

BOOK REVIEW

Berihun Adugna Gebeye. *A Theory of African Constitutionalism*. Oxford: Oxford University Press, 2021. ix + 243 pp. Table of cases. Table of legislation. Index. \$99.00. Hardcover. ISBN: 9780192893925.

A Theory of African Constitutionalism was one of several volumes in the Oxford Comparative Constitutionalism series to arrive in 2021. Two years and several additional works in that series later, Berihun Adugna Gebeye's book remains the most comprehensive analysis of constitutionalism in Africa to appear in decades, if not ever. With this ambitious, thoughtful, and detailed study of African constitutions since pre-colonial times, Gebeye offers a new theoretical frame to better understand, evaluate, and improve African constitutional development. Using case studies of South Africa, Ethiopia, and Nigeria, he explains why certain constitutional structures have arisen across Africa and how future constitutionalists might ensure that African nations "execute their constitutional promises."

In Chapters 1 through 3, Gebeye introduces his theory of "legal syncretism." Bridging the "dualism" between "legal centralism" (where law is inherently tied to and arising from the state) and "legal pluralism" (which incorporates non-state sources of law such as custom and tradition), syncretism is the "process and result of adoption, rejection, invention and transformation of diverse and seemingly opposite legal rules, principles, and practices into a constitutional state with imperial or colonial legacies" (10).

If that seems like a mouthful, it is. But Chapter 2 does a masterful job of explaining syncretism as a "blending" of the indigenous constitutions of pre-colonial Africa, the "superimposed" constitutions of the colonial powers, and the postcolonial constitutional systems that have rejected and adopted various aspects of liberal constitutionalism, customary and religious law, and traditional authority. Precisely because African constitutions have arisen from and are embedded in this "constitutional matrix," studying them as only state law imposed "from above" or indigenous practices "from below" fails to fully grasp their complexities.

Gebeye is most persuasive in this first section. His notion of syncretism as both a "process" that drives constitutional development and the constitutions that "result" is insightful and better reflects the general history than previous

accounts that either centered on the state or ignored it altogether. The case studies of Chapters 4 through 6 are also impressive. Tracing three constitutional structures—federalism, executive power, and women’s constitutional rights—in the three selected countries, Gebeye’s descriptions are rich and enlightening. The discussion of women’s rights illustrates how CEDAW and Western notions of gender equality have combined in complex ways with Islamic and customary laws. The description of why African executive power is uniquely “hyperactive...imperial...and personalized” explains how written constitutions which involve limited government, divisions of power, and (some) protection for individual rights can co-exist with presidents who seek to “limit the limitations” that constrain them.

Gebeye’s primary argument is that syncretism offers a better empirical explanation of African constitutionalism than either centralism or pluralism. He unfortunately seems to drop these latter frames from the case studies (instead highlighting the shortcomings of other theories such as “classic federalism”), but the sheer depth of the research validates his claim. For this alone, the book is essential reading for anyone interested in law and/or political power in Africa.

Any “weaknesses” of the work likely can be remedied by future study. Gebeye (or others) should articulate more precisely how and why syncretism works as described. When might particular indigenous traditions be adopted or not? Which ones? What factors shape the degree to which international law is incorporated? How much of a constitution is likely to be “from below” and how much “from above?” With more specificity as to how elements of the constitutional matrix combine and adhere, legal syncretism could better predict how constitutional systems across the world might develop.

Finally, it is unclear how useful legal syncretism is for normative study. Chapter 7 seeks to do just this, using it to identify the shortcomings of existing African constitutions and offer guidance as to how they might be remedied. Gebeye advises that constitutional designers should account for Africa’s “syncretic state” to mitigate its vulnerability in the global arena and include its rural citizenry. Overreliance on postcolonial constitutional reforms such as decentralization is also misguided. Instead, reformers must seek “constitutional jurisgenesis” in which both “liberal constitutional values and culture diversity” are central. But why, how, and in what constituent parts these two elements should be adopted is not specified. Why such a blending is inherently superior also is not fully articulated. Legal syncretism clearly explains what has happened in Africa; whether it can, in a meaningful way, guide future constitutional design and development remains to be seen. *A Theory of Constitutional Development*, however, is certainly the place to start.

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doi:10.1017/asr.2023.33