

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



Introduction

This study assumes that African countries have yet to achieve clarity on what political framework will best manage their rich diversities of people, achieve good governance, and draw upon indigenous African cultures, values, and institutions as sources of strength and legitimacy. As evidenced by contemporary problems in Africa—civil wars, increasing disparities in wealth among populations, and economic stagnation—the legacy of constitutions and political frameworks left behind by colonial powers has proven largely ineffective. Postindependence governance frameworks have contributed to a crisis of identity throughout much of the African continent. Existing legal frameworks that seem to stress unity through the suppression of diversity have left many Africans feeling disempowered and unable to see themselves reflected in the governance of the nation within which they live. This study argues that if an African nation’s constitution and its attendant governing framework are to embody the *soul* of that nation, as they are expected to do, they must reflect the essential cultural values and norms of all of the nation’s peoples and build on *their* worldview as the starting point for constitutionalism—with constitutionalism defined as a mechanism for controlling, regulating, and managing the exercise of power in a process by which people, individuals and groups, pursue material and other values through institutions using resources with outcomes and effects. Constitutionalism in Africa must be seen not as a process that begins and ends with the mere elaboration of a constitutional document, but rather as a living process that is constantly evolving with the participation of its people to promote their ownership of the governing frameworks and make them reflect the political, economic, social, and cultural dynamics of the continent and its populations.

The crisis of identity that this study seeks to address is not a product of mere contemporary events, but rather one with historical roots. It is common knowledge that the African state was carved out of diverse racial, ethnic,

and cultural entities, which gave the state a pluralistic configuration. The African state was and is still to this day largely a composite of distinct ethnic units—many of which would likely have described themselves at the time of colonization as nations in their own right.¹ The tendency of colonial powers to treat certain groups and regions preferentially in the development of political and economic policies led to considerable disparities among ethnic groups in the shaping and sharing of power, national wealth, social services, and development opportunities and effectively sowed the seeds for future conflict among indigenous groups. Instead of seeking remedies in addressing these disparities through an equitable system of distribution of power and representation, many postindependence African governments adopted wholesale the constitutional models and governance structures prescribed by their colonizers. In doing so, they emphasized monolithic concepts of unity by suppressing territorially definable ethnic minorities, who sought not only to be recognized for their distinctive identities but also to participate in the constitutional and governing frameworks of the states within which they lived.

In a number of African countries, this tension between the colonially anointed and governing elite and the groups subject to that elite culminated in armed conflict and a demand for various forms of self-determination. Sudan suffered a seventeen-year secessionist war that began only four months before the declaration of independence on January 1, 1956. When the former Belgian Congo (now the Democratic Republic of the Congo) declared independence in 1960, the province of Katanga tried to break away, igniting a civil war in which the interests of the major powers became involved and that resulted in the death of UN Secretary-General Dag Hammarskjöld. In Nigeria, Biafra waged a secessionist war during the late 1960s that was suppressed only after considerable loss of life and severe destruction. Eritrea, once part of Ethiopia, fought a war of independence that lasted for thirty years until 1991. Civil wars also devastated Angola and Mozambique, and while these wars were more ideological than ethnic, they had undercurrents of identity conflicts. Chad too suffered a violent conflict in which ethnonationalism was a factor.

Some of these conflicts, or at least their root causes, persist today, even where a semblance of peace has been achieved. The Democratic Republic of the Congo is back in arms. Côte d'Ivoire, previously seen as a model of stability, has exploded. Senegal is confronting a regional rebellion in the Casamance region. The situation in Nigeria remains precarious. In Sudan although the North-South conflict, which had resumed in 1983 after a ten-year precarious peace, appears to have ended with the January 9, 2005, signing of the Comprehensive Peace Agreement (CPA), the war in Darfur in western Sudan and the less visible conflict in the Beja region in the east continue to pose a major challenge to peace, unity, and stability in the country.

As Crawford Young contends, democratic transitions in contemporary Africa indicate that “cultural diversity constitutes a significant challenge to national [unity] and state effectiveness in a politically liberalized environment, but not an insuperable obstacle. Careful constitutional design can facilitate (though not guarantee) accommodation of ethnic, religious and racial differences. In such institutional practice, accumulated experience demonstrates that cultural pluralism needs to be acknowledged, through arrangements which ensure inclusionary politics, and create structural incentives for inter-communal cooperation.”²

Among the critical questions posed by ethnic conflicts and the crises of identity behind them is whether a country that is pluricultural and multi-ethnic should be governed as such; whether the role of religion (in particular one religion) should dominate the affairs of an inherently pluralistic state; and whether majority rule is sufficient to satisfy contemporary standards of democracy. How different governments respond to these questions will reflect not only differing perspectives on race, culture, and religion but also differing conceptions of the extent to which race, culture, and religion should determine the distribution of power and national wealth, the provision of public services, the enjoyment of the status and rights of citizenship, and the pattern of development.

Accordingly, this study addresses two sets of interrelated issues: the management of diversities through various *forms and degrees of self-determination* (including those that ensure equal participation in the governance of one’s country, as well as self-administration, autonomy, and federalism) and *cultural contextualization* through the application of relevant indigenous norms within a framework that recognizes both peculiarities and commonalities. These two sets of issues will be examined with particular emphasis on a number of policy areas: conflict prevention, management, and resolution; democratic principles of consensual decision making; the pursuit of human dignity through culturally relevant principles of “human and people’s rights”; socioeconomic development as a process of self-enhancement from within that balances growth with equitable distribution; gender equality; and the integrity of the environment.

The study approaches constitutionalism as a concept that goes beyond the constitution to embrace political, economic, and social and cultural dynamics in a comprehensive process—more fully discussed in chapters 1 and 2. Self-determination should be understood as a means by which people sharing distinct characteristics decide on the framework and the system of governance under which they wish to live and participate in the realization of the same—whether within the existing state framework or in a newly independent entity to which they choose to subject themselves, as explored in chapter 4. Accordingly, the study views self-determination as a tool of conflict prevention, management, and resolution within or outside the unity framework.

Although preserving national unity is the preferred option, this study maintains that it is indeed in the interest of that unity for countries to pursue credibly the principle of self-determination, including independence, not to promote secession, but to encourage the creation of conditions that would make unity attractive to potential secessionists. While the prospects of national integration in the long run should be cautiously and sensitively promoted, in the short run governance should be pursued through a constitutional system based on coexistence within a broader national framework of unity; diversity and the integrity of every group, however small, should be respected and equitably accommodated. With this goal in mind, whether the resulting constitutional system is labeled "autonomy," "federation," or "confederation" is less important than the effective distribution of powers it stipulates and the manner in which the system attends to the needs and rights of all of its peoples, regardless of their racial, ethnic, religious, or cultural differences.

It should be acknowledged that at present, in virtually all African countries confronted with national identity crises, demands for self-determination by ethnoregional groups run against the official objective of preserving national unity. They are accordingly suppressed, often with the disregard and even connivance of the international community. Indeed, in its stereotypical form, the desire to preserve national unity is fortified by the principle of territorial integrity and the protection of colonial borders as reflected in the charters and instruments of the Organization of African Unity, reaffirmed by its successor, the African Union, and endorsed by the United Nations.

To place the challenge of conflicting national visions in context, this book aims to examine the situation in a select sample of regionally representative countries: those that have experienced colonial policies; those struggling to accommodate religious, racial, and ethnic diversity; and those dealing with the challenges of federalism and threats of secession.

A personal note about the process that has led me to this study is called for. No work is entirely without a genesis and a historical evolution in which experiences interplay to chart the way for the next step. My work began in the late 1950s with a focused legal anthropological study of the Dinka and led to a broader study of their culture, folklore, oral history, and biographies. I then moved on to the Sudanese crisis of identity that has been a key factor in the North-South civil war and the conflicts proliferating in several regions of Northern Sudan. An aspect of the work on this national, or second, level has been the search for peace with justice within a framework of equitable unity in which my occupational responsibilities in government and diplomacy predisposed and facilitated my involvement. The third level of my activities has focused on Africa as a whole; in collaboration with other scholars, I have explored ways of preventing, managing, and resolving conflicts, and promoting participatory democracy, human rights, and culturally sensitive

development. The fourth level of my work has had a global purview. For twelve years, from 1992 to 2004, with a global mandate as the UN secretary-general's representative on internally displaced persons, my preoccupation was on the plight of 25 to 30 million people, in more than fifty countries who were uprooted by armed conflicts, communal violence, egregious human rights violations, and other human-made or natural disasters within their own nations. These peoples had not crossed international borders and were therefore not refugees in the conventional sense and not covered by the 1951 Convention on Refugees and its 1967 protocol. Nor were they protected and assisted by the UN Office of the High Commissioner for Refugees. My findings from some thirty-three in-depth missions around the world revealed that the conditions of the victims of these internal wars had much in common, nearly always characterized by an acute crisis of national identity that privileges some to enjoy the full rights of citizenship and marginalizes others on the basis of race, ethnicity, culture, and religion to the extent that citizenship becomes only of paper value.

Despite all that is shared by these conflicts and crises of nationhood around the world, there are significant differences, especially within a continent as diverse as Africa. Although Sudan, of course, stands out as an acutely divided country, the conflicts that have raged elsewhere, such as in Angola, Burundi, Côte d'Ivoire, the Democratic Republic of the Congo, Ethiopia and Eritrea, Liberia, Rwanda, and Sierra Leone, reflect cleavages of varying degrees. And although Nigeria has been relatively successful in managing its diversities through federalism, the crisis of national identity continues under the surface and from time to time flares up. Even Somalia, reputedly homogeneous, has experienced devastating conflict based on clan divisions.

It goes without saying that my experiences at these four levels have significantly contributed to my perspective on the issues involved. There is, of course, an inherent danger of overgeneralization from what one has experienced and witnessed. Kwame Anthony Appiah has warned against generalization: "Now I am confident in rejecting any homogenizing portrait of African intellectual life, because the ethnographies and the travel literature and the novels of parts of Africa other than my home are all replete with examples of ways of life and of thought that strike me as thoroughly pre-theoretically different from life in Asante, where I grew up." Appiah went on to elaborate with specific examples of what is not in common and provides a vivid picture of the diversity experienced by a number of African societies:

Compare Evans-Pritchard's famous Zande oracles, with their simple questions and their straightforward answers, with the fabulous richness of Yoruba oracles, whose interpretation requires great skill in the hermeneutics of the complex corpus of verses of Ifa; or our own Asante monarchy, a confederation in which the king is *primus inter pares*, his elders and paramount chiefs guiding him in council, with the more absolute power of Mutesa the First in nineteenth-century

Buganda; or the enclosed horizons of a traditional Hausa wife, forever barred from contact with men other than her husband, with the open spaces of the women traders of southern Nigeria; or the art of Benin—its massive bronzes—with the tiny elegant goldweight figures of the Akan. Face the warrior horsemen of the Fulani jihads with Shaka's Zulu impis; taste the bland foods of Botswana after the spices of Fanti cooking; try understanding Kikuyu or Yoruba or Fulfulde with a Twi dictionary. Surely differences in religious ontology and ritual, in the organization of politics and the family, in relations between the sexes and in art, in styles of warfare and cuisine, in language—surely all these are fundamental kinds of difference?³

Putting aside his preferential tone, one can only agree with Appiah about the differences among the Africans. Abdullahi An-Na'im demonstrates another point of view: that despite the differences, there are cultural similarities among the Africans. As he has argued, we need to recognize not only the multifaceted diversity of Africa but also the similarity of the experiences of its peoples with colonialism and its aftermath.

One needs to be careful about generalizations in view of the diversity of cultural, ethnic, religious, and other features of African societies . . . [but] the similarities of recent African experiences are too obvious and relevant to ignore in efforts to pool resources and develop responses to the drastic consequences of past colonialism and current differentials in global power relations. For the purposes of the legal protection of human rights in particular, those consequences include the establishment of European model nation-states premised on specific constitutional and legal assumptions, and ways in which that model was misconceived or misapplied in African settings. They also encompass patterns of political development, education systems, and social trends as well as economic, technological, and other forms of postcolonial dependencies of African countries on developed industrialized countries.⁴

In the area with which I am most familiar—customary law—scholars who pioneered the study and teaching of African law note in their writings that there is as much that divides as there is that unites indigenous African legal systems, including the value systems that the law is intended to promote and sanction. It is this premise that gives me the courage to tackle African problems of governance from a continental perspective. However, it must be conceded at the outset that one's own proximity to a particular African subculture, and deep-rooted attachment to the same, will inevitably color one's outlook. I do not conceal the fact that much of my scholarly and professional life has been devoted to the problems of my own country, Sudan. If my views or perspectives appear too colored by this experience, I hope tolerance will prevail to forgive the shortcoming without prejudice to the whole.