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**RETHINKING GOVERNANCE AND CONSTITUTIONALISM IN AFRICA: THE
RELEVANCE AND VIABILITY OF SOCIAL TRUST-BASED GOVERNANCE AND
CONSTITUTIONALISM IN MALAWI**

By

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DECLARATION

I declare that this thesis, which I hereby submit for the degree Doctor Legum (LLD), at the University of Pretoria, is my own work and has not previously been submitted by me for a degree at this or any other tertiary institution.

Mwiza Jo Nkhata

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DEDICATION

This thesis is dedicated to my parents Jo Nkhata Snr and Isabel Kaonga

SUMMARY

The failures of constitutionalism and good governance in Africa are well documented. Importantly, these failures have also highlighted the importance of constitutionalism and good governance in Africa. This study centrally explores the relevance and viability of social trust-based governance and constitutionalism in Malawi, specifically, and Africa, generally. Social trust-based governance and constitutionalism is an approach to governance and constitutionalism that is informed by the trust concept and is also fully mindful of local conditionalities in its operationalisation. By referring to the Constitution of Malawi and other pieces of legislation in Malawi, this study demonstrates that there is a legal basis for articulating and practising social trust-based governance and constitutionalism in Malawi. This legal basis stems primarily from sections 12 and 13 of the Constitution but is also supported by legislation like the Corrupt Practices Act, Public Finance Management Act, Public Procurement Act and the Public Audit Act.

In spite of the fact that there is a basis for social trust-based governance and constitutionalism in Malawi it is evident that governance and constitutionalism in Malawi have not, so far, been practised in line with the stipulations of the social trust-based approach. The current approach to governance and constitutionalism in Malawi is heavily steeped in the liberal democratic tradition. In this connection, this study demonstrates the limitations of the liberal democratic approach to governance and constitutionalism in Malawi principal among which is the lack of autochthony. Since the apparatus of liberal democracy has subsequently become quite entrenched in Malawi and most African countries, it is argued that the way forward involves creating a synthesis out of liberal democracy and the norms, traditions and values indigenous to Africa. This study identifies the philosophy of *ubuntu* as being an important source of values and principles that can be utilised to confer some autochthony to governance and constitutionalism in Malawi, specifically and Africa, generally. The approach adopted in this study concedes that neither a rigid insistence on liberal democratic constitutionalism nor a strict adherence to *ubuntu*-based governance and constitutionalism can succeed in Malawi. The solution is to utilise values from both traditions in order to generate a viable approach to governance and constitutionalism.

In this study, the viability and relevance of social trust-based governance and constitutionalism is demonstrated by reference to the relationship between the branches of government, public resource management and the accountability of public functionaries and citizenry empowerment in Malawi. This study argues that a social trust-based approach to governance and constitutionalism can improve the relations between the branches of

government, reinvigorate public resource management and also enhance accountability of public functionaries and empower the populace in line with the Constitution's vision. The Constitution, as the supreme law of the land, thus remains integral to governance and constitutionalism in Malawi.

Keywords: Governance, constitutionalism, democracy, ubuntu, public resource management, trust, fiduciary obligations, public functionaries, accountability, participation.

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