(Conference Draft)

"Conceptualizing the Developmental State in Resource-Rich Sub-Saharan Africa"

Sara Ghebremusse[†]

2015 Law and Development Conference

New Orleans, USA
March 2015

[†] Ph.D. Student, Osgoode Hall Law School, York University.

I. Introduction

Since gaining independence, Sub-Saharan African[1] states have played a varied role in their extractive sectors.[2] Nationalistic policies that saw many African governments participate directly in natural resource production dominated the early post-colonial period.[3] By the late 1980s, the sectors underwent wholesale privatization and the role of the state experienced a neoliberal revamp.[4] Today, several African states — such as Angola, the Democratic Republic of Congo (DRC), Ghana, Guinea, Mali, Mozambique, and Tanzania — are introducing new mining laws aimed at increasing direct state participation in extractive activities in order to create more policy space for revenue generation.[5]

African states are inserting themselves more in their extractive sectors due in large part to the importance of natural resource wealth to revenue generation. Natural resource revenues make up a significant portion of the national budget in resource-rich Sub-Saharan African states, and act as a source of development financing.[6] Of the twenty countries in Africa classified as "resource-rich" by the International Monetary Fund, ten are fiscally dependent on revenues derived from resource extraction.[7] Yet, despite the significant wealth natural resource extraction presents, Sub-Saharan Africa today remains a "continent of paradoxes"[8]: the abundance of natural resources has not led to meaningful economic growth across the region.[9]

The success or failure of achieving development objectives across resource-rich Sub-Saharan Africa can depend on the role the state plays in its extractive sector. This paper will analyze what form this state participation can take by using the "developmental state" concept. In particular, this paper proposes a *graduated* developmental state model that is based on state capacity, both fiscally and structurally. This paper is divided as follows: Section II provides an overview of the developmental state and examines the specific role law has played in its evolution. Section III then examines the developmental state in Sub-Saharan Africa, paying particular attention to model countries put forth in the literature. Finally, Section IV proposes the graduated developmental state

---

* Ph.D. Student, Osgoode Hall Law School, York University.

[1] Also referred to as "Africa".

[2] In this paper "extractive sectors" refers to the industries in which non-renewable natural resources (oil, gas, metals and minerals) are mined or removed from nature, producing raw materials.

[3] H. Besada and P. Martin, *Mining Codes in Africa: Emergence of a Fourth Generation?* (May 2013), The North South Institute, available at <http://www.nsi-ins.ca/wp-content/uploads/2013/03/Mining-Codes-in-Africa-Report-Hany.pdf>, accessed 14 December 2014, p. 4.

[4] *Ibid*.

[5] *Ibid*; J. Jacobs, "An Overview of Revenue Flows from the Mining Sector: Impacts, Debates, and Policy Recommendations", in B. Campbell (ed.), *Modes of Governance and Revenue Flows in African Mining* (Houndmills, Basingstoke, Hampshire: Palgrave Macmillan, 2013), p. 17.

[6] Including the Millennium Development Goals (and its post-2015 successor). A. Bhushan, Y. Samy and K. Medu, *Financing the Post-2015 Development Agenda: Domestic Revenue Mobilization in Africa* (September 2013), online: The North-South Institute <http://www.nsi-ins.ca/wp- content/uploads/2013/09/2013-Financing-the-Post-2015-Africa.pdf>, accessed 14 December 2014, p. 3.

[7] International Monetary Fund, *Sub-Saharan Africa – Sustaining Growth amid Global Uncertainty*, World Economic and Financial Surveys (2012), available at <http://www.imf.org/external/pubs/ft/reo/2012/afr/eng/sreo0412.pdf>, accessed 14 December 2014.

[8] F.B. Nyamnjoh and I.M. Jimu, "Success or Failure of Developmental States in Africa: Exploration of the Development Experiences in a Global Context", in P. Mbabazi and I. Taylor (eds.), *The Potentiality of 'Developmental States' in Africa: Botswana and Uganda Compared* (Dakar: CODESIRA, 2005), p. 18.

[9] *Ibid*.

model in resource-rich Sub-Saharan Africa by examining important considerations for its adoption and providing tailored recommendations.

II. The Developmental State

At its core, the "developmental state" is committed to economic development. It is generally characterized as "a state that intervenes and guides the direction"[10] of economic growth. Chalmers Johnson's 1982 study of Japan and its Ministry of International Trade and Industry (MITI) was the first to profile the characteristics of this state model. In his landmark study, *MITI and the Japanese Miracle*,[11] Johnson identified four key components of the developmental state: a small, efficient bureaucracy; a political environment that allows the bureaucracy to operate independently and free of intrusive interests; state intervention in the economy; and pilot institutions, such as the MITI.[12] Johnson's study helped identify a type of state that gained prominence in the decades following World War II. Although state intervention was common among both industrialized and developing economies, the developmental state offered a way to characterize governments that went beyond intervention alone and used it as a tool to advance economic growth.

After dominating economic policymaking in the years immediately following World War II, active state intervention faced opposition as neoliberal economic policies gained popularity in the 1980s. The rise of neoliberalism coincided with the decline of the developmental state, as neoliberals argued it was not equipped to handle the economic crises that arose in the late 1970s and early 1980s. As a result, the role of the state in development took a backseat to neoliberal policies that favoured deregulation, free trade, and privatization. However, today — after years of what many scholars agree was a failure of neoliberal policies to promote development[13] — several developing countries are channeling the principles of the developmental state model proposed by Johnson. According to Karl Botchway and Jamee Moudud, the mediocre record of neoliberalism has revived support for state intervention and refocused attention on the role of the state in development.[14] David Trubek describes this modern developmental state as the "new developmental state".

A. The "New Developmental State" — The Evolution of Law and the Developmental State

Alongside the evolution of developmental state theory in political science, economics, and international political economy was its critical alignment with law and development scholarship. As a field of study, law and development consistently shifted due to its

[10] E.P. Caldentey, *The Concept and Evolution of the Developmental State*, 37 International Journal of Political Economy, no. 3 (2008), p. 28.
[11] C. Johnson, *MITI and the Japanese Miracle: The Growth of Industrial Policy, 1925-1975* (Stanford: Stanford University Press, 1982).
[12] P. Mbabazi and I. Taylor, "Botswana and Uganda as Developmental States(?)", in P. Mbabazi and I. Taylor (eds.), *The Potentiality of 'Developmental States' in Africa: Botswana and Uganda Compared* (Dakar: CODESIRA, 2005), p. 4.
[13] See for example J. Stiglitz, *Globalization and Its Discontents* (New York: W.W. Norton & Co., 2002) and D. Rodrik, "After Neoliberalism, What?" (Harvard University, August 2002), available at: <http://www.bndespar.com.br/SiteBNDES/export/sites/default/bndes_pt/Galerias/Arquivos/conhecimento/seminario/novosrumos_Dani.pdf>, accessed 14 December 2014.
[14] K. Botchway and J. Moudud, *The Search for a New Developmental State*, 37 International Journal of Political Economy, no. 3 (2008), at 6.

intersections with "law, economics, and the practices of states and development agencies."[15] The first major iteration of law and development scholarship emerged in the 1960s among American legal scholars as "the law and development movement."[16] Influenced by the modernization theory of W.W. Rostow, which contended that development occurred in a period of successive phases of economic growth, these scholars advocated that the adoption of Western legal traditions could foster Third World modernization.[17] Consequently, this movement supported a "top-down" approach that consisted of reforming the legal profession to train lawyers to use law as a means of achieving the developmental goals of the state.[18]

Law and development's encounter with the developmental state historically covers two distinct time periods. The first can be described as the "law of the developmental state."[19] During this period, law was used as a tool of the developmental state, specifically directed to making state intervention more effective. This approach was mostly used in the 1960s and early 1970s, when development economists favoured the state guiding industrial growth over the private sector. Private sector actors were considered less equipped to manage the demands of industrial expansion; states were regarded as better suited to carrying out development.[20] The second period emerged in the 1980s after doubts were raised about the developmental state. With the shift towards more neoliberal economic policies, "law in the neoliberal market"[21] became the second encounter between law and the developmental state. Law's role in the economy morphed during this period from a tool to advance development goals, to a shield used to protect the market against unwanted state intervention.[22] The role of the state was limited to using law as a means to protect investor expectations and facilitate private business transactions.[23] Since the late 1990s, international financial institutions (IFIs) have rejected the "night watchman" concept of the state and accepted that various market distortions and failures may require intervention and direct corrective action.[24]

Today there is no prevailing theory that is shaping the relationship between law and the developmental state. David Trubek suggests "the consensus on which the neoliberal model was built is crumbling"[25] while new conceptions are emerging from state practices and development scholarship. The absence of a theoretical consensus on the role of law in the developmental state has led to what Trubek calls the "new developmental state."[26] In the midst

---

[15] D.M. Trubek, "Law, State, and the New Developmentalism: An Introduction", in D.M. Trubek, H.A. Garcia, D.R. Coutinho, and A. Santos (eds.), *Law and the New Developmental State: The Brazilian Experience in Latin American Context* (Cambridge: Cambridge University Press, 2013), p. 3.
[16] K.E. Davis and M.J. Trebilcock, *The Relationship Between Law and Development: Optimists versus Skeptics*, 56 American Journal of Comparative Law (2008), at 900.
[17] *Ibid*, at 901.
[18] *Ibid*.
[19] Trubek (2013), *supra* note 15, p. 5.
[20] *Ibid*.
[21] *Ibid*.
[22] *Ibid*.
[23] *Ibid*.
[24] K. Rittich, "The Future of Law and Development: Second-Generation Reforms and the Incorporation of the Social", in D. Trubek and A. Santos (eds.), *The New Law and Economic Development: A Critical Appraisal* (New York: Cambridge University Press, 2006), p. 212.
[25] Trubek (2013), *supra* note 15, p. 5.
[26] *Ibid*.

of the current theoretical vacuum, different ideas about the developmental state are emerging that rely on "different models of development and different roles for law."[27]

An overarching feature of this new developmental state is the revised relationship between the state and the private sector. No longer is the state acting as the guiding hand of the economy; neither is the private sector seeking to act unilaterally with little involvement from the state. Instead, new developmentalism acknowledges that optimal development goals will be realized if the state and the private sector collaborate. New developmentalists posit that this can include public-private partnerships, and other joint efforts that originate from state promotion of industrial innovation and competitiveness.[28] Policies that may characterize this new developmental state include:

- "Primary reliance on the private sector as investor rather than direct state ownership [with natural resource sectors being a possible exception];
- Acceptance of a major role for the state in steering investment, coordinating projects and providing information…;
- Promotion of productive (rather than speculative) foreign direct investments;
- Emphasis on making private firms competitive rather than on shielding them from competition;…
- Promotion of domestic capital markets and the financial sector both to generate and to allocate resources;…"[29]

Law and development scholars continue to offer differing insights into what form the new developmental state can take.[30] Prior to the emergence of this concept, the developmental state took shape from models in East Asia. These models, and the developmental state experience in Latin American, are discussed further in Subsection B.

B. The Developmental State in East Asia and Latin America

1. East Asia

Studies of East Asian countries dominate developmental state scholarship due to the high rates of economic growth many experienced in the latter half of the twentieth century. Japan, South Korea, Singapore, Taiwan, and Hong Kong are often considered the prototypes for developing countries seeking to replicate their success. Although experiences varied in each country, an examination of two leading examples — Japan and South Korea — helps illustrate some of the features that contributed to theorizing the developmental state.

Japan's development efforts centred on the creation of the MITI in 1949. Faced with a devastated economy following the end of World War Two, the MITI was initially tasked with coordinating the "Policy Concerning Industrial Rationalization,"[31] which aimed to combat harmful

[27] *Ibid*.
[28] *Ibid*, p. 9.
[29] D.M. Trubek, *Developmental States and the Legal Order: Towards a New Political Economy of Development and Law*, Univ. of Wisconsin Legal Studies Research Paper No. 1075 (2008), p. 11.
[30] See for example Botchway and Moudud's alternative take on the "new developmental state" in *The Search for a New Developmental State*, *supra* note 14.
[31] Caldentey, *supra* note 10, at 28.

regulations — particularly those contributing to deflation — put in place by the Supreme Commander of the Allied Powers, namely those targeting deflation.[32] In addition to spearheading this policy, the MITI was soon given powers under the Foreign Capital Law to negotiate the price and conditions of technology imports.[33] Within three years, the MITI's authority was broadened to include control over merchandise imports and the foreign exchange budget. As a result, a system of import control responsible for protecting domestic industry was created. The concurrent control over foreign exchange also helped foster the growth of exports.[34]

After its early success, the MITI expanded its continued support of domestic industries by providing much-needed access to credit through the implementation of two connected policies. The first was the creation of the Japan Development Bank, which was initially responsible for lending to two key domestic industries: energy and metal production. The second policy expanded lending to other industries through a generous scheme that involved both the Japanese central bank and commercial banks.[35]

South Korea also pursued export-oriented policies after the end of a devastating war (in this case the Korean War in 1953).[36] Following Japan's example, South Korea created a government ministry tasked with pursuing economic growth. The Ministry of Commerce and Industry was conceived as part of the country's first five-year economic development plan; its mandate, like MITI's, was to implement foreign exchange policies and export subsidies favourable to domestic industries, while providing preferential access to credit.[37]

Central to both Japan's and South Korea's development strategies was fluidity. Economic policies were flexible, and adapted to different times and conditions. In South Korea, this consisted of distinct five-year plans that implemented incremental developmental policies over the length of each plan. The first two put in place after the Korean War focused on promoting self-reliance and strengthening the state's economic instruments. The third plan shifted its focus to the development and export growth of key industries, specifically agriculture, and heavy and chemical industries. Later, recognizing its growth potential, the South Korean government turned to the development of the high tech industry in the 1990s.[38] Much like South Korea, Japan executed phased development plans, beginning with the initial focus of restoring the industrial process in the years immediately following the end of World War II, then fostering strong export industries. Afterwards, in the 1980s, Japan supported the new, high-growth technology sector while responding to less competitive industries, such as textiles and steel production.[39]

Based on the Japanese and South Korean developmental state models, Esteban Pérez Caldentey identified three additional features that complement Chalmers Johnson original scholarship. First, interventionist policies used by the state were not confined to public ownership; instead, the developmental state used various instruments including "tax credits, breaks, subsidies, import controls, export promotion, and targeted and direct financial and credit policies instruments that belong to the realm of industrial, trade, and financial policy."[40] Second, state intervention is fluid, and

[32] *Ibid*.
[33] *Ibid*.
[34] *Ibid*.
[35] *Ibid*, at 29.
[36] J. Wong, *The Adaptive Developmental State in East Asia*, 4 Journal of East Asian Studies (2004), 345-362.
[37] *Ibid*, at 351.
[38] Caldentey, *supra* note 10, at 30.
[39] *Ibid*, at 29.
[40] *Ibid*, at 30.

"varies over time in scope and content."[41] Third, active participation by the private sector is key to the developmental state's success.[42]

Despite the initial consensus regarding the state's role in East Asian economic development, the 1997 East Asian crisis raised doubts about the efficacy of this approach.[43] Commentators blamed the institutional framework of the developmental state — especially the close relationship between the state and business — for the poor regulatory framework and lack of transparency that instigated the crisis.[44]

2. Latin America

Much like East Asia, Latin America's developmental state experience was varied. Caldentey traces its origin to the first half of the nineteenth century, when several Latin American states gained independence and were subsequently integrated into the global trade system. At that time, small domestic industries forced Latin American countries to rely extensively on exports for economic growth. Consequently, Latin American states used trade to achieve the dual purpose of facilitating the creation of domestic industry and generating government revenue through both tariffs and export taxes.[45] In the decades that followed, Latin American governments assumed a greater interventionist stance in a number of areas: the construction of general infrastructure (roads, railways); the protection of specific domestic industries and export sectors; and the promotion of skilled labour. Government policies used to advance these development goals included subsidies, access to credit, tariffs, and export taxes.[46]

Latin American intervention continued in the middle of the twentieth century, when development strategy centred on state-led industrialization. A variety of government measures were used to achieve this goal, including control over natural resource sectors, supporting nontraditional industries through various fiscal and monetary policies, and creating national development banks to improve access to cheap credit.[47] The Latin American developmental state is often associated with this period in history, wherein domestic industrialization was favoured over export promotion.[48]

Unlike the experience in East Asia, Latin American developmental states were considered less successful, particularly in the wake of the 1980s debt crisis. State intervention in the region became synonymous with inflation and wasteful spending, rather than economic growth. This negative view of state action precipitated the introduction of structural adjustment programmes, and their accompanying neoliberal economic policies in several Latin American states in the 1980s.[49]

C. Defining Features of the "Successful" Developmental State

The developmental state experiences of East Asia and to some extent Latin America have aided scholars in defining criteria that are vital to its success. Thandika Mkandawire divides these features into two broad categories: ideological and structural.[50] Mkandawire contends that this

[41] *Ibid*.
[42] *Ibid*.
[43] T. Mkandawire, *Thinking about developmental states in Africa*, 25 Cambridge Journal of Economics (2008), at 292.
[44] Wong, *supra* note 36, at 345.
[45] Caldentey *supra* note 10, at 36.
[46] *Ibid*, at 38.
[47] *Ibid*, at 43.
[48] *Ibid*.
[49] *Ibid*, at 48.
[50] Mkandawire, *supra* note 43, at 290.

"ideology-structure nexus" distinguishes developmental states from other states. Ideologically, the developmental state is "developmentalist" — its "mission" is "that of ensuring economic development, usually interpreted to mean high rates of accumulation and industrialization."[51] Other developmental state scholars, such as Pamela Mbabazi and Ian Taylor, argue that this involves achieving more than merely increased rates of growth: a developmental state also "*earnestly seeks* to deploy its resources to the *job* of economic development."[52] Structurally, the developmental state is defined by its "*capacity* to implement economic policies sagaciously and effectively,"[53] which is determined by such factors as institutions, technology, politics, and administration.[54] Additional measures, such as poverty levels and human capacity, can also be used to conclude whether the state meets the structural criteria.[55] Improvements to such areas of the day-to-day lives of the broader population can help entrench the state in society and enhance its legitimacy, thus supporting a sustainable developmental state and ensuring its success. Much of the scholarly contributions discussed here were made since Johnson's study of the MITI. This section attempts to consolidate these contributions with Johnson's into a list of four defining features of the "successful" developmental state.

1. Development-oriented political leadership

State intervention in the economy is not exclusive to the governments of developing countries; states of different political orientation have intervened in markets throughout history. When defining developmental states, however, scholars are keenly attentive to the type of economic intervention that is taking place.[56] Although the formula is not exact — it varies from state-to-state — state intervention centres on the leadership of a development-oriented political base. The goals this leadership sets can elevate the state to an "entrepreneurial agent"[57] that undertakes its developmental vision.

Ideologically, the political leadership are united by similar economic and political development beliefs. In the East Asian examples previously discussed, political elites shared a common development approach due to a combination of political alliances and authoritarian rule.[58] The ways in which development-oriented political leadership emerges varies as well. In the East Asian experience, it was attributed to a concerted response by political elites to respond to political and economic conditions (both local and international) in the post-World War Two period, including "broad coalitional commitment, scarce resource endowment and severe security threats."[59] Development-oriented political leadership may also emerge from a group of like-minded political

---

[51] *Ibid*.
[52] P. Mbabazi and I. Taylor, "Conclusion: Developmental States and Africa in the Twenty-First Century", in P. Mbabazi and I. Taylor (eds.), *The Potentiality of 'Developmental States' in Africa: Botswana and Uganda Compared* (Dakar: CODESIRA, 2005) p. 150 (emphasis in the original).
[53] Mkandawire, (2001), *supra* note 43, at 290 (emphasis in the original).
[54] *Ibid*.
[55] K. Botchway and J. Moudud, "Neo-liberalism and the Developmental State: Consideration for the New Partnership for Africa's Development", in B.F. Bobo and H. Sintim-Aboagye (eds.), *Neo-liberalism, Interventionism and the Developmental State: Implementing the New Partnership for Africa's Development* (Trenton, NJ: Africa World Press Inc., 2012), p. 23.
[56] Mbabazi and Taylor, *supra* note 52, p. 151.
[57] H. Chang, "The Economic Theory of the Developmental State", in Meredith Woo-Cumings (ed.), *The Developmental State* (Ithaca, NY: Cornell University Press, 1999), p. 194.
[58] P. Meyns and C. Musamba, *The Developmental State in Africa: Problems and Prospects*, INEF Report 101/2010, available at <https://inef.uni-due.de/cms/files/report101.pdf>, accessed 14 December 2014, p. 22.
[59] *Ibid*.

elites that share similar development goals, and earn the trust of the bureaucracy and private sector to carry out their agenda.[60] A non-predatory group that was generally uncorrupted and sought limited personal gains also contributed to the success of early developmental states, which suggests that the political will to guide the economy towards developmental goals is an important feature of the successful developmental state.[61]

2. An autonomous and effective bureaucracy

To realize its vision for development, the state, as an "entrepreneurial agent", must use the necessary institutions.[62] If none exist, the developmental state can create them. Johnson's study of the MITI identified an autonomous and effective bureaucracy as one of the successful institutions created by the Japanese developmental state. Its success can be attributed to such Weberian characteristics as meritocracy, promotional incentives, and guaranteed prestige and legitimacy.[63] These features created a class of bureaucrats committed to a shared corporate-culture working in an environment that bred autonomy and isolation from political elites. Armed with this freedom, bureaucrats were able to carry out development goals using methods they deemed effective, including a combination of "'carrots' and 'sticks'"[64] that shaped markets through both incentives and disciplinary measures.[65]

3. Performance-oriented governance

Successful developmental states also possess political legitimacy that is generated from the support of the broader population. The developmental state can ensure it receives continued support by distributing the benefits of economic growth equitably.[66] Doing so entails a combination of setting certain performance standards for the market, while also committing to transferring those results into actual changes in the everyday lives of the population. Using this approach helped ensure the continued political success of East Asian developmental states, as economic growth coincided with greater income equality, lower unemployment, and a reduction in poverty.[67]

4. Production coordination and conflict-management

Intervening in the economy to pursue development goals was a staple feature of the developmental state exemplified by East Asian countries. In order to achieve these goals, states coordinated with businesses to meet certain economic benchmarks. Measures used to assist the private sector included subsidies, protectionism, and creating cooperative relationships between business and financial institutions. States use of these measures was not undertaken blindly — it was intended to promote productivity by incentivizing the private sector and ensuring continued government support.[68]

Coordination among public and private sectors can also reduce transaction costs. Ha-Joon Chang contends the determination of investment decisions underpinning industrial policy may require

---

[60] *Ibid*.
[61] *Ibid*, p. 23.
[62] Chang, *supra* note 57, p. 195.
[63] Meyns and Musamba, *supra* note 58, p. 23.
[64] *Ibid*.
[65] *Ibid*.
[66] *Ibid*, p. 25.
[67] *Ibid*.
[68] *Ibid*.

knowledge of complementary projects from competing business entities.[69] Centralized coordination that may include identifying points of overlap and cooperation, or facilitating agreements between parties, can promote more effective economic change. To encourage collaboration, states can use both financial and political resources to address gaps that hinder cooperation.[70]

Resolving potential conflicts between coordinated actors is another feature of the successful developmental state.[71] The allocation of scarce resources requires making decisions that one economic actor may consider disadvantageous, and subsequently resist. Coordination not only can help counter opposition, it can also commit to mitigating or resolving any conflicts that may arise.[72]

The "successful" developmental state is overwhelmingly based on the experiences of the high-growth East Asian economies of the twentieth century. Describing the components here is intended to identify popular understandings in developmental state literature; it is not meant to narrow any discussion of what the successful developmental state can look like in other contexts, particularly Sub-Saharan Africa.

III. The Developmental State in Sub-Saharan Africa

Of the nearly fifty countries in Sub-Saharan Africa, only four — Botswana, Mauritius, South Africa, and Uganda — are discussed in literature as potential developmental states. In most instances, the scholarship concerning the developmental state and Africa centres around the question of whether or not the model is possible (outside of the four countries mentioned earlier). Referred to as "impossibility theorems", some Africanist developmental state scholarship attempts to debunk this thesis.[73] They contend the arguments are not based on the reality of Africa's historical, political, or economic climate: the developmental state existed in many parts of Africa, and still can today. This section will discuss the developmental state in Africa by providing a historical overview of the African state in development, examining the replicability and rationale for the developmental state in Africa, then concluding with a discussion of three African developmental states: Botswana, Mauritius, and South Africa.

A. History of the African State in Development

Like East Asia and Latin America, the African state became a dominant player in development after the end of a tumultuous period in history. The end of colonialism and new-found independence thrust African governments into the centre of their states' development trajectories. Post-colonial leaders of Africa's newly independent states inherited the task of pursuing social and economic development from their colonial predecessors. As heads of the nationalist parties that dominated the post-colonial one-party state system, these leaders and their parties quickly became synonymous with the state as agents of development.[74] Kwame Nkrumah in Ghana, Tanzania's Julius Nyerere, and Kenneth Kuanda in Zambia are a few examples.[75] At independence these leaders were faced with a weak, almost nonexistent private sector, which led many states to assume the role of the

[69] Chang, *supra* note 57, p. 193.
[70] *Ibid*.
[71] *Ibid*, p. 196.
[72] *Ibid*.
[73] Mkandawire, *supra* note 43, at 309-310.
[74] Botchway and Moudud, *supra* note 55, p. 16.
[75] *Ibid*.

main economic actor. This responsibility extended from constructing social and economic infrastructure, to owning and managing productive industries.[76]

For some scholars, the centrality of development to this group of post-colonial leaders is sufficient to describe these states as developmentalist.[77] For others, these leaders' records raise serious doubts about early post-colonial developmentalism in Africa.[78] Although development was a priority for several leaders, some scholars argue that consolidating power was another objective that detracted from developmentalism. Claude Ake, for example, contends that state intervention was not used to promote development, but rather "to facilitate the appropriation of wealth by means of state power."[79] The early development failures across Sub-Saharan Africa is used to support this view.

Despite some of these failures of early African leaders, development remained a central priority throughout the remainder of their political careers and those of their successors. Although the "state-development nexus"[80] altered as growth in African economies began to decline during the period of economic hardship in the 1970s, African states remained active participants in development as neoliberalism gained prominence in the 1980s.[81] When the neoliberal-inspired structural adjustment programmes failed to meet expectations, even IFIs accepted a role for the state in the development process. However, state involvement was predicated on the notion of "good governance" advanced by those same IFIs.[82]

B. Replicability and Rationale of the Developmental State in Africa

The mixed history of the African state in development raised doubts about the success of the East Asian developmental state model in the post-adjustment era. Some scholars argued that the developmental state was economically and culturally unique to East Asia, and beyond the political and institutional capacity of African governments.[83] Mkandawire categorizes these "impossibility theses" as: lack of ideology; dependence syndrome; lack of autonomy; neo-patrimonialism and rent seeking; the lack of technical and analytical capacity; and a poor record of performance.[84]

Mkandawire dismisses these arguments by arguing that they are not based on African historical experiences, nor the development trajectories of successful developmental states.[85] According to Mkandawire, the climate exists in Africa for the developmental state. He contends that developmentalism has historically been a priority for African leaders, thus refuting the lack of ideology argument. He also dismisses the neo-patrimonial and rent seeking arguments based on historical evidence. Neo-patrimonialsim and rent seeking are automatically equated with corruption and patron-clientelism, without determining whether such behaviour is advancing developmental goals or not.[86] Mkandawire notes that both neo-patrimonial and rent seeking behaviour can positively

---

[76] Meyns and Musamba, *supra* note 58, p. 28.
[77] Nyamnjoh and Jimu, *supra* note 8, p. 16; Mkandawire, *supra* note 43, at 291.
[78] Meyns and Musamba, *supra* note 58, p. 29.
[79] C. Ake, *Democracy and Development in Africa* (Washington, D.C.: Brookings Institution, 1996), p. 6.
[80] H. Stein, "Rethinking African Development", in Ha-Joon Chang (ed.), *Rethinking Development Economics* (London: Anthem Press, 2003), p. 159.
[81] Nyamnjoh and Jimu, *supra* note 8, p. 27.
[82] Mkandawire, *supra* note 43, at 292.
[83] Botchway and Moudud, *supra* note 55, p. 24.
[84] Mkandawire, *supra* note 43, at 294-298; Botchway and Moudud, *supra* note 55, p. 25.
[85] Mkandawire, *supra* note 43, at 309.
[86] Botchway and Moudud, *supra* note 55, p. 25.

impact growth through the redistribution of resources. In support of his argument, Mkandawire identifies East Asian developmental states where rents were used to help spur industrialization.[87]

The nature of African institutions is also used to argue that the developmental state is not replicable in the region. Democratic institutions are often touted as key requirements for the success of the African developmental state. The economic success of Botswana and Mauritius — two peaceful democracies — is used to support this assertion, in contrast to the lower, or negative, economic growth that occurred in the rest of Africa, where key institutions are considered "irredeemably greedy, corrupt and captured by rent seekers."[88] According to Botchway and Moudud, this argument overlooks how other developmental states, particularly in East Asia, succeeded without democratic institutions but rather authoritarian regimes.[89] Mkandawire suggests that democratic institutions in Africa should, at the very least, provide a system of "checks and balances."[90] His view recognizes a need for accountability, but does not imply that democracy is necessary for the African developmental state to succeed.

Despite the replicability debate, there is greater consensus in developmental state literature regarding the role it can play in promoting development in modern Africa. During the colonial period, African resources were misallocated as colonial institutions were extractive and restricted production. Many of these colonial institutions remained intact after independence was secured.[91] In addition to inheriting extractive colonial institutions, newly-independent African states were left without a civil service, a strong-centralized taxation system, or vital infrastructure.[92] The state structure at that time was ill-equipped to meet the development objectives of newly-independent states.[93] Over fifty years of independence has not changed the state structure in many African states that struggled to build state institutions amidst war, civil strife, and the lack of adequate resources. Across the region today the state structure remains poor. Howard Stein describes this as a "developmental crisis" — African economies are incapable of generating the conditions necessary for sustained levels of growth and improvements in the standard of living.[94] Poverty, unemployment, and inequality rates remain high while several states are mired in conflict, disease, famine, and low levels of agricultural and industrial production.[95] Africa remains a "continent of paradoxes" — it possesses abundant natural resources and human capacity that a developmental state can harness to promote meaningful economic development that is currently lacking in many parts of the continent.[96]

C. African Developmental States?

The role of the African state in development varied across the continent. Generally, several African states are considered to have prioritized development; however, only four states are ever discussed in the literature as coming close to meeting the criteria for the developmental state:

---

[87] Mkandawire, *supra* note 43, at 299.
[88] Meyns and Musumba, *supra* note 58, p. 27; Mkandawire, *supra* note 43. 310.
[89] Botchway and Moudud, *supra* note 55, p. 34.
[90] Meyns and Musumba, *supra* note 5, p. 27.
[91] A. Seidman, R.B. Seidman, P. Mbana, and H. Hu Li, "Introduction", in A. Seidman, R.B. Seidman, P. Mbana, and H. Hu Li (eds.), *Africa's Challenge: Using Law for Good Governance and Development* (Trenton, NJ: Africa World Press Inc, 2007), p. 4, 6.
[92] *Ibid*.
[93] *Ibid*.
[94] Stein, *supra* note 80, p. 153.
[95] Nyamnjoh and Jimu, *supra* note 8, p. 18.
[96] *Ibid.*

Botswana, Mauritius, South Africa, and Uganda. Of the four, Botswana, Mauritius, and South Africa will be discussed in greater detail below.

1. Botswana

Botswana is described as a developmental state due to its transformation from a tiny colonial outpost to having the institutional capacity to achieve consistently high levels of growth and promote development. At the time of independence, Botswana was one the world's poorest countries with a per capita income of approximately US$80.[97] Today, Botswana is one of Africa's few middle-income countries. This transformation is attributed to a number of factors characteristic of the developmental state: a development-oriented political leadership willing to intervene in the economy; an autonomous and effective bureaucracy; and a production-oriented private sector.[98]

After Botswana gained independence from Great Britain, the country was quickly set on the course of building a national economy and improving living conditions. Under the leadership of President Seretse Khama, development planning was adopted to provide a systemic approach to social and economic development.[99] It continued with Khama's successor, Quett Masire, and remains in place today with the most recent National Development Plan.[100] A significant component of the political leadership's success in promoting development planning was its ability to resist destructive neo-patrimonial and rent seeking behaviour.[101]

To ensure the effective execution of National Development Plans, Botswana's leadership was also committed to establishing the necessary institutions.[102] This included the creation of an autonomous and effective bureaucracy, which steadily grew from a group of expatriate experts following independence to a modern, and competent civil service today. The Ministry of Finance and Development Planning was the centrepiece of Botswana's developmental state. Early leadership ensured the bureaucracy's independence by shielding it from political interference. Its capacity evolved, and the agency eventually set the tone for development planning in the country.[103]

From early on, Botswana encouraged private investment, particularly in the country's mining sector. Botswana took advantage of its mineral wealth by entering into a joint venture with the mining giant De Beers, which helped finance development planning in the immediate post-colonial period.[104] Diamond mining continues to support Botswana's economic growth. Today, Botswana government intervention consists of direct measures to encourage downstream mining activities and ensure the industry's continued success and positive contributions to the national economy. These include the creation of a diamond technology park in the capital city, Gaborone, that incubates small-scale companies, and their spinoffs, that cut, polish, and sell diamonds themselves.[105]

---

[97] D. Sebudubudu, "The Institutional Framework of the Developmental State in Botswana", in P. Mbabazi and I. Taylor (eds.), *The Potentiality of 'Developmental States' in Africa: Botswana and Uganda Compared* (Dakar: CODESIRA, 2005), p. 82.
[98] Meyns and Musamba, *supra* note 58, p. 42.
[99] *Ibid*, p. 46.
[100] *Ibid*.
[101] *Ibid*, p. 47.
[102] Sebudubudu, *supra* note 97, p. 81.
[103] Meyns and Musamba, *supra* note 58, p. 48.
[104] Meyns and Musamba, *supra* note 58, p. 49; D. Acemoglu, S. Johnson, and J. Robinson, *An African Success Story: Botswana*, MIT Department of Economics Working Paper No. 01-37 (2001), p. 17.
[105] R. Young, "Botswana: From sleepy backwater to global mining hub", available at <http://www.bbc.co.uk/news/business-23771552>, accessed 9 January 2015; "Diamond Technology Park Botswana", available at <http://www.safdico.com/Diamond-Technology-Park>, accessed 9 January 2015.

2. Mauritius

Agriculture was the main economic activity during the colonial period in Mauritius. The Netherlands was the first European country to come across the island in 1598, and quickly established sugar cane farming. France continued sugar production when it gained control of the island, creating large wealthy sugar plantations that the British maintained after it added Mauritius to its colonial empire.[106] Sugar cane production created a wealthy economic class that survived the end of colonialism and the creation of an independent Mauritius state in 1968.[107] At independence Mauritius retained many of the qualities of a mono-crop colony: sugar cane production remained the country's single export crop and main source of government revenue.[108]

Mauritius' economic elites did not possess political power at independence. It instead was held by the middle-class, which moved to strengthen the education system and consolidate power in the bureaucracy. Despite its disassociation from the capitalist class, the ruling party sought partnerships with the private sector in order to achieve economic growth and support their goals as a welfare state focused on combatting rising unemployment and supporting a growing population.[109]

Recognizing the volatility of a mono-crop economy, the state undertook measures to diversify the economy by introducing labour-intensive manufacturing in the 1970s.[110] Eventually, additional policies were introduced to support export-led industrialization in the country, including the creation of an export processing zone. Modelling its industrialization after the East Asian developmental states, Mauritian bureaucrats spearheaded the state's economic transformation.[111]

3. South Africa

Unlike Botswana and Mauritius, South Africa's characterization as a developmental state is disputed. Since the end of apartheid in the early 1990s, South Africa's dominant political party, the African National Congress, focused significant state effort on righting the economic wrongs of that era using redistributive measures. South Africa's natural resource sector is regarded as a means through which the development prospects of the general population, particularly disadvantaged Blacks, can improve. The Black Economic Empowerment (BEE) policy is one attempt to harness the development potential of South Africa's mining wealth.[112]

The BEE was part of South Africa's 2002 overhaul of the mining sector. New legislation was introduced to promote the participation of Historically Disadvantaged South Africans in mining ventures. Rather than support widespread economic gains, however, the BEE instead has benefitted a small-handful of well-connected black South Africans.[113] It has yet to achieve the greater numbers of employment and skills development Andrew Lawrence contends is necessary to achieving a "democratic and developmental South African state." Although there is little doubt South Africa's mineral wealth can promote the country's developmental goals, it is likely the state's current redistributive attempts do not go far enough.[114]

---

[106] T. Meisenhelder, *The Developmental State in Mauritius*, 35 The Journal of Modern African Studies, no. 2 (1997), at 279, 280.
[107] *Ibid*.
[108] *Ibid*, at 281.
[109] *Ibid.*
[110] *Ibid*, at 283.
[111] *Ibid*, at 288.
[112] A. Lawrence, "Neoliberalism", in J.N Singh and F. Bourgouin (eds.), *Resource Governance and Developmental States in the Global South* (Houndmills, Basingstoke, Hampshire: Palgrave Macmillan, 2013) p. 41, 50.
[113] *Ibid*, p. 55.
[114] *Ibid*, p. 57.

IV. Conceptualizing the Developmental State in Resource-Rich Sub-Saharan Africa

Botswana, Mauritius, and South Africa offer examples of different developmental state approaches in resource-rich Sub-Saharan Africa. Based on these varying examples, and those from East Asia and Latin America, this section attempts to propose a developmental state model for other similarly situated African states, with a particular focus on state participation in natural resource extraction. Many African governments currently recognize the impact of natural resource wealth to economic development as they are reclaiming a greater role in their extractive sectors to create more policy space for revenue generation.[115] The African Mining Vision (AMV) articulates this commitment. Concluded in 2009, the AMV expresses states' willingness to promote long-term development using revenue generated from resource extraction.[116]

The developmental state structure can assist resource-rich African states to meet the commitments outlined in the AMV. The model is not static, nor is there a blueprint that can be transplanted to every resource-rich African state.[117] Instead, the model varies and can be adapted to the different conditions of each state.[118] However, the model relies extensively on the developmental state model that encourages state-private sector collaboration, and thus it supports tailored engagement between the state and the private sector across resource-rich Africa.[119] The capacity of states and their extractive industries differ across Sub-Saharan Africa; therefore the type of state-private sector engagement will depend on what measures are available to national governments given their fiscal, political, and economic position.

A. Important Considerations

Before discussing specific developmental state measures that may be suitable for resource-rich Africa, this section will examine four important considerations that will likely impact the successful implementation of any policies: the resource curse; democratic institutions and good governance; state capacity; and the taxation of extractive activities.

1. The resource curse

According to the "resource curse" thesis, natural resource endowment is more of a curse to some countries than a blessing.[120] The theory emerged as an explanation for the phenomena

[115] Besada and Martin, *supra* note 3, p. 4.
[116] T. Shaw, *Post-2015 Natural Resource Governance in Africa: African Agency and Transnational Initiatives to Advance Developmental States* (Ottawa: North South Institute, 2013), p. 1.
[117] Meyns and Musamba, *supra* note 58, p. 34.
[118] Caldentey, *supra* note 10, at 30.
[119] Trubek, *supra* note 29, at 13.
[120] R. Auty, *Sustaining Development in Mineral Economies: The Resource Curse Thesis* (London: Routledge, 1993); J. Sachs and A. Warner, *Natural Resource Abundance and Economic Growth*, NBER Working Paper No. 5398 (1995), at 2; P. Collier and B. Goderis. *Commodity Prices, Growth, and the Natural Resource Curse: Reconciling a Conundrum*, Centre for the Study of African Economies, Working Paper Series (August 2007).

of slow economic growth in certain resource-rich states compared to their resource-scarce counterparts.[121] It has evolved to explain two other distinct outcomes: weakened political institutions; and a higher prevalence of civil conflict.[122] According to the theory, the abundance of natural resources can lead to rent-seeking behaviour and increased rates of corruption by political elites.[123] The availability and attraction of resource rents has been linked to the prevalence of political violence in resource-rich states. Past conflicts in the Democratic Republic of Congo and Sierra Leone are used by such scholars as Paul Collier and Anke Hoeffler to support the link between resource wealth and conflict.[124] However, there is no consensus in the literature about the correlation between those two phenomena and natural resource endowment.[125]

In contrast, there is less dispute regarding the correlation between resource abundance and low growth rates. This negative relationship has been attributed to four factors: "Dutch disease"; commodity price volatility; "declining terms of trade"; and the "enclave nature" of the resource sector.[126] Dutch disease is a term that was coined in the 1970s to describe the negative effects of the boom in natural gas exploitation on the Netherlands economy.[127] The growth in natural gas exports contributed to declines in the manufacturing and agricultural sectors as a result of the appreciation of the Dutch currency, which led to these industries being less competitive internationally.[128] The same patterns were identified in other countries with dominant natural resource sectors, thus making it one of the identifiable characteristics of the resource curse.[129]

Like Dutch disease, the other three factors are risks uniquely present in resource based economies. Inconsistent commodity prices make the management of national budgets more difficult, as forecasting revenues can become unpredictable.[130] Additionally, the "declining terms of trade" theory contends that natural resource exports will accrue less value for resource-rich states as the price of manufactured imports increase long-term.[131] Similarly, the "enclave nature" of resource extraction offers minimal economic benefits due to few local production linkages, and low employment rates in the sector.[132] Combined, these four factors negatively impact growth, and contribute to the thesis that natural resource endowment is more of a curse than a blessing, particularly in low- and middle-income developing countries.[133]

In Africa, the resource curse has taken many forms. Of particular concern are the political effects, which include elites benefiting from resource wealth through corruption and

---

[121] Sachs and Warner, *supra* note 120, at 2.
[122] P.G. Ferreira, *Breaking the Weak Governance Curse: Global Regulation and Governance Reform in Resource-Rich Developing Countries*, SJD Thesis, University of Toronto Faculty of Law (2012), p. 287 [unpublished].
[123] P. Martin, *A Closer Look at Botswana's Development: The Role of Institutions*, 9 Paterson Review (2008), at 38.
[124] *Ibid*, at 36-37.
[125] Ferreira, *supra* note 121, p. 29.
[126] *Ibid*.
[127] *Ibid*.
[128] *Ibid*.
[129] *Ibid*, p. 30.
[130] *Ibid*.
[131] *Ibid*, p. 31.
[132] *Ibid* p. 32.
[133] *Ibid.*

patronage to the detriment of the broader populace.[134] When it comes to explaining the relationship between natural resources and wealth in Africa, it seems to be easy to contend that "the lack of democratic accountability and the presence of patron-client politics, extensive corruption, and a weak rule of law"[135] contributes to the poor management of natural resources in the region.

2. Democratic institutions and good governance

Following the popular adoption of the resource curse thesis to explain negative economic growth in developing countries, development scholars turned their attention to methods necessary to combat the negative effects of the resource curse. Soon the idea emerged that combating the resource curse required a political response; and more specifically, one that entails the creation of sound institutions and policies.[136] The influence of Douglass North's "new institutional economics" was vital to contending that "institutions matter for development."[137] North's economic theory argued that institutions created incentives for behaviour by enhancing the efficiency of economic transactions and improving the overall political and economic environment in which investment can occur.[138] This premise spurred the popular theoretical framework that it was not only that institutions mattered, but that the quality of these institutions was also important. From that, the notion of "good governance" emerged and dominated economic evaluations of resource-rich developing countries since the 1990s.[139]

Debate about the potential success of the African developmental state already contemplates the necessity of "good governance" and democratic institutions as this debate is keenly applicable to the adoption of the developmental state in resource-rich countries. Historically, developmentalism was not synonymous with resource-rich African states. Despite vast amounts of mineral wealth, development prospects rarely improved across Africa, with the exception of Botswana, Mauritius, and South Africa. Many scholars attributed this inability to capitalize on natural resources on the lack of democratic institutions across Sub-Saharan Africa that resulted in mismanaged extractive sectors, and the deterioration of economic institutions.[140]

Expanding the role of the state in contemporary natural resource extraction raises concerns for those who would contend that greater intervention can lead to corruption and

---

[134] M.H. Khan, "Governance and Growth Challenges in Africa" in A. Noman, K. Botchwey, H. Stein and J.E. Stiglitz (eds.), *Good Growth and Governance in Africa: Rethinking Development Strategies* (Oxford: Oxford University Press, 2011), p. 115; Rittich, *supra* note 24, p. 210.
[135] Khan, *supra* note 134.
[136] D. Acemoglu, S. Johnson and J.A. Robinson, *The colonial origins of comparative development: an empirical investigation*, 91 American Economic Review, no. 5 (2001), 1369-1401; W. Easterly & Ross Levine, *Tropics, germs, and crops: how endowments influence economic development*, 50 Journal of Monetary Economics, no. 1 (2003), 3-39; H. Mehlum, K. Moene and R. Torvik. *Institutions and the Resource Curse*, 116 The Economic Journal, no. 508 (2006), 1-20; World Bank, *Striking a Better Balance* (2004), available at <http://documents.worldbank.org/curated/en/2004/09/5138809/striking-better-balance-world-bank-group-extractive-industries-final-report-extractive-industries-review>, accessed 14 December 2014.
[137] M. Prado and M. Trebilcock, *Path Dependence, Development, and the Dynamics of Institutional Reform*, 59 University of Toronto Law Journal (2009), at 342.
[138] *Ibid*; Rittich, *supra* note 24, at 214.
[139] Mehlum et al., *supra* note 135.
[140] Besada and Martin, *supra* note 3, p. 4.

inefficiency.[141] Although this argument alone is likely insufficient to remove the state completely from extractive activities, it does shift attention to what form the state should take to limit rent seeking behaviour. In Africa, the emphasis is often on preventing corruption and promoting "good governance" by building democratic institutions, such as multiple parties, the rule of law, transparency, accountability, and presidential term limits.[142] Despite being heralded as hinderances to rent seeking behaviour, there is little guarantee that democracies and democratic institutions will do just that while positively contributing to economic growth and supporting the goals of resource-rich developmental states.[143]

The experiences of successful developmental states reveal that development-oriented political leadership can do more to achieve the goals of the developmental state, regardless of the type of political regime in place. The same can potentially be said for political leadership in resource-rich African states, as suggested by recent reforms in Angola, and the DRC — a willingness to implement sound policies that support the private sector and direct mineral wealth to socio-economic development initiatives can promote growth in the extractive industry and achieve broader development, whether or not the regime introducing these measures is democratic.

3. Varied state capacity

Many resource-rich African states lack financial resources upon the discovery of mineral reserves to fund the necessary extractive infrastructure. These states also tend to be unable to finance the exploration or extraction of these minerals through state-owned enterprises. Nor do they have the necessary knowledge and skilled labour needed for exploration and extraction. Furthermore, depleted revenues limit offering direct financial incentives that can promote natural resource investment without sacrificing investment needed in other government sectors. This leads to a catch-22, since the state's inability to explore and extract natural resources necessitates the promotion of foreign direct investment early in the extractive process, which may be difficult without sufficient financial incentives.[144]

Strengthening state capacity can not be achieved overnight. It occurs over time as states undertake measures that enhance its ability to participate in the extractive sector. Botswana offers an example of the gradual development of state capacity in the resource sector, which can be viewed as a *graduated* developmental state model. The model discussed in Subsection B illustrates how the role of the state can evolve in proportion to the expansion of the resource sector based on the approach undertaken in Botswana.

4. Taxation of extractive activities

To combat any capacity deficiencies, resource-rich African states can rely on their fiscal regimes to achieve two key objectives: attract investment from foreign extractive companies to conduct upstream mining activities; and maximize the generation of tax revenue from this activity for

[141] Botchway and Moudud, *supra* note 14, at 16.
[142] Botchway and Moudud, *supra* note 55, p. 35.
[143] *Ibid*, p. 34.
[144] S. Ghebremusse, *Assessing the Petroleum Fiscal Regimes of Nigeria, Ghana, and Cameroon*, LLM Thesis, University of Toronto Faculty of Law (2014), p. 2-3 [unpublished].

the state.[145] However, these two objectives inherently conflict when resource-rich African states use fiscal measures to attract investment, as they often do:[146] attractive fiscal measures cut into the petroleum revenues oil-producing African states can maximize for themselves.[147] Consequently, the proper design of the fiscal regime is key for resource-rich African states to balance these two conflicting objectives[148] and potentially channel the revenue into an expanded developmental state.

Currently, national governments in resource-rich African states use a variety of different fiscal instruments to govern natural resource extraction. Royalties, resource rent taxes, corporate income taxes, and contractual schemes such as service contracts and production-sharing agreements are used to tax resource extraction directly. Additionally, resource-rich African states make use of tax incentives to further formulate their extractive sector's fiscal regime.[149]

The precise combination of policies used varies from country-to-country, as no resource-rich African state is the same – social and economic conditions vary, including levels of development, economic diversity, and the availability of tax revenue from other sources. Accordingly, the fiscal regimes of resource-rich developmental states should account for their specific revenue needs and how natural resource revenue can be used to meet developmental state goals.

B. A Proposed Resource-Rich Developmental State Model

Proposing a graduated developmental state model in resource-rich Africa is an attempt to address the small gap in African developmental state literature related to how progressively establishing developmental state policies can help its entrenchment and enhance its capacity. Current literature on the African developmental state offers defining features that help determine whether an African state can be identified as one. The distinction may be less obvious in contemporary resource-rich African states that lack the clear and distinguishable institutional framework. What follows is a tentative model for the resource-rich developmental state that is based on different stages of resource sector development. The model assumes a long resource-horizon;[150] states facing depleting mineral reserves are faced with particular concerns that a burgeoning resource economy is not.[151] The model is also not specific to a particular natural resource.

1. Early stages - exploration and initial extraction

States with younger extractive sectors consisting of new or undiscovered mineral reserves can prioritize attracting and incentivizing foreign investment to undertake exploration. Since many African states may lack the resources to conduct exploration and production in these early stages,

---

[145] *Ibid*, p. 3.
[146] M.A. Ayoade, *Nigerian Petroleum Profits Tax and Financial Incentives: 50-Year Requiem?*, 24 University of Ghana Law Journal (2008-2010), at 173.
[147] *Ibid*.
[148] T. Baunsgaard, *A Primer on Mineral Taxatio*n, IMF Working Paper WP/01/139 (September 2001), available at <http://www.imf.org/external/pubs/ft/wp/2001/wp01139.pdf>, accessed 14 December 2014, at 3; Jacobs, *supra* note 5, p. 23.
[149] Ghebremusse, *supra* note 144, p. 3.
[150] "Resource horizon" refers to the longevity of a state's mineral sector, based on the state's amount of mineral reserves. P. Daniel et al., *Extracting Resource Revenues*, 50 Finance and Development, no. 3 (2013), available at <http://www.imf.org/external/pubs/ft/fandd/2013/09/daniel.htm>, accessed 8 May 2014, p. 19.
[151] *Ibid*.

attracting foreign extractive companies can help undertake necessary extractive activities. Once minerals are discovered, the state can maintain that same incentive regime in order to encourage further exploration and production. As foreign extractive companies become profitable, incentives can be progressively removed in order to generate greater revenue for the state.[152] These funds can then in turn be redirected to other developmental goals, or used to further support state participation in the extractive industry.

An additional measure that can assist and attract new producers is partnering with foreign investors to conduct exploration and production.[153] For example in post-colonial Botswana, the Khama regime entered into an agreement with De Beers, the world's leading diamond mining company, to establish a joint venture, Debswana, in which the state held a 50 percent stake.[154] Through Debswana, the Botswana government was able to secure a steady stream of resource revenue, which helped promote early socio-economic development and enhanced the capacity of the state to further participate in the extractive sector. Establishing a steady revenue stream can also support the creation of "pilot institutions"[155] that are tasked with directing the policy objectives of the developmental state, both inside and outside the extractive sector.

Taxes generated from the discovery of natural resources can quickly become the main source of government revenue. The newfound wealth can greatly support achieving development objectives; however, it can also lead to increased dependence on mineral wealth, raising the risks associated with the resource curse.[156] In an effort to neutralize the impact of the resource curse, resource-rich African developmental states can structure their extractive sector engagement to account for their level of dependence on resource revenue and its potential effects. How this can look varies as a result of the state's level of dependence.[157]

Resource-rich African states with a high dependence on resource revenue can strive to maintain consistent levels of revenue from extraction while also enacting fiscal policies that can help reduce dependency long-term. These efforts can consist of both government- and firm-related measures. At the government level, the state can direct some revenue to non-extractive industries, such as agriculture and manufacturing, in order to encourage economic diversification and support other exporting sectors of the economy harmed by the effects of Dutch disease. At the firm level, the state can provide either fiscal incentives or stipulate contractual provisions (or use a combination of both) to encourage foreign extractive companies to engage in activities that support value-added production in the natural resource sector, such as greater downstream extractive activities.[158]

2. Middle to later stages

As resource-rich African states continue to engage with private sector extractive actors, it can increase its level of intervention based on related improvements in capacity. At this stage in resource production, greater focus can be paid to harnessing more local involvement in order to ensure transfer of foreign technical expertise and knowledge. The purpose of this objective is to support development of local industry to ensure long-term growth, and linkages to other local industry.

Providing finance is one measure that can secure greater involvement by local firms.[159] Access to finance is a major obstacle for many local firms in resource-rich Africa. A developmental

[152] *Ibid*, p. 20.
[153] Martin, *supra* note 122, at 43.
[154] *Ibid*, at 42.
[155] Sebudubudu, *supra* note 97, p. 83.
[156] Ghebremusse, *supra* note 144, p. 12.
[157] *Ibid*.
[158] *Ibid*.
[159] Botchway and Moudud, *supra* note 14, at 11.

state can use a graduated approach to support local firms once sufficient revenue has been generated from earlier stages. The state can provide financing to local firms either through nationally owned banks, or the central bank.[160] Securing financing can assist local firms to purchase the needed technology to compete with, or act as local suppliers for, foreign firms.[161]

To ensure local firms gain industrial knowledge, local content requirements can be stipulated in later joint-venture agreements, or national legislation. These requirements can help promote meaningful employment, as well as support the development objectives of a resource-rich developmental state.[162] Currently a few countries have legislated local content requirements, including Ghana, Nigeria, and Angola.[163]

During later stages of resource extraction, the resource-rich developmental state can continue to expand its role by investing directly in sector-related infrastructure. For example, the Botswana government recently completed the construction of a diamond technology park to promote small-scale diamond mining companies and related businesses.[164]

V. Conclusion

Natural resource wealth presents resource-rich states in Africa with the opportunity to become developmental states focused on promoting extractive sector growth in order to support the state's broader developmental goals. This paper attempted to conceptualize how this endeavour could look in modern resource-rich Africa, based on the historical experience of Botswana, one of the few successful developmental states in Africa. Botswana's history reveals that varied state capacity is not a limitation to successful implementation of the developmental state. Instead, state's can direct whatever resources it possesses to foster state-private sector collaboration. This can depend on the stage of the extractive sector — in younger sectors, states can use their political and fiscal resources to attract foreign investment to undertake upstream extractive activities that the state may lack the capacity to undertake itself; then, as the state generates more revenue, its participation can graduate to greater involvement, including supporting increased participation of local firms or direct state participation in extractive activities through joint ventures, production sharing agreements, and public-private partnerships.

The graduated model proposed here is not perfect — its success depends on the presence of several factors, including development-oriented political leadership, effective pilot institutions, and performance-oriented governance. Nevertheless, as resource-rich African countries are turning to their mineral wealth to achieve development goals, the developmental state model offers one way this can be done across Sub-Saharan Africa.

References

[160] *Ibid*.
[161] *Ibid*, p. 12.
[162] J.S. Ovadia, *Local Content and the Emergence of the Petro-Developmental State in the Gulf of Guinea*, PhD Thesis, York University, Graduate Program in Political Science (2013), p. 154 [unpublished].
[163] R. Kulasingam, *Think global but act local: Local content rules in the oil and gas sector*, available at <http://www.dentons.com/en/insights/alerts/2014/july/10/think-global-but-act-local-local-content-rules-in-the-oil-and-gas-sector>, accessed 9 February 2015.
[164] Young, *supra* note 153.

Acemoglu, D. S. Johnson and J.A. Robinson, *The colonial origins of comparative development: an empirical investigation*, 91 American Economic Review, no. 5 (2001).

Ake, C. *Democracy and Development in Africa* (Washington, D.C.: Brookings Institution, 1996).

Auty, R. *Sustaining Development in Mineral Economies: The Resource Curse Thesis* (London: Routledge, 1993).

Ayoade, M.A. *Nigerian Petroleum Profits Tax and Financial Incentives: 50-Year Requiem?*, 24 University of Ghana Law Journal (2008-2010).

Baunsgaard, T. *A Primer on Mineral Taxatio*n, IMF Working Paper WP/01/139 (September 2001), available at <http://www.imf.org/external/pubs/ft/wp/2001/wp01139.pdf>, accessed 14 December 2014.

Besada, H. and P. Martin, *Mining Codes in Africa: Emergence of a Fourth Generation?* (May 2013), The North South Institute, available at <http://www.nsi-ins.ca/wp-content/uploads/ 2013/03/Mining-Codes-in-Africa-Report-Hany.pdf>, accessed 14 December 2015.

Botchway, K. and J. Moudud, "Neo-liberalism and the Developmental State: Consideration for the New Partnership for Africa's Development", in B.F. Bobo and H. Sintim-Aboagye (eds.), *Neo-liberalism, Interventionism and the Developmental State: Implementing the New Partnership for Africa's Development* (Trenton, NJ: Africa World Press Inc., 2012).

Botchway, K. and J. Moudud, *The Search for a New Developmental State*, 37 International Journal of Political Economy, no. 3 (2008).

Bhushan, A. Y. Samy and K. Medu, *Financing the Post-2015 Development Agenda: Domestic Revenue Mobilization in Africa* (September 2013), online: The North-South Institute <http://www.nsi-ins.ca/wp- content/uploads/2013/09/2013-Financing-the-Post-2015-Africa.pdf>, accessed 14 December 2015.

Caldentey, E.P. *The Concept and Evolution of the Developmental State*, 37 International Journal of Political Economy, no. 3 (2008).

Chang, H. "The Economic Theory of the Developmental State", in Meredith Woo-Cumings (ed.), *The Developmental State* (Ithaca, NY: Cornell University Press, 1999)

Collier, P. and B. Goderis. Commodity Prices, Growth, and the Natural Resource Curse: Reconciling a Conundrum, Centre for the Study of African Economies, Working Paper Series (August 2007).

Davis, K.E. and M.J. Trebilcock, *The Relationship Between Law and Development: Optimists versus Skeptics*, 56 American Journal of Comparative Law (2008).

Daniel, P. et al., *Extracting Resource Revenues*, 50 Finance and Development, no. 3 (2013), available at <http://www.imf.org/external/pubs/ft/fandd/2013/09/daniel.htm>, accessed 8 May 2014.

"Diamond Technology Park Botswana", available at <http://www.safdico.com/Diamond-Technology-Park>, accessed 9 January 2015.

Easterly, W. & Ross Levine, *Tropics, germs, and crops: how endowments influence economic development*, 50 Journal of Monetary Economics, no. 1 (2003).

Ferreira, P.G. *Breaking the Weak Governance Curse: Global Regulation and Governance Reform in Resource-Rich Developing Countries*, SJD Thesis, University of Toronto Faculty of Law (2012).

Ghebremusse, S. *Assessing the Petroleum Fiscal Regimes of Nigeria, Ghana, and Cameroon*, LLM Thesis, University of Toronto Faculty of Law (2014).

International Monetary Fund, Sub-Saharan Africa – Sustaining Growth amid Global Uncertainty, World Economic and Financial Surveys (2012), available at <http://www.imf.org/external/pubs/ft/reo/2012/afr/eng/sreo0412.pdf>, accessed 14 December 2014.

Jacobs, J. "An Overview of Revenue Flows from the Mining Sector: Impacts, Debates, and Policy Recommendations", in B. Campbell (ed.), *Modes of Governance and Revenue Flows in African Mining* (Houndmills, Basingstoke, Hampshire: Palgrave Macmillan, 2013).

Johnson, C. *MITI and the Japanese Miracle: The Growth of Industrial Policy, 1925-1975* (Stanford: Stanford University Press, 1982).

Khan, M.H. "Governance and Growth Challenges in Africa" in A. Noman, K. Botchwey, H. Stein and J.E. Stiglitz (eds.), Good Growth and Governance in Africa: Rethinking Development Strategies (Oxford: Oxford University Press, 2011).

Kulasingam, R. *Think global but act local: Local content rules in the oil and gas sector*, available at <http://www.dentons.com/en/insights/alerts/2014/july/10/think-global-but-act-local-local-content-rules-in-the-oil-and-gas-sector>, accessed 9 February 2015.

Lawrence, A. "Neoliberalism", in J.N Singh and F. Bourgouin (eds.), *Resource Governance and Developmental States in the Global South* (Houndmills, Basingstoke, Hampshire: Palgrave Macmillan, 2013).

Martin, P. *A Closer Look at Botswana's Development: The Role of Institutions*, 9 Paterson Review (2008).

Mbabazi, P. and I. Taylor, "Botswana and Uganda as Developmental States(?)", in P. Mbabazi and I. Taylor (eds.), *The Potentiality of 'Developmental States' in Africa: Botswana and Uganda Compared* (Dakar: CODESIRA, 2005)

Mbabazi, P. and I. Taylor, "Conclusion: Developmental States and Africa in the Twenty-First Century", in P. Mbabazi and I. Taylor (eds.), *The Potentiality of 'Developmental States' in Africa: Botswana and Uganda Compared* (Dakar: CODESIRA, 2005).

Mehlum, H. K. Moene and R. Torvik. *Institutions and the Resource Curse*, 116 The Economic Journal, no. 508 (2006).

Meisenhelder, T. *The Developmental State in Mauritius*, 35 The Journal of Modern African Studies, no. 2 (1997),

Meyns, P. and C. Musamba, *The Developmental State in Africa: Problems and Prospects*, INEF Report 101/2010, available at <https://inef.uni-due.de/cms/files/report101.pdf>, accessed 14 December 2014

Mkandawire, T. *Thinking about developmental states in Africa*, 25 Cambridge Journal of Economics (2008), at 292.

Nyamnjoh, F.B. and I.M. Jimu, "Success or Failure of Developmental States in Africa: Exploration of the Development Experiences in a Global Context", in P. Mbabazi and I. Taylor (eds.), *The Potentiality of 'Developmental States' in Africa: Botswana and Uganda Compared* (Dakar: CODESIRA, 2005).

Ovadia, J.S. *Local Content and the Emergence of the Petro-Developmental State in the Gulf of Guinea*, PhD Thesis, York University, Graduate Program in Political Science (2013).

Prado, M. and M. Trebilcock, *Path Dependence, Development, and the Dynamics of Institutional Reform*, 59 University of Toronto Law Journal (2009).

Rittich, K. "The Future of Law and Development: Second-Generation Reforms and the Incorporation of the Social", in D. Trubek and A. Santos (eds.), *The New Law and Economic Development: A Critical Appraisal* (New York: Cambridge University Press, 2006).

Sachs, J. and A. Warner, Natural Resource Abundance and Economic Growth, NBER Working Paper No. 5398 (1995).

Sebudubudu, D. "The Institutional Framework of the Developmental State in Botswana", in P. Mbabazi and I. Taylor (eds.), *The Potentiality of 'Developmental States' in Africa: Botswana and Uganda Compared* (Dakar: CODESIRA, 2005).

Seidman, A. R.B. Seidman, P. Mbana, and H. Hu Li, "Introduction", in A. Seidman, R.B. Seidman, P. Mbana, and H. Hu Li (eds.), *Africa's Challenge: Using Law for Good Governance and Development* (Trenton, NJ: Africa World Press Inc, 2007).

Shaw, T. *Post-2015 Natural Resource Governance in Africa: African Agency and Transnational Initiatives to Advance Developmental States* (Ottawa: North South Institute, 2013).

Stein, H."Rethinking African Development", in Ha-Joon Chang (ed.), *Rethinking Development Economics* (London: Anthem Press, 2003).

Stiglitz, J. *Globalization and Its Discontents* (New York: W.W. Norton & Co., 2002) and D. Rodrik, "After Neoliberalism, What?" (Harvard University, August 2002), available at: <http://www.bndespar.com.br/SiteBNDES/export/sites/default/bndes_pt/Galerias/

Arquivos/conhecimento/seminario/novosrumos_Dani.pdf>, accessed 14 December 2014.

Trubek, D.M. *Developmental States and the Legal Order: Towards a New Political Economy of Development and Law*, Univ. of Wisconsin Legal Studies Research Paper No. 1075 (2008).

Trubek, D.M. "Law, State, and the New Developmentalism: An Introduction", in D.M. Trubek, H.A. Garcia, D.R. Coutinho, and A. Santos (eds.), *Law and the New Developmental State: The Brazilian Experience in Latin American Context* (Cambridge: Cambridge University Press, 2013).

Wong, J. *The Adaptive Developmental State in East Asia*, 4 Journal of East Asian Studies (2004), 345-362.

World Bank, *Striking a Better Balance* (2004), available at <http://documents.worldbank.org/curated/en/2004/09/5138809/striking-better-balance-world-bank-group-extractive-industries-final-report-extractive-industries-review>, accessed 14 December 2014.

Young, R. "Botswana: From sleepy backwater to global mining hub", available at <http://www.bbc.co.uk/news/business-23771552>, accessed 9 January 2015.