The Colonial Architecture of Exclusion: The Personal Law Exemption and the Institutionalisation of Gender Subordination in West Africa and the Caribbean

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Abstract: This article investigates the enduring impact of colonialism on gender equality in post-colonial Commonwealth nations, focusing specifically on examples from West Africa and the Caribbean. It focuses on discriminatory provisions embedded in the constitutions of countries in the Caribbean and West Africa that routinely exempt personal and customary laws from non-discrimination protections. This uniformity is traceable to the "Neo-Nigerian Bill of Rights" model, which serves as the foundational template. This article uses process-tracing to show how this model established a structural approach that guaranteed a general right, while simultaneously authorising its suspension. The article argues that this flawed constitutional design constitutes a colonial suspension of women's rights. Drawing on feminist legal theory and postcolonial studies, the analysis examines the enduring impact of colonialism on gender equality, particularly on the structural failure embedded in their founding documents, an issue that manifests differently in the plural legal systems of West Africa versus the common law systems of the Caribbean. By comparatively analysing The Gambia, Sierra Leone, The Bahamas, and Dominica, this article illustrates how colonial legacies continue to shape gender relations and legally institutionalise gender subordination.
Keywords: Neo-Nigerian Model; Personal Law Exemption; Constitutional Architecture; Gendered Colonialism; Decolonial Feminist Theory

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A. Introduction

It is widely acknowledged that discriminatory personal, customary, or traditional laws have a negative impact on women's human rights and have very tangible and often quite harmful consequences for women and girls' well-being. How issues of marriage, divorce, inheritance, and other family and personal matters are decided directly affects women and girls' economic prospects, for example, their ownership of land and property and their actual ability to participate in political and social life, including freedom from forced

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marriage and gender-based violence. Discriminatory personal law regimes have a profound and far-reaching effect on women's lives.

Ironically, constitutional non-discrimination provisions have often been deliberately limited in their ability to address this issue. Many constitutions contain what are known as "clawback clauses", or exclusionary clauses, which exempt personal law from their guarantees of non-discrimination. These clauses effectively transform constitutional protections against discrimination into open invitations to discriminate as they place customary or personal laws outside of constitutional review and protection. In African countries such as Kenya and Zimbabwe, advocates have been successful in constitutional reform efforts to promote women's equal rights in personal matters. In others, such as Botswana, women's rights advocates continue to pursue litigation and reforms to undo the exemption of customary and other personal law norms from anti-discrimination protections.[1]

However, women's rights advocates still face multiple challenges to overcoming this discrimination. Article 1 of the Convention on the Elimination of All Forms of Discrimination (CEDAW) defines the term "discrimination against women" as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. For the African region, Article 1(f) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) defines "Discrimination against women" as "any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres in life." While the Maputo Protocol provides the regional human rights framework for the African countries under analysis, a parallel instrument exists for the Caribbean nations. Several countries in the region, including two of the case studies (Dominica and The Bahamas), are party to the Inter-American human rights system. The key regional instrument is the American Convention on Human Rights, also known as the Pact of San José, Costa Rica. The Convention provides a general non-discrimination guarantee and prohibits discrimination on the basis of "race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

Despite these comprehensive commitments at the international and regional levels, the fundamental structural flaw persists within the national constitutional architecture itself. This flaw is not an isolated local development but a pervasive, deliberately imposed colonial template. The structural flaw and its widespread implementation are empirically

1 Open Society Foundations, For Women in Botswana, Victory Against a 'Clawback Clause', Open Society Voices, 27 September 2013, https://www.opensocietyfoundations.org/voices/women-botswana-victory-against-clawback-clause (last accessed on 21 October 2025).

supported. Using the UN Women's public database of constitutional provisions relating to women's human rights, the *Global Gender Equality Constitutional Database*, I performed an exhaustive analysis of all former British territories catalogued therein.[2] My analysis confirms a world-wide pattern of colonial imposition, as I identified remarkably similar non-discrimination provisions appearing in the constitutions of the Bahamas, Barbados, Belize, Botswana, Dominica, Fiji, The Gambia, Ghana, Kiribati, Malaysia, Sierra Leone, St. Kitts & Nevis, St. Lucia, St. Vincent & the Grenadines, Singapore, the Solomon Islands, Turks & Caicos, and Zambia. Not only do they all have very similar structures, but identical terms and phrases appear such as "no law shall make any provision that is discriminatory either of itself or in its effect" except for "with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law."

While promising equality, these constitutional provisions often contain significant limitations. Firstly, they frequently exclude personal or family law issues from their scope, meaning that matters such as marriage, divorce, inheritance, and property rights are often not subject to constitutional guarantees. Secondly, they may also exclude customary law from non-discrimination scrutiny, allowing discriminatory practices rooted in tradition to persist. As a result, women are denied equal protection under the law in these crucial areas.

Against this background, this article describes how an exclusionary gender order was built into the modern constitutions of post-colonial Commonwealth countries. It aims to explore the colonial origins of exclusionary clauses in post-independence constitutions of former British colonies and its detrimental impact on women's rights. In doing so, this article examines the plural legal systems established during colonial rule and the subsequent drafting of independence constitutions, highlighting the inclusion of provisions that exempt personal and customary laws from constitutional guarantees of equality and non-discrimination.

This contribution illustrates the enduring impact of colonialism on women's rights. The roadmap for this analysis is structured as follows: Section B establishes the historical foundation of the debate, tracing the colonial genesis of legal pluralism and identifying the precise moment the Neo-Nigerian model was structurally imposed. Section C then examines the discriminatory provisions within the constitutions of the selected African and Caribbean countries. This empirical foundation leads to Section D, which is dedicated to detailing the implications on women's rights, unmasking how the constitutional architecture institutionalised gender subordination. Building on this critique, the fifth section advocates for a decolonial feminist framework, providing the critical lens necessary to dismantle these colonial legacies and develop legal frameworks grounded in local contexts. The conclusion summarises the imperative for reform, calling for the elimination of exclusionary clauses and advancing a dialogic constitutionalism where women's voices are integral to shaping legal and social norms.

2 UN Women, UN Women-Headquarters, http://www.unwomen.org (last accessed on 21 October 2025).

B. Gendering Colonialism: The Structural Imposition of Exclusionary Constitutionalism

The foundation of modern-day constitutionalism in Africa can be traced back to the colonial era. The Berlin Conference, which occurred in 1884-1885, marked the start of the "Scramble for Africa" and led to the loss of African autonomy and self-governance.[3] During the colonial era, African countries were ruled with the sole aim of extracting wealth through domination and imperialism.[4] Mamdani argues that the end of slavery resulted in Europeans needing to colonise Africa in order to support the growth of cotton for "the Satanic Mills."[5]

A parallel development of modern constitutionalism unfolded in the Commonwealth Caribbean. Shaped by a shared history of British colonialism, these nations possess common legacies of law, constitutional design, and political institutions. Although the motivations for colonial administration differed from the resource extraction model in Africa, the groundwork for constitutional imposition was similarly laid. The Westminster Model system, derived directly from the former colonial power, was implanted throughout the region.[6]

However, after World War II, European powers realised that they could no longer maintain indefinite control over their colonies.[7] As a result, most African and Caribbean countries were hastily granted representative government in the decade leading up to independence. A decade later, in the mid-1950s, decolonisation began, and African and Caribbean nations regained their independence from their former European colonial rulers.[8] Decolonisation represented a moment of both rupture and continuity within the geopolitical system.[9] The British authorities set the parameters and conditions for the constitutional conferences, often with a paternalistic or condescending attitude toward Caribbean leaders. The enduring legacy of colonialism continues to shape legal systems in many African and

3 *Yolanda Spies*, The Right to Equality in Customary Law: What Role for the Constitutional Court?, Stellenbosch Law Review 19 (2008), p. 333.

4 *Mahmood Mamdani*, Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism, Princeton 1996, p. 192.

5 Ibid., p. 37.

6 *Cynthis Barrow-Giles / Ronnie R. F. Yearwood*, Mandatory constitutional referendums in Commonwealth Caribbean constitutions: Placing "people" at the centre of the constitution?, King's Law Journal 34 (2023), p. 215.

7 *Jeffrey Herbst*, States and Power in Africa: Comparative Lessons in Authority and Control, Princeton 2014, p. 90.

8 *Olusegun Adeyeri / David Kehinde Adejuwon*, The Implications of British Colonial Economic Policies on Nigeria's Development, International Journal of Advanced Research in Management and Social Sciences 1 (2012), p. 5.

9 *Danielle Bonilla Maldonado / Michael Riegner*, Decolonization, in: Rainer Grote / Frauke Lachemann / Rüdiger Wolfrum (eds.), Max Planck Encyclopedia of Comparative Constitutional Law, Oxford 2020.

Caribbean nations, including the concept of a public-private divide, and the imposition of a "constitutional gender order".[10]

Feminist scholars have highlighted the "double colonisation" experienced by women, who faced both general discrimination as colonised subjects and specific gender-based discrimination.[11] Within the framework of "exclusionary gender constitutionalism", a woman's relationship with the nation or state is often perceived as secondary, largely defined and understood through her role within the family and her marital connections.[12]

I. Legal Pluralism and Colonial Architecture

The colonial era introduced a complex system of legal pluralism, where statutory, customary, and religious laws coexist, though the resulting systems varied significantly between regions. Legal pluralism not only acknowledges the existence of multiple legal spheres but also formulates hypotheses about the relationships between them. The existence of legal pluralism itself is less compelling than the dynamics of change and transformation it entails. Historically, there has been a shift in how the interaction between legal orders, particularly between state law and nonstate law, is characterised. The development of customary law was a continuous and collaborative process where power imbalances were evident. This system of legal pluralism, therefore, was not a mere preservation of tradition, but a selective codification designed to manage both the colonial economy and local political control. As a result, legal pluralism, which preserved the co-existence of "general law" (the common law inherited from Britain) and "customary law" (often indigenous rules selectively codified or distorted by colonial administrators), was entrenched primarily in the African context. In the Caribbean, the legal system remained more unified under Common Law, with family matters being governed by inherited statutory and common law, but the distinction between "general law" and "personal law" was nonetheless established as a structural feature. These customary and personal laws were predominantly governed by traditional male authorities whose support was essential for a stable transfer of power. However, it is important to note that subordinate groups were not entirely passive or without influence in this process.[13] As Sally Engle Merry explains, customary law was "itself of the colonial period, shaped by the efforts of "native" modernising elites to create law attuned to the new market economy and the efforts of European officials to preserve traditional culture and the power of tribal

10 *Ruth Rubio-Marin*, The Constitutional Establishment of the Gender Order: Revolutionary Times and Exclusionary Constitutionalism, in: Ruth Rubio-Marin, Global Gender Constitutionalism and Women's Citizenship: A Struggle for Transformative Inclusion, Cambridge 2022, p. 26.

11 *Chandra T. Mohanty*, Under Western Eyes: Feminist Scholarship and Colonial Discourses, Boundary 2 (1984), p. 333; *Gayatri C. Spivak*, Three women's texts and a critique of imperialism, Critical Inquiry 12 (1985), p. 242.

12 See *Ruth Rubio-Marin*, Global Gender Constitutionationalism and Women's Citizenship, Cambridge 2023; *Helen Irving* (ed.), Constitutions and Gender, Cheltenham 2017.

13 *Sally Engle Merry*, Legal Pluralism, Law and Society Review 22 (1988), p. 880.

political leaders."[14] Similarly, Chanock points out, "[t]he development of customary law was a vital part of African political assertion under colonialism."[15]

This feature of constitutionally recognising customary or religious law, common in Africa and Asia, was largely absent in the Caribbean because the pre-colonial society had been so thoroughly replaced by colonial rule. Nevertheless, the distinction between "general law" and "personal law" was established as a structural feature across both regions, creating the vehicle for institutionalised gender exclusion.

II. The Neo-Nigerian Bill of Rights Model and its Export

The structural imposition of this gendered legal framework intensified during the rapid constitution-making of the late 1950s and 1960s across all decolonising territories. The sheer volume and speed of transitions led the Colonial Office to rely on templates, resulting in independence constitutions that bore striking similarities. A Ibhawoh noted, initial constitutional provisions were drawn overwhelmingly from departing colonial power, "hence reflecting assumptions far more common in the metropole than in particular African societies."[16] Indeed, the role of constitutions in structuring gender hierarchies is a deeply rooted aspect of the modern constitutional endeavour, which cemented the alliance between emerging liberal democracies and the burgeoning capitalist system in industrialising nations.

The uniformity across Commonwealth nations, particularly in the structural limitations placed on rights can be directly traceable to the constitutional model pioneered for Nigeria. As Parkinson has documented in *Bills of Rights and Decolonization*,[17] the British Colonial Office was closely engaged in the negotiations and drafting processes for the constitutions of countries exiting their empire and advocated strongly for rights inclusion. In 1962, the Colonial Office adopted an official policy to promote the inclusion of bills of rights based on the model that had been incorporated into the Nigerian constitution, one that Stanley de Smith famously dubbed the "Neo-Nigerian Bill of Rights."[18]

The constitutional architecture that would define gender relations across the decolonising Commonwealth stemmed from the Colonial Office's reliance on an expedient, piece-

14 Ibid., p. 893.

15 *Martin Chanock,* Neither customary nor legal: African customary law in an era of family law reform, International Journal of Law, Policy and the Family 3 (1989) ,pp. 75–76 as cited in *Johanna E. Bond,* Constitutional exclusion and gender in Commonwealth Africa, Fordham International Law Journal 31 (2007), p. 289.

16 *Bonny Ibhawoh*, Between Culture and Constitution: Evaluating the Cultural Legitimacy of Human Rights in the African State, Human Rights Quarterly 22 (2000), p. 845; see also *HK Prempeh*, Africa's Constitutionalism Revival: False Start or New Dawn?, International Journal of Constitutional Law 5 (2007), pp. 469-506.

17 *Charles Parkinson*, Bills of Rights and Decolonisation: The Emergence of Domestic Human Rights Instruments in Britain's Overseas Territories, Oxford 2007, pp. 19-20.

18 *Stanley De Smith*, The New Commonwealth and its Constitutions, London 1964, p. 193

meal methodology in drafting the Nigerian Bill of Rights.[19] The development of the official policy was an evolutionary process, shaped by the experiences of Malaya and Ghana, but ultimately crystallised with the Nigerian one. As the Colonial Office placed a great institutional importance on precedent, once the decision was made to grant Nigeria a bill of rights, the Neo-Nigerian model became the standard template for all territories requesting similar provisions. The Colonial Office's reliance on the Neo-Nigerian model became the standard template for all territories requesting similar provisions, including most of those in the Caribbean.

It is important to note that the adoption of these templates in the Caribbean followed a rapid, sequential pattern. The Bill of Rights in the British Guiana Constitution 1961 was the first introduced in an Anglo-Caribbean Constitution, quickly followed by the Bill of Rights in Chapter III of the Jamaica Independence Constitution 1962.[20] This rapid constitutional layering ensured that the structural flaws of the Nigerian precedent were rapidly institutionalised across much of the Caribbean. However, from the outset, one key nation proved an outlier. Trinidad and Tobago rejected the structural style of the Bill of Rights found in the Nigeria Independence Constitution 1960. Instead, Trinidad and Tobago opted to borrow from the statutory Canadian Bill of Rights 1960 , despite the British Colonial Office's documented poor opinion of the Canadian instrument as a model for constitutional Bills of Rights.[21] Though the Colonial Office ultimately permitted Trinidad and Tobago to establish its own constitutional Bill of Rights, this alternative approach, dubbed the "antimodel", was subsequently abandoned.[22] No succeeding decolonisation or territorial constitutions within the British Empire chose to incorporate the Canadian model. This meant the structural limitations inherent in the Neo-Nigerian template continued as the constitutional standard for most newly independent nations. The methodology used by the Nigeria Working Group to create this foundational template was one of legal pastiche, or "cut and paste", rather than original drafting.[23] According to Eastwood, the Assistant Under-Secretary responsible for West Africa in the Colonial Office, who led the process, the group adopted the European Convention on Human Rights as the main model, supplementing it with specific provisions borrowed from the constitutions of Sudan, Pakistan, Malaya, and other Commonwealth territories.[24] This choice was not expansive; no precedents outside the Commonwealth or international sphere were utilised. This limitation was deliberate, stemming from the Colonial Office's rigid adherence to the British legal tradition of drafting in detail, which

19 CO 554/1534.

20 Jamaica (Constitution) Order in Council 1962.

21 The Constitution of the Republic of Trinidad and Tobago Act 4 of 1976; see also *Tracy Robinson*, The Bill of Rights at Sixty-Two: Assessing Trinidad and Tobago's Constitutional Experiment, The UWI St. Augustine Law Journal 3 (2025), p. 5.

22 *Robinson,* note 21, p. 5.

23 Christopher Eastwood*,* 27 August 1958, CO 554/1535.

24 Ibid.

meant only documents prepared by British-trained lawyers were deemed useful. This insular methodology, rooted in British professional pride and a self-imposed limitation on knowledge, restricted the constitutional team's gaze and ensured that only Commonwealth and international examples were ever employed.[25]

In a candid internal assessment of the process, Eastwood noted on 11 January1960, that the Sierra Leonean draft was the first attempt "to rehash of the corresponding Nigerian brief."[26] This reliance on *rehash* underscores the institutional priority given to speed and bureaucratic conformity over original deliberation. The expedient approach resulted in a flawed, structurally compromised document. Nevertheless, by March 1960, this precedent had rapidly shifted Colonial Office policy, leading to the approval of bill of rights requests from Sierra Leone, British Guiana, and Kenya.

In a telling correspondence from 4 January 1960, Colonial Office official P.A Carter to Aaron Emanuel, from the West Africa Department and part of the Nigeria Working group, revealed the underlying lack of due process in subsequent exports, noting regarding Sierra Leone:

> *"I do not think that delegates are likely to wish to get down to detailed discussion on the provisions, but will be content to follow the Nigerian precedent. I think that it will be sufficient, subject to the Governor's views, to circulate the Nigerian provisions as a basis for discussion, and after a preliminary conversation, subject to general agreement, that the Nigerian provisions will be appropriate for Sierra Leone to conclude that they should be incorporated in the Sierra Leone Constitution.*[27]

This internal document dramatically underscores the operative reality: the incorporation of a nation's foundational rights was treated as a pro forma bureaucratic exercise, not a serious deliberative process. The Nigerian model's adoption was driven by the assumption that delegates would be "content to follow the Nigerian precedent", allowing the Colonial Office to impose the rights architecture with minimal local engagement. The official expectation was that merely circulating the Nigerian text would suffice to establish its appropriateness, reducing the constitution-making process to an administrative rubber-stamp.

Thus, the structurally weak template, characterised by broad exceptions that enabled the constitutional perpetuation of gender discrimination through the exclusion of personal law, was not an accidental feature but a deliberate imposition of convenience. The flawed architecture was exported not through careful, rights-based deliberation but by the sheer power of administrative precedent, ensuring that newly independent nations inherited a constitutional foundation that institutionally guaranteed the colonial suspension of women's rights under the guise of legal uniformity.

25 *Parkinson*, note 22, p. 153.

26 Christopher Eastwood, 11 January 1960, CO 554/828.

27 P.A. Carter, 4 January 1960, CO 554/828. Emphasis added.

The Nigerian-model export lies in its sui generis structure, which deliberately undermined the integrity of the rights it proclaimed. Despite its reliance on the European Convention on Human Rights, this model thinly and mostly negatively described the rights and provided copious exceptions that further compromised the integrity of the bill of rights. This is why Ghai noted that the detailed rights were "struggling to stay afloat in the sea of exceptions."[28] These exceptions, which permitted the restriction of fundamental rights in the name of "public order" or "existing law", became the precise constitutional mechanism through which gender discrimination was preserved.

This structural choice was an act of constitutionalising patriarchal control. The British incorporated the legal mechanism for weakening or reversal of non-discrimination safeguards within the newly established constitutions. Crucially, the non-discrimination provision in the Nigerian model, and its successors, typically contained an explicit clause exempting laws relating to marriage, divorce burial, devolution of property on death, or other matters of personal law or custom from the constitutional guarantees. The Colonial Office, in its pursuit of administrative and political stability during decolonisation, prioritised two key objectives over women's fundamental autonomy: legal pluralism and political expediency. Exempting these laws from the anti-discrimination clause was an act of deference to these traditional gatekeepers, securing their political assent by protecting their authority over women and family matters. In Africa, by protecting the jurisdiction of customary and religious laws, the Colonial Office ensured that the emerging national elite did not have to confront or dismantle deeply entrenched local power structures. This choice reveals that women's fundamental equality was deemed a negotiable commodity, a concession readily traded for the administrative convenience of maintaining the colonial-era legal status quo and the political expediency of securing a smooth handover to a male-dominated post-colonial government. With this history in view, it appears that the real imposition from "the West" is *not women's human rights*, it is rather the *colonial suspension of women's right*s.

C. Analysing Discriminatory Constitutional Provisions in African and Caribbean Nation

Many African and Caribbean constitutions, while ostensibly guaranteeing equality and non-discrimination, contain provisions that perpetuate gender inequality. The existence of these broad non-discrimination clauses, guaranteeing basic rights regardless of religion, race, place of origin, political opinions, colour, or creed, stands in direct tension with subsequent specific exclusions. This paradox is rooted in the common heritage of the Neo-Nigerian Bill of Rights model, which established a structural approach to rights that granted a general guarantee while simultaneously authorising its suspension through specific carve-outs.

28 *Yash Ghai*, The Kenyan Bill of Rights: Theory and Practice, in: Philip Alston (ed.), Promoting Human Rights through Bills of Rights: Comparative Perspectives, Oxford 1999, p. 187.

This section reviews the exclusionary clauses of selected West African countries (The Gambia,[29] Sierra Leone)[30] and Caribbean countries (The Bahamas,[31] Dominica),[32] highlighting how these clauses affect women's rights in areas such as marriage, divorce, inheritance, and property ownership. The four countries selected demonstrate the many similarities between African and Caribbean countries, including small size, history, political and legal traditions, while serving as important comparators absent in broader constitutional scholarship. This comparative focus illustrates the nuanced ways in which the common colonial template was adapted, revealing crucial differences in the scope of protected grounds, the nature of the exemptions, and the practical utility of the anti-discrimination provision itself.

I. Constitutional Text, History, and the Exclusionary Framework

The history of the anti-discrimination provision in these countries reveals that the exclusionary clauses were generally incorporated either as part of the pre-independence constitutional frameworks or carried over without substantive change into the independence documents.

The term "personal law" within the context of these constitutional clawback provisions requires precise definition. The constitutional clause exempts laws "with respect to adoption, marriage, divorce, burial, devolution of property on death or other interests of personal law." For the purpose of the paper, this refers to laws related to family, domestic status, and inheritance. This definition is essential, particularly for the Caribbean case studies, wherein customary or religious laws are generally not part of the unified legal systems of The Bahamas or Dominica. However, for the West African nations, "personal law" often overlaps with or is determined by codified customary and religious systems, necessitating

29 The Gambia is located midway on the bulge of the West Africa coast and stretches over 400 kilometres inland from west to east on either side of the River Gambia, varying in width from about 50 km near the mouth of the river to about 24 km upstream. The country is bound to the north, south, and east by the Republic of Senegal and to the west by the Atlantic Ocean. The River Gambia, which runs the entire length of the country from the Futa Jallon highlands in the Republic of Guinea to the Atlantic Ocean, divides the country's land area of 10,689 square kilometres almost equally into two halves: the South Bank and the North Bank.

30 Sierra Leone is located along the West Coast of Africa bounded on the North and Northeast of Guinea and the East and Southeast of the Republic of Liberia. It covers an area of about 72,000 square kilometres (28,000 square miles) and extends from latitude 7 degrees north to 10 degrees north, and from longitude 10 degrees west to 14 degrees west. On the west and southwest, the Atlantic Ocean extends approximately 340 kilometres (211 miles).

31 The Bahamas is an archipelago State on the North-Western edge of the West Indies. The islands occupy a strategic position as the gateway to the Gulf of Mexico, the Caribbean Sea, and the entire Central American region.

32 The Commonwealth of Dominica operates as a multiparty, unicameral parliamentary democracy. Classified as having high human development, Dominica is also home to the Kalinagos, an indigenous population that preserves distinct cultural practices separate from mainstream society.

the inclusion of a separate customary law claw back in those constitutions to immunise those specific group-based legal orders. The article thus understands "personal law" as the set of rules governing private status and familial relations, which, in the post-colonial context, functions as the primary vehicle for institutionalised gender discrimination, regardless of whether it is rooted in inherited common law (Caribbean) or plural legal systems (West Africa).

II. The Caribbean Model: Narrow Grounds and Personal Law Exemptions

In the Commonwealth of The Bahamas, the anti-discrimination provision and its exception were a direct inheritance. The 1973 Constitution, after independence, in its Article 26, establishes a general prohibition against discriminatory laws and treatment. However, this clause is unique among the case studies because it does not explicitly include "sex" or "gender" as prohibited grounds of discrimination, thus significantly limiting the entire provision's utility in challenging gender inequality. While the opening provision of Chapter III (in Article 15) includes "sex" as one of the prohibited grounds in the declaration of certain basic rights, the definition of what is "discriminatory" at Article 26 is limited. Article 26 also does not apply to any law concerning adoption, marriage, divorce, burial, inheritance, or other matters related to personal law. This clause was a standard feature of the pre-independence constitutional instruments, demonstrating the commitment to gender equality was structurally limited from the moment of sovereignty. The Constitution also contains a general savings law clause (Article 30) that limits challenges to laws enacted prior to independence, rendering the anti-discrimination provision largely ineffective against inherited discriminatory legislation. The cumulative effect of these restraints meant that the clawback provision was not the central point of constitutional contention in The Bahamas; rather, the fundamental problem was the textual absence of "sex" as a prohibited ground, rendering the entire clause functionally useless for gender equity challenges.[33]

This constitutional failure necessitated direct, high-stakes political intervention to achieve reform. In August 2012, The Bahamas appointed a Constitutional Commission to review the Constitution in advance of the country's fortieth anniversary of Independence.[34] The core issue was that separate Constitutional provisions governing the transfer of nationality from parent to children and the award of nationality to foreign-born spouses granted privileges to Bahamian men that were not afforded to Bahamian women.

Consequently, in June 2016, the Government held a Constitutional referendum to address gender inequality, seeking to grant men and women equal ability to confer citizenship to their spouses and children. Current constitutional provisions governing the transfer of nationality from parent to children and the award of nationality to foreign-born spouses

33 See Report of the Constitutional Commission into a Review of The Bahamas Constitution (2013), pp. 110-113.

34 *Celeste Nixon*, Constitution under review, The Tribune, 2 August 2012, https://www.tribune242.com/news/2012/aug/02/constitution-under-review/ (last accessed on 21 October 2025).

of Bahamian citizens currently grant privileges to Bahamian men that are not afforded to Bahamian women. The Constitutional Commission had specifically recommended amending the definition of "discrimination" to explicitly include "sex", a critical question also put to the electors. The four constitutional amendment bills dubbed "gender equality bills" and "citizenship bills" were overwhelming rejected by voters, leaving the challenge unresolved.[35] This outcome was particularly concerning given that the Bahamian population is 85% of African descent and that women constitute a larger and more active segment of the electorate, underscoring the deep, successful public mobilisation against substantive gender equality.[36] The repeated failure of the Bahamian populace to ratify amendments, as seen in the defeated 2016 referendum, serves as a powerful testament to the enduring institutional and cultural resistance spawned by the structurally inadequate colonial constitutional model.

The Commonwealth of Dominica achieved independence from the United Kingdom in 1978, resulting in the adoption of the 1978 Constitution. However, the nationalist movement that delivered independence was rooted in a black masculinist bearing, where the entire concept of equality was fundamentally hinged upon establishing the credibility of the West Indian black male elite to govern.[37] In this nationalist reasoning, equality was inseparable from liberty, and empire.[38] This populism, therefore, underwrote the initial post-colonial project, prioritising the recognition of black male governance on the global stage over the dismantling of existing gender hierarchies.

Consequently, the anti-discrimination provision in Section 13 of the 1978 Constitution, a direct inheritance of the Colonial Office's Neo-Nigerian model, is notably stronger on its face than The Bahamas's given that affirms the right to fundamental freedoms "whatever his race, place of origins, political opinions, colour, creed or sex", thus explicitly including sex as a protected ground. However, the constitutional commitment to non-discrimination is immediately undermined by the qualifying exception under Section 13(4)(c), standard to the inherited template. The constitutional provision against discriminatory law is qualified, as it does not prevent the application of personal law concerning adoption, marriage, divorce, burial, inheritance, or other similar matters to individuals of a particular description (or those connected to them). These exemptions can lead to situations where constitutional guarantees of equality are undermined.[39] Notably, neither of the Caribbean constitutions include a separate clawback for customary law, relying solely on the personal law exemption.

35 UN General Assembly, A/HRC/WG.6/29/BHS/1.

36 *Alicia Wallace*, Policymaking in a 'Christian nation': Women's and LGBT+ rights in The Bahamas' 2016 referendum, Feminist Review 25 (2017), p. 69.

37 Dominica, Report of the Dominica Constitutional Conference held in Marlborough House London (1977), p. 15.

38 *Tracy Robinson*, Gender, Nation and the Common Law Constitution,Oxford Journal of Legal Studies 28 (2008), pp. 735-762.

39 See generally, *Stephen B. Aranha,* Bahamianness as an exclusive good: Attempting to change the Constitution, International Journal of Bahamian Studies 22 (2016), pp. 16-33.

Despite this constitutional limitation, Dominica has a record of progressive political and statutory action. Dominica was the first country in the Americas to elect a female prime minister, Eugenia Charles, in 1980, and she remained in office for over 14 consecutive years.[40] It was also the first country in the English-speaking Caribbean to develop and approve a National Policy on Gender Equality.[41] Post-independence efforts to address gender inequality include the ratification of international conventions like CEDAW and the development of key legislation, such as the Protection against Domestic Violence Act (2001) and the Sexual Offences (Amendment) Act (2016), which criminalised marital rape and expanded penalties for sexual offences.[42]

Dominica's constitutional history demonstrates that even where "sex" is included as a prohibited ground, the structural flaw of the personal law exemption persists. The clause ensures that legal pluralism in matters of family status is constitutionally protected even when it leads to gender inequality, thereby institutionally embedding the colonial suspension of women's rights within the private domain from the moment of its founding.

III. The West African Model: Broad Grounds and Dual Clawbacks

In Africa, particularly in West Africa, the pattern of inheritance and subsequent evolution shows varied degrees of commitment to change regarding the prohibited grounds, though the structural exclusion persists. The initial Gambian Constitution, enacted in 1970, included the archetypal savings clause limiting the scope of non-discrimination protections. This same exclusionary language was carried over into the second and most recent version of the Constitution, adopted in 1996.[43] Section 33 of the 1997 Constitution is significant as it contains a more extensive list of prohibited grounds of discrimination than its Caribbean counterparts, making it valuable for addressing intersectional harms.[44] Yet, this provision does not extend to matters concerning "adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law".

40 *Imaobong Umoren*, 'It's Only Leftist Women Who Talk that Damn Nonsense About Women Being at a Disadvantage': Eugenia Charles's Gender Politics in Dominica, Gender & History 33 (2021), pp. 269-285.

41 *Ramona Biholar*, Masculinities and the Practice of Dominica's National Gender Policy, in Politics, Power, and Gender Justice in the Anglophone Caribbean: Women's Understandings of Politics, Experiences of Political Contestation and Possibilities for Gender Transformation (2014).

42 Human Rights Council, National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21 (2024), A/HRC/WG.6/47/DMA/1, paras. 53 and 56.

43 *Satang Nabaneh*, Women's political participation in The Gambia—One step forward or two back?, in: Satang Nabaneh et al. (eds.), The Gambia in Transition: Towards a new constitutional order, Pretoria 2022, pp. 125-152.

44 *Satang Nabaneh*, The Impact of the African Charter and the Maputo Protocol in The Gambia, in: Victor Ayeni (ed.), The Impact of the African Charter and Maputo Protocol in Selected African States, Pretoria 2016, pp. 5–94.

This structural flaw is juxtaposed against a bold, post-independence commitment to gender parity. The 1997 Constitution also introduced a broader women's rights provision in Section 28, explicitly stating that "women shall be accorded full and equal dignity with men" and shall have "the right to equal treatment with men, including equal opportunities in political, economic and social activities." Further demonstrating this political commitment, the Women's Act 2010 was enacted specifically to domesticate international conventions like CEDAW and the Maputo Protocol. The tension between the broad, modern aspirations of Section 28 and the limiting, colonial-era personal law exemption in Section 33 remains an open question for Gambian courts. This structural contradiction institutionalises inequality, requiring statutory laws like the Women's Act to operate under a fundamental constitutional constraint.

Moreover, this constitutional battleground is further complicated by the fragility of reform. The 2020 Gambian Draft Constitution proposed a progressive legislative gender quota that would have reserved 14 seats in parliament specifically for women, a reform that ultimately failed to be enacted after the necessary bill was rejected by the National Assembly.[45] A private member bill, which sought to increase women's representation in the National Assembly also failed in 2022.[46] A subsequent gazetted 2024 Draft Constitution demonstrably rolled back these gains, notably through the deletion of a clause that had mandated gender diversity in the leadership of independent institutions was also rejected.[47] Ultimately, even when post-independence political will attempts to correct the structural flaws inherited from colonialism (such as the Section 33 exemption), the fragility of constitutional reform allows for the easy sabotage of progressive gains, ensuring that the legacy of institutionalised gender inequality persists.

The constitutional trajectory of Sierra Leone demonstrates the continuity of the colonial-era rights structure and its subsequent role in post-conflict exclusion. The nation's path to the present 1991 Constitution was marked by sharp political transitions. The 1951 Constitution, which reflected 1947 constitutional proposals, initiated the journey toward self-rule.[48] However, the subsequent decades saw democratic decline: following Siaka Stevens' victory in 1967, the parliamentary system was dismantled in favour of a presi-

45 *Satang Nabaneh,* Attempts at Constitutional Reform in The Gambia: Whither the Draft Constitution?, IACL-AIDC Blog, 29 September 2020, https://blog-iacl-aidc.org/2020-posts/2020/9/29/attempts-at-constitutional-reform-in-the-gambia-whither-the-draft-constitution (last accessed on 21 October 2025).

46 *Satang Nabaneh,* Why The Gambia should fast-track gender quotas for women, The Conversation, 27 January 2022, https://theconversation.com/why-the-gambia-should-fast-track-gender-quotas-for-women-175661 (last accessed on 21 October 2025).

47 *Satang Nabaneh*, Constitution Bill Rejected at Second Reading: Halting the Reform Process in The Gambia?, ConstitutionNet, 8 July 2025, https://constitutionnet.org/news/voices/constitution-bill-rejected-second-reading-halting-reform-process-gambia (last accessed on 21 October 2025).

48 *Joseph J. Bangura,* Constitutional development and ethnic entrepreneurism in Sierra Leone: A metahistorical analysis, in: Marda Mustapha / Joseph J. Bangura (eds.), Democratization and Human Security in Postwar Sierra Leone, New York 2016, pp. 13-35.

dential framework in 1971, which was then replaced in 1978 by a One-Party Republican Constitution that officially banned opposition parties.[49]

The current 1991 Constitution[50] was adopted during a period of immense internal strife, as rebel forces sought to dismantle the one-party system, leading to a brutal civil war that lasted eleven years.[51] Post-conflict efforts, including the establishment of the Truth and Reconciliation Commission (TRC) in 2002, urged the creation of a new constitutional framework to foster peace and reinforce democratic governance.[52] Yet, the constitutional constructs were such that human rights and democratic principles became mere obligations, rather than subjects of rigorous debate aimed at societal betterment.

The constitutional provisions in Sierra Leone offer a prime example of the compromised nature of the inherited colonial rights model. While the 1991 Constitution of Sierra Leone, in Section 27, generally prohibits discriminatory laws and treatment on grounds including sex, the nation's adherence to the Colonial Office template is starkly evident in its restrictive dual clawback structure, which severely undermines this guarantee. Section 27 is subjected to several critical exceptions. The first is the personal law exemption, Section 27(4)(d), which explicitly states that the constitutional prohibition against discriminatory laws does not apply to legislation concerning "adoption, marriage, divorce, burial, devolution of property on death or other interests of personal law". This provision instantly immunises large swaths of law that govern women's status and economic security, ensuring that discriminatory practices in marriage and inheritance are protected from constitutional scrutiny. The second is the customary law clawback, Section 27(4)(e), which further stipulates that the anti-discrimination provision does not prevent the application of laws related to a particular race or tribe or customary law to members of that group, even if those laws exclude the general law. This dual exclusion explicitly sanctions discrimination within the crucial domains of marriage, inheritance, and personal status, ensuring that patriarchal customary law practices are entrenched despite the constitutional principle of equality. This dual exclusion explicitly sanctions discrimination within the crucial domains of marriage, inheritance, and personal status, ensuring that patriarchal customary law practices such as the exclusion of women from paramount chieftaincies and discriminatory citizenship provisions (which historically prevented Sierra Leonean women from passing citizenship to their foreign spouses) are entrenched despite the constitutional principle of equality. Indeed, patriarchal customary laws are prevalent, and traditional views often tolerate widespread inequality and gender-based violence.

49 Ibid.

50 Constitution of Sierra Leone (Act No. 6) (1991).

51 *Lesley Frances Connolly*, Post-conflict transition and development in Sierra Leone: A Case for the Transformative-Justice model, Master Thesis, University of Cape Town (2011).

52 *Proscovia Svard,* The international community and post-war reconciliation in Africa: A case study of the Sierra Leone Truth and Reconciliation Commission, African Journal on Conflict Resolution 10 (2010).

The gender-discriminatory effect of Section 27 was a major concern raised by the Constitutional Review Committee (CRC), which submitted a report recommending its deletion and replacement with a comprehensive prohibition on discrimination on any ground.[53] The post-conflict agenda and subsequent legal reform efforts have attempted to address this colonial legacy through the enactment of the Gender Empowerment Act in November 2022, which provides for a minimum 30 percent quota for women in political and appointment positions.[54] Nevertheless, the retention of Section 27(4)(d-e) in the supreme law of the land means these statutory advancements exist under the shadow of a constitutional provision that structurally exempts customary and personal law from human rights scrutiny.

Across these four Commonwealth nations, a consistent pattern emerges: while their constitutions establish general principles of non-discrimination, they all include specific exemptions for matters of personal or family law. Sierra Leone and The Gambia, consistent with their dual legal heritage, further explicitly address customary law within their exceptions. The tension inherence in these provisions underscore the complex interplay between formal legal frameworks and informal customary practices. This creates an inherent tension within the foundational legal documents themselves. While these constitutions enshrine principles of equality and non-discrimination, the inclusion of exemptions for personal laws can undermine these principles. This allows discriminatory customary and religious laws to persist, perpetuating gender inequality and limiting women's rights.

These exclusions have a demonstrably uneven impact, disproportionately affecting women's rights in critical areas governed by customary and religious laws. These legal systems often contain provisions that disadvantage women in marriage, divorce, property ownership, and inheritance, effectively permitting gender-based discrimination despite constitutional commitments to equality.

D. Implications on Women's Rights: The Institutionalisation of Gender Subordination

The enduring impact of colonialism on West African and Caribbean nations extends far beyond historical narratives as it continues to shape contemporary legal systems by embedding and legitimising patriarchal norms within the constitutional structure itself. Colonial structures deliberately marginalise women, confining them to roles centered on domestic responsibilities, such as childbearing and household duties.[55]

The inclusion of these exemptions, regardless of whether the initial anti-discrimination provision includes "sex" (as in Dominica, The Gambia and Sierra Leone) or omits it (as in The Bahamas), demonstrates a constitutional design that sanctions gender-based

53 Report of the Constitutional Review Commission (2016), pp. 132-137.

54 Act No. 23 of 2022.

55 See for example, *Cyrelene Amoah-Boampong / Christabel Agyeiwaa*, Women in Pre-colonial Africa: West Africa, in: Toyin Falola / Olajumoke Yacob-Haliso (eds.), The Palgrave Handbook of African Women's Studies, London 2019, pp. 1-13.

discrimination in critical areas of a woman's life. In The Bahamas, this exclusion is most starkly realised by the textual omission of "sex" or "gender" as prohibited grounds in Article 26. This deliberate flaw rendered the entire anti-discrimination provision largely useless for challenging gender-based laws, shifting the political focus away from the clawback provision. Referendums aimed at amending the constitution to address gender discrimination failed repeatedly, demonstrating not just political resistance, but the deep, sustained structural inertia against equality.[56]

This institutionalised subordination finds conceptual grounding in the work of Higgins and Fink, who argue that family law is not merely a private affair but functions as legal architecture that builds and defines the political community (the nation), often through the exclusion and subordination of women[57] This is particularly relevant given that when interpreting the personal law exemptions found in the post-colonial constitutions like those of The Gambia and Dominica, it should be seen as not accidental oversights but as structural choices that deliberately define the "nation" on a gendered, exclusionary basis. By exempting personal law from the constitutional equality guarantee, the state uses family or personal law to legally construct women as dependent subjects, thereby fulfilling the logic of exclusionary gender constitutionalism.

Conversely, in Sierra Leone and The Gambia, where the anti-discrimination clauses are broader (including "sex"), the coexistence of multiple legal systems creates inconsistency and conflict. For example, 8 percent of constitutions allow customary or religious law to override constitutional guarantees of equality.[58] Here, the dual claw back for personal and customary law explicitly institutionalises inequality.[59] The decision to allow customary or religious law to override constitutional guarantees of equality, as happens in personal law matters like inheritance reflects the dynamic that Saba Mahmood analyses in which the state's choice to preserve legal pluralism, sanctions discrimination under the guise of respecting cultural or religious differences.[60] This dual legal framework often perpetuates gender-based discrimination, leaving women with limited avenues to seek justice. For instance, under customary law, a widow may be denied her late husband's property without justification despite constitutional guarantees of equality, a practice that reinforces male dominance and entrenches gender inequality in society.[61] This failure to disrupt the inherit-

56 *Wallace*, note 44.

57 See *Tracy E. Higgins / Rachel P. Fink*, The Constitutionalization of the Family: Lessons from Global Constitutionalism, Fordham Law Review 82 (2014), p. 2379.

58 *Jody Heymann / Aleta Sprague / Amy Raub,* Advancing equality: How Constitutional Rights can Make a Difference Worldwide, Oakland 2020.

59 UN Women*,* A Guidance Note on the Making and Shaping of Constitutions from a Gender Perspective, 2021.

60 *Saba Mahmood*, Politics of Piety: The Islamic Revival and the Subject of Women, Princeton 2005, p. 208.

61 For example, see *Joy Ezeilo*, Rethinking women and customary inheritance in Nigeria, Commonwealth Law Bulletin 47 (2020), pp. 706–718.

ed patriarchy confirms the critique by Tracy Robinson, who argues that the inherited Common Law constitutional model institutionalised gender hierarchy by failing to challenge patriarchal common law assumptions.[62]

By excluding women from leadership and decision-making positions, these systems have not only perpetuated gender disunity but have also deprived nations of the transformative potential of women's leadership and contributions. The combined experiences of being Black and a woman have disproportionately disadvantaged women and girls of African descent, who even today frequently remain among the most marginalised and discriminated against women globally, consistently ranking at the lowest levels across various social development indicators.[63]

The enduring structural deficiencies of the inherited constitutional provisions have translated directly into protracted public and legal battles in the post-independence era, demonstrating the persistence of this colonial imposition. The inability to challenge discriminatory personal law regimes via the anti-discrimination clause has forced advocates to pursue constitutional change through more contentious political and judicial avenues. For instance, The Bahamas has experienced profound public debate and two failed constitutional referendums related to these provisions. Similarly, in The Gambia, post-dictatorship efforts to enact a progressive new constitution were sabotaged, with the subsequent 2024 draft rolling back proposed gains such as gender quotas, a clear example of the fragility of constitutional reform against entrenched patriarchal structures.

The post-independence difficulties in reforming these entrenched provisions reveal that the colonial legal architecture continues to shape and limit contemporary efforts toward gender justice, turning what should be a legal matter into a minefield of cultural and political confrontation. Recognising this minefield, which conflates constitutional challenges with attacks on "national traditions and cultures" have sometimes focused on political measures like parliamentary quotas (as seen in The Gambia) rather than direct constitutional confrontation.[64] This strategic choice highlights how the colonial legal architecture continues to shape and limit contemporary efforts toward gender justice. Addressing gender inequality requires a critical examination and dismantling of these colonial legacies that prioritised administrative convenience and political expediency over substantive human rights.

62 *Robinson,* note 38.

63 *Satang Nabaneh*, Women of African descent, intersectionality and human rights, in: Alexandra Cosima Budabin / Jody Metcalfe / Shilpi Pandey (eds.), Minority women, rights, and intersectionality: Agency, power, and participation, London 2025, pp. 73-91.

64 *Satang Nabaneh*, The Gambia's new constitution has stalled again – 5 reasons why and what that means for democracy, The Conversation, 24 August 2025, https://theconversation.com/the-gambias-new-constitution-has-stalled-again-5-reasons-why-and-what-that-means-for-democracy-261809 (last accessed on 21 October 2025).

E. A Decolonial Feminist Framework: Repositioning the Clawback Clause as a Vestige of Empire

A decolonisation approach—which attends to the history and impact of the exercise of colonial power is an important tool for women's rights advocates. It helps upend the difficult dynamic that local groups currently face by creating the opportunity for constitutional reform advocacy to critique these claw back provisions as foreign vestiges of racism and colonialism. In countries of West Africa and the Caribbean, this approach undermines the stereotype that the problem is essentially African or cultural, instead identifying the structural mechanism as an imposed colonial technology.

Feminist scholars such as Jacqui Alexander advocate for a more nuanced and expansive approach to decolonization. This approach should be grounded in local realities while simultaneously addressing broader political, economic, psychological, and social dimensions.[65] Other feminist scholars, deepen this understanding by advocating for a more nuanced and expansive decolonisation that is grounded in local realities while simultaneously addressing broader political, economic, psychological, and social dimensions.[66] Feminist approaches have highlighted the limited historical narratives of constituent power that often overlook feminist activism within the broader framework of global constitutionalism.[67] Feminist critiques of constitution-making processes, as highlighted by scholars like Rubio-Marín,[68] emphasise the need for women's substantive inclusion as active participants at all levels of constitutional change. This feminist perspective advocates for women's recognition not merely as beneficiaries of rights, but as integral constitutional actors holding constituent power, participating in constituted power structures, and fully realising their status as rights holders.

This decolonial feminist approach necessitates a departure from a static, essentialist understanding of law. It calls for a historically grounded analysis that acknowledges legal pluralism as a dynamic phenomenon. Each legal order, whether state law, customary law, or religious law, mutually shapes and reshapes the others over time. Therefore, defining a fixed "essence" of law or custom becomes less relevant than understanding these concepts within the specific power relations and historical contexts that define their interplay. Plural normative orders, once established, can exhibit remarkable resilience, often legitimising

65 *M. Jacqui Alexander*, Erotic Autonomy as a Politics of Decolonization: An Anatomy of Feminist and State Practice in the Bahamas Tourist Economy, in; M. Jacqui Alexander / Chandra Talpade Mohanty (eds.), Feminist Genealogies, Colonial Legacies, Democratic Futures, New York 1997; see also *Vanessa Agard-Jones*, Le Jeu de Qui? Sexual Politics at Play in the French Caribbean, in: Faith Smith (ed.), Sex and the Citizen: Interrogating the Caribbean, Charlottesville 2011.

66 *Mohanty*, note 12; *Uma Narayan*, Dislocating Cultures: Identities, Traditions, and Third-World Feminism, Oxfordshire 1998.

67 *Helen Irving*, Introduction, in: Helen Irving (ed.), Constitutions and Gender, Cheltenham 2019, pp. 1–15.

68 See for example *Ruth Rubio-Marín / Helen Irving* (eds.), Women as Constitution-Makers: Case Studies from the New Democratic Era, Cambridge 2019.

themselves through appeals to tradition; conversely, they can undergo radical transformations through contestation—a process vividly illustrated by the development of customary law within colonial societies.

By reframing the anti-discrimination clause's exemptions as a structural, colonial imposition rather than a native cultural failing, advocacy can transform the discourse. Constitutional reform efforts, where successful, have opened up legal space to bring equality principles and customary norms into conversation with each other, allowing for a balancing that recognises positive dimensions of custom that do not diminish women's equality rights. This surfacing of hidden histories is also crucial for legal cases involving the clawback provisions and transforms the discourse around international support. Financial support from entities like the United Kingdom that may once have been viewed as simple development aid now enters the more serious issue of reparations. The value lies in supporting local groups to unearth these hidden histories, create dialogue spaces that recognise colonial distortions of Indigenous conceptions of community practices, and curate new, context-specific understandings of gender equality principles.

F. Concluding Reflections

The framing by a constitution of the relationship with state, customary (and/or religious) law systems, and gender equality is crucial to the economic, social, political, and cultural status of women and girls. The analytical goal of this article is to expose the colonial genesis of exclusionary constitutional clauses, which is validated by the insight that, as Reva Siegel observes, the stories we construct about the past fundamentally shape our "common sense" intuitions about present-day legal and political realities.[69] This necessitates a critical re-examination of constitutional history to dismantle the narrative that gender inequality is purely an indigenous cultural failure.

The comparative analysis of West African and Caribbean nations reveals that the Neo-Nigerian Bill of Rights model was exported with a fundamental structural failure that guaranteed the colonial suspension of women's rights, whether through explicit exemptions or deliberate omissions. This structural legacy, regardless of its specific local manifestation, constitutes a system of legal architecture that defines the political community on an exclusionary, gendered basis.

To support us in reconceptualising constitutional arrangements that should exist in a just society, shifting away from essentialist definitions of law and toward a historical understanding of legal pluralism is critical. Recognising that legal systems constantly evolve and interact; we can move beyond simplistic distinctions between formal and informal law. Instead, we should focus on the specific historical and social contexts that shape the development and application of different legal orders.

69 *Reva Siegel*, Collective Memory and the Nineteenth Amendment: Reasoning about the Woman Question in the Discourse on Sex Discrimination, in: Austin Sarat / Thomas R. Kearns (eds.), History, Memory and the Law, Ann Arbor 1999.

By adopting a decolonial feminist perspective, we can challenge the colonial legacy of exclusionary legal frameworks and advocate for the inclusion of diverse voices, particularly those of women. There is need for women's substantive inclusion as active participants at all levels of constitutional change. This perspective advocates for women's recognition not merely as beneficiaries of rights, but as integral constitutional actors holding constituent power, participating in constituted power structures, and fully realising their status as rights holders. In essence, decolonising the narrative around constitutions and personal laws must be a gendered project.