

10-1-2010

Mauritius: An Example of the Role of Constitutions in Development

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Recommended Citation

Adam Aft and Daniel Sacks, *Mauritius: An Example of the Role of Constitutions in Development*, 18 U. Miami Int'l & Comp. L. Rev. 105 (2014)

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MAURITIUS: AN EXAMPLE OF THE ROLE OF CONSTITUTIONS IN DEVELOPMENT

Adam Aft & Daniel Sacks***

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I. INTRODUCTION

Even in the twenty-first century, violence and death followed elections in Africa and elsewhere in the developing world. Though post-electoral conflict and violence has a number of possible causes and plausible explanations, this article examines the island nation of Mauritius and considers the role that the structure of its electoral systems play in lessening post-electoral ethnic violence, and suggests these systems as a possible model for other countries in the developing world. Most urgently, this article considers what lessons Mauritius may provide for Haiti, an island nation in the developing world with very pressing needs after the January 2010 earthquake.

Mauritius is a small island nation in the Indian Ocean, and today is one of the most developed nations in Africa—despite the

prognostications about the country's future offered by the future Nobel Laureate economist James Meade in the early 1960s.¹ Mauritius' remarkable transformation can be partially attributed to its unique electoral system, which by design requires compromise between political actors from a variety of ethnic backgrounds. Mauritius can be analyzed as a model for electoral systems and constitutional designs in other developing nations.

Located 400 miles off the coast of Madagascar,² Mauritius consists of the 720 square mile island of Mauritius³ and the much smaller island of Rodrigues. An extremely heterogeneous population of 1.2 million people occupies the island.⁴ Since Britain granted Mauritius independence in 1968,⁵ there has been incredibly little ethnic conflict on the island⁶ despite the heterogeneity of the population and the relatively small amount of space there is to share. This is due, in part, to an electoral system that promotes multi-ethnic coalitions and compromises, and ultimately, democratic consolidation.⁷

In 1961, after chairing the Economic Survey Mission to Mauritius, future Nobel Laureate economist James Meade wrote that "Mauritius's development prospects [are] poor—that Mauritius [is] a strong candidate for failure, with its heavy economic dependence on one crop (sugar), vulnerability to terms of trade shocks, rapid

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¹ Arvind Subramanian, *Mauritius: A Case Study*, FIN. & DEV., Dec. 2001, at 22, 22, available at <http://www.imf.org/external/pubs/ft/fandd/2001/12/subraman.htm>.

² Deborah Bräutigam, *Institutions, Economic Reform, and Democratic Consolidation in Mauritius*, 30 COMP. POL. 45, 45 (1997).

³ Henry Srebnik, *Can an Ethnically-Based Civil Society Succeed? The Case of Mauritius*, 18 J. CONTEMP. AFR. STUD. 7, 9 (2000).

⁴ *Id.*

⁵ Shelia S. Bunwaree, *Economics, Conflicts and Interculturality in a Small State: The Case of Mauritius*, 9 POLIS 1, 3 (2002) (Cameroon), available at <http://www.polis.sciencespobordeaux.fr/vol10ns/bunwaree.pdf>.

⁶ See Eliphaz G. Mukonoweshuro, *Containing Political Instability in a Poly-ethnic Society: The Case of Mauritius*, 14 ETHNIC & RACIAL STUD. 199, 222 (1991) (Zim.).

⁷ Bräutigam, *supra* note 2, at 45; Bunwaree, *supra* note 5, at 3-4.

population growth, and potential for ethnic tensions.”⁸ At the time of its independence Mauritius primarily relied on sugar export for most of its income; this remains true today.⁹

Over the next 40 years, Mauritius experienced tremendous economic and social development. “By the mid 1990s [Mauritius’s] income distribution was on par with the highly equitable newly industrializing East Asian countries.”¹⁰ Today, a number of different rankings highlight Mauritius’s success, and by most measures it ranks first in Africa. According to the World Bank’s Doing Business Index for 2010, as of June 2010 Mauritius was the best place in Africa to do business, and the twentieth best in the world.¹¹ The Ibrahim Index of African Governance ranks Mauritius as the best-governed nation in Africa.¹² The Heritage Foundation considers Mauritius the freest state in Africa, and the twelfth freest country in the world.¹³ The Economic Freedom of the World Index also ranks Mauritius the freest nation in Africa.¹⁴ The Human Development Index places Mauritius as the second most developed nation in Africa.¹⁵ The

⁸ Subramanian, *supra* note 1, at 22.

⁹ Bräutigam, *supra* note 2, at 49.

¹⁰ *Id.* at 48.

¹¹ *Economy Rankings*, DOING BUSINESS, THE WORLD BANK, <http://www.doingbusiness.org/rankings> (last visited Feb. 12, 2010).

¹² ROBERT I. ROTBERG & RACHEL M. GISSELUQUIST, BELFER CTR. FOR SCI. & INT’L AFFAIRS, STRENGTHENING AFRICAN GOVERNANCE: IBRAHIM INDEX OF AFRICAN GOVERNANCE 13 (2008), available at <http://belfercenter.ksg.harvard.edu/index.html> (search for “Strengthening African Governance;” then follow the “Strengthening African Governance: Results and Rankings 2008” hyperlink; then follow the “Strengthening African Governance: Index of African Governance 2008” hyperlink).

¹³ *2011 Index of Economic Freedom*, THE HERITAGE FOUND., <http://www.heritage.org/Index/Ranking.aspx> (last visited Jan. 2, 2011).

¹⁴ JAMES GWARTNEY ET AL., ECONOMIC FREEDOM OF THE WORLD, 2007 ANNUAL REPORT 14 (2007), available at <http://www.freetheworld.com/2007/EFW2007BOOK2.pdf>.

¹⁵ U.N. DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 2007/2008: FIGHTING CLIMATE CHANGE 230 (2007), available at http://hdr.undp.org/en/media/HDR_20072008_EN_Complete.pdf.

Transparency International Corruptions Perception Index ranks Mauritius as the second best nation in Africa for its measures.¹⁶

Mauritius has reached such lofty rankings despite having “few natural resources, no home grown technology, no defence forces, little capital and import[ing] most of its food.”¹⁷ Mauritius’s success can be largely attributed to its institutions.¹⁸ Mauritius is home to “a remarkable and enviable era of highly inclusive democratic participation,”¹⁹ in large part because the institutions surrounding the electoral system promote cooperation and consensus building between ethnic groups.²⁰ There is “a genuine consensus among the major political parties on the rules of attaining, exercising, and relinquishing power.”²¹ In turn, Mauritius’s political stability encourages economic development.²² The ethnic tensions Meade feared have been relatively non-existent.²³

Mauritius’s success story is impressive, which is why its constitutional system provides a model for economic development. In Part I, we review Mauritius’s background and discuss aspects of the island’s history that played an important role in shaping the country. Then, we explain the electoral system’s development and structure in Part II. In addition, we also engage in a brief textual analysis of the individual rights and structural provisions in

¹⁶ ANNE CHANDIMA DEDIGAMA, PROP. RIGHTS ALLIANCE, INTERNATIONAL PROPERTY RIGHTS INDEX (IPRI) 2009 REPORT 20 (2009), available at http://www.internationalpropertyrightsindex.org/atr_Final1.pdf; see also *2008 Corruption Perceptions Index*, TRANSPARENCY INT’L, http://www.transparency.org/policy_research/surveys_indices/cpi/2008 (last visited Jan. 2, 2011).

¹⁷ Bunwaree, *supra* note 5, at 3.

¹⁸ Arvind Subramanian & Devesh Roy, *Who Can Explain the Mauritian Miracle: Meade, Romer, Sachs, or Rodrik?*, in IN SEARCH OF PROSPERITY: ANALYTIC NARRATIVES ON ECONOMIC GROWTH 205, 239 (Dani Rodrik ed., 2003) [hereinafter Subramanian & Roy].

¹⁹ *Id.* at 207.

²⁰ Stephanie Kodish, *Balancing Representation: Special Representation Mechanisms Addressing the Imbalance of Marginalized Voices in African Legislatures*, 30 SUFFOLK TRANSNAT’L L. REV. 1, 47-48 (2006).

²¹ Subramanian & Roy, *supra* note 18, at 208.

²² Mukonoweshuro, *supra* note 6, at 222.

²³ See generally Subramanian, *supra* note 1 (describing the economic growth of Mauritius).

Mauritius's Constitution. With the constitutional structure in mind we argue, in Part III, some of the reasons why Mauritius provides a valuable model for the developing world. There are difficulties in strictly adhering to Mauritius as a model, which we discuss in Part IV. Finally, we address in Part V what lessons Mauritius may provide as Haiti continues its path to development in light of the recent tragic events in that country.

II. MAURITIUS BACKGROUND

It is likely that Portuguese sailors, arriving at the turn of the 16th century, were the first humans to set foot on Mauritius.²⁴ Until then, only animal and plant life, such as the dodo, inhabited the island.²⁵ The Portuguese named the island Crine, but did not settle it.²⁶ The Dutch renamed the island 'Prins Maurits van Nassaueland' after Prince Maurice of Nassau,²⁷ but did not settle the island until 1638.²⁸ The Dutch made significant contributions to the island's flora and fauna, including the introduction of sugar cane and European animals.²⁹ Unfortunately, the Dutch introduced rats among other European animals, which played a role in the demise of the dodo.³⁰ Dutch settlers stayed on the island until 1710, leaving after poor administration, diseases, and natural disasters ravaged the population.³¹

In 1715, the French claimed in the island and named it Isle de France.³² They began settling the island in 1721 and made a

²⁴ SYDNEY SELVON, *Introduction* to HISTORICAL DICTIONARY OF MAURITIUS xi (1991).

²⁵ See Srebrnik, *supra* note 3, at 10.

²⁶ SELVON, *supra* note 24, at xi.

²⁷ *Id.*

²⁸ SELVON, *supra* note 24, at xi; see also VIJAYALAKSHMI TEELock, MAURITIAN HISTORY: FROM ITS BEGINNINGS TO MODERN TIMES 31 (2001).

²⁹ SELVON, *supra* note 24, at xi, xvii; see also TEELock, *supra* note 27, at 43.

³⁰ SELVON, *supra* note 24, at xi; see also TEELock, *supra* note 27, at 44, 45.

³¹ SELVON, *supra* note 24, at xi; TEELock, *supra* note 27, at 45.

³² SELVON, *supra* note 24, at xvii; TEELock, *supra* note 27, at 48.

significant impact.³³ The French established a naval base, opened the first sugar estates, and in 1744 opened the first sugar factory.³⁴ The French maintained a strong presence on the island—except for a brief period during the French Revolution—until the British conquered the island in 1810.³⁵ In 1814, France formally ceded control to Britain.³⁶

The imposition of British rule balanced between changing institutions and maintaining stability. Notably, the British changed the name of the island back to Mauritius³⁷ and made English the official language.³⁸ However, the British left the Napoleonic legal system intact as well as other French institutions such as sugar barons' property rights.³⁹ In 1835, the British abolished slavery and compensated plantation owners for the lost value of their slaves, who had come from Madagascar.⁴⁰ In order to replace their workforce, plantation owners imported indentured Indian workers—both Hindus and Muslims.⁴¹ Descendants of these workers make up most of the population in modern day Mauritius.

Mauritius's current population has a variety of ethnic backgrounds and speaks at least fifteen languages.⁴² Almost seventy percent of the population is Indo-Mauritian (the descendents of workers brought from India),⁴³ just over a quarter of the population is Creole-Mauritian (the descendents of slaves brought to the island from Africa),⁴⁴ three percent is Sino-Mauritian (Chinese immigrants

³³ SELVON, *supra* note 24, at xvii; TEELock, *supra* note 27, at 18.

³⁴ TEELock, *supra* note 27, at 55-56, 73.

³⁵ *See id.* at 60-64, 164.

³⁶ S. A. de Smith, *Mauritius: Constitutionalism in a Plural Society*, 31 MOD. L. REV. 601, 601 (1968).

³⁷ SELVON, *supra* note 24, at 203.

³⁸ *See* CHIT G. DUKHIRA, MAURITIUS AND LOCAL GOVERNMENT MANAGEMENT 17 (1992).

³⁹ LAW REFORM COMMISSION OF MAURITIUS, BACKGROUND PAPER ON "REFORM OF CODES" 2 (2010), available at <http://www.gov.mu/portal/goc/lrc/files/reform-codes.pdf>.

⁴⁰ *Id.* at 212.

⁴¹ *Id.* at 225-38.

⁴² Srebnik, *supra* note 3, at 9.

⁴³ U.S. Cent. Intelligence Agency, *The World Factbook 2011*, <https://www.cia.gov/library/publications/the-world-factbook/geos/mp.html> (last updated Feb. 1, 2011).

⁴⁴ *Id.*

and their descendents),⁴⁵ and two percent is Franco-Mauritian (the descendents of French colonists).⁴⁶

III. ELECTORAL SYSTEM

A. The System's Development

Mauritius has a long democratic history – particularly relative to other African nations. The British introduced democracy to the island with a very limited election in 1885, in which only propertied French and Creole classes voted.⁴⁷ In 1926 Indo-Mauritians were allowed to vote; in 1947 all literate adult males voted;⁴⁸ in 1959 Mauritius instituted universal suffrage.⁴⁹ However, bureaucrats dominated much of the policy-making on the island. From 1885 to 1933, elected representatives made up only one-third of the governing body.⁵⁰ Between 1933 and 1947, this number increased to two-thirds,⁵¹ and in 1947 “the unofficial majority in the Legislature became an elected majority.”⁵² This change, as well as a widening of the electorate,⁵³ led to the first Hindu majority government,⁵⁴ but also demonstrated that a special system would be needed if all the island’s different ethnic groups were to be represented in the legislature.⁵⁵

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Bräutigam, *supra* note 2, at 52.

⁴⁸ *Id.* at 52-53.

⁴⁹ *Id.* at 53.

⁵⁰ Smith, *supra* note 36, at 604.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *See id.* at 604-05. Mauritius is different than many other African countries in that its electorate is comprised of only four major groups as opposed to a greater number of groups in other African countries. With the Mauritian plurality consisting of less, but more definable groups, the special electoral system ensures a wider participation and support for any governing coalitions. *See* William F.S. Miles, *The Mauritius Enigma*, 10.2 JOURNAL OF DEMOCRACY 91, 102 (1999).

A period of institutional change followed, during which suffrage became universal and the movement toward independence began.⁵⁶ From the late 1940s through the 1960s, Mauritius underwent a number of changes to its electoral system.⁵⁷ Constituencies were redrawn,⁵⁸ the use of party lists debated,⁵⁹ and “under-represented minorities were allocated nominated seats.”⁶⁰ These changes and trials led to the system the British implemented in the late 1960s at the time of the independence referendum.

Before Britain granted Mauritius independence, British electoral commissioners convened a final and decisive constitutional conference in London in 1965⁶¹ to design the country’s current electoral system.⁶² This conference intended “to ensure safe and adequate representation for all sectors of the Mauritian population.”⁶³ The British Government feared ethnic tensions and their potential for destabilizing the Mauritian economy.⁶⁴ This concern did not belong to the British alone—only fifty-five percent of Mauritians voted for pro-independence parties in the country’s first election⁶⁵ because of fears that the Hindu majority “would use its majority power against the numerically weaker groups.”⁶⁶ Forty-four percent of Mauritians voted against independence in a referendum immediately prior to independence.⁶⁷ Fears over ethnic violence were made worse by riots and fighting between Creoles and Muslims after

⁵⁶ *Id.*

⁵⁷ *See id.* at 604-11.

⁵⁸ *Id.* at 606.

⁵⁹ *Id.* at 605-06.

⁶⁰ *Id.* at 606.

⁶¹ *Id.* at 67.

⁶² Subramanian & Roy, *supra* note 18, at 207.

⁶³ Raj Mathur, *Parliamentary Representation of Minority Communities: The Mauritian Experience*, 44 AFR. TODAY 61, 61 (1997).

⁶⁴ Smith, *supra* note 36, at 606. It is likely that the British Government’s main concern was preventing violence in Mauritius during any transition to Mauritian independence.

⁶⁵ Subramanian & Roy, *supra* note 18, at 207.

⁶⁶ *Id.*

⁶⁷ *Id.* at 241.

parliamentary elections in August of 1967.⁶⁸ However, that was a rare instance of ethnic violence in the island's modern history.⁶⁹

Though Mauritius's population was, and is, comprised of a myriad of ethnic groups, the country's Hindu population has long constituted a majority.⁷⁰ Without a carefully designed electoral system, any party appealing to the Hindus would have "an automatic hegemonic control over the Mauritian political process."⁷¹ Moreover, the designers sought a system that would not only prevent one ethnic group's dominance, but also minimize or reduce the country's ethnic divisions.⁷² The final design of the system "[forces] the main parties to seek support from all communities."⁷³

The results of changes to the electoral system over the preceding two decades informed the London conference in 1965. Though the conference resolved to grant Mauritius independence if a newly elected government gained support for independence, it did not finalize the electoral system.⁷⁴ Instead, the British Secretary of State appointed a commission "to make recommendations on an electoral system, constituency boundaries and the best method of allocating seats in the Legislature."⁷⁵ The Banwell Commission presented its report in 1966, and Mauritius accepted its design of constituencies and representation in 1967, using them to this day.⁷⁶

Perhaps the most notable decisions made by the commission were those options that it chose to avoid. The commission chose not to implement single member constituencies,⁷⁷ or direct proportional

⁶⁸ *Id.* at 207.

⁶⁹ Smith, *supra* note 36, at 602.

⁷⁰ Subramanian & Roy, *supra* note 18, at 207.

⁷¹ Mukonoweshuro, *supra* note 6, at 201.

⁷² See Bräutigam, *supra* note 2, at 53.

⁷³ WORLD BANK & NETLIBRARY, INC., WORLD DEVELOPMENT REPORT 1997: THE STATE IN A CHANGING WORLD 113 (1997), available at <http://go.worldbank.org/DPIFX1PSC0>.

⁷⁴ See Smith, *supra* note 36, at 608.

⁷⁵ *Id.*

⁷⁶ *Id.* at 609.

⁷⁷ Bräutigam, *supra* note 2, at 53.

representation,⁷⁸ as either would have led to an overrepresentation of the Hindu population in the parliament,⁷⁹ and possibly ethnic and linguistic polarization.⁸⁰ Nor did the commission implement a fully consociational system,⁸¹ as lobbied for the island's Muslim community, because such a system (where a certain number of seats would be held for each ethnic community, delegated by a system of separate voter rolls) would preserve the island's ethnic divisions at the expense of national unity.⁸² Rather, the commission's final system acknowledged ethnic concerns, using consociational principles in a parliamentary system.⁸³

Mauritius also implemented the Banwell Commission's suggestions for constituency design.⁸⁴ As recommended by the commission, on the island of Mauritius the twenty constituencies are divided evenly between rural and urban areas.⁸⁵ The borders of these constituencies were drawn prior to independence, with the intent of ensuring the representation of both Hindus and the general population.⁸⁶ Rural areas were home to a majority Hindu population, and urban areas were home to the other sections of the population.⁸⁷

The Mauritian Government rejected the Banwell Commission's attempts to "safeguard under-represented minorities."⁸⁸ The commission had made two recommendations. The first was that if a party received more than twenty-five percent of the vote, but less than twenty-five percent of the seats, it would receive additional seats in order to bring its representation in the legislature to twenty-five percent.⁸⁹ Second, five extra seats would be allocated to "best losers," from underrepresented parties and communities, based on a

⁷⁸ Mathur, *supra* note 63, at 61.

⁷⁹ Bräutigam, *supra* note 2, at 53.

⁸⁰ Mathur, *supra* note 63, at 61-62.

⁸¹ Bräutigam, *supra* note 2, at 53.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Smith, *supra* note 36, at 609.

⁸⁵ Srebrnik, *supra* note 3, at 11.

⁸⁶ Mathur, *supra* note 63, at 62.

⁸⁷ *Id.*

⁸⁸ Smith, *supra* note 36, at 609.

⁸⁹ *Id.*

formula that only granted these extra seats to parties that “obtained at least 10 percent of the total vote and at least one directly elected member and unless it had a defeated candidate belonging to the community entitled to the seat to be allocated.”⁹⁰

The Mauritian Government rejected these suggestions⁹¹ due to fear that this system would not properly represent the island’s Muslim population,⁹² and would disrupt the existing support of many of the other existing parties.⁹³ In order to resolve the situation, the British dispatched the Parliamentary Under-Secretary for the Colonies to Mauritius. A compromise was reached, with Mauritius accepting the system for appointing “best losers,” which is still used today.⁹⁴

B. The System’s Structure

The Mauritian Constitution (“Constitution”) provides the supreme law of the land.⁹⁵ This section explores the Constitution’s structure from an individual rights and then a structural perspective. Focus is placed on the structural lessons that can be learned from the Constitution. However, an important body of literature exists addressing constitutional provision of rights, which is why this article addresses individual rights before discussing the Constitution’s structure.

1. Individual Rights

The individual rights protected in the Constitution are mainly negative rights, as opposed to positive rights.⁹⁶ It is important to

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* at 610.

⁹⁴ *Id.*

⁹⁵ The CONST. Mar. 12, 1968, ch. 1, para. 2 (Mauritius).

⁹⁶ See Daniel Kaufmann, *Human Rights and Governance*, in HUMAN RIGHTS AND DEVELOPMENT 352, 352 (Philip Aston & Mary Robinson eds., 2005) (discussing the difference between first generation negative rights—political and civil rights protections—and second generation positive rights—social and economic rights).

consider the types of protections for individual rights before considering the Constitution's structure because of the recent focus on constitutions as means to protect positive individual rights.⁹⁷ For example, the South African Constitution provides that "[e]veryone has the right to have access to—(a) health care services, including reproductive health care; (b) sufficient food and water; and (c) social security"⁹⁸ Given the supremacy of the Mauritian Constitution, provision of positive rights would necessarily create a hierarchy favoring these positive rights.⁹⁹

In an evolving Lockean and Jeffersonian manner, the Constitution declares as fundamental freedoms, "the right of the individual to life, liberty, security of the person and protection of the law."¹⁰⁰ The Constitution also provides rights similar to those established by U.S. Constitution's First Amendment,¹⁰¹ and rights protecting property, including governmental taking without compensation.¹⁰² These fundamental rights are not only negative rights, but also cornerstone negative rights that free societies have sought throughout history.¹⁰³ The importance of the first rights established as the Lockean basis for a free society—life, liberty, and property—cannot be overstated.¹⁰⁴ These rights are emphasized and catalogued in the Constitution because they are the essential building blocks for strong institutions necessary to foster development. Development is difficult, if not impossible, without these basic guarantees.¹⁰⁵

⁹⁷ See *id.* at 23.

⁹⁸ CONST. OF THE REPUBLIC OF S. AFR. 1996 ch. 2, § 27(1).

⁹⁹ THE CONST. Mar. 12, 1968, ch. I, para. 2 (Mauritius).

¹⁰⁰ *Id.* at ch. II, para. 3(a).

¹⁰¹ *Id.* at ch. II, para. 3(b).

¹⁰² *Id.* at ch. II, para. 3(c).

¹⁰³ See, e.g., THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

¹⁰⁴ See Kaufmann, *supra* note 96, at 382 ("Voice and participation mechanisms are thus not only very important because of their fundamental value, but also due to their instrumental value as key to socio-economic development outcomes. And in addition to the evidence in this respect from cross-national data, this finding also applies at the ('micro') project level: investment projects funded by the World Bank in settings with better civil liberties and participatory mechanisms are found to have a much higher socio-economic impact.").

¹⁰⁵ Richard A. Posner, *Creating a Legal Framework for Economic Development*, 13 THE WORLD BANK RES. OBSERVER 1, 1 (1998).

The Constitution provides broad protections of life and liberty, enumerating the only instances where deprivations of them are allowed.¹⁰⁶ This creates a presumption of liberty in all situations in which one of the specific enumerations is not implicated.¹⁰⁷ These liberty rights expressly protect from slavery and torture.¹⁰⁸

The Constitution goes on to enumerate a strong set of specific protections for property.¹⁰⁹ It provides protections for criminal defendants, such as a presumption of innocence until proven guilty.¹¹⁰ It contains specifically enumerated protections related to First Amendment type rights.¹¹¹ These rights include: freedom of assembly, conscience, expression, movement, and freedom to establish schools.¹¹² The Constitution also guarantees protection from discrimination.¹¹³

Underlying all of these rights is an enumeration of methods for enforcement.¹¹⁴ Essentially a jurisdictional provision, it confers broad jurisdiction to the Supreme Court in order to remedy the violation of a constitutional right.¹¹⁵

The reason for focusing on the negative rights provided in the Constitution is twofold. First, the development and implementation of positive rights is dependent on a sufficient base of negative rights.¹¹⁶ Second, the only individual rights in the Constitution are the negative rights discussed above. These negative rights are especially important in light of the recent downward trend of

¹⁰⁶ THE CONST. Mar. 12, 1968, ch. II, para. 5(1) (Mauritius).

¹⁰⁷ See generally RANDY BARNETT, RESTORING THE LOST CONSTITUTION: THE PRESUMPTION OF LIBERTY (2006) (applying similar reasoning in the context of the U.S. Constitution).

¹⁰⁸ THE CONST. Mar. 12, 1968, ch. II, para. 6, 7 (Mauritius).

¹⁰⁹ *Id.* at ch. II, para. 8.

¹¹⁰ *Id.* at ch. II, para. 10.

¹¹¹ *Id.* at ch. II, para. 11.

¹¹² *Id.*

¹¹³ *Id.* at ch. II, para. 16.

¹¹⁴ *Id.* at ch. II, para. 17.

¹¹⁵ *Id.*

¹¹⁶ Kaufmann, *supra* note 96, at 381.

negative rights in many developing countries.¹¹⁷ Positive rights are less likely to develop when negative rights decline.¹¹⁸ Further, low levels of political and civil rights are inversely related to high incidences of state capture.¹¹⁹ State capture is an especially important problem for many reasons. An example being, as enforcement for negative rights wanes state capture increases and makes it more difficult to better ensure negative rights.¹²⁰ Structural guarantees can help prevent this downward spiral,¹²¹ which is why a strong constitutional guarantee of negative rights is important for preventing state capture and stimulating positive development outcomes.

The Constitution's provisions of individual rights also provide an important lesson for development professionals and NGOs. While many development professionals seek to meet goals and benchmarks based on positive rights, it is important not to lose focus on maintaining a negative rights base.¹²² Kaufmann observes, "[I]gnoring the status of [negative rights] in a country may have significant implications for aid effectiveness, both indirectly through the 'mediating' role of control of corruption, and directly through the positive impact that progress of [negative rights] can have on [positive rights]."¹²³ Having established the importance of the underlying negative rights protected by the Constitution, this article now addresses the structure of the Constitution.

2. Structural Constitution

The structural Constitution forms the basic institutions that contribute to the Mauritian success story. This article reviews the Constitution and its structural design in some detail in order to later

¹¹⁷ *Id.* at 6 fig. 1.

¹¹⁸ *See id.*

¹¹⁹ *See id.*

¹²⁰ *See id.*

¹²¹ *See id.*

¹²² *See generally* U.S. Dept. of State Geographic Bureau, A Guide to American Environmental Non-Governmental Organizations Active in Sub-Saharan Africa (May 1995), available at <http://dosfan.lib.uic.edu/ERC/bureaus/afr/950501NGO Africa.html>.

¹²³ *See* Daniel Kaufmann, *Human Rights and Governance*, in HUMAN RIGHTS AND DEVELOPMENT 352, 352 (Philip Aston & Mary Robinson eds., 2005).

discern what value these institutions have in fostering development in Mauritius. The textual analysis in this section serves as a reference point for the basis of at least one set of successful institutions in a developing country. The Constitution provides for the President,¹²⁴ Parliament,¹²⁵ and the Judicature.¹²⁶ Given that the Mauritian government is parliamentary, this article first reviews the parliament and then briefly discuss the other branches of government.

The Mauritian parliament, created at independence in March 1968,¹²⁷ has seventy seats,¹²⁸ and replaced a 34-member Legislative Council (which had 21 elected seats) that had been ruling the country since 1947.¹²⁹ Sixty of the seats are filled through the election of three candidates in each of the twenty constituencies.¹³⁰ Representatives from Rodrigues fill two additional seats.¹³¹ The three candidates in each Mauritian constituency and the two candidates in Rodrigues who receive the most votes are elected.¹³² Per Schedule 1 of the Mauritian Constitution,¹³³ the Electoral Supervisory Commission fills the remaining eight seats based on criteria intended to balance ethnic and party concerns.¹³⁴

In running for parliament, every candidate must declare their membership in an ethnic group—out of the four officially recognized groups (Hindu, Muslim, Sino-Mauritian, or General Population¹³⁵)—on their nomination form.¹³⁶ After an election of sixty-two members of parliament, the electoral commission examines the results and determines how each of the four ethnic communities is repre-

¹²⁴ THE CONST. Mar. 12, 1968, ch. IV (Mauritius).

¹²⁵ *Id.* at ch. V.

¹²⁶ *Id.* at ch. VII.

¹²⁷ Subramanian & Roy, *supra* note 18, at 223.

¹²⁸ Mathur, *supra* note 63, at 62.

¹²⁹ Subramanian & Roy, *supra* note 18, at 5.

¹³⁰ Srebrnik, *supra* note 3, at 11.

¹³¹ Mathur, *supra* note 63, at 62.

¹³² *Id.* at 62-63.

¹³³ THE CONST. Mar. 12, 1968, sched. 1 (Mauritius).

¹³⁴ Srebrnik, *supra* note 3, at 11; Mathur, *supra* note 63, at 63.

¹³⁵ Srebrnik, *supra* note 3, at 11.

¹³⁶ *Id.*; Mathur, *supra* note 63, at 63.

sented.¹³⁷ From these calculations, the Electoral Supervisory Commission selects the “best losers” to fill the remaining eight seats.¹³⁸

The “best losers” are candidates from recognized parties who stood for election in their constituencies and received the highest percentage of votes cast without winning.¹³⁹ The “best loser” seats are awarded in two ways.¹⁴⁰ The four seats are only based on community representation.¹⁴¹ The second four seats are based on community and party representation.¹⁴² To calculate which parties are underrepresented, the electoral commission compares the number of representatives from each group to the population demographics from the 1972¹⁴³ census, the last census that required the population to declare their ethnicity.¹⁴⁴ The formula to determine the best losers divides the total of each population by one plus the number of representatives from that population.¹⁴⁵ The winner is the best loser from the population with the largest quotient—regardless of his or her party.¹⁴⁶ This mathematical process is repeated for three more of the “best loser” seats.¹⁴⁷

The electoral commission selects four additional “best losers” by both community and party representation.¹⁴⁸ Though the calculations used are the same as in the first set of four seats,¹⁴⁹ in selecting the second set of four seats the electoral commission pays attention to preserving the political balance established by the election.¹⁵⁰ If the selection of the second four “best loser” seats strengthens the opposition coalition’s position in parliament, the

¹³⁷ Srebrnik, *supra* note 3, at 11.

¹³⁸ *Id.*

¹³⁹ *Id.*; Mathur, *supra* note 63, at 64.

¹⁴⁰ Mathur, *supra* note 63, at 63.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 63-64.

¹⁴⁸ *Id.* at 63.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 67.

electoral commission must give the winning coalition an equal number of seats to rebalance the parliament toward the results of the election.¹⁵¹ The “best loser” seats are not intended to unbalance the results of an election, but rather are aimed toward “[correcting] any imbalance in the representation of various communities that results from the direct election.”¹⁵²

The parliament’s structure is central to the Mauritian government; the other government institutions are determined by the parliament. The parliament chooses the President, who serves for a five-year term.¹⁵³ All of the executive power is vested in the President.¹⁵⁴ Along with the President, there is also a Vice President who the parliament appoints for a five-year term.¹⁵⁵ Both the President and Vice President are eligible for reelection.¹⁵⁶ Other than directing how to appoint the President and Vice President and delineating their terms, Chapter IV of the Constitution does not provide much other instruction.¹⁵⁷

The Constitution establishes a Supreme Court with unlimited jurisdiction to hear all cases, as well as two courts of appeal, divisions of the Supreme Court, to hear intermediate civil and criminal cases.¹⁵⁸ After establishing the Court, the Constitution grants jurisdiction and lays out the process and types of decisions that litigants may appeal.¹⁵⁹ One of the more notable decisions that litigants may appeal to the Supreme Court is any decision relating to highly valued property.¹⁶⁰ This provision gives effect to the negative rights relating to property that were discussed above.¹⁶¹

¹⁵¹ *Id.* at 72.

¹⁵² *Id.* at 67.

¹⁵³ THE CONST. Mar. 12, 1968, ch. IV, para. 28 (Mauritius).

¹⁵⁴ *Id.* at ch. VI, para. 58.

¹⁵⁵ *Id.* at ch. IV, para. 29.

¹⁵⁶ *Id.* at ch. IV, para. 28, 29.

¹⁵⁷ *Id.* at ch. IV.

¹⁵⁸ *Id.* at ch. VII, § 76.

¹⁵⁹ *Id.* at ch. VII, § 81.

¹⁶⁰ *Id.* at ch. VII, § 81(1)(b).

¹⁶¹ *See supra* Part II.B.1.

The Constitution's other structural provisions focus on important pre-commitments, especially for developing states.¹⁶² The Constitution provides an Ombudsman, who the President appoints only after consultation with multiple parties, including the minority leadership in Parliament.¹⁶³ The Ombudsman is charged with expansive abilities to initiate investigations on request or by using his judgment.¹⁶⁴

The last major chapter of the Constitution addresses finances and places restrictions on how the government may spend money.¹⁶⁵ The main restriction in this chapter is the necessity that expenditures are provided for by law.¹⁶⁶

These structural provisions and resulting protections for individual liberty are not necessarily *the* model for a successful constitution in developing countries. The importance of the Constitution, both in terms of individual negative liberties and its structure, is its creation of a system of government that fosters, not impedes, growth in Mauritius.

IV. MAURITIUS AS A MODEL

We now consider to what extent Mauritius can serve as a model for development, appraising positive outcomes in Mauritius, as well as other factors that may be contributing to the country's relatively successful development path.

A. Positive Outcomes

Mauritius' complex electoral system produced stability and minimized conflicts since implementation. The system is designed to prevent one ethnic group from dominating politics, and therefore

¹⁶² See, e.g., JAMES M. BUCHANAN & GORDON TULLOCK, *THE CALCULUS OF CONSENT: LOGICAL FOUNDATIONS OF CONSTITUTIONAL DEMOCRACY* (1962); Ejan Mackaay, *The Emergence of Constitutional Rights*, 8 CONST. POL. ECON. 15 (1997).

¹⁶³ THE CONST. Mar. 12, 1968, ch. IX, para. 96 (Mauritius).

¹⁶⁴ *Id.* at ch. IX, para. 97.

¹⁶⁵ *Id.* at ch. X.

¹⁶⁶ *Id.* at ch. X, para. 104.

encourages coalition building across ethnic groups and incentivizes cooperation over ethnic out-bidding and rivalry.¹⁶⁷

Mauritius consolidated its democracy in large part because the rules of its electoral system make forming a consensus necessary, encourages compromise, and discourages extreme positions.¹⁶⁸ Mauritian political parties and ethnic groups have become well practiced at building consensus through the regular formation of coalitions.¹⁶⁹ The Constitution's structure encourages negotiation and compromise amongst the country's political parties and ethnic groups by incentivizing coalition formation—in order to govern, parties needed to find partners to share power with.¹⁷⁰ Over time, groups learned how to share benefits and build support amongst coalition partners, preventing defections.¹⁷¹ The result of this process has been a "pattern of side payments to coalition partners first used in the post-independence stabilization [to become] institutionalized."¹⁷²

Since the first post-independence election, political parties formed coalitions in order to govern Mauritius.¹⁷³ In 1968, a coalition comprised of two Hindu-affiliated parties and a Muslim party emerged to form the first independent government¹⁷⁴ in an election "dominated neither by purely ethnic concerns nor overt political-party ideological differences."¹⁷⁵ Non-ethnic parties emerged quickly—founded in 1969, the Mouvement Militant Mauricien ("MMM") emerged as a "nonsectarian, class-based alternative to the communal politics."¹⁷⁶ A large number of political parties have continually existed in Mauritius¹⁷⁷ and form into coalitions during elections, "agreeing not to run against each other [in order] to

¹⁶⁷ Srebrnik, *supra* note 3, at 11.

¹⁶⁸ Bräutigam, *supra* note 2, at 53.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 56.

¹⁷² *Id.* at 57.

¹⁷³ WORLD BANK, *supra* note 73.

¹⁷⁴ Bräutigam, *supra* note 2, at 49.

¹⁷⁵ Mukonoweshuro, *supra* note 6, at 201.

¹⁷⁶ Bräutigam, *supra* note 2, at 49.

¹⁷⁷ See Srebrnik, *supra* note 3, at 11-12.

prevent a split in the vote.”¹⁷⁸ It is likely that the emphasis on non-ethnic issues in elections is one reason for a lack of post-electoral violence in Mauritius.

The compromises encouraged by Mauritius' electoral institutions may have also prevented another source of conflict, often tied to ethnicity, common in other developing nations. By institutionalizing side payments and the sharing of benefits between parties¹⁷⁹ the Mauritian electoral system prevents “tribalism of the elite,” a major cause of conflict in the developing world,¹⁸⁰ where holding power in government becomes a means to access resources, jobs, and wealth.¹⁸¹ Across Africa, conflict surrounds elections because ruling parties do not want to surrender the wealth they possess via access to government coffers.¹⁸² The Mauritian system ensures that wealth is spread among ethnic groups through their ruling coalitions by forcing power sharing.¹⁸³

The promotion of compromise and consensus formation may decrease violence in another way. The Mauritian system “encourages moderation and provides disincentives for . . . ‘outbidder’ parties, those who appeal exclusively to ethnic extremes.”¹⁸⁴ This is important because polarizing the electoral landscape along ethnic

¹⁷⁸ *Id.* at 11.

¹⁷⁹ *Id.*

¹⁸⁰ Pranab Bardhan, *Method in the Madness? A Political-Economy Analysis of the Ethnic Conflicts in Less Developed Countries*, 25 *WORLD DEV.* 1381, 1383 (1997).

¹⁸¹ *Id.*

¹⁸² See, e.g., Andreas Schedler, *The Nested Game of Democratization by Elections*, 23 *INT'L POL. SCI. R.* 103 (2002); Robert H. Bates, *Ethnicity, Capital Formation, and Conflict* (Center of International Development at Harvard University, Working Paper No. 27, 1999), available at http://www.hks.harvard.edu/var/ezp_site/storage/fckeditor/file/pdfs/centers-programs/centers/cid/publications/faculty/wp/027.pdf.

¹⁸³ See *infra* Part V.B.

¹⁸⁴ Srebrnik, *supra* note 3, at 11.

lines – “ethnic outbidding” – can lead not only to mistrust,¹⁸⁵ but also to ethnic violence.¹⁸⁶

B. Other Factors

The structure of Mauritius’s electoral institutions plays a significant role in lessening ethnic tensions and creating democratic stability, allowing the nation to develop. Other factors also contributed to the nation’s success in consolidating democracy and developing economically.

Mauritius’s long democratic history likely supports the carefully designed electoral system. As discussed above, elections had been taking place in Mauritius since 1885,¹⁸⁷ though that election was only open to a small portion of the population.¹⁸⁸ From 1926 onwards, however, significant portions of the island’s population were allowed to vote.¹⁸⁹ By 1968, “much of the male electorate had had almost a generation of experience in the forms of democracy.”¹⁹⁰ Familiarity and practice with a democratic system may well have helped ease Mauritius’ democratic consolidation. However, at the time of independence, democracy was clearly not consolidated, as the riots of 1967 demonstrated distrust with the electoral system. The consociational “Best Loser” system surely played a role in overcoming these fears.

Mauritius’s economic growth from the late 1960s to the present day has quite clearly contributed to an increased standard of living on the island and improvements in the well being of its citizens.¹⁹¹ Economic growth may have also played a role in reducing

¹⁸⁵ James D. Fearon, *Ethnic Mobilization and Ethnic Violence* 6 (Aug. 11, 2004) (unpublished article), available at <http://www.stanford.edu/~jfeardon/papers/ethreview.pdf> (2004).

¹⁸⁶ Ashish Chaturvedi, *Rigging Elections with Violence*, 125 PUB. CHOICE 189, 189-90 (2005).

¹⁸⁷ Bräutigam, *supra* note 2, at 52.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at 52-53.

¹⁹⁰ *Id.* at 53.

¹⁹¹ See, e.g., N. L. Aumeerally, *‘Tiger in Paradise’: Reading Global Mauritius in Shifting Time and Space*, 17 J. OF AFR. CUL. STUD. 161, 161 (2005) (discussing

conflict over time. A major cause of civil conflict is low per capita income.¹⁹² As Mauritius's per capita income improved over time, Mauritius experienced less civil conflict.¹⁹³ However, it is hard to map which way this relationship moves. The consensus-building nature of the electoral institutions in Mauritius fostered economic development and reduced the potential for civil conflict.¹⁹⁴ Furthermore, democratic stability within the government allows management of economic reforms¹⁹⁵ and encourages foreign investment.¹⁹⁶

Perhaps the most important factor in Mauritius's success in reducing economic tension, consolidating stable democracy, and developing economically, is that it followed its rules where so many other nations did not.¹⁹⁷ Following the rules is especially difficult given the problems that rent-seeking and capture occur at all levels of government in developing countries.¹⁹⁸ As discussed above, the problem of state capture is accompanied by a significant cascading problem.¹⁹⁹ Once enforcement and the rule of law dissipate enough, most economic activity is forced to operate outside of a formal legal framework.²⁰⁰ While discussing a different development context, de Soto observes that

[p]erhaps the most significant cost was caused by the absence of institutions that create incentives for people to seize economic and social opportunities to specialize within the marketplace [P]eople who [can] not operate within the law also [can] not hold property effi-

Mauritius' self promotion as a "Tiger in Paradise" similar to the successful Asian tigers).

¹⁹² PAUL COLLIER, *THE BOTTOM BILLION* 3-17 (2007). Christopher Blattman & Edward Miguel, *Civil War* 2-3 (Nat'l Bureau of Econ. Research, Working Paper No. 14801, 2009), available at http://www.nber.org/papers/w14801.pdf?new_window=1.

¹⁹³ See generally Subramanian & Roy, *supra* note 18, at 36.

¹⁹⁴ Mukonoweshuro, *supra* note 6, at 222.

¹⁹⁵ Bräutigam, *supra* note 2, at 53.

¹⁹⁶ Mukonoweshuro, *supra* note 6, at 222.

¹⁹⁷ Bräutigam, *supra* note 2, at 46.

¹⁹⁸ HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL*, 17-28, 81-89 (3rd ed. 2000).

¹⁹⁹ See *supra* Part III.B.2.

²⁰⁰ DE SOTO, *supra* note 198, at 81-89.

ciently or enforce contracts in the courts; nor [can] they reduce uncertainty through limited liability systems and insurance policies or create stock companies to attract additional capital and share risk. Being unable to raise money for investment, they [can] not achieve economies of scale or protect their innovations through royalties and patents.²⁰¹

In light of our earlier analysis of the Constitution, the potential for operation outside of the rule of law is even more important. The Constitution provides protection of property and other rights, but without proper enforcement and the ability of citizens to vindicate their rights, the basis for any development fails. Sustained investment leading to consistent productivity gains is very difficult in an environment without the rule of law.²⁰²

The consistent protection and evolution of property rights in an endogenous manner is a direct result of the Mauritian system's inclusive nature.²⁰³ This progression fits within Mancur Olson's story in *Dictator Democracy and Development*.²⁰⁴ In this narrative, Olson notes that the initial point of nature revolves around small groups forming.²⁰⁵ These groups then seek to extract rents as roving bandits.²⁰⁶ Over time, these groups recognize that they can extract greater rents as a stable bandit.²⁰⁷ This leads Olson to observe that

if a roving bandit rationally settles down and takes his theft in the form of regular taxation and at the same time

²⁰¹ *Id.* at 83.

²⁰² KENNETH W. DAM, THE LAW-GROWTH NEXUS: THE RULE OF LAW AND ECONOMIC DEVELOPMENT 91-153 (2006).

²⁰³ Dani Rodrik, Institutions for High-Quality Growth 21-23 (Nat'l Bureau of Econ. Research, Working Paper No. 7540, 2000), available at <http://www.hks.harvard.edu/fs/drodrik/Research%20papers/institutions.PDF>.

²⁰⁴ Mancur Olson, *Dictatorship, Democracy, and Development*, 87 AMER. POL. SCI. R. 567 (1993).

²⁰⁵ *Id.* at 567.

²⁰⁶ *Id.* at 568.

²⁰⁷ *Id.*

maintains a monopoly on theft in his domain, then those from whom he exacts taxes will have an incentive to produce. The rational stationary bandit will take only a part of income in taxes, because he will be able to exact a larger total amount of income from his subjects if he leaves them with an incentive to generate income that he can tax.²⁰⁸

This observation applies in the Mauritian context to the extent that its parliamentary structure provides continued enforcement and recognition of constitutional protections. For development purposes, the growth of endogenously originating outcomes is more important than the exact scope of an institution. The Mauritian experience teaches that the more successfully a constitutional structure fosters the rule of law and incubates endogenous growth of respect for negative rights, the more successful that constitutional structure will be in fostering development.

V. DIFFICULTIES IN APPLICATION

A. Caveats

Though the Mauritian electoral system has been highly effective in preventing ethnic conflict and promoting interethnic cooperation,²⁰⁹ it faces meaningful criticism. The most important criticism is that the current system enhances or promotes ethnic divisions over the creation of a central Mauritian identity.²¹⁰ Some suggest that the current system is outdated.²¹¹ Many also suggest that the formalization of ethnic groups within the Constitution and the electoral system prevents Mauritius from developing a true civil society or a national identity.²¹² The continual reference and use of the same four ethnic groups ingrains those groups in society, even

²⁰⁸ *Id.*

²⁰⁹ *See supra* Part IV.A.

²¹⁰ Mathur, *supra* note 63, at 74.

²¹¹ *Id.* at 74-75.

²¹² Bunwaree, *supra* note 5, at 4; Srebrnik, *supra* note 3, at 8; see also Mathur, *supra* note 63, at 74.

though they may not be relevant any more. Continued use of the 1972 census to represent the country's ethnic breakdown may illustrate a lack of progress.²¹³ Moreover, according to Mauritian Political Scientist Raj Mathur, "Since 1976 . . . communalism has ceased to play an important role in the way people vote."²¹⁴ By continuing to use ethnic identities enshrined in the constitution over forty years ago, it is possible that the Mauritian electoral system is preserving outdated visions of its own society.

However, changing the existing system could lead to further issues. Removing or decreasing a minority group's rights, "may be perceived by the ethnic minorities as attempts to deny them of their rights."²¹⁵ A debate over what rights different ethnic groups deserve, "may arouse communal sentiments that are detrimental to nation building."²¹⁶

B. Considering the Institution

The Mauritian example is important because it allows observations about the role effective institutions may play in developing countries, regardless of their exact contours. Douglass North observes, "the answer [for development] lies in the characteristics of the basic institutional environment and the degree to which these basic ground rules are enforced."²¹⁷ North's insight regarding the impact of institutions on development is crucial for analyzing the degree to which Mauritius can function as a model for developing countries elsewhere. However, the key questions are to what extent institutional analysis can really provide concrete development answers, and what about Mauritius can inform development elsewhere in developing countries?

The Mauritian example can provide a number of benefits for development challenges in developing countries, particularly in

²¹³ Mathur, *supra* note 63, at 63.

²¹⁴ *Id.* at 75.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ Douglas C. North, *Institutional Change and Economic Growth*, 31 J. ECON. HIST. 118, 124 (1971).

consideration of what type of institutions are necessary to move economic activity toward production and away from redistribution. The Mauritian Constitution successfully controls factions and fosters productive activity in society. One of the keys to this success has been a familiar notion since at least the Enlightenment and applied in America's constitutional founding.²¹⁸ Madison's famous Federalist 10 stresses the importance of making it very costly to use government in order to redistribute wealth.²¹⁹ Madison noted that:

[T]he most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government.²²⁰

This insight is essential in the developing world where limiting harmful wealth redistribution while encouraging wealth creation is a pervasive issue. Through its unique voting structure, most of the country is invested in the success and outcomes overseen by the Mauritian Constitution. This alone is impressive and a laudable goal. However, the real importance is that by effectively investing the population in the Constitution and its enforcement, the structural benefits of the Constitution also shine through. An effectively adopted and enforced constitution allows for pre-commitment and

²¹⁸ *Id.* at 124-25.

²¹⁹ *Id.*

²²⁰ THE FEDERALIST NO. 10, at 49 (James Madison) (Yale Univ. Press, 2009).

the reduction of agency costs.²²¹ In the developing world, one of the largest agency costs is wealth redistribution and a government more invested in taking than creating.²²²

Mauritius also shows the importance of incremental growth. The Mauritian Constitution provides a pre-commitment to reducing the amount of losers. The “best loser” design allows for enough stability to maintain a slow and steady endogenous growth of negative rights and the rule of law essential for development.²²³ The formal constraints are important, and this article has sought to consider them in looking at Mauritius as an example. However, the informal changes and growth that exist as a result of this formal system are just as important. North argues:

Changes in informal constraints—norms, conventions, or personal standards of honesty, for example—have the same originating sources of change as do changes in formal rules; but they occur gradually and sometimes quite subconsciously as individuals evolve alternative patterns of behavior consistent with their newly perceived evaluation of costs and benefits.

The process of change is overwhelmingly incremental The reason is that the economies of scope, the complementarities, and the network externalities that arise from a given institutional matrix of formal rules, informal constraints, and enforcement characteristics will typically bias costs and benefits in favor of choices consistent with the existing framework. The larger the number of rule changes, *ceterus paribus* the

²²¹ MAXWELL L. STEARNS & TODD J. ZYWICKI, PUBLIC CHOICE CONCEPTS AND APPLICATIONS IN LAW 501-02 (2009) (discussing “two important aspect of constitutional design: first, pre-commitment strategies that limit governmental powers and that channel decision making through specified procedures, and second, mechanisms that reduce agency costs by limiting opportunities for government officials to benefit from pursuing objectives that depart from those for whom they are expected to serve and for whose benefit they derive their power.”).

²²² DE SOTO, *supra* note 198, at 81-89; Olson, *supra* note 204.

²²³ *See supra* Part III.B.2.

greater the number of losers and hence opposition. Therefore . . . institutional change will occur at those margins considered most pliable in the context of the bargaining power of interested parties.²²⁴

Minimizing the costs to the losers minimizes opposition to change at the margin. The Mauritian constitutional structure provides a framework to enhance stability and allow development-enhancing changes at the margin.

C. Moving Forward

Considering Mauritius as a model, along with the institutional benefits, it is apparent that there are concrete lessons for development. Analyzing a success story, such as Mauritius, provides the tools to understand some of the developing world's greatest challenges. When considering any development problem it is essential to account for those who stand to lose from any changes to the status quo. A benefit of a participatory democracy example like Mauritius is it demonstrates one way for an institutional structure to minimize the losers, which helps provide stability for gradual change. This outcome is also essential because it helps address the problem of law and legal institutions as a source for development reforms.²²⁵

Law and legal institutions each risk having a central focus, ignoring the need for local knowledge. Hayek famously stated that "[t]he curious task of economics is to demonstrate to men how little

²²⁴ Douglas C. North, *Institutional Change: A Framework of Analysis* 5-6, (Research Papers in Econ., Working Paper No. 9412001, 1994), available at <http://129.3.20.41/eps/eh/papers/9412/9412001.pdf>.

²²⁵ See generally PROMOTING THE RULE OF LAW ABROAD: IN SEARCH OF KNOWLEDGE (Thomas Carothers ed., 2006) (providing a collection of articles addressing the role the rule of law and rule of law reforms have and have not played in global development challenges); THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL (David M. Trubek & Alvaro Santos eds., 2006) (considering multiple points of view from the development economics field to describe the changing way in which development practitioners think about and implement rule of law reforms)).

they really know about what they imagine they can design.”²²⁶ It is just as true that the curious task of rule of law and legal institutional reform in development is to demonstrate how little men can design. Providing a structure for incremental movement emphasizes decentralization as opposed to centralization.

The Mauritian representative democratic system is one model for lowering the risk of external costs. When most members of society are at a lower risk for another group imposing costs on them there is more freedom for private ordering. This article is not intended to argue that representative democracy is a panacea for questions of economic development. In fact, this article suggests quite the opposite: that Mauritius provides one example of a system with endogenous roots that has allowed continuous growth. Legal institutions are essential to development to the extent they foster liberty without stifling growth, a central plan to avoid a central plan. James Madison arguing for the U.S. Constitution captured this concept perfectly, “[i]n framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.”²²⁷ Mauritius is an example because it shows this balance can exist in the developing world and that legal institutions can have a tangible impact on development.

VI. HAITI

There are many challenges in the developing world, some of which are ongoing as countries strive towards economic improvements, and some of which are brought about by crisis. In January 2010, Haiti faced a devastating earthquake in its capital Port-au-Prince.²²⁸ As Haiti recovers while also facing challenges similar to

²²⁶ F.A. HAYEK, *THE FATAL CONCEIT: THE ERRORS OF SOCIALISM* 76 (W.W. Bartley III ed., 1988).

²²⁷ *THE FEDERALIST* NO. 51 (James Madison).

²²⁸ Simon Romero & Marc Lacey, *Fierce Quake Devastates Haitian Capital*, N.Y. TIMES, Jan. 12, 2010, <http://www.nytimes.com/2010/01/13/world/americas/13haiti.html>.

other countries in the developing world, considering the Mauritian case may provide some guidance.²²⁹ While Mauritius and Haiti do not share similar ethnic heterogeneity, the two countries do share a common Creole speaking culture.²³⁰

Haiti currently operates, at least on paper, in a republican form of government under a somewhat recent Constitution.²³¹ Before discussing Haiti's current constitutional structure it is important to note the Haitian Constitution's tumultuous history since Haiti first adopted it in 1987. Not long after adopting the Constitution it was suspended from 1988-1989.²³² While the Constitution was technically fully reinstated in 1994, normal constitutional elections did not resume until 2006.²³³ Given the Constitution's history as well as the problems of governing after a natural disaster, one must consider Haiti's Constitution while fully understanding that the system designed on paper is not necessarily an accurate representation of local conditions.

The Haitian national legislature discussed in Chapter II, Section C of the Constitution is a bicameral legislature that has traditional legislative powers.²³⁴ The Executive role established in Chapter III, Section A is very similar to the role played by the Executive in the United States.²³⁵ The only exception is that the President shares his or her role with a prime minister that the President appoints from the majority party in Parliament.²³⁶ Finally, Chapter IV provides a judiciary that operates similarly to the Supreme Court in the United States.²³⁷

²²⁹ David Carment & Yiagadeesen Samy, *The Mauritian Miracle and the Haitian Tragedy*, CITIZEN SPECIAL, Apr. 8, 2010, <http://www.carleton.ca/cifp/app/serve.php/1281.pdf>.

²³⁰ *Id.*

²³¹ 1987 CONST. OF THE REPUBLIC OF HAITI Mar. 29, 1987.

²³² STEEVE COUPEAU, *THE HISTORY OF HAITI* 127-162 (2008).

²³³ See Mark Schuller, *Seeing Like a "Failed" NGO*, 30 POLAR 67, 71-73 (2007).

²³⁴ 1987 CONST. OF THE REPUBLIC OF HAITI Mar. 29, 1987, tit. V, ch. II, art. 98-103.

²³⁵ *Id.* at tit. V, ch. III, art. 134-135.

²³⁶ *Id.*

²³⁷ 1987 CONST. OF THE REPUBLIC OF HAITI Mar. 29, 1987, tit. IV.

Though Mauritius faces greater ethnic division than Haiti, the Mauritian constitutional structure has proved to be more stable.²³⁸ It is possible that the need to balance the heterogeneous population in Mauritius fosters a more stable government, as the minority groups each have a vested interest in continuing a stable government and their aggregated interests foster stability. It is also possible that even though the British seemingly imposed a system of government on Mauritius, the form of government carefully considered the makeup of the Mauritian population and designed a government specifically tailored to those needs. The Mauritian lesson for Haiti is not certain, but if nothing else it encourages development practitioners assisting with the Haitian recovery to consider the importance of constitutional structure and electoral design when attempting to ensure stability moving forward.

There is cause for optimism, and Haiti has a unique opportunity moving forward with its recovery from the January 2010 earthquake. While the recovery will likely be long and painful, Haiti has a chance to revisit its electoral system and consider alternatives that will foster greater stability and help solidify economic improvements made during the Haitian recovery.

VII. CONCLUSION

In some ways, Mauritius had no choice but to implement an electoral system that encouraged participatory politics. With forty-four percent of the country opposed to independence—a bloc composed of “virtually the entire non-Indian population”—creating a system that brought all the ethnic groups together seemed a necessity.²³⁹ The results have been positive: “These institutions have ensured free and fair elections, the rule of law, a vibrant and independent press, and respect for property rights”²⁴⁰ Different parties win elections, conflicts are resolved within the system, and

²³⁸ See Mukonoweshuro, *supra* note 6, at 222.

²³⁹ Subramanian & Roy, *supra* note 18, at 241.

²⁴⁰ *Id.*

“democratic practices are ‘deeply internalized’ in the expectations of citizens and rulers and in the workings of society.”²⁴¹ Perhaps most importantly, these elections are not followed by violence. The Mauritian success story provides an important starting point for considering development problems either in Sub-Saharan Africa or in countries such as Haiti. While Haiti does not share the same heterogeneous ethnic makeup, its shared culture with Mauritius makes it important to consider the Mauritian example as Haiti continues to recover from the January 2010 earthquake.

²⁴¹ Bräutigam, *supra* note 2, at 45.