

zung über das Verhalten der wichtigsten internationalen Akteure somit nicht möglich. Da dies jedoch nicht der Hauptfokus der Herausgeber ist, werden die Erkenntnisse, die dem Sammelband zu entnehmen sind, keineswegs geschmälert.

Dieser erkenntnisreiche politikwissenschaftliche Sammelband ist angesichts seines durchgängig hohen Niveaus und seiner klaren Struktur sowohl für Studierende als auch für Forscher der internationalen Politik, Außenpolitik und Afrikapolitik geeignet. Rechtswissenschaftler dürften insbesondere auf Grund der durchgehend angewendeten Analyse der internationalen Schutzverantwortung im Spannungsfeld zwischen Rhetorik und Praxis durch die Mitglieder der internationalen Gemeinschaft anregende Erkenntnisse erhalten.

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**Identity, Diversity, and Constitutionalism in Africa**

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One major question in the debate on the rule of law and constitutionalism concerns the extent to which contemporary national constitutions and statutory books must reflect local values and norms. Within the global trend toward Rule of Law, a surge of violent internal conflicts and a view of constitutions as means of conflict prevention and management, this question has provoked different answers, emphasizing either international standards of constitutions or the necessary dominance of local norms. This is especially true in postcolonial spaces where legal structures were rather modeled after metropolitan models than adapted on base of local norms and institutions. Besides questions of substantial reference to specific cultural heritages, the process of participation in the drafting of constitutions also newly attracted scientific interest.<sup>1</sup> Regionally, constitutional reform has currently taken place in numerous countries, following either the change of political regimes (Egypt, Tunisia, Sudan) or as domestically driven exercises of reform (Kenya, Ghana, Tanzania, Zimbabwe, Nigeria). It is within this twofold debate, that the book of Francis M. Deng intervenes with a pragmatic stance toward the integration of local norms into constitutional frames to acknowledge and functionalize the diversity of culturally heterogeneous states. Francis M. Deng and his collaborators argue that the legacy of colonial structures (statutory laws as well as independence-constitutions) and their postcolonial heirs mostly prevented integration within multicultural states.

The book, with a foreword by former Nigerian president Olusegun Obasanjo, is divided into ten chapters. The first two chapters take the reader through a broad definition and evaluation of constitutionalism (9-15) and a brief comparative history of constitutions as well as

1 *Andrew Aroto*, Conventions, constituent assemblies, and round tables: Models, principles and elements of democratic constitution making, *Global Constitutionalism* 1 (2012), p. 173.

their collective orientation after independence (17-30). It is within the latter chapter, that the roots for identity conflicts are explained, following the argument that state elites adapt the repressive and exclusive elements of the colonial state rather than reform them. The third and fourth chapter of the book first explain the development of identities as well as evolution of stronger ethnic ties among sections of the population as an effect of loosening bonds between the states and their populations, emphasizing the challenge of unity of present day states (31-44). The fourth chapter aims at clarifying the meaning of self-determination as a legal and political term, discussing the existing literature on either restricting self-determination within internationally acknowledged borders or allowing for new states to be created. The author himself argues for new nation states only as the ultima ratio of self-determination (45-76). While the previous chapters outlined the multidimensional challenges of contemporary African states and their management of minority's requests, chapter five and six offer diverse anthropological and philosophical interpretations of African worldviews and normative concepts. Drawing from descriptions of Akan (Ghana), Dinka (South Sudan), Bantu (Southern Africa) as well as Rwandan concepts of personhood, norms of good governance and the provision of justice, the author gives examples of indigenous norms and institutions to adapt (77-102). The taxing chapters are the ones translating African values into mechanism of conflict resolution, democratic participation, cross-cultural perspectives on human rights and dignity, culturally oriented development as self-enhancement, integrity of the environment as well as gender equality. Chapter seven, firstly, takes on the first two difficult tasks and argues for a common ground among different groups who harbor potential conflict as shared value of sustainable reconciliation and consensus. Drawn from continentally dispersed legal principles, Deng offers to appeal to these values for multilevel conflict resolution. Secondly, conflict resolution must be institutionalized through forms of federalism and the protection of minority rights since most group conflicts arise out of competition for state power. Without arguing for transferring traditional structures to the national level, Deng nevertheless underlines African principles which should inform politics and legal judgment. While universal values of democracy as popular participation in public decisions is not alien to African societies, institutional settings should be informed by local practices and worldviews to acquire cultural legitimacy (103-142). Chapter eight proposes to read human dignity as cross-cultural consensus, which can be explored to localize international human rights, but also to broaden international dimensions of rights. African norms are equally necessary for self-development as they are providing further arguments for environmental protection. At the same time gender equity remains the most sensitive issue, which apparently has not found sufficient hold in traditional value systems (143-183). Both concluding chapters argue for in-depth studies of African indigenous knowledge as a prerequisite for appropriating constitutional forms (185-193) and after a brief summary of the argument show a tentative success of integration in the case of South Sudan (195-211). The author helpfully integrated a wide range of African comparative material in the majority of the chapters.

Deng, himself an educated legal scientist and renowned international diplomat with the UN, rightly points at the importance of identity claims in conflicts. He argues that recent and

enduring violent conflicts in states such as both Sudans, Eritrea, Ethiopia, Somalia, Kenya, DRC or even Nigeria should be interpreted as expressions of identity conflicts, which have been aggravated by maladjusted constitutions. The innovation of the book lies in its method: it outlines the discourse on various local norms to search for openings in existing constitutional practices and legal settings to re-integrate local norms as a mean to gain “cultural legitimacy” (131). Legitimacy is captured on two levels: It is an affirmation of common *substantial* values between conflicting parties, lending support to sustainable cooperation. At the same time legitimacy of future constitutions can be increased because these values themselves inspire *procedures* to reach compromises and need not be “imported”. To give evidence to such substantial values, Deng himself provides a compilation and critique, combining philosophical anthropology, political history and constitutional thought. The argument is also shaped by the author’s diplomatic involvement in (post-) conflict situations. Diplomatic reasoning in post-conflict societies reasonably enough searches for the most likely common denominator to bring together conflicting parties and Deng found these commonalities in local norms and practices that which should be recognized to further sustainable constitutions in such societies. However, this pragmatic view sometimes runs short of translating the values into institutions although the political dimensions of constitutions is recognized already at the beginning of the book. Following the expression of constitutional scholars that constitutions were and remain instrumental power maps (9), how can political actors be convinced to turn to traditional modes of reasoning and perhaps traditional institutions, if they are reducing personal power of current leaders? Observing constitutional negotiations, they rather resemble bargaining than value-driven arguments. Additionally, a major question remains to delineate groups that are recognizable and stable for the period of transition. Not always are groups as obviously divided by history, religion and lineage as in Sudan. Furthermore, how are statute books to be reformed and traditional leaders to be given more material capacities to enhance community development if state agencies resist the call for subsidiarity of economic development? Appeals to cultural values overlap requests for material gains, which give continuity to cultural practices. Although there is much evidence that identity matters, it needs to be combined with other factor for sustainably constitutions in post-conflict societies.

The first decade of the 21st century has seen rising practical and academic interest in African constitutions as some are presently subject to reform. Deng’s volume contributes to research questions concerning the issues group rights and adapting traditional authorities.<sup>2</sup> While others have given gender equality and religious rights more space,<sup>3</sup> Deng offers methodological approaches to specifically enrich local values through internationally legalized norms and vice versa, opening a space of cross-cultural dialogue without opting for either universal nor relativist position. However, ample evidence is given by South Africa, that

- 2 Okon Akiba (ed.), *Constitutionalism and society in Africa*, Aldershot 2004, H. Kwasi Prempeh, *Africa's "constitutionalism revival": False start or new dawn?*, Int’l J. Con. L. Vol. 5, No. 469 (2007).
- 3 J. Oloka-Onyango (ed.), *Constitutionalism in Africa: Creating opportunities, facing challenges*, Kampala 2001.

cultural claims can become contested areas undermining the idea of one nation and one law, even if cultural self-determination is constitutionally guaranteed.<sup>4</sup> New forms of political relations, such as being citizen in a state and subject of traditional areas, make more interdisciplinary research a necessity. Having contributed to this task makes the volume of Deng valuable for further inquiries.

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4 *Jean and John Comaroff*, The struggle between the constitution and “things african”, Interventions Vol. 7, Issue 3, (2005), p. 299.