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Introduction

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IV. THE RULE OF LAW IN AFRICA
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The phrase "Rule of Law" has recently been the subject of a resurgence of interest, particularly as a key element in the broader and even more seductive phrase "good governance, human rights and democracy," the mantra of "the Washington consensus" and Western aid to poorer nations. "The Rule of Law" can be interpreted in a variety of ways and from a variety of perspectives. The three contributions in this section reflect aspects of this diversity. They deal in turn with an analysis of broad trends and patterns in the structure of modern African constitutions; a case study of the politics behind the Nigerian Constitution of 1963 (the first Republican Constitution), which among other things gave the executive greater power over the judiciary; and third, an account of the depiction of law in fiction by African writers in the 1970s and 1980s. Each article is quite different in reach, focus and style, yet each shows a concern with the tension between perceptions of law as a constraint on arbitrary power and of law as an instrument of power, which may itself be repressive and arbitrary.

In the first article in this section, Dr. Akin Alao gives a detailed account of the political background to the changes made by the first Republican Constitution of Nigeria in 1963. The 1963 Constitution severed remaining constitutional ties with the colonial power (creation of Republic, abolition of appeals to the Privy Council), bolstered the power of the Federal Executive, especially in relation to the judiciary, and attempted to strengthen a fragile Federation in a huge and diverse country. The 1963 regime ended with a military coup in 1966. The failure of this attempt to build a strong Federal structure, according to Akin Alao, "was a result of the zero-sum-game politics, which was compounded by a winner-takes-all strategy." Alao's article appears to converge on the point that a country characterized by regional, ethnic, or religious diversity is likely to fare better under a proportional, parliamentary, federal system than a majoritarian, presidential, unitary one. This argument might be heeded in many countries, not only in Africa, always bearing in mind that fundamental cleavages cannot be resolved by constitutional design alone.

The first article in this section is broadly concerned with constitutional design from a "top down" point of view. The second article adopts a different perspective. Drawing eclectically on ideas derived from American critical legal studies and the related, but separate, law and literature movement, Emmanuel Yewah draws attention to the

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treatment of legal themes in modern literature by African authors. The main protagonists in these novels and plays are subjects of the law: defendants, witnesses, victims and attorneys. Two themes run through these accounts: the tension between African tradition and western modernity and perceptions of law as an instrument of power or as a form of protection against it.

A striking feature of this article is that five of the seven works considered are in French. One of the enduring legacies of colonialism has been a language barrier between "French-speaking" and "English-speaking" elites, to say nothing of Dutch, Afrikaans, Portuguese and Spanish speakers. One result is that Nairobi and Lagos communicate more easily with London and Washington than will Brazzaville or Dakar, who in turn maintains strong linguistic links with their former colonizers.[1] I have to admit that when I learned that there was a contribution linking African literature with law, I immediately thought of Chinua Achebe,[2] Wole Soyinka, Francis Deng, and the great corpus of English literature that came out of South Africa during the apartheid era. I had not, until now, thought about literature in French in this connection and so I was guilty of a not uncommon form of parochialism. This article is double welcome. First, because it reminds us that the idea that we can learn a lot about law from literature applies as much to Africa as to the West and second, because "African literature" is written in many languages besides English.

1 To talk of "Anglophone" and "Francophone" in relation to African countries is misleading, for the vast majority of people in such countries speak African languages rather than English or French. In Uganda, for example, English is the official language of law and government, but only a small minority of the population has a working knowledge of English.

2 Readers interested in English language literature may want to look at: *'Like a Mask Dancing: Law and Colonialism in Chinua Achebe's 'Arrow of God,'* Amreena Manji, J. LAW & SOC. Dec 2000 v. 27 p.626; *'Things Fall Apart, or Modern Legal Mythology in the Civil Law Tradition,'* John W. Van Doren, WIDENER J. OF PUB. LAw, Jan. 1993 n2 p. 447.--Eds.