

# A Comparative Study of “Group-Orientedness” in Chinese and African Legal Cultures

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**Abstract:** This study examines the historical dimensions of “group-orientedness” in Chinese and African legal traditions to propose new frameworks for Sino-African rule-of-law exchange. Traditional Chinese legal praxis reinforced group-orientedness through concepts like the integration of rites and law and dispute resolution prioritizing harmony. Despite colonial restructuring of African legal systems into a tripartite framework, collective consciousness within African customary law remains resilient. Both traditions prioritize maintaining group harmony in mediation systems and dispute resolution mechanisms. Building on this shared value of group-orientedness, Sino-African legal cooperation should establish syncretic mediation mechanisms that balance cultural adaptability with modern legal principles. By reactivating traditional group structures and implementing dual-track mediation systems, such cooperation can foster mutual learning and integration across civilizations in the legal domain, offering new paradigms for diversity in global governance.

**Keywords:** Group-orientedness; sino-african legal cooperation; legal culture; traditional chinese legal culture; african customary law

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## 1. Introduction

At the Symposium on Cultural Inheritance and Development, President Xi Jinping observed, “Marxism grasps human nature through the prism of social relations, while Chinese culture situates individuals within the family, the nation, and the world—both rejecting the conception of people as isolated entities.” The communitarian perspective highlights the importance of collective interests, social harmony, and shared responsibility within legal culture. In both Chinese and African traditional societies, law and culture are informed by communal values: Chinese tradition centers on the family—emphasizing familial bonds and the ethics of filial piety—whereas African customary legal culture is grounded in clans and tribes, valuing collective responsibility and fraternal solidarity.

The emphasis on communitarianism stems from historical lessons demonstrating that extreme individualism inevitably undermines social cohesion. Rooted in the notion of a shared destiny, it urges each person to bear responsibility and care for the world, adopting the principle “the rise and fall of the nation is everyone’s responsibility” as a foundational life ethic.

## 2. Mapping China’s Communitarian Legal Culture

### 2.1. Lineage and Clan: The Social Foundation of Communitarianism

A “zōngzú” (lineage) refers to a patrilineal kin group centered on a common male ancestor, whose direct male descendants

and their households observe prescribed ethical norms. The lineage system embeds individuals within a multi-tiered hierarchy bound by blood ties. From the Western Zhou period onward, the state leveraged kinship to uphold social order, institutionalizing a “larger clan overseeing smaller sub-clans” and following the principle “succession by birth order, not by merit; status by rank, not by age”<sup>[1]</sup>. Within this framework, clan membership defined one’s social network and personal identity. Traditional society comprised concentric levels—clans from a shared progenitor, lineages spanning generations, extended families, and individual households—thus forging a communitarian order rooted in kinship.

The fusion of Confucian ethics with the lineage system reinforced communitarian values. Through rites that “venerate ancestors to harmonize sub-clans and unite the greater clan” and by distinguishing social rank with “different statuses, different rituals,” the lineage’s ritual-legal complex stabilized families and society. Confucian rites mandated obligations to both family and state—exemplified by the maxim “strict father, gentle mother, filial child”—which extended into broader social order. Under this influence, the sovereign-subject relationship mirrored familial hierarchy. In sum, the mutual intertwining of legal codification and ethical norms solidified the lineage’s communitarian framework.

The “chāxù” (graduated order) pattern typifies traditional Chinese social networks. As Fei Xiaotong observed, relationships form concentric circles centered on the self, with ties graded by intimacy and authority<sup>[2]</sup>. Individuals subordinate personal interests to group obligations, and legal liabilities and benefits are often borne collectively. This hierarchy underpins Chinese collectivism, forging strong group identity rooted in family and kinship. Legal norms reflect this structure—for instance, the “five degrees of mourning” penal code established collective liability and kin concealment of offenses<sup>[3]</sup>. The enfeoffment system extended kinship into territorial governance; the “maternal brother” policy dispersed the Ji princes across the Spring and Autumn states, further blending lineage and locality to reinforce the chāxù order.

## 2.2. Xiū-qí-zhì-píng: Political-Cultural Ideal of Communitarianism

Traditional Chinese political culture is structured around the ethical progression of “self-cultivation, family regulation, state governance, and world harmony” (xiushen-qijia-zhiguo-pingtianxia). This sequence reflects the expansion of moral obligations from the individual to the state, embodying the core values of collectivism. The first step, “self-cultivation,” stresses the individual’s moral discipline according to patriarchal-Confucian ethics. As stated in *The Great Learning*, “self-cultivation is the foundation,” linking personal conduct to the broader social order. During the Tang Dynasty, the imperial examination system was grounded in Confucian classics, reinforcing the political significance of moral cultivation. Rituals such as the Archery Rite and the Capping Ceremony institutionalized and publicized ethical standards<sup>[4]</sup>.

At the level of “family regulation,” the household serves as the fundamental unit of both ethics and governance. Principles such as filial piety and the Five Constant Virtues structure domestic order, promoting harmony within the family and offering a moral blueprint for national administration. The “state governance” phase represents an expansion of familial ethics. The ruler is perceived as the patriarch of the nation, practicing benevolent rule and moral governance. Legislation prioritized collective interests through ideals such as “venerating Heaven and protecting the people” and “manifesting virtue and exercising restraint in punishment.” Governance relied on moral authority, with officials expected to lead by example, maintaining order as in an extended family.

“Bringing harmony to the world” aims for a morally cultivated, harmonious coexistence. Confucianism upholds the value of harmony, while Mencius emphasized, “The people are most important; the ruler is the least,” advocating a people-centered approach to governance. The *Western Inscription* articulates the idea of “all people are my kin, all creatures my companions,” extending clan-based ethics into a universal moral order.

Overall, the xiushen-qijia-zhiguo-pingtianxia framework illustrates a moral progression from the individual to the global. Collectivist values permeate this structure, emphasizing the individual’s ethical responsibility and role within the family-state system.

## 2.3. Collective Responsibility and Conflict Avoidance: Legal Practice as an Expression of Collectivism

Traditional Chinese legal culture emphasized a people-centered approach, prioritizing public welfare in both legislation

and enforcement. The maxim “The people are the foundation of the state” reflects this collective legal orientation. Legal codes historically protected vulnerable groups and promoted adjudication “on behalf of the people,” focusing on harmony over individual rights—marking a departure from Western rule-of-law ideals.

The integration of ritual and law defined the Confucian–Legalist tradition. From the Qin–Han to the Tang–Ming, patriarchal and clan rules were absorbed into state law, reflecting the ideal of joint ritual-legal governance. Magistrates emphasized moral instruction and mediation. Family disputes were resolved through clan norms, with formal law as a supplement. Legal enforcement was rooted in ethics and group order.

The Confucian ideal of “no litigation” emphasized harmony and resolution. Traditional adjudication prioritized mediation over confrontation. Confucius asked, “Is it not best to ensure no litigation?” Officials often favored conciliation, as in a Southern Song case resolving guardianship via foster care. Law functioned not merely punitively, but as a tool for preserving social cohesion<sup>[5]</sup>.

### **3. The Legal Culture of Group Orientation in Africa**

#### **3.1. Social Foundations of Legal Culture**

African legal systems are inherently tribal, where collective identity overrides individual rights, and authority rests with chiefs and elder councils. Among the Ashanti, new laws require approval by the chiefs’ council, a public assembly, and proclamation by the king, reflecting strong collective participation. Land belongs to the tribe, with individuals holding only usage rights—underscoring the tribe’s central role in legal culture.

Traditional African religions—such as ancestor worship and belief in nature spirits—confer a sacred character upon the law. In this worldview, lawbreaking is regarded as an offense against the divine, and individual behavior is tightly constrained by collective belief systems<sup>[6]</sup>. Among the Barolong of South Africa, disputants must swear on a totemic hammer, invoking divine punishment as a legal deterrent. Witch doctors use poison ordeals and divination to determine guilt, integrating divine will into justice. Moreover, African mythology and taboos have given rise to numerous prohibitory norms. For example, myths of a covenant between the Supreme Deity and humanity have generated collective taboos that play a vital role in maintaining social order<sup>[7]</sup>.

Traditional religion imbues the law with sanctity; legal transgressions are seen as acts of sacrilege. Among the Barolong, disputants swear upon tribal totems, and supernatural judgments are employed to resolve conflicts. Together, mythology and taboos establish behavioral boundaries, reinforcing both social order and group identity.

#### **3.2. Manifestations of Group Orientation in the Evolution of Legal Culture**

Since the 7th century, Islamic legal culture began to spread across Africa, introducing individualistic notions of property that clashed with traditional communal land ownership<sup>[8]</sup>. Inheritance, for example, under Islamic law emphasizes individualized distribution, challenging African customs rooted in collective ownership. After undergoing adaptation, North Africa became fully Islamized, whereas sub-Saharan Africa developed a dual legal structure. Among the Hausa people, hybrid courts were established that integrated Islamic and customary law. The Maliki school of jurisprudence, prominent in the region, recognizes collective ownership within customary law, demonstrating respect for and integration of African legal traditions.

From the 15th to 20th century, Western colonial powers introduced civil law systems in Africa, aiming to replace indigenous legal traditions. However, to reduce governance costs, they retained aspects of customary law. This led to a tripartite legal structure: Western law governed public matters, Islamic law operated in specific regions (notably in North and West Africa), and customary law remained dominant in civil disputes<sup>[9]</sup>. Despite the disruptive impact of colonial legal systems, African group-oriented legal culture demonstrated remarkable resilience. For example, when France forcibly implemented the Napoleonic Code in Algeria, aiming to dismantle tribal communal landholding, the resulting social unrest ultimately reinforced local collective consciousness.

Since the mid-20th century, the rise of African nationalism led many countries to gain independence. During this process, traditional legal culture was reevaluated and adapted. On the constitutional level, many African states formally recognized customary law. For instance, Section 39 of South Africa's 1996 Constitution ensures the coexistence of customary and common law. In terms of judicial reform, some nations established specialized customary law courts, while others—such as South Africa—incorporated customary principles into regular courts, including the Constitutional Court.

#### **4. Homologous yet Heterogeneous: A Comparative Analysis of Group-Oriented Legal Cultures in China and Africa**

Traditional legal cultures in both China and Africa emphasize collectivism and the value of social harmony. In both contexts, the family—defined by kinship ties—serves as the foundational unit of the community, where intergenerational responsibility and ancestral worship are central. Both cultures uphold the principle of subordinating individual interests to the collective good.

Structurally, ancient Chinese political organization was deeply rooted in familial orientation, famously characterized as “a politics based on the family.” Patriarchal ethics permeated the legal system, and national legislation consistently integrated Confucian rites, reinforcing the ideology of family-based governance. In contrast, traditional African societies were organized around tribal structures. Clans and tribes were bound by blood relations, shared totems, and communal land. Land ownership typically resided with the tribe, while members held collective cultivation and usage rights. Private land ownership and sales were largely prohibited, with only leasing permitted. Social matters were managed through village assemblies and councils of chiefs. Chiefs and elders resolved disputes based on ancestral will, employing moral persuasion and sacred oaths as instruments of governance<sup>[11]</sup>.

At the level of legislative and judicial practice, Chinese law placed strong emphasis on filial piety and familial affection. Historical legislation consistently upheld the authority of elders, with legal codes delineating hierarchical roles. Judicial decisions often prioritized family relationships over abstract legal principles, with intra-clan matters resolved by clan elders. The family functioned as the nucleus of civil law, with the patriarch acting as the legal representative. Marriage, inheritance, and related issues were governed by the interests of the extended family. At the grassroots level, disputes were resolved through people's mediation, village compacts, or clan tribunals, with a focus on reconciliation and restoring harmony. African legal systems are characterized by legal pluralism, wherein statutory law coexists with customary law. Many African states legally recognize customary rights, and official courts often establish “native courts” to adjudicate intra-tribal civil disputes according to traditional norms. Dispute resolution emphasizes reconciliation rather than enforcement. Elders mediate conflicts, and winning parties frequently forgo the execution of judgments to preserve group harmony. Despite structural differences, both Chinese and African legal cultures resist radical individualism, instead stressing collective responsibility and the maintenance of social stability<sup>[12]</sup>.

In sum, while both China and Africa share group-oriented legal foundations, China integrates this collectivist ethos into a centralized legal bureaucracy, whereas Africa maintains a broad sphere of traditional legal autonomy. This results in structurally heterogeneous institutions grounded in homologous values.

#### **5. Possible Pathways for China–Africa Legal Dialogue from a Group-Oriented Perspective**

Since the African independence movements, China and African countries have forged deep political and cultural ties. The preceding analysis of the similarities and differences in group-oriented legal cultures provides a solid foundation for institutional exchange.

### **5.1. Mutual Learning in Mediation Mechanisms**

The cultural affinity between Chinese and African mediation traditions offers a natural foundation for cooperative mechanisms. Centering on the protection of community interests, both sides can draw on their collectivist traditions to develop culturally adaptive and legally sound dispute resolution systems.

A dedicated mediation mechanism could be established under the existing Forum on China–Africa Cooperation (FOCAC), integrating representatives from governments, enterprises, and civil society to form a multi-level coordination platform<sup>[13]</sup>. For example, in disputes over major infrastructure projects, local tribal elders or spokespersons could engage directly with Chinese project managers, while representatives from Chinese civil organizations could also offer input. This would fully leverage the efficacy of group-based dispute resolution<sup>[14]</sup>.

At the operational level, it is essential to activate the mediation functions of group organizations on both sides. Chinese trade associations and Chinese business associations in Africa could establish mediation committees to resolve disputes through peer review and industry standards, reducing reliance on formal judicial procedures. At the same time, the mediation authority of African tribal chiefs and clan councils should be respected. In local disputes, traditional institutions should be given precedence, operating under customary law. Traditional mediation mechanisms should be formalized within national legal systems, while respecting the authority of tribal chiefs and clan councils in resolving local disputes under customary law. This system respects the collectivist traditions of both China and Africa while ensuring procedural justice through modern legal frameworks. It facilitates an organic fusion of traditional wisdom and modern norms, offering dual guarantees for the long-term stability of China–Africa cooperation<sup>[15]</sup>.

### **5.2. Institutional Alignment in Community Governance**

In rural China, governance is often achieved through village codes and covenants, which reinforce ethical norms and communal cohesion, emphasizing moral governance and shared responsibilities. In African tribes, order is maintained through creative customary law based on elders' councils and oral directives. China–Africa cooperation should recognize the institutional value of village rules and tribal customs, and work toward a tripartite mechanism of “traditional authority—negotiated consensus—cultural identity” to balance individual and collective interests, thereby co-constructing grassroots governance communities.

## **5. Conclusion**

Against the backdrop of global multipolarity and localized governance, China–Africa legal dialogue must combine conceptual exchange with technical cooperation, while also fostering institutional resonance to deepen mutual alignment in legal thought and practice<sup>[16]</sup>. Only by acknowledging differences, dispelling prejudices, and respecting tradition can both sides preserve the “spirit” of their legal cultures, enabling systems to be mutually enriching and practically interoperable. In the future, China and Africa should embrace group orientation as a shared value, establishing an inclusive legal dialogue platform to explore pathways toward legal development based on “civilizational pluralism and a shared community of destiny.” This not only represents the modern inheritance of their traditional legal wisdom but also offers new possibilities for global legal diversity and justice.

### **Disclosure statement**

The author declares no conflict of interest.

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