International Economic Law and Central Banks in Africa: Toward a Progressive Pro-Development Approach

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For too long, lawyers have ceded central banks to economists. Even within economic law and policy, central banks, and the monetary regimes they operate, perhaps best characterize the governance norm of technocracy over democracy. Institutionally, the technocratic turn expresses itself in this context as a commitment to central bank independence; in turn, this institutional norm of independence buttresses the substantive commitment to anti-inflationary policy even where it may be tied to higher unemployment and lower demand. Often characterized as neoliberalism, the frameworks that undergird this form of central bank governance more accurately constitute a form of "ordoliberalism": rather than a spontaneous effect of "free," that is to say, deregulated, markets, they arise out of highly concerted and complex sets of global market disciplines.

With this ordoliberal frame, a certain techno-mystification has shrouded the regulation and operation of central banks. Even though their institutional design depends directly on underlying legal commitments and policy choices, monetary regimes and central banks often seem to operate outside the realms of ordinary law and policy. This is all the more true when it comes to international economic law. Although the global financial architecture ultimately arises out of the institutions established by the Bretton Woods treaties of 1944, the role of law in international financial and monetary regulation has often disappeared into a "black hole." Instead, much of international financial and monetary coordination appears to operate under regimes of soft law and self-regulation.

The concession of central banks to economists has often problematically tended, in various ways, to put private-sector interests ahead of the broader public interest. The theoretical or ideological justification for this prioritization maintains that privileging the former benefits the latter: robust market growth and profit for private actors advances the larger social good. But the divergence between the two frequently is exposed. During times of severe financial crisis – from the developing-country debt crises of the 1980s and 1990s to the global capital markets crisis of 2008-2009 -- the norm of technocratic independence has supported protocols that shore up the stability of financial institutions, often at the expense of ordinary livelihoods. This worldview has obscured or legitimated the ways in which publics have been required both to suffer extraordinary austerity and to take on enormous debt to prop up banks that failed due to their own market and financial errors.

The tension between these interests also pertains in less dramatic times, in determining what monetary and financial policy will best support sustained development. For African countries, as well as for other developing countries, this debate takes on particular characteristics. On the one hand, runaway inflation can create especially pernicious effects in the developing-economy context. The low-inflation environment, according to many, is paramount to preserving financial stability and supporting robust economic growth over the long term. Yet, on the other hand, controlling currency value and monetary circulation too tightly can choke fledgling processes of real-economy investment and production. This may be even more true in the developing-country context, and particularly the African context, than in other contexts. Countries with less-developed financial systems do not necessarily respond to monetary transmission (when monetary policy reverberates throughout the economy), and so do not respond to interest rate adjustments and money controls in the same way that more developed economies do. Additionally, many firms in African countries lack access to external financing like their counterparts in developed countries. As a result, they must rely on retained earnings and bank debt to finance their growth. This further erodes the effects of interest rate policies and creates a cyclical effect of growth centered on the business cycle.

In short, the distributional consequences of central bank and monetary regime design – how that design "distribute[s] resources and allocate[s] losses … among constituents" – have too often avoided thoroughgoing evaluation by lawmakers and legal analysis. Notably, and despite the prevalence of the anti-inflationary view, the practice of central banks in high-income countries has increasingly departed from this view, and towards an embrace of pro-growth low interest-rate policy. Some analysts now argue that the anti-inflationary perspective is based on an overly broad reaction to the macroeconomic ills of the 1970s.

The stakes have never been higher than now to revisit and interrogate the foundations of central bank design, and especially so for Africa. Despite encouraging economic growth in the past few decades, poverty and unemployment have often stubbornly persisted, highlighting the need for pro-development monetary policy. As the continent moves forward with an ambitious vision for economic integration, numerous projects for regional monetary coordination and monetary union have emerged or become more salient. The creation or reform of African regional currencies has accelerated,[1] potentially leading to a single continental currency. These monetary integration plans will be in most cases presided over by national and regional central banks.[2]

The time is right, then, to devote close attention to how international, regional and local laws, norms and practices can benefit from a new approach to the analysis of central banks. This approach would understand the norm of central bank independence, and the privileging of anti-inflationary policy as the "dominant objective," as only one among many institutional and substantive configurations. Rather than seeing financial markets as domains of private commerce, it would understand the vital role of the public in making those markets possible. In the context of African economies, the goal of controlling inflation and maintaining monetary stability remains key, but must find balance with other goals, such as providing access to credit for small and medium enterprises, investing in infrastructure, and supporting broad-based and sustainable growth and employment in the real economy. Central banks, and the governments to which they belong, should calibrate monetary policy so as to accommodate these broader goals. Needless to say, the larger international community, particularly creditor governments of the global North and international financial institutions, should also play a supportive – rather than obstructive – role.

In the continental context, Africa's regional central banks, and the projects of monetary coordination and monetary union they oversee, arise directly out of treaty frameworks. These frameworks provide vital opportunities for calibrating these policy objectives in the form of legal and institutional design. The goal must be to ascertain the components of a progressive, pro-development approach that will seek to balance the objective of financial stability with the objective of maintaining sufficient macroeconomic policy space, and the objective of central bank independence with the objective of accountability to the public interest.

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[1] Currently, there exist two regional currencies, the West African CFA franc and the Central African CFA franc, widely understood to have played a key role in enabling continued economic control by France over its former colonies. By contrast, emerging plans for monetary integration accompany broader plans for continental regional integration that support economic self-determination. Many of these plans remain in development. Both the Economic Community of West African States (ECOWAS) and the West African Economic and Monetary Union (WAEMU) have declared plans for a regional currency called the Eco. Additionally, the Abuja Treaty created the African Economic Community and called for the establishment of the African Central bank (ACB) and a common currency. The treaty stipulated that the single currency was to be preceded by

the creation of five regional monetary unions under the umbrella of the African Monetary Union, including: (1) the West African Economic and Monetary Union (WAEMU), (2) the Economic and Monetary Community for Central Africa (CAEMC), (3) the Arab Monetary Union (ArMU), (4) the Southern African Monetary Union (SAMU), and (5) the East African Monetary Union (EAMU). Each regional monetary union is required to create common currencies for its member countries. Relatedly, Afrixim bank has launched the Pan-African Payment and Settlement System (PAPSS) that encourage uses of local currency in cross border payments in Africa.

[2] The African Union maintains an ultimate goal of creating an African Central Bank with responsibility for a common monetary policy and single currency for all of Africa. Africa's current regional central banks include the Central Bank of West African States (BCEAO) and the Bank of Central African States (BEAC).

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