiments of Constitution-Making and the Design of Limited Constitutional Authority in the Making of a New Liberia.**

The Liberian unitary sovereignty emerged as an over-centralised political and predatory order. This pattern was made possible by the constitution which provided for an overwhelming presidential authority that eventually transcended to presidential tyranny. This entrenched a kind of democratic political order that Alexis de Tocqueville termed “democratic despotism” in the Liberian polity. This was what provoked the violent breakdown of the country’s civil authorities. This therefore demands that the country need to undertake constitutional reform through constitutional choices. Such a process of reform should be made to embrace more than one decision-making arena. “An arena being the setting in which a particular type of action occurs.” Therefore in a country such as Liberia, arenas include both formal and informal settings.

Formal settings include such platforms as legislatures, courts, ministries, and academic institutions, professional and voluntary associations. While informal settings includes such indigenous institutions as family and kinship units, age-sets associations, secret societies, village and town councils, community-based organisations, clan-based institutions and such other places where people meet regularly to talk with one another. Thus decisions about the rules on the construction of new governance arrangements for post-war Liberia must be made in more than one collective choice arena. It will involve both formal and informal constitutional choice processes in community, district, county, and national arenas where parts of the draft or proposed constitution would be subject to intense debate and necessary amendments made prior to constitution ratification.

As explained in chapter two, in constitutional choice emphasis is placed upon the people of a society to draw up a theory of governance that best fits their own circumstances and fashion appropriate governance institutions based on that theory. This, however, requires open, informed, and enlightened discourses with careful reflections and exercise of choice. Political experiences in Africa have shown that no form of government can cope with deep disagreements that bear on patterns of governance that is characterised by a dominant power and dominance by long-standing elites to the disadvantage of a broader section of the society. Such circumstance inevitably met with resistance. And when such resistance from those who are subject to dominance are coerced or driven underground through the instruments of state power, such governments may become sufficiently corrupt to a level that it becomes impervious to reform (V. Ostrom 1997: 286). Such regimes become either corruptly

authoritarian or corrupt democracies and in some case a combination of both as the case of Liberia or elsewhere in Africa clearly demonstrates. In such conditions such regimes become vulnerably disposed to coup de'tats and/ or civil wars.

The prevailing fragility of post-war stability in Liberia remains a disturbing issue. Experiences have shown that processes of post-war reconstruction depend very much on the search for fair and equitable solutions that yield consensus and informed consent among former conflicting actors in order to re-establish shared communities of understanding among those who associate together. In the case of Liberia, this observation was sadly, manifested in peace agreements that converted political novice rebel groups and criminal gangs into political parties. Such a democratic anomaly has in many cases ended up enthroning criminal regimes and/ or criminal states and democratic despotism that make recurrence to violent conflicts inevitable. The case of Liberia under Samuel Doe and President Charles Taylor's regimes and a host of such regimes in the World are illustrative enough about the negative consequences of such democratic mistake.

The above observation, suggests that post-war reconstruction and peace-building need to focus on constitutional reform. Constitutional rules need to focus on principles of equity jurisprudence rather than criminal jurisprudence, as criminal jurisprudence has but a marginal place in the constitution of order in viable democracies. In this regard, this study suggest the process of constitutional choice which will subject the country's governance choice to intense debates by all units of government and social groups that constitute the Liberian multitude of government, in open public realms, and the constitution of open public realms could be such forums as the convening a Sovereign National Conference (SNC), or convening the National Constitutional Convention (NCC) or Constitutional Assembly, where an appropriate choice of constituting a covenantal governance institutional model in Liberia could be debated. This pattern of constitution-making is akin to what Diamond (1961) referred to as constitutional decentralisation.

In this way debates would be organised in a process of constitutional choices; the debate would be organised at the community or village level before the district, the district before the county level, the county before the national level's SNC or NCC. This process would subject political and administrative issues, and governance design to participatory debate by the people at four levels of action arenas – the community or village, the district, and the county and finally the national level. The process presents a pattern that could be correctly explained as a bottom-up action process. This process well captures Vincent Ostrom's notion that the doctrine of the sovereignty of the people could be realised as more than a theoretical principle because the people participated directly in constitutional and collective choices that set the terms and conditions of daily life and established provisions governing the actions of their representatives in larger arenas of politics (V. Ostrom 2008: 139).

However, such debates must not be limited to the formulation of constitutional laws or governance institutional design. The process should as well be made to embrace major national issues and governmental decision-making structures to reflect citizens' collective choices on decisions pertaining to whole system of governance affairs or national issues. For instance in Nigeria, the participation of the Nigeria Labour Congress (NLC) and other Non Governmental Organisations (NGOs), and other voluntary associations and private individuals, in the debate over World Bank/ IMF loan in 1985, contributed to the defeat of government's initial position, which was to take the loan (Iyayi 2008). That was an instance of how the citizens through their diverse institutional arrangements and action arenas can participate in governance of their own affairs.

Through such a process of debate and because emphasis would be placed on open, informed, and careful deliberations and ratifications of the draft constitution in the open public realm, involving the exercise of choice by the people, and decisions based on unanimous assent, the source of authority will then reside in a covenant that is binding on individual actors, groups, associations, organisations, and the units of government to the process in

the governing relationships. Another positive incentive that is associated with such a pattern is that the citizens in their diverse political and socio-cultural formations are invested with the authority to make or modify constitutional laws that pertain to the construction of their governance arrangements. Through such a process, the Liberian society therefore would become a self-governing society rather than state-governed society. In such a condition law acquires publicness and justness of meaning that uniformly applies to those formulating law, those using law, those enforcing, and those judging the application of law (V. Ostrom 1999, 1: 65; [1991]: 62).

Vincent Ostrom underscored the importance of such a covenantal approach to the constitution of a self-governing order by emphasising that authority grounded in comradeship has different connotations from authority viewed as lordship, where authority grounded as lordship implies domination that eventually transcends to tyranny. Also underscoring this point, Sawyer argued that, “meeting the challenge of constitutional choice requires considerable pooling of knowledge and critical analysis among people themselves in discourses about their collective dilemmas, aspirations, and goals; their conflicts and potential conflicts; and their capacity to transform them.”

If the entire segment in the Liberian population participates in crafting the rules affecting their operational choices, governance performance is more likely to be enhanced, given the country’s diverse socio-cultural formations which often affect the physical operation of the overall governance processes. Thus framing of democratic institutions for the discourse of an appropriate choice in Liberia must be made to include the participation of the local or ordinary people as well as the elite population in the society, and such pattern is what will constitute the foundations for democratic self-governance in Liberia; otherwise the discourse may turn out to be the traditional African elite driven discourses as it has isolated a main segment of the population to which their interests, choices and dilemmas that it should serve.

Again a meaningful discourse must involve an understanding of the functioning of human and material endowments, and social capital embedded in the Liberian society. All of which constitutes modes of governance extant in Liberia and the external factors that affect governance processes in the country. This process is expected to yield a clear understanding of Liberia’s governance challenges and ensure well crafted governance institutions that will empower the Liberian people and make their contributions in proffering solutions to their political problems absolutely indispensable. This argument points to the necessity of broadening the processes of discourse of governance framework through constitutional choice in Liberia to include every social group and segment of the Liberian population that have the patterns that reflect principles of self-organising and self-governing potentials appropriate for indigenous democratic governance legitimacy.

Such institutions that have significant participatory roles and influence on decision-making – the Poro and Sande secret societies, women’s and men’s groups, age-set groups, clan-based institutions and community-based organisations, ethnic and minority groups, religious institutions and forums, institutions of learning, professional associations, parliamentarians, constitutional assemblies, specialised commissions, the ordinary people and the elite population, male and female alike, that are geographically dispersed in the country can be employed in the processes of crafting appropriate institutions for democratic self-governance. This pattern of democratic self-governing society recognises that rule by assembly can only occur when rules of assembly are constitutive of an assembly as a going concern.

Crafting such a governance framework requires informed discourses of all these afore-mentioned institutions, groups and persons in the Liberian society. However, these institutions and groups markedly differ from one another in many ways that suggest the need to craft relationships that draws on each other’s diverse capabilities. In the process of seeking to achieve appropriate governance institution, they engage in such processes of raising important questions pertaining to the past, present and expected future functioning of institutions of

governance, which leads to building common knowledge, shared communities of understanding, patterns of accountability, and mutual trust as essential residuals.

This process reflects the application of process of constitutional choice to ordinary interpersonal relationships in which the diverse social groups in Liberia become participants in processes of constitutional choice and designers along with others working out in cooperation, institutional arrangements for a new Liberia. Liberia can become a democratic self-governing society but not until the existence of conditions, in which the citizens become masters of themselves, by working cooperatively together among themselves in productive working relationships as coproducers and coproviders (E. Ostrom 1996; 1990), in the management of their governance affairs. This is not only important towards attaining desired results, it equally points to the true character of democratic participation that leads to viable democratic self-governing society. This remains the appropriate model that could entrench sustainable post-war reconstruction and peace-building in the country.

## 8. Conclusion

In this research study, I have attempted using theoretical, historical, and empirical narratives in demonstrating how Liberia's unitary president-centred government with "Supreme Executive Power" vested in the presidency has represented epitomes of tyranny, arbitrary rule, and democratic despotism. The research study argued that such governance pattern was what called for the fourteen year civil war that eventually led to the collapse of the country's governing institutions. The study also hints that such governance arrangements is as well militating against stable political order in the country's current democratisation and post-war reconstruction efforts. Thus, to ensure stable political order and by extension sustainable post-war reconstruction, this study has posited that the country need to undertake some radical governance reforms through the process of constitutional choice that has recourse to numerous units of government as well as the political and socio-cultural institutions of the Liberian people. I argued this would entrench a viable democratic political order and by extension, sustainable post-conflict reconstruction. A viable democratic political system in this study is defined as government with limited, distributed political authority and shared constitutional powers that permits the participation of the Liberian people in their diverse institutions and socio-cultural formations in the governance of their own affairs. I therefore posit that such democratic governance arrangement would no doubt entrench political stability in Liberia.

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