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AFRICA, ARMED VIOLENCES AND POLITICAL INSTABILITY: THE INADEQUACY OF THE "LAW" PRACTICED IN CENTRAL AFRICA, FROM INDEPENDENCES TO THE PRESENT DAY

This reflection focuses on armed violence and political instability in Africa, articulated in the practice of Western law which, in its local practice, gives very little satisfaction. This dissatisfaction, or more precisely this failure of the practice of Western law in sub-Saharan Africa, is rooted in most of the analyses proposed in a kind of "irreducible" or even "congenital" that would be unique to black African societies. In other words, black Africans would be ontologically incapable of apprehending and then domesticating western principles of law, a guarantee of their harmonious development and even their effective entry into Civilization.

Our approach is therefore in complete break with this form of primitive reductionism, a prism that was established from the very first moments of the "colonial encounter" and from which the essential relations that structure the history that have become common of the West and Africa were built. In this discussion, contrary to what has been given to us to see and which blurs any reading and analysis that can be made of the phenomena that are taking place on the continent, we want to question the formal nature of the instruments made available to Africans and the uses that the actors in question make of them, all the more so since these are conflicts and the use of the law on the continent. This perspective, which is relatively free from the "weight of history" and "excessive Western paternalism" in the future of the continent, seems likely to offer us a better grasp of the real reasons for the permanence of conflicts, of violence that causes instability.

Key words: Africa, decolonization, violence, law, philosophy of history, philosophical anthropology, political instability.

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Африка, вооруженное насилие и политическая нестабильность: неадекватность «Закона», практикуемого в Центральной Африке со дня независимости до наших дней

Наша рефлексия сосредоточена на вооруженном насилии и политической нестабильности в Африке, сформулированных в практике западного права, результат применения которого в местном контексте весьма неудовлетворителен. Констатация этого неудовлетворения, или, точнее, этой неудачи применения практики западного права в странах Африки к югу от Сахары, присутствует в большинстве аналитических трудов, предполагающих «невозможность» или даже «врожденность», якобы уникальные для чернокожих африканских обществ. Другими словами, предполагается, что чернокожие африканцы онтологически неспособны к обучению и доместикации западных принципов права как гарантии их гармоничного развития и даже их эффективного вступления в Цивилизацию.

В данной статье мы стараемся полностью порвать с такой формой примитивного редукционизма, с призмой, созданной с первых же минут «колониальной встречи», из которой были построены основные отношения, структурировавшие общую историю Запада и Африки. В ходе дискуссии, вопреки тому, что нам было дано, и размывая любые возможные прочтения и анализ явлений, мы хотим поставить под сомнение формальный характер доступных для африканцев инструментов и то, как акторы могут их использовать, тем более учитывая наличие конфликтов и присутствия права на континенте. Эта перспектива, относительно свободная от «веса истории» и «чрезмерного западного патернализма» в будущем континента, по-видимому, может дать нам лучшее представление о реальных причинах постоянных конфликтов и насилия, вызывающих нестабильность.

Ключевые слова: Африка, деколонизация, насилие, закон, философия истории, философская антропология, политическая нестабильность.

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**Африка, қарулы зорлық-зомбылық және саяси тұрақсыздық:
тәуелсіздіктен бастап бүгінгі күнге дейін Орталық Африкада қолданылған
«Заңның» жеткіліксіздігі?**

Біздің көрінісіміз Африкадағы қарулы зорлық-зомбылық пен саяси тұрақсыздыққа бағытталған, Батыс заңдарының тәжірибесінде көрсетілген, оны жергілікті жағдайда қолдану нәтижесі өте қанағаттанарлықсыз. Африканың Сахарадан оңтүстігіндегі бұл заңсыздық практикасының сәтсіздігі туралы мәлімдеме қара африкалық қоғамдарға ғана тән «мүмкін еместіктің» немесе тіпті «табиғи емес» талдамалық жұмыстардың көпшілігінде кездеседі. Басқаша айтқанда, қара африкалықтар онтологиялық тұрғыдан батыстың құқық қағидаттарын оқыту мен үйсіндіруге қабілетсіз, олардың үйлесімді дамуы мен тіпті өркениетке енуінің кепілі ретінде қабылданады. Бұл мақалада біз қарабайыр редукционизмнің осы түрінен, «отаршылдық кездесудің» алғашқы минуттарынан бастап құрылған, оның негізінен Батыс пен Африканың ортақ тарихын құрылымдаған негізгі қатынастар құрылған призмадан толықтай бас тартуға тырысамыз. Пікірталас барысында, бізге берілгендерден айырмашылығы және құбылыстардың кез келген ықтимал оқылымдары мен талдауларын азайту, біз африкалықтарға қол жетімді құралдардың формальды сипатына және актерлер оларды қалай қолдана алатындығына күмән келтіргіміз келеді, әсіресе қақтығыстардың болуы және континент құқығының болуы. Континенттің болашақтағы «тарих салмағынан» және «шамадан тыс батыстық патернализмнен» бұл перспектива бізге тұрақсыздықты тудыратын тұрақты қақтығыстар мен зорлық-зомбылықтың нақты себептерін жақсы түсінуге мүмкіндік беретін сияқты.

Түйін сөздер: Африка, отарсыздану, зорлық-зомбылық, құқық, тарих философиясы, философиялық антропология, саяси тұрақсыздық.

Introduction

In black Africa, apart from the abundance of its natural resources and the more or less untouched side of its nature or, if you will, what is still left of it, the picture that we make of it is that of underdevelopment – in opposition to the development that characterizes the countries of the North – as well as its procession of generalized *ills[1] (violences, wars, famines, epidemics, etc.), which seems to have become consubstantial – as they are taken up in unity by social scientists and interested in it only by developers and other NGOs. It can be noted that this canvas*, which seems to be *dedicated* to reporting on the deep nature of the continent, necessarily includes within it the "indispensable building blocks" of its definition. Indeed, the identification of violences, for example armed conflicts such as civil wars, rebellions, insurrections, but also forms of nepotism-type violences that distinguish more than elsewhere on the continent, the Central African region, as well as the phenomena of corruption, clientelism, and other financial gabegies, are all characteristic elements of black Africa today.

If the black Africa referred to in this reflection, which has the challenge of questioning scientific discourses, but also those of policies on the dysfunctional nature of institutions that would be a source of instability, refers more to the French-speaking Central Africa made up notably by Gabon, Congo Brazzaville, Cameroon, Chad, Central Africa, the Democratic Republic of Congo, but also Equatorial Guinea, which, although having Spanish as its official language. The latter country, in addition to being a full part of the community, is a full member of all the economic, monetary and regional institutions constituting this area of the continent. It is therefore the CEMAC or the Economic and Monetary Community of Central Africa, the CEEAC or Economic Community of Central African States, and the BEAC or Bank of Central African States. It should be noted that the last country cited in this case non-French-speaking Equatorial Guinea has

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[1] Anything that seems excessively paradoxical insofar as, this Africa singularly, that of the center in particular is full in its soil and basement of immense natural resources that are the subject of uninterrupted exploitation from the very advent of the colonial encounter. Resources that, if they were being exploited by Western «partners» on the one hand, and, if the revenues generated by this exploitation were equitably redistributed to the population in the form mainly of basic services (health, education, housing and essential infrastructure, roads and bridges, port and airports in particular), on the other hand would effortlessly compensate for these «evils» which are, it is seen, more the consequence of too much wealth of these regions articulated in the principle of capitalism , unfortunately for them, the leitmotif is first and foremost a profit described as immoral at the expense of human reason.

become, since its *oil boom* in the early 1990s, one of the main funders of the institutions mentioned above, in particular because of these economic performance and its more rational management of the revenues of "black gold" to the point of having demanded and obtained the prestigious and important post of Governor of the BEAC , which post has, at the same time, become rotating to the dismay of Gabon, which had so to speak the exclusivity[2].

Thus, to return to this conception of Africa which looks more like a damning diagnosis that unfortunately seems to leave very little room for optimism (René Dumont, 1962), we can say of this "diagnostic vision" generalized in fact to all the French-speaking countries of Black Africa, even if, the French-speaking West region of the continent seems to make, in some respects, an exceptional figure. Indeed, what could fundamentally distinguish French-speaking Central Africa from French-speaking West Africa is the fact that in terms of democracy and the economy to retain only these two aspects, the last mentioned rather acts as a "good student" as their performance in these areas (the political alternation and the vivacity of democracy are observable since precisely the advent of democracy , economic growth is sustained, which puts them far ahead of their counterparts in the center of the continent. However, for some time now, there has been doubt as to the sustainability of these achievements. Indeed, there is now a fear that the progress made in the field of democracy will be profoundly threatened by what should be called the *third term syndrome here*[3]. *If the events that are taking place there were to take hold in the long term, it is obvious that the risks of seeing French-speaking West Africa, so far spared in this particular area, unfortunately joining Central Africa, which has never left it, is more than likely. It must be said, finally on this note, that the difference that has been observed in the development of these two regions under French influence is more due to the statutes that had constituted them at the time of the colonies. It is right, in view of this reading of the facts, to think that Africa is at the same time the victim and the actress of a tragedy which we know in advance that it has little chance of experiencing an epilogue contrary to the one it intends to live; a kind of script written in advance*

and whose plot inexorably follows the univocal path of its realization.

That said, in order to account for this "psycho-drama" that would be played out on a daily basis on African lands, we must focus on questioning two consecutive, but above all decisive moments constituting the history of this part of the container, without, however, being fundamentally exhausted. This is therefore the colonial moment, an essential moment, if we are to objectively grasp in its foundations the phenomena considered and, in this case, violence and, on the other hand, independence or postcolonial moment. It is precisely from this singular moment that the colonists/colonized "witness passage" would have taken place; a kind of "benevolent" transition between the "masters and possessors" of the future of Africans, on the one hand, and, on the other, the latter whose maturity deemed more or less acceptable by the first cities has made it possible to hold some "hand-picked" according to very specific criteria. Except that contrary to what was "right" to expect from this soil of data made up by these two essential moments in the history of Africa, in particular in terms of systems or logics explaining the phenomena of violence observed; exploitation and resulting results appear to be insufficient to the extent that, as we can see, the problem remains unresolved. One even gets the impression that the "scientific" answers about their reasons for this violence in Africa are a kind of permanent recycling of old recipes that have, in essence, nothing to do with the intrinsic reality that suggests them.

More generally, and it has become a kind of classic in some African studies in particular, when it comes to explaining observable failures in development policies (health, education, environment, etc.), justifying the impasses of structural adjustment policies (*politique d'ajustement structurels* – PAS) or the importance of inter-communal, inter-religious conflicts that are established as a mode of dispute resolution, basically to signal the inability of these African states to fully integrate the modernity embodied by the rule of law , it is almost always because of the almost *ontological* impossibility of Africans to grasp and then appropriate the models of social organization proposed by the West.

Research methodology.

In this article, I oppose the idea of systematically reducing all the evils that are undermining the African continent to a kind of irreducible or even congenital tare that would be a specificity of the constituent societies of black Africa. Indeed, at the

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[2] https://www.jeuneafrique.com/depeches/95526/politique/sommet-de-la-cemac-un-equato-guineen-nomme-chef-de-la-beac-poste-desormais-rotatif-2/

[3] https://www.francetvinfo.fr/monde/afrique/societe-africaine/le-syndrome-du-troisieme-mandat-en-afrique-les-nouvelles-formes-de-coups-d-etat_4078153.html

same time as it provokes *a legitimate outcry* in response to this form of reductionism both among the African populations and among those who work there, this prism that was established from the first moments of the "colonial meeting" and from which the bulk of the relations that structure the history that have become common of the West and Africa (with specificities that each region implies) were built, necessarily blurs the lines of analysis and the readings that can be made of the phenomena we study there. Moreover, by not offering the black continent any other possible way out of this "curse", with the exception of an "excessive paternalism" to the West which consists in ensuring that Africa, like a child, takes the path formerly taken by its "father" by taking care to follow to the letter, all the different successive stages that this implies, the West has as guaranteed the permanence of African turpitudes because it denies by this attitude, its ability to consider otherwise an exit from "crisis" of which it is not, at least not in absolute terms, the lead author.

However, it seems precisely, because it is impossible for post-independence Africa to remember only this phase of its history, follows to the letter the path of a history that is not its own but which rather echoes the Western historical trajectory (as if the West wanted to speak to itself by projecting on Africa all or part of its historical journey), that has settled the well-known idea of an Africa that would clearly refuse its development. Thus, against this pessimistic and defeatist approach to an Africa that would turn its back on its development, I propose, after a brief review of the debates around the question of the law practised in black Africa, no longer to be interested as is customary, the inappropriateness of the law practiced in this part of the world and its replacement by a right that would be specific to these peoples (customary law/traditional law), but rather to question the formal nature of the instruments made available and the uses and actors involved make them. It seems that this path is likely to allow us to better understand the reasons for the continuity of conflict and the violence they carry out.

A brief historical reminder notes that some studies on violences or conflicts in Black Africa have, so to speak, little interest in what could be one of the real sources of the problem, namely the abundance of natural resources in Africa's soil and subsoil. These studies give greater emphasis on the mechanical inability of black Africans to not only grasp in their essence but above all to integrate into their daily lives the principles of rights and justice inherited from colonization, which are also considered to have universal value and therefore applicable to all, and

the exclusive guarantee of genuine development. It is often forgotten to point out, when one wishes to account for this situation, that much of the conflicts that have taken place in Africa to date have the origin and stakes of control of resources. Whether it is the genocide in Rwanda, the rebellions in South Kivu, Sudan, the repeated *coups d'états* in the Central Africa, etc., the control of the natural resources of these regions by the industrialized countries is at the heart of these antagonisms.

Background and justification

Long described as a "geological scandal", like the present Democratic Republic of Congo (then private property of the King of the Belgians) because of its abundant natural resources at the very beginning of the 20th century, especially at the very moment when the colonialist West had unilaterally arrogated, shortly before, the complete exclusivity (Berlin Conference of 1885), Africa has always been the object of covetousness. This almost limitless exclusivity of colonial empires on both the spaces, the land, the waterways, and the bodies, all under the leadership of the Treaty of Berlin 1885, eventually made Raoul Allier say about black Africans especially that: "[...] left to their own devices (speaking of the societies of Black Africa), they would have remained always and immutably at the same point and ... to reach higher ... a hand must be extended to them and pull them on the path that goes up." (R. Allier 1927: 225); or to Jules Ferry[4] four decades earlier than, I quote: "Gentlemen, we must speak higher and more true! It must be said openly that indeed the superior races have a right to the lower races [...] because there is a duty for them. They have a duty to civilize the inferior races." All that justified in the end, the nature of the treatments that has always been reserved for this continent as well as the people who live there, denying them at the same time, any possibility of belonging to a co-temporality or even a co-humanity[5].

As well as colonization and its cohort of vices that have left, upside down, the social structures constituting sub-Saharan Africa in general and Central Africa singularly in the same way as slavery before it, the proclamations of independence and

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[4] Jean Suret-Canale (1962), *Afrique Noire, Géographie, Civilisations, Histoire, Éditions Sociales, pp. 244.*

[5] Johannes Fabian, *Le temps et les autres : Comment l'anthropologie construit son objet.* Traduction française par Estelle Henry-Bossoney et Bernard Müller. Toulouse, Anacharsis, 2006, 313 p.

their effective implementation represent a fertile ground for anyone who wants to understand and explain black Africa in its complexity today. Indeed, called to me and scream by some local political actors very opposed to colonial rule, the case especially of nationalists as well as fervent supporters of revolution movements, but put off, in some cases, by other actors of the first plan often described as "evolved"[6], with routes sometimes very ambiguous but yet reluctant to the idea of empowerment of the territories , the case, for example, of the first president of post-colonial Gabon, Mr. Léon M'Ba, who, despite the massive 92% "yes" on 24 September in the 1958 referendum on Gabon's accession to the French Community, failed to achieve his ambition to make Gabon a French department because independence was imposed on him from the outside by the former metropolis, the independences, since this is precisely what this is, which should have devoted the effective return of the populations of the territories thus conquered to an "original sovereignty", have instead turned into a simulacrum of autonomy by serving more the interests of the new leaders who did not hesitate to concentrate and personalize all the powers at their disposal with, and this is not to say , the effective "blessing" of the metropolis. Unfortunately, this had the effect of the lasting establishment of dictatorships but also almost permanent unrest, coups, assassinations, etc. Certainly, as K. Ramondy[7] rightly points out, General de Gaulle's return to power on 1 June 1958 was marked by the end of the Fourth Republic, which saw all its institutions disappear with it at the same time as the Fifth Republic was born a few months later with the institutions that characterize it, which had not been so to speak, not facilitated the realization of the Gabon departmentalization project so desired by Léon M'Ba.

However, by focusing somewhat on the ambiguous figure of Leon M'ba, one quickly realizes that, the occurrence of the *coup d'état* of 18 February 1964, only four years after the country's accession to independence and thus its accession to the summit of the new "independent" state, was only the logical consequence of France's "let-up" in , not only in the choice of statesmen, but also in the manner in which they led to the aftermath of this advent, the policies of the young independent states. No doubt to strengthen his own position, says Alexandre Keese, Gondjout then president of the National Assembly was conspiring with the opposition to obtain a power-sharing between a prime minister with the executive and a strong parliament, Leon M'Ba (then prime minister) fought to establish a presidency with real power. The Gabonese leader ultimately opted for a completely illegal route, having his opponents arrested within the party. What was the reaction on the French side? High Representative Risterucci commented on this anti-democratic leaning as an expression of a fundamental difference between African and French mentalities. That a government was even obliged to take on certain repressive measures against provocations from the democratic institutions of the state was, in his view, a characteristic attitude of African political behaviour: "The African has never understood anything about our separation of executive and judicial powers: for him, the one who commands must also suppress disobedience to his orders..."[8].

Moreover, the series of excerpts from monthly reports or summaries that follow these episodes easily shows the inclination of the colonial administration on the «departure» in favor of the perfectly illegal actions posed by this "evolved" that will preside over the destiny of the young State:

"Wanting and believing himself sincerely democratic, to the point that no accusation irritates him more than that of being a dictator, he has nevertheless ceased that he has not passed a constitution granting him virtually all the powers and reducing the role of parliament to the role of an expensive setting that is evaded even when needed". [9]

"While events have somewhat mishandled legal orthodoxy, we must remember that we are in Africa where parliamentarism will remain a somewhat fictitious setting for a long time to come. Keeping this view in mind, it is to be welcomed that somewhat harsh processes, barely devoid of physical violence, have allowed Gabon to escape the period of adventure and political unrest"[10].

"[...] the idea of democracy does not have quite the same meaning in France and Gabon, if not in Africa; the political events that have taken place over the past year and which will be listed-res reveal on

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[6] Alexandre Keese, *L'évolution du « leader indigène » aux yeux des administrateurs français : Léon M'Ba et le changement des modalités de participation au pouvoir local au Gabon, 1922-*1967, Afrique & histoire, 2004/1 (vol. 2), pages 141 à 170.

[7] Karine Romandy, *Leaders assassinés en Afrique centrale 1958-1961: entre construction nationale et régulations des relations internationales*, Etudes africaines. Paris, L'Harmattan, Série Histoire, 2020, 596 p.

[8] Alexandre Keese, 2004/1, p 162-163.

[9] C.A.O.M., FM IAffPol/2243, Risterucci, « Synthèse mensuelle pour le mois de novembre 1960…», p. 4.

[10] C.A.O.M., FM IAffPol/2243, Risterucci, « Synthèse mensuelle pour le mois de novembre 1960…», p. 11.

the part of Mr. Léon M'Ba, a strong supporter of personal power, a certain casualness towards democratic principles"[11].

It is not, at this level of discussion, innocuous to recall that this "evolved" whose undemocratic acts and excesses are tolerated had, between 1932 and 1947[12], experienced a series of unfortunate events that led him to disgrace. In particular, he experienced the decline, he the clerk and indigenous leader much appreciated and feared[13] both by his community, the prison for facts that certainly still have not been proven, and to finish the exile before finally experiencing a happy outcome. Indeed, excerpts from reports on this episode of Leon M'Ba's life did not seem to augur for him, such an end:

"Very intelligent, very insinuating, he will soon have taken advantage of the respects that one seems to have for him, to capture the confidence of the Europeans and exert his influence on the auxiliaries, the shooters in party. Especially since Leon M'Ba was, and will still may be, in relationship with the communist cells of France". [14]

"The fact that M'Ba Leon contacted the R.D.A. organization is sufficient for him to be monitored.

If he had been able to attend the interterritorial school of the R.D.A. that preceded the Congress, he would have heard the arguments of Stalinist communist politics.

If he could not hear them, it is reasonable to suspect that he brought documentation, although nothing is known about this point". [15]

"I continue to be concerned about the actions of this ambitious, intelligent and wise Fang, particularly appreciated, for reasons that may need to be deepened, by the management of the English Firm John Holt who employs him". [16]

Moreover, and to return to the heart of this discussion, it must be said that the fact being in reality, both at the head and inside the apparatuses of the young States, were Western technical advisers whose mission was to continue surreptitiously to ensure alongside the "new political elites", the task once reserved for governors and other colonial administrators. Thus, in the end, colonial empires have, so to speak, never lost control of African territories, especially geopolitically, strategically and economically.

The consequence was finally that the new leaders of the "ex-colonies" who became independent in the late 1950s and early 1960s, inherited, as it stands, the entire legal-administrative apparatus of the colonizer that was perfectly favorable to them, which is far from innocuous insofar as it was designed to serve essentially the colonial interests and maintain in these spaces an influence that remains, as can be seen today, beyond the present moment. It is precisely in this capacity that African independence is, from the point of view of many observers, an equally decisive moment as colonization in the grasp of the various circumstances that are taking place in Africa and which can be described as indistinguishable coupled with the insolubility of an Africa constantly plagued by the conflicts that plague it from the beginnings of the (colonial) encounter.

However, retaining slavery, colonization or even the biased independences of sub-Saharan Africa singularly, as essential moments in which the problems that still undermine the black continent have been "built" on today, has the immediate consequence of de facto situating them with such an approach in a kind of "identity confinement" that would inevitably cloud any attempt to reflect on the stagnant and suffering Africa.

This attitude of suggesting a kind of self-censorship to anyone, let alone African researchers, reflecting or working on the problems facing black Africa today and whose explanatory model is based on a methodological and theoretical approach to the episodes of slavery, colonization and independence, is seen as a statism or even an intellectual regression. Indeed, it is through phrases such as: "questioning the liturgical mode of victimization," "incantation become inaudible" (A. Mbembe, 2000); or even more recently from the perspective opened by the writer Fatou Diome (2019) who suggests the idea that "African youth must heal from their memory" because resentment, she says, is a hindrance to any future project, that definitively any reference to the history of the colonial encounter and its effects would be disqualified. In any case, there is a kind of subtle injunction on the part of a certain African elite, but not only, which is to ensure that a deadlock or, at the very least, selective amnesia on the his-

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[11] MAE, D.A.M., Gabon, 2078, Direction des Affaires africaines et malgaches, « Note sur la situation et les partis politiques au Gabon » (sans numéro), 24/10/1961, p. 1.

[12] Alexandre Keese, 2004/1, p 146-154

[13] C.A.D.N., fonds Libreville 3, R. Pechayrand, administrateur-maire de Libreville, à Gouvernement du Gabon, Direction des affaires civiles, Bureau des douanes (n° 211), 13/12/1922, p. 2.

[14] C.A.D.N., fonds Libreville 3, Marchessou à Deitte, lieutenant-gouverneur de l'Oubangui-Chari (n° 19c), 23/01/1933, p. 2.

[15] C.A.D.N., fonds Libreville 3, service de Sûreté de la Côte-d'Ivoire, « Sur M'Ba Léon » (sans numéro), sans date, p. 2.

[16] C.A.D.N., fonds Libreville 3, Sadoul à Gouvernement général de l'Afrique Équatoriale Française, Direction du cabinet (n°208/CAB), 14/04/1949, p. 2.

tory of Africa's encounter with the West is carried out. Because it is said, it is only in this way that a different destiny for this continent can be serenely contemplated.

While our reflection does not relate to or is fundamentally based on the same lines of analysis made by these last two reproaches/approaches on issues relating to Africa's problems under the seal of "victimization" (Mbembe/Diome), it has nevertheless linked with them insofar as, colonial history and that of independence constitute both a moment, in terms of duration but also in terms of chronological events, which is not inconsequential in the structuring of colonizing/colonized and postcolonized relations. The question of the future of colonialism as a mechanism of domination has already been asked and analysed in several respects, and this something of "colonial" origin that resists so much different circumstances and time has been differently named but from a perspective that is always the same, that is, a kind of historical-structural continuum that remains active in the North-South relations. Thus, this something fundamentally "colonial" can be traced in various terms or expressions: "imperial debris" at Stoler (Stoler, 2016), "colonial legacy" at Bayart and Bertrand (Bayart, Bertrand, 2006), or "colonial continuity" on the side of Debos (Debos, 2013), etc. It should be noted that the surreptitious nature of this colonial continuum lies in the former colonial tutelage's desire not to ostentatiously appear within the "new mechanisms of domination" under construction, the idea conveyed by the term neo-colonialism.

As a result, time, whether political, everyday or historical, is no longer envisaged in a linear and purely chronological way as in a kind of mechanical continuity, but as a very different reality that echoes as little as possible the previous historical episodes. However, to consider the issue in this way is not without consequences. Indeed, it can clearly be seen as a kind of confession, a way of admitting that time was decisive in reconfiguring the continuities of the colonial system. As a result, the concepts of "imperial debris," "colonial legacies," "colonial continuities" previously evoked allowed these continuities to be studied in the post-colonial present, i.e. how they still shape the present (Stoler, 2016).

If it is true, as Edward B. Tylor pointed out, that human history and prehistory find their place in the general organization of knowledge, this is all the more true that they are a source of power intended to influence the course of modern ideas and actions (Edward B. Tylor 1958: 529). Thus, going back to the colonial period and the independence period, it can be said that these moments constituted, by their

singularity, places of fertilization and incubation of an important part of the problems observed in contemporary Africa. Just as it can also be noted, with regard to the solutions constantly envisaged from independence, in order to anticipate or even contain Africa's problems (Structural Adjustment Policies, Development Assistance, Democracy, Good Governance, Sustainable Development etc.), that they have so far produced no real effect on the health of the continent, anything that seems to give René Dumont definitively, 1962.

Results, discussion

The entanglement of many factors (demographic pressure, scarcity of resources, land disputes, migration, the question of aboriginalism as well as so-called "external" factors such as the use of colonial law as an exclusive principle of social regulation in territories under guardianship) is very often referred to as the explanatory scheme justifying the occurrence of violence and its permanence on the African continent, at least in the so-called conflict zones.

It is also noted that the most common arguments used to explain the development of areas of tension are due both to the resurgence of identity, ethnic, religious or nationalist references, but also to the failure of states of law and sovereignty in disrepair, or to the interference of regional and international powers that ultimately make up a kind of globalization of international criminal organizations, etc. (P. Hugon 2001). It is certainly remarkable that many analysts of conflicts in Africa have sometimes identified factors exogenous to this violence, but in general it is almost always in order to better link them with the local part of the places of their event. Thus, in addition to the factors mentioned above, the proliferation of conflicts on a continent-wide scale would result from economic underdevelopment, rent and predation economies as well as economic issues, and the rise of a criminal global economy (J-C Ruffin 1995).

On the other hand, it also appears essential to point out that it is easier for "specialists" on the issue of conflicts in Africa to systematically generalize conflicts to the whole continent, thus making this reality an almost indisputable fact. However, on closer attention, one immediately realizes that in the 1990s, only 10 African countries were affected by the phenomenon of violence, whereas in the 2000s it was 14 countries out of 54 states on the continent. This assumes that there are many very important regions or territories in number and area where there is no record of violence such as civil wars, rebellions or any other imaginable abuse. At the same time,

we can also note that these latter regions, spared by the phenomenon of conflict, which are considered to be the exclusive prerogative of Africa, are also, like those plagued by violence, subjected to the same so-called "aggravating" factors mentioned above.

This observation, which certainly does not fundamentally call into question the more or less decisive role of these various so-called "aggravating" factors in the occurrence of conflicts and their permanence on the continent, nevertheless invites to reconsider the elements of analysis at the same time that it assumes that each specificity and, possibly, their articulation to data often very neglected, as well as the diffuse nature, but also the concentrated nature of the power observable within the social regulatory instruments thus considered.

Much of the work on the violence in Africa seems to be unanimous about the alleged origins of the violence. Indeed, as indicated more, they are of two orders: endogenous and exogenous. The endogenous part of which the arguments widely taken up and disseminated are based on the idea that they are the identity references, ethnic, religious, etc., which carry this endless violence and, the exogenous part that is characterized precisely by the imperialism of the dominant power that imposes on the territories under guardianship, a model of social ordering (colonial law, code of indigenate, etc.), totally foreign to the internal operating logics of the societies under consideration, which would, from this point of view, generate the observed violence.

Indeed, it seems easier to consider that it is the exogenous part that complicates the nature of the social relations of a given society insofar as they are generally little or poorly understood from the beginning by the dominant power. In the end, the result is that the consubstantial conflict share of any society is exacerbated. Considering the establishment of "colonial law" in "conquered" territories, one realizes that its application or more precisely the application of its norms considered perfectly foreign by its recipients, upsets at the same time that it reconfigures the local secular social order. Of course, in this case, its implementation is aimed at guaranteeing imperialist interests in the colonies concerned, but this choice has very little, if any, regard for the local structures of the social organization. On the contrary, the fundamental idea in this case is for the dominant power to further annihilate, by all means, any possibility of existence or coexistence of competing models of norms.

Except that this type of approach, which relies on the exercise of force to impose itself, very often believes that, in the name of a supposed "civilizing duty" (carried by the colonist), the principle of responsiveness specific to the populations to which it is addressed is put in the name of a supposed "civilizing duty" (carried by the colonist). Indeed, as an ability for an organization to adapt quickly to unforeseen and abrupt changes in its environment, the principle of responsiveness in this case does not necessarily follow the expected paths, namely an adaptation in the direction of submission. On the contrary, it can be seen that the mechanisms intended to ensure the establishment of the dominant order are, on the contrary, carried away by the resistance to the multifaceted mechanisms that the populations actually oppose.

Indeed, we note that the studies that have devoted themselves to this question almost systematically or, rather, give very little space to the so-called "meeting" between the West and Africa, the moment "founding" and fertile ground and decisive moment of the "chaos" observed on the continent. Indeed, this moment carries precisely within it, the seed of a historical dispute that the "carriers" of "civilization" have never ceased, even today, to repress in a kind of collective unconscious (them/us) which has the effect on the one hand of masking the "cultural rampage" committed on the continent to retain only this aspect, and on the other hand, to give itself "good conscience" by trying to substitute for this part of humanity "destroyed or denied" a subtle legal device supposed to allow the black African to return to civilization. Except that in the end, it is surreptitiously to subjugate him.

As a result, all attempts, which could otherwise be described as homeopathic, to give meaning to the persistence of observable conflicts on the continent have so far been constantly showing their limits. We are, it seems, more so in sub-Saharan Africa, in a kind of allegory of the "rejection of graft" which is indeed reflected in the violence that we deplore and which are, so often rightly or wrongly, systematically attributed to the factors of identity, ethnic, religious, etc., however, like the human body, society or social structures which are also bodies in the sense of living bodies, are one of them. Just as the human body will reject any foreign element, so will social structures consider them to be an intruder, as a threat that must necessarily be neutralized, any foreign element. As a result, the body's defence system is set in motion. Thus, these exogenous devices that are not reducible to the only questions of law that we are essentially interested in here, seem to have exactly the same effect in sub-Saharan African society.

What if, without necessarily going back into the debates on cultural relativism, the choice of histori-

cal continuity advocated by the new African elites, which was to take over and apply as they are all the rules of operation of the colonial state within the new so-called independent states at least in terms of law, was finally the source of their own turpitudes? Indeed, if any transplant is a medical act whose effectiveness is vital for the whole body, practitioners first ensure on the one hand, the dysfunctional and totally irreversible nature of the organ thus damaged before it replaces a completely other which, on the other hand would have demonstrated its equivalence, its functional valence and finally its irremediable compatibility donor/ recipient in the field of transplants. It is precisely on this principle that the technique of transplantation in surgical medicine rests. On the basis of this analogy, one can ask whether, in colonial times as well as in post-colonial times, the finding of the dysfunctions of African legal systems had been duly noted, which would have justified the indispensable nature of a "graft". But we also know that to ask the question is to answer it, since in this "meeting" only colonial interests mattered. In the latter scheme, wouldn't what can be considered a "rejection of the graft" which in fact results in endless tensions observable on the continent be justified? On the contrary, is it not simply an expression of an incompatibility in form between local social regulation practices fundamentally ostracized and relegated to the periphery since the "colonial encounter" and their substitution by exogenous devices or positive rights deemed essential, it was said, to the accession of the continent to the status of civilized? In other words, considering this analogy of the graft mentioned above, does the exacerbation of the conflicts observed in Africa not inform on the contrary about the formal incompatibility in the removal of the "traditional duty" of local social structures by civilizing power and its substitution by transplantation of a graft represented by "colonial law"?

Conclusion

Traditional, *customary* or *primitive* law versus *positive* law, *Roman* or *Western* law: which models carry an efficient social regulation for Africa?

Because it puts an end to connivance within a group or between different groups of individuals (family, clan, village, city, region or country), the conflict, by its occurrence, unravels the balance established by the latter. In other words, the conflict calls into question the relations of domination or balance historically instituted at the same time as it upsets the internal regulations of groups and more

or less permanently reconfigures the political balance. As a result, the various protagonists oppose each other in the name of ideologies, worldviews or utopias bearing social and cosmological and social contracts (Bernard Calas, 2011). Living together is the guarantee of unity and prosperity not only within the group but also between different groups with common interests (resources, arable lands, rivers, etc.) the challenge is, for the custodians of the authority as well as for the members who constitute them, to ensure its preservation for as long as possible by preventing all forms of internal and external tensions.

The regulation of possible tensions necessarily takes place, as B. Calas points out, by means of the law, the compromise and the wholesale routine of the "right". Thus, the establishment of a standard, its limits as well as those of good and evil, somehow fixes and stabilizes the balance of power, as well as legitimizes the exercise of authority in defining content as well as limits. This articulation between norms, compromises, authority and limits guarantees the maintenance of social and political order, and possibly its reproduction and therefore its social permanence (Bernard Calas, 2011). The law thus appears from this perspective as a kind of indispensable instrument, a structure without which, it is perfectly impossible to envisage any social stability. This gives us the opportunity to discuss, in the light of the discourse on "traditional or customary African law", the universal valence of the practice of law. While it is indisputable that the various regulations mentioned above take place in a "public space" through constantly renewed debates and discussions, the fact remains that this "public space" and the forms of negotiations that take place there, based certainly on a social contract or a "natural order", differ from one society to another.

Contrary to what the subtitle of this section may suggest, it is not a question of re-discussing customary, traditional or primitive law and Western law back-to-back to determine which of the two in practice would be best suited to end the eternal conflicts and violence that "ravage" Africa and thus enable it to initiate sustainable development, not necessarily in an ecological sense, or to determine which of the two practices would be superior to the other. While it is undeniable that the treatment reserved by colonial empires for the various mechanisms of management of African social structures has not escaped the clichés and assignments characteristic of this period, we will remember here only a few practical cases whose description will allow us to understand the mechanisms and the different processes of social or-

dering that were described too early as primitive and thus allow us to finally convince ourselves that we are in the presence of a unique reality of which it is difficult to challenge the operationality. The bottom line is that in either case, these practices and norms, which do not differ in substance, pursue the same purposes as only the forms vary somewhat.

From the general principle of law, we will not take up the idea that there is a set of rules that will govern the conduct of men in society by carefully organising social relations. A social space, says B. Calas, of any scale, cannot fail to be worked by internal systemic contradictions, sources of tension between the different actors. By retaining only this aspect of the law, it is clear that we want to promote the idea that there is an essential principle that underlies it, namely the prevention of conflict within the group or more broadly between different groups.

Let us remember that conflict is a disorder, a period during which are disputed (not discussed), to be destroyed, either partially or totally, norms and regulations, underpinnings of pre-existing political stability and social cohesion. Basically, the conflict brings to an end the social harmony obtained at the cost of concessions, hence the importance of anticipating its occurrence. As a result, all societies in the world will work to implement mechanisms aimed at maintaining social cohesion.

In his introduction to the study of African customary law, H. Levi Bruhl wrote exactly the following:

(…) If we have some difficulty grasping them, it is due to certain peculiarities of their mentality that depart from ours, although there are naturally and necessarily between the two many commonalities. The world in which the "primitives" move is infinitely less intellectualized than ours, and much more emotional, much more poetic too, and populated by supernatural elements and symbols. Yet it has its own logic, and, if we look at it, the various institutions in force in these populations cease to seem absurd and find their explanation.

(…) It is under the understands, however, that a lawyer is not comfortable there. The ways of thinking and reasoning to which he has been accustomed until then are not appropriate here. The same difficulty — to an infinitely lesser degree — had arisen when lawyers had turned to the study of Greek law. We have seen eminent people, such as Ludovic Beauchet, completely ignore certain Athenian institutions because they wanted to adapt them, as on a bed of Procuste, to the categories of Roman law considered a model of universal value. It is all too obvious that we must first defend ourselves from

our traditional methods if we are to study and understand the rights of the so-called primitive populations. (H. Levi Bruhl 1956 : 70-71 (translated by L.Turarbekova from the original text cited by F.Mensah)).

That being said and without trying to go back unnecessarily to the rear-guard fights based in particular on opposition to the centrality of the model of Western civilization that would claim absolute universality, or the subjectivity that characterizes much of Levi Bruhl's words, it can be agreed that the essence of what says does not echo a kind of excessive nihilism that supports the impossibility of the existence of institutions capable of regulating the living together of Africans. It is clear that the issue raised here is not the absence of a right as a regulatory practice of the social, but rather the form it takes insofar as, by its variation, it baffles the unsophisticated observer. In fact, would it be possible to consider this possibility? no answers Levi Bruhl? Indeed, he adds, *"Ubi societas, ibi jus": wherever there is a social group of a certain density and permanence, there is a right, regardless of the level it occupies in the scale of civilizations. If the law is, as I believe, the set of mandatory rules that a society imposes on its members, there is no reason to believe that this function is not fulfilled as well among Arunta or Pygmies as in the most advanced countries of Europe or America* (H. Levi Bruhl 1956: 71 (translated by L.Turarbekova from the original text cited by F.Mensah)).

If, therefore, the law is the set of the mandatory rules that a society imposes on its members and, on the other hand, its function is not the exclusive fact of a singular society which, by having to impose it on others, one can agree that it plays (the law) within the various social groups scattered throughout the world of quite identical roles, among which, as we have previously mentioned, that of social regulator that of preventing conflict.

To put this reality to account is also to admit that intra- and intergroup disputes that in some cases lead to violence such as armed conflicts are not, strictly speaking, a specificity of Africa. To put this reality down is also to recognize that the exacerbation and permanence of these conflicts in the areas of their emergence across the continent are neither the result of the inoperative nature of traditional local mechanisms since, in most cases, we are dealing with states born of independence and therefore heirs of legal mechanisms of the colonial empire which had endeavoured to weaken by all means, all or part of local regulatory instruments; nor can we accept the argument of the impossibility or inability of Af-

ricans to appropriate the tools of social regulation since inter-communal, inter-religious, inter-tribal conflicts are not generalized on a continent-wide basis where almost all the constituted states have inherited the regulatory mechanisms of the colonial empire. Once these different contradictions have been identified, the question of the persistence of conflicts, violence and, more broadly, the instability of the continent remains unresolved.

We argued from the outset that, contrary to approaches that attribute the persistence of violence and the instability observed in some parts of the continent, to the inability of Africans to integrate the development model made available to them – by whom? And for what purpose? – and its refusal to submit to the institutional rules supposed to spur the development that it sorely lacks, or worse, this paternalistic tendency of the West to formulate the vow that Africa will take the predefined paths for it so that it is no longer surprising, if not aberrant to reproach it for not being sufficiently part of history[17]. Post-independence Africa is unique, as are other parts of the world, and as such, it does not necessarily take the paths in line with the expectations placed in it.

This non-compliance of black Africa, especially with pre-established normative operating frameworks, is disconcerting at the same time as it is worrying, since, on some sides of the question, the problem is always the same: Africa itself[18]. Indeed, it has been made a habit to read here and there that Africa is unable to reinvent itself. And if precisely her ability to reinvent herself was rather obstructed by the surreptitious obligation that is made to her to follow a path that she does not recognize, since, at the time of her spawning, she is simply not invited to do so? and if the instability observed through conflicts and other violence was not, as is often believed, an inability to appropriate the tools of social regulation such as colonial or Roman law, but rather a simple formal inadequacy of these tools to its own reality, unfortunately constantly denied? What if the violence that was actually observable on the continent was more of an echo, no longer of this "tare", this

incapacity that has become *congenital* to Africa, but of practical need for rehabilitation of social regulation mechanisms?

It is usually much easier to blame the factors identified above for Africa's problems, particularly in the area of violence and conflict. This is more due to the fact that there is a correlation between the functioning of institutions and political stability. As a result, the violence that occurs there and the instability they create can only be seen, by pure logic, as the result of the dysfunction of the social regulatory institutions in this case the legal or even political institution. However, and he also had to think about it – unless we consider that this unthinkable is skilfully maintained – this logic that inevitably links political instability to the dysfunction of institutions is undoubtedly, operating only if it is the only logical possibility. However, this is not the case, because other logics can be summoned and are equally effective. In Central Africa in particular, but not only, it is customary for political instability to be observed and exacerbated even, while institutions continue to "operate normally". In this regard, the example of Gabon is more telling. Indeed, even as the post-election situation of August 2016 caused several casualties in Libreville and inside the country in the camp of the political opposition in particular, which had appealed to the international community to foresee an exit from the crisis, a French political leader answering questions from the deputy member of the Committee on Foreign Affairs, elected from the Upper Rhine Bruno Fushs, on the state of health of the "newly elected" President of Gabon, Mr. Le Drian, French Foreign Minister and current Minister so far, will respond: *"The government governs, the new National Assembly from the legislative elections has been installed,"* before concluding: *"President Bongo has suffered a stroke, he is recovering in Morocco and hopefully he will be able to resume his activities as normal. He was elected, the National Assembly was elected, there is a government, the institutions work. The reality is that."* [19]

This reality, which took place in Gabon in 2016 and which has as a corollary violence and political instability in Africa, is also currently in Côte d'Ivoire and Guinea Conakry (West Africa).

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17 Le discours de Dakar de Nicolas Sarkozy, prononcé le 26/07/2007 consulter le site

www.icicemac.com/actualite/nicolas-sarkozy-nul-ne-peut-demander-aux-generations-d-aujourd-hui-d-expier-ce-crime. html> consulter également le site www.elysee.fr/president/les-actualites/discours/2007/discours-a-l-universite-de-dakar.8264. html

18 Kae Amo, Frédérique Louveau et Matthieu Salpeteur, « Recherches et débats : réinventer l'Afrique ? », *Journal des anthropologues*, 126-127 | 2011, 491-497

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19 https://www.lemonde.fr/afrique/article/2019/04/08/il-a-ete-elu-quand-le-quai-d-orsay-censure-les-propos-de-le-drian-sur-ali-bongo_5447518_3212.html; voir aussi http://reseaudecolonial.org/2019/11/12/de-la-francophonie-a-la-franco-folie-des-rapports-de-pouvoir-en-afrique-cas-de-lelection-presidentielle-du-27-aout-2016-au-gabon/

However, this approach, which arises by establishing itself as the norm in the sense that it invites in a totally unequivocal way not to conceive of conflicts, the wholesale instability observed on the continent, which, under the prism of the dysfunction of institutions and their corollaries of justifications that range from the opposition of models of norms (modern law/traditional law) to the almost innate inability of Africans to integrate the normative logics of modernity (practical culturalism), unfortunately does not integrate, contrary to this pattern reflected in this type of study and analysis of African policy, that the power and functional nature of institutions may be the main reason for political instability on the continent. Too often we forget to be interested in the fact that the state apparatus inherited from colonization has given the political elites of independence positions of authority with excessive power, in addition to ignoring the flagrant violations of the rules of governance when they took place, and which unfortunately still take place today. It is this tendency that fosters authoritarianism. Rather, it is in this direction that more should be looked at. Indeed, this high concentration of power creates political instability, which is, in fact, the result of popular reactions to these authoritarian institutions.

It is therefore possible, if only temporarily, to close the rearguard debate between modern law and traditional law, as Levi Bruhl had already done in his day, to consider customary law from the theoretical point of view alone. Indeed, the observation of the various variations he takes informs about the violence and conflicts that are systematically attached to him. The fact is that its diffuse character through, in particular, forms of marriage, family law, political organization and procedures sufficiently shows a kind of deconcentration of authority and therefore of power. This "scattering" of power through a set of structures that underpin society as a whole is an effective form of social regulation that prevents by its form the occurrence of some conflict. Anything that makes Bruhl say the following: "*(...) the regime of obligations presented itself in these tribes in ways that were not only instructive for "themselves" but were likely to shed light on many obscure points in the history of institutions"* (H. Levi Bruhl 1956: 71).

In the end, as we have seen, the problem of violence and political instability in Central Africa in particular does not necessarily fall within the hallmarks of traditional customary/modern law opposition, nor to the inability of Africans to integrate mechanisms of social regulation that are subject to any modernity, but rather a purely practical reality, which studies on African policies have so to speak never taken into account: it is the excessive concentration of power in the hands of individuals in very small numbers in a political system where secular mechanisms of social regulation are more for the diffusion of ounces of authority throughout the entire social structure. Violence and conflicts that cause political instability are thus internal oppositions to authoritarianism.

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