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Decolonizing Constitutional Discourse Through Afrocentric Theoretical Constructs—A Tripartite Comparison

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Abstract

The discourse on constitutional autochthony in Africa has often been constrained by the dominance of Eurocentric legal and political paradigms that emerged from the continent's colonial history. In the post-independence period, African states such as Ghana, South Africa, and particularly Nigeria have grappled with the challenge of designing and implementing constitutions that are both democratic and authentically indigenous. This article develops an Afrocentric paradigm for autochthonous constitutionalism, arguing that Africa's constitutional legitimacy must be derived from its cultural, philosophical, and historical traditions rather than external legal models. Drawing from the theory of Afrocentricity, this paper examined the epistemological foundations of African constitutional thought and the degree to which modern African constitutions reflect—or fail to reflect—indigenous values such as communalism, Ubuntu, consensus-based governance, and respect for traditional authority. Comparative analysis was deployed to explore Ghana's chieftaincy integration, South Africa's embrace of Ubuntu and customary law, and Nigeria's ongoing struggle with federalism and legitimacy. It was found that an Afrocentric constitutional paradigm can provide a more legitimate and sustainable governance model for Africa by centering indigenous epistemologies, participatory constitution-making, and local norms within modern state frameworks. This approach not only reclaims Africa's constitutional sovereignty but also redefines constitutionalism as a culturally embedded and evolving process of self-determination.

Keywords: Afrocentricity, Constitutionalism, Autochthony, Indigenous Governance, legitimacy

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1. Introduction

The contention surrounding constitutional autochthony—the idea that a constitution gains its legitimacy from the people's will and indigenous traditions instead of external imposition—

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constitutes the essence of Africa's pursuit of genuine governance. Across the continent, constitutions still show signs of colonial and neocolonial models. It is a surprise that African countries can really narrate that they are constitutionally independent when their systems of government are still mostly based on European ideas. As Amah notes, "Nigeria's constitutional journey reveals a continuous search for legitimacy through the rhetoric of autochthony, yet its frameworks remain deeply entrenched in colonial logic".¹ This tension highlights a significant issue in postcolonial Africa: the disparity between formal independence and epistemic sovereignty.

An autochthonous constitution, derived from the Greek term *autochthonous*, signifying "sprung from the soil", is anticipated to embody the customs, perspectives, and lived experiences of its populace. In practice, however, most African constitutions have been based on Western liberal-democratic models that don't always fit with the way things are in their own countries. Thus, the matter is not solely legal but also cultural and philosophical. Roscoe Pound² famously said that law is a reflection of society. If this is true, then African constitutional law must also reflect African social realities. The Afrocentric paradigm, articulated by scholars such as Molefi Kete Asante,³ advocates for the re-centering of African experiences, values, and epistemologies within political and legal institutions.

The pursuit of constitutional autochthony varies across Africa. Ghana, South Africa, and Nigeria each have their own ideas about this quest. Kwame Nkrumah's Ghana tried to make a pan-African identity and include traditional forms of government in its constitution, especially by recognizing chieftaincy. After apartheid, South Africa had one of the most open constitution-making processes in the world. The final document includes both liberal rights and the African idea of Ubuntu, which stresses the value of human dignity and community. Nigeria, on the other hand, is a more complicated case. Its constitutional history, characterized by colonial imposition, military interventions, and elite-driven constitutional conferences, exemplifies the enduring challenge of establishing modern governance on indigenous legitimacy.

The Nigerian experience is particularly enlightening. Since Nigeria became independent in 1960, its constitutions have gone back and forth between using models from other countries and trying to define themselves. People still criticize the 1999 Constitution, which is still in force, for being foisted on them by a military regime and not having the support of the people. Adejumo-Ayibiowu points out that the constitution's lack of connection to African moral and philosophical values like communalism, duty, and consensus makes the lack of participatory legitimacy even worse.⁴ In this regard, Nigeria's constitutional framework exemplifies what scholars refer to as "constitutions without constitutionalism"—documents that espouse democratic principles yet fail to reflect the ethos of the populace.⁵

It is argued that to achieve true constitutional autochthony, there is a need to move away from Eurocentric constitutional thought and toward Afrocentric constitutional thought. An Afrocentric

¹ E. Amah, 'Autochthony and Constitutional Legitimacy in Nigeria', (2020) 14(3) *Journal of African Law and Society*, 143.

² R. Pound, *Social Control through Law*, Yale University Press, 1942.

³ M. K. Asante, *Afrocentricity: The Theory of Social Change*. African World Press, 2003.

⁴ D. Adejumo-Ayibiowu, 'Afrocentrism as an Ideological Critique of Eurocentric Liberal Democracy', (2020) 10(2) *African Journal of Political Science*, 67.

⁵ K. Head, and O. Enwere, 'Constitution without Constitutionalism: The Nigerian Dilemma', (2018) 11 *Africa Legal Studies Review*, 12.

paradigm necessitates more than the incorporation of indigenous symbols or the acknowledgment of customary law; it requires a profound epistemological transformation in the conceptualization, legitimization, and implementation of constitutions. The Afrocentric viewpoint regards the constitution not solely as a legal instrument but as a dynamic manifestation of a people's worldview. It sees constitutional legitimacy as based on culture and history, connecting the experiences of Africans before, during, and after colonial rule.

This paper has three main goals. First, to formulate a theoretical framework that links Afrocentricity and constitutional autochthony. Second, to examine the comparative efforts of Ghana, South Africa, and Nigeria to indigenize their constitutional frameworks, assessing their successes and failures. Third, to suggest guidelines for creating an Afrocentric framework that can direct future constitutional changes in Africa, stressing Nigeria's requirement for a constitution that is people-oriented and culturally significant.

This study employs a qualitative doctrinal, and comparative methodology. It utilizes constitutional texts, historical narratives, and academic literature to evaluate how these three countries have managed the conflict between inherited Western paradigms and indigenous African traditions. How can African epistemologies restore equilibrium in the constitutions of African states without entirely dismissing Western constitutional frameworks? How has the absence of Afrocentric constitutional foundations affected the governance of African states, particularly regarding legitimacy, representation, and sustainability? These questions have strenuously been provided in this study.

2. Theoretical and Conceptual Underpinnings

2.1 Autochthony in the constitution

Constitutional autochthony is the idea that a country gets its constitution from its own will, not from an outside source. The idea became more popular after colonialism ended, when newly independent countries tried to show that they were no longer dependent on their former colonial powers. In the African context, this entailed formulating constitutions that not only represented independence but also reflected indigenous cultural values. According to Amah's study of Nigeria's constitutional history, "autochthony is not just a declaration of independence; it is a test of whether constitutional legitimacy is based on the people's consent and traditions".⁶

The idea of autochthony came about because people were arguing about whether postcolonial constitutions were legal in constitutional law. For example, Ghana tried to show that its constitution was its own by repealing the British Order in Council that had made its independence constitution possible. Nigeria tried to do something similar, but it didn't work out because its 1960 and 1963 constitutions were negotiated within the framework of British parliamentary sovereignty. In contrast, South Africa's 1996 Constitution, which was created through an inclusive process and was approved by a democratically elected Constitutional Assembly, is one of the most successful African experiments in making a constitution from scratch.⁷

⁶ E. Amah, 'Autochthony and Constitutional Legitimacy in Nigeria', (2020) 14(3) *Journal of African Law and Society*, 145.

⁷ H. K. Prempeh, 'African Constitutionalism and the Challenge of Legitimacy', (2003) 50(1) *Africa Today*, 473.

2.2 Afrocentricity as a paradigm

Afrocentricity, formulated by Molefi Kete Asante in the 1980s, is an epistemological and cultural paradigm that aims to prioritize African experiences and perspectives in the examination of African phenomena. Asante defines Afrocentricity as “the placing of African ideals at the center of any analysis that involves African culture and behavior”.⁸ In the context of constitutionalism, Afrocentricity contests the preeminence of Euro-American legal theories and asserts that African societies have their own profound traditions of governance, justice, and social order. These traditions—illustrated by consensus systems, community-oriented decision-making, and restorative justice—provide viable alternatives or supplements to Western constitutional frameworks.

Adejumo-Ayibiowu expands Asante’s framework into political theory, contending that Afrocentric governance must be rooted in African moral traditions that prioritize relationality, duty, and communal responsibility.⁹ The Afrocentric paradigm, therefore, repudiates the idea that modernity and indigeneity are incompatible. Instead, it supports a synthesis in which African societies modernize according to their own cultural standards. When it comes to designing constitutions, this means writing ones that are both modern in form and traditional in content. They should reflect African values like Ubuntu (treating others with respect), community solidarity, and respect for traditional authority.

2.3 Connecting Afrocentricity and constitutional autochthony

The connection between Afrocentricity and constitutional autochthony is based on the idea of legitimacy. A constitution that does not embody the values and identity of its populace may become an extraneous imposition, irrespective of its formal legality. Afrocentricity offers the philosophical and normative foundation for attaining constitutional autochthony by repositioning African epistemologies within constitutional contexts. It redefines legitimacy not only as procedural consent (e.g., elections or referenda) but as cultural authenticity—the extent to which a constitution aligns with the people’s worldview. The relationship can be exemplified through a comparison of the cases from Ghana, South Africa, and Nigeria. Ghana’s 1992 Constitution acknowledges chieftaincy and customary law, indicating a degree of Afrocentric integration, although it adheres to a Westminster-style framework. South Africa’s incorporation of Ubuntu into its legal system, especially in the pivotal case¹⁰ that eliminated the death penalty, explicitly recognized Ubuntu as a constitutional principle. The South African case regarding the death penalty¹¹ demonstrates a more pronounced Afrocentric impact on constitutional interpretation. Nigeria, on the other hand, is still mostly Eurocentric in both structure and spirit. Even though it has a federal system and recognizes customary law, its constitution has not yet adopted the communal and participatory values that are typical of traditional African governance.

⁸ M.K. Asante, *The Afrocentric Idea*, (Temple University Press 1987); M. K. Asante, *Afrocentricity: The Theory of Social Change*. (African World Press, 2003) 5.

⁹ Adejumo-Ayibiowu, Damilola, ‘Afrocentrism as an Ideological Critique of Eurocentric Liberal Democracy’, (2021) 10(2) *African Journal of Political Science*, 103.

¹⁰ *S v. Makwanyane* (1995) 3 SA 391 (CC).

¹¹ *Ibid.*

2.4 Critiques of Afrocentric constitutionalism

Critics of Afrocentric constitutionalism caution against idealizing precolonial traditions or presuming cultural uniformity throughout Africa. Prempeh asserts that “African constitutionalism must balance the celebration of cultural authenticity with the imperatives of universal human rights and modern governance”.¹² Additionally, Afrocentric approaches must safeguard against patriarchal or exclusionary practices inherent in certain customary systems. Consequently, the objective is not to entirely reinstate precolonial governance but to recontextualize its principles—consensus, community, and accountability—within modern democratic frameworks.

In this context, an Afrocentric framework for constitutional autochthony is neither reactionary nor isolationist. It does not aim to reject the global constitutional order; rather, it seeks to pluralize it by affirming African agency in the formulation of constitutional norms. It imagines a legal system that is based on indigenous values but also open to the hopes and dreams of all people.

3. Historical Context: Colonial Legacies and Postcolonial Constitutions in Africa

It is impossible to understand the rise of African constitutionalism without putting it in the context of colonialism. European colonial powers not only established territorial boundaries but also implemented foreign governance systems that disrupted indigenous political structures. The colonial state was basically authoritarian, extractive, and centralized. It was made to serve the interests of the empire instead of the interests of the people who lived there. Mahmood Mamdani contends that colonialism in Africa resulted in a “bifurcated state” that segregated citizens and subjects: modern law for the colonizers and customary law for the colonized.¹³ This dual structure led to long-lasting contradictions that postcolonial constitutions have had a hard time fixing.

In British West Africa, indirect rule made it possible for traditional leaders and colonial administrators to work together. Instead of being independent guardians of indigenous governance, chiefs became agents of the colonial state. The Native Authorities system in Nigeria, which Frederick Lugard set up, was a good example of this mixed system. It looked like it was keeping traditional structures in place, but it actually undermined their legitimacy by turning them into tools of foreign rule. Likewise, in the Gold Coast (now Ghana), the colonial government wrote down customary law in ways that made it less flexible and more specific to the area. These actions changed the meaning of the word “tradition,” which Ranger famously called “the invention of tradition”.¹⁴

When most Africa Countries became independent, African leaders took over these colonial legal and political systems and tried to turn them into modern nation-states. The centralized bureaucracy, codified law, and hierarchical authority that were used to control colonies became the basis for governance after colonization. This continuity dulled the power of independence to change things. Constitutions written at the time of independence often copied the Westminster or Napoleonic models with only minor changes to fit local conditions. The 1957 Constitution of Ghana, the 1960

¹² H. K. Prempeh, ‘African Constitutionalism and the Challenge of Legitimacy’, (2003) 50(1) *Africa Today* 475.

¹³ M. Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*. (Princeton University Press, 1996) 37.

¹⁴ T. Ranger, ‘The Invention of Tradition in Colonial Africa’, in Eric Hobsbawm and Terence Ranger (eds.) *The Invention of Tradition*, (Cambridge University Press, 1983) 211.

Independence Constitution of Nigeria, and the early Union Constitution of South Africa (which left out the majority of the population) are all examples of this pattern.

The fight for constitutional autochthony started as a response to these outside models. During the 1960s and 1970s, thinkers such as Kwame Nkrumah, Julius Nyerere, and Obafemi Awolowo tried to bring African socialism and traditional values into the way governments worked. But the continued dominance of elites, military coups, and neocolonial dependence kept these hopes from coming true. The constitutional history of Nigeria, characterized by successive military interventions, illustrates how inherited colonial frameworks enabled authoritarianism. Amah asserts that “the colonial logic of centralized control mutated into postcolonial militarism”.¹⁵ This means that Africa's postcolonial challenge was not only political independence but also epistemological decolonization, or the return of indigenous ways of thinking about law, authority, and legitimacy.

4. Ghana's Journey: Merging Tradition and Modernity

Ghana has a unique place in the history of how African constitutions have changed over time. Ghana was the first country in sub-Saharan Africa to become independent in 1957. It became a place where people could try out new ways of designing constitutions after colonialism. Kwame Nkrumah's idea of Pan-African socialism stressed the need for political unity and the blending of old and new ways of running a country. But the way Ghana's constitution worked shows how hard it is to balance traditional legitimacy with modern government.

4.1 The Nkrumah era and the testing of the constitution

Ghana's 1957 Independence Constitution, based on the British Westminster system, set up a parliamentary government with Queen Elizabeth II as the constitutional monarch. But by 1960, Nkrumah was unhappy with the limits of this system. Ghana adopted a republican constitution through a plebiscite. This constitution gave the president a lot of power and represented full sovereignty. The process was a break from colonial rule and a claim of constitutional autochthony.¹⁶ However, the resulting centralization of power sparked worries about authoritarianism, showing how hard it is to find a balance between unity and pluralism in postcolonial governance.

Nkrumah's later ideological writings, including *Consciencism*,¹⁷ delineated an Afrocentric philosophical basis for governance. He imagined a constitutional system based on African humanism, communal values, and anti-imperial unity. His ideas foreshadowed subsequent demands for Afrocentric constitutionalism, even if they were not fully realized. Ghana's military interventions in 1966 and 1972 disrupted this trajectory; however, each constitutional re-drafting signified renewed efforts to harmonize imported legal frameworks with indigenous values.

The judiciary began to confront the issue of constitutional legitimacy early on. The Supreme Court upheld the government's powers of preventive detention under the Preventive Detention Act in *re*

¹⁵ E. Amah, ‘Autochthony and Constitutional Legitimacy in Nigeria’, (2020) 14(3) *Journal of African Law and Society* 152.

¹⁶ D. Austin, *Politics in Ghana, 1946–1960* (Oxford University Press, 1964) 219.

¹⁷ K. Nkrumah, *Africa Must Unite*. (New York: International Publishers, 1964) 132.

Akoto and Seven Others.¹⁸ This decision was widely criticized for putting state authority above personal freedom. The ruling was legally sound according to the text, but it showed how weak imported constitutional norms can be when they are put to the test against local ideas of justice.

4.2 The constitution of 1992 and the role of chieftaincy

The 1992 Fourth Republican Constitution is Ghana's best effort to make the constitution stable and accommodate its own people. It clearly states that chieftaincy is a constitutionally protected institution that plays a role in local governance and cultural preservation. As Boafo-Arthur points out, "Ghana's chieftaincy institution is still the most visible link between precolonial traditions and the modern state".¹⁹ This means that the constitution includes customary authority in the democratic system without completely subordinating it to the state.

This constitutional acknowledgment of chieftaincy illustrates Ghana's pragmatic stance on Afrocentric constitutionalism. The 1992 Constitution does not romanticize tradition; instead, it makes it a part of governance that is always changing.²⁰ Chiefs are very important for managing land, settling disputes, and helping communities grow. They represent native ideas of consensus and community responsibility.

The Constitution was a new beginning for Ghana's constitutional identity. After years of coups and authoritarian rule, the return to multiparty democracy was marked by public consultations and the inclusion of traditional governance institutions. The Constitution's Article²¹ clearly recognizes the National House of Chiefs and their important role in preserving culture and governing local areas. The Supreme Court upheld the constitutional status of the chieftaincy institution in *Nii Kpobi Tettey Tsuru III v. Attorney-General*,²² stating that the state could not change traditional authority structures without the agreement of the communities involved. In the same way, *Adjei Ampofo v. Attorney-General*²³ confirmed the judiciary's role in upholding community-based and participatory values in constitutional interpretation. These cases exemplify an evolving Afrocentric jurisprudence that recognizes the integration of law within culture. The Ghanaian constitutional experience exemplifies a progressive integration of contemporary governance with traditional legitimacy, highlighting the pragmatic aspects of constitutional autochthony.

However, there are still problems to solve, especially when it comes to including women and balancing traditional autonomy with central government oversight. Ghana's model shows that constitutional autochthony can be improved by bringing together modern democratic structures and traditional institutions.

5. The South African Model: Ubuntu and Participatory Constitutionalism

South Africa presents a particularly persuasive example of an Afrocentric-inspired constitutional framework in Africa. Emerging from the trauma of apartheid, the Constitution of South Africa²⁴ represents a deliberate effort to ground modern democratic governance in indigenous moral

¹⁸ *In re Akoto and Seven Others* (1961) GLR 523 (SC).

¹⁹ K. Boafo-Arthur, 'Chieftaincy and Politics in Ghana since 1982', (2004) 5 *West Africa Review*, 49.

²⁰ The Constitution of the Republic of Ghana 1992

²¹ Section 271 of the Constitution of Ghana, 1992.

²² (2010) SCGLR 904 (SC).

²³ (2003-2004) SCGLR 411 (SC).

²⁴ Constitution of the Republic of South Africa, 1996.

philosophy—specifically, the concept of Ubuntu. As Justice Yvonne Mokgoro explains, “Ubuntu embodies the spirit of African humanism that emphasizes interdependence, respect, and restorative justice”.²⁵ By embedding Ubuntu into constitutional interpretation, South Africa sought to humanize its legal system and reclaim its cultural dignity.

5.1 The negotiated constitution and participatory process

The process of drafting South Africa’s post-apartheid constitution was profoundly participatory. From 1994 to 1996, millions of people took part in public debates, consultations, and submissions. This participatory attitude gave the constitution a level of legitimacy that is rare in Africa. The Constitutional Assembly and the Constitutional Court in South Africa approved the country’s constitution. In Nigeria, the military imposed the constitution in 1999. The legitimacy that comes from this popular participation shows how important community consensus and collective agency are in Afrocentrism.

5.2 Ubuntu as a moral code for the constitution

The incorporation of Ubuntu into South African jurisprudence²⁶ exemplifies the practical application of Afrocentric constitutional thought. The Certification of the Constitution of the Republic of South Africa²⁷ case is a big deal in the history of the Constitution. The Constitutional Court said that the new constitution followed the thirty-four constitutional principles that all parties agreed on. These principles stressed respect for human dignity, accountability, and inclusiveness. The landmark case *S v. Makwanyane*²⁸ ended the death penalty. The court used Ubuntu as a moral basis for compassion, respect for human dignity, and reconciliation. This is a clear statement of Afrocentric moral philosophy in a modern constitutional setting. Justice Mokgoro’s concurring opinion stressed that “Ubuntu is part of our heritage and informs the interpretation of the right to life and dignity under the Constitution”.²⁹ This shows how African philosophical ideas can help us understand the Constitution and moral issues, in addition to Western ideas about rights.

The case of *Bhe v. Magistrate, Khayelitsha*³⁰ exemplifies the incorporation of customary law into the constitutional framework. The court ruled that male primogeniture in inheritance was against the constitutional right to equality and struck it down. But it also recognized that customary law is a real and changing system that can change in a democratic setting.

Ubuntu, which is often translated as “I am because we are”, is an Afrocentric idea that people depend on each other. South Africa’s constitutional law has turned Ubuntu from a cultural principle into a constitutional value. In *Port Elizabeth Municipality v. Various Occupiers*,³¹ the court used Ubuntu to find a balance between property rights and social justice. It said that evictions must be humane and respectful of the dignity of the people who are being evicted. As Mokgoro J. states, “Ubuntu infuses constitutional interpretation with compassion, respect, and humaneness”,³² this moral-legal synthesis is the basis for an autochthonous South African constitutional order. So, the

²⁵ Y. Mokgoro, ‘Ubuntu and the Law in South Africa’, (1998) 4 *Buffalo Human Rights Law Review*, 323.

²⁶ (1996) 4 SA 744 (CC).

²⁷ (1996) 4 SA 744 (CC).

²⁸ (1995) 3 SA 391 (CC).

²⁹ Ibid. Y. Mokgoro, ‘Ubuntu and the Law in South Africa’, (1998) 4 *Buffalo Human Rights Law Review*, 324

³⁰ (2005) 1 SA 580 (CC).

³¹ (2005) 1 SA 217 (CC).

³² Y. Mokgoro, ‘Ubuntu and the Law in South Africa’, (1998) 1 (1) *Potchefstroom Electronic Law Journal* 17-20.

constitution is only legitimate if it is both procedurally inclusive and in line with indigenous moral standards.

5.3 Finding a balance between the old and the new

Even with these successes, South Africa's constitutional order has trouble bringing together traditional leadership and customary law with democratic governance. Sometimes, the fact that state and customary institutions exist at the same time leads to jurisdictional conflicts, especially in rural areas. The constitutional acknowledgment of traditional leadership and the adaptive interpretation of customary law by the judiciary signify significant progress towards a hybrid, Afrocentric constitutionalism. South Africa's experience demonstrates that constitutional modernity does not necessitate cultural alienation; instead, it can flourish through the interplay between tradition and democracy.

6. Nigeria's Search for a Constitution that is its Own

Nigeria's constitutional history is a perfect example of the African fight for autochthony. Nigeria's search for a legitimate and native constitution is still going on. The country has more than 250 ethnic groups, many religions, and a history of colonial exploitation and military rule. Each constitutional experiment from 1960 to 1999 has been influenced by outside forces and elite negotiations, not by the people themselves. Suberu says that "Nigeria's constitutional evolution has been more about managing diversity from above than nurturing unity from below".³³

6.1 Colonial foundations and federalism

Nigeria's constitutional development commenced during British colonial governance, which instituted a centralized administrative framework via indirect rule. The Richards Constitution of 1946, followed by the Macpherson Constitution of 1951 and the Lyttleton Constitution of 1954, created a type of federalism that was more about making things easier for the government than giving people real self-determination. Nigeria adopted a Westminster-style constitution when it became independent in 1960. This constitution was very similar to British legal traditions. The 1963 Republican Constitution kept most of the colonial framework while also symbolically asserting sovereignty. In this way, Nigeria's independence was constitutional but not epistemic.

6.2 The 1979 presidential constitution and military rule

After the civil war (1967–1970), Nigeria started a new constitutional project that led to the 1979 Constitution, which set up a presidential system based on the one in the United States. The military government said this was necessary to keep the country stable and united. But the process was driven by elites and didn't have popular support. The resulting framework established a robust central government that diminished local governance structures and traditional institutions. Elaigwu says, "Nigeria's federalism is paradoxically unitary in spirit and centralized in practice".³⁴ This imbalance goes against the Afrocentric ideas of communalism and participatory governance.

³³ R. T. Suberu, *Federalism and Ethnic Conflict in Nigeria*, (United States Institute of Peace Press, 2001) 88.

³⁴ J.I Elaigwu, 'Federalism and the Challenges of Nation-Building in Nigeria' (2019) 7 (1) *Nigerian Journal of Political Science Review*, 42.

6.3 The 1999 constitution and the Issue of legitimacy

General Abdulsalami Abubakar's military government put the 1999 Constitution into effect without a vote. It is Nigeria's current governing document. Its preamble falsely says that "We the people of Nigeria" made it, even though it was forced on them from the top down. Because of this lack of legitimacy, there have been many calls for a "people's constitution". Both civil society groups and academics say that the document does not have either procedural or substantive autochthony. The 1999 Constitution, which is still in effect, has never been put to a vote by the people. Nigerian legal experts, such as Nwabueze and Sagay, have consistently contended that the absence of participatory ratification diminishes its moral authority.³⁵ Adejumo-Ayibiowu asserts that "the Nigerian constitution's legitimacy crisis reflects its failure to embody indigenous moral philosophies that prioritize communal responsibility and dialogical consensus".³⁶

The federal system in Nigeria makes it even harder to achieve autochthony. The centralization of fiscal and political authority has diminished regional autonomy and undermined conventional governance structures. Nigeria's traditional rulers are not allowed to have formal constitutional roles, but Ghana's chieftaincy is still recognized by the constitution. This exclusion breaks the link between modern government and the legitimacy of native people. Moreover, the focus on Western legalism and adversarial politics is at odds with the African values of consensus and restorative justice.

6.4 Nigerian case law and how to read the constitution

Nigerian courts have consistently contended with issues of constitutional validity and federalism. The Supreme Court made it clear in *Attorney-General of Ogun State v. Aberuagba*³⁷ that federalism means respecting both national and state powers. Also, in *A.G. Lagos State vs. A.G. Federation*³⁸ The Court upheld the idea of cooperative federalism in Federation, saying that financial relationships must stay within constitutional limits.

Other cases have shown Afrocentric judicial reasoning by putting social welfare and community interests first. In *Fawehinmi v. Abacha*,³⁹ the Supreme Court used international human rights standards to back up people's rights to dignity and freedom of association. In *Okogie v. Attorney-General of Lagos State*,⁴⁰ the court made it clear that the government has a moral duty to provide education as a social good. This is similar to the Afrocentric idea of governance as serving the community.

*INEC v. Musa*⁴¹ reaffirmed the constitution as the highest law, representing the will of the people, while *A.G. Abia State v. A.G. Federation*⁴² dealt with how to fairly divide up resources and how to share money, both of which are very important for Nigeria's federal stability.

³⁵ B. O. Nwabueze, *Constitutional Democracy in Africa* Vol. 1: Structures, Powers and Organising Principles of Government (Spectrum Books 2003) 321.

³⁶ D. Adejumo-Ayibiowu, 'Afrocentrism as an Ideological Critique of Eurocentric Liberal Democracy' (2021) 10(2) *African Journal of Political Science* 109.

³⁷ (1995) 1 NWLR (Pt. 3) 385 (SC).

³⁸ (2003) All FWLR (Pt. 168) 909.

³⁹ (2014) 9 NWLR (Pt. 1412) 217 (SC).

⁴⁰ (1981) 2 NCLR 337 (SC).

⁴¹ (2003) 3 NWLR (Pt. 806) 72 (SC).

⁴² (2006) 16 NWLR (Pt. 1005) 265 (SC).

7. Comparative Analysis

7.1 Comparative analyses of Ghana, South Africa, and Nigeria

The comparative paths of Ghana, South Africa, and Nigeria show a pattern of constitutional adaptation that goes on and on. Ghana exemplifies gradual institutional synthesis; South Africa signifies normative reconstruction; and Nigeria illustrates structural fragmentation. But all three experiences teach the same thing: legitimacy can't be forced through laws; it has to be grown through cultural harmony and participation.

The strength of Ghana's constitution comes from how well it combines chieftaincy institutions. The success of South Africa comes from its Ubuntu-based constitutional humanism. The ongoing struggle in Nigeria highlights the necessity of anchoring constitutional authority in indigenous values and social engagement. Afrocentric constitutionalism serves as both a diagnostic and prescriptive framework: it elucidates the shortcomings of foreign constitutions and offers a model for genuine renewal.

7.2 For an Afrocentric Nigerian constitution

An Afrocentric approach to constitutionalism in Nigeria would require reimagining governance from the grassroots upward. This entails democratizing the constitution-making process via authentic public engagement, incorporating traditional institutions into formal governance, and instilling indigenous ethical principles such as Omoluabi (the Yoruba concept of moral character) and Udo (the Igbo notion of peace and harmony) into the constitutional framework. It would also require a decentralization of power that lets communities show off their political and cultural identities within a single federal system.

The constitutional challenge in Nigeria transcends mere textual reform; it entails an epistemic transformation, transitioning from externally derived paradigms of statehood to locally rooted concepts of legitimacy. Constitutional reforms will stay shallow if this change doesn't happen. Amah's poignant conclusion, "Nigeria's constitutional crisis is not of structure alone but of spirit",⁴³ underscores that the essence of Afrocentric constitutionalism, if adopted, could provide Nigeria with a means to achieve authentic self-definition and enduring governance.

From an Afrocentric viewpoint, Nigerian constitutionalism exemplifies a significant contradiction and potential. The federal system is a new way of adapting a Western model to the diverse conditions of Africa. It makes room for regional autonomy within a single framework. The constitutional acknowledgment of customary law and traditional institutions offer constrained yet significant opportunities for the articulation of indigenous legal consciousness. The extensive variety of indigenous governance traditions among Nigeria's ethnic groups constitutes a significant reservoir of constitutional knowledge that remains predominantly underutilized in formal constitutional design.

Conversely, the ongoing centralization of power within the Nigerian federal system contradicts the principles of distributed authority found in numerous indigenous political systems, especially the Igbo models, which feature advanced systems of checks and balances. The marginalization of

⁴³ E. Amah, 'Autochthony and Constitutional Legitimacy in Nigeria', (2020) 14(3) *Journal of African Law and Society*, 154.

traditional institutions within the constitutional framework perpetuates their estrangement from genuine cultural foundations, thereby converting them from dynamic governance entities into mere ceremonial extensions of the contemporary state. The legal dualism that acknowledges customary law while subordinating it to English common law and legislation establishes what an Afrocentric analysis would characterize as epistemic hierarchy, favoring Western knowledge systems over indigenous ones.

As Nigerian scholar Nsongurua Udombana puts it, “decolonizing the constitutional mind” means putting African philosophical frameworks at the center of constitutional design.⁴⁴ This could mean rethinking federalism so that it is based on cultural and linguistic groups instead of the states that are now mostly based on colonial administrative units; adding indigenous conflict resolution methods like the Yoruba *ajoge* or Igbo *igba mbọ*—industrious—to the formal justice system; and making a bill of rights that strikes a balance between individual freedoms and community responsibilities that is more in line with indigenous ethical systems. The challenge is huge because Nigeria is so different and the people who benefit from the current system are so set in their ways, but this change is necessary because it could lead to more honest and effective government.

8. Creating an Afrocentric Framework for Constitutional Design

8.1 Putting African epistemologies back in the center

To establish an Afrocentric framework for constitutional design, it is imperative to initiate epistemic reconstruction—re-centering African epistemologies as legitimate sources of political and legal knowledge. Asante asserts that “Afrocentricity is not merely about Africanization of content, but a total shift in perspective toward African agency and self-definition”.⁴⁵ This transformation requires recognizing that African societies had sophisticated governance systems long before colonial intervention, many of which reflected democratic and consensual principles. The Yoruba *ogboni* council, the Igbo *umunna* - village assembly, and the Tswana *kgotla* are all examples of indigenous ways of making decisions that involve the community and hold people accountable.

Consequently, an Afrocentric constitution must embody these epistemologies, not merely as symbolic enhancements but as foundational principles directing governance. For Nigeria, this means making the morals of *Omoluabi*—honesty, respect, and responsibility to the community—an important part of how the government works. The Akan philosophy of *Sankofa*, which means “return and fetch it”, also tells African societies to bring back useful traditions to help them run their governments today. By adopting these ideas, African countries can turn constitutionalism from a borrowed legal system into a way of life.

8.2 Cultural legitimacy and sovereignty through participation

The notion of participatory sovereignty is a central aspect of Afrocentric constitutional design. This principle transcends representative democracy by asserting that legitimacy derives from the active engagement of communities in the constitution-making process. Prempeh notes that “the extent to which a constitution embodies the lived experiences of its people determines its endurance and

⁴⁴ N. Udombana, 'Life, Dignity and the Pursuit of Happiness: Human Rights and Living Standards in Africa' (2008) 28(1) *The University of Tasmania Law Review* 48.

⁴⁵ M. K. Asante, *Afrocentricity: The Theory of Social Change* (African World Press 2003) 12.

authority”.⁴⁶ In practical terms, this means that there should be a lot of consultation, local discussion, and the recognition of traditional institutions as legitimate participants in constitutional discourse.

In this regard, South Africa's constitutional process is a good example. Its participatory nature created both procedural and substantive legitimacy, showing how cultural and popular involvement can help keep the constitution stable. On the other hand, Nigeria's elite-driven processes have repeatedly made texts that lack spirit. To create an Afrocentric model for Nigeria, the process of making a constitution must be more democratic. This means that rural communities, traditional councils, women's groups, and youth organizations must all have a say in defining the country's basic principles.

8.3 Integration of the old and the new

An Afrocentric constitution does not call for the complete reinstatement of precolonial governance; rather, it promotes an innovative amalgamation of tradition and modernity. Constitutional pluralism, which means that both customary and statutory systems can exist at the same time, can be a good thing instead of a bad thing. Elaigwu asserts, “the challenge for African federalism is not to erase difference but to institutionalize dialogue between cultural systems”.⁴⁷ In this context, constitutional design ought to regard traditional leadership and customary law as evolving elements of contemporary governance.

For Nigeria, harmonization would mean officially recognizing the roles of traditional leaders in settling local disputes, preserving culture, and helping communities grow. Putting these roles together in the constitution can help make them legitimate while still holding them accountable to the people. The Afrocentric paradigm perceives constitutionalism as a discourse between tradition and contemporary society—a dynamic constitution that adapts alongside its populace.

9. Problems and Critiques of Afrocentric Constitutionalism

9.1 The Issue of cultural pluralism

A primary criticism of Afrocentric constitutionalism pertains to Africa's extensive cultural diversity. Nigeria has hundreds of ethnic groups, each with its own customs and political traditions. Some people say that basing a constitution on “African culture” could mean that some traditions are more important than others. Prempeh warns that “the appeal to tradition must not become a tool for cultural domination or ethnic exclusion”.⁴⁸ Therefore, the Afrocentric paradigm must embrace a pluralist rather than monolithic conception of African identity, viewing multiplicity as a source of strength.

9.2 Issues of gender and human rights

Another problem is finding a way to make Afrocentric values fit with universal human rights standards, especially when it comes to gender equality. Some traditional practices have historically excluded women or strengthened patriarchal systems. Critics are concerned that promoting

⁴⁶ K. H Prempeh, ‘African Constitutionalism and the Challenge of Legitimacy’, (2003) 50(1) *Africa Today* 478.

⁴⁷ J.I. Elaigwu, ‘Federalism and the Challenges of Nation-Building in Nigeria’, (2019) 7(1) *Nigerian Journal of Political Science Review* 49.

⁴⁸ K.H. Prempeh, ‘African Constitutionalism and the Challenge of Legitimacy’, (2003) 50(1) *Africa Today* 480.

tradition may exacerbate these inequalities. Afrocentricity, when understood correctly, stresses the worth and connection of all people. Mokgoro says that "Ubuntu's emphasis on humaneness provides a moral basis for gender equality and restorative justice".⁴⁹ This means that an Afrocentric constitution must look at indigenous values in a new and more open way, making sure that cultural authenticity and human dignity are in line with each other.

9.3 Globalization and new colonial limits

The ongoing global economic and political pressures also limit Afrocentric constitutionalism. International financial institutions, donor agencies, and global human rights regimes frequently exert influence on constitutional reforms in Africa. These people may push for governance models that put neoliberal efficiency ahead of cultural legitimacy. For example, Western aid conditions that stressed formal democracy and market liberalization shaped Nigeria's democratic reforms after 1999. Afrocentric constitutionalism must contend with these external influences while affirming local autonomy. Amah notes, "Constitutional sovereignty in Africa today is as much a struggle against internal fragmentation as against external dependency".⁵⁰

9.4 Resistance from institutions and elitism

Another problem is entrenched political elites. Many leaders don't want to let people really participate in processes because Afrocentric constitutional reform threatens their inherited privileges. Nigeria's repeated failures to hold a truly sovereign national conference are an example of this resistance. Elites frequently characterize popular participation as destabilizing or impractical, thereby preserving dominance over constitutional discourse. To get past this, we need civic education and grassroots mobilization to make sure that constitutional change is a movement led by the people rather than a deal between the elite.

9.5 Unending limitations

The comparative analysis also shows that current methods of indigenizing constitutional orders have major structural flaws. In all three cases, traditional institutions are still not very important to the main functions of the modern state. They mostly only have cultural and ceremonial roles and don't have much say in important issues like governance, economic policy, or the administration of justice. The subordination of customary law to imported legal traditions continues, establishing what Nigerian scholar Nwabueze characterizes as a fundamental "hierarchy of legal consciousness"⁵¹ that favors Western epistemologies.

The gender aspects of constitutional indigenization pose specific challenges, as attempts to integrate traditional institutions and customary law frequently conflict with constitutional equality provisions, especially concerning women's rights. All three countries have had a hard time finding a way to protect gender equality while also respecting cultural authenticity. One way South Africa has tried to do this is by making it clear in its Constitution that customary law cannot be used in a way that violates the Bill of Rights. From an Afrocentric viewpoint, this necessitates what Hudson-

⁴⁹ Y. Mokgoro, 'Ubuntu and the Law in South Africa', (1998) 4 *Buffalo Human Rights Law Review* 326.

⁵⁰ E. Amah 'Autochthony and Constitutional Legitimacy in Nigeria', (2020) 14 (3) *Journal of African Law and Society* 157.

⁵¹ B.O. Nwabueze, *Constitutional Democracy in Africa* Vol. 1: Structures, Powers and Organising Principles of Government (Spectrum Books 2003) 50.

Weems characterizes as Africana womanist analysis, which critiques both Western feminism and patriarchal traditions through African philosophical frameworks.

10. Conclusion

At its core, the search for constitutional autochthony in Africa is a search for self-definition. African countries have been trying out different constitutions for more than sixty years, and many of them still show signs of colonial influence. Ghana and South Africa have made significant progress in reconciling indigenous traditions with contemporary governance, whereas Nigeria continues to grapple with a legitimacy deficit stemming from enforced constitutionalism. The Afrocentric paradigm proposed in this paper provides a framework for overcoming this deadlock.

Afrocentric constitutionalism offers a route to authentic indigenous governance by prioritizing African epistemologies, advocating participatory sovereignty, and reconciling tradition with modernity. It redefines legitimacy not just as legality, but as cultural authenticity, which means that the law should be in line with the moral and philosophical values of the people it serves. For Nigeria, adopting this paradigm necessitates transcending constitutional amendments in favor of a comprehensive redefinition of the social contract.

The Afrocentric paradigm urges Africa to restore its constitutional vision. It imagines a future in which constitutions are not imposed from outside but are instead living expressions of African humanity, wisdom, and community. As Asante says, “To be Afrocentric is to be centered in one's own history, guided by one's own ancestors, and committed to one's own destiny”.⁵² Africa's constitutions can only become truly autochthonous—rooted, legitimate, and lasting—through this kind of re-centering.

11. Recommendations for Nigeria and other African countries

a) Putting the constitution-making process back together

The most important constitutional job for Nigeria is to start a real process for making a constitution that is based on the will of the people. This should start with wide-ranging discussions with people from all walks of life, including communities, civil society, and traditional institutions. The process needs to be open, fair, and open to discussion. South Africa's experience shows that participation can give something legitimacy. The ultimate objective is not merely a new text, but a revitalized social contract rooted in indigenous values and collective agreement.

b) Putting indigenous institutions together

Constitutional frameworks should facilitate a more substantive integration of traditional institutions into governance structures, transcending their predominantly ceremonial functions. This could mean that traditional leaders have a special seat in legislative bodies that they can give advice on executive decisions, and that traditional justice systems have more power in certain cases. The specific form of incorporation should be tailored to the context, reflecting the varied traditions of different African societies instead of adhering to a standardized model.

The design of the constitution should formally acknowledge the role of traditional institutions in governance. Nigeria can learn from Ghana's constitutional protection of chieftaincy and South

⁵² M. K. Asante, *Afrocentricity: The Theory of Social Change* (African World Press, 2003) 24.

Africa's acknowledgment of traditional leadership. These organizations can help the state and local communities get along better, which will help bring people together. But their inclusion must be balanced with accountability to the people and equality between men and women.

c) Putting Afrocentric moral values into practice

Nigeria's constitution ought to delineate ethical principles rooted in African philosophy, including Omoluabi (virtue), Ubuntu (humanity), and Udo (peace). The preamble and directive principles of state policy can show these ideas. They can help both the law and the government. Nigeria can promote civic responsibility and a sense of community by incorporating moral values into its constitutional framework.

Federal and devolution systems ought to be restructured to embody indigenous interpretations of distributed authority, rather than merely adopting Western models of federalism. This could mean using cultural and linguistic communities instead of random administrative boundaries to make subnational units, and coming up with uneven ways to give communities more freedom that take into account their unique needs and traditions.

d) Encouraging civic awareness and constitutional education

An Afrocentric constitution cannot flourish without a robust constitutional consciousness. Public education programs should teach people about indigenous values of governance, focusing on moral integrity, communal duty, and consensus. Civic education based on local languages and customs can strengthen citizens' sense of ownership and duty to the constitution.

e) Collaboration in the region and solidarity across Africa

Lastly, African countries should talk to each other about their experiences with Afrocentric constitutional development. Organizations like the African Union and ECOWAS can help people talk about how to combine customary law, encourage participatory constitution-making, and make modern governance work better with traditional ways of doing things. This Pan-African partnership fits with Nkrumah's idea of continental unity based on shared cultural values.