

The African Continental Free Trade Agreement Forthcoming: The Development of a Rules-Based Trading Order (forthcoming Routledge, 2024),

Author: Kofi Oteng Kufuor

Chapter 2

The Civic Republican Deficit in Africa and the Failure of Post-colonial Trade Arrangements

2.1 Introduction

Stemming from the issues raised in the previous chapter, institutions are vital for the success of trade liberalization in Africa; however, the emphasis in scholarship on regional trade law in Africa has tended to be on regional institutions. There tends to be little focus on the domestic trade laws of states that are parties to regional economic integration treaties. Thus, in the study of the interaction between states through trade treaties, there is the predisposition to ignore national institutions as essential for the mix of rules that will ensure the success of open markets across Africa. The significance of national institutions is that they help enable credible commitment to open markets and agreed international economic obligations. Among other roles, institutions prevent decision-makers from shuffling economic policies and socio-political relationships at will, thereby frustrating trade treaty goals.

Therefore, I make the claim in this chapter that understanding of beneficial international economic activity is enriched if consideration is given to how domestic actors undercut or support trade agreements. In post-colonial Africa, as I assert in this chapter, there was no stability and predictability in regional treaty systems. This was because the domestic institutional arrangements to shore up regional agreements were anaemic. National elites agreed treaty commitments but returned home and, in collaboration with their domestic supporters, frustrated any benefits traders expected in the wake of agreed reductions in or eliminations of tariff and non-tariff barriers.¹ This was possible because of weak or non-existent civic participation in public life in Africa at the time.

The suppression of civic participation in political life in post-colonial Africa was based on the need to build a strong polity and this goal could be frustrated, it was argued, by claims to rights, including

¹ See Lynn Mytelka, 'A Genealogy of Francophone West and Equatorial African Regional Organisations', 12 (2) *Journal of Modern African Studies* (1974), pp. 297–320. Mytelka details the ebb and flow, the shifting alliances, and the rise and fall of numerous regional bodies in Africa at the time.

the rights of citizens to participate in decision-making.² From this belief emerged a civic republican deficit that helps explain the failure of regional integration in Africa. A strong civic republican bent could have played a significant role in building sturdy and unified regional organizations for integration. However, research on the failure of efforts to achieve post-colonial African integration seems to ignore the impact of the civic republican deficit across the continent.

Civic republicanism is a concept that stresses the participation of individuals in public discourse to foster beneficial socio-political action. In this chapter, I assert that accounts of the failure of African unification projects have overlooked the absence of a connection between elite decision-makers and domestic constituencies. This gap created a situation across Africa in which there was a lack of 'ownership' by citizens in relation to economic integration and, as I claim, this subordinated integration agreements to the caprices of African leaders. Thus, instead of market integration being a socially beneficial action to provide regional public goods and being embedded in an accountability framework, it became a virtually privately owned venture that just happened to play out in the public sphere. With their near absolute control over integration systems and unencumbered by their constitutions – when they existed – African rulers were capable of dismantling or ignoring at will any treaty system they had put in place.

Market integration was therefore a victim of the politics of post-colonial Africa. In the absence of mechanisms at the domestic level to cement regional arrangements, meaningful regionalism never really took root. In effect, one explanation for the failure of post-colonial regionalism in Africa is that the African heads of state treated integration processes as their own private projects. The African elite created, modified, and dissolved economic integration arrangements as situations determined. Good institutions capable of freeing the integration process from control by African heads of state and subjecting the process to depersonalized socio-political forces did not exist. Authoritarian rule cut off elites from their citizens and, hence, even if there were any collective domestic preferences for stronger integration, elite decision-makers did not need to respond accordingly.

I use two instances of regionalism to affirm the position on the absence of civic republicanism and the impact in Africa. One site in which to test my assertion is Spanish America, where efforts to create a political post-colonial single market and political entity in 19th century failed because Spain had

² The claim by the post-colonial state was that liberal democracy and human rights had to be sacrificed in the interests of the economic development and political stability of the new countries: see Rhoda Howard, 'The Full-Belly Thesis: Should Economic Rights Take Priority over Civil and Political Rights- Evidence from Sub-Saharan Africa', 5 (4) *Human Rights Quarterly* (1983), pp.467–490.

created very strong authoritarian structures across its empire. Authoritarianism in Spain's colonies gave birth to a pattern of rule that marginalized public participation in decision-making. Thus, after the war of independence in the 19th century and the end of Spanish rule in South America, the federation of Gran Columbia, formed by Spain's South American colonies to fight for independence, was unravelled by those interests that were unwilling to see the federation continue. The other setting for hypotheses is the unification of the US. The success of US unification revolves, in part, around the role civic republican deliberation played in preventing delegates from the component states to the unification congresses from adopting whimsical, self-serving behaviour that could have derailed the creation of the proposed union.

The extent of civic involvement in economic integration in Africa, Spanish America, and the US is path dependent: path dependence is the propensity of institutions or organizations to evolve in particular ways because of societies' beliefs and values. Path dependence theorists assume that history matters and that once organizations or institutions set out on a particular path, they become locked into that path on the grounds of 'increasing returns' and the constraints on decision-makers' behaviour, which is shaped by reservations about adopting a new path for the organizations or institutions. As Margaret Levi has noted,³ path dependence means that the political costs of reversing institutional or organizational trajectories can be so high that this ensures their durability and persistence. Path dependence therefore stresses the importance of history in understanding socio-political change. Hence, I draw on history to explain different economic integration outcomes for two purposes: first, history helps re-state the case made by Richard Posner that the days of law as an autonomous discipline are over.⁴ Second, scholars of market integration in Africa have largely limited the use of history as a method to the division of Africa during the colonial era⁵ and also the moulding of colonial economies to suit South–North trade, thus making it difficult to enable deeper and persistent post-colonial intra-African trade.⁶

³ See Margaret Levi, 'A Model, a Method, and a Map: Rational Choice in Comparative and Historical Analysis' (1997), in *Comparative Politics: Rationality, Culture and Structure* (1997), Mark Irving Lichbach and Alan S. Zuckerman (eds.), Cambridge University Press: Cambridge, pp.19–41, p.28.

⁴ See Richard A. Posner, 'The Decline of Law as an Autonomous Discipline: 1962–1987', 100 (4) *Harvard Law Review* (1986), pp.761–780.

⁵ The claim is that the colonial period fostered a sense of a separate identity across Africa that turned its citizens inwards such that they identified themselves with their new post-colonial states. Thus, there was no sense of African unity that could serve as a mental construct for African unification. The assertion in this regard is that the constant cross-border contact of the pre-colonial era that could have been used as a building block for a sense of 'Africanness' leading to unification was lost to the consolidation of parochial, inward-looking identities under the umbrella of the new states: see Dwayne

2.2 Civic Republicanism

Civic republican theory traces its roots to political thought developed by Aristotle. This concept asserts that the good life of the Greek polis revolved around active citizen political participation, albeit by those at the time who were privileged enough to contribute to political discourse.⁷ Civic republicanism does not mean just the good life measured by the right to participate in decision-making – as a concept it is supposed to be instrumental in securing and preserving political liberty and striking a blow against arbitrary rule. Thus, civic republicanism is a tool for constructing a politically healthy polity. It is out of the process of deliberation through political participation that norms emerge and are sustained. Norm entrepreneurs initiate and sustain these norms.⁸

Civic republicanism has several properties. They include the goal of civic virtue, the organic concept of community, and the notion that individuals are socially constructed. According to civic republican theory, civic virtue is not simply a secondary by-product of other, more practical governmental activities: in the civic republican vision, a primary function of government is to shape values and to define virtue, and thereby educate its citizenry to be virtuous. Civic republicans define virtue as the political process of dialogue and ultimate agreement over fundamental collective goals and aspirations.⁹ Civic republicans assert that dialogue among citizens will produce beneficial principles to govern society as political dialogue will produce – and then encourage and cultivate – civic virtue.

Wong, *Challenges in Unifying Africa: The Case of Ghana and Togo* (January 11, 2018), available at <https://www.huffpost.com/entry/challenges-in-unifying-africa>, (last visited November 8, 2019).

⁶ This process developed over centuries and largely through the European domination of world trade. One consequence was that a trade relationship crystallized with Africa (and the rest of the developing world), serving as a reservoir of cheap raw materials for the modern advanced economies: see Walter Rodney, *How Europe Underdeveloped Africa* (1972), Bogle-L'Ouverture Publications: London.

⁷ See Mogens Herman Hansen, *The Tradition of Ancient Greek Democracy and Its Importance for Modern Democracy* (2005), The Royal Danish Academy of Sciences and Letters: Copenhagen, (copy on file with the author), p.20.

⁸ Norm entrepreneurs are the central actors during the first stage in the life cycle of a norm. Ingebritsen points out that they can be individuals, states, or societal actors: see Christine Ingebritsen, 'Norm Entrepreneurs: Scandinavia's Role in World Politics', 37 (1) *Cooperation and Conflict* (2002), pp.11–23.

⁹ See Cass R. Sunstein, 'Interest Groups in American Public Law', 38 (1) *Stanford Law Review* (1985), pp.29–87, p.31.

On the face of it, civic republicanism is a political theory privileging collective, rather than individual, human endeavours in shaping social action. This is because, as noted, in the civic republican scheme, individuals are ‘socially situated or constituted’. In short, the collective social environment inevitably shapes the individuals residing within it. In these circumstances, the community becomes something more than the sum of its parts. The community becomes an organic entity that is entirely distinct from its components (i.e., the individual citizens who live together within the community). Modern-day civic republicans recognize the impossibility of replicating the old republican community of ancient Greece. However, modern civic republicans are still drawn to the old republican model of town-meeting direct democracy as civic republicanism’s one real strength is its personal, face-to-face means of identifying and achieving common goals.

Civic republicanism gained traction in legal scholarship in the 1960s when American law academics identified a relationship between this concept and the struggles of the American founding fathers to constructing a post-colonial political entity in the 18th century. One civic republican moment was when Americans contended with the adoption of a constitution for the new republic. The new country had to decide whether to embrace civic virtue and thus ensure that Americans, in some instances, subordinate their private interests to the overall good of society. It was through this process that the new state would develop collective preferences and beneficial decisions for the public good.¹⁰

Expounding on law and civic republicanism, Bruce Ackerman has asserted that there were three constitutional moments in the US with distinct episodes of civic republicanism. He states that these were the creation of the new republic; the adoption of post-Civil War amendments to the US Constitution; and the New Deal in the 1930s, which was designed to re-order society in the wake of the Great Depression.¹¹ For Ackerman, the first two episodes produced constitutional texts, and the third, the New Deal, resulted in a clash between the popular movement for economic regulation and the Supreme Court’s free market activism, with a seeming triumph for economic regulation. Derrick Bell and Preeta Bansal identify civic republicanism in the right to bear arms under the American Constitution¹² and the civil rights struggles of

¹⁰ Ibid., pp.31–32.

¹¹ See Bruce Ackerman, ‘The Storrs Lectures: Discovering the Constitution’, 93 (6) *Yale Law Journal* (1984), pp.1013–1072.

¹² See David C. Williams, ‘Civic Republicanism and the Citizen Militia: The Terrifying Second Amendment’, 101 (3) *Yale Law Journal* (1991), pp.551–615.

African-Americans.¹³ James Grey Pope has added the so-called Jeffersonian upsurge in US politics,¹⁴ the Jacksonian period under the presidency of Andrew Jackson,¹⁵ and there is also the Populist era of the late 1800s.¹⁶

A current episode of civic republicanism is found in the rise of environmental awareness and activism triggered by Earth Day.¹⁷ Earth Day reflects the process in politics whereby an issue oscillates between periods of dormancy or tepid attention in which there is hardly any public attention and periods during which attention escalates to such a level that the issue receives constant and intense attention from the public. In extraordinary periods, lawmakers find themselves under pressure to align themselves with popular opinion. In this vein, Hope Babcock sees an international dimension to civic republicanism in the growing public agreement across countries that global climate change is a potentially catastrophic problem, to which individuals are contributing through their consumption habits. As a result of climate change, we are giving environmental issues greater salience.¹⁸

During republican moments, voters acquire information about legislative positions, and they also acquire information about the state of the world that may lead to a change in their own expressed preferences. These periods are likely to be attended by new legislative initiatives responding to public demands; such legislation differs from legislation passed in response to the demands of conventional interest groups.¹⁹ This pressure and the results produced seem contrary to standard explanations for

¹³ See Derrick Bell and Preeta Bansal, 'The Republican Revival and Racial Politics', 97 (8) *Yale Law Journal* (1988), pp.1609–1621.

¹⁴ See James Grey Pope, 'Republican Moments: The Role of Direct Popular Power in the American Constitutional Order', 139 (2) *University of Pennsylvania Law Review* (1990), pp.287–368, p.306.

¹⁵ See Harry L Watson, 'Andrew Jackson's Populism', 76 (3) *Tennessee Historical Quarterly* (2017), pp.218–239.

¹⁶ See Adam Slez, *The Making of the Populist Movement: State, Market, and Party on the Western Frontier* (2020), Oxford University Press: New York; and Elisabeth S. Clemens, *The People's Lobby: Organizational Innovation and the Rise of Interest Group Politics in the United States, 1890–1925* (1997), University of Chicago Press: Chicago.

¹⁷ See Adam Rome, 'The Genius of Earth Day', 15 (2) *Environmental History* (2010), pp.194–205.

¹⁸ See Hope M. Babcock, 'Civic Republicanism provides Theoretical Support for Making Individuals More Environmentally Responsible', 23 (2) *Notre Dame Journal of Law Ethics & Public Policy* (2009), pp.515–536.

¹⁹ See Daniel A. Farber, 'Politics and Procedure in Environmental Law', 8 (1) *Journal of Law, Economics, & Organization* (1992), pp.59–81.

political outcomes grounded in collective lobbying by organized interest groups, as described by Mancur Olson in his work on decision-making.²⁰

Scholars researching socio-political developments in South Africa have used the concept of civic republicanism to understand occurrences of community activism and decision-making. Xolela Mangcu has highlighted a republican moment during the anti-apartheid struggle in South Africa concerning the nature of housing policy in poorer black neighbourhoods.²¹ Civic republicanism is noted as enabling the effective functioning of democracy. It provides a beneficial link between decision-makers, on the one hand, and those who are supposed to accept policy made by decision-makers, on the other hand. The anti-apartheid struggle reflected civic republicanism as community activists and organizations educated people living in black neighbourhoods about their rights, and they raised awareness about equality and social justice. The post-apartheid era in South Africa has witnessed an ongoing republican episode in the form of the so-called Nativism movement. Nativism is taking the form of anti-immigrant action crystallizing around competition between South Africans and immigrants for jobs, houses, and transport and the animosity of the native-born people towards immigrants.

On the purpose of associations that promote activism, Mafolo has stated that: ‘ We seek to build a climate congenial to continued reflection and self-examination by the native intelligentsia, asserting itself in the realm of arts and culture, socio-economy, and politics. The South African intelligentsia faces a cardinal responsibility to mobilise the weakest and most vulnerable sections of the society to find their voices, to live up to its historical obligation of developing and sustaining critical consciousness among the people. We see the scientific, literary, and artistic members of our society playing a central role in the regeneration of our young people, in the form of creative writing, poetry, participating in debates and generally contesting ideas’.²² The Arab Spring was also a reflection of civic republicanism as citizens formed new social movements and protested the economic and political challenges they faced due to their respective regimes. These social movements emerged and filled a vacuum across the region because political parties and civil society on the eve of the uprisings were seen as weak. These new Arab social

²⁰ See Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups* (2nd edition, 1971), Harvard University Press: Cambridge.

²¹ See Xolela Mangcu, *The Democratic Moment: South Africa's Prospects under Jacob Zuma* (2009), Jacana Media: Auckland Park, South Africa, pp.225–227.

²² See Sabelo J. Ndlovu-Gatsheni, *Tracking the Historical Roots of Post-Apartheid Citizenship Problems: The Native Club, Restless Natives, Panicking Settlers and the Politics of Nativism in South Africa* (2007), ASC Working Paper No.72, available at <https://scholarlypublications.universiteitleiden.nl/handle/1887/12905> (last visited June 10, 2023).

movements were vital to the uprisings that started in 2010.²³ They exploited the availability of technology to build networks and press for major socio-political reform.²⁴

It should be noted here that civic republicanism is not at odds with economic or political liberalism. While republicanism focuses on the collective good, it still stresses the importance of the role of the individual. As stated above, civic republicanism seeks to promote discourse, due process in public decision-making, and freedom of association – these being examples of the rights liberalism holds dear for individual protection.²⁵ Furthermore, the use of the term ‘civic republicanism’ does not mean that its proponents feel antipathy towards monarchical forms of government. If this was at the heart of civic republicanism, then the minimization of participatory processes in the debates over post-colonial African unification would be understandable as some African countries were monarchies at the time.²⁶ Civic republicans do not propose the elimination of monarchy – they are neither opposed to nor supportive of monarchical governments. Their stress is on shaping public matters through energized public participation and deliberation in relation to socio-political issues.²⁷

As pointed out above, institutions, those formal and informal laws and their enforcement characteristics that shape human relations,²⁸ tend to persist even after the initial conditions that gave rise

²³ See Roel Meijer, *Citizenship Rights and the Arab Uprisings: Towards a New Political Order* (2015), Ministry of Foreign Affairs: The Netherlands, available at <http://www.academia.edu/10333562/> (last visited October 15, 2023); and Reinoud Leenders, ‘Social Movement Theory and the Onset of the Popular Uprising in Syria’, 35 (3) *Arab Studies Quarterly* (2013), pp.273–289.

²⁴ See Halim Rane and Sumra Salem, ‘Social Media, Social Movements and the Diffusion of Ideas in the Arab Uprisings’, 18 (1) *Journal of International Communication* (2012), pp.97–111.

²⁵ See Katrina Loulousis Combs, *The Republican-Liberal Continuum: De-Polarizing the Historiographical Debate* (2010), Thesis presented to the faculty of Olivet Nazarene University in partial fulfilment of the requirements for the degree of Master of Arts in Philosophy of History, available at https://digitalcommons.olivet.edu/cgi/viewcontent.cgi?article=1004&context=hist_maph (last visited June 10, 2023); and Joyce Appleby, *Liberalism and Republicanism in the Historical Imagination* (1992), Harvard University Press: Cambridge.

²⁶ During this period, Burundi, Ethiopia, Libya, Lesotho, Morocco, Rwanda, and Swaziland were monarchies.

²⁷ See Richard Dagger, ‘Communitarianism and Republicanism’, in *Handbook of Political Theory* (2004), in Gerald F. Gaus and Chandran Kukathas (eds.), Sage Publications: Thousand Oaks, California, pp.167–179, p.168.

²⁸ See Douglass North, ‘Institutions’, 5 (1) *Journal of Economic Perspectives* (1991), pp.97–112, p.97.

to the early institutions have changed. This is path dependence, which stresses the role of ‘increasing returns’, especially dynamic increasing returns that develop over time.²⁹ The concept of increasing returns has a number of facets that are relevant to this chapter. Theoreticians of path dependence and increasing returns assert the following about institutions and path dependence: first, there tends to be large set-up or fixed costs when crafting institutions.³⁰ When these costs of reforming or repealing institutions are prohibitive, individuals have good reason to persist with existing institutions. Second, increasing returns to existing institutions has learning effects. The knowledge actors accumulate when running complex systems results in higher returns from their continuing use. Repetitive use of institutions produces experience and thus actors continue to invest in the existing systems. Third, coordination effects that come into play when more actors use the institutions makes them attractive to an increasingly wide set of actors.³¹

The upshot is that path dependence and increasing returns can cement inefficient institutions³² and thus constrain future choices even if those future choices are much more efficient. It is in this vein that Douglass North asserts that there are hardly any revolutions that have upended an institutional order. Any meaningful change that does occur is glacial as existing interests enjoy the political and economic benefits of the institutional matrix. There may be brief periods of violence (heralded as revolutions) when contending social forces find it hard to conduct peaceful major institutional change, but even in such instances, this change is not as revolutionary as assumed. Even if a new social class captures power, it

²⁹ See W. Brian Arthur, ‘Competing Technologies, Increasing Returns, and Lock-in by Historical Events’, 99 (394) *Economic Journal* (1989), pp.116–131, p.116.

³⁰ ‘In order to carry out a market transaction it is necessary to discover who it is that one wishes to deal with, to inform people that one wishes to deal and on what terms, to conduct negotiations leading up to a bargain, to draw up the contract, to undertake the inspection needed to make sure that the terms of the contract are being observed, and so on. These operations are often extremely costly, sufficiently costly at any rate to prevent many transactions that would be carried out in a world in which the pricing system worked without cost’: see R.H. Coase, ‘The Problem of Social Cost’, 3 *Journal of Law and Economics* (1960), pp.1-44, p.15.

³¹ See W. Brian Arthur, *Increasing Returns and Path Dependence in the Economy* (1994), University of Michigan Press: Ann Arbor, Michigan, p.112.

³² *Ibid.*, p.113.

soon reverts to the old institutions it challenged or fashions new ones that bear a considerable resemblance to the discredited and overthrown institutions.³³

For all the profound and robust intellectual endeavours of legal academics on market integration in Africa, there seems to be a lacuna in relation to the use of history to dissect the various treaty systems, their formation, and how history has shaped their respective paths. When history is invoked as a method of study, this tends to be in rather limited circumstances: scholars limit history to the different legal traditions that are born out of colonial history and how these traditions work against the harmonization of different domestic legal orders in sub-regional integration systems.³⁴ As important as this approach to history is, my assertion here is that history and its relationship to law go much deeper and are much broader when researching the failure of African market integration.³⁵

My use of history begins with the assertion in the scholarly literature that the institutions and organizations for colonial governance in Africa were extractive and exclusionary. With the overthrow of colonial rule in mind, the nationalist struggle sought to broaden the political space for Africans by building mass political movements, suggesting that the new political milieu would be a radical break from the constrictive colonial era.³⁶ However, after independence was won, the new African elite reverted to the very authoritarian governance arrangements that they had overthrown. In Africa, therefore, understanding the failure of market integration from the civic republican perspective requires appreciating colonial settlement and rule, and the post-colonial continuity of the narrow space for citizen participation

³³ See Douglass C. North, *The New Institutional Economics and Development* (1993), available at <https://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/4397/9309002.pdf?sequence=1&isAllowed=y> (last visited June 28, 2019), pp.5–7.

³⁴ See Bankole Thompson, ‘Legal Problems of Economic Integration in the West African Sub-Region’, 2 (1) *African Journal of International and Comparative Law* (1990), pp.85–102, p.100; and Muna Ndulo, ‘Harmonisation of Trade Laws in the African Economic Community’, 42 (1) *International and Comparative Law Quarterly* (1993), pp.101–118.

³⁵ See Kofi Oteng Kufuor, *African Unification: Law, Problems and Prospects*, (2016), Carolina Academic Press: Durham, NC, chapter 3; and Kofi Oteng Kufuor, ‘Pathways to African Unification: The Four Riders of the Storm’, 28 (1) *Fundamina: A Journal of Legal History* (2022), pp.103-139.

³⁶ See Miles Larmer, ‘Social Movement Struggles in Africa’, 37 (125) *Review of African Political Economy* (2010), pp.251–262; and Leonard Wantchékon and Omar García-Ponce, *Critical Junctures: Independence Movements and Democracy in Africa* (2017), Working Paper, Princeton University, available at https://omargarciaponce.com/wp-content/uploads/2013/07/critical_junctures_may_2017.pdf (last visited June 10, 2023).

in decision-making. The absence of disruptive discontinuous change as European rule unravelled had implications for regional market integration treaty law. The use of history thus helps to understand the path African market integration has taken and why it has not been so successful.

2.3 The Unification of the United States

After gaining independence in 1783, the former American colonies adopted the Articles of Confederation, followed in 1789 by the present Constitution. The delegates to the conventions that adopted both instruments were disconnected from the mass of the population; rather, they were instructed by their citizens in the quest for union under the Articles of Confederation and then even closer economic and political union under the Constitution. The import of the instructions was that US unification was not a completely personal project of the ruling elite;³⁷ it was also a public process that was driven by the desire of citizens to forge a new nation.³⁸ Instructions were part of the colonies' political heritage, stemming from instructions in local government in England from where they traced their constitutional roots. In England, boroughs used instructions to request legislative action through boroughs' common councils.³⁹ Instructions informed the people of pressing constitutional issues, and common councils, which issued most of the instructions, provided a forum for debating these issues.

³⁷ See Christian David Lear, *Planters, Merchants, and Revolution: Lobbying Power and the Economic Origins of Independence in South Carolina* (2017), available at <https://scholarcommons.sc.edu/etd/4077>, submitted in Partial Fulfilment of the Requirements for the Degree of Master of Arts in History College of Arts and Sciences University of South Carolina (last visited May 25, 2023); and Marc Egnal and Joseph A. Ernst, 'An Economic Interpretation of the American Revolution', 29 (1) *William and Mary Quarterly* (1972), pp.3–32.

³⁸ Before independence, the American colonists drafted several plans for unification: the New England Confederation of 1643 was the first. It was in response to the need for common security and essentially preserved the independence of local governments. The 1660 Commission of the Council for Foreign Plantations was a plan for union devised in Britain. This plan was predicated upon mercantilism for the colonies and enhanced revenue for Britain: see Donald S. Lutz, 'The Articles of Confederation as the Background to the Federal Republic', 20 (1) *Publius: The Journal of Federalism* (1990), pp.55–70, p.58.

³⁹ Common councils were municipal bodies with some legislative functions. They tended to practise a form of direct democracy: see Carl I. Hammer, 'Anatomy of an Oligarchy: The Oxford Town Council in the Fifteenth and Sixteenth Centuries', 18 (1) *Journal of British Studies* (1978), pp.1–27, p.10.

The English system of instructions was replicated in New England and was ‘the constitutional basis for the revolutionary political action’.⁴⁰ Therefore, the instruction system in the American colonies as a means of monitoring and directing delegates’ behaviour at the respective conventions was path dependent. It was rooted in English political forms and was transplanted to the American colonies. Hence, the route towards popular participation was grounded partly in the pre-colonial history of the US. The English settlement in North America produced institutional outcomes that included structures permitting the democratic participation of a small yet growing percentage of the population. The English immigrants to the US came with ideas of liberty and limits on state power, which was not surprising since, by the mid-1500s, the English parliament was asserting itself vis-à-vis the English crown. Starved of money, English monarchs had to raise money through taxation of the population, which required making more and more concessions to parliament.⁴¹ As migrants flocked from England to the colonies, they therefore had a cache of ideas that were shaped by faith in liberty and restraints on state power – ideas that were fostered in the crucible of the Age of Enlightenment and that sprang up in the tailwind of England’s Glorious Revolution.⁴² As a result, democratic space in England’s American possessions was carved out on the back of the imported ideas.

What helped ground early notions of democracy even more deeply in the colonies was the fact that there was a lack of natural resources in the early colonies. This prevented what modern political economists call the resource curse. The lack of natural resources compelled the creation of inclusive political systems. Thus, in 1619, the Virginia colony established a legislative assembly that virtually gave all free adult men a say in the laws governing the colony. Similar developments played out in the colonies of Maryland and Carolina, where the political economy of these two territories made it extremely difficult to compress the settlers into a strict socio-political order with the ruling classes on top and immigrants below them. Therefore, long before the colonies made their push for independence, they had popular

⁴⁰ See Christopher Terranova, ‘The Constitutional Life of Legislative Instructions in America’, 84 (5) *New York University Law Review* (2009), pp.1331–1374.

⁴¹ See Douglass North and Barry Weingast, ‘Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England’, 49 (4) *Journal of Economic History* (1989), pp.803–832, pp.808–810.

⁴² See Daniel Walker Howe, ‘Why the Scottish Enlightenment Was Useful to the Framers of the American Constitution’, 31 (3) *Comparative Studies in Society and History* (1989), pp.572–587; and Alan Tully, ‘The Political Development of the Colonies after the Glorious Revolution’, (2008), in *A Companion to the American Revolution*, Jack P. Greene and J.R. Pole (eds.), Blackwell: Malden, Massachusetts, pp.29–38.

assemblies capable of restraining executive power to some extent, and serving as a vehicle for popular expression.⁴³

Take for instance, the political transformation in the Pennsylvania colony. Pennsylvania was established as a proprietary colony. Proprietary colonies were grants of land in the form of a charter, or a licence to rule for individuals or groups. They were used to settle areas rapidly with English subjects at the proprietors' expense during the costly settlement years. Also, they could be used by the crown to repay a debt to or bestow a favour upon a highly placed person. The proprietary colony was titled in the proprietors' name, not the king's. The proprietors could appoint all officials; create courts, hear appeals, and pardon offenders; make laws and issue decrees; raise and command militia; and establish churches, ports, and towns. Proprietors had the opportunity to recoup their investment by collecting quitrents – annual land fees – from the settlers who had purchased land in these colonies.⁴⁴

However, socio-political currents saw Pennsylvania move from being an entity in which considerable *de jure* power was concentrated in the executive arm of the colony, towards one in which the legislative assembly acquired more power at the expense of the executive. The legislative assembly did this by holding the colony's executive council to account.⁴⁵ Similar developments took place in the New Jersey colony. On the eve of independence, New Jersey had eroded the power of its proprietors and its legislative assembly had gained control of the colony's purse.⁴⁶ This struggle, and, in particular, the legislative assembly's use of its power of the purse to influence the actions of the governor, the council, and the courts, have been recognized as important democratic developments in New Jersey that laid the foundation for its participation in the American Revolution.⁴⁷

⁴³ See Daron Acemoglu and James A. Robinson, *Why Nations Fail: The Origins of Power, Prosperity, and Poverty* (2012), Crown Publishers: New York, pp.31–40.

⁴⁴ See Francesca Ditifeci, 'The Charter of Maryland (1632): A Model of Proprietary Charter', 68 (3) *Politico* (2003), pp.511–522; and Piotr Michalik, 'Charter of Maryland as an Example of Proprietary Colonial Charter', 5 (1) *Central European Journal of Social Sciences and Humanities* (2008), pp.339–360.

⁴⁵ See Chester Raymond Young, 'The Evolution of the Pennsylvania Assembly, 1682–1748', 35 (2) *Pennsylvania History: A Journal of Mid-Atlantic Studies* (1968), pp.147–168.

⁴⁶ See Stephen B. Presser, 'An Introduction to the Legal History of Colonial New Jersey', 7 (2) *Rutgers-Cam Law Journal* (1975), pp.262–344, p.271.

⁴⁷ *Ibid.*, p.294.

Another example of political openness was the instructions issued by the residents of Boston in Massachusetts to their deputies in the state colonial legislature on a range of topics, such as education, morality, and taxation.⁴⁸ Massachusetts citizens also issued instructions to state delegates during the drafting of the US Constitution. Massachusetts had a record of instructions to state delegates going back to the 1600s, such that, by the 1700s, the instructions system was construed as a right in Massachusetts under common law. Thus, Massachusetts' delegates were reminded that instructions were at least *de facto* binding and that there would be political consequences for delegates if they failed to adhere to the instructions.⁴⁹

Therefore, across the colonies, on the eve of the Revolutionary War in 1776, and at the state and trans-state levels, there was a groundswell of political participation and political accountability. The colonies had managed to forge a system in which they had elected representatives in their respective legislative assemblies, assemblies that had evolved over more than a century in the direction of empowering an increasing number of constituents.⁵⁰

Instructions thrived in the colonies partly because of the power of the towns and cities. For example, when the most significant decision of the colonial era was before the Massachusetts legislature – whether to declare independence from England – the legislature asked the towns for instructions. The towns and cities had the power to say no and hence, it was through popular affirmation that, in a town-based referendum, Massachusetts deputies favoured independence. Popular ratification solidified their determination to fight for independence, just as it would later ensure the legitimacy of the US Constitution.

Taverns in colonial cities and towns were venues in which to meet like-minded individuals and thus they functioned as clearing houses and test beds of revolutionary ideas. As the colonies took shape, taverns became central locations for several aspects of colonial life. They were 'utilized as meeting places for assemblies and courts' and became a central location for discussion. In taverns across the colonies, literate patriots read the news of the day aloud to their fellow revellers, thereby further stoking revolutionary fervour. The taverns were also a place to bring news from other colonies, and promulgate

⁴⁸ See Kris W. Kobach, 'May "We the People" Speak? The Forgotten Role of Constituent Instructions in Amending the Constitution', 33 (1) *University of California Davis Law Review* (1999), pp.1–94, pp.28–29.

⁴⁹ *Ibid.*, p.60.

⁵⁰ See Salvatore Colleluori, *The Colonial Tavern, Crucible of the American Revolution* (2015), available at <https://warontherocks.com/2015/04/the-colonial-tavern-crucible-of-the-american-revolution/> (last visited July 18, 2019).

ideas from leading patriots, like Thomas Paine, James Chalmers, and Thomas Jefferson.⁵¹ Not surprisingly, as anger and discontent about British rule spread throughout the colonies, many colonial subjects took to the taverns to discuss, argue, and debate the way forward.⁵² This tavern culture was part of a larger movement in which members of every social class were increasingly 'making choices and voicing opinions in the new consumer marketplace of the eighteenth century'.⁵³

Unification of the US under the 1789 Constitution was essential to overcome one of the quandaries under the Articles of Confederation: despite having achieved independence, the US was still not a single market as local governments refused to dismantle local commercial regulations that stifled intra-Confederation commerce. The state governments under the Articles of Confederation did not hesitate to frustrate exports from other states within the Confederation through the imposition of tariffs and taxes.⁵⁴ This development was contrary to the expected post-independence benefits of a single

⁵¹ Michael M. Kiley, 'Thomas Paine: American Founder and Political Scientist', 8 (1) *Biography* (1985), pp.51–67.

⁵² See Colleluori, *The Colonial Tavern, Crucible of the American Revolution*, *supra*.

⁵³ See Baylen J. Linnekin, 'Tavern Talk and the Origins of the Assembly Clause: Tracing the First Amendment's Assembly Clause Back to Its Roots in Colonial Taverns', 39 (3) *Hastings Constitutional Law Quarterly* (2012), pp.593–628, pp.601–602.

⁵⁴ The significance of this was highlighted in the case of *EEOC v. Wyoming*, in which the court, underscoring the problem of barriers to domestic trade, noted the origin and purpose of the Commerce Clause of the Constitution in these words by J. Stevens:

"If any liberties may be held more basic than others, they are the great and indispensable democratic freedoms secured by the First Amendment. But it was not to assure them that the Constitution was framed and adopted. Only later were they added, by popular demand. It was rather to secure freedom of trade, to break down the barriers to its free flow, that the Annapolis Convention was called, only to adjourn with a view to Philadelphia. Thus the generating source of the Constitution lay in the rising volume of restraints upon commerce which the Confederation could not check. These were the proximate cause of our national existence down to today.

"As evils are wont to do, they dictated the character and scope of their own remedy. This lay specifically in the commerce clause. No prohibition of trade barriers as among the states could have been effective of its own force or by trade agreements. It had become apparent that such treaties were too difficult to negotiate and the process of securing them was too complex for this method to give the needed relief.

market. The smaller states of the new country had anticipated immense benefits from the Confederation, with the expected deregulation of national trade and creation of a customs union. However, interstate tariff and non-tariff barriers emerged due to the cost of the Revolutionary War and the need of the new country to pay off war debts. In the absence of a strong central government charged with this responsibility, individual states of the Confederation adopted protectionist measures to raise revenue. These measures included imposing border tariffs in general, and protecting their domestic manufacturers with tariffs targeting those goods that local industries could already manufacture or had the emerging potential to do so.

The consequence of protectionism under the Articles of Confederation was an increasing escalation of trade conflicts, with economically powerful and strategically situated states such as New York and Massachusetts exploiting this and punishing commerce with discriminatory duties against neighbouring states' traffic at their ports. Moreover, even goods not manufactured in the Confederation, once imported, faced barriers when crossing the state lines. Therefore, states with fewer geographical advantages resented the bite that port states took from commerce.

The escalating trade wars within the new country resulted, in some instances, in overt discrimination by one state against goods produced in or re-exported from a neighbouring state. It was patently obvious then that 'the centrifugal, contentious economic interests rising among the states' posed a threat to the survival of the new nation. This difficulty convinced decision-makers that the problem resided in the Articles of Confederation and the view that the survival of the union necessitated substantial changes to the constitutional regime. Thus, for states such as Connecticut and New Jersey, a compelling motive for ratifying the Constitution was what one author referred to as 'the ambition and rapacity' of New York.⁵⁵

Power adequate to make and enforce the prohibition was required. Hence, the necessity for creating an entirely new scheme of government.

"So by a stroke as bold as it proved successful, they founded a nation, although they had set out only to find a way to reduce trade restrictions. So also, they solved the particular problem causative of their historic action, by introducing the commerce clause in the new structure of power (Stevens, J., concurring) *EEOC v. Wyoming*, 460 U.S., (1983) p.226, pp.244–245.

⁵⁵ During the debates at the Connecticut Ratification Convention in 1788, Oliver Ellsworth noted that:

'Union is necessary to preserve commutative justice between the states. If divided, what is to hinder the large states from oppressing the small? What is to defend us from the ambition and rapacity of New York, when she has spread over the vast territory which she claims and holds? Do we not already see in

The move beyond the Articles of Confederation towards a stronger union was also shaped by instructions as the component states of the Confederation instructed their delegates to recommend a general convention and, later, when they sent delegates to the Philadelphia Constitutional Convention,⁵⁶ they made sure to instruct their delegates regarding which changes to support and which to prevent. The deliberations in the Convention were not open to the public⁵⁷ but this did not dilute the feedback from the delegates to their respective states. Thus, for example, Delaware's delegates were instructed to reject any changes to the equal numerical representation between the states.⁵⁸ Taking instructions like these seriously, some members left in the middle of the convention "because they felt that their instructions did not warrant them countenancing the direction of the convention".⁵⁹ So effective was local control over delegates to the convention that on the eve of the adoption of the new Constitution, James Madison, one of the foremost participants in the move from the Articles of Confederation to the Constitution,⁶⁰ noted

her the seeds of an overbearing ambition? On our other side there is a large and powerful state Massachusetts. Have we not already begun to be tributaries? If we do not improve the present critical time, if we do not unite shall we not be like Issachar of old, a strong ass crouching down between the burdens? New Jersey and Delaware have seen this and have adopted the Constitution unanimously.'

See Oliver Ellsworth's *Speech at the Connecticut Ratification Convention* (January 4, 1788), available at <https://www.consource.org/document/oliver-ellsworths-speech-at-the-connecticut-ratification-convention-1788-1-4/> (last visited March 11, 2023).

⁵⁶ This Convention took place in 1787 and resulted in the drafting of the US Constitution although this was not the Convention's original purpose.

⁵⁷ See Abigail K. Woodruff, *The Unintended Consequences of Increased Transparency in American National Government*, (2010). CMC Senior Theses, paper 84 available at https://scholarship.claremont.edu/cgi/viewcontent.cgi?article=1085&context=cmc_theses (last visited October 16, 2023). Shielding deliberations from the public was to appease the powerful constituencies. Allowing the public to intrude on the decision-making might have had a negative impact on the deliberative process, and therefore the founders believed the proceedings should remain confidential. In the latter case, their constituencies might condemn them for not adhering to their preferences, or they might reject the new constitution outright, pp.4-5.

⁵⁸ See Terranova, 'The Constitutional Life of Legislative Instructions in America', *supra*, p.1340.

⁵⁹ *Ibid.*, pp.1340-1341.

⁶⁰ See Colleen Sheehan, *James Madison: the Father of the Constitution* (2013), available at <https://www.heritage.org/political-process/report/james-madison-father-the-constitution> (last visited August 2, 2019).

that '[a] spirit of locality' characterized state legislatures and stated that this 'evil' was 'inseparable' from the fact that legislators were chosen by small towns or counties.⁶¹ Therefore the Constitution was a limp document until the voice of the people energized it through the respective state conventions.

It seems plain that post-colonial unification of the 13 American colonies and the subsequent single market were made possible by, inter alia, the fact that right from the early measures to craft a unified market, state delegates were shaped and controlled by domestic democratic forces as delegates were tethered to local constituencies and this constrained any personal and capricious claims in the process. While this view does not exclude the rents to be reaped by elite interests from a stronger union,⁶² it does remind scholars of integration that more durable market integration stems from civic deliberation that is channelled into the decision-making process.

2.4 Post-colonial African Unification

As previously noted, Edward Blyden gave birth to the concept of pan-Africanism and African unification.⁶³ Writing in the late 19th century, Blyden developed arguments about the importance and ultimate feasibility first of West African unification, and then of African unification. He identified a variety of actors at the heart of his proposed unification process; churches, mosques, institutions of learning, and newspapers were all expected to construct his pan-African edifice from the bottom up. He saw the importance of national leaders cementing the superstate he argued for, but he fully appreciated that this should be anchored in the creation of an African civil society of sorts that was enthusiastic about unification.⁶⁴

Blyden's intellectual heirs, such as Joseph Casely Hayford, appreciated this approach. Casely Hayford was instrumental in forming the National Congress of British West Africa (NCBWA). This organization functioned as a place where businessmen and other elites converged and developed plans to expand on commercial opportunities across Britain's colonies. The ultimate commercial aim was to secure fairer treatment for colonial native businesses at the hands of the colonial authorities.⁶⁵ However,

⁶¹ See Terranova, 'The Constitutional Life of Legislative Instructions in America', *supra*, p.1345.

⁶² Probably the best exposition of this is Charles A. Beard, *An Economic Interpretation of the Constitution of the United States* (1913), MacMillan: New York.

⁶³ See Lynch, *Edward W. Blyden, 1832 – 1912 and Pan-Negro Nationalism*, *supra*.

⁶⁴ See 'Edward W. Blyden', 5 (1) *Journal of African History* (1964), pp.73–86; and James Conyers, 'Edward Wilmot Blyden and the African Personality: A Discourse on African Cultural Identity', in *Racial Structure and Radical Politics in the African Diaspora Vol.3* (2017), James Conyers (ed.), Routledge: London, pp.143–160.

⁶⁵ The Constitution of the National Congress of British West Africa, 1923, states:

the NCBWA also planned the social and political direction of Britain's colonies, with a particular stress on political participation by African representatives in colonial legislative assemblies. Thus, through its structure and congresses, the NCBWA bore the sheen of the deliberative essence of a civic republican approach to the concept of pan-Africanism.⁶⁶ Edward Blyden's project has never been fully realized. There is yet to be a unified African state and there is also no strong post-colonial African as powerful and authoritative as the EU. With regard to a strong organization after independence, the new states argued over the strength of the new body. The arguments marshalled to explain the failure of what became the OAU are extended also to the ultimately flaccid regional organizations that sprouted up across Africa in the 1960s and 1970s.

Explanations for the woeful performance of economic integration are varied: from the economic point of view is the assertion that African economies are so similar and therefore unification of the continent is superfluous.⁶⁷ If only Africa had a balance of agrarian, industrial, and service economies, this would promote intra-African trade on the back of comparative advantage and specialization and would provide the economic base upon which to erect a robust regional political superstructure. The significance of this perspective is derives from the interpretation of European unification by scholars who see Europe's strong governance structures as grounded in its need to govern the dense volume of goods, services, and capital that are traded daily across Europe's borders. This is the explanation of the internationalization of capital as it applies to European unification.⁶⁸ A related explanation lies in the

'That among the objects of the Congress shall be the promotion of the common interests of the British West African Dependencies politically, economically, socially, and otherwise; and to promote and effect unity of purpose and of action among them; to establish Universities, Colleges, Academies and Schools for the racial education and culture of the people; to promote commercial and industrial intercourse of the people and to work for better conditions generally in all British West Africa'.

Available, in part, at <http://www.swarthmore.edu/SocSci/tburke1/8bsyllabus/nationalism.htm> (last visited April 8, 2021), para 18.

⁶⁶ See Akintola J.G. Wyse, 'The Sierra Leone Branch of the National Congress of British West Africa, 1918–1946', 18 (4) *International Journal of African Historical Studies* (1985), pp.675–698; and J. Ayodele Langley, 'The Gambia Section of the National Congress of British West Africa', 39 (4) *Journal of the International African Institute* (1969), pp.382–395.

⁶⁷ For instance, with regard to trade within the ECOWAS, see Karim Karaki and Elke Verhaeghe, *Understanding ECOWAS Trade Policy and Trade Facilitation: Advancing Economic Integration One Hurdle at a Time* (2015), available at <https://ecdpm.org> (last visited April 8, 2021).

⁶⁸ See Mark Thatcher, 'Supranational Neo-Liberalization: The EU's Regulatory Model of Economic Markets' (2013), in *Resilient Liberalism in Europe's Political Economy*, Vivien A. Schmidt and Mark

assertion by Edward Mansfield and Helen Milner that because of the breath-taking technological developments of the 1800s, what was virtually the European single market existed long before the EU proclaimed its formal creation in 1993⁶⁹ under the Single European Act.⁷⁰ This explanation by Mansfield and Milner is based on industrialized Britain, France, and Germany exchanging manufactured goods with Europe's agrarian economies.⁷¹

Political arguments run from the sheer lack of political will on the part of African governments to surrender state sovereignty to the recent addition that the durability of state sovereignty is the product of the process of decolonization.⁷² The hypothesis underlying the latter is that decolonization in Africa was not violent enough to destroy the entrenched domestic lobbies that benefit from the protection granted to them by the state in the exercise of its sovereign power. Thus, the new post-colonial elites inherited the colonial state infrastructure, and they were happy to keep these arrangements in place as they enjoyed the rents that the European elites had enjoyed during the era of empire. There is also the claim that the various sub-regional organizations compete with the AU. They are efficient at providing public goods – even more efficient than the AU (and the OAU before it). These organizations are also durable. These two factors make them valuable to their members in their respective sub-regions and valuable to the actors that staff the organizations. Hence, merging bodies such as the Southern African Development Community (SADC) and ECOWAS into a single African body is difficult, if not impossible, to achieve.⁷³

Thatcher (eds.), Cambridge University Press: Cambridge, chapter 6; and Christoph Hermann, 'Neoliberalism in the European Union' 79 (1), *Studies in Political Economy* (2007), pp.61-90.

⁶⁹ See *The European Single Market*, available at <http://ec.europa.eu/growth/single-market/> (last visited July 6, 2019).

⁷⁰ See Single European Act (1993), available at <https://eur-lex.europa.eu/legal-content> (last visited July 6, 2019).

⁷¹ See Edward D. Mansfield and Helen V. Milner, 'The New Wave of Regionalism(s)', 53 (3) *International Organization* (1999), pp.589–627, p.596.

⁷² See Kufuor, generally, *African Unification: Law, Problems and Prospects*, *supra*.

⁷³ *Ibid.*

There is also the view that the EU, an organization held up as the ideal type for African unification,⁷⁴ was born out of circumstances that evolved over almost a thousand years of European history and that the forces that shaped this process are not present in Africa. As a result, the sudden replication of an EU-style organization in Africa is virtually impossible.⁷⁵ The post-Second World War ideological and political interests of the US were vital to the creation of the EU. The US had to constrain historic tensions between France and Germany,⁷⁶ tensions that contributed to the turbulence in Europe in the form of two world wars. One of the measures adopted in order to prevent another major European war was the placement of coal and steel deposits in Europe under a supranational body.⁷⁷ This political-military goal was enunciated in the Schuman Declaration and the consequent creation of structures that have developed into the EU.⁷⁸ African conflicts, while influenced to some extent by the ideological clashes between the US and the then Union of Soviet Socialist Republics (USSR), did not pose a serious

⁷⁴ This enthusiasm for the EU is evident in the proposals to revise the 1975 ECOWAS Treaty: see ECOWAS, *Review of the ECOWAS Treaty: Final Report by the Committee of Eminent Persons* (1992), ECOWAS: Lagos (copy on file with the author).

⁷⁵ Ibid.

⁷⁶ See Paul R. Hensel, 'The Evolution of the Franco-German Rivalry', in *Great Power Rivalries* (1988), William R. Thompson (ed.), University of South Carolina Press: Columbia, South Carolina, pp.86–121.

⁷⁷ See Henry L. Mason, *The European Coal and Steel Community: Experiment in Supranationalism* (2013), Springer: Dordrecht. The fact that coal and steel were the first sectors to be incorporated in a treaty and a supranational organization demonstrates their importance for a country's economy and military power. Coal and steel had provided the military capability for both France and Germany to invade each other to gain direct access to Alsace-Lorraine, endowed with iron deposits, and the Saar, enriched with coal. Coal and steel were the building blocks of both France and Germany's industry. Their cooperation in this field would have gradually eliminated excessive wastes by breaking down cartels that were usually created. Hence, industrial development and production would have been boosted, making it more efficient. Moreover, from the French point of view, German power, which established its industrial dominion upon the Ruhr, would have been contained through the creation of a supranational coal and steel industry. Hence, disputes over Alsace-Lorraine – a region whose coal reserves had been contended by both France and Germany – would have been limited, if not eliminated. Finally, European leaders were convinced of the fact that Germany would have relied more on trade with other European countries to further support its economic reconstruction, while French fears of an invasion or German dominion could disappear: see Isabel Cavalli, *From Coal and Steel Community to Eurozone: An Imperfect Economic Integration* (2019), Master's Degree Programme Final Thesis, available at <http://dspace.unive.it/handle/10579/14139?show=full> (last visited June 11, 2023), p.8, fns 6 and 8.

⁷⁸ See *Schuman Declaration* (1950), available at https://europa.eu/european-union/about-eu/symbols/europe-day/schuman-declaration_en (last visited June 28, 2019).

enough threat to US interests (or USSR interests) to warrant the US insisting on discipline in the form of a regional organization similar to the EU.⁷⁹

What this chapter seeks to do is try to expand the set of interpretations for the weak, in some instances moribund, regional bodies such as the Arab Maghreb Union (AMU)⁸⁰ across Africa with lessons for the AfCFTA. A plausible explanation that is left out of the range of assigned reasons for weak African economic integration bodies is that the unfettered power of post-colonial African leaders put durable and meaningful economic integration beyond the reach of popular accountability. The call for economic integration in Africa coincided with the rise of the authoritarian state after the end of European colonial rule. One outcome of authoritarian rule was the exclusion of the interests Edward Blyden claimed were essential for merging African states. In the absence of citizen control and accountability, post-colonial African leaders found themselves unrestrained in their power to create, shuffle, and dissolve regional bodies in Africa with very little regard for their citizens.

Their sweeping discretion is reflected in the numerous sub-regional arrangements relating to the major debates over the direction of regional integration during the period. Moreover, though a number of other economic and political factors explain the cycle of organization creation, change, and dissolution, scholars have noted that one major factor is the issue of tensions and disagreements between African leaders. These strains and the fact that regionalism was monopolized by heads of state meant that regional bodies were extremely brittle. Several examples illuminate this point.

The Organization of Senegal River States (OERS) was established in 1968. Its objectives were broad, going beyond its primary riparian plans to include the harmonization of plans for agriculture and stock-raising; education, training, and information; public health; industrial development; transportation

⁷⁹ See Bruce Carolan, 'The Birth of the European Union: US and UK Roles in the Creation of a Unified European Community', 16 (1) *Tulsa Journal of Comparative and International Law* (2008), pp.51–65, pp.56–57.

⁸⁰ See Bjørn Møller, *Africa's Sub-regional Organisations: Seamless Web or Patchwork?*, Crisis States Research Centre Working Paper, No. 56, (2009), available at <https://eprints.lse.ac.uk/28486/1/WP56.2MollerRO.pdf> (last visited June 11, 2023), pp.16–17. The weakest of all the designated RECs at this time is most probably the AMU: see Hatice Rumeysa Dursun, 'Understanding the Failure of the Arab Maghreb Union: A Critical Constructivist Account', 10 (2) *Journal of History Culture and Art Research*, (2021), pp.26–38. Dominated by Algeria and Morocco with their approximately equal strength, and because these two countries are each other's foes, it is not strange that the AMU has underperformed, bordering on complete insignificance. However, there has been some activity in the wake of the Arab Spring: see Mette Eilstrup-Sangiovanni, 'Death of International Organizations: The Organizational Ecology of Intergovernmental Organizations', 1815–2015', 15 (2) *Review of International Organizations* (2020), pp.339–370.

and telecommunications; commercial exchanges; judicial cooperation; and civil and commercial legislation.⁸¹ Furthermore, the OERS members were charged with the promotion and realization of African unity, with two of its four members, Senegal and Guinea, going as far as expressing the view that the OERS was a unique confederation and must end up as a unitary single state.⁸²

However, the OERS floundered as a result of the mutual suspicions that developed between Senegal and Guinea in the wake of the November 1970 attempt to overthrow the government of Guinea. Accusing Senegal of harbouring insurgents, President Sékou Touré of Guinea refused to attend the conference of OERS heads of state in 1971 and failed to send representatives to attend meetings throughout the rest of the year. In 1972, the heads of state of Mauritania, Senegal, and Mali denounced the convention of Labe that had created the OERS.⁸³ This consequence was that the OERS was dissolved when Guinea withdrew, and the three remaining countries subsequently created the Senegal River Basin Development Authority.

Another organization that collapsed on account of disagreements between political rulers was the Senegambia Confederation. Established in 1982, the Confederation was greeted with considerable euphoria in the contracting countries – Gambia and Senegal. The Gambian President Dawda Jawara praised the agreement as a major step in the movement towards continental unity in Africa and, on his part, the Senegalese President Abdou Diouf stated that ‘[a]round the world, everyone knows that but for the vicissitudes of colonial history, we, Senegalese and Gambians, would today be citizens of one and the same state, for in every respect, we constitute a single people with the same destiny and with identical aspirations’.⁸⁴ Thus, the Senegambia Confederation was a piecemeal reflection of African unification.

On September 30, 1989, the Confederation ended – seven and a half years after it had begun. Its goals of policy integration in various areas and the establishment of an institutional framework for the gradual realization of the stipulated goals were far from achieved. The collapse of the Senegambia Confederation was traced to the personal disputes between the presidents of the two units over the rule

⁸¹ An account of its functions can be found in Ronald Bornstein, ‘The Organisation of Senegal River States’, 10 (2) *Journal of Modern African Studies* (1972), pp.267–283, pp.267–269.

⁸² See David G. LeMarquand, *International Development of the Senegal River* (1982), a thesis submitted to Oxford University for the degree of Doctor of Philosophy, available at <https://ora.ox.ac.uk> (last visited October 19, 2023), p.121.

⁸³ *Ibid.*, chapter 5.

⁸⁴ See Philip C. Aka, ‘The Continued Search for Appropriate Structures for Governance and Development in Africa in the 21st Century: The Senegambia Confederation in Historical and Comparative Perspective’, 47 (2) *California Western International Law Journal* (2017), pp.109–156, p.135.

that the president of the Gambia was permanently the vice-president of the Confederation. This caused the Senegalese president to denounce the Confederation as a drain on Senegal's resources and in 1989 the Confederation was dissolved.⁸⁵

The EAC was established in 1967 and collapsed in 1977.⁸⁶ A number of factors explain the end of the EAC and one of them is the unconstrained power of the heads of state of its members. With very little semblance of democratic accountability,⁸⁷ and in the absence of a domestic integration civil society to consistently encourage enthusiasm for the EAC project, the relationships between the heads of state were an essential variable in ensuring EAC efficiency and continuing success. Thus, with the coup d'état in Uganda in 1971 that removed the Milton Obote regime and replaced it with the Idi Amin-led junta, the relationships between the heads of state were upset. Julius Nyerere of Tanzania refused to recognize the Amin administration⁸⁸ and, in the wake of this decision, he refused to convene the East African Authority – the EAC's highest decision-making body. In the absence of an effective coordinating paramount body, it was virtually impossible to approve the EAC budget and this contributed to the shattering of organizational cohesion. The decline in solidarity and cooperation was further reflected in the closure of the Tanzania–Uganda border, the suspension of commercial flights by East African Airways, and border conflicts between the two members. The fact that hostile military engagements took place between two partner states unquestionably complicated the EAC's efforts to work towards its goals and thus raised questions about institutional legitimacy.⁸⁹

The failure to anchor their trade relations in the domestic level and thus involve their citizens in decision-making also explains the following causes of the instability of the regional bodies: African regional organizations were created with the intention of projecting the personal power of leaders who advocated for their creation. If a leader was unable to control a regional body he had advocated for, it was

⁸⁵ See Edmun B. Richmond, 'Senegambia and the Confederation: History, Expectations, and Disillusions', 10 (2) *Journal of Third World Studies* (1993), pp.172–194, p.184.

⁸⁶ See Arthur Hazlewood, 'The End of the East African Community: What Are the Lessons for Regional Integration Schemes?', 18 (1) *Journal of Common Market Studies* (1979), pp.40–58.

⁸⁷ Soon after independence in the 1960s, all three members of the UAS became authoritarian states as they banned all opposition political parties.

⁸⁸ See Kofi Oteng Kufuor, 'The OAU and the Recognition of Governments in Africa: Analyzing Its Practice and Proposals for the Future', 17 (2) *American University International Law Review* (2001), pp.369–401.

⁸⁹ See John Mgaya, A sub-thesis submitted in partial fulfilment of the requirements for the degree of Master of Arts (International Relations) in the Department of International Relations, Research School of Pacific Studies, (1986) The Australian National University, pp.91–95.

not surprising to see his government adopt a lax attitude towards its progress or pull out completely. Second, the near feudal regional order made decisions that reflected the personal relationships among heads of state and not any carefully constructed, bottom-up consensus on regional integration. Third, mindful of the benefits of integration, these leaders looked for like-minded allies as they scrambled for influence in their respective regions, the inevitable result being the establishment of multiple organizations that were superfluous⁹⁰ and imposed financial costs that a lot of members found hard to shoulder.⁹¹

I noted above that US unification was partly enabled by instructions from the respective colonies. As stressed, the colonial elite considered the preferences formed by ordinary citizens in the taverns, legislative assemblies, and other forums. This was not the case across colonial Africa as its legislative assemblies in this era offered little space for the control of executive power. A constant feature of African colonial legislative bodies was that they were part of the array of extractive institutions at the time. European powers created so-called extractive institutions to govern Africa. Extractive institutions are institutions that enable a small group of individuals with power and influence to exploit the mass of the population. Inclusive institutions are the opposite of extractive ones. They are designed to draw as many people into the process of government to minimize, if not completely eliminate, exploitation.⁹²

Africa's extractive institutions were the consequence of the difficulty Europeans faced in settling long-term in most parts of Africa and developing a stake in their various colonies. European extractive institutions did not introduce much protection for private property, nor did they provide checks and balances against government expropriation. In fact, the main purpose of the extractive state was to transfer as much of the resources of the colony to the colonizer, with the minimum amount of investment possible.⁹³ Not surprisingly then, African colonial legislative assemblies were created to further the

⁹⁰ See Benedikt Franke, 'Competing Regionalisms in Africa', 9 (3) *African Studies Quarterly* (2007), pp.31–64.

⁹¹ See Muhabie Mekonnen Mengistu, 'Multiplicity of African Regional Economic Communities and Overlapping Memberships: A Challenge for African Integration', 3 (5) *International Journal of Economics, Finance and Management Sciences* (2015), pp.417–425.

⁹² See Acemoglu and Robinson, *Why Nations Fail: The Origins of Power, Prosperity, and Poverty*, supra, chapter 3.

⁹³ See Daron Acemoglu, Simon Johnson, and James A. Robinson, *The Colonial Origins of Comparative Development* (2000), Massachusetts Institute of Technology Department of Economics Working Paper No. 00-22, pp.6–9, available at <https://www.aeaweb.org/articles?id=10.1257/aer.91.5.1369>, (last visited June 10, 2023).

colonial extractive mission. While they did progressively include African members, until the eve of decolonization, the composition, power, and functions of the legislative bodies were determined by the colonial administration within the respective colonial territories and these bodies were limited largely to deliberative and advisory roles. Furthermore, the colonial governor had the power to veto any legislation that the legislative assemblies passed.⁹⁴

Decolonization in Africa never really changed the colonial state. With the unravelling of European rule in Africa, the new states and their constitutions soon mimicked the colonial constitutional order, with its powerful executive and docile legislative bodies. The departing colonial authorities had insisted on liberal constitutional orders as the bedrock of the post-colonial constitutions. These constitutions were the product of bargains between African nationalist elites and the colonial powers.⁹⁵ However, as these agreements, with their constraints on executive power, reflected elite preferences with little civic engagement in regional integration, they were easy to dismantle on the grounds that the new states needed constitutions tailored to their particular social and economic circumstances. Thus, swiftly, most independent African entities re-embraced their colonial past by revising their political arrangements to adopt new constitutions that allowed the executive arm of government sweeping powers in the name of state-building. In a number of instances, military regimes completely did away with constitutions and even when there was a return to civilian rule, these new systems tended to be rather fragile as the cycle of authoritarian rule re-emerged over time and, in this setting, there was virtually no link between rulers and their citizens, such that the former were free to do what they liked. A casualty of this was the regional economic orders that they had created.

2.5 Spanish American Unification

To reinforce the importance of domestic institutions for controlling the tendency of governments to abandon their market integration commitments, I examine the failure of post-colonial Spanish America

⁹⁴ Thus, the pre-First World War forums for gathering local views and opinions under the British policy of Indirect Rule were not designed to be, and did not function as, legislatures. The first of these Legislative Councils were established in the Gold Coast in 1850 and Sierra Leone in 1863 as essentially advisory bodies. Real legislative and executive powers lay with the colonial governors. The Nigerian Council established in 1913 also had legislative powers and was a merely advisory body. Similar bodies were set up in Kenya (1906) and the Gambia (1888). In the French territories, a similar narrow framework existed that constrained meaningful participation by colonial citizens: see Mojeed Olujinmi A. Alabi, 'The Legislatures in Africa: A Trajectory of Weakness', 3 (5) *African Journal of Political Science and International Relations* (2009), pp.233–241.

⁹⁵ See Victor T. Le Vine, 'The Fall and Rise of Constitutionalism in West Africa', 35 (2) *Journal of Modern African Studies* (1997), pp.181–206.

to unite into a single entity as hoped for during its wars of independence against Spain in the 19th century. Spanish America developed institutions similar to African institutions in their common inability to constrain post-colonial elites. This development in Spanish America was the result of the path of colonial settlement and how this path shaped efforts to achieve integration among Spain's former colonies.

Meaningful measures to create a trans-regional post-colonial space across Spanish America began with Simón Bolívar. He proposed the merging of Spain's South American colonies into a single political unit. He described the relationship between Spain and its South American colonies as one in which Spain had suppressed agriculture, industry, and commerce. Moreover, Spain had erected inter-colony barriers that stunted any meaningful commercial exchange.⁹⁶ Bolívar therefore sought to break down these barriers by creating a single market in the form of a union of these territories: this was Gran Colombia, comprising modern-day Venezuela, Colombia, Panama, Ecuador, and parts of Brazil, Guyana and Peru. He hoped to expand Gran Colombia to include all of later to incorporate modern-day Peru and Bolivia and thus forming a Confederation of the Andes.⁹⁷ In Bolívar's view, regional unity was an absolute necessity for the future of Spanish South America. While his immediate focus was on the collective military organization of the colonies through a continental army to repel any attempt by Spain to retake its possessions, this proposal was an integral part of unification, which, *inter alia*, would remove trade barriers and foster unity. Gran Colombia would therefore also enable peace in post-colonial Spanish America. Most probably, Bolívar also saw how a single monetary and customs union would be beneficial compared to multiple post-colonial states, each with its trade policy being carried over from Spanish rule.

Gran Colombia failed and was dissolved in 1831. However, its collapse was not an isolated case – it was an indicator of how post-colonial Spanish American unification efforts would rise and fall. Like African unification, the landscape of post-colonial Spanish America is dotted with failed attempts at collective action aimed at economic and political union. According to one observer, there were around 50 attempts at unification between 1820 and 1870 across Spanish America, but these never produced

⁹⁶ See Simón Bolívar, 'Letter from Jamaica', (1815), available at <https://library.brown.edu/create/modernlatinamerica/chapters/chapter-2-the-colonial-foundations/primary-documents-with-accompanying-discussion-questions/document-2-simon-bolivar-letter-from-jamaica-september-6-1815/> (last visited May 9, 2023).

⁹⁷ See Gordon Mace, 'Regional Integration in Latin America: A Long and Winding Road', 43 (3) *International Journal* (1988), pp.404–427, p.404.

workable frameworks for unity.⁹⁸ The ruling classes across the region, unconstrained by their citizens, constructed and demolished a variety of unions depending on their political and economic caprices.

The lack of room for civic engagement in colonial and post-colonial Latin America at independence is traced to absolutism in Spain. This political setting arose from the conditions the Spanish settlers found themselves in and the fact that Spanish America was ideal grounds in which to transplant absolutism from Spain. With vast quantities of precious minerals under its control, the Spain devised a system of rule that protected elite privilege while suppressing natives, the slaves imported from Africa, and the mass of poor immigrants from Spain. Thus, this political order excluded the mass of the people from participating in government.⁹⁹ The King of Spain exercised not only sovereignty over his colonies, but property rights as well. He was an absolute ruler; every economic, political, and religious position depended on his will. The transplanting of Spanish institutions helped consolidate absolutism by diluting the power of any local representative institutions that emerged during the colonial era.

In contradistinction to US unification, which was enabled by a relatively more robust participatory tradition birthed in England (and in the Netherlands),¹⁰⁰ the crown in Spain, on the eve of its colonial adventure, had eroded civic participation. Thus, and as we have stated above, while in the US, cities and towns provided instructions to the delegates to the respective Congresses, cities and towns in Spanish America served no such role, having been neutered by the Spanish monarchs prior to Spain's colonial venture. Up to the 13th century in Spain, the *cabildos* (the town councils) had acquired considerable prerogatives, granted to them by the Spanish monarchs and nobility. Moreover, there was an appearance of independence and democracy in these bodies as membership of a *cabildo* was based on popular election. However, the establishment of Spain's colonial empire in the Americas happened at a

⁹⁸ In the 19th century, several union schemes sprouted up across Spanish America: for example, there was the Federal Republic of Central America; the Greater Republic of Central America; and the United States of Central America: see Rodrigo Paez Montalban, 'Central America in Search of Lost Unity', in *Resilience of Regionalism in Latin America and the Caribbean, Development and Autonomy* (2013), Andres Rivarola Puntigliano and Jose Briceno-Ruiz (eds.), Palgrave MacMillan: Basingstoke, pp.121–145.

⁹⁹ The overall pattern and persistent general authoritarian and unequal nature of post-colonial Spanish America is detailed in Kenneth L. Sokoloff and Stanley L. Engerman, 'Institutions, Factor Endowments, and Paths of Development in the New World', 14 (3) *Journal of Economic Perspectives* (2000), pp.217–232.

¹⁰⁰ The Dutch roots of American government tend to be overlooked: see Roger D. Congleton, 'America's Neglected Debt to the Dutch: An Institutional Perspective', 19 (1) *Constitutional Political Economy* (2008), pp.35–60.

time when the *cabildos*' independence and powers were in decline. Therefore, the *cabildos* of 13th-century Spain were not the same as the *cabildos* of 15th-century Spanish America; by that time, popular election to a *cabildo* was being replaced by the Spanish crown appointing crown members. With this development, the *cabildos* began to move away from their democratic inclinations and were transformed into aristocratic bodies, with membership being passed down to succeeding generations along family lines. In addition, a market for membership also emerged as the Spanish crown sold political membership of *cabildos* to those willing to purchase positions on what were now bodies known more for their noble and aristocratic status than their democratic role. The sum effect of these changes engineered by the Spanish crown was that the *cabildos* began to lose their reputation as representative bodies.¹⁰¹

The colonial *cabildos* were no different from their Spanish forebears as, upon establishment, membership was based on elite invitation, at the expense of democracy. Furthermore, and just as in Spain, the colonial *cabildos* handed down membership – further eroding their original representative nature, as well as diluting any potential for constructive debate and innovative ideas. This bequeathing of membership, coupled with the power of the crown to pack them with royal nominees effectively destroyed any semblance of popular representation in Spain's empire.¹⁰² In addition, colonial governors constrained the powers of *cabildos* by fining members and, in some instances, imprisoning them;¹⁰³ they starved them of resources needed to function and they curtailed their revenue-raising powers. As colonial power increased and government appointees consolidated their authority, *cabildos* were relegated to receiving government diktat instead of engaging in legislative and policy deliberation.¹⁰⁴ Gradually, the positive impact of the *cabildos* was lost and they ceased to be forums for the meaningful citizen participation.

Complicating this picture and resulting in the further contraction of public space and discourse was the nature of the colonial and post-colonial rulers in Spanish America. Spain's colonial institutions produced a class of rulers known as *caudillos*. The *caudillos* had four notable characteristics: (1) rent

¹⁰¹ See José Ignacio García Hamilton, 'Historical Reflections on the Splendor and Decline of Argentina', 25 (3) *Cato Journal* (2005), pp.523–540, pp.522–523.

¹⁰² One can only imagine the lack of time for debates as more and more people insist on being heard. The plausible self-interest dimension even in public interest forums only further diluted the power of the *cabildos*.

¹⁰³ See William Whatley Pierson, 'Some Reflections on the Cabildo as an Institution', 5 (4) *Hispanic American Historical Review* (1922), pp.573-596, p.593.

¹⁰⁴ *Ibid.*, p.595.

extraction with force, patrimonial relationships, and unswerving fealty of the mass of citizens to the *caudillo*; (2) the lack of a formal and predictable means of succession to offices; (3) the tendency to rely on military or para-military force to secure office; and (4) the threat to their tenure in office.¹⁰⁵

Caudillismo produced two outcomes of relevance for this study: first, the *caudillos* promoted anti-centralism that impeded any tendency toward economic and political union among the various colonies. Second, the *caudillos* shut off space for civic participation. Together, these developments in Spanish America set the stage for the propensity of the dissolution at will of the many unions created by Spain's former colonies in that region. The *caudillos* were the product of the way Spain administered its colonies. Colonial administrators acquired, or had bestowed upon them, considerable leeway in day-to-day administration. This flexibility, coupled with distance from Spain, resulted in colonial officials acquiring more personal power. The colonial viceroys were also granted considerable formal powers. These powers were reflected at the local level and were carried over to the post-colonial era.¹⁰⁶

Compounding this political setting and serving as a cultural countervailing force against post-colonial unification is the assertion made by some scholars that Spanish society had given birth to a colonial stereotype in Spanish America of the people from Spain who had settled there. There was a rabid individualism, so the assertion held, that served to reinforce the authoritarian institutions of the Spanish. Hispanic America was settled by the most adventurous and conservative elements of Spanish society. The individualism of these settlers was coupled with the fact that migrants from Spain settled Spanish America without their families but as individuals who had no affection for government. Hispanic America became a melting pot of settlers, indigenous people, and freed slaves that, it is asserted, were all hostile towards government. This was the '*gauchocracia*' or 'cowboyocracy' of Argentina¹⁰⁷ and Uruguay,¹⁰⁸

¹⁰⁵ See Eric R. Wolf and Edward C. Hansen, 'Caudillo Politics: A Structural Analysis', 9 (2) *Comparative Studies in Society and History* (1967), pp.168–179, p.169.

¹⁰⁶ See William H. Beezley, 'Caudillismo: An Interpretive Note', 11 (3) *Journal of Inter-American Studies* (1969), pp.345–352, p.346. Spain's traditions were also implicated in this resistance to colonial and post-colonial unity. Spain had produced a race of people that was individualistic rather than cooperative. This was the product of eight centuries of contest between the Spanish people, on the one hand, and the Moors, on the other hand. As the Spanish had limited themselves to their towns and cities, they became devoted more to these settlements than to their provinces or the entire kingdom. The Conquistadors took this world view with them to the colonies. They had no passion for a unified post-colonial Spanish America and their descendants carried this way of thinking with them beyond independence. They were more inclined to be loyal to local rulers than to central governments.

¹⁰⁷ See Richard W. Slatta, *Gauchos and the Vanishing Frontier* (1992), University of Nebraska Press: Lincoln, especially chapter 3.

which helped produce the *caudillos* who rejected all things foreign. In light of this view and the end of empire, it was not surprising that they had no enthusiasm for a new type of foreign rule – membership of a federation or even confederation.

The colonial era and its institutions therefore produced Spanish Americans who were highly individualistic with no sense of loyalty beyond the village or city in which they lived. They had little sense of mobility and were unwilling to integrate with other persons beyond their locality. The reaction against the far-reaching centralism of the native country inevitably drove the peoples of Spanish America towards a localism¹⁰⁹ that was in keeping with their individualistic character.

2.6 Conclusion

This chapter has done the following: using a comparative-historical method, it has underscored the significance of constraining state power to ensure the persistence and durability of regional integration. This approach has been lacking in the literature on African integration. It is rare for scholars to dwell on the domestic level and explore the lax controls on the power of post-colonial rulers and why this laxity virtually ensured the failure of economic integration in Africa. Inspired by history, this chapter has not sought to overturn existing explanations for the failure of robust post-colonial integration in Africa. Cutting through the post-colonial milieus of the US, Spanish America, and Africa, this chapter has tried to enrich the explanation for the paths of market integration. It has traced success and failure to the historical disjuncture between decision-makers, on the one hand, and the citizenry, on the other hand. The conclusion is that early institutions for civic republican participation in the US differed from institutions

¹⁰⁸ See Pablo Lacasagne, 'The Gaucho in Uruguay and Its Contribution to Literature', 32 (1), *Revista Interamericana de Bibliotecologia* (2009), pp.173–191.

¹⁰⁹ It was not just hostility to federation that was problematic. The post-colonial elites had difficulties welding together the states that they had taken over from Spain. Peru is a good example of this difficulty; local Peruvian ruling classes were reluctant to join Gran Columbia. They feared its disrupting effect, empowering lower classes that were servile and ideal as fodder for labour in Peru. Armed poor Peruvians, radicalized by Bolivar and others, posed a threat to normality and stability. Further, the Peruvian elite, enjoying rents accruing to them because of their power, was divided amongst itself along regional lines and the result was a difficulty in establishing even a strong, centralized Peruvian state. Local institutions and interest were so powerful that between 1821 and 1845, Peru endured 53 governments, 10 congresses, and 7 constitutions, but still failed to create a strong central government with authority over all the new nation: see Marcus J. Kurtz, 'The Social Foundations of Institutional Order: Reconsidering War and the "Resource Curse" in Third World State Building', 37 (4) *Politics & Society* (2009), pp.479–520, pp.494–495.

in Africa and Spanish America, with US institutions providing more fertile soil for the creation of a single market and a single state.¹¹⁰ The chapter has also underscored the significance of the past for understanding the failure of efforts to achieve market integration in Africa. In the hubris about market integration and political union, the debate, law, and policy all seem to have been disconnected from African history and an appreciation of the history of the models that were seemingly created without any real friction. History and civic republicanism are good means of, and models for, interpreting efforts to achieve integration in Africa.

¹¹⁰ See Jack N. Rakove, Andrew R. Rutten, and Barry R. Weingast, *Ideas, Interests, and Credible Commitments in the American Revolution* (2000), available at <https://deliverypdf.ssrn.com/delivery.php?> (last visited October 15, 2023).