



## JPs Review of Conferences, Seminars and Events

### **THE LAW FACTORY IN AFRICA: HOW DOES IT WORK? THE ANSWERS FROM THE SYMPOSIUM JURIDIQUE DE LIBREVILLE**

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1. **Introduction.**- An interesting approach to exploring what the state of the law in Africa is today has been to ask the question “how does the law factory in Africa work?” (“*comment fabrique-t-on le droit en Afrique?*”) to a number of prominent scholars, mainly from Africa itself, as well as to a limited number of law practitioners. The answers were given at the *Symposium Juridique de Libreville* (November 21st and 22nd, 2013), organised by the *Fondation Raponda Walker pour la Science et la Culture*<sup>1</sup>, having as its main partner the *Institut Français du Gabon*<sup>2</sup>, as well as other institutions (among which the *Université Omar Bongo de Libreville*<sup>3</sup> and the *Université Montesquieu Bordeaux IV* and specifically its CERDRADI, *Centre d’Études et de Recherches sur les Droits Africains et sur le Développement Institutionnel des pays en développement*<sup>4</sup>).

At the Libreville Symposium recurrent references have been made to the contribution of community law (*le droit communautaire*) as an instrument of supranational integration and of customary law (*la coutume*) as an indicator of legal

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<sup>1</sup> See <http://fondationraponda-walker.org>

<sup>2</sup> See <http://www.institutfrancais-gabon.com>

<sup>3</sup> See <http://www.uob.ga/>

<sup>4</sup> See <http://cerdradi.u-bordeaux4.fr/>

pluralism in Africa: it is mainly because of the direct relevance of both perspectives to two of the tracks of the research project JPs (Jurisdiction and Pluralisms)<sup>5</sup> that this note is written, although the interest raised by the papers presented as well as by the scientific discussion that followed suggests to widen – at least to a limited extent - the scope of this review (although the well planned structure of the panels and subpanels will not necessarily be reproduced here).

The idea of making, building, assembling, engineering, producing the law as if it were somehow similar to what takes place in a factory dealing with industrial outputs poses the challenge of considering the interaction among a plurality of factors of production (the main features of states' legal systems), processes (legitimacy, legality, judicial review), quality of products (effectiveness of the implementation of laws), marketing (coordination with international law and other states' legal systems) as well as customers' satisfaction (the good practice of democracy). Obviously, the analogy does not go much farther but to the purposes of the scientific meeting it did carry with it a message of support for the need of a realistic and sound assessment, combining both strict analysis and accurate synthesis that would bring together the various compartments of the "law factory". The articulation of the topics through a number of panels reflected the plurality of such distinct compartments and their complementarity and interaction.

This approach reveals the quest for an evaluation, on the one hand, of the degree of emancipation of African law from the prevailing framework of legal *mimétisme* from the former colonial power(s) which has been for quite a long time (and still is widely perceived to be) the general common stereotype classification of the law in African countries (rather than of African law as such) and, consequently, of its own original and autochthonous character, to the extent not only of not being any longer a product of importation but, quite to the contrary, of being exportable. The perspective of a fertile symbiosis of African law with the rest of the world – most notably and primarily with European Law – has been openly indicated in his opening statements by professor Guy Rossatanga-Rignault, President of the *Fondation Raponda Walker*, professor at the

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<sup>5</sup> See <http://www.jupls.eu>

*Université Omar Bongo de Libreville* as well as the intellectual engine who took care of the brilliant organisation of the Symposium.

The motivation of the scientific purposes of the Symposium was then quite ambitious and, so framed, it could but hardly have been fully achieved, at least in part because *law in Africa* (and its distinctiveness from *African law*, whatever the latter may be regarded to mean) must necessarily encompass a wider range of legal experiences than the one referred to at the Symposium out of a rather small number of mainly Central African countries, all somehow representative of former French colonisation (a situation that inevitably and exclusively implies, therefore, French legal language, French legal education, French legal scholarship and French contemporary references), whereas the law in Africa must be conceived of as something resting on quite larger a scenario<sup>6</sup>.

Another reason for the difficult achievement of those ambitious purposes is that significant material areas of the law have not been considered, if not incidentally: for instance, fundamental rights and criminal law have been almost entirely neglected<sup>7</sup>; so has the contemporary role of Islamic law. The rather poor (so far) African practice of any sort of territorial decentralization – federal, regional or devolved – has also been entirely ignored, as if the emphasis on developmental policies as a pragmatic justification for the centralisation of any decision-making process were to be shared and not questioned.

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<sup>66</sup> In fact, most references were to a rather small number of Central African countries (mainly, the countries of origin of the participants): Gabon, of course, where the Symposium was held, and then Benin, Cameroun, Central African Republic, Congo (Brazzaville), Côte d'Ivoire, Togo. Occasionally, references were made to other countries, such as Niger, Senegal, or Sierra Leone. Of course, it's not the number *per se* of countries that matters, as the fact that all or most of them occupy a bordering central African region and even more important, that all of them (with the partial exception of Cameroon) share their former ties with France and cannot be easily considered, therefore, as representative of the whole of the African continent and of the variety of the influences that shape its colonial legal formant. Moreover, the Mediterranean countries may arguably be only selectively be included.

<sup>7</sup> And so has consequently been any critical assessment of (the lack of) effectiveness and impact of the African Court on Human and Peoples' Rights.

Even the constitutional form of government has been scarcely examined: from this point of view, for instance, a closer comparative analysis with the French semi-presidential model and its system of checks and balances – including the experience of having to do and somehow of managing *cohabitation* - would have allowed to highlight to what extent the “more than presidential” institutional pattern in those very few Central African countries has gone far away from its very source of inspiration (a dynamics that doesn’t certainly deserve to be exported).

But the main reason – in my opinion - for considering that the purposes of the Symposium need more ground to be explored is that by and large the attention rightly paid to the law of contemporary modern and modernised Africa has not been adequately integrated and complemented by an equivalent attention to the cleavage still existing with a traditional and not yet modernised (perhaps more authentic?) Africa.

Reference to customary law (and its sources, inherent varieties, modes of transmission, evolution, adaptation, effectiveness in resolution of conflicts and adjudication) ought not to be limited to custom as a source of law with subsidiary effects within a kelsenian system of hierarchy of norms – as has often been done at the Symposium – but rather needs being assessed as an (un)official system of sources of law alternative and even competing with the kelsenian one. The African customary system as such – that is, as elaborated by scholars of systemology and comparative law<sup>8</sup> and not abstract customary norms *per se* - is, of course, to a large extent inconsistent with the kelsenian system and even more with the principles of *légalité* and undifferentiated individual citizenship derived from France. And yet, being contrary to the orthodoxy doesn’t diminish its reality and its contribution to the definition of the state of the law in Africa.

Here the cleavage between tradition and modernity is still strong and quite evident – and the experience that a new generation of African constitutions (since the 90ies of last century) is trying to achieve by rationalising traditional (political and judicial) institutions and rules shouldn’t be neglected.

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<sup>8</sup> The immediate scientific reference is to R. David, C. Jauffret-Spinozi, *Les grands systèmes de droit contemporains*, 11me ed., Dalloz, 2002, 441.

There is still no evidence - one must admit - that this latter and more recent constitutional and normative attitudes to that regard will eventually produce the expected results – such as establishing some sort of *cultural ownership of the legal system* by part of the population, thus enriching the foundation of legitimacy of post-colonial states -; and yet the explicit subordination of traditional customary law to a higher source of law such as the constitution and more in particular the Bill of Rights, although establishing a pattern of weak legal pluralism<sup>9</sup> might contribute to setting in motion also some social and cultural dynamics that appear to be compatible with both respect for traditions and cultural roots, on the one hand, and modernisation and well-being of individuals (and especially women), on the other. The imperative assumption, of course, is that legal pluralism ought not to revive older forms of *indigénat* or be some sort of unusual food appreciated mostly as exotic edible ingredients by a foreign cuisine but rather be regarded more as an instrument of representation of *what is* than as a way for preservation of *what used to be* and consequently *must be*, for ever.

The circumstance remains that the original historical *régime* of legal pluralism has never been abandoned by most Asian countries; that in Latin America it is characterizing the current generation of new constitutional documents (thus affecting the so called «*nuevo constitucionalismo ibero-americano*»); that in Northern America and Northern Europe, just as in Australia, the legal customary systems of the local indigenous populations are somehow recognised and made consistent with the respective constitutional setting. It may be a dynamics too much oriented towards a perspective *de jure condendo* or too dependent on legal sociology and/or anthropology and it may be more up to the political system than to law scholars to take a stand on it.

However, law scholars – at least because of the ongoing process of rationalisation of legal pluralism (through recent constitution-making and repeatedly through constitutional adjudication) – ought not to remain indifferent to the

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<sup>9</sup> In the sense given by John Griffiths, in his widely quoted contribution *What is Legal Pluralism?*, in *Journal of Legal Pluralism*, 1986, in [http://www.jus.uio.no/smr/english/research/areas/diversity/Docs/griffiths\\_what-is-legal-pluralism-1986.pdf](http://www.jus.uio.no/smr/english/research/areas/diversity/Docs/griffiths_what-is-legal-pluralism-1986.pdf)

phenomenon while assessing the state of the law in Africa today. As a matter of fact, in a world that is committed to accommodate the intricacies of systemological legal pluralism – along with global legal pluralism -, perhaps the African experience in the same direction might be more than appreciated and become a source of an exportable expertise in the factory of law.

**2. *The Symposium Juridique.***- So far the general framework of the Symposium, which, apart from some limits as indicated above, has generally provided plenty of high level presentations and lively discussions, thus establishing an ideal academic environment such as could indeed be exported to other contexts. The Symposium has been articulated into various monothematic panels, with a strict ten minutes time available for each presentation (a draconian limit that has miraculously been respected) and a reasonable time for the debate. This synthetic survey of the ideas that have circulated at the Symposium does not always reproduce the order of the programme.

**2.1 *International law and community law.***- International law plays an important role in shaping African law and the African continent has given its specific contribution (to the extent that allows to speak of *militantisme juridique*) to the development of general international law (even though because of the need of armed intervention from abroad for the protection of security or because of the reasons for putting international criminal justice in motion). The collective dimension of rights – between universalism and individualism – as enshrined in the African Charter represents a specific contribution to international law. Professor Adama Kpodar (*Université de Kara, Togo*) has further highlighted how the rules of general international law are still providing the ground for establishing the rules of community law and the regional and sub-regional settings, thus leaving sovereign member states fully in charge of the processes involved.

Community – that is, supranational - law represents an area that has gone through huge developments, both quantitatively and qualitatively and the matter has deserved to be dealt with by several presentations.

Professor Alain Ondoua (*Université de Poitiers, Detaché auprès de l'Agence de la Francophonie, Yaoundé, Cameroun*) has introduced the issue of the proliferation of regional and sub-regional organisations, establishing a network of competitive and complementary institutions and developing the legal status of the law of integration as part of domestic law. In particular, one can distinguish a gradual emerging of (i) a domestic law for enabling participation to such organizations as well as of (ii) a domestic law for the execution of community law.

The former occasionally makes express reference to international treaties providing for a process of integration and founding the category of “constitutional clauses for integration” (as in the Constitution of Benin); while the latter may be further classified according to the function in charge of execution, which can require a normative intervention (supported by the principle – and obligation – of loyal cooperation) or a judicial activity.

It is particularly interesting for an observer from Europe to notice that within CEMAC<sup>10</sup>, for instance, the domestic judge is at the same time community judge; and yet, the instrument of preliminary ruling that would ensure a uniform application of community law is scarcely – if at all – used by domestic judges, thus giving evidence to some sort of legal nationalism not only ensured by the requirement of a unanimous vote by member- states (or by the clause on freedom to withdraw) but supported as well by the judiciary. Such judicial reluctance to play its role within the network of African community law and institutions has been underlined by all speakers, thus emphasizing the *absence of any judicial dialogue* as an instrument for coping with inconsistencies between conflicting legal orders and eventually overcoming them.

The network of regional and sub-regional organisations and the establishment of a (potentially and selectively) supranational framework – to which reference is often made through the concept of «community law» – is quite impressive, including various institutions that vary in the membership. Professor Martin Dende (*Université de Nantes*) has emphasized the achievements in the crucial area of maritime transports, an area that

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<sup>10</sup> See the website of the *Communauté Économique et Monétaire de l'Afrique Centrale* in <http://www.cemac.int/>

may be regarded as a true laboratory of internationalisation of the production of law (not only in Africa), distinguishing between instruments and purposes of uniformisation or of harmonisation. However, the process of establishing such a wide network of organisations requires more cooperation and coordination among them: as it is now, in fact, the system may have established a rather anarchic, mainly decorative and scarcely operational architecture, better known to specialists in the field only, unable to overcome reluctance by states to fully accept to comply with it.

The specific sensitivity of legal practitioners on the supranational community perspective has been brought forward in another panel by Nicolas Chevrinais (Partner/Avocat, Ernst & Young, France/Gabon) who dealt with the articulations of the process of multi-sector integration (insurance, currency exchange, protection of intellectual property, customs), reaching quite a remarkable level with regard to business law, which has been thoroughly harmonised – thus establishing a world record - due to the 1993 OHADA treaty; and by Madeleine Berre (Managing Partner, Deloitte & Touch, Gabon) who elaborated her scenario to be of African business law through a retrospective assessment of 20 years of experience with OHADA<sup>11</sup>.

The debate has further contributed to the assessment of developments on the path of supranational integrative legal pluralism: as a matter of fact, in spite of the declaratory stress on “supranationality”, nation-states continue to be at the very centre of the system (they have been called «*maîtres des traités*» explicitly recalling the *Bundesverfassungsgericht* in the *Lissabon Urteil*), while the process of integration – as compared with the early dynamics in the European Communities – cannot rely on the role of interactive judiciaries and on their willingness to dialogue in order to overcome problems of enforcement and elaborate doctrines such as direct effect and primacy. So, on the one hand the African nation-state is more in charge of implementing a law that is produced in a «foreign kitchen» than of the very making of the law – thus raising problems of national democratic legitimacy of rules; and, on the other, the domestic

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<sup>11</sup> See the website of OHADA (*Organisation pour l'Harmonisation en Afrique du Droit des Affaires*) in <http://www.ohada.com/>



judge is not willing not to resist adjudicating the constitutionality of the establishing treaties.

The pressure from the international context has been emphasised in yet another contribution, by David Ikoghou-Mansah (*Université de Libreville*, Gabon) who framed it within the concept of pragmatism in law-making: more and more material sources of law – amenable to political, social and economic pragmatism short of any ideological dogmas or foundations - substitute what used to be common premises and references (like right and left of the political spectrum) and agencies of various kinds are experiencing a considerable growth and influence in law-making, in Africa as well. From this point of view, considering also phenomena like voters' volatility and abstention, African polities appear to be fragile laboratories, exposed to hegemonic forces fostering an undesirable *pensé unique*.

A different perspective – although still in interaction with the international context of normative communitarisation – has been offered by David Hiez (*Université de Luxembourg*) with regard to the difficult elaboration of uniform legislation on cooperative societies within the framework of OHADA.

**2.2 *Environmental law and indigenous law*.**- A panel entirely focused on the law of the environment is by itself an organisational choice by the Symposium reflecting a value-oriented approach inclined to favour a dynamics of circulation of law and adjudication within Africa and between Africa and the rest of the world while drawing inspiration from shared planetary problems. Furthermore, the field of environmental law provides a very interesting and stimulating introduction into the area and modes of interaction between contemporary political law making and customary law as the latter is related to society and its primary needs.

The papers presented as well as the debate that followed have been quite up to the expectations. Nevertheless - and paradoxically, considering how much this field is quite at the edge of contemporary African legislation and enforcement – the crucial

issue of customs and traditional law of local communities emerges again, playing a critical role of antagonism with a western-oriented normative framework.

In this context, the concept of genetic resources as formalised by the 1992 Rio Convention on Biological Diversity becomes quite relevant, as dealt with by Jean-Dominique Wahiche (*Muséum National d'Histoire Naturelle*, Paris). The text of the Convention – after acknowledging in the Preamble *“the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components”* – states in its art.8.j that *“subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices”*: reference is therefore made to a large set of customary sources of law and practices of local communities with a view of bridging the gap between rationalist science and traditional knowledge, in an attempt of setting new ground for the protection of the environment and genetic resources (conceived as everything that is or has been living and is fit for reproduction) through and by experience and traditional practices of indigenous populations.

However, the perspective of sharing knowledge with local communities raises legal problems of consent as well as of protection of intellectual property, problems which are not to be regarded as easily managed, considering the hard task of coordinating some structural differences between the “western” approach (based on individual property and limited time-wise safeguard) and the practice of indigenous people (based on collective property, holistic perception of nature and timeless protection). Sharing knowledge in an inclusive attitude that requires *ad hoc* solutions and patterns, such as to allow also for sharing the consequent revenue.

Another paper – by Covacks Missang Bibang (*Université de Libreville-UOB*, Gabon) – has dealt with the contribution of international law to the development of national environmental legislation. Reference has been made to a principle of «green intervention» (modelled after the concept of humanitarian intervention), aimed at preventing large scale accidents. The influence of international law has determined the elaboration of the Environmental Code of Gabon. International law proves to be efficient also in shaping national policies and legislation by African states in their commitment against importation and cross-border transportation of toxic waste materials.

Alexis Ndui-Yaabela (*Université de Bangui*, Centrafrique) has emphasised the experience of Central African regionalism and of *ad hoc* sources of international law («green agreements») with regard to the preservation of natural resources. After twenty years of international coordination, regionalism in the area proves to go well beyond mere legal aesthetics and, to the contrary, to be able to play a crucial role for achieving the established purposes.

**2.3 Sources of law in Africa.-** A wide and critical approach has been offered by Alioune Badara Fall (*CERDRADI, Université de Bordeaux IV*), provocatively suggesting that African law does not exist as it is either a copy or is not enforced. African themselves seem little inclined to acknowledge value to their own law, introducing some ambiguities in the legal environment. The strong relationship between law and society needs to be emphasised. It is relevant also to elaborate an assessment of the approach to legal education in francophone Africa – that emphasises the role of *la loi* rather than of *le droit*, and indicates therefore a positivist and state-centred attitude, to the extent of promoting a sort of legislative fetishism which has obvious political underpinnings: civil society in Africa either is politicised or it simply does not exist. It is hard to elaborate the paradigms of the regulatory state in Africa because of its persistent centralisation of power (not to speak of the phenomenon of importation of laws). The concept of the very nature of law (*juridicité*) in Africa still requires to be investigated although one may feel optimistic on the capacities of African scholars.

An evaluation of the factory of law in Africa – perceived more as a plurality of small artisan workshops than as a large factory run by the inspiration of one manager - shares a great deal of the distinguishing features of law-making in other parts of the world. Therefore, François Feral (*Université de Perpignan*) underlined how it would be hard to see a specific regional (African) legal nature of the law (*juridicité*) thoroughly separated by the law as produced under the effects of world globalisation. African law and law in Africa does provide keys for an evaluation of wider legal phenomena.

**2.4 Traditional customary law.-** The Preamble of the Constitution of Gabon makes express reference to “*son attachement à ses valeurs sociales profondes et traditionnelles, à son patrimoine culturel, matériel et spirituel*”. Nevertheless - as commented by Steve Singault Ndinga (*Université de Libreville-UOB, Gabon*) -, although in an early stage since independence there were some prospects of general implementation of traditional law, later developments have contributed to marginalise the enforcement of custom as a source of law.

In his presentation, Augustin Emane (*Université de Nantes*) quoted J.F. Gonidec - who said that “*le juriste africain doit réussir la synthèse des droits traditionnels africains et du droit moderne*” – in order to question the compatibility between the traditional African cultural and social environment and contemporary legislation produced by the modern lawmaker. Further valuable doctrinal references in the field are V. Y. Mudimbe (“The invention of Africa”) and Eric Hobsbawm (“The Invention of Tradition”). And yet, customary law does not seem to be fit in order to ensure effectiveness and certainty of the law as well as appropriateness to sociological realities, as demonstrated in detail in the field of labour law. The role of traditional law in yet another specific area, such as administrative law, has been dealt with by François Narcisse Djame, (*Université de Douala, Cameroun*), distinguishing between private law and public law: in the former, the Supreme Court has recognised the role of traditional law, provided it would not be inconsistent with *ordre public* and general principles of

law; in the latter, the transformation of practices traditionally followed by social groups is a delicate matter to be left to the administrative judge.

The area of land property law (*droit foncier*) and land reform has been the topic of the presentation offered by Pierre Etienne Kenfack (*Université de Yaoundé 2*, Cameroun): an area that affects vulnerable components of the population, thus requiring an adequate balancing between legality and legitimacy of legislation and special care in setting the desired purposes of land reforms, considering also that one has to cope with the acquisition of large extensions of fertile lands by new sectors of civil society. There is indeed the possibility of an excessive fragmentation of the legal edifice (a patchwork of rules) as a consequence of the effectiveness of the many «own laws» of traditional groups that would oppose pluralism to a statute-centred setting.

**2.5 Political law-making: the Constitution as a source of law.-** The role of constitutional sources in central Africa has been illustrated by Télesphore Ondo (*Université de Libreville-UOB*, Gabon): the Constitution has not achieved the purpose of limiting power(s) but it has succeeded in bringing peace to society; although unilateral since the early constituent stage and also in the later stages of revision, it has captured other causes of legitimacy. Separation of powers, judicial review (overcoming an excessive judicial self-restraint), an effective political representation and pluralism - and not only universal voting rights - need to be strengthened, in line with the *Charte africaine de la démocratie, des élections et de la gouvernance* (CADEG).

African constitutionalism has been explored by Dominique Etoughe Mba (*Université de Libreville-UOB*, Gabon) in its quest for mediation between the need of protecting stability and the opportunity for ensuring rotation in roles of government and opposition. Such mediation between conflicting values has plaid differently in different periods of history since after decolonisation, due to the priority of establishing the state itself. The role of parties (from one-party régime to competitive multiparty system) has been quite crucial in detecting the distinguishing features of each historical period. The coexistence of *stabilité* and *alternance au pouvoir* may be seen as in the process of being achieved.

Along the same lines and referring also to Carl Schmitt, Flavien Enongoue (*Université de Libreville-UOB*, Gabon) focused on the Constitution of Gabon and stressed the environment of «*consensus conflictuel*» whereby emergency operates as a source of a new legal legitimacy, in line with the old aphorism of Roman law according to which *ex facto oritur ius* that affects administrative law not less than constitutional law.

The system of sources of law has been critically dealt with by a number of contributors focusing on the role of the various actors – formally or less than formally – participating to the function of law-making – or even highlighting the absence of any legislation at all, even in crucial areas of social life and activities, as done by Farafina Boussougo-Bou-Mbine (*Université de Libreville*, Gabon).

Marcelin Nguete Abada (*Université de Yaoundé 2*, Cameroun) has illustrated the wide social participatory network underlying the law-making process and, more in particular, the very influential role played in particular by the ministerial and presidential staff (*les cabinets*), a good example being provided by the governmental structure of the executive power in Cameroun.

**2.6 Judicial law-making.**- Judicial (constitutional law and) law making is a typical feature of contemporary (at least in western Europe, since World War 2) mainstream constitutionalism that is shared by francophone African countries, as critically highlighted by a few papers as, for instance, by Alexis Essono Ovono (*Université de Libreville*, Gabon).

Guy Rossatanga-Rignault (*Université de Libreville*, Gabon) has been rather critical of such development, emphasising the absence of effective instruments of control of excessive and virtually limitless courts' creative law-making power, not only without any sound theoretical ground for it but even quite inconsistently with Montesquieu's classic framework according to which "*les juges de la nation ne sont ...*

*que la bouche qui prononce les paroles de la loi, des êtres inanimés qui n'en peuvent modérer ni la force ni la rigueur*". While the function of adjudication does have a physiological component of rule-making, current practice – the Constitutional Court of Gabon as a court of last instance providing a clear example – shows that judicial rule-making goes well beyond the creativity inherent in the judicial function.

Another perspective has been dealt with by Hervé Ngangui (*Université de Libreville, Gabon*), who pointed out how judicial independence is influenced by a number of social political and cultural factors that lead to the circumstance that their career is affected by politics. Legislative reforms, improvement of training and a higher level of professional ethics would all contribute to enhancing the most needed quality of judicial independence.

Judicial law-making has been further dealt with by Stéphane Bolle (*Université Paul Valéry – Montpellier 3*) who described to extent to which in some African countries judicial law-making (i) expresses its own creativity and is not then just a copy of French case-law, (ii) goes well beyond being "*la bouche de la loi*" and has more or less achieved playing the role of giving the "*interprétation authentique*" of legislation. The African "*fabrique jurisprudentielle*" does borrow techniques and methods of interpretation from abroad without but the results are their own, thus allowing an image of constitution courts in Africa as "*constituants secondaires*".

### **3. Some final remarks.**

In his final remarks, Professor Adama Kpodar (*Université de Kara, Togo*) emphasised how much the law is the product of society (*ubi societas, ibi jus*) and is therefore a mirror of it. The purpose of the conference was to check whether this strict relationship is confirmed in Africa, due to the pervasive effects of foreign legal influences under colonialism and subsequent instances of *mimétisme juridique* even after the achievement of independence. In other words, is there – and how to assess it – an African legal identity?

The building bricks of a possible answer are to be found exploring (i) in legal texts (inclusive of international law and community supranational law), (ii) in the complex interaction between traditional customs (*droit non légiféré*) and positive law on the background of the need for legal certainty, somehow undermined and made more ambiguous by areas of *métissage normative*, (iii) in the evaluation of the role of actors (constitutional courts, political law-makers – even in the exercise of a determination not to legislate -, ministerial staff), (iv) in the context in which the factory of law operates in Africa.

For sure, any African legal identity is to be recognised and evaluated with reference to its richness and complexity as well as, consequently and inevitably, to its ambiguities. The question is a fascinating intellectual challenge and the Symposium has contributed to framing an answer, starting from the acknowledgement of the need for a necessary commitment to African law by African scholarship.