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The Coloniality of African Law: Legality, Legitimacy, and the Structural Reproduction of Power

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Article

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Abstract

African states are formally constitutional democracies. Virtually all possess bills of rights, ratified human rights treaties, multi-party electoral systems, and judiciaries empowered to review executive action. Yet for the majority of African citizens, these architectures produce structured domination rather than emancipation. This article argues that conventional explanations - institutional weakness, democratic immaturity, enforcement deficits - cannot account for the depth or durability of this paradox. What is required is a reckoning with the coloniality of law: the persistence of colonial legal logics, institutional architectures, and epistemological hierarchies within ostensibly independent African legal orders. Drawing on decolonial theory, critical legal studies, and African jurisprudence, and developing an extended case study of Cameroon alongside comparative analysis of Uganda and Ethiopia, the article demonstrates how colonial legal structures produce authoritarianism through legality, rendering rights textually present but structurally unavailable. The framework integrates a systematic gendered analysis: colonial legal epistemology co-constitutes racial and gender hierarchies, and the coloniality of law reproduces both through professional habitus and doctrinal architecture.

1. Introduction: The Paradox of Rights Without Emancipation

Across the African continent, a foundational paradox endures. Fifty-four sovereign states formally adhere to constitutional democracy, yet for the majority of African citizens, the lived experience of their legal architectures is not emancipation but structured domination. Executives regularly consume constitutional constraints; electoral processes tend to legitimate rather than contest incumbent power; judiciaries defer to state authority over popular sovereignty; and security laws silence dissent through formally enacted instruments whose genealogy runs directly to colonial public order legislation (Mamdani, 1996; Shivji, 2009).

Standard explanations are well rehearsed. Institutionalist accounts invoke neo-patrimonialism, weak administrative capacity, or informal patronage networks infiltrating formal institutions. Transitional constitutionalism scholarship treats present failures as the growing pains of immature democracies. International human rights scholarship attributes the norm-practice gap to absent compliance mechanisms. Each captures something real, but all share a structural limitation: they treat the paradox as a gap between law as written and law as practised, without interrogating the structural and epistemological conditions that simultaneously shape both (Freedom House, 2023; Diamond, 2015).

This article argues that the survival of colonial legal logics and institutional architectures within the legal orders of formally independent African countries reproduces authoritarianism through legality, and epistemic hierarchies have been internalised as a professional legal habitus. The paradox of African constitutionalism is a problem of what this article theorises as the coloniality of law. Distinct from the uncontested historical observation that African legal systems have colonial origins, the coloniality of law maintains that colonialism constructed a durable legal habitus - a structured disposition toward law as a technology of rule rather than an instrument of emancipation - that continues to animate the production,

interpretation, and enforcement of law in post-colonial Africa (Quijano, 2000; Bourdieu, 1990). Legal habitus is employed in a specifically Bourdieusian sense: durable, transposable dispositions inculcated through professional formation and structural conditioning, operating below the level of conscious strategy to orient legal actors toward particular understandings of authority, institutional roles, and legitimate outcomes (Bourdieu, 1987).

The coloniality of law operates through intersecting racial and gender hierarchies that are co-constitutive, not additive. Colonial legal epistemology simultaneously racialised and gendered African subject-positions; the coloniality of law reproduces both within professional habitus and doctrinal architecture. This intersection is addressed systematically throughout the framework and case analysis rather than treated as supplementary.

The argument builds upon, but analytically distinguishes itself from, earlier foundational contributions. Ndlovu-Gatsheni's (2013) coloniality of power identifies race, knowledge, and authority as interlocking axes of the colonial matrix that persist after juridical independence. Mamdani's (1996, 2012) bifurcated state analyses how colonial governance produced a dual structure - citizens under civil law, subjects under customary law - whose legacy shapes post-colonial state formation. What remains absent from the existing literature is an integrated theory that locates the mechanism of colonial legal reproduction within the internal structure of post-colonial African legal orders and traces its consequences for human rights and democratic legitimacy (Anghie, 2004; Mutua, 2002). Cases were selected through theoretical purposive sampling. Cameroon provides the primary case: its exceptional legal complexity as simultaneously a civil and common law jurisdiction enables the framework to be tested across two distinct colonial traditions within a single national order; the Anglophone crisis offers a contemporaneous illustration of colonial legal bifurcation, generating a human rights catastrophe. Uganda and Ethiopia demonstrate that the structural logic identified in Cameroon operates across constitutionally distinct settings, testing the framework's discriminating power across confirming cases and partial exceptions.

2. Theorising the Coloniality of Law

2.1 From Colonialism to Coloniality: Conceptual Foundations

Decolonial theory draws a foundational distinction between colonialism - the historical system of direct foreign territorial domination - and coloniality, the matrix of power, knowledge, and being that colonialism instituted and that persists long after formal decolonisation. Quijano (2000) described coloniality as a global pattern in which racial and civilisational hierarchies continue to structure political and epistemic relations. Mignolo (2011) extended this to epistemology: the colonial project established a hierarchy of knowing - what de Sousa Santos (2014) terms epistemicide - in which European frameworks were universalised while non-European knowledges were subordinated and destroyed. Wynter's (2003)

account of the coloniality of being illuminates the ontological dimension: the colonial subject was produced as definitionally outside the protections liberal legal order extended to rights-bearing persons.

Crucially, Oyěwùmí (1997) and Tamale (2014) demonstrate that these axes were simultaneously racialised and gendered: African women were positioned at the intersection of racial subordination and patriarchal exclusion within colonial legal epistemology, occupying subject-positions from which both liberal rights claims and customary protections were structurally withheld. This co-constitutive racial-gender hierarchy is not peripheral to the coloniality of law; it is constitutive of the legal habitus that the framework identifies as its reproductive mechanism.

Law was not merely one instrument among others through which colonial power operated; it was the instrument through which colonial power became legitimate. Colonial administrators enacted ordinances, convened courts, and produced legal records that transformed the extraction of labour and land into lawful commercial activity, the suppression of political resistance into public order enforcement, and the subordination of entire populations into the administration of native subjects. Law gave colonialism its grammar of legitimacy - and it is precisely this grammar that the coloniality of law identifies as persisting within post-colonial African legal orders. Critical legal scholars in the African tradition, from Shivji's (2009) analysis of the right to self-determination to Mutua's (2002) critique of human rights discourse, have consistently shown how liberal legal frameworks reproduce rather than transcend colonial power relations. The coloniality of law synthesises these insights into a systematic theoretical framework with diagnostic and programmatic dimensions.

2.2 Three Dimensions and the Bourdieu Problem

The coloniality of law is a structured condition of post-colonial legal orders in which colonial legal logics, institutional architectures, and epistemological hierarchies continue to animate the production, interpretation, and enforcement of law after formal independence. It operates across three analytically distinct but empirically interrelated dimensions.

The structural dimension encompasses the persistence of colonial institutional arrangements - hyper-presidential executive authority, expansive emergency powers, subordinate judiciaries, and the marginalisation of indigenous normative orders - within formally independent constitutional systems. Colonial institutions were designed to govern without consent, suppress participation, and maintain order in the service of extraction. When African states adopted these structures at independence, they inherited not merely institutional forms but institutional purposes: the machinery of authoritarian governance in constitutional dress (Chanock, 1985; Benton, 2002).

The epistemic dimension encompasses the domination of African legal orders by European legal philosophy and doctrine, and the systematic marginalisation of African legal traditions. This produces a legal culture in which European legal concepts are treated as universal while African normative traditions are confined to the subordinate register of 'customary law', subjected to repugnancy tests, and denied epistemological standing as sources of genuine legal authority (Fitzpatrick, 1992; de Sousa Santos,

2014). The colonial construction of 'customary law' as the domain of family, marriage, and inheritance concentrated precisely on the areas where women's rights were most extensively subordinated. Legal professionals trained within the colonial tradition internalised a conception of family law as resistant to liberal rights claims. This orientation persists in post-colonial judicial culture across all three case study jurisdictions, with measurable consequences for women's access to property, inheritance, and bodily autonomy (Nyamu-Musembi, 2002; Tamale, 2014). Epistemic decolonisation must therefore be intersectional: the racial and gender epistemological hierarchies were constructed together and must be dismantled together.

The dispositional dimension encompasses the internalisation by legal professionals, judges, and political elites of a legal habitus in which formal legal compliance is treated as sufficient for legitimacy, law is understood as an instrument of state authority rather than popular sovereignty, and technical legal reasoning functions as a barrier to rather than an instrument of transformative justice.

Bourdieu (1987) theorised the legal field as a relatively autonomous space of professional competition, insulated from the political field by its own internal doxa and the symbolic capital that accumulates through mastery of legal technique. Post-colonial African legal institutions are structurally different: judicial appointment through executive patronage, administrative transfer of judges who rule against the government, inadequate judicial salaries creating structural dependence, and the direct deployment of security forces to parliamentary chambers during constitutional proceedings all indicate a far lower degree of field autonomy than Bourdieu's model presupposes. The coloniality of law, therefore, adapts rather than applies Bourdieu's habitus concept: the habitus operates not primarily through the internal doxa of professional competition but through the intersection of professional formation - curriculum, training, epistemic hierarchy - and structural incentives - appointment, tenure, administrative pressure - that together produce characteristic patterns of judicial reasoning. This is a habitus of professionals operating within a field whose limited autonomy is itself a product of colonial institutional design. The theoretical consequence is that structural and dispositional dimensions are more tightly coupled in the African post-colonial legal field than in Bourdieu's European model, making their co-occurrence more predictable and their joint operation more difficult to challenge through individual actors' choices alone.

The evidential basis for the dispositional dimension rests on three interlocking sources. First, curriculum analysis: systematic review of law school syllabi across African jurisdictions documents that European law constitutes the overwhelming majority of required coursework, with African legal history and indigenous jurisprudence appearing, where present at all, as optional modules attracting minimal enrolment (Adebisi, 2016). Second, judicial appointment data: in Cameroon, over 80 per cent of Supreme Court justices appointed between 2000 and 2020 completed postgraduate legal training in France or at predominantly Paris-trained Cameroonian institutions, producing generational transmission of epistemic orientation. Third, judicial outcomes: the pattern of formalist reasoning - courts explicitly limiting review to procedural compliance without engaging substantive rights claims, and declining to consider whether procedural forms carry democratic meaning under prevailing conditions - is consistent across jurisdictions with different colonial inheritances.

The dispositional dimension is best understood as a theoretically specified mechanism whose evidential basis rests primarily on structural indicators - curriculum, appointment patterns, outcome patterns - rather than on direct evidence of internalised disposition. Direct evidence from judicial interviews, oral histories, and ethnographic legal sociological work would constitute more robust validation and is the primary agenda for future empirical research.

Together, the three dimensions constitute the coloniality of law: not a historical residue awaiting erosion through time, but a dynamic, self-reproducing structural condition. Where all three co-occur and mutually reinforce each other - as in Cameroon- the coloniality of law operates at maximum intensity, generating pathologies resistant to piecemeal reform.

2.3 Legality Without Legitimacy: The Central Mechanism

Legality without legitimacy names the central pathology produced by the coloniality of law. In classical liberal legal theory, compliance with established legal procedures generates a presumption of legitimacy - what Weber (1978) theorised as the foundation of rational-legal authority. In contexts shaped by the coloniality of law, this conflation is actively dangerous: when the legal framework was itself constructed by and for colonial power - designed not to embody popular sovereignty but to govern subjects - legal validity cannot generate democratic legitimacy.

Scheppele's (2018) concept of autocratic legalism - the use of formally democratic legal procedures to establish authoritarian outcomes- captures part of this phenomenon but understates its structural depth. For Scheppele, autocratic legalism is primarily a deliberate strategy deployed by political actors who exploit procedural legitimacy for anti-democratic ends. The coloniality of law identifies something categorically different: a legal system so designed that authoritarian outcomes are its natural product, not the strategic achievement of particular actors. Autocratic legalism presupposes a baseline of democratic legality that is later subverted; the coloniality of law shows that in many African contexts, that baseline never existed. The distinction is between pathology as strategy and pathology as structure. The two mechanisms are analytically complementary rather than mutually exclusive, and the distinction is a matter of empirical weight. Structure is the primary explanation for why authoritarian outcomes are reproduced across changes of government, judicial personnel, and constitutional text.

The framework also extends the mainstream comparative constitutional law literature. Levitsky and Ziblatt (2018) and Bermeo (2016) theorise democratic backsliding as the gradual erosion of democratic norms by incumbent leaders - a framework analytically underpowered in the post-colonial African context precisely because it presupposes baseline democratic institutions that the coloniality of law framework shows were never fully established. Roznai's (2017) work on unconstitutional constitutional amendments is directly relevant to Cameroon's 2008 removal of presidential term limits: the coloniality of law analysis illuminates why courts in post-colonial contexts systematically fail to enforce implied constitutional limits, not through incompetence alone, but because the legal habitus provides no epistemic resources for conceiving such limits as judicially enforceable norms.

A further dimension concerns the relationship between legality and political violence. Colonial legal orders did not merely fail to prohibit violence against colonised populations; they legalised, organised, and routinised it through formal mechanisms - statutes, regulations, judicial orders - through which they simultaneously produced the appearance of legitimate governance. Military tribunal jurisdiction over civilians in Cameroon's Anglophone regions is not an exception to the normal legal order; it is an expression of the normal legal order operating according to its colonial logic. The legal habitus supplies the professional vocabulary - jurisdiction, procedure, statutory authority - through which this is rendered legally natural and institutionally unquestionable (Baxi, 2008).

2.4 Distinguishing the Coloniality of Law from Mamdani's Bifurcated State

Mamdani's (1996, 2012) analysis of the bifurcated colonial state demands direct engagement as the most important adjacent framework. Three distinctions establish the coloniality of law as analytically independent. First, Mamdani's primary analytical focus is the political sociology of state-society relations; Where Mamdani locates reproduction in the state's bifurcated structure, the coloniality of law locates reproduction in the internal professional and epistemic dynamics of legal institutions themselves - curriculum, judicial habitus, doctrinal architecture - rather than in the broader state-society relationship. Second, Mamdani's bifurcated state is primarily a thesis about the political marginalisation of subjects; the coloniality of law is a thesis about the professional internalisation of colonial legal purpose, explaining why institutions ostensibly designed to extend rights protection systematically fail to do so even for formally enfranchised citizens. Third, the coloniality of law foregrounds the epistemic dimension - the hierarchisation of European legal philosophy over African normative traditions within professional legal culture- that Mamdani's structural account does not address.

A further distinction concerns temporal dynamics. Mamdani's thesis is primarily a continuity thesis: the colonial legal structure persists because post-colonial elites inherited and reproduced it. The coloniality of law is equally a thesis about reproduction through transformation: the mechanism operates not only through preservation of colonial institutional forms but through their adaptation and internalisation in professional habitus, such that formally reformed institutions continue to generate colonial outcomes through new legal instruments. This is precisely why Ethiopia, where one of Africa's most formally progressive constitutional texts generates authoritarian outcomes, is fully explicable within the coloniality of law framework but sits awkwardly within a framework primarily oriented toward structural continuity. The two frameworks are complementary rather than competitive: Mamdani explains the structural and political-sociological inheritance; the coloniality of law explains the mechanism of legal professional reproduction through which that inheritance is transmitted and consolidated.

2.5 The African Regional Human Rights System: Coloniality at the Supranational Level

The African Charter on Human and Peoples' Rights does not transcend the coloniality of law; it instantiates it at the supranational level through the same structural mechanism that operates

domestically. Negotiated in the early 1980s by African state elites whose legal formation was overwhelmingly colonial, the Charter embeds colonial legal logic at its architectural core. Its foundational framework - individual rights held against a duty-bearing state, enforced through quasi-judicial proceedings controlled by state consent, operates within the epistemological parameters of Western liberal rights discourse without subjecting those parameters to scrutiny. Its claw-back clauses, permitting limitation of rights by domestic law conditioned on restrictions prioritising public order, reproduce the coloniality of law's central mechanism: the subordination of individual freedom to governmental authority through formally legitimate legal instruments (Ouguergouz, 2003; Murray, 2000). The same logic that rendered colonial public order ordinances legally valid while substantively dominating operates within the Charter to render rights internationally proclaimed but domestically overrideable. Legality without legitimacy is thus not merely a domestic pathology; it is reproduced at the regional scale by a treaty architecture whose drafters could not escape the legal habitus within which they had been professionally formed.

The African Court has begun to contest this inheritance, in *Lohé Issa Konaté v Burkina Faso* (Application 004/2013, 2014), striking down criminal defamation laws, and in *APDF & IHRDA v Republic of Mali* (Application No. 046/2016, 2018), finding Mali's Family Code violated the Charter by permitting child marriage. Yet the structural constraints on the Court's reach are themselves expressions of the coloniality of law at the supranational level. As of 2025, only 8 of 55 AU member states have accepted individual petition rights under Article 34(6) - a figure further reduced by Tanzania's 2019 and Côte d'Ivoire's 2020 withdrawals. This pattern is analytically predictable within the framework: states whose domestic legal orders most intensively reproduce executive dominance respond to transformative external jurisdiction by withdrawing from it. Remedial orders have been systematically ignored, and the African Commission has been hampered by chronic under-resourcing and absence of enforcement mechanisms beyond moral condemnation - reproducing at the regional level the same gap between legal validity and practical enforcement that characterises domestic legal orders.

Three leverage points for meaningful reform follow from this analysis. Coordinated civil society advocacy could generate conditions for amending Article 34(6) to establish compulsory jurisdiction for states meeting democratic governance thresholds. AU mechanisms linking development assistance to Charter compliance could create incentives for individual petition acceptance. Regional economic communities - ECOWAS, the EAC, SADC - have begun developing human rights protocols with greater enforcement capacity; strengthening these sub-regional mechanisms while developing coordination frameworks with the African Court offers a path toward effective enforcement that bypasses the Charter system's state-consent architecture (Murray, 2000).

3. Colonial Foundations, Post-Independence Continuity, and Scope Conditions

3.1 The Colonial Legal System: Designed to Dominate

The colonial legal systems imposed on Africa between the late nineteenth and mid-twentieth centuries were designed for three interlocking purposes: the regulation and exploitation of African land, labour, and resources; the suppression of political dissent; and the construction of an epistemological hierarchy in which European law occupied universal authority while African normative orders were reduced to subordinate 'customary law' (Prempeh, 2007; Mann & Roberts, 1991). Centralised executive authority, emergency regulations, public order statutes, and repugnancy clauses were not merely unjust applications of otherwise legitimate legal principles: they were the logic of colonial law itself (Mamdani, 2012; Chanock, 1985). The gendered dimension of this architecture was equally foundational: 'customary law' was constructed as the regulatory domain of family, marriage, inheritance, and land - precisely the areas governing women's social and economic position - and its administration through male chiefs and colonial administrative officers systematically excluded women from legal subjecthood in the domains most directly affecting their lives (Tamale, 2014; Nyamu-Musembi, 2002).

The colonial legal construction of emergency power deserves particular attention. Sedition ordinances, public assembly restrictions, and detention without trial were standard features of colonial legal architecture deployed against organised political resistance. These instruments were neither aberrations nor failures; they were the legal technology of colonial governance. Their transmission to post-colonial constitutional orders - sometimes verbatim, sometimes through structurally equivalent successor legislation - represents one of the clearest pathways through which the coloniality of law operates (Young, 1994; Benton, 2002). The architecture of colonial judicial appointment equally merits examination: colonial courts were administrative instruments of the colonial state, staffed by officials whose professional formation oriented them toward the maintenance of order rather than the protection of rights. When post-colonial states inherited these procedures -- as virtually all did - they inherited not merely institutional arrangements but the structural logic of judicial subordination to executive authority (Von Doepp, 2005).

3.2 Post-Independence Continuity, Variation, and Scope Conditions

The transition from colonial rule to formal independence was, with few exceptions, a process of Africanisation of personnel rather than decolonisation of structures. African political and legal elites assumed control over a state apparatus designed to dominate and extract, retaining the basic architecture: the common law or civil law framework, the strong executive, emergency powers provisions, and the relegation of customary law to the institutional margins (Mamdani, 1996; Shivji, 2009). This continuity reflected structural constraints: African legal elites trained entirely within the colonial epistemological framework; Cold War geopolitics that made structural legal transformation ideologically costly; and independence arrangements that, in many cases, entrenched colonial-era institutional designs to protect departing powers' interests.

Understanding the framework's scope conditions requires a systematic analysis of partial exceptions. Three conditions appear to explain why Botswana, Namibia, and post-apartheid South Africa have more

successfully contested one or more dimensions of the coloniality of law. The conditions are individually contributory but jointly explanatory: no single condition appears sufficient; their combined presence correlates with meaningful resistance. First, an organised, institutionally embedded legal complex - bar associations, academic legal culture, and civil society lawyers - capable of generating sustained countervailing professional norms. Second, constitutional transition moments accompanied by genuine popular participation, creating civic constituencies with ownership claims over constitutional meaning: South Africa's post-apartheid process received over two million public submissions and conducted education campaigns in all eleven official languages, producing a document with deeper popular authorial investment than most post-colonial African constitutions. Third, constitutional designs that structurally constrain emergency powers and judicial appointment: Namibia's constitution includes judicially enforceable limits on presidential emergency authority of unusual specificity.

These scope conditions are not external qualifications of the framework but its constitutive elements: the coloniality of law is a structural condition susceptible to contestation under determinate conditions, not an inescapable fate. Jurisdictions undergoing erosion of bar association independence, academic freedom, or judicial appointment procedures can be expected to exhibit increasing intensity of the coloniality of law's operation over time, regardless of constitutional text (Prempeh, 2007; Hirschl, 2004). Where organised legal complexes, participatory constitutional moments, and structural constraints on emergency powers co-exist, the coloniality of law is partially contested; where any of these erode, its intensity predictably increases.

4. Legality Without Legitimacy in Practice: Case Studies

4.1 Cameroon: The Coloniality of Law in Concentrated Form

Cases were selected through theoretical purposive sampling: Cameroon as a high-intensity case where all three dimensions co-occur; Uganda as a case of structural continuity with partial dispositional contestation; Ethiopia as a case of progressive constitutional text absorbed by colonial legal logic.

Cameroon provides the most analytically rich case study in contemporary Africa. Its legal complexity is exceptional: simultaneously a civil and common law jurisdiction, a product of both French and British colonialism, and the site of a protracted armed conflict whose origins lie precisely in colonial legal bifurcation. The 1961 Federal Constitution concentrated effective constitutional authority in a predominantly Francophone federal executive. The move to a unitary state in 1972, accomplished through a constitutionally irregular referendum bypassing the federal structure, consolidated French civil law and executive dominance across the territory. The 1996 Constitution introduced reforms - a Constitutional Council, a Senate, decentralisation provisions - that left executive dominance substantively intact. The 2008 constitutional amendment removed the two-term presidential limit, enabling Paul Biya, in power since 1982, to remain indefinitely in office. Each transformation was legally executed: referenda held, parliamentary procedures followed, constitutional provisions technically

respected. This is the operation of legality without legitimacy, constitutional form preserved while democratic substance is systematically hollowed out (Fombad, 2011; Sindjoun, 2002).

A critical structural deficiency crystallises the coloniality of law with unusual force: the 1996 Constitution does not entrench a justiciable Bill of Rights. The preamble incorporates by reference the Universal Declaration and the African Charter, but there is no mechanism by which citizens can directly enforce constitutional rights claims against the state in ordinary courts. The Constitutional Council provides no individual right of petition, and ordinary courts have not developed a jurisprudence of directly enforceable constitutional rights (Fombad, 2017). This reflects the French-derived tradition of droit public, in which constitutional norms are addressed to state institutions rather than citizens. Rights are present at the level of constitutional text, systematically unavailable at the level of justiciable legal claim. The gendered dimension of this lacuna is acute: in the absence of directly enforceable constitutional equality guarantees, women seeking to enforce rights against discriminatory customary practices face a structural barrier not merely to particular remedies but to constitutional standing itself. Isolated attempts by Cameroonian courts to treat the preamble as directly justiciable have not produced a consistent rights jurisprudence, confirming the structural unavailability of constitutional rights.

The Constitutional Council, established under the 1996 Constitution and operationalised only in 2018, illustrates how the coloniality of law shapes institutional design to serve elite interests while maintaining constitutional form. Composed entirely of presidential and parliamentary appointees, it may be seized only by the President, the Presidents of Parliament, or one-third of parliamentary members. Citizens, civil society organisations, and political parties have no standing to petition it (Fombad, 2017). The Council thus functions not as a guardian of rights against governmental overreach but as a mechanism for managing intra-elite political competition: textually present, institutionally captured, and functionally inaccessible to those most in need of constitutional protection.

4.2 Emergency Constitutionalism and the Anglophone Crisis

The Anglophone crisis - which escalated from professional strikes by lawyers and teachers in 2016 into full-scale armed conflict after 2017 - provides a devastating illustration of the coloniality of law in action. Its origins lie in colonial legal bifurcation: the marginalisation of the common law tradition and English-medium education in the Northwest and Southwest regions, which post-colonial constitutional arrangements formally protected but practical governance systematically eroded across decades of Francophone administrative dominance. The state's legal response invoked public order legislation traceable in its core provisions to colonial-era statutes. Lawyers and teachers were arrested and prosecuted before military tribunals whose jurisdiction over civilian accused is constitutionally questionable but has been upheld by courts deploying formalist reasoning that prioritises procedural regularity over substantive fairness.

The Law on the Suppression of Acts of Terrorism (Law No. 2014/028) was applied to political activists and civil society leaders whose conduct bore no resemblance to any internationally recognised

conception of terrorism, with the military tribunal at Yaoundé handing down extended sentences on this basis (Amnesty International, 2017; Human Rights Watch, 2023). By conservative estimates, over four thousand people have been killed, more than half a million internally displaced, and hundreds of thousands have fled as refugees to Nigeria. Schools closed for years, disrupting the education of over six hundred thousand children; torture, enforced disappearances, and arbitrary arrests have been extensively documented (UNHCR, 2023; UNICEF, 2022). Women and girls have been disproportionately affected: sexual violence has been used systematically as a weapon of conflict, while displacement has severed access to reproductive healthcare, legal documentation, and community dispute resolution mechanisms through which many women in the Anglophone regions exercised practical legal agency. Cameroon's courts have, with few exceptions, declined to exercise meaningful review - habeas corpus applications dismissed on procedural grounds, challenges to military tribunal jurisdiction rejected through formal legal reasoning that accepts the letter of statutory provisions while ignoring their systemic abuse.

UN Committee against Torture. (2017). Concluding observations on the fifth periodic report of Cameroon (CAT/C/CMR/CO/5).

4.3 Electoral Legalism and the Reproduction of Power

The electoral dimension of Cameroon's legal order further illustrates legality without legitimacy. The Electoral Code of 2012 places administrative responsibility for elections with the Ministry of Territorial Administration, directly accountable to the President of the Republic. Elections Cameroon (ELECAM), nominally independent, operates without genuine autonomy: its governing board is presidentially appointed, and its enforcement authority is not insulated from governmental actors. Electoral disputes are adjudicated by the Supreme Court, whose President is appointed by the President of the Republic and whose members lack functional security of tenure.

The 2018 presidential election, conducted amidst active armed conflict in Anglophone regions where dramatically lower participation rates reflected the structural impossibility of democratic engagement, was certified by the Constitutional Council without substantive engagement with the conditions that made democratic participation structurally unavailable to a significant proportion of the electorate. Electoral legalism produced its characteristic outcome: the legal form of democratic legitimacy superimposed on conditions of democratic impossibility - procedures followed, majorities counted, winners declared, while the substantive democratic conditions that alone give such procedures meaning were absent (Fombad, 2011; Sindjoun, 2002).

4.4 Comparative Dimensions: Uganda and Ethiopia

Uganda's constitutional order provides a comparative illustration of the same structural logic in a different constitutional configuration. The Constitution (Amendment) Act 2017 removed the presidential age limit through a parliamentary process conducted under extraordinary coercion: members of Parliament who opposed the amendment were physically assaulted by military personnel deployed within the parliamentary chamber itself; the Clerk of Parliament was arrested; the process was

completed under conditions bearing no resemblance to deliberative constitutional procedure. The Constitutional Court, petitioned in *Mabirizi Kiwanuka v Attorney General* (Constitutional Petition No. 3 of 2018), dismissed the challenge. The majority accepted the formal regularity of the procedure - counting votes, verifying the required majority - while declining entirely to examine the conditions under which that majority was secured. Justice Kakuru's dissent engaged more substantively with whether physical coercion could vitiate procedural regularity, representing an internal contestation of the formalist legal habitus the majority exemplified (Isanga, 2017). This formalist reasoning is paradigmatic of the dispositional dimension: legal logic that treats the visible forms of constitutional procedure as sufficient for constitutional validity regardless of whether those forms carry democratic meaning. This formalist refusal to interrogate coercive conditions is not merely judicial timidity; it reflects a legal habitus in which procedural form is treated as sufficient for constitutional validity, regardless of substantive democratic meaning.

The gender dimension of Uganda's coloniality of law warrants explicit integration. Tamale's (2014) analysis demonstrates how Ugandan legal institutions have deployed the colonial legal habitus - specifically its construction of 'culture' and 'tradition' as domains resistant to rights-based intervention - to resist LGBTQ rights claims while simultaneously invoking Victorian-era penal legislation of direct colonial provenance. The criminalisation perpetuated by the Anti-Homosexuality Act and its successors is itself colonial in origin, introduced through British imperial law. The coloniality of law renders the colonial origin of 'traditional' legal norms invisible within professional legal consciousness - a pattern reproduced across family law, inheritance, land tenure, and sexual regulation.

Ethiopia’s 1994 Constitution is formally one of the most ambitious constitutional documents in Africa: it establishes ethnic federalism, provides for extensive rights including socio-economic rights, and uniquely recognises the right of national self-determination up to and including secession (Fiseha, 2012). The gap between constitutional text and institutional practice is explicable through the coloniality of law's absorption mechanism, most precisely through State of Emergency Proclamation No. 1300/2021, issued during the Tigray conflict.

Proclamation No. 1300/2021 invoked Article 93 of the Constitution, which vests declaration power in the Council of Ministers subject to parliamentary approval within 48 hours. The Federal House of Representatives ratified the Proclamation on the same day it was tabled, without committee referral, without substantive amendment, and without dissent, deploying the constitutional form of parliamentary oversight as a ratification mechanism rather than a deliberative check. The Proclamation's provisions were sweeping: telecommunications severed, movement restricted, humanitarian access blocked, and administrative detention extended to journalists and civil society activists. The Federal Supreme Court - whose members serve at the executive's administrative discretion and whose jurisprudence has systematically avoided review of executive emergency powers - raised no challenge to the Proclamation's compatibility with the constitutional rights provisions it suspended (Ethiopian Human Rights Commission, 2021). The Constitution was procedurally observed and substantively emptied. This is the absorption mechanism in legal form: governments need not amend a progressive constitutional

text to subordinate it; they need only ensure that oversight institutions remain populated by actors whose professional formation orients them toward state authority rather than constitutional fidelity. The Proclamation exemplifies the absorption mechanism: progressive constitutional rights are not formally repealed but rendered inert by emergency instruments interpreted through a state-centred legal habitus.

The post-2018 Abiy Ahmed reforms introduced genuine, if partial, changes - the release of political prisoners, liberalisation of civil society regulation, appointment of women to senior judicial and executive positions - but the Tigray conflict demonstrated that these had not transformed the structural dimension of the coloniality of law. Ethiopia under Abiy Ahmed represents the partial exception that the scope conditions analysis predicts: reforms to the dispositional dimension without corresponding structural reform produce gains that remain vulnerable to reversal under conditions of crisis.

5. Toward a Decolonial African Legal Order

5.1 Re-Centring Legitimacy and Popular Sovereignty

A decolonial African legal order must proceed from a fundamental reorientation of the relationship between legality and legitimacy. Legal validity cannot be treated as self-justifying in societies whose legal frameworks were constructed by and for colonial power. Legitimacy must be assessed against the alignment of law with the actual aspirations, values, and participatory agency of African peoples - not as rhetorical aspiration but as an operational constitutional principle (Tully, 1995; de Sousa Santos, 2014). This requires rethinking democracy beyond the periodic elections that serve as legitimacy markers within colonial-derived constitutional frameworks, toward sustained participatory structures: community assemblies, deliberative forums, and constitutional design processes in which all communities exercise genuine authorial agency over the fundamental rules of their political community.

South Africa's post-apartheid constitutional process demonstrates that popular constitutional authorship is not a utopian aspiration but a replicable institutional practice. This invocation must, however, be held alongside Madlingozi's (2017) incisive critique: transformative constitutionalism's promise of recognition, incorporation, and redistribution has excluded black South Africans from its material benefits while deploying their symbolic inclusion to legitimise the constitutional order. South Africa is therefore an existence proof of popular constitutional authorship, not a model for its substantive outcomes. The lesson is that the participatory process is necessary but not sufficient: the institutional mechanisms through which popular authorship is translated into ongoing constitutional governance must prevent capture by elite-professional networks whose habitus remains shaped by the coloniality of law.

In institutional terms, legitimacy is achievable - not guaranteed - where three conditions are met simultaneously and sustained over time: constitutional design processes with binding popular authorial input and ongoing participatory governance mechanisms; bill of rights provisions directly enforceable by individuals in ordinary courts, without gatekeeping by executive-appointed bodies; and an independent

legal academy generating professional formation oriented toward popular sovereignty rather than state authority. Ghana's Supreme Court, the Malawian Constitutional Court's annulment of election results in 2020, and elements of South Africa's constitutional jurisprudence represent partial instantiations that establish the institutional possibilities as real rather than aspirational (Prempeh, 2007).

5.2 Epistemic Decolonisation and the Recovery of African Jurisprudence

The epistemic dimension demands recovery and constitutionalisation of African jurisprudential traditions as genuine sources of legal authority, not ornamental acknowledgements in constitutional preambles. The Ubuntu philosophical tradition - developed systematically in Ramose (1999) and Metz's (2011) communal relationship account - offers resources for a legal anthropology substantively different from the possessive individualism of liberal rights theory, foregrounding relational personhood, social solidarity, and communal accountability as constitutive of rights claims rather than their limits. The Constitution of Kenya 2010 offers a partial model: its recognition of community land rights, requirement that courts apply African customary law where applicable, and recognition of traditional dispute resolution as a legitimate component of the justice system represent a significant, if incomplete, attempt at constitutionalising African legal traditions within a framework that also protects individual rights (Klare, 1998).

Any invocation of African restorative justice traditions as institutional models must engage critically with their contested dimensions. Rwanda's Gacaca courts are frequently cited as a successful example of African traditional dispute resolution, yet a substantial literature documents significant departures from the pre-colonial communal practice invoked: the courts were state-designed, operated under the political direction of the ruling party, subject to documented manipulation, and raised serious procedural fairness concerns (Clark, 2010). Ubuntu warrants equivalent scrutiny: its applications in some traditional governance contexts have reproduced patriarchal authority structures that subordinate women and youth, and its invocation in post-apartheid state-building has sometimes functioned as cover for communitarian consensus-enforcement rather than genuine deliberation. The coloniality of law does not propose a return to pre-colonial legal orders as they actually existed - an impossible and potentially reactionary aspiration - but the critical recovery of African normative resources as living, contested, and evolving contributions to legal thought.

The gender dimension of epistemic decolonisation is structurally central. Decolonial feminist scholarship - Oyěwùmí (1997), Tamale (2014), and the broader TWAIL feminist literature - has demonstrated that colonial epistemologies simultaneously racialised and gendered African subject-positions, marginalising women from both colonial and indigenous rights frameworks. Kenya's recognition of gender equality as a foundational value (Article 10), combined with the requirement that customary law be consistent with the Bill of Rights (Article 2(4)), establishes a principled framework for integrating African legal traditions while subjecting them to non-discrimination norms. Any invocation of African tradition as a source of legal authority must be subjected to the same critical scrutiny applied to

European legal inheritance: examining whose interests a claimed tradition serves, whose voices it silences, and whether its contemporary institutional expression reflects genuine communal normative practice or state-engineered traditionalism reproducing colonial gender hierarchies under a new name (de Sousa Santos, 2014; Nyamu-Musembi, 2002).

5.3 Transformative Constitutional Design: Possibilities and the Bootstrapping Problem

Structural decolonisation requires constitutional reform that directly confronts the architectural features reproducing the coloniality of law. Three structural imperatives are foundational: the dismantling of hyper-presidentialism through genuine constitutional constraints, including real term limits protected against amendment and meaningful parliamentary oversight of emergency powers; the institutional empowerment of fourth-branch accountability bodies with genuine operational independence and security of tenure; and constitutional recognition of indigenous normative orders through principled integration that ensures traditional authority structures are democratically accountable rather than merely institutionally preserved (Himonga & Nhlapo, 2014).

The core tension is this: if the primary mechanisms of constitutional reform - judicial review, rights adjudication, and parliamentary law reform - are themselves embedded in European legal modernity, and if the institutions implementing reform are staffed by actors whose habitus was formed under colonial legal conditions, what prevents reform from being absorbed into the existing structure, as Ethiopia's 1994 Constitution was absorbed through Proclamation No. 1300/2021?

The response to this bootstrapping problem must specify not only the conditions under which habitus transformation takes hold but the mechanism through which it is first initiated. The case evidence is instructive here: counter-habitus orientations are not produced by institutional reform proceeding from above; they originate at the margins of the legal field in actors formed through different professional pathways. Justice Kakuru's dissent in *Mabirizi* was not generated by institutional design; it was generated by a professional formation that had internalised the substantive rather than merely procedural dimensions of constitutional validity. Public interest litigators pursuing habeas corpus on behalf of Anglophone detainees in Cameroon, and bar associations resisting executive pressure on judicial appointments across all three jurisdictions, are the sites at which an alternative legal habitus is being actively formed and transmitted.

Habitus transformation at the field level is initiated when these minority orientations achieve sufficient institutional density to alter the conditions of professional reproduction: when the dissenting judge becomes a curriculum designer, when the public interest litigator leads the bar association, when community-embedded lawyers occupy law school faculties. This sequencing is not circular; it does not require reformed institutions before reform can begin, only the deliberate amplification of counter-habitus actors already present within the legal field into the specific positions that control professional formation. Three conditions are therefore constitutive prerequisites rather than supplementary aspirations. First, epistemic decolonisation of the legal academy must accompany institutional reform:

African legal traditions, decolonial jurisprudential thought, and critical legal methodologies must occupy foundational rather than supplementary positions in professional formation, creating the generational pipeline of counter-habitus formation without which reformed institutions will be re-populated by actors shaped by the colonial pattern. Second, institutional redesign for genuine accountability - judicial appointment processes insulated from executive control, parliamentary oversight with deliberative rather than ratification requirements, civil society participation frameworks embedded in constitutional governance - must establish the structural conditions within which counter-habitus actors can sustain their orientations without administrative neutralisation. Third, popular constitutionalism and civic legitimacy must be prerequisites for constitutional authority rather than aspirations for subsequent democratic deepening.

Jurisdiction-specific applications follow directly. Cameroon requires an individual petition mechanism anchored in a codified justiciable Bill of Rights enforceable in ordinary courts, with specific gender equality provisions that are directly enforceable rather than dependent on preamble incorporation alone. Uganda requires repeal or fundamental revision of the Public Order Management Act and genuine depoliticisation of the Judicial Service Commission. Ethiopia requires the entrenchment of parliamentary oversight of emergency declarations with deliberative rather than ratification requirements, and statutory guarantees of judicial tenure insulated from executive administrative pressure.

6. Conclusion: From Text to Transformation

This article has theorised the coloniality of law as the conceptual key to understanding a central paradox of contemporary African political life: the persistent coexistence of constitutional formalism and structural domination. The claim is not that African law is merely colonial law in disguise, though the genealogical continuities are undeniable. It is that colonialism constructed a legal logic - a structured relationship between law, power, and legitimacy in which legality substitutes for rather than generates legitimacy - and that this logic was transmitted into post-colonial African legal orders through structural continuity, elite reproduction, epistemic subordination, and professional habituation. The coloniality of law therefore operates not as a historical residue but as the generative grammar of African constitutionalism.

The framework’s distinctiveness lies in identifying the legal habitus as the primary mechanism of colonial legal reproduction. In post-colonial African contexts, this habitus is not the autonomous professional competition Bourdieu theorised in European legal fields; it is the product of a field whose autonomy has been structurally constrained by executive dominance. Where Ndlovu-Gatsheni’s coloniality of power explains Africa’s embeddedness in global colonial hierarchies, and Mamdani’s bifurcated state explains the political-sociological inheritance shaping state–society relations, the coloniality of law explains why legal institutions themselves reproduce domination through their internal professional and epistemic dynamics. Its three dimensions - structural, epistemic, and dispositional - interact to produce self-reinforcing pathologies resistant to piecemeal reform but susceptible to transformation when all three are addressed simultaneously.

The empirical analysis confirms the framework's explanatory power. Cameroon demonstrates the coloniality of law in its most concentrated form: a constitutional order formally committed to rights and the rule of law has produced four decades of uninterrupted executive dominance, a protracted armed conflict rooted in colonial legal bifurcation, and a human rights crisis of continental significance - all through legal forms that preserve the appearance of constitutional governance. Uganda and Ethiopia confirm the pattern's structural character. Uganda's emergency-powers architecture and Ethiopia's Proclamation No. 1300/2021 illustrate how legality without legitimacy is reproduced across distinct constitutional configurations. Ethiopia is especially instructive: a progressive constitutional text was procedurally observed and substantively emptied without amendment, through institutions whose professional formation systematically forecloses substantive constitutional review. When authoritarian outcomes remain invariant across changes in governments, judiciaries, and constitutional texts, structure bears primary explanatory weight.

For human rights scholars and practitioners, this analysis carries both diagnostic and programmatic implications. Diagnostically, it requires moving beyond the assumption that Africa's human rights gap is primarily a problem of enforcement capacity, institutional weakness, or political will. It is also - and perhaps fundamentally - a problem of legal structure: the framework within which rights are embedded is itself the product of a colonial logic that systematically forecloses their realisation. This logic is racial and gendered at once. The coloniality of law reproduces racial and gender hierarchies simultaneously, and any human rights agenda that treats gender as supplementary rather than constitutive is structurally incomplete.

Programmatically, the analysis warns that transformative constitutionalism carries within it the seeds of a new iteration of the coloniality of law if pursued without first establishing the epistemic, institutional, and civic preconditions for genuine transformation. The bootstrapping problem does not render decolonial reform impossible; it specifies that reform must be initiated through counter-habitus actors already present in the legal field - dissenting judges, public-interest litigators, community-embedded legal practitioners - and deliberately amplified into positions that shape professional formation. Constitutional redesign must be accompanied by the transformation of knowledge systems, professional cultures, and popular participation. Without these deeper transformations, decolonial constitutionalism risks reproducing colonial legal logic under progressive textual cover.

Four methodological limitations warrant acknowledgement. First, the purposive case-selection strategy risks bias toward high-intensity cases. Second, the Uganda and Ethiopia sections rely substantially on secondary sources; researchers with access to primary legal materials may refine these assessments. Third, the framework applies across civil and common law traditions as if the coloniality of law operates through both with equal intensity, though the dispositional dimension may manifest differently in civil law jurisdictions where codification concentrates interpretive authority in legislative text. Fourth, primary interview data with judges, legal educators, and bar association leaders would deepen and test the dispositional dimension's empirical claims; this is the primary agenda for future research.

The structural, epistemic, and dispositional dimensions of the coloniality of law are not discrete problems requiring sequential solution; they are mutually reinforcing dimensions of a single structural condition requiring simultaneous engagement. When that engagement is undertaken under the conditions identified here - popular participation, epistemic transformation, and institutional redesign sequenced as prerequisites rather than aspirations - the instruments of constitutional reform can genuinely serve decolonial ends. Where it is not, the form of decolonisation risks concealing the reproduction of colonial legal logic, and the paradox with which this article began will persist under new names.

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