

The governance bank

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Paul Wolfowitz was a controversial figure from the moment of his appointment as President of the World Bank until his resignation in the face of accusations of unethical conduct.¹ His policy decisions to continue and deepen the Bank's focus on borrower governance issues and in particular his decision to suspend key loans over concerns about borrower corruption were equally controversial.² They led critics to argue that refusal to lend because of borrower governance issues could divert the Bank from its core mandate of reducing poverty, or, if taken to a logical extreme, result in a decision not to lend to poor countries, many of whose governments are corrupt.

The furore over Wolfowitz and the attention to the stoppage of key loans obscures the fact that the Bank's principal approach to dealing with borrower corruption is not to stop loans. On the contrary, the Bank's approach, continued and deepened by Wolfowitz, is to provide financing for reforms of key government systems such as the judiciary, the civil service, or the decentralization of public service delivery.

This approach to dealing with poor borrower governance was recently articulated in the Bank's new governance and anti-corruption strategy. The strategy reaffirms the Bank's commitment to remain engaged in countries with poor governance by identifying reforms that both the Bank and the borrower government can support.³

The Bank began to focus on borrower 'good governance' in the early 1990s, defining the term as 'epitomized by predictable, open and enlightened policy making; a bureaucracy imbued with a professional ethos; an executive arm of government accountable for its actions; and a strong civil society participating in public affairs; and all behaving under the rule of law'.⁴ Increasingly, the Bank has also focused on the relationship between government and society, working to

¹ Vice President and Corporate Secretary, International Bank for Reconstruction and Development, 'Second report of the ad hoc group' R2007-0089 (May 14, 2007).

² Celia Dugger, 'World Bank chief outlines a war on fraud', *New York Times*, 12 April 2006; Steven Weisman, 'Wolfowitz corruption drive rattles World Bankers', *New York Times*, 14 September, 2006..

³ World Bank, 'Strengthening World Bank group engagement on governance and anticorruption', 21 March 2007 (available at <http://go.worldbank.org/32PINXVIJo>).

⁴ International Bank for Reconstruction and Development/World Bank, 'Governance: the World Bank's experience' (1994, Washington DC: World Bank).

improve the transparency of government actions and insisting on the inclusion of civil society groups in policy dialogue.

While some loans may be difficult to classify, according to the World Bank's annual report 24 per cent of the Bank's loans in fiscal 2005 aimed to strengthen the rule of law, the justice system and public administration. This is a larger percentage of loans than was dedicated to any other theme, and outweighs the percentage of loans for health, education and social services combined.⁵ The Bank has increasingly made the disbursement of loans conditional on improvements to the quality of governance. In 2005 48 per cent of all conditions on loans involved public sector governance, a greater percentage than any other theme.⁶ Finally, the Bank has made the value of loans available to the poorest borrowers dependent on measures of governance quality.⁷ The Bank for Reconstruction and Development has become the Bank for Good Governance, and the new governance and anti-corruption strategy does not indicate that any change in this trend is under contemplation.

The Bank asserts that its focus on governance 'follows from its mandate to reduce poverty' because 'a capable and accountable state creates opportunities for poor people, provides better services, and improves development outcomes'.⁸ There is no contradiction between the Bank's focus on good governance and its focus on poverty reduction if it can be assumed, first, that better governance will lead to the reduction of poverty and, second, that the Bank is in a position to help strengthen borrower governance. However, scholars continue to debate the direction of causality between good governance and economic development,⁹ and there are reasons to question the Bank's effectiveness as a financier of good governance in countries where governance is poorest. The Bank's designers crafted legal and institutional constraints to prevent the Bank from engaging in politics. While the Bank has carved out a limited space for engagement in work on good governance, it remains unable to address these issues where they are politically embedded. The consequence of the Bank's partial blindness is an inability to conduct risk analysis or to craft effective reform programmes for countries governed on neo-patrimonial lines. Even with a reformed charter, it is doubtful that the Bank would be able to work on governance issues with such borrowers.

⁵ The International Bank for Reconstruction and Development/World Bank, 'The World Bank annual report 2005: year in review' (Washington DC: World Bank, 2005) (available at <http://go.worldbank.org/A6JoIM1WN0>).

⁶ Operations Policy and Country Services, World Bank, 'Review of World Bank conditionality: background paper 4. Content of conditionality in World Bank policy-based operations: public sector governance, privatization, user fees and trade', September 2005 (available at <http://go.worldbank.org/6UF9OQDJ00>).

⁷ International Development Association, 'IDA's performance-based allocation system: IDA rating disclosure and fine-tuning the governance factor', September 2004 (available at <http://siteresources.worldbank.org/IDA/Resources/PBAFINAL.pdf>).

⁸ World Bank, 'Strengthening World Bank group engagement'.

⁹ See, e.g., Daniel Kaufmann and Aart Kraay, *Governance and growth: causality which way?—evidence for the world, in brief* (Washington DC: World Bank, 2003); Harry Seldadyo, Emmanuel Pandu Nugroho, and Jakob de Haahn, 'Governance and growth revisited', *Kyklos* 60: 2, 2007, pp. 279–90; Mancur Olson, Jr., Naveen Sarna and Anand Swamy, 'Governance and growth: a simple hypothesis explaining cross-country differences in productivity growth', *Public Choice* 102: 3–4, 2000, pp. 341–64.

Original intent

The World Bank's Articles of Agreement were negotiated in 1944 at the Bretton Woods Conference. The purpose of the Bank was to finance postwar reconstruction and investment in developing countries. The conference delegates had a narrow concept of development finance. A review of the Bank's early loans shows lending for electrification and hydroelectric power, for the purchase of heavy machinery for the agricultural, mining and steel industries, and for the construction of highways and ports.

Harry Dexter White, the US Treasury official who developed the plan for the Bank, was one of a number of Wilsonian internationalists who believed that open trade and economic cooperation between the United States and the Soviet Union were key to postwar peace and stability. The International Monetary Fund and the World Bank were to provide the framework for this cooperation. Accordingly, a critical aspect of the design of the World Bank was that it be apolitical and impartial in its lending.¹⁰

An early US Treasury document makes it clear that the plan's authors were concerned both about the possibility of discrimination against borrowers based on the nature of their political systems and about the possibility that economically unsound loans could be made to advance national political agendas.¹¹ Two sets of safeguards were conceived to prevent these types of abuse. The first was designed to constrain the Bank's operations. Article III, section 5(b) and article IV, section 10 of the Bank's Articles of Agreement explicitly prohibit the Bank from making lending decisions on any but economic criteria and from interfering in the political affairs of members. The second set of safeguards was structural. The representation of country members on the Bank's board would prevent any individual country from using the Bank to further its own political agenda. Moreover, the Treasury imagined that the Bank would operate primarily as a facilitator of private lending, and that the market would refuse to participate in any loans that lacked sound economic underpinnings.¹²

In short, development finance was understood as investment in equipment and infrastructure, carried out under a watchful impartial committee of technocrats whose only purpose would be to judge the economic efficiency of the loan. The US Treasury asserted that 'The Bank itself can have no policy outside the

¹⁰ White expended substantial effort on persuading the suspicious Soviet Union to join the new international organizations. The Soviet government sent an observer delegation to Bretton Woods, and White met the delegation both formally and informally. Ultimately, however, the Soviet Union declined to join, instead creating separate organizations for the Soviet bloc. See R. Bruce Craig, *Treasonable doubt: the Harry Dexter White spy case* (Lawrence, KA: University Press of Kansas, 2004). The 1995 release of decrypted Soviet cables under the Venona project confirms longstanding allegations that Harry Dexter White was a Soviet agent of influence, although historians are debating the extent of his cooperation. Notwithstanding this factor, the view that an institutional framework was necessary as a basis for economic cooperation between the United States and the Soviet Union was shared by other administration officials as well as by President Roosevelt, and Congress passed the Bretton Woods Act, by which the United States became a signatory to the Bretton Woods Agreements. For the Bretton Woods Agreement Act, see P.L. 79-171, c. 339: 59 Stat. 512: 31 July 1945.

¹¹ US Treasury, 'Questions and answers on the Bank for Reconstruction and Development', 24 February 1944.

¹² US Treasury, 'Questions and answers'.

purely financial sphere.’¹³ From its inception, however, driven by fiduciary duties as well as concerns about its own creditworthiness, the Bank assessed the policy environments of potential borrowers as part of project appraisal. Project loans were sometimes made conditional on specific macroeconomic policy reforms.¹⁴ In 1980 the Bank’s policy dialogue was facilitated by the launching of a new loan instrument, the structural adjustment loan (the predecessor of today’s development policy loan). Structural adjustment loans, unlike the investment loans that were disbursed against project expenditures, were nominally given to offset the transaction cost of adopting and implementing better policies and were disbursed as agreed reforms were undertaken.¹⁵

The first generation of structural adjustment loan conditions were fairly evenly balanced between trade and economic management issues (27 per cent) and public sector governance issues (24 per cent). In the 1990s, however, the Bank sharpened its focus on governance, and by 2005 the focus of Bank conditions had shifted, with only 12 per cent of all conditions relating to trade and economic management and 48 per cent relating to public sector governance.¹⁶

The Bank’s legal mandate

The Bank’s venture into governance reform raised legal questions in the light of the clauses in its Articles of Agreement prohibiting consideration of non-economic factors and political interference. In 1990, Vice-President and General Counsel Ibrahim Shihata drafted a memorandum that clarified the legal scope of the Bank’s mandate with respect to governance.¹⁷

Shihata cautioned that the Bank could not lend on human rights criteria or other criteria of a political character. The type of political system and the political ideology and character of the government—whether authoritarian or democratic, of ‘western style or another’—should be ‘of no relevance to the Bank’ as ‘rapid economic growth has taken place ‘within a variety of political systems and with quite different ranges of public policies’. He also cautioned against using conditionality to effect political change: ‘Regardless of how simplistic it may be to attempt to introduce political transformation through the conditionality of external lending, such conditionality would not in my view be consistent with the explicit provisions of the Bank’s Articles of Agreement.’¹⁸ The only exception to this prohibition would be where the Bank staff could show a ‘preponderant’ economic

¹³ US Treasury, ‘Questions and answers’.

¹⁴ Devesh Kapur, John P. Lewis and Richard Webb, *The World Bank: its first half century*, vol. 1 (Washington DC: Brookings Institution, 1997) pp. 454–55.

¹⁵ Although these loans were originally conceived as instruments that would be rarely used in order to get ‘a place at the table’ when members were deciding macroeconomic policy, structural adjustment loans became popular as a way to channel quick funds to borrowers suffering balance of payments crises to help prevent their defaulting on debts. See Nancy Birdsall, Stijn Claessens and Ishac Diwan, ‘Policy selectivity forgone: debt and donor behavior in Africa’, *World Bank Economic Review* 17: 3, 2003, pp. 409–35.

¹⁶ World Bank, ‘Review of World Bank conditionality: background paper 4’.

¹⁷ I. F. I. Shihata, ‘Issues of “governance” in borrowing members: the extent of their relevance under the Bank’s Articles of Agreement’, 1990.

¹⁸ Sec. IV(2).

impact of a political factor as the result of objective analysis. The Bank should be involved neither in factional politics nor in attempting to induce a change of political system. Calls for popular participation in the making or implementation of rules are labelled as 'borderline cases', acceptable only where staff can show the direct impact of such participation on compliance with Bank programmes.¹⁹

On the other hand, Shihata argued that 'internal and external political events may have significant direct economic effects which, due to their economic nature, may properly be taken into consideration in the Bank's decisions'.²⁰ It was legitimate to gather information on the political situation to enable the Bank to give good policy advice and make good assessments of the feasibility and effects of proposed reforms, or to judge creditworthiness or project implementation capacity.

Finally, Shihata asserted that the Bank could legitimately be concerned with 'good order' in the borrower country, which he defined as the existence of a system based on abstract rules that are actually applied and on functioning institutions that ensure the appropriate application of such rules. More specifically, the memorandum argues that reform policies cannot be effective in the absence of a system in which

a) there is a set of rules which are known in advance, b) such rules are actually in force, c) mechanisms exist to ensure the proper application of the rules and to allow for departure from them as needed according to relevant procedures, d) conflicts in the application of the rules can be resolved through binding decisions of an independent judicial or arbitral body and e) there are known procedures for amending the rules when they no longer serve their purpose.²¹

Accordingly, the memorandum states that the Bank may reasonably be engaged in areas of public administration that 'are deemed to have a direct effect on investment prospects' and on 'economic considerations', such as civil service reform, legal reform, accountability for public funds and budget discipline.²²

Three justifications are offered for this division between the political character of government and the rule of law and public administration. The memo claims that the process of establishing such a system of 'good order' 'should go hand in hand with the investment of capital for productive purposes'. Second, the memo states that 'The existence of such a system is a basic requirement for a stable business environment; indeed for a modern state.'²³ Finally, it implies that the Bank may reasonably be concerned with the establishment of the rule of law as a necessary prerequisite for the Bank to fulfil its fiduciary duties to lend productively and efficiently.

This authoritative legal memo guides the Bank's actions on governance, and when operational staff make forays into forbidden territory they are sometimes pulled back by the legal department. But this distinction between the political system and 'good order' is not defensible. In some countries, the political system is incompatible with the rule of law.

¹⁹ Sec. IV(3).

²⁰ Sec. III(3).

²¹ Sec. IV(3).

²² Sec. IV(3).

²³ Sec. IV(3).

Where law does not rule

Shihata's description of 'good order' and the Bank's definition of 'good governance' coincide with what the sociologist Max Weber called 'rational-legal authority'.²⁴ Under rational-legal authority, the government's claim to the right to rule rests on its compliance with law. It has a technical civil service recruited on the basis of merit to see that the laws are carried out. In such a government, there is a distinction between the person working in government and the role that he or she fills, and obedience is due to the office, not to the person. Moreover, the assets of the government are kept distinct from the assets of the people who occupy government offices, and those assets may be deployed only in accordance with rules.

In contrast, Weber described patrimonial rule, a type of government where the leader's right to rule rests on tradition. Under patrimonial rule, government is personal rather than rule-based. The assets and powers of government are owned personally by the leader, rather than belonging to a leadership 'office'. Government administration is staffed by those with personal ties to the leader. This entourage is compensated from the leader's personal assets, or through a right of extraction, such as the right to collect tolls on a road or a share of crops from a farm.²⁵

The history of European state-building has been the gradual transition away from patrimonial rule towards rational-legal bureaucracy. Scholars attribute this transition to a number of factors, including the rise of the middle class, the pressures of war, and bargaining between revenue-starved governments and their people.²⁶ Over centuries, the citizens of these nations developed a shared identity and an approximate consensus on the proper role of government. But the adoption of 'rational-legal authority' as the ruling concept of government is relatively recent. For example, a professional bureaucracy, the second attribute of good governance cited in the World Bank definition, was not created in England until the mid-nineteenth century, and not established in the federal government of the United States until 1873.²⁷

Political scientists studying the new states formed from the collapse of European empires remarked that while they had inherited the formal institutions of their former colonizers, they seemed to operate much like Weberian patrimonial states. Eisenstadt coined the term 'neo-patrimonial' to describe these new patrimonial states. The difference was that the post-independence leaders did not have claims based on traditional right; instead, they purchased political support through the distribution of patronage.²⁸

²⁴ Max Weber, *The theory of social and economic organization* (New York: Free Press, 1947).

²⁵ Weber, *The Theory* p. 345.

²⁶ Charles Tilly, *Coercion, capital, and European states, AD 990–1990* (Cambridge, MA: Basil Blackwell, 1990); Douglas North and Robert Paul Thomas, *Rise of the western world: a new economic history* (Cambridge: Cambridge University Press, 1996); Margaret Levi, *Of rule and revenue* (Berkeley, CA: University of California Press, 1998).

²⁷ Arti Hoogenboom, 'The Pendleton Act and the civil service', *American Historical Review* 64: 2, 1959, pp. 301–18.

²⁸ S.N. Eisenstadt, *Traditional patrimonialism and modern neopatrimonialism* (London: SAGE, 1973); Guenther Roth, 'Personal rulership, patrimonialism and empire building in the new states', *World Politics* 20: 2, 1968, pp. 194–206.

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President Bongo of Gabon, perhaps with wider latitude for candour given his country's oil riches and lack of dependence on foreign aid, explained the operation of such a system to a French interviewer. He said that the millions of dollars that passed through his personal bank account were used to pay government expenses and also redistributed to the people:

Very simply, I redistribute to the Gabonese most of the money with which the Gabonese state entrusts me. I'll give an example. Recently, a minister came to see me with another colleague. Approached by students at the university, they brought them to me in this same room where we now sit. Around the same table. The students, in front of me, started listing their needs. And this, and that. We did the calculation and the total amounted to 700 million francs CFA. To which were added round-trip tickets for Paris for six people and the cost of food and lodging over there. I took the money from my accounts—the same accounts we are talking about—to pay for the books, the notebooks, the computers and everything else. The other university of Massaku learned of this and also went on strike. They sent a delegation to say, 'And us, Mr President, what should we do? We didn't get anything.' As this university is smaller, I gave a little less: 500 million francs CFA. That is, in total, around 1.2 billion. I take it out of my pocket. The professors: we don't have money, no cars! I pay. Demonstrations? I pay. Agricultural fairs? I pay. Women's day? I pay. If it has to be paid for, I pay. The Gabonese aren't stupid. They know well. They say: Bongo has money, he's the president. But if there is 1 million, there are 500,000 francs for him and 500,000 for the rest of us. And the special services of the State? Who pays?... When you go to the interior of the country, people ask for a meeting, they wait all day. There is a lack of equipment, poverty. The president comes with sacks, he gives 20 million [francs CFA] here, 30 millions there.²⁹

Asked if this system is good for Gabon, Bongo replied, 'I do not know if it is good. At any rate, it is the only one possible! Besides, not long ago you had the same system in your country. Was the Palace of Versailles built with the money of France or that of Louis XIV?'

Neo-patrimonial rule is incompatible with the rule of law. Patronage, not rule of law, is demanded by the government's supporters. Governments dispense exemptions from the application of laws because exemptions are among the least expensive patronage goods that a government can distribute. At the same time, the use of government for the distribution of patronage undermines the implementation of policies and rules more generally, as where the distribution of civil service positions on non-meritocratic criteria results in a civil service less apt for the tasks with which it is charged, or where the diversion of budgetary funds for other purposes results in less money for policy implementation.

Finally, neo-patrimonial rule is incompatible with the rule of law because patrimonial practices have been criminalized. As victorious reformers in western states successfully pushed for the abandonment of patrimonial practices, they also vilified and criminalized them. The acceptance by public officials of bribes for the favourable exercise of influence, noted without shame or comment in the

²⁹ Omar Bongo, *Blanc comme negre* (Paris: Bernard Grasset, 2001). Translation Melissa Thomas.

seventeenth-century diary of Samuel Pepys,³⁰ became a criminal offence. The sale of public office, once praised by some as a way of allowing the middle-class access to positions that had previously been the province of the nobility, was criminalized. Laws now distinguish state and personal property and authority, and the extent of the public sphere has grown. Patrimonial practices are now considered to be corrupt. Many neo-patrimonial states have a colonial past, and are inheritors of a legal framework with which they find themselves at odds daily. Systems of control and law enforcement are neglected, captured and weakened. When the government is engaged in organized crime, law cannot rule.

Changing from neo-patrimonial rule to the rule of law requires a political transformation that is more fundamental than a change of leadership, and even more fundamental than a change in the way leadership is selected. It requires a change in the relationship between government and society; a change in society's expectations of government and the way in which political support is built. But the Bank can neither consider how such a political transformation might be facilitated nor develop specific strategies for dealing with neo-patrimonial states. Unable to discuss, much less confront, the political roots of 'weak' governance, the only approach to 'strengthening' governance that the Bank can muster is premised on government 'ownership' of reforms. But for neo-patrimonial governments and their supporting constituents, advancing the rule of law is a subversive agenda. It will interfere with the government's ability to channel demanded benefits to its supporters and threaten the government's hold on power. Because of the criminalization of patrimonial practices, the stricter application of law would result in the imprisonment of key government actors. Few people are likely to 'own' reforms that will land them in gaol.

The Bank hits its limits

The Bank's inability to recognize or address the embeddedness of features of poor governance in the political structure of neo-patrimonial regimes hampers its ability to evaluate risk, and prevents it drawing lessons from repeated mistakes. Two examples of this type of problem come from the Bank's work in Papua New Guinea and Kenya.

Papua New Guinea is a neo-patrimonial polity where the redistribution of material goods to one's circle plays a key role in politics.³¹ The Bank undertook a number of projects in Papua New Guinea in the 1990s.³² While the individual projects received positive evaluations, a review by the Bank's evaluation arm that considered the overall impact of the Bank's assistance determined that 'the Bank was unable to make a significant contribution to [Papua New Guinea's] development in the 1990s'.³³ The evaluation cited, among other factors, unrealistic

³⁰ Samuel Pepys, *The diary of Samuel Pepys* edited by Latham and Williams (London, HarperCollins, 2000) (see, e.g., entries for 16 August 1660, 3 April 3 and 21 November 1663). See also Colin Pilkington, *The civil service in Britain today* (Manchester: Manchester University Press, 2000), p. 15.

³¹ Anthony Siaguru, *In-house in Papua New Guinea with Anthony Siaguru* (Canberra: Asia-Pacific Press, 2001).

³² World Bank, 'Papua New Guinea Country Assistance Evaluation', Report No. 20183, 6 March, 2000.

³³ World Bank, 'Papua New Guinea Country Assistance Evaluation'.

optimism about investment projects, given policy constraints and weak institutions. Evaluating a petroleum project in the country, the Bank concluded that 'the progress in managing the growth of the oil and gas industry has not led to sustained economic benefit to the country because of the macroeconomic mismanagement of oil revenues'. The review concluded that the Bank should address governance 'in tandem' with other projects.³⁴ Accordingly, the Bank mounted a \$90 million Governance Promotion Adjustment Loan to underwrite a series of governance-related reforms, including privatization, procurement reform, and the strengthening of the capacity of institutions such as the Auditor General's Office, Ombudsman Commission, and the Parliamentary Public Accounts Committee. Paradoxically, by adopting a strategy of attempting to address governance 'in tandem' with other efforts, the Bank can justify increasing lending to mismanaging governments.

The Bank's work in Kenya has long been an iconic example of its inability to learn from mistakes. From 1980 to 1996, the Bank extended nine loans totaling \$1.2 billion to support key reforms. However, the government largely failed to comply with the Bank's conditions, and when it did, it often reversed these measures later.³⁵ With respect to a condition regarding maize marketing, the reform was implemented and then reversed seven times. 'The episode has been cruelly but accurately summarized by the saying that the Kenyan government sold the same reform to the World Bank (indeed, to the same Bank vice president) seven times in a row.'³⁶

In 1998 the Bank's evaluation unit repeated a decade-old assessment that there was little support in Kenya for the reforms promoted by the Bank.³⁷ The Bank then developed a country assistance strategy for Kenya that envisaged a lower level of lending in the absence of substantial progress on reforms, including civil service reform and the adoption of a comprehensive anti-corruption strategy. The government refused to make the assistance strategy public. When the government appointed a 'change team' to manage reforms, however, the Bank rushed back to ordinary lending levels and prepared to move to even higher levels, even though the conditions that the Bank had set had not been met. According to the Bank's evaluation unit, 'Inadequate [government] ownership and overestimation by the Bank of what [the government] was willing to do were the major considerations ... the factors adversely affecting outcomes had changed little over time.'³⁸ This lending coincided with the Goldenberg scam of 1990–1993 in which a company received government subsidies of millions of dollars under an export compensation scheme for imaginary exports of gold and diamonds. Under the probe of a subsequent truth commission, President Moi was implicated. Losses are estimated to have been about \$600 million, roughly equivalent to half of all Bank lending to Kenya between 1980 and 1996.³⁹

³⁴ World Bank, 'Papua New Guinea Country Assistance Evaluation'

³⁵ World Bank, 'The Republic of Kenya: country assistance evaluation', Report No. 28812, 21 May, 2004.

³⁶ Jan Willem Gunning, 'Budget support, conditionality and impact evaluation', 2005, presented at the Practitioner's Forum on Budget Support, Cape Town, South Africa, 5–6 May 2005).

³⁷ World Bank, 'The Republic of Kenya'.

³⁸ World Bank, 'The Republic of Kenya'.

³⁹ 'Moi "ordered" Goldenberg payment', BBC News website, 17 Feb. 2004.

When in 2002 the newly elected president of Kenya promised that ‘corruption will now cease to be a way of life in Kenya’,⁴⁰ the Bank eagerly embraced the new administration. In May 2004 Bank staff wrote to the executive directors of the country assistance strategy for Kenya: ‘The new government has made a clear break from the past. Importantly, it has demonstrated in many ways its commitment to eliminating corruption and restoring the rule of law ... To help Kenya realize its potential, the country assistance strategy (CAS) proposes an ambitious program for the reengagement of the Bank Group with Kenya.’⁴¹

However, fresh corruption scandals show that it will take more than a change of administration to change the underlying structure of Kenyan politics. In January 2005 John Githongo, Permanent Secretary for Ethics and Governance, resigned his post and left the country claiming to fear for his life. His letter of resignation was accompanied by a detailed report of his investigation into an estimated \$700 million of government payments to fictitious companies as a means of raising campaign finance for the President’s political party. (To put this figure in context, between December 2000 and January 2006 the World Bank lent Kenya \$741 million.) According to Githongo, the scheme involved senior government ministers, and although the President was briefed regularly, he took no action.⁴² While individual staff members working on the Kenya country team have occasionally called attention to the neo-patrimonial nature of Kenyan politics, the Bank has proved unable to incorporate this information into its decision-making with respect to Kenya.

Globally, the Bank’s evaluation unit reports that the Bank’s public sector governance projects are more successful than the average for all the projects that the Bank undertakes. Some 76 per cent of evaluated public sector governance projects had a satisfactory outcome and 39 per cent had a substantial institutional development impact.⁴³ However, sustainability is not considered in evaluating project outcome,⁴⁴ an omission of particular significance with respect to institutional reform: it is not clear what good comes from unsustainable improvements in institutions. Accordingly the percentage of projects with *sustainable* substantial institutional development impact is less than 39 per cent. In light of this less than encouraging global figure, it would be interesting to see the rate of sustainable substantial institutional development impact for countries with neo-patrimonial governments.

Notwithstanding the Bank’s increased volume of governance work and its own reported satisfaction with the results, only 4 per cent of surveyed borrower

⁴⁰ ‘Sleaze hits Kenya’s “clean” rulers’, BBC News website, 3 Feb. 2006.

⁴¹ International Development Association and International Finance Corporation, ‘Memorandum of the President of the International Development Association and the International Finance Corporation to the executive directors on a country assistance strategy for the Republic of Kenya’, 2004.

⁴² John Githongo, ‘Letter from John Githongo to His Excellency President Mwai Kibaki’, 22 November 2005 (made available on the BBC News website accompanying the story by Fergal Keane, ‘A fearless Kenyan whistleblower’, 9 February 2006, available at http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/09_02_06_kenya_report.pdf).

⁴³ World Bank, ‘2004 annual review of development effectiveness’, 2005.

⁴⁴ See Evaluation Approach at http://www.worldbank.org/oed/oed_approach.html, accessed 6 July 2006.

government officials cited public sector governance as among the sectors where the Bank is the most effective. Twenty-one per cent named the rule of law as the policy area where Bank interventions are least effective.⁴⁵

Neo-patrimonial governments depend for their political survival on the distribution of jobs and contracts. This suggests that both civil service reform and public financial management reform will prove especially difficult in these environments. The Bank's evaluation arm has noted the lack of success in the Bank's work on civil service reform globally. An evaluation of the Bank's civil service reform work in 32 countries found that only 33 per cent of closed projects and 38 per cent of ongoing projects had satisfactory outcomes, and that,

[e]ven when desirable, outcomes were often not sustainable. Downsizing and capacity building initiatives failed to produce permanent reductions in [civil service] size and to overcome capacity constraints in economic management and service delivery. There was no evidence that civil servants began to 'own' and follow formal rules such as codes of ethics in any meaningful way. As a result, institutional reforms could not substantially limit arbitrary action by bureaucrats or politicians.⁴⁶

The evaluation noted that 'in the absence of external checks on political interference, [civil service] hiring remained a primary mode of dispensing patronage'. The Bank had been relying 'mainly on budget scenarios to guide the design' of civil service reforms, and had not adequately accounted for 'labor market and institutional trends (for example, projected demand for [civil service] jobs or the level of political appointments in the [civil service])'.

Reports on efforts to support better public financial management in heavily indebted poor countries (HIPCs) suggest that the Bank has encountered unforeseen difficulties there as well. Debt relief was extended to HIPCs in order to increase the amount of spending to reduce poverty. In 2001, however, a joint assessment by the International Monetary Fund (IMF) and the Bank determined that not one of 25 governments receiving debt relief was capable of tracking and reporting the amount of poverty-reducing spending. Evaluating the effectiveness of the spending was a much more distant goal.⁴⁷

The assessment pointed to serious problems in budget formulation and execution, and, in nearly all cases, the lack of a functioning audit system. It recommended increased donor assistance to HIPCs to improve their public expenditure management systems. '[T]wo of the 25 HIPCs should be able to carry out satisfactory tracking and reporting within one year, with a small amount of upgrading of their present systems. A further seven will require some upgrading to achieve the same objective over 1–2 years; and the remaining 16 HIPCs have [public expenditure management] systems where substantial upgrading is required.'⁴⁸ The IMF

⁴⁵ World Bank, 'Review of World Bank conditionality: background paper 6. 2005 conditionality survey: executive summary and detailed summary results', 2005.

⁴⁶ World Bank, 'Civil service reform: a review of World Bank assistance', 2006.

⁴⁷ International Monetary Fund and International Development Association, 'Tracking of poverty-reducing spending in heavily indebted poor countries (HIPCs)', 2001.

⁴⁸ International Monetary Fund and International Development Association, 'Tracking of poverty-reducing spending'.

and the Bank did not hazard a guess as to when the public expenditure management systems in the last category would be upgraded.

In a 2005 update the IMF and the Bank reported that an average of seven donors per country were working with each government to improve its financial system, in all areas. However, 'the presence of active donor agencies does not appear to correlate strongly with improved [public expenditure management] performance'.⁴⁹ While the update reported progress, it also noted that the expenditure systems of a number of governments actually degraded during this period. Echoing the original assessment, the update concluded that 'substantial efforts are still needed. Of the twenty-three countries reassessed from 2002, two have improved and are now assessed as needing little upgrading to their [public expenditure management] system. Five countries need some upgrading to their [public expenditure management] systems and sixteen countries still need substantial upgrading.'⁵⁰ The report ascribed the slow speed of progress to HIPC government 'capacity limitations'. There was no suggestion that such reforms might be contrary to the interests of some governments.

Don't ask, don't tell

The Bank is increasingly moving to allocate funds preferentially to countries with 'good' institutional and policy environments, thereby limiting the amounts lent to countries with 'bad' environments.⁵¹ Such a policy of selectivity does not require any concern with underlying causes. If, however, the Bank wishes to improve borrower governance, then it must of necessity be concerned with the causes of weak governance. But the inability of the Bank to consider the embeddedness of the targeted 'governance' behaviours in the political system risks making such interventions ineffectual and even harmful.

The legal and institutional constraints conceived to ensure that the Bank did not engage in political activity, as well as the Bank's bureaucratic and political constraints, prevent the Bank from pursuing the governance agenda effectively. Dialogue within the Bank is circumscribed by the prohibitions of the Articles of Agreement as well as by the structure of the Board. In 1995, Board members offended by 'political statements' in the work of Bank staff demanded an opinion on the legality of such statements. Shihata's 1995 'Legal opinion on the prohibition of political activities in the Bank's work' cautions that 'The Bank is not an academic institution; its research and publications must therefore serve the Bank's purposes and be relevant to its specialized mandate. The relevance of the Bank's research to the institution's activities and purposes defines the outer limits of its research

⁴⁹ International Monetary Fund and International Development Association, 'Update on the assessments and implementation of action plans to strengthen capacity of HIPCs to track poverty-reducing spending', 12 April 2005.

⁵⁰ International Monetary Fund and International Development Association, 'Update on the assessments.'

⁵¹ International Development Association, 'IDA's performance-based allocation system: IDA rating disclosure and fine-tuning the governance factor' September 2004 (available at <http://siteresources.worldbank.org/IDA/Resources/PBAFINAL.pdf>).

work; the priorities of the Bank and its members guide its actual scope.⁵² This restriction not only limits the Bank's work, it shapes the development dialogue more widely, as many donors and development practitioners rely on the prolific output of the Bank's excellent and well-financed researchers and staff.

Quite apart from legal restraints or concerns about Board reactions, the Bank also seeks to avoid offending the governments with whom, by its Articles of Agreement, it must enter into partnership. Thus, while Shihata's 1990 memo claimed the right of the Bank to engage in political analysis, such analyses are sensitive and the Bank engages in them gingerly. The Bank sometimes seeks to address this difficulty by contracting such reports from consultants, which provides a level of plausible deniability and political insulation. Even so, political analysis is often limited to a discussion of existing political parties and the electoral system, although the neo-patrimonial nature of governance is independent of both the identity of leaders and the system of selecting them. While some analytical work now mentions the existence of patronage systems, there is little discussion of how the abolition or transformation of such systems might be possible.

Restraints on acceptable discourse in the Bank interfere with its effectiveness in dealing with neo-patrimonial regimes in several ways. First, as in the examples discussed in this article, they have historically prevented the Bank from correctly identifying and assessing political risk. It cannot, for instance, assess borrower ownership of reforms independently, particularly when this means contradicting the protestations of would-be borrowers.⁵³ Second, they have prevented the Bank from attempting to develop an approach to the core problem of 'good' governance in neo-patrimonial regimes, namely facilitating the political transformation to governments based on the rule of law and the provision of public goods. Indeed, a number of observers charge that the Bank, by feeding money to neo-patrimonial regimes and failing to curb the diversion of resources, has helped them to widen and entrench their patronage networks, thereby obviating the need for political transformation.⁵⁴ A third consequence is that staff are not expected to be familiar with the political economy of the countries with which they work, and consequently many are not only innocent of the local specifics, but unaware of political economy as a field.

The corruption issue is an interesting example of the impact of these constraints. At one time the Bank considered corruption to be political and therefore outside its proper ambit of consideration. Older Bank documents mince delicately around the topic with references to weak public financial management and economic governance problems. Inability to consider corruption led the Bank into dramatic

⁵² I. F. I. Shihata, 'Legal opinion on the prohibition of political activities in the Bank's work', 1995, sec. V.

⁵³ Mervyn King, Governor of the Bank of England, recently voiced a similar concern with respect to the IMF. He said that the Fund's process 'was hamstrung by the IMF's staff having insufficient independence to publish their views, particularly when addressing "divergences between stated objectives [of countries] and actual policies at the national level"'. See 'IMF "faces obscurity" without shake-up', *Financial Times*, 21 Feb. 2006, p. 1.

⁵⁴ Joseph Hanlon, 'Do donors promote corruption? The case of Mozambique', *Third World Quarterly* 25: 4, 2004, pp. 747-63; Andrew M. Mwenda and Roger Tangri, 'Patronage politics, donor reforms, and regime consolidation in Uganda', *African Affairs* 104: 416, 2005, pp. 449-67.

public folly, such as channelling millions of dollars to Mobutu's Zaire notwithstanding documentary evidence of massive diversion.⁵⁵

In 1995 the newly appointed President of the World Bank, James Wolfensohn, was told that corruption was political and therefore could not be discussed. Notwithstanding this warning, Wolfensohn made the control of corruption one of the central themes of his presidency.⁵⁶ He did so *not by expanding the realm of permissible discussion, but by denying the political nature of corruption*:

[W]hen I came to the World Bank, I was given an admonition by our General Counsel that I should read the Articles of the Bretton Woods agreements. In there it says I am to deal with economic matters and that as an international civil servant, I should not, if I want to keep my job, talk about political matters. I was then told that there was one word I could not use, which was the 'C' word, the 'C' word being 'corruption'. Corruption, you see, was identified with politics, and if I got into that, I would have a terrible time with my Board.

Well, I then visited quite a number of countries, and I decided in 1996 that I would redefine the 'C' word not as a political issue but as something social and economic. That got me in under the wire of the Articles of the Bretton Woods institutions and, simultaneously, my friend Michel Camdessus did the same on the side of the International Monetary Fund.⁵⁷

As a consequence of this redefinition, the Bank now lends to corrupt governments to 'help' them control their own corruption. This approach makes sense only if corrupt governments are presumed to be in agreement with the objective of controlling corruption. And yet, as Githongo's report suggests, governments that depend politically on corrupt practices cannot saw off the branch on which they are seated.

The Bank has, perhaps unwittingly, set out to subvert neo-patrimonial systems. For neo-patrimonial borrowers, the Bank's governance agenda is not a slate of technocratic governance reforms that further a shared vision. It is an attempted grafting of institutions from one type of government onto another for which they are ill suited, an effort to reorder fundamentally the relationship between state and society in the absence of any idea of how such transformations might be worked. The institution of a professional civil service, to return to the example, would doubtless improve the government's effectiveness in developing and implementing policy, but would seriously hamper the ability of the government to generate political support by giving positions to its constituents.

The borrowers are no more eager than the Bank to discuss the neo-patrimonial nature of their political regimes. The label carries stigma and the threat of reduced access to donor funds. Neo-patrimonial governments have found that they can obtain more resources for distribution, thereby strengthening their own political support (and, as noted above, obviating the need for more fundamental change),

⁵⁵ Michela Wrong, *In the footsteps of Mr Kurtz: living on the brink of disaster in Mobutu's Congo* (New York: Perennial, 2002).

⁵⁶ Sebastian Mallaby, *The world's banker: a story of failed states, financial crisis, and the wealth and poverty of nations* (New York: Penguin, 2004).

⁵⁷ James Wolfensohn, 'Remarks at a global forum on fighting corruption', 24 February, 1999 (available at <http://go.worldbank.org/FQMIZVENCo>).

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by agreeing with the Bank. They allow the Bank to stipulate reform of laws and formal processes that have little to do with the way government operates or that can be quickly coopted for new purposes. Conflict between the Bank's and the government's intentions comes to a head only when the Bank's enthusiasm for supporting reforms flags, and lending is cut; or when the Bank insists on reforms that seriously threaten neo-patrimonial practices.

The Bank is not designed to fight this type of political battle with its members. It has no real facility for gathering sensitive political information about criminal activities, relying primarily on information supplied by borrower governments. Nor can it easily protect sensitive information adequately against criminal operators that are also governments, which command intelligence agencies and can demand access to the Bank's documents as directors, governors and shareholders. Internal confidential documents are leaked with alarming frequency, politicizing internal debate and putting those who share information at personal risk. The Bank is prohibited from developing separate policies aimed at changing the nature of governance in neo-patrimonial countries. The charter also specifies that the Bank can interact with borrowers only through certain government agencies,⁵⁸ which necessarily limits its ability to pursue subversive agendas. Finally, the Bank's borrowers are also on its Board.

The Bank's struggle to reform governance with one eye closed carries risks not only of failure but also of perverse consequences. One, already mentioned, is the strengthening of the very systems that the Bank seeks to replace or reform by providing neo-patrimonial governments with more patronage goods to distribute. A second consequence is deepening poverty as those governments help themselves to the Bank's public sector reform lending and go deeper into debt. It is difficult to argue that public sector reform loans are the type of investment that produces a new stream of revenue that can be used for repayment.

Reforming the Bank

The Bank's evaluation of political risk is hampered by the presence of borrowers and their advocates on the Board and by the Bank's need for borrower government assent to its activities. In addition to these structural obstacles, the Bank's work to reform neo-patrimonial borrowers faces legal hurdles. Shihata's 1990 memo found that while the Bank could legally take cognizance of political realities in conducting risk analysis, it could not use conditionality to transform political regimes. Can these hurdles be overcome, or at least minimized? Should they be?

It would be theoretically possible—although politically improbable—to amend the Bank's charter to remove the provisions prohibiting political interference and the use of political criteria in lending, to remove the requirement that the Bank work only with governments, and to allow the Bank to guard the confidentiality of documents even from its own members in order to insulate the technical staff from political pressure. It might even be conceivable—whether or not it is desirable—to

⁵⁸ Art. III, sec. 2.

reinvent the Bank in such a way that borrowers are not represented on the Board at all. But even then the Bank's bureaucratic and political constraints would be likely to interfere with its efforts to transform neo-patrimonial governments. Because the Bank's administrative budget is tied to its volume of lending, and because the Bank does not produce other easily measurable outputs, Bank staff are likely to continue to face the pressure to lend, skewing risk analyses. The Bank's repeated promises to stop rewarding staff for lending, a problem documented in the 1992 Wapenhans report,⁵⁹ suggest that changing this incentive will not be easy.

Working on transforming neo-patrimonial governments is also likely to be politically difficult for the Bank. Most borrower governments would refuse to work with an institution that aims to promote the enforcement of laws that would criminalize their method of rule unless they could be reasonably sure of being able to control the outcomes. Even the Bank's technical assistance for this purpose is often grudgingly accepted as an irritating concomitant of loan money. Proceeding without consent raises uncomfortable questions about sovereignty and the right to self-determination.

Another problem is the West's unwillingness to compromise on governance ideals. Change in neo-patrimonial governments is likely to be incremental and slow. But the Bank could not defend an agreement that the government would steal less next year, or torture less next year, or give a disadvantaged minority more equal (but still unequal) treatment, or give fewer (but still some) government jobs to their relatives—even if all parties agreed that this would be an improvement in the present quality of governance. While the Bank's new strategy acknowledges that change in governments with systemic corruption is likely to be slow, western political constituencies are likely to be very uncomfortable with anything that looks like acceptance of offensive behaviour. The Bank cannot hope to work with neo-patrimonial governments without getting close to them, and it cannot be seen to be close to them without suffering a public relations backlash. While this problem could be addressed by giving projects the right public relations 'spin', the necessity of doing this would complicate risk analysis, project design, and monitoring and evaluation.

Finally, it would be difficult for the Bank to claim any technical expertise or comparative advantage in transforming neo-patrimonial governments. While historians have mapped out the political development of the West, the extent to which these experiences can be generalized is still an open question. Moreover, the extent to which these kinds of complex change can be facilitated or catalysed by external actors is still unclear.

As globalization makes the world a smaller place, increasing cross-border externalities, rich countries cannot afford to ignore neo-patrimonial governments in the hope that they will spontaneously develop into governments based on the rule of law and the generation of public goods. Their governance is associated with poverty, they are poor providers of public goods such as environmental protection

⁵⁹ World Bank, 'Effective implementation: key to development impact. Report of the Portfolio Management Task Force', 1992.

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and basic security, and their weak control of their territories creates 'ungoverned spaces' that can give rise to security threats. However, if poor governance is an important determinant of poverty, it does not necessarily follow that the Bank is well positioned to address this underlying cause. Before the Bank or any donor can hope to intervene effectively, it must have a better understanding of how good governance develops. Only then can it determine what kind of intervention would be effective and what kind of institution would be best positioned to intervene, or even whether there is an important role for outside intervention at all.