Designing the Regulatory Roles of Government in Business: The Lessons from Theory, International Practice and Ethiopia's Policy Path

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1. The Concepts, Arguments and Theories in Regulation

1.1. The Concept of Regulation

Regulation is an expanding concept whose definition needs to include its nature, subject matter, instruments, techniques and enforcement.[1] Distinction is often made between economic and social regulation, the former referring to the attempt to correct the allocation shortcomings of the market and the latter to the attempt to realize humanitarian welfare goals.[2] In both, regulation can be defined: i) as the making and enforcing of rules by governmental actors; ii) as the direct intervention of the state irrespective of the forms of intervention; or iii) as all forms of influence affecting behaviour from whatever source and for whatever purpose.[3] Hence, some consider regulation as the controlling, by a governmental agency, of the activities of economic agents that, if not controlled, will be performed sub-optimally or outside individual and collective bargaining.[4] Some others take it as intentional restriction of someone's choice of activity by any entity not directly involved in the performance of the activity.[5] Others take it as governmental means of reconciling the conflicts between freedom and

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[1] It may be considered as a type of legal instrument; an intentional or goal directed process of controlling, governing, directing, enabling, coordinating, influencing or ordering; a process of interaction between actors; or a process of self-correction. It may be initiated by state institutions, non-state institutions, economic and social forces, technologies, actors and regional and extra-national institutions. It may be enforced by ministries, departments, agencies, associations, committees, firms, individuals, communities, networks, courts, supra-national bodies, and the market. It may include rules, norms, institutions, cognitive frames, cultures, systems and networks directed at firms, individuals, markets, the family and the government. Its instruments may be legal, quasi-legal, non-legal, universal, sectoral, bilateral, financial and non-financial rules or trust. See Julia Black, "Decentring Regulation: Understanding the Role of Regulation and Self-Regulation in a 'Post-Regulatory' World," in Black J., Current Legal Problems, 2001, at pp. 134-135.

[2] See Thimm, B., Regulation and Regulatory Transformation in European Insurance markets (Doctoral Dissertation, Ludwig-Maximilians-Universität München, 1999), at pp. 56, 59-69.

[3] See Julia Black, 2001, supra note 1, at p. 129.

[4] See Thimm, 1999, supra note 2, at pp. 37, 40-55.

[5] See Kabir, R., Security Market Regulation: An Empirical Investigation of Trading Suspension and Insider Trading Restriction (Dissertation nr. 91-1, Faculty of Economics and Business Administration, University of Limburg, Maastricht, the Netherlands, 1990), at p. 103.

control, hierarchy and equality, and continuity and change to set order in an economic society.[6] Others also take it as adjusting or steadying the motion of an activity at various stages for specific purpose whosoever may do that.[7]

The concept of regulation is also analysed in centred and decentred approaches.[8] The centred approach couples regulation exclusively with government while the decentred one uncouples it from there. The decentring idea is expressed in a number of ways. It is expressed 1) as internal fragmentation of the governmental tasks of regulatory policy formation and implementation; 2) as a proposition that governments do not, and should not, have a monopoly on regulation but that regulation does, and should, occur within and between social actors outside the government; 3) as decoupling of regulation from government to self-regulators and the post-regulatory regulation of self-regulation; 4) as restraint of governmental action by the pressure of non-governmental actors; 5) as shrinking of the size of government through power decentralization; 6) as removal of government and administration from the centre of society, i.e. as shift from hierarchical to horizontal relationship between the two; or 7) as a changed understanding of the nature and relationship of society and government that government is no more the only capable and effective commander and controller.[9]

The shift from centred to decentred understanding of regulation has implications on the role of government in society, on the cognitive framework in which regulation is viewed, and on the design of regulation.[10] It is a changed understanding of the nature and relationship between society and government that has a number of features.[11] First, it recognizes the complexity of the interactions between the actors and systems in society. The interactions are complex and intricate and the actors are diverse in their goals, intentions, purposes, norms and powers. Secondly, it recognizes the fragmentation and diverse construction of knowledge. No single actor can have the knowledge required to solve complex, diverse and dynamic problems and the overview necessary to employ all the instruments needed to make regulation effective. Information is also constructed through closed sub-systems (like politics, administration and law) which develop images in accordance with their own lenses while decision makers construct images of their environment through their own cognitive frames. Thirdly, it shows the fragmentation of the exercise of power and control. There is increasing recognition that government does, and should, not have monopoly on the exercise of power and control; that the latter are fragmented between societal actors on one hand and between societal actors and the government on the

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[6] See Samuels et. al., "Regulation and Regulatory Reform: Some Fundamental Conceptions," in Samuels, W.J. And Schmid, A.A., Law and Economics: An Institutional Perspective (Kluwer. Nijhoff Publishing, Boston. Hague. London, 1982), at p. 252.

[7] See Machan, T. R., "Should Business be Regulated?" in Regan T. (Editor), Just Business: New Introductory Essays in Business Ethics (Mcgrow-Hill, Inc., New York et. al., 1984), at p. 209.

[8] See Julia Black, 2001, supra note 1, at pp. 103-146.

[9] See Id., at pp. 103-105.

[10] See Id., at pp. 145-146.

[11] See Id., at pp. 106-112.

other hand; and, hence, that there are both formal and non-formal ordering in an economic society. Fourthly, it recognizes the autonomy of societal actors. There is increasing recognition that several societal actors continue to develop or act in their own way and that no single actor can hope to dominate other actors through unilateral regulation. Fifthly, it recognizes the existence and complexity of the interaction and interdependence between societal actors on one hand and between societal actors and the government on the other in the process of regulation. The case is not that society has problems and government has solutions but that each has both problems and solutions, hence, being mutually dependent on each other for resolution. Both government and regulation result from interaction and interdependence. Sixthly, it shows the demise of the public-private distinction and the rise of rethinking on the use of formal authority in governance and regulation. Both governance and regulation are taken to be outcomes of webs of influences which can operate in the absence of formal governmental or legal sanction. They are considered as manifestations in 'hybrid' organizations or networks that combine governmental and non-governmental actors in a variety of ways. Finally, it shows a normative proposition that regulation has to be hybrid, multifaceted and indirect. This means that regulation should combine governmental and non-governmental actors, use a number of different strategies simultaneously or sequentially, and be a process of co-ordinating, steering, influencing, balancing and redesigning interactions between actors and systems.

The decentred understanding shifts the locus of regulation from the government to other multiple places and implies that policy-makers should know: 1) that there is no clear dichotomy between state regulation and non-state regulation but a continuum between them; 2) that instrument mix is important in regulation both because problems have multiple causes many of which are unknown and regulation has unintended consequences, hence necessitating the combination of a range of regulatory instruments to minimize or self-correct the unintended consequences; 3) that regulatory design has to be contextual (i.e. responsive to the context in which it will be operating) as one set of solutions will not fit all problems; 4) that governments should not steer directly but create conditions in which actors steer themselves in the direction the governments want them to go; and 5) that the task of government regulation in the post-regulatory world should be regulating self-regulation.[12]

Other conceptions also use regulation to refer not only to the conventional forms of government command and control but also to the forms of social control by third parties that seek to harness both the government and the regulated businesses.[13] They believe in the dynamic symbiosis between the regulatory actions of the government, the regulated businesses and the third parties.[14]

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[12] See Id., at pp. 112-113, 128-144.

[13] See Gunningham N. and Grabosky P., Smart Regulation: Designing Environmental Policy (Oxford University Press, New York / Oxford, 1998), at p. 4; and Ayres I. and Braithwaite J., Responsive Regulation: Transcending the Deregulation Debate (Oxford University Press, New York - Oxford, 1992), at pp. 3-4.

[14] See Ibid.

1.2. The Concepts of Government Regulation, Self-Regulation and Self-Governing Market

If one recognizes the decentred idea of regulation, then societies comprise a number of regulatory systems that can be categorized into government regulation, self-regulation and the market.

Government regulation exists when governmental institutions make and sanction rules for the market by deriving their authorities from the government.[15] Its subject matter may be social, by focusing on such concerns as protecting citizen or worker health and safety, accomplishing environmental and aesthetic goals or promoting civil rights objectives, or economic, by focusing on legally enforceable guidelines and direction that are regarded as means for legitimate commercial endeavour.[16] Self-regulation can mean soft law including unilateral rules and standards of firms, bilateral arrangements between firms and the government, collective arrangements between firms, collective arrangements between the government, firms and other actors (including auditors, technical committees, NGOs, community groups and the like), and private contracts between individuals and firms.[17] It exists when private sector agencies make rules, and sanction failures by disciplinary action, by deriving their authorities from acceptance of the rules by their members and delegation.[18] Some governmental surveillance may also exist to ensure the presence of self-regulation.[19] However, self-regulation is generally understood as a system of private ordering.[20] The market itself can also be taken as a regulatory system as it governs individual behaviour and the structure of opportunity sets within which choices are made.[21] It exists, not as equivalent of non-regulation, but as a regulatory system where private power operates.[22] It is also seen, not as one that can be fully run by government wishes, but as one that stands on its own and seeks recognition by policy-makers.[23] Some also see government regulation and the market as functional equivalents for the belief that private power will be operative in both.[24] Others also argue that "private sector and public sector regulations are interrelated ... [and] ... that the presence of effective private regulation [can] eliminate [...] the need

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[15] See Kabir, 1990, supra note 5, at p. 5.
[16] See Machan, 1984, supra note 7, at p. 209.
[17] See Julia Black, 2001, supra note 1, at pp. 121, 113-121.
[18] See Kabir, 1990, supra note 5, at p. 6.
[19] See Finsinger et. al., Insurance: Competition or Regulation? - A Comparative Study of the Insurance Markets in the United Kingdom and the Federal Republic of Germany (Report Series No. 19, the Institute for Fiscal Studies, London, 1985), at p.17.
[20] See Cafaggi, F. (ed.), Reframing Self-Regulation in European Private Law (Kluwer Law International, the Netherlands, 2006); and Schepel H., The Constitution of Private Governance: Product Standards in the Regulation of Integrating Markets (Hart Publishing, Oxford and Portland, Oregon, USA, 2005) for the self-regulatory systems in Europe and the US.
[21] See Samuels et. al., 1982, supra note 6, at pp. 252 - 254.
[22] See Ibid.
[23] See Julia Black, 2001, supra note 1, at pp. 114-128.
[24] See Samuels et. al., 1982, supra note 6, at p. 255.

for public regulation".[25] Hence, both government and non-government regulation can be taken as ways of tuning the social and opportunity set structure and the distribution of income, wealth, interest and power in a society.

This study opts for the wide understanding of regulation to refer to both the governmental and non-governmental interventions that attempt to order the economic and social affairs of a society with a view to achieving defined objectives. It also considers the market as a regulatory system by itself, believes that regulation should always be dynamic, and sees that regulation may be concerned with the organization of an industry (as a market structure regulation) and the behaviour of actors (as a market conduct regulation).

1.3. The Concepts of Deregulation, Regulatory Reform and Regulatory Transformation

If one understands regulation widely, deregulation and regulatory reform will not necessarily mean less control and greater freedom. They just constitute facets of the structure of order and may only mean i) change in the pattern of freedom and control, hierarchy and equality, and continuity and change; ii) change in the organization and control of the economic system, the distribution of opportunity sets, income, wealth and welfare, and the power structure; and iii) change in the uses to which the government is put, in the interests which the government should support and in the control of the government itself.[26] Hence, deregulation or regulatory reform should mean change from one to a different system of regulation from whichever system of regulation one starts.[27]

Regulation, deregulation and regulatory reform are, therefore, functional equivalents.[28] They are taken to be continuing facets of power play over the system of rules, the control of government and the use of government to protect interests and to channel economic performance.[29]

The concepts of 'regulatory transformation' and 're-regulation' are also often used to refer to the process of change from one form of regulation to another.[30]

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[25] See Kabir, 1990, supra note 5, at p. 6.
[26] See Samuels et. al., 1982, supra note 6, at pp. 256.
[27] See Ibid.
[28] See Id., at pp. 262.
[29] See Id., at pp. 262-264.
[30] See Nemeth, K., European Insurance Law: A Single Insurance Market? (European University Institute Working Papers Law no. 2001/4, Badia Fiesolana, San Momenico, Italy, 2001), at pp. 18-20.

1.4. The Arguments for and against Government Regulation

The arguments for and against government regulation have come from several disciplines that deal with three interrelated issues, namely i) the relationship between law and society, ii) the relationship between law and economic conduct, and iii) the relationship between business and government.

The legal and social theories on the relationship between law and society used to take positive law as a reflection of custom and morals whose function is to maintain order by establishing and enforcing rules and resolving disputes.[31] The classical (Greek) legal tradition focused on societal custom and morality.[32] The Natural law tradition emphasized on reason and human nature.[33] The legal positivist tradition focused on the distinction between the positive law made by government and the law that exists in society (as custom or morality).[34] The custom-culture or historical tradition focused on the legal importance of custom and tradition.[35] The law and social organization tradition focused on the influence of social organization on the form and content of law.[36] The selective mirror tradition took law as reflection of certain customs, morals and economic and non-economic values and interests within a society.[37] The instrumentalist tradition took law as instrument of achieving societal interests.[38] The selective mirror and instrumentalist traditions also paved the way for evolution of legal theory from traditional doctrinism to post-modernism and the economic analysis of law.[39] All the aforementioned theories of law and society did not show the autonomy of the legal discipline from the political, economic, moral, sociological, historical and other disciplines.[40] They have asserted that the legal and non-legal disciplines are inseparable despite the differences in their focus and that one has to take law in general, and regulation in particular, as a multidimensional phenomenon that develops, not in a self-contained and autonomous, but in an interdisciplinary manner (i.e. as a phenomenon affected by economic, political, historical, philosophic, psychological, social, religious & other developments).[41] The development of the theories has also pointed out that the understanding in the legal discipline has to shift from the traditional social order function of law to the instrumentalism of law and regulation to meet objectives.

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[31] See Tamanaha, B. Z., A General Jurisprudence of Law and Society (Oxford University Press, 2001), at pp. 1-50.
[32] See Ibid.
[33] See Ibid.
[34] See Ibid.
[35] See Ibid.
[36] See Ibid.
[37] See Ibid.
[38] See Ibid.
[39] See Ibid.
[40] See Cotterrell, R., The Politics of Jurisprudence: A Critical Introduction to Legal Philosophy (2nd ed., Lexis Nexis, UK, 2003).
[41] See Ibid.

The legal and economic theories on the relationship between law and economic conduct are relatively recent. Though rooted as early as the time of Adam Smith and Jeremy Bentham, the discipline of law and economics was shaped as intellectual discipline in the 1960s and 70s when i) economists criticized the approach of legal scholars as formalists who view law only in terms of its own internal logical structure and ii) jurisprudence started to move from legal formalism and logical reasoning to legal realism and instrumentalism of law (and from the use of traditional legal concepts such as fairness and justice to the use of economic concepts and principles such as efficiency in the analysis and evaluation of law, legal institutions and processes).[42]

The political and economic theories on the relationship between business and government have existed as of the second half of the 18th century. The classical political economists advocated for laissez-faire beginning the 1770s.[43] The Marxian theory tried to explain the plight of capitalism and advocated for government planning and action beginning the 1840s.[44] Economists advocated for government intervention by reasons of monopolies, externalities, public goods and income inequalities at microeconomic level and by the Keynesian analysis of aggregate demand and subsequent developments at the macro level beginning the 1940s.[45] Free market movement rose again in the 1960s.[46] Government intervention was then favoured by reason of market failures in the 1970s.[47] The role of government to shape the economy was also recognized, and its extensive use opposed, in the 1980s and thereafter.[48] The

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[42] The discipline of law and economics is concerned with the application of economic theory to examine the formation, structure, processes and economic impact of law, legal institutions and processes to see if these are economically justified. It is based on the logic that laws affect economic performance by changing incentive structures and behavior. Its organizing principles lie in micro, welfare and institutional economics and include the concepts of circular flow of economic activity, exchange, self-interest, perfect competition, Pareto efficiency (in production and exchange), and Kaldor-Hicks efficiency (also called wealth maximization or compensation principle) and the idea of using institutions (governance mechanisms) as alternative means of contracting to reduce transaction costs (the Coase theorem). See Mercuro, N. and Medema, S. G., Economics and the Law: From Posner to Post-Modernism (Princeton University Press, New Jersey, 1997), at pp. 3, 13-24, 51; Hirsh, W. Z., Law and Economics: An Introductory Analysis (2nd ed., Academic Press, Inc., 1979/1988), at pp. 2-9; Backhaus, J.G. (ed.), The Elgar Companion to Law and Economics (Edward Elgar Publishing Limited, UK, 1999), at pp. 7-30; and Cseres K. J., Competition Law and Consumer Protection (European Monographs, Kluwer Law International, The Hague, 2005), at pp. 12-22.

[43] See Jhingan, M. L., The Economics of Development and Planning (35th Revised and Enlarged Edition, Vrinda Publications (P) Ltd., 2002), at pp. 66-94.

[44] See Id., at pp. 95-104.

[45] See Acocella, N., The Foundations of Economic Policy: Values and Techniques (English Version Translated From Italian By Brendan Jones, Cambridge University Press, USA, 1998), at p. xv.

[46] See Id., at p. 214

[47] See Id., at p. xv.

[48] See Id., at p. 214.

2008 financial and economic crisis has then triggered movements towards increasing the regulatory roles of governments in business (in at least the financial markets).[49]

The arguments in the law and economics and political economy disciplines have, therefore, ranged between two extremes. The classical political economists, standing at one end of the extremes, advocated for a laissez-faire economic system where government intervention shall not exist.[50] They considered the market as a system separate from, but connected to, politics and family life and believed in the capacity of markets to self-regulate.[51] They began with the market, followed a policy of laissez-faire, advocated that the market is not, and need not be, political and recognized a responsive role for the government.[52] They assumed a perfectly competitive system where the market is guided, not by government intervention and regulation, but by the "invisible hand" (i.e. the demand, supply and prices that base on self-interest) though they differ in the focus of their particular theories.[53] They had two important contributions, i.e. an argument for market self-regulation and a theory of value and distribution.[54] The traditional theorists considered the economy, by their argument for market self-regulation, as a system of independent and autonomous property owners, each pursuing his/her self-interest, each linked with the other through contract and each constrained only by the requirement that he/she should respect the property rights of

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[49] See the Information, Communiqués and Study Reports of the G-20 from its website: http://www.g20.org/index.aspx as accessed on December 01 2009; the World Bank World Development Report 2009, accessed from: http://www.worldbank.org/ on December 01 2009; the Annual Report of the WTO for 2009, accessed from http://www.wto.org/english/res_e/booksp_e/anrep_e/anrep09_e.pdf on December 01 2009; the Annual Report of the Executive Board [of the IMF] for the Financial Year Ended April 30, 2009, accessed from http://www.imf.org/external/pubs/ft/ar/2009/eng/index.htm on December 01 2009; and Christoph Ohler, 2009, International Regulation and Supervision of Financial Markets after the Crisis (Universities of Jena and Halle, Working Papers on Global Financial Markets No. 4, March 2009).

[50] Political economy is a discipline that explores the responsibilities of the state with regard to the economy. Studies in political economy address two sets of questions. One set focuses on the idea of a self-regulating market and asks whether government (political) intervention into the economy enhances or impedes want satisfaction. The other set focuses on public agenda formulation and inquires into the nature of the relationship between private interests and public goals and the bearing of the one upon the other. See Caporaso, J. A. and Levine, D. P., Theories of Political Economy (Cambridge University Press, Reprint, 1993), at pp. 1-3.

[51] See Id., at pp. 3, 33-54, 217-218.

[52] See Ibid.

[53] Adam Smith is the foremost classical economist who advocated the idea of laissez-faire. He regarded every person as the best judge of his self-interest who, in furthering that interest, would also further the common good. He argued that every individual, if left free, will strive for maximizing his wealth; and hence all individuals, if left free, will maximize the common wealth. Some subsequent theories also assume a perfectly competitive economy [See summary of the theories of Adam Smith, David Ricardo, Thomas Robert Malthus, John Stuart Mill and Joseph Alois Schumpeter in Jhingan, 2002, supra note 43, at pp. 66-94, 105-113].

[54] See Caporaso and Levine, 1993, supra note 50, at pp. 33, 38-46.

others.[55] They argued, in this line, that a system of private persons pursuing their self-interests without overall regulation will lead to a set of voluntary transactions that satisfy the wants of those persons; that the market facilitates rearrangement of property according to the wants of property owners as long as individuals act both as buyers and sellers; that only individual hardship and failure can result from the market; that the market as a whole will not fail despite individual failures; that the market will assure the growth and full utilization of society's capital stock if its operation is placed into private hands and led by decisions based on profit motive instead of public regulation; and that the only roles of government in a society should be national defence, administration of justice and provision of public services that can facilitate commerce.[56] The modern theorists argued, by their value and distribution theory, that every society meets the material necessity of life through production and distribution of surplus using the system of division of labour, commodity exchange and price; that the form of this process varies from society to society; and that the market is only one among a number of social mechanisms for meeting the material necessity of life.[57]

The Marxian political economy, standing at the opposite extreme, advocated for a planned economic development where the role of government is crucial.[58] It explained history and the economic system materially as a struggle between different classes and groups in society caused by conflict between the modes and relations of production and believed that the role of government is crucial until such conflict vanishes in communism.[59] It showed how powerful political forces, hence political struggles, originate in the dynamics of capitalist economic processes and criticized the classical claim that markets can regulate themselves.[60] It believed that economic order results from the unplanned and uncontrolled acts of individuals and that control must ultimately reside outside the individual (i.e. in the state).[61] It argued that individuals within the economy pursue interests that are uniquely their own but that are not isolated and independent; that classes are set up and class consciousness develops as individuals understand the commonality of their interests; that classes translate the economic interests of their members into a political agenda; and that class interests become political interests in the struggle over state power.[62] It, like the classical view, recognized that the capitalist economy consists of accumulated commodities, individuals who own those commodities and exchange relations which connect the individuals.[63] It, however, believed that the market is not a mechanism for maximizing the private welfare of individuals generally but a means for facilitating the capitalists'

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[55] See Ibid.
[56] See Ibid.
[57] See Id., at pp. 46-54.
[58] See Jhingan, 2002, supra note 43, at pp. 95-104.
[59] See Ibid.
[60] See Caporaso and Levine, 1993, supra note 50, at pp. 3-4, 55-78, 218-219.
[61] See Ibid.
[62] See Id., at pp. 56-69.
[63] See Id., at pp. 58.

appropriation of surplus value and accumulation of capital.[64] The Marxian theory also developed three strands that took the transformation of individual economic interests into collective political interests at their core and explain the relation between the state and the economy differently, namely the revolutionary politics, the politics of class compromise (also known as social democratic politics) and the Marxian state theory.[65] The revolutionary politics strand believed that capitalist economy concentrates capital, creates unemployed and low-paid workers, polarizes classes, and leads to violent revolution.[66] The social democratic politics strand believed that the position of labor and capital can be altered peacefully instead of violent revolution if workers participate in interest groups, parties, and electoral-legislative processes and the economy is rationalized to the welfare of all citizens (workers and capitalists alike).[67] The Marxian state theory believed that the economy is full of irreconcilable conflicts between economic interests of classes; that this conflict will threaten social order; and that the state has to preserve social order by perpetuating the political interests of a class while oppressing another class.[68]

The neo-classical political economists (who are known as utilitarian) continued with the classical idea of business as a separable system from government, but applied utilitarian philosophy to analyze the problem of the nature and purposes of market economy and see the case for government intervention.[69] They argued that the aim of both the market as a set of voluntary private transactions and the government as a use of political authority should be utility maximization and that the relationship between government and business should be defined on the basis of the idea of market failure to maximize utility.[70] They started with the principle of utility that the morality of what we do is determined by the overall effect it has on the welfare or happiness of those affected by the outcome and, hence, that government regulation can be justified only if it brings better satisfaction of desires in a society than would result in its absence.[71] They believed that all individuals seek the highest degree of satisfaction of their wants, order their preferences, make rational choices and enter into exchange transactions to maximize their satisfaction out of constrained endowment; that group welfare is achieved through voluntary transactions based on individual rational choices; that free market allows maximum scope for free and voluntary exchange and efficient allocation of resources; and that the role of government should be doing what the market can not do such as the definition of property rights and the correction of market failures.[72] They measured the satisfaction of desires in society through the Pareto-optimality ideal according to which maximum satisfaction of desires means that one is made better off

[64] See Id., at pp. 60-63.
[65] See Id., at pp. 56, 69-78.
[66] See Id., at pp. 70-72.
[67] See Id., at pp. 72-74.
[68] See Id., at pp. 74-78.
[69] See Caporaso and Levine, 1993, supra note 50, at pp. 4.
[70] See Id., at pp. 4, 86, 219.
[71] See Machan, 1984, supra note 7, at pp. 218.
[72] See Caporaso and Levine, 1993, supra note 50, at pp. 79-99.

without making someone else worse off.[73] They believed that this optimality is achieved when the market, given reasonable estimates, leads to greater satisfaction of desires than would result otherwise. They, accordingly, argued that government regulation can be justified if it is shown that it will produce results that are closer to achieving Pareto-optimality than the results that would be obtained without it.

The Chicago School of Law and Economics acted along the line of the classical political economists and recognized a laissez-faire economic system governed by private law remedies that are subject to evaluation based on the efficiency test.[74] It, until World War II, focused on analysis of law based on the classical propositions that economic actors rationally pursue their economic self-interest, that competition is inherent within and intrinsic to economic life, and that market-generated outcomes based on free competition are superior to those resulting from government interference.[75] It, after the war, focused on demonstrating the nexus between competitive markets and their efficient outcomes.[76] It currently stands on three pillars.[77] First, it believes that individuals maximize their satisfaction in both their market and non-market behaviour. It assumes, by this, that individuals set their preferences, access and perfectly process information, rank all possible outcomes of their decisions according to their relative desirability, and engage in additional unit of activity when the additional benefit with that unit of activity exceeds or is equal to the additional cost. Secondly, it believes that legal policy can influence economic performance and the level of legality through adjustment of the prices reflected in legal rules. It assumes, by this, that individuals are responsive to price incentives in both their market and non-market behaviours and that legal rules set legal sanctions or legal consequences as prices for engagement in certain legal or illegal behaviour. Thirdly, it believes that legal rules and outcomes should be assessed based on their economic efficiency. It argues that the concept of justice in a social system founded on economic principles is congruent with the concept of economic efficiency, that economic efficiency should be tested through the principle of wealth maximization (also called the Kaldor-Hicks efficiency test or the compensation principle), and that the ethical basis of wealth maximization should be grounded in the principle of consent (i.e. voluntary market transaction).[78] It assumes that individuals would consent to wealth maximization

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[73] See Machan, 1984, supra note 7, at pp. 218; Caporaso and Levine, 1993, supra note 50, at pp. 82-85; Acocella, 1998, supra note 45, at pp. 23-50; and Cseres, 2005, supra note 42, at p. 16.

[74] The School originated in the 1920s and 30s and was shaped into its form in the 1960s and 70s. See Mercuro and Medema, 1997, supra note 42, at pp. 51-56; and Cseres, 2005, supra note 42, at pp. 22-28.

[75] See Ibid.

[76] See Ibid.

[77] See Mercuro and Medema, 1997, supra note 42, at pp. 57-59.

[78] It prefers the Kaldor-Hicks efficiency test to the Pareto formula. The Pareto efficiency test focused on the making of someone better-off without making any one else worth-off. The Kaldor-Hicks efficiency test dismissed the Pareto test by arguing that the promulgation of public policy and legal change will normally bring about winners and losers. It then proceeded with an alternative criteria of optimality that change from one state of the economy to another state that

(hence, to wealth maximizing policies, laws and changes) as long as there is sufficient probability that they will benefit from application of such policies, rules and changes in the long run even though they lose from the application of a certain policy or rule in the short run.[79] It also argues that the idea of wealth maximization based on consent or voluntary market transaction is valid both morally (as it builds on the virtues of utilitarian and Kantian tradition of human respect and autonomy) and pragmatically (as the world reality shows that societies where markets are allowed to operate freely are not only wealthy but also have more political rights, liberty, dignity and content).[80]

The Keynesian school of economics argued that the unregulated free market lacks valuable human sentiments: that it fosters callousness or insensitivity towards the plight of those who fail or who are unable to take part in the economic struggle.[81] It believed that market failure is deeper and more challenging to the institution of a private enterprise system than the Neo-classical approach considered and criticized the claims for market self-regulation.[82] It argued that the pursuit of self-interest is often self-defeating as workers' effort to increase demand for labour often leads to lower levels of employment and income and the community's effort to save more leads to less saving and investment; that market economies are not stable and will not make full use of resources available to them if they are left to their own devices; and that state intervention is called for to secure the macroeconomic conditions necessary to stabilize market.[83] It, accordingly, felt that regulation is necessary to prevent distraction of human ideals by unregulated businesses.

The Harvard School of Law and Economics rejected the price theory in classical political economy and believed that market performance is a matter of market structure (i.e. industrial organization).[84] It argued that market structure determines market conduct which in turn determines market performance, that market structure is influenced by conditions (including technology, types of goods, and the behaviour of buyers and sellers) and that government intervention is necessary to shape these. It believed that the creation of free competition is a goal by itself, that markets are not necessarily competitive, that a competition policy can have objectives beyond the efficiency objective, and that a far-reaching government intervention can be necessary to make the competition process workable. It also rejected the theoretical approach in classical political economy and emphasized on the need for analyzing the economic

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can favor some individuals at the expense of others also constitutes improvement to a society's welfare if i) the gains to the winners exceeds the loss to the losers and ii) the losers are potentially compensated so that they will accept the change and the gainers will remain better-off. [See Mercuro and Medema, 1997, supra note 42, at pp. 14-21; and Cseres, 2005, supra note 42, at pp. 16-17 for details].

[79] See Ibid.

[80] See Ibid.

[81] See Machan, 1984, supra note 7, at p. 214.

[82] See Caporaso and Levine, 1993, supra note 50, at pp. 4, 100-125, 219.

[83] See Id., at pp. 100-125.

[84] The proponents of the school started their arguments in the 1930s and the School took its shape in the 1950s. See Cseres, 2005, supra note 42, at pp. 42-45, 55-56 and 101-103.

results of a certain market structure or conduct based on the empirical study of real markets.

The Freiburg School of Law and Economics emphasized on the creation of open market with social justice and individual freedom in between socialism and western liberalism and the role of government to guarantee this.[85] It believed that government should set the framework for economic processes without taking part in the process by itself and that the aim should not exclusively be on guaranteeing efficiency but economic freedom. It focused on state ordered liberalism.

The Austrian School of Law and Economics considered the market as entrepreneurial discovery process where government intervention is hardly necessary.[86] It believed that competition is a dynamic process of discovery by entrepreneurs who create and coordinate their market, that the market orders itself automatically and spontaneously, and that government should not intervene but guarantee freedom. It focused on market ordered liberalism.

The Game theory considered the market and competition as strategic interaction between firms.[87] It emphasized on the strategic conduct of firms as opposed to the structure of the market and believed that the strategic conduct of firms affects the structure and performance of industry, that the welfare gain in a market is a matter of this strategic interaction, and that the role of government is to set the scope and conditions for the interaction, i.e. to correct the imperfections and behaviours that may cause welfare loss.

The Public Choice Theory rejected the idea that government officials are persons who seek to act for the common good or in the public interest and believed instead that they are rent seekers, i.e. persons who waste public resources by investing in political activities consistent with their own interests instead of investment in economically productive activities.[88] It believed that individuals do not exhaust their exchange in the marketplace but take it into the political process to enhance their utility; hence that society's scarce resources are allocated both by the market place and the political process by the same individuals who act in several capacities.[89] Its Axiomatic branch recommended the evaluation of collective choice-making processes based on welfare economics.[90] Its Conventional (Homo Economicus) branch argued that individuals (both in political and economic arenas) are utility maximizers and hence that governmental actors are motivated not by a desire to enhance public interest but by a

[85] The School was created in the 1930s. See Id., at pp. 83-88.
[86] The School was created in the 1920s and developed in the 1940s. See Id., at pp. 89-91.
[87] The School was developed in the 1940s. See Id., at pp. 65-67.
[88] The theory originated in the Mid 1950s. See Mercuro and Medema, 1997, supra note 42, at pp. 84-85.
[89] See Id., at pp. 86-87.
[90] See Id., at p. 85.

desire to enhance their own prospects.[91] Its Catallaxy (Contractarian) branch argued that differences in political process are resolved through market like voluntary exchange arrangements (i.e. spontaneous coordination); denied the existence of a standard (like the efficiency and welfare tests of Pareto and Kaldor-Hicks) by which one can evaluate the appropriateness of public policy or legal change; and believed that consensus among the governmental actors is much more important than the standardization of tests.[92]

The New Haven School considered the contemporary world as one where regulation and administrative law of a welfare state play increasingly prominent role and advocated the evaluation of regulatory and administrative actions on the basis of the concerns of efficiency and justice.[93] It believed that public action should be based on economic justification and that political institutions should be evaluated realistically by using the rational actor as the model of governmental behaviour.[94] It advocated for the making of efficiency and justice within a system that uses the mechanisms of both the market and the democratic political process and allows individual choice.[95] It recognized the virtues of the market in allocating scarce resources and believed that multiple sources of market failure necessitate some form of government intervention.[96] It recognized the role of both private law and regulatory rules and institutions to correct pockets of market failure in society and argued that legal-economic policy should be limited to correcting market failures, that market-failure-correcting policies should be evaluated and put into place based on cost-benefit analysis by taking the concerns of efficiency and justice into account, and that rule making and dispute settlement should be left to the parties as long as they can cooperate to do them and as long as such approach is socially beneficial and least costly.[97]

The Modern Republican Civic Tradition appealed to norms of democratic public decision-making that are broader than mere aggregation of individual private interests.[98] It envisioned a public arena where decision-making is through principled deliberation and reasoned dialogue by those who think wisely and abstract from their private position and experience for the common good.[99] It started with four central principles, namely deliberation, equality, universalism and citizenship and then argued that political participants subordinate their private interests to the public and common

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[91] See Id., at pp. 85, 87-94.
[92] See Id., at pp. 85, 94-96.
[93] The School originated in the 1960s and 70s. See Mercuro and Medema, 1997, supra note 42, at pp. 79-83.
[94] See Id., at pp. 79, 82.
[95] See Ibid.
[96] See Id., at p. 80.
[97] See Id., at p. 82.
[98] The tradition originated in the 1960s and culminated in the mid-1980s. See Mercuro and Medema, 1997, supra note 42, at pp. 97-98.
[99] See Id., at p. 98.

good through the process of collective self-determination.[100] It accordingly, took politics and government as spheres superior to the merely private concerns of the private sector.[101]

The School of Critical Legal Studies acted along the lines of Marxian theory and believed that law and legal institutions are just one aspect of the larger social structure whose role is to serve as tools of politics, ideology and historical contingency.[102] It argued that social engineering and liberal reforms can not attain justice merely by thinking in a capitalistic system; that reality is a cultural and social construct based on ideology; that legal and economic relations become meaningful within a shared construction of reality; and, hence, that attention should be given to alternative ways of thinking about legal and institutional structures and their impact on resource allocation.[103] It, accordingly, advocated for continued commitment to activism and transformational politics that will reject the consciousness and analysis of an existing system of capitalistic society.[104]

The School of Institutional Law and Economics believed that the economy is a system of relative rights and powers, that the interaction between individuals is a function of this system of rights and powers, and that law or government is a means i) to work out whose interests should count as rights, whose values should dominate, and who should make these decisions and, through the resolution of these issues, ii) to determine the allocation of not just rights but resources and hence income, wealth and power in a society.[105] It saw the importance of institutions (i.e. habits, custom, social patterns and legal and economic arrangements) that impact upon the performance of the economic system and believed in the interaction between law, government and the market to set order.[106] First, it believed in the existence of mutual influence between law, governmental action and the market; in the existence of tension between continuity and change; and in the importance of the policy choice process in resolving the tensions in the economic system.[107] Secondly, it took that the market is not only a universe of

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[100] It, by the concept of deliberation, referred to the support to emergent policies, laws and decisions by argument and reason rather than by the outcome of self-interested deals; by the concept of equality, to the elimination of disparities in political participation among individuals and social groups; by the concept of universalism, to the mediation of different approaches to politics and the different conceptions of public good; and by the concept of citizenship, to the guarantee to citizen participation in and control over political processes and national institutions. [See Id., at pp. 98-99].

[101] See Ibid.

[102] The School originated in 1977 and grew through the influence of legal realism, American Historiography and neo-Marxism. See Mercuro and Medema, 1997, supra note 42, at pp. 157-165.

[103] See Id., at pp. 165-170.

[104] See Id., at pp. 157-158 and 170.

[105] See Mercuro and Medema, 1997, supra note 42, at pp. 115-118. The School has originated in the 1920s and 30s (See same citation).

[106] See Id., at pp. 101, 107, 112-115.

[107] See Ibid.

commodities but also a universe of human relations where the identity of the players, the starting points of the game, the strategic behaviour, the choice of the participants, the conflict of competing interests and the consequent problems of order matter.[108] Thirdly, it took society as a venture for mutual advantage and resolution of questions of identity and conflict of interests and argued that the ultimate purpose of legal, governmental and economic processes is the resolution of the problem of order in society.[109] It then, considered the legal system or government as means to enhance the scope of coordination and argued that the presence of government within the legal-economic processes is inevitable to resolve scarcity-based conflicts in society by defining the structure of rights and the system of compensation.[110] It did not believe in a singular solution to the legal-governmental-economic issues based on such value premise as efficiency or wealth maximization but in the multiplicity of potential systems and solutions.[111] It took the determination of the system of rights and powers as the most crucial matter to handle and believed that this is a matter of choosing the interests to be accommodated and the persons who should loose and gain.[112] It also believed that determination of the system is a function of the relative pressures of those who are able to secure the promotion of their interests through government.[113]

The School of Neo-Institutional Law and Economics shared the view with the School of Institutional Law and Economics that institutions (i.e. rules of the game) are important factors in the determination of economic structure and performance and that institutional structures, institutional changes and economic performances influence each other.[114] It, however, focused on three central concepts (namely property rights, contracting, and transaction costs) at both the micro and macro levels and saw that institutions also fail.[115] It focused on the rights, bargains and transaction costs of individuals at the micro level and on the definition of the property rights system of the society, the political bargain over the system, and the costs of that bargain at the macro level.[116] It believed that both the political, social and legal rules that define the property rights for economic units and establish the basis for production, exchange and distribution (at the institutional environment level) and the governance structures that shape the cooperation and competition between them (at the institutional arrangement level) are important.[117] It believed that individuals pursue their self-interest rationally subject to constraints (such as the definition of property rights, transaction and information costs and the limited computational capacity of the human mind) and that

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[108] See Ibid.
[109] See Ibid.
[110] See Ibid.
[111] See Ibid.
[112] See Id., at pp. 118-129.
[113] See Ibid.
[114] The School originated in the 1960s. See Mercuro and Medema, 1997, supra note 42, at p. 130; and Cseres, 2005, supra note 42, at pp. 63-65.
[115] See Ibid.
[116] See Ibid.
[117] See Ibid.

institutional structures should be designed by government at the macro level to define the opportunity sets, facilitate the political and economic exchange that maximizes gain and wealth, set the form of economic organization and the framework for individual institutional arrangements, and enhance the society's wealth-producing capacity.[118] It also argued that measures at the macro level are not sufficient to ensure wealth-enhancing exchange relationships and, hence, that economic performance should be left to the exercise of each individual's interest within the macro framework.[119] Its transaction costs theory also considered the market and the firm as alternative mechanisms of decision making both of which are affected by costs, believed that the choice between the two institutions depends on their relative efficiency, and argued that the creation of any market structure that aims at reducing transaction costs should not be disallowed by government under the guise of competition regulation.[120]

The moralists in political economy asked if government regulation of business, with its punitive implications, is a morally justifiable way to deal with whatever is regarded as undesirable in a society's economic affairs.[121] They distinguished between government regulation and government management (or administration) and argued that government regulation of publicly owned spheres for reason of public interest is within the scope of government management, hence morally justified, while government regulation of privately owned spheres is more than government management, therefore lacking moral justification.[122] They, however, believed in the fluidity of the public-private sphere distinction and argued that no area of human life can be seen as protected from government management or administration unless there is limit to the concept of public interest.[123] They then argued that regulation that purports to solve problems that can be solved by private action is morally wrong.[124]

The state-centred approaches in political economy moved from the economic imperative to the state and considered the government as an entity having its own goals and seeking to control the economy, not simply to correct market failures or distribute wealth and power, but to impose purposes of its own.[125] They, therefore, argued that government should exist not because of market failure but because of its own goals.

Recent thinkers have, however, suggested that a good policy solution to the tension between those who favour strong government regulation and those who advocate free market is not choosing between the two but understanding the interplay between private and public regulation and steering the mix between the two with a view to

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[118] See Ibid.
[119] See Ibid.
[120] See Cseres, 2005, supra note 42, at pp. 64-65.
[121] See Machan, 1984, supra note 7, at pp. 210 -212.
[122] See Ibid.
[123] See Id., at p. 212.
[124] See Id., at pp. 229-230.
[125] See Caporaso and Levine, 1993, supra note 50, at pp. 5, 181-196 & 220.

involving both government and citizens.[126] Hence, some have believed in the importance of distinguishing between the political and the economic realms but warned on the dangers of making one of the two dominant over the other.[127] Others have believed that a good policy is one that accepts the need for symbiosis between state regulation and self-regulation and promotes responsive regulation in which case the forms and degrees of regulation should be attuned to the differing structures, motivations and objectives of an industry by taking into account the extent to which the industry makes private regulation work.[128] They have defined responsiveness not as a prescription of the best way to regulate but as an attitude of following a strategy of regulation that should depend on the demands of context, culture and history.[129] They have believed that regulation should be flexible, purposive, participatory and negotiable as opposed to autonomous and repressive.[130] They have also endorsed the idea of promoting private market governance through enlightened delegations of regulatory functions to public interest groups, to unregulated competitors of the regulated firms, and to the regulated firms themselves or their associations.[131]

Ayres and Braithwaite have, therefore, proposed adoption of a strategy that i) involves both governmental regulators, public interest groups and self-regulators in the regulatory process; ii) promotes self-regulation by industry and cooperation between regulatory agencies and regulated industries; iii) makes the regulatory style neither punitive nor cooperative alone but a tit-for-tat that mixes punishment and persuasion as the means of securing regulatory objectives; iv) escalates intervention between self-regulation and government command and includes a strategy of enforced self-regulation; v) avoids industry-wide intervention and regulates through partial intervention, i.e. through regulation of an individual firm or a subset of firms in the industry; and vi) ensures accountability of regulatory discretion through openness in regulation, adherence to law and assurance of citizen participation.[132] They have, accordingly, recommended a regulatory system which should depend much on self-regulation, persuasion and laissez fair and less on command regulation, punishment and industry-wide intervention.[133]

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[126] See Fine, B., "Beyond the Developmental State: Towards a Political Economy of Development," in Lapavitsas C. and Noguchi M. (eds.), Beyond Market-Driven Development: Drawing on the Experience of Asia and Latin America (Routledge Taylor & Francis Group, London-New York, 2005).

[127] See Ibid.

[128] See Ayres and Braithwaite, 1992, supra note 13; and Gunningham and Grabosky, 1998, supra note 13.

[129] See Ibid.

[130] See Ibid.

[131] See Ibid.

[132] See Ayres and Braithwaite, 1992, supra note 13, at pp. 5-6, 19-53, 54-157.

[133] They recommend a regulatory strategy which uses self-regulation, enforced self-regulation, command regulation with discretionary punishment and command regulation with non-discretionary punishment in decreasing order; an enforcement strategy which uses license revocation, license suspension, criminal penalty, civil penalty, warning and persuasion in increasing order; and an industry intervention strategy which makes laissez fair, fringe firm

Gunningham and Grabosky have also argued that a pluralistic, flexible and imaginative approach that combines all policy instruments and regulatory actors, tailors the instruments and actors to particular goals and circumstances, and harnesses the resources outside the public sector for regulation is advisable as it reduces the regulatory burden on government, saves public resources to situations where government intervention or assistance is most required, and enhances the capacity of businesses to seek cost-effective improvements.[134] They have indicated that the optimality of regulatory mix can be assessed by using the criteria of flexibility, certainty, integrity, practicality, responsibility, transparency, communication, effectiveness, equity, community acceptance, community participation and innovation.[135]

1.5. The Theories of Government Regulation

Once recognized, the specific nature of government regulation has also been analysed through three dominant theories, namely the public interest theory, the capture theory and the economic theory.[136]

The public interest theory, which was dominant until the 1970s, argued that government regulation is a response to public demand for correction of inefficient and inequitable practices of the actors in an unregulated market.[137] It assumed that markets are always apt to failure if left unregulated and that government can act efficiently.[138] Its validity declined in the 1970s and thereafter due to arrival of several other theories on the economics of regulation and rise of criticism to the making of distinction between public and private interest theories.[139]

The capture theory, which was dominant in the 1970s and 80s, argued that regulated parties capture government regulation through time so that regulation serves their

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intervention, dominant firm intervention, oligopoly tournament and industry-wide intervention in decreasing order. See Ibid, at pp. 35, 39 and 154.

[134] See Gunningham and Grabosky, 1998, supra note 13.

[135] See Id., at pp. 25-31.

[136] See Kabir, 1990, supra note 5, at pp. 3-5; Thimm, 1999, supra note 2, at pp. 70-83; and Uche, C. U., ''The Theory of Regulation: A Review Article," in Journal of Financial Regulation and Compliance, Vol. 9, No. 1, 2001 (Henry Stewart Publications, 1358-1988), at pp. 68-70. The theories have originated in the United States and spread to Europe and then to the rest of the world. See P. Görant T. Hägg, "Theories on the Economics of Regulation: A Survey of the Literature from a European Perspective," in the European Journal of Law and Economics (Electronic Version), Vol. 4, 1997, at pp. 337-357.

[137] See Kabir, 1990, supra note 5, at p. 3; Uche, 2000, supra note 136, at p. 68; and Thimm, 1999, supra note 2, at pp. 70-73.

[138] See Ibid.

[139] See P. Görant T. Hägg, 1997, supra note 136, at pp. 337-357; and Michael Hantke-Domas, "The Public Interest Theory of Regulation: Non-Existence or Misinterpretation?" in the European Journal of Law and Economics (Electronic Version), Vol. 15, 2003.

interest instead of the public interest.[140] It argued that regulation is response to the demand of regulated parties who want to escape competition and obtain government protection of their interests.[141] It was based on observation that the implementation of regulation serves the interests of a sub-group of society instead of a claimed majority.[142]

The economic theory, which grew beginning the early 1970s, argued that government regulation is the result of the forces of demand and supply between politically effective economic interest groups and the government.[143] It argued that government regulation is nothing but supply of rules of behaviour to the economic interest groups in consideration of the support the politicians may get from the groups and that the demand for regulation comes from the groups that seek the economic benefits the government can provide through regulation.[144] It differed from the capture theory by arguing that the 'capture' of the regulator is not only by the regulated parties as it is also by interest groups other than the regulated parties and that the 'capture' of the regulator is not accidental but a result of conscious exercise of the political behaviour of people which is not different from their choice-making behaviour in the market.[145]

All the three theories have, however, also suffered from criticism. The public interest theory was criticized for basing regulatory action on the fluid concept of public interest, for failure to fully explain the way public demand is transferred into regulatory action and for lack of empirical evidence supporting the public interest hypothesis.[146] The capture theory was criticized for linking regulation to the interest of the regulated parties only and for lack of complete explanation of the mechanism by which the regulated parties succeed in influencing the regulator despite the presence of more empirical evidence to its hypothesis than to the public interest hypothesis.[147] The economic theory was criticized for assuming that interest groups are able to influence

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[140] See Kabir, 1990, supra note 5, at pp. 4; Uche, 2000, supra note 136, at p. 69; and Thimm, 1999, supra note 2, at pp. 74-76.
[141] See Ibid.
[142] It grew as theory due to shift of scholarship from the idea of market failure to consideration of the collective decision making process itself. See Ibid.
[143] It grew as a theory following George Stigler's thesis of this idea in 1971. See Kabir, 1990, supra note 5, at pp. 4-5; Thimm, 1999, supra note 2, at pp. 76-83; and Meier, K. J., The Political Economy of Regulation: the Case of Insurance (State University of New York Press, 1988), at pp. 18-32.
[144] Richard Posner and Sam Peltzman sharpened this theory in 1974 and 1976, respectively, by way of criticizing on the works of Stigler. Posner argued that regulation is result of coalition between the regulated industry and the customer groups where the organized exploits the unorganized and Peltzman argued that regulation is concerned with the transfer of wealth between producers and consumers where the producer group is most likely to influence regulation. See Meier, 1988, supra note 143, at pp. 23-25.
[145] See Kabir, 1990, supra note 5, at pp. 5.
[146] See Thimm, 1999, supra note 2, at pp. 71-73; and Michael Hantke-Domas, 2003, supra note 139, at pp. 165-190.
[147] See Thimm, 1999, supra note 2, at pp. 74-75.

regulatory policies directly and denying the truth that such ability depends on the design of the political process and the precise form of administrative organization in a country.[148] The critics to it have argued that regulatory policy is more than just competition between interest groups, that it results from a complex interaction between industry groups, consumer groups, regulatory bureaucrats and political elites who have their own interests and that the opportunities available for each group depends on the political environment.[149] The use of each of these theories should, therefore, be made within the more general theories on the relationship between legal, economic and political processes that are discussed in the preceding section.

2. The Design, Rationale and Constitutional Basis of Regulation in International Practice

2.1. The Design of Regulation

Economic coordination and allocation of resources can be done through administrative planning, the market mechanism, or both. The difference between the planned, market and mixed economies lies in the mix of the former two approaches though it is arguable in practice that all economies are mixed as the two approaches cannot disappear entirely. The point is that economic activities and decisions are guided largely by the totality of objectives of the public sector in planned economies; largely by the market mechanism, competition policy, regulation and instruments of fiscal, monetary and trade policy (that correct or supplement the market mechanism) in market economies; and by both public objectives and the market mechanism in mixed economies.

The governments in centrally planned economies dominate the economy through direct ownership of the bulk of the modern sectors of the economy and direct control of both the product and factor markets.[150] They run state monopolies in both production and

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[148] See Id., at pp. 82-83.

[149] See Meier, 1988, supra note 143, at pp. 18-32, 84-87, 107-108, 134-136, 137-166, 167-171.

[150] All the ex-socialist economies used to do this (See, for instance, Zonis M. and Semler D., The East European Opportunity: The Complete Business Guide and Source Book (John Wiley & Sons, Inc., New York [etc.], 1992), at pp. 13-388; and Pomfret, R., Constructing a Market Economy: Diverse Paths from Central Planning in Asia and Europe (Edward Elgar, Cheltenham-UK and Northampton-USA, 2002), at pp. 9-25, 57). Some countries also still favour central planning by their constitutions (See the 1992 constitution of Cuba, at articles 1, 5-7, 9, 10, 12, 14-27, 45, 47-50, 60, 64, 75 & 98; the 1971 constitution of Egypt as amended in l 980, at articles 4, 17, 23-39, 86, 122, 123 & 138; the 1980 constitution of Guyana as amended in 1996, at articles 1, 9-11, 13-22, 24-26, 32, 38-40, 142 & 213-215A; the 1945 constitution of Indonesia, at articles 33 & 34 of the constitution and article 28G of the Second Amendment; the constitution of North Korea, at articles 1, 5, 8, 19, 20, 21-38, 63, 70, 72, 84, 91, 117, 119, 122 & 134; and the 1973 constitution of Syria, at the preamble & articles 1-3, 13-27, 36, 46, 47, 50, 71-73, 85, 91-94, 115, 118, 119 & 126-128. I have accessed the constitutions of these countries through the Constitution Finder database of the T.C. Williams School of Law of the University of Richmond available at http://confinder.richmond.edu/.

distribution and couple this with marginal and stifled private enterprise.[151] They take direct ownership and supply as the main forms of state intervention in the economy.[152]

The governments in the developed market economies, on the contrary, rely on competition, government regulation and some form of government ownership as instruments to guide economic activity.[153] They rely on competition policy to prevent excessive use of economic power by offering choice to purchasers, exposing an individual's power to restraint by rivals' power, and motivating companies to become more efficient.[154] They use competition laws to prevent and control the development of market imperfections when competition fails.[155] They use them to increase efficiency and innovation, control the abuse of economic power, keep the competition process within legitimate bounds, protect consumers, and restrain anticompetitive governmental and non-governmental actions.[156] They often make the competition laws less comprehensive instruments than economic regulation so that they will aim at policing aspects of the market that restrain competition, including the abuse of dominant position, the making of horizontal and vertical anticompetitive agreements, the creation of anticompetitive mergers, the imposition of patent and intellectual property related restraints to competition, and the implementation of unilateral market discriminations.[157] They also make them rely on the principles of private ownership, rivalry and profit maximization so that their enforcement will not need constant supervision, oversight, or command and control as in the case of regulation. They rely on direct government ownership to provide public goods.[158] They use regulation as an intermediate scheme between the competition and government ownership approaches.[159] They, by this, substitute the decision in the market place by judgments of the regulators and usually prescribe positive commands (i.e. activities for the regulated business) unlike competition laws that are usually limited to negative commands (i.e. prohibitions of conduct).[160] They usually use the regulations to promote

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[151] See Ibid.
[152] See Ibid.
[153] See Pierce, R.J.J.R. and Gellhorn, E., Regulated Industries in A Nutshell (3rd Ed.) West Publishing Company, St. Paul, Minn., USA, 1994), at pp. 7, 14-18; Gellhorn, E. and Kovacic, W. E., Antitrust Law and Economics in A Nutshell (4th Ed. West Group, 2001), at pp. 42-90; Areeda, P. and Kaplow, L., Antitrust Analysis Problems, Texts and Cases (5th Ed. Aspen Law & Business, 1997), at pp. 3-38; Calvini, T. and Siegfried, J., Economic Analysis and Antitrust Law (2nd Ed., Little, Brown and Company, Boston and Toronto, 1988), at pp. 1-67; Hovenkamp, H., Economics and Federal Antitrust Law (Handbook Series Student Edition, West Publishing Co., St. Poul, Minn, 1985), at pp.1-82.
[154] See Ibid.
[155] See Ibid.
[156] See Ibid.
[157] See Ibid.
[158] The non-market nature of these goods often implies that the decision on their provision has to be made in the political process. See Pierce and Gellhorn, 1994, supra note 153, at pp. 16-17.
[159] See Id., at p. 7.
[160] See Ibid.

efficiency, non-discrimination, equality, service reliability, fair dealing, honesty, informed decision making and safety.[161]

The idea of having competition regimes started to take shape in Northern America and Europe in the 19th century in response to the demands of democratisation and industrialization.[162] Both continents recognized the potential benefits of competition and potential harms of unrestrained economic freedom and decided to have competition laws as early as the middle of that century.[163] Their decisions to enact competition laws and the targets were also frequently influenced by economic, legal and political forces.[164]

The competition regime in USA grew through six periods following the Senator John Sherman's proposal of antitrust bill to the Senate in 1888.[165] The first period (from 1888 to 1911) gave ground to free competition and freedom of contract through public debate.[166] The second period (from 1911 to 1933) resulted in trade associations and cooperative competition.[167] The third (New Deal) period (from 1933 to 1948) brought about an idea of equality with the central theme of commitment to economic enterprise free from oppressive private economic power.[168] The fourth period (from 1948 to 1967) resulted in economic expansion, persistent collision between liberalism and oligarchy and claim for pluralism (in opposition to Joseph Stalin's totalitarianism).[169] The fifth period (from 1968 to 1980) brought about deregulation in favour of efficiency, property rights and equality based on free competition.[170] The sixth period (from 1980 to 1992) brought about deregulation in favour of corporate freedom from government as well as control.[171] Free competition (as freedom from both government regulation and private

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[161] See Id., at p. 11.

[162] Canada and the United States were the first countries that introduced competition law (in 1889 and 1890, respectively) while many European countries introduced their competition laws in the 1950s (after World War II) (See Gerber, D.J., Law and Competition in Twentieth Century Europe: Protecting Prometheus (Oxford University Press, Oxford, 2001), at pp. 1, 6; and World Bank, World Development Report 2002 (Chapter 7: Competition), World Bank, Washington, D. C., 2002, at p. 139).

[163] See Gerber, 2001, supra, at pp. 6 & 11.

[164] See Id., at pp. 425-429.

[165] See Peritz, R. J. R., Competition Policy in America: History, Rhetoric, Law (Oxford University Press, 1996/2000), at pp. 5-8 & 9-299.

[166] The Sherman's Bill was enacted into law in 1890 and the courts debated on its enforcement in the years between 1890 and 1911. See Ibid.

[167] See Ibid.

[168] The early New Deal focused on political cooperation and equality of citizens - whether owners, workers or consumers. The later New Deal focused on economic competition and consumerism. See Ibid.

[169] See Ibid.

[170] This period started with government illegitimacy and ended with populist deregulation. See Ibid.

[171] See Ibid.

economic power) was, therefore, part of the persistent concern on liberty, equality, private property and freedom of contract in the US throughout the above periods.[172]

The competition policy and its limits were also articulated in the country in two kinds of rhetoric.[173] The first rhetoric was concerned with commitment to individual liberty, free competition (from government power), freedom of contract, wealth maximization, private property right and freedom of speech.[174] The second was concerned with commitment to equality, majority interest, free competition (from excessive economic power), fair competition, consumer protection and entrepreneurship.[175] The first rhetoric prevailed from the Sherman Act debates up to the early New Deal and the second after the later New Deal.[176] Both kinds of rhetoric resulted in three logics on the relationship between the government and the private economic spheres.[177] The first logic considered the two as distinct spheres whose separation was to be guarded as the basis of a free society.[178] The second logic combined them into one by forcing one of the two to lose its distinctiveness in favour of the other.[179] The third logic recognized the distinctiveness of the two and saw some partnership between them.[180]

The making of competition law was imbedded in Europe in the movement towards liberalism and political freedom in the 19th century.[181] The continent saw concentration of political power in the ruling elites and extensive regulation of economic conduct by absolutist governments and organizations like guilds to preserve the wealth of the state or economic prerogative of the ruling elites until that century.[182] It conceived competition and its regime as institutions that can reduce class difference, check political and economic power (as part of the idea of rule of law), diminish poverty and create wealth as of the second half of that century.[183] Hence, Austria saw the first competition law proposal made to protect the competition process from politics and ideology in the 1890s and continued to discuss on them until they were blocked by political events as the century turned.[184] Germany took over the discussion started in Austria and enacted the first European competition law in 1923 in response to the post

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[172] See Gerber, 2001, supra note 162, at p. 3.
[173] See Id., at p. 301.
[174] See Ibid.
[175] See Ibid.
[176] See Ibid.
[177] See Id., at p. 302.
[178] This is the classical approach. See Ibid.
[179] This is the case with the arguments of the New Deal era which made the private economic sphere disappear in favour of the political (the government) sphere and the arguments of the Chicago School of Economics and the Public Choice Theory which made the political (the government) sphere disappear in favour of the private economic sphere. See Ibid.
[180] This is true of the late 20th century. See Ibid.
[181] See Gerber, 2001, supra note 162, at pp. 16-42.
[182] See Ibid.
[183] See Ibid.
[184] See Id., at pp. 6, 7, 43-114.

war inflation crisis.[185] The system of competition law was important in the economic and legal life in Germany during the 1920s, but was abolished in the 1930s.[186] The idea of having competition law was, then, discussed and followed by a number of German like competition legislation in many of the European states in the 1930s.[187] The movement was interrupted due to the Second World War. [188]

Many of the European governments, however, also used competition law as means of encouraging economic revival, strengthening the fragile freedoms and achieving political acceptance after the Second World War though they also had heavy regulatory frameworks that forced their competition laws to possess only marginal place in their general economic systems.[189] Germany developed an 'Ordoliberal' vision of society (a vision of society between complete liberalism and socialism) during the post war period and claimed that economic freedom and competition are sources not only of prosperity but also of political freedom, that they should form the "economic constitution" of society and that the law should protect and implement them by checking both political and private economic power.[190] It, then, used the competition regime as 'pillar' of a 'social market economy' during the post war period when its neo-liberal reformers succeeded to enact a competition law in 1957.[191] The EEC made competition a key instrument of economic integration when the European Economic Community (conceived through the European Coal and Steel Community Treaty of Paris of 1951) was created by the European Economic Community Treaty of Rome of 1957 and the member states of the EEC were required to align their regimes with the competition and freedom principles of the EEC Treaty.[192] The EU strengthened the economic and political importance of the competition regime through the principle of subsidiarity (of the Maastricht Treaty of February 1992) and the competition modernization reforms of 2004.[193] The EU competition regime also influenced the legislative developments in the

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[185] See Id., at pp. 7, 115-141.
[186] See Id., at pp. 7, 141-152.
[187] See Id., at pp. 7, 153-164.
[188] See Ibid.
[189] See Id., at pp. 7, 153-164, and 165-231.
[190] This is the influence of the Freiburg School discussed above. See Gerber, 2001, supra note 162, at pp. 7-8, 232-265; and Cseres, 2005, supra note 42, at pp. 83-88.
[191] See Gerber, 2001, supra note 162, at pp. 8 and 266-391.
[192] See Gerber, 2001, supra note 162, at pp. 8, 392-416; and Cseres, 2005, supra note 42, at pp. 92-96. The Member States of the EEC either introduced competition law for the first time (as was the case in Italy) or revised and strengthened their existing laws to align them with the EEC Model (as was the case in France and the Netherlands). The Ordoliberalism idea of the Freiburg School has served as the basis for both the EEC Treaty and the subsequent reforms until it gave some way to the competition theory of the Harvard School [See Cseres, 2005, supra note 42, at pp. 96-109].
[193] The Maastricht Treaty was agreed on the 11th of December 1991 and signed on the 7th of February 1992. It served as means of shifting from market (economic) integration to policy integration. The EU also moved to modernize the institutional and procedural matters of its competition regime in 2003 and materialized it by decentralizing the responsibility of competition enforcement to its Member States as of 01 May 2004. See EC, Council Regulation No 1/2003 of 16 December 2002 on implementation of the rules on competition laid down in

European Economic Area (EEA).[194] The European Economic Area Treaty (signed between the 15 EC Member States and Norway, Iceland and Liechtenstein on the 21st of October 1991 and entered into force in 1994) included rules on competition which closely followed the European Community Treaty of Rome and the European Community Merger Regulation.[195] The two regimes also paralleled institution wise[196]. The member States of both the EU and the EEA have, accordingly, adopted competition laws modelled upon the Treaty of Rome.[197]

Japan introduced its Unfair Competition Act in 1934 to comply with the 1900 unfair trade practices clause of the Paris Convention on Industrial Property of 1883; its Anti-monopoly Law (and Fair Trade Commission) in 1947 to foster entrepreneurship, competition, the protection of consumers and the democratic development of its economy along the American model; and its Free Gifts and Trade Misrepresentations Act in 1962 to correct local problems and foster the protection of consumers and fair competition.[198]

Most other countries of the world (including the transition and emerging market economies of Eastern Europe, Asia, Latin America and Africa) also introduced competition laws (while the US and many of the West European countries strengthened their existing competition regimes) following the privatizations, liberalizations and

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Articles 81 and 82 of the Treaty, in the Official Journal of the European Communities, (No. L1/1, 4.1.2003); EC, Council Regulation No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), in the Official Journal of the European Communities, (No. L 24, 29.1.2004); Celine Gauer et. al., Regulation 1/2003 and the Modernization Package fully applicable since 1 May 2004, in the EC Competition Policy Newsletter, Number 2, Summer 2004; EC, Competition (Antitrust, Mergers, Cartels … Overview and Legislation), retrieved in Nov. 2005 from: http://ec.europa.eu/comm/competition/index_en.html); and Cseres, 2005, supra note 42, at pp. 96-109.

[194] See Richard Whish, Competition Law (4th ed., Butterworths, Reed Elsevier (UK) Ltd, 2001), at pp. 52-53.

[195] See Ibid.

[196] See Id., at pp. 52-53 for brief comparison.

[197] The Treaty has influenced the Greek Act of 1977, the French Ordinance of 1986, the Austrian Act of 1988 (as amended), the Spanish law altered in 1989, the Italian Protection of Competition and the Market Act of 1990, the Belgian Protection of Economic Competition Act of 1991, the Irish Competition Act of 1991, the Finnish Competition Act of 1992, the Norwegian Competition Act of 1993, the Portuguese Decree of 1993, the Icelandic Act of 1993 (amended in 2000), the Swedish Competition Act of 1993, the Swiss Competition Act of 1996, the Dutch Competition Act of 1997, the Danish Competition Act of 1997 (and its new legislation of 2000), the UK Competition act of 1998, the 1999 changes to the German Merger Control and Competition Law, and the reforms on the 1970 Law of Luxembourg. See Richard Whish, 2001, supra note 194, at pp. 53-55; and EC, 2005.

[198] It also reformed the laws through time to make them suitable to local conditions. See Heath, C., The System of Unfair Competition Prevention in Japan (Kluwer Law International, the Hague /London/Boston, 2001), at pp. 3-289; and World Bank, 2002, supra note 162, at p. 139.

technology changes of the 1990s.[199] Many of them came to a growing neo-liberalist consensus that markets deliver better outcomes than state plan and management of the economy and recognized the importance of effective competition policy and law to shape business culture in the period.[200] They started to apply their competition regimes in almost all economic activities including those that were once regarded as natural monopolies or the preserves of the state (such as telecommunications, energy, transport, broadcasting, and postal services) as of the same period.[201] Hence, the majority of them placed the promotion of competition at the centre of their regulatory reforms and created competition authorities or made their regulatory agencies in charge of promoting competition besides their regulatory functions.[202]

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[199] See Richard Whish, 2001, supra note 194, at pp. 1-2; OECD, Regulatory Reform: Stock-Taking of Experience with Reviews of Competition law and Policy in OECD Countries - and the Relevance of such Experience for Developing Countries, (Note by the Secretariat to the Global Forum of the OECD, Paris, 12-13 February 2004), retrieved on December 20 2006 from: http://www.oecd.org/dataoecd/22/32/25501344.pdf; and Amann, E. (ed.), Regulating Development: Evidence from Africa and Latin America (The CRC Series on Competition, Regulation and Development, Edward Elgar, Cheltenham-UK and Northampton-USA, 2006), at pp. 1-301.

[200] See Richard Whish, 2001, supra note 194, at p. 1; World Bank, 2002, supra note 162, at p. 139; OECD, 2004, supra note 199, at pp. 2-14; World Bank and OECD, A Framework for the Design and Implementation of Competition Law and Policy (Washington and Paris, 1999), at p. v; Bahaa Ali El Dean and Mahmoud Mohieldin, "On the Formulation and Enforcement of Competition Law in Emerging Economies: The Case of Egypt," Working Paper 60, the Egyptian Center for Economic Studies, Cairo, September 2001, retrieved in March 2005 from: http://www.eces.org.eg/Downloads/ECESWP60.pdf, at p. 22; and Ajit Singh, "Competition and Competition Policy in Emerging Markets: International and Developmental Dimensions," G-24 Discussion Paper 18, UNCTAD, New York, September 2002, retrieved in March 2005 from: http://www.unctad.org/en/docs/gdsmdpbg2418_en.pdf, at p. 6. The Neo-liberalist ideology was initiated by the Mont Pellerin Society, developed by Milton Friedman and Friedrich von Hayek, and implemented to some extent by Ronald Reagan and Margaret Thatcher [See Kuczynski P-P. and Williamson J., (eds.), After the Washington Consensus: Restarting Growth and Reform in Latin America (Institute for International Economics, Washington DC, 2003), at p. 326]. The reform process in Latin America and most developing countries was also enhanced by the Washington Consensus of 1989 [See Kuczynski and Williamson, supra, with focus on pp. 1-47, 265-331; and Fine, 2005, supra note 126, at. pp. 17-28].

[201] See World Bank and OECD, 1999, supra note 200, at p. v; Bahaa Ali El Dean and Mahmoud Mohieldin, 2001, supra note 200, at p. 22; Ajit Singh, 2002, supra note 200, at p. 6; World Bank, 2002, supra note 162, at p. 139; OECD, 2004, supra note 199, at pp. 2-14; and Amann, 2006, supra note 199, at pp. 1-301.

[202] See Ajit Singh, 2002, supra note 200; OECD, 2004, supra note 199; David Levi-Faur, "The Global Diffusion of Regulatory Capitalism," in David Levi-Faur and Jacint Jordana (eds.), The Rise of Regulatory Capitalism: The Global Diffusion of a New Order, in the Annals of the American Academy of Political and Social Science, Vol. 598, March 2005 (Retrieved in March 2005 from: http://www.fu-berlin.de/ffu/Promo-%20Regulatory%20Capitalism.pdf; and http://poli.haifa.ac.il/~levi/la1.pdf); and Hoekman, B. and Mavroidis, P. C., "Economic Development, Competition Policy and the WTO," Policy Research Working Paper 2917, World Bank, Washington, D.C., October 2002. (See also the OECD country reports on competition law developments from the OECD website).

The development of competition regimes did not, however, result in elimination of regulation. The two existed in the countries in varying mixes as a matter of both policy and the level of market development.[203] The ideology of neo-liberalism encouraged the creation of free markets while the processes of privatisation and deregulation also resulted in the introduction and spread of new forms of regulation and regulators along with the development of the competition regimes.[204] The changes resulted in the introduction of new division of labour between the state and society, increase of delegation of power, and adoption of new regulatory solutions and institutions that are diffused horizontally (i.e. from country to country and sector to sector), top-down (i.e. from the global or regional to the local) and bottom-up (i.e. from the local to the international or regional) though the countries adopted specific solutions that were not necessarily one and the same.[205] The idea of government through autonomous regulatory agencies, which existed originally as a central feature of the American administrative state, also got ground in Western Europe as governments changed and utilities were privatised and liberalized in the twentieth century.[206] The reforms in the two continents then influenced the regulatory solutions in many of the other countries of the globe.[207]

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[203] See OECD, 2004, supra note 199; Amann, 2006, supra note 199; David Levi-Faur and Jacint Jordana, "The Making of a New Regulatory Order," in David Levi-Faur and Jacint Jordana (eds.), supra note 202; Geradin D. et. al., Regulation through Agencies in the EU: A New Paradigm of European Governance (Edward Elgar, Cheltenham-UK and Northampton-USA, 2005); and Monica Prasad, The Politics of Free Markets: The Rise of Neo-liberal Economic Policies in Britain, France, Germany, and the United States (The University of Chicago Press, Chicago (etc.), 2006).

[204] See Ibid.

[205] They caused shift towards a system where the state steers and businesses take the responsibilities of giving service and innovation. They brought about a second level (indirect representative) democracy where citizens elect political representatives and the political representatives delegate authority to expert regulators which enjoy autonomy to formulate and administer policies. [See David Levi-Faur, 2005, supra note 202; Geradin et. al., 2005, supra note 203, at pp. 3-273; Monica Prasad, 2006, supra note 203; Gilardi, F., "The Institutional Foundations of Regulatory Capitalism: The Diffusion of Independent Regulatory Agencies in Western Europe," in David Levi-Faur and Jacint Jordana (eds.), supra note 202; Elkins, Z. and Simmons, B., "On Waves Clusters, and Diffusion: A Conceptual Framework," in David Levi-Faur and Jacint Jordana (eds.), supra note 202; Lazer, D., "Regulatory Capitalism as a Networked Order: The International System as an Informational Network," in David Levi-Faur and Jacint Jordana (eds.), supra note 202; Meseguer C., "Policy Learning, Policy Diffusion, and the Making of a New Order," in David Levi-Faur and Jacint Jordana (eds.), supra note 202; and Jacint Jordana and David Levi-Faur, "The Diffusion of Regulatory Capitalism in Latin America: Sectoral and National Channels in the Making of a New Order," in David Levi-Faur and Jacint Jordana (eds.), supra note 202].

[206] See Gilardi, 2005, supra note 205; and Geradin et. al., 2005, supra note 203, at pp. 3-273.

[207] This happened through information networking, policy learning, international agreements, desire to attract international capital, and need to make policy regimes compatible between trading partners. See David Levi-Faur, 2005, supra note 202; David Levi-Faur and Jacint Jordana, 2005, supra note 203; Jacint Jordana and David Levi-Faur, 2005, supra note 205;

The transition and emerging market economies of Eastern Europe, Asia, Latin America and Africa also mixed the techniques of economic management used in the free market and planned economies because of the dynamics of their transitions.[208] Their governments claimed to play active roles in the effort to bring about economic development and relied on different degrees of government ownership, regulation and competition.[209] They promised to reform their regulatory systems and to promote competition through time.[210] Their competition regimes, however, played marginal roles, in practice and their governments had to intervene to regulate more than the governments of the developed market economies because of little understanding of the uses, dynamics, costs and consequences of the competition regimes and resistance on the part of both the governments, the business community and the public.[211] The regulatory systems and competition laws adopted in many of these economies were also influenced by the systems of their trading partners though the outcomes did not equalize with the systems in the latter.[212] Hence, the solutions shaped in Northern

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Elkins and Simmons, 2005, supra note 205; Lazer, 2005, supra note 205; Meseguer, 2005, supra note 205; Gilardi, 2005, supra note 205; Geradin et. al., 2005, supra note 203, at pp. 3-273; and Monica Prasad, 2006, supra note 203.

[208] See Jhingan, 2002, supra note 43, at pp. 414-425; Pomfret, 2002, supra note 150, at pp. 1-8, 30-133; Amann, 2006, supra note 199; McMahon G. (ed.), Lessons in Economic Policy for Eastern Europe From Latin America (Macmillan Press Ltd., London and St. Martin's Press, Inc., New York, 1996); Akio Hosono and Neantro Saavendra-Rivano (eds.), Development Strategies in East Asia and Latin America (Macmillan Press Ltd., London and St. Martin's Press, Inc., New York - in association with UNCTAD, 1998), at pp. 1-65; Naím M. and Tulchin J. S., Competition Policy, Deregulation and Modernization in Latin America (Lynne Reinner Publishers, Inc., USA and UK, 1999); González J. A. et. al. (eds.), Latin American Macroeconomic Reform: The Second Stage (The University of Chicago Press, Chicago and London, 2003); Gleason, G., Markets and Politics in Central Asia: Structural Reform and Political Change (Routledge Taylor & Francis Group, London-New York, 2003); Schneider, B. R., Business Politics and the State in Twentieth-Century Latin America (Cambridge University Press, Cambridge, UK and others, 2004); and Boyd, R., et. al. (eds.), Political Conflict and Development in East Asia and Latin America (Routledge Taylor & Francis Group, London-New York, 2006).

[209] See Ibid.

[210] See Gerber, 2001, supra note 162, at p. 5; World Bank and OECD, 1999, supra note 200, at p. v; World Bank, 2002, supra note 162, at p. 139; OECD, 2004, supra note 199, at pp. 2-14; Bahaa Ali El Dean and Mahmoud Mohieldin, 2001, supra note 200, at p. 22; Ajit Singh, 2002, supra note 200, at p. 6; Boyd, et. al., 2006, supra note 208; Amann, 2006, supra note 199; and Pradeep, S. M., 2002/2003, "Competition Policy in Developing Countries: An Asia-Pacific Perspective," Bulletin on Asia-Pacific Perspectives 2002/03, United Nations Economic Commission for Asia and the Pacific (UNESCAP), Bangkok, 2002, retrieved in May 2005 from: http://www.unescap.org/pdd/publications/bulletin2002/ch7.pdf, at pp. 80 & 86.

[211] See Gerber, 2001, supra note 162, at p. 5; Pradeep, 2002/2003, supra note 210, at pp. 80 & 86; Schneider, 2004, supra note 208; Amann, 2006, supra note 199; Boyd, et. al., 2006, supra note 208; and Manzetti L. (ed.), Regulatory Policy in Latin America: Post-Privatisation Realities (North-South Center Press, University of Miami, 2000), at pp. 83-101 and 257-275.

[212] See David Levi-Faur and Jacint Jordana, 2005, supra note 203; Jacint Jordana and David Levi-Faur, 2005, supra note 205; Gilardi, 2005, supra note 205; Bahaa Ali El Dean and

America influenced the system in Latin America and those developed by the EU regime influenced the developments in Asia and the countries of Central and Eastern Europe.[213] The EU system also influenced the systems in the countries of the Mediterranean cost from Algeria to Turkey due to movement towards a "Euro-Mediterranean Economic Area" (which was intended to make such countries member to a Euro-Mediterranean (Association) Agreement).[214]

The general design of government intervention in many of the economies is also explained in terms of three competing approaches on the economic roles of government, namely the market-friendly, the developmental state and the market-enhancing approaches.[215] The market-friendly and the developmental state approaches consider markets and the government as rival institutions competing for controlling and coordinating the economy.[216] The market-friendly approach considers direct government intervention in specific industries as harmful or distortive of the allocation of resources.[217] It considers that most economic coordination can be achieved through the market mechanism and private sector organizations.[218] It believes that the role of government should be little more than pursuing macroeconomic stability to provide proper incentives for saving, investment and human capital accumulation and recognizes only government actions that facilitate the development and efficiency of markets such as provision of legal infrastructure for market transactions and goods subject to extreme market failure.[219] The developmental state approach believes that the market failures associated with the problems of coordinating resource mobilization, allocating investment and promoting technological catch-up at the developmental stage level are so pervasive that state intervention is necessary to remedy the problem.[220] It,

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Mahmoud Mohieldin, 2001, supra note 200, at pp. 8, 15-21; and Richard Whish, 2001, supra note 194, at p. 55.

[213] See Ibid.

[214] See Richard Whish, 2001, supra note 194, at p. 55; and Bahaa Ali El Dean and Mahmoud Mohieldin, 2001, supra note 200, at pp. 21-27.

[215] See Fine, 2005, supra note 126, at pp. 17-28; Masahiko Aoki et al. (eds.), The Role of Government in East Asian Economic Development: Comparative Institutional Analysis (The IBRD/World Bank, Clarendon Press, Oxford, 1997), at pp. xv – xvii, 1-35; Jaeho Yeom, "Economic Reform and Government-Business Relations in Korea: Towards an Institutional Approach," in Akio Hosono and Neantro Saavendra-Rivano (eds.), 1998, supra note 208, at pp. 139-143; Noguchi, M., "Introduction: Globalism and Developmentalism," in Lapavitsas and Noguchi (eds.), 2005, supra note 126, at pp. 1-12; Noguchi, M., "Can Asia Find its Own Way of Development? Corporate Governance, System Conflict and Financial Crisis," in Lapavitsas and Noguchi (eds.), 2005, supra note 126, at pp. 34-46; and Amann E. and Baer W., "From the Developmental to the Regulatory State: the Transformation of the Government's impact on the Brazilian Economy," in Amann, E. (ed.), 2006, supra note 199, at pp. 101-113.

[216] See Ibid.

[217] See Masahiko Aoki et. al., 1997, supra note 215, at pp. xv – xvii, & 1; and Jaeho Yeom, 1998, supra note 215, at pp. 141.

[218] See Ibid.

[219] See Ibid.

[220] See Masahiko Aoki et. al., 1997, supra note 215, at pp. xv – xvii, 1-35; Jaeho Yeom, 1998, supra note 215, at pp. 142; Fine, 2005, supra note 126, at pp. 17-28; Amann and Baer, 2006,

accordingly, believes that the government should govern the market.[221] The market-enhancing approach considers the market and the government not as mutually exclusive substitutes but as non-rivals that complement each other.[222] It recognizes both the comparative advantages of the private sector institutions over government, by focusing on their ability to provide incentives and to process information, and the limitations of the private sector institutions to coordinate themselves and to solve all market imperfections.[223] It, accordingly, recognizes the usefulness of government policy to improve private sector capacity, to solve coordination problems and to overcome market imperfections.[224] It considers government not as neutral arbiter exogenously attached to the economic system to correct the failures of private coordination but as an endogenous (integral) element of the system with the same informational and incentive constraints as the other economic agents in the system.[225] It also believes that a significant fraction of economic activity is coordinated neither by the market itself nor within a government bureaucracy but by decentralized private sector firms and intermediaries and that the role of government should be to promote, complement and coordinate the activities of these institutions.[226] It, therefore, takes government as promoter of private-sector development and coordination.[227] Hence, all the three approaches consider the market as the initial basis for economic organization and recognize that markets alone are imperfect.[228] They, however, differ in the mechanism for solving the market imperfections. The market-friendly approach believes that most market imperfections can be solved by private sector institutions.[229] It believes that coordination problems should be resolved by market-based institutions; takes markets and firms as the primary means of resolving coordination problems; and advocates that the role of government should be limited to the framing of competition and the provision of public goods.[230] The developmental state approach considers government intervention as a primary solution.[231] It believes that the government has better information and judgment than the private sector and that many important coordination problems should be resolved by it.[232] It, unlike the market-friendly approach which

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supra note 215, at pp. 101-113; and Silva P., "Government-Business Relations and Economic Performance in South Korea and Chile: a Political Perspective," in Boyd, et. al., 2006, supra note 208, at pp. 74-117.

[221] See Ibid.

[222] See Masahiko Aoki et. al., 1997, supra note 215, at pp. xv – xvii, 1-35; Jaeho Yeom, 1998, supra note 215, at pp. 139-143; Fine, 2005, supra note 126, at pp. 17-28; Noguchi, M., "Introduction: Globalism and Developmentalism", supra note 215, at pp. 1-12; and Noguchi, M., "Can Asia Find its Own Way of Development? ...", supra note 215,, at pp. 34-46.

[223] See Ibid.

[224] See Ibid.

[225] See Ibid.

[226] See Ibid.

[227] See Ibid.

[228] See Ibid.

[229] See Ibid.

[230] See Ibid.

[231] See Ibid.

[232] See Ibid.

recommends minimum government action to correct market failure, believes that market failures are so pervasive that they call for maximum intervention of the government.[233] The market-enhancing approach emphasizes on the use of government policy to promote private sector coordination.[234] It believes that government should not be responsible to solve coordination problems by substituting private order but to complement and foster the latter such as by facilitating the development of private sector institutions that can overcome the coordination failure.[235] It believes in the ability of the private sector to coordinate a large fraction of economic activity (whether across markets, within firms, by using intermediaries, or jointly with the government) and recognizes the potential for the government to facilitate the development of this ability.[236]

Hence, the Western European and Northern American governments lived as mercantilist totalitarian governments (exhibiting features of the developmental state approach) until both continents recognized the potential economic benefits of democratisation and competition in the 18th and 19th centuries.[237] They were transformed into market-friendly governments as their markets grew beginning the 19th century.[238] The Latin American states followed state-led industrialization and import substitution policies in accordance with the developmental state approach in the period between World War II and the late 1970s.[239] Most of them rushed into privatisation, free trade and financial liberalization as of the late 1970s because of weak institutional expansion of the developmental state approach and criticism of the approach for causing the debt crisis and hyperinflation of the 1970s.[240] They strived towards building regulatory capitalism along the line of the market-friendly approach following crisis of the developmental state approach and the advent of economic liberalism and democratic governance in the post 1970s.[241] They established new regulatory agencies

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[233] See Ibid.
[234] See Ibid.
[235] See Ibid.
[236] See Ibid.
[237] See Gleason, 2003, supra note 208, at pp. 9-10; Gerber, 2001, supra note 162, at pp. 1, 6-8, 11, 232-265; World Bank, 2002, supra note 162, at p. 139; and Peritz, 1996/2000, supra note 165, at pp. 5-8 & 9-299.
[238] See Ibid.
[239] See Jacint Jordana and David Levi-Faur, 2005, supra note 205; Schneider, 2004, supra note 208, at pp. 3-261; Boyd, et. al., 2006, supra note 208, at pp. 1-265; Amann, 2006, supra note 199, at pp. 101-176; Akio Hosono and Neantro Saavendra-Rivano (eds.), 1998, supra note 208, at pp. 1-14, 53-65, 69-86, 88-103, 106-120 and 122-136.
[240] See Ibid.
[241] See Ibid. [See Akio Hosono and Neantro Saavendra-Rivano, 1998, supra note 208; Schneider, 2004, supra note 208, at pp. 3-261; Boyd, et. al., 2006, supra note 208, at pp. 1-265; and Lapavitsas and Noguchi (eds.), 2005, supra note 126) for contrast between the Latin American and Asian experiences; Amann, 2006, supra note 199, at pp. 1-301 for contrast between the Latin American and African experiences; and Manzetti, 2000, supra note 211, at pp. 1-275 and Amann, 2006, supra note 199, at pp. 101-176 for the post-privatisation developments in Latin America].

and implemented reforms through diffusion of practices.[242] The socialist governments of Asia, Europe and the rest of the world took the developmental state approach along the lines of Marxism until the 1990s.[243] They, following the 1917 Revolution of Russia, nationalised their market institutions in favour of the state enterprise and made their governments responsible for all types of economic activity until that decade.[244] They were influenced gradually by the Western approach of market-friendly state following the reforms of the late 1980s and 1990s.[245] The USSR and its Republics allowed the taking of private economic initiative and reformed the economic roles of their governments by shifting from the Soviet corporate form (i.e. the state enterprise) to new commercial organizations in which the state retained ownership and managerial interests (i.e. the joint stock societies) as of the late 1980s.[246] China re-shaped the economic roles of its government within a blend of socialism and free market.[247] It

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[242] The idea of governance through autonomous regulatory agencies had historical roots in the region as early as the 1920s. But, the rise of such institutions was slow and limited to the financial sector in the 1980s while it was spectacular after 1992. Only 43 regulatory agencies existed in the region before 1979 while their number grew to more than 138 in the post 2002 period. [See Jacint Jordana and David Levi-Faur, 2005, supra note 205].

[243] See Pomfret, 2002, supra note 150, at pp. 2-3, 9-26; and Lucas, S. and Maltsev, Y., "The Development of Corporate Law in the Former Soviet Republics," International and Comparative Law Quarterly, Vol. 45, April 1996.

[244] Pre-revolution USSR knew private sector institutions in form of simple partnerships and joint stock societies. It abolished these institutions in 1918 following the 1917 Revolution and recognized only joint activity through the state enterprise (with the idea of 'operative management') in the period between 1918 and 1986. It recognized state enterprise managerial freedom in the 1960s due to 'economic law' movements. It launched its Perestroika in the second half of the 1980s. [See Lucas and Maltsev, 1996, supra note 243; and Pomfret, 2002, supra note 150, at pp. 2-3, 9-26].

[245] See Lucas and Maltsev, 1996, supra note 243, at pp. 386-388; Gleason, 2003, supra note 208, at pp. 1-149; and Pomfret, 2002, supra note 150, at pp. 1-8, 30-132.

[246] The initial USSR reforms of Perestroika marked recognition of individual labour and private economic activity through juridical persons relatively free from state control by adoption of the law of individual labour activity of 1986, the law of cooperatives of 1988 and the leased enterprise system that replaced the cooperative system in 1989. The full Perestroika, launched in 1990, marked full commitment to the end of the command economy by adoption of all union laws on ownership, enterprise and joint stock societies that i) recognized labour income; ii) replaced the communist concept of 'personal ownership' by the concept of 'ownership' by citizens; iii) introduced the concept of 'collective ownership' through 'joint stock societies'; and iv) introduced the use of individual/family/ and collective enterprises along with the 'joint stock societies'. The 1991 reforms allowed the creation of 'small enterprises' and undertaking of 'entrepreneurial activity'. The republics followed the all union reforms of 1990 and 1991 by adopting laws that allowed private economic activity in 1990 and 1991. The state enterprises continued with the concept of '(full) economic jurisdiction' until they were privatized into joint stock societies (that allowed state ownership and management participation). [See Lucas and Maltsev, 1996, supra note 243].

[247] See Pomfret, 2002, supra note 150, at pp. 54-57; ONG, K.T.W., and Baxter, C.R., "A Comparative Study of the Fundamental Elements of Chinese and English Company Law," International and Comparative Law Quarterly, Vol. 48, January 1999, at pp. 91-92; and

changed its system of privately owned companies into communist party-led state owned companies when it adopted the Marxist ideology in 1949 and followed a planned economic system in the 1950s, 60s and 70s.[248] It then shifted its emphasis from class struggle under traditional Marxism to struggle for economic development under 'open door policy' in 1978 and reintroduced the system of private business organization through enactment of a Joint Venture law in 1979, separate pieces of legislation for business entities between 1979 and 1994, and a National Corporation Law of China in July 1994.[249] It, through the Corporation Law of 1994, opted to adopt the business organizational structure of Western capitalism (mainly of the UK type) in a political and economic regime of Socialist-Market economy, to remove the state from direct management of business operations (though it continued to retain majority ownership in the largest enterprises), to restructure the organization and management of state-owned enterprises, to promote the development of small private enterprises and thereby to promote efficiency and productivity through competition.[250] It endorsed the Socialist-Market philosophy through amendment of its 1982 constitution in 1993, 1999 and 2004.[251] It, under the Socialist-Market philosophy and the Corporation Law of 1994, considered the private sector not as substitute for state industry but as necessary supplement to it and necessary evil to regulate closely.[252] The Socialist Republic of Vietnam followed the approach of China when it adopted its 1992 constitution.[253] Eastern Europe started to reject the system of central planning during the second half of 1989.[254] Both these and the other socialist countries around the world intensified their reforms towards the market friendly approach of the West in the 1990s and thereafter.[255] The governments of Eastern Asia that did not endorse the socialism (including Japan) focused on facilitation of private sector coordination along lines that look like the market enhancing approach.[256] Their economic developments were brought about through a shared growth process in which both the private (rural and urban) sectors of the economy and the administrative bureaus of the governments were coordinated, the latter acting as quasi-agents of private interests by absorbing and representing them in bureaucratic processes.[257]

Marukawa, T., "Evolutionary Privatisation in China," in Lapavitsas and Noguchi (eds.), 2005, supra note 126, at pp. 136-148.

[248] See Ibid.

[249] See ONG and Baxter, 1999, supra note 247, at pp. 92-93, 98.

[250] See Id., at pp. 93, 95, 97-99.

[251] See at articles 1, 3, 5-28, 42, 44, 45, 85, 86 & 89 of the constitution as amended.

[252] See ONG and Baxter, 1999, supra note 247, at pp. 97 & 102.

[253] See at articles 1, 2, 6, 15-29, 50, 57, 58, 61, 62, 67, 83, 84, 101, 103, 109, 110, 112, 114 & 116 of the constitution; and Pomfret, 2002, supra note 150, at p. 3-4.

[254] See Pomfret, 2002, supra note 150, at p. 26.

[255] See Lucas and Maltsev, 1996, supra note 243; and Pomfret, 2002, supra note 150, at pp. 30-132.

[256] See Masahiko Aoki et. al., 1997, supra note 215, at pp. 24-30, 41-131, 208-372; Akio Hosono and Neantro Saavendra-Rivano (eds.), 1998, supra note 208, at pp. 1-14, 17-34, 53-65, 144-154 & 157-173; and Lapavitsas and Noguchi (eds.), 2005, supra note 126, at pp. 1-12, 17-28, 34-46, 63-83 & 117-133.

[257] See Ibid.

The African governments intervened in their economies significantly in the 1960s because of perception that the post-independence African state had the responsibility to liberate the population from poverty, disease and illiteracy.[258] Many, however, questioned the sheer size of those governments following the rise of the liberalization schools in the developed countries in the late 1970s and early 1980s.[259] They criticized the state-led socio-economic system in the continent for being self-serving and destructive unlike the state intervention in the East Asian economies which played positive role.[260] They criticized it for failure to meet the goals of political and economic liberation and for being an institution to advance the economic interests of the ruling elite or to create patronage with certain politically influential social groups or segments of the population.[261] The IMF, World Bank and other powers led by USA, accordingly, sponsored and tested a structural adjustment program in many Sub-Saharan African countries in the 1980s and 1990s to curb the poor state-led socio-economic system and to replace the State by the Market mechanism.[262] The African markets, however, also failed to coordinate the economy.[263] They were criticized for i) juxtaposing the modern and the subsistent producer sectors; ii) for not enabling the peasantry to switch their production plans according to demands of the consumers and transfer their own needs into effective aggregate demand; iii) for being guided largely by international as opposed to domestic needs; iv) for marginalizing large segment of the population by making the allocation of resources elitist and serving the interests of the better-off minority; and v) for neglecting modernization of the subsistence sector.[264] Many, therefore, advised the African governments to reform themselves, restructure their markets and create partnership with the markets so that they will sustain the socio-economic development in the continent.[265] They recommended the creation of state-

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[258] See Kidane Mengisteab, "A Partnership of the State and the Market in African Development: What is an Appropriate Strategy Mix?" in Kidane Mengisteab and Logan, B. I., (eds.), Beyond Economic Liberalization in Africa: Structural Adjustment and the Alternatives (Zed Books Ltd, London and New Jersey, and The Southern Africa Political Economy Series (SAPES), South Africa, 1995), at p. 163.

[259] See Id., at pp. 164-178.

[260] See Ibid.

[261] See Ibid.

[262] The program included three groups of reforms, i.e. deflationary measures including the removal of subsidies and reduction of public expenditures; institutional changes including privatisation and decontrol of prices, interest rates, imports, and foreign exchange; and expenditure switching measures including devaluation and export promotion. See Id., at pp. 163-164.

[263] See Id., at pp.173-175.

[264] See Ibid.

[265] They recommended that the African states should undergo both economic and political democratization and avoid authoritarianism; establish a properly functioning domestic market; encourage mass and civil society participation in decision making; provide the peasantry with voice; access resources to the general population; correct the inequalities among ethnic groups and regions; narrow the gap between urban and rural areas; correct the dualistic development of the modern urban and the subsistent rural sectors; liberalize the economy cautiously; redefine their position in the international division of labour; and integrate internally, regionally and

market partnership (hence the market enhancing approach) as, on one hand, there is the need for reform towards market liberalization (as the African state, represented by state owned-enterprises, was self-serving and inefficient in meeting the needs of the population) and, on the other, the African economies lack the optimal conditions for efficient market operation in reality (hence requiring state intervention to institutionalize a workable market system and sustainable development).[266] They also recommended that the appropriate mix between state and market in each of the African countries has to be determined based on the level of diversification of the economy, the degree of transformation of the subsistent sector and the level of development of the private sector in each country.[267] The governments also tried to promote the development of their markets and to endorse the idea of state-market partnership since the advent of their reforms in the 1990s though they differed in their successes.[268]

2.2. The Rationale for Regulation

The planned economy is based primarily on a belief that the economy can be led best according to desirable objectives decided in the political process. The reason for its regulation is, therefore, mainly ideology. The market economy is, on the contrary, based on belief that competition maximizes consumer welfare both by increasing production and allocation efficiency and encouraging invention.[269] It believes that i) the market decides on what to produce, on how to allocate resources in the production process and on to whom to distribute the various products; that ii) competition among producers will determine the right producer of goods and services which will have the highest quality and the lowest price; and that iii) consumers can influence the decision on what and how much to produce through their willingness or refusal to buy.[270] It

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internationally. [See Kamidza R. et. al.., "The Role of the State in Development in the SADC Region: Does NEPAD Provide a New Paradigm?", Paper prepared for an International Conference hosted by the Third World Network (TWN) and the Council for Development of Social Research in Africa (CODESRIA) on "Africa and Development Challenges of the New Millennium", Accra, Ghana, 23 to 26 April 2002, retrieved on 25 July 2007 from: http://www.codesria.org/Links/conferences/Nepad/matlosa.pdf, at pp. 2-22; and Tawfik R. M., "NEPAD and African Development: Towards a New Partnership between Development Actors in Africa," Retrieved in July 2007 from: http://www.codesria.org/Links/conferences/general_assembly11/papers/tawfik.pdf, at pp. 1-13; Kidane Mengisteab, 1995, supra note 258, at pp. 164-181; and Kidane Mengisteab and Logan, 1995, supra note 258, at pp. 6-12, 292-294 & 163-268]. [See also World Bank, Can Africa Claim the 21st Century (Washington and Paris, 2000) for the reforms advocated by the African Development Bank, the African Economic Research Consortium, the Global Coalition for Africa, the United Nations Economic Commission for Africa and the World Bank as the century turned].

[266] See Ibid.

[267] See Ibid.

[268] See World Bank, 2000, supra note 265; and Amann, 2006, supra note 199, at pp. 179-301.

[269] See Pierce and Gellhorn, 1994, supra note 153, at p. 19-20, 42; and Ogus, A.I., Regulation: Legal Form and Economic Theory (Clarendon Press, Oxford New York, 1996), at pp. 29-54.

[270] See Ibid.

recognizes the use of government regulation and ownership only when there are flaws in the operation of competition that can not be corrected by antitrust laws.[271]

The developed market economies, therefore, used to justify the use of government regulation by i) the idea of market failure (which comprises the problems of monopoly, public goods, destructive competition, scarcity, externality, information deficit, bounded rationality and third party paying) and ii) the needs of economic co-ordination, macro-economic and social policy consideration, and protecting existing regulation.[272] They justified it by monopoly when economics of scale available for manufacturing a product or for providing a service were so large that the relevant market could be served at the least cost by a single firm. They justified it by the idea of public good when the market refused to supply these goods because of the non-profitability and free ride problems that follow the non-rivalry and non-excludable nature of the goods. They justified it by destructive competition when competition disabled firms from recovering their costs. They justified it by scarcity when unexpected scarcity caused excessive rent or windfall profit and generally changed the distribution of wealth. They justified it by externalities when the market led a firm to produce more detrimental effects to society than the benefits. They justified it by information deficit and bounded rationality when lack of information inhibited the making of prudent decisions and called for consumer protection. They justified it by the needs of coordination when the market failed to set standards and coordinate actions by itself as in the case of road traffic. They justified it by macro-economic and social policy considerations when the market failed to address the objectives of economic growth, stability and fair wealth redistribution. They justified it by the need of protecting existing regulation when competitors in an unregulated market threatened the actors in a regulated market and defeated the purposes of existing regulation. They justified it by the problem of third party paying and decision making when the decisions to buy a product, to pay for it and to derive the benefits of obtaining the product were made by different individuals and institutions instead of by same person as in the case of the doctor-patient relationship.

The transition and emerging market economies of Eastern Europe, Asia and Latin America also justified their government regulations by the dynamics of their transitions to the free market.[273] The economic reforms in such economies included the objectives of progressively shifting from a command to a market economy, exposing the domestic economy to the rigors of domestic and international competition and bringing about economic development.[274] The governments in the economies had to implement

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[271] See Ibid.

[272] See Pierce and Gellhorn, 1994, supra note 153, at pp. 43-69; and Ogus, 1996, supra note 269, at pp. 29-54.

[273] See McMahon, 1996, supra note 208; Akio Hosono and Neantro Saavendra-Rivano, 1998, supra note 208, at pp. 1-65; Naím and Tulchin, 1999, supra note 208; Jhingan, 2002, supra note 43, at pp. 414-425; Pomfret, 2002, supra note 150, at pp. 1-8, 30-133; González et. al., 2003, supra note 208; Gleason, 2003, supra note 208; Schneider, 2004, supra note 208; Boyd, et. al., 2006, supra note 208; and Amann, 2006, supra note 199.

[274] See Ibid.

several structural adjustment measures; reform their appearance in the markets; put the private sectors and the market mechanism at the center of the economy; and deregulate and re-regulate from time to time.[275] They had to redesign their participation in economic activities; correct and regulate the market in various ways; and plan and coordinate their competition, regulatory, trade, monetary and fiscal policies.[276] They had to shift their roles in the economy from direct ownership and control into the creation of conditions for effective operation of the market; the provision of infrastructure, goods and services which the market can not provide; and the implementation of corrective measures that are necessary to ensure stability, efficiency and fairness in the allocation of resources and distribution of wealth.[277] They, therefore, had to justify their interventions by the transitory nature of their economies, the existence of private and public actors in their markets, the presence of market imperfections and challenges to the market mechanisms they introduced, and the need for achieving several development objectives.[278] They, accordingly, needed a role which is more extensive and active than the role the governments in the developed liberal economies play and less extensive than the role the governments in the planned economies play as they had to both promote liberalism and face a number of imperfections and development challenges due to the newness of their markets.[279] The reforming African governments have also seemed to follow the path for similar reasons.[280]

2.3. The Constitutional Basis of Regulation

The scope and manner of government intervention in the sphere of private economic activities and the shape of regulation, competition and the decision of actors within the economic system are matters of economic constitutionalism that call for constitutional definition.[281] Most of the countries do not, however, deal with the economic roles of their governments in their constitutions expressly and directly despite their attempts to list some economic powers of the governments in the constitutions.[282] They usually focus on questions of political power, civil liberties, justice and the like in their constitutions and delimit the scope for government regulation of private affairs only indirectly by recognizing individual property and labour rights; endorsing the principles of freedom of contract, limited government, due process and rule of law; and

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[275] See Ibid.
[276] See Ibid.
[277] See Ibid.
[278] See Ibid.
[279] See Ibid.
[280] See World Bank, 2000, supra note 265; and Amann, 2006, supra note 199, at pp. 179-301.
[281] See Voigt S. and Wagener H. J. (eds.), Constitutions, Markets and Law: Recent Experiences in Transition Economies (Edward Elgar, Cheltenham-UK and Northampton-USA, 2002); and Gerber, 2001, supra note 162, at pp. ix.
[282] See Murrphy, W. F., and Tanenhaus, J., Comparative Constitutional Law: Cases and Commentaries (St. Martin's Press, Inc., New York, 1977), at pp. 261-307; and Voigt and Wagener, 2002, supra note 281.

encouraging economic individualism.[283] Scholars have also tended to consider constitutions as instruments of social contract for legitimising the state and its actions in terms of fairness, justice or efficiency until a new instrumentalist view rose recently to consider constitutions as economic coordination-devices.[284]

Hence, only forty countries around the world have expressly determined the economic roles of their governments by their constitutions. Thirty three of them have determined the economic roles of their governments expressly and delegated the power to make specific policies and plans to the latter on top of their recognition of private property rights and economic freedoms.[285] Twenty nine of these countries have adopted the free

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[283] See Ibid.

[284] I favor the "constitution as coordination-device" view as opposed to the "constitution-as-contract" view in the constitutional political economy parlance (See Voigt and Wagener, 2002, supra note 281, for discussion about these views and the case in the transition and emerging market economies).

[285] See the 1998 constitution of Albania, at articles 4 & 11; the 1993 constitution of Andorra, at articles 27-32; the 1992 constitution of Angola, at articles 7,9-14, 46, 88-90, 105, 110, 112 & 115; the 1995 constitution of Azerbaijan, at articles 13-16, 29, 30, 35, 38, 51, 59, 60 & 132; the 1994 constitution of Belarus, at articles 2, 13, 41, 44, 45, 47, 79, 83, 95, 100, 141 & 145; the 1988 constitution of Brazil as amended in 1992,1993 and 1995, at articles 1, 3, 5, 6, 7, 18, 21, 22, 24, 40, 48, 84, 164, 165, 170-204, 208, 209, 214, 218, 219, 225, 237, & 230; the 1991 constitution of Bulgaria, at articles 17-21, 48, 51, 52 & 105; the 1992 constitution of Cape Verde as amendment in 1999, at articles 65-68, 72, 75, 88-96, 196, 197, 215 & 217; the 1982 constitution of China as amended in 1988, 1993, 1999, and 2004, at articles 1, 3, 5-28, 42, 44, 45, 85, 86 & 89; the 1991 constitution of Columbia, at articles 1, 2, 5, 25, 26, 34, 38, 44, 47-50, 57-66, 332-344 & 365-373; the 1992 Constitution of Ghana, at articles 18, 20, 23, 34, 36, 37, 40, 76, 86, 87 & 89; the 1987 constitution of Haiti, at articles 35-39, 155, 156, 220, 224-226 & 245-252; the 1949 constitution of Hungary as amended until 2003, at articles 8-13, 17, 19, 32D, 33, 35, 70B, 70C & 70E; the 1950 constitution of India as consolidated up to the seventy-eighth amendment act of Aug 1995, at articles 37-39, 41, 43A, 47, 48, 52, 53, 73, 74, 298, 300A & 301-307; the 1979 constitution of Iran as amended in July 1989, at articles 1-4, 28, 29, 43-49, 71, 72, 81-83, 126 & 134; the 1937 constitution of Ireland as last amended 2002, at the preamble and articles 15, 28, 43 & 45; the 1992 constitution of Paraguay, at articles 69, 70, 86, 95, 103, 107-116, 176-178, 242, 243, 246 & 285-287; the 1987 constitution of the Philippines, at articles II (sections 1, 5, 9, 10, 11, 18-21, 28), III (sections 1, 9, 10), XII (sections 1-22) & XIII (sections 1-19); the 1976 constitution of Portugal, at articles 9, 47, 58-66, 71-72, 80-103, 161-163, 165, 188, 192, 200, 201 & 258; the 1929 constitution of Qatar, at articles 1, 4, 8, 26-29, 31, 62, 67, 120 & 121; the 1991 constitution of Romania, at articles 1, 33, 38, 41, 43, 46, 72, 88, 101, 102, 134 & 135; the 2001 constitution of Somaliland, at articles 11, 13, 19, 20, 31, 90 & 94; the constitution of Spain as last amended in 1992, at articles 10, 33-35, 38-43, 49-54, 97, 98, 128-133, 137, 138 & 149; the constitution of Sri Lanka as amended in 2000, at articles 20, 21, 25, 30, 52, 58, 65, 91, 137 & second schedule (Lists I and II); the 1987 constitution of Suriname as amended in 1992, at articles 5, 6, 24-27, 34, 36, 40-44, 50, 69-73, 115, 122 & 154; the 2005 constitution of Swaziland, at articles 15, 31, 33, 34, 57, 60, 61, 65, 67, 70, 71, 76, 196, 197, 207 & 211-218; the 1999 federal constitution of Swiss Confederation as amended in 2003 and 2004, at articles 2, 6, 26, 27, 33, 35, 36, 41, 44-56, 73, 74, 81, 89, 94-120, 126-135, 146, 164, 171-180, 186 & 187; the 1946 constitution of Taiwan, at articles 15, 16, 22, 53, 57, 59, 62, 83, 107-111, 142-169 (with its additional articles of July 1994, at articles 1, 9 & 10); the 1997

market principle expressly while two, namely China (under its 1982 constitution as amended in 1993, 1999 and 2004) and the Socialist Republic of Vietnam (under its 1992 constitution) have followed a policy of socialist market economy and the other two, namely the Islamic Republic of Iran (under its 1979 constitution as amended in July 1989) and the Yemen Republic (under its 1991 constitution) have adopted the free market principle under an Islamic Economic Jurisprudence.[286] The other seven have expressly determined the economic roles of their governments by making the system socialist or state controlled in the main and delegating the power to make specific policies to the government.[287]

Thirty five other countries have recognized private property rights and economic freedoms and authorized their parliaments or governments to determine the government economic roles by way of delegating the policy making and planning power.[288] Thirty

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constitution of Thailand, at sections 1-4, 12, 13, 48-50, 52, 54, 55, 57, 77, 81-90 & 211; the 1996 constitution of Ukraine, at articles 1, 3, 5, 11, 13-16, 23, 41-43, 46-50, 75, 85, 92, 95, 99, 100, 113, 114 & 116; the 1992 constitution of Vietnam, at articles 1, 2, 6, 15-29, 50, 57, 58, 61, 62, 67, 83, 84, 101, 103, 109, 110, 112, 114 & 116; the 1991 constitution of Yemen, at articles 3, 6-17, 19, 21, 26, 40, 71, 72, 94, 102, 103, 109 & 110; and the constitutional charter of Serbia and Montenegro, at arts 3, 8, 9, 11, 12, 33 & 43-45. I have accessed the constitutions of the countries indicated in this and the subsequent citations through the constitution finder database of the T.C. Williams School of Law of the University of Richmond available at http://confinder.richmond.edu/.

[286] See Ibid.

[287] See the 1992 constitution of Cuba, at articles 1, 5-7, 9, 10, 12, 14-27, 45, 47-50, 60, 64, 75 & 98; the 1971 constitution of Egypt as amended in May l 980, at articles 4, 17, 23-39, 86, 122, 123 & 138; the 1980 constitution of Guyana as amended in 1996, at articles 1, 9-11, 13-22, 24-26, 32, 38-40, 142 & 213-215A; the 1945 constitution of Indonesia as amended, at articles 33 & 34 of the constitution and article 28G of the Second Amendment; the constitution of North Korea, at articles 1, 5, 8, 19, 20, 21-38, 63, 70, 72, 84, 91, 117, 119, 122 &134; the 1973 constitution of Syria, at the preamble & articles 1-3, 13-27, 36, 46, 47, 50, 71-73, 85, 91-94, 115, 118, 119 & 126-128; and the 1977 constitution of Soviet Union, at articles 1-5, 10-27, 39, 40, 42-44, 70-73, 108-109, 128, 129 & 131.

[288] See the 1963 constitution of Afghanistan, at articles 29 & 37 (with the 2001 draft constitution at articles 380 & 600); the 1989-1996 constitution of Algeria, at articles 37, 83, 84 & 122; the 1853 constitution of Argentina as amended in 1860, 1866, 1898, 1957 and 1994, at articles 14, 14bis, 17, 19 & 75; the 1995 constitution of Armenia, at articles 8, 28, 33, 34, 74 & 89; the 2002 constitution of Bahrain, at articles 8-16, 88, 117 & 118; the 1972 constitution of Cameroon as amended in 1996, at the preamble, articles 5, 11, 14, 25, 26, 34 & 35; the 2003 constitution of Chechnya, at articles 3, 9, 31-34, 36-39, 70, 84 & 93; the 1992 constitution of Congo (Brazzaville), at articles 30-32, 36, 61, 62, 88-90, 103-105, 107, 122 & 152-155; the 1990 constitution of Croatia as consolidated in June 15, 2001, at articles 1, 48-58, 108 & 112; the 1960 constitution of Cyprus, at articles 9, 23, 25, 26, 54 & 118-121; the 1996 (draft) constitution of Eritrea, at articles 10, 21, 23, 32, 42, 46 & 55; the 1992 constitution of Estonia, at articles 10, 28, 29, 31, 32, 39, 86, 87, 111 & 112; the 1995 constitution of Ethiopia, at articles 13, 40-43, 55(10), 72, 73, 77(4), 77(6) & 85-92; the 1999 constitution of Finland, at articles 15, 18, 19, 62, 91; the 1958 constitution of France as amended in March 2003, at articles 11, 20, 34-39, 49, 50 & 69-71; the 1995 constitution of Georgia as amended in 2004, at articles 7, 21, 23, 30, 31, 37, 38, 48 & 69 (with the Constitutional Law of 6 February 2004 at articles 78, 79, 81, 95 & 96); the

four of them have made the delegation within the free market idea and one of them, namely Tunisia (under its 1959 Constitution as amended in June 2002) has made it under its Islamic Economic Jurisprudence.[289] Eleven other countries have recognized private property rights and economic freedoms and delegated only few specific economic powers to their parliaments or governments.[290] Two of these countries, namely the Islamic Republic of Pakistan (under its constitutional amendment Orders of 2002 and Act of 2003) and Saudi Arabia (under its 1992 constitution), have made this within the framework of their Islamic Economic Jurisprudence while the rest have assumed a secular free market.[291] Twenty nine other countries have recognized private property rights and economic freedom without saying anything on the economic roles of their governments.[292] Four other countries have delegated few economic powers to

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1949 Basic Law of Germany up to the 50th amendment of May 2002, at articles 12, 14, 15, 65, 70, 73-75, 88 & 91a; the constitution of Greek as amended in 2001, at articles 5, 17, 25, 73, 81-83, 106 & 107; the 1996 constitution of Equatorial Guinea, at articles 5, 26-29, 36, 44, 45, 47, 60 & 76; the 1990 Basic Law of Hong Kong, at articles 4-7, 11, 33, 36, 48, 59, 60, 62, 73, 102 & 105-135; the 1947 constitution of Italy, at articles 2, 4, 38, 41-47, 94-96 & 99; the 1946 constitution of Japan, at articles 13, 25, 27, 29, 73; the 1952 constitution of Jordan, at articles 11, 12, 23 & 45-51; the constitution of Kazakhstan, at articles 1, 6, 24, 26, 28, 39, 40, 53, 61, 64, 66 & 67; the 1983 constitution of Northern Cyprus, at articles 36, 46-50, 55-58, 66, 134 & 159; the 1996 Draft Basic Law of Palestine, at articles 8, 19, 20, 23, 47, 53, 60, 67, 86 & 87; the 1997 constitution of Poland, at articles 20-24, 46, 64-69 & 154; the 1993 constitution Russian Federation, at articles 7, 8, 9, 34-37, 39, 41, 80, 84, 106 & 114; the 1991 constitution of Rwanda, at articles 23, 30, 50, 51 & 78; the 1992 constitution of Slovakia, at articles 20, 35, 37, 39, 40, 55, 56, 86 & 119; the 1996 constitution of South Africa, as amended in 1999, at articles 22, 25, 27, 43, 44, 85, 104, 156, Schedule 4 parts A and B & Schedule 5 parts A and B; the 1994 constitution of Tajikistan, at articles 1, 12, 13, 32, 35, 36, 38, 39, 48, 49, 60, 64, 65, 73 & 75; the 1991 Charter of Tibet, at articles 3, 4, 5, 12, 15, 16, 18, 19, 20 & 93; the 1959 constitution of Tunisia as amended in 2002, at articles 1, 5, 14, 18, 34-38, 49, 58, 60 & 70; and the 1991 constitution of Zambia, at articles 11, 16, 44, 46, 47, 49, 50, 62 & 110.

[289] See Ibid.

[290] See the 1929 Constitution of Austria, at articles 10-12 & 149; the 1867-1992 Constitution Act of Canada, at articles 1, 36, 91 & 92; the 1980 constitution of Chile, at articles 1, 8, 19 (16-18 and 21-26), 20, 32, 60, 97 & 98; the 1949 constitution of Costa Rica, at articles 45-47, 50, 56, 64-66 & 73; the 2004 interim constitution of Iraq, at articles 4, 14, 16, 22, 24 & 25; the constitution of Pakistan (including the Seventeenth Amendment Act of 2003 and the Legal Framework Order of 2002), at articles 18, 23, 24, 29-31, 172, 173 & Fourth schedule to article 70(4); the 1952 constitution of Puerto Rico, at articles II (sections 9, 16, 20) & VI (sections 12, 13, 14, 19); the 1992 constitution of Saudi Arabia, at articles 5, 8, 14-22, 26-28, 31, 59, 67 & 75; the 1991 constitution of Slovenia as amended in 2000, at articles 33, 49, 50-52, 66-71, 74, 75 & 152; the constitution of Sweden as last amended in 1979, at Chap.1 (articles 1, 2, 3), Chap 2 (articles 1, 18, 20, 22, 23), Chap. 5 (article 1), Chap. 8 (articles 2, 3), Chap. 9 (12-14) & Chap. 10 (with the Riksdag Act amendment of 1974, at arts 6 and 7); and the 1787 constitution of USA (including the fifth, tenth and fourteenth amendments).

[291] See Ibid.

[292] See the 1981 Constitution Order of Antigua and Barbuda; the 1973 Independence Order of Bahamas, at articles 15, 27 & 122-124; the 1966 Independence Order of Barbados, at articles 11, 16, 103 & 104; the 1970 constitution of Belgium, at articles 16, 17 & 179; the 1981 constitution of Belize, at articles 15, 17, 112 & 113; the 1995 constitution of Bosnia and

their parliaments and governments without ruling both on the economic roles of their governments and the private property rights and economic freedoms of their citizens expressly though they have promoted the latter in practice.[293]

The countries that recognized the principles of economic freedom and democracy have also required that the interventions of their governments in the economy and, hence the restrictions to private economic freedom and competition, have to be justified by purposes which have to be accepted ultimately by the majority of their societies.[294]

Herzegovina, at articles I, II, III & VII; the constitution of Cook Islands, at art, 64; the 1992 constitution of Czech Republic, at articles 1 & 10; the 1953 constitution of Denmark, at articles 73-75; the 1978 constitution of Dominica as amended in 1984, at articles 1, 6, 95 & 96; the 1997 constitution of Fiji Islands, at articles 6, 40 & 44; the 1973 Constitution Order of Grenada, at articles 6, 92 & 93; the 1944 constitution of Iceland (as amended in 1984, 1991, 1995 and 1999), at articles 72 & 76; the 1975 Basic Law of Israel, at sections 1-3, 3b, 4 & 5 (with the 1992 Basic Law, at sections 1, 1a & 3 and the 1994 Basic Law, at sections 1-10); the 1962 Constitution Order of Jamaica as amended in 1999, a Part I chap. III and Part III; the constitution of Kenya as amended in 1997, at articles 75, 112 & 113; the 1814 constitution of Norway as last amended in 1995, at articles 1, 49, 75, 101, 105, 110 & 110c; the 1983 Constitution Order of St. Kitts and Nevis, at articles 8, 88 & 89; the 1978 constitution of Saint Lucia, at articles 6, 97 & 98; the 1979 Constitution Order of Saint Vincent and the Grenadines, at articles 6, 88 & 89; the constitution of Western Samoa, at article 14; the constitution of Solomon Islands, at articles 8, 110 & 130-132; the 1976 constitution of Trinidad and Tobago as amended in 2000, at articles 4 and 5; the constitution of Tuvalu, at articles 11, 20, 50-54, 61, 62, 73-75, 81, 84 & 85; the 1995 constitution of Uganda, at articles 5, 20, 26, 35, 40, 77, 79, 98 & 99; the 1998 Human Rights Act of United Kingdom; the 1983 Constitution Act of Vanuatu, at articles 5 & 33; the 1999 constitution of Venezuela, at articles 2 & 3; and the 1979 constitution of Zimbabwe as last amended in 1993, at articles 11, 16, 27, 31G, 31H, 32, 50, 112 & Schedule 6 (Section 112).

[293] See the 1900 constitution of Australia, at articles 51 & 92; the constitution of Palau, at article 1, section 2; the 1963 constitution of Singapore, at articles 22c, 22d, 22e, 37 & 112-115; and the 1875 constitution of Tonga, at articles 18, 30, 31, 45 & 104.

[294] Most of these countries have expressly endorsed the principles of economic freedom and democracy in their constitutions and urged for limitation of their governments by societal purposes (See the constitutions cited in supra notes 285, 288, 290 & 292). The market economy countries whose national constitutions did not expressly define the economic roles of their governments have also used these principles and their general social, political and economic policies to limit the economic roles of their governments (See Murrphy and Tanenhaus, 1977, supra note 282, at pp. 261-307; and Mandelbaum, M., The Ideas that Conquered the World: Peace, Democracy and Free Markets in the Twenty-First Century (Public Affairs, New York, 2003), at pp. 241-375). The Member States of the EU were expressly required by the Maastricht Treaty to adopt and coordinate their economic policies based on the principle of open market economy with free competition (See Thimm, 1999, supra note 2, at p. 37; and Chance, C., Insurance Regulation in Europe (Lloyd's of London Press ltd., London, 1993), at pp. 139-140). Most of the transition and emerging market economies have also tried to coordinate their economic, political and constitutional reforms in their efforts to build democracy and market economy (See Voigt and Wagener, 2002, supra note 281; Gleason, 2003, supra note 208; Schneider, 2004, supra note 208; Amann, 2006, supra note 199; and Teichman, J. A., The

They have believed that the interventions have to be justified by the involvement of some public interest in an economic activity and that they have to balance between public and private interests.[295] They have also believed that regulation must be reasonable and that regulatory decisions and actions must not be imposed arbitrarily.[296] They have, therefore, required that all economic legislation must have some rational relation to legislative ends and that the legislative ends must be legitimate.[297] They have also required that the economic legislation should demonstrate that its instruments are necessary and proper to meet the legislative ends and address the question of equal protection of businesses.[298] Their principle of representative democracy has also required that the economic legislation must be checked and the regulators account.[299] They have also used the principle to activate public discussion and criticism on the underlying basis of their legislative and regulatory actions so that their law makers, regulators and the public will understand the rationale behind the actions and the need for change.[300]

3. The Policy Path in Ethiopia

3.1. The Pre-1974 Regime

Ethiopia did not define the economic roles of its 'governments' in the period before 1930.[301] It passed through a history of feudal serfdom in which the kings and Kings of kings claimed absolute authority over the life and property of their subjects, acted as sovereign sources of all 'governmental' power (as heads of government, fountains of justice, commanders of the military and defenders of the Church), and appropriated surplus from the agrarian and emerging trade activities of the time by deriving their powers from convention.[302] Emperor Menilik II attempted at modernizing the country's economy through international concessions and domestic reforms in the period between

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Politics of Freeing Markets in Latin America: Chile, Argentina and Mexico (The University of North Carolina Press, Chapel Hill and London, 2001).

[295] See Pierce and Gellhorn, 1994, supra note 153, at pp. 73-87; Ogus, 1996, supra note 269, at pp. 29-46 & 55-71; Voigt and Wagener, 2002, supra note 281; Schepel, 2005, supra note 20, at pp. 1-35 & 225-414; and Cafaggi, 2006, supra note 20, at pp. xv-xxviii & 3-357.

[296] They, by the non-arbitrariness and reasonableness, have meant that the regulation has rational relation to legitimate regulatory ends and that the regulatory means chosen is sufficiently related to the ends. See Ibid.

[297] See Ibid.

[298] See Ibid.

[299] See Ibid.

[300] See Ibid.

[301] See Bahru Zewde, A History of Modern Ethiopia 1855-1991 (Second Edition, AAU Press and Research and Graduate Programmes Office, Addis Ababa, 2002, Originally Published in the UK in 2001 by James Currey Ltd.), at pp. 85-100.

[302] See Ibid.

the 1890s and the 1910s without formal constitutional definition of the economic roles of his government.[303]

The country started to define the economic roles of its government only during the reign of Emperor Haile Sellassie I between 1930 and 1974.[304] It evolved from feudal serfdom to an absolutist Imperial State when it adopted the first written Constitution of July 23 1931.[305] It consolidated the Emperor's powers and centralized the administration of state affairs in that constitution as a step forward from fragmented system.[306] It used the constitution as an instrument for securing national unity under centralized rule of the Emperor and for modernization of its state structure.[307] It also adopted a Revised Constitution in 1955 to respond to the changing political climate of the period between 1931 and the early 1950s and cemented the centralization and modernization processes and somehow separated the powers of the three branches of government, i.e. the parliament, the executive and the judiciary, for the first time.[308] Both the 1931 and the 1955 constitutions did not, however, define the economic roles of the Imperial government as they indicated only the state property, the individual rights to property and work, the powers of the Emperor to issue money as head of state, and the responsibilities of the Council of Ministers of the time to discuss and propose all matters of policy to the Emperor.[309]

The Imperial government tried to define its economic roles only by action. It adopted a ten years programme of industrial development in 1947 (as the first of its kind in the country's history) and three subsequent five-years development plans (i.e. a first five

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[303] It was in this period that Ethiopia saw the Railway concession to France (1894), the Bank of Abysinia concession to the Britain (1905), the first Ministerial Government including the head of customs and Negad Ras (Head of Trade) of Ethiopia (1907), the Itege Taitu Hotel (1907), the Menilik II School (1908), and the Menilik II Hospital (1910). See Id., at pp. 99, 100-108.

[304] See Id, at pp. 99-108.

[305] See Id., at pp. 137-148; IGE-MI, Ethiopia: Forty Years of Reign; Forty Years of Progress 1930-1970 (Ministry of Information of Imperial Government of Ethiopia, Addis Ababa, 1970), at pp. 29-32, 47; and Aberra Jembere, Legal History of Ethiopia 1434-1974: Some Aspects of Substantive and Procedural Laws (Doctoral Dissertation, Erasmus Universiteit, Rotterdam and Afrika-Studiecentrum Leiden, 1998), at pp. 165-170.

[306] See Ibid.

[307] See Ibid

[308] See IGE-MI, Ethiopia: Forty Years of Reign; Forty Years of Progress 1930-1970, supra note 305, at p. 47; Bahru Zewde, 2002, supra note 301, at p. 206; Aberra Jembere, 1998, supra note 305, at pp. 170-180; and IGE, Revised Constitution of Ethiopia Proclamation No. 149/1955, Negarit Gazeta, Year 15, No, 2, Addis Ababa, 4th November, 1955. The Emperor exercised multiple powers under the revised constitution. He had to approve all principal laws enacted by the parliament. He had to appoint and dismiss high government officials and to exercise broad executive functions. He had to exercise judicial power as overseer of justice. He self-restricted His power only when He made His Prime Minister head of government and increased his power by Order No. 44 of 1966. [See same citation].

[309] See IGE, Revised Constitution of Ethiopia Proclamation No. 149/1955, supra note 308, at arts. 32, 43, 44, 47, 71 and 130; Bahru Zewde, 2002, supra note 301, at pp. 140-143; and Aberra Jembere, 1998, supra note 305, at pp. 165-170.

years plan for the period from 1957 to 1961; a second five years plan for the period from 1962 to 1967; and a third five years plan for the period from 1968 to 1973).[310] It aspired to promote the socio-economic growth of the country through individual as well as governmental initiatives under both the programme and the plans and made the program focus on industrial development; the first five years plan on investment, capacity building, and modernization; the second five years plan on industrial activity; and the third five years plan on broad areas of socio-economic development.[311] It increased the impetus for private investment and industrial expansion during implementation of the plans and established a Planning Commission in 1970 to organize the planning machinery of the government and assist the investment and socio-economic progress of the country.[312] It encouraged the private ownership of businesses and regulated commercial activities through laws that were meant to lay down the basis for business expansion and development.[313]

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[310] See IGE-MI, Ethiopia Facts and Figures (Ministry of Information of Imperial Government of Ethiopia, Addis Ababa, 1960), at pp. 45-46; IGE-MI, Ethiopia: Forty Years of Reign; Forty Years of Progress 1930-1970, supra note 305, at pp. 91-94; and IGE, Planning Commission Order No 63/1970, Negarit Gazeta, Year 29, No. 19, Addis Ababa, 9th June 1970.

[311] See Ibid. Most of what the Imperial government did in the period from 1930 to 1947 was focused on the provision of communication infrastructure to link the country's provinces to the capital; on regulation of the country's tax system; and on educating the peoples of the country. It laid down the basis for the plans when it issued the programme. It also issued the second and third five year plans as part of a twenty year development framework. See IGE-MI, Ethiopia: Forty Years of Reign; Forty Years of Progress 1930-1970, supra note 305, at pp. 32 & 91-93.

[312] See IGE-MI, Ethiopia: Forty Years of Reign; Forty Years of Progress 1930-1970, supra note 305, at pp. 77 & 91-94; and the Planning Commission Order No 63/1970, supra note 310. It made substantial support to the textile, food, leather, cement, metal, glass and footwear sectors (See the former citation). See also Fraser I. S., "The Administrative Framework for Economic Development in Ethiopia," J. Eth. Law, Vol. III, No. 1 (June 1966), at pp. 118-150 for discussion of the planning machinery of the Imperial Government of the time.

[313] See the Law of Loans of 1924/25; the Decree on Commercial Registration of 25 August 1928; the Company law of 12 July 1933; the (draft) Bankruptcy law (of 12 July 1933); IGE, Imperial Goods Price Control Proclamation No 38 of 1943 (as amended by Proclamation No 53/1944); IGE, the Locally Produced Goods Price Control Proclamation No 53 of 1944; IGE, Commercial Code of the Empire of Ethiopia Proclamation No. 166/1960, Negarit Gazeta, Year 19, No. 3, Addis Ababa, 5th May 1960, at the preface and preamble; IGE, Business Enterprises Registration Proclamation No. 184/1961, Negarit Gazeta, Year 21, No. 3, Addis Ababa, 20 October, 1961; IGE, Domestic Trade Proclamation No 294/1971, Negarit Gazeta, Year 30, No 32, Addis Ababa, 3 September 1971; IGE, Domestic Trade License Regulations Legal Notice No 413/1971, Negarit Gazeta, Year 31 No 4, Addis Ababa, 22 November 1971; IGE, Regulation of Trade and Price Proclamation No 301/1972, Negarit Gazeta, Year 31 No 16, Addis Ababa, 17 June 1972 (which repealed the Price Control Proclamation No 38 of 1943 as amended and the Price Control Proclamation No 53 of 1944); Bahru Zewde, 2002, supra note 301, at pp. 137-148 & 189-201; and Winship P. (Editor and Translator), Background Documents of the Ethiopian Commercial Code of 1960 (Faculty of Law, Haile Sellassie I University, Artistic Printers, Addis Ababa, Ethiopia, 1974), at pp. 10-11 & 37.

It also recognized the need for regulating anti-competitive practices when it enacted the Commercial Code of May 1960.[314] It took lesson from the 1900 Paris Convention for the protection of Industrial Property (as amended in Lisbon in 1958) and prohibited unfair competition by the Code with a major objective of protecting the good will and preserving the businesses of traders.[315] It strengthened the competition regime by repealing its price control laws and enacting an Unfair Trade Practices Decree in 1963.[316] It used the unfair competition rules of the Code and the Unfair Trade Practices Decree to promote commerce and business stability until the value of both laws was lost with the advent of the 1974 Socialist Revolution.[317]

The Imperial government did not, however, establish independent market regulators as most of its tasks were developmental. Its institutions, including the competition law enforcer, were ministerial by nature.[318]

3.2. The 1974 to 1991 Regime

The military government of the country that came to power in 1974 abrogated the Imperial Revised Constitution of 1955 and centralized state power in the Provisional Military Administrative Council (PMAC) (the Dergue in Amharic) by enacting a Provisional Military Government Establishment (PMGE) Proclamation on September

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[314] See IGE, Commercial Code of the Empire of Ethiopia Proclamation No. 166/1960, supra note 313, at the preface.

[315] It prohibited all acts of competition that are contrary to honest commercial practice, including acts done to discredit the undertaking, products or commercial activities of a competitor and false statements made to mislead customers about these, by the code. It restricted commercial employees, commercial travelers, commercial representatives, commercial agents, and business hirers from undertaking commercial activities similar to those being carried out by the employer, principal or lessee during the currency of their relationship and allowed the inclusion of contractual restrictions in commercial agency and business lease agreements that may extend the application of this restriction to a period after termination of the agreements. It also restricted business sellers from undertaking commercial activities similar to those transferred to the buyers during a period of five years following the date of sale. See IGE, Commercial Code of the Empire of Ethiopia Proclamation No. 166/1960, supra note 313, at arts. 130-134, 30, 40, 47, 55, 144, 158, 159, 204 & 205; and Winship, 1974, supra note 313, at pp. 52-53.

[316] The decree prohibited unilateral actions, discriminatory activities, agreements, arrangements, informal understandings and monopolies that directly or indirectly harm free competition and/or the interests of the public including consumers, producers, dealers and others. See IGE, Unfair Trade Practice Decree No 50/1963, Negarit Gazeta, Year 22, No. 22, Addis Ababa, 2nd September 1963, at arts. 3(h) & 5.

[317] See the preface to IGE, Commercial Code of the Empire of Ethiopia Proclamation No. 166/1960, supra note 313; and the preamble to IGE, Unfair Trade Practice Decree No 50/1963, supra note 316.

[318] The Unfair Trade Practices Decree had to be enforced by the Ministry of Commerce and Industry of the time. See IGE, Unfair Trade Practices Decree No 50 of 1963, supra note 316, at arts. 3(h) & 5.

12, 1974.[319] It only aspired for a new constitution and used this and its nationalization proclamations as basic law for thirteen years.[320] It declared a Socialist Economic Policy in 1974 and made its Central Planning Offices responsible to manage the economy.[321] It, by the Declaration, coined a Motto of 'Ethiopia Tikdem' (Ethiopia First), declared an Ethiopian socialism ('Hiberettesebawinet') and considered the pursuit of private economic activity based on private gain as something contrary to community interests.[322] It defined the motto and the 'Hiberettesebawinet' to mean equality, self-reliance, dignity of labour, supremacy of the common good, and indivisibility of the Ethiopian unity in a socialist line.[323] It adopted a core principle of economic and social policy that the common good should precede the pursuit of individual gain.[324] It considered poverty, disease and ignorance as the main problems of the country and the prevention of economic exploitation and, hence, the public ownership and governmental guidance and control of the nation's economic resources, as the main means for solving the problems.[325] It decided to own and administer all the resources and activities crucial for economic development and to provide all the indispensable services to the community.[326] It allowed private sector activity only in so far as it would not impede the objectives of 'Ethiopia Tikdem' and 'Hiberettesebawinet'.[327] It allowed the establishment of cooperatives for agricultural activities and the carrying out of industrial, natural resource exploration and small scale enterprise development activities and the participation of foreign capital and know-how only in so far as all these were to contribute to the aforementioned objectives.[328] It took responsibility to assist and support the people in their efforts to mobilize labour, resources and ideas towards national economic development and aspired for fraternal and peaceful relation

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[319] See PMGE, Provisional Military Government Establishment Proclamation No. 1/1974, Negarit Gazeta, Year 34, No. 1, Addis Ababa, 12 September, 1974.

[320] See Ibid; PMGE, Provisional Military Government Establishment (Amendment) Proclamation No. 27/1975, Negarit Gazeta, Year 34, No. 23, Addis Ababa, 17 March, 1975; and Fasil Nahum, "Socialist Ethiopia's Achievements as Reflected in its Basic Laws," J. Eth. Law, Vol. 11 (1980), at pp. 83-88.

[321] See PMGE, Declaration [on Economic Policy of Socialist Ethiopia] of the Provisional Military Government of Ethiopia (Official English Translation from the Amharic), Addis Ababa, December 20, 1974; PMGE, Central Planning Commission Establishment Proclamation No 128/1977, Negarit Gazeta, Year 36, No. 29, Addis Ababa, 20th August 1977; PMGE, National Revolutionary Development Campaign and Central Planning Supreme Council Establishment Proclamation No 156/1978, Negarit Gazeta, Year 38, No. 4, Addis Ababa, 29th October 1978; PMGE, The Office of the National Committee for Central Planning Establishment Proclamation No 262/1984, Negarit Gazeta, Year 43, No. 13, Addis Ababa, 7th June 1984; Befekadu Degefe and Berhanu Nega, (Eds.), Annual Report on the Ethiopian Economy Vol. I (The Ethiopian Economic Association (EEA), Addis Ababa, 1999/2000), at pp. 284-296, 304-308; and Bahru Zewde, 2002, supra note 301, at pp. 236-248.

[322] See PMGE, Declaration [on Economic Policy of Socialist Ethiopia], supra note 321, at p. 7.

[323] See Id, at p. 8.

[324] See Id, at pp. 9-11.

[325] See Ibid.

[326] See Id, at p. 10.

[327] See Ibid.

[328] See Ibid.

and cooperation between Ethiopia and its neighbours.[329] It condemned colonialism, neo-colonialism and imperialism in those lines.[330] It nationalized all major means of production and distribution and all banks and insurers on January 01 1975; all industrial proprietorships and business organizations on February 03 1975; all rural land on March 04 1975; and all urban lands and extra houses on July 26 1975.[331] It consolidated the nationalization process by 1976 and adopted a programme of National Democratic Revolution on April 21 1976 to pave the way for establishment of a socialist society of the People's Democratic Republic of Ethiopia.[332] It formed a Union of Ethiopian Marxist Leninist Organizations on February 16 1977, an Organization of the Ethiopian Peasantry on April 27 1978, and a National Development Campaign and Central Planning Supreme Council (that would guide the day-to-day operation of the country's economy) on October 29 1978.[333] It restricted the making of private sector investment to small scale industries and handicrafts through these measures and other laws.[334] It enacted the Constitution of the People's Democratic Republic of Ethiopia on September 12, 1987 and introduced a mixed economic system through several laws that called for increased participation of the private sector along the socialist lines as of 1989.[335]

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[329] See Id, at pp. 10-11.

[330] See Ibid.

[331] See PMGE, Government Ownership and Control of Means of Production Proclamation No 26/1975, Negarit Gazeta, Year 34, No. 22, Addis Ababa, 11th March, 1975; and CSO, Peoples Democratic Republic of Ethiopia Facts and Figures (Central Statistical Office (CSO), Bole Printing Press, 1987), at p. 10.

[332] See Raúl Valdés Vivò, 1978, Ethiopia's Revolution (International Publishers, New York, 1977/1978), at pp. 101-110; and CSO, Peoples Democratic Republic of Ethiopia Facts and Figures, supra note 331, at p. 10.

[333] See CSO, Peoples Democratic Republic of Ethiopia Facts and Figures, supra note 331, at pp. 10-14.

[334] See PMGE, Proclamation Relating to Commercial Activities Undertaken by the Private Sector Proclamation No. 76/1975, Negarit Gazeta, Year 35, No. 18, Addis Ababa, 29th December 1975; PMGE, Regulation of Domestic Trade Proclamation No. 335/1987, Negarit Gazeta, Year 46, No. 24, Addis Ababa, 23rd June, 1987; and PMGE, Domestic Trade Regulations No. 109/1987, Negarit Gazeta, Year 46, No. 27, Addis Ababa, 27th August, 1987.

[335] See PDRE, Constitution of the People's Democratic Republic of Ethiopia Proclamation No. 1/1987, Negarit Gazeta, Year 47, No. 1, Addis Ababa, 12th September, 1987; PDRE, Small-Scale Industry Development Council of State Special Decree No. 9/1989, Negarit Gazeta, Year 48, No. 19, Addis Ababa, 5th July 1989 (re-enacted later as Small-Scale Industry Development Proclamation No. 30/1989 by Notice of Approval No. 8/1989, Negarit Gazeta, Year 49, No. 2, Addis Ababa, 5th October 1989); PDRE, Hotel Services Development Council of State Special Decree No. 10/1989, Negarit Gazeta, Year 48, No. 20, Addis Ababa, 5th July 1989 (re-enacted later as Hotel Services Development Proclamation No. 31/1989 by Notice of Approval No. 9/1989, Negarit Gazeta, Year 49, No. 2, Addis Ababa, 5th October 1989); PDRE, Joint Venture Council of State Special Decree No. 11/1989, Negarit Gazeta, Year 48, No. 21, Addis Ababa, 5th July 1989 (re-enacted later as Joint Venture Proclamation No. 32/1989 by Notice of Approval No. 10/1989, Negarit Gazeta, Year 49, No. 2, Addis Ababa, 5th October 1989); PDRE, Council of State Special Decree on Investment No. 17/1990, Negarit Gazeta, Year 49, No. 12, Addis Ababa, 19th May 1990; PDRE, Council of Ministers Regulations to Provide for the Issuance of License for Agricultural Activities Regulation No. 7/1990, Negarit Gazeta, Year 49, No. 17, Addis Ababa, 18th June 1990; PDRE, Industrial License Council of Ministers

The PMGE Proclamation did not define the economic roles of the military government as a basic law as it only consolidated all the state powers in the PMAC. Only the government made the definition through the Declaration of Socialist Economic Policy, the Proclamation on Government Ownership and Control of Means of Production, and the laws on private investment and commercial undertakings.[336] The 1987 Constitution, however, defined the economic roles of the government though along the lines of socialism.[337] It set up a system in which i) the National Shengo (i.e. the parliament) would determine the domestic and foreign policy (including the monetary and fiscal policy) and the long-term and short-term social and economic plans of the country; ii) the government would own the means of production along with cooperatives and private individuals (as law would define); guide the economic and social activities of the country through a central plan; guide the private ownership and activity of cooperatives and individuals for benefit of the national economy; guarantee private property, right to transfer private property, and individual labour (subject to the socialist policy); and pursue foreign policy under the socialist principles of peaceful coexistence, proletariat internationalism and non-alignment; and iii) both the government and the society would shoulder responsibility to expand health and social protection mechanisms.[338]

3.3. The Post-1991 Regime

The 1991 transitional government of the country abrogated the 1987 Constitution of the military government by adopting a Transitional Period Charter in May 1991.[339] It used the Charter as the basic law of the country until adoption of the Constitution of the

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Regulations No. 8/1990, Negarit Gazeta, Year 49, No. 18, Addis Ababa, 19th June 1990; PDRE, License for Tourist and Hotel Facilities Council of Ministers Regulations No. 9/1990, Negarit Gazeta, Year 49, No. 19, Addis Ababa, 22nd June 1990; and PDRE, Participation of Foreign Investors Council of Ministers Regulations No. 10/1990, Negarit Gazeta, Year 49, No. 23, Addis Ababa, 4th September 1990.

[336] See the Government Ownership and Control of Means of Production Proclamation No 26 of 1975, supra note 331; the Proclamation Relating to Commercial Activities Undertaken by the Private Sector No. 76 of 1975, supra note 334; the Regulation of Domestic Trade Proclamation No. 335 of 1987, supra note 334; and the Domestic Trade Regulations Proclamation No. 109 of 1987, supra note 334. The government enacted the Ownership and Control of Means of Production Proclamation following adoption of the Declaration and used it to define activities that were to be undertaken by the government, by the private sector, and jointly by foreign capital and the government by leaving only small scale activities to the private sector (See the Government Ownership and Control of Means of Production Proclamation No. 26/1975, supra note 331, at arts. 2, 3 & 4).

[337] See PDRE, Constitution of the People's Democratic Republic of Ethiopia Proclamation No. 1/1987, supra note 335.

[338] See Id., at the preamble and arts. 9-18, 21 & 27-30.

[339] See PDTCE, Transitional Period Charter of Ethiopia No. 1/1991, Negarit Gazeta, Year 50, No. 1, Addis Ababa, 22 July, 1991.

Federal Democratic Republic of Ethiopia of 21st August 1995.[340] The Charter paved the way for decentralization of state power between the central and regional governments.[341] It did not define the economic roles of the government but recognized the individual and collective rights of the nations, nationalities and peoples of the country and indicated the responsibility of the government to rehabilitate the war and drought ravaged areas of the country.[342] The transitional government defined its economic roles under a transitional economic policy adopted in 1991 and promised to reduce the scope of its economic activities in the interest of free market; to promote domestic and foreign private investment; to involve the national and regional administrations in the process of economic management; and to enhance popular participation in the design and implementation of development plans.[343] It then enacted laws that were designed to provide for the development and regulation of private investment and trade in different sectors.[344]

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[340] See FDRE, Constitution of the Federal Democratic Republic of Ethiopia Proclamation No 1/1995, Federal Negarit Gazeta, Year 1, No 1 Addis Ababa, 21st August 1995.

[341] See TGE, Definition of the Sharing of Revenue Between the Central Government and the National/Regional Self-Governments Proclamation No. 33/1992, Negarit Gazeta, Year 52, No. 7, Addis Ababa, 20th October, 1992; and TGE, Definition of Powers and Duties of the Central and Regional Executive Organs of the Transitional Government of Ethiopia Proclamation No. 41/1993, Negarit Gazeta, Year 52, No. 26, Addis Ababa, 20th January 1993.

[342] See PDTCE, Transitional Period Charter of Ethiopia No. 1/1991, supra note 339, at arts. 1, 2, 14-17.

[343] See TGE, Ethiopia's Economic Policy during the Transitional Period (Official Translation, Addis Ababa, November 1991), at pp. 17ff. The specific reform objectives of the government included promoting domestic and foreign private investment; expanding the role of the private sector in whole sale and retail trade, industrial development, mining and tourism; increasing productivity and efficiency of public enterprises and monopolies; promoting inter-sectoral linkages, balanced regional industrial development and national technological capability; forming and accumulating capital; expanding economic infrastructure (through improvement and expansion of the road network, development of the transport and communication sectors, reduction of service costs, fostering of urban economic growth, promotion of environmentally sustainable energy-development, and building of manpower capacity); ensuring health, safety and environmental protection; conserving and rehabilitating natural resources; promoting international competitiveness in areas of comparative advantage; enhancing export quality, quantity and market; maintaining positive balance of payments; and maintaining carefully planned and properly coordinated monetary and fiscal policy [See the policy principles and objectives of the government of the time from http:/www.telecom.net.et./economy.htm].

[344] See TGE, Encouragement, Expansion and Co-ordination of Investment Proclamation No. 15/1992, Negarit Gazeta, Year 51, No. 11, Addis Ababa, 25th May 1992; TGE, Encouragement, Expansion and Co-ordination of Investment (Amendment) Proclamation No. 31/1992, Negarit Gazeta, Year 52, No. 5, Addis Ababa, 13th October 1992; TGE, Mining Proclamation No. 52/1993, Negarit Gazeta, Year 52, No. 42, Addis Ababa, 23rd June 1993; TGE, Mining Operations Council of Ministers Regulations No. 182/1994, Negarit Gazeta, Year 53, No. 84, Addis Ababa, 20th April 1994; TGE, License for Agricultural Activities Council of Ministers Regulations No. 120/1993, Negarit Gazeta, Year 52, No. 45, Addis Ababa, 10th July 1993; TGE, National Seed Industry Agency Proclamation No. 56/1993, Negarit Gazeta, Year 52, No. 47, Addis Ababa, 16th July 1993; TGE, Transfer of Technology Council of Ministers Regulations No. 121/1993, Negarit Gazeta, Year 52, No. 53, Addis Ababa, 31st July 1993;

The 1995 Constitution introduced federalism and authorized the Council of Ministers in government to formulate the socio-economic, fiscal and monetary policies and strategies of the country provided that the Council secures approval of the strategies and policies by the parliament (i.e., the House of People's Representatives).[345] It did not define the economic roles of the government as such but i) allowed the winning political party to constitute the government and formulate the socio-economic policies and strategies of the country; ii) recognized seven national policy principles and objectives on political, economic, social, cultural, environmental, external relation and national defence matters (along with several group and individual rights); and ii) required all government institutions to adhere to these principles and the rights defined in the Constitution.[346] It, by the principles, authorized and required the government of the winning party to formulate socio-economic policies and strategies that will ensure i) the benefit of all Ethiopians from the country's intellectual and material resources; ii) the equal opportunity of all Ethiopians to improve their economic conditions and the equitable distribution of wealth among them; iii) the provision of special assistance to nations, nationalities and peoples that are least advantaged in economic and social development; iv) the holding and administration of land and other natural resources for the common benefit and development of the peoples of the country; v) the participation of the peoples of the country in the formulation of national development policies and programmes; vi) the protection and promotion of health, welfare and living standards of the working population of the country; and vii) the aversion of natural and man-made disasters and provision of timely assistance in the advent of disaster.[347]

The federal government pursued the reform objectives started by the transitional government under this authority of the Constitution. It focused on structural adjustment

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TGE, Export Trade Duty Incentive Scheme Establishing Proclamation No. 69/1993, Negarit Gazeta, Year 52, No. 62, Addis Ababa, 18th August 1993; TGE, Domestic Trade (Amendment) Council of Ministers Regulations No. 123/1993, Negarit Gazeta, Year 52, No. 64, Addis Ababa, 7th September 1993; TGE, Radiation Protection Proclamation No. 79/1993, Negarit Gazeta, Year 53, No. 39, Addis Ababa, 22nd December 1993; TGE, Monetary and Banking Proclamation No. 83/1994, Negarit Gazeta, Year 53, No. 43, Addis Ababa, 30th January 1994; TGE, Licensing and Supervision of Banking Business Proclamation No. 84/1994, Negarit Gazeta, Year 53, No. 44, Addis Ababa, 31st January 1994; TGE, Licensing and Supervision of Insurance Business Proclamation No. 86/1994, Negarit Gazeta, Year 53, No. 46, Addis Ababa, 1st February 1994; TGE, Customs Clearing Agency License Issuance Council of Ministers Regulation No. 155/1994, Negarit Gazeta, Year 53, No. 47, Addis Ababa, 1st February 1994; TGE, Licensing and Supervision of Health Service Institutions Council of Ministers Regulations No. 174/1994, Negarit Gazeta, Year 53, No. 66, Addis Ababa, 16th February 1994; TGE, National Fertilizer Industry Agency Establishment Proclamation 106/1994, Negarit Gazeta, Year 54, No. 2, Addis Ababa, 1994; and TGE, Licensing and Supervision of Private Educational Institutions Council of Ministers Regulations No. 206/1995, Negarit Gazeta, Year 54, No. 14, Addis Ababa, 6th March 1995.

[345] See FDRE, Constitution of the Federal Democratic Republic of Ethiopia Proclamation No 1/1995, supra note 340, at arts. 55(10), 77(6) & 77(4).

[346] See Id., at arts. 13, 40, 41, 42, 43, 72, 73 & 85-92.

[347] See Ibid.

as was the case with the transitional government and targeted at the objectives of attaining macroeconomic stability and equitable economic growth; maintaining prudent monetary and fiscal policy; controlling inflation; developing modern and sound financial system; encouraging saving and long-term investment; promoting private sector development; easing the investment law; building capacity; accelerating privatisation; implementing development programs in agriculture, infrastructure, education, health and population; reducing import tariffs; deregulating the external current account; furthering the liberalization of foreign trade in goods and services; diversifying export; integrating Ethiopia into the global economy; and strengthening the international competitiveness of the country in the years between 1996 and 2001.[348] It, accordingly, privatized two hundred six public enterprises and further revised the privatization, investment, trade registration, licensing, and tax laws in the period.[349]

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[348] See Ethiopia, "Ethiopia - Enhanced Structural Adjustment Facility Mid-Term Economic and Financial Policy Framework Paper, 1998/99-2000/01, retrieved on March 28 2000 from: http://www.imf.org/external/np/pfp/eth/etp.htm#IIIA; and Befekadu Degefe and Berhanu Nega, 1999/2000, supra note 321.

[349] See database of the Privatization and Public Enterprises Supervising Agency and FDRE, Privatization of Public Enterprises Proclamation No. 146/1998, Federal Negarit Gazeta, Year 5, No. 26, Addis Ababa, 29th December 1998; FDRE, Privatization of Public Enterprises (Amendment) Proclamation No. 182/1999, Federal Negarit Gazeta, Year 6, No. 4, Addis Ababa, 18th November 1999; FDRE, Investment Proclamation No 37/1996, Federal Negarit Gazeta, Year 2 No 25 Addis Ababa, 18 June 1998; FDRE, Investment Incentives Council of Ministers Regulations No. 7/1996, Federal Negarit Gazeta, Year 2, No. 29, Addis Ababa, 4 July 1996; FDRE, Investment Incentives (Amendment) Council of Ministers Regulations No. 9/1996, Federal Negarit Gazeta, Year 3, No. 2, Addis Ababa, 25 October 1996; FDRE, Investment (Amendment) Proclamation No. 116/1998, Federal Negarit Gazeta, Year 4, No. 42, Addis Ababa, 11th June 1998; FDRE, Investment Areas Reserved for Domestic Investors Council of Ministers Regulations No. 35/1998, Federal Negarit Gazeta, Year 4, No. 43, Addis Ababa, 12th June 1998; FDRE, Investment Incentives Council of Ministers (Amendment) Regulations No. 36/1998, Federal Negarit Gazeta, Year 4, No. 44, Addis Ababa, 12th June, 1998; FDRE, Investment (Amendment) Proclamation No. 168/1999, Federal Negarit Gazeta, Year 5, No. 49, Addis Ababa, 22nd April 1999; FDRE, Commercial Registration and Business Licensing Proclamation No. 67/97, Federal Negarit Gazeta, Year 3, No. 25, Addis Ababa, 6 March 1997; FDRE, Federal Government Commercial Registration and Licensing Council of Ministers Regulations No. 13/97, Federal Negarit Gazeta, Year 3, No. 28, Addis Ababa, 8th March, 1997; FDRE, Addis Ababa/Dire Dawa Administration Commercial Registration and Licensing Council of Ministers Regulations No. 14/97, Federal Negarit Gazeta, Year 3, No. 29, Addis Ababa, 10th March, 1997; FDRE, Commercial Registration and Business Licensing (Amendment) Proclamation No. 171/1999, Federal Negarit Gazeta, Year 5, No. 54, Addis Ababa, 8th June, 1999; FDRE, Mining Income Tax (Amendment) Proclamation No. 23/1996, Federal Negarit Gazeta, Year 2 No. 11 Addis Ababa, 15th February, 1996; FDRE, Income Tax (Amendment) Proclamation No 36/1996, Federal Negarit Gazeta, Year 2 No 24 Addis Ababa, 14th May 1996; FDRE, Customs Tariff Regulations No. 6/1996, Federal Negarit Gazeta, Year 2, No. 27, 4th July 1996; FDRE, Importation of Machinery and Goods on Franco-Valuta Basis Council of Ministers Regulations No. 8/1996, Federal Negarit Gazeta, Year 2, No. 36, Addis Ababa, 19th July 1996; FDRE, Re-Establishment and Modernization of Customs Authority Proclamation No. 60/1997, Federal Negarit Gazeta, Year 3, No. 18, 13th February 1997; FDRE, Sales and Excise Tax (Amendment) Proclamation No. 77/1997, Federal Negarit Gazeta, Year 3,

The political party in government (i.e. the Ethiopian Peoples Revolutionary Democratic Front - EPRDF) elaborated on the economic and social policy objectives of the country through a 'Direction of Revolutionary Democracy Development Lines and Strategies' issued in 2000.[350] It focused on the usefulness of private economic initiative (free market) as engine of economic growth and foresaw the market correction and developmental roles of the government by the Direction.[351] It reiterated Africa's failure to implement both the neo-liberal model of the industrialized economies and the developmental state model of the centrally planned economies; rejected the use of both models by considering the former as one that forces laissez-fair in a least developed economy and the latter as one that allows too much government intervention to the detriment of free market; believed in the need for selective government intervention in a country like Ethiopia; and appreciated the need for adopting the liberalism model of the East Asian market economies in the country as one that allows government intervention to speed up economic development.[352] It believed in the need for establishing partnership between the government and the developmental market actors in the domestic market and progressively integrating the Ethiopian economy with the international.[353]

The federal government translated the 'Direction' of the party into government policy and launched a strategy of Agricultural Development Led Industrialization by adopting a Rural Development Policies, Strategies and Programs; a Capacity Building Strategy and Programs; a Strategy of Matters of Building Democratic System in Ethiopia; an Industrial Development Strategy; and a Foreign and National Security Policy and Strategy in 2001 and 2002.[354] It, through these policies and strategies, elaborated on a

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No. 40, Addis Ababa, 3rd June 1998; FDRE, Stamp Duty Proclamation No. 110/1998, Federal Negarit Gazeta, Year 4, No. 36, Addis Ababa, 12th May 1998; FDRE, Customs Authority (Amendment) Proclamation No. 125/1998, Federal Negarit Gazeta, Year 4, No. 55, 30th June 1998; FDRE, Income Tax (Amendment) Council of Ministers Regulations No. 43/1998, Federal Negarit Gazeta, Year 5, No. 7, Addis Ababa, 13th November 1998; FDRE, Sales and Excise Tax (Amendment) Proclamation No. 149/1999, Federal Negarit Gazeta, Year 5, No. 29, Addis Ababa, 15th December 1999; FDRE, Petroleum Operations Income Tax (Amendment) Proclamation No. 226/2000, Federal Negarit Gazeta, Year 7, No. 8, Addis Ababa, 26th December 2000; and FDRE, Income Tax (Amendment) Proclamation No. 227/2001, Federal Negarit Gazeta, Year 7, No. 9, Addis Ababa, 4th January 2001.

[350] See EPRDF, Revolutionary Democracy: Development Lines and Strategies (Discussion Document, Amharic Version, Mega Publishing Enterprise, Nehasie, 1992 (August 2000)), at pp. v, vi, 3-32 & 123-239.

[351] See Ibid.

[352] See Ibid.

[353] See Ibid.

[354] See FDRE, Rural Development Policies, Strategies and Programs of the Federal Democratic Republic of Ethiopia (Amharic Version, Addis Ababa, Hidar 1994 Eth. C. (November 2001)); FDRE, Capacity Building Strategy and Programs of the Federal Democratic Republic of Ethiopia (Amharic Version, Addis Ababa, Yekatit 1994 Eth. C. (February 2002)); FDRE, Matters of Building a Democratic System in Ethiopia (Amharic Version, Addis Ababa, Ginbot 1994 Eth. C. (May 2002)); FDRE, Industrial Development Strategy of the Federal Democratic

number of economic and social policy objectives. The major ones were i) reducing the direct role of government in business; ii) encouraging the development of private sector; iii) promoting competition, economic efficiency and growth; iv) correcting market failure; v) providing goods and services which the market may not provide; vi) avoiding price and quality abuses; vii) ensuring consumer protection; and viii) integrating the Ethiopian economy with the global economy.[355] It promised to intervene into the economy only when there are reasons for market correction and steering (i.e. to coordinate activities of the market actors, correct market failures, and carry out activities that need to be carried out by the government).[356] It promised to enhance the market, and reduce its roles to activities that can not be done by the market, though it also continued to believe in the developmental roles of state enterprises and party-owned foundations because of the large size of market imperfection in the country compared to the developed market economies.[357] It then continued with the privatization and legal reform processes started in the pre-2001 period with a view to implementing the new policy. It, accordingly, privatized more than forty three public enterprises and further revised the trade registration, licensing and investment laws.[358]

Republic of Ethiopia (Amharic Version, Nehasie 1994 (August 2002)); and FDRE, A Foreign and National Security Policy and Strategy of the Federal Democratic Republic of Ethiopia (Amharic Version, Hidar 1995 (November 2002)). The government required the coordination of all the policies and strategies with the Rural Development Policies, Strategies and Programs (See the Rural Development Policies, Strategies and Programs of the Federal Democratic Republic of Ethiopia, at pp. 235-242; the Capacity Building Strategy and Programs of the Federal Democratic Republic of Ethiopia, at pp. 13-16; the Industrial Development Strategy of the Federal Democratic Republic of Ethiopia, at pp. 13-19; and the Revolutionary Democracy: Development Lines and Strategies, supra note 350, at pp. 123-239).

[355] See Ibid.

[356] See the Rural Development Policies, Strategies and Programs, supra note 354; the Matters of Building a Democratic System, supra note 354; the Industrial Development Strategy, supra note 354; and the Revolutionary Democracy: Development Lines and Strategies, supra note 350, at pp. v, vi, 3-32, 123-239.

[357] See Ibid. The developmental roles of government enterprises and the government's interest to establish them (in economic areas where private investors may not be willing to participate for various reasons) was re-stated in a subsequent law (See FDRE, Public Enterprises Supervising Authority and Industrial Development Fund Establishment Proclamation No 277/2002, Federal Negarit Gazeta, Year 8, No 24, Addis Ababa, 27th June 2002, at arts. 5(2) and 13(1(a) and (b)).

[358] See database of the Privatization and Public Enterprises Supervising Agency and FDRE, Commercial Registration and Business Licensing (Amendment) Proclamation No. 328/2003, Federal Negarit Gazeta, Year 9, No. 48, Addis Ababa, 17th April 2003; Commercial Registration and Licensing Council of Ministers (Amendment) Regulations No. 87/2003, Federal Negarit Gazeta, Year 9, No. 71, Addis Ababa, 22nd July 2003; FDRE, Commercial Registration and Business Licensing (Amendment) Proclamation No. 376/2003, Federal Negarit Gazeta, Year 10, No. 9, Addis Ababa, 13th November 2003; FDRE, Commercial Registration and Licensing Council of Ministers /Amendment/ Regulations No. 95/2003, Federal Negarit Gazeta, Year 10, No. 10, Addis Ababa, 21st November 2003; FDRE, Investment Proclamation No 280/2002, Federal Negarit Gazeta, Year 8, No 27, Addis Ababa, 2 July 2002; FDRE, Council of Ministers Regulations on Investment Incentives and Investment Areas Reserved for Domestic Investors No 84/2003, Federal Negarit Gazeta, Year 9, No. 34, Addis Ababa, 7

It also revised the tax laws with a view to modernizing and consolidating them and encouraging trade and investment.[359]

The federal government also continued with the re-establishment of sectoral regulators and assignment of regulatory functions which was started by the 1991 transitional government. It re-established the National Bank of Ethiopia (as regulator of the financial market), the Ethiopian Electricity Authority (as regulator of the electricity supply market), the Ethiopian Telecommunications Authority (as regulator of the telecom services and equipment supply market), the Ethiopian Civil Aviation Authority (as regulator of the air transport, aviation and related services market), the Transport Authority (as regulator of the road and rail transport and related services market), the Maritime Affairs Authority (as regulator of the marine transport and related services market), the Ethiopian Radiation Protection Authority (as regulator of the market for radiation services and use of radioactive materials), the Quality and Standards Authority (as standard setter for quality of goods and services), the Education Relevance and Quality Agency (as regulator of the quality and relevance of higher education), the Ethiopian Roads Authority (as regulator of the construction and use of highways and roads of the national network), the Ethiopian Drug Administration and Control Authority (as regulator of the manufacture, trade, use and trial of drug and medical equipments), the Ethiopian Revenue and Customs Authority (as regulator of

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February 2003; FDRE, Investment (Amendment) Proclamation No. 375/2003, Federal Negarit Gazeta, Year 10, No. 8, Addis Ababa, 28th October 2003.

[359] See FDRE, Value Added Tax Proclamation No. 285/2002, Federal Negarit Gazeta, Year 8, No. 33, Addis Ababa, 4th July 2002; FDRE, Income Tax Proclamation No 286/2002, Federal Negarit Gazeta, Year 8, No. 34, Addis Ababa, 4 July 2002; FDRE, Council of Ministers Income Tax Regulations No 78/2002, Federal Negarit Gazeta, Year 8, No. 37, Addis Ababa, 19 July 2002; FDRE, Council of Ministers Value Added Tax Regulations No. 79/2002, Federal Negarit Gazeta, Year 9, No. 19, Addis Ababa, 31st December 2002; FDRE, Excise Tax Proclamation No 307/2002, Federal Negarit Gazeta, Year 9, No. 20, Addis Ababa, 31st December 2002; FDRE, Turnover Tax Proclamation No 308/2002, Federal Negarit Gazeta, Year 9, No. 21, Addis Ababa, 31st December 2002; FDRE, Re-Establishment and Modernization of Customs Authority Proclamation No. 368/2003, Federal Negarit Gazeta, Year 9, No. 93, 11th September 2003; FDRE, Value Added Tax (Amendment) Proclamation No. 609/2008, Federal Negarit Gazeta, Year 15, No. 6, Addis Ababa, 25th December 2008; FDRE, Excise Tax (Amendment) Proclamation No 610/2008, Federal Negarit Gazeta, Year 15, No. 7, Addis Ababa, 25th December 2008; FDRE, Turnover Tax (Amendment) Proclamation No 611/2008, Federal Negarit Gazeta, Year 15, No. 8, Addis Ababa, 25th December 2008; FDRE, Stamp Duty (Amendment) Proclamation No 612/2008, Federal Negarit Gazeta, Year 15, No. 9, Addis Ababa, 25th December 2008; FDRE, Income Tax (Amendment) Proclamation No 608/2008, Federal Negarit Gazeta, Year 15, No. 15, Addis Ababa, 9th January 2009; FDRE, Council of Ministers Income Tax (Amendment) Regulations No 164/2009, Federal Negarit Gazeta, Year 15, No. 28, Addis Ababa, 24th March 2009; FDRE, Customs Proclamation No. 622/2009, Federal Negarit Gazeta, Year 15, No. 27, 19th February 2009; FDRE, Export Trade Duty Incentive Scheme Establishing Proclamation No. 249/2001, Federal Negarit Gazeta, Year 7, No. 19, Addis Ababa, 5th July 2001; FDRE, Export Prize Award Council of Ministers Regulations No. 126/2006, Federal Negarit Gazeta, Year 12, No. 41, Addis Ababa, 5th May 2006; and FDRE, Revised Export Trade Duty Incentive Scheme Establishing Proclamation No. 543/2007, Federal Negarit Gazeta, Year 13, No. 57, Addis Ababa, 4th September 2007.

customs clearing agents and controller of customs), the Ethiopian Broadcasting Authority (as regulator of the broadcasting services market), the Ethiopian Commodity Exchange Authority (as regulator of the commodity exchange market), the Ethiopian Investment Agency (as registrar and general regulator of investment), and the Environmental Protection Authority (as general regulator of the environmental effect of trade and investment).[360] It re-established the Privatization and Public Enterprises

[360] See FDRE, National Bank of Ethiopia Establishment (as Amended) Proclamation No. 591/2008, Federal Negarit Gazeta, Year 14, No. 50, Addis Ababa, 11th August 2008; FDRE, Banking Business Proclamation No. 592/2008, Federal Negarit Gazeta, Year 14, No. 57, Addis Ababa, 25th August 2008; FDRE, Licensing and Supervision of Micro-financing Institutions Proclamation No 40/1996, Federal Negarit Gazeta, Year 2, No 30, Addis Ababa, 5th July 1996; TGE, Licensing and Supervision of Insurance Business Proclamation No. 86/1994, supra note 344; FDRE, Electricity Proclamation No. 86/1997, Federal Negarit Gazeta, Year 3, No. 50, Addis Ababa, 7th July 1997; FDRE, Electricity Operations Council of Ministers Regulations No. 49/1999, Federal Negarit Gazeta, Year 5, No. 52, Addis Ababa, 20th May 1999; FDRE, Rural Electrification Fund Establishment Proclamation No. 317/2003, Federal Negarit Gazeta, Year 9, No. 35, Addis Ababa, 6th February 2003; FDRE, Telecommunication Proclamation No. 49/1996, Federal Negarit Gazeta, Year 3, No. 5, Addis Ababa, 28th November 1996; FDRE, Telecommunication Services Council of Ministers Regulations No. 47/1999, Federal Negarit Gazeta, Year 5, No. 20, Addis Ababa, 27th April 1999; FDRE, Telecommunications (Amendment) Proclamation No. 281/2002, Federal Negarit Gazeta, Year 8, No. 28, Addis Ababa, 2nd July 2002; FDRE, Ethiopian Civil Aviation Authority Re-establishment Proclamation No. 273/2002, Federal Negarit Gazeta, Year 8, No. 20, Addis Ababa, 14th May 2002; FDRE, Ethiopian Aviation Security Proclamation No. 432/2004, Federal Negarit Gazeta, Year 11, No. 17, Addis Ababa, 2nd February 2004; FDRE, Motor Vehicles and Trailers Identification, Inspection and Registration (Amendment) Regulations No. 74/2001, Federal Negarit Gazeta, Year 7, No. 35, Addis Ababa, 29th June 2001; FDRE, Transport Proclamation No. 468/2005, Federal Negarit Gazeta, Year 11, No. 58, Addis Ababa, 6th August 2005; FDRE, Maritime Sector Administration Proclamation No. 549/2007, Federal Negarit Gazeta, Year 13, No. 60, Addis Ababa, 4th September 2007; TGE, Radiation Protection Proclamation No. 79/1993, supra note 344; FDRE, Quality and Standards Authority of Ethiopia Establishment Proclamation No. 102/1998, Federal Negarit Gazeta, Year 4, No. 26, Addis Ababa, 3rd March 1998; FDRE, Quality and Standards Authority of Ethiopia Establishment (Amendment) Proclamation No. 413/2004, Federal Negarit Gazeta, Year 10, No. 58, Addis Ababa, 2nd August 2004; FDRE, Higher Education Proclamation No. 351/2003, Federal Negarit Gazeta, Year 9, No. 72, Addis Ababa, 3rd July 2003; FDRE, Ethiopian Roads Authority Re-establishment Proclamation No. 80/1997, Federal Negarit Gazeta, Year 3, No. 43, Addis Ababa, 5th June 1997; FDRE, Drug Administration and Control Proclamation No. 176/1999, Federal Negarit Gazeta, Year 5, No. 60, Addis Ababa, 29 June 1999; FDRE, Customs Clearing Agents Council of Ministers Regulation No. 108/2004, Federal Negarit Gazeta, Year 10, No. 65, Addis Ababa, 18th July 2004; FDRE, Customs Proclamation No. 622/2009, supra note 359; FDRE, Broadcasting Proclamation No. 178/1999, Federal Negarit Gazeta, Year 5, No. 62, Addis Ababa, 29th June 1999; FDRE, Broadcasting Service Proclamation No. 533/2007, Federal Negarit Gazeta, Year 13, No. 39, Addis Ababa, 23rd July 2007; FDRE, Ethiopia Commodity Exchange Proclamation No. 550/2007, Federal Negarit Gazeta, Year 13, No. 61, Addis Ababa, 4th September 2007; FDRE, Ethiopia Commodity Exchange Authority Proclamation No. 551/2007, Federal Negarit Gazeta, Year 13, No. 62, Addis Ababa, 4th September 2007; FDRE, Ethiopia Commodity Exchange Authority Establishment (Amendment) Proclamation No. 566/2008, Federal Negarit Gazeta, Year 14, No. 17, Addis Ababa, 8th February 2008; FDRE,

Supervising Agency (as facilitator of the privatization process and supervisor of government enterprises), the Public Financial Enterprises Agency (as supervisor of the government owned financial institutions), the Ethiopian Intellectual Property Office (as protector and regulator of the use of intellectual property), the Ethiopian Information and Communication Technology Agency (as coordinator of the development and use of Information and Communication Technology), and the Information Security Agency (as controller of the information network and use of information).[361] It re-established the Ministry of Trade and Industry as general registrar and regulator of trade (not assigned to other regulators) and couch of the privatization of public enterprises, the development of investment, the expansion of micro and small enterprises, the provision of services in trade, the establishment of chambers of commerce and professional associations in the trade and industry sectors, the provision of one-stop-shop service to investors, and the enforcement of competition law; the Ministry of Transport and Communications as general regulator of maritime and transit services and coordinator of the regulation of other transport and communication services; the Ministry of Works and Urban Development as standard setter for design and construction works, couch of the professional competence of engineers, architects and trans-regional water work and urban development operators, and regulator of the grades of contractors and consultants and the ownership, importation and exportation of construction machinery; the Ministry of Health as general controller of hygiene, health and pharmacy services, and drug administration; the Ministry of Mines and Energy as regulator of mineral exploration and mining operations (including the market for precious and ornamental minerals

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Coffee Quality Control and Marketing Proclamation No. 602/2008, Federal Negarit Gazeta, Year 14, No 61, Addis Ababa, 25th August 2008; FDRE, Investment Proclamation No 280/2002, Federal Negarit Gazeta, Year 8, No 27, Addis Ababa, 2nd July 2002; FDRE, Investment (Amendment) Proclamation No. 375/2003, Federal Negarit Gazeta, Year 10, No. 8, Addis Ababa, 28th October 2003; FDRE, Environmental Protection Authority Establishment Proclamation No. 9/1995, Federal Negarit Gazeta, Year 1, No. 9, Addis Ababa, 24th August 1995; FDRE, Environmental Protection Organs Establishment Proclamation No. 295/2002, Federal Negarit Gazeta, Year 9, No. 7, Addis Ababa, 31st October 2002; FDRE, Environmental Pollution Control Proclamation No. 300/2002, Federal Negarit Gazeta, Year 9, No. 12, Addis Ababa, 3rd December 2002; and the annex to FDRE, Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 471/2005, Federal Negarit Gazeta, Year 12, No. 1, Addis Ababa, 17th November 2005.

[361] See FDRE, Privatization and Public Enterprises Supervisory Agency Establishment Proclamation No. 412/2004, Federal Negarit Gazeta, Year 10, No. 57, Addis Ababa, 2nd August 2004; FDRE, Financial Public Enterprises Agency Establishment Council of Ministers Regulation No 98/2004, Federal Negarit Gazeta, Year 10, No. 31, Addis Ababa, 30th January 2004; FDRE, Ethiopian Intellectual Property Office Establishment Proclamation No. 320/2003, Federal Negarit Gazeta, Year 9, No. 40, Addis Ababa, 8th April 2003; FDRE, Ethiopian Information and Communication Technology Development Authority Establishment Proclamation No. 360/2003, Federal Negarit Gazeta, Year 9, No. 82, Addis Ababa, 22nd July 2003; FDRE, Information Network Security Agency Establishment Council of Ministers Regulations No. 130/2006, Federal Negarit Gazeta, Year 13, No. 5, Addis Ababa, 24th November 2006; and the annex to FDRE, Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 471/2005, Federal Negarit Gazeta, Year 12, No. 1, Addis Ababa, 17th November 2005.

produced by traditional and small-scale mining operations) and the storage and distribution of petroleum; the Ministry of Education as general regulator, standard setter and accreditation provider for higher education; the Ministry of Agriculture and Rural Development as general regulator of the making of foreign investment in agriculture, use of veterinary drugs and pesticides, and manufacture, trade, warehousing and quarantine of fertilizer, plants, seeds, animal and animal products, hide and skin, coffee and other agricultural products; the Ministry of Water Resources as regulator of the construction and operation of water works on trans-regional water bodies; the Ministry of Culture and Tourism as standard setter for tourism facilities; the Ministry of Labour and Social Affairs as registrar of trade unions and employers associations, couch of the implementation of occupational health and safety standards, and regulator of the provision of foreign employment services to Ethiopians; the Ministry of Justice as regulator of the federal court advocates and registrar of the religious, non-profit making and non-governmental organizations and associations that operate in Addis Ababa, Dire Dawa and more than one Region; the Ministry of Science and Technology as coordinator of science and technology projects; and the Ministry of Information as registrar and general regulator of the commercial press, media, advertisement and film shooting.[362] It also enforced a new competition law as of the

[362] See FDRE, Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 4/1995, Federal Negarit Gazeta, Year 1, No. 4, Addis Ababa, 23rd August 1995; FDRE, Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia (Amendment) Proclamation No. 93/1997, Federal Negarit Gazeta, Year 4, No. 5, Addis Ababa, 23rd October 1997; FDRE, Re-organization of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 256/2001, Federal Negarit Gazeta, Year 8, No. 2, Addis Ababa, 12th October 2001; FDRE, Reorganization of the Executive Organs of the Federal Democratic Republic of Ethiopia (Amendment) Proclamation No. 380/2004, Federal Negarit Gazeta, Year 10, No. 15, Addis Ababa, 13th January 2004; FDRE, Reorganization of the Executive Organs of the Federal Democratic Republic of Ethiopia (Amendment) Proclamation No. 411/2004, Federal Negarit Gazeta, Year 10, No. 56, Addis Ababa, 2nd August 2004; FDRE, Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia (Amendment) Proclamation No. 465/2005, Federal Negarit Gazeta, Year 11, No. 55, Addis Ababa, 30 June 2005; FDRE, Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 471/2005, Federal Negarit Gazeta, Year 12, No. 1, Addis Ababa, 17th November 2005; FDRE, Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia (Amendment) Proclamation No. 546/2007, Federal Negarit Gazeta, Year 13, No. 54, Addis Ababa, 21st August 2007; FDRE, Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia (Amendment) Proclamation No. 603/2008, Federal Negarit Gazeta, Year 15, No. 1, Addis Ababa, 24th October 2008; FDRE, Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia (Amendment) Proclamation No. 641/2009, Federal Negarit Gazeta, Year 15, No. 51, Addis Ababa, 16th July 2009; FDRE, Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia (Amendment) Proclamation No. 642/2009, Federal Negarit Gazeta, Year 15, No. 48, Addis Ababa, 10th July 2009; FDRE, Registration of Ships Council of Ministers Regulations No 1/1996, Federal Negarit Gazeta, Year 2, No. 9, Addis Ababa, 13th February 1996; FDRE, Capital Goods Leasing Business Proclamation No. 103/1998, Federal Negarit Gazeta, Year 4,

17th of April 2003 with a view to achieving the objectives of preventing and eliminating anti-competitive and unfair governmental and non-governmental trade practices; maximizing economic efficiency and social welfare in the supply and distribution of goods and services; and safeguarding the interests of consumers.[363] It prohibited all agreements, dominant positions and unilateral practices that will harm competition by the new competition law and continued to control the exercise of unilateral acts and practices that can harm good will and business by the 1960 commercial code.[364] It also committed to accelerate the growth of the private sector as a key partner to its most

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No. 27, Addis Ababa, 5th March 1998; FDRE, Freight Forwarding and Ship Agency License Issuance Council of Ministers Regulations No. 37/1998, Federal Negarit Gazeta, Year 4, No. 46, Addis Ababa, 19th June 1998; FDRE, Registration and Control of Construction Machinery Proclamation No. 177/1999, Federal Negarit Gazeta, Year 5, No. 61, Addis Ababa, 29th June 1999; FDRE, Fertilizer Manufacturing and Trade Proclamation No. 137/1998, Federal Negarit Gazeta, Year 5, No. 14, Addis Ababa, 24th November 1998; FDRE, Seed Proclamation No. 206/2000, Federal Negarit Gazeta, Year 6, No. 36, Addis Ababa, 6th June 2000; FDRE, Public Health Proclamation No. 200/2000, Federal Negarit Gazeta, Year 6, No. 28, Addis Ababa, 9th March 2000; FDRE, Animal Diseases Prevention and Control Proclamation No. 267/2002, Federal Negarit Gazeta, Year 8, No. 14, Addis Ababa, 31st January 2002; FDRE, Fisheries Development and Utilization Proclamation No. 315/2003, Federal Negarit Gazeta, Year 9, No. 32, Addis Ababa, 4th February 2003; FDRE, The Proclamation to Provide for a Warehouse Receipts System No. 372/2003, Federal Negarit Gazeta, Year 10, No. 2, Addis Ababa, 14th October 2003; FDRE, Film Shooting Permit Council of Ministers Regulations. No. 66/2000, Federal Negarit Gazeta, Year 6, No. 30, Addis Ababa, 28th March 2000; FDRE, Higher Education Proclamation No. 351/2003, Federal Negarit Gazeta, Year 9, No. 72, Addis Ababa, 3rd July 2003; FDRE, Technical and Vocational Education and Training Proclamation No. 391/2004, Federal Negarit Gazeta, Year 10, No. 26, Addis Ababa, 1st March 2004; FDRE, Customs Clearing Agents Council of Ministers Regulation No. 108/2004, Federal Negarit Gazeta, Year 10, No. 65, Addis Ababa, 18th July 2004; FDRE, Raw Hide and Skin Marketing System Proclamation No. 457/2005, Federal Negarit Gazeta, Year 11, No. 45, Addis Ababa, 15th July 2005; FDRE, Mining (Amendment) Proclamation No. 22/1996, Federal Negarit Gazeta, Year 2, No. 10, Addis Ababa, 15th February 1996; FDRE, Mining (Amendment) Proclamation No. 118/1998, Federal Negarit Gazeta, Year 4, No. 47, Addis Ababa, 23rd June 1998; FDRE, Mining Operations Council of Ministers (amendment) Regulations No. 124/2006, Federal Negarit Gazeta, Year 12, No. 24, Addis Ababa, 10th March 2006; TGE, Licensing and Supervision of Health Service Institutions Council of Ministers Regulations No. 174/1994, supra note 344; TGE, Licensing and Supervision of Private Educational Institutions Council of Ministers Regulations No. 206/1995, supra note 344; and FDRE, Coffee Quality Control and Marketing Proclamation No. 602/2008, supra note 360.

[363] See FDRE, Trade Practice Proclamation No 329/2003, Federal Negarit Gazeta, Year 9, No. 49, Addis Ababa, 17th April 2003, at the preamble and article 3.

[364] See FDRE, Trade Practice Proclamation No 329/2003, supra note 363, at arts. 4, 6, 10 & 11; and IGE, Commercial Code of the Empire of Ethiopia Proclamation No. 166/1960, supra note 313, at arts. 130-134. The competition law foresees the exemption, by the Trade Practices Commission, of only i) the commercial activities exclusively reserved by law for government, ii) the developmental enterprises that may have to be encouraged by government, and iii) the basic goods and services that may have to be subject to price regulation by government from its application (See the Trade Practice Proclamation No 329/2003, supra note 363, at articles 4 & 5). The government is revising the competition law currently.

recent economic growth and poverty reduction strategies.[365] It also launched a civil service reform program to enhance the quality and speed of the public services to the private sector and continued to work to integrate the country into the world trading system.[366] It, accordingly, seemed to live as a government of transition economy striving towards building the institutions of free market through less extensive roles than the roles of a government in a planned economy (as the move is towards free market) and more extensive and active roles than the roles of a government in a developed market economy (as there are a number of market imperfections and development challenges that can not be managed by the Ethiopian market).

The country, therefore, looked to be under a government that pursues the market enhancing approach with a view to building the institutions of free market (i.e. the market friendly system) in the long run. This characterization has, however, become fragile for three reasons:

Firstly, the Ethiopian government has largely remained to be administrative despite the policies and reforms. The institutions established by the government to act as independent market regulators are few and the bulk of government-business relationship is left to ministries that are administrative by nature. All the institutions

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[365] See Ethiopia, Poverty Reduction Strategy Paper, July 31, 2002, retrieved on Oct. 12 2006 from:http://www.imf.org/External/NP/prsp/2002/eth/01/073102.pdf;Ethiopia,Poverty Reduction Strategy Paper — Annual Progress Report 2002/2003, February 12, 2004, retrieved on Oct. 12 2006 from: http://www.imf.org/external/pubs/ft/scr/2004/cr0437.pdf; Ethiopia, Poverty Reduction Strategy Paper— Annual Progress Report 2003/04, January 30, 2006, retrieved on Oct. 12 2006 from: http://www.imf.org/external/pubs/ft/scr/2006/cr0627.pdf; FDRE (Ministry of Finance and Economic Development), Ethiopia: Building on Progress, A Plan for Accelerated and Sustained Development to End Poverty (PASDEP) (2005/06-2009/10) (Volume I, September 2006, Addis Ababa), retrieved on 10 June 2008 from: http://www.mofaed.org/macro/PASDEP%20Final%20English.pdf; FDRE (Ministry of Finance and Economic Development), Ethiopia: Building on Progress, A Plan for Accelerated and Sustained Development to End Poverty (PASDEP) (2005/06-2009/10) (Volume II, September 2006,Addis Ababa); FDRE (Ministry of Finance and Economic Development), Ethiopia: Building on Progress, A Plan for Accelerated and Sustained Development to End Poverty (PASDEP), Annual Progress Report 2005-2006 (June 2007,AddisAbaba); and FDRE (Ministry of Finance and Economic Development), Ethiopia: Building on Progress, A Plan for Accelerated and Sustained Development to End Poverty (PASDEP), Annual Progress Report 2006-2007 (December 2007,Addis Ababa), retrieved on 10 June 2008 from: http://www.mofaed.org/APR%202006%20and%202007/PASDEP%20Annual%20Progress%20Report%202006%20-%202007.pdf.

[366] See reports of the Ministry of Capacity Building of the country for the civil service reform program and Geboye Desta, Melaku. 'Accession for What? An Examination of Ethiopia's Decision to Join the WTO' Journal of World Trade 43, no. 2 (2009) (Kluwer Law International BV, The Netherlands), at pp. 347ff, for the process of Ethiopia's accession to WTO.

other than the National Bank of Ethiopia are also made accountable to ministries that are entrusted with general administrative and regulatory powers over the sectors in which they operate.[367] The competition law enforcement is also left to the Ministry of Trade and Industry which is administrative by nature.[368]

Secondly, the majority of market actors (i.e. the actors other than the financial institutions and the sectors for which special regulators are established) are not subject to market regulation, nor to the competition law, as though the system is laissez-fair.[369] They are required to meet the general trade registration and licensing requirements for the sector of activity during start up and rarely subjected to ongoing substantive and disclosure requirements and supervision by the licensing and regulatory institutions for purpose of trade regulation though they have to renew their licenses periodically.[370] They can also close or change their businesses, undergo amalgamation and dissolution processes (under the Commercial Code), and modify or return their licenses more freely than the financial institutions.[371] Both the sectoral regulators and the government

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[367] See FDRE, the Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 471/2005, supra note 361.

[368] The decisions of the competition commission (which is known currently as Trade Practices Commission) are enforceable only after final approval by the Ministry of Trade and Industry (See the Trade Practice Proclamation No 329/2003, supra note 363, at articles 12-19).

[369] More than eighty nine point six (89.6) percent of the total traders and ninety three point six (93.6) percent of the business organizations registered with the Ministry of Trade and Industry are individuals and private limited companies, respectively, that are not subject to strict requirements under both the commercial code and sectoral legislation (See the trade registration data base of the Ministry).

[370] See FDRE, Commercial Registration and Business Licensing Proclamation No. 67/97, supra note 349; FDRE, Federal Government Commercial Registration and Licensing Council of Ministers Regulations No. 13/97, supra note 349; FDRE, Addis Ababa/Dire Dawa Administration Commercial Registration and Licensing Council of Ministers Regulations No. 14/97, supra note 349; FDRE, Commercial Registration and Business Licensing (Amendment) Proclamation No. 171/1999, supra note 349; FDRE, Commercial Registration and Business Licensing (Amendment) Proclamation No. 328/2003, supra note 358; FDRE, Authentication and Registration of Documents Proclamation No. 334/2003, Federal Negarit Gazeta, Year 9, No. 54, Addis Ababa, 8th May, 2003; Commercial Registration and Licensing Council of Ministers (Amendment) Regulations No. 87/2003, supra note 358; FDRE, Commercial Registration and Business Licensing (Amendment) Proclamation No. 376/2003, supra note 358; FDRE, Commercial Registration and Licensing Council of Ministers /Amendment/ Regulations No. 95/2003, supra note 358; TGE, the Encouragement, Expansion and Co-ordination of Investment Proclamation No. 15/1992, supra note 344; FDRE, Investment Proclamation No 37/1996, supra note 349; FDRE, Investment (Amendment) Proclamation No. 116/1998, supra note 349; FDRE, Investment Areas Reserved for Domestic Investors Council of Ministers Regulations No. 35/1998, supra note 349; FDRE, Investment (Amendment) Proclamation No. 168/1999, supra note 349; FDRE, Investment Proclamation No 280/2002, supra note 358; FDRE, Council of Ministers Regulations on Investment Incentives and Investment Areas Reserved for Domestic Investors No 84/2003, supra note 358; and FDRE, Investment (Amendment) Proclamation No. 375/2003, supra note 358.

[371] See ibid with the trade registration and licensing practices of the Ministry of Trade and Industry and sectoral regulators.

do not also set price, quantity and quality regulations except in few instances.[372] The competition law enforcement and creation of market competition have also remained to be unsatisfactory despite introduction of the competition law of 2003.[373] The financial institutions are, on the contrary, subject to strict nationality, legal form, initial capital, ownership spread, business plan, organizational structure and management quality related requirements during their start up and capital adequacy, reserving, provisioning, liquidity, solvency, functional separation, ownership separation, risk diversification, risk transferring, accounting, valuation, market conduct, information exchange, reporting, disclosure and fund guarantee related requirements during their operation.[374] They are closely supervised by the National Bank and have to get its prior permission to close or change their businesses and undergo amalgamation and dissolution processes.[375] The operators in some of the sectors for which regulators are established

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[372] The competition law reserves the power of the government to regulate the price and distribution of basic goods and services (See the Trade Practice Proclamation No 329/2003, supra note 363, at articles 22 & 23). Only the transport, fuel supply, electricity and telecom services are, however, subject to price regulation in practice. The production and sale of food is also hardly regulated in practice though the public health law anticipates that the quantity and quality of same will be subject to regulation by the Ministry of Health (See the Public Health Proclamation No. 200/2000, supra note 362, at articles 8-10). The quality and standards agency also enforces its standards on voluntary basis and makes only those that are related to products listed by law and have direct bearing on health, safety, weight and measurement compulsory (See the information from website of the Agency with the PDRE, Regulations of the Council of Ministers to Declare Ethiopian Standards Regulation No. 12/1990, Negarit Gazeta, Year 49, No. 25, Addis Ababa, 5th September 1990; the PDRE, Council of Ministers Regulations to Provide for Standards Mark and Fees Regulation No. 13/1990, Negarit Gazeta, Year 49, No. 26, Addis Ababa, 5th September 1990; and the PDRE, Weights and Measures Regulations Legal Notice No. 431/1973, Negarit Gazeta, Year 32, No. 13, Addis Ababa, 9th March 1973).

[373] The competition regime is affected by incompleteness of law, weak enforcement machinery, public sector dominance and absence of advocacy (See the Trade Practice Proclamation No 329/2003, supra note 363; the staff profile and annual operational reports of the Trade Practices Commission; the study reports of the Private Sector Development Hub of the Addis Ababa Chamber of Commerce and Sectoral Associations; and the study report of the Booz Allen Hamilton to USAID entitled: Ethiopia Commercial Law & Institutional Reform and Trade Diagnostic, January 2007, at pp. 58-65. Note also the more than two hundred state enterprises established in different sectors by regulations no. 6/1992 up to 104/1992, 105/1993 up to 118/1993, 124/1993, 127/1993 up to 154/1993, 156/1994 up to 180/1994, 184/1994 up to 196/1994, 199/1994 up to 203/1994, 204/1995, 205/1995, 207/1995, 208/1995, 210/1995 up to 216/1995, 10/1996, 18/1997, 26/1998, 28/1998-31/1998, 38/1998, 42/1998, 45/1998, 46/1998, 50/1999, 53/1999, 58/1999, 81/2003 up to 83/2003, 90/2003, 92/2003 up to 94/2003, 97/2004, 99/2004, 100/2004, 109/2004, 110/2004, 116/2005, 119/2005, 122/2006, 131/2007, 134/2007, 136/2007, 140/2007 and subsequent amendments).

[374] See TGE, Licensing and Supervision of Banking Business Proclamation No. 84/1994, supra note 344; TGE, Licensing and Supervision of Insurance Business Proclamation No. 86/1994, supra note 344; FDRE, Licensing and Supervision of Micro-financing Institutions Proclamation No 40/1996, supra note 360; FDRE, Banking Business Proclamation No. 592/2008, supra note 360; and the NBE Directives Number SBB/1/1994 through SBB/45/2008, SIB/1/1994 through SIB/28/2004, and MFI/01/1996 through MFI/17/2002.

[375] See Ibid.

(such as the electricity and telecom operators, the radiation and health service providers, and the manufacturers and distributors of drug and medical equipments) are also subject to some technical, quality and safety standards, codes, procedures and guidelines by the respective regulators while the air transport service providers are subject to national and international safety requirements.[376]

Thirdly, the federal government has clearly rejected the liberalism model of the advanced economies in its policies and strategies and the Prime Minister (and a number of the government officials) have re-argued in favour of the developmental state approach.[377] The Prime Minister has already argued that the free market idea is a failure in Africa and that the developmental state approach is one to re-favour.[378] The argument is shared by officials of the government and members of the leading political party (EPRDF) though it is not translated into a government policy officially.[379]

4. Conclusion

The choice of appropriate mix between government and business is a matter of interdisciplinary consideration and cost-benefit analysis. Ethiopia and other developing countries need to make it after consideration of the following points:

A. The role of government regulation in the economy is a function of stage of economic development. In a low state of economic development, the efficiency of markets, the capabilities of firms and the availability of intermediaries to solve coordination problems is limited and the scope for government to facilitate development can be significant. As the economy matures, however, the ability of the private sector improves and the scope for government intervention can be limited. The boundary between the private and government spheres and the mechanisms of economic coordination also largely depend on institutional features of the economy. The view that less government intervention is desirable as the economy develops should not also mean that every economy will eventually converge to a system in which coordination is achieved merely through the mediation of markets. The underdevelopment of private-sector institutions does not also automatically guarantee

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[376] See the directives of the Ethiopian Electricity, Telecommunications, Radiation Protection, Drug Administration and Control, and Civil Aviation Authorities from their websites.

[377] See the Rural Development Policies, Strategies and Programs, supra note 354; the Capacity Building Strategy and Programs, supra note 354; the Matters of Building a Democratic System, supra note 354; the Industrial Development Strategy, supra note 354; the Foreign and National Security Policy and Strategy, supra note 354; and the Revolutionary Democracy: Development Lines and Strategies, supra note 350, at pp. v, vi, 3-32, 123-239 for rejection of the model of liberalism of the advanced economies by the official policies of the government.

[378] See Meles Zenawi, 2007, African Development: Dead Ends and New Beginnings, Unpublished Extracts, retrieved in June 2007 from: http://www0.gsb.columbia.edu/ipd/pub/Meles-Extracts2-AfTF2.pdf.

[379] It has become common to hear about the developmental state approach in the key note speeches of government officials. The approach has also already become part of the recent business process re-engineering (BPR) action of the government.

the effectiveness of state activism or call for unconditional state intervention. The government must be capable of and motivated to perform the required coordination tasks in the public interest and its capability and incentives need to be shaped by the political-economy structure in which the government exists.

B. Both the market and the government can fail as regulatory systems. The problems of monopoly, public good, destructive competition, scarcity, externality, information deficit, bounded rationality, third party paying, price instability, involuntary unemployment, inflation, balance of payments disequilibria and so on; the need for economic co-ordination and protection of existing regulation; and the need for achievement of macro-economic and social policy goals such as growth, stability and equity (in wealth redistribution) call for government intervention. The problems of rent-seeking, waste, erroneous calculation, power abuse, capture and so on, however, also call for significant reduction of government intervention in business.

C. Neither the traditional command and control regulation nor the free market alone can provide satisfactory answers to the increasingly complex regulatory problems of the modern world. The experience in successful economies shows that the design of government intervention and regulation in an economy is a matter for continuous reform aiming at identification of the kind of division of labour between the market and the government that most suits the prevailing socio-economic circumstances. It has shown that exploration of the mix that combines market and non-market policy instruments and effectively harnesses the different regulatory participants with a view to meeting desirable regulatory objectives is important.

D. Fixing the mix between government and business requires that a country has to have clear vision and determination on the type of society to create. It also requires that the country indicates this vision and determination in its constitution and the heart of its system.

E. Most of the modern theories do not completely reject the governmental regulation of business. Only some like the classical and the Marxian political economists have recommended for the development of free market without government and government without market, respectively, and both have remained to be ideal. The other theories have often differed in their explanations of the interaction between market and government, in the extent to which they endorse governmental and non-governmental regulations and in the choice of the interests that justify each of these. Real life also shows that governments regulate despite the varying arguments against governmental regulation of business. The arguments based on treatment of the market and the government as mutually exclusive substitutes have also become traditional. The advice to developing countries also seems to be away from the extremes of the market-friendly and developmental state approaches to a market-enhancing approach so that the markets and governments will exist in partnership until the markets outweigh in the system.

F. The ideas of decentred and responsive regulation have implied the decoupling of regulation from government; the introduction of tripartite regulation by governmental regulators, self-regulators and interest groups; the post regulation of self-regulation (and the interest groups); and the making of regulation cooperative instead of adversarial. The centring of regulation in government is criticized for poor targeting of rules, rigidity, unilateral decision making, unintended outcome, weak motivation, information and instrument failure, and under and over-enforcement. The self-regulation and interest group options are also found to be affected by the level of prudence, capacity and ethics of the market actors and interest groups. They require the existence of business and social communities that i) possess cultural values which will allow little freedom to fraudulent activity and scandal, ii) can smoothly and effectively resolve conflicts of interests, iii) can shoulder the responsibility and impartiality which self-regulation requires, and iv) have members who possess deeply ingrained commitment to adhere to own codes of conduct. Ethiopia and the many developing countries lack this. The recommendation is, therefore, to have a system that will allow the pragmatic mixing of the three options through time.

G. Regulation faces constraints and costs no matter how it is justified. It can be constrained during its formation when particular interests succeed in influencing it in their favour. It can be constrained during its implementation when informational and administrative limits, conflicts of interest between the regulators and the regulated entities, and political considerations affect it. It can face enforcement costs when it involves rule formulation, institutional set up and compliance expenses and results in outcomes that may discourage innovativeness of the regulated institutions. The presence of these costs and constraints do not, however, imply the taking of position against regulation as their magnitude depends on the design of the regulatory system. It, however, implies that a cost-benefit assessment has to be done and the beneficial approach has to be chosen during regulatory design.

H. Any attempt to find out the right relationship between government and market should not, therefore, be based on dichotomy between the market and the government. It should not also aim at a single hard-and-fast solution for all problems as economic coordination and development (hence, the design of regulation) are continuous processes of system change in which society should try to discover better solutions from time to time. The policy should be to pragmatically mix between competition, government regulation, self-regulation and market discipline according to context. The system should also be one that allows the taking into account of national and international economic, political and social factors, the synthesis of solutions through interdisciplinary consideration, and the making of continuous review of solutions.

Ethiopia and many of the other developing countries should also make the general definition of government and business relationship topic for constitutional law as it is a matter of socio-economic system design. The developed market countries of Northern America, Western Europe and Japan have succeeded in making their systems free market without expressly defining the economic roles of their governments in their constitutions, but by i) assuming the free market principle, conferring private property

rights and recognizing the exercise of individual labour and economic freedoms by their constitutions, and ii) putting in place the necessary regulation. They have also benefited from stability of policies. The countries of Eastern Europe, Asia and other regions that have shifted their attentions from communism to the free market system have also assisted their transitions through clear definition of the economic roles of their governments in their constitutions on top of the recognition of private property rights and individual economic freedoms. Ethiopia and many of the other developing countries have, however, left the relationship between government and business to discretion of the executive in government and this has made their systems fragile due to political choices. The case for general constitutional definition of policy and the roles of government in business is, accordingly, high in them despite the need for pragmatism and flexibility.

Ethiopia should also make other improvements. First, it should not confuse between the administration and the regulation approaches and work towards creation and use of independent market regulators for the regulatory functions. Secondly, it should enhance the use of the competition mechanism and build the capacity for it as a matter of its free market policy. Thirdly, it should raise the capacity and interest to effectively intervene and regulate the markets for the matters in respect of which the competition mechanism fails to hold whether due to the nature of the matters or the market behaviour. All these are legitimate and expected from the current policy set up of the country.