Towards an Endogenous African Constitutionalism

From Colonial Legacies to Reflexive Creolisation?

Johannes Socher, Satang Nabaneh, Abdou Khadre Diop, Adem Abebe & Sami Abdelhalim Saeed

12.02.2026 doi: 10.59704/8106d54cc27e7611

African constitutionalism stands at a pivotal moment in its evolution. After more than six decades of independence for most African countries, it has become imperative to examine the nature, foundations, legitimacy, and institutional architecture of the constitutional systems governing the countries making up the continent. Drawing on our different fields of research and taking examples from a recently published special issue in the World Comparative Law (WCL) journal, we propose to explore pathways towards a truly endogenous constitutionalism, rooted in Africa's socio-political, cultural, economic, and historical realities. Taking some of the most evident colonial legacies as the starting point, we propose a research agenda that goes beyond calls for decolonising liberal constitutionalism in Africa. For such a project to be successful, the nurturing and expansion of spaces for comparative engagement across linguistic divides and inherited legal systems within Africa and beyond will be crucial.

Colonial legacies in liberal constitutionalism

The notions of the modern African state and its constitutive elements – territorial boundaries, people, and even the ideas of sovereignty and government – were either imposed or largely inherited constitutional ideas and institutional frameworks developed in other parts of the world. In particular, the first constitutions following independence of most African states in the 1950s and 1960s were largely designed at a time when the idea of liberal democracy was ascendant, founded on the principles of limited government, political pluralism, human rights, and separation of powers.

In the former British colonies, the first constitutions at independence were generally adopted under the auspices of colonial authorities, inspired by and significantly replicating British political thought and structures. Even when these countries abandoned these independence constitutions and adopted new ones, they often went for the worst versions of American presidentialism. As Kwasi Prempeh has argued, this "absolute presidentialism", in which practically every state institution is subordinated to the powers of the president, does not have its origins in African culture or traditions but has its direct predecessor in the colonial governor. Other colonial legacies persist in many countries until today. For example, as Satang Nabaneh shows in her contribution to the WCL special issue, colonial legacies continue to shape gender relations and legal frameworks in many anglophone African countries where provisions dating back to British colonial rule continue to be in place that exempt personal and customary laws from protection against discrimination. Furthermore, many restrictive penal codes regarding reproductive rights, such as abortion, remain tethered to the historical structure of the colonial state, reflecting a legacy of state control over individual agency.

In francophone Africa, as well, the conceptual foundations and institutional architecture of the post-independence constitutions largely reflected the French Fifth Republic. This model imposed centralised, often authoritarian administrative structures that aimed to assimilate colonies into the French Republic's cultural and legal systems. The "colonial pacts" signed at the time of independence often ensured that France retained significant control over economic, military, and political institutions, including priority rights to exploit natural resources and the maintenance of French financial systems. This institutional framework has historically limited the economic sovereignty of former colonies, contributing to a "state-empire" dynamic that persists in regional secu-

rity and economic structures. The CFA franc zone in West and Central Africa epitomises this continued dependence, with monetary policy being dictated from France rather than by the affected African nations themselves. Moreover, the perpetuation of French as the sole official language has created linguistic barriers that exclude significant portions of the population from full participation in constitutional and political life, thereby reinforcing elite capture of democratic institutions and limiting the potential for truly inclusive constitutional frameworks. This linguistic exclusion and its constitutional implications have become so acute that the Malian military regime, in its 2023 constitution, took the radical step of de-officialising the French language altogether, making Mali the first francophone African country to do so – a move that, whatever its other motivations, directly addresses the democratic deficit created by linguistic barriers to constitutional participation.

While British and French colonial legacies are the best known, traces from other former colonising powers can also be found. Take, for example, Namibia: Although German colonisation lasted only about three decades and was succeeded by South African administration and occupation, German colonial rule left a lasting imprint on the country's legal structure as an independent state. This becomes particularly evident in the extremely uneven distribution of land along ethnic lines, which has been kept more or less untouched by the Namibian Constitution, thereby effectively insulating the foundational thefts of the colonial era from radical reform.

Pathways to endogenous constitutionalism

Sixty years later, the record of the inherited largely liberal constitutional framework remains mixed. As the global order undergoes profound transformations, it offers African countries new room and agency to rethink the underlying values and institutional underpinnings of their political systems. Recurrent constitutional crises across the continent, coups d'état, ethnic conflicts, and a lack of trust in public institutions and frameworks – in particular in relation to multiparty democracy and elections – also underscore the urgency of refounding the constitutional compact on firmer, more legitimate grounds. In many ways, emerging and converging global realities present a jurisgenerative moment to create new meaning, norms and institutional architecture that are legitimate and effective as well as confidently owned by African societies.

In the WCL special issue, several cross-cutting themes emerge that deserve emphasis. First, it is not sufficient for a constitution to be formally adopted in accordance with the required procedures; it must be perceived as legitimate by the populations it seeks to serve. Second, diversity appears as an essential characteristic that African constitutions must recognise and embrace. Whether ethnic, cultural, linguistic, or religious: Diversity must be recognised as a source of richness rather than a source of conflict in constitutional frameworks. Third, the articulation between tradition and modernity emerges as a permanent challenge. An endogenous African constitutionalism must therefore be capable of integrating traditional heritages while enabling innovation and adaptation to contemporary realities. Lastly, 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 hybridisation, allowing the integration of external contributions into an authentically African synthesis.

Experiments to adapt ideas and to pursue innovative values and ways of designing constitutional and democratic governance are nothing new in African constitutional discourse. Kwasi Wiredu has argued that a political system based on multiparty competition for power is only one form of democracy and instead advocated a democratic system based on consensus. Similarly, Mogobe Ramose has formulated an African perspective on democracy that highlights the importance of popular sovereignty based on *Motho ke motho ka batho* ("a person is a person through other people" / "I am because you are"), an ethical maxim that can be found in many of the vernaculars of the Bantu-speaking peoples in Africa. This critique is also echoed in the WCL special issue in a contribution by Seema Shah

and Alexander Hudson, who observe that as post-colonial states push back against the hegemony of the liberal democratic model, a vision of a reimagined African democracy is simultaneously emerging at different institutional levels, revealing a conceptualisation of democracy that goes beyond the liberal model.

Another prominent critique has been that liberal conceptions of rights unduly emphasise individual autonomy and will over the community. For example, Makau Mutua has denounced the focus on the individual as a Western obsession unfit for the African context. Instead, it has been suggested that an African understanding of human rights must take into account both the needs of individuals and the demands of shared living, where individual rights are inherently linked to the collective. One core aspect of this understanding is that individual human rights must correspond to duties towards the family, community and the state. For instance, there is a growing push to move away from Western "title deed" paradigms toward communal land tenure systems based on "use rights." This reconceptualisation views land not as an individual asset in capitalist transactions, but as a social order that creates reciprocal rights and obligations that bind a community together.

Towards reflexive creolisation?

At a time when calls for decolonisation are ubiquitous – not only in constitutional scholarship – we need a clear picture of what should be decolonised in the first place. In African constitutionalism, a new interest in colonial legacies on so far under-researched areas such as gender discrimination offers important new insights. When it comes to the different colonial legacies of other former colonising powers beyond Britain and France, it will be important to question so far unchallenged assumptions. For example, there is a widely shared belief that German colonisation has left no traces in the constitutional systems of its former African colonies (see, e.g., here and here).

On the other hand, there are, of course, many challenges to African constitutionalism that cannot – at least not entirely – be blamed on colonial pasts. Take, for example, the current revival of military coups in many francophone West African countries, which many of the military regimes themselves conveniently describe as "decolonial". There is no doubt that continuing French influence exists in the region. But to portray the military takeovers as acts of anticolonial resistance would be too simplistic. Rather, the resurgence of military coups reflects deeper domestic challenges: widespread disillusionment with electoral democracy, persistent insecurity fuelled by jihadist insurgencies, endemic corruption, and the failure of civilian governments to deliver basic services and economic opportunities. Popular support for military takeovers, at least initially, therefore reveals a profound crisis of legitimacy affecting constitutional institutions that were often perceived as serving elite interests rather than the broader population.

The path for African countries to an endogenous constitutionalism should, in any case, not be limited to decolonising in the sense of rejecting constitutional ideas just because they are "foreign" or "Western". In particular, this should not lead to a taboo on exploring ways of learning from constitutional experiences outside of Africa. For example, the constitutionalisation of political parties in African countries is a relatively new phenomenon and some aspects, such as experiences with constitutionalising intra-party democracy in Europe, can be visited as sights of comparative learning, irrespective of North-South entanglements.

Another example is the concept of consociationalism, as proposed by Arend Lijphart for the Belgian context. The concept itself was originally inspired by Arthur Lewis' idea of "inclusive coalitions" developed in the context of Africa, versions of which continue to be proposed as a model in African constitutional debates (see e.g. here and here). This process of interaction between ideas and practices, melding African and comparative experiences, can constitute a form of creolisation – generating new and distinct frameworks that go beyond mimicry and raw mixing.

For such a reflexive project to be successful, the nurturing and expansion of spaces for comparative engagement across linguistic divides and inherited

legal systems – both within Africa and beyond – will be crucial. Dedicated spaces such as the RefLex Centre for Advanced Studies in Berlin where previously unquestioned paradigms of a liberal "Western" or "Northern" understanding of constitutionalism can be openly challenged and debated are key in this effort, and it is encouraging to note that there is a whole group of scholars among the first cohort of fellows thinking about colonial legacies and their implications for African constitutionalism. On the other hand, while scholars from the South come to the North, the opposite direction of travel continues to be the exception. For example, engagement by non-African scholars in academic forums such as the African Network of Constitutional Lawyers remains rare. Collaborations such as organising and conducting a masterclass on colonial legacies in public law – held not only in the academic centres of the North but also in regional hubs such as Nigeria – are therefore important steps towards more truly multidirectional exchange of knowledge and for African constitutionalism to be better integrated into the global discourse of comparative constitutional law.

The authors are members of the Executive Committee of the African Network of Constitutional Lawyers.

ABOUT THE AUTHORS

Johannes Socher
Johannes Socher is the Academic Coordinator at the Centre for Reflexive Globalisation and the Law (RefLex) at Humboldt Universität zu Berlin and a Fellow at the Institute for International and Comparative Law in Africa, Faculty of Law, University of Pretoria.

Satang Nabaneh
Satang Nabaneh is is a Gambian legal scholar and human rights practitioner. She is the Founder and Executive Director of Law Hub Gambia.

Abdou Khadre Diop
Abdou Khadre Diop is Associate Professor at the Université Numerique Cheikh Hamidou Kane (Senegal) and the President of the Senegalese Association of Constitutional Law. He is Vice President (West Africa) in the African Network of Constitutional Lawyers.

Adem Abebe
Adem Abebe is Vice President (East Africa) in the African Network of Constitutional Lawyers.

Sami Abdelhalim Saeed
Sami Abdelhalim Saeed ist Vize-Präsident (Nordafrika) des African Network of Constitutional LawyersSami Abdelhalim Saeed is Vice President (North Africa) in the African Network of Constitutional Lawyers.

SUGGESTED CITATION

Socher, Johannes; Nabaneh, Satang; Diop, Abdou Khadre; Abebe, Adem; Saeed, Sami Abdelhalim: Towards an Endogenous African Constitutionalism: From Colonial Legacies to Reflexive Creolisation?, Verfassungsblog, 12.02.2026, doi: 10.59704/8106d54cc27e7611.

Licensed under CC BY-SA 4.0.

Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20260213-153158-0.