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Crafting Political Institutions in Africa. Electoral Systems and Systems of Government in Rwanda and Zambia Compared

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Abstract

Scholars of institutional design attribute large importance to the choice of new institutions. The comparative analysis of how Rwanda and Zambia crafted their new electoral systems and the systems of government regards procedural, structural and rational choice variables which may influence the option for particular solutions. External influences and the type of transition are determinants that can decide which actors make their interests prevail. The degree of innovation or conservatism of new institutions is mainly a result of the speed of the process and the kind of actors involved. However, rational reflections on how to produce legitimacy and minimize personal risks which take into consideration the state of conflict in the country decide on the speed and on innovative outcomes. The structured analysis of only two cases uncovers already that it is rather difficult to realise the transfer of design recommendations into reality.

Key words: institutions, institutional design, transition, electoral system, Rwanda, Zambia

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Zusammenfassung

Institutionengestaltung in Afrika. Wahl- und Regierungssysteme in Ruanda und Sambia im Vergleich

Die große Zahl an Veröffentlichungen zum Thema „*institutional design*" zeigt, welche Bedeutung die Politikwissenschaft der Wahl neuer politischer Institutionen beimisst. Diese vergleichende Untersuchung der Institutionengestaltung in Ruanda und Sambia berücksichtigt historisch-prozessuale, strukturelle und interessenorientierte Variablen, die auf die Entscheidung für bestimmte Wahl- und Regierungssysteme Einfluss ausüben können. Es zeigt sich, dass externe Faktoren und der Verlaufstyp der Transition entscheidend darauf einwirken können, welche Akteure in der Lage sind, ihre Interessen durchzusetzen. Die Prozessgeschwindigkeit und die Struktur der beteiligten Akteure sind maßgebend dafür, wie innovativ oder konservativ die neuen Institutionen gestaltet werden. Das Interesse an Legitimität und persönlicher Risikominimierung bestimmen wiederum die Prozessgeschwindigkeit und die Gestaltung innovativer Institutionen. Diese rationalen Entscheidungen berücksichtigen dabei die Konfliktsituation im Lande. Der strukturierte Vergleich zweier Fälle legt nahe, dass der Transfer von Empfehlungen des *institutional design* als schwierig gelten muss.

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1. Introduction

Democratisation seems to be all around since the Third Wave (Huntington 1991) reached the African continent. Taking multiparty elections as the major indicator for the opening of a regime, the situation has changed impressively within the last one and a half decades. Nicolas van de Walle (2002, 2003) observed recently that, in the late 1980s, nine states south of the Sahara conducted multiparty elections, whereas only seven states failed to do so between 1989 and the end of 2000. Three of the states that had avoided elections up till then have very recently held multiparty elections. All of them are situated in the Great Lakes Region: Rwanda saw presidential and parliamentary polls in 2003, Uganda just held its first multiparty elections in February 2006, and the Democratic Republic of Congo very recently conducted its first polls.

At the same time, the discussion on system change in Africa had to learn to differentiate between the cases. The total breakdown of one-party regimes (Bratton 1997: 91) did not lead to substantial democratisation; instead, this occurred in rather few cases (mainly Benin, Cape Verde, Namibia and South Africa according to Basedau 2003: 17). Processes in Africa did not develop in a linear manner towards democracy, transitions were either termed protracted, apparently endless, or as being stuck in a 'floating' state (Barkan 2000, Hartmann 2002: 312, Erdmann 2002: 324). Outcomes were and still are unclear. However, transitions always demand for a new order of governance, hence, for institutional changes.

This paper will discuss these institutional rearrangements of the systems of government as well as the electoral systems. The guiding question is: How and why did relevant actors in Rwanda and Zambia opt for particular systems of government and electoral systems? The study will show that historical and procedural conditions in the respective national cases broadly influenced the interest-led decisions of political actors crafting new institutions. It recognises that similar findings drawn from post-socialist states in Eastern Europe (Lijphart 1992, Nohlen/Kasapovic 1996, Krohn 2003, Bos 2004) are transferable to Africa.

The paper proceeds in four steps. At the beginning, it provides a short review of the theoretical debate on institutional design and distinguishes institutional crafting that describes the effective act of creation. The section also highlights the benefits of comparing the rather unorthodox couple of Rwanda and Zambia and develops systematic framework of questions for the research of both cases. On this basis, the paper then turns to a short description of the institutions crafted in Rwanda (section 3) and Zambia (section 4). By following the research framework, this two-country-analysis renders possible the paper's next step, the actual comparison of the two cases. Finally, the paper's conclusions emphasize that aside from the overall African preference for strong presidents, the impact of national factors – such as recent history, procedures and nationally shaped personal risk perceptions – is strong. Hence national context matters.

2. A Three-Dimensional Framework of Analysis: Process, Structure, Interests

The lively debate on constitutional choices, i.e. on institutional design, largely focuses on the system of government and the electoral system (e.g. Lijphart 1991, 1992, 2004, Betz 1997, Sartori 1997, Reynolds 2002). The main question is whether one system type supports democratic development better than another. Arend Lijphart (2004) recently presented what are probably the most accentuated recommendations for an institutional design adequate for divided societies. He exposes a best-system proposal based on two core elements, power

sharing and group autonomy, thus ignoring Donald Horowitz' warning of two years earlier: 'Designers who propound one-size-fits-all prescriptions will be especially disappointed' (2002: 35).[1]

Regarding systems of government, Juan J. Linz (1990a, 1990b) heavily criticised presidential systems for their autocratic bias and declared parliamentary systems to be preferable. His central finding is that new democracies should avoid to vest too much power in one sole individual (cf. Linz 1994: 6-25). Matthew Soberg Shugart and John M. Carey (1992: 28-36) agree with Linz' criticism on pure presidential systems, but answer with differentiation. They conclude that there are different types of presidential systems with different effects. They prefer semi-presidential systems[2] (Duverger 1980) to pure presidentialism. To summarise their main argument, they suggest to counterbalance a powerful president with a prime minister who is controlled by the assembly (Shugart / Carey 1992: 50-51, similarly Lijphart 2004: 102).

Even though no one really defends pure presidentialism as the better system, several scholars doubt the importance of the system of government to a country's democratic performance. Dieter Nohlen speaks of a 'double myth' of the importance of system of government choice (1992: 94). It is neither the most central question which system to choose, nor is it totally irrelevant. It is the context of the case in question that determines which system might be more appropriate. As a matter of fact, we find only very few cases in Africa that are not presidential.

Critics of presidentialism have occasionally been accused of focussing on the wrong aspect: 'Winner-take-all is a function of electoral system, not of institutions in the abstract' (Horowitz 1990: 76). Proponents of parliamentarism indicated the central importance of interrelating the question to the debate on electoral systems (Lijphart 2004), while scholars of the African case pointed out how important the electoral system was in the case of ethnic heterogeneity (Bos/Schmidt 1997: 414).

In general, representation, concentration and participation are the three main functions of electoral systems. They are joined by the two fundamental demands of simplicity and legitimacy. However, it is impossible to craft an electoral system that fulfils all of the functions and demands in perfect equality. In particular, the functions of representation and concen-

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[1] Horowitz (2002) identified four main dangers for institutional optimists: First, research relies too heavily on successful cases. Second, generalisations rely too heavily on the comparison of cases with similar colonial, cultural or regional features. Third, single cases might be overestimated. Fourth, international scholars tend to favour their home country's system.

[2] Since Shugart and Carey identified five types instead of Duvergers three, they renamed the semi-presidentialism premier-presidential systems. Duvergers term is used here because of its wider usage in science and political practice.

tration stand nearly irreconcilably opposed. Representation aims at including the whole range of relevant groups, including minorities. Concentration aims at an efficient aggregation of political positions in the assembly to keep governments stable and majorities clear-cut.[3]

By and large, two basic mindsets can be distinguished. They correspond widely with the central dichotomy of majoritarian systems and proportional representation (PR). One approach favours incentives for the cooperation of groups *before elections*. Barkan, Horowitz, Reilly and Sartori belong to this faction of scholars whose preoccupation is to produce an institutionally stabilised legislature who is capable of acting effectively. Concentration is preferred to representation. Thus they tend to favour majoritarian systems. The second approach focuses on inclusive representation of all relevant groups. The main goal of scholars such as Lijphart, Reynolds, Bos and Schmidt is to incite political groupings to cooperate *after competitive elections*. Loose majorities are accepted for the sake of broad coalitions in which every group has the potential to participate. Not surprisingly, this approach favours PR systems.

The dichotomy only represents a basic decision for one of the main roads, while the various real types of electoral systems represent an extensive net of lanes leading in different directions. Therefore, the scholars named above do not all postulate the same design. Analysing agrarian societies in Africa, Joel Barkan (1995) argues for a first-past-the-post system that provides for a strong link between voter and representative. He adds: a face-to-face representation possesses a higher quality than abstract group inclusiveness. Horowitz (1991, 1993, 2002, 2003) and Benjamin Reilly (2001) propose alternative vote in a system of absolute majority to reward moderate behaviour of political opponents and to provide for an efficient concentration simultaneously. While Horowitz and Reilly want to avoid a second poll, Sartori (1997) argues for the advantages of a double ballot system. He more or less prefers the French electoral system that fostered an efficient bipolarisation and ensured the representation of minorities. Andrew Reynolds subordinates concentration and simplicity to inclusiveness. He suggests a PR system with open lists in constituencies of a medium size (1995a) or a German-style personalised PR system (1995b). He and Lijphart worry about a frozen advantage for the incumbents where 'it is naïve to expect minorities condemned to permanent opposition to remain loyal, moderate and constructive' (Lijphart 2004: 98). For the sake of consensus democracy Lijphart accentuates the function of representation. He therefore recommends a simplified version of the Danish PR system in bounded constituencies with

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[3]   For a full discussion of functional claims see Nohlen/Kasapovic (1996: 183-187) and Nohlen (2004: 155-161).

closed lists.[4] Meanwhile, Bos and Schmidt (1997: 414-416) prefer a simple PR system to guarantee the inclusion of all relevant actors with the aim of attenuating politicised ethnicity. They reject excessive use of consociational elements due to their complexity, immobility and high costs.

Returning to Horowitz' insight that there might be no best system, the variety of opinions about the appropriate electoral system for divided societies seems to underline his statement. There are too many context-dependent entrapments. For example, PR systems with closed lists may result in the neglect of a weak electoral periphery that a dominant party, which can often be found in divided societies, does not rely upon to win (cf. Weiland 1996: 97-99). Furthermore, the geographic repartition of groups, the prevalence of strongholds or the size of the assembly can play a decisive role. Rein Taagepera concludes that it might seem that no advice can be given other than 'Pick anything and try to muddle through' (Taagepera 2002: 257). By no means should there be a confusing alteration of electoral systems. Voters should be granted the opportunity to learn from electoral outcomes and to adapt their behaviour with the implementation of their electoral intention in mind. A rather easy-to-understand system is a must in this respect.

This short review of the debates on institutional design reveals the necessity of recommendations based on the specific national context. This does not bar scholarly expertise from influencing the crafting of institutions, but it must obviously be quite individual. However, the academic debate intensified only after many African 'democratisers' had to opt for a particular arrangement in the early 1990s. Yet for the sequence of events, we cannot expect that scholars' recent conclusions had an impact. Why, then, do actors opt for distinctive forms of the system of government and the electoral system? To clarify the dissociation from the academic discussion on 'institutional design', the process of actual implementation of a specific set of institutions shall be called the 'crafting of institutions'.

Rwanda is a particularly interesting case. The starting point of its transition, the year 1990, is the same as in most African Third Wave countries, but in the Rwandan case the process of crafting took a long and extremely troubled 13 years. It ended in 2003 with a new constitution and Rwanda's first multiparty elections since independence. The country's extraordinary history, deeply affected by the 1994 genocide, suggests the need for a case study. However, case studies tend to cloud or cover general tendencies; and the Rwandan one-party state in fact broke down well before the genocide. A comparison with another sub-Saharan

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4   Interestingly, for divided societies, he recommends a system that has been developed and practised in one of the world's most homogenous societies. Even more interestingly, the Danish system tends to have majoritarian effects if the constituencies become too small, that is why the Danish added compensatory seats distributed proportionally at the national level.

case may sharpen the explanation of different outcomes without losing sight of general trends. Zambia is a good choice for the comparison because it shows a certain degree of structural similarity to Rwanda,[5] but differs with respect to the historical process. The comparison is based on an analysis of primary sources (constitutions, laws, media coverage) and secondary literature as well as on qualitative interviews in both countries.[6] It is undertaken by following a framework of analysis derived from the pertinent literature on political transitions (e.g. Huntington 1991, Bratton/van de Walle 1997, Lemarchand 1992, Mbaku/Ihonvbere 2003, Tetzlaff 2004, Hartmann 1999) and the genesis of political institutions (Nohlen/Kasapovic 1996, Nohlen/Krennerich/Thibaut 1999, Jones Luong 2000, Krohn 2003). It includes three main approaches, each presenting hypothetical factors of explanation, which are operationalised by a range of questions (see table 1). The first approach is based on the assumption that the historical process can influence the crafting of institutions. The second approach assumes that the positioning of the relevant actors is related to institutional decisions. The third approach is based on the assumption that the actors' interests can explain institutional choices.

Table 1: Framework of analysis: approaches, variables and operationalisation

First approach: the historically embedded process	
Type of initiation	What are the historical reasons for the initiation of the transition?
Type of transition	Has the process been forced 'from below' or steered 'from above'?
Speed	Did deadlines influence the thoroughness of the constitutional debate? Did the wish for rapidity dominate the process? Has the process been delayed, protracted or hurried?
External influence	Did donors determine or influence the process with concrete institutional guidelines?
Second approach: actors' structure	
Opposition unity	Did a unified opposition exist or has the opposition been fragmented?
Conflict management	How did rival actors manage their conflicts? Has violence occurred?
Political personnel	How are political actor groups staffed? Are there 'real democrats' or rather 'recycled elites' (cf. Hillebrand 1993)?
Third approach: actors' interests	
Increase of legitimacy	Did actors craft the institutions according to the people's preferences? Were the chosen institutions supposed to immunise against external criticism? Did actors build a false front, an institutional façade?
Neo-patrimonialism	Did the 'big men' logic shape the actors' institutional preferences?
Risk minimisation	Were the chosen institutions supposed to guarantee a certain degree of political influence on the part of the respective actors?
Tradition	Did actors resort deliberately to autochthonic, pre-colonial institutions?

Source: Own representation.

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[5]   Concerning cultural, geographic, religious, demographic, and economic variables.

[6]   The semi-structured interviews took place in Lusaka and Kigali in November and December 2004. Interview partners included local political scientists, heads of constitutional commissions, senior state and party representatives, and government critics in both countries.

3. Rwanda: A Set of Innovative Institutions Lacking Transparency

In Rwanda, today's political institutions were not implemented directly after the demise of General Juvénal Habyarimana's one-party regime. After the installation of a democratic system was disrupted in the early 1990s, the 1994 genocide marks a hitherto unparalleled caesura in Rwandan history, leading the country into a prolonged transitional period that ended with a new constitution and elections in 2003.

The result is a presidential-parliamentary system of government, using Shugart and Carey's (1992) pentamerous typology, with a directly elected president of the republic and a prime minister heading the government. Both of them interact with a bicameral parliament which is crafted of the chamber of deputies and the senate. The president appoints and discharges the prime minister who proposes the cabinet ministers. These have to reflect the composition of the chamber. A political party in possession of the majority of seats in the chamber must not occupy more than half of the cabinet seats. The chamber has the right to pass a vote of no confidence against the entire cabinet or any of its members with a two-thirds majority. The president may dissolve the chamber only once during the presidential term. The senate cannot be dissolved. Furthermore, the president has the right to veto any law with the consequence of returning it to parliament where it requires a two-thirds majority of the joined members of both houses to reject the veto. The president's ability to rule with decrees is restricted, but he can present a law to the people. Bills accepted by referenda become effective without renewed involvement of parliament. Apart from the head of state, senators are powerful players in the Rwandan system of government. The senate has to approve constitutional amendments, all organic laws and all bills concerning defence, security, criminal law, electoral law and basic freedoms. In addition, the non-partisan senate supervises the country's political organisations'[7] observance of the national objectives and the ban on divisionism. This leads us to the electoral system.

The parliamentary electoral system is very complex, divided into (at least) three elements, and could be called a segmented system with proportional focus. Segmentation, in this case, refers to direct and indirect modes of election. Twelve senators are indirectly elected for a non-renewable eight-year term by special electoral colleges in the provinces,[8] four by the forum of political parties that is a compulsory collective body of all registered parties, and two by the academic community. Finally, the president appoints eight senators, and former presidents become lifetime senators. The representatives in the upper house are officially

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[7]   The term 'political parties' is avoided in the constitution, but they are meant by the term 'political organizations'.

[8]   On the basis of the 2006 administrative reform, the part of the Rwandan constitution regulating the ballot for provincial senators is to be amended as there are only five provinces left.

non-partisan, they exclusively qualify as '*inararibonye*', a local term which is difficult to define precisely – though it is a constitutional condition – but refers to a cloudy social concept of venerability. Their party affiliation is unknown; the electoral system is intransparent and provides the executive with a considerable additional influence on legislation. The situation is complicated by the fact that one-third of the deputies of the chamber are elected indirectly as well. 24 women, two representatives of the youth, and one for handicapped persons, all of them officially non-partisan, are elected by special electoral colleges on the provincial (women) or national (youth, handicapped) levels. Only 53 of 106 members of parliament are directly elected by a system of proportional representation with a five percent threshold and closed national lists. Seats are allocated by the Hare-Niemeyer method for a four-year term. The Rwandan president is elected with a simple majority of votes for a seven-year term. No candidate may serve more than two terms as head of state.

4. Zambia: A Set of Conservative and Easy-to-understand Institutions

Zambia's new institutions were created in 1991 and came into force immediately after the fall of Kenneth Kaunda's one-party rule. They were partly revised in 1996 and the constitutional arrangement is still under debate.

Zambia has a system of government that provides for a directly elected president, allowing us to use Shugart and Carey's typology again. The executive power is exclusively exercised by the president or through officials dependent on him. The president is head of state, head of government and commander-in-chief of the armed forces. A vice-president, appointed by the president, has replaced the office of prime minister which existed during one-party rule. Besides serving as a substitute to the president in extraordinary situations, he mainly acts as a kind of minister for parliamentary relations; thus, by and large, the Zambian vice-president reminds one of typical African prime ministers. All the cabinet ministers are solely dependent on the president, but they have to be members of parliament. The president can dissolve the only parliamentary chamber, called the National Assembly. However, he does so at the risk of losing his office because parliamentary and presidential elections in Zambia are always conducted simultaneously. This reflects the strict implementation of the constitutional understanding of parliament, which 'shall consist of the President and the National Assembly' (article 62). The legislative powers of the president are limited. He may veto bills and restrict the amount of the national budget. A two-thirds majority can reject vetoes in the assembly. The president has no legal power to bypass the assembly, e.g. by using decrees.

The constitution does not provide for referenda that could open up a back door for the president to push through its will by means of populist action.

There are two electoral systems that are related to the two directly elected national bodies: the president and the National Assembly. Members of parliament are elected by the so-called first-past-the-post system, more precisely termed system of relative majority. The candidate obtaining the most votes relative to his/her competitors wins the seat without regard to his/her absolute share. There is no need for a second ballot. The number of seats is identical to the number of constituencies plus a maximum number of eight members appointed by the president. Zambia comprises 150 constituencies, which allows up to 158 deputies in the National Assembly. The president is elected in one single national constituency using the same first-past-the-post system. At least this has been true since the 1996 constitutional review. The first multiparty presidential election held during the current period of democratisation utilised a system of absolute majority that requires a second ballot if none of the candidates reached more than half the valid votes. Zambia intends to return to this system after the 2006 polls because of several irregularities that occurred in 1996 and 2000. We will return to this point later. Altogether, the system used in Zambia is probably the easiest to understand and therefore a rather transparent electoral system offered to actors in crafting institutions.

5. Testing the Analytical Framework in Comparative Perspective

Against the background of the constitution-making processes up until 2005, we now turn to the question why the actors opted for these institutional arrangements. Which of the factors clustered under the three research approaches best explain the outcomes? Are there general trends that can be derived from the study of our two cases? Due to a comparative perspective on the two cases, the answers on the questions become more visible as a single case study could exemplify.

Explanatory strength of the historically embedded process approach

First, we examine the variables clustered in the historically embedded process approach: the reasons of initiation, the type of transition, the speed of the process and the external influence. We start with the external influence, which observers from established democracies might tend to overestimate. In the two cases examined, no active external influences determining outcomes of the process of crafting could be identified. Certainly, there were strong external impulses on the process as such, especially on its initiation in the early 1990s. But

Hartmann's (1999: 296) finding that there has been no relevant influence on tangible institutional outcomes can be affirmed by this study. External influence has not been the only reason for the initiation of institutional reforms, but rather one of several interacting events. These events have been quite similar in the two countries compared. During the 1980s, economic pressure on both countries increased due to internal mismanagement and declining cash crop prices (coffee for Rwanda, copper for Zambia). Since political legitimacy in both countries relied on the economic output (due to the lack of democratic input legitimacy), the failure of economic performance in conjunction with the moderate form of autocracy[9] led to open discontent within the public.

Zambia underwent a coup attempt in 1990 (Luchembe-Putsch), which was first reported as a success on the radio, provoking spontaneous public celebrations (Mwanakatwe 1994, Meyns 1995). During student protests that year, at least 23 people were shot by police forces and roughly a thousand were arrested (ibid.) which stimulated further discontent. The rise of maize meal prices provoked additional mass protests. Meanwhile, the Zambia Congress of Trade Unions (ZCTU) became the driving force behind the protests. In addition to the impressive articulation of dissatisfaction on the streets, criticism emerged within the ruling UNIP. Altogether very clear signals were sent to Kenneth Kaunda that something had to be done. Rwanda's population did not go as far. Discontent was expressed more moderately, but nevertheless emphatically. Pioneers of the freedom of speech, such as journalists of *Kinyamateka* and *Imabga* or representatives of *Dutembere* (women association), began to criticise the MRND regime. The rural population 'on the hills' practised civil disobedience to express their dissatisfaction.[10] Internal criticism was coincidentally compounded with a military threat from the Rwandan exile community in Uganda. The Rwandan Patriotic Front (RPF) were very effective in their attack on their home country in October 1990, coming to some 70 kilometres of Kigali before being repelled by French, Belgian and Zairian troops which effectively took over the fight from Rwanda's weak armed forces. Here too, altogether very clear signals were sent to Juvénal Habyarimana that something had to be done.

A rapprochement between the emerging opposition forces had been one of the first tasks to be tackled. This dynamic led to the creation of the Movement for Multiparty Democracy (MMD) in Zambia and to a joint action of 33 opposition intellectuals in Rwanda who both

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[9] Open expression of discontent might not have been possible in more autocratic regimes. Subsuming Rwanda and Zambia under moderate autocracies draws upon the typology of Jean-François Médard (1991) is backed by the argumentation of Michael Bratton and Nicolas van de Walle (1997: 77-82). Bratton and van de Walle first termed Rwanda a 'military oligarchy" (1994: 473) before correcting the classification in 1997 to the same type of 'competitive one-party system" that Zambia also belonged to.

[10] People boycotted obligatory collective maintenance work (*umuganda*) or even destroyed *umuganda* efforts (Longman 1999: 342-344).

called for the reintroduction of multi-party politics. The international environment supported this development as the fall of the Berlin Wall produced an international climate of change towards democracy. In light of collapsing socialist regimes in Eastern Europe, Kaunda lost the legitimacy he had first drawn from his championing of 'African socialism' and then from his exploitation of the bloc confrontation in the Cold War. France explicitly put pressure on Rwanda with the La Baule discourse of François Mitterrand in June 1990, when the French president announced the linking of public development aid to the progress of democratisation (Bertrand 2000). In both countries we can discover a combination of internal, military and international challenges that shaped the initiation of political transition. The international conditions were similar in both cases. The military threat for the regime was different in scope, but similar in the danger for the regime's survival. And, while the forms of expression of popular discontent differed, its underlying motivation was of a dominantly economic nature in both cases. The one-party regimes were mainly challenged because of their bad economic performance and not because of their autocratic governance. Since the initiation of the process was rather similar, it can be omitted as an explanatory variable for the different outcomes.

Likewise, the pure type of transition is not a good indicator for the explanation of institutional outcomes. The dichotomy of types 'from below' and 'from above' that is appropriately used by many political scientists dealing with Africa (e.g. Lemarchand 1992, Mbaku/ Ihonvbere 2003, Tetzlaff 2004), lacks the complexity needed to produce fruitful results.[11] Both cases stand for a transition 'from above' but crafted different institutions. The speed of the process is more decisive. Two important factors describe the speed of crafting: a) the total time span between the beginning of the process and the implementation of the results, and b) the allocated working period of the relevant constitutional commissions. Table 2 presents both factors. Creativity and innovation suffer from hurried processes. The less time the process leaves to the respective expert panel, the less innovative and creative the results are and the more the results rely on earlier decisions and well-known concepts. Even if narrowly timed expert commissions presented some innovations, most fell victim to rapid compromises between politicians if the total time span for crafting has been correspondingly short. This has been the case in Zambia, where the Mvunga Commission did not have but half a year to propose a new set of institutions. Yet, this was not a lot of time, the crucial decisions were reached during talks between UNIP and MMD protagonists within 14 days in

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[11] Huntington's differentiation between transitions, transplacements, and replacements (1991) is not appropriate for Africa because it implicitly assumes that there are clearly identifiable groups of autocrats and democrats, preferably dividable into hardliners and softliners. This assumption does not generally hold in Africa.

mid-1991. The quick compromise averted innovations proposed by the Mvunga Commission (e.g. second chamber of parliament) and led to the perpetuation of old institutions, such as the first-past-the-post electoral system. The institutions crafted were mainly path-dependent on the decisions made in the early 1960s when the first republic was created. The institutional compromise was meant to be provisional by the acting personnel, but was reinforced by the successful free and fair elections conducted under this arrangement.

Table 2: Relation between speed and innovation

	Total time span from start to implementation	Allocated working period of constitutional commissions	Crafting results
Rwanda	13 years: September 1990-Mai 2003	Karemera: 9 months Rutaremara: 3 years	highly innovative
Zambia	10 months: October 1990-August 1991	Mvunga: 6 months Mwanakatwe: not relevant	conservative

Source: Own representation.

A similar development became apparent in Rwanda when the Karemera Commission submitted a constitutional draft broadly inspired by the French paradigm in 1991. The draft facilitated a first important step towards liberalisation. Parties other than MRND were allowed and emerged in May 1991. The most important opposition parties formed a concerted committee (*Comité de concertation*). The committee included the Democratic Republican Movement (*Mouvement démocratic républicain*, MDR), the Social Democratic Party (*Parti social démocrate*, PSD) as well as the Liberal Party (*Parti libéral*, PL). It relied mainly on mobilising capabilities of the MDR which referred both in terms of its name and personnel to the former MDR-Parmehutu. The latter had been the single political party in Grégoire Kayibanda's First Republic in the 1960s and 1970s, having its stronghold in central Rwanda while Habyarimana's regime originated from the north of the country. Faustin Twagiramungu, Kayibanda's son-in-law, became the MDR leader. Despite old antagonisms, progressive forces in the committee parties were ready to negotiate with MRND while the external opposition focussed on armed action. MRND and the committee formed a common interim government to continue the process of institutional crafting as part of ceasefire negotiations with the RPF, leading to the Arusha Treaty of August 1993. The treaty included a protocol on the institutional arrangement with a rather cumbersome name[12] shortened here to 'Protocol on Power-Sharing' (PPS). The PPS provided for a weakened president, a powerful prime minis-

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[12]   Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front on Power-Sharing within the Framework of a Broad-Based Transitional Government of October 30, 1992 and January 9, 1993.

ter leading the broad-based government, and a 70-member transitional national assembly. It did not contain electoral rules because of its transitional character. The PPS planned a new constitutional commission that would not be bound to any of the PPS' provisions but charged with the task to create a fully democratic regime. The PPS did not come into force before the genocide to which approximately 10 percent of the Rwandan population (mainly Tutsi and moderate Hutu) fell victim and which led to the flight of approximately half of the population. Since the genocide is not at the centre of this article, we will concentrate on its institutionally relevant aftermaths. Almost isochronally to the first reports of assassinations, the RPF launched a renewed offensive on Rwandan territory,[13] finally reaching its objective of ending the genocide and assuming power in Kigali in July 1994. Thereafter, the new RPF-regime implemented the institutional provisions of the PPS. Modifications that were applied concerned the distribution of public positions between the political parties, which had become necessary due to the ban of radical parties responsible for the genocide, including the MRND. The length of the period of transition was fixed to five years and was then prolonged another four years in July 1999. The RPF showed no signs of urgency with regard to the introduction of a new constitutional commission, but finally provided for the legal basis. Tito Rutaremara, a RPF senior official, became the president of a twelve-member commission, guiding a sound three-year process – enough time to consult various experts, study foreign models, discuss ideas in public meetings throughout the country and present an elaborated final draft to the transitional government and assembly, which made only minor changes. The constitution was presented to the population for referendum in May 2003. It obtained more than 90 per cent of the votes (Comelena 2003).

The comparison of Zambia and Rwanda allows no statement concerning the democratic quality of the institutions crafted, nor are we able to draw any conclusions regarding specific arrangements. However, the speed variable explains whether institutions could have been innovative or were forced to stay rather conservative: innovation that bases on well-considered aims needs time, while rapid decisions had to rely on well-known foreign or post-independence models.

Explanatory Strength of the Actors' Structure Approach

Opposition unity, conflict management and political personnel are the potential factors clustered in the actors' structure approach. How useful is this approach for explaining institutional outcomes? First of all, the unity of the opposition cannot explain specific outcomes as one would imagine. If strong presidents legally dominated an authoritarian regime, one

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[13]   To be precise, the RPF had been positioned on Rwandan territory already. It officially controlled parts of northern Rwanda and had some troops in Kigali as concession of the Arusha Treaty.

could presume that a united democratic opposition would tend to diminish presidential power and lobby for a substantial mode of power-sharing. Rwanda's first attempt in the early 1990s could serve as an example. Though the opposition was heavily divided along at least three cleavages (moderates vs. hardliners, domestic vs. exile, peace-loving vs. violence-prone), they all agreed on decreasing presidential power. Whether oppositional unity was, however, the real explanatory factor in this regard is quite questionable. The situation as a whole rather implies a coincidence than a collaboration. The Karemera draft matched the interests of the domestic committee opposition and the RPF as regards the weakening of the role of the head of state,[14] while the MRND leadership mainly sought to prevent a total military defeat.

Later in the process, the RPF-dominated Rutaremara Commission stood as the counter-example to the opposition's unity. The howsoever structured opposition had no opportunity to actively push for a weak president and, indeed, a strong president – stronger than the transitional head of state – was created. Nevertheless, and not due to the opposition's structure, the Commission members continued to emphasise the alleged power-sharing aspects of the constitution, including the PR electoral system. Meanwhile, Zambia's MMD, presenting a very closed front during negotiations on the crafting of the institutions, blocked the introduction of a purely US-style presidentialism with a clear-cut division of power between the executive and legislative branches. It also blocked the establishment of a second chamber serving to de-concentrate power; not to mention the idea of a broad-based power-sharing system.

There might be a certain logic behind this. The actors of a divided opposition could try to secure their share in power, which can obviously best be realised in a broad system of power-sharing including a 'government of national unity'. Yet, the question is whether the oppositional structures are powerful enough, if divided, to achieve this objective against an incumbent authoritarian regime. In general, the line of argument advanced here shows that a focus on actors' interests is necessary to explain institutional decisions while the actors' structure is important to detect the relevant interests.

Another point is the influence of conflict management. The process of negotiation in Rwanda was overshadowed by the simultaneous military option chosen by RPF forces. The main goal of the process of institutional crafting was to end a war. The Arusha treaties were, first and foremost, ceasefire treaties. The institutional arrangement was created merely for a transitional period. Its central element consisted of a very concrete distribution of state offices, down to the nomination of specific office holders. The distribution of seats in the tran-

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[14]   The general perception had been that Habyarimana cannot be avoided as president at the end of a bloodless transformation process.

sitional assembly had been fixed in Arusha. A constitutional commission was part of the interim institutions. After the genocide the RPF put great emphasis on the need for formally obeying the Arusha institutions. The parties that were the driving forces behind the genocide were excluded and the division of power changed in favour of the RPF, but the institutional arrangement remained intact. The export of the security problem with ex-FAR and *interahamwe* groups to the neighbouring Congo together with the consolidation of RPF power within the Rwandan borders led to a relatively stable situation without an outright violent conflict.

As far as conflict management in Zambia is concerned, there was always a return to the negotiating table before violent escalation transpired. Significant signals from the Zambian army that they could revoke support for Kenneth Kaunda, pushed him to negotiations without the actual use of force, if we simply interpret the Luchembe coup trial as one of the aforementioned signals. Politically, the military played but a minor role, as the absence of civil war led to a situation where political and armed actors were congruent. Instead, politicians of the emerging (unarmed) opposition were able to organise meetings and publish institutional claims in newspapers. Armed government forces did not intervene nor intimidate them. Finally, the oppositional pressure led to roundtable negotiations. A coalition of Christian churches served as intermediary when they invited the relevant forces to the Anglican cathedral in Lusaka in July 1991.

These less conflictive conditions might have lowered the tendency to worry about majoritarian arrangements. Conflictive conditions seem to stimulate the desire for broad power-sharing arrangements, regardless of their different consequences.

The political personnel, like the pace of the process, might be helpful in explaining the innovative or conservative character of the institutions crafted. The original distinction of 'real democrats' and 'recycled elites' is not applicable to the cases because of the difficulties in detecting 'real democrats'. In both countries, the opposition was not primarily democratic but rather anti-regime. However, another distinction, viz. between 'recycled elites' and 'replaced elites' is helpful. In the time until the referendum of 2003 the Rwandan elite was replaced completely. Not only the political staff which had been involved in or which had been assassinated in connection with the genocide were replaced. The survivors of the pre-genocide domestic opposition, like Twagiramungu and others, as well as at least 41 internal RPF critics (ICG 2002: 28f.) left the country and went into exile. The former RPF-head of state Pasteur Bizimungu resigned from office because he violated a law valid during the transitional period and prohibiting the foundation of new political parties, For the allegation of 'divisionism' Bizimungu's 15 years sentence has meanwhile been prolonged to 25 years imprisonment. Today, very few politicians on higher posts, all of them undoubtedly supporters of

the current government, originate from the pre-genocide domestic opposition.[15] Most of the leading figures returned from Anglophone exile countries (cf. Reyntjens 2004). This tidy replacement of political elites opened up the process for constitutional innovations, as nobody felt affiliated to earlier institutions, nor to the French model that highly influenced the Karemera Commission. In contrast, Zambian political elites have rather been recycled. They were used to the old institutions and committed to the rule 'never change a running system'. One can therefore hold that replaced elites tend to be more innovative while recycled elites are more conservative with respect to the crafting of institutions.

Explanatory Strength of the Actors' Interests Approach

The third approach comprises four variables possessing conjectural explanatory capacity: the increase of legitimacy, the neo-patrimonial heritage, risk minimisation and pre-colonial traditions. We will start with the last one. Did actors deliberately resort to autochthonic, pre-colonial institutions? Traditions were not of major concern to the actors that crafted or counselled the creation of the institutions under examination. Political masterminds in both countries established a certain relationship between the preference for semi-presidentialism and the traditional role allocation between the king and the queen mother.[16] But both systems of governments do not conform to Duverger's concept, the Rwandan prime minister and the Zambian vice-president are de facto pure administrators and their existence can be explained more persuasively by other factors.

Risk minimisation proves to be a more promising variable. The initial point is a simple assumption: The more dangerous the consequences of institutional transition might be for influential actors, the more they will manipulate the institutional arrangement in favour of their personal safeguard. There is certainly no guarantee that the assumed institutional effects occur, but the degree of manipulation might be connected to the degree of risk. First, and as a consequence, we have to look at the quality of the transitional risk for the actors. Essentially, the risk can be two-dimensional. There is the risk of losing economic resources or of falling victim to legitimate (detention) or illegitimate (assault) physical harm. Risk perceptions, and probably also real risks, have been much more pronounced in Rwanda than in Zambia. As shown above, political conflict management in post-colonial Rwanda has been violent for a significant part of history. It has been interconnected with displacement, death

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[15]   One example is the president of the Chamber of Deputies, Alfred Mukezamfura, interviewed in Kigali, Dec. 3, 2004.

[16]   Interviews with Akashambatwa Mbikusitu-Lewanika (Lusaka, Nov. 8, 2004) and Tito Rutaremara (Kigali, Dec. 8, 2004). A similar role allocation of this kind existed at both courts, the Rwandan Mwami's and the Zambian Lozi king's.

and genocide. The belief of Rwanda's current RPF-elite that they may lose office and power raises their considerations of an existential threat. Additionally, there is a strong link between political power and economic wealth in Rwanda.[17] In Zambia, generally a peaceful nation, the risk has been lower. While the link between state and economy has been as intense as in Rwanda, the danger of physical harm has been minor, though a certain risk cannot be denied. But student uprisings and a failed coup attempt are not of the same quality as civil war and genocide. The Zambian game was not about all or nothing. The right strategy to minimise the risk for Kaunda seemed to be not to manipulate the institutional arrangement openly but to present himself as the father of the nation, guiding her to multiparty democracy. He was convinced he would win free and fair presidential elections (cf. Bach 1994: 35; Meyns 1995: 29; Mwanakatwe 1994: 224) which further reduced his wish for special institutional arrangements. Kaunda did not press for the creation of a second chamber (House of Representatives), which would have overrepresented rural politicians and traditional leaders, who were supposed to support him, but postponed this step after his presumed electoral victory. Frederick Chiluba has shown some ambitions to minimise the risk to lose, but on a rather more technical level. At a time when observers remarked the return to presidential office of several former autocrats (cf. Hartmann 1996), Chiluba wanted to exclude Kaunda from Zambia's 1996 presidential elections. A clause concerning a presidential candidate's ancestry had been introduced in the electoral law. The new norm limits candidateship to Zambians of Zambian-born parents, and Kaunda's parents were born in neighbouring Nyasaland, today's Malawi. Since the overwhelming majority of his party declined Chiluba asserted a change from an absolute majority to a simple majority rule in presidential elections, thus avoiding second-round ballots which might incite the opposition to unite. In contrast, the Rwandans were very keen on risk minimisation by intense, proactive and rather sophisticated institutional innovation.

The influence of neo-patrimonialism is rather ambivalent. It is difficult to decide whether actors consciously opt for a solution that fosters neo-patrimonial structures or whether it is rather an underlying cultural factor. However, there is little influence on the choice of the electoral system. Theoretically, single member constituencies produce a clear winner and sole representative of the electoral unit. Hence they fit in well with 'big men' structures. Empirically, Zambia opted for such a system, but Rwanda did not. Having said that, the preference for strong presidents is empirically visible in almost all sub-Saharan countries and, theoretically, plausibly linked to neo-patrimonialism (cf. Bratton/van de Walle 1997: 63-65). Zambia and Rwanda opted for a strong president. Oppositional efforts to 'parlamenta-

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[17] In 2002, FPR members guided 17 out of the 21 biggest parastatal companies (ICG 2002), but since the MDR-ban movements in favour of other FPR members are probable.

rise' the system of government in Zambia vanished, at the latest, with MMD winning the presidency. Similarly, efforts to reduce presidential powers in Arusha were eliminated in Rwanda's 2003 constitution. Even during the transitional period, the Rwandan prime minister played a subordinate role in spite of his significant constitutional powers. Kagame's claim to be vice-president instead of vice-premier underlines that perception dominated over legalism. None of the other applied factors offer more explanatory strength for the choice of very powerful presidents.

Furthermore, legitimacy makes ruling easier. Legitimate institutions, i.e. institutions that reasonably satisfy the people's preferences, are not supposed to be asserted by force. This is a big advantage in a changing world in which despotism is generally no longer tolerated by donors. In consequence, the legitimacy of institutions in developing countries consists of at least two dimensions: the internal and the external dimension. Decision makers have to satisfy their own people and the donors. The remaining question is which level of legitimacy is necessary to stabilise the system? And, do actors fish for legitimacy or do they just look for the system presumably preferred by the people?

First of all, it is important to regard the extent of legitimacy deprivation. Zambia suffered primarily from economic failure and closed governance that the people were tired of. Rwanda, on the other hand, had totally collapsed and restarted the political process after the genocide.

The two main sources of legitimacy of the interim regime had been the implementation of most of the Arusha agreement and the interim character of government itself. At the same time, this meant that the transitional period could not have been prolonged endlessly without the danger of losing its legitimacy. In light of Rwanda's historical experiences, the introduction of an electoral regime was not a sufficient means to achieve an adequate level of legitimacy for new institutions. Internally, the wish for stability and safety is still dominant in Rwanda, while the Zambian population wanted to get rid of the one-party system that they associated with economic downfall. Externally, donors (and political scientists) were overwhelmed with re-democratisation efforts and opening elections in Africa at the beginning of the 1990s, so that many tended to overestimate the persistence of this development, as we know today. In the case of Rwanda, donors are generally reluctant to criticise the political development as the international community failed to prevent the genocide. Consequently, Rwandan officials had to present institutions that satisfied both the donors' wish for elections and their citizens' wish for stability, but they very well knew that critique from both sides would not be too rigorous, whether because of hope, lack of alternatives, fear or a sense of guilt. This constellation enabled the Rwandan actors to craft electoral and government institutions that allowed general elections, but restricted them for the sake of stability,

and that called for a government of national unity and broad representation in which the dominance of the ruling party was well assured. Zambians, on the other hand, wanted to go to the polls quickly. The old institutions were well known and not perceived as the reason of the ill, neither by the population nor by opposition intellectuals. All parties involved were convinced that the system could be rectified later, if necessary.

In general, the historically determined level and quality of the need to increase legitimacy strongly influenced both processes of institutional crafting. Again, the incentives for the Rwandan regime to be rather innovative and act very discreetly were strong, while the pressure for results in Zambia and the lower level of legitimate institutional renewal produced a much more conservative outcome.

6. Some Concluding Explanations on the Interrelation of Processes and Interests

Because Rwanda and Zambia differ in terms of institutional results as well as in terms of procedural and actor-centred factors, conclusions can be drawn as to why certain institutions were chosen. A comparative analysis of the two cases shows that the crafting of institutions in Africa is neither lacking in innovation nor in creativity nor is it simply following the blueprints of foreign systems. Historical heritage and proximity to the model of the former colonial master are not evidence for blind copying, but a result of deliberate decision.

Institutional crafting is about a complex process in which history delivers the framework for actors who have to choose from different options. A set of eleven factors, extracted from the relevant literature, has been examined qualitatively in a small-N comparison (N=2). Their contribution to explaining why actors opted for distinctive forms of institutions has been diverse. Needless to say, all the conclusions drawn here are centred on the two cases under examination. Nevertheless, there are variables that seem to have a general significance and others that might be worth controlling by adding more cases.

Sorting the explanatory strength of the variables, we can first of all affirm that traditional pre-colonial arrangements had no significant influence on new institutions. Unfortunately, this is the only variable that allows a clear answer of this kind. Several factors, especially those of the historic-procedural approach build the framework of action. There is neither a direct external influence, nor does the initiation or the type of transition directly determine the institutional outcome. But they may be decisive concerning who (and whose interests) will affect the arrangement. Since Rwandan opposition had difficulties to re-establish after the historic events in 1994, a comparison with its unified Zambian counterpart proves diffi-

cult as to the role of a unified opposition. In Rwanda's transitional period (1994-2003), veritable Opposition did not exist. However, this points to some of the more decisive factors.

Two variables largely determined whether or not the outcome was conservative or innovative. These are the speed of the process and the structure of the political personnel. While high-speed processes with recycled elites tend to produce conservative outcomes, time-consuming processes with replaced elites open institutional crafting up to innovation. Where quick decisions are necessary, well-known institutional arrangements are preferred. These institutions resort to earlier national institutions or to foreign patterns, but they are never transferred blindly. Where new elites take time to create institutions, innovative arrangements reflect even more clearly the actors' interests. Meanwhile, conflict management, risk minimisation and the question of legitimacy influence concrete choices. The intensity and type of conflict that occurred before the crafting process affect these factors.

In brief, Rwanda's violent conflict (civil war and genocide) increased expectations for a new set of institutions. Innovation was possible and necessary to craft structures that were generally associated with democratic power-sharing and that guaranteed the stability of the regime in power. Power-sharing arrangements are often more complex and less transparent than majoritarian arrangements. That helped to create a beneficial façade without sacrificing the regime's stability. In fact, the dominant forces gained from this intelligent Rwandan solution. Zambia, meanwhile, did not suffer from an intense violent conflict. A swift political solution to a political conflict in which nobody had to fear for his life, i.e. where the incentives to minimise the risk to lose were minor compared to Rwanda, was preferred by elites, both in government and in opposition, who realised that the best source for legitimacy lay in multiparty elections conducted under an institutional compromise that could be rectified afterwards. However, even a speedily implemented institutional arrangement that produced and therefore gained legitimacy proved to be more persistent than anticipated. The most innovative politicians obviously tend to become conservative with regard to majoritarian arrangements as soon as these institutions are supposed to support their own electoral success.

If this paper is a first attempt at a thorough, structured analysis of only two cases, it shows that much more research should be done on the creation – and reform – of institutions in Africa, whose influence on the political development is most probably interdependent with other factors. However, its influence is undeniable and in contrast to political culture it is much more accessible for political steering.

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