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Note

## “Leave Now”: A Proposal to Reconcile Justice and Pragmatism in Democratically Transitioning Countries

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# “Leave Now”: A Proposal to Reconcile Justice and Pragmatism in Democratically Transitioning Countries

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### INTRODUCTION

This Note proposes a mechanism intended to protect transitioning and consolidating democracies.<sup>1</sup> That mechanism is to establish a pension system that would be available to former national leaders (presidents and prime ministers) who had behaved properly in connection with elections. The pension would provide substantially more resources to former leaders than do existing national pensions, and would be conditioned on not using violent means to prevent elections or retain power. Critically, the existence and function of the system would be made clear up front *before* leaders have engaged in the kind of violence or obstruction that it is designed to prevent. By incentivizing salutary behaviors, such a system could hopefully avoid the tension that exists between justice and pragmatism when trying to find a way to convince a leader to step down *after* he<sup>2</sup> has used violence to block or win elections or to maintain power after losing an election.

Unfortunately, there is no good approach to dealing with such leaders once they have already taken extremely repressive actions. At that point, a leader would be unlikely to ever willingly step down out of fear of international prosecution or domestic reprisals. Like Shakespeare's Richard III, such leaders are "in [s]o far in blood that sin will pluck on sin."<sup>3</sup> There is also no attractive option for an active response by the international

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1. This Note uses the definition of democratically transitioning and consolidating democracies used in previous literature. See JUAN J. LINZ & ALFRED STEPAN, PROBLEMS OF DEMOCRATIC TRANSITION: AND CONSOLIDATION: SOUTHERN EUROPE, SOUTH AMERICA, AND POST-COMMUNIST EUROPE 3-7 (1996).

2. Masculine singular pronouns are used throughout this Note, but that should not be read to imply that there are no female leaders who would qualify for such a pension or who might consider using extra-legal means to retain power.

3. WILLIAM SHAKESPEARE, THE TRAGEDY OF RICHARD III, act 4, sc. 2., in KING RICHARD III 51, 160 (Janis Lull ed., Cambridge Univ. Press 1999).

community. To send in military force to topple a foreign government is enormously costly, not only for the intervening countries, but also for civilians in the targeted country. International prosecution, meanwhile, is not only an ex post solution that has by definition failed to prevent prior violence, but it is also subject to a range of perverse consequences in that it can destroy delicate political equilibria.<sup>4</sup> Finally, it defies justice and offends the conscience to provide ex post incentives such as guaranteeing the financial resources to enjoy a high quality of life in exile to a leader who has attempted to use violent means to retain power. In any event, promises of such incentives are not credible for several reasons, notably the threat of prosecution.

One premise of this Note is that promoting democracy is worthwhile.<sup>5</sup> With this in mind, the goal of the pension system is to create a financial incentive for democratic leaders in transitioning democracies to step down (or reduce the financial incentives not to do so).<sup>6</sup> Thus, the pension would be available nearly automatically to leaders who stepped down in response to electoral defeat or retired after serving their terms, or for other good reasons.

African entrepreneur Mo Ibrahim has created a prize with somewhat similar goals, the Mo Ibrahim Prize for African Leadership.<sup>7</sup> It has been

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4. See Julian Ku & Jide Nzelibe, *Do International Criminal Tribunals Deter or Exacerbate Humanitarian Atrocities?*, 84 WASH. U. L. REV. 777, 816–27 (2006).

5. There is a large body of literature regarding possible benefits of democracy. One set of benefits may be greater domestic and international stability. For instance, Professors John R. O’Neal and Bruce Russett have argued that democracy is one factor that leads to international peace. See John R. O’Neal & Bruce Russett, *The Kantian Peace: The Pacific Benefits of Democracy, Interdependence, and International Organizations, 1885–1992*, 52 WORLD POL. 1, 21–24 (1999). For a theory of democracy as stability-enhancing at the domestic level, see James D. Fearon, *Why Use Elections to Allocate Power?* (May 12, 2000) (unpublished manuscript), available at <http://tinyurl.com/3scqzq5>. Fearon argues that democracy allows multiple groups in society to contest with one another within a framework that allows opposition to be coordinated and provides incumbents the incentives to maintain bargains. *Id.* at 2–3. Democracy may also promote individual-level freedoms although the relationship is sometimes ambiguous. See FAREED ZAKARIA, *THE FUTURE OF FREEDOM: ILLIBERAL DEMOCRACY AT HOME AND ABROAD* 17–21, 25–27 (reissue 2007). Despite the possible problems Zakaria identified with illiberal democracies, this Note will primarily argue in favor of an innovation that will contribute to making the basic democratic processes of fair elections and peaceful transitions of power work more smoothly. Although there are historical cases where democratic transitions led to illiberal outcomes, such as the election of Adolf Hitler or possibly the success of Hamas in Palestinian elections in the Gaza Strip, these are the exception rather than the norm. These concerns will be further considered *infra* Part IV.G.

6. Part IV.F, *infra*, will consider a modified version of the pension system that may have some relevance in the cases of dictators who may be willing to step down from power in the face of challenges to their rule (especially for leaders such as Mikhail Gorbachev, who played a major role in undermining the totalitarian system that put him in power in the first place), authoritarian leaders acting within nominally election-based systems in which elections are widely acknowledged to be rigged (such as Hosni Mubarak), and formerly democratic leaders who undermined democracy at some point in the past (such as Ivory Coast’s Laurent Gbagbo).

7. Ibrahim’s life was recently profiled by *The New Yorker*. See Ken Auletta, *The Dictator Index*, NEW

awarded to Joaquim Chissano of Mozambique and Festus Mogae of Botswana.<sup>8</sup> The award provides leaders \$5 million over ten years when they leave office and \$200,000 per year thereafter for the rest of their lives, as well as an additional \$200,000 annually for purposes of donation to a charity of the recipient's choice.<sup>9</sup> The award is standard-based and goes to a leader who has "deliver[ed] security, health, education, and economic development to their constituents."<sup>10</sup> The political requirements at the heart of the pension system proposed in this Note — that a politician must have left office after fair elections — are merely preconditions for eligibility for the Ibrahim Prize.<sup>11</sup> The Prize Committee was chaired until recently by former UN Secretary-General Kofi Annan and continues to include other well-known international figures such as Mary Robinson, Mohamed ElBaradei, and Salim Ahmed Salim.<sup>12</sup> Mr. Ibrahim's goal is explicitly to allow "essentially good people, who may be wavering, the chance to opt for the good life after office."<sup>13</sup>

The Ibrahim Prize is an exciting and innovative program that is similar in its motivations and design to the program proposed here. There are some critical differences, however. First, the Prize only applies to sub-Saharan Africa, whereas the pension program proposed in this Note is meant to apply more generally to consolidating democracies anywhere. Second, the Prize is a standard-based award, whereas the pension system is a rule-based award.<sup>14</sup> Third, whereas the Prize is based on general work in

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YORKER, Mar. 7, 2011, at 44.

8. See *Festus Mogae Wins Ibrahim Prize*, BBC NEWS (Oct. 20, 2008, 12:51 PM GMT), <http://tinyurl.com/3p9vk2s>; *Mozambique Ex-Leader Wins Prize*, BBC NEWS (Oct. 22, 2007, 2:36 PM GMT), <http://tinyurl.com/yqn7l3>.

9. *The Ibrahim Prize*, MO IBRAHIM FOUND., <http://tinyurl.com/28t2de8> (last visited Apr. 13, 2011). The Ibrahim Prize is endowed with a \$100 million gift from African telecommunications entrepreneur Mo Ibrahim. Jacques Mangala, *Skepticism over the Mo Ibrahim Prize for Achievement in African Leadership*, 1 UMOJA 35, 35 (2006); J.F.O. McAllister, *A Nobel for Honest Politicians*, TIME (Oct. 25, 2006), <http://tinyurl.com/y88mwb3>.

10. *Prize Offered to Africa's Leaders*, BBC NEWS (Oct. 26, 2006, 8:34 AM GMT), <http://tinyurl.com/3jeb8wv>.

11. MO IBRAHIM FOUND., *supra* note 9.

12. Auletta, *supra* note 7, at 50; *The Ibrahim Prize Committee*, MO IBRAHIM FOUND., <http://tinyurl.com/43eqdk6> (last visited Apr. 19, 2011).

13. Tom Burgis, *Ibrahim Hopes \$5m Will Stop Leaders Clinging to Office*, FIN. TIMES (Oct. 26, 2006) (quoting Mo Ibrahim) (internal quotation mark omitted), <http://tinyurl.com/3v9f2c6>. Establishing pensions for government officials has arguably played an important role in the history of American politics as well. For instance, there is a common conception that President Franklin D. Roosevelt's court-packing plan caused a constitutional revolution by scaring Justice Roberts into switching his vote to uphold New Deal legislation, starting with the minimum wage in *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937), which in turn prompted the demoralized conservatives such as Justice McReynolds to retire. Some have argued, however, that Justice McReynolds was encouraged to retire instead because he was granted a full pension by Congress. See Jamie L. Carson & Benjamin A. Kleinerman, *A Switch in Time Saves Nine: Institutions, Strategic Actors, and FDR's Court-Packing Plan*, 113 PUB. CHOICE 301, 304, 316–17 (2002).

14. When no leader meets the standards in a given year, no prize is awarded, as occurred in both

the area of development,<sup>15</sup> the pension system relates primarily to conduct around elections. Finally, the amounts considered here for annual and lifetime payments are considerably higher than those awarded under the Prize.<sup>16</sup>

The rest of the Note proceeds as follows. Part I will introduce the basic parameters of the pension system. Though the Note will not address every aspect of the proposed system’s structure, it presents broad structural outlines. Part II will consider why leaders might accept monetary awards in exchange for stepping down after being constitutionally defeated. It will not only consider this issue in abstract terms, but it will also consider the hypothetical willingness to step down of actual leaders who came to power through relatively democratic means but who then used non-democratic means to stay in power at the expense of their citizens in a counterfactual world where the pension was available. These leaders are among those whose behaviors might have been different if they had enjoyed a guarantee of a comfortable retirement and resources for their families. Part III will then consider the pension system’s benefits as well as the cost to endow it using reasonable assumptions. Due to these potential costs, there will be an examination of whether there are entities that would be willing to fund the system. Next, Part IV will identify some of the challenges involved in implementing and extending the pension system, some of which are practical or political issues — such as whether subordinate officials would need to be covered in order to make the system effective — and some of which are moral objections.

## I. STRUCTURE OF A PENSION SYSTEM FOR LAW-ABIDING INTERNATIONAL LEADERS

A fundamental problem in transitioning and consolidating democracies in which democratic norms may not have completely taken hold is that an

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2009 and 2010 (the third and fourth year of consideration of possible recipients of the prize). See Press Release, Mo Ibrahim Found., Mo Ibrahim Foundation Announces Decision Not to Award 2010 Ibrahim Prize (Jun. 12, 2010), available at <http://tinyurl.com/4ytsxm2> (“The standards set for the Prize winner are high, and the number of potential candidates each year is small. So it is likely that there will be years when no Prize is awarded. In the current year, no new candidates emerged.”); see also Auletta, *supra* note 7, at 50 (“We’re not easy graders.” (quoting Mohamed ElBaradei) (internal quotation marks omitted)). For a discussion of the contrast with the proposal here on this score, see *infra* Part I.A.

15. *About Mo Ibrahim Foundation*, MO IBRAHIM FOUND., <http://tinyurl.com/3rck86a> (last visited Apr. 20, 2011) (“[T]he [Ibrahim] Foundation aims to support the further development of [sub-Saharan Africa],” and “does [not] . . . see its role as commentating on short-term electoral and other crises despite their often damaging impact.”).

16. I recognize, of course, that talk is cheap, whereas the Ibrahim Prize is a functioning program. For a discussion of the hypothetical costs of endowing an expanded program under different assumptions about the generosity of payments and the number of recipients, see *infra* Part III.B.

elected leader facing the end of his term may consider his own interests without internalizing the costs to other citizens of his possible decisions. This may lead him to subvert fair elections<sup>17</sup> or, failing that, to resist stepping down after defeat.<sup>18</sup> The proposal here is to alter leaders' incentives by offering a substantial pension for those in democratically transitioning countries who allow fair elections and step down if they lose, avoiding unconstitutional or extra-legal actions.<sup>19</sup> The pension would also be extended to elected leaders in such democracies who do not seek reelection at all, to avoid creating incentives for such leaders to run, in part to preserve the possibility of a pension. If a leader can be made to change his calculation with a simple pension<sup>20</sup> that allows his country to avoid the costs of civil violence and maintaining unnecessarily large security forces, then significant gains in human welfare can be achieved at the expense of compensating one (admittedly possibly undeserving) individual who happens to be in a position to impose disproportionate costs to further his own interests.<sup>21</sup>

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17. For a discussion of the problem of determining whether an election was fair, see *infra* Part IV.C.

18. Mexican President Felipe Calderón has noted that during the process of democratization, “there can be a backlash . . . and backsliding[; p]residents can win elections and then shut down the press, suffocate the opposition and seek to become presidents for life . . . .” Fred Hiatt, *Promises to Keep*, WASH. POST, Mar. 4, 2011, at A19.

19. A problem arises in determining what constitutes “unconstitutional means.” One question would be whether a leader is eligible for the pension despite having tried or succeeded in the past to change the constitution, either by summarily replacing it or by strong-arming through an amendment that allowed him to avoid term limits. An ambiguous position can be taken respecting this question at this point, although clearly it is less offensive for a leader to avoid term limits by using the prescribed constitutional amendment procedure than by simply ignoring or unilaterally replacing the constitution. See Tom Ginsburg et al., *On the Evasion of Executive Term Limits*, 52 WM. & MARY L. REV. 1807, 1865 (2011). For those leaders who had in the past done something more offensive, such as outright ignoring the constitution, it still may make sense to allow them to be eligible for the pension through a preclearance procedure of some kind. See *infra* Part IV.F. Festus Mogae, the former president of Botswana and the second recipient of the Ibrahim Prize, noted that the primary purpose of the award was to “encourage leaders to leave” because “[o]therwise even democratically elected [leaders] are tempted, at the end of their terms, to change ‘the constitution to allow them to stay forever.’” Auletta, *supra* note 7, at 50.

20. The Mo Ibrahim Foundation is based in part on a similar justification. See *The Ibrahim Prize*, MO IBRAHIM FOUND., *supra* note 9 (“[I]n 2008 alone, aid to sub-Saharan Africa from G7 countries totalled [sic] just over an estimated US\$25 billion, the Foundation believes that the money it is contributing through the Ibrahim Prize is a comparatively small investment. But given to an individual with a proven ability to contribute to Africa the money has the potential for very significant returns.”); see also Ginsburg, *supra* note 19, at 1867–68 (noting the possibility of a system of incentives, and singling out the Ibrahim Prize and available jobs, such as international university appointments, to encourage leaders to step down as a substitute for term limits, while noting skepticism of the efficacy of such measures where a country has extensive natural resources and where a leader might fear prosecution).

21. It is true that the underlying behavioral model followed by leaders assumed by the argument in this Note is a rather materialistic one that deemphasizes political leaders' ideological commitments. That model, however, has some support in the political science and economics literature. See, e.g.,

### A. *Design of the System*

The critical elements of the system are (1) a standing promise; (2) to provide particular people; (3) who meet certain defined conditions; (4) with a defined set of benefits; (5) which is made and paid for by a sponsoring organization of some kind.<sup>22</sup> These elements are considered below. One of the critical challenges of creating an effective pension system that is referenced throughout this Note is making a credible

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Daron Acemoglu et al., *A Theory of Military Dictatorships*, AM. ECON. J.: MACROECONOMICS, Jan. 2010, at 1, 2–5 (citing political science literature supporting the notion that military coups are generally the result of the military protecting its institutional interests); Daron Acemoglu & James A. Robinson, *A Theory of Political Transitions*, 91 AM. ECON. REV. 938, 938–40 (2001) (developing a theory in which the economic elite is motivated by its own material interests to run the government to prevent redistribution and, when out of government, to mount coups against redistributive democratic regimes; also citing political science literature that shows redistributive regimes often emerge during times of economic crisis, which fuel opposition politics). Furthermore, although a leader may view perpetuating his ideology as one of the benefits of using aggression to remain in power, it may be that those benefits are prioritized below the leader’s own pecuniary interests. See Erich Weede & Edward N. Muller, *Rebellion, Violence, and Revolution: A Rational Choice Perspective*, 35 J. PEACE RES. 43, 46 (1998) (applying a rational choice framework to revolutionary actors that assumes leaders disregard the effects of their action on the broader society).

22. Martin Skladany also considers a performance-based compensation system funded by foreigners, although there are many differences between his proposal and the current proposal. In his proposal, Skladany focuses on the use of such payments as an anticorruption tool, makes a substantial number of officials eligible, and measures performance by the level of corruption rather than by a demonstrated transition of power. Martin Skladany, *Buying Our Way Out of Corruption: Performance-Based Incentive Bonuses for Developing Country Politicians and Bureaucrats*, 12 YALE HUM. RTS. & DEV. L.J. 160, 168–74 (2009). The possibility that guaranteed income may reduce corruption by officials while in office, and possibly benefit Western companies that are bound by antibribery laws, is one of the benefits that Western governments can hope for from funding the pension system. See *infra* notes 95–97 and accompanying text. There is no reason that Skladany’s system could not coexist with the system proposed in this Note. Indeed, they are complementary insofar as Skladany’s system contributes to the well-being of a national leader (and certain lower-level leaders) in return for good conduct in the execution of his duties, while the pension system contributes to the leader’s well-being subsequent to his term in office in return for good conduct during his departure. They do work at cross-purposes, however, insofar as the high payments to civil servants under the Skladany regime (which he suggests could be ten to twenty times their national salaries, see Skladany, *supra*, at 166) would generate entrenched constituencies at the time of governmental transitions, after which senior civil servants would be replaced. See discussion *infra* Part IV.B; cf. Skladany, *supra*, at 199 (noting that monetary incentives might encourage leaders to use “intimidation and violence” to stay in power, but that noncorrupt public officials serve as checks against such abuses). Whereas the proposed pension for national leaders is only a marginal incentive to attempt to *become* president or prime minister, paying sizable bonuses to a large number of senior civil servants could create disruptive competition for those posts and increase the vehemence with which those officials will battle political transitions. Of course, the extent of the marginal incentive depends on the existing expectation of civil servants for returns from corruption, since the payments may just be in exchange for less corruption. Another important criticism of Skladany’s analysis is that in light of the fact that it might cost several billion dollars to endow a program for national leaders alone, see *infra* Part III.B, Skladany gives short shrift to the potentially considerable cost of the anticorruption program he has described. See Skladany, *supra*, at 177–78 (assuming that costs in the future are discounted rather than doing a careful discounted cost analysis).

promise that the leader will actually be paid once he steps down from power and loses his immediate leverage.

### 1. *Standing Promise*

The various elements of the pension system are quite flexible. What is not flexible, and what contrasts this program with the Ibrahim Prize, is that any leader can know in advance whether he qualifies for the payment.<sup>23</sup> Instead of wondering whether he will have met the criteria, and then having to wait for the prize selection committee to make its determination, a leader would be able to step down with full confidence that he will get the award. This provides a clear incentive for the leader to plan his behavior in a way that guarantees his own self-interest without undermining some of the basic structures of democracy that undergird liberal<sup>24</sup> society. In contrast, a standard-based award provides an ambiguous signal because the standard may be perceived as a delegation of authority to the evaluation committee to consider the overall moral worthiness of a potential recipient.

### 2. *Defining Potential Recipients*

The initial universe of targeted leaders is democratic leaders who did not block elections or attempt to overturn election results through violence. Because it would be undesirable to incentivize leaders who wanted to retire to not do so, it would also cover leaders who retired after completing their term or reaching their term limit, who lost a legitimate no-confidence vote, or perhaps those who left office for some other legitimate reason. This is the baseline case. Although it is possible that because of the nature of power dynamics within some countries subordinate officials (civilian or military) would also need to receive payments in order to incentivize a successful transition of power, providing for such a case would require a significant extension to the basic proposed pension system.<sup>25</sup>

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23. Cf. William M. Butterfield, Prizes for Development: The Political Economy of Subsidizing Good Institutional Outcomes 27–30, 162–64 (July 29, 2008) (unpublished Ph.D. dissertation, George Mason University), available at <http://tinyurl.com/44zpxxl> (noting that a rule-based award targeted to each country would be more effective than the Ibrahim Prize, but also too expensive).

24. Naturally, the term “liberal” here is meant in the classical sense. See ZAKARIA, *supra* note 5, at 17 (“For people in the West, democracy means ‘liberal democracy’: a political system marked not only by free and fair elections but also by the rule of law, a separation of powers, and the protection of basic liberties of speech, assembly, religion, and property. . . . [I]his bundle of freedoms . . . might be termed ‘constitutional liberalism’ . . .”).

25. See discussion *infra* Part IV.B.

Another question, one on which this Note takes no definitive position, is which countries would be covered by the pension system.<sup>26</sup> The goal of the pension system would be to give payments reasonably calculated to preserve or improve the robustness of the democratic process in those countries. Where such payments are not needed — such as in consolidated democracies with routine transitions of power, or in countries in which former office holders have many attractive and legitimate options for post-leadership employment (of course, these two groups of countries often overlap) — they probably ought not to be made. Thus, established democracies, such as the United States, Canada, the Member States of the European Union, and so forth, would be excluded.

The characteristic, then, that would be shared by all targeted countries would be that they are transitioning democracies. This analysis does not imply that only poor countries could be eligible. Countries with high national incomes but immature political institutions may actually be better served by such a system than poorer countries because national wealth might increase the incentive to retain power. On the other hand, democracy may be more tenacious or more likely to develop where the per capita Gross Domestic Product (GDP) is higher and where there is a stronger middle class and stronger civil society.<sup>27</sup> It is difficult to conclusively know the shape of these issues *ex ante*. What is clear, however, is that the cost of erring on the side of over-inclusion is fairly negligible because, in absolute terms, the cost of extending the pension payments to additional countries is simply not very high relative to the amount of damage a leader can inflict on a modern economy by refusing to step down.<sup>28</sup> In the cost estimates for the program below, it is assumed that twenty-five countries would participate in the program.

### 3. *Determining Conditions for Eligibility*

The conditions that will eventually need to be met by leaders will need to be defined with particularity. The *sine qua non* of the pension system is that leaders behave properly around election times and not use unconstitutional or extra-legal means in an attempt to retain power.<sup>29</sup> The

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26. For analysis of sources that may be used to determine which countries will participate, see *infra* note 100 and accompanying text.

27. See David L. Epstein et al., *Democratic Transitions*, 50 AM. J. POL. SCI. 551, 551–52, 561–67 (2006) (finding support for the theory that higher incomes increase the likelihood of democratization).

28. See *infra* Part III.

29. One challenge to such a system is screening out leaders employing “electoral authoritarianism.” See, e.g., Andreas Schedler, *Electoral Authoritarianism*, in THE SAGE HANDBOOK OF COMPARATIVE POLITICS 381, 381–82 (Todd Landman & Neil Robinson eds., 2009). The system will have to be designed to avoid paying money to those regimes that use quiet repression to guarantee outcomes. Professor Nurmikko designed a model of electoral authoritarianism in which leaders use

fewer conditions there are besides these, the better. Although other conditions are theoretically possible<sup>30</sup> — such as requiring a potential recipient to have not engaged in prior bad acts in order to arrive at or consolidate their power, or to have behaved within certain bounds while in power — this Note argues that caution is necessary in imposing such additional conditions because the effectiveness of the pension system could be undermined by any requirements that make a particular leader unsure of his eligibility at the time he must decide whether to resist losing power.<sup>31</sup>

Another possible set of conditions would be more forward-looking and would lay out requirements for a leader to meet in order to stay eligible once pension payments had begun. Some requirements would likely be perceived as costly, such as a requirement to participate in truth-and-reconciliation or similar proceedings.<sup>32</sup> A different kind of costly forward-looking requirement could seek to regulate a recipient's future career in democratic politics. For instance, a recipient might be restricted from serving in other senior government posts or from running for reelection for the highest office. This condition could prevent leaders from following a path like that of Russia's Vladimir Putin, who went from being president to prime minister, and still exercises great power.<sup>33</sup> Costly forward-looking requirements are likely less pernicious to the objectives of the system than backward-looking requirements, so long as the scope of the commitment

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bribes to the military to produce political violence, particularly when they control substantial public resources, the punishment the army might face is low, and the relative foresight of the leader is greater than that of the army. See Sanna Nurmikko, *Survival of Political Leadership* 1–3 (Univ. of Essex Dep't of Econ., Discussion Paper No. 652, 2008), available at <http://tinyurl.com/4x92kzy>. She hints at the possibility of bribing leaders themselves to discourage them from using the army to inflict political violence. See *id.* at 3, 20, 28. For further discussion of the challenge of identifying when an electoral process has been fair, see *infra* Part IV.C.

30. There is existing literature on the use of conditionality of foreign aid to autocratic regimes to encourage democratization. See, e.g., Joseph Wright, *How Foreign Aid Can Foster Democratization in Authoritarian Regimes*, 53 AM. J. POL. SCI. 552, 554–56 (2009) (testing a theory of aid conditionality where the effectiveness of the program depends on whether a dictator would have a good chance of winning fair elections); see also Simeon Djankov et al., *The Curse of Aid*, 13 J. ECON. GROWTH 169 (2008) (finding aid is associated with reductions in democratization). These papers focus primarily on the ability of aid to benefit a leader *while he is in power*, so that aid becomes — like oil — an unearned resource that can be enjoyed without producing good government or economic development. Cf. ZAKARIA, *supra* note 5, at 73–76 (noting how political modernization and economic growth are hindered by wealth in natural resources and providing examples). Thus, the criticism that aid can prevent democratization relies on the precisely opposite mechanism from that suggested here because here the pension would only be available to leaders after they left power. The democratization literature also focuses on the behavior of existing autocrats, rather than the behavior of existing constitutionally elected leaders, although the system suggested in this Note could be extended to autocratic leaders as well. See *infra* note 134 and accompanying text.

31. See discussion *infra* Part IV.D.

32. See *infra* note 128 and accompanying text.

33. See Eberhard Schneider, Commentary, *Split in the Political Tandem Putin-Medvedev?*, 3 CAUCASIAN REV. INT'L AFF. 219, 219–22 (2009), available at <http://tinyurl.com/3omqlvn>.

is clear in advance.<sup>34</sup> While these forward-looking conditions would make the pension offer less attractive than it otherwise might be, the offer would at least retain clear standards for initial and continuing eligibility.<sup>35</sup> A former president who wanted to return to politics in violation of a condition of the pension would be making a rational decision that the return is worth giving up the pension (at least temporarily). If that leader has already respected democratic transitions in the past and his return is legitimately desired by a majority of voters in a fair election, there is no reason to think that is necessarily a problem. One could even design the pension such that it was turned on or off depending on the current activities of the recipient. Thus, a recipient who ran again for high office, lost, and then gracefully acquiesced to the results could return to receiving the pension. Such a system would appear to further the underlying goals of entrenching elected democracy.

#### 4. *Setting the Size of the Offer*

The size of the offer will play a critical role in determining whether leaders will embrace it.<sup>36</sup> The basic goal is to guarantee a quality of life attractive enough to be acceptable to someone used to the trappings of power. Part II analyzes the cost-benefit calculus faced by a national leader considering whether to use extra-legal means to retain power and how the magnitude of the pension they are offered plays an important role. In Part III, cost estimates are generated for two different pension schemes. Both schemes are front-loaded; one would pay \$5 million up front with an additional \$1 million per year, while the other would pay \$10 million up

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34. It is more difficult to deal with the problem of former leaders who may continue to exercise decisive influence from the sidelines — beyond mere advice to their successors — through their personal influence on current officeholders and loyalties from members of the security forces or other influential groups. The problem with trying to condition a recipient's pension on prohibiting this kind of influence in the future is the same as the problem with imposing preconditions on eligibility. Constraints on future influence, as opposed to office-holding, make it possible that a pension recipient might unforeseeably lose payments. At the critical moment of decision, when a potential pension recipient who still holds office is attempting to decide whether to allow or to respect elections, there will be doubt about whether he will receive the pension.

35. Potential recipients may actually appreciate some forward-looking requirements, especially if accompanied by additional perquisites. For instance, as will be suggested below, pension payments may be conditioned upon the recipient's participation in an advisory body that works with other countries seeking to initiate their own democratic transitions. With sufficient amenities, such arrangements could allow a former leader to maintain an image of a dignified and important person who addresses significant issues, even after stepping down from office. *See infra* notes 48, 72–75 and accompanying text.

36. Many studies have documented the importance of the relationship between pensions and the amount of retirement wealth on early retirement. *See, e.g.*, Richard Blundell et al., *Pension Incentives and the Pattern of Early Retirement*, 112 *ECON. J.* C153, C153–54, C167–69 (2002); Andrew A. Samwick, *New Evidence on Pensions, Social Security, and the Timing of Retirement*, 70 *J. PUB. ECON.* 207, 210 (1998) (emphasizing the importance of the rate of accrual of pension benefits).

front and an additional \$3 million per year. Of course, a larger payment would either raise the cost to endow the program or restrict the number of leaders who would be eligible for the pension under a constant endowment. Furthermore, the pension also may or may not provide survivor's benefits to a leader's spouse; providing such payments would both increase the pension's desirability and its costs.

Also to be considered is how the payment would be structured. For instance, it could be made in-cash or in-kind. There is a good reason to consider structuring the agreement in a way that prevents recipients from converting a guaranteed stream of payments into a lump sum through a financial intermediary.<sup>37</sup> The fear would be that former leaders who ran out of money might resort to making trouble again in their countries.<sup>38</sup> There may also be a case for allowing the pension payment to vary depending on the size of the national economy a leader controls or some other metric, because there are greater incentives to stay in power where there are substantial resources at the leader's behest. On the flip side, leaders from tiny countries could be offered a scaled-down pension; it would be unreasonable to give the leader of Nauru,<sup>39</sup> for example, such large sums as those suggested above.

##### 5. *Who Will Fund the Program?*

The most obvious way to fund the program is for advanced democracies, such as the United States, Japan, Canada, Norway, and the Member States of the European Union, to contribute directly to it.<sup>40</sup>

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37. This problem could be prevented by making pension payments immune from assignment to or seizure by creditors. Thus, one could set up a similar system to spendthrift trusts. Of course, as with spendthrift trusts, national courts may consider exceptions to the general grant of immunity from seizure, as they do for trust assets in the areas of family law, government claims, and the provision of necessities. See Anne S. Emanuel, *Spendthrift Trusts: It's Time to Codify the Compromise*, 72 NEB. L. REV. 179, 183–86, 194–209 (1993). Still, making it legally difficult to seize the income stream offered by the pension may make it virtually impossible to capitalize. Structuring payments in-kind in whole or in part — with, for instance, a large house, a chauffeured car, guaranteed education for children, and other noncash benefits — would also alleviate the capitalization problem.

38. For example, the recent return of Jean-Claude “Baby Doc” Duvalier to Haiti has evidently inspired “a new cycle of the polarization that has crippled th[e] country for decades.” Ginger Thompson, *Duvalier Meets with Advisers as Haiti Holds Its Breath*, N.Y. TIMES, Jan. 18, 2011, at A4. Duvalier's return may have been motivated in large part by a desire to bolster his legal argument that he should be allowed to access cash from a Swiss bank account — to which he allegedly needed access because he is running out of money — because he had returned to Haiti and authorities there showed no interest in prosecuting him. Ginger Thompson, *In Duvalier's Return to Haiti, Some See a Cash Motivation*, N.Y. TIMES, Jan. 21, 2011, at A1.

39. Nauru's estimated GDP as of 2005 (the most recent year for which figures are available) was only \$60 million. *The World Factbook: Australia-Oceania: Nauru*, CENT. INTELLIGENCE AGENCY, <http://tinyurl.com/cs4g65> (last updated Apr. 6, 2011).

40. An ironic means of funding the program would be through the use of the recovered assets of existing dictators. For instance, tens of billions of dollars around the world belonging to the Qaddafi regime were recently frozen. See, e.g., Helene Cooper, *U.S. Freezes a Record \$30 Billion in Libyan Assets*,

Unfortunately, this is likely to raise the charge that the funding countries are meddling in the affairs of other countries.<sup>41</sup>

There is no reason, however, that the entity offering this program must be funded by governments. It appears this program could be endowed permanently, under reasonable assumptions, for between \$2 billion and \$8 billion.<sup>42</sup> The lower bound of this estimate is substantially less than the *annual* disbursements of the Bill & Melinda Gates Foundation for the years 2008 and 2009.<sup>43</sup> Indeed, there are numerous foundations that could afford such a program.<sup>44</sup>

Funding the pension program independently of national governments would have some distinct advantages. First of all, the fact that it was paid for by a foundation would underscore the fact that this program is designed to benefit the countries whose leaders receive funding rather than the countries that might otherwise be funding it.<sup>45</sup> For instance, the Ibrahim Prize, funded by money from an African entrepreneur, has fewer credibility problems in Africa than a similar award provided by Western governments likely would.<sup>46</sup> Furthermore, working within the framework of a foundation, former leaders might be able to continue their participation in international civil society. They could be invited to join consulting teams working on any number of projects and report back to the foundation. This would productively put to use the skills such leaders brought to their offices in the first place and later developed while in office.<sup>47</sup> Thus, it could reduce one of the costs faced by leaders stepping

N.Y. TIMES (Feb. 28, 2011), <http://tinyurl.com/3s88qgt>. A small portion of those funds might be used. The problem in doing so is that the people of the country from which the money was taken may feel entitled to have the frozen assets returned. The frozen funds are also probably seen as the main bargaining chip in future negotiations with the remaining elements of the old regime.

41. Cf. McAllister, *supra* note 9 (noting that “diplomatic proprieties” have hindered the anticorruption efforts of foreign aid donors as well as the “peer review” process among African leaders, and that Mo Ibrahim believed he could “make a few waves” with his own private money).

42. See *infra* Part III.B.

43. See BILL & MELINDA GATES FOUND., 2009 ANNUAL REPORT 12, <http://tinyurl.com/2bksq4j> (reflecting over \$2.8 billion and \$3 billion in grants paid in 2008 and 2009, respectively).

44. *Top 100 U.S. Foundations by Asset Size*, FOUND. CTR. (last updated Feb. 22, 2011), <http://tinyurl.com/28g33rc>. The fact that several foundations have assets well above the amounts proposed to fund this program does not mean that funding this program fits comfortably within the mandate of any existing organization. Rather, it illustrates the fact that the program *could* be privately funded.

45. Skladany considered a similar set of issues when evaluating the optimal funders for his program, which would provide prizes for reducing corruption. See Skladany, *supra* note 22, at 197–98.

46. See Auletta, *supra* note 7, at 50. Ibrahim himself doubts whether money provided by a non-African could have the same impact as his own prize because of African pride. *Id.*

47. The Ibrahim Prize cites this as an explicit goal. See *The Ibrahim Prize*, MO IBRAHIM FOUND., *supra* note 9 (“The money from the Ibrahim Prize will also help to ensure that Africa doesn’t lose the experience and expertise of its best leaders when they leave office, by enabling them to continue in other public roles. While leaders from the Western world have a range of options open to them after

down, which is the loss of access to interesting challenges.<sup>48</sup> It might also keep them closer to positions of power from which they could enhance their professional prestige.

The structure of the disbursing organization will play a role in establishing the credibility of the commitment. A foundation might be less susceptible to political pressures to end the program, or at the very least, to cease payments to a particular leader in light of new evidence of bad conduct he perpetrated while in office.<sup>49</sup> This is the kind of concern that might make an incumbent unwilling to count on such a program. Operating the system through a formal and independent organization that could not be destroyed without the organization's own board's consent would also make the permanence of a funding organization more credible.

Regardless of whether the granting organization is a foundation, an international organization, or a set of governments, endowing the organization will make promises of payment more credible. Providing a large portion of the pension up front is also helpful. Finally, the credibility of the organization's promise to a recipient could be raised by making it in an explicit and enforceable contract, or better yet, creating an independently-administered trust. The main concern here would be ensuring that the trustee or contract had some mechanism to enforce any forward-looking conditions imposed by the award. On the other hand, all of these mechanisms may not be that convincing to leaders from countries where such legal niceties may frequently be eviscerated with the stroke of the leader's pen. Therefore, the system will gain credibility only with actual experience, and signaling its credibility before it becomes entrenched will be a major challenge.

### B. *Comparison to Golden Parachutes in the Corporate World*

There is an analogy between the use of the payments suggested here and the use of golden parachutes employed to incentivize the retirement of corporate executives. Sometimes, corporate executives fail to maximize the value of their company, perhaps through incompetence or self-dealing. Nevertheless, they may have allies on the board willing to prevent a non-

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leaving office, including writing memoirs or sitting on company boards, these are not available to their African counterparts. The prize allows them to build on their achievements in office and play an active role in civil society, diplomacy or conflict resolution on the continent once they have left office."); see also Mohamed (Mo) Ibrahim, *Prerequisite to Prosperity: Why Africa's Future Depends on Better Governance*, INNOVATIONS: TECH., GOVERNANCE, GLOBALIZATION, Winter 2009, at 3, 6–7.

48. See *infra* notes 72–75 and accompanying text.

49. It is in fact unlikely that a rational foundation would cavalierly cut off any particular recipient, because that would undermine the pension's credibility by sending a signal to all future leaders who might rely on the pension promise as a motivation to leave power peacefully that they cannot rely on the pension. That fact might not preclude pressure at various times to end the program entirely.

negotiated ouster.<sup>50</sup> Golden parachutes — substantial payments to incumbent managers upon takeovers — are offered by boards so that managers will more objectively evaluate takeover offers rather than resort immediately to defensive tactics such as poison pills.<sup>51</sup> Obviously, it is undesirable from an entrenched executive’s personal standpoint to give up the power and perquisites of a corporate empire. The golden parachute, however, might offer a sufficiently attractive financial package for an executive to look at retirement from a more benign perspective.

While the more direct analogy to the golden parachute supplied by a corporate board to its senior executives in the context of payments to former national leaders would be a pension provided by the legislature of the country ruled by the relevant incumbent leader, it might often not be politically feasible for a legislature to offer so large a pension. Furthermore, since enemies of a former leader might arrange for a promised pension to be reduced, a domestic promise of a large and continuing pension might not be credible. In contrast, it may be easier for foreign governments or a foreign foundation to make such a credible promise.<sup>52</sup>

## II. LEADERS’ WILLINGNESS TO ACCEPT PENSION PAYMENTS IN LIEU OF CONTINUED RULE

This Part focuses on whether national leaders would be willing to step down in the wake of electoral defeat in return for pension payments. One of the key drivers of the possible willingness to accept such a deal is that extra-legal means of staying in power can be risky to leaders. This is true both in terms of the less amenable international political environment and domestic political situation they will face in the event of victory, as well as the possibility of prosecution or even summary execution if they fail. To make the discussion more concrete, this Part examines some specific leaders whose countries might have benefitted had the pension system been in place.

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50. See Andrei Shleifer & Robert W. Vishny, *Value Maximization and the Acquisition Process*, J. ECON. PERSP., Winter 1988, at 7, 8–9.

51. See Harbir Singh & Farid Harianto, *Management-Board Relationships, Takeover Risk, and the Adoption of Golden Parachutes*, 32 ACAD. MGMT. J. 7, 7–9 (1989).

52. This is an example of a time-inconsistent commitment. For background on time inconsistency, see, for example, JÖRG LINGENS, UNION WAGE BARGAINING AND ECONOMIC GROWTH 35–40 (2004). A similar problem of time-inconsistency is explored later in the context of whether a credible promise can be made by international institutions and domestic tribunals not to prosecute a former leader for crimes against humanity or other offenses. See *infra* note 124. In both cases, the problem is that while the leader controls security forces and can create enormous suffering, promises about future conduct may be one of the only bargaining chips available to the opposition, but when the leader steps down, there may be enormous temptation for the opposition to renege on such promises. The leader, of course, knows that this temptation will exist and has good reason to disbelieve any promise made to him when his hands are still on the levers of power.

*A. Cost-Benefit Analysis from the Perspective of the Leader*

The discussion of a leader's incentives assumes that when considering whether to use extra-legal means to stay in power, a defeated leader (or one blocking or manipulating elections out of fear of defeat) has engaged in no bad acts during his term of office that will require either international prosecution or international cooperation with a subsequent domestic prosecution. Further, it assumes that the leader alone (as opposed to large numbers of his allies who may also need to be paid off) determines whether to hold elections and step down upon defeat.<sup>53</sup>

*1. Benefits of Stepping Down*

One possible benefit of stepping down for an incumbent leader is access to a nationally provided pension. In many countries, however, the pensions currently provided are relatively modest. For instance, in relatively wealthy sub-Saharan African countries such as Botswana<sup>54</sup> (whose former president, Festus Mogae, won the Ibrahim Prize<sup>55</sup>), the presidential pension is equal to the greater of the salary that the former president received while in office or 80% of the current salary of the president,<sup>56</sup> it is received so long as the claimant does not qualify under various exceptions.<sup>57</sup> The current presidential salary is approximately \$76,000.<sup>58</sup> In Namibia, another relatively wealthy sub-Saharan African nation,<sup>59</sup> future presidents who are not impeached also will receive either the basic salary received as president or 80% of the salary of the current president.<sup>60</sup> The current salary of the Namibian president is approximately \$89,000.<sup>61</sup> Although these pensions are tax free, they would provide, by themselves, a substantially reduced standard of living for most former national leaders.

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53. The implications of relaxing these assumptions are considered in detail *infra* Part IV.B, D.

54. Botswana's per capita GDP in 2010 was estimated to be \$13,100, making it a middle income country. *The World Factbook: Africa: Botswana*, CENT. INTELLIGENCE AGENCY, <http://tinyurl.com/2479qn> (last updated Apr. 6, 2011).

55. BBC NEWS, *Festus Mogae Wins Ibrahim Prize*, *supra* note 8.

56. LAWS OF BOTSWANA, PRESIDENTS (PENSIONS AND RETIREMENT BENEFITS) ACT, 1998, ch. 02:03 (1998), available at <http://tinyurl.com/3utz6q3>.

57. *Id.* § 6.

58. The Botswanan president receives a little over 500,000 Botswanan Pula. Reuben Pitse, *Dibotelo Commission Presents No 'Honey' for Politicians*, BOTS. GAZETTE, [http://www.gazette.bw/tbg\\_head2.htm](http://www.gazette.bw/tbg_head2.htm) (last visited Jul. 18, 2011).

59. Namibia's per capita GDP is estimated to be \$6900 for 2010. *The World Factbook: Africa: Namibia*, CENT. INTELLIGENCE AGENCY, <http://tinyurl.com/yu6eoh> (last updated Apr. 6, 2011).

60. GOV'T. GAZETTE REP. OF NAMIBIA No. 3350, FORMER PRESIDENTS' PENSION AND OTHER BENEFITS ACT (2004), available at <http://tinyurl.com/3vhatfa>.

61. One article suggests that the Namibian president's salary is 600,000 Namibian dollars. See Lindsay Dentlinger, *Nujoma's Package Unveiled*, NAMIBIAN (Sept. 23, 2004), <http://tinyurl.com/3seuq9x>.

Leaving power may not prevent leaders from benefitting from funds stolen from their country while in office.<sup>62</sup> Presumably, many leaders steal some assets from their governments and deposit them in Swiss bank accounts or other concealed locations. It is certainly true that some former dictators are famous for stealing enormous troves of money.<sup>63</sup> It appears, however, that the former leaders are facing increasing challenges in accessing stolen funds.<sup>64</sup> This has been evident in light of the international reactions to the recent abdications of power by Hosni Mubarak and Zine al-Abidine Ben Ali in North Africa,<sup>65</sup> the rebellion against Moammar Qaddafi in Libya,<sup>66</sup> and the post-election violence inspired by Laurent Gbagbo's intransigence in Ivory Coast.<sup>67</sup> To that extent, the creation of a new pension scheme may be just bringing former leaders back to the increasingly foreclosed former calculus of economic opportunity. One difference, though, is that relatively honest leaders might find a low-corruption-with-high-pension equilibrium more satisfying than the traditional low-pension-with-high-corruption equilibrium.

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62. This may be much more common among dictators than among leaders elected through constitutional means, who perhaps face greater checks on their power.

63. See, e.g., DAVID CHAIKIN & JASON C. SHARMAN, CORRUPTION AND MONEY LAUNDERING: A SYMBIOTIC RELATIONSHIP 166–67 (2009); Sergio Salvoni, *Recovering the Proceeds of Corruption: Ferdinand Marcos of the Philippines*, in RECOVERING STOLEN ASSETS 79 (Mark Pieth ed., 2008).

64. Discussions in the 1980s focused on stripping former dictators like Ferdinand Marcos and Jean-Claude Duvalier of their wealth. Symposium, *Pursuing the Assets of Former Dictators*, 81 AM. SOC'Y INT'L L. PROC. 394–405 (1987). Nevertheless, there remain substantial obstacles, even with, for example, the relatively developed Swiss laws for asset repatriation. See David Chaikin, *Policy and Legal Obstacles in Recovering Dictator's Plunder*, BOND L. REV., Dec. 2005, at 27, 29–30. But cf. Jonathan Wheeler & Jade-Alexandra Fearn, *New Swiss Law on Recovery of "Illicit Assets" from 1 February 2011*, CLIENT ALERT (Morrison & Foerster LLP, San Francisco, Cal.), Feb. 2, 2011, available at <http://tinyurl.com/3cmwdqa> (noting new Swiss law that will make it easier for the Swiss government to provide mutual legal assistance in order to repatriate funds to countries whose leaders stole assets). In the push to recover dictators' assets, it is possible to again see the tension between justice and pragmatism. The hope repeatedly suggested in this Note is that the promise of guaranteed income will reduce graft. It is likely that the leaders who are concerned that they will be unable to access some of their stolen funds would steal much more than they would if they had an assured income (after all, the theft entails risks). The actions necessary to commit these thefts could lead to more enemies, more paranoia, and more clinging to power.

65. For discussion of freezes related to Mubarak's assets, see, for example, Samuel Rubinfeld, *Egypt Requests Freeze on Mubarak's Assets*, WALL ST. J. (Feb. 22, 2011, 9:58 AM), <http://tinyurl.com/3ftuar4>; U.S. *Slower than Swiss on Mubarak Funds*, UNITED PRESS INT., Feb. 19, 2011, available at <http://tinyurl.com/3pjphzb>. For Ben Ali, see, for example, Tom Malinowski, *Hit the Dictators Where it Hurts*, WASH. POST, Feb. 19, 2011, at A21 (noting that within a week, Switzerland and the European Union had frozen Ben Ali's funds).

66. See, e.g., Helene Cooper, *U.S. Freezes a Record \$30 Billion in Libyan Assets*, N.Y. TIMES (Feb. 28, 2011), <http://tinyurl.com/3s88qgt>; Fiona Gaven, *Dictators and Their Sons: Col Gaddafi's Billionaire Children*, TELEGRAPH (Mar. 1, 2011, 6:30 AM GMT), <http://tinyurl.com/69h5bw4>; *Switzerland Freezes Gaddafi Assets*, SWISSINFO.CH (Feb. 24, 2011, 7:11 PM), <http://tinyurl.com/3tv4ye4>.

67. See, e.g., Simon Taylor, *EU Freezes Gbagbo's Assets*, EUR. VOICE (Jan. 14, 2011, 7:54 PM CET), <http://tinyurl.com/3r3yaxa>.

A lower international tolerance for the financial shenanigans of developing countries' leaders, especially after having perpetrated violence against their people, may not be the only way in which the opportunity cost of leaving power is shrinking. Leaders who oppose democratic movements with violence may risk becoming international pariahs and losing their ability to enjoy many perquisites of their office, such as international recognition and their ability to travel as an international dignitary. In contrast, if they leave power, they might be able to hone the skills they developed while in office as they engage in international civil society, thus continuing to enjoy some of the perquisites they might have become accustomed to while constitutionally in office. For instance, Festus Mogae is now the UN Special Envoy on Climate Change.<sup>68</sup>

Finally, and importantly, by stepping down promptly, a leader might face a lower chance of being killed or imprisoned in the event that he fails to retain power, either in the shorter or the longer term.<sup>69</sup> This depends on the extent to which an abdicating leader's enemies might have a greater chance (or incentive) to harm him if he leaves office without a struggle versus attempting to stay in power extra-legally. It is also possible that the leader cares to some extent about the well-being of his fellow citizens and would welcome the chance to avoid violence or civil war without giving up some share of his own perquisites.<sup>70</sup>

## 2. *Costs of Stepping Down*

There are also clear costs to stepping down for a national leader. These include, at the most pedestrian level, the loss of access to the lifestyle that national office was providing free of personal expense.<sup>71</sup> A more subtle loss, though, but perhaps equally important, is that former leaders likely face a less interesting set of challenges due to the absence of the work that has defined their recent lives.<sup>72</sup> Remember that the people who reach high-

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68. See Press Release, United Nations, Two New UN Envoys Chosen to Spearhead Progress on Climate Change (Sep. 18, 2008), available at <http://tinyurl.com/3h7z4tb>.

69. See Ku & Nzelibe, *supra* note 4, at 802–05 (discussing the grim fates of African coup plotters and opponents).

70. Of course, this depends on the candidate to whom he had lost. For instance, a president from one ethnic group might hate members of the ethnic group of the candidate that defeated him and not value the lives of members of that ethnic group in his calculations.

71. An untold number of sources catalogue the lifestyles of government leaders. See, e.g., *French Press Slam African Leader's Lavish Holidays*, FRANCE 24 (Jan. 1, 2009), <http://tinyurl.com/3std8b>; Brendan McSherry, *The Political Economy of Oil in Equatorial Guinea*, AFR. STUD. Q., Spring 2006, at 23, 26 (“Misallocation of [Equatorial Guinea’s] oil rents for lavish personal expenditures have grown to ridiculous proportions.”). The needs of the president of the United States are sufficiently met, to the point that many have chosen not to carry wallets. See John Campanelli, *Spender in Chief's Personal Finances*, PLAIN DEALER (Cleveland), Feb. 21, 2011, at D1.

72. On the difficulties faced by leaders leaving power — including anxiety about declining physical abilities and a desire to compensate through the power that comes from a high position,

political office have navigated a severe selection process. As such, they are likely to have unusual psychological characteristics. Fortunately, former high-level politicians in established democracies today have many options. These include entering (or returning to) business life, continuing in public service in a lesser elected or appointed office, working in international institutions, acting as a public intellectual, or working in the non-profit and NGO sector.<sup>73</sup> Citizens of wealthy countries are fortunate that their leaders have these options because they incentivize politicians to behave appropriately while in office and, at the appropriate time, to leave office. For national leaders from poorer countries, whose networks of friends and allies have fewer attractive positions and inducements to offer, there may be more temptation to stay in power in spite of a majority's opposition.<sup>74</sup> In such a context, leaving power also likely makes it more difficult for a national leader to perpetuate family dynasties and the careers of family, friends, and allies from a strong position.<sup>75</sup>

Furthermore, a leader may be unwilling to step down because the loss of control of a sovereign state exposes him to prosecution for bad acts he committed in order to obtain power or during his administration.<sup>76</sup> Finally, it is probable that the exertion of power, and indeed possibly even the infliction of political violence, may be consumption goods for some persons who obtain leadership.<sup>77</sup> In the case of both national and corporate office, leadership is held by people who presumably value both money and power.<sup>78</sup> It is reasonable to assume that there is a selection effect that makes the psychological characteristics of national presidents inclined to hold onto power in the face of democratic opposition different

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feelings of nothingness, paranoia and anxiety about others taking revenge against them, and concern for their legacy — see Manfred Kets De Vries, *The Retirement Syndrome: The Psychology of Letting Go*, 21 EUR. MGMT. J. 707, 708–13 (2003). Professor De Vries wrote that “[j]ust as trees need water and sunshine to flourish, many leaders need the admiration of their subordinates to feel truly alive.” *Id.* at 708.

73. See Lisa Anderson, *The Ex-Presidents*, 21 J. DEMOCRACY, Apr. 2010, at 64, 68–73; see also Kevin Theakston, *What Role for Former Leaders*, POL. STUD. ASS'N, <http://tinyurl.com/3dhhu2h> (originally presented at the Political Studies Association Conference, Swansea, U.K., Apr. 1–3, 2008) (describing the post-office-holding lives of Western leaders).

74. See Anderson, *supra* note 73, at 70 (“[Africa] do[es]n’t have financial institutions for ex-presidents to go and run, or boards of great companies.” (quoting Mo Ibrahim) (internal quotation marks omitted)).

75. Professor De Vries writes that even well-paid CEOs “feel financial pressure to remain on the job.” De Vries, *supra* note 72, at 710. They have come to expect a high relative standard of living comparable to other extremely wealthy individuals and “[a]dditional pressure to remain may come from spouses and children, who are used to the perks and reflected glory that come with top leadership.” *Id.*

76. For further discussion, see *infra* Part IV.D.

77. This would be the inverse of the possible benefits to a leader's conscience of not being responsible for the deaths of his fellow citizens. For further discussion, see *infra* Part IV.A.

78. See De Vries, *supra* note 72, at 710–11 (noting that power may be a substitute for the physical well-being of youth); Shleifer & Vishny, *supra* note 50, at 7.

from the average person. They may be more risk-loving, such that they require a larger guaranteed amount of money and other inducements to make them indifferent between accepting those incentives and taking the gamble of using violence to stay in power despite the possible consequences (economists would say they have a higher certainty equivalent).<sup>79</sup>

### 3. *Changes in the Costs & Benefits of Leaving Office Under the Pension System*

With the pension system in place, leaders who step down will receive additional resources, and the differential between staying and leaving would be reduced. As was suggested earlier, the pension could be a function of observable conditions within a country. For instance, if the incentive for a leader to stay in power is that he can extract economic rents from the society, and since societies with valuable extractive industries create more rents, the pension payments could be made to depend to some extent on the value of the extracted products a country produces per year. Alternatively, the ability to commit graft may come from the organization of executive power. For instance, a parliamentary leader may find it harder to divert money than a presidential leader, and indeed to stay in power against the will of a parliamentary majority, and so the payments may be based in part on a country's political structure.

Furthermore, the pension may enable a leader to leave office with an intact reputation but still with sufficient resources to live the kind of life he envisions as suitable for himself. The pension could thus have the indirect effect of inducing greater honesty in politicians' conduct while in office as well as less violence in departing it. Having the opportunity to exit office with guaranteed resources and the ability to maintain an honest and non-violent reputation might also open up more possibilities for these former leaders in civil society.<sup>80</sup> Even if those possibilities are not as great as exist for retiring Western leaders, that does not mean they are non-existent, particularly if one aspect of the pension system involved creating new tasks to utilize the expertise of participating leaders.

#### B. *Leaders Who Might Have Stepped Down Given the Pension Offer*

There are many examples of leaders whose countries might have benefitted if the pension system was in place. These are leaders who resisted having an election or recognizing the results of an election,

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79. See Ku & Nzelibe, *supra* note 4, at 792–93.

80. Professor Lisa Anderson noted that politicians will consider the effect of their actions in office on the demand for their services in the market for post-presidential services. See Anderson, *supra* note 73, at 73–75. This suggests that enhancing the post-resignation opportunities for senior politicians could be an additional goal for policymakers.

creating significant tension between achieving justice and, arguably, the pragmatic best solution of paying them a large sum to exit power. The tension resulted not from the leader’s pre-election conduct but from what the leader had done to try to maintain power. A good place to start looking comes from a recent paper on term limits by Tom Ginsburg that includes a list of leaders who have evaded them. This list categorizes these leaders according to whether the means they used to attempt to overstay term limits involved amending, replacing, or simply ignoring the existing constitution.<sup>81</sup> It does not include leaders who used violence or repression to stay in power close to the time of a scheduled election when they had not reached the term limit.

At least two of the leaders who chose to ignore or suspend their constitution might have behaved differently if the pension offer had been in place. Mamadou Tandja of uranium-rich Niger was originally elected in 2005 and was even praised by President George W. Bush for his commitment to democracy, but was eventually ousted in a 2010 coup after he rolled back Niger’s democratic institutions during a year of attempting to overstay the country’s term limit.<sup>82</sup> Isaias Afwerki of Eritrea, meanwhile, represents the not uncommon case of a national independence leader who initially led a pragmatic government but then put off elections and eventually allowed the basis of his rule to devolve into violence and foreign aggression.<sup>83</sup>

The violence and political unrest that has recently wracked Ivory Coast reflects baseline conditions in another country that might have dramatically benefitted from the kind of pension system proposed here. The availability of a sufficient annuity-like pension might have incentivized Ivory Coast’s incumbent president Laurent Gbagbo to step down. In the absence of such a pension, the Obama administration apparently offered Gbagbo a position in an international organization and emigration to elsewhere in Europe, North America, or Africa.<sup>84</sup> Gbagbo probably would not have found such a position secure, however, because this offer was made to him after substantial violence already had occurred by his orders. Indeed, the UN High Commissioner on Human Rights threatened that Gbagbo might face human rights charges if he had played a role in violent attacks.<sup>85</sup> As a consequence of Gbagbo’s refusal to leave power, there were

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81. See Ginsburg, *supra* note 19, at 44–47.

82. See Adam Nossiter, *Niger Junta Gives Assurances on Democracy Plans*, N.Y. TIMES, Feb. 21, 2010, at A4; Adam Nossiter, *Niger’s Destitute Population Senses a Threat to Its Scrap of Democracy*, N.Y. TIMES, Jul. 14, 2009, at A4.

83. See Nunu Kidane, *Isaias Afwerki*, NEW INTERNATIONALIST, Mar. 2004, at 29.

84. Eric Lipton & Sheryl Gay Stolberg, *In Ivory Coast, Bid to Ease Out Defiant Leader*, N.Y. TIMES, Jan. 1, 2011, at A1.

85. *Id.* While some of Gbagbo’s violence occurred during and after the election, it is possible he may be linked to other human rights violations connected to the Ivorian Civil War or to other events

riots, violence against international peacekeepers protecting the duly-elected president, sanctions, international military intervention, and a brief civil war, all terribly costly.<sup>86</sup> Of course, in the end, for all the damage he did to his country, Gbagbo was defeated anyway, making the losses seem even more absurd.<sup>87</sup> The clumsy attempt to buy off Gbagbo after the fact is an excellent example of why it would be better to create a standing offer that creates a clear opportunity cost for commencing antidemocratic violence.

There are historical cases where exile was accepted by autocratic leaders. These reinforce the idea that leaders are sometimes willing to step down from power where they face a much deteriorated political situation. For example, Idi Amin, the one-time dictator of Uganda, accepted exile in Saudi Arabia and a pension from the House of Saud to stay out of politics, and eventually died in Saudi Arabia.<sup>88</sup> Zine el-Abidine Ben Ali, the former dictator of Tunisia, also now resides in Saudi Arabia, although the final chapter in his saga has yet to be written.<sup>89</sup> The fact that these leaders only left after having instigated significant persecution against their own peoples limited the breadth of countries they could choose for their exile and probably the enjoyment they could derive during it as well, given the risk created by those actions in terms of exposure to prosecution upon visiting certain countries.

### III. FINANCIAL FEASIBILITY OF THE PENSION SYSTEM

The discussion to this point has presupposed that some entity or entities would be willing to fund a pension system for former national leaders that would pay them additional money beyond any pension promised them under their own nations' laws. To determine whether the creation of such a system is feasible, this Part asks what the benefits of such a system might be to an international donor and what the financial costs of such a program would be.

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in his decade as the Ivorian president. He may be exposed to eventual prosecution for these crimes as well. For a discussion of the difficulties such a history poses for a leader considering whether to accept the pension, see *infra* note 123 and accompanying text.

86. See Adam Nossiter, *Ivory Coast: U.N. Vehicles Attacked*, N.Y. TIMES, Jan. 14, 2011, at A8; see also Suyash Paliwal, Note, *The Primacy of Regional Organizations in International Peacekeeping: The African Example*, 51 VA. J. INT'L L. 185, 211–13 (2010) (highlighting the United Nations peacekeeping mission in Ivory Coast).

87. See Adam Nossiter, *Strongman Out, Ivory Coast Is Reviving*, N.Y. TIMES, Apr. 14, 2011, at A12.

88. Auletta, *supra* note 7, at 50. Of course, Amin was a dictator who seized power in a coup. Whether the pension scheme should be extended to such individuals is considered *infra* Part IV.F.

89. Auletta, *supra* note 7, at 50.

### A. *Benefits of Creating the Pension System*

Avoiding failed democratic transitions, and the chaos and violence that sometimes accompany them, is the greatest benefit of creating a pension system like the one outlined here. The costs of such civil violence are so great that, at least on a global basis, the pension system would quite possibly make a return on investment if it was to work even once in a medium-sized country. To make this concrete, consider that a relatively small country such as Ivory Coast had an estimated GDP of \$37.8 billion in 2010.<sup>90</sup> Given the cost calculations below,<sup>91</sup> the entire cost of setting up and endowing the program for an indefinite duration would be between approximately 5% and 20% of Ivory Coast’s annual GDP. Fittingly, one bank estimated that the Ivorian economy might shrink 5% in the first three months of 2011 as a result of election violence there, and also foresaw a major increase in the inflation rate, from 4.3% to 12.1%.<sup>92</sup> After those estimates, the scope of the Ivorian civil war increased and the IMF has projected the Ivorian economy will shrink 7.5% in 2011 even though the conflict has now ended.<sup>93</sup>

Additionally, such violence may have the potential to harm developed countries’ economies, particularly where the countries whose leaders would receive the pension are substantial producers of commodities with price-inelastic demand, such as energy resources or agricultural staples (uranium in Niger may be a good example, or possibly cocoa in Ivory Coast<sup>94</sup>).

Furthermore, although this effect is difficult to quantify, the availability of a substantial international pension may reduce graft by leaders while they are in office by providing them a signal about how they will support themselves after they leave office.<sup>95</sup> Countries with strong anti-bribery

90. *The World Factbook: Africa: Cote d'Ivoire*, CENT. INTELLIGENCE AGENCY, <http://tinyurl.com/3oyq7h8> (last updated Apr. 6, 2011).

91. See *infra* note 101 and accompanying text.

92. Pauline Bax & Olivier Monnier, *Ivory Coast Economy Facing ‘Catastrophic’ Effect After Poll, Ouattara Says*, BLOOMBERG (Jan. 19, 2011, 4:49 AM), <http://tinyurl.com/3eqwyoz>. Much of this contraction is probably attributable to sanctions, which are not an automatic consequence of election-related violence. See Adam Nossiter, *Ivory Coast Rebels Claim to Have Expanded their Advance*, N.Y. TIMES, Mar. 7, 2011, at A6. Nevertheless, from a policy standpoint, this merely illustrates the point that sanctions — which are harmful both to the imposing and imposed-upon country — as well as the costs of civil war are much more expensive than the cost of setting up an alternative system that might provide better incentives and avoid such costs entirely.

93. See INT. MONETARY FUND, *WORLD ECONOMIC OUTLOOK 81* (April 2011), available at <http://tinyurl.com/6cfzjln>; Steven Erlanger, *As Fighting Continues, the French Take Control of an Ivory Coast Airport*, N.Y. TIMES, April 4, 2011, at A4.

94. See Food & Agric. Org. of the U.N. [FAO], *FAO Commodities and Trade Technical Paper 1, Medium-Term Prospects for Agricultural Commodities: Projections to the Year 2010*, at 73–80 (2003) (first of a new series, entitled “FAO Commodities and Trade Technical Papers,” that surveys the importance of cocoa in Ivory Coast).

95. If the goal of a foreign leader is to have a large but not exorbitant amount of disposable assets

laws, such as the United States and the Member States of the European Union,<sup>96</sup> have an interest in reducing the level of corruption of foreign states because corruption may hinder their companies when they compete with firms from countries with weaker anticorruption laws.<sup>97</sup> Because these countries have disadvantaged themselves on the supply side of corruption, they have an incentive to try to push downward the demand for corrupt payments. Additionally, one reason that leaders might be exposed to electoral defeat is that they have become out of touch with the times and ineffective.<sup>98</sup> Bad policy that might be enacted by such a leader upon retaining office extra-legally could have spillover effects on other countries, either because it is destabilizing or because it leads to lower growth, less national prosperity, and less trade.

Finally, creating a system that leads to more peaceful transitions of power may allow other states to avoid military interventions that have occasionally been mounted in response to such leaders' behavior, and the financial, military, and diplomatic costs those interventions create.<sup>99</sup>

#### B. *Costs of Creating the Pension System*

Primarily, the costs of the proposed pension system appear to be financial. These costs would not likely be prohibitive under reasonable assumptions. Assuming that this program is offered to twenty-five countries,<sup>100</sup> and applying other reasonable assumptions,<sup>101</sup> the cost of the

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(say \$25 million) available in the event of exile, but he believes that many of his assets will be seized, he may steal vastly more in order to ensure that even if he is unlucky and most of his assets are lost, he will have enough money in enough places to live as he likes. One of the rationales of the Ibrahim Prize is that leaders "might . . . feel competitive pressure to demonstrate clean hands." McAllister, *supra* note 9.

96. For background on U.S. and international anticorruption laws, see Eugene R. Erbstoesser et al., *The FCPA and Analogous Foreign Anti-Bribery Laws — Overview, Recent Developments, and Acquisition Due Diligence*, 2 CAPITAL MARKETS L.J. 381, 381–86, 395–96 (2007).

97. Competitive concerns motivated the United States — which was the first country to develop an anti-bribery law applicable to the actions of its companies abroad — to commence Organisation for Economic Co-operation and Development (OECD) negotiations for a multilateral treaty in the 1980s, which eventually led to a treaty that called on signatories to adopt legislation prohibiting foreign bribery. *See id.* at 395–96.

98. *See* De Vries, *supra* note 72, at 709 ("All CEOs who reach [the] burnout point — whether they are young, middle-aged, or well past the usual retirement age — should heed [the] warning signs and say, 'enough is enough; someone else needs to take over the reins and bring new ideas into the organization.'").

99. Consider, for example, the French intervention in Ivory Coast. *See* Steven Erlanger, *French Colonial Past Casts Long Shadow over Policy in Africa*, N.Y. TIMES, Apr. 17, 2011, at A10.

100. A very rough estimate of the number of countries engaged in political transitions can be made using the Polity IV dataset. *Polity IV Project: Political Regime Characteristics and Transitions, 1800–2009*, CTR. FOR SYSTEMIC PEACE, <http://www.systemicpeace.org/polity/polity4.htm> (last updated Mar. 22, 2011). In this dataset, there are at least fifty countries with positive polity scores — which measure democratization — and per capita GDP less than \$5000. *See id.* For obvious reasons, the overlap between countries featuring relative poverty and positive levels of democratic behavior and

\$5 million up-front pension with annual \$1 million payments is less than \$2.7 billion (assuming an indefinite duration). The more generous \$10 million up-front pension with annual \$3 million payments would cost approximately \$7.3 billion, given the same assumptions about the number of countries and the interest rate.

In reality, the costs are likely to be lower than suggested here. Presumably, as democratic institutions develop within a particular state, the program will not need to be continued.<sup>102</sup> Therefore, there will be a limited and not an indefinite duration. Because of the discounting, however, later years do not play as big a role as current years in determining the costs of the program, so the eventual elimination of a program, if it only takes place after decades, will have a limited effect on the endowment cost.

In addition to the financial costs, some sponsors might be concerned about sullyng their images by what may be characterized as supporting the lavish lifestyles of former leaders, some of whom may have acted questionably while in office. There are several reasons to think that this problem is surmountable. First, wealthy industrialized countries already support the lifestyles of many existing dictators through commercial, military, and diplomatic relations, as they do with the current leaders of Saudi Arabia and as they did, until recently, with the former leaders of Egypt.<sup>103</sup> While these leaders are in power rather than out of power, there has traditionally not been moral outrage directed at the arrangements because they are seen to serve the national interests of wealthy industrialized countries.<sup>104</sup> It is not clear that more attention would be paid

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countries that would benefit from this system is not complete. The first group includes some countries, like India, whose leaders would likely not accept this kind of program because they are in charge of proud, consolidated democracies and would find it insulting. Some wealthier democracies, such as those with substantial natural resources wealth but that are in the early stages of democratic transitions, might benefit. A thorough report from Freedom Works on various democratic transitions, ADRIAN KARATNYCKY & PETER ACKERMAN, FREEDOM HOUSE, HOW FREEDOM IS WON: FROM CIVIC RESISTANCE TO DURABLE DEMOCRACY (2005), may also be useful in identifying the number of countries that might benefit from such a program.

101. The real interest rate is assumed to be five percent; each program country has a president enter every fourth year (including the first year); and each recipient receives the money for twenty-five years. The relevant interest rate is the real interest rate because the payments would be inflation-indexed against either the dollar or some baseline basket of currencies.

102. There is no fairness issue in discontinuing the pension offer for future leaders at any particular time because whoever funds the program could announce that fact in advance. There is no property right in the pension offer inhering in the office of head of government or head of state in any country. The offer is purely instrumental and should be eliminated where it is no longer needed.

103. See, e.g., *SIPRI Arms Transfers Database*, STOCKHOLM INT’L PEACE RES. INST., available at <http://tinyurl.com/3szuo84> (last visited Jul. 18, 2011) (making available data showing that between 2000 and 2010, U.S. arms exports to Saudi Arabia and Egypt were over \$1.4 billion and over \$5 billion, respectively, in 1990 prices).

104. American military and diplomatic support for the political regime in Equatorial Guinea — a West African country with enormous oil exports and a corrupt government — is a particularly

to such support, especially at the more modest level envisioned by the proposed pension system, when they are out of power. Second, it will probably be possible to explain these arrangements as in the interests of the contributing countries for the reasons described above. Third, as suggested already, countries themselves need not fund this program, but rather, the system could be endowed by wealthy individuals or foundations who could emulate Mo Ibrahim's visionary decision to create the Ibrahim Prize. These institutions might be under less pressure to mold their policies to public pressure, both because they might face less scrutiny than states engaging in the same conduct would since they are not using public funds, and because they are not answerable to the public in any event.

Despite these arguments, sponsors are unlikely to be willing to adopt this project unless they consider it to be just. Under a utilitarian system of ethics, there is a benefit if the program works to prevent election violence, reduce graft, and allow for peaceful transitions of power in some cases. Whether the benefit justifies the costs will depend on a comparison of the financial costs of the system, which will include payments to "false positives" — leaders who would have stepped down in any event and would have committed the same level of graft in the absence of the pension — and the frequency with which it works to prevent violence and corruption, as well as the extent of the violence and corruption and any possible costs of military intervention prevented. Of course, many people reject a purely utilitarian approach to morality. On the other hand, even a deontological approach to ethics could possibly justify such payments by recognizing that abdicating power in accord with a constitutional duty in the face of temptation to seek to retain it creates some moral basis to justify a monetary reward. While in an ideal world, leaders would obey their duties without incentives, it is probably unrealistic to expect that to always be the case.

#### IV. POLITICAL & MORAL CONCERNS RAISED BY THE PENSION SYSTEM

There are a host of political and moral concerns that can be raised against the proposed pension system or an extension of it to other groups, such as subordinate officials and former dictators. This Part begins with several potential political problems with the system and concludes by focusing on one particularly important moral issue that the system might

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egregious example. See Adam Nossiter, *U.S. Engages With an Iron Leader in Equatorial Guinea*, N.Y. TIMES, May 31, 2011, at A4 (including details about the involvement of American oil companies in the country's energy sector, the role of American military contractors in defending the regime, and quotations from the U.S. ambassador contesting the dark image of the country painted by the rest of the world and NGOs).

create. The problems considered are: (1) the fact that ideology and power may be more important to a leader than money; (2) the possibility that subordinate officials besides leaders may need to be brought into the system; (3) the challenge of verifying compliance with the conditions imposed by the system (however limited); (4) the problem of prior bad acts by leaders; (5) the possibility that the system may undermine the incentives for good governance; (6) some of the specific issues raised by extending the system to dictators; (7) the possibility the pension would encourage dictatorship by encouraging democratizing leaders to step down for despotically-minded populist leaders; and (8) the possibility that the system may cheapen the nature of leadership in developing countries.

*A. Ideology & Power More Important than Money for the Hard Cases*

One reason to doubt the possibility of the pension system’s success is repeatedly returned to throughout this Note. Specifically, it is important to think of the psychological character of those who self-select into victory in the politics of low-income incipient democracies. If they care more about power than about money to a sufficient extent, or they are aiming to create a family dynasty, this proposed system might not be very successful. On the other hand, at some point, the exercise of power under deep uncertainty about personal safety and regime longevity may become more a burden than a pleasure, even for individuals whose personalities make them generally fond of intrigue and violence.

It is important to keep in mind that the “easy cases” — those for whom the money promised by the pension is easily enough to get them to leave power — might be the leaders who would not have stood firm in the face of determined opposition in any event. It could be that the pension only convinces these easy cases to leave and is therefore ineffective in changing the outcomes in any particular case because the “hard cases” might have contempt for the offer. Nevertheless, while there may be a core group of hard cases that the system proposed here will do little to resolve, the policy does not have to solve every hard case. At least this is true in an absolute sense (keeping in mind the benefits to the people of the countries whose leaders are receiving the payments), if not necessarily in the sense of the return captured by the funder for the reasons discussed in the previous Part.

*B. The Leader’s Circle of Friends*

A second question that needs to be addressed is whether it would suffice to pay off only a single leader from each regime. So far, the assumption has generally been that only the national leader — a president or prime minister — would need to be offered a pension. But is the

structure of power in consolidating democracies such that the leader's decision to permit elections and then gracefully accept their results sufficient to actually make those things happen?<sup>105</sup> Or, rather, are there many subordinate officials who can hijack the process? If so, how wide a net must be cast amongst subordinate officials to make sure that a regime determined to fulfill the conditions set by the proposed program is actually capable of doing so?<sup>106</sup>

Of course, it may be hoped that without a committed person on top, it would be difficult for subordinate figures in a regime to coalesce around a strategy of preventing a scheduled election or an orderly transition of power following such an election. On the other hand, to the extent that an existing regime embodies the political interests of a powerful subgroup within a country, there will be strong pressure on a leader to remain in power to perpetuate that group's interest. A leader who abandoned those interests for his own personal interests might be afraid of a rapid death brought about by his own allies. Furthermore, those allies might be sufficiently strong to quickly coalesce around a successor and perpetuate the political policies that kept the previous incumbent in power through repression. The spoiler power of subordinates may also be greater if there is a relatively clear line of succession within a leading group. A subordinate with high hopes of eventual power might undermine the will of a putative superior with some desire to increase political freedoms.

The basic scenario envisioned for the pension system in this Note, however, is its application to young democracies in which there has already been at least a single election. In such circumstances, this sort of minority domination — similar, perhaps, to the Sunni domination in Iraq during the reign of Saddam Hussein<sup>107</sup> — may be less relevant, although surely not non-existent. In any event, the same argument that minimizes the importance of the fact that some leaders care more about power than money applies in this case as well. To be a beneficial policy innovation, the pension system does not have to bring about transitions of power in the hardest of cases, just in some cases.

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105. In responding to the idea that the Ibrahim Prize is based on an “elitist” conception of politics that underrates the importance of civil society contributions, Mo Ibrahim has noted that “the actions of the President are really crucial. There are no checks and balances to control their power . . . Don't say that's elitist. This is a fact of life.” Auletta, *supra* note 7, at 52 (internal quotation marks omitted).

106. For a discussion of the importance of building coalitions, even in autocratic governments, and how such coalitions are built, see Jennifer Gandhi & Adam Przeworski, *Authoritarian Institutions and the Survival of Autocrats*, 40 COMP. POL. STUD. 1279, 1280–84 (2007). The authors focus on partisan legislatures within autocratic states as a context for controlling negotiated policy outcomes, as well as pure spoils systems. *Id.*

107. See Vali Nasr, *When the Shiites Rise*, 85 FOREIGN AFF. 58, 61 (2006) (“Today, Iraqi Shiites worry far more about the Sunnis' domination than about Tehran's influence in Baghdad.”).

The military is the other logical origin from which antidemocratic forces are likely to emerge.<sup>108</sup> Professor Daron Acemoglu and his coauthors have developed a theory under which a legacy military from a non-democratic regime poses a threat to a nascent democracy after the beginning of a democratic transition until it is reformed.<sup>109</sup> Their model more generally considers a principal-agent model, focusing on the decision of a non-democratic oligarchy to develop a strong military in the first place before a democratic transition has even started.<sup>110</sup> The oligarchy’s decision, in turn, depends in part on background societal conditions, but primarily on inequality and military effectiveness.<sup>111</sup> In their model, a legacy military demands concessions from nascent democracies (as it also had done from the oligarchy that created it in the first place) in the form of high wages.<sup>112</sup> But because the military expects the democratic government to reform the military as soon as it has a chance to do so — and thus weaken the military’s leverage — the government has a commitment problem in making long-term promises.<sup>113</sup> Natural resources raise the temptations for the military to undermine democracy.<sup>114</sup>

Subordinate senior civilian officials as well as senior military leaders may also be susceptible to an international system of pensions. These individuals could either be offered direct financial transfers, as in the case of the leader, or jobs could be provided either in existing institutions or new institutions designed for the purpose of being staffed by such individuals. Professor Acemoglu and his coauthors explicitly ignored this possibility of “bribes” to particular members of the military, which may be one way to avoid coups.<sup>115</sup> Naturally, a commitment to provide more than the national leader with a pension would change the cost calculations for endowing the program. Additionally, because these kinds of decisions would be case-specific, it is unlikely this could be made a part of the basic

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108. See, e.g., Peter M. Lewis, *Endgame in Nigeria?: The Politics of a Failed Democratic Transition*, 93 AFR. AFF. 323, 329–31 (1994) (“The Nigerian transition crisis revealed the increasingly predatory and self-interested character of military rule, a proclivity which has intensified social discord and internal military disaffection.”).

109. Acemoglu et al., *supra* note 21.

110. See *id.* at 1.

111. *Id.* at 3.

112. *Id.* at 1–2.

113. *Id.* at 1–3. Ironically, one upshot of this that the authors note is that it may be easier for countries facing serious international threats to democratize because the continued threat eliminates the commitment problem a democracy faces in committing not to neuter the military. *Id.*

114. *Id.* at 3–4.

115. *Id.* at 2 n.4. But see Professor Nurmikko’s discussion of the political relationship between the military and the ruling Mugabe regime in Zimbabwe to see how this may be a counterfactual assumption in some circumstances, as top military officers receive bribes as part of the effort to maintain their loyalty. Nurmikko, *supra* note 29, at 4–6.

pension system proposed here.<sup>116</sup> Given the many issues the possibility of this extension raises, it should be considered only a tentative possibility.

### C. *Guaranteeing Election Fairness*

A third important issue is determining how elections would be judged to guarantee their fairness, and therefore, a leader's eligibility for the pension. There are already existing institutional mechanisms judging the fairness of elections through various Western and international governmental organs.<sup>117</sup> This pension system could probably free-ride on the existing system, although slight modifications to the reporting structure of those observers might be necessary insofar as they may need to address a specific set of criteria for eligibility for the pension. Of course, observers from whatever organization or organizations charged with the task of definitively determining the fairness of the election for the purposes of the pension may be treated with more solicitousness than other observers and obtain more access, particularly if they make a positive decision contingent on being allowed broad access to the electoral process. One advantage of the system making substantial expenditures on election monitoring is it may demonstrate that the award's funders are serious in the initial period before some leaders have started to receive it. Again, if these costs are financed by the pension program, the costs may expand once again. It may therefore be necessary to partner with an existing organization with significant experience in the area, such as the Carter Center,<sup>118</sup> to limit additional outlays. This, then, may create a tradeoff between avoiding additional costs and incorporating additional signaling to leaders of the pension program's financial commitment.

Given the concern about "electoral authoritarianism,"<sup>119</sup> it is important that observers are present to identify somewhat subtle electoral abuses. This is particularly true in the pre-election period, when such things as abuse of state resources are often not commented on by observers.<sup>120</sup> Recognizing the possibility of somewhat subtle electoral abuses does not mean embracing a romantic view of electoral democracy, either in

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116. On the other hand, the pre-clearance system discussed *infra* Part IV.F–G might be able to accommodate some subordinate officials.

117. For example, the United Nations, Organization for Security and Co-operation in Europe, and numerous U.S. NGOs often sponsor election monitors. Thomas Carothers, *The Observers Observed*, J. DEMOCRACY, July 1997, at 17, 18. Carothers, however, has critiqued the work done by at least some international observers as amateurish and lamented the fact that election monitoring was a "growth industry," suggesting it may be sensible to add no further groups to those that already exist. *See id.* at 21–23.

118. *Id.* at 21 ("There is a small core of organizations with [sic] a serious commitment to high-quality election observation and assistance, including . . . the Carter Center . . .").

119. *See* Schedler, *supra* note 29, at 381–82.

120. *See* Carothers, *supra* note 117, at 22–23.

developing or developed countries. Elections are messy, and the behavior of very few politicians in any country measures up to a blameless ideal of good citizenship. Developing a set of clear metrics will be important, and some abuse is to be expected. Hewing to those metrics and not allowing the determination of electoral rectitude to become a test of a leader's overall political palatability during his entire tenure is fundamental to the credibility of the pension system. If the test of electoral behavior does become a more generalized political inquiry, the problems described above with respect to making the system conditional return to the fore and could undermine the value of the system altogether.<sup>121</sup>

*D. The Problem of Prior Bad Acts*

A fourth issue, and perhaps the most nettlesome of all, is that some presidents may not only commit humanitarian crimes around elections but also at other points before or during their tenure, either in order to consolidate power or as a matter of national policy. In light of the pension system's goal of incentivizing political incumbents to use only constitutional means to retain power, the existence of prior bad acts raises two distinct problems.

First, and fundamentally outside the scope of the proposed system, is that if a leader is afraid that a subsequent government, a foreign government, or an international organization may indict him for crimes allegedly committed during the administration, then he could be hesitant to step down at all. For instance, would Charles Taylor have accepted even a very large sum of money to leave power, knowing that he might be prosecuted for his crimes in the civil war in Sierra Leone?<sup>122</sup> Would it make sense for Moammar Qaddafi ever to leave Libya voluntarily after perpetrating so much violence? This is clearly an enormous problem.<sup>123</sup> The risk of a leader being prosecuted for earlier deeds is probably something that cannot be solved through the pension system because there are too many decision-makers to generate a consensus needed to

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121. See discussion *supra* Part I.A.3.

122. See Ricardo Lagos & Heraldo Muñoz, *The Pinochet Dilemma*, FOREIGN POL'Y, Spring 1999, at 26, 36–37.

123. The cognitive dissonance of Western policymakers in crisis situations involving dictatorial governments using violence against their people is noteworthy. On the one hand, they instruct leaders to leave power and dangle exile as a viable option, while on the other hand they initiate investigations at the Security Council and threaten leaders with accountability and punishment for already completed crimes. Compare *United States Tells Gaddafi to 'Leave Now'*, AUSTL. BROAD. CORP. (Feb. 28, 2011, 12:03 AM AEDT), <http://tinyurl.com/3bqby7r> (describing opening of war crimes investigation), with *Rice: Qaddafi Exile an Option if He Ends Killing*, THE EARLY SHOW — CBS NEWS (Mar. 1, 2011, 11:23 AM), <http://tinyurl.com/44uly4> (stating that the United States would consider the possibility of exile for Qaddafi if he ends the violence). While the conflicting impulses between pragmatism and justice are obvious, given the ruthlessness of leaders like Qaddafi, the incentive to try to stay in power is clear.

provide effective immunity from prosecution.<sup>124</sup> It would be difficult to credibly make such a commitment in any event.

The best hope might be that if the pension system incentivizes a leader to not engage in vicious behavior immediately before losing power, it may contribute to more peaceful and less acrimonious transitions of power, and as a result, subsequent leaders — as well as international institutions — could be more willing to “live and let live” with respect to the past. This would be particularly true if former leaders retain the loyalty of important elements of society such that their indictment could be destabilizing.<sup>125</sup> Furthermore, a guaranteed income out of office may also discourage an incumbent from committing excessive graft while in power.<sup>126</sup> Less graft might also mean fewer victims and less desire for vengeance subsequent to a leader’s exit.<sup>127</sup> Obtaining the ends sought by the pension system in the first place, however, may require a tamping down of the desire for universal justice. Such compromises may be necessary in order to secure reasonable outcomes in an imperfect world. While the pension proposal may mitigate that tension to some extent, it cannot eliminate it entirely.

Second, the existence of crimes before the election period may generate opposition to providing particular leaders with a pension. Adding further preconditions to pension eligibility beyond those relating to a leader’s behavior proximate to the constitutional transition of power, however, would reduce a leader’s certainty regarding his eligibility for the award. For example, if the grant were to be conditioned on good behavior throughout an entire administration, and indeed throughout an entire life, that would introduce uncertainty into the calculation of a leader about his likelihood of getting the grant subsequent to a peaceful exit. Even after the pension was granted, a leader could never be sure when some new evidence of a past misdeed would be brought to light that could lead the pension to be

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124. Furthermore, even if a consensus were reached, it could be breached after the fact by either a change of mind or subsequent decision-makers. For instance, the political opponent of an incumbent president may be willing to agree to not prosecute the president in order to secure the president’s resignation, but might change his mind after the president steps down if he can get revenge without threatening his political position. Rational incumbents would then not be willing to believe such promises. In other words, the opposition leader’s promise not to prosecute is time-inconsistent.

125. See Ku & Nzelibe, *supra* note 4, at 781 (noting the spoiler problem in international prosecutions); Lagos & Muñoz, *supra* note 122, at 31–37 (noting the tension created in the Chilean political system after the former dictator’s arrest in the United Kingdom).

126. See *supra* notes 96–97 and accompanying text.

127. It will also make it more difficult for observers to identify the fruits of graft by observing the lifestyle of a former leader after he leaves office. It would be difficult to tell if a reasonably luxurious lifestyle on the part of an ex-leader was based on funds stolen during his tenure in office or funds received as a result of the pension. This could only be true over a narrow range of luxurious lifestyles because the initial pension payment would not be that high, so it would not allow an official to engage in substantial use of stolen funds undetected, but it would perhaps contribute to a salutary amount of forgiveness and forgetfulness.

cut off. Decreased certainty thereby potentially destroys the clear signal the pension is meant to provide to leaders that undergirds its ability to prevent violence. In addition to creating uncertainty for a leader, these further preconditions would require the grant organization to engage in the unpleasant and difficult task of adjudicating whether a democratic leader's behavior over a long period of time met a somewhat ambiguous standard, rather than observing during a discrete period of time (around an election) whether a leader engaged in specific behaviors.

There are limits to the ability of the pension system to mitigate the tension between justice and pragmatism. Yet, the demands for justice are often difficult to deny because of — naturally — their very justice. A more moderate approach than requiring the absence of any bad acts to provide the pension, which might undermine the purpose of the pension in the first place, would be to require recipients who are accused of prior bad acts to participate in any duly constituted truth-and-reconciliation-type program that is set up to investigate the past, though with attendant immunity from prosecution.<sup>128</sup> As has been argued above, forward-looking requirements that are clear in their scope allow leaders to know what they are bargaining for when they accept a pension.

#### *E. Reducing the Incentives for Good Governance*

By providing substantial payments even to leaders who have governed poorly, the pension system could lead to slower economic development and less rapid increases in the independence of national institutions than if leaders were competing actively for a standard-based award like the Ibrahim Prize.<sup>129</sup> In that context, democratic transitions may remain fragile even if a single incumbent steps down. The field may be left clear for whoever takes over to seize long-term power. Thus, it could be argued that

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128. For an incisive analysis of the politics of truth commissions, see Stephen Landsman, *Alternative Responses to Serious Human Rights Abuses: Of Prosecution and Truth Commissions*, 59 L. & CONTEMP. PROBS. 81 (1996).

129. In order to evaluate the effectiveness of national leaders, the Mo Ibrahim Foundation has worked with renowned scholars to develop the Ibrahim Index of African Governance. See *Capacity Development and Project Team*, MO IBRAHIM FOUND., <http://tinyurl.com/3ncvte6> (last visited Apr. 16, 2011); see also Ibrahim, *supra* note 47, at 2, 7 (describing the Ibrahim Index and explaining that it relies on quantifiable measures of governments' service delivery to their citizens, and also explaining that it is intended to improve the quality of statistical data gathering in Africa). It is not clear, however, that many leaders see themselves as actively competing for the prize, though Ellen Johnson Sirleaf, the president of Liberia, has mused about the possibility that she might win the prize. Auletta, *supra* note 7, at 52. Apparently, though, the Ibrahim Index and Prize combined have created a sense of competition among African policymakers. *Id.* at 53. On the other hand, the fact that the prize committee chose not to award the prize for two straight years, *id.* at 50, may mean the standards will become seen as too stringent to be worth competing for. Some possible candidates who did leave office and would have been eligible for the pension award, such as John Kufour of Ghana and Thabo Mbeki of South Africa, were not considered worthy of the prize. *Id.*

the approach of the Ibrahim Prize is actually more effective not only at incentivizing improved governance, but ultimately at incentivizing true democratic transitions.<sup>130</sup>

The best response to this concern is that liberalizing African leaders are presumably not governing well in order to gain access to the Prize (which in fact did not exist during most of the tenures of its first two recipients), nor would they have any reason to govern poorly if they were accorded a substantial pension. Indeed, they may have a good reason to be less corrupt because they will have a clear source of income after departing national leadership.<sup>131</sup> In any event, excellent leaders may well be motivated by the hope of improving the lives of their people and securing an honored place in history. The effect of a prize on a leader's inherent liberalizing tendencies may be low, whereas the effect of a prize on a leader's willingness to step down may be high.

Nor is there necessarily a strong reason to suspect that the availability of the pension will encourage worse candidates to seek high office. Indeed, the opposite may be true. There are always strong incentives to become the leader of a nation-state, particularly where such office provides the means of enrichment through corruption, as tends to be the case in consolidating democracies with weak institutional checks on executive power. The availability of a substantial pension provides an incentive that may disproportionately encourage honest people to enter high politics relative to the current set of incentives, which provide the biggest returns of holding office to dishonest people.

Another possible problem with implementing the pension system suggested here is that the existence of substantial automatic awards for retiring leaders might undermine the incentives provided by the standard-based Ibrahim Prize, at least in sub-Saharan Africa, where the Prize is offered. On the other hand, this problem is mitigated by the fact that even with substantial automatic payments, the Prize would still be a nice financial top-up for its recipients. Furthermore, the high substantive standards of the Prize would likely allow it to remain a prestigious award in the vein of the Nobel Prize that would bring with it personal stature and influence with value beyond the financial incentives.<sup>132</sup>

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130. Mo Ibrahim said that “[w]e are not putting this out as a department of pensions, but instead as a reward for the leaders who really managed to deliver to their people.” Interview by Margaret McElligott with Mo Ibrahim, Founder, Celtel, in Wash., D.C. (Oct. 26, 2006), <http://allafrica.com/stories/200610260012.html>.

131. *See supra* notes 95–97 and accompanying text.

132. Indeed, Ibrahim himself has noted that “[i]f someone would like to [pay Ivorian President Gbagbo or other leaders,] they are welcome to do that. We did not corner the market on prizes or inducements.” Auletta, *supra* note 7, at 50 (internal quotation marks omitted).

F. *Availability of Pension for Dictators*

Another important question, which has been hinted at already, is whether non-democratic leaders should be eligible for a modified version of the pension system. For example, individuals who took or retained power through coups or other non-constitutional means but who later become interested in or willing to accept a transition to democracy may also be made eligible for pension payments along the lines suggested previously for democratic leaders. The logic in favor of providing payments to democratically-elected presidents who step down according to schedule and without violence seems to extend naturally to leaders who attained or retained power in other ways but who are willing to transition to open and fair elections. The goals in either case are, after all, basically utilitarian: moving to and consolidating more democratic governance. The mechanism is an outgrowth of the fact that the increase in citizen welfare that can be obtained from such a transition is potentially vastly larger than the amount of the pension payments to a particular leader.

On the other hand, the issues of prior bad acts might be even starker in the case of leaders who did not obtain power according to existing constitutional means. Rare is the revolution that does not involve some humanitarian crimes that either violate international law or could be prosecuted domestically.<sup>133</sup> In this case, the existence of a pension system to prevent election-related violence, by mitigating the convulsions around the eventual transfer of power, could possibly eliminate some of the tension between justice and the pragmatic outcome of the leader stepping down with an easy life for himself and freedom for his country. The pension system is, however, incapable of eliminating the tension between providing that easy life and achieving justice for revolutionary crimes or crimes motivated by the regime's earlier perceptions of political expediency.<sup>134</sup>

In such cases, a more substantive review of a leader's conduct may be warranted. The idea of conditioning pension payments to elected leaders on their conduct in office outside of the election context was criticized as casting doubt on the certainty of the pension for the targeted group of leaders and thereby, perhaps, undermining the pension's effectiveness in

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133. See Weede & Muller, *supra* note 21, at 43–44 (arguing, in the context of a discussion about whether rational choice or deprivation theories of the origin of revolution are more compelling, that revolution implies a successful prior rebellion, which is defined as a violent power struggle). Of course, there are more and less violent revolutions, and Professors Weede and Muller consider whether these are the same types of phenomena in light of the relatively nonviolent revolutions in Central and Eastern Europe in 1989. See *id.* at 44 n.2.

134. It seems unlikely that the payment scheme itself would incentivize revolutions. Most coup leaders are primarily interested in obtaining national leadership, and the risks are such that they would probably not risk life and limb for the chance to get the relatively modest pension proposed here.

preventing political violence.<sup>135</sup> In contrast, it may be possible for an administrative body to do a preclearance of the conduct of a leader who obtained power through a coup or, for someone like Mikhail Gorbachev, through a fundamentally non-democratic system. It could signal to that leader that he would be eligible for the pension despite his conduct in obtaining or executing his office. Such preclearance may be joined, as suggested above, with a forward-looking requirement that the leader participate in subsequent truth-and-reconciliation proceedings in order to receive the pension.<sup>136</sup>

Similarly, leaders who in the past had refused to hold or who had sabotaged fair elections might be willing to turn over a new leaf and allow fair and observable elections. While a blanket forgiveness for past bad conduct in the event that a leader ultimately allows a fair and non-violent transition of power through democratic means could cause incumbents to push those elections down the line until they feel like their position is sufficiently weak that attempting to maintain power would not be worthwhile, it might still be useful to grant a waiver in certain cases, depending on circumstances. Because this exception would apply primarily to leaders who had been democratically elected and then undermined the constitutional order in some manner, it may be best to use it sparingly. Nevertheless, the fundamental utilitarian logic of preventing future bad acts at the expense of a relatively inexpensive pension holds (notwithstanding that providing the pension might set a bad example for other leaders currently considering taking antidemocratic steps), and so the idea that there should be some mechanism allowing leaders to wipe the slate clean potentially has some merit.

### G. *The Problem of Replacing Good Leaders with Bad Ones*

There may be a concern that the pension may lead to the resignation of a liberalizing leader in favor of a new leader who may take the country in a despotic direction. This may be brought about, for instance, by the electoral victory of a populist leader who uses the initial backing of a majority to seize greater power from weak national institutions.<sup>137</sup> Although the pension system might theoretically have the opposite effect, encouraging despotically-inclined leaders to step down in favor of

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135. See discussion *supra* Part IV.D.

136. Of course, political leaders may be hesitant to consult a preclearance board because they may fear that by doing so they would appear weak. To avoid this problem, the preclearance board could initiate the preclearance process on its own and privately signal an incumbent nondemocratic leader of its determination.

137. See ZAKARIA, *supra* note 5, at 91–105 (pointing to the problem of elected leaders usurping authority from other layers and branches of government in Russia, Venezuela, and elsewhere, although “[p]luralism rests on competing centers of power”).

liberalizing leaders, it is not unreasonable to assume that the willingness to step down in return for a pension that can guarantee a high (but not national-leader-level) quality of life is correlated with non-despotic tendencies.

Though this is a real concern, it is important to keep in mind the context in which the pension is operative. A leader who undermines democratic elections is guaranteeing the breakdown of a critical aspect of the democratic transition and imposing substantial costs on the (perhaps delicate) constitutional order. In some cases, this may be in furtherance of a concomitant “liberal transition” on the part of a leader who sees himself as a “liberal autocrat.”<sup>138</sup> In such a case, the leader may have undermined an election in order to stand between his country and the despotism he perceives as possible if he relinquishes power. Theoretically, there may be cases where the “better” outcome from a liberal perspective might be to temporarily devalue democracy. For a genuine liberal autocrat, however, the increased incentive to step down provided by the pension system may be minimal.<sup>139</sup> Recall that the pension system is designed for politicians primarily motivated by selfishness, whereas a liberal autocrat may care more about his country’s future.<sup>140</sup> The pension system may, by contrast, help to discourage undermining democratic transitions for reasons that have to do with the leader’s perceived personal self-interest rather than his concerns for liberalism in his country, leaders’ rhetoric notwithstanding.

Nevertheless, it may be prudent to build in some flexibility in the system to account for the most exceptional cases of once-democratic leaders who have governed well and eventually stepped down. While for leaders who came to and left power constitutionally the pension would be automatic, for other leaders who had once undermined democracy the preclearance system could be used to create a credible promise that they would be eligible for the pension as they approach a decision whether to continue using antidemocratic means to retain power.<sup>141</sup>

This last set of considerations raises another question. Given that Western powers have often supported illiberal democracies perceived to support policies in their national interest, countries may try to act as “spoilers” to the pension system by providing countervailing incentives to leaders. For instance, conventional wisdom among policy observers is that

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138. *Id.* at 95–96.

139. Mo Ibrahim responded to the fact that Tunisia and Egypt, both of which recently experienced popular revolutions that deposed longtime authoritarian leaders, had also scored highly on his foundation’s governance index by pointing out that the Ibrahim Index “is not an index of democracy, it’s an index of everything.” Auletta, *supra* note 7, at 52–53 (internal quotation marks omitted).

140. *See supra* note 21. Besides, a national leader who stays in office continues to enjoy the perks of national leadership at no personal expense.

141. *See* discussion *supra* Part IV.F.

Western countries, particularly the United States, have supported Arab dictatorships out of some combination of fear of the creation of “Islamist” governments, a desire for oil price stability, and support for Israel.<sup>142</sup> They may thus oppose the departure of a friendly autocrat (elected or not) in the face of a democratic tide behind a politician viewed as a religious fundamentalist or a nationalist opposed to Western interests. One way to address this would be to allow, as discussed above, for some flexibility in designing the pension so that it could permit leaders who only violated democratic principles in order to defend liberal principles to access it.<sup>143</sup> An alternative possibility, if the principle of democracy promotion is seen as paramount, would be to try to run the pension system through an international organization, which might provide a basis for claims that member countries have an obligation not to undermine the program.

Finally, a slightly different issue concerns the possibility that politicians might try to game the system through exchanges of power in order to qualify more individuals for a pension. In presidential democracies with only occasional elections, this is hard to imagine. Few leaders would go to the trouble of getting elected only to start a series of resignations and assumptions of power by individuals in order to become eligible for the pension. The risk is theoretically greater in parliamentary democracy, because a parliamentary majority could name successive prime ministers — indeed, they could name every member of the ruling coalition as prime minister for a brief period. While this is a theoretical possibility, in practice it is unlikely to be a serious threat to the integrity of the system. For one thing, most developing democracies in Latin America, Africa, and Central Asia have adopted a presidential model of government.<sup>144</sup> Second, procedural requirements for the award could foreclose such a practice

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142. See, e.g., Justin Elliot, *How Did the U.S. Get in Bed with Mubarak?*, SALON.COM (Jan. 29, 2011, 5:01 AM), <http://tinyurl.com/3dotyks> (“The three leaders — the two King Abdullahs and Mubarak — they are America’s most important allies in the eastern Arab world. That’s very important because that’s the defense of oil, it’s the defense against the vast popular anger in the Arab and Muslim world against the United States — for its positions vis-à-vis Palestine-Israel, for invading Iraq . . .”).

143. In a case where there is a conflict of principles between liberalism and democracy, the compromise implied by this flexibility would at least be principled insofar as it is a temporary deemphasizing of democracy in favor of liberalism. In contrast, if countries are motivated to support a dictator by their own national interests, even if those interests are opposed or antithetical to the interests of the inhabitants of the dictator’s country (such as when foreign countries support a dictator who guarantees the flow of oil in return for payments that are not distributed to the people, but rather, raise the value of the national currency and reduce competitiveness throughout the rest of the economy), then it may be best to leave that country out of the pension system. If the countries who are meddling want to promise a nice retirement package to their chosen dictator, that is their business. In light of the recent rough treatment of former Egyptian President Hosni Mubarak, however, they might have trouble making their promises credible.

144. See *List of Electoral Democracies*, WORLD FORUM OF DEMOCRACY, <http://www.fordemocracy.net/electoral.shtml> (last visited Apr. 16, 2011).

without damaging the clarity of the signal the pension system is meant to provide; the prize may be limited to leaders who spent some reasonable amount of time in office, or only to those whose exit from power came after having served a constitutionally proscribed term, a general election, or a legitimate vote of no confidence.<sup>145</sup> If procedural requirements did not succeed in preventing gaming, a country could be temporarily suspended from the program.

#### *H. Cheapening National Leadership*

There is a moral concern that the pension system, which could be characterized as a bribe, will be viewed as cheapening or commoditizing the nature of leadership in countries that are covered by the system. This same objection has been raised to the Ibrahim Prize,<sup>146</sup> although it is funded by an African entrepreneur who made his fortune delivering cellular telephone services to hundreds of millions of Africans. It has also been argued that the Prize reinforces the notion of the African “big man” rather than building civil society.<sup>147</sup>

The best answer to these objections is to point back to the fundamental fact emphasized throughout this Note that the control of the national budget and the security services make it possible for self-interested decisions of a national leader to cause enormous havoc to society as a whole. Although a developed civil society reduces the scope of this possibility to some extent, it cannot eliminate it entirely. Traditions of democratic politics cannot be born wholly formed, but rather, have to be earned with time. The premise of the proposal in this Note is to make it less difficult to begin that process. The point at which an announcement is made that a country has “graduated” from the pension program would surely be a time to celebrate the consolidation of democracy in that country, but the presence of the program would not be an insult to the country’s people. Rather, it is an acknowledgment that the consolidation of change takes time. Indeed, the very different context faced by developing democracies today in comparison to the environment once faced by today’s consolidated democracies—including the fact that many developing democracies have enormous populations and are operating in a much more competitive international economy—should help to scuttle racist or chauvinistic explanations for slower democratic development. So

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145. Occasionally, a democratic crisis may occur within a party. In genuine cases, a standard-based exception may apply.

146. Mangala, *supra* note 9, at 37 (“[C]ritics argue that . . . the prize will, in fact, fuel the public perception that African leaders are so corrupt they will leave power only when offered a monetary incentive. . . . Furthermore, there is a perception that African leaders are being treated . . . different[ly] from other world leaders.”).

147. *Id.*

should the fact that despite these disadvantages, many countries throughout various regions of the world, from Chile to Botswana to Mongolia, have still managed to find their way onto a path of sustained economic and political development.<sup>148</sup> In the meantime, as Mo Ibrahim pointed out, “if you do manage to take five million people out of poverty, or get clean water to people or educate kids, a \$5 million reward is peanuts.”<sup>149</sup>

It might be argued that the political leadership of poor or democratically transitioning states should not be motivated by a desire to become rich. Whereas cutting off the ability of national leaders to squirrel assets away abroad is consistent with that principle, the pension scheme advocated here is inconsistent with it. A different principle, however, and the one advocated here, reconciles the policies: namely, reducing the incentives to stay in power illegitimately and consolidating a process of democratic transition.<sup>150</sup> If a leader can obtain the assets he seeks for a good life by behaving prudently in office and leaving constitutionally, the office will remain attractive but the negative externalities associated with the misuse of that office may be reduced. Rather than tilting at the windmills of human nature in transitioning democracies by condemning the self-interested behavior of leaders, wealthy foreigners can take advantage of the asymmetry between the personal interests of a leader and his ability to wreak economic and political havoc on his country through corruption and violence.<sup>151</sup>

If the above reasoning is considered unsatisfactory, the system could be made to depend on legislative consent from each participating country. This could be problematic if it compromises the credibility of the pension to a leader considering retirement or resistance in the face of actual or potential democratic defeat. A leader may fear that in the future, such conditions may be modified or declared violated, subjecting his future well-being to the political currents in his country.<sup>152</sup> One way to

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148. And of course, Western democracy developed to its current point only after centuries of warfare following the Treaty of Westphalia.

149. McAllister, *supra* note 9 (internal quotation mark omitted). This statement may be seen as the kind of objectionable attribution of success to a single “big man” that critics complain of. Still, although it may be unfair to ascribe success to a single individual, a national leader can go very far toward destroying the opportunities for his country’s development. Maybe it would be better to commend a national leader for actively *facilitating* development and doing nothing active to prevent it.

150. *See infra* notes 94–98 and accompanying text.

151. Politics, as Max Weber said, “means strong, slow drilling through hard boards with both passion and a sense of proportion.” MAX WEBER, *Politics as a Vocation*, in MAX WEBER’S COMPLETE WRITINGS ON ACADEMIC AND POLITICAL VOCATIONS 155, 207 (John Dreijmanis ed., Gordon C. Wells trans., 1989). The legacy of autocracy does not disappear with the resignation of one man. Therefore, the pension system is specifically conceived *as a system* that will continue to encourage democratic consolidation from leader to leader.

152. This procedure requiring legislative consent may also be problematic insofar as it creates

compromise and allow for legislatures to have some say but not to undermine the credibility of the signal provided by the pension offer would be to require that a legislature consent to the pension system, but once that permission was granted, to not allow the legislature to change its mind, at least with respect to the incumbent leader at the time of the initial agreement. An alternative that would tend to allow a greater extension of the program (because it would require no affirmative action on the part of legislatures) would be for the funding institution to generate an initial list of countries to which the pension offer will be considered operative, but then allow a declaration by the legislature of a country to void the offer with respect to that country.

A more reactive stance would presumably need to be taken for the non-democracies or former democracies whose leaders may apply under a standard-based preclearance procedure. The process of applying would lead to a determination of whether the incumbent leader would qualify. After the first democratic transition in such a country where a preclearance was granted and the reigning autocrat at the time had resigned, the country would probably continue to participate in the program going forward since it would then be a transitioning democracy.

#### CONCLUSION

This Note has considered whether a pension scheme offered to leaders of countries going through a democratic transition would be helpful in consolidating democracy by encouraging peaceful and procedurally fair transitions of power. The political difficulties of creating such a system have been extensively explored and the political problems with arranging such a scheme considered. The existence of the Ibrahim Prize, which has similar goals — although serving fewer intended recipients — suggests that such a plan may be plausible.

The financial costs of the plan — which would almost certainly cost less than \$10 billion in net present value to endow and which requires low initial outlays that could be ended if the program was found to be ineffective — are modest in comparison to its potential benefits. The system may be capable of generating beneficial effects on both the electoral politics and governmental administration of numerous transitioning democracies. In that light, the overall scheme and the problems tentatively addressed above deserve more exploration.

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tension between the different branches of government in a transitioning democracy.