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RESURRECTING THE RULE OF LAW IN LIBERIA

Jim Dube

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RESURRECTING THE RULE OF LAW IN LIBERIA

*Jim Dube**

I. INTRODUCTION

The rule of law is more than a legal concept. It encompasses more than an established set of rules and legal institutions. In the case of Liberia, there can be no rule of law without the commitment of those relatively few people who administer those rules on behalf of a post-conflict state that has endured twenty-five years of civil war and exploitation. This Essay seeks to prove that existing legal architecture and institutions in a post-conflict state matter less to the rule of law than does the character of the people who run the legal system. The Essay does not suggest that legal rules are, or should be, subordinate to personality in the orderly functioning of a post-conflict society. However, it concludes that emphasis on creating new laws to address the perceived causes of state failure will ultimately accomplish little if the judges and lawyers who operate the legal system are not genuinely committed to the rule of law.

This argument is developed by outlining, in very broad terms, the pre-conflict Liberian legal system and how it failed to serve as a meaningful bulwark against warlord predators. Then, the Essay focuses on a particular case, decided by Liberia's Supreme Court on August 23, 2007,¹ involving Liberia's former head of state, Charles Gyude Bryant, who served as chairman of the National Transitional Government of Liberia (NTGL) from October 2003 until the inauguration of Liberia's current President, Ellen Johnson-Sirleaf, on January 16, 2006. The *Bryant* case provides an example of how the presidential immunity provision in Liberia's Constitution was invoked in an attempt to trump the rule of law with the rule of impunity, and how the Supreme Court of Liberia's judgment offers hope for a better day in Liberia's legal future, notwithstanding the divided opinion of the Court.

II. A BRIEF LEGAL HISTORY

Liberia came into being in July 1847, with a U.S.-style constitution.² The fact that Liberia looked to the United States in designing its legal system was only natural. Those who were in control of Liberia's geography at the time were freed slaves from the United States who were transplanted by organizations such as the American Colonization Society (ACS).³ These organizations were sponsored by the southern

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1. *Bryant v. Liberia*, [2007] __ L.L.R. __ (Liber.) (slip opinion on file with author).

2. See generally CONSTITUTION (1847) (Liber.).

3. See JEREMY I. LEVITT, THE EVOLUTION OF DEADLY CONFLICT IN LIBERIA 32-33 (2005); see also LESTER S. HYMAN, UNITED STATES POLICY TOWARDS LIBERIA 1822 TO 2003: UNINTENDED CONSEQUENCES? 3-5 (2003).

aristocracy in the United States as a means to relocate freed slaves whose notions of freedom were potentially contagious in the antebellum southern United States.⁴ The freed American slaves were new settlers in the West African territory, now known as Liberia, which was then occupied by various indigenous groups. These settlers became known as the Americo-Liberians.

The 1847 Liberian Constitution, like its U.S. model, established three independent branches of government: executive, legislative, and judicial.⁵ It called for an elected president⁶ and an elected bi-cameral legislature, which was divided into a House of Representatives and a Senate.⁷ It provided for a judiciary, with the Supreme Court of Liberia at its pinnacle,⁸ consisting of the Chief Justice and four Associate Justices. Below the Supreme Court were the Circuit Courts and the Magistrates Courts for each of Liberia's counties.⁹ Much of Liberia's law was codified. To this day, the five-volume *Liberian Codes Revised* is the bedrock text upon which Liberian lawyers rely. Its source was primarily American common law.¹⁰

As in the United States, case precedent also served as an evolutionary mechanism for the law to develop. Decisions of the Supreme Court are binding on lower courts. The *Liberian Law Reports* disseminates important case law to judges and practitioners. To an outside observer, it would appear that pre-conflict Liberia had a strong legal architecture: codified law enacted by an elected legislature, construed by a hierarchical court system, and guided by precedent; publication of case law, together with publication of statutes enacted by the House of Representatives and the Senate; a functioning national bar association; and the education of law students at the Louis Arthur Grimes School of Law.

Yet, behind this legal structure, the reality was that most Liberians were excluded from participation in their government and in their court system. The Americo-Liberian settlers and their descendants used the law to restrict voting rights to property owners.¹¹ Since indigenous groups, who accounted for more than ninety percent of the population, had no concept of the private ownership of property, they did not get to vote.¹² From 1847 through 1980, the Americo-Liberian governing class kept tight control over the instruments of government and the economy.¹³

The collapse of the Liberian state and the onset of civil war came suddenly and violently on April 12, 1980, when Master Sergeant Samuel Doe and sixteen other low-ranking members of the military scaled the Executive Mansion in Monrovia, murdered the elected President William Tolbert, and then marched the Cabinet to the nearby

4. See LEVITT, *supra* note 3, at 32-33; HYMAN, *supra* note 3, at 3-5.

5. CONSTITUTION, art. 2-4 (1847) (Liber.).

6. *Id.* art. 3, § 1.

7. *Id.* art. 2, § 1.

8. *Id.* art. 4, § 1.

9. *Id.* art. 5, § 2. A county in Liberia is the legal equivalent of an American state or a Canadian province.

10. Tiawan Saye Gongloe, *Rebuilding the Liberian Justice System* 9-10, 34 (Carr Ctr. for Human Rights Policy Working Papers, 2004-2005).

11. AMOS SAWYER, *BEYOND PLUNDER: TOWARD DEMOCRATIC GOVERNANCE IN LIBERIA* 11-12 (2005).

12. LEVITT, *supra* note 3, at 38.

13. See generally LEVITT, *supra* note 3; see also SAWYER, *supra* note 11, at 12-16.

beach where they were summarily shot.¹⁴ The Liberian Constitution and the country's legal institutions afforded no real protection against the tyranny and mayhem that were to follow, notwithstanding that the legal architecture and institutions existed.

Master Sergeant Samuel Doe was of the Krahn indigenous group.¹⁵ He was the first member of any indigenous group to hold the presidency. During his 10-year rule from 1980 to 1990, the Krahn excluded not only the Americo-Liberians, but also other indigenous groups, from playing any meaningful role in government.¹⁶ Faced with external pressure to re-establish the rule of law, Doe's response was to create a commission to design a new constitution.¹⁷ As a result, the Liberian Constitution of 1986 came into being, and it is still the fundamental law of Liberia today.¹⁸ Ironically, this Constitution is the product of a regime known for its brutality. It is difficult to reconcile the words of the 1986 Constitution with the realities of what was happening in Liberia. For example, with respect to the "Structure of the State," Article 1 of the 1986 Constitution states as follows:

All power is inherent in the people. All free governments are instituted by their authority and for their benefit and they have the right to alter and reform the same when their safety and happiness so require. In order to ensure democratic government which responds to the wishes of the governed, the people shall have the right at such period, and in such manner as provided for under this Constitution, to cause their public servants to leave office and to fill vacancies by regular elections and appointments.¹⁹

Like its predecessor of 1847, the Constitution of 1986 created separate "coordinate" branches of government: the executive, the legislative, and the judiciary.²⁰ In reality, however, the executive branch trumped the other two "coordinate" branches, making the presidency the "brass ring," which would yield rewards when grabbed. While the doctrine of presidential immunity existed as an implicit adjunct to the constitutional provisions for impeachment under the 1847 Constitution,²¹ and had been successfully invoked by former President C.D.B. King in 1930 when he faced charges of violating Liberia's anti-slavery laws,²² the 1986 Constitution elevated presidential immunity to an explicit written constitutional protection. Article 61 states:

The President shall be immune from any suits, actions or proceedings, judicial or otherwise, and from arrest, detention or other actions on account of any act done by him while President of Liberia *pursuant to any provision of this Constitution or any other laws of the Republic*. The President shall not, however, be immune from

14. LEVITT, *supra* note 3, at 197; HYMAN, *supra* note 3, at 21-22.

15. HYMAN, *supra* note 3, at 22.

16. *Id.* at 23 (citing HERMAN J. COHEN, *INTERVENING IN AFRICA: SUPERPOWER PEACEMAKING IN A TROUBLED CONTINENT* (2000)).

17. SAWYER, *supra* note 11, at 19.

18. *See generally* CONSTITUTION (1986) (Liber.).

19. *Id.* art. 1.

20. *Id.* art. 3.

21. CONSTITUTION, art. 2, § 6, (1897) (Liber.).

22. *In the Matter of the Petition of C.D.B. King*, [1932] 3 L.L.R. 337 (Liber.).

prosecution upon removal from office for the commission of any criminal act done while President.²³

Functional immunity did not stop with Doe, however. He ruled through a political entity called the People's Redemption Council (PRC) and, because he was in control of the constitution-writing exercise, he extended immunity beyond himself, as President, to his political party, the PRC. Article 97(a) of the 1986 Constitution states as follows:

No executive, legislative, judicial or administrative action taken by the People's Redemption Council or by any persons, whether military or civilian, in the name of that Council pursuant to any of its decrees shall be questioned in any proceedings whatsoever; and, accordingly, it shall not be lawful for any court or other tribunal to make any order or grant any remedy or relief in respect of any such act.²⁴

This constitutional bunker did not shelter the Doe regime from the consequences of its excesses. Doe's rule ended as abruptly and as violently as it had begun. In 1990, he was murdered, on video, by Prince Johnson, a warlord who was then vying for power.²⁵ This took place as Liberia's pre-eminent warlord, Charles Taylor, was in the process of taking control of most of Liberia in a civil war that was to destroy much of the country's infrastructure.²⁶ After Doe's murder, Liberia was ruled between 1990 and 1996 by a National Transitional Government, but its authority did not extend beyond Monrovia.²⁷

Charles Taylor, like Samuel Doe, also operated through a political party: the National Patriotic Front of Liberia (NPFL). While Taylor fought in the field, NPFL was using the Liberian court system to destabilize the frail transitional government. In the case of *National Patriotic Front of Liberia (NPFL) v. Liberia National Transitional Government (LNTG)*,²⁸ NPFL sought a writ of mandamus to remove three cabinet ministers. The Transitional Government, then headed by a "collective" presidency, asked the Supreme Court to dismiss NPFL's mandamus petition "because the petition is unconstitutional since it violates Article 61 of the Liberian Constitution which prohibits suits and proceedings, judicial or otherwise, being brought against the President, and that the five Councilmen who are exercising 'collective presidency' are immune from suits or court process as in this case."²⁹

In the *NPFL* case, the Supreme Court spoke on the Transitional Government:

The Liberia National Transitional Government is not a constitutional government in the strictest sense. It is a government created by an agreement made between parties to our civil war. Unlike a constitutional government, it is not established by the free will and consent of the Liberian people. This Interim Government may at best be styled as a government of necessity. That necessity being the need to restore peace to our land so that a government of law and order can be established. These warlords

23. CONSTITUTION, art. 61 (Liber.) (emphasis added).

24. *Id.* art. 97(a).

25. LEVITT, *supra* note 3, at 208.

26. *Id.* at 205-10.

27. *Id.* at 211-16.

28. [1995] 38 L.L.R. 130 (Liber.).

29. *Id.* at 134.

and their followers have enslaved the Liberian people by fear derived from the barrel of their guns. For more than five years, they have deprived us of law and order and have removed freedom and justice from our society. Tyranny and naked power without the rule of law is our daily companion.³⁰

In denying the Government's claim for Article 61 immunity, the Supreme Court concluded "the Liberian Constitution never contemplated or implied a 'Collective Presidency.'" ³¹ Notwithstanding the Court's commentary on the chaos brought to Liberia by civil war, the Court ruled in favor of Taylor who was successfully behind the reins of that civil war. Liberia's legal architecture facilitated Taylor's application to the Court for a prerogative remedy, bloody hands aside. Subsequently, Taylor went on to win a political victory in the elections held in late 1996, thus becoming Liberia's first elected President since Tolbert's murder in 1980.

What ensued during the Taylor regime from 1997 through to 2003 was the total disintegration of Liberian social order and the Liberian state. Neither the Liberian Constitution of 1986 nor the domestic internal laws of Liberia had any appreciable effect in redressing the widespread use of terror and the decay of social institutions. Yet, technically, Liberia still had a constitutional democracy, with an elected president, an elected legislature, and a functioning judiciary.

Liberia's then-leading human rights lawyer was Tiawan Gongloe. Speaking out against the Taylor regime, however, was risky. Counselor Gongloe was arrested and tortured for what he said and wrote. The following excerpt appeared on a website called "The Perspective," posted on April 28, 2002, at Abidjan, Ivory Coast:

The Regional Office of the Center for Democratic Empowerment (CEDE) wishes to add its voice to CEDE's Liberian Program Office in expressing shock and unreserved condemnation of the criminal arrest, detention and torture of Counselor Tiawan S. Gongloe Counselor Gongloe was arrested by one of the dreaded units of the Liberia National Police Force . . . on April 24, 2002. He was taken to the National Police Headquarters and thrown into a cell [P]olicemen, clearly acting under orders, proceeded to strip Mr. Gongloe nude and carry out an ordeal of brutal physical assaults and various forms of torture throughout the night. By the morning, Counselor Gongloe could not walk on his legs, his face swollen, his left eye badly bruised and he had lost hearing in one ear.³²

It did not matter what laws were on the books, nor did it matter what legal institutions were in place to administer those laws. Instead, what mattered was the contempt of the Taylor regime for the rule of law and the failure of the legal system to do anything about it. Counselor Gongloe's release from custody did not happen through any habeas corpus petition; rather, it happened because the outside world's attention to his plight became an embarrassment to Taylor's regime.

Ultimately, Taylor was defeated in August 2003, but only by brute force mounted against him by other warlord groups within Liberia.³³ These groups had high

30. *Id.* at 138-39.

31. *Id.* at 143.

32. CEDE *Condemns the Arrest, Detention and Torture of Counselor Tiawan S. Gongloe*, THE PERSPECTIVE, Apr. 20, 2002, <http://www.theperspective.org/cedestatement.html> (last visited Apr. 2, 2008).

33. SAWYER, *supra* note 11, at 42-43.

sounding names, such as Liberians United for Reconciliation and Democracy (LURD) and Movement for Democracy in Liberia (MODEL), and they received external help through the military arm of a regional governmental organization called the Economic Community of West African States (ECOWAS).³⁴

When Taylor's rule ended during the summer of 2003, Monrovia was in ruins, and once again surrounded by warlord combatants. A ceasefire was agreed upon in June 2003. Subsequently, a Comprehensive Peace Agreement (CPA) was negotiated during June and July of 2003 and signed in August of 2003 at Accra, Ghana.³⁵ The principal parties to the CPA were the three major combatant groups: the Government of Liberia (GOL), which represented Taylor's forces, plus LURD and MODEL. The CPA easily swept aside Liberia's Constitution and its three branches of government. Article 35 of the CPA, titled "Special Provisions," stated, in part:

[T]he Parties [GOL, LURD, MODEL] agree on the need for an extra-Constitutional arrangement that will facilitate its formation and take into account the establishment and proper functioning of the entire transitional arrangement. Accordingly, the provisions of the present Constitution of the Republic of Liberia, the Statutes and all other Liberian laws, which relate to the establishment, composition and powers of the Executive, the Legislative and Judicial branches of the Government, are hereby suspended. For the avoidance of doubt, relevant provisions of the Constitution, statutes and other laws of Liberia which are inconsistent with the provisions of this Agreement are also hereby suspended. All other provisions of the 1986 Constitution of the Republic of Liberia shall remain in force.³⁶

The three warlord groups then "selected" Charles Gyude Bryant, a businessman from Monrovia, to be chairman of yet another National Transitional Government of Liberia (NTGL).³⁷ Bryant took office in October 2003.³⁸

The CPA created a new legislative body called the National Transitional Legislative Assembly (NTLA), a unicameral body similarly formed by a process of selection, rather than election.³⁹ As for the judiciary, the CPA provided that all members of Liberia's Supreme Court "shall be deemed to have resigned."⁴⁰ New judicial appointments were made by Chairman Bryant, subject to the approval of the NTLA. Finally, the CPA provided for the restoration of the Constitution and statutes inconsistent with the CPA upon the inauguration of an elected Government in January 2006.⁴¹

The NTGL was mandated to hold elections in October 2005.⁴² In the meantime, however, it functioned as the extra-constitutional authority of the Liberian state. With

34. *Id.*

35. Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties, Aug. 18, 2003 [hereinafter CPA], available at http://www.usip.org/library/pa/liberia/liberia_08182003_toc.html.

36. *Id.* art. 35.

37. LEVITT, *supra* note 3, at 239.

38. *Id.* at 242.

39. CPA, *supra* note 35, art. 24.

40. *Id.* art. 27.

41. *Id.* art. 35.

42. LEVITT, *supra* note 3, at 239.

political power being parceled out to competing warlord factions coupled with the limited role of Liberian law that remained in force during the two-year transition period, it came as no surprise that the NTGL was discovered to be riddled with corruption. The corruption was so severe that the ECOWAS sent a team of investigators in 2005 with the following mandate:

Following a working visit by the ECOWAS Mediator . . . [the] Foreign Ministers of Ghana, Nigeria and Sierra Leone, and the Executive Secretary of ECOWAS to Liberia, a decision was made on the need to send a delegation of ECOWAS Team of Investigators to Liberia. This decision was precipitated by the staccato of complaints from civil society and development partners in Liberia against what was conceived as “rampant corruption, lack of accountability and transparency in financial and economic matters on the part of high government officials.”⁴³

The ECOWAS Final Report, submitted in July 2005, was harsh in its criticism of financial malfeasance and misappropriation at the hands of the highest levels of the NTGL.⁴⁴ While the ECOWAS Final Report made specific recommendations regarding the removal from office of Finance and Commerce cabinet ministers, it punted any decision about Bryant back to ECOWAS. ECOWAS, however, did nothing. In October 2005, with Frances Johnson-Morris as head of the country’s electoral commission, elections were held and Liberia had a new president-elect, Ellen Johnson-Sirleaf.

As the NTGL was coming to an end in early January 2006, the non-constitutional NTLA passed what it styled as a “Binding Resolution,” which would have surprising consequences for Chairman Bryant. The Resolution stated as follows:

WHEREAS the Economic Community of West African States, concerned about the rumours and allegations of corruption in Government, sent an audit team to Liberia, but the audit report has never been made public, thus removing from the public domain vital information on receipt of government revenues and the expenditure thereof as required by the principles of good governance, transparency and accountability [The Sirleaf Administration] is empowered to audit the income and expenditures of the NTGL from October 14, 2003 to January 3, 2006.⁴⁵

In her inaugural address on January 16, 2006, President Johnson-Sirleaf targeted Liberia’s tragic experience with its all too powerful Executive Branch and vowed a new beginning, with these words: “As we today savour the new dawn of hope and expectation, I pledge to bring the Government closer to the people. The days of the imperial Presidency . . . of a domineering and threatening Chief Executive are over in Liberia. This was my campaign promise which I intend to keep.”⁴⁶ To advance restoration of the rule of law, President Johnson-Sirleaf appointed Frances Johnson-Morris as Minister of Justice and asked Counselor Gongloe to return to Liberia to serve as Solicitor General. To send a message that kleptocrats in Government would

43. ECON. COMM. OF W. AFR. STATES [ECOWAS], FINAL REPORT OF ECOWAS TEAM OF INVESTIGATORS INTO ECONOMIC CRIME IN LIBERIA, § 1.1 (July 2005) (on file with author).

44. *Id.* §§ 3.2.13-10.

45. Binding Resolution 002 Adopted by the National Transitional Legislative Assembly (Jan. 4, 2006).

46. President Ellen Johnson-Sirleaf, President of Liberia, Inaugural Address (Jan. 16, 2006), available at <http://www.theliberiandialogue.org/articles/c011806tws.htm>.

be held accountable, the Ministry of Justice proceeded to prosecute leaders of the NTGL regime from the top down.

III. THE BRYANT CASE

In March 2007, Bryant was indicted and arrested on charges of economic sabotage for defrauding the Government of nearly \$1.4 million American dollars while acting as Chairman of the NTGL. Bryant immediately filed a Petition for a Writ of Prohibition against both the Republic of Liberia and the trial judge of the Criminal Court who was to hear the case.⁴⁷ Bryant's Petition, which claimed presidential immunity under Article 61 of the 1986 Constitution, was heard by the full Supreme Court on April 24, 2007.

Bryant's claim for immunity under the 1986 Constitution rested primarily on two grounds. First, Bryant argued that he was *like* a President, even though his formal title was "chairman," and was essentially elected by the three warlord groups who, in turn, expressed the will of their constituents. Hence, Bryant argued that he be considered as an elected president entitled to Article 61 immunity. Second, because Bryant had never been impeached during his tenure nor removed from office, he argued that one of the necessary conditions precedent to lifting his immunity never occurred. Accordingly, he continued to enjoy immunity even though he had left office and, consequently, he argued that the Court had no jurisdiction to hear the case.⁴⁸

The Government was represented not only by Counselor Gongloe, but also by Counselors Philip Banks⁴⁹ and Michael Wright. The Government's brief opened with a synopsis of recent history, including the steps necessary to bring peace to Liberia. The Government wrote:

[T]he belligerent parties to the conflict (i.e. [GOL], [LURD], and [MODEL]) gathered, with select representatives of certain political parties and civil society organizations, in the City of Accra, the Republic of Ghana, in 2003 under the auspices of ECOWAS. As noted herein, the Government of Liberia at the time, elected in 1997 under a special arrangement designed by the United Nations and ECOWAS to bring constitutional democracy to Liberia after a protracted period of war, was one of the belligerents to the conflict. The pre-conditions to the conclusion and execution of a peace agreement for the restoration of peace to Liberia were the compulsory resignation of former President Charles Taylor, the complete dissolution of his Government, including the resignation of the Justices of the Supreme Court, and the replacement of the dissolved government by a transitional government comprising primarily the three warring parties to the conflict. All of these were to occur through extra-constitutional arrangements and processes laid out in the Comprehensive Peace Agreement (CPA).⁵⁰

The Government made several primary arguments in opposing immunity. First, it asserted that the CPA, by suspending all provisions of the 1986 Constitution in relation

47. Brief for Respondent at 4, *Bryant v. Liberia*, [2007] __ L.L.R. __ (Liber.) (on file with author).

48. *Id.* at 11.

49. Philip Banks is editor of *Liberian Law Reports* and annotator of the *Liberian Codes Revised*, and, as of August of 2007, Liberia's new Minister of Justice.

50. Brief for Respondent, *supra* note 47, at 1.

to the Executive Branch, also in effect suspended Article 61.⁵¹ Second, the Government contended that even if Article 61 had been in force, Bryant was not an elected president; he was a “selected” chairman and, therefore, not entitled to claim Article 61 immunity.⁵² Third, it argued that the NTGL was not a constitutional government; rather, it was an extra-constitutional government as set out in Article 35 of the CPA. Hence, the Government argued that the Supreme Court, in applying the reasoning of its *NPFL* decision in 1995, should find that the head of an extra-constitutional government is unable to find legal refuge in the provisions of the Liberian Constitution—notably Article 61.⁵³ Finally, the government contended that Bryant was seeking immunity for alleged criminal conduct, whereas Article 61 only applies to actions done “pursuant to any provision of the Constitution or any other laws of the Republic of Liberia.”⁵⁴

The Government argued that “[t]o accept . . . that [Bryant] is immune and shielded from prosecution from criminal conduct committed by him while in office, acts which were clearly outside the scope of any definition of his duties . . . would turn the concept of immunity into one of impunity.”⁵⁵ The Government further argued that accepting Bryant’s argument “would be paving the road for future executives to plunder the treasury of the Liberian nation and to engage, flagrantly, in criminal conduct, and then claim protection from the very Constitution that is designed to protect the Liberian people and nation.”⁵⁶

The Court released its Judgment on August 23, 2007, dismissing Bryant’s petition for a writ of prohibition and ordering him to stand trial.⁵⁷ However, the Court was sharply divided with three judges holding that the call for an audit in the NTLA’s Binding Resolution constituted a waiver of immunity.⁵⁸ The majority opinion, written by Justice Kabineh Ja’Neh, held that the CPA was the “Organic Document” of the land from October 2003 to January 6, 2006 and that “[d]uring said period, the CPA was the supersedeas over and above all other instruments including the 1986 Constitution in relation to political governance in Liberia.”⁵⁹ Justice Ja’Neh reasoned that since the NTLA derived its authority from the CPA, “it is our opinion that the NTLA was granted extraordinary power and authority under the CPA to also include suspension of any provision(s) of the Liberian Constitution. A ‘Constitutional Legislature’ as we have today, is certainly not vested nor could it exercise such authorities and powers.”⁶⁰

The narrow ratio of the majority’s decision took judicial notice of the NTLA binding audit resolution as the means to defeat Bryant’s claim to immunity. Justice Ja’Neh stated as follows:

51. *Id.* at 6.

52. *Id.* at 7-8.

53. *Id.* at 6-7.

54. *Id.* at 10 (quoting CONSTITUTION, art. 61 (1986) (Liber.)).

55. *Id.*

56. *Id.*

57. *Bryant v. Liberia*, [2007] ___ L.L.R. ___ (Liber.) (slip opinion on file with author).

58. *Id.* at 28.

59. *Id.* at 21.

60. *Id.* at 24.

To the mind of this Court, assuming that Article 61 was applicable in the instance of petitioner, given the extra Constitutional character of the NTGL, the NTLA passage of the “Binding Resolution” by its letter and spirit, clearly remove the immunity shields and deprive the petitioner of such immunity. This Court recognizes that under normal condition, it would be unthinkable that a resolution of the Legislature will set aside a constitutional provision; but as we have indicated, the CPA at the time was the Supreme law of our country, and it was the CPA from whence the NTLA received its authority to do what it did in order to bring sanity to the precarious situation that faced us as a Nation-State.⁶¹

Noting that Bryant, himself, was a “creature” of the extra-constitutional arrangements, the Court reasoned, “[C]an he now properly challenge an act of auditing him authorised [sic] and sanctioned by the CPA, through the NTLA? We hold no.”⁶²

While the majority opinion, in dicta, rejected the Government’s argument that Article 61 immunity did not extend to criminal conduct, the Chief Justice of Liberia accepted the Government’s argument and made it the *ratio decidendi* of his opinion.⁶³ Chief Justice Lewis, after quoting Article 61 and underlining the “pursuant to law” clause, stated as follows:

It is my opinion that Article 61 of the Liberian Constitution (1986) does not provide absolute immunity to the President; rather, it provides immunity ‘from any suits, actions or proceedings, judicial or otherwise,’ including prosecution, so long as the act done by him, or her, while President is *pursuant* to any provision of the Constitution or any other laws of the Republic. Where, however, the act done by him, or her, while President is not pursuant to any provision of the Constitution or the statutory laws of the Republic, he or she is not immune from prosecution.⁶⁴

The Chief Justice emphasized that Bryant had been charged with Economic Sabotage under the country’s Penal Law for conduct allegedly committed while he served as chairman of the NTGL. Therefore, if the allegation was true, the act would not be pursuant to any provision of the Constitution or any other laws of the Republic, but contrary to law and, as such, prosecuted under the country’s penal code.⁶⁵

To summarize, the majority opinion, at its essence, hoists Bryant on the petard of the NTLA’s audit resolution. On the other hand, the Chief Justice’s opinion, at its essence, construes Article 61 in a manner that will hopefully limit “imperial” presidencies in Liberia’s future.

IV. CONCLUSION

How does the Bryant case support my argument that the rule of law is not found in the quality of the written law, nor in the legal institutions administering the written law, but depends more on the character of the people to whom the legal system is entrusted? I pose the following questions to the reader: Did the Liberian Supreme

61. *Id.* at 26 (emphasis added).

62. *Id.*

63. *Id.* at 4 (Lewis, C.J., concurring in part and dissenting in part).

64. *Id.* (emphasis in original).

65. *Id.*

Court in 1995 hand Charles Taylor a legal victory on a claim for a prerogative writ because the Court recognized Taylor as the winner of the civil war? Did the current Supreme Court, in its decision, disregard the powerful forces behind Bryant, who, after all, was “selected” by all three warlord groups, and nonetheless decide to hold him to account for his conduct in a forthcoming criminal trial?

The work of Counselor Gongloe exemplifies my thesis. He displayed remarkable courage when he was a human rights advocate, and he continued to display much courage in arguing on behalf of Liberia’s government that Bryant was not entitled to immunity. In doing so, Gongloe also advocated for an interpretation of presidential immunity beneficial to a post-conflict society by holding Liberia’s former head of state accountable for alleged criminal conduct. And the Chief Justice of Liberia agreed with him!

Liberia does not need new legal architecture as much as it needs more people like the Chief Justice, the Solicitor General, and the past and incumbent Ministers of Justice, who are genuinely committed to the rule of law. That said, even the most hard-working leaders cannot achieve success alone. They must be amply assisted by a community focused on resurrecting the rule of law, and they need the continued aid and support of outsiders who believe in what they are trying to accomplish and have the skills to help.

The need for legal skills is so great in nations like Liberia, and there are many lawyers throughout North America who are either nearing retirement or retired and still have much to contribute. Yet, I believe that many of us hesitate to volunteer because we create self-imposed limits on what we think we can accomplish—limits driven by our experience in practicing law. Before volunteering, I questioned how I, an Ontario litigator with a background in financial institution and insolvency-restructuring work, could provide useful help to the challenges being faced by Liberia’s Ministry of Justice. I quickly discovered that my willingness and readiness to venture beyond my comfort boundaries was enough to help make a difference.