

Inaugural Lecture on Human Rights
Africa Legal Aid – 12 July, 2004

**The Ethics of Africa's Governance:
Rights, Rules and Relativism**

by Dr. Ali A. Mazrui

Director, Institute of Global Cultural Studies
and
Albert Schweitzer Professor in the Humanities
Binghamton University
State University of New York at Binghamton, New York, USA

Albert Luthuli Professor-at-Large
University of Jos, Jos, Nigeria

Chancellor, Jomo Kenyatta University of Agriculture and Technology
Thika and Nairobi, Kenya

Andrew D. White Professor-at-Large Emeritus and Senior Scholar in Africana Studies
Cornell University, Ithaca, New York, USA



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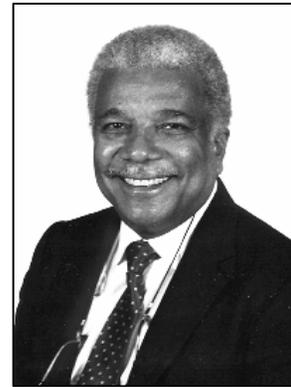
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Biography of Dr. Ali A. Mazrui

Dr. Ali A. Mazrui obtained his B.A. with Distinction from Manchester University in England, his M.A. from Columbia University in New York, and his doctorate from Oxford University in England.

Upon completing his education at Oxford University, Dr. Mazrui joined the faculty of Makerere University (Kampala, Uganda), where he served as head of the Department of Political Science and Dean of the Faculty of Social Sciences until 1973. In 1974, he joined the faculty of the University of Michigan as professor and later as the Director of the Center for Afroamerican and African Studies (1978-1981). In 1989, he was appointed to the faculty of Binghamton University, State University of New York as the Albert Schweitzer Professor in the Humanities and the Director of the Institute of Global Cultural Studies (IGCS).



Dr. Mazrui also holds three concurrent faculty appointments as Albert Luthuli Professor-at-Large in the Humanities and Development Studies at the University of Jos in Nigeria, Andrew D. White Professor-at-Large Emeritus and Senior Scholar in Africana Studies at Cornell University and Chancellor, Jomo Kenyatta University of Agriculture and Technology, Nairobi, Kenya. Dr. Mazrui has also been a Visiting Scholar at Stanford University, The University of Chicago, Colgate University, McGill University, National University of Singapore, Oxford University, Harvard University, Bridgewater State College, Ohio State University, and at other institutions in Cairo, Australia, Leeds, Nairobi, Teheran, Denver, London, Baghdad, and Sussex amongst others.

In addition to his academic appointments, Dr. Mazrui has also served as President of the African Studies Association (USA) and as Vice-President of the International Political Science Association and has lectured on five continents. Dr. Mazrui has also served as Special Advisor to the World Bank and served on the Board of the American Muslim Council, Washington, D.C.

Dr. Mazrui's research interests include African politics, international political culture, political Islam and North-South relations. He is author or co-author of more than 20 books. Dr. Mazrui has also published hundreds of articles in major scholastic journals and for public media. He has also served on the editorial boards of more than 20 international scholarly journals.

In addition to his written work, Dr. Mazrui was also the creator of the much acclaimed and widely discussed television series *The Africans: A Triple Heritage*, which was jointly produced by the BBC and the Public Broadcasting Service (WETA, Washington) in association with the Nigerian Television Authority. A book by the same title was jointly published by BBC Publications and Little, Brown and Company. The book was a best seller in Great Britain and was adopted or recommended by various book clubs in the United States, including the Book of the Month Club. Dr. Mazrui recognised among world's top 100 public intellectuals

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The issue of whether human rights are universal is linked to the wider issue of whether there is such a thing as a universal moral standard or a universal ethical code.

I propose to argue that there is indeed a universal moral standard, but we do not know it yet. What will one day be acknowledged as universal is unfolding slowly. There are denominations of Islam which believe in a Hidden Imam, guiding us mysteriously without being seen. Universal human rights are the equivalent of a Hidden Imam, revealing himself slowly but not yet completely.

Just as no one should be afraid of the Hidden Imam as a benevolent force in history, no one need be afraid of universal human rights either. We will gradually identify those rights, partly through the old utilitarian principle of minimization of pain and maximization of happiness in human experience.

Nineteenth century Western political thinkers like Jeremy Bentham, James Mill and John Stuart Mill developed a moral code based on the principle of the greatest happiness of the greatest number. This nineteenth century utilitarian philosophy had both strengths and weaknesses. But it needs to be re-examined in the light of the ultimate code of human rights, revealing itself slowly out of the womb of human history. Human rights and human obligations need to be balanced in such a way that the sum-total of human happiness is optimized and the sum-total of human pain is minimized.

Relativism: Cultural and Temporal

The Hidden Imam of human rights reveals itself in installments. Shakespeare once proposed that there was nothing either right or wrong or good or bad, but thinking made it so. But what people thought in Shakespeare's time is very different from what they think today. Changing perceptions across time inevitably result in changing standards across generations. If moral judgments vary across time (from epoch to epoch, or even decade to decade), why should they not differ across cultures?

Moral variations across time may be called "historical relativism" (cross-cultural). Moral variations across societies may be called "cultural relativism" (cross-societal).

These variations affect leadership and its ethics across time and across cultures. Regarding the Clinton-Lewinsky scandal: was it the adultery or the lying under oath which was worse? In Islam it was the adultery which was the bigger threat to the social order of the family.

Homosexuality in the first half of the 20th century was a crime almost everywhere in the

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world. Since the second half of the 20th century, it has been legalized in most of the Western world. But are we ready yet for a gay President of the United States?

The death penalty has been abolished in Canada, Western Europe, and at least 30 other countries. It may one day be regarded as a violation of human rights in the United States. But we are not yet ready for a U.S. President who is against the Death Penalty.

There used to be a time when some religions regarded the souls of women as less important than the souls of men. Now in the West are the lives of women regarded as more important than the lives of men?

The case of Karla Faye Tucker, executed in Texas in February 1998, was the first woman to be executed in Texas since the U.S. civil war – although 37 men were executed in Texas in 1997 alone. She was also only the second woman to be executed in the U.S. since the death penalty was re-legalized in the 1970s.

One out of every eight murders in the U.S. are committed by a woman, but it has been extremely rare for a woman murderer to be executed. On the other hand, it has been relatively easy for a Governor to pardon a woman on death row.

Is the life of woman valued higher, while the soul of a woman is no longer valued less highly than the soul of a male? Most Governors in the U.S.A. can more easily risk pardoning a woman on death row than a man. Pragmatism clashes with ethics.

The definition of corruption in the USA has tightened in the last 40 years. John F. Kennedy as President nominated his own brother, Robert Kennedy, to be Attorney General. By the standards of 1961, that was acceptable. By the moral standards of today such an appointment is nepotistic and corrupt.

I personally believe that there is a universal moral standard which cuts across cultures and across epochs, but we do not as yet know what it is. That universal moral standard is being revealed slowly by human history – but human history may still have a long way to go.

It is like the old doctrine of pre-destination in religions like Islam or Calvinism. We may believe everything is preordained, but we have no idea where the destination is.

*Inna Shaqqiva la Shaaivul azali
wa 'aksuhu 'saidu lam vubaddali*

In Calvinism, the answer is to look for signs of the destination; signals of salvation. They are not conclusive, but they may be road signs.

Similarly, with universal moral standards, we just look for signs as to what is universal.

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A ban on incest may be universal. A ban on matricide (mothers killing their children or vice versa) may be universal – a universal sense of revulsion. Torturing and killing babies and children may be universal.

Babies are innocent! Are we revolted when they are tortured because they are babies or because they are innocent? If we are revolted by baby-torture because babies are innocent, we may decide that torturing any innocent person (by extension) is wrong. If there is torture in Baghdad and Guantanamo Bay today, it may be wrong even if the purpose is right.

Most of us have reached that conclusion. But these are signs that there is probably a universal standard. These signs do not themselves constitute the universal standard.

Between Human Rights and Civil Liberties

What about the distinction between human rights and civil rights? Civil rights and civil liberties are specific to particular countries. Human rights are supposed to be valid for the whole of the human species.

The right to marry across racial differences (inter-racial marriage) is a human right. The right to marry a person of the same sex (gay marriages) is a civil right in the State of Massachusetts. Inter-racial marriage has evolved into a universal human right. Same sex marriages, on the other hand, are unlikely to be included in a future United Nations Declaration of Human Rights. At best gay rights are civil rights in more and more societies, but seem unlikely to be accepted as universal human rights in all societies.

And yet, who knows? If the truly universal ethical code is in the womb of history, and is only revealing itself slowly in installments, even gay rights may one day be raised from the status of civil rights in Western societies to the status of human rights across the world.

After all, the Hidden Imam of Secular Ethics has yet to pronounce his final fatwa of governance. How do these ethics manifest themselves in the African experience?

While the actual ethical code of human rights may vary either across cultures or across generations, respect for human rights may depend upon other sociological considerations. Two societies may agree that torture is wrong, and they may even agree on the definition of torture, and yet one society may be more prone to practicing torture.

The British and the Americans may share the conviction that torturing prisoners of any kind is unethical. But is it possible that the American police, and indeed American soldiers, are more prone to beat up suspects and bludgeon prisoners than either the British police or British troops? Is that difference due to the fact that the wider American society is more violent than British society? Are the prison scandals of Abu Ghraib in Iraq a product of an American domestic legacy of guns, lynching and the old frontier?

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In spite of Africa's postcolonial history, public opinion in all African countries is against military coups. Military intervention in politics is therefore regarded as politically unethical. And yet some African countries are coup-prone while others are coup-proof. Coup-prone countries in the first half century of Africa's independence have included Nigeria, Sudan, Burkina Faso, Congo (Kinshasa), Congo (Brazzaville), as well as Ghana. Coup-proof countries in the first fifty years of Africa's independence have included Tanzania, Zambia, Malawi, Senegal, Morocco, Kenya and even strife-torn Zimbabwe.

The ethics of each society insist that soldiers should not be rulers, but the politics of some of those societies produce military governors. There is consensus that military coups are wrong, but there is a gap between the domain of ethics and the realm of politics. Many African societies do not practice what they preach.

There has been a good deal of scholarly research about the causes of military coups in countries like Ghana and Nigeria. But there has been next to no research as to why coups have not taken place in countries like Tanzania, Senegal, Zambia and Kenya. We need the information if we are ever to close the gap between the ethics of civilian supremacy and the politics of military coups.

But when a society is in agreement about the fundamentals of right and wrong, what factors make the society violate its own principles? In the African experience, the greatest tests to tolerance and social justice are not economics and class struggle, but ethnicity, religion and gender. Let us first examine sectarian and ethnic conflicts before we turn to issues of gender and sex.

Ethnic Conflicts and Religious Tensions

As we grapple with new levels of conflict in Africa, from Kigali to Kismayu, from Maputo to Monrovia, we ought at least to try and identify which socio-political situations are particularly conflict-prone.

Quite a good deal of work has been done on the plural society in Africa – the type of society like Nigeria Kenya or Tanzania – which has a multiplicity of ethnic groups and plurality of political allegiances. What has yet to be explored adequately is the phenomenon of the dual society – a country whose fundamental divide is between two groups or two geographical areas. The state in a dual society is vulnerable in a different way from the state in a plural society. In a dual society two ethnic groups may account for more than three quarters of the population.

Rwanda is a dual society. So is the Sudan. But they are dual societies in very different senses. Rwanda is an ethnically dual society whose fatal cleavage is between the majority Hutu and the minority Tutsi. Burundi is similarly bifurcated between majority Hutu and minority Tutsi.

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Sudan is a regionally dual society – divided between a more Arabized northern Sudan and a Christian-led southern Sudan. But although the Sudan is regionally dual, it is ethnically plural. Both northern and southern Sudan are culturally diverse within themselves. Indeed, the northern province of Darfur has recently been engulfed in an intra-Northern conflict.

Cyprus is both regionally and ethnically dual between Greeks and Turks. There has been a stalemate hovering between partition and confederation, with the United Nations and the European Union still trying to mediate. Czechoslovakia was also both ethnically and regionally dual between Czechs and Slovaks. In the post-communist era, the country has indeed partitioned itself into separate Czech and Slovak Republics. In effect the state of the old Czechoslovakia has collapsed and split into two.¹

The most risky situations are not those involving a convergence of ethnic duality and regional (territorial) duality, as in Cyprus or Czechoslovakia. It is true that when the two ethnic groups are concentrated in separate regions, it increases the risk of territorial or political separatism and secession. But, in human terms, that may not be the worst scenario.

The most risky form of duality is that of pure ethnic differentiation without territorial differentiation. It means that there is no prospect of a Cyprus stalemate, keeping the ethnic groups separate but peaceful. It also means that there is no prospect of Czechoslovakia's "gracious parting of the ways" by creating separate countries. Rather, the two groups are so intermingled in neighborhoods, at times so intermarried, that a soured ethnic relationship is an explosive relationship.

Rwanda and Burundi fall into that category – ethnic duality without regional duality. The two groups are intermingled from village to village, certainly from street to street. Rwanda also happens to be the most densely populated country on the African continent (estimated at 210 persons per square kilometer before the genocide of 1994, or about 540 persons per square mile).

Ethnic duality without regional separation can be a prescription for hate at close quarters. Rwanda's and Burundi's tragedies are a combination of ethnic duality, population density, geographic intermingling and the legacies of colonial and pre-colonial relationships.

Northern Ireland is also a case of ethnic duality (Protestant and Catholic) with considerable intermingling within the north. There is no question of partitioning the north itself into a Catholic sector to be united with the Irish Republic and a Protestant section loyal to the United Kingdom. A second Irish partition is not in the cards, not least because the population of the north is too geographically intermingled for another partition. Inter-communal hate is therefore immediate and at close range.

¹ See for example, Arthur S. Banks (ed.) *Political Handbook of the World 1993* (Binghamton, NY: CSA Publications, 1994) pp. 211-6 and pp. 735-8.

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Is Sri Lanka in the Indian Ocean also a dual society, with the two biggest groups being the majority Sinhalese and the minority Tamils? The population is intermingled to a substantial extent, but the Tamil Tigers rebel group is fighting for a separate Tamil homeland in predominantly Tamil areas. Militarily the country faces a stalemate at the moment.

Ethnically dual societies are vulnerable to the risk of polarization. The absence of potential mediating coalitions through other groups makes the Rwandas and Burundis of this world more vulnerable than ever to periodic ethnic convulsions. Cultural frontiers without territorial frontiers – a dual identity within a single country, a society at war with itself.

Sudan is also a country at war with itself, but its North-South duality is regional rather than ethnic. As we indicated, both northern and southern Sudan are multi-ethnic, but the south is distinctive by being culturally more indigenous, less Islamized and led in the main by Christianized Sudanese. There was a civil war between the two regions between 1955 and 1972, ending with the Addis Ababa accords of the latter year.² In 1983 a second Sudanese civil war broke out and has raged until recently. Both civil wars created hundreds of thousands of refugees and displaced persons.

The first North-South civil war (1955-1972) was more clearly secessionist. The Southern rebels wanted to pull out of Sudan and form a separate country (the Czechoslovakia solution of later years). The second Sudanese civil war has been more ambivalent about secession. Indeed, Southern military leader Colonel John Garang has often emphasized that he stands for a democratization of the whole of the Sudan rather than for southern secession.

The third Sudanese civil war is in the west of the country. The dualism in Darfur province is not between Muslim and non-Muslim, but between the more Arabized Sudanese and the less.

In Rwanda the speed of killing in April and May 1994 was much faster than almost anything witnessed in the Sudanese civil war – some 200,000 people were killed in Rwanda within barely a two-week period. "There are no devils left in Hell," declared the cover title to one of the May 1994 issues of the American newsmagazine's *Time*, "They are all in Rwanda."³ More were killed later. A third of the population of the country was subsequently displaced or dislocated.

² See, for example, Dunstan M. Wai, *The African-Arab Conflict in the Sudan* (New York and London: Africana Publishing Co, 1981) and M.O. Beshir, *The Southern Sudan: Background to Conflict* (New York and London: C. Hurst and Company, 1968).

³ This was a quote from a Christian missionary who witnessed the carnage in the Central African country which *Time* decided to use over a picture of a Rwandese mother holding

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The dual society continues to cast its shadow over plural Africa - from Zimbabwe (Shona versus Ndebele) to Algeria (Arab versus Berber), from Nigeria (north versus south) to the tensions of Kigali and Khartoum. Is there a dualism in Ghana between monarchical traditions like Asante and non-Royalist ethnic communities like the Ewe?

While Czechoslovakia was a case of both ethnic and territorial dualism (Czech versus Slovak), Burundi as well as Rwanda are cases of ethnic dualism (Tutsi versus Hutu) without territorial dualism, Yemen has been a case of territorial dualism (north versus south) without significant ethnic dualism. Is the distinction between the self-styled Republic of Somaliland and the rest of Somalia a case of territorial dualism without ethnic dualism (as in the case of Yemen)? Or is there sub-ethnic dualism between the two parts of Somalia which make it more like the case of Cyprus (Greek-Cypriot versus Turkish-Cypriot), both ethnically distinct and territorially differentiated? Alternatively the two parts of Somalia may be an intermediate category of dualism, equally prone to internecine conflict. Moreover, the North is former British and the South former Italian. Displacement is less of a problem in the Republic of Somaliland than in the rest of Somalia.

The United Republic of Tanzania is a more artificial case of dualism between the much smaller member, Zanzibar, and the mainland of the old Tanganyika. Afro-Arab refugees from the 1960s are beginning to return to Zanzibar. There have indeed been heated political disputes between the two parts of the United Republic, with separatist sentiments sometimes manifested on the island of Zanzibar and sometimes, paradoxically, manifested among mainlanders. Religious tensions are at play between Muslims of Zanzibar and the Christian elite of Tanzania. But the situation is complicated by the fact that half the population of the mainland is Muslim in any case, though politically underprivileged. The religious divide in Tanzania is much more subdued than it is in either Sudan or Nigeria.

Gender: The New Agenda

While human rights in Africa have indeed continued to be compromised by these ethnic and religious tensions, and were historically violated by racial issues, the one major area of improvement in ethical performance is with regard to women. "Tribes" are sometimes genocidal; religions are drifting towards jihads and

its baby at a refugee camp near Ngara, Tanzania. See Time Vol. 143 No. 20 May 16, 1994, cover page and pp. 56-63. See also "Rwanda: Civilian Slaughter" Africa Confidential Vol. 35 No.9 (6 May 1994) pp. 5-6 and "Rwanda: A Double Agenda" Africa Confidential Vol. 35 No. 10 (20 May 1994) p. 8 and "Rwanda: From Coup to Carnage", Africa Confidential. Vol. 35 No.8 (15 April 1994) p. 8 and, "Streets of Slaughter" Time Vol. 143 No. 17 (April 25, 1994) pp. 45-6 and, "Rwanda: All the Hatred in the World", Time Vol. 143 No. 24 (June 13, 1994) pp. 36-7.

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crusades. But relations between women and men in Africa are getting better rather than worse.

Perhaps more by default than by design, post-colonial Africa has started using women in senior diplomatic positions more readily than in almost any other major public service. Uganda has had a woman Foreign Minister and a woman Vice-President sooner than the United States had a woman Secretary of State. The U.S. has still not had a woman Vice-President. Uganda has also had a number of senior female ambassadors since independence at posts which have ranged from Accra to Paris, Copenhagen to Washington, Paris to Ottawa.

Paris itself has had a diverse number of African women ambassadors representing a range of political regimes from Ghana to Tanzania, from the African National Congress to Uganda. The ANC Envoy, Ms. Dulcie September, was indeed assassinated in Paris in 1988, probably by agents of apartheid.

The most famous African woman of the 1970s was Elizabeth Bagaya, Princess of Toro in Uganda. Dictator Idi Amin made her Ambassador and then Foreign Minister of Uganda. He then tried to humiliate this proud African woman with allegations of sexual misconduct at a French airport. The lies were a disgrace to Idi Amin rather than to the Princess.

The most famous African woman of the 1980s and the 1990s was Winnie Mandela. Again this was not through a planned political design. In a sense Winnie Mandela's ascent to political prominence was in the same tradition as Mrs. Corizon Aquino of the Philippines (in the wake of a martyred husband), Ms. Benazir Bhutto in Pakistan (in the wake of a martyred father) and Mrs. Sirimavo Bandaranaike in Ceylon (now Sri Lanka – in the wake of a martyred husband.) Winnie, like the other women, was another illustration of female succession to male martyrdom. Moreover, the 1990s were a mixed bag for her. Her husband was released but he divorced her. She had ambivalent standing within the African National Congress. She also faced serious legal charges.

Will Winnie Mandela one day become the Foreign Minister of this new Black-ruled South Africa? Although politically wounded, Winnie Mandela is still a force to be reckoned with in South Africa.

South Africa – like Zimbabwe before it – did experiment under Black-rule a system of disguised racial reservation of seats for whites at least for a while. But should not planned governance in Africa as a whole include a strategy of gender reservation of seats? Uganda under Yoweri Museveni has made an impressive start with women parliamentarians, but a schedule of legislative empowerment is needed.

One possible design would be to have the following three phases of gender representation:

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Phase I: Reserved seats for women in the legislature elected only by women without prejudice to the rights of women as voters or candidates on the common electoral roll as well.

Phase II: Reserved seats for women in the legislature, elected by a franchise consisting of both men and women.

Phase III: Abolition of special seats for women when the evidence shows a commensurate and more balanced representation of men and women through a common electoral roll without the need for reserved seats.

Where is this kind of gender-planning most likely to happen? Apart from places like Uganda, the most likely laboratories of gender planning in Africa may turn out to be Muslim countries. For one thing, Muslim societies are more used to gender separation in other areas of social life. Secondly, Muslim countries like Pakistan and Egypt have already experimented with special seats for women. Thirdly, Muslim African countries like Somalia and Libya have experimented with gender-regiments in the armed forces – in a continent where soldiers remain among the major actors in politics. Fourthly, it is a Muslim country – Algeria – which seems to have led the way in using women in the air force. And the air force is often a major influence on political strategies in Africa. (The attempted coup in Kenya in 1982 was led by the air force.)

The Sex Code and the Constitutional Order

Constitutionalism is not only about relations between families and genders, perennial and vital as these are; nor is constitutionalism only about political participation and ethnic accommodation, crucial as these dimensions have to be considered. Constitutionalism is also about the limits of state power in the lives of private individuals. They say "an Englishman's home is his castle," ready to be defended by him even against all unwarranted officialdom. Under what circumstances is "an African's home his kraal," ready to be defended by him even against state intrusion? Constitutionalism is therefore also about the curbing of state power from intruding too far into the private life of the individual.

John Stuart Mill (1806-1873) drew a distinction between self-regarding actions, which have consequences only for the person doing them, and other-regarding actions, which have consequences for other people. (On Liberty. 1859) According to Mill's view of liberty, a democratic government does not interfere in the self-regarding actions of an individual, even if the government or the society disapproves of them. Thus, if a man and a woman decides to live in sin and never get married, a democratic government and a free society should not interfere, even if they disapprove of the sinful lifestyle.

What if a man and a man lived in sin as homosexuals, or a woman and a woman lived in sin as lesbians? John Stuart Mill himself would still have said that self-regarding immorality between consenting adults may be a matter for the church, but not for the

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state. The Almighty may judge in the Hereafter, but not the government in the here and now! What is immoral need not be illegal.

However, John Stuart Mill was ahead of his own Western society. During his own time the state and society did interfere vigorously in the private behaviour of individuals. Indeed, even a generation after John Stuart Mill, the Anglo-Irish writer Oscar Wilde (1854-1900) was imprisoned (1895-1897) in Britain for homosexual behaviour.

What has happened since then in the west? Here we must distinguish between individual offenses against the economic order (such as stealing and bribery and corruption) and individual offenses against the sexual code of conduct of the society.

John Stuart Mill lived during Victorian times. This period was characterized at the elite level by high tolerance of economic deviance (e.g. corruption) and low tolerance of sexual deviation (adultery, fornication and homosexuality).

In high English society it was a bigger scandal to be discovered as being a homosexual than to be discovered as being economically corrupt. Sexual deviation was regarded with greater disapproval than economic deviance-although corruption was more "other-regarding" than homosexuality.

What has happened in the West since John Stuart Mill and the imprisonment of Oscar Wilde is a reversal of priorities. There are more and more laws against individual economic deviance (such as kickbacks and bribery) and fewer and fewer regulations to moderate individual sexual deviation.

When I was a student in England in the 1950s there were laws against male homosexuality (but not against lesbianism). Since then both forms of homosexuality in Britain have become legal. Within the European Union, discrimination against homosexuals can be taken to the European Court of Human Rights.

In the United States' Armed Forces it is no longer permitted for the army to ask new recruits if they are homosexuals – "Don't ask, don't tell!" is the rule. Massachusetts has even legalized same-sex marriages.

On the other hand, there are much tougher restrictions in American public life against bribery, nepotism, kickbacks and other forms of corruption. In 1961 John F. Kennedy was, as we indicated earlier, able to appoint his own brother, Robert, as Attorney-General of the United States. Today a nepotistic appointment at such a high Federal level would be impossible. The rules against nepotism in the U.S. system have become much tighter.

It is all part of this dialectic in the West's liberal order. Sins of economic and political corruption are less and less tolerated, while sins of the flesh and of sex are more tolerated.

John Stuart Mill would have approved. Private sex is self-regarding and should not be

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any business of the state; corruption is more harmful to society and is therefore other-regarding. The state should try to stamp out corruption.

In most of Africa outside the Republic of South Africa, is the order of priority closer to the days of Oscar Wilde in Britain than to the days of "Don't ask, Don't tell" in the United States today?

Apart from South Africa (where homosexuality is legalised), are most African governments more strongly targeted against sexual deviation than against economic deviance? The governments of Robert Mugabe in Zimbabwe, Daniel arap Moi of Kenya until 2002, and Yoweri Museveni in Uganda have in the past shown greater indignation against homosexuality than against economic corruption, relatively speaking – though in reality the three governments have often been concerned about both tendencies.

President Museveni played host to President Bill Clinton of the United States in 1998. President Clinton had a sex scandal in 1998; did he use war to divert attention from it? President Museveni had a war scandal in the Congo in 1999, did Museveni use sex to divert attention from it? Clinton's war-games in 1998 ranged from bombing Afghanistan and Sudan to new confrontations with Iraq; his sex scandal was of course primarily the Monica Lewinsky affair.

President Museveni's war scandal in 1999 was the degree of his army's involvement in the conflict of the Democratic Republic of the Congo. His sex-diversion in 1999 was the intemperate attack on the gay community in Uganda, and his giving the green light to the police to engage in massive harassment of homosexuals.

In the United States the self-regarding actions of the most powerful man in the country were exploited by his political enemies in 1998. But American public opinion insisted that private adultery was self-regarding and irrelevant for Clinton's public office. The Senate of the United States refused to convict Clinton of "high crimes and misdemeanors."

In Uganda the most powerful man in the land was not cast in the role of the accused, but in the role of the accuser. And the real accused were a vulnerable sexual minority (homosexuals) who even in the West continue to be exposed to intolerance and violent bigotry. In much of the Western world recently the state has been trying to protect homosexuals from the bigotry of heterosexual extremists. In Zimbabwe, Uganda and Kenya the state seems to be eager to join the heterosexual extremists in their bigotry. The West has learnt that private sinners should be left to the efforts of religious and moral institutions. In Museveni's Uganda and Mugabe's Zimbabwe, homosexual sinners may be victimized by the state – while corrupt officials, politicians and soldiers often get away with most of their loot. In most of Africa, other-regarding corruption often enjoys more *de facto* license than self-regarding sexual deviation.

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The constitutional order can defend either set of values provided it is implemented with proper procedure and according to due process. While it is true that excessive sexual deviation hurts society, is it not equally true that excessive sexual deviation hurts the family?

The West is better than Africa in defending the economic order. But is the West better than Africa in defending the family? Economic achievements are among the glories of the West; but the disintegration of the family are among its abject failures. So Africa needs to find a better balance, a new equilibrium, a new kind of constitutionalism.

In reality we can defend the African family without using our gay brothers and sisters as scapegoats. They are also part of the African family. The African family is threatened by many other forces. By HIV and AIDS among heterosexuals, by rapidly loosening family ties, by labour migration and urbanization, and by the wider forces of Westernization in our lives.

Constitutionalism in the broader society is supposed to be one of the anchors of stability – helping to define the rules of the game, helping to check excesses of power, seeking to extend democratic rights and due process even to those who might stray to economic deviance, even to those who might manifest sexual deviation.

Conclusion

We have sought to demonstrate in this paper that although a universal standard of human rights exists, it is only manifesting itself gradually. As of now ethical standards vary across epochs and across cultures.

While written constitutions in Africa are a feature of the twentieth century, constitutionalism in Africa is a much older phenomenon. Constitutionalism is a process of political rules and obligations which bind both governors and the governed, both kings and ordinary citizens. There is no constitutionalism under absolute monarchs or absolute presidents. Constitutionalism is of necessity a version of limited government. Many societies in Africa before colonialism did endeavor to limit the powers of their rulers.

In Ghana, pre-colonial constitutionalism was best realized among, say, the Ewe. Such societies might have been stateless but they certainly were not constitution-less. Some groups were "tribes without rulers," but they were not "tribes without rules." On the other hand, monarchies in pre-colonial Ghana were often absolutist. They had *de facto* constitutions giving, say, the Asantahere too much power. But having a constitution is not the same thing as having constitutionalism. Where the powers of the rulers were sometimes almost unlimited, constitutionalism atrophied. Destooling a Paramount Chief was an exception rather than the rule.

Written constitutions arrived in Africa as colonialism was coming to an end. Major

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dilemmas confronted African countries. Tanganyika (later Tanzania) agonized whether having an army was a good option at all. Ghana under Kwame Nkrumah agonized whether having monarchies was at all sensible. Later, Uganda under Yoweri Museveni debated whether having political parties was not dangerous idea. Issues of order, stability and freedom have always been at stake in these fundamental reappraisals.

But governance is also about economics and about wider cultural issues. While central economic planning (the old five-year planning) has declined in Africa, political planning is on the rise. South Africa is looking for ways to plan the next phase of empowering Black people in the face of White economic dominance. The new Nigeria under President Olusegun Obasanjo is planning ways of reducing the powers of the military and the violence-proneness of the Delta region. And President J .A. Kufuor of Ghana has been feeling his way towards planning for democracy instead of plunging into democracy. Political planning is becoming respectable in Africa on the eve of the new millennium. But Africa also needs to defend individual privacy against state intrusion. Africa also needs to protect itself from the tensions of religion and ethnicity, and the tensions of dual and plural societies.

Gender planning is perhaps the most serious of all the omissions in Africa's political and economic reforms. We are indeed witnessing a general shift in popular participation in Africa. We have noted the declining faith among Africans in "heroes and hero-worship" of the old Nkrumahist tradition. We have witnessed in select African examples the emergence of a new optimism about political engineering and planned governance. We need to add gender planning if Africa's grand design for the 1990s and the 21st century is to become comprehensive enough and fundamental enough to tilt the balance in favour of genuine societal transformation. Afrostroika is the re-structuring of Africa. Afrostroika needs to be androgynized if it is to avoid some of the pitfalls of perestroika elsewhere in the world. Perestroika and glasnost led to the collapse of the Soviet Union. Afrostroika can yield better results.

The silences have ended; the struggle has resumed for a new constitutional order in the Africa of the new century. We may not yet have evolved the final code of universal human rights, but Africa and the human race have at least raised global standards of tolerance and social justice. We have not yet arrived in the promised land of liberty, but we must persist in our efforts to get there.

