

*Review*

# Habermas' deliberative democracy and the Zimbabwean constitution-making process

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The paper applies Habermas' theory of deliberative democracy to argue for an objective, non-partisan and non-evil outcome in the Zimbabwean constitution-making process. Habermas' deliberative democracy is particularly useful because it emphasizes rational discourse and it tries to put away prejudices and egoistic tendencies in constitutional making. For Zimbabweans, non-partisan thinking assumes political equality between human beings as moral persons who have a conception of rationality. In the current constitution-making process, main political parties [(Zimbabwe African National Union-Patriotic Front (ZANU-PF) and Movement for Democratic Change-Morgan Tsvangirai Faction (MDC-T)] have bargained and campaigned for favoured positions concerning the sticking points of the constitution. The said political parties have used a calculus of party interests to influence public opinion on controversial issues in the constitution such as, among others, executive powers, land, war veterans, media and citizenship. Habermas' deliberative democracy entails that Zimbabweans should not be disadvantaged by partisan thinking. It is immoral for political parties to tailor principles so as to fit into their existing power structures. Party inclinations and aspirations should not override the views of the grassroots people. The opinion rival of the two main political parties, as the paper argues, creates a slippery slope scenario whereby the media, student unions, trade unions and non-governmental organizations (NGOs) have flanked behind either MDC-T or ZANU PF perceptions. From a logical point of view, such thinking has created a false dichotomy thereby silencing and ignoring a wide range of alternative viewpoints which transcend partisan views. Further, the paper argues that the future of Zimbabwe, as enshrined in the proposed constitution, ought not to be sacrificed in the attempt to achieve political domination since the future of Zimbabwe is great, and lies beyond party politics. What is constitutionally desirable for Zimbabweans must be reasonable rather than just party inclined and manipulated.

**Key words:** Habermas, deliberative democracy, constitution-making, Zimbabwe, rationality.

## INTRODUCTION

This paper critically analyses the procedural aspects of the Zimbabwean constitution-making process from a moral point of view. It does not directly focus on the substantive aspects concerning executive powers, land, war veterans and homosexuality that have dominated

media debates. Instead, the paper argues that if a fair and legitimate constitution-making process is done, main views on what has to be contained in the constitution will be gathered in a democratic and hence representative manner although votes will play a decisive role in the acceptability of a constitution. There are two traditions in constitution-making, the first is revolutionary (paving way for a completely new political order whereby constitution-making replaces an old political system) and the second is evolutionary (in which constitution making is an ongoing process to limit the powers of an existing government). The constitution is very important for Zimbabweans because it is supposed to be revolutionary

**Abbreviations:** GNU, Government of national unity; ZANU PF, Zimbabwe African National Union-Patriotic Front; MDC-T, Movement for Democratic Change-Morgan Tsvangirai Faction; MDC, Movement for Democratic Change; Copac, Constitution Parliamentary Committee; NGOs, non-governmental organizations, NCA, National Constitutional Assembly.

to pave way for fresh elections and end the political crisis that has resulted in the formation of a transitional government of national unity (GNU) in February 2009.

The unstable political situation in the country has led to slow economic growth since no investors are eager to invest in a politically unstable environment. Foreign direct investors are holding on to their funds due to skepticism of the current political situation and they want to be sure of what will transpire after presidential elections in either 2012 or 2013. It can be argued therefore that even though the constitution-making is a political aspect, it influences economic and social development indirectly thereby demonstrating its importance.

The paper begins by providing a theoretical background to the idea of a moral point of view by sketching the contributions of Hume, Kant and Rousseau. It is argued that the objective of any moral viewpoint is to arrive at an impartial judgement that transcends egoistic tendencies. Secondly the paper analyses Habermas' deliberative democracy as a communicative theory that allows rational discussions between the politicians and non-politicians in constitution-making. The significance of Habermas' deliberative democracy is explored. Thirdly the paper exposes the actual situation that is obtaining in the Zimbabwean constitutional making process and applies Habermas' deliberative democracy as a philosophical tool that can be used to overcome the problem of partisan thinking. In this regard, important implications that relate to a constitution making process are drawn.

## **THEORETICAL BACKGROUND**

Philosophy provides analytic tools for clarity in debate. Eriksen (2003: 8) maintains that "the task of philosophy is merely to clarify the moral point of view and the criteria for democratic legitimacy through an analysis of the procedural requirements for rational debate." This means that philosophy helps to make procedural requirements less confused and focused. Capaldi (1989) maintains that philosophical conceptualizations of the idea of a moral point of view can be traced back to Hume's notion of the "judicious spectator".

Hume attempts to explain how moral judgments of approval and disapproval are possible given that people normally are focused on achieving their egoistic interests. He posited that in making moral judgments individuals abstract (in imagination) from selfish particular interests and adopt an impartial point of view from which they assess the effects of others' actions on the interests of everyone affected (Pogge, 1989, 2007).

Later, philosophers posited similar perspectives for moral reasoning designed to yield impartial judgments once individuals abstract from their selfish aims and interests and assess situations from an impartial point of view. But rather than being mainly explanatory like Hume's, the role of these impartial perspectives is to

serve as a basis from which to assess and justify moral rules or principles. Kant's categorical imperative procedure (Timmons, 2002), Adam Smith's impartial spectator (Buchan, 2006), and Rousseau's general will (Gourevitch, 1997) are key examples of accounts of a moral point of view.

The moral point of view appears to be significant part of an account of practical reasoning. For instance, Kant's categorical imperative is envisioned as a point of view any reasonable person can adopt in deliberating about what he/she ought morally to do (Timmons, 2002). When joined with the common assumption that the totality of moral reasons is final and/or override non-moral reasons, the moral point of view might be regarded as the most fundamental perspective that we can adopt in practical reasoning about what we ought to do.

## **HABERMAS' DELIBERATIVE DEMOCRACY**

Cooke (2000: 947) defines deliberative democracy as, "a conception of democratic government that secures a central place for reasoned discussion in political life." Habermas' ideas are useful in understanding deliberative democracy since he is a key figure behind the theory. Habermas employs a liberal standpoint for his deliberative democracy theory, with the rule of law and constitutionalism as main tenets. Unlike Rawls, Habermas grounds constitutionalism and law on communicative reason. Communicative reason is defined as "social action that is both based on and oriented to mutually supposed validity claims about shared interpretations of the world" (Baynes, 2009: 538).

Habermas outlines a more inclusive theory of deliberative democracy, where political deliberation is not restricted to political elites, and both the public and private spheres play a part in the political process. This makes reasonable agreement possible through rational discussion. For Habermas, the public sphere is the broad domain of non-governmental associations in which citizen's form, debate, and revise variously shared interpretations of the world and its meaning (Baynes, 2009: 538). Before moving on to the procedural elements in Habermas's theory, the discussion begins with an elucidation of two concepts that form the foundation of Habermas's work on deliberation, namely; public sphere which hosts political deliberation; and the ideal speech community that outlines the conditions under which a political community can reach consensus.

Habermas's concepts of the public sphere and the ideal speech community form the central core of his deliberative theory. They are main concepts in the allocation of citizen power as a potential to influence others and to challenge political rulers because they describe how and where political deliberation can occur in a deliberative democracy. He identifies elements present in the public sphere, namely a critically enabled political public sphere that is free of institutional interference and a literary

public sphere where citizens can develop their critical faculties, as necessary for a properly functioning public sphere that deploys deliberative democracy (Shahramnia, 2011: 256). To augment his concept of the public sphere, Habermas developed a rational model of deliberation through his theory of the ideal speech community in which he outlines the conditions under which a community may reach consensus on moral problems and norms without the taints usually associated with self-interest, prejudice, and political affiliation (Shahramnia, 2011: 256). In conjunction, these two concepts; a public sphere free of state interference and consensus-oriented, rational deliberation- form the foundation of his deliberative theory.

Habermas maintains that the formation of the public sphere was a peculiar, unprecedented historical event that occurred in several nation states in Europe during the early modern era (Habermas, 1989: 26). Existing political structures were strained by pressure from a rising civil society fuelled by the growing wealth of the middle classes through trade and capitalist activity (Habermas, 1989: 14). These pressures led to private people within the respective nation states coming together to form publics, which then took control of the public sphere from the authorities of the time, and used it to engage those same authorities in debate over the rules governing the sphere of commodity exchange and social labour (Habermas, 1989: 26).

However, the political function of the public sphere so formed evolved from a communication sphere in the public domain that was in existence even before the public took control from the authorities. Communication in this, the literary public sphere or sphere of letters, was focused on cultural activity and was the „training ground“ for the critical faculty exercised in the public sphere in the political realm (Habermas, 1989: 29). The literary public sphere was a necessary precursor to the political public sphere in the public realm, for it formed the bridge between the ruling nobility and the bourgeois intellectuals (Habermas, 1989: 30).

The literary public sphere came into being in various institutions within the nation state, varying according to the composition of those who attended, and the scale and climate of the debates. However, they all had three common features (Habermas, 1989: 36). First, the discussions occurred without regard for social status or rank, as if they were taking part amongst equals. Secondly, they revolved around topics that had been the exclusive preserve of the churches and public authorities until that time. The transformation of culture into a commodity broke the exclusivity, and made „art“ available to all. Private persons now had to analyse art for themselves, derive its meaning, and come up with a rational explanation for their analysis. Thirdly, the public's in the literary public sphere were no longer exclusive. Just as culture lost its exclusivity when it transformed into a commodity, allowing any private person to obtain art for

his or her own use, the bourgeois public sphere attained its political function when the public developed a political conscience. Public opinion, as the expression of reason within the public sphere, rejected absolute sovereignty as the source of law and formulated a concept of general and abstract law that drew legitimacy from the public sphere of civil society (Habermas, 1989: 54).

The rationality of the proposed laws, coupled with their generality and abstract nature, allowed for a convergence with the existing political system because an enlightened monarch could use rationality as the basis for his or her actions (Habermas, 1989: 54). The literary public sphere, therefore, is a precursor of the bourgeois public sphere, but Habermas does point out that the two publics do not coincide completely. Even though the people that made up the two spheres did not coincide completely, and the definition of one public is essentially a fiction, it is a fiction that is made possible by the bourgeois acceptance of the identification of „property owner“ with „human being“ (Habermas, 1989: 56). Not all private individuals who participated in the literary public sphere did, or even could, participate in the political public sphere. Rather, individuals communicated with one another in the literary public sphere in their capacity as human beings, but participated in the political public sphere as owners of commodities (Habermas, 1989: 55).

An illusion that there was only one public sphere was sustainable because of struggles for the political emancipation of civil society. At this time, the interests of the property owners of the political public sphere coincided with the freedom of the individual in general. In any case, the idea of individuals participating in different spheres and playing different roles is central to the public sphere that Habermas uses in his deliberative theory.

The public sphere that hosts political deliberation in Habermas's deliberative theory incorporates many of the elements he identified in the bourgeois public sphere. It requires citizens to have a critical faculty, and the sphere must be both independent of the state and free from state interference. Communication in the political public sphere needs to be rational because irrational communication, such as rhetoric, is less open to critique and consideration.

Communication in the literary public sphere, however, does not need to be rational and it is in this segment of the public sphere that individuals develop their critical faculty. The flow of ideas from the non-political segments of the public sphere and the private sphere into the political public sphere is facilitated by individuals who are active in several segments of the public sphere and in the private sphere in different capacities: as citizens, workers, employers and private individuals. In defining the space in which political deliberations occur, Habermas gives only a brief description of the type of deliberation that is appropriate for the political public sphere. He gives a more detailed account of deliberation in his discussion of the ideal speech community.

The form taken by deliberation is as important as the spaces in which it occurs, and in his theory of the ideal speech community, Habermas outlines the conditions under which a community may reach consensus on moral problems and norms without the taints usually associated with self-interest, prejudice, and political affiliation. He utilises the theories of linguistic philosopher Austin, to establish that understanding is the end product of human speech. Austin's theories define three distinct speech acts: Firstly, locutionary speech acts are statements of fact or empirical statements about the world. Secondly, illocutionary speech acts involve an action such as a promise, a command or a question. Thirdly, prelocutionary speech acts involve the manipulation of the audience of the speech act into agreeing with the speaker, or being in some way influenced. Examples of prelocutionary speech acts include leading questions in a trial and much of the rhetoric in any speech to a political gathering.

Habermas argues that it is through speech acts that meaning is attainable from discourse, and echoes the arguments of other linguistic philosophers such as Searle that each speech act contains both locutionary and illocutionary elements. Habermas refines Austin's definitions of locutionary, illocutionary, and pre-locutionary speech acts to fit his theory about deliberation, beginning with communicative actions. These he defines as linguistically mediated interactions in which all participants pursue only illocutionary aims (Habermas, 1984: 295). It is the validity claims inherent in speech acts that allow Habermas to connect discourse with ethical considerations. The key to the previous statement is that the addressee is rationally motivated. By subjecting the words of the speaker to critical analysis, the addressee is in the position to accept or reject the words and statements of the speaker through assertion, direction, avowal, and prediction.

Rational statements point towards consensus, while false, illogical or inconsistent statements do not. He then goes on to argue that as a medium for achieving understanding, speech acts perform three functions: first, they establish and renew interpersonal relations; second, they represent or presuppose states and events; third, they manifest experiences (Habermas, 1984: 308). Habermas refines Austin's definitions with further points about communicative actions and validity claims. Speech acts move towards understanding, which Habermas assumes is the ultimate function of discourse, by allowing the passage of thoughts and experiences from one individual to another. Critical analysis of the validity claims within a speech act allows the rationality of the act to be determined and the speech act either accepted or rejected.

To complete the rational base for his theories of ethical behaviour and judgement, Habermas establishes the necessary conditions for acceptance or rejection of validity claims, communicatively achieved agreement is

measured against exactly three criticisable validity claims; in coming to an understanding about something with one another and thus making themselves understandable, actors cannot avoid embedding their speech acts in precisely three world-relations and claiming validity for them under these aspects (Habermas 1984: 308).

If a speaker and an addressee come to a consensus on a speech act, then the act itself must have addressed the three world-relation criteria that are to establish and renew interpersonal relations, represent or presuppose states and events, or manifest experiences. If the speech act does not address one or more of the world-relations, then the validity claims fail. These definitions form the rational structure of Habermas's Ideal Speech Community, and act as a foundation for his theory and a framework for an ethical system using Kantian moral reasoning.

## **THE SITUATION IN THE ZIMBABWEAN CONSTITUTION-MAKING PROCESS**

Before the commencement of the constitution-making process, the main political parties in Zimbabwe, Zanu Zimbabwe African National Union-Patriotic Front (PF) and Movement for Democratic Change- Morgan Tsvangirai Faction (MDC-T) went around the country providing their supporters with "suitable" answers for the constitution talking points. Some of the controversial issues include executive powers, land, media, war veterans and citizenship. According to "The Standard" (June 20 to 26, 2010), ZANU-PF selected people who would make contributions at these meetings while strongly warning everyone to remain silent.

"The Herald" (21st July, 2010) features an interview with Lovemore Madhuku, National Constitutional Assembly (NCA) chairperson where Madhuku argues that the process of constitutional outreach is flawed because it is left to politicians. For Madhuku, no constitution-making process is left to politicians. A constitution is about the people and must be people-driven. Madhuku laments a scenario where each political party is telling people what to say and he asks whether that can be called a constitution. Madhuku argues that his National Constitutional Assembly is totally opposed to that process. For him, constitution needs an independent commission or body comprising stakeholders from civil society. The current arrangement is that the ruling parties are running the affairs of the committee. They are telling people what to say. As a result Madhuku describes the whole process as chaotic and a waste of time.

The constitutional outreach program, meant to gather people's views on the new constitution, has exposed the deep political polarization and intolerance that still exists between ZANU PF and MDC-T supporters. Since the constitution-making process started, tension, friction and shouting matches have characterized most of the

meetings. Even signaling one's intention to contribute a view by raising a hand, has now been politicized by the participants. When MDC-T supporters want to contribute to debate, they raise their hands as any other person would do. And here lies the problem. An open palm is a gesture linked to the MDC party symbol. In retaliation, ZANU PF supporters have resorted to raising their hand with fists clenched. Evidence from "the Standard" (20 to 26 June, 2010) clearly shows that there is still much animosity between supporters of ZANU PF and the MDC-T. Such incidents, and many others being observed at the meetings, are clear indicators of the dark cloud of political polarization and intolerance characterizing the political terrain in the country.

The hard-line positions taken by Zanu PF and the larger formation of the Movement for Democratic Change (MDC) on presidential term limits and the retention of the Prime Minister's post may prove to be a difficult task for the troubled constitution-making process. Analysts warned the issue of presidential term limits may come back to haunt the latest attempt to produce a new constitution because of the serious tug of war between ZANU PF and MDC-T. Zanu PF calls for presidential terms to be limited to two but with a little provision for this to only apply after the new constitution is adopted.

"The Standard" (June 20 to 26, 2010) focuses on the chaos and corruption dogging the constitution process, as well as Zanu PF's crass efforts to control the debate. It concludes:

*It seems that Zanu PF's aim in coaching people on how to respond to questions is so that a constitution is produced that promotes their agenda of enabling President Mugabe not only to stand in future elections but also ensure he has another two terms in office. This means the constitution that they would rather see written is not for the general good but to serve the interests of one individual and a handful of his hangers-on who stand to benefit from his politics of patronage.*

The Constitution Parliamentary Committee (Copac) has expressed concern over lack of adequate publicity of the ongoing constitution-making exercise, saying it is likely to impact negatively on the outcome. The Copac co-chairperson Mr Douglas Mwonozora acknowledged they were facing challenges of lack of funding to advertise and raise awareness on the constitution-making process through the media. He reported that Copac had no funds for advertising the outreach programme since the little fund they realize from donors is meant to cover accommodation and subsistence costs.

## **APPLYING HABERMAS' DELIBERATIVE DEMOCRACY IN THE ZIMBABWEAN CONSTITUTION-MAKING PROCESS**

Deliberative democracy, as expressed by Habermas, is

useful in the Zimbabwean constitution making process because it guarantees participation by both politicians and members of the public without politicians necessarily dominating the process. If participation is fair, then the outcome of the constitution is seen as fair also. Genuine public participation requires social inclusion, personal security, and freedom of speech and assembly.

A strong civil society, civic education, and good channels of communication between all levels of society facilitate this process. Only a considerable commitment of time and resources will make genuine public participation possible (Hart, 2003: 1). The following passage indicates how a participatory process should operate:

*In a highly participatory process, civil society and the media are sometimes given important roles in official public consultation processes (for example, civil society can assist with organizing and facilitating face-to-face meetings between the public or sectoral groups and the constitution makers, and media organizations can help by advertising meetings and gathering views... (Brandt et al., 2011: 310).*

The significance of Habermas' theory of deliberative democracy is that it supplies principles that may be useful for the procedure of constitution-making that exclude, among other vices, greediness, egoism, intolerance and violence. Hart (2003: 4) asserts, "How a constitution is made, as well as what it says, matters." I am interested in „how“ part of Hart's point. The constitution making procedure must be fair for the outcome to be fair and useful for future generations. Emotional tensions based on ideological differences should be buried so that parties so that the process is fair. When differences are buried constitution-making becomes part of peace making especially in divided societies like Zimbabwe which went through election violence especially in the June 2008 presidential runoff. It becomes a forum of reconciling party based divisions, negotiating conflict and redressing grievances (Hart, 2003). The negotiation should include both politicians and non-politicians so that the deliberative process is genuine.

In deliberative democracy to the Zimbabwe constitution-making process, Habermas' deliberative democracy has important implications on reasonableness. In choosing what is ideal, we should not put egoistic interests but put inclinations and biases at the service of reason. The ideal of public reason merely requires participants in social dialogue about matters of justice to listen to and reasonably evaluate others' claims about justice so long as these claims are voiced in terms they understand and are supported with reasons they can accept on the basis of their own moral views. The concept of rationality which is highly central in deliberative democracy is captured pragmatically; the notion of designing a process may suggest a high degree of rationality, based on an understanding of the consequences of different possible

arrangements. In recent years researchers have been trying to assess, for example, whether a parliament or a constituent assembly is better geared to the task of constitution-making, whether transparency or a measure of confidentiality in negotiations is more likely to produce consensus, whether deadlines should be prescribed for the conclusion of different stages of the process, and, significantly, the consequences of a high degree of popular participation (Brandt et al., 2011: 18).

Habermas maintains that we should not readily accuse one another of self or group interests, prejudice or bias and of such deeply entrenched errors as ideological blindness and delusion. The said accusations by implication arouse resentment and hostility thereby blocking away reasonable agreement. In addition, party interests, as in the case of Zimbabwe, create a false dichotomy in which biases of dominant political parties silence and bury alternative viewpoints. It does not go beyond this to require that members of dominant group seek out experiences, which can help them understand the standpoints of the subordinate and the marginalized. Nor does the ideal of public reason require dominant group members to examine their moral views self-critically to uncover any signs of ideological determination. By failing to point out the limitations and distortions of the epistemic viewpoint of dominant group members, the ideal of public reason masks and reinforces the privileges of dominant groups rather than uncovering and undermining them. While reasonableness is being exercised, it has to be noted that deep differences of opinion is a normal state of public culture within a democratic society. However, if these differences arise, must not be due to party influences but due to different conceptions of what may be morally acceptable in a democratic society. This assumes liberty in decision making (Mill, 1978). It is therefore unreasonable to allow political parties to dominate in the constitution-making process since it is inconsistent with deliberative democracy.

Application of Habermas' deliberative democracy would mean that political parties would allow people to speak out what they think and this may not be necessarily what the dominant parties hold. The constitution must be based on what is morally desirable and not on what parties view as politically expedient. Tolerance will be upheld thereby putting away hidden political motives in the process. Calculations on likely election results and resultant political positions could be avoided by exploring Rawls' veil of ignorance. Tolerance would therefore ensure fair political procedure (Brooke, 2005) instead of taking advantage of a rival political party.

Mabvuto (2007), basing on the constitution-making process of Malawi, argues that that the constitution must provide common framework within which people of diverse or diametrically opposed views and beliefs are enjoined to interact without resorting to the force of arms. The political violence experienced in some areas in Zimbabwe such as Masvingo and Manicaland Provinces

(„The Standard“ 18 to 24 July, 2010) are a result of hostility created by political parties. Such rivalry could have been avoided if parties follow clear steps of tolerance.

Habermas' theory of deliberative democracy is an attempt to arrive at morally objective principles of justice. In the context of constitution-making, this would translate to an open-minded approach in the settling of political differences (Kukathas, 2003). If moral objectivity is exercised, prejudices would be put aside and political parties would find it easier to implement the outcome.

Cohen (2003: 275) argues that „...moral consensus increases social trust and harmony, supports social peace, reduces the complexity of decision making, encourages a willingness to cooperate and so reduces the cost of monitoring and enforcement...and reduces alienation from public choices because citizens embrace the norms and ideals that guide those choices.” If consensus is allowed to come from the public by way of finding out the genuine concerns and dominant views, it would be easier for the final product to be trusted. Mistrust is a result of political party domination. Deliberative democracy would put away selfish motives and party interests and allow people to speak out. This would in turn help to support social peace because violence based on party differences would have been avoided.

To a significant extent Habermas' theory of deliberative democracy will help to achieve transparency. This ensures that there are no hidden motives in the process of constitution making. In Zimbabwe, political parties have failed to exercise transparency and have been involved in strategic instead of deliberative politics. Gauthier (1993: 315) maintains that deliberative politics connotes a reasoned interchange among persons who recognize each other as equal in authority and entitlement...all remain open to the possibility of persuasion by others. This means that moral ideals are cherished if the process is transparent and if it hinges on public debate. Conversely, if strategic interaction is exercised, there is appeal to self interest through conditional offers of cooperation and forbearance. This involves taking advantage of potential political rivals at the expense of the public. Such actions represent not transparency but a vector sum in the field of political forces.

If Habermas' theory of deliberative democracy is logically carried out, this would mean that political parties shun self-interest and allow public debate to take place. Public debate should be based on genuine principles of democracy and moral ideals from practical experiences elsewhere (Malawi, South Africa and Kenya). This would ensure public participation in the process. This is consistent with article VI of the Global Political Agreement which states that it is the duty of the Zimbabweans to make a constitution by themselves and for themselves. In addition, the right to participate in constitution making is logically derived from the general meaning of democratic participation in the United Nations Declaration of Human Rights, Article 21 (1 to 3). Participation involves the

concept of local ownership as shown subsequently;

*Local ownership begins by ensuring that priorities are determined locally. It is crucial that time, space, and processes exist to promote dialogue that can lead to a consensus-based constitution. In a peace building process, if local actors participate in defining the problem they are more likely to take ownership of the solutions. Similarly, if people feel a sense of ownership of the constitution they are more likely to protect it and exercise their duties under the new constitutional order. A constitution like peace cannot be imposed from outside (Brandt et al., 2011: 5).*

Hart (2003: 5) contends that participatory constitution-making has become one of the criterion of a legitimate process. However, the participation should not involve indoctrination and propaganda to influence public debate but the public should be given constitutional education that is largely free from bias (Martin and Reidy, 2006). If there is no significant public participation, it is likely that the process and the outcome will be rejected since deliberative democracy and propaganda are mutually opposed.

Furthermore, a fair process would ensure credibility of outcome. If party differences and political party calculations are put aside, a fair process is likely to be achieved and this in turn, gives credibility to the outcome of the process. Assessment of credibility is based on what is accepted as genuine from the point of view of democracy. A constitution-making process is credible if it is consistent with the basic principles of justice (Pogge, 1989: 2007). If procedural justice is lacking, the process will require revision or revisiting. A credible process will therefore guarantee public acceptance and it will have a futuristic application. Credibility will also ensure cost effectiveness because the outcome is not thrown away. In turn, this avoids additional costs.

## CONCLUSION

The paper has argued that Habermas' theory of deliberative democracy can be used to overcome partisanship in the Zimbabwean constitution-making process. The Zimbabwean situation has been characterized by political party domination and this has resulted in political parties dominating outreach discussions, procedural issues and the content of the constitution. Political parties have made their calculations and have taken positions to influence the outcome of the proposed constitution especially in issues to do with executive powers, land, war veterans and citizenship among others.

Habermas' theory of deliberative democracy will be useful because it allows both political parties and individuals to be selfless and think of the good of the country since Zimbabwe as a nation is irreducible to political parties. Habermas' theory of deliberative democracy

ensures impartiality and fairness in the choice of principles to be enshrined in the constitution and this occurs when people give their voices in a manner which ensures justice. This implies no individual or group of individuals will take unfair advantage of the process for selfish benefits.

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