# Cultural Policing: Cases of South Africa and Cameroon

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### Abstract

This article discusses the debate between universalism and cultural relativism approaches to human rights and how states attempt to resolve the conflict between the two approaches. As Comaroff and Comaroff (2004) state in their article "Policing Culture, Cultural Policing: Law and Social Order in Postcolonial South Africa", the contradiction between universalism and cultural tradition is present especially in the post-colony, but also in other settler states. This article displays this contradiction in multiple different cultural contexts such as in South Africa and Cameroon with the policing of witchcraft. It argues that states use cultural policing in an attempt to protect citizens from the harm that their constitutions promise to and in effect harm indigenous peoples or people who participate in traditional religious practices. Additionally, cultural policing is a solution to the conflict between the call to follow universalism and diverse cultural populations. This "call to follow " universalism is reflective of the pressure to comply with international legal norms by the international community on developing states and is coupled by domestic pressure to prioritize and protect cultural traditions. First, I will introduce the debate of universalism vs cultural relativism and each approach to human rights. Second, I will introduce dynamics within international law that push states to adopt universalist approaches to human rights contrasted by pressure from within states to adhere to cultural relativist approaches. Third, I will explain how states use cultural policing as a solution to this conflict with specific examples from post-colonies, South Africa and Cameroon.

## 1 Introduction

[lines=2]The most consistent theoretical debate surrounding international human rights is the debate between *universalism* and *cultural relativism*. The universalist approach asserts fundamental principles of justice that are thought to transcend culture, society, and politics. Universalism is the founding principle in international law from the post World War era. Customary international law is rooted in natural law principles that were created during the Age of Enlightenment and drew inspiration from Roman law, Christianity, and social contract

theory. Natural law theorizes that all people have inherent rights created by God, nature, and reason. Natural rights have served as the foundation for many important documents in the Western world, such as the *Declaration of Independence*, *Declaration of the Rights of Men and of the Citizen*, the *UN Charter*, and the *European Convention on Human Rights*. Core instruments of international human rights law such as the *Universal Declaration of Human Rights* and the *United Nations Covenant on Civil and Political Rights* are thought to be a part of customary international law. Binder in *Cultural Relativism and Cultural Imperialism in Human Rights Law* argues that these core instruments reflect a liberal individualism prevalent in the Western world but ignore concepts of group membership, duties, and respect for nature that are more likely to be prioritized than non-Western cultures (Binder, 1999, 17). The cultural relativist approach believes that *rights* are socially constructed and reflect the various experiences of specific historical standards of communities. In response to universalism, cultural relativists argue that the concept of fundamental principles of justice are inherently an expression of Western imperialism and should not be used as a one size fits all moral framework for cultures around the world.

According to cultural relativist argument, since the Universal Declaration of Human Rights was drafted by a draft committee that favored Western leaders, the international legal and moral standards written in the document are biased towards fundamental western traditions. The foundation of the cultural relativist argument is that there are no inherent rights of people independent of society and culture, because rights are value judgments that are socially constructed based on historical and social contexts. Thus, rights deemed universal will always come into conflict with other cultures because no state has identical histories. Advocates for cultural relativism do not oppose the concept of human rights, but rather argue that the articulation of certain human rights as universal is too restrictive and allows for little variation in terms of cultural practice. States may encompass rich ethnic and religious diversity including groups that practice traditions that may violate natural law or constitutional law, thus putting the government in the middle of the universalism vs. cultural relativism debate.

States choose to adopt a universalist approach in their governance because of the need for legitimacy within the international community and domestically. In Thomas Franck's The Power of Legitimacy Among Nations, he defines legitimacy as "a property of a rule or rule-making institution which itself exerts a pull toward compliance on those addressed normatively because those addressed believe that the rule or institution has come into being and operates in accordance with generally accepted principles of right process" (Franck, 1990, 95) The concept of international legitimacy can be understood as the level a state is in accordance with customary international law. Thus, Western states that enumerate natural law domestically have legitimacy because core human rights documents throughout history that were inspired by Western, Enlightenment thinkers, serve as the foundation for international human rights standards.

Legitimacy is also important at the international level and is obtained through reputation. In his paper "A Compliance Based Theory," Andrew T. Guzman

argues the relevance of reputation when determining why states follow international law. According to Guzman, "when entering into an international commitment, a country offers its reputation for living up to its commitments as a form of collateral" (Guzman, 2002, 1849). A state that develops a reputation for compliance with international obligations signals to the international community that it is cooperative, allowing the state to enjoy long-term relationships with other states and a greater ability to make binding promises. Thus, because a state's reputation has value and provides the state with benefits, a state prioritizes compliance and positioning itself in favor of other cooperative states (Binder, 1999).

State governments also face pressure to comply with expectations from home. This pressure is exacerbated in the post-colony due to the relative newness of the government. After winning independence, the actors put in power must prove themselves to be legitimate rulers or face coup attempts. A legitimate government is thought of as one that has a strong national identity and fulfills its promises to its citizens. Maintaining a strong national identity is difficult due to the scars from oppressive and fracturing colonial governments. In post-colonies that adopt a representative democracy, national identity is important because it represents a new found pride in the country's history and culture by locals who can now participate in governance. Thus, new sparks of nationalism usually occur and lead to domestic pressure for a government to protect domestic expectations over international expectations, such as spending domestic resources because of the "responsibility to protect" obligation outlined in the UN Charter.

The expectations from the international and domestic front inevitably come into conflict with each other. A method of dealing with the tension between universalism and cultural relativism is cultural policing. Cultural policing can be defined as attempts by the state to control or regulate culture. States police culture when certain cultural practices break law, domestic or international. Cultural policing is used as a strategy of internalizing universalist language of human rights and thus complying with international human rights norms to establish legitimacy. For example, countries such as South Africa adopted universalism in their constitution: "Everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources; Everyone has the right to freedom of conscience, religion, thought, belief and opinion" (South Africa, 1997). This constitutional framework was built to protect their citizens from harm and empower them with political, civil and physical integrity rights. Adopting a constitution inspired by customary international law standards had its benefits in terms of laying the groundwork for self-governance, but had its complications when the constitution's promises came into conflict with cultural traditions.

## 2 Case of South Africa

A cultural norm that deeply challenges the African National Congress of South Africa is witchcraft. A belief and fear of the occult is widespread in South Africa. Indeed, witch beliefs and practices saturate everyday life. Most rural people, and many in town, consult doctors regularly to divine the cause of affliction, to guard against attack, to give a competitive edge over rivals, and to ensure their own well-being. According to Comaroff and Comaroff: "South African occult is not a form of primitive magicality or animism; but embodies a set of normative convictions about moral order, social and material equity; and that it provides a matter-of-fact repertoire of 'first cause' explanations in the face of human misfortune or natural catastrophe" (Comaroff and Comaroff, 2004, 517). To many South Africans, witchcraft is assumed to be the primary cause of misfortune. Thus, the existential imperative of occult believers to protect themselves and their community from witchcraft comes into direct conflict with the legal standards of the South African constitution. The post-apartheid constitution was modeled after European law which written in a majority Christian environment, therefore there are no precedents to follow to aid in dealing with the occult.

The Witchcraft Suppression Act of 1957 was passed during apartheid South Africa, and made it illegal to practice witchcraft, or accuse anyone of doing so. This act was a prime example of European suppression of African culture, and caused accusers and the accused themselves to seek help from the informal sector such as customary courts and self justice. According to Dirk in "Occult Beliefs, Globalisation and the Quest for Development in African Societies" a number of police officers believed in the occult themselves which further complicated the enforcement of the act (Dirk, 2003, 27). The reliance on the informal sector and police non-compliance led to a rapid decline in the perceived legitimacy of the South African government. Thus, the South African government was faced with the dilemma of whether to repeal the Witchcraft Suppression Act with an official recognition of the existence of witchcraft or to fight to end the witch craze. This dilemma is a symptom of the post-colony because of the desire to heal from imperialism and celebrate indigenious culture by indigenizing legislation but also the need for a stable and legitimate government that protects the human rights of its citizens.

As a solution to the dilemma of how to deal with witchcraft, the Occult-Related Crimes Unit of the South Africa Police Services (SAPS) was established. SAPS offered workshops on the forensics of witchcraft, ritual killings, Satanism, and other dangerous practices and stated that their business is "not culture but the conviction of common murderers." According to Comaroff and Comaroff, detectives like Inspector Jackson Gopane saw their work in the SAPS as alternative policing capable of dealing with magical evil and an alternative to mob witch-burnings (Comaroff and Comaroff, 2004). To accomplish this method of alternative policing, Inspector Gopane collaborated with locals as a traditional healer. His efforts were assisted by the chair of the national Traditional Healers' Association, Dr. Hitler Letsoalo, who pledged the services of his members to

help the state police the occult.

Eventually, due to increasing instances of witchcraft violence, the South African government wanted to back away from incorporating the occult into traditional forms of policing and instead recognize witchcraft violence as its own problem. The National Conference on Witchcraft Violence convened by the Commission on Gender Equality in September 1998 created a logical framework of problem analysis and developed recommendations to deal with witchcraft violence. The Commission on Gender Equality recommended a comprehensive model of combined activities in the educational, legal, spiritual, community, and mental health sectors, urging the government to not simply deny the existence of witchcraft. In addition to recommending educational and legal action, the Commission argued for the use of spiritual alternatives, such as substituting witchcraft violence with spiritual healing. This solution solves conflict between the constitutional imperative to protect human rights and the need to preserve African cultural and religious beliefs after apartheid by stopping violence but also recognizing the importance of the spirit. Thus, South Africa transitioned from cultural policing from approaching it through the lens of crime to attending the mental, emotional, and spiritual needs of the victims and perpetrators of witchcraft violence.

# 3  Case of Cameroon

In the 1980s, the Cameroonian government, similar to South Africa's came under increased pressure to address witchcraft and began heavily prosecuting those who practice it. Cameroon's constitution contains common universalist promises: "every person has a right to life, to physical and moral integrity and to humane treatment in all circumstances. Under no circumstances shall any person be subjected to torture, to cruel, inhumane or degrading treatment; no person shall be harassed on grounds of his origin, religious, philosophical or political opinions or beliefs, subject to respect for public policy." The constitution's language explicitly draws inspiration from natural rights principles and represents an attempt to gain legitimacy by appealing to customary international legal standards.

Cameroon has its own unique set of circumstances regarding witchcraft compared to South Africa. In "Witchcraft and the Limits of the Law," Peter Geschiere seeks to explore how the Cameroonian regime approaches the policing of witchcraft and its collaboration with traditional healers known as nganga. He states that the panic surrounding witchcraft was not limited to South Africa and spread throughout the African continent including Cameroon. Witchcraft is an integral part of the social order. It is believed to be an extremely evil force but if channeled correctly it can also bring riches, luck, and power. According to Geschiere, there is an effort to compartmentalize the sphere of the occult through assigning terminological distinctions between negative and positive forms, however, these distinctions are always precarious and never self evident (Comaroff and Geschiere, 2009).

The lack of ability to properly distinguish between different forms of witchcraft is just a part of the inherent circularity of legislative intervention in the field of witchcraft. While living in Cameroon, the people in Geschiere's village informed him that witch doctors called the nganga, can heal only because they have used witchcraft to kill before. Thus, the main protection against evil forms witchcraft involves past evil deeds, making the main protection against witchcraft witchcraft itself. This circular logic is echoed by officials in Cameroon's legal system. According to Geschiere, judges believe that witchcraft is a basic evil and must be exterminated at all costs. The main witnesses the prosecution uses in cases of witchcraft are the nganga, witch doctors. The nganga claim that they are able to aid the prosecution's case because they have a "third eye" that can see witches and catch them doing magic. These witch doctors are needed as key experts in order for Cameroonian judges to act within Western conventions of the law, such as proving the accused practiced witchcraft "beyond a reasonable doubt."- The healers used as key witnesses by the states to combat witchcraft present themselves very differently from typical villagers. According to Geschiere, healers that work within the judicial system often previously worked in public service, speak French fluently, and have a modern education (Comaroff and Geschiere, 2009). They construct their identity as a government service member that works as a part of a new association of traditional healers. These healers try to separate themselves from the religious aspect of their work, instead referring to their expertise as "science" in which they are a doctor of in a hospital.

The Cameroonian courts do not address the logical fallacy of wishing witchcraft to be exterminated in order to protect citizens but at the same time incorporating witchcraft in their investigation and prosecution against accused witches. In "Witchcraft and the Limits of the Law," Geschiere argues that this is because in private life, judges, like other civil servants, are involved in the world of witchcraft to protect themselves (Comaroff and Geschiere, 2009). They enlist the help of the nganga to protect themselves from attacks from rival political opponents or to attack opponents themselves. Thus, they don't see any inconsistency in accepting help from these witches in their struggle against witchcraft. From the Cameroonian government's perspective, witchcraft is the ultimate form of subversion of the state's authority, sabotages development keeping Cameroon "backwards" and undermines the position of the state elites. However, witchcraft is ingrained in the political and social order of Cameroon, used for state officials' advantage despite delivering harsh and long sentences to those convicted of witchcraft. The hypocrisy of the Cameroonian courts and civil servants represents the overarching struggle of the post-colony in its mission to modernize in order to gain legitimacy. The state takes a strong legal stance on witchcraft by punishing those who participate in backwards practices such as witchcraft, but at the same time legitimizes witchcraft with the use of nganga.

# 4    Conclusion

Both the governments of Cameroon and South Africa have to navigate the difficult challenge of obtaining legitimacy, modernizing, and putting a stop to witchcraft violence. The South African government had to deal with the unique challenge of a widespread belief in the occult coupled with international and domestic pressure to establish legitimacy. Thus, the state incorporated policing the occult within their police force with the Occult Related Crimes Unit in the South African Police Force to combat witchcraft violence and eventually conferring with the Commission on Gender Equality to promote education and spiritual healing as long term solutions. The Cameroonian government incorporated witchcraft into their judicial system in order to institute better, more informed justice against perpetrators of witchcraft with the inclusion of healers. While the Cameroonian government did acknowledge spiritual beliefs, its cultural policing exacerbates panic surrounding the occult and reveals class tensions. Both the South African and Cameroon instances of cultural policing serve as examples of the conflict between respecting and uplifting spiritual beliefs and practices and respecting the rule of law states have to face. This dilemma is especially seen in the post-colony due to the large amount of cultural diversity and the need to establish legitimacy as a new government. The need for legitimacy is two-fold, international and domestic. The international side pushes states toward the universalist approach to human rights because it is the foundation of international law, while the domestic side pushes states toward the cultural relativist approach in order to preserve and protect culture. Cultural policing as an attempt to establish legitimacy among international and domestic pressure is a solution to the conflict between two opposite approaches to human rights and brings the theoretical into the practical.

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