

# H-Diplo | ISSF

Roundtable, Volume X, No. 13 (2018)

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**Alan J. Kuperman, ed. *Constitutions and Conflict Management in Africa: Preventing Civil War Through Institutional Design*. Philadelphia: University of Pennsylvania Press, 2015. ISBN: 9780812246582 (cloth, \$65.00/£54.00).**

Published on **23 April 2018**

Shortlink: [tiny.cc/ISSF-Roundtable-10-13](http://tiny.cc/ISSF-Roundtable-10-13)

Permalink: <http://issforum.org/roundtables/10-13-africa>

PDF URL: <http://issforum.org/ISSF/PDF/ISSF-Roundtable-10-13.pdf>

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### Introduction by Philip E. Muehlenbeck, George Washington University

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In *Constitutions and Conflict Management in Africa*, Alan J. Kuperman has assembled a diverse set of international scholars with different backgrounds ranging from Ph.D. candidates, to practitioners, to a distinguished professor emeritus. The book's purpose is to contribute to a debate over whether "accommodation" or "integration" is the optimal constitutional design for African states (2-3). It is upfront in acknowledging that there are considerable methodological challenges to such a study, which Kuperman lists as "causal variable, outcome variables, endogeneity, omitted variables, selection effects, and degrees of freedom" (9).

One of these challenges is the danger in attempting to develop a one-size-fits-all-theoretical approach to conflict management in Africa. That continent is very large and diverse, and there is no reason whatsoever to believe that what works (or does not work) in one country can be applied to another country. In most circumstances it would be a case of comparing apples to oranges. What, for example, can be gleaned from comparing the relative ethnic integration of countries like Ghana and Senegal to countries such as Nigeria and Rwanda? Whereas Nigeria and Burundi each have two to three ethnic groups which have historically jockeyed for power, Ghana and Senegal lack dominant ethnic groups and instead have several mid-sized ethnic groups, making it easier for either accommodation or integration approaches to be successful.

Furthermore, as Karly Kuperberg and Stefan Wolff note in their chapter on Sudan: "institutions are important, but their effectiveness is conditioned by the behavior of local and international leaders" (99). This seemingly was not appreciated by all of the volume's contributors, most of whom do not acknowledge the fact that many African actors ignore their country's constitution when it impedes their political goals. A good example of this is Burundi, which is cited by Filip Reyntjens as the most successful case study. If the chapter were written today, it would be hard to classify Burundi as a constitutional success story given that in 2015 President Pierre Nkurunziza won a third presidential term (despite the fact that the country's constitution limits presidential terms to two), leading to wide spread riots and a failed coup against his presidency. As a result, the book is unfortunately already outdated in some of its findings.

The two reviewers in this roundtable approach the book from backgrounds in political science and economics and both give *Constitutions and Conflict Management in Africa* generally high praise. Ian Spears, an expert in African civil wars and conflict resolution and state formation, commends Kuperman for organizing the volume "around a common set of ideas and parameters" (it should not be discounted how challenging this can be for the editor of such a volume). Spears labels the scholarship in the collection "well-informed" and finds the chapters "pithy and insightful, and the narratives are authoritative." He concludes that the book "is a superb one that many students, researchers, and policy-makers are likely to find compelling."

Professor Salih, a specialist in the politics of development, praises Kuperman for having done a "remarkable job" of pulling together the volume's seven case studies into an "integrated whole." According to Salih, each of the volume's chapters "in a unique way, provides thought-provoking and thematically unifying analysis, showing that constitution reforms are not good for the sake reforms, but only when their outcomes can absorb the variety of shocks they are designed to respond to or engendered them in the first place."

As a historian of the Cold War in Africa, I naturally approach this book from a much different perspective. I was shocked to see only one reference to the Cold War in the entire book. The Cold War has been extremely impactful on the trajectory of African politics in the twenty-first century. Many of the civil wars which have

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ravaged the continent in the past few decades would not have occurred had there not been an abundance of weapons dumped on the continent by the United States, Soviet Union, Czechoslovakia, France, and others during the Cold War. Moreover, superpower support of dictatorial regimes during the Cold War impeded the establishment of civil society respect for constitutional authority across the continent. Unfortunately, this contextual variable is completely ignored in this volume—presumably because it would considerably complicate assessment of the theoretical debates its authors grapple with. Another shortcoming of the book is that it does not discuss presidential term limits in its review of African constitutions. This is a shame given how important of an issue this has been in Africa over the past few years, causing tensions in Burundi, Benin, the Democratic Republic of Congo, Rwanda, Gambia, and Zimbabwe in particular.

Nonetheless, as the reviews by professors Spears and Salih attest, this book will be of value to scholars of conflict management and potentially to policymakers as well.

### Participants:

**Alan J. Kuperman** is Associate Professor and chair of the Global Policy graduate studies committee at the LBJ School of Public Affairs, University of Texas at Austin, where he is also the founding coordinator of the Nuclear Proliferation Prevention Project ([www.NPPP.org](http://www.NPPP.org)). His research focuses on ethnic conflict, military intervention, and nuclear nonproliferation. His latest books are *Constitutions and Conflict Management in Africa* (Philadelphia: University of Pennsylvania Press, 2015) and *Nuclear Terrorism and Global Security* (New York: Routledge, 2013), and a recent article is “Obama’s Libya Debacle,” *Foreign Affairs* 94:2 (March/April 2015). He is currently completing a book on humanitarian military intervention. In 2013-2014, he was a senior fellow at the U.S. Institute of Peace, and in 2009-2010 he was a fellow at the Woodrow Wilson International Center for Scholars, both in Washington, D.C. He holds a Ph.D. in Political Science from MIT.

**Philip E. Muehlenbeck**, a Professorial Lecturer in history at George Washington University, is the author of *Betting on the Africans: John F. Kennedy’s Courting of African Nationalist Leaders* (Oxford University Press, 2012) and *Czechoslovakia in Africa, 1945-1968* (Palgrave Macmillan, 2016) and editor of four volumes on various aspects of the Cold War. Muehlenbeck is also the series editor of a new book series with Vanderbilt University Press titled “The Cold War: Global Perspectives.”

**M. A. Mohamed Salih** obtained a Ph.D. in Economics and Social Science from University of Manchester, UK, in 1983. He is Professor Emeritus of Politics of Development at the Institute of Social Studies, Erasmus University Rotterdam, and the Department of Political Science, University of Leiden in the Netherlands. His regional research interests, fieldwork, academic and policy research interests: Africa and Middle East and shortly in the English-speaking Caribbean. His recent books include: *Economic Development and Political Action in the Arab World* (New York: Routledge, 2014); *Local Climate Change and Society* (London & New York: Routledge, 2013); *Climate Change and Sustainable Development: Challenges for Poverty Reduction in the 21st Century* (Cheltenham: Edward Elgar, 2009); *Interpreting Islamic Political Parties* (New York: Palgrave Macmillan, 2009); and *Hermeneutics, scriptural politics and human rights. Between text and context* (New York: Palgrave Macmillan, 2009).

**Ian S. Spears** is associate professor of political science at the University of Guelph in Ontario Canada and senior research associate at the University of Johannesburg, South Africa. He is the author of *Civil War in African States: The Search for Security* (Boulder: First Forum/Lynne Rienner, 2010) and co-editor (with Paul

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Kingston) of *States Within States: Incipient Political Entities in the Post-Cold War Era*. He has published numerous book chapters and articles, including *Journal of Democracy*; *International Journal*; *Global Change, Peace and Security*; *African Conflict and Peacebuilding Review*; *Third World Quarterly*; and *Review of African Political Economy*. He is currently working on a book on the problems of conflict resolution.

### Review by M.A.R.M. Salih, Erasmus University Rotterdam, Emeritus

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To the best of my knowledge, *Constitutions and Conflict Management in Africa: Preventing Civil War through Constitutional Design*, is the first and most recent book of its kind, presenting African case studies wholly devoted to the subject matter of the relationship between constitutional design and conflict management. The editor has done a remarkable job in stitching together seven case studies on constitutional accommodation (Burundi, Kenya, Nigeria and Sudan) and integration (Ghana, Senegal and Zimbabwe) in an integrated whole. The chapters are written by experts, scholars, and researchers at the cutting-edge of their profession and who have interrogated elements of the subject matter in their publications, albeit from different focuses and much broader research interests.

Likewise, the editor should also be commended for guiding the reader through the methodologies and approaches employed to develop the overall research design as well as the challenges and promises these approaches and methodologies contribute to the quality of a study of this magnitude. It is difficult, almost impossible for any reviewer not to recognize the chapter by Eli Poupko,<sup>1</sup> which has ably elucidated the theories and methods underlying the overall institutional structure framing the effects of constitutional design on conflict management (and peaceful coexistence). The details provided therein on coding of three variables—executive, legislative, and administrative—to yield five categories of constitutional design (hyper integrative, integrative, balanced, accommodative, and hyper-accommodative) are meticulously introduced and duly explained. This type of chapter is considered a rare feature in many edited publications and for this reason it gives credence to the findings. It erodes many of the caveats on methods presented in the Introduction. Those are presumably responses to questions raised during validation workshops and internal discussions.<sup>2</sup>

Using the three concepts which exemplify the contents of this book, two chapters stand out as the most balanced, accommodative, and integrative. I take these chapters and their relationship to the rest of the chapters in turn.

First, the findings of Reyntjens's<sup>3</sup> chapter on “Burundi: Institutionalizing Ethnicity to Bridge the Ethnic Divide” go beyond Burundi to address comparable cases of the institutionalization of ethnicity in Kenya, Nigeria, and Sudan and beyond these countries in my view. This is particularly so due to the similarities of 2007 electoral violence in Kenya and the electoral violence in Burundi as described by Reyntjens therein. The risks of accommodative constitutional arrangements in these cases are no match to the potency of ethnic politics and elite capacity to thwart the very constitutional arrangements they have designed. However, the

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<sup>1</sup> Eli Poupko, “Africa’s Domestic Institutions of Integration and Accommodation: A New Database,” in Alan J. Kuperman, ed., *Constitutions and Conflict Management in Africa: Preventing Civil War through Constitutional Design* (Philadelphia: University of Pennsylvania Press, 2015), 183-225.

<sup>2</sup> A *Conference on Constitutional Design and Conflict Management in Africa* was held at the University of Texas at Austin, 15 November 2011, Austin, Texas, where the draft chapters constituting this book were presented and a unifying methodology discussed. The reflexive nature of the Introduction could be influenced by those earlier methodological debates.

<sup>3</sup> Filip Reyntjens, “Burundi: Institutionalizing Ethnicity to Bridge the Ethnic Divide,” Kuperman, 27-50.

distinguishing similarities of these cases are informed by their different histories, economics, demographics, and climatic shocks that permeate the constitutional design outcomes. The chapters also speak to the content implicitly explicated by Reyntjens, who could be understood proposing that despite accommodative constitutional guarantees, peace remains elusive and a risky business contingent on disparate factors that vary from one country to another. Stretching Reyntjens's argument beyond the time frame within which it was written, the current political instability and constitutional paralysis in Burundi is not too different from Kenya's 2007-2008 post-election violence and the continuation of President Mwai Kibaki's 'business-as-usual' attitude. The outcome was his ascendance to power, completing an extra-constitutional term accommodated by the opposition in typical political exchange arrangement.<sup>4</sup> Similarly, while the Nigerian elite were able to galvanize the interest of the larger ethnic groups in an accommodative political settlement, the case of ethnic minorities, competently described, explained and analyzed by Eghosa Osaghae,<sup>5</sup> amply magnifies the risks invited by accommodation in cases of entrenched (nested) political elites vying to maintain the status-quo at any expense. Sudan's institutionalized ethnicity is so much entrenched that even the political elite opposing the center finds it difficult to unite whether in Darfur or Southern Kordofan. It is not constitutional reforms that spark the incidence of localized violence, but the existence of ancient nations (Darfur, Dar Masalit, Dar Zaghawa) frozen in history through the Native Administration introduced by the British and kept intact by subsequent post-independence governments.<sup>6</sup>

Second, a central chapter in this book is authored by W. Zartman, Hilary Thomas-Lake, and Arame Tall, on "Senegal: The Limits of Hyper-Centralization," which traverses all types of constitutional shocks and responses.<sup>7</sup> One outcome of the weakness of the celebrated 'local' is that it often confronts local realities beset by lack of skills, finance, and technical capacity to address issues of momentous magnitude that only the central state can resolve. The local government bypassing the highly powered Senegalese presidency during the 2009, 2012, and 2016 floods<sup>8</sup> is, in a sense, different from U.S. President George W. Bush's declaration of the state of emergency during hurricane Katrina.<sup>9</sup> The two cases are different due to the differences in socio-economic development but united by the fact that, if left to its own device, hyper-centralization can produce more harm than good, particularly in cases where 'constitutionalism culture' has apparently not been

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<sup>4</sup> S.F. Materu, *The Post-Election Violence in Kenya: Domestic and International Legal Responses* (The Hague: Asser Press, 2015).

<sup>5</sup> Eghosa Osaghae, "Nigeria: Devolution to Mitigate Conflict in the Niger Delta," in Kuperman, 71-94.

<sup>6</sup> R.S. O'Fahey, *The Darfur Sultanate: A History* (New York: Columbia University Press, 2008), M.W. Daly, *Darfur's Sorrow: A History of Destruction and Genocide* (Cambridge: Cambridge University Press, 2007) and J. Flint and A. de Waal, *Darfur: A Short History of a Long War* (London: Zed Books, 2006).

<sup>7</sup> W. Zartman, Hilary Thomas-Lake, and Arame Tall, "Senegal: The Limits of Hyper-Centralization," Kuperman, 135-157.

<sup>8</sup> The persistence of the urban floods despite the presidency intervention is captured in The World Bank's "Global Facility for Disaster Reduction and Recovery," (GFDRR) publication: World Bank, GFDRR, 2014, [https://www.gfdr.org/sites/gfdr/files/Senegal\\_English\\_August%202014.pdf](https://www.gfdr.org/sites/gfdr/files/Senegal_English_August%202014.pdf) (accessed 15 April 2016).

<sup>9</sup> Douglas Brinkley *The Great Deluge: Hurricane Katrina, New Orleans, and the Mississippi Gulf Coast* (New York: HarperCollins, 2015).

institutionalized, such as the case of Senegal. The editor has addressed this issue in the ‘Introduction,’ but indirectly relates to the case of Zimbabwe,<sup>10</sup> where he succinctly argues that, “the trade-offs between peace and democracy should be informed by rigorous social scientific analysis of the causes of each” (9). The Zimbabwe government’s authoritarianism has united an opposition made up of diverse ethnic groups, which gives hope for the future, even in an authoritarian constitutional-design arrangement which spurred discontent and economic ruin. In contrast to, but in other ways similar to Senegal’s hyper-centralized constitutionalism, Zimbabwe’s authoritarianism has equally invited the intervention of the presidency, albeit in a harsher and unrelenting instrumentalism.

Unlike most edited books, *Constitutions and Conflict Management in Africa* offers the reader a synthesis in an all-embracing ‘Conclusion’ which sums up the main academic and policy debates informing the thorny issues linking constitutional design and conflict management—or the prevalence of peace. The schism between conventional wisdom and the findings accumulated through research and database compilation are sobering, yet by no means conclusive. The mega contention here is neither accommodation nor integration per se can alone offer the desired recipe for conflict management or shock absorption because countries differ and therefore a grounded theory of practice would probably trump both.

On the whole, the apologetic tone that radiates through the Introduction warning of possible yet remote methodological folly (not adhering to cross-country aggregates and quantitative methodologies) has done little to dampen the robustness of the case studies. Each chapter, in a unique way, provides thought-provoking and thematically unifying analysis, showing that constitutional reforms are not good merely for the sake of reforms but only when their outcomes can absorb the variety of shocks they are designed to respond to or that engendered them in the first place.

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<sup>10</sup> Andrew Reynolds, “Zimbabwe: The Unintended Consequences of Authoritarian Institutions,” in Kuperman, 158-182.

### Review by Ian S. Spears, University of Guelph

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At the beginning of his new edited volume, Alan J. Kuperman asks whether violent conflict can be prevented or reduced by changing a country's domestic political institutions. To explore this question, he contrasts two approaches to constitutional design: the integrative approach which centralizes power, minimizes the relevance of identity groups, and promotes instead a common national identity; and the accommodative approach, which provides guarantees for identity groups through autonomy, federalism and proportional representation. Kuperman and his authors acknowledge that current scholarly trends favor the accommodative approach.

The scholarship throughout the book is well-informed, the individual chapters are pithy and insightful, and the narratives and findings are authoritative—even though the reader is sometimes pointed in opposing directions. Kuperman's conclusions are that (1) notwithstanding the academic consensus that accommodation is the better approach, most states in Africa are on the integrative side of the spectrum; (2) that being integrative does not necessarily preclude effective conflict management; and (3) that steering countries towards a more accommodative approach is difficult and likely to do more harm than good.

Framing these two approaches in this tidy way is useful even if it is complicated by some of the composite models that are also discussed in the book. Consociationalism and the work of its proponent Arend Lijphart, for example, are said by Kuperman to be the most cited demonstration of accommodation (3, 228).<sup>1</sup> But its most important feature—power-sharing in a grand coalition—might better be regarded as integrative insofar as it is a useful means for drawing outlying areas and groups into a unified center. Indeed, some scholars recommend power-sharing in a general sense not because of the power it distributes outward but because it pulls people *in* and centralizes power at a time—a post-conflict environment—when a common cause is needed most.<sup>2</sup>

Despite this issue and the opposing directions the case studies point, Kuperman effectively organizes his contributors around a common set of ideas and parameters. For each of the seven African case studies, the author investigates 'shocks' and the relative capacity of the country's institutions—the constitutional design—to manage them. In his concluding chapter, Kuperman is also effective at pointing out the sometimes-jarring discrepancies in the conflict literature more generally. Given the divergent perspectives on the link between power-sharing and conflict mitigation (229-232), for example, one could hardly be blamed for a lack of faith in social science to find solutions about basic questions on peace and conflict.

Kuperman's views are at once realist, conservative, and iconoclastic. In this volume he explicitly rejects an approach to scholarship that seeks the promotion of 'ideal-type institutions.' Such an approach will already be familiar to readers who know his prolific publications, especially those on interventions in Rwanda and

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<sup>1</sup> Alan J. Kuperman, "Designing Constitutions to Reduce Domestic Conflict," 3; "Rethinking Constitutional Reform for Democracy and Stability," 228.

<sup>2</sup> Marina Ottaway, "Is Democracy the Answer?," in Chester Crocker, Fen Osler Hampson, and Pamela Aall, eds., *Leashing the Dogs of War: Conflict Management in a Divided World* (Washington, D.C.: United States Institute of Peace, 2007), 604.



Libya.<sup>3</sup> Like other realist-oriented scholars, he focuses on the possible and impossible and, in this volume, he urges scholars and policy-makers not to change what cannot be changed.

The book is a superb one that many students, researchers, and policy-makers are likely to find compelling, if still troubling. It has also provided an opportunity to reflect on three sets of interrelated questions: (1) Can authority (and legal power) be extended to fit the shapes and sizes of contemporary states in Africa and elsewhere? Or is the projection of authority really the consequence of an externally-driven process (that is, one that responds to a competitive international environment)? (2) Does constitutional design—the term that is used throughout the book—reflect bargaining outcomes or can it represent some higher (if still achievable) set of liberal ideals? (3) Finally, are constitutions themselves a source of conflict, a product of conflict, or a means to manage conflict?

One way to consider this book is to acknowledge the view that saving African states from conflict and collapse continues to be regarded as a largely domestic problem. That is, this book represents the ongoing faith that internal engineering—constitutional design—remains the appropriate and only viable means of addressing Africa's governance challenges. This view is in contrast to other literature that sees states as products of their competitive environments. Jeffrey Herbst has argued, for example, that we have now internalized the idea that the existing state system must be kept largely as it is—with no border changes—regardless of the dysfunctional nature of the state or the corrupt ways of its leadership. Herbst claimed that in spite of decades of evidence that failed states cannot rescue themselves—regardless of the clever institutions outsiders might seek to impose—the international community continues to recognize them and claim that somehow failed states can be made to work in future.<sup>4</sup> Similarly, a generation ago, Robert Packenham critically observed that, whenever a particular approach does not produce the desired results in terms of peace or development, the typical response was in effect to try harder rather than to examine whether the goals are actually achievable.<sup>5</sup>

Independence from colonialism, the end of the Cold War, and the conclusion of individual civil wars have each been regarded as opportunities to start again and implement the conventional wisdom on good governance. But as Kuperman (citing Tansey) correctly observes, no state, not least in Africa, is a *tabula rasa* (233). There are deep structural features of the African state that shape behaviour and outcomes—and that frequently undermine well-intended efforts to maintain peace on the continent. These features might include the fact that there is no single political tradition; ethnic, linguistic and religious pluralism; institutional weakness; lack of infrastructure; arbitrary borders and expansive territory. Indeed, in his chapter, Eli Poupko observes that African leaders stubbornly ignore contemporary scholarship that spells out how conflicts can be mitigated by consociationalism or centripetalism: “The advice from scholars of constitutional design in

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<sup>3</sup> Alan J. Kuperman, “A Model Humanitarian Intervention?,” *International Security* 38:1 (2013), 105-136; Kuperman, “Rwanda in Retrospect,” *Foreign Affairs* 79:1 (January/February 2000): 94-118.

<sup>4</sup> Jeffrey Herbst, “Let Them Fail: State Failure in Theory and Practice,” in Robert I. Rotberg, *When States Fail: Causes and Consequences* (Princeton: Princeton University Press, 2004), 302-318.

<sup>5</sup> Robert A. Packenham, *Liberal America and the Third World: Political Development Ideas in Foreign Aid and Social Science* (Princeton: Princeton University Press, 1973).

divided societies, such as Lijphart and [Donald] Horowitz,” he writes, “appears not to have much impact” (199).<sup>6</sup>

Regardless of whether they have actually read those texts, many post-independence and contemporary African leaders—especially those described in this book—may not have found them useful. African leaders, however, did read or engage other thinkers such as Samuel Huntington or Vladimir Lenin, who offered other types of helpful guidance on how to manage the extraordinary circumstances they faced. U.S. Secretary of State Henry Kissinger once described Africa’s leaders as “realists” who, if they were to survive, had no choice but to be “finely attuned to the nuances of the power relationships” around them.<sup>7</sup> Aristide Zolberg also once compared Africa’s newly independent leaders to company executives pushing buttons on their desks only to discover that the wiring was nonexistent.<sup>8</sup> The problem was not that African leaders had no constitutions through which to organize and govern their states; rather it was that the constitution designs were foreign to African circumstances and thus rendered meaningless.

What emerged in much of the continent since then were either highly personalized and clientelist regimes (Zaire under Mobutu Sese Seko being the most notable example) or coercive authoritarian regimes (Ethiopia under the Dergue, the Coordinating Committee of the Armed Forces, Police, and Territorial Army, being a compelling example). To the extent that the post-Cold War era represented a new set of conditions for Africa, many leaderships on the continent responded not with institutions but with “the instrumentalization of disorder”—keeping themselves in power by making everyone else feel insecure.<sup>9</sup>

Some would say that, as a result, clientelism is so dominant in African politics that there are effectively no institutions. Political dynamics are questions of the resources available to ‘big men’ rather than the effectiveness of constitutional design. With states being so deeply penetrated by these clientelist relations, neither is there any sense of civil society if, by that term, we mean an independent set of civilian organizations making demands on the state. In this sense, it is hard to fault or credit constitutional design for political outcomes; the idea that institutions can shape or channel collective political behavior remains an aspiration rather than a reality.

In reading this book, then, there is the unfortunate sense that Western-based and Western-educated observers and policy-makers are barking up the wrong tree. To be sure, the authors also make the distinction between the legal (*de jure*) and the actual (*de facto*) distribution of power—which in turn gives the reader a clear sense of how power is really organized. There are also scholars who claim that Africa is in the process of being increasingly institutionalized—that institutions are holding politicians to account and that leaders are in fact

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<sup>6</sup> Eli Poupko, “Africa’s Domestic Institutions of Integration and Accommodation,” 199.

<sup>7</sup> Henry Kissinger, *Years of Renewal* (1999), 905.

<sup>8</sup> Aristide R. Zolberg, *Creating Political Order: The Party-States of West Africa* (Chicago: Rand McNally, 1966), 41.

<sup>9</sup> Patrick Chabal and Jean-Pascal Daloz, *Africa Works: Disorder as a Political Instrument* (Oxford: James Currey, 1999).

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respecting these measures.<sup>10</sup> But the point made by Patrick Chabal and Jean-Pascal Daloz is that the status quo of patronage and disorder ‘works’ for most African rulers and their clients and is here to stay. Regimes will incorporate a minimal level of prescribed institutions to satisfy the donor community but institutions have yet to reliably service their survivalist needs as effectively as a critical mass of clients. Regardless of the academic consensus that various forms of institutionalized ‘accommodation’ are the most desirable path to conflict management, change is unlikely in the foreseeable future.

Kuperman’s book also provokes questions about the respective roles of bargaining versus political ideals. That is, can an agreement reached through bargaining nonetheless be counted on to include all of the elements that the authors think are necessary for conflict resolution? If not, which should take precedence: the ideals or the agreement among the most powerful? Finally, will an agreement, even one reached through either of these means, stick in the absence of state power?

The two terms “constitutional design” and “institutions” tend to be used interchangeably by the authors (1). If both integrative and accommodative approaches can be effective in managing conflict—a central conclusion of the book—then the actual design matters less than the fact that institutions of one sort or another exist and that they are supported by state power. Design, however, evokes something consciously created for a specific purpose rather than a mechanism that is established merely by way of bargaining. Indeed, design suggests that the framers are knowingly in pursuit of a higher ideal; “institutions,” by contrast, could refer merely to the routinization of behavior that emerges in the course of groups interacting over a prolonged period of time.

Clearly an agreement that is arrived at through conflict and bargaining can produce institutional outcomes that are compatible with peace. Charles Tilly has argued that neither the state as an institution nor democratic rule were deliberate creations. Instead, they were by-products of other activities, often war, or the outcomes of contests and struggles between local groups.<sup>11</sup>

In this volume, however, the authors appear to prioritize design ahead of a negotiated agreement. In most cases, reflecting the scholarly consensus, this means that there is a preference for design that reflects accommodationist elements over integrationist ones: guarantees for identity groups, limited government, checks and balances. Even the remedies for countries that continue to experience internal conflict—and indeed the explanation often cited for why otherwise integrated states experience peace—is not more integration but accommodation and/or liberal reforms that limit power.<sup>12</sup>

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<sup>10</sup> See Daniel N. Posner and Daniel J. Young, “The Institutionalization of Political Power in Africa,” *Journal of Democracy* 18:3 (July 2007): 127-140.

<sup>11</sup> See Charles Tilly, *Contention and Democracy in Europe, 1650-2000* (Cambridge: Cambridge University Press, 2004), 9; Charles Tilly, *Coercion, Capital, and European States, AD 990-1990* (Cambridge: Basil Blackwell, 1990), 75.

<sup>12</sup> On page 2, for example, Kuperman writes “this chapter recommends promoting gradual reform of Africa’s existing, integrative constitutional designs by counterbalancing them with liberal institutions, especially the separation of powers—including a strong parliament, independent electoral, and judicial review.”

Indeed, many of the authors are understandably reluctant to acknowledge that centralization of power could itself be a source of peace. Thus, in spite of the fact that its constitutional design is designated as “hyper-integrative,” Ghana had successfully managed conflict; the author of that chapter, Justin Orlando Frosini, urges new measures be taken to “ameliorate” its centralizing tendencies. Frosini’s conclusion is that “Ghana demonstrates that a highly centralized constitutional design, including a strong presidency and first-past-the-post elections, is not inconsistent with stable democracy, *so long as it is complemented by other robust liberal institutions in a country with diverse ethnic demography*” (133-134, italics added).<sup>13</sup>

From this perspective, bargaining or hyper-integrative outcomes are acceptable provided they are accompanied by accommodation. But the opposite is not regarded as true: no one suggests that the failings of accommodation should be remedied with greater integration, even though one of the book’s sections is titled “Integration Can Work.” Accommodationists present their arguments as if centralization cannot cope with demands for reform from civil society; the opposing perspective is to say that liberalization leads to demands that it cannot control.

To the extent that a certain model or vision of constitutional design is prioritized, the processes of institutionalization and conflict resolution are likely to be compromised. As Nehel Bhuta writes outside of this volume, “A political order will successfully stabilize where the constitutional arrangements it guarantees are sufficiently advantageous to powerful or politically effective parts of the population to coordinate their interests in conformity with those arrangements; politically ineffective groups or parts of the population can be ignored as long as enough of those who are effective acquiesce in the ‘coordination order.’”<sup>14</sup>

In other words, it may be possible for outsiders to design constitutional arrangements and for these arrangements to reflect good governance. But if they are to stick they nonetheless need to correspond with the interests or ways of being of the belligerents themselves. Otherwise, the result will be mere organizations rather than institutions.

In many cases, however, as Marina Ottaway points out in an article in *Development and Change*, bargaining processes are often undermined by the ideals themselves. “Best practices,” as envisioned by the donor community, often work well in states with stable, well-established state structures, she says. But they often do not solve problems for less developed countries that lack a deeper institutional foundation or where they do not correspond with local institutions or indigenous practices.<sup>15</sup> Fine-tuned checks and balances that are attractive to Western eyes may also be regarded by African governments as likely to undermine their authority or, by well-connected citizens accustomed to the perks of patronage, as paralyzing and interfering. “The downside of this increasingly nuanced understanding of the complexities of state reconstruction,” writes

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<sup>13</sup> Justin Orlando Frosini, “Ghana: The Complements of Successful Centralization: Checks, Balances, and Informal Accommodation”: 133-134.

<sup>14</sup> Nehel Bhuta, “New Modes and Orders: The Difficulties of a Jus Post Bellum of Constitutional Transformation,” *University of Toronto Law Journal* 60:3 (2010): 799, 845.

<sup>15</sup> Marina Ottaway, “Rebuilding State Institutions in Collapsed States,” *Development and Change* 33:5 (November 2002): 1001-1023.

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Ottaway, “is that prescriptions are becoming so complicated that they defy implementation—in some cases, they even defy common sense.”<sup>16</sup>

In this light, it is not surprising that Kuperman (following Poupko) finds that states in Africa are unreceptive to change: any transition, he says, “from integrative to fully accommodative constitutional design—as many experts recommend—is likely to end up incomplete, inequitable, or both” (233). Others have discovered similar problems, though they offer solutions that are radically different from Kuperman’s. Jeffrey Herbst found that “there appears to be no impetus” for change from inside African countries. Instead, the idea that there is an economic or political crisis in Africa, he says, “came from outside the continent.”<sup>17</sup> In his discussion of corruption in the *Journal of Modern African Studies*, J.P. Olivier de Sardan, suggests that those on the ground do not necessarily see anything wrong with the system, as dysfunctional or corrupt as it may appear to outsiders; the system is merely accepted for what it is.<sup>18</sup>

In the end, the debate about integrative versus accommodative constitutional design may be irrelevant insofar as it is simply not possible to undertake the kind of reforms that scholars say are necessary to achieve peace. This is also yet another reason why protecting African states from war may be counter-productive: it may only be the crisis of war itself that brings about change and why, in the absence of war, African states may remain stuck in seemingly dysfunctional ways. This more extreme approach—not one that Kuperman is advancing—is to abandon even the ideal of a peaceful approach to conflict management and allow forces to work themselves out through war.<sup>19</sup>

A third question concerns the extent to which constitutional design, in addition to being a means to manage conflict, is also a source of conflict, and a product of conflict. We see evidence of all three in Kuperman’s case studies.

Certainly constitutional design is held up as a promising avenue to the resolution of violent conflict. But its success is contingent on other factors as well. Generally, a prerequisite for power-sharing to function, for example, is that the adversaries actually want such a system, have an interest in its continued success, and are willing to cooperate with other ethnic elites. As Arend Lijphart has observed elsewhere in his discussion of consociational democracy, such arrangements require political elites to “make deliberate efforts to counteract the immobilizing and unstabilizing effects of cultural fragmentation.”<sup>20</sup>

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<sup>16</sup> Ottaway (2002), 1005-1006.

<sup>17</sup> Jeffrey Herbst, “War and the State in Africa,” *International Security* 14:4 (1990), 132.

<sup>18</sup> J.P. Olivier de Sardan, “A Moral Economy of Corruption,” *Journal of Modern African Studies* 37:1 (1999): 25-52.

<sup>19</sup> See Edward N. Luttwak, “Give War a Chance,” *Foreign Affairs* (July/August 1999): 36-44; Gerard Prunier, “In Sudan, Give War a Chance,” *New York Times*, 4 May 2012.

<sup>20</sup> Arend Lijphart, “Consociational Democracy,” *World Politics* 21:2 (1969), 212; italics in original.

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In almost every case of the Kuperman book, too, the contributors are careful to place constitutional design within its proper context. “[I]nstitutions are important,” observe Karly Kupferberg and Stefan Wolff. But “their effectiveness is conditioned by the behavior of local and international leaders” (99).<sup>21</sup> Similarly, on Zimbabwe, Andrew Reynolds writes, “there is inevitably a limit on the ability of constitutional design to constrain powerful political interests. [President Robert] Mugabe’s actions within the ‘power-sharing’ government since 2008 show how—in Zimbabwe at least—the agency of elites can overwhelm the nominal constraints of political institutions” (177).<sup>22</sup>

Evidently, then, constitutional design is just one factor—albeit a potentially important one—that can shape outcomes of peace and conflict: good institutions can be undermined by bad leadership; less-than-perfect institutions can be saved by good leadership.

But the connection between certain institutional provisions is sometimes assumed rather than demonstrated. Throughout the book is the faith that solutions to the problem of conflict can be found in representative institutions. Frosini writes, for example, that a “constitutional provision that proved helpful [in the case of Ghana] was media freedom, which permitted the aggrieved to express and debate their complaints peacefully” (129). Only the most cynical observers would object to more inclusive government and a free press. But representation may be oversold as an elixir for violent conflict. An African American president in the White House coincided with a downturn in race relations in the United States; a woman president could also do little to reduce violence against women. In Africa, mere representation may do little to change the material well-being of citizens when the governments themselves are often so incapacitated. Indeed, Marxists have long chastised liberals for their belief that voting would change the life circumstances of the most aggrieved in South Africa.<sup>23</sup> And in some cases, liberal institutions may be a source of conflict: Contrary to Frosini’s claims, Jack Snyder, for example, argues that freedom of speech in Rwanda actually served the cause of genocidal violence in 1994 insofar as radio-broadcast hate messages made the country’s situation more explosive.<sup>24</sup>

On the other hand, it is difficult to blame some elements of constitutional design for having failed to bring peace. The Comprehensive Peace Agreement (CPA) in Sudan, for example, was an agreement that effectively settled the long-standing war between north and south Sudan—a conflict that had produced millions of casualties. It is hard to find fault with the agreement for not regulating intergroup conflicts within each region (99). Kupferberg and Wolff also find it “remarkable” that “since 2005, the two sides rarely have crossed the threshold of violence directly against each other” (104). But is such an outcome really so surprising? After all, while the leaderships in both north and south may have wanted a united Sudan under their control, an

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<sup>21</sup> Karly Kupferberg and Stefan Wolff, “Sudan: ‘Successful’ Constitutional Reform Spurs Localized Violence,” 99.

<sup>22</sup> Andrew Reynolds, “Zimbabwe: The Unintended Consequences of Authoritarian Institutions,” 177.

<sup>23</sup> John S. Saul, “Cry for the Beloved Country: The Post-Apartheid Denouement,” *Review of African Political Economy* 28:89 (September 2001): 429-460.

<sup>24</sup> Jack Snyder, *From Voting to Violence: Democratization and Nationalist Conflict* (New York: W.W. Norton, 2000), 268-269.

independent status free of the other was a more desirable end to which both sides had themselves become reconciled and neither wanted to jeopardize. Is that really a question of constitutional design?

Finally, consider the prospect that the ‘shocks’ that are examined in the book are actually good for long term institutional development. When political institutions are presented as ‘condition variables’ as they are in this book, the impression is that they are also static and unchanging features of the political landscape. But institutions evolve in response to each test that they survive. As Samuel Huntington argued, institutions that cannot solve problems lose their value and die; but those that do adapt and prove to be effective in new and differing circumstances survive and become ever-more valued by the community.<sup>25</sup>

To be sure, the challenge of contemporary institutional development is unprecedented. In Europe the institutional development of the state itself was, according to some scholarship, a direct consequence of war. Contemporary African leaders, by contrast, must engage in the Procrustean challenge of peacefully extending their authority and legal system across the permanent, sometimes extensive and certainly diverse territories that make up African states. While Western state formation seemed to require violence in the establishment of effective and peaceful authority, contemporary liberals reverse this process and assume that African leaders will arrive at the same outcome without violence. Indeed, Mohammad Ayoob observed how European leaders never had the burden of human rights organizations “breathing down their necks.”<sup>26</sup> In Africa, by contrast, violence along the way is invariably regarded as failure.

In this sense, the strongest political institutions are also products of conflict. What the contributors here deem to be failures are in fact reconciliations in power that, over the long term, might produce peace and stability. In light of Kenya’s recent violence, Gilbert Khadiagala writes “Kenya’s experience offers a model of where other African countries may wish to end up in their own constitutional designs, *although perhaps not the ideal way to get there*” (70, italics added).<sup>27</sup> According to some scholarship, Africa’s peaceful independence is, ironically, precisely the reason why its political institutions are so weak. Consequently, being constantly tested in the post-independence era, both internally and externally (that is, with less attachment to the existing grid of borders and states), may actually be the key to the development of strong institutions. In other words, Kenya’s experience may not be ‘ideal’ but it may be the price that needs to be paid for long-term institutional strength.

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<sup>25</sup> Samuel Huntington, *Political Order in Changing Societies* (New Haven: Yale University Press, 1968).

<sup>26</sup> Mohammad Ayoob, “Inequality and Theorizing in International Relations: The Case for Subaltern Realism,” *International Studies Review* 4:3 (Fall 2002), 75.

<sup>27</sup> Gilbert M. Khadiagala, “Kenya: Gradual Pluralization Fails to Buffer Shocks,” 70.



**Author's Response by Alan J. Kuperman, LBJ School of Public Affairs, University of Texas at Austin**

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*Constitutional Reform: Intelligent Design or Evolution?*

A fundamental question in comparative politics is whether today's developing countries must retrace the hundreds of years of violence that gave birth to today's relatively stable democracies in Western Europe and East Asia. Scholarship on development and conflict management, including our recent edited volume, presumes that shortcuts can be identified. Such research looks for lessons from history to 'design' better state institutions, rather than waiting for them to 'evolve' naturally via Darwinian struggle.

Ian Spears is not the first to question this enterprise. As he notes, Charles Tilly famously claimed that European state-making required centuries of fighting between protection rackets.<sup>1</sup> The gangs that produced violence most efficiently survived and grew, while others became extinct. Two key factors that facilitated efficient violence were a shared ethno-national identity and strong institutions. Eventually, war and genocide—cultural and actual—winnowed thousands of gangs and tribes into a dozen or so nation-states.

Building on this theory, other scholars have argued that Africa's underdevelopment stems from the West's refusal to let that continent replicate Europe's bloody past. Jeffrey Herbst hypothesizes that Africa's states are too weak because they are too many. The Tilly-esque solution would be to let them fight it out so that after perhaps a few hundred years of blood-letting Africa too would have fewer but more capable states. Herbst bemoans that such an evolution has been prohibited by western norms that ban aggression and freeze post-colonial borders.<sup>2</sup> Relatedly, Mohammed Ayoob complains that international human rights norms prohibit coercive assimilation to forge unified national identity, as necessary for successful development.<sup>3</sup> According to Herbst and Ayoob, developed countries have outlawed the two tactics—war and genocide—that historically were essential to their own success, thereby dooming Africa to permanent underdevelopment.

Spears embraces this Darwinian view that advocates violent conflict—both international and domestic—in Africa's own interest. From this perspective, he writes, "protecting African states from war may be counter-productive: it may only be the crisis of war itself that brings about change . . . [I]n the absence of war, African states may remain stuck in seemingly dysfunctional ways." Indeed, he argues that the domestic upheaval arising from floods, droughts, economic crises, and other shocks—upheaval that our book aims to minimize—is "actually good for long term institutional development," because "institutions evolve in response to each test that they survive." By this logic, he suggests that our book's goal of promoting institutions to mitigate violent conflict is fundamentally misguided, because "being constantly tested in the

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<sup>1</sup> Charles Tilly, "War Making and State Making as Organized Crime," in Peter B. Evans, et al., eds., *Bringing the State Back In* (New York: Cambridge University Press, 1985): 169-191.

<sup>2</sup> Jeffrey Herbst, *States and Power in Africa: Comparative Lessons in Authority and Control* (Princeton: Princeton University Press; 2000). Jeffrey Herbst, "Responding to State Failure in Africa," *International Security*, 21:3 (Winter 1996/1997): 120-144.

<sup>3</sup> Mohammed Ayoob, "State Making, State Breaking, and State Failure," in Chester A. Crocker, et. al., eds. *Managing Global Chaos*, eds. (Washington, D.C.: United States Institute of Peace Press, 1996), 37-51.



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post-independence era, both internally and externally . . . may actually be the key to the development of strong institutions.”

Spears is correct that well-intentioned meddling by foreign powers may backfire—a theme in my own research on humanitarian intervention.<sup>4</sup> Moreover, the track record of western states promoting constitutional reform in the developing world including Africa is hardly stellar, as discussed in my concluding chapter of the book under review. However, our volume remains optimistic that African states can peacefully incorporate lessons gleaned from history rather than having to relearn them first-hand via recurrent violence.

Spears notes that our book’s lessons, based on in-depth case studies and the first ever database of constitutional design in all African countries, diverge somewhat from the conventional wisdom on constitutional reform that rigidly advocates accommodation of diverse societal groups. Our book finds instead that ‘accommodation’ does not always work and that its opposite—‘integration,’ which promotes unified identity and authority—does not always fail. Either constitutional approach, if institutionalized properly, can peacefully manage societal conflict: accommodation should be extensive and equitable but avoid threatening groups having the capacity to respond violently; integration should be complemented by liberal institutions—such as the separation of powers—to avoid tyranny that can provoke violent dissent. But if not institutionalized properly, according to our case studies, each approach may instead foster violence. In the book, I conclude that—in light of Africa’s existing mainly integrative constitutions, and the likely resistance from powerful elites to radical accommodative reform—the safest path to mitigating violent conflict may be to promote not accommodation but rather liberal institutions to complement existing integrative ones.

Spears’s terminology differs somewhat from that in our book. He argues that consociational democracy is integrative because it requires a grand executive coalition of all parties. By contrast, we view such guaranteed inclusion as the epitome of accommodation, because it eliminates incentives for identity groups to appeal for votes from other groups—and thereby promotes multiple identities rather than a unified national one. In addition, Spears’s review sometimes conflates ‘accommodation’ and ‘liberal institutions.’ Our book, sharply distinguishes these two types of constitutional reform: accommodation “provides guarantees to societal groups based on their distinct identity or geographic location,” whereas liberal institutions are “especially the separation of powers—including a strong parliament, independent electoral commission, and judicial review” (2). Spears also argues that constitutional “design” means only premeditated plans, not the messy hodgepodge resulting from history, politics, and bargaining. By contrast, we use the word both ways, as one would in referring to a house modified by additions: ‘Oh my, what a dysfunctional design it has now; it needs a totally new design.’

Both Spears and Mohamed Salih are correct that constitutional reform (especially accommodation) faces stiff opposition from vested, often ethnically based, domestic interest groups. Salih rightly warns of the “potency of ethnic politics and elite capacity to thwart the very constitutional arrangements they have designed,” which our book documents in Burundi in 1993 when elements of the Tutsi minority resorted to genocide rather than honor their pledge to surrender political control to the Hutu majority. In Nigeria too, Salih argues, accommodation failed because of “political elites vying to maintain the status-quo at any expense.” Spears cautions that whenever African political elites agree to constitutional reform, it is mere window dressing for

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<sup>4</sup> Alan J. Kuperman, “The Moral Hazard of Humanitarian Intervention: Lessons from the Balkans,” *International Studies Quarterly* 52:1 (March 2008): 49-80.

international audiences: “Regimes will incorporate a minimal level of prescribed institutions to satisfy the donor community, but institutions have yet to reliably service their survivalist needs as effectively as a critical mass of clients.”

Spears’s review suggests that constitutions are meaningless scraps of paper, since political outcomes stem from power and interest, not legal institutions. In the few cases where accommodation succeeds, he argues, it is not because the new political institutions constrain political interests but rather because they reflect those interests. As he writes, “A prerequisite for power-sharing to function, for example, is that the adversaries . . . are willing to cooperate with other ethnic elites” in the first place, meaning that the ostensible success of accommodation is an epiphenomenal mirage. Salih warns that accommodation also faces hurdles of resource scarcity when the devolution of authority “confronts local realities beset by lack of skills, finance, and technical capacity to address issues of momentous magnitude that only the central state can resolve,” as our book illustrates in Senegal.

Ultimately, Spears implies that constitutional reformers and conflict managers should give up and let power-politics take its course, since any attempt to promote constitutional change will not just fail but likely backfire by undermining naturally evolving institutions. Echoing scholars such as Marina Ottaway,<sup>5</sup> he asserts that “To the extent that a certain model or vision of constitutional design is prioritized, the processes of institutionalization and conflict resolution are likely to be compromised.” Though mainly critiquing accommodation, Spears also dismisses my recommendation of liberal institutions to complement existing integrative constitutions. According to him, “Fine-tuned checks and balances that are attractive to Western eyes may also be regarded by African governments as likely to undermine their authority or, by well-connected citizens accustomed to the perks of patronage, as paralyzing and interfering.”

We are left with at least four questions: Can western donors compel constitutional reform? Should they? Do African countries seek constitutional reform on their own volition? And what is the proper advice for developing countries pursuing constitutional reform whether for external or internal reasons? I shall address each question in turn.

First, the West’s leverage has admittedly declined from its peak in the 1990s when the Soviet Union’s demise left developing countries nowhere else to turn for support. Since then, the rise of China and its largely unconditional aid and trade relationships with the developing world, including Africa, have weakened western leverage over a host of issues from human rights to corruption.<sup>6</sup> Nonetheless, my field research indicates that African countries still crave close relationships with the West for many reasons—including economics, security, and legitimacy—thereby sustaining significant western leverage over their governance decisions.

Second, developed countries have the right, and some would argue the responsibility, to use this leverage—if they can do more harm than good. Spears and Salih claim that Western meddling makes things worse. But considering how violent the evolution of states was in Europe, and how bloody recent conflicts have been in

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<sup>5</sup> Marina Ottaway, “Rebuilding State Institutions in Collapsed States,” *Development and Change* 33:5 (2002): 1001-1023.

<sup>6</sup> Moisés Naím, “Help Not Wanted,” *New York Times*, 15 February 2007.

countries such as Rwanda, Congo, and Sudan, the enlightened promotion of constitutional reform could potentially save millions of lives, offering a quicker and more humane path to development.

Third, many African countries seek constitutional reform for their own reasons. When I presented the pre-publication findings of our book at the University of Khartoum in 2013, I was mobbed afterwards by a member of Sudanese civil society asking not just about constitutional structures but how to involve citizens in the reform process. Since Africans are going to pursue constitutional reform in any case, scholars should offer our best counsel based on rigorous study of history.

Fourth, and hardest, is providing the right guidance. Analysts must determine not just what has worked elsewhere but if it can succeed in a specific country. I agree with Spears and Salih that accommodation has been oversold as a panacea, ignoring the inadequacy of local capacity and the risk of violent backlash from vested interests. Yet, I cannot leap to the conclusion that the best answer is for experts to stand aside and let nature take its course, because both internal and external actors will continue to press for change and thus need sound advice. In one of my first research projects, I documented how a failed constitutional reform effort in Rwanda had contributed to that country's 1994 genocide.<sup>7</sup> To avoid repeat of such tragedy, scholars need to figure out which reforms help or hurt—in practice, not just in theory—and then share that guidance with developing countries and international donors. I hope our recent book is a step in that direction.

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<sup>7</sup> Alan J. Kuperman, "The Other Lesson of Rwanda: Mediators Sometimes Do More Damage Than Good," *SAIS Review* 16:1 (Winter-Spring 1996): 221-240; Kuperman, "Provoking Genocide: A Revised History of the Rwandan Patriotic Front," *Journal of Genocide Research* 6:1 (March 2004): 61-84.