

### III. REVIEWS

*„Ante Portas – Studia nad Bezpieczeństwem”  
2017, No 2(9)*

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***THE SEPARATION OF POWERS IN AFRICAN CONSTITUTIONALISM,  
ED. CHARLES MANGA FOMBAD, OXFORD UNIVERSITY PRESS,  
OXFORD 2016, SS. 414***

One of the authors, and at the same time the editor of this reviewed publication is Charles Manga Fombad, professor of law, scientifically associated with the University of Pretoria. The author's team consisted also of James Fowkes, Francois Verter, Conrad Bosire, Sylvester Shikyil, Fernando Bastos, Andre Thomashausen, Cofi Quashigas, Ameze Goubadia, Assef Fiseh, Walter Ochieng, Nico Horn, Jeffrey Jowel, Horace Adjolohoun and Michaela Hailbronner. Each of the authors professionally and scientifically deals with the subject of the constitutionalism and separations of powers in Africa. Both scientists working at the universities as well as the persons occupying additional functions (e.g. Jeffrey Jowell – Director of the Birmingham Centre for the Rule of Law, Professor Emeritus at University College London), have contributed to the creation of the publications.

Charles M. Fombad gained his knowledge and experience at the University of Yaounde, University of London and University of Uppsala. Before working at the University of Pretoria, Fombad had been connected with the universities in Botswana and Cameroon. Professor Charles M. Fombad is the laureate of many awards, which express the appreciation for his scientific achievements. The most important award should be recognized by the University of Botswana, awarded three times by the Research Awards Committee for excellence in research. In addition, professor Fombad is a member of many scientific bodies, such as the South African Academy of Sciences, the Stellenbosch Institute for Advanced Studies (STIAS) and the International Association for Constitutional Law (IACL). Professor Fombad was accepted as an associate member of the International Academy of Comparative Law in

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2017. His scientific interests include constitutional law, legal union, and the law of legal harmonization. This confirms his academic achievements, which include many items regarding the division of powers and the constitutional system in African countries.

One of the latest monographs of Charles M. Fombad's is the book „The Separation of Powers in African Constitutionalism”, published by the Oxford University Press in 2016. This publication is a development of the concerns raised by the author in numerous articles on the constitutional separation of powers in African countries. The publication consists of five parts, which contain chapters on specific issues that are a part of the problem. However, it begins with the introduction to the Series of Manuals of African Constitutional Law Stellenbosch and the preface. Next, the publication contains a list of cases, which are described in the content of the monograph. These cases are divided according to the national key and ordered in an alphabetical order, with the date of the ruling and the page number on which reference is made to each of the indicated cases.

The author appeals not only to African, but also to other countries, among others to the United States of America, Great Britain or France, and thus to the states that had important interests in the past in Africa. The author also refers to the judgments of international courts and tribunals on this list. The time range of the analysis covers a wide period of time. The author, delving into the issues discussed, refers not only to the most recent events, but also to the judgments and decisions that were published in the early twentieth century. Moreover, the publication contains a detailed list of the legal provisions to which the Author refers in his monograph. Similarly to the previous list, this one also contains legal regulations organized by countries. The author indicates both the type of legal act referenced on a specific page and a specific provision of the act. He also included a list of abbreviations used in the text. Each chapter ends with a bibliography used by the author.

The authors begin their deliberations by pointing out that within the last two decades Africa had dealt with many blockages that hindered its development. At the same time, they note that African countries have problems with an overly centralized authority. On this occasion, the authors are tempted to indicate the reasons that determine this tradition of power consolidation. They indicate colonialism as the main cause of this (p. 17): *The fact that the colonialist sought to establish in the former colonies, the only system of government which they knew and rightly or wrongly assumed was the best and not necessarily that adopted to the needs and peculiarities of the particular country, was a problem.*

The legacy of colonialism is the domination of the party system existing practically on the entire continent. One-party traditions and the popular ideas of revolution have caused African "socialism" to develop in African countries. In the first part, the author generally regards the formation of African

constitutionalism referring to the past. It also indicates at what stage the constitutional division of powers in African countries is nowadays.

Part 2 describes the relations between the legislature and the executive. In this part, co-authors point to differences in the identification of the sources of the constitutional power in relation to the executive and legislative power in the Anglophone African countries. The next two chapters consist of the case studies – Conrad Bosire describes the Kenyan bicameralism and the path this country went through to build its political system, while Sylvester Shikyin describes the case of Nigeria.

Part 3 deals with the relations between judiciary and political authorities in Lusophone Africa. The introductory chapter to this part discusses the relationship between the judiciary and executive in this part of the continent in general, and in Ghana. Next, the question of super-presidentialism in Angola is raised. The authors also address the issues related to Nigeria and the assessment of the system of relations between political and judicial authorities. They do the same in regard to Ethiopia. The authors also make reflections on the role of current relations between the judiciary and other authorities in Africa and the development of African countries. In addition, this section contains a chapter on the Kenyan case after the 2010 elections and the situation of the judiciary in the country.

Part 4 – the last one, reflects on the independence of African political institutions. This section contains a chapter on the responsibility of individual institutions in the system of powers division in Africa. The following chapters concern the prosecutor's office and the role of law and Anglophone and Francophone Africa. This section, as well as the entire publication, is concluded by Michaela Hailbrunner, regarding the constitutional conditions related to the division of authorities. The author was also tempted to prepare a forecast on at how the situation related to the division of powers will develop in African countries in the future.

The entire publication contains an index, thanks to which the reader can easily find a fragment about the issues of his interest. This is extremely valuable in the case of such a vast work like the publication named: 'The Separation of Powers in African Constitutionalism'. In addition, we shall pay attention to the thought-out and transparent structure of the text. In the first part an outline of the historical formation of the constitutional division of powers, as well as the characteristics of modern constitutionalism in Africa were made.

In the next part, reference is made to the relationship of the legislature and executive to characterize the relationship between the judicial authorities with previously presented legislation and the executive. It is worth appreciating that the content referring to the whole continent and the prevailing trends related to the mutual relations between the authorities are interwoven with some interesting case studies, such as Kenya after 2010.

The last part concerning the independence of the individual constitutional institutions is a kind of a summary of the knowledge presented so far, and describes the most important trends related to the subject. In addition, it presents the bodies that uphold the independence of political institutions in African countries.

The great value of the publication is a thorough analysis of the factors and historical experiences which influenced the shape of the modern constitutionalism in Africa. This allows the reader to understand the depth of the problems faced by individual African countries. It also gives a specific background, which is the analysis of dependencies between the branches of the authorities. Thanks to the inclusion of cultural influences affecting the constitutional system in Africa, the book, despite the legal character, becomes interesting not only for lawyers, but also for political scientists, internatiologists, historians and culture experts.

Each part has been designed to suggest that the authors are outstanding specialists in a given field. It should also be noted that the subject complements a large gap in the non-African publishing market in this field. Only few items that holistically take into account cultural, historical, political, and legal issues, have been translated into English so far. Thus, the publication is highly commendable.