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THE DIALECTIC OF VALUE AND ITS BALANCE IN AFRICAN COUNTRIES' CONSTITUTIONS

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Abstract

African states face numerous challenges in establishing a modern state framework. This stems from the significant colonial legacy, which resulted in the infiltration of Western religion, culture, and values into African civilization. One of the significant results of this infiltration is the disparity in values between Western and African civilizations. While drafting many African constitutions, legislators found that the conflicts arising from this infiltration constituted a complex dichotomy for reconciling local and Western values. This study aims to explore this issue. On the other hand, it attempts to understand the dialectical principles emerging from this contradiction. Furthermore, the study evaluates the extent to which this dialectic is reflected in African constitutions. I employ qualitative methods in this work, using induction and observation to comprehend and characterize the phenomenon being studied thoroughly and to draw broad conclusions that support the study's objectives. The findings showed that most Western values inserted into African constitutions have not struck a chord with African beliefs, and that the imposition of Western values has long plagued African lawmakers.

Keywords: *Africa, Constitution, State, Society, Values.*

AFRİKA ÜLKELERİNİN ANAYASALARINDA DEĞER DİYALEKTİĞİ VE DENGESİ

Öz

Afrika devletleri modern devlet için bir çerçeve oluşturmada çok sayıda engelle karşı karşıyadır. Bunun nedeni, Batı dininin, kültürünün ve değerlerinin Afrika medeniyetine sızmasına yol açan büyük sömürge mirasıdır. Bu sızmanın etkilerinden biri de iki medeniyet arasındaki değerlerdeki farklılıktır. Afrika anayasalarını taslak haline getirme sürecinde, Afrika yasama organları bu sızmadan kaynaklanan çatışmanın yerel ve Batı değerlerini uzlaştırmayı zorlaştırdığını tanık

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olmuşlardır. Bu çalışma, bu değerler çatışmasından kaynaklanan diyalektik ilkeleri ve bu diyalektiğin Afrika anayasalarına ne ölçüde yansıdığını anlamak için bu konuyu incelemeyi amaçlamaktadır. Bu çalışmada nitel incelenen olguyu tam olarak kavramak ve karakterize etmek ve çalışmanın hedeflerini destekleyen geniş sonuçlar çıkarmak için nitel yöntemi kullanılmıştır. Bulgular, Afrika anayasalarında eklenen eklektik duran Batı değerlerinin çoğunun Afrika değerleriyle örtüşmediğini ve Batı değerleri yarattığı çatışmanın uzun zamandır Afrikalı yasa koyucuları rahatsız ettiğini göstermektedir.

Anahtar Kelimeler: *Afrika, Anayasa, Devlet, Toplum, Değerler.*

Introduction

Evaluating the viability of the constitution and its fundamental role in building African states is becoming increasingly important in the modern era. This issue takes on greater significance when discussing methods for forming identities and establishing constitutional principles in a complex context. Particularly given the historical changes that directly influenced the configuration of African nations. The most notable shift occurred during the Western colonial era, when colonists utilized Christian evangelization to gain religious influence in African societies. Orientalism also served as an ideological tool to Westernize African people, organizations, and government institutions. Today, one of the most significant challenges facing African countries is the influential role of religion and morality in constitutional making. Immediately after decolonization, African countries found themselves confronted with a duality of local and Western values. This challenge created a dilemma reflected in the formulation of most African states. The repercussions of this interaction continue to influence African legislation to this day. This paper will discuss the dialectic of values and their balance in constitutional drafting in African countries. The discussion will not be limited to a specific country, given the similarities in these countries' origins and developments, which have led to a shared destiny in this field.

1. THE DICHOTOMY OF LAW AND VALUES

Due to the close relationships and overlaps between the concepts of law, morals, values, and religion, theoretical debates arise. The foundation of this discussion stems from the interactions among religion, law, and values, along with the issues that both ancient and contemporary philosophers addressed in their extensive discussions about restoring values. In modern constitutional democracies, the questions raised by the interaction between law and religion are perhaps the most significant introduction to the central concerns of contemporary political and legal theory (Berger, 2011, p. 43). In this study, we cannot cover this topic extensively. Instead, we will focus on studying the

related aspects of our topic. Notably, religious systems were present in nearly every ancient culture. The Ottoman Empire, the Islamic caliphate, Babylon, Persia, Greece, Rome, India, China, Papua New Guinea, and African kingdoms and communities all had their unique religious systems (Olatunbosun & Aladekomo, 2020, p. 2). The final laws that people had to follow were established by kings and spiritual leaders, with the assistance of priests, and were regarded as divine decrees. Hammurabi's legislation, for example, had religious overtones and governed many activities in the Babylonian Empire (Oke, 2002, p. 1).

The rules of the Greek towns, known as Nomos, and "the laws of heaven that are not written and firm" (Logos) have developed a dialectical relationship among the Greek people (Çelik, 2021, p. 147; Akin, 2005, p. 25). The Roman Empire, which ruled over Europe, the Middle East, and North Africa following the collapse of Greece, demonstrated a strong connection between religion and law. In traditional African communities, religion and law were closely intertwined. The hundreds of gods, souls, and ancestors that were worshipped at the time were inextricably linked to the state, souls, and ancestors that were worshipped at the time were inextricably linked to the state (Peoples et al. 2016, p. 272). In other words, the secular leadership in ancient African civilizations was closely associated with God, as the monarchs of African pagan nations exercised both spiritual and material authority (Kehinde, 2008, p. 423). In ancient societies, it was believed that the laws governing secular nations were imposed by the gods whom the religious people venerated. Many contemporary nations' constitutional laws have been influenced by religious beliefs (Marty, 2025). The Queen of England has strong constitutional ties to the historic churches in England and Scotland. However, England has been a Christian nation since the sixteenth and seventeenth centuries (Torrance, 2025, p. 5).

Given that religion is an underlying human inclination that takes many forms, it is helpful to examine the organizational framework that religion offers to support and reinforce moral values and conduct in this specific environment (Naranje, 2015, p. 16). According to academics like Descartes, Locke, and Paley, morality is derived from religion and precedes it (Hussain, 2019, p. 72). The will of God decides good and evil, and God's laws are moral laws (Naranje, 2015, p. 15). Throughout the Orientalist journey, religious ideas have been portrayed as exclusionary and hateful, and their inferiority has been reinforced through literature, art, and media (Boualam & Ennam, 2014, p. 22). A detailed examination of contemporary states shows that, despite efforts by modernization movements to establish a clear division between religion and the state, there is still overlap and a discernible impact of religion on the state (Clark, 2023, p. 5). Several states, especially those with formal theocracies, still have religious influences on their laws. According to

Olatunbosun and Aladekomo (2020), 53 nations have recognized religions. They are based on legal systems like Sharia, civil law, and common law, including Islam, Christianity, Buddhism, and Judaism. Sharia law, which is used in many Islamic republics, is the clearest example of how religion influences legislation.

The concept of value and the notion of law belong to one of the primary schools of ethical thought. The theory of value differentiates between circumstances considered inherently good and those deemed inherently wicked. Whereas the theory of law distinguishes between correct and incorrect actions. Ancient Greek philosophers like Plato and Aristotle explored the nature of higher human values, which is where the concept of value originated (Özkan, 2020, p. 162). By merging Christian doctrine with Aristotelian ethics, medieval philosophers such as Thomas Aquinas developed theological perspectives on the concept of value (Ndzi, 2025, p. 41). Secular ethical frameworks such as Kantian deontology (Immanuel Kant) and utilitarianism (Jeremy Bentham and John Stuart Mill) emerged during the Enlightenment (O'Flaherty, 2019, p. 43). Friedrich Nietzsche and John Dewey were among the nineteenth-century intellectuals who questioned conventional moral theories and highlighted the influence of authority and experience on values (Garrison, 2015, p. 17). While value theory also connects to other normative domains like aesthetics and the philosophy of law, it significantly impacts political philosophy, which addresses questions of fairness, rights, and the appropriate exercise of power (Paulos & Çelik, 2020, p. 92). Liberalism, socialism, and conservatism are just a few political philosophies built on differing views of what is valuable and how to reconcile conflicting values like equality, freedom, and tradition.

Anthropology, sociology, psychology, and other empirical fields that examine individuals' and societies' true moral convictions and values are closely linked to value theory. In this context, "value" encompasses all areas of philosophy, including aesthetics, social and political philosophy, the philosophy of religion, and moral philosophy. The term "value theory" in its more limited sense refers to a relatively small subfield of normative ethical theory that focuses exclusively on categorizing objects as either subjectively or objectively valuable (Schroeder, 2008). A person's "values" encompass all of their beliefs regarding or opposing various matters. According to Edel (1953), a person's values include standards of taste and judgment, as well as preferences and avoidances, desires and aversions, tendencies toward pleasure and pain, goals and ideals, interests and disinterests, and what they perceive to be right and wrong, good and evil. Conversely, the philosophy of law examines the fundamental principles of legal systems and the relationship between morality and the law. It employs value theory to assess the validity and rationale of legal requirements. The interplay between religion, morals,

and the law gives rise to legal positivism in the realm of public law, particularly constitutional law. Legal positivism's negative influence on the concept of constitutionalism risks distorting values. In this respect, Powers (1951) emphasizes that not everything that is formally performed or commanded qualifies as a law. Law cannot be established simply by legislative authority declaring it to be a necessary regulation of the state.

2. VALUE AND OBLIGATION

The unavoidable conflict between the concepts of obligation and value underlies the assumptions of the study exploring the connection between values and the law. This issue relates to assessments of absolute and relative values, which often arise in discussions about ethics and aesthetics. Any assessment of relative value is merely a factual statement. Thorson (1988) believes that a person's own values define their worth; good and evil are meaningless outside of one's own experience. According to Satella (2017), no summary of facts may suggest an absolute value judgment. The distinction that absolute value, also known as simple value, is a type of unconditional value arises from the contrast between absolute and relative values. If specific factors constrain the worth of something, it possesses relative value (Zimmerman, 2025). Until the eighteenth century, when value and responsibility theories diverged from ethical theory—particularly with Lotze and Ritschl—they remained included under the umbrella of ethical theory. The former focused on goodness, examining whether value is relative or absolute, subjective or objective, and closely tied to emotion and desire. The duty view, on the other hand, replaces right and wrong with good and evil (Kansowa, 2019). It is challenging, if not impossible, to distinguish when a value ceases to qualify as a responsibility, despite some philosophers maintaining an unbreakable link between the two theories on the grounds that values are simply responsible behavior and that what is obligatory is a command, or a mandatory rule, thus directed to the will (Laird, 1913, p. 145).

In contrast to the current understanding of morality and law as two overlapping sets of rights and regulations, the Kantian approach views morality and law as distinct and non-intersecting. Law does not define morality, and morality does not require inclusion in the law (Fletcher, 1987). Kant views the law as a source of motivation since it offers an external incentive, such as a specific punishment (Potter, 1994, p. 92). However, unlike the law, morality requires the incentive to be internal to the agent rather than external (Potter, 1994, p. 102). Moral law is characterized by the fact that one acts solely because it is required of them and that the concept of obligation, in whatever form, serves as a powerful motivator for decision-making. Therefore, internal legislation indirectly renders all other moral duties,

regardless of whether they are moral, even though there are numerous direct moral requirements.

3. VALUES BETWEEN PECULIARITY AND UNIVERSALITY

Despite their differences, values are all tightly related. Thus, social, moral, religious, political, artistic, and even economic values can all be discussed meaningfully. Certain statements are necessary to identify value differences at a particular level of comprehension. The historical unity of the concept of value highlights that this unity is not solely based on the possibility that humans share certain characteristics in consciousness or that we are a single species trying to survive (White, 2013, p. 88). It also considers that people have psychological needs and drives, as well as the trend toward unifying values in cultures. Furthermore, based on these facts, humanity's historical trajectory has increasingly taken on a united form, reflected in the currently desired unity in the concept of value. This presents humanity with what is essentially a single world order, where decisions at every stage of life progressively influence one another (Edel, 1953, p. 196). The responsibility of defining standards for appropriate resolution has been placed on humanity, posing common challenges. Though religious diversity is the central example of value pluralism in contemporary political history. The movement's concerns have spread well beyond its religious roots. Arguably, the various other expressions of cultural diversity flourishing in nations like Canada, the US, the UK, and France have overshadowed the religious foundations of value pluralism (Berger, 2011, p. 43). The assertion of universality merely states that if an action or person is, for whatever reason, thought deserving of praise, then the same praise should be extended to a similar action, wherever and whenever it occurs, and to a similar person, regardless of the time, place, and their effects (Laird, 1913, p. 150).

Africa has always had a strong sense of belonging to God and the conviction that this planet is God's, since religion is the cornerstone of every culture and country (Awoniyi, 2015, p. 1539). African culture consists of a diverse range of beliefs and practices (Idang, 2015, p. 104), which possess unique qualities that have been the focal point of all activities within African communities. For instance, there is a conviction that the human soul exists and endures beyond the death of the body, along with the belief in spirits of both good and evil; it is through these spirits that one might attain the Supreme Being (Idang, 2015, p. 109). In African culture, religion is primarily associated with a moral sense of truth and justice, implying the existence of both good and evil. Robert and Gregory (2024) assert that religious concepts appear to pervade every facet of African civilization. Before the rise of monotheistic religions, soothsayers and magicians were believed to act as a bridge between God and people, interpreting what God desired for them (Men, 2021, p. 29).

According to their interpretations, soothsayers, sorcerers, and fortune tellers all play a role in controlling social behavior, and people are deterred from committing crimes by their fear of being discovered.

4. CONSTITUTION AND VALUES: INTERSECTING STANDARDS

Constitutionalism, which is similar to the closely related concepts of state, government, democracy, authority, and law, deals with the distribution of power within any social unit. However, the concept frequently addresses significant political, philosophical, and ethical issues regarding how political power functions and coexists (Godden & Morison, 2020). The social interaction raises concerns regarding the maintenance of order and the resolution of disputes related to the enforcement of regulations. The question of whether people with different opinions should be shielded from the dominance of powerful factions, as well as how living arrangements represent the goals of both individuals and groups, are also brought up. A fundamental characteristic of traditional African culture was that the family was at the head of the political structure, with a chief in each family and village (Palagashvili, 2018, p. 278). The clan head was the highest authority among them (Claude Muller, 1975, p. 4). Before the advent of Western colonialism and the subsequent dismantling of traditional African political structures, this type of political system was observed in southern Nigeria. African communities maintained their own religious organizations, chiefs' councils, and counselors. Leadership was either inherited or attained through conquest, and it was considered treason against God to be disloyal to the leader. For instance, in Akwa Ibom State, Nigeria, checks and balances were upheld through traditional symbols, societal norms, and various classes of leaders who fulfilled distinct roles in different areas of life, despite the fact that the traditional political establishment was predominantly totalitarian (Peters & Bassey, 2019, p. 118).

Thus, it is evident that religious, social, and moral values are closely tied to political ideals. Respect for political leaders and institutions stems from the people's political beliefs. Democracy is a clear example, and regardless of its interpretation, it cannot be claimed that democracy is not native to Africa. Numerous democratic practices throughout history have intersected with traditional African institutions. African civilizations have long embraced customs that, in both theory and practice, align with modern conceptions of democratic governance. Nnaemeka (2024) argues that these customs, which integrate multicultural extended family traditions such as those of the Yoruba and Nupe with Igbo village democracy, can be woven into political behavior to restore values of integrity, respect, and other virtues that promote peaceful coexistence and instill discipline. Unlike the current widespread adoption of the costly Western system, which is not entirely suitable for Africa's needs

and unique circumstances, these practices can serve as a foundation for sustainable progress in democratic governance. Most African nations have not effectively leveraged their rich cultural heritage. The findings of scientific and technological research have not been widely implemented, and the general disregard for knowledge—especially indigenous knowledge—in the governance of states and societies seems to have undermined African progress and development. This perspective required the creation of new, responsible interpretations that prioritize regional values. It is essential to distinguish between objective and subjective viewpoints in this context. When an action demonstrates the highest value that the actor can achieve, it is objectively regarded as ethically correct. However, an action must exemplify behavior to be considered moral; for this reason, the actor's intention, responsibility, and subjective viewpoint hold greater significance. Undoubtedly, an actor may make erroneous judgments of worth due to a lack of understanding of the facts (Laird, 1913, p. 150).

5. THE CHALLENGE OF BALANCE BETWEEN VALUES IN AFRICAN CONSTITUTIONS

Value is a concept that describes something's intrinsic worth, utility, or what is deemed desirable, deserving of praise, or true as a standard, principle, or belief (Smith, 2004). The African ideals serve as benchmarks for gauging Africans' progress. In this perspective, praise or condemnation, respect or honor, success or failure in a society are all determined by values as standards (Udofia, 2021, p. 116). Values and assessment procedures are explored in many facets of human existence. Political theory's notions of public welfare encompass a wide range of evaluations, including significant choices regarding the state's organization as issues of public concern (Kaymaz, 2022, p. 179). In the legislative process, values have become increasingly important in legal philosophy. While drafting, interpreting, or enforcing laws, the legislator is not strictly following a formula but rather determining the ideal social policy within more or less restrictive parameters. Regrettably, the dominance of Western materialism over the native human value system is causing crises to converge in modern communities (Çelik, 2014, p. 61). According to Iroegbu (1994), the traditional African value system prioritizes man, society, nature, and God over material possessions like tools, equipment, and goods. The unbreakable bond between colonialism and Orientalism is evident in the African context. The two ideas have intricate interactions and take various forms. Malečková (2021) sheds light on the different accounts of the missions carried out by Orientalists following Napoleon, such as those by Lamartine, Gautier, and others. For some anthropologists and social science writers, the connection between colonialism and Orientalism is also clear and tangible (Çolak, 2021, p. 120). Orientalist expeditions to the East were

motivated by more than just a desire to engage with diverse cultures, amusement, or adventure; they specifically aimed to spy on the East to gain a deeper understanding of it and assist in its subjugation.

Therefore, Todorov's 1982 essay, "Travel Narratives and Colonialism", regarded these initiatives as a clear manifestation of colonial ideology (Hamet, 2013, p. 161). In particular, Orientalism was a process through which European and later American cultures consolidated their identity and grew stronger in the face of the oppressed and devalued Eastern Other (Hamet, 2013, p. 159). The social sciences later played a significant role in reinforcing Western dominance over the East by promoting lofty ideals. Although Western hegemony was illegal, it established a political order in Africa solely through force, ultimately leading to its devastation, disorder, and unrest (Anjum, 2014, p. 198).

The emotional demands of religious individuals are deeply ingrained in African people when religious sentiments are considered (Udofia, 2021, p. 116). Abbink (2014) argues that in Africa, most social, political, and economic institutions were founded on a religious idea. Dubé (1971) distinguished three types of African religious practice: "contact religion", which combines two or three different religious traditions; "religion of the moment", which is a religion practiced during emergencies; and, most importantly, "transmitted religion". Religion in traditional African civilization did not distinguish between moral and religious law. Idowu (1998) uses the Yoruba people of Nigeria as an example, claiming that morality is unquestionably a byproduct of religion. They don't attempt to distinguish between the two, as doing so would have devastating results.

The decolonization effort failed to achieve its objectives of preparing Africans to live independently. A contributing factor to the decolonization project's failure was the inability to establish institutions and laws that reflected African ideals. Consequently, African constitutions were typically not adapted to the unique conditions of specific nations. Instead, most constitutions were written in an ideologically distinct environment where Marxism, socialism, one-partyism, and statism were all prevalent (Dwyer & Zeilig, 2018). Therefore, it is essentially a legacy of the colonial powers, hurriedly written in government offices for national leaders with little to no participation from local residents.

In Africa generally, authentic constitutions were a rare idea. For instance, external pressure influenced the negotiation and drafting of Zimbabwe's 1980 independence constitution (Hoekman, 2013, p. 906). In 1979, a long-running war in its former colony needed to end, and the new British Conservative administration sought to resolve a challenging and protracted foreign policy issue (Napier, 1997, p. 99). The black majority was completely excluded from the constitutional debate in South Africa, and the

constitution resulted from discussions among representatives of the white minority only (Mbaku, 2013, p. 155).

Other points of view in legal theory support alternative strategies. In practice, it is impossible to completely rule out the potential impact that religious influences could have on the legal realm of human existence (Ruch & Anyanwu, 1983). The way different national and international religions interact with the law demonstrates that they can coexist. Nevertheless, it is difficult to accept that religious considerations influence the majority of legal provisions, particularly in the context of secular law. For instance, laws prohibiting same-sex marriage in several U.S. states and multiple European nations contradict religious beliefs. In this sense, Immanuel Kant's legal theory comes to mind. The famous philosopher argued that only morality is truly significant and rejected the role of religion in the creation of laws (Johnson & Cureton, 2004). Similarly, local African values can be better understood by considering democracy as an objective value and life as a subjective value. In his exploration of African value philosophy as the highest and ultimate of all values, he personified the importance of life and its precedence over other values in the traditional African worldview (Edem, 2022). Even though anarchy and crime were rare in traditional African societies—a fact some scholars have praised in their discussions of Africa's rich history—wars and criminal activity did occur. Still, they were easily contained due to the heightened value placed on human life (Bayart, 1999, p. 119).

Reading African constitutions undoubtedly makes us more aware of the challenges in balancing the conflicting ideals of Western culture and widely held local beliefs. Two sources are often cited when discussing democracy and governance: the ancient Roman democracy and the Western democracy introduced to emerging nations after colonization. In fact, before colonization, Africa had its own systems of democracy and governance. In 1236, Sundjada Keita, the Mandingo Emperor, declared the Constitution of the Mandingo Empire at Kouroukan-Fuga “La charte de kouroukanfouga” (Diarrassouba, 2020). This charter holds significant legal importance for constitutional law, in addition to its cultural significance as an Intangible Cultural Heritage of Humanity, recognized by UNESCO in 2009.

The social and political atmosphere of African societies during that period must be considered to fully understand the origins and goals of this ancient ritual. Informal traditional institutions were not merely ordinary, quasi-traditional, or quasi-administrative organizations, nor were they simple conventions (Gayoye, 2025, p. 6). The “talking tree” served as an early institution that facilitated the regulation of economic production processes, social relationships among various societal components, and the peaceful, stable, and secure transfer of power. It established mechanisms and protocols

for resolving disputes and internal crises. In this form of social organization, rulers utilized internal cultural, social, and economic references to justify their legitimacy and the legality of their actions (Dosso, 2012, p. 67). This focus on political discourse was based on the four fundamental elements of contemporary governance: accountability, transparency, consensus, and coordination. While deference to authority was deeply rooted in traditional African culture, inconsistencies and gaps in the official rules that govern are now evident (Diangitukwa, 2014, p. 12).

Conclusion

Confronting controversial issues related to race, language, gender, accountability, social justice, difference, and identity has been achieved through the effective use of constitution-making. One can easily envision the growing discrepancy between the letter of states' constitutions and their political reality, especially when compared to the colonial-inspired constitutions of the 1960s. African lawmakers find themselves in a challenging cultural-intellectual dichotomy. Deliberately propagated through the social sciences, the myth of the West, its economic model, and its technological prowess have devalued the "indigenous values" that define the authenticity of regional cultures. Therefore, Africa must reevaluate its modernization trajectory due to the disastrous effects of imperialism, which include the loss of identity and traditional values. The fundamental logic of politics has not shifted, despite many African nations experiencing changes in their formal institutional structure. For instance, populist movements emerge as a natural reaction to correct the course after the denial of traditional values, as power and resources remain concentrated in the hands of the central authority.

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