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Beyond the Bifurcated and the Extraverted

Vernacularised Democracy and the Post-Colonial Critique of African Power

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Abstract

This research note examines how constitutional restraints on presidential tenure operate when they conflict with competing claims to political authority. Building on postcolonial accounts of the divided state, overlapping public obligations, and the persistence of political hierarchies after independence, it specifies how these conditions shape the operation of a particular constitutional restraint.

Drawing on Politicojuridity, the paper uses the Authority Triangle to explain how law, political power, and the normative commitments that justify public office can fall out of alignment even as constitutional procedures remain in use. It develops Vernacularised Democracy as an application of this framework, identifying **Democratic Absorption** as a process through which political actors use constitutional language and procedures to give legal effect to claims grounded in liberation history, communal stewardship, or direct appeals to majority will. It disaggregates vernacular legitimacy into three empirically observable registers: **liberation-historical, communal-stewardship, and majoritarian-plebiscitary**; and argues that the configuration of these registers predicts whether tenure restraints hold or are absorbed.

Two episodes illustrate the inquiry: Malawi's 2002 – 03 attempt to change the number of terms an incumbent could serve, and Zimbabwe's 2026 amendment extending the incumbent's term. The comparison identifies who could uphold or alter each restraint, which vernacular claims were advanced, and what evidence would establish their influence on the decision. The paper concludes by setting out a comparative research agenda for explaining when constitutional restraints hold and when the procedures through which they operate help weaken them.

Keywords: Politicojuridity, Vernacularised Democracy, Democratic Absorption, constitutional restraint, presidential tenure, postcolonial African politics

This paper is presented as a research note rather than a full empirical analysis. Its purpose is to set out a theoretical framework and illustrate its application through two contrasting cases. The empirical sections are illustrative rather than adjudicative; systematic testing of the hypotheses set out in Section 6 is underway through ongoing research at the Africa Politicojuridity Institute.

1. Introduction: The Analytical Gap

Post-colonial political thought has been extraordinarily successful in diagnosing the pathologies of the African state. It has shown how colonial power created structures of exclusion, how independence produced new forms of predation, and how the post-colonial condition is marked by violence, extraversion, and moral duality. This intellectual tradition, spanning from Fanon to Mbembe, remains the most profound and influential account of African political life.

Yet a fundamental question remains unanswered. Why does constitutional democracy, even when formally adopted and procedurally preserved, fail to become the supreme source of political authority? Why do elections, constitutions, and courts not displace older, vernacular structures of legitimacy, but rather become absorbed by them? Why do constitutional amendments removing term limits, the very essence of democratic erosion, frequently acquire social acceptance, or even popular celebration?

The post-colonial canon explains why the African state is *distorted*. It does not fully explain why constitutionalism is *absorbed*.

This paper draws on Politicojuridity to examine how constitutional democracy operates within the forms of authority that postcolonial scholarship has brought to light. Its starting point is that political authority depends on the relationship between law, political power and the normative commitments that justify the exercise of public office. Where these elements diverge, a democratic institution can retain its legal form while its operation comes to depend on political loyalties and claims to authority that the constitutional order was intended to govern. The paper develops Vernacularised Democracy as an application of Politicojuridity to this problem. It asks how political actors translate claims grounded in liberation, communal obligation or personal loyalty into constitutional decisions, and under what conditions those decisions reinforce or subordinate legal restraint.

The paper proceeds in six sections. Section 2 reviews the post-colonial canon, grouping its major figures into three traditions: the psychological and structural (Fanon, Mamdani); the moral and normative (Ekeh, Ake); and the pathological and material (Mbembe, Bayart). Section 3 identifies the analytical limits of this canon, showing what it misses about constitutional absorption. Section 4 introduces Vernacularised Democracy and its core mechanisms. Section 5 illustrates the framework through the cases of Zimbabwe and Malawi. Section 6 concludes by arguing for a politicojuridical synthesis that completes, rather than replaces, the post-colonial project.

2. The Post-Colonial Canon: Mapping the Terrain

2.1 The Psychological and the Structural: Fanon and Mamdani

Frantz Fanon's contribution lies in his analysis of colonial violence as a psychic and psychological wound.[1] In *Black Skin, White Masks* and *The Wretched of the Earth*, Fanon describes how colonization deforms the colonized subject, producing inferiority complexes, neuroses, and a desperate desire for recognition from the colonizer.[2] The post-colonial state, for Fanon, is often betrayed by a national bourgeoisie that fails to build genuine national consciousness. His concern is with the *interior life* of the colonized; the ways in which colonial power becomes embedded in the psyche.

It would be a mistake to reduce Fanon's contribution to a theory of psychological damage alone. In The Wretched of the Earth, he explicitly addresses the question of national culture and the role of the intellectual in forging a legitimate post-colonial order.[3] His concern is not merely with the wounded psyche but with the conditions under which a genuinely national authority might be constituted.[4] Frantz Fanon's contribution lies in his analysis of colonial violence as a psychic and psychological wound. In *Black Skin, White Masks* and *The Wretched of the Earth*, Fanon describes how colonization deforms the colonized subject, producing inferiority complexes, neuroses, and a desperate desire for recognition from the colonizer. The post-colonial state, for Fanon, is often betrayed by a national bourgeoisie that fails to build genuine national consciousness.[5] His concern is with the interior life of the colonized; the ways in which colonial power becomes embedded in the psyche.[6]

Mamdani's framework is not merely descriptive; it is a theory of how institutional architecture produces political subjectivity.[7] The bifurcated state is not simply a spatial arrangement but a machine for generating different kinds of persons; citizens and subjects; with different relationships to authority.[8] Mahmood Mamdani's *Citizen and Subject* shifts from the psychological to the structural.[9] Mamdani argues that colonialism created a bifurcated state: direct rule in urban areas, where rights-bearing citizens were governed through civil law; and indirect rule in rural areas, where "customary" subjects were governed through Native Authorities.[10] This bifurcation was not

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[1] Frantz Fanon, *The Wretched of the Earth* (Constance Farrington tr, Penguin Classics 2001) 27–34, 200–04.
[2] Frantz Fanon, *Black Skin, White Masks* (Charles Lam Markmann tr, Pluto Press 1986) 10–14, 83–108, 210–22; Fanon, *The Wretched of the Earth* (n 1) 40–43.
[3] Fanon, *The Wretched of the Earth* (n 1) 166–89.
[4] ibid 159–65, 196–99.
[5] Fanon, *The Wretched of the Earth* (n 1) 119–25, 134–42.
[6] Fanon, *Black Skin, White Masks* (n 2) 11–13, 141–49; Fanon, *The Wretched of the Earth* (n 1) 200–15.
[7] Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton University Press 1996) 16–18, 285–87.
[8] ibid 18–23, 52–61.
[9] ibid 3–8.
[10] ibid 16–19, 37–48, 109–11.

a temporary arrangement but a durable architecture that the post-colonial state inherited.[11] Democratization, for Mamdani, remains incomplete because the rural/urban, citizen/subject divide persists.[12]

Together, Fanon and Mamdani explain why the African state is both psychologically wounded and structurally distorted.[13] They show how colonial power produced subjects who were alienated from their own traditions and from the modern state, and how it produced institutions that reproduced exclusion even after independence.[14] Their contribution is indispensable. Yet neither fully explains why constitutional democracy fails to become supreme. Fanon's subject is damaged and seeking recognition; he does not ask what legitimacy systems the colonized already possessed, and how those systems might continue to structure political authority.[15] Mamdani's analysis is top-down and structural; he shows how the state is organized, but not how authority is *recognized* and *legitimised* by ordinary citizens.[16] A citizen with full legal rights may still recognize a traditional chief, a liberation hero, or a charismatic strongman as the true source of authority.

2.2 The Moral and the Normative: Ekeh and Ake

Ekeh's two publics thesis remains one of the most powerful accounts of why post-colonial states struggle to command moral loyalty.[17] Its explanatory force lies in its recognition that Africans are not failed citizens of a single public sphere, but active participants in two distinct moral economies with different criteria of obligation.[18] Peter Ekeh's "two publics" thesis is perhaps the closest precursor to the argument developed in this paper.[19] Ekeh argues that colonialism created two public realms: the "primordial public" (ethnic, communal, affective) and the "civic public" (state, formal, legal).[20] Africans typically participate in both, but the primordial public commands deeper moral loyalty, while the civic public is often treated as an arena for extraction.[21] The citizen feels obligations to both, but the primordial often wins.[22]

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[11] ibid 23–27, 287–94.
[12] ibid 288–92, 296–301.
[13] Frantz Fanon, *The Wretched of the Earth* (Constance Farrington tr, Penguin Classics 2001) 119–25, 200–04; Mamdani (n 1) 16–27.
[14] Fanon, *Black Skin, White Masks* (Charles Lam Markmann tr, Pluto Press 1986) 10–14, 141–49; Mamdani (n 7) 52–61, 287–94.
[15] See Fanon, *Black Skin, White Masks* (n 2) 210–22; Fanon, *The Wretched of the Earth* (n 1) 166–89.
[16] Mamdani (n 7) 16–23, 285–94.
[17] Peter P Ekeh, 'Colonialism and the Two Publics in Africa: A Theoretical Statement' (1975) 17(1) *Comparative Studies in Society and History* 91, 91–93.
[18] ibid 92–93, 106–08.
[19] ibid 92–93.
[20] ibid 92–93, 100–06.
[21] ibid 106–11.
[22] ibid 108–12.

Claude Ake's normative vision is not naive idealism; it is grounded in a rigorous critique of how imported proceduralism displaces substantive democratic participation.[23] His insistence that democracy must be rooted in material needs and communal traditions anticipates the central concern of this paper: that legal form alone cannot generate legitimacy.[24] Ake's contribution is normative and prescriptive. Ake was one of the most trenchant critics of imported liberal democracy in Africa.[25] He argued that Western-style multi-party elections produce elite circulation without substantive empowerment, and that a genuine African democracy must be rooted in the material needs and communal traditions of the people.[26] His concern was with what authentic African democracy *should* look like, not merely with what it *does* look like.[27]

Ekeh and Ake together explain why formal democratic institutions often fail to command moral loyalty.[28] Ekeh shows that the civic public is experienced as alien and extractive; Ake argues that a democracy rooted in African realities would look very different from the liberal model.[29] Their contribution is essential. Yet Ekeh describes a *coexistence* of two publics; he does not explain the *process* through which one absorbs the other.[30] And Ake's normative vision, while inspiring, does not provide the analytical tools to explain why vernacular legitimacy sometimes reinforces constitutionalism and sometimes absorbs it.[31] The question of *mechanism* remains unanswered.

2.3 The Pathological and the Material: Mbembe and Bayart

Achille Mbembe's work is deliberately provocative, and it would be a category error to read his concepts of "necropolitics" and "the postcolony" as empirical claims about all African political life.[32]They are philosophical interventions designed to unsettle complacent accounts of sovereignty and to reveal dimensions of power that liberal theory cannot capture.[33] Mbembe's work is the most philosophically ambitious in the post-colonial canon. His concepts of "necropolitics" (the power to expose populations to death) and "the postcolony" (a space of grotesque excess, obscenity, and

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[23] Claude Ake, *Democracy and Development in Africa* (Brookings Institution 1996) 129–35; Claude Ake, *The Feasibility of Democracy in Africa* (CODESRIA 2000) 7–15.
[24] Ake, *The Feasibility of Democracy in Africa* (n 23) 18–26, 180–86.
[25] Claude Ake, 'The Unique Case of African Democracy' (1993) 69(2) *International Affairs* 239, 239–41; Ake, *Democracy and Development in Africa* (n 23) 130–32.
[26] Ake, 'The Unique Case of African Democracy' (n 25) 241–44; Ake, *The Feasibility of Democracy in Africa* (n 23) 182–90.
[27] Ake, 'The Unique Case of African Democracy' (n 25) 243–44; Ake, *Democracy and Development in Africa* (n 23) 135–39.
[28] Peter P Ekeh, 'Colonialism and the Two Publics in Africa: A Theoretical Statement' (1975) 17(1) *Comparative Studies in Society and History* 91, 92–93, 106–11. Ake, *The Feasibility of Democracy in Africa* (n 23) 18–26.
[29] Ekeh (n 28) 107–10; Ake, 'The Unique Case of African Democracy' (n 25) 241–44.
[30] See Ekeh (n 28) 108–12.
[31] See Ake, *The Feasibility of Democracy in Africa* (n 23) 180–90.
[32] Achille Mbembe, *On the Postcolony* (University of California Press 2001) 14–17; Achille Mbembe, 'Necropolitics' (2003) 15(1) *Public Culture* 11, 11–14.
[33] Mbembe, *On the Postcolony* (n 32) 1–17, 102–05.

arbitrary violence) describe a politics that is fundamentally about domination and suffering rather than legitimacy and consent.[34] His Africa is a space of "zombification," where power operates through spectacle and the body rather than through law and reason.[35]

Jean-François Bayart's politics of the belly is not a cynical reduction of politics to material interest.[36] It is a sophisticated account of how the state becomes an arena for the pursuit of recognition, status, and belonging, mediated through networks that are simultaneously material and affective.[37] Bayart's "politics of the belly" describes African politics as a struggle for access to state resources, driven by networks of patronage, kinship, and clientelism.[38] The state is an "extraverted" entity, dependent on external resources, and political competition is fundamentally about distribution rather than legitimacy.[39] His framework is materialist, transactional, and deeply skeptical of idealist accounts of authority.[40]

Mbembe and Bayart together explain why African politics often appears as a realm of excess, violence, and material accumulation.[41] They show that power is not primarily about legal authority but about bodies, resources, and networks.[42] Their contribution is profound. Yet Mbembe's framework is one of rupture and pathology. Power in the postcolony is not legitimate; it is grotesque, excessive, and violent.[43] This leaves no room for understanding why vernacular authority might command genuine social recognition.[44] And Bayart explains why actors compete for power (material gain), but not how their claims to power are justified and recognized (legitimacy scripts).[45] Patronage networks may explain the distribution of resources, but they do not explain why citizens invest emotional and moral commitment in particular leaders.[46]

3. The Limits of the Canon: Why Post-Colonial Thought Misses Absorption

The post-colonial canon, for all its brilliance, shares a common limitation: it focuses on the *conditions* of African politics: the distorted state, the extraverted economy, the bifurcated society,

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[34] Mbembe, 'Necropolitics' (n 32) 11–12, 39–40; Mbembe, *On the Postcolony* (n 32) 102–11, 173–82.
[35] Mbembe, *On the Postcolony* (n 32) 104, 108–15, 128–33.
[36] Jean-François Bayart, *The State in Africa: The Politics of the Belly* (2nd edn, Polity Press 2009) ix–xx, 228–41.
[37] ibid 235–41, 260–67.
[38] ibid 218–27, 232–35.
[39] ibid 20–32; Jean-François Bayart, 'Africa in the World: A History of Extraversion' (2000) 99(395) *African Affairs* 217, 217–20, 225–28.
[40] Bayart, *The State in Africa* (n 36) 218–27, 260–67.
[41] Mbembe, *On the Postcolony* (n 32) 102–15; Bayart, *The State in Africa* (n 36) 228–41.
[42] Mbembe, 'Necropolitics' (n 32) 24–30; Bayart, *The State in Africa* (n 36) 218–27.
[43] Mbembe, *On the Postcolony* (n 1) 102–11, 173–82.
[44] See ibid 108–15, 128–33.
[45] See Bayart, *The State in Africa* (n 36) 228–41.
[46] ibid 235–41, 260–67.

the wounded psyche; but not on the *mechanics of constitutional absorption*. This is not a trivial gap. It has three specific consequences.

First, it leaves unexplained why constitutional amendments removing term limits frequently acquire social acceptance. If the post-colonial state is simply predatory, why do citizens sometimes celebrate the extension of presidential tenure? If the civic public is simply extractive, why do elections sometimes generate genuine enthusiasm? The canon describes the alienation of the civic public but does not explain why the primordial public sometimes absorbs it entirely.

Second, it cannot account for variation. Why does constitutional manipulation succeed in some cases (Zimbabwe) and fail in others (Malawi, 2003)? Why do some parliaments capitulate to executive overreach while others resist? The post-colonial canon describes the general conditions of distortion but does not explain the specific outcomes.

Third, it neglects the *legitimacy* of vernacular authority. Fanon's subject is damaged; Mamdani's subject is bifurcated; Mbembe's subject is grotesque; Bayart's subject is material. None of these frameworks fully acknowledges that vernacular authority may command genuine moral and affective loyalty; not merely as a mask for material interests or psychological trauma, but as a coherent system of legitimacy in its own right.

To move from structural diagnosis to institutional mechanics, Politicojuridity builds upon, rather than bypass, the foundational insights of African constitutionalism and legal pluralism. In mapping the post-colonial state, Mahmood Mamdani and Peter Ekeh identified active institutional processes; specifically the bifurcation of civic and customary governance and the moral bifurcation between the civic and primordial publics.[47] Yet while Ekeh explained why state officeholders feel morally licensed to extract resources from the civic public to nourish the primordial public, he left under-theorised how those same actors use *formal constitutional procedures* to rewrite the rules of the civic realm itself.[48]

Similarly, comparative African constitutionalists such as H. Kwasi Prempeh and Charles Manga Fombad have rigorously documented the persistence of the "imperial presidency" and the fragility of constitutional term limits across the continent.[49] However, their diagnosis largely frames the

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[47] Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton University Press 1996) 16–23; Peter P Ekeh, 'Colonialism and the Two Publics in Africa: A Theoretical Statement' (1975) 17(1) *Comparative Studies in Society and History* 91, 92–93, 106–11.

[48] Peter P Ekeh, 'Colonialism and the Two Publics in Africa: A Theoretical Statement' (1975) 17(1) *Comparative Studies in Society and History* 91, 92–93, 106–11.

[49] H Kwasi Prempeh, 'Presidents Untamed' (2008) 19(2) *Journal of Democracy* 109, 110–14; Charles Manga Fombad, 'Constitutional Reforms and Constitutionalism in Africa: Reflections on Some Current Challenges and Future Prospects' (2011) 59(4) *Buffalo Law Review* 1007, 1042–55.

problem as an institutional deficit; a failure of constitutional engineering, judicial independence, or liberal-democratic political culture to restrain executive dominance.[50] By drawing on Boaventura de Sousa Santos's concept of *interlegality*: the porous, overlapping collision of different normative orders within the same socio-political space[51]; Politicojuridity reframes constitutional erosion. Rather than viewing the subversion of tenure limits merely as an absence of legalism or a return to patrimonial pathology, it treats constitutional amendment and judicial interpretation as active sites of normative translation, where indigenous and liberationist moral economies are converted into valid positive law.

One further clarification is necessary. The framework developed here should not be read as a claim that African polities are uniquely susceptible to vernacular absorption. The mechanisms described: semantic capture, procedural instrumentalisation, hierarchical subordination; are general features of political life wherever constitutionalism encounters pre-existing legitimacy structures. They can be observed in Turkey under Erdoğan, in Hungary under Orbán, and in India under Modi. What distinguishes the African cases is not the *nature* of the mechanism but the *historical depth* of vernacular legitimacy structures and the *plurality* of registers available for political mobilisation. Africa is therefore not an exception but a paradigmatic site for observing dynamics that are globally recurrent.

4. Vernacularised Democracy in the Politicojuridical Framework

Before proceeding, the relationship between the two concepts central to this paper must be stated explicitly. Politicojuridity is the broader analytical framework: it examines the relationship between Law, Political Power and Moral Order through the **Authority Triangle**, assessing their alignment against the **Principle of Normative Balance**. Vernacularised Democracy is a *specific application* of Politicojuridity to the problem of democratic absorption: how vernacular claims to authority come to shape the operation of constitutional institutions. Politicojuridity supplies the diagnostic and explanatory framework; Vernacularised Democracy identifies the processes of Democratic Absorption, Majority Rule Conversion and Constitutional Subordination**.** The concepts are therefore nested rather than synonymous: all Vernacularised Democracy is politicojuridical, but not all politicojuridical analysis concerns vernacularisation.

Within the Authority Triangle, Law establishes the powers and limits of public office; Political Power concerns their exercise; and Moral Order supplies the normative commitments that justify

[50] See H Kwasi Prempeh, 'Africa's "Constitutionalism Revival": False Start or New Dawn?' (2007) 5(3) *International Journal of Constitutional Law* 469, 480–85.

[51] Boaventura de Sousa Santos, *Toward a New Legal Common Sense: Law, Globalization, and Emancipation* (2nd edn, Butterworths LexisNexis 2002) 437.

public authority. **Normative Balance** exists where these relationships are substantively aligned. **Politicojuridical Rupture** describes a disruption of that relationship. The misalignment produces a **Normative Legitimacy Deficit** in which legally constituted authority operates without adequately reflecting its underlying normative obligations. Such a deficit need not entail illegality or the loss of public acceptance: an officeholder may act through recognised constitutional procedures and command substantial support while weakening the obligations that justify the office.



Figure 1: The Authority Triangle.

These constructs describe distinct but potentially connected dimensions of politicojuridical misalignment. Normative Balance is not established merely because political decisions conform to legal procedures or enjoy popular approval; it requires substantive alignment between the exercise of power, the constraints of law and the normative obligations that justify authority. Politicojuridical Rupture identifies a disruption of that relationship, while the Normative Legitimacy Deficit describes the condition in which such misalignment becomes embedded or persists within formally constituted institutions. The Legitimacy Imperative, by contrast, is a general condition of political authority: power must continually secure and sustain its justification. Where a Normative Legitimacy Deficit persists, political actors may respond to this imperative through practices that preserve institutional recognition and public acceptance without correcting the underlying misalignment. If those practices also reproduce the conditions that make them politically functional, an Illegitimate Governance Loop may emerge. The distinction is consequential: neither constitutional legality nor political durability necessarily demonstrates Normative Balance, and neither recurrent governance failure nor the persistence of a legitimacy deficit alone establishes the existence of a self-reproducing loop.

Vernacularised Democracy examines how this misalignment may facilitate democratic absorption. Political actors invoke authority grounded in liberation histories, communal obligations or personal loyalty. Where these claims acquire precedence over constitutional commitments, elections, parliamentary votes and amendment procedures may convert them into legally effective decisions that subordinate constitutional restraint. This process also illuminates the **Legitimacy Imperative**: the continuing need of political power to secure and sustain authority. Under conditions of normative misalignment, political actors may satisfy that imperative through vernacular legitimation and the preservation of legal form rather than the restoration of Normative Balance. Where such practices repeatedly sustain political authority while reproducing the underlying deficit, they may constitute an **Illegitimate Governance Loop**. The empirical question is how claims to authority travel from public justification to institutional decision, and how constitutional restraint is affected along the way.

The effect of vernacular claims is nevertheless contingent. They may reinforce Normative Balance where traditions of stewardship or communal responsibility sustain resistance to unconstitutional tenure extension. Conversely, Constitutional Subordination becomes visible where the practical force of constitutional restraint repeatedly depends on its compatibility with the interests of those exercising power. The distinction allows similar appeals to vernacular authority to be examined across divergent constitutional outcomes, without presuming that vernacularisation necessarily produces democratic absorption or that normative misalignment is irreversible.

To prevent "the vernacular" from becoming an analytically imprecise catch-all for any political behaviour outside liberal legalism, Politicojuridity disaggregates vernacular legitimacy into three distinct, empirically observable registers. While these registers frequently overlap in practice, each operates through a different organisational logic and exerts a distinct pressure on constitutional constraints:

- **Liberation-Historical Vernaculars:** Grounded in the collective memory of anti-colonial struggle, this register confers a quasi-sacred, founding mandate upon the liberation movement and its leadership. It frames state sovereignty not as a conditional trust delegated by individual voters, but as an earned historical patrimony that cannot legitimately be terminated by procedural term limits.

- **Communal-Stewardship Vernaculars:** Rooted in pre-colonial and customary norms of relational accountability, kinship, and elderhood, this register judges executive authority by its capacity to deliver protection, social harmony, and material redistribution. Crucially, this register is double-edged: it can license life-tenure for a benevolent "father of the nation," yet

it also provides a potent moral vocabulary for deposing an incumbent whose economic failures or greed violate the norms of reciprocal stewardship.

- **Majoritarian-Plebiscitary Vernaculars:** Emerging from the fusion of electoral democracy with populist sovereignty, this register treats the immediate, unmediated will of the living majority; or the charismatic bond between leader and crowd; as superior to entrenched constitutional parchment. Under this logic, procedural locks that prevent citizens from re-electing a popular incumbent are cast as elitist, anti-democratic restrictions on popular sovereignty.

These three registers can be operationalised as a coding scheme for comparative analysis. Table 1 specifies, for each register, its characteristic claim to authority, the institutional arena in which it is most likely to be deployed, and the constitutional outcome it is most likely to produce.

Table 1: Operationalising the Three Vernacular Registers

Register	**Characteristic Claim**	**Primary Arena**	**Predicted Constitutional Effect**
Liberation-Historical	"We earned the state through struggle; it is our patrimony"	Parliament, party structures	Hegemonic absorption: amendment succeeds, courts defer
Communal-Stewardship	"A leader is a steward; we judge by protection and provision"	Civil society, traditional authorities, electorate	Double-edged: can license tenure extension *or* justify deposition, depending on performance
Majoritarian-Plebiscitary	"The living majority's will supersedes constitutional parchment"	Campaigns, referenda, populist mobilisation	Contested: succeeds where incumbent is popular, fails where economic performance falters

Distinguishing these three registers sharpens comparative analysis. It explains why an incumbent backed by a cohesive **liberation-historical** script (as in Zimbabwe) can enforce total legislative discipline to subordinate constitutional limits, whereas an incumbent relying primarily on **majoritarian-plebiscitary** or **communal-stewardship** claims (as in Malawi) remains vulnerable to counter-mobilisation once economic performance falters or rival succession claims fracture the ruling coalition.

4.1 Democratic Absorption

Democratic Absorption is the overarching process through which democratic institutions are incorporated into vernacular legitimacy hierarchies. It is not institutional collapse. Rather, it is institutional *re-signification*. The forms persist, but their logic is transformed. Absorption operates through three primary mechanisms:

1. **Semantic Capture**: constitutional language is retained but reinterpreted through vernacular frameworks (e.g., "the people's will" comes to mean "the leader's mandate");
2. **Procedural Instrumentalisation**: democratic procedures are employed not to determine authority but to ratify it;
3. **Hierarchical Subordination**: constitutional rules are expected to accommodate vernacular authority, not constrain it.

4.2 Majority Rule Conversion

The most important mechanism through which democratic absorption occurs is the conversion of majority rule.

Under liberal constitutionalism, majority rule and constitutional restraint operate simultaneously. The majority chooses the government. The constitution limits the government. Neither principle is intended to dominate the other. They exist in productive tension.

Within Vernacularised Democracy, however, majority rule undergoes a process of **legitimacy conversion**. An electoral victory ceases to function merely as a procedural mandate. Instead, it becomes evidence of superior legitimacy. The democratic script says: "*The majority has selected a government.*" The vernacularised script says: "*The majority has confirmed our legitimate ruler.*"

This distinction transforms the constitutional order. Once electoral success becomes proof of superior legitimacy, constitutional constraints begin to appear secondary. Consequently, constitutional amendments, term-limit removals, and executive expansions are frequently justified not as departures from democracy but as expressions of democratic will.

4.3 Constitutional Subordination

The ultimate outcome of Democratic Absorption is **Constitutional Subordination**. Constitutional Subordination occurs when constitutional institutions survive formally but lose supremacy within the legitimacy hierarchy. The constitution continues to exist. Its procedures continue to operate. Its language remains authoritative. Yet its authority becomes *conditional*. The true source of authority lies elsewhere.

The constitution functions less as a restraint upon power and more as a vehicle through which power is translated into legal form. This explains why constitutional amendments frequently favour incumbents. The issue is not merely elite manipulation. The issue is that large sections of society may regard constitutional modification as legitimate when it serves authority already perceived as legitimate. The constitution survives. Its supremacy does not.

5. Illustrating the Corrective: Zimbabwe and Malawi

The Zimbabwean and Malawian episodes illustrate how this framework can guide comparison. In each episode, the analysis identifies the constitutional restraint at issue, the actors able to enforce or alter it, and the claims to authority used to justify their choices. It then asks how those claims entered the decision and what happened to the restraint. A successful amendment can indicate constitutional subordination where the evidence shows that the procedure converted a claim of political precedence into weaker limits on office. A defeated amendment can show that a restraint held while leaving open why it held. Constitutional conviction, organised public opposition, factional rivalry and changing calculations of political loyalty may have operated together. The comparison turns on what the evidence allows us to say about their respective roles

The comparison traces the constitutional constraint that requires an incumbent president to leave office at a point fixed in advance. In Malawi, the attempt to remain in office took the form of a proposal to change the number of terms the president could serve. In Zimbabwe, it took the form of an amendment extending the duration of the current term and applying that extension to the incumbent. In each case, the analysis asks who could uphold or alter the applicable restraint, what claims to authority were put before those actors, and what contribution those claims made to the eventual outcome.

5.1. Case 1: Zimbabwe – Hegemonic Absorption and Constitutional Subordination

The Zimbabwean case is best understood not as a single event but as a *pattern* that has recurred across four decades. The 1987 amendment, which abolished the prime ministership and created an executive presidency without a popular ballot, established the template. The 2026 amendment, which extended the incumbent's term and abolished direct presidential elections, reproduced it. Treating 1987 as the paradigmatic instance and 2026 as confirmatory recurrence allows the analysis to draw on a richer evidentiary base while acknowledging the provisional character of the most recent episode.

5.1.1. The Constitutional Restraint at Issue

- The 1979 Lancaster House Baseline: Under the original independence constitution, executive authority was divided between a Prime Minister and a ceremonial President, with the latter restricted to a maximum of two six-year terms.[52]

- The 2013 Post-Global Political Agreement Baseline: Following the 2013 constitutional overhaul, tenure was constrained by a dual lock: section 91(2) disqualified any person who had held presidential office for two terms from re-election, section 95(2)(b) fixed each term at five years, and section 328(7) barred any incumbent from benefiting from an amendment to a term-limit provision (requiring a national referendum for changes to Chapter 16 entrenchments).[53]

5.1.2. Empowered Institutional Actors

- Parliament (ZANU – PF Supermajority): Under both the 1979 Charter (section 52) and the 2013 Constitution (section 328(5)), a two-thirds majority of the legislature held the formal power to pass constitutional bills.[54]

- The Judiciary and Electorate: Under the 2013 framework, the Constitutional Court and the electorate (via a mandatory referendum under section 328(6) and (9)) were empowered as secondary veto players against self-serving tenure extensions.[55]

5.1.3. Claims to Authority and Institutional Translation

- The Liberation Script: ZANU–PF grounded executive authority in the historical mandate of the anti-colonial liberation struggle, framing the state as the rightful patrimony of the liberation movement rather than a conditional trust regulated by liberal procedure.

- **Mechanics of Absorption:**

    - Semantic Capture: Constitutional references to "the people's will" and "national stability" were reinterpreted to mean the uninterrupted continuity of the liberation party's mandate.

[52] Constitution of Zimbabwe 1979 (SI 1979/1600), s 28(3); Lovemore Madhuku, *An Introduction to Zimbabwean Law* (Weaver Press 2010) 48–50.
[53] Constitution of Zimbabwe Amendment (No 20) Act 2013, ss 91(2), 95(2)(b), 328(7) and 328(9).
[54] Constitution of Zimbabwe 1979, s 52; Constitution of Zimbabwe 2013, s 328(5).
[55] Constitution of Zimbabwe 2013, ss 167(2)(d), 328(6) and 328(9).

- Procedural Instrumentalisation: In 1987, Parliament enacted the Constitution of Zimbabwe Amendment (No. 7) Act 1987, abolishing the prime ministership, creating an executive presidency, and eliminating the two-term cap so Robert Mugabe could assume executive presidential power without an immediate popular ballot.[56] In June–July 2026, the ZANU–PF parliamentary supermajority repeated this pattern via Constitution of Zimbabwe Amendment (No. 3) Bill 2026 (passed 216–42 in the National Assembly), extending presidential and parliamentary terms from five to seven years (pushing the 2028 election to 2030) and abolishing direct presidential elections in favour of parliamentary selection.[57]

- Bypassing Entrenchments: Proponents argued that altering term *length* under section 95(2)(b) rather than the two-term *cap* under section 91(2) circumvented the incumbent-benefit prohibition in section 328(7) and avoided a national referendum, while the Constitutional Court declined to block the bill's passage.[58]

5.1.4. Outcome for the Constitutional Restraint

- Complete Subordination: The constitutional text survived formally and supplied international legal validity, yet it lost all autonomous capacity to bind the incumbent. The legislature functioned as a translation mechanism converting revolutionary entitlement into valid statutory text, leaving the tenure limit wholly subordinate to the Liberation Script.

It should be noted that the 2026 amendment is recent enough that its stability cannot yet be fully assessed. The analysis here treats it as consistent with the pattern established in 1987 but acknowledges that hegemonic absorption is an ongoing achievement rather than a fixed state. Future research should examine whether the 2026 amendment provokes the kind of factional contestation that characterised Malawi in 2004, or whether the Liberation Script remains sufficiently cohesive to sustain legislative discipline.

[56] Constitution of Zimbabwe Amendment (No 7) Act 1987 (Act 23 of 1987), ss 4–6; Welshman Ncube, 'Constitutionalism, Democracy and Political Practice in Zimbabwe' in Ibbo Mandaza and Lloyd Sachikonye (eds), *The One Party State and Democracy: The Zimbabwe Debate* (SAPES Books 1991) 155, 171.

[57] Constitution of Zimbabwe Amendment (No 3) Bill 2026 (HB 1, 2026); 'Zimbabwe MPs Pass Bill Extending President Emmerson Mnangagwa Time in Power' *BBC News* (London, 19 June 2026)< https://www.bbc.co.uk/news/articles/c20y15m0337o> accessed 17 November 2026.

[58] Veritas, 'Constitution Watch 2/2025: Presidential Term Limits' (2025) < https://www.veritaszim.net/node/7877> accessed 17 November 2026; *BBC News* (n 8).

5.2. Case 2: Malawi – Contested Vernacularisation and Contingent Resilience

5.2.1. The Constitutional Restraint at Issue

- Section 83(3) of the 1994 Constitution: Adopted following the end of Hastings Kamuzu Banda's life presidency, section 83(3) stipulated that the President "may serve in their respective capacities a maximum of two consecutive terms" of five years each.[59]

- Amendment Threshold (Section 196): Because section 83(3) was not listed in the Schedule of provisions requiring a national referendum under section 196(1), Parliament was legally competent to alter the term limit through a two-thirds majority vote of all members of the National Assembly (128 of 192/193 seats) under section 196(2).[60]

5.2.2. Empowered Institutional Actors

- The National Assembly: The decisive veto arena resided in Parliament, where President Bakili Muluzi's ruling United Democratic Front (UDF) held roughly 95–101 seats; falling short of the two-thirds supermajority on its own and requiring support from opposition Alliance for Democracy (AFORD) and Malawi Congress Party (MCP) legislators, as well as strict discipline within UDF ranks.[61]

- The Judiciary and Civil Society: The High Court was empowered to adjudicate executive bans on public demonstrations, while the Public Affairs Committee (PAC), churches, and the Forum for the Defence of the Constitution (FDC) mobilised extra-parliamentary pressure.[62]

5.2.3. Claims to Authority and Institutional Translation

- **Competing Vernacular Scripts:**

    - Incumbent Script: Muluzi and UDF loyalists framed the Constitution (Amendment) Bill 2002 (the "Open Term Bill," gazetted on 24 May 2002 and tabled on 4 July 2002 by AFORD MP Khwauli Msiska) as an act of popular empowerment, arguing that

[59] Constitution of the Republic of Malawi 1994 (Act 20 of 1994), s 83(1) and (3).
[60] ibid s 196(1)– (2) and Schedule.
[61] Chris Maroleng, 'Malawi: The Slippery Slide Towards Autocracy?' (Institute for Security Studies, Situation Report, 12 November 2002) <https://issafrica.org/research/situation-reports/situation-report-malawi-the-slippery-slide-towards-autocracy-chris-maroleng> accessed 17 November 2026.
[62] Malawi Bans "Third Term" Protest' *BBC News* (London, 17 February 2003) http://news.bbc.co.uk/2/hi/africa/2771793.stm accessed 17 November 2026; 'Getting Rid of Muluzi' *Africa Confidential* (London, 2 May 2003) africa-confidential.com accessed 17 November 2026.

section 83(3) infringed upon the people's sovereign right to re-elect a leader of their choice.[63]

- Counter-Scripts (Anti-Autocracy and Factional Succession): Civil society and religious bodies invoked the collective memory of Banda's thirty-year dictatorship to frame two-term rotation as a moral obligation of stewardship.[64] Crucially, within the UDF and opposition factions, Muluzi's personal charismatic legitimacy had degraded amid economic contraction, food shortages, and succession ambitions among senior party barons.[65]

The rhetorical framing of the defecting UDF parliamentarians is instructive. Rather than invoking abstract constitutional principle, they drew on the communal stewardship register to argue that a leader who sought to extend his tenure was violating the norms of reciprocal obligation. Dissident ruling-party figures; including former senior minister Brown Mpinganjira (who broke from the UDF to form the National Democratic Alliance), Deputy Minister of Agriculture Joe Manduwa, Deputy Minister of Finance Jan-Jaap Sonke, and Commerce Minister Peter Kaleso; cast the third-term bid as a betrayal of generational trust and collective welfare during a period of acute national famine.[66]

Challenging the party's claim that only Bakili Muluzi could lead the nation, Mpinganjira framed the attempt to alter section 83(3) as a failure of leadership stewardship; asking pointedly, "*If the party is failing to attract young blood and if it has not prepared anyone in the past eight years, then what would happen if Muluzi dropped dead today?*"; while accusing the executive of "*raping the Constitution"* to perpetuate personal rule.[67] Similarly, when UDF rebels Joe Manduwa and Jan-Jaap Sonke publicly broke ranks with the party whip ahead of the January 2003 parliamentary session, they grounded their defiance in their direct covenant with starving constituents and Muluzi's broken pledge to honour the July 2002 parliamentary defeat, forcing even the President to concede in a national

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[63] Constitution (Amendment) Bill 2002, *Malawi Government Gazette Supplement Containing Private Members' Bills*(24 May 2002); Mustapha Kamel Hussein, 'A Critical Stock Take of Malawi's 19 May 2009 Elections' (2010) 9(1) *Journal of African Elections* 50, 54.

[64] 'Malawi Revives Third Term Debate' *BBC News* (London, 10 September 2002) <http://news.bbc.co.uk/1/hi/world/africa/2249511.stm> accessed 17 November 2026.

[65] 'Malawi: Year-Ender 2002 – Third Term Dominates Agenda' *IRIN News* (20 January 2003) <https://reliefweb.int/report/malawi/malawi-year-ender-2002-third-term-dominates-agenda> accessed 17 November 2026.

[66] Boniface Dulani and Jan Kees van Donge, 'A Rose by Any Other Name? The Third Term Debate in Malawi' in Roger Southall and Henning Melber (eds), Legacies of Power: Leadership Change and Former Presidents in African Politics (HSRC Press 2006) 201, 211–18; 'Malawi MPs Flee Over "Third Term" Row' *BBC News* (London, 30 January 2003) http://news.bbc.co.uk/2/hi/africa/2710353.stm accessed 17 November 2026.

[67] 'Third Term Debate Back on the Agenda' *IRIN News* (Johannesburg, 23 July 2002) thenewhumanitarian.org accessed 17 November 2026; Harri Englund, 'Introduction: The Culture of Chameleon Politics' in Harri Englund (ed), A Democracy of Chameleons: Politics and Culture in the New Malawi (Nordiska Afrikainstitutet 2002) 11, 11–14.

address that "at this time when our people are starving, it seems irresponsible and hard-hearted to pre-occupy ourselves with politics."[68]

These interventions suggest that constitutional opposition acquired force through arguments about public welfare, reciprocal obligation and the responsibilities of leadership. Such arguments may have helped legislators connect the tenure limit with the purposes it served. The politicojuridical question is whether these commitments independently motivated resistance, reinforced constitutional conviction, or supplied a public justification for factional opposition. Establishing their respective contributions requires evidence linking the arguments advanced to the decisions taken.

- **Legislative Defeat and Withdrawal:**
    - On 4 July 2002, in an open roll-call vote, the Open Term Bill received 125 votes in favour against 59 against (with 5 abstentions), failing by three votes to reach the 128-vote constitutional threshold after key UDF figures (including Cassim Chilumpha, Jan Sonke, and Joe Manduwa) and segments of the MCP broke ranks.[69]
    - When the government reintroduced a modified Third Term Bill in January 2003, facing renewed parliamentary defections (including sacked Commerce Minister Peter Kaleso) and mass protests, Justice Minister Henry Dama Phoya withdrew the bill from Parliament on 29 January 2003 prior to a vote.[70]

5.2.4. Outcome for the Constitutional Restraint

- Contingent Preservation: Section 83(3) successfully bound the incumbent, forcing Muluzi to step down in 2004 (a limit later reinforced by the High Court in 2009 when Muluzi sought a non-consecutive return).[71]

The defeat of the Open Term Bill and the withdrawal of the subsequent Third Term Bill preserved the tenure constraint for the remainder of Muluzi's presidency. The episode brings several possible

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[68] 'Malawi: UDF MPs Reject Third Term Bid' *The Nation / allAfrica* (Blantyre, 6 October 2002) https://allafrica.com/stories/200210080198.html accessed 17 November 2026; 'Third Term Divides Ruling Party' *IRIN News* (Johannesburg, 24 October 2002) https://www.thenewhumanitarian.org/news/2002/10/24/third-term-divides-ruling-party accessed 17 November 2026; Dulani and van Donge (n 1) 215–17.

[69] 'No Third Term for Muluzi' *IRIN News* (Johannesburg, 5 July 2002) https://www.thenewhumanitarian.org/news/2002/07/05/no-third-term-muluzi accessed 17 November 2026; *Africa Confidential* (n 14).

[70] Malawi's "Third-Term" Bill Shelved' *BBC News* (London, 29 January 2003) http://news.bbc.co.uk/2/hi/africa/2705067.stm accessed 17 November 2026.

[71] *The State and Electoral Commission, Ex Parte Bakili Muluzi and United Democratic Front* Constitutional Cause No 2 of 2009 (High Court of Malawi).

explanations into view. Public mobilisation gave legislators a constitutional and moral basis for opposing the extension, while divisions within and across parties affected the coalition needed to pass it. The politicojuridical question is how those pressures interacted at the decisive points. The fact that the constraint held establishes its effect in this episode. The reasons it held bear on whether that resilience could be expected under a different governing coalition.

The Malawian case thus illustrates **contested vernacularisation**: a condition in which no single legitimacy register achieves hegemony, and constitutional institutions become arenas in which competing vernacular claims are fought out. The outcome; the defeat of the Open Term Bill; was not a victory for legal-rational constitutionalism but a contingent product of vernacular fragmentation. Had Muluzi's charismatic legitimacy remained intact, or had the communal-stewardship register been successfully mobilised in his favour, the outcome might have been different. This is precisely what the framework predicts: where vernacular legitimacy is fragmented, constitutional resilience is contingent; where it is hegemonic, constitutional subordination is near-total.

6. Research Agenda

The framework developed in this paper generates a series of testable propositions that future research should examine. These are stated here as hypotheses rather than conclusions, in keeping with the research-note genre.

H1 (Hegemonic Absorption): Where a single vernacular register; typically liberation-historical; achieves dominance within the ruling coalition and the legislature, constitutional restraints on tenure will be subordinated through procedurally valid amendment, and judicial review will defer to legislative sovereignty.

H2 (Contested Vernacularisation): Where vernacular legitimacy is fragmented across competing registers, constitutional restraints will be defended or altered depending on the balance of factional power, and outcomes will be contingent rather than determined.

H3 (The Double-Edged Stewardship Register): Communal-stewardship vernaculars will be mobilised *in favour of* tenure extension where the incumbent is perceived to be delivering protection and provision, and *against* tenure extension where economic performance falters or the incumbent is perceived to be violating norms of reciprocal obligation.

H4 (Majority Rule Conversion): The likelihood that an electoral mandate will be interpreted as an ontological mandate—justifying constitutional alteration—increases with the size of the electoral majority and the weakness of countervailing vernacular registers.

H5 (Interlegality and Translation): Constitutional amendments that appear procedurally valid but substantively subordinate will be more likely to survive international scrutiny where they are framed in the language of legal-rationalism, even as their domestic meaning is vernacularised.

Testing these hypotheses requires a mixed-methods design: comparative case studies using process-tracing (to establish the causal role of vernacular claims), discourse analysis of parliamentary and campaign rhetoric (to code the three registers), and, where possible, survey or focus-group data on public attitudes toward tenure restraints. The African continent offers a rich set of cases for such an inquiry, ranging from hegemonic absorption (Zimbabwe, Uganda) to contested vernacularisation (Malawi, Zambia) to constitutional resilience (Ghana, Botswana). Comparative extension beyond Africa; to Turkey, Hungary, and India; would test the framework's generality.

7. Conclusion: Toward a Politicojuridical Synthesis

This paper has argued that post-colonial political thought, for all its diagnostic power, leaves unanswered a critical question: why constitutional democracy, even when formally adopted and procedurally preserved, fails to become the supreme source of political authority. The canon explains why the African state is distorted, bifurcated, extraverted, and wounded. It does not fully explain why constitutionalism is absorbed.

Vernacularised Democracy addresses this gap. By disaggregating vernacular legitimacy into three empirically observable registers; liberation-historical, communal-stewardship, and majoritarian-plebiscitary; it specifies the mechanisms through which claims to authority grounded in history, community, or majority will come to shape the operation of constitutional institutions. The comparison of Zimbabwe and Malawi illustrates the framework's explanatory power: hegemonic absorption in Zimbabwe, where a cohesive liberation-historical script subordinated the constitution to the party's historical mandate; contested vernacularisation in Malawi, where fragmented legitimacy claims turned parliament into an arena of vernacular contestation and produced contingent constitutional resilience.

The contribution is not to replace the post-colonial canon but to complete it. Fanon, Mamdani, Ekeh, Ake, Mbembe, and Bayart mapped the terrain of African politics with unmatched depth. Vernacularised Democracy grounds their insights in the specific mechanics of constitutional authority. It explains why the constitutional "immigrant" is domesticated within a resilient vernacular household; and why this domestication often acquires social consent.

The central challenge for comparative politics is therefore not merely to explain institutional weakness. It is to explain why legitimacy repeatedly defeats legality. Until that question is answered, democratic backsliding will continue to be described more successfully than it is

understood. The framework offered here is intended as a contribution to that deeper inquiry—one that takes vernacular legitimacy seriously, not as a pathology to be overcome, but as a structure of authority that constitutionalism must engage, accommodate, or risk being absorbed by.

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