

REPLY TO DR BRYDE

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I have carefully reread those portions of Dr. Bryde's book that he says I misread; I regret that I stand by my original review. Whether I misread or he misspoke, however, raises only a minor issue. His book raises major issues, and merits the attention of every person concerned not only with African law, but law and development generally. He asks the right question: Why do African countries do so little about development, despite their rhetoric? And he comes to an unexceptionable conclusion: "Only a political system that manages to curtail elite privilege has the capacity to effect change through law."

What to do about elite power of course becomes the principal issue in development. Bryde leaves us in the paradox that elite theory always poses. On the one hand, he says that "we cannot expect a privileged elite to use law as an instrument in the interest of the underprivileged when this would threaten their own privileges." At the same time, "an enfranchisement of the underprivileged. . . would not necessarily improve the situation; the traditional values of these groups are often at odds with their emancipatory interests." No wonder he cannot provide us with a "happy end"! On that formulation, elite control is simultaneously inevitable, and destructive. It leaves no solutions save to wait for the Hero to lead us into the light. It denies all potential by the mass to control their destiny.

Bryde reaches that conclusion because of his domain assumption, that values and attitudes determine behavior. Values and attitudes, however, resist change through law. Bryde's domain assumption requires his pessimistic conclusions.

An alternative formulation exists. Choice determines behavior. How people choose depends upon two factors: the range of choice they confront, and the reasons they choose within that range. The latter frequently consist in part of subjective factors; the former never does. Societal institutions mainly determine the range of choice. Law can do a great deal about structuring societal institutions. It can thus affect the range of choice of the political elite, by restructuring the state machinery, property and contract law, the party system, the law of public corporations, and so forth.

Choice does exist. The differences between countries that started from seemingly similar bench marks--China and India, Greece and Sweden, Mexico and the United States, Austria and Yugoslavia, Kenya and Tanzania--otherwise defy explanation.

Bryde's downbeat conclusions flow, I believe, from his inaccurate assumptions about the way law affects behavior, and therefore, society.

Knowledge channels action. Bryde recommends that local lawyers spend their time playing at *elegantia juris*, and expatriates at windy sociological theory, leaving no lawyers engaged with the problems of designing the political system to curtail elites. His conclusion applies equally to every social science. In the end, his advice conduces to a tame class of local intellectuals making the existing system work better, and a set of expatriates harmlessly dabbling in abstractions.

Inevitably, however, revolutionary moments occur repeatedly in the history of every country, when the political elite find it in their interest to oppose the economic ruling class, and therefore, to use their power to change things more or less radically. Programmes for change must address the causes of difficulties. Explanations address causes. At such revolutionary moments, lawyers can contribute to development only if they have devised explanations for elite power and mass vulnerability that identify their legal causes, for only so can they devise legal situations. Without new law, the new political system that Bryde calls for cannot emerge.

Lawyers in Anglophonic Africa have not yet done that sort of analysis. Despite all the constitutions that have been made and remade since independence, lawyers have not proposed many new provisions. The table of contents of any Anglophonic African constitution (with rare exceptions, such as the Leadership Codes in Tanzania and Zambia) identifies difficulties faced not by African countries but by the British government in the nineteenth century. (Only Lesotho's suspended constitution, for example, even mentions a planning commission.) Lawyers did exactly what Bryde recommends: they mainly harmonized local law, and a few expatriates became theorists. When constitutions came up for change, the lawyers had nothing to contribute towards a political system or legal order likely to bring about development.

The scope and power of Bryde's book has required both of us to reach overarching questions of conceptualization and methodology in our disagreement here. Only out of debate and conflict, however, can we advance our thinking. The power of Bryde's book lies in his forceful statement of the situation, its weakness in his failure to supply institutional (and therefore legal) explanations for the behavior he describes. This is an important book. It should be read both widely and critically.