

Did Africa Invent Human Rights?

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One should first of all note that, in this as in other cases, the fact that we are asking whether Africa invented Human Rights might prove more interesting than any actual answer to the question itself. We shall focus here on the “Kurukan Fuga Charter” and/or “Mande Charter” which are said to have been drawn up before the “Bill of Rights” (1689), the “Declaration of the Rights of Man and of the Citizen” (1789), even prior to the “Magna Carta” (1215-1297). As Africa was the cradle of humanity, it might seem logical from an Afro-centric perspective that Human Rights should also have been born on that continent, in this case in West Africa, in the Sudan-Sahelian region. We shall firstly foreground the “invention of tradition” as the production of a “model,” that is, the establishment of a maximal distance between Africa and Europe. An attempt will then be made to bring these two intellectual continents together, availing ourselves of certain aspects of the work of Michel Foucault that are capable of enriching this debate, or at least of decentering it. We shall then conclude by evoking the Revolutions of Tunisia, Egypt, and Libya as counterpoints to the present historical study, even if it be placed under the banner of “African Renaissance.”

The play representing the emergence of Human Rights on African soil is divided into several acts.

Act One

We begin with Maurice Delafosse (1870-1926), colonial administrator, ethnographer, and orientalist, and his *opus magnum*, *Haut-Sénégal-Niger* (1912), in which he paints an impressive ethnological-historical picture of the “civilisations” of that part of Africa, in particular the great “Sudanese” empires (Ghana, Mali, Sonraï) that succeeded each other, throughout this area, between the eighth and sixteenth centuries.⁽¹⁾ We do not know who informed Delafosse because his work is based on secondary information gleaned from inquiries carried out by colonial administrators (heads of districts) at the request of the governor general of French West Africa at the time, Clozel. From the point of view of what interests us here, it emerges clearly

from the inquiry that Sunjata Keita, having defeated Sumanworo Kanté, Emperor of Sosso, at the battle of Krina, in 1235 (a date essentially invented by Delafosse), became the founding sovereign of the Empire of Mali.⁽²⁾ But once having reported this major event, Delafosse makes no mention whatsoever of the Kurukan Fuga meeting during which Sunjata Keita supposedly enacted the famous charter.

Act Two

The first mention of the latter event in a book written in French took place in 1960, in the Guinean historian Djibril Tamsir Niane's *Sunjata or the Mandingo Epic*, a translation of an epic tale collected from the griot (*jeli*) Mamadou Kouyaté of Jeliba Koro in Guinea.⁽³⁾ This work, which does not include a complete literal transcription in the original Malinke, thus contains a chapter entitled "Kurukan Fuga or the division of the world," which tells of a meeting that Sunjata organised following his victory over Sumanworo, and which brought together the chief clans of the empire as well as the newly subjected peoples.⁽⁴⁾ It also announces the prohibitions (*jo*) and the norms of "joking relationships" (*senankuya*) governing relations between the various Mande clans. But in the final chapter of the book, "The Eternal Mandingo," Kouyaté and Niane not only describe the political organisation which Sunjata established during that meeting but call it a "Constitution," without making clear exactly which term in Malinke this French noun might correspond to ("Go to Kaba and you will see the Kurukan Fuga clearing where the assembly that gave the Soundiata Empire its *constitution* was held").⁽⁵⁾

Act Three. Souleymane Kanté and the N'ko

In 1949, Souleymane Kanté (1922-1987), a Guinean marabout, invented the N'ko alphabet by mixing Arabic and Latin graphemes, thanks to which he was able to translate the Koran and write many other books in Malinke.⁽⁶⁾ Among these books, we note a volume of "legislative customs," probably inspired by the colonial legal code or a variation of it in Delafosse's *Haut-Sénégal Niger*. This volume contains the 130 "rules" or "laws" (*ton*)⁽⁷⁾ promulgated by Sunjata at Kurukan Fuga, which Kanté, adhering closely to Delafosse's chronology, assigns to 1236, one year after the presumed date of the battle of Krina.⁽⁸⁾

The first set of laws concerns the old customs (*landa*)⁽⁹⁾, those drawn up by the elders and destined to be abolished later upon the adoption of new laws.

The second set concerns Sunjata's sojourn in the Marka area, during which time the future sovereign came to appreciate certain Muslim customs of that country, especially the seven-day week.

The third set contains those established following the relinquishment of the laws in force during the reign of Sumanworo, the emperor defeated by Sunjata.

These “laws,” “rules,” or “customs” concerned a number of different domains: material possessions, ways of obtaining and transmitting them, marriage and the question of dowries, inheritance, the status of slaves, the organisation of labour within families and according to age, land rights, the prohibition of human sacrifice, the safeguard of foreigners, succession to chieftdom, rules concerning violent conflict and murder, oaths and ordeals, the calendar, social status (*tontigi*, *tontan*) and the associated “joking relationships,” and so forth.

All these “rules” or “laws” arise from giving a fixed, standard juridical status to practices “performed” in various ways, over time, within what we might call for lack of a better term “the Mande cultural area.” They comprise, therefore, a kind of oral codex “invented” for the most part by Kanté himself, given that the latter admits that the griots were incapable of formulating it. Its contents, however, probably derive from observations or historical inquiries carried out among the custodians of the “tradition” (elders, griots, etc.) of his own culture by that erudite Moslem. This oral codex, therefore, underwent a two-fold transformation: on the one hand, it became the object of transcription and of a written transformation into the kind of “list” that transcription typically produces; on the other hand, it was referred back to a distant past, to 1236, which date, as we have seen, is a total invention.

Fixing the oral codex in writing and dating it to the Sunjata era makes it a “false archaism,” thereby placing its author, and his co-authors Kouyaté and Niane, in a position one might call “Afrocentric.” [\(10\)](#) For such a dating operation makes the “laws” and the “Constitution” of Kurukan Fuga precede, by five centuries, the English “Bill of Rights,” and by six, the French Revolution’s “Declaration of the Rights of Man and of the Citizen.”

Ultimately, however, the significant question is less whether these oral regulations may be compared to a “Constitution,” whether or not their unwritten status disqualifies them as such, than of discovering their purpose. One cannot doubt that the pre-colonial Mandan world was endowed with rules, norms, and values, although these varied greatly depending on time and place, another complicating factor. The real difficulty is that it is impossible to compare a set of rules, be it even a “code” or a “charter” like that of Kurukan Fuga, with the “Bill of Rights” or the “Declaration of the Rights of Man and of the Citizen.”

If one seeks to make a comparison at all costs, and supposes that the meeting actually took place in the thirteenth century, it is with the Hammurabi Code, for example, rather than a “Constitution” of any kind, that one should compare the

Kurukan Fuga charter, seeing that the latter essentially intended to regulate relations between groups and questions of social status. The two issues are closely linked because they concern an extremely hierarchized society (warriors, “castes,” slaves) where the maintenance of social and political order was fundamental. In the story of the creation of the Kurukan Fuga charter, and in general in the epic of Sunjata, one can detect the clear intention of promoting a vast project for social and political reorganisation aimed at putting an end to “the war of all against all,” which, within the Mandan and West-African context in general, meant factional warfare (*fadenkele*) between opposing provinces and chieftainships (*kafo*). From this stems the importance, as narrated both by Kouyaté and Kanté, of establishing pacts between rival “houses,” the famous *senankuya*, “cooled down,” “depoliticized” and transformed later into “joking relations” and “cathartic alliances” by colonial ethnology (Radcliffe-Brown, Griaule). These are no less than social and political contracts drawn up with a view to guaranteeing peace and maintaining order so as to control rival aristocracies; something, all else being equal, a bit like the way Philip the Fair, in the thirteenth century, tried to centralise the French monarchy by limiting the power of his vassals.

In the Sunjata epic, and the Kurukan Fuga assembly which marked its climax, one needs to detect the staging (by the dominant aristocracies, or the contemporary political elites that succeeded them, of a process of establishment or re-establishment of an imperial power, which took over from that of Emperor Sumanworo Kanté.⁽¹¹⁾ This is why Kouyaté and Kanté’s idea of comparing the Kurukan Fuga Charter to the “Bill of Rights” and the “Declaration of the Rights of Man and of the Citizen” does not make much sense. Not because Africa or Africans would not have been capable of drawing up a “Constitution,” but because the charter in question does not reflect in any way an uprising against absolute monarchy analogous to that of seventeenth-century England’s *Glorious Revolution*—a revolution leading to the emergence of a parliamentary monarchy—or any preoccupation whatsoever with the rights of the individual. Once again, this charter concerned exclusively the establishment of pacts or alliances between groups, “social contracts” if you like, but social contracts which have strictly nothing to do with the political philosophy of the seventeenth and eighteenth centuries (of Hobbes, Locke, and Rousseau) aimed at guaranteeing—by recurring to the achievements of the *Magna Carta* and the *Habeas Corpus Act*, and by deploying a fictional opposition between a “state of nature” and a “social contract”—the transformation of subjects into citizens endowed with certain rights.

Act Four. The Kankan meeting (1998)

In any case, this anachronism, typical of all religious or cultural fundamentalisms, made its comeback in the context of the emergence of policies of decentralisation

as well as policies favouring multiculturalism and ethnic diversity in the West African countries of the Sudan and Sahel areas. With the support of international organisations, financiers and NGO's, in Senegal and in Mali the values of humanity (*maaya*), hospitality (*terenga*), and power centered in the household (*ka mara la segin so*) have been promoted as proofs of good government, while in the various countries of the area palavers between families or groups and debates within villages are encouraged as useful ways of solving conflict and re-establishing peace between the various ethnic communities. In this manner, the Sudan and Sahel region of West Africa, seen as a land of concord, is "sold" on the international aid market as a perfect counter-example to be held up against central or coastal Africa (Ivory Coast), torn by tribal conflict and genocide.

It was in this context that, following the initiative of the agency for the French Language (OIF) and CELTHO (Centre for the linguistic and historical study of the oral tradition), a seminar was held at Kankan, Guinea in 1998, open to participants from the various West African Sudan and Sahel countries. The official aim of this workshop was the improvement of mutual understanding amongst exponents of tradition, researchers, and communications experts, with a view to devoting themselves urgently to the collection and safeguarding of the African oral heritage.

During the seminar, bard-narrators were invited to provide, in turn, their respective versions of the Kurukan Fuga charter. Judge Siriman Kouyaté, a Guinean magistrate and a member of an important family of bards, took it upon himself—in purest colonial style—to draw up a "summary," in the form of a "constitutional text" containing 44 articles.

The outcome of the 1998 meeting and subsequent "rediscovery" of the Kurukan Fuga in fact brought about the marginalisation of the version by Souleymane Kanté, the Guinean marabout inventor of the N'ko alphabet, whose text of the charter, inspired by colonial juridical custom, impacted considerably on the printed version provided in the final document of the seminar. Indeed, only the version drawn up during the seminar, based on a "summary" of the various versions provided by the bards, and which ignored the Kanté version completely, was authorised. Instead, the two contributions by the Mali researcher Youssouf Tata Cissé occupy a position of primary importance: the "Sunjata Testament" narrated by his main informer, the bard Wa Kammissoko, and the "Hunters' Oath," an oral text claimed to precede (1222) the Kurukan Fuga charter (1236) and to contain articles regarding "human rights."

Thus, by tracing the genealogy of the Kurukan Fuga charter to the "Hunters' Oath," it has been possible to "improve further" on Kanté who, for his part, had simply claimed that the Charter was older than the 1689 "Bill of Rights." Henceforth, the

African version of human rights is presented as being contemporary with if not anterior to the English Magna Carta (1215-1297). It is worth pointing out that if the Magna Carta establishes, almost by inaugurating it, the freedom of the individual as opposed to the arbitrary authority of the despot, it is difficult to find an equivalent in the Mandingo tradition prior to the Souleymane Kanté texts, those of the Kankan seminar, or the “Hunters’ Oath” as published by Youssouf Tata Cissé. One might ask whether, in reality, such back-dating of the right of the individual to resist royal power—as found in the entire tradition of English politics, from the Magna Carta to Habeas Corpus to the Bill of Rights—does not derive from a “democratic” or “egalitarian” vision of the customs of the traditional associations of Malinke hunters (*donso ton*). At any rate, this is how this back-dating operation was performed, beginning with the investigations of Cissé and enhanced later by the theoretical elaborations of the anthropologist Claude Meillassoux. The possibility cannot, therefore, be excluded that Cissé, having been in close contact with Meillassoux, may have adopted in his work on the “Hunters’ Oath” a perspective that provided a “traditional” legitimation of democratic processes implemented throughout Africa in the 1990’s.

The meeting, which concluded with the “rediscovery” of the Kurukan Fuga Charter, therefore brought to light a number of principles or preoccupations of a strictly contemporary nature, such as human rights, gender equality, the environment, cultural diversity, and African unity, issues that appear as so many “false archaisms,” to cite again Lévi-Strauss’s famous expression.

The outcome of the Kankan meeting: “Kurukan Fuga Charter” or “Mande Charter”?

This process of the “invention of tradition” continued in a subsequent meeting held at Bamako, Mali, in 2004. There were many participants, some of whom had taken part in the Kankan seminar. The Senegalese writer Boubacar Boris Diop, while trying to maintain his distance from the Afrocentric position of Cheikh Anta Diop—whose ideas had, in actual fact, had an immense impact on the process that led to the promotion of the Kurukan Fuga Charter—nonetheless mocks those who see the charter as “an *a posteriori* construction drawn up by intellectuals prepared to go to any dishonest ends to find valid references for their own history.”

Contrary to this writer, although without going to the point of speaking of fraud, we cannot but think that both the Charter and its appendices (the “Hunters’ Oath” and the “Mande Charter”) are indeed constructions that find their place in a process capable of creating a cultural heritage. During the following meeting, held again at Bamako in 2007 at the initiative of the Mali Minister of Culture, the charter’s development continued with the launching, by Youssouf Tata Cissé, of the “Hunters’

Oath,” now relabelled as the “Mande Charter”. This final version of the “tradition” has managed to prevail upon the international scene of “world cultures,” as it is the version chosen at Abu Dhabi in 2009 for inclusion in the representative list of UNESCO’s Intangible World Heritage.

It is impossible not to detect in this choice the outcome of a rivalry between the two main promoters of the Charter, Guinea and Mali. This rivalry becomes particularly evident from the graphic choices made, seeing that the name of the assembly convoked by Sunjata may be written in two different ways: Kurukan Fuga, in the Malian manner, or Koudoukan Fouga, in the N’ko language of Guinea, which is the form in which it is exhibited in the place where the famous gathering is supposed to have actually occurred. This “rivalry of allegiances,” to use the words of research veteran Bakary Kamian of Mali at the “National Seminar for the Authentication of the Kurukan Fuga Charter” held in 2010 at Kangaba, should not, however, lead one to forget, according to him, the “complementary nature” of this “undeniable conquest of national heritage,” which reaches far beyond the borders of present-day Mali. During this seminar, an appeal was made, stated once more in “Afrocentric” terms, against “denial” of any kind—that is, against any attempt to question the “real nature” of the charter following its inclusion in UNESCO’s list—as well as the consequent necessity for the Malian authorities to possess a consensual version of the document.

The final touch (for the moment) was added by the celebration of the fiftieth anniversary of Malian independence at Kurukan Fuga on the first of October, 2010, a ceremony during which Mali President Amadou Toumani Touré, in the presence of a large Guinean delegation, laid the foundation stone of a huge monument to be built in the famous “clearing,” thus fixing in cement and engraving in marble the various laws of that “unwritten constitution,”[\(12\)](#) and completing the process of consolidation of Malinke identity, begun several decades previously.

Before concluding on this point, we should add that the debate surrounding Kurukan Fuga, far from being limited to the West African milieu, has also entered the French political arena. The occasion was provided by the speech made by Ségolène Royal at Dakar in 2009, in response to a sadly famous one by Nicolas Sarkozy.[\(13\)](#) During her speech, the then candidate for the Presidency of the French Republic referred to the Mande Charter to demonstrate that “Africans had already, decidedly, entered history.”

We have to put an end to this false idea according to which democracy and fundamental rights had a sole cradle, the West. In a recent conference organised by Stéphane Hessel on the history of the Universal Declaration of the Rights of Man, of which he was one of the authors, he yielded the floor to Souleymane Bachir Diagne.

The latter recalled that in the Mande Charter of the thirteenth century, in this “Hunters’ Oath ” which also addressed the entire world, one finds a definition of the rights of the human being which still applies today.[\(14\)](#)

Rethinking the model

One cannot exclude *a priori* the possibility that the Kurukan Fuga assembly actually took place in the thirteenth century and that, during that gathering, Sunjata Keita, founder of the Mali Empire, promulgated a certain number of rules and passed or confirmed a whole series of pacts between the principal clans of the empire. But by the same token, one cannot exclude either that it is all a late reconstruction made by some griots and traditionalists anxious to legitimise the imperial power of the Keita or certain branches of it.

So far, we have emphasized the issue of the “invention of tradition,” not as the “discovery” of a hidden treasure, that is, its “rediscovery,” but as the creation of a new model. For this reason, my focus, willingly or unwillingly, has been on establishing the greatest possible distance between Europe and Africa, that is, between the individual rights of Western man and the hierarchical ideology of West Africa. I would like, at this stage, to take the opposite route in order to draw Africa and Europe closer together. In this perspective it is useful to recall Michel Foucault’s work *Society Must Be Defended*—which unexpectedly, and without the author’s being aware of it, provides a means through which to avoid maintaining an unbridgeable gap between the two continents.[\(15\)](#) The existence of this radical breach has, indeed, the unfortunate effect of attributing the monopoly of human rights to Europe, thus arousing the ire of the post-colonials who, by way of retort, seek to “provincialize Europe,” in order to make it swallow its pride.[\(16\)](#)

In *Society Must Be Defended*, Foucault seeks to deconstruct philosophy, especially the political philosophy of the sixteenth and seventeenth centuries. In his opinion, the political philosophy of natural rights and the social contract, that of Machiavelli, Grotius, Hobbes and Pufendorf, represents a simple legitimation of royal sovereignty. He opposes to the political philosophy model that of “the war of the two races” (devised in the seventeenth century by Boulainvilliers, and taken up again in the nineteenth century by liberal historians like A. Thierry and F. Guizot, and which supplied Marx with his class-struggle model). These two models, in Foucault’s opinion, correspond to two legacies: that of Rome for political philosophy, that of Jerusalem for “the war of the two races.”

This second model creates opposition, in a paradigmatic manner, in the context of the history of France, but also that of England, between two demographic strata or ethnic stocks: on the one hand, the Franks, invaders from Germany and the

forerunners of the nobles, on the other, the autochthonous Gallo-Romans, ancestors of the Third Estate. One finds the same dualism in the history of England with the Norman invaders as the ancestors of the aristocracy and the “native” Anglo-Saxons as those of the common people.

Foucault, who has little understanding of non-European societies despite the central position occupied by ethnology in his thinking, is unaware of the fact that the pattern of the war of the two races, which he analysed in an exclusively European context, may be applied to other areas of the world, in particular to the African continent.

Which political model, which theory of power is most widespread in Africa, and in particular in the West African areas of Sudan and Sahel, that is, in the region to which the “Kurukan Fuga Charter” is most relevant? Among the Mossi, the Bambara and other populations, it is the opposition between the conquering chiefs on the one hand and the natives, those connected to the land and custodians of rites, on the other. This conception of power is particularly suited to the famous practice of “joking relationships” mentioned above, which are really simple political pacts, oral “contracts” sanctioning power relationships between different groups (clans and lineages).

Would it not be better, therefore, to consider this binary opposition between powerful conquerors and autochthonous populations as a veritable structural pattern reaching beyond geographical continents, the famous “cultural,” even philosophical, areas? Is this not the kind of “good to think” opposition transcending “cultural” differences that Lévi-Strauss had in mind? Does it not permit us to avoid those terrible problems that lock thinking and philosophies within overly narrow geographical and cultural confines? Privileging this kind of pattern would, in any case, help to overcome some of the weak points of the “Kurukan Fuga charter,” at least in its Kankan version. This latter version, indeed, unlike the “Kurukan Fuga Gbara” by Souleymane Kanté, provides no room for the “original dwellers” (*lampasi*), who are none other than the “old dominators,” declassed following their defeat to “autochthonous” rank and “custodian of rites” status.

For this charter, which is promulgated by a power at the apex of the social hierarchy, that of the Emperor Sunjata, offers the vanquished no escape route, no pardon. The model of the war between the two races, a model common—let us recall—to Europe and Africa alike, is quite different. Siéyès notably detected this pattern in the clash within the Old Regime between the Third Estate, descended from the autochthonous Gauls, and the aristocracy, descended from the Franks, the Germanic invaders. This scheme of relative autochthony —and not absolute as in the case of present-day indigenous movements—offers the present struggle for

political emancipation a highly effective intellectual tool. But not in its existential and racial form, as in the case of recent defenders of Ivory Coast “ivoirité”; simply as a means to oppose men of power, seen as invading conquerors. This old pattern of conflict between two strata of the population or two social classes, which goes beyond the usual North/South, Europe/Africa, West/other divides, may be recovered and used efficaciously in present-day political conflicts.

Beyond this, is it not time to renounce seeking at all costs “African” equivalents of the grand “European” philosophies and theories of human rights of the seventeenth and eighteenth centuries, prompted by a kind of “mimetic rivalry” that leads only to frustration and misunderstanding? The recent “African” democratic revolutions in Tunisia, Egypt, and Libya, although they have already become the prey of partisans of cultural nationalism, were initially carried out in the name of freedom of expression and democracy, without creating any particular problems for their protagonists. The latter felt no need to seek in the Koran, in the caliphates, in “democratic” Berber traditions or elsewhere, political models capable of justifying their actions. The peoples of Tunisia, Egypt, and Libya simply took their human rights and turned them against us, giving us an example of what needs and remains to be done to free ourselves too from “our” tyrants. They did not ask human rights for its passport, they simply expressed their own thirst for freedom and dignity. Nobody would dare accuse them of having thus betrayed any kind of “African” authenticity, be it that of the continent’s northern part.

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Notes

* [Editor's note] This paper, delivered at the 2013 GASC, was responded to by Richard van Oort's paper, "[The Challenge of Originary Thinking: A Response to Jean-Loup Amselle](#)," included in this issue of *Anthropoetics*. ([back](#))

1. On the life and work of Maurice Delafosse, see Amselle and Sibeud (1998). ([back](#))

2. Maurice Delafosse, (1912, 2 : 169). ([back](#))

3. We say "written in French" because we have no dates for the transcription and publication of Souleymane Kanté's *Kurukan Fuga Gbara*; cf. *infra*. ([back](#))

4. Niane (1960 : 136-143). ([back](#))

5. Niane (1960 : 152, emphasis added). One should notice that in the Sunjara epic collected at Kela (Mali) by Jan Jansen there is no mention of the Kurukan Fuga. See Jansen, Duintjer & Tamboura (1995). ([back](#))

6. Amselle (2005). ([back](#))

7. *To*, "rule, law, regulation, government, groups subjected to the rule, something which may not be derogated, obligation, duty, assigned goal." Delafosse (1955 :759). ([back](#))

8. Souleymane Kanté (1994). ([back](#))

9. *Lada et Landa*, "coutumes, loi coutumière," from Arabic *ladat*. Delafosse (1955: 452). ([back](#))

10. The best-known representative of “Afrocentrism” is Diop (1974). [\(back\)](#)
11. Whether within the framework of the administrative decentralisation in Mali or of the “African renaissance” so dear to Abdoulaye Wade, ex-president of Senegal (2000-2012). [\(back\)](#)
12. Keita & Kouyate (2010). [\(back\)](#)
13. Sarkozy, while apologizing for European colonialism, aroused hostile reactions with his statement that Africans had “not sufficiently entered History.” [\(back\)](#)
14. It is evidently possible to make an oral test like the “Hunters’ Oath” say what one wishes if one does not know the conditions in which it was enunciated. On this issue, see the article by Diagne (2011 : 664-672), which avoids dealing with this question. [\(back\)](#)
15. Foucault (2003). [\(back\)](#)
16. Chakrabarty (2000). [\(back\)](#)