SYMPOSIUM

Towards an Endogenous African Constitutionalism and Legitimate Government: Rethinking the Foundations of Constitutional Law in Africa

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African constitutionalism stands at a pivotal moment in its evolution.[1] After more than six decades of independence for most African states, it has become imperative to examine the nature, foundations, legitimacy, and institutional architecture of the constitutional systems governing the countries making up the continent. This symposium engages in this critical reflection and proposes to explore pathways toward a truly endogenous constitutionalism, rooted in Africa's socio-political, cultural, economic and historical realities.

The central question running through this symposium concerns constitutional authenticity: How can African states develop constitutional frameworks that reflect their own values, traditions, and aspirations while addressing contemporary challenges of democratic and effective governance? This inquiry is not merely academic. It touches the very core of political legitimacy and institutional stability across the continent.

The timing for this reflection is particularly opportune. The global order is undergoing profound transformations that offer African states new room and agency to rethink the underlying values and institutional underpinnings of their political systems, even as real risks remain that Africa's already muzzled voices in the international arena may fade

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1 *Berihun Adugna Gebeye*, A Theory of African Constitutionalism, Oxford 2021, p. 35; *Charles Manga Fombad*, Constitution-Building in Africa: The Never-Ending Story of the Making, Unmaking and Remaking of Constitutions, African and Asian Studies 13 (2014), p. 429; *Boubacar Ba*, L'évolution constitutionnelle des pays africains de succession française, Annales Africaines, Nouvelle Série 2 (2020), p. 27.

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further. Recurrent constitutional crises across the continent, coups d'état,[2] ethnic conflicts,[3] and a lack of trust in public institutions and frameworks, particularly in relation to multiparty democracy and elections,[4] also testify to the urgency of refounding the constitutional compact on more solid and legitimate bases. In many ways, emerging and converging global realities present a "jurisgenerative moment" to create new meaning, norms and institutional architecture that are both legitimate and effective and confidently owned by African societies.

This symposium brings together contributions that collectively offer a multidimensional perspective on the quest for an endogenous African constitutionalism. These contributions do not seek to offer simple solutions to the formidable constitutional, institutional governance challenges facing the countries on the continent. Instead, they urge decision makers, intellectuals and civil society at large to engage in deliberative processes, and continuously, to ensure that our fundamental institutional and normative foundations are the results of collective reflection rather than merely accidents of history and sticky colonial mimicking. To this extent, the contributions seek to advance debates around "de-colonialising" thinking, design and practice in the specific field of constitutional and democratic governance. They offer ideas that are not merely nostalgic, even apologetic, longing for some inexistent "utopian" pre-colonial African oasis of governance, nor an excuse to defensively dismiss ideas and structures originating from other parts of the world. Instead, the contributions endeavour to show that African countries can and must imagine constitutional systems based on collective and continuous deliberation.

The contributions emerged from the 2024 Biennial Congress of the African Network of Constitutional Lawyers (ANCL) held under the theme "Towards an Endogenous African Constitutionalism and Legitimate Government: Epistemological and Empirical Perspectives" in Dakar, in partnership with the Senegalese Association of Constitutional Law, the Cheikh Anta Diop University, and the Université numérique Cheikh Hamidou Kane. We are grateful for the trust and tremendous support of the International Institute for Democracy and Electoral Assistance, the National Democratic Institute, and the Senegal and Gambia office of the Konrad Adenauer Stiftung in organising this event, bringing together consti-

2 *Charles Manga Fombad*, Countering the Scourge of Unconstitutional Changes of Government in Africa, IACL-AIDC Blog, 16 June 2022, https://blog-iacl-aidc.org/transformations/2022/6/16/countering-the-scourge-of-unconstitutional-changes-of-government-in-africa (last accessed on 3 October 2025); *Oumarou Narey*, Les changements anticonstitutionnels de gouvernement mode ou contre mode?, IACL-AIDC Blog, 28 June 2022, https://blog-iacl-aidc.org/transformations/2022/6/28/les-changements-anticonstitutionnels-de-gouvernement-mode-ou-contre-mode- (last accessed on 3 October 2025).

3 See *Jeremie Gilbert*, Constitutionalism, Ethnicity and Minority Rights in Africa: A Legal Appraisal from the Great Lakes Region and the reply by *Kwasi Prempeh*, International Journal of Constitutional Law 11 (2013), p. 414.

4 *Charles Manga Fombad / Johannes Socher* (eds.), Constitutionalisation of Political Parties and the State of Democracy in Sub-Saharan Africa, Baden-Baden 2025.

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tutional experts from across the African continent and beyond.[5] We would also like to thank the managing editors of this journal for agreeing to publish selected proceedings of the Congress, and the various external reviewers for their diligent comments that helped improve the quality of the contributions. The authors deserve tremendous recognition for putting together contributions that we are certain will move the discourse forward. In addition to these contributions written in English and French, we are honoured that one of the keynote speakers at the Congress, former President of Cabo Verde Jorge Carlos Fonseca, has agreed to complement this symposium with inspiring reflections—written in Portuguese and translated to English—on constitutionalism, democracy and legitimate government in Africa, drawing on his personal experience as a political leader of the West African island country and his towering intellectual credentials.[6]

In his foreword "From the Island to the Mainland–Insights for African Constitutionalism from Cabo Verde from a Personal Experience of Political Life", Fonseca urges us to always consider the critical value of "a societal commitment to the values and principles that sustain the democratic order grounded in liberty". He draws on Cabo Verde's experience, and echoing Africa-wide aspirations, on the importance of a constitutional and institutional architecture that "promotes dialogue, the sharing of powers, and the pursuit of consensus", beyond brutally adversarial, winner-takes-all systems. The Constitution, he writes, is "an unfinished project, requiring constant deepening", and "democracy is not a point of arrival, but a permanent process of construction". In this, the African experience of making and unmaking constitutions may perhaps be seen as part of learning by trial and error in the journey towards genuine self-determination—one confident to draw on African history, experiences across and beyond the vast seas surrounding the continent, reason and continuous dialogue.[7] In the process, Fonseca urges us to navigate carefully the enduring "tensions between hope and disenchantment" in Africa, as countries "oscillated invariably between the enthusiasm of a 'renaissance' and the disillusionment of coups d'état, political and institutional instability, and the absence of progress in the well-being of populations under autocratic regimes." Fonseca concludes that "cultivating democracy in Africa means believing that societies of free women and men are the best guarantee of development, justice, and dignity for all". With this, he reminds us that there is no single route or institutional architecture to achieving these ideals. Our hope is that the contributions comprising this symposium will advance the discourse, design and practice as

5 The symposium editors would like to thank the ANCL and here in particular the following persons for convening the Congress: Elvis Fokala, Laura-Stella Enonchong, Yvonne Oyieke, Djaminatou Zombre, Papa Momar Diop, Al Hassane Boye Sakho, and Ghislain Pemba.

6 *Jorge Carlos Fonseca*, Prefácio: Da Ilha ao Continente–Perspectivas para o Constitucionalismo Africano a partir de Cabo Verde, com base em uma Experiência Pessoal de Vida Política, World Comparative Law 58 (2025), in this issue.

7 *Abdullahi Ahmed An-Na'im*, African Constitutionalism and the Role of Islam, Philadelphia 2006, Chapter 3.

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Africa seeks to build a constitutional and democratic architecture capable of delivering a life of dignity and agile enough to adapt to the demands of a changing continent and world.

In the second contribution with the title "An African Model of Democracy? Evidence from Treaties and Frameworks, Constitutional Preambles, and Public Opinion", Seema Shah and Alexander Hudson observe that as postcolonial states push back against the hegemony of the liberal democratic model, possibly more than ever before, a vision of a reimagined African democracy is simultaneously emerging at different institutional levels, revealing an alternative "conceptualization of democracy that goes beyond the core tenets of the liberal model".[8] As Shah and Hudson show, this emerging vision is marked by participation, consensus and the importance of context-specific values, rules and modes of operation—ideals that Fonseca emphasized in his foreword. Consequently, the authors call for more scholarly attention to modes of political participation that go beyond elections to better understand the ways in which Africans are already practicing this alternative vision of democracy in their communities.

In the symposium's third contribution, "Autochtonie et Démocratie, entre Tradition et Modernité: Le Compromis Africain, l'Exemple du Cameroun", Paule Suzanne Ngo Nguimbous goes on to address the fundamental question of autochthony and its relationship to democracy.[9] Examining the African compromise between tradition and modernity, the author offers a nuanced reflection on the possibility of reconciling universal democratic values with African cultural and traditional specificities, thus moving beyond the sterile opposition between tradition and modernity, using Cameroon as an illustrative example.

The institutional dimension of African constitutionalism is explored in the next contribution by Aubran Donadoni Ntolo Nzéko, who analyses the potential role of the African Court on Human and Peoples' Rights in resolving electoral disputes ("La Cour Africaine des Droits De L'homme et des Peuples: Une Solution aux Contestations des Élections en Afrique").[10] Nzéko's contribution raises crucial questions about the articulation between regional and national jurisdictional mechanisms and about building a truly pan-African constitutional architecture.

Moustapha Ndiaye, in the symposium's fifth contribution "La Constitutionnalisation de l'Ethnie dans les États d'Afrique Subsaharienne de Succession Coloniale Française", examines the constitutionalisation of ethnicity in francophone African countries.[11] His study

8 *Seema Shah / Alexander Hudson,* An African Model of Democracy? Evidence from Treaties and Frameworks, Constitutional Preambles, and Public Opinion, World Comparative Law 58 (2025), in this issue.

9 *Paule Suzanne Ngo Nguimbous*, Autochtonie et Démocratie, entre Tradition et Modernité: Le Compromis Africain, l'Exemple du Cameroun, World Comparative Law 58 (2025), in this issue.

10 *Aubran Donadoni Ntolo Nzéko*, La Cour Africaine des Droits De L'homme et des Peuples: Une Solution aux Contestations des Élections en Afrique, World Comparative Law 58 (2025), in this issue.

11 *Moustapha Ndiaye*, La Constitutionnalisation de l'Ethnie dans les États d'Afrique Subsaharienne de Succession Coloniale Française, World Comparative Law 58 (2025), in this issue.

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highlights tensions between recognition of ethnic diversity and construction of national unity, thus questioning the modalities of integrating African sociological realities into formal constitutional frameworks.

Ndiaye's study is followed by Satang Nabaneh's "The Colonial Architecture of Exclusion: The Personal Law Exemption and the Institutionalization of Gender Subordination in West Africa and the Caribbean".[12] Nabaneh shows how colonial legacies continue to shape gender relations and legal frameworks in many anglophone African countries. Using the UN Women's database of constitutional provisions relating to women's human rights, she reveals a pattern for many anglophone African countries where provisions dating back to British colonial rule continue to be in place that exempt personal and customary laws from non-discriminatory protection.

Finally, Jan Erk concludes the symposium with some general reflections on the prospects for African constitutionalism amid a changing global world.[13] Drawing extensively on his own scholarship on decentralisation, federalism and constitutional identity and history in Africa, Erk argues that the present changing world order offers an opportunity for recognising and empowering homegrown traditions of constitutionalism in Africa. Following an examination of the potential impact the changing world order will bring to constitutional development in Africa, Erk looks at the fate of different homegrown systems of traditional law and governance. Against this background, he identifies five distinct categories of challenges and opportunities to recognising and empowering homegrown constitutionalism.

Several cross-cutting themes emerge from these contributions and deserve emphasis. First, the question of legitimacy runs across the symposium. It is not sufficient for a constitution (or amendments to it) to be formally adopted according to required formal procedures; it must be perceived as legitimate by the populations it seeks to serve, and such legitimacy is often linked to the extent to which the document is seen as reflecting "broad consensus" among the key stakeholders.[14] This legitimacy presupposes popular appropriation and adequacy between constitutional norms and societal values.

Second, diversity appears as an essential characteristic that African constitutions must recognise and manage. Whether ethnic, cultural, linguistic, or religious diversity, constitutional frameworks must find mechanisms to transform this plurality into richness rather than a source of conflict.

12 *Satang Nabaneh*, The Colonial Architecture of Exclusion: The Personal Law Exemption and the Institutionalization of Gender Subordination in West Africa and the Caribbean, World Comparative Law 58 (2025), in this issue.

13 *Jan Erk,* Recognising and Empowering Homegrown Constitutionalism: The Challenges and Opportunities Accompanying the Changing Global Order, World Comparative Law 58 (2025), in this issue.

14 *Adem Kassie Abebe*, The (Il)legitimacy of Constitutional Amendments in Africa and Democratic Backsliding, Asian Journal of Comparative Law 19 (2024), p. 473.

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Third, the question of the relationship between the global and the local arises acutely. An endogenous constitutionalism does not mean isolationism or rejection of all external influence. Rather, it involves developing a capacity for selection, adaptation, and creative hybridization, allowing the integration of external contributions into an authentically African synthesis.

Fourth, the articulation between tradition and modernity emerges as a permanent challenge. African societies are dynamic and constantly evolving. An endogenous African constitutionalism must therefore be capable of integrating traditional heritages while enabling innovation and adaptation to contemporary realities. Of course, this is not a call for a nostalgic return to an idealized past, nor is it a rejection of the achievements of universal constitutional thought. Rather, it is an ambitious project to construct a constitutional order that is both faithful to African realities and open to the world, rooted in traditions while resolutely oriented toward the future.

The contributions presented in this symposium were developed and discussed during the ANCL Congress against the background that the idea of the modern state, as well as its constitutive elements—territorial boundaries, people, and even the ideas of sovereignty and government—were either imposed (through the Berlin Conference of 1884-1885),[15] or largely based on inherited constitutional ideas and institutional frameworks of governance developed in other parts of the world. In particular, the first independence constitutions and the post-1990 constitutional framework were largely designed at a time of ascendancy of the idea of liberal democracy, founded on the principles of limited government, political pluralism, rights, and separation of powers. The record of the largely liberal framework remains mixed, reflecting both the challenges of the foundational structure and the lack of political will to practice and live up to enshrined constitutional ideas.

Within this broad liberal framework, there have been experiments to adapt ideas, as well as to pursue innovative values and ways of designing constitutional and democratic governance. The contributions in this Symposium demonstrate this vitality of African constitutional reflection and the richness of ongoing experiences across the continent. They show that another constitutionalism is possible, one that places African peoples at the centre, recognises their historical agency, and gives them the means to define their own political destiny. It is in this spirit that we present this symposium to the readers of this journal. We hope that it will contribute to nourishing the debate on the future of constitutionalism in Africa and inspire new research and practices capable of strengthening the legitimacy and effectiveness of African constitutional systems. The path toward a truly endogenous African constitutionalism is long and fraught with obstacles, but it is necessary. The scholarship represented here sketches some of its contours and illuminates its stakes.

15 *Berihun Adugna Gebeye*, Global Constitutionalism and Cultural Diversity: The Emergence of Jurisgenerative Constitutionalism in Africa, Global Constitutionalism 10 (2021), p. 44.

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It is up to intellectuals, practitioners, and citizens from and concerned for the African continent to continue this essential work of constitutional refoundation.

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