

## The Failed State and Failed State-Building: How Can a Move Away From the Failed State Discourse Inform Development in Somalia?

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Somalia has entered the world's imagination as the archetypal failed state; when thinking of states that have 'failed', it is most likely that Somalia will be first to spring into the mind. This is not for no good reason – the situation in Somalia is dire. However, the classification of Somalia as a failed state is harmful, resulting in misguided approaches to state-building which primarily focus on institutional development. Using the ontological project of Mogobe Ramose and consequently considering Somalia from a perspective other than that of a failed state, one is able to see that in many areas Somalia should not be classified as having failed as such and that there exists a society which has thus far been ignored.

Taking Somalia out of the failed state discourse has the result of opening up new avenues for possible development, which eschew the external imposition of central institutions in favour of a development which builds on the society which already exists. Habermasian discourse ethics provide support here, orienting development around discussion and consensus. By following the lead of Somaliland and basing state-building on discourse among Somalis, the likelihood of projects succeeding is greatly increased due to their greater legitimacy through consensus.

The issue of state-building in Somalia seems to be one of the most intractable problems facing the international community in recent times. Since 1991 the country has been without an effective government and has endured civil war, terrorism and famine and, despite

many conferences designed to restore stability to the country, there remains no apparent progress.

It will be argued herein that a principal reason for the absence of progress in reconstructing the Somali state is the description of Somalia as a 'failed state'. This inaccurate designation leads to misguided strategies for development.<sup>1</sup> A re-conceptualisation of the Somali situation will be proposed, utilising the 'rheomode' linguistic form. There will then be a consideration of the economic situation in Somalia and how this supports the rejection of the 'failed state' discourse, followed by a brief examination of the current approach of the international community. In the light of the new conception of Somalia's existence, an approach to Somalia's development will be proposed that is based on Habermasian discourse ethics, prioritising participation by Somali citizens over imposed institution-centric development.

## The Failed State: A Rheomodic Re-conceptualisation

Somalia is consistently described as a 'failed state'. In 2012 it was branded the most failed state in the Fund for Peace Failed State Index for a fifth consecutive year (achieving an even lower score than in 2011),<sup>2</sup> due to perceived 'lawlessness, ineffective government, terrorism, insurgency, crime, abysmal development and [piracy]'.<sup>3</sup> It is submitted herein that, though it is correct that Somalia exists with-

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<sup>1</sup> The term 'development' in this context is viewed as synonymous with 'state-building'. It is a term which has the potential to be problematic due to its myriad different possible conceptualisations. Fundamentally, development in this instance is conceived to be an improvement in the situation of a given nation *in some way*. Herein, this foundation is extended to be viewed in line with Amartya Sen's notion of development as freedom, or the increase of individual capability (see Amartya Sen, *Development is Freedom* (OUP, 1999) 3). This is a conscious rejection of more narrow approaches to development which are concerned predominantly with economic and institutional growth which has been prominent in the development discourse for Somalia (evidenced *inter alia* by the Garowe Principles of 2011 which privileged institutional change over a focus on the individual).

<sup>2</sup> JJ Messner and others, *The Failed States Index 2012* (Fund for Peace, 2012) 4.

<sup>3</sup> *ibid* 14.

out a state and lacks development, the failed state discourse occludes the reality of the situation and is harmful to attempts to encourage development from *within* the country.

Peter Haldén gives two principal reasons for rejecting the failed state discourse. Firstly, Haldén points to it being ‘a negative definition of a subject matter only in negative terms’, giving no positive indication of the factual situation.<sup>4</sup> This is correct; the failed state discourse suggests what the situation *is not*, but gives no clue as to what it *is*. As such, the term obfuscates the reality of Somalia and provides no useful basis upon which to consider how to begin state-building. Secondly, Haldén asserts that the failed state discourse refers back towards a Western, Westphalian vision of statehood.<sup>5</sup> In restricting the view to this Western ideal, the scope for development is greatly narrowed. The result of this narrowing is that development projects are restricted to those that attempt to fulfil this ideal form of statehood, focusing on central state institutions – a focus inappropriate for Somalia. Thus, the failed state discourse has the two-fold impact of giving an inaccurate picture of the situation and then limiting the options for remedying that situation.

The continued focus on rebuilding centralised state institutions has been described as perpetuating the ‘sickness’ in Somalia.<sup>6</sup> It is submitted that this propensity to central state-building is a direct consequence of the myopia induced by the failed state discourse. As well as limiting development options it is also problematic in its depiction of the on-going Somali experience. There is an inherent implication of finality in the term ‘failed’ – suggesting that the country has reached its nadir and is resting at the lowest ebb, static. It also portrays the country as a blank canvas upon which new institutions may

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<sup>4</sup> Peter Haldén, ‘Somalia: Failed State or Nascent States-System?’ (FOI, 2008) FOI Somalia Papers, Report 1, 17 <[http://www.foi.se/ReportFiles/foir\\_2598.pdf](http://www.foi.se/ReportFiles/foir_2598.pdf)> accessed 25 March 2012.

<sup>5</sup> *ibid* 18.

<sup>6</sup> Gerard Prunier, ‘The London Conference on Somalia or, Alice in Wonderland goes Imperialist’ (Hurst, 27 February 2012) <<http://www.hurstblog.co.uk/the-london-conference-on-somalia-or-alice-in-wonderland-goes-imperialist/>> accessed 3 April 2012.

be imposed due to the lack of existent governance structures. This is misguided in both senses: the situation in Somalia is non-static, a constant fluctuation between better and worse (evidenced by *inter alia* the famines of 1992 and 2011), the opposite of that suggested by ‘failed state’. Similarly, Somalia is not in a state of blankness, but of political absence. Communication networks are present; Somalis exist within an intersubjectivity in which Somali society is present, providing the capacity to build a polity without technocratic imposition. The need to reject the failed state discourse is clear, as is the need for a conceptual alternative that illustrates the ongoing nature of Somali existence.

The ontological project of Mogobe Ramose provides a radical basis upon which to found the proposed alternative. His ontology is based on the African philosophy of *ubuntu*, which emphasises the intersubjective nature of existence, viewing society as a wholeness (‘we are who we are through others’ being a simplified explanation).<sup>7</sup> This wholeness is temporal as well as societal, stressing the interconnectedness of events and existence through time. In order to present this, Ramose utilises the ‘rheomode’ form of linguistics.<sup>8</sup> The rheomode is a conceptual departure from the standard ‘subject-verb-object’ mode prevalent in Western linguistics, due to that mode’s focus on the subjective; conversely the rheomode – and subsequently Ramose’s ontology – emphasises the intersubjective and the wholeness of existence. Ramose uses the rheomode due to his ontology’s view of being as a continuous and unified ‘incessant flow of motion’,<sup>9</sup> both societal and temporal, which cannot be reconciled with the inherently fragmentary and subjective ‘subject-verb-object’ mode. The rheomode is able to provide a better reflection of existence through its use of the verbal noun, or gerund; Ramose uses ‘be-ing’ instead of ‘be’ rejecting the ‘false opposition of between be-ing and becoming’,<sup>10</sup> portraying

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<sup>7</sup> Dumani Mandela and Warren Goldstein, *African Soul Talk: When Politics Is Not Enough* (Jacana Media, 2003) 83.

<sup>8</sup> A linguistic form developed by David Bohm; See David Bohm, *Wholeness and Implicate Order* (Routledge, 2002) 34-60.

<sup>9</sup> Mogobe B Ramose, *African Philosophy Through uBuntu* (Mond Books, 2002) 45.

<sup>10</sup> *ibid* 44.

existence as a continuum rather than a fragment,<sup>11</sup> retaining reality's 'incessant flow of motion'. Applying this to Somalia,<sup>12</sup> the failed state discourse acts in the manner of 'subject-verb-object' by focusing on a fragment in time of Somalia's existence – the past participle 'failed' drawing attention only to the failure of the state – but not to the continued reality of the situation. It is submitted that any label to be applied to the situation in Somalia should employ the rheomode to demonstrate and account for the ongoing existence of society in Somalia.

In our quest to form an alternative to the failed state discourse, Haldén provides a useful distinction between political and social order in Somalia, illustrating that while political order is absent, social order is present.<sup>13</sup> The failed state discourse conflates the two, declaring the country to be failed due to the absence of political order in spite of the presence of social order. To do so gives a distorted impression of the Somali situation as it cannot account for the presence of society in the absence of state. Thus it is submitted that the failed state discourse should be replaced with a concept cognisant of social order and which utilises the rheomode. It is proposed that this is

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<sup>11</sup> *ibid* 46.

<sup>12</sup> It appears that there are inherent dangers in applying Ramose's project to the Somali situation, principal amongst which is the potential criticism that, in using ubuntu (a Southern African concept) to East African Somalia (over 3,500 kilometres away), we are demonstrating a ham-fisted approach to culture, assuming that what is good for one region is good for an entire continent. Despite this very real concern, it is held that Ramose's ontology is applicable to Somalia. Ramose is explicit in his depiction of his philosophy as one that is an African philosophy *through* ubuntu—it is African, not Southern African. Ramose sees ubuntu as being 'the root of African philosophy' which provides a 'broad philosophical "family atmosphere"' (see *ibid* 40). Therefore, in applying Ramose's project to Somalia, we are utilising an African philosophy, not a regional concept. A second point to make with regard to the applicability of Ramose's project to the situation in Somalia is that we are applying it to the situation within which Somalia finds itself, or more specifically how that situation is perceived by the international community. As stated above, the term 'failed state' implies a static situation whereby a state has reached its nadir; Ramose's ubuntu-inspired ontology provides us with the tools to firstly demonstrate the inaccuracy of this statement, and secondly to provide a radical alternative. Therefore, Ramose's project is applicable to Somalia not (necessarily) because Somalia is African, but because it is perceived to be a failed state.

<sup>13</sup> Haldén (n 4) 17.

possible if one views Somalia as a ‘society existing absent of polity’ instead of a failed state. This concept does not suffer from the finality attached to the past participle ‘failed’ and instead retains the rhemodic quality of present and continuous being through the gerund ‘existing’. In so doing, this approach acknowledges the continued being of social order and so allows liberation of the Somali state-building focus from its confines within traditional notions of central institutional development. By recognising the existence of social order, it becomes plausible to propose state-building based upon that order, where citizens take a dominant role, rather than a submissive one such as occurs when central institutional structures are imposed from above.

### **The Economy and Social Order Since State Collapse**

It is important to illustrate that social order is existent in Somalia to demonstrate that the rejection of the failed state discourse is not erroneous. This section will support the view of Somalia as a ‘society existing absent of polity’, using the (relatively) positive economic situation as evidence of social order.

Since the collapse of the Barre regime in 1991 Somali society and the economy have not swan-dived into chaos, as is typically suggested, but have improved in certain areas. The telecommunications industry provides an example of this growth, which has been more rapid than in other African states.<sup>14</sup> Furthermore, it has been said that the quality of telecommunications in Somalia is better than elsewhere on the continent.<sup>15</sup> This requires infrastructure and organisation which in itself demonstrates the presence of a social order in Somalia. Furthermore, the existence of a telecommunications industry is indicative of the existence of a form of social order – telecommunication requires there to be communication between people in order to exist. Therefore, its presence in Somalia can be argued to be evidence that

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<sup>14</sup> Mary Harper, *Getting Somalia Wrong? Faith, War and Hope in a Shattered State* (Zed Books, 2012) 124.

<sup>15</sup> *ibid* 125.

rather than the picture of simple ‘lawlessness’ that is portrayed, there is an intact societal base. Further, there are foreign companies operating within Somalia which would purportedly ‘avoid doing business in a number of Africa’s nation states’.<sup>16</sup> The Total Oil Company operates in Somaliland<sup>17</sup> and a Coca-Cola bottling plant worth \$10m was opened in 2012.<sup>18</sup> It is prudent to note that though these wealthy companies are not the product of Somali entrepreneurship, they are indicators of a social order which is conducive to business. There is a paucity of data regarding life within Somalia and as such it is difficult to compare the pre- and post-1991 situations, but from what little there is we are able to support the contention that the circumstances have improved since the end of the Barre regime. In 1991, life expectancy at birth was 44 years – in 2012 it has risen to 51.<sup>19</sup> This improvement is minor but it is nonetheless an improvement and one which can be argued to be conducive to the presence of society. Urban access to water has also increased over a similar period<sup>20</sup> – these two statistics can be viewed together to argue that that very basic necessities of life have become more available, which consequently allows individual focus to shift from acquiring these necessities to engaging in discourse, which in turn supports the growth of society. This contention is tenuous and so we must be careful not to overstate it, but the crucial point remains; that since the failure of the government, the state of Somalia (in terms of society) persists. In support of this contention is the existence of a yearly book festival in

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<sup>16</sup> Benjamin Powell and others, ‘Somalia After State Collapse: Chaos or Improvement?’ (2008) 67 *Journal of Economic Behaviour & Organisation* 657, 661.

<sup>17</sup> Peter T Leeson, ‘Better Off Stateless: Somalia Before and After Government Collapse’ (2007) 35 *Journal of Comparative Economics* 689, 705.

<sup>18</sup> Katrina Manson, ‘Coca-Cola Boosts Somaliland Economy’ *The Financial Times* (Berbera, 17<sup>th</sup> May, 2012) <<http://www.ft.com/cms/s/0/35ab85bc-80ca-11e0-8351-00144feabdc0.html#axzz2Lqf6S4gB>> accessed 24 February 2013.

<sup>19</sup> World Bank, ‘Life expectancy at birth, total (years)’ (World Bank Data, 2012) <[http://data.worldbank.org/indicator/SP.DYN.LE00.IN/countries/SO-ZF-XM?order=wbapi\\_data\\_value\\_2010%20wbapi\\_data\\_value&sort=asc&display=defalt](http://data.worldbank.org/indicator/SP.DYN.LE00.IN/countries/SO-ZF-XM?order=wbapi_data_value_2010%20wbapi_data_value&sort=asc&display=defalt)> accessed 17 March 2013.

<sup>20</sup> From 21% with access in 1993 to 66% in 2010; World Bank, ‘Improved water source, urban (% of urban population with access)’ (World Bank Data, 2012) <<http://data.worldbank.org/indicator/SH.H2O.SAFE.UR.ZS/countries/SO-ZF-XM?display=default>> accessed 17 March 2013.

Hargeisa, providing a concrete outlet for Somali literature.<sup>21</sup> This festival is an example of the presence of intersubjective engagement within Somalia, which is in turn an example of the presence of society.<sup>22</sup> This exemplifies the inaccuracy of the failed state discourse, showing that order is not anathema to the situation in Somalia and that central state institutions need not be built first in order to organise the citizenry – Somalis have managed this on their own.

Similarly, the standard of living in Somalia has predominantly improved since the collapse of the state. Peter Leeson has examined a number of development indicators in Somalia before and after state collapse, finding that of 18 categories, the situation has improved in 14 without a central government.<sup>23</sup> These improvements include immunisation against measles and tuberculosis, maternal mortality, health facility access and quantity of doctors.<sup>24</sup> Further, when compared with peaceful sub-Saharan nations, Somalia (as of 2005) sits in the top 50 percent for death rate, life expectancy, and telephone and internet usage.<sup>25</sup> Prior to the Barre regime's collapse Somalia was in bottom 22 percent in these areas,<sup>26</sup> demonstrating clear improvement. There have been developments in other areas as well. Leeson has pointed to the increase in civil liberties experienced by Somalis since the fall of the Barre government. Where free speech was previously strongly repressed there now exist independent newspapers and radio stations.<sup>27</sup> Mary Harper has asserted the presence of an ambu-

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<sup>21</sup> Mark Tran, 'Somaliland's Hargeisa Book Festival Celebrates Fifth Year' *The Guardian* (London 16 July, 2012) <<http://www.guardian.co.uk/world/2012/jul/16/somaliland-book-festival-fifth-year?INTCMP=SRCH>> accessed 23 February 2013.

<sup>22</sup> It is important to note here that we are proposing the existence of a society; we are not suggesting that the current situation in Somalia is comfortable or that it would be unproblematic if it were to remain in its current state. It is not acceptable that the current state of affairs continues, but it is important to illustrate that despite the terrible conditions, a society is present.

<sup>23</sup> Leeson (n 17) 697.

<sup>24</sup> Areas where the situation has worsened are GDP per capita, water access, adult literacy and school enrolment; Leeson (n 17) 697.

<sup>25</sup> Powell and others (n 16) 664.

<sup>26</sup> *ibid.*

<sup>27</sup> Leeson (n 17) 698.



lance service in Mogadishu as demonstrative of the continued being of a Somali society, despite the absence of a state.<sup>28</sup>

Nonetheless, it is not suggested that the situation in Somalia is acceptable; living standards are woefully low when considered against Western standards. However, what this data reveals is that the lack of a central state has not resulted in a reversion to a state of nature, but that Somalis have organised themselves to provide services for each other. The failed state discourse is clearly not accurate in the case of Somalia: the country has not failed, but it does fit the ‘society existing absent of polity’ approach. What this serves to illustrate, then, is that though Somalia requires development, Somalis themselves have the capacity to direct this development, rather than it being imposed by the international community. As will be demonstrated below, successful state-building in Somalia must arise through Somali participation, with technocratic assistance rather than leadership.

### The Past Informing the Future

The use of the rheomode in the suggested new conceptualisation of Somalia’s situation entails a renewed sense of temporality. Whereas the term ‘failed state’ implies a new beginning, ‘society existing absent of polity’ acknowledges that the current situation has antecedents which exert continued influence; there is no implied severance with the past. This theme is adopted by Martin Doornbos, who identifies the need in state-building to ‘map out different trajectories to collapse’,<sup>29</sup> as these should inform the focus of development; if centralised institutions were pivotal in causing collapse it would be folly to rebuild the state in a similar form. Thus, the temporal sensitivity of the ‘society existing absent of polity’ approach becomes more evidently necessary – by viewing the current situation as part of a dy-

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<sup>28</sup> Harper, *Getting Somalia Wrong? Faith, War and Hope in a Shattered State* (n 14) 108.

<sup>29</sup> Martin Doornbos, ‘State Collapse and Fresh Starts: Some Critical Reflections’ (2002) 33 *Development and Change* 797, 805.

namic historical whole, previous experiences are understood as pressing concerns. It is critical, then, to examine some of the factors of state collapse in Somalia.

Of key importance for understanding the collapse is Somalia's clan system. This system is nuanced and complicated, but is broadly divided between the Darod, Dir, Hawiye and Isaq clans, which then split into myriad sub-clans.<sup>30</sup> The clan structure did not in itself cause the breakdown of the Somali state, but it does help explain why the centralised Barre regime was strongly opposed. Barre's government attempted to suppress the clan in Somalia (*inter alia* by banning the use of clan-based expressions).<sup>31</sup> Despite this, the clan survived and it was along those lines that opposition groups like the United Somali Congress and the Somali Democratic Salvation Front arose.<sup>32</sup> To be stable, any state-building in Somalia must account for the devolved nature of Somali society, something less possible with a centralised development focus.

Somalia's clan system reflects what Roland Paris identifies as a society's 'cleavage structures',<sup>33</sup> which are divisions within society that can either reduce or exacerbate pre-existing tensions. In Somalia, there is a risk that the imposition of central state institutions will deepen the cleavage structures already present, as Somali citizens will not be afforded the time to develop consensus over and above the cleavages that exist through the clans. Paris asserts the need for 'cross-cutting cleavages' in society, to reduce the chance and impact of social conflict.<sup>34</sup> This is not possible where state institutions are imposed from above, as doing so prevents the organic development of consensus among citizens along varied lines. The likely outcome would be 'cumulative cleavage structures' with consensus developing within existent clan-based lines, potentially aggravating inter-clan

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<sup>30</sup> For a simple chart of the clan structure, see Harper, *Getting Somalia Wrong? Faith, War and Hope in a Shattered State* (n 14) 37.

<sup>31</sup> Harper, *Getting Somalia Wrong? Faith, War and Hope in a Shattered State* (n 14) 54.

<sup>32</sup> Haldén (n 4) 25-6.

<sup>33</sup> Roland Paris, *At War's End* (CUP, 2004) 170.

<sup>34</sup> *ibid* 170.

tensions. This danger is stark when one considers the imposition of democracy; though an admirable aim of state-building, were democratic, multi-party elections to be held in Somalia too quickly they would serve greatly to enhance existing cleavages, particularly if parties were formed along clan lines. Paris sees this possible consequence of the democratic process as being so severe that he describes democracy as one of the ‘pathologies of liberalism’ due to this ability to strengthen existent divisions.<sup>35</sup>

This serves to support the contention that the failed state discourse is an inapt approach for Somalia particularly as its confinement of state-building efforts to those focused on central institutions does not suit the social reality. A prime example is the continued international support for the Transitional Federal Government (TFG) until the end of its mandate in August 2012. The top-down imposition and support of the TFG failed to allow the formation of cross-cutting cleavages as by failing to identify extant society such imposed institutions cannot be sensitive to the requirements and cleavage structures of that society and consequently have no stable foundation. Conversely, the rheomodic ‘society existing absent of polity’ approach, by identifying and building upon pre-existing society in a bottom-up manner, enables the development of consensus that transcend the clan structure of Somali society, thus reducing tension. Harper cites the way in which democracy has developed in Somaliland, describing it as the slow but sure “‘tortoise” approach to political plurality’.<sup>36</sup> The important distinction is that state-building in Somaliland has been ‘rooted in a popular consensus and *embedded in society* rather than imposed from above’.<sup>37</sup> This slow approach to democratisation (with limits on political party numbers as well as constitutional prohibition of clan-based parties)<sup>38</sup> has resulted in the development of a

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<sup>35</sup> *ibid* 163.

<sup>36</sup> Harper, *Getting Somalia Wrong? Faith, War and Hope in a Shattered State* (n 14) 135.

<sup>37</sup> Mark Bradbury, *Becoming Somaliland* (Progressio, 2008) 242 (emphasis added); quoted in Harper (n 14) 134.

<sup>38</sup> Harper, *Getting Somalia Wrong? Faith, War and Hope in a Shattered State* (n 14) 135-6.

system of cross-cutting cleavages that overcome existent tension. This is without the imposition of central institutions by the international community, and it is submitted that this absence of imposition is key to Somaliland's success: there was no 'fresh start' or severance with the past, but the *continued existence* of a society, with the gradual development of its previously absent polity. The same is required in Somalia; development cannot succeed without a stable foundation, and this is impossible without allowing the growth of cross-cutting cleavages.

### **The International Community**

It is clear that development in Somalia must focus on bottom-up, organic growth rather than imposition of institutions and polity. As a 'society existing absent of polity' rather than a failed state, stability in Somalia can only come through Somalis building their own state out of the society within which they already exist. Unfortunately the international community has continued to focus on top-down, technocratic and short-term modes of development without allowing enough time for embryonic cross-cutting cleavages to grow.

So far, international conferences on Somalia appear not to have been held with the intention of empowering Somalis and encouraging them to develop their own polity. By branding Somalia a failed state, the international community implies a sense of impotence, that Somalis are unable to build their own state due to incapacity. This impotence has resulted in conferences that apparently exclude Somalis, typically being brief (mere weeks at the most)<sup>39</sup> and held outside of Somalia, begging the question of how these can encourage the development of a substantively Somali polity. This question becomes more pronounced when compared with the series of conferences in the early 1990s that led to the creation of a stable government in Somaliland. These meetings brought together the various clans in-

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<sup>39</sup> Ismail I Ahmed and Reginald Herbold Green, 'The Heritage of War and State Collapse in Somalia and Somaliland: Local-Level Effects, External Interventions and Reconstruction' (1999) 20 *Third World Quarterly* 113, 124.

habiting Somaliland, with a view to public and participatory development of the region.<sup>40</sup> Key to the conferences' success was their focus on bottom-up participation (including minority as well as main clans)<sup>41</sup> which resulted in the formation of cross-cutting cleavages. The series of discussions culminated in the Borama conference, which lasted for four months, illustrating the time required to reach a suitable consensus as to how state-building in the region should proceed. By contrast, the London Conference on Somalia in February 2012 lasted for a single day and was finished by 3:30pm.

The 2012 London Conference provides a guide to the international community's attitude towards Somalia. The attendees were high level, including Ban Ki Moon, Hilary Clinton and Baroness Ashton along with numerous foreign ministers. From Somalia were the President and Prime Minister of TFG, the speaker of the Transitional Federal Parliament (TFP) and the President of Somaliland.<sup>42</sup> This illustrates the top-down nature of international imposition of development strategy upon Somalia, rather than encouraging bottom-up consensus and state-building among Somali citizens. This top-down focus was further evidenced by the London Conference's endorsement of the Garowe principles, which seek to convert the draft constitution into one that is permanent, using what has been described as 'an unelected and undemocratic "constituent assembly"'<sup>43</sup> (since the conference occurred, the Provisional Constitution has been adopted).<sup>44</sup> The London Conference did make reference to Somali ownership of development but it was hollow; ownership would be of development planned by the international community, not by Somalis,

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<sup>40</sup> *ibid.*

<sup>41</sup> Haldén (n 4) 30-1.

<sup>42</sup> London Conference on Somalia, 'Attendee List' (Foreign & Commonwealth Office, 2012) <<http://www.fco.gov.uk/en/global-issues/london-conference-somalia/attendees>> accessed 7 April 2012.

<sup>43</sup> Ahmed Ali M Khayre 'London Conference on Somalia: Another Missed Opportunity?' *Hiiraan Online* (17 March 2012), <[http://www.hiiraan.com/op4/2012/mar/23254/london\\_conference\\_on\\_somalia\\_another\\_missed\\_opportunity.aspx](http://www.hiiraan.com/op4/2012/mar/23254/london_conference_on_somalia_another_missed_opportunity.aspx)> accessed 4 April 2012.

<sup>44</sup> Federal Republic of Somalia, Provisional Constitution, 2012.

thus the approach remains one of imposition.<sup>45</sup> It has been argued that Somalis were given ‘little choice but to comply with what the London Conference had decided they should “own”’ – not only was there minimal Somali representation at the conference, the conclusions had been written before it began and the TFG Prime Minister was given a pre-prepared speech to deliver.<sup>46</sup>

Though the term ‘failed state’ was not mentioned the approach was undeniably the top-down, institutional-centric focus of the failed state discourse. Repeated use of the word ‘we’ in the communiqué demonstrates the international community’s retention of control,<sup>47</sup> indicative of the failed state ideology – Somalia has ‘failed’ and so cannot help itself. If the international community were to view Somalia as a ‘society existing absent of polity’ the focus surely would be on collaboration with Somali citizens to achieve an appropriate resolution. The International Crisis Group has adopted this argument, calling for devolution of development, ‘providing delegated authority and resources to allied local administrations and groups’.<sup>48</sup> The next UK-based conference on Somalia is due to be held in May 2013 and it thus far appears that it will take a similar impositional

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<sup>45</sup> In reiterating adherence to the Garowe II principles, the communiqué demonstrates its impositional nature, focusing on top-down institutional structure rather than considering how to facilitate internal discourse, as will be recommended below. This was further evident in Annex B to the communiqué, which called for international coordination and ‘build on existing structures’—in effect this binds Somali progress to structures which were developed by the international community and the TFG, eschewing the possibility of the creation of new structures, developed through and upon pre-existing Somali society (London Conference on Somalia, ‘Annex B’ (Foreign & Commonwealth Office, 2012)) <<http://www.fco.gov.uk/resources/en/pdf/global-issues/731221182/communique-annexb>> accessed 28 March 2012).

<sup>46</sup> Prunier (n 6).

<sup>47</sup> Examples of this include: ‘We welcomed the progress represented by the Garowe Principles’; ‘We agreed that we would build an international framework of partners in order to bring much needed coordination...’; and ‘We encouraged effective coordination between UN entities working on Somalia’ (London Conference on Somalia, ‘Communiqué’ (Foreign & Commonwealth Office, 2012)) <<http://www.fco.gov.uk/en/news/latest-news/?view=PressS&id=727627582>> accessed 28 March 2012).

<sup>48</sup> International Crisis Group, ‘Somalia: The Transitional Government on Life Support’ (2011) *Africa Report* No. 170, 4; See also 23-4.

approach, with the focus being on the partnership between the international community and the new Federal Government of Somalia rather than the development of pre-existing societal order.<sup>49</sup>

The Provisional Constitution was adopted conclusively in August 2012 by the Somali Constituent Assembly which, it could be argued, represents progress of the institutional approach to development as promulgated by the international community. Nonetheless, despite its virtuous aims, it is submitted that the Constitution will not be able to help substantively in the development of a Somali polity as it has been imposed prior to the development of cross-cutting cleavages. It has been suggested that the disconnect between the imposed constitution and the substantive reality of Somalia is that of a 'parallel universe, a fantasy land'.<sup>50</sup> This sentiment is not surprising when considering that though the Constitution was approved by the constituent assembly, it was written by a group of high-level actors and experts.<sup>51</sup>

The international community appears wedded to the failed state discourse and the imposition-oriented approach to state-building that it promulgates. What is required is a fundamental change in focus, with development that recognises and builds on the existing Somali society and is accordingly substantively Somali-led. Next, an alternative approach will be proposed which provides this change in focus, using the rheomodic conception of Somalia as a 'society existing absent of polity' to allow this Somali-led development.

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<sup>49</sup> London Conference on Somalia, 'Aims' (Foreign & Commonwealth Office, 2012) <<https://www.gov.uk/government/news/somalia-conference-aims>> accessed 26 February 2013.

<sup>50</sup> Mary Harper 'Somalia: Failed State or Fantasy Land?' *BBC* (2 August 2012), <<http://www.bbc.co.uk/news/world-africa-19099442>> accessed 26 February 2013.

<sup>51</sup> The constitution itself was drafted by the United Nations Political Office for Somalia (UNPOS). It was subsequently agreed by 'six of Somalia's key power bases - the president, prime minister, parliamentary speaker, two regional presidents and a leader of a Sufi militia' before being 'rubber-stamped' by the National Constituent Assembly (ibid).

## The Alternative

It has been illustrated that, due to the presence of society and despite the absence of a state, Somalia should not be classed as a failed state but as a 'society existing absent of polity'. This section will argue that the existent society should be utilised by encouraging communicative and deliberative reasoning among citizens, providing a legitimate bottom-up foundation to the development of a Somali polity (as opposed to its imposition from above) ensuring that what is developed is stable.

Thomas McInerney has posited that, generally, state-building should arise through discursive interaction rather than imposition, citing the work of Jürgen Habermas.<sup>52</sup> This reasoning is applicable to the situation in Somalia: due to the presence of society, discursive approaches are possible, and as such Habermasian discourse ethics may be used to provide support for a bottom-up formation of a Somali polity. The use of Habermasian discourse ethics in consort with Ramose's *ubuntu*-inspired use of the rheomode could be deemed problematic due to the rationalism of Habermas' project and the empiricism of the rheomodic notion of a 'society existing absent of polity'. However, to suggest as such is to misconceive their relationship in this present work: the relationship is not one of synthesis but of symbiosis – each begets the other. By this it is meant that in order to reach a situation whereby rationalist Habermasian discourse ethics can be used, one must first use the empirical concept of 'society existing absent of polity'. The rationalism of discourse ethics presupposes the existence of an intersubjectivity without demonstrating its presence; the existence of the intersubjectivity (here in the form of 'society existing absent of polity') is reached through the use of the empirical rheomodic view of Somalia. Therefore the two concepts, while not necessarily theoretically reconciled, are able to work together, one giving a depiction of the present reality of Somalia as a

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<sup>52</sup> Thomas F McInerney, 'Law and Development as Democratic Practice' (2005) 38 *Vanderbilt Journal of Transnational Law* 109, 125.



‘society existing absent of polity’ and the other providing a method of resolving that reality into a society with a Somali-built polity.<sup>53</sup>

As has been posited above, the creation of cross-cutting cleavages and consensus is crucial to successful development in Somalia, by reducing regional and clan-based tensions.<sup>54</sup> The notion of cross-cutting cleavages corresponds with the Habermasian concept of ‘validity claims’: Habermas holds that the truth or rightness of a claim, norm or rule ‘can only be vindicated discursively, by way of argumentation and a rational consensus’.<sup>55</sup> Accordingly, Habermas asserts that ‘[m]oral argumentation...serves to settle conflicts of action by consensual means’.<sup>56</sup> This provides support for the notion that for tension in Somalia to be replaced with consensus there must be moral argumentation in the form of rational communication, allowing consensus to develop. Thus if a *legitimate* polity is to emerge in Somalia it must be through consensus and shared validity claims arrived at through discourse among Somalis.

The theme of legitimacy through communication is adopted by Cohen and Sabel who view deliberative and participatory decisions as

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<sup>53</sup> Unfortunately, the synthesis of Habermas’ and Ramose’s projects is too big a task to undertake in this work. For the present, it must suffice that the two projects may be used symbiotically, one after the other, rather than in unified combination.

<sup>54</sup> The International Crisis Group have called for national reconciliation as a priority: ‘Somalia: The Transitional Government on Life Support’ Africa Report No. 170 *International Crisis Group* (Brussels/Nairobi 21 February 2011). Reconciliation is something that has occurred in Somaliland through conferences, joining disparate members of society together, and allowing opposing groups to take their respective places in Parliament (Brad Poore, ‘Somaliland: Shackled to a Failed State’ (2009) 45 *Stan J Int’l L* 117, 130-1). Furthermore, the success of governance in Somaliland has been attributed to its foundation in ‘traditional Somali concepts of governance by consultation and consent’ (Seth Kaplan, ‘The Remarkable Story of Somaliland’ (2008) 19 *Journal of Democracy* 143, 144). This use of traditional governance concepts gives the emergent polity cross-cutting legitimacy not present in imposed institutional structures. This legitimacy is evidenced by the fact that in a very tight 2003 presidential election, the opposition party conceded peacefully having had its challenge rejected by the courts (ibid 150).

<sup>55</sup> Jürgen Habermas, *The Theory of Communicative Action Vol. 1* (Thomas McCarthy tr, Polity, 1991), 109 (cited in William Outhwaite, *The Habermas Reader* (Polity, 1996) 177).

<sup>56</sup> Jürgen Habermas, *Moral Consciousness and Communicative Action* (Christian Lenhardt and Shierry Weber Nicholsen tr, MIT Press, 1999) 67.

being more legitimate than those which are imposed, as ‘they proceed on the basis of free public reasoning among equals’;<sup>57</sup> decisions arrived at on this basis are consensus decisions and so have inherent legitimacy. In this way, such legitimacy-conferring consensus in Somalia, as well as embodying the Habermasian notion of validity claims, is analogous (though not identical) to the Kelsenian *grundnorm*, acting as a ‘historical first’ norm and providing legitimacy and validation for subsequent norms that arise.<sup>58</sup> Somalia’s current existence without polity represents one of the rare times that the formation of a *grundnorm* is necessary.<sup>59</sup> If the product of state-building in Somalia is to be legitimate, there must exist a ‘first’ consensus, or quasi-*grundnorm* validity claim, among Somalis and this can only be legitimate itself if it is reached through rational communication – as per Habermasian discourse ethics – rather than if it is imposed from above. With a legitimate validity claim in effect, any subsequent cleavages that develop will receive conferred legitimacy and as such will more likely be cross-cutting rather than cumulative. This resultant legitimacy therefore means that decisions reached by communicative consensus would have much scope to reduce tension.<sup>60</sup> This aim of legitimate consensus-building is only possible if Somalia is viewed as a ‘society existing absent of polity’, but not if the failed state discourse is retained, as the use of the rheomode in the former concept acknowledges the continued being of a Somali society which may therefore be used as a basis for discourse.

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<sup>57</sup> Joshua Cohen and Charles Sabel ‘Directly-Deliberative Polyarchy’ (1997) 3 European Law Journal 313, 320.

<sup>58</sup> Hans Kelsen, *Pure Theory of Law* (Max Knight tr, University of California Press, 1967) 201.

<sup>59</sup> This represents a further point in which the use of Ramose’s ontology has the potential to become problematic. Kelsen’s *grundnorm*, as an historical first norm, is necessarily a static concept, whereas Ramose’s use of the rheomode is, as stated above, based on the notion that being is in a constant state of flux. As such, it could be argued that the two do not fit together. Despite this, it is submitted that they can be used jointly, Ramose’s ontology depicting the continued presence of society and Kelsen’s *grundnorm* (or a quasi-*grundnorm*) being what is required in the form of consensus to create a polity within this society.

<sup>60</sup> Ahmed and Green have asserted that devolved peace-making in Somalia have increased trust and cordiality between clans. See Ahmed and Green (n 39) 124.

A further factor that must be considered is that a discourse-based consensus-building approach to development would have the effect of creating a polity gradually, through incremental steps, making change less dramatic, mirroring the ‘tortoise’ approach of Somaliland. In Somaliland, existing governance structures like elders’ councils were utilised in creating the polity while conferences designed to facilitate this polity creation brought clans together, were carried out over long periods of time and focused on discourse about the type of political system that was desired.<sup>61</sup> This is in contrast to the dominant institutional approach, which acts disjunctively, attempting to impose a polity in violent and quick transformations. As stated above, the Constitution was drafted by experts at UNPOS and was agreed by senior members of the Somali government before being ‘rubber-stamped’ by the National Constituent Assembly.<sup>62</sup> It was accompanied by an UNPOS ‘Guidebook to the Somali Draft Provisional Constitution’, which begins with a section entitled ‘What is a Constitution?’, further demonstrating the degree to which the Constitution was imposed, rather than being developed gradually through national consensus.<sup>63</sup> Though a document with admirable aspirations, the Constitution has been imposed rather than developed through dialogue between Somalis – as was the case in Somaliland – and as such it is submitted that it will not be able to bring Somalis together in a way that can build consensus and therefore provide a stable platform for polity to emerge. This helps us in illustrating that a discourse-based approach would further adhere to the rheomodic view of Somalia as being in constant motion, rather than as a fragmented series of episodes; it accepts that state-building must be a gradual and linear process of consensus as well as institution-building that cannot be broken down into fragments due to the reality of the situation as a wholeness. If state-building is to be successful in Somalia, it must operate in this linear and non-violent manner, utilising the ‘rational consensus’ which come through approaches

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<sup>61</sup> Harper, *Getting Somalia Wrong? Faith, War and Hope in a Shattered State* (n 14) 133.

<sup>62</sup> Harper, ‘Somalia: Failed State or Fantasy Land?’ (n 50).

<sup>63</sup> UNPOS, *Guidebook to the Somali Draft Provisional Constitution* (2012).

based on Habermasian discourse ethics<sup>64</sup> and which are necessarily a gradual exercise.

Of paramount importance in enabling this situation of communicative consensus-building is the international community's recognition of the existent society in Somalia. In order to do so, the failed state discourse must be rejected due to its implicit ignorance of Somalia's society. The acceptance of the continued existence of a society in constant motion, made possible by the rheomodic 'society existing absent of polity' approach, allows consideration of discourse-based forms of state-building by recognising and building upon what is already present, whereas the failed state discourse, with its 'fresh start' ethic, is inherently focussed on the imposition of central institutions. Thus the focus of state-building in Somalia must be less on institutional arrangements and more on enabling Somalis to come together in rational communication to achieve consensus about how to develop their own polity.

### Closing Remarks

Somalia is not in a state of limbo, devoid of society, and in that sense it has not failed. The presence of its society and economy are testament to the fact that the failed state discourse is fundamentally inappropriate when discussing Somali state-building. It has been demonstrated that Somalia fits far better within the notion of a 'society existing absent of polity' and as such the international community should refocus the methods of state-building in Somalia away from central institutional development and towards the creation of fora in which Somalis can reach communicative consensus about the best state for themselves to build. Conferences similar to the Borama Conference should happen in Somalia, allowing time for consensus to develop. It is folly to assume that the way forward for Somalia can be established in a single day, thousands of miles from Mogadishu. State-building efforts must have more temporal sensitivity by

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<sup>64</sup> Habermas (n 55) 177.

accepting the rheomodic view of Somalia, recognising that the country is not a blank page, but that it has a past which must be considered and an existent society that should be used to provide the bedrock for development. If this is not accepted by the international community, the developmental future of Somalia is likely to be unstable, painful and expensive. Unfortunately, the London Conference has illustrated that the international community, though not expressly using the term ‘failed state’, is still very much following the failed state discourse, advocating top-down, centralised state-building. Lessons must be learned from the example of Somaliland and the tortoise approach to democratisation, built on a series of long conferences. Prior to the London Conference, the then Secretary of State for International Development, Andrew Mitchell, commented that ‘[w]e want our wider interventions to be faster’,<sup>65</sup> suggesting that the international community is, tragically, not yet ready to leave the misguided urgency of the failed state discourse behind.

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