Subsidiary sovereignty and the constitution of political space in Zambia[1]

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> *Dear AEGIS participant – I will* not *present this essay at the 2007 Conference, but it does give a detailed background to the themes I will be discussing. This paper will be published, soon I believe, in a forthcoming book tentatively entitled* Zambia: Independence and after, *edited by Jan-Bart Gewalt, Giacomo Macola & Marja Hinfelaar for Brill.*

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The irony of writing the history of 'post-Independence' Zambia is, sadly, the nation's stark lack of genuine independence. Over the course of her forty-odd years as an internationally recognized state, Zambia – like much of Africa – has had less and less to say about the basic facts determining the welfare of her citizens. A further irony is that Zambia's vulnerability to forces beyond her control – a condition which can be termed 'subsidiarity' – seems to have deepened in the wake of the post-Cold War onslaught of liberalization that promised to revitalize the nation's economy and her democratic institutions.

Evidence of Zambia's deeply rooted subsidiarity is extensive. For starters, her constitutional order, and indeed a sizable chunk of her extant legislation, are not of the nation's own making but a colonial legacy. Zambia's gross national product – based heavily on copper export revenues – is hostage to strategic commercial, military and technological decisions made in cabinet meetings and corporate boardrooms on distant continents. Her state budget, and the policy instruments by which government claims to address the banes of poverty, unemployment, ill-health and illiteracy, are strictly controlled by transnational debt-masters in Washington. Even Zambia's major religious

bodies – and their concomitant items of doctrine and faith – are beholden to unassailable episcopal hierarchies the apices of which reside in Europe and North America. On the whole, Zambians have virtually no say at all on vital questions of life and death – like the price of copper and fossil fuels, the right of Christian clergy to exorcise demons or the affordability of anti-retroviral drugs.

The frailty of Zambia's sovereignty is well known, yet still we continue to use the vocabulary of 'independence.' Why is this? Partially, no doubt, out of discretion. Given devastating deterioration of living standards over the past four decades, the benefits of Zambian citizenship have been reduced to little else than a rather empty juridical sovereignty. Etiquette aside, the prevailing conceptual diplomacy is also based on the premise that 'independence' is the normal state of affairs for a sovereign nation like Zambia. The endless list of caveats that belie this fundamental truth, for Zambia as for countless of her neighbors, must be aberrations. Whether these anomalies are seen to be structural or contingent, constitutive or transient, contemporary thinking on statehood is such that sovereignty and subsidiarity are mutually negating concepts.

The inability of state theory to problematize subsidiary sovereignty as an analytical notion is evidenced by the generous use, of late, of the residual category of 'failed' or 'collapsed' states in African political analysis; 'failed' states are effectively excluded from the domain of established theory by relegating them below the normative threshold of genuine stateness. This move 'exceptionalizes' (cf Roe 1999) African government and effectively removes African concerns[2] from the realm of serious consideration – beyond the pale of what could lead to new insights in political or social theory. The fact that this methodological ploy is a sign of theoretical torpor is evidenced by the volume of empirical entities that are assigned, ad hoc, to this shelf. Somewhat alarming, for the dedicated Africanist at least, is the tendency for African politics as a whole to be portrayed as a failed enterprise. Indeed, Africa is increasingly represented as a continent of states in various stages of failure, either imploded or simple waiting for the inevitability of collapse. Conventional political actors of democratic discourse – parliaments, nationalist politicians, civic activists, intellectuals,

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[2] 'African concerns' are of course no different than the concerns of any section of humanity. Yet, as Ferguson (2006) has compellingly argued, 'Africa' has become an idealized place in the Western imagination in which empirical facts and differences are reduced to stereotypical abstractions. Such stereotypical features of 'Africa' – hunger, war, superstition – can arouse disgust or compassion, but for mainstream academia in much of the West, they are not *interesting*.

professionals, the enlightened urban middle class – are widely dismissed as ineffectual or actively complicit in the ostensible, self-interested patrimonial meltdown.

Within academic discourse, one finds two competing explanatory frameworks which uphold the perceived crisis of politics in Africa. The dominant position, especially within mainstream political science, asserts that the sorry state of national economies and populations are evidence of the somehow flawed (or incomplete) nature of African states. Collapsed states like Somalia, or even relatively stable polities like Zambia, are all plagued by the survivals of a premodern political order which systematically block or co-opt efforts at consolidating institutions and practices of rational, not to say democratic, government. Despite the post-Cold War return of political pluralism and elements of media independence, elected leaders are prone to 'semi-authoritarian' practices – self-interested abuse of office and kleptocracy, nepotism and ethnic bias – all of which corrode the developmental potential of state regulation. As a result, economic productivity and competitiveness falter, rendering the national as a whole hostage to the vagaries of global market forces.

The competing view is equally single-minded. It reaffirms the aberrations of subsidiarity, but reveals them to be externally imposed – caused by the malevolent foreign masters of an unjust global system. The thrust of this defensive narrative is to provide a reasonable explanation for the vast evidence of state failure and the persistence of authoritarianism despite nominal democratization. Thandika Mkandawire (1999), for example, explains the persistence of authoritarianism by reference to the conditions on public policy and action imposed by external debt masters. These conditions have produced, in his memorable term, "choiceless democracies" by which the very notion of democratic and accountable government is compromised. Following this track, Mary Kaldor (nd.) argues that choiceless democracy is a main cause of the spate of intrastate violence and associated state collapse that plagues post-Cold War Africa.

> These are the circumstances that give rise to the 'new wars'. It is the lack of authority of the state, the weakness of representation, the loss of confidence that the state is able or willing to respond to public concerns, the inability and/or unwillingness to regulate the privatisation and informalisation of violence that gives rise to violent conflicts.

The internalist and externalist portrayals of subsidiarity and concomitant socio-political pathologies are functionalist, airtight explanations that negate one another. Neither has

any room for a notion of political contestation as a source of social change. In the end they agree on everything but on who to blame. Indeed, voluminous empirical evidence suggests that both accounts are valid. All African governments perform their self-assigned functions – collect revenues, manage the economy, regulate social institutions, deliver basic social services and amenities –more poorly than almost any other states on the planet. Equally true is the assertion that this poor performance is largely an outcome of decades of ill-conceived and erratic intervention by foreign governments and development agencies (e.g., Easterly 2006).

Clearly sovereignty and subsidiarity are not mutually exclusive, but can and do intermingle in complex ways and in relatively stable social formations. Asking where the blame lies for Zambia's marginal position in the world order would seem to be the wrong question. What we need to understand better is how, *specifically*, do the internal and external factors interact to produce states of subsidiary sovereignty (cf Harrison 2001; Callaghy 2001). This demand for specificity is not simply about attention to empirical detail, important as this is. It also implies that internal and external articulations vary substantially from context to context – from country to country, and over time in the same socio-physical space. Different political contexts exhibit different factors, different configurations of actors and institutions. And these (f)actors and configurations have specific histories that are not identical with the assemblages or trajectories one will find in any other context. These specificities can only be made clear through close empirical study of a given context.

Zambian subsidiarity

In the case of Zambia, then, the years of the Third Republic[3] have been a unique and curious concoction of ultra-liberalism coupled with deep subsidiarity, deriving from severe indebtedness and concomitant aid dependence. Upon secession to executive power in 1991, President Chiluba and his Movement for Multiparty Democracy (MMD) became model pupils of structural adjustment as endorsed by Washington-

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[3] The revision of the Zambian constitution in 1991, revoking the political monopoly of the reigning United National Independence Party of President Kenneth Kaunda, ushered in a new constitutional regime, termed the Third Republic. Zambia's First Republic was born at independence in 1964. The transition to a Second Republic was the result of UNIP's constitutional instatement of a 'one-party participatory democracy' in 1972.

aligned transnational public financial institutions.[4] Under the tutelage of the World
Bank and the IMF, the MMD government, among other moves, sold off the bulk of the
nation's public assets, relinquished regulation of the value of the national currency,
eliminated import and export restrictions and abdicated responsibility for the welfare of
small-holder agricultural producers (e.g., Rakner 2003).

It is not unusual, of course, for a government to accede to power, and/or hold onto it, by
virtue of its deference to a vastly more powerful foreign patron. In imperial and
colonial history, such a relationship has been often termed 'suzerainty' – the subsidiary
state is run, in practice, by a configuration of political forces which operates within
more or less stringent limits laid down by foreign patrons; the subsidiary sovereign
plays 'vassal' to the external 'suzerain' power. In Zambia's case, her astronomical
indebtedness has left her defenseless against the dictates of the transnational
development industry. Indeed, Zambia's contemporary niche in the global political
economy is a function of her role as a subservient client of the transnational
development industry – above all, the Bretton Woods institutions, countless bilateral
donor bodies, and the numerous agencies of the UN system, from UNDP to UNHCR.

Since the final years of the 1990s, the transnational development industry has dealt with
the world's heavily-indebted poor nations as problematic clients. They owe too much to
be abandoned, but are no longer considered productive investments in any foreseeable
timeframe. Countries like Zambia (and most of Africa) are no longer expected to 'take
off' into industrial modernity. From the point of view of their major creditors – the
World Bank and the IMF –the main aim is to build their capacity to be good clients.
Good clienthood involves, above all, maintaining a large loan portfolio and meeting
repayment targets conscientiously. In the rhetoric of contemporary development-speak,
this specific form of suzerain subsidiarity is termed 'partnership,' and it comprises three
key elements:

   (1) 'ownership' – this means that the client politicians will take responsibility for
        policy decisions and refrain from blaming the creditors for the negative social
        consequences of neo-liberal measures;

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[4] Lusaka rumor in the mid-nineties had it that the IMF felt obliged to exhort the Zambian government to
slow down its over-zealous program of liberalization and privatization.

(2) 'good governance,' which implies that the client government will keep its expenditures within the agreed macro-economic frame, thus ensuring predictable debt repayment; and

(3) 'rule of law' which means that individual officials can be held accountable for the abuse of public resources (but not, for example, for incurring bad debt), and that whatever assets foreign investors bring into the country can be repatriated upon demand.

In general terms, one might hypothesize that the structural tension within subsidiary sovereignty is heightened under conditions of political pluralism. An asymmetrical 'partnership' such as prevails between the Zambian state and its transnational creditors requires a configuration of complicit social forces to manage the client state. Since the political leadership is theoretically accountable to its electorate, this implies a basic contradiction: the needs of the electorate are subordinate to the demands of foreign creditors, and yet the political leadership must appear to be the people's advocate and to hold full responsibility for its actions.

Despite some turbulent moments (related to the privatization of the copper mines and the concomitant theft of large cobalt reserves), the MMD has managed this balancing act rather well. The most serious challenge to its hegemony has come, ironically, not at the polls, but from outside the conventional political arena.[5] While the MMD presidential candidate came close to losing the 2001 elections, and MMD managed to garner less than half the seats in the same parliamentary elections, this was not so much the result of a successful oppositional challenge (UPND's performance at the polls was much weaker, and regionally even more lopsided than that of the MMD[6]), but reflected

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[5] I don't want to overestimate the empirical legitimacy of the MMD regime. Despite the Supreme Court's ruling to the contrary, evidence submitted to that august court strongly suggest that MMD systematically abused public resources in the 2001 elections while also engaging in at least sporadic rigging to secure its razor-thin (29%) mandate. In the previous 1996 general elections, MMD's actual support at the polls was 70% of a 40% turnout, i.e., also around 28% of the franchised electorate (van Donge 2005). In other words, one can make a strong argument that MMD has ruled Zambia for at least the past ten years with the active support of less than a third of the population. Clearly, much of its 'success' is the harvest of political skullduggery and manipulation. On the other hand, no other political grouping has managed to garner more substantial support at the polls.

[6] While UPND came within roughly 35,000 votes of wresting the presidency from MMD in 2001, its showing in the contemporaneous Parliamentary and Local Government elections lagged considerably behind. According to the Electoral Commissions results, MMD surpassed UPND by 75,000 votes in the parliamentary poll, while in the council election, MMD candidates received roughly 110,000 votes more than their competitors from the UPND.

near-fatal wounds inflicted on the MMD by a coalition of civic advocates calling themselves the Oasis Forum.

In what follows I will examine the background and experiences of the Oasis Forum to illustrate the contradictory nature of the political space of subsidiary sovereignty.

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The Oasis saga

The Oasis Forum was formed in 2001 to block the bid by the then-incumbent President, Frederick Chiluba, to manipulate the Republican constitution so that he could stand for a third term in office. The Forum united the efforts of the statutory Law Association of Zambia (LAZ), Zambia's three main Christian mother bodies, as well as the country's numerous and geographically diffuse women's organizations. An auspicious wedding of "the legal authority of the lawyers, the moral authority of the Church, and the popular authority of the women's movement,"[7] the Oasis Forum represents an unparalleled alliance of Zambia's mainstream civic leadership. Nothing like it had ever occurred before within Zambia's civil society, which had been chronically prone to competitivity and divisiveness. The earlier fragmentation was fuelled, in part, by the subcontracting processes of donor agencies which constantly pitted fragile civic organizations against one another. The government's practice of establishing and funding loyal 'non-governmental' organizations also tended to politicize relationships within the civic sector. Against this background, emergence of the Oasis Forum, and its proven ability to hold together amidst funding droughts and other adversity clearly signalled an unprecedented turn in the constitution of political society. The initial impetus for this turn was the dramatic collapse of Frederick Chiluba's credibility as a political leader.

In 1991, Mr Chiluba and his Movement for Multiparty Democracy (MMD) forced Zambia's president of 27 years, Kenneth Kaunda, to change the Republican constitution and reinstate political pluralism. MMD then proceeded to defeat him and his United National Independence Party (UNIP) at the polls in a landslide victory. MMD captured a 2/3+ majority in Parliament in 1991, and again (albeit contentiously) in 1996, allowing Chiluba to co-opt the constitutional reforms and effect constitutional changes

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[7] Paraphrasing Fr. Joe Komakoma (interview: Lusaka, April 4, 2003).

at whim. Among his reforms were constitutional provisions restricting presidential tenure to two terms. These reforms were widely seen as a deliberate move to end Kaunda's political career once and for all. Chiluba was fêted as a national emancipator in 1991, but by 2001 his administration was at the nadir of its popularity. For one, the MMD government's drastic neo-liberal reforms had plunged large sections of the population into absolute poverty without the protection of a safety net. Adding insult to injury, Chiluba was ensconced in widespread allegations of abuse of office and the plunder of public assets.

In February of 2001, as Chiluba's second term of office was coming to a close, key figures in the Law Association of Zambia; in the national Catholic, Protestant and Evangelical church bodies; and in the umbrella organ of Zambia's women's organizations joined forces to organize a Public Debate in order to rally popular opposition to Mr Chiluba's third term bid. The meeting issued a tightly-worded Declaration instructing the incumbent to respect the constitution and give up further designs on the presidency. After the convention, the organizers –constituting themselves as the Oasis Forum – mobilized a national campaign in support of these demands.[8]

The Forum's campaign incited an extraordinary wave of non-violent civil protest across the country and proved unexpectedly successful. In early May, after less than three months of concerted pressure, Chiluba announced that he would not be available as a candidate for the presidency in the forthcoming elections, 'in the interest of the nation.' Although his announcement aroused deep scepticism, he stood by his word and anointed lawyer Levy Mwanawasa as the MMD candidate. Mwanawasa eventually won the contentious elections in December of 2001 on an incredibly thin majority.

A new strategy
The Oasis Forum leadership was understandably elated by their unexpected success and somewhat intoxicated, perhaps, with their display of civic muscle following Chiluba's official withdrawal from the presidential race. In June 2001 (5 months before the slated elections) the Oasis Forum retreated to a lodge outside of Lusaka to reconnoitre and strategize. The gathering – comprising 17 participants all tolled – concluded that the

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[8] The names Oasis Forum and Oasis Declaration come from the site of a February 2001 rally which was held at the Oasis Restaurant in Lusaka.

Zambian people still needed the Oasis Forum, and the five original partners organizations vowed to consolidate their alliance. With the issue of Chiluba's third term out of the way, the Forum needed a new rationale and focus. At the retreat, the organizing committee redefined their purpose as follows:

- promote a culture of Constitutionalism
- promote the doctrine and practice of separation of powers
- promote gender equity
- promote law reform
- promote civic activism
- promote and conduct public interest litigation
- promote professionalism and integrity in the holders of the public offices; and
- promote a culture and practice of accountability and transparency in governance.[9]

As a shopping list of liberal aims, this agenda is ambitious, but unexceptional. Over the preceding decade, African advocacy groups had become increasingly adept in producing cosmopolitan charters, often in hope of securing foreign donor funding. The Oasis Forum's *Strategic Plan 2002-2004* (from which this and the following list are drawn) falls in this category, and was drawn up at least partially with a view to attracting further financial support.[10] What *is* remarkable about the Forum's strategic plan is not so much the ends as the means. In pursuit of its liberal agenda, the Oasis Forum charted out a 19-step path of activities, including the following key items:

> …
4.   Conduct *public debates* and *consultations* in relation to **laws** requiring reform
> …
7.   Mount a *civic education campaign* to introduce people to basic principles of a **constitution** and **governance**, including the **rule of law**, through media, workshops, meetings
8.   Arrange for points for collecting submission from *the public*
9.   Gender *training* in **constitutional** drafting
10.   Drafting a *popular* **constitution**

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11. Carry out **Constitutional** development *conferences*

12. Annual *Convention*

13. Convening of a *Constituent Assembly*

    …

    etc.[11]

Given the fact that the Forum's Organizing Committee (its sole management body until late 2001) comprised at most a couple dozen individuals, all of whom had heavy responsibilities in the leadership of large and busy organizations (e.g., the Non-Governmental Organizations' Coordinating Committee and the Catholic Church), the sheer scope of the Plan is astonishingly immodest. But mundane logistic considerations aside, one is struck with the outright audacity of the Forum's self-proclaimed mandate. After having been in existence for less than a year, the Oasis Forum considered itself 'legally, morally and socially' entitled to oversee the drafting and adoption (through a Constituent Assembly) of a new Republican Constitution for the Zambian nation! And they expected to be taken seriously. Against all odds they were and, at this writing nearly five years down the line, still are.

This remarkable situation – how a small elite group of cosmopolitan professionals finds itself imagining itself as the genuine (moral) leadership of a country – opens up space for a discussion of two central issues. The words in *italics* highlight the first issue. These terms indicate the central concern of the Forum with what one might term, borrowing from Habermas (1989), the public sphere. I hypothesize for the sake of argument that the Oasis Forum embodies the sensibilities of an emergent "public bourgeoisie" that is preoccupied, much like the emergent European bourgeoisies of the 18th century studied by Habermas, with establishing, expanding and consolidating a realm of public political discourse based on 'critical-rational debate.' A corollary of this concern with publicity is the problem or representation, in both of the term's primary meanings: the new public bourgeoisie is involved in a critique of the way that the incumbent political leadership (mis-)represents its exercise of power to the citizenry. At the same time, the elite social forces undergirding the Oasis Forum are concerned with their own mandate, i.e., with their right to represent 'the people' and their interests.

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[11] *Strategic Plan*, pp. 17-8.

The text in **boldface** signals a second dimension to the analysis. These terms relate to the Constitution and to the legal domain more generally. Their prevalence in this pivotal policy document indicate that, despite the fact that lawyers represent by far the smallest partner to the alliance (LAZ's membership totals roughly 600), juridical concerns dominate the Forum's agenda. Following suggestions originally formulated by Judith Shklar (1964), I would argue that some form of 'legalism' constitutes the ideological and rhetorical common denominator for this remarkable socio-political experiment.

The irony here is that this ideological frame of legalist liberalism derives from the same realm of transnational institutions as the development industry, the steward of Zambia's subsidiarity. Yet it is intrinsically contradictory. It provides standards for critique of the prevailing political culture (of unaccountable government); but at the same time empowers a procedural, formalistic legalism that is prone to privilege (individual) 'rights' over collective 'justice.'

But before we can discuss the conundra of representation and legalism as elements of the political landscape of the 3rd republic, there are some preliminary issues to deal with. The Oasis Forum story raises three immediate questions: Who are the social actors behind the Oasis Forum, why did they opt to challenge the prevailing political culture, and how (and to what extent) did they succeed? The following section attempts a provisional sociology of the political society of the Third Republic with a focus on the professional elite from which the Oasis Forum draws its leadership. This social mapping then acts as a backdrop to a discussion of the central analytical issues of representation and the role of legalism in the post-Chiluba era political arena.

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Contrary to conventional wisdom about the disembodied nature of the African state, the Zambian state *is* embedded in 'society', but this is an elite *political* society (in Chatterjee's sense) of middleclass, largely urban professionals. The social context of the Zambian state is a complexly interwoven assemblage of elite social forces who share, if nothing else, a substantial social distance from the vast majority of the population whose living standards have, since the 1970s, gradually slid down the slippery slope into 'absolute' poverty. This section of the population – living in both in rural villages and urban compounds – is many, many times more likely to be unemployed, scantly educated, undernourished, suffering from dilapidating but

treatable illnesses, etc – than any senior member of government, the upper crust of the civil service or the leadership of the Oasis Forum. On the other hand, individuals in the latter three categories are very likely to share a large number of social qualities with respect to education, income, property ownership and lifestyle, which are beyond the ken of most of their fellow Zambians.

This is not to say that 'political society' as a whole is cut from the same cloth. On the contrary, and here is the rub – members of elite political society differ sharply in their political values, in their ideas about the 'rules of the game' and in their conception of their role in society. They are thus caught up in zealous struggle among themselves, a struggle over the scope of state power which is simultaneously a contest of ideas and principles. Unlike many countries in the region, ethnicity plays a negligible role in this struggle (*pace* Posner 2005). Nor is it simply a struggle among political parties – of incumbent politicians vs. the opposition; indeed, this distinction can be relatively fuzzy as politicians circulate among parties and ever-shifting inter-party alliances with dizzying speed (especially in election years). Rather the key confrontation within political society is between an 'old guard' of partisan veterans, on the one hand, whose raison d'être and modus operandi is alignment with whoever controls the Executive branch of government, with broad discretionary powers and, at the other end of the continuum, an emerging new faction of nonpartisan political agents, epitomized by the Oasis Forum, who seem to be driven by principles of accountable government, which they hope to promote by strict constitutional constraints on Executive discretion. The roots of division are more difficult to trace than the actual point of fissure.

What kind of a class or classes populate Lusaka's political society? The bulk of the political class derives its livelihood from the state; that is, indeed, its basic objective. The public bourgeoisie from which the OF springs, is similarly an ancillary, even parasitic class. Its main incomes derive from service provision (lawyers) and rents[12] (clergy, ngos). Much of the wealth that supports this group originates abroad. Professionals appear to invest their often substantial but irregular earnings in property, in their children's education, and in 'appearances' (furnishings, personal vehicles, attire, recreational electronics, etc). Beyond this, the more successful have subsidiary

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[12] Rents, i.e., based on exploiting an 'artificially created transfer' (Tollison) which derives primarily from international donors agencies (including e.g., the Vatican).

business interests in real estate, services (private schools, clinics) and commerce (restaurants, boutiques, tourism).

As a rule, this class/stratum has little interest in manufacturing and processing, and has only subsidiary connections to primary production (with only minor agricultural investments, mostly as a 'retirement fund' rather than a serious business). These people – many members of the clergy will be an exception – largely think of themselves as involved in 'business'; but they do not take significant risks with – nor enjoy large returns on – their generally meagre capital (although one pair of lawyers managed to purchase the former presidential jet). If this is a bourgeoisie, its relationship to circuits of capital accumulation, be they national or international, is tenuous. It is, one could say, an 'imaginary' class, whose bourgeoisness resides more in its liberal-cosmopolitan value-orientation than in direct capitalist interests. It is also an 'intermediary' class – caught between the ruling faction of its class and the people it would represent; and between its vision of the future and the harsh realities of the present. The precariousness of its situation is hard to overestimate: in absolute terms the rural and urban poor are most vulnerable to life-threatening crisis. But in relative terms, any major economic or political upheaval can easily erode whatever security this non-productive bourgeoisie currently enjoys, flinging them out into the margins of the formal economy.

This sense of in-betweenness resonates with my experience of contemporary Lusaka. The rising public class is anxious to be recognized for its lavish and conspicuous material achievement. Perhaps this reflects the pervasive insecurity of social life in Zambia today. The HIV epidemic has left a horrendous dent in the population pyramid, and has no regard for class. A number of my living middle-class friends from the 1980s – and many more have died than not – are the last surviving offspring in a family of 6 or more children. But of course the anxiety of the rising public bourgeoisie is also about distinction. Lusaka's middle class is not a cultural elite. The South African Ster Cinekor cinema complex at the new Arcades shopping mall thrives on action cinema and ethnic comedy; cinema for the new public bourgeoisie is an escape, not a source of critical debate.[13] There is a new generation of Zambian playwrights, but performances at the Lusaka Theatre Club play to half-empty halls of expatriates. My middle-class friends have lavish bookshelves, but John Grisham – and not an up-and-coming Zambian

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[13] A survey of DVD consumption in private homes could lead to other conclusions, however.

Emile Zola – would seem to be the most popular author. There is also a boom in the Lusaka music scene, a veritable mushrooming of independent labels and local artists. Although the genre is heavily influenced by American rap/hip-hop – a textual art form – there is little social content in the lyrics. Popular rappers and lyricists dwell on off-colour humour and soap opera themes: the obsession of the modern Lusaka girl with finding a guy who could deliver 'House, money, car' provided the biggest popular hit of 2005.

Critical debate is channelled, then, directly into politics, without diversion through the arts. Nevertheless, humane, liberal values prevail. The Forum's cosmopolitan orientation reflects legacy of colonial rhetoric and practice as well as contemporary international influences. To a large extent, these are the children of junior colonial civil servants, brought up in the ethos of public professionalism preached, if not always practiced, by the British colonial service that administered Northern Rhodesia (as Zambia was previously known) until 1964, and remained a major element of government administration well into the seventies. In the postcolony, the rhetoric of public service has largely been supplanted by a (neo-)liberal rhetoric of good governance and efficiency. And yet, when asked about its aims and motivation, the Oasis leadership invokes, in quite a consistent pattern, a vocabulary of patriotism, duty and service. Many central Oasis actors see themselves as a social conscience. They claim to be driven by a strong social obligation deriving from their elevated social position, and from the privilege of education and employment provided by society. Another motivational theme, especially among the Forum's juridical and clerical members, is that of law and justice. Both lawyers and clergy stress the persistent lack of 'rule of law' under MMD (and later) as insidious and deeply frustrating.

In my reading, the somewhat aristocratic values of duty and service, alongside an emphasis on rules and transparency express nostalgia for an (idealized) version of Zambia as imagined in the immediate postcolonial period, i.e., initially a product of the anti-colonial struggle. The hankering for law and justice in particular, appears as a longing for a return to a primordial, more genuine form of government, where public authority was exercised for the greater good, and not for private benefit. While this vocabulary is not unaffected by other influences – i.e., the transnational rhetoric of human rights and good governance – the immediate referent is to the practical experience of recent Zambian history. In any event, this specific public bourgeoisie

would seem to be in pursuit of greater stability, reciprocity and equilibrium, be this modelled on an idealized past or a keen vision of the future.

Nostalgic or not, the Forum's perspective on politics contrasts sharply with the rhetoric of the MMD. From its inception, the MMD has deployed a 'modernist' language of change. Its 1991 slogan 'the hour has come' meant that Zambia was ready for new leadership, but it also referred to the ambitious and ambiguous projects of democratization, liberalization and modernization. Far from nostalgic, MMD promised to lead the nation away from the bad habits of the past (the 2nd republic). This inevitably meant a journey into an uncertain, but promising future. As it turned out, the open-endedness of the MMD's political vision –about change and process, and not about an explicitly imagined social order – proved fully compatible with the Chiluba's government's gradual drift away from accountability into semi-authoritarianism and plunder.

"Representative publicness" and the postcolonial Party-State
Despite its nominal transition to a more liberal, pluralist dispensation in the 1990s, Zambia's political system retained much of the legacy of 'absolutist' Party/State publicity. For most of the 2nd and 3rd republics, the Party/State has functioned as a kind of 'quasi-feudal' public authority. The party elite under the 'Humanist' President Kaunda, and again under 'neo-liberal' President Chiluba, constituted a kind of state nobility (to borrow Bourdieu's term), surviving primarily on rent extraction (copper revenues and foreign aid; later on the proceeds of privatization). It was socially positioned on the basis of ascribed status (i.e., as Central/National Executive Committee members and Cabinet Ministers), and linked to society through an elaborate system of political patronage, which fanned out from Provincial Party executives and Members of Parliament to Ward Councillors and beyond. This Party 'nobility' dominated the public sphere – it directly controlled the media, defined the terms and vocabulary of public discourse and represented itself through "a strict code of 'noble' conduct", i.e., "insignia (badges and arms), dress (clothing and coiffure), demeanour (form of greeting and poise) and rhetoric (form of address and formal discourse in general)."[14]

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[14] Habermas (1989, p. 8), referring to the German imperial class in the High Middle Ages.

This pattern brings vividly to mind Habermas' notion of 'representative publicness' [*representative Öffentlichkeit*] against which an earlier emerging bourgeoisie struggled in 18th century Europe. Thomas McCarthy (1989, p. xi) summarizes Habermas' basic idea like this:

> In its clash with the arcane and bureaucratic practices of the absolutist state, the emergent bourgeoisie gradually replaced a public sphere in which the ruler's power was merely represented before the people with a sphere in which state authority was publicly monitored through informed and critical discourse by the people.

Not unlike the feudal nobilities of Habermas' historical study, Zambia's ruling party (UNIP) exercised a similarly opaque form of absolute power, especially after 1972, wherein the population was largely deprived of information concerning the rationale or inner workings of government. The Oasis Forum's consistent tirade against the government's lack of 'transparency and accountability', then, might be seen as a direct strategic reaction of this absolutist legacy of performative representation. Through this critique, the new public bourgeoisie has explicitly set itself against the *ancien régime* grounded in an absolutist culture of politics – of representative publicity, neo-patrimonial domination and parasitic clientelism.[15] This can be seen in their dedication to mass mobilization campaigns; to public 'workshopping' as a means of provoking critical debate; in their insistence on a regular stream of clear public statements explaining their positions and actions; and in their scrupulous maintenance of full public transparency in all dealings with government. In all of these efforts, the Forum has been closely allied with the independent *Post* newspaper which carried the Oasis Declaration on its websites for years, and which has been a major channel for all Forum publicity.

The political strategy of the Forum, then, might be defined in relationship to the problem of representation – in the dual sense of mandate and publicity. Publicity refers to the means – including the language – by which the common concerns of Zambian society are dealt with in public. The Forum's fundamental aim, as we have seen, appears to be a transformation of 'the public', the rules of the game of political behaviour. But what support can it leverage in this endeavour? Rooted in an ancillary class, the Forum is plagued by a general anxiety about its mandate – to what extent can it genuinely exercise the voice of 'the people' who interests it seeks to promote? Their

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[15] E.g., Bayart 1993 and Mbembe 2001 cover this ground in detail.

long-term success in institutionalizing a democratic transformation of the public realm will inevitably depend on the strength of their mandate.

The limits of success

The Forum was immensely successful in its politics of mobilization against Chiluba's third term bid in 2001. It clearly responded to a deep-felt public demand and provided a conduit – the green ribbon and car-honking campaign – for Zambians to vent pent-up frustrations with the political establishment. OF was also successful in its innovative exercise in alliance-building and maintenance. Above all, OF contributed profoundly to the shaping of the agenda of public discourse –OF's actions between February and May 2001 effected a transformation of public culture, the issues discussed and the vocabulary used, but also the *attitude* of public debate; OF (re-)instilled in Zambian 'bourgeoise society' a sense of confidence about its political efficacy, something that had been deeply shaken by MMD's apparent betrayal of the liberal ideals that brought it into power in 1991.

The Forum's attention to publicity is also an attempt to constitute a public sphere in its own image. i.e., create a forum where they will be fully understood by their 'audience'. This implies a strong dose of 'education/capacity building', first around the Third Term issue and more recently around Constitutional reform. The Forum's rhetoric does not only attempt to speak to an audience, a public, it also seeks to constitute a public sympathetic to its agenda.

Despite its significant and unprecedented successes, the Forum seems to have had virtually no impact on established partisan politics, opposition political parties in particular. Despite its popularity and success in mobilization and agenda setting, and despite the keen interest of opposition parties in associating themselves with and indeed co-opting OF campaigns and slogans, the Forum cannot claim any clear real leverage on partisan politicians. The point is not really whether or not the Forum has been efficacious in the partisan political arena, but about the lack of a mechanism linking civic and partisan action.

Two political registers

The new 'public' bourgeoisie represents a liberal-bourgeois vision for the future of Zambia, rather than any specific social constituency. Their liberalism ties them – especially the clergy and the feminists – to specific segments of the population – i.e.,

'the poor'. But their claims to represent these groups vis-à-vis the government or donor agencies are simply claims. They are reasonable claims and in most respects borne out by practical actions, but not established by any tangible mandating mechanism (vote, charter).

The elite urban professionals that conjured up the Oasis Forum had, quite evidently, sufficient legal-moral 'credibility' to challenge the Party/State apparatus of Chiluba's MMD. But just as evidently, this pivotal asset of legal-moral credibility is both immaterial and fragile. It is easily compromised by any impression of intimate association with unscrupulous politicians. The lack of a clear, verifiable constituency generates insecurity within the Forum and its social base. This insecurity expressed itself in a fundamental distrust of partisan politics and political parties in general. The basic dilemma was an understanding of the need to 'do politics' in order to achieve their substantive normative ends, but the inability to identify or even conceive of a political mechanism – a form of collective agency – that could be expected to survive the corrupting bruises of Zambian political skirmishes with its integrity, and credibility, in tact.

As the Chisamba retreat of June 2001 concurred: 'The Oasis Forum should not be transformed into an organization, but should remain as a loose alliance, *faceless*.'[16] I understand 'facelessness' in this context to imply the lack of *personalized* self-promotion. The Forum's credibility can only be maintained if it draws directly on abstract, or perhaps better, *transcendental* forms of authority – spirituality, morality, legality, solidarity. Immediately there are grounds to suspect that such intrinsically authoritative rhetoric is (ab)used to advance the ambitions of a specific individual, it loses legitimacy. Clearly this is not true of conventional political campaigning. Party politicians clothe their soapbox rhetoric in references to 'development' and 'peace' – selfless aspects of the greater good. But no politician campaigns 'facelessly.' This suggests that the Oasis Forum is intuitively working a different political register, one reserved for disinterested political rhetoric, walled off from the partisan fray.

iv

Like apartheid in South Africa, subsidiary sovereignty is a legal order premised on exclusion. It operates through a constitution, caters to regular elections and

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[16] Ibid., my emphasis.

encompasses a range of institutions of democratic representation. At the same time, the voice and genuine interests of the vast majority of the population are kept in the margins, with no real power to influence public policy and its implementation.

As in South Africa, where lawyers played a crucial role in the fight against apartheid (Abel 1995), the legal profession has been a key actor in the struggle for institutional reforms to ensure greater justice in the exercise of power. Indeed, their imprint on the Oasis Forum and its achievements has been far greater than the jurists' modest numbers would suggest. Through becoming the architects of the Forum's public rhetoric, and its leading authority on the strategically crucial constitutional review process, the lawyers have had a huge impact on the Forum's political trajectory.

I have discussed the implications of legalism at length elsewhere (Gould 2006) and will not repeat those arguments here. One related issue deserves special attention, however. As we have argued above, the Oasis Forum has played an unprecedented and progressive role in defining a political agenda for the reform of Zambia's political culture. Yet it has been silent on the issue of subsidiarity. Perhaps this reflects the fact that many individuals in the Forum leadership have benefited, or expect to benefit financially from a commissioned assignment from the World Bank or an allied agency. While it is my informed belief that the Forum would have reached all of its major goals without any donor support, it is also true that the women's movement (NGOCC and many of its member organizations), the various church bodies and even the Law Association are all beneficiaries of the donor dollar to some extent. It is in the very nature of subsidiary sovereignty, no doubt, that the suzerain must, from time to time, invest in the sovereignty of the client state (cf Carothers 2005).

Such cynicism aside, one might also ask to what extent might the 'juridification' of the Forum's approach itself affect the role that subsidiarity takes on in the political agenda of the new public bourgeoisie. Echoing Benhabib's critique of Habermas, one can claim that the Forum has exercised a very weak distinction between "'juridification"… on the one hand, and making public, in the sense of making accessible to debate, reflection, action, and moral-political transformation, on the other" (Benhabib 1992, p. 94). Indeed, the Forum draws on three bodies of rather inflexible canon: statutory law, religious dogma and orthodox development discourse. None of these is particularly conducive to critical-rational debate in the Habermasian sense; but more cogently, neither do they provide conceptual tools to reveal the mechanisms of subsidiarity. Of

the three, it is perhaps the procedural mindset of legal reasoning that provides the dimmest view of the broader structural mechanisms that constrain Zambia's economy.

Perhaps the main problem is that the new public bourgeoisie's strategy of incursion into the public sphere doesn't address long-term structural problem of its social reproduction as a class, its base in material production/capital accumulation. Without such a base, can the public bourgeoisie exercise sustained leverage on the state? Can it effect a transformation of the public sphere without solid links to a wider 'public' beyond itself? Or, to put a Marxist twist on the problem at hand, can the cosmopolitan bourgeoisie constitute itself as a class without controlling the material conditions of its social reproduction?

Perhaps it is enough, at this juncture to suggest that subsidiary sovereignty be thought of dialectically – as an organically constituted struggle between two contradictory principles: subordination and emancipation. Neither of these principles exists in a 'pure', abstract form. The specific motives and mechanisms of subordination, and the social sources of the emancipatory moment derive from a specific historical, ideological, political context. This is an important reason why it is so necessary to maintain rigorous scrutiny of the unfolding history of independent Zambia.

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