rights. In the relativist view, the sanctity of the extended family in Africa undermines the legitimacy of individual rights, viewed as a western import. Other human rights instruments too, such as the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), adopted by the General Assembly in 1993, privileges an independent, free woman.

Women's human rights activists do indeed emphasize the idea of personal autonomy, precisely as a means of addressing the oppression of individual women within the family unit where women's human rights are frequently violated through domestic violence, restrictions on access to resources, and in matters of marriage, divorce, and property rights. In other words, the human rights of women epitomize questions about the relationship of the individual to the group. Those in support of universal precepts, including African legal scholar Makau Wa Matua, argue that individual rights must always be applied in a social milieu. Matua says:

"... a thorough understanding of the meaning of human rights, and the complicated processes through which they are protected and realized, would seem to link inextricably the concepts of human rights, peoples' rights, and duties of individuals. Individual rights cannot make sense in a social and political vacuum, devoid of the duties assumed by individuals. This appears to be more true in Africa than any other place"[10].

Matua is principally interested in the nature of the relationship between the individual and society in Africa, which he characterizes as dramatically different from the relationship between the individual and the state in western societies. What is significant to this argument, in addition to the nature of the relationships described, is simply the acknowledgment that a relationship exists. The oversimplified opposition between the individualistic west and communitarian Africa ignores the ways in which individuals with varying degrees of personal autonomy are constituted as members of society through groups, everywhere.

Women's struggles for human rights often position them in opposition to family and social networks where their roles and rights have been defined; however, because of the sanctity of the family, they often choose not to seek empowerment and freedom which sets them against their kin. It is therefore crucial to find ways for women to be protected as individuals against abuses. Doing so should not mean that the family will be undermined as an important social institution. Coomaraswamy makes a fundamental observation when she asserts that "the family is the place where individuals learn to care, to trust and to nurture each other. The law should protect and privilege that kind of family and no other"[11].

Although attention to the realm of the family in Africa is central to any discussion of women's human rights, this focus should not distract from other sources of abuse against women which occur outside the local cultural context. To place a spotlight on the family as the exclusive source of discrimination against women puts disproportionate blame on this particular cultural domain, to the exclusion of other violations of women's integrity. For example, in many parts of Africa discriminatory practices remain unnoticed as such, and many states--Algeria, for instance--uphold patterns of conduct which some deny are disadvantageous to women, claiming instead that the attitude toward women is essential to the cultural integrity of those countries and significant constituents of national identity.

International practices too, such as the structural adjustment programs (SAPs) of the World Bank and IMF, which in many ways contribute to suspicion toward international human rights agendas, may themselves constitute violations of personal economic rights. As Illumoka has

pointed out, SAPs have led to the depreciation of local currencies and the "rationalization of industry, including privatization of public enterprises and reduction of government expenditure on social services, resulting in spiraling inflation ... and severely restricted access to education and health facilities"[12]. In their wake, SAPs have contributed especially to the devaluation of women's work. Nurturing cultural institutions are thus threatened through international financial arrangements.

As the African women activists working on the book project argue, the participation of African women in the international women's rights movement emphasizes that the affronts women suffer to their human dignity cannot only be solved through local institutions. This being the case, the debate over the relativity or universality of human rights is one which actually distorts the problem, rather than illuminating the condition of women. The harm in maintaining this bipolar debate is that it perpetuates "international hierarchies of power that contribute to the on-going polarization of the West and the Third World and [limit] ... the definition and scope of struggles perceived to fall within the purview of women's human rights"[13].

Oloka-Onyango and Tamale suggest that one possible remedy lies in an "intra-cultural and cross-cultural dialogue" which recognizes that "the personal is political, but the political is extremely rich and diverse"[14]. It is this remedy which has the potential to push anthropology past its commitment to the philosophy of relativism. Although anthropologists have always engaged in cross-cultural dialogue, these dialogues were not exchanges in the manner supported by Oloka-Onyango and Tamale which require recognition of cultural assets and limitations on all sides. Nor have these dialogues been inspired by the feminist consciousness that introduces the dialectic between the personal and the political.

Since the book project has fostered both a cross-disciplinary and cross-cultural dialogue of this nature, for the remainder of the paper, I examine how a dialogue of the type proposed by Oloka-Onyango and Tamale can be useful in moving beyond the debate toward an alternative approach to women's human rights. I begin by exploring how the historically relativist perspective toward human rights in anthropology impeded intra-cultural exchanges, in spite of its intentions to defend the powerless.

ANTHROPOLOGY, HUMAN RIGHTS AND ETHICAL RELATIVISM

In 1948, the American Anthropological Association (AAA) distributed a statement written by Melville Herskovitz rejecting the universality of international human rights norms. In formally advocating such a rejection, the AAA posited that the recently released Universal Declaration of Human Rights enumerated rights and freedoms which were culturally, ideologically, and politically nonuniversal[15]. Rather, the rights and freedoms cited therein contained a western, Judeo-Christian bias, and therefore could not be regarded as rights which are inalienable.

In a recently published article in Human Rights Quarterly, Ann-Belinda Preis explores the way in which the 1948 decision formed a foundational and predominantly uncritical approach to human rights on the part of anthropologists which remained unchallenged for the next thirty or so years. Herskovitz's point of view emanated from his concern, and the larger

anthropological concern, with the impact of western colonialism on two-thirds of the world, and the hypocrisy of supporting the claim for human rights while colonial regimes which drafted and signed the Declaration simultaneously committed atrocities in the name of the civilizing mission[16].

In an article which addresses statements of this kind, Wa Mutua states that while the current human rights movement has its roots in the western liberal tradition, and this fact indicates a lack of completeness, it does not, however, deny "the universality of many of its ideals and norms." Mutua argues:

In the West, the language of rights primarily developed along the trajectory of claims against the state; entitlements which imply the rights to seek an individual remedy for a wrong. The African language of duty, however, offers a different meaning for individual/state-society relations; while people had rights, they also bore duties. The resolution of a claim was not necessarily directed at satisfying or remedying an individual wrong. It was an opportunity for society to contemplate the complex web of individual and community duties and rights to seek a balance between the competing claims of the individual and society.
This view is not relativist. It does not advance or advocate the concept of apartheid in human rights or the notion that each cultural tradition has generated its own distinctive and irreconcilable concept of human rights[17].

Moreover, Matua recognizes that relativism in human rights serves as an anti-imperial device, as Herskovitz intended as an advocate for colonized societies; but, its use as such represents a misunderstanding inspired by cultural-nationalism. While arguments against relativism are often ethnocentric and, in Matua's view, a symptom of the moral imperialism of the west, he also insists that both extremes--relativism and ethnocentric arguments against relativism--"only serve to detain the development of a universal jurisprudence of human rights"[18]. Herskovitz's position deserves more critical reflection than this paper allows but, suffice to say, his position had a profound effect on anthropological thought, such that the anti-relativist position has only recently begun to amass proponents.

Perspectives proffered by Canadian Africanist Rhoda Howard and political scientist Jack Donnelly represent some of the well-known challenges to the position of ethical relativism. Donnelly recognizes that there are other trajectories for human rights within the liberal tradition, outside of the conception of the individual as "atomistic and alienated from society and the state." Howard's position, according to Matua, however, represents an ethnocentric critique of relativism. Matua says of Howard that:

[S]he refuses to acknowledge that pre-colonial African societies knew human rights as a concept ... Howard is so fixated with the Western notion of rights attaching only to the atomized individual that she summarily dismisses arguments by African scholars, some of whom could be classified as cultural relativists, that individual rights were held in a social, collective context[19].

Howard does point out that while women and men have more formal rights in post-colonial Africa, the western model has essentially deprived women of the political influence they had in many indigenous societies. Her example of the 1929 "Women's War" in Nigeria is a case in point, in which tens of thousands of Igbo women attacked chiefs appointed by the British, as a protest against the abrogation of their traditional power. Moreover, Howard also

insists that there can be no adequate analysis of the human rights of African women, or improvements made for their effective implementation without understanding the sociohistorical context of women's lives. Legislation that does not recognize the influence of culture and tradition on male and female perceptions of each other will be ineffective[20].

While Donnelly and Howard are two examples of engagement with human rights in the African context, the more widespread challenge to relativism which has swept the discipline has just begun to move more seriously into the realm of human rights, emanating especially from feminist circles. The context for this challenge, as I have stated throughout, is within the increasingly prominent place of women's rights issues on the general agenda of the human rights movement. Since feminism aims to connect the academic world with social change, feminist anthropologists work not only to describe and analyze the lives of women and gender relations, but to generate strategies to improve them. The feminist agenda is antithetical to relativism--but not subsequently, cultural context--since it depends on judgments in order to develop strategies for change.

Feminist anthropology has inevitably intersected with international women's human rights movement asserting, as feminist anthropologist Martha C. Ward puts it: "flatly stated, the treatment of women in human societies transcends cultural boundaries"[21]. These statements are not ethnocentric rejections of relativism, but rather claims supported by diverse groups agreeing with Oloka-Onyango and Tamale's dictum that the personal is political, but the political is extremely rich and diverse. Feminists from both camps have argued that "it is simply unacceptable to subject women to subordinate treatment that enslaves them to men," and that "human rights is about regulated civilized behavior and conduct toward all human beings"[22]. These positions reflect a coming together in feminist anthropology of applied and academic approaches, with clear activist points of view attached to research agendas.

The women's human rights movement now faces the challenge of carrying "women's voices, interests, and concerns into the mainstream human rights law-making arena so that the diversity of women's experiences in different cultures is introduced into international human rights law"[23], establishing new forms of contact zones which eschew coercion, radical inequality, and intractable conflict. It is through this process that anthropologists can be especially valuable participants, employing their strengths in collecting and analyzing ethnographies which establish avenues to disseminate the voices of the women with whom they collaborate.

I now turn to Naima Hasci's work with Somali women refugees in Kenya. As an anthropologist and human rights activist, Hasci provides a wonderful illustration of the need to unite activism and scholarship as an approach for bridging international, national, and local institutions for women's human rights so that they may assist more effectively the communities they endeavor to serve.

THE EXAMPLE OF SOMALI WOMEN REFUGEES IN KENYA

In her chapter, "From the Frying Pan into the Fire", Hasci examines the rights of refugee women in Africa, focusing on Somali refugee women in Kenya during the period 1991-1997. She seeks to address "the inconsistencies between the high level standard setting of human rights laws by the international community and the low level enforcement of such rights at the

national level", especially with respect to the protection of refugee women's rights in countries of asylum.

Hasci begins with a discussion of the location of refugee settlements in border communities[24], where "the state's juridical presence is minimal or non-existing." In such instances, the host community wields de-facto powers at the local level often with negative impact on refugees. At the international level, CEDAW has been instrumental in highlighting and interpreting violence against women. Article 1 of the Convention is relevant to female refugees, condemning "any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life." Also, since 1988 the United Nations High Commissioner for Refugees (UNHCR) has discussed the issues of safety, discrimination, and sexual exploitation, and in 1995 finally published guidelines on violence against and protection of refugee women. While these guidelines on refugee women's protection are "extensive, detailed and drawn from various refugee women's experiences in the camps, including Somali women in Kenya in the last 7 years ... it remains to be seen how effective CEDAW and the UNHCR's guidelines will be in contributing to the prevention or mitigation of sexual violence and the promotion of equity among refugees"[25].

Since national governments are ultimately responsible for effectively implementing international human rights standards, it is the Kenyan government which is responsible for implementing the UNHCR's guidelines. According to Kenya's national law, rape is a crime punishable by imprisonment with hard labor for life, with or without corporal punishment[26]. In spite of this, the police and military in Kenya have "not only been negligent in their duties to stop the rape crimes, but on the contrary, in many instances the Kenyan police were reported to have raped, beaten and killed refugee women."

Hasci argues that given Kenya's poor human rights record, especially toward women, and its policy of persecution of Somali-Kenyans, "the international community and particularly the UNHCR could have taken appropriate measures in time to avoid the establishment of the refugee camps in such a dangerous region where border disputes play a role in acts of aggression against refugees."

Clearly, protection by the host government of refugees is not occurring; instead, the camps create "prison-like conditions providing minimal assistance, water, food, shelter and medicine"[27]. Although international agencies are theoretically supposed to work in conjunction with host governments for the protection of refugees, the paradox, says Hasci, is that "the UNHCR itself is in a sense, like the refugees, a guest of the Kenyan government, and in the final analysis, it operates in an environment over which it has little control, and therefore unable to fulfill effectively its mandate"[28].

In exploring ideas which may lay the foundation for future solutions to these kinds of paradoxes, it is imperative to generate a commitment and sense of ownership of laws at the national and local levels. Existing laws should be linked to or drawn from existing indigenous socio-legal norms and principles, such as, for instance, the Somali "xeer". The international community faces a dilemma: how to uphold the universality which breathes life into international legal instruments of women's rights while at the same time minimizing those laws' disassociation from local socio-legal norms.

Attention to institutions such as the "xeer" is essential. The "xeer" is a socially constructed set of norms established to safeguard security and social justice for Somalis in Somalia and in the diaspora. While there is no room within the confines of this paper to delve into the specific structure and principles of the "xeer," it is nonetheless significant to point out that it stands as one of the pillars of communal relations, and as such codifies accepted standards of conduct and behavior. Since the international and national normative systems function inadequately, refugee women must gain access to their rights by negotiating all three levels: international, national, and cultural. Institutions which draw from legal structures that societies can identify with are crucial if human rights are to become integrated into the legal culture of a given society.

Action toward this end is occurring. In the past few years, the United Nations General Assembly and the Commission on Human Rights have successfully urged Mary Robinson, the High Commissioner, to establish through her Technical Cooperation Program, National Human Rights Institutions. These Institutions refer to bodies established by governments through constitutional or legislative processes for the express purpose of supporting and protecting human rights.

The idea behind these organizations is that "the development of a culture of human rights at the national level depends on the existence of a vigorous civil society, one which encourages the formation of community groups; which not only tolerate but encourage respect for individual differences"[29]. This mission represents the parallel aim of the women's human rights movement to acknowledge women as autonomous persons within the realm of family relations, in that both strive to integrate the individual and the community as two essential components of coherent human rights principles.

The General Assembly and the Commission on Human Rights recognize the importance of diversity among those who comprise the National Institutions, since "an effective, credible National Institution will be one which reflects in composition, the community it is established to serve"[30]. Moreover, because those individuals who require help the most are unlikely to seek out the Institution, one of its purviews is to develop approaches to assist those with physical disabilities and those in remote locations without adequate transportation.

Community groups established to support the work of the Institution will promote decentralization and greater accessibility. Since it is crucial that National Institutions respond to particular community needs, the nature of the assistance has been varied. Over the past few years in Africa, Institutions have been established in South Africa, Uganda, and Zambia. Ultimately, National Human Rights Institutions have the potential to manifest the rhetoric of international instruments such as CEDAW and the African Charter. Moreover, they can achieve this

... in a manner which is consistent with the standards prescribed in the international treaties, while accommodating constitutional particularities and the extraordinarily disparate challenges posed by local conditions and cultures -- thus respecting ethnic, cultural, religious and linguistic diversity in a more informed and sensitive manner than any regional or international body[31].

National Institutions reflect the burgeoning awareness of the limitations to relativism and the necessity of developing a truly universal human rights discourse, one which recognizes that

women's rights are indeed human rights, and that African women's rights need to recognize that African women exist as "singular-universals" as do we all. In her chapter's conclusion, Hasci concurs:

... the issue here is not about maintaining relativism as a dichotomy to universalism, but about integrating, adapting and building on what is universally human and gender-sensitive about a society's cultural and juridical heritage so that it can be genuinely sustained locally, nationally and internationally[32].

Notes

1. I would like to thank Dr. Gail Linsenbard for her insights and critical reading of parts of this paper. This article is dedicated to my parents, Sanford and Vivian Fox, whose own scholarship and activism for human rights continues to inspire me.
2. Cook, Rebecca J. "Women's International Human Rights Law: The Way Forward," in Cook, Rebecca J., Human Rights of Women: National and International Perspectives. University of Pennsylvania Press, 1994.
3. See Coomaraswamy, Radhika, "Reinventing International Law: Women's Rights as Human Rights in the International Community," Human Rights Program, Harvard Law School, 1997.
4. Colligan, Sumi, "`To Develop Our Listening Capacity, To Be Sure that We Hear Everything': Sorting Out Voices on Women's Rights in Morocco," in Diana J. Fox and Naima Hasci , eds., Women's Rights As Human Rights: Activism and Social Change in Africa, . . Lewiston, NY: Edwin Mellen Press, forthcoming, 1999.
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13. Colligan, Sumi, "'To Develop Our Listening Capacity, To Be Sure that We Hear Everything': Sorting Out Voices on Women's Rights in Morocco," in Diana J. Fox and Maima Hasci, eds., Women's Rights As Human Rights,. Lewiston, NY: Edwin Mellen Press, forthcoming, 1999.
14. Oloka-Onyango, J. and Sylvia Tamale,"'The Personal is Political', or Why Women's Rights are Indeed Human Rights: An African Perspective on International Feminism," Human Rights Quarterly , Vol. 17: 691-731, 1995.
15. Preis, Ann-Belinda S., "Human Rights as Cultural Practice: An Anthropological Critique" , Human Rights Quarterly ,Vol. 18: 286-315, 1996.
16. Personal communication with Dr. E.P. Skinner 5/27/98.
17. Mutua, Makau Wa, "The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties," Virginia Journal of International Law , Vol. 35: 39. pp. 344-345, 1995.
18. Ibid.
19. Both Howard and Donnelly uphold the importance of establishing the universality of human rights, although both recognize that universal acceptance does not exist. Howard, for instance, has most recently argued that concepts of human dignity exist in many African cultures, but dignity should not be equated with the notion of rights; therefore, attempts to establish the existence of universally held notions of rights overlook the significant distinctions therein.
20. Howard, Rhoda, "Women's Rights in English-speaking Sub-Saharan Africa," In Claude E, Welch, Jr. and Ronald I. Meltzer, eds., Human Rights and Development in Africa.. Albany: State University of New York Press, 1984.
21. Ward, Martha C., A World Full of Women, Waveland Press, 1996.
22. Cook, Rebecca J., "Women's International Human Rights Law: The Way Forward," in Cook, Rebecca J., ed., Human Rights of Women: National and International Perspectives. Philadelphia: University of Pennsylvania Press, 1994.
23. Ibid.
24. Hasci defines border communities as "... culturally coherent territories where people of definite cultural identities have had to be split into two or more units, each faction placed in the area of jurisdiction of a distinct state; which functions to integrate such a pre-existing culture area into a new socio-economic system removed from the whole original culture." "From the Frying Pan into the Fire: Somali Refugee Women's Rights in Kenya," In Dian J. Fox and Naima Hasci, eds., Women's Rights as Human Rights: Lewiston, NY: Edwin Mellen Press, forthcoming,1999.
25. Hasci, Ibid: 3
26. Goodwin-Guy, Guy S., The Refugee in International Law. Oxford University Press, 1996, p. 257, cited in Hasci, Ibid.
27. Hasci Ibid: 3
28. Ibid: 4

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30. Ibid: 5
31. Ibid: 7

African Political Cultures and the Problems of Government

ELLIOTT P. SKINNER

INTRODUCTION

The thesis of this essay is that African countries will continue to be racked by conflicts unless leaders agree about how to govern their multi-faceted nation-states and how to distribute their economic resources equitably. Without a compromise that would ensure "ethnic justice", neither so-called "liberal democracy", nor any other species of government will succeed in Africa. If "liberal democracy" presently has any evolutionary advantages, it will have to adapt to local realities, and its contours will be shaped by indigenous African socio-cultural traditions. These have been changing over time, and now face the challenge of a Post-Cold War world where people are demanding equity. Can anthropologists contribute to the debate about these issues?

Recently, while explaining to a group of influential Americans the constitutional problems in his country, an African diplomat remarked with a smile, "Oh, I was told that I must not use the concept 'tribalism' in America, but should use 'ethnicity' instead." What he implied was that whether one called his fellow citizens "tribalists" or "ethnics", they used the same sentiment in competing for power and all that flowed from that. Thus, a concept that had formerly been used to trivialize the complexity of African societies undergoing colonization was proving to be impervious to change by later anthropologists and by Africans themselves [1].

Discourse about "tribalism" or "supertribalism" or "ethnicity" in contemporary Africa is now linked to demands for "democracy" (another kind of "discourse") that I would prefer to see as demands for political or regime change. Africans are seeking relief from coups, misgovernment, and economic collapse. Many western governments, especially the US, also threaten to withhold economic aid from African countries that do not move toward democracy.

The problem is that when questioned seriously, Americans often admit that for them "democracy" is really an act of faith. For example, US Ambassador Thomas R. Pickering declared at the United Nations, on October 28, 1991 ("African Day Devoted to Debt Relief"):

Reforms to improve governance are essential, both for sustainable economic growth, and political stability .... The bottom line of good governance is democracy itself. It is not our role to decide who governs any country, but we will use our influence to encourage governments to let their people make that decision for themselves.... In sum, we will help those who move towards democracy.

Many Africans, especially those tired of military dictatorships and faltering economies, and politicians out of power and in exile, applaud these prescriptions. Nevertheless, they wisely or cynically refrain from defining the criteria for their own political culture. The result is that both

Elliot P. Skinner is Emeritus Professor of Anthropology, Columbia University, where he held the Franz Boas Chair of Anthropology. He served as US Ambassador to Upper Volta.

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the US and many African leaders are creating the basis for "disemia". This is a condition among local power seekers who, to please hegemonies, may either disguise those aspects of social life that conflict with the hopes of tutelary powers, or create systems out of phase with local realities, or cynically manipulate local conditions to gain or remain in power.

Unfortunately, due primarily to the history and function of our discipline, anthropology never gained respect among indigenous Africans [2]. Even African anthropologists distance themselves from us, (ironically naming us among the proverbial "Others". We anthropologists still retain that rural bias once judged necessary to capture the essence of African socio-cultural systems. We continue to ignore the realities of rapidly urbanizing African societies. Even our post-modernist discourse deals with the esoteric of fast disappearing African traditions, rather than with how modernizing people gain power and control resources. Many anthropologists still refuse to learn African languages, even when they attempt to deconstruct the subtleties of their discourses in order to get at the variegated images in African minds.

In striking contrast to anthropologists, African politicians in the late 1950s and early 1960s were primarily interested in the issues of "independence", "national integration", and "modernization", somewhat in that order. This tiny, largely urban and westernized minority, aspired to lead their largely rural, and basically agricultural societies, still governed by traditional authorities who were often deemed decadent and reactionary. Kwame Nkrumah, and his cohorts, sought the "political kingdom" and felt that everything else would be added thereunto.

With their knowledge of the economic, political, and social realities of the colonial world, most anthropologists, feared a difficult decolonization process. Geertz, among others, warned that the persistence of "primordial bonds" (based on kinship, blood, language, and religion) could frustrate the emergence of a new "political society" [3]. He hypothesized that the creation of "new states" bent on "modernization" and "national integration" might initially increase conflicts in African societies. Geertz recommended a "macrosociological" methodology to gain a "holistic or comprehensive" view of the problems facing those societies [4].

The young American political scientists who saw in decolonization a fruitful area of study fully expected conflict to accompany socio-cultural change. After all, they often defined politics as "who gets what" and this frequently involved severe conflict. The dominant paradigm many brought to Africa was that there was a positive relationship between economic development and greater social and political integration. These scholars, therefore, had little difficulty with intergroup tensions due to "political competitiveness." As they saw it, "political competitiveness" was an "essential attribute of a democracy" [5].

Invited by Kwame Nkrumah to teach "sociology" at the emerging University of Ghana, St. Clair Drake, an "anthropologist", noted the actual conflict between the traditional authorities and the modernizing politicians. But fearing to be considered a conservative and reactionary anthropologist, Drake was prudent. He stressed that anthropologists could make a contribution to the understanding of social change by studying what factors facilitated or hindered the traditional leaders from playing an important role in "the process of planned economic and social development" [6]. Few founder-presidents of African states welcomed Drake's advice.

With Botswana and Swaziland among the major exceptions, the emerging African leaders opted for the political cultures of their metropoles: the Westminster model, and the Belgian and

French presidential and premier systems. These men ignored that the governmental processes they cherished had evolved in economically, industrially, politically, and socially complex state systems. Moreover the Europeans judged these "too civilized," for transfer to the colonies. African leaders ignored what Pearl Robinson would later term the "cultures of politics" that had developed during the colonial period, and used, as Gramsci stated, to maintain "hegemony protected by the armor of coercion" [7]. The African nationalists even ignored their own counter-racist philosophies such as "negritude" and the "African Personality." They occasionally paid lip service to traditional political cultures, but firmly rejected compromise with African traditional politicians for fear of derailing the drive for independence [8].

Kwame Nkrumah had a bitter conflict with the Asantehene and other traditional leaders in Ghana who objected to being excluded from government. In Ouagadougou, a frustrated traditional emperor, the Mogho Naba of the Mossi people, attempted to use his traditional army in a quixotic attempt to dissolve an embattled Territorial Assembly. Sir Edward Mutesa II of the Baganda quarreled with Sir Andrew Cohen, Britain's last colonial governor, about the future government of Uganda and was exiled to England where he died in poverty. Such reports were legion [9].

Hoping to "modernize" their usual mono-economies, the new African leaders often espoused an "African Socialism" where the state controlled the economy. Insisting upon the need for "national integration," in the face of a plethora of ethnic collectivities, African leaders imposed a single party system, claiming that this was close to the African "palaver." There was often some justification for these actions, since competitively engaged in the Cold War the protagonists did attempt to profit from African ethnic competition [10].

What confounded many western theorists was that whether African leaders espoused Marxism-Leninism, African and non-African socialism, capitalism or mixed capitalism and so on, their efforts failed. They rejected compromises and ignored the advice of Sir Arthur Lewis to Nkrumah, that the political-economy of the new African states should use agriculture to build their economies and should employ ethnic-based coalitions for government [11]. The result was that confusion reigned about how African leaders could and should deal with their economies and regimes.

Those anthropologists who kept abreast of conditions in Africa were not surprised by the chaos. Surprised when asked by some political scientist to deal with traditional leaders in a book dealing with political parties and national integration, Peter C. Lloyd, a specialist on the Yoruba kingdom, observed that while "the chiefs have not been in the van of the national movement, at least in recent decades ... the picture so often painted of a straight fight between elderly illiterate chiefs, living in the past, and modern Western-educated politicians is not in accord with the facts" [12].

Lloyd believed that the emergent African political leaders needed to turn the allegiance of the masses from ethnic groups to the state, and from their traditional rulers to the parliamentary leaders--especially when members of the new ruling class, by training and ways of thought, and in styles of life, were divorced from the masses. He advised politicians to recognize the loyalty of the people to their traditional leaders, and to involve the latter in the governance of the country. Above all, the politicians should not use traditional leaders only for

symbolic purposes, thereby running the risk of "destroying the prestige of the rulers just as did too close an association with the colonial administration in past decades" [13].

Joining the debate, Norman Miller warned about the need to harmonize the role of Tanzanian traditional rulers in development and governance so as to avoid ethnic conflict. He declared: "Viewed from the higher echelons of government in the new nations, the rural leader is an insignificant individual who goes about managing his local affairs and carrying out--with varying degrees of success--the policies and hopes of the government. Viewed from below, from the inner recesses of the village, the leader is a man of authority; a man who has used wealth, heredity, or personal magnetism to gain a position of influence." He argued that the rural leaders were the key to development plans in the rural areas, and warned that any "lack of initiative ... would entrench the status quo and doom the modernization plans before they begin" [14].

When asked to comment upon this article while in Ouagadougou, I described how the new state officials in the Upper Volta (now Burkina Faso) were devoting so much time to the problems of their states in major world capitals, that they had neither the time nor the energy to serve the rural areas. Whereas I had observed that during decolonization, many traditional leaders feared for their positions, when faced with disinterest from the capital, in 1968, they simply pitched in and helped their subjects. The politicians in Ouagadougou were too busy quarreling to deal with rural problems, with the result that the military replaced them [15].

George C. Bond, who had witnessed the transition from colonial rule to independence in North Rhodesia/Zambia, reported that disagreement about development pitted the royal houses and the "new men." When rural villagers wanted economic development, but were reluctant to pay for it, this "put pressure on all those chiefdoms leaders whose power ... [was] based primarily on popular support" [16]. Bond suggested then that "if the party-based elite was "unable to provide for local demands, the chief and the royal clan stand as a potential alternative source of leadership." When he returned to Zambia in 1973, he found that a one-party state was firmly in place and local party politicians had moved to urban centers to reap the rewards of office. Meanwhile, "internal and external forces, combined to restore the chief and his ruling clique to positions of power." This led to "the resurgence of traditional patterns of authority in the rural areas where most Zambians live, but also to the rise of new but politically conservative coalitions at the local level" [17].

By the l980s, regardless of ideology, the political economies of the African states had so deteriorated that this led to frequent military coups, political oppression, ethnic strife and economic degradation. Some of the blame lay with African governments that often "pursued economic policies or created public institutions that became impediments to their economic progress" [18]. The other part of the problem was due to Africa being the victim of a changing global economic environment. Because African economies were so heavily dependent on the export of a few primary products, any recession in the West caused them to collapse [19].

To complicate the situation, the end of the Cold War and a subsequent disinterest by both East and West in African affairs, led to Afropessimism--the almost racist notion that Africa and Africans were hopeless. Rather than consider Africa's problems as the precipitate of its turbulent change, the practices of the often embattled (and often corrupt) African leaders were blamed. The United States insisted that Africa's only solution was to adopt democracy and free

markets. American ideologues insisted that "democracy" means not only the right of people to elect their own government, but that only a democratic system can guarantee the full exercise of fundamental human rights now judged to be universal and applicable to all individuals without distinction as to age, gender, descent, religion, ethnicity, or race [20].

There is general agreement in most African countries that coups must end, corruption must be rooted out, and economies must be restored. There is less agreement among Africans about the meaning of "democracy." Many Africans believe that the larger issue of governance is related to the general conditions in African countries. Some African scholars declare that there were traditional forms of democracy, autocracy, monarchy, and oligarchy in state-organized societies as well as stateless societies in their pre-colonial history. They assert that African traditional political systems functioned, not because of their forms, but because they fulfilled felt needs in societies. According to this argument, the important factor was "political authority" derived from a "jural community" and defined as the widest grouping within which there is a moral obligation and a means ultimately to settle disputes [21].

Increasingly, African scholars insist that whereas western ideas about democracy are specifically rooted in the notion of political and social rights for individuals, the reality of Africa is still one in which "collectivities", or "ethnic" groups, rather than individuals are demanding social justice. In this context, what matters is respect for African cultures and languages, and ethnic concerns in the distribution of their countries' or world resources. These views are now being linked to the conviction that African traditional leaders and important personages should join politicians in governing African societies. Moreover, these demands are coming from urbanites as well as rural folk.

C.S. Whitaker, a student of Northern Nigerian politics, has always questioned the assumptions that there could not be a compromise in the leadership of what he has called "confrontation societies," (those having many of the mixed attributes of small urban westernized elites and rural agricultural folk largely governed by traditional leaders). Based on solid empirical research, he challenged the notion that such collaboration was neither inevitable or practical. Whitaker noted an emerging stable symbiosis of modern and traditional elements, and cited several cases of "creative adjustments" leading to what he described as "democratic reforms." Whitaker concluded that "significant elements of the traditional political system of the emirates proved to be compatible in practical terms with significant features of the modern state" [22]. He suggested that the emerging political culture of African countries would do well to take traditional elements into account. Interestingly enough, these views are now shared by some of his colleagues who worked in Nigeria [23].

Maxwell Owusu, a Ghanaian anthropologist, called attention to the implications of his study of a town in Ghana that supported the views of Whitaker. Viewing that society holistically, Owusu found as much continuity as change in Ghanaian politics. Prefering to look at the issue of governance in terms of "national unification," rather than in terms of "modernization," Owusu, focused on the struggle for power between groups. He asserted that such struggles were always present in that society, whether between traditional rulers, or between traditionalists and the new elites or other factions. The issue boils down to "the possession of wealth and its distribution and consumption to achieve or maintain high social status, prestige and social privilege. In this politico-economic competition, individuals and

Lawgiving and the Administration of Justice in Some African and other Early States

HENRI J. M. CLAESSEN

INTRODUCTION

In this paper I present some aspects of lawgiving and the administration of justice in some early states. To do so I will apply some of the concepts developed by anthropologists. The use of these terms makes it necessary to ask to what extent it is useful to employ West European judicial concepts to the ways in which the rules and measures of early states were formulated and enforced. Would it not be better to employ the "participants" concepts so as to describe and analyze the systems of rules and regulations of early states in their own terms [1]? This would certainly be advisable if this paper aimed at the analysis of only one such system, but because its aim is to compare a number of early state judicial systems, a broader, intercultural frame of thought is needed. This requires that we formulate our categories and concepts in such a way that different systems of lawgiving can be brought under their headings.

In this paper I try to find if and how in early states rules and regulations--laws--were established; in what ways such rules and regulations were brought to the attention of those concerned; in what ways such rules and regulations were sanctioned; and how people were made to do what was ordered. Finally, I look for similarities and differences in the systems discussed.

Every society has norms and values according to which people are supposed to behave. This is true even though, as Malinowski pointed out, people do not obey rules and regulations automatically. They often seek to escape obligations, or try to interpret the rules to their own advantage [2]. As a consequence, most societies also have mechanisms to cope with deviant behavior. In hunter-gatherer societies, such mechanisms are usually very limited; when efforts to mediate have no success, one of the contending parties leaves the band [3]. In more complex societies, disputes are sometimes solved by what Gulliver calls negotiation [4]. Here the disputants, each assisted by socially relevant supporters, try to reach a settlement. Another method of dispute settlement is adjudication wherein a binding decision is given by a third party who has some degree of authority. Such a decision "is in some way coercive in that the adjudicator has not only both the right and the obligation to reach and enunciate a decision but also the power to enforce it" [5]. Such enforcement may vary from agreement by the audience to the support of an armed force. A good example of adjudication is found in Homer's Illiad, analyzed by both Tamayo y Salmorán and Van der Vliet [6]. Here a small group of elders was required to pronounce, each in turn, a judgment, and he who, according to the sentiments of the people, pronounced the most fair decision was rewarded. In fact the decision was rendered by

Henri J. M. Claessen is Distinguished Professor of Anthropology Emeritus, Leiden University, the Netherlands. Currently, he serves as Vice President of the International Union of Anthropological and Ethnological Sciences.

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the people and it would have been difficult for an individual to defy their judgment. The difference between the two ways of dispute settlement discerned by Gulliver thus is "the difference between the presence or absence of overriding authority" [7].

Where adjudication is the dominant method of dispute settlement, acknowledged standards exist that can be interpreted to meet the particular cases. "This does not mean, of course, that standards are inevitably clearly defined, or that they lack a degree of flexibility, under adjudication; but definition and rigidity tend to be greater" than where negotiation is the dominant form [8]. This implies the existence of a set of rules with which a number of people is familiar. Such rules and convictions are usually inculcated during the education of the young; parents and family heads insure that a general knowledge of such notions is achieved. The next "higher" form of administered justice comes when a functionary or specialist hears the case and pronounces a judgment that eventually is enforced by his assistants. This development is characteristic of early states.

Where an increasing number of people live together on a permanent basis, the need arises for the development of additional, or new, rules and regulations. Studies by Gregory Johnson show that either more permanent rules and regulations develop, or the larger community breaks apart into smaller units [9]. Similarly, the description by Kottak of the development of an early state among the Betsileo of eastern Madagascar demonstrates that when groups of people are forced by reasons of safety to stay together on a permanent basis, new forms of organization develop, and new rules and regulations are needed to make the society work [10]. In early states, where large numbers of people lived together on a permanent basis, the ruler or central government had the task of developing the necessary rules and directives for the regulation of social relations.

PROBLEMS OF LAWGIVING

In a comparative study of twenty-one early states, in all twenty-one cases "the ruler is the formal law giver" [11]. This statement requires certain clarifications. Is it only the ruler who makes laws? Are there also other bodies concerned with lawgiving? Is every decree by the ruler a "law"? When do we speak of "laws"?

The same comparative survey concluded that the "sovereign is the supreme judge in early states" [12]. This statement also poses a number of questions that need to be clarified. Is the ruler the only judge? Are there standard procedures for the administration of justice? Is appeal possible in judicial matters? Are there legal specialists? Is there a codification of law? And, finally, why do people obey rules? The actual amount of coercion in early states is, according to Maurice Godelier, often limited [13]. Now let us try to formulate answers to these questions.

Law is a complex concept. In studies of state societies law is usually connected with those regulations that by negligence or infraction are enforced by the central government. In theory laws hold for all inhabitants of the early state. Also, in theory, it is the ruler who lays down the laws and maintains law and order. In reality lawgiving and enforcement are complex processes. To begin with, not every decree by a ruler is a 'law'. There are decrees meant to arrange temporary matters only, or hold for just a few people. For example, when a ruler states that there should be new women added to his harem, this is not a law, but an order. The same holds

for his directive that certain people will not be invited to the next feast. Speaking more generally, incidental regulations, or regulations meant for specific people only, should not be considered as laws, even if the decrees may have dire consequences for the individuals concerned. Laws are regulations holding for the whole population, or at least for broad categories of it [14].

Various people and institutions have influence over the preparation of laws. There are councilors and councils, personal advisers, brothers, friends, cousins, ministers, and in a number of cases, the queen. The formal influence of councils is mentioned for the the Aztecs, the African Kuba, the Indian state of the Maurya, Capetian France, and the Incas, among others [15]. Informal influences have been established for each of the twenty-one cases presented in The Early State [16]. In most cases, relatives of the ruler were mentioned as informal advisors, but administrative functionaries, priests, friends, and the like were mentioned in this capacity as well. In West African Dahomey, for example, the caboceers (civil servants), under whose supervision the subject matter of the new law fell, met with the ruler and a number of his female advisors. There were fierce discussions in which the contenders tried not so much to evaluate the merits of the proposal, but rather to outdo their rivals. Finally the ruler summarized the various points of view, formulated his decision, and issued the law [17].

Such new laws and regulations could cover a great variety of matters. The formal prohibition for the inhabitants of Ouidah to plant coffee, sugar or peanuts had clearly a commercial background, but the prohibition to sit on a chair in public was connected with the sacred character of the ruler [18]. In East African Buganda, as in Rwanda and Burundi, the queen-mother dominated the administration of the state as long as the ruler was young and inexperienced [19]. In medieval West Europe, queens such as Aliénor of Aquitaine [20], Emma of Normandy [21], and the Merovingian queens Brunhild and Fredegund [22], greatly influenced the administration of their states. Even in the strongly male dominated Islamic societies, queens have ruled and made law [23]. Consequently, it can be concluded that the central government of early states issued laws and regulations which were formally ascribed to the ruler, even though many people influenced their preparation.

To what extent was a ruler (assisted by his councilors) free to issue new rules and regulations? It is not easy to answer this question in a general way. Quite often "new" laws were not new at all, but only the reformulation of already existing directives. It was rather impractical to change an existing corpus of laws and regulations thoroughly; complete chaos would be the result [24]. Even the so-called new legal systems introduced by Visigothic or Carolingian rulers were no more than collections of existing rules and customs to which only some new, incidental regulations were added [25]. As long as a ruler remained within the limits of the norms and values of the particular society, subjects would accept new laws, because such a ruler acted in a legitimate way [26]. A ruler who did not live up to the norms and values and issued laws that were impractical or went against the prevailing morality would disqualify himself as a god-given ruler and seriously endanger his position. An example may clarify this point.

In 1722, the British slave trader Robert Norris went from the coastal town of Whydah to Abomey, more than 100 kilometers to the north in the interior. His journey was relatively easy. There were well-kept roads, bridges over rivers, and guest houses in the villages and towns

along the road, where he could spend the night. The captain of the escort took great care that Norris was served well, telling Norris that he was responsible with his head for the well-being of the white man. Norris was struck by the order and safety of the country [27]. There was continuity in the way in which travelers were protected. Norris's experiences were similar to those of John Duncan and to Skerchly who visited Abomey in 1847 and 1874, respectively. Less favorable were the experiences of travelers visiting Buganda. Explicit royal orders to assist him notwithstanding, John Speke, the discoverer of the sources of the Nile, had great difficulties in getting boats to cross Lake Victoria [28]. The American traveler Chaillé-Long, who visited Buganda some ten years, later mentioned that at a distance of only one day from the capital he already was aware of the enmity of the Bugandese functionary, entrusted with his well-being. Chaillé-Long even accuses the functionary of "malevolence and hostility" towards him and his company [29]. Although Stanley, who was in Buganda shortly after Chaillé-Long's visit, gives a more favorable impression [30], the French lieutenant Linant de Bellefonds, who was in Buganda at the same time as Stanley, reports great problems with the leader of the escort over the carrying of his baggage and the distribution of food [31].

The Bugandese problems were caused by administrative failures. The orders of the king were given without explicit details and without considering whether they were feasible or realistic. The courtiers immediately went out to do as ordered, only to find, once away from the capital, that their tasks were impossible. There were no facilities for travelers here: good roads, guest houses and food reserves were lacking, and the local population was not prepared to to provide food and goods to complete strangers. The comparison of these two cases demonstrates that when a ruler issued orders without providing the tools to fulfill these, he was asking for deceit and disobedience. As long as his servants were in his presence his power seemed absolute, but once they were a safe distance away, the ruler's power diminished.

THE MULTI ETHNIC STATE

The fact that the majority of early states consisted of different ethnic groups added to the already complex issue of law giving. In most cases, various ethnic groups were conquered and added to the state's existing population. This, in itself, did not necessarily endanger the development of well-functioning early states since in many cases the conquered groups had rather similar cultures, norms, and values. This was the case, for example, with the subjugation by the Incas of the Chincha Indians. A similar situation was found with the early extensions of the Asante state in West Africa. Only when societies with quite different cultures were affected did tensions become pronounced [32].

Several scholars have addressed the problems early state rulers faced with populations of different ethnicities. Anatoly Khazanov distinguishes between mono-ethnic, mono-lingual, and poly-ethnic early states [33]. States of the first type have no problems in this respect. When similar linguistic and cultural populations were brought together into one political unit, political problems might arise, but not cultural problems. The majority of early states, however, consisted of people of different cultural backgrounds. This often created a paradox.

As a rule, only one ethnic group in these states was occupying the dominating positions. Its upper stratum had become the ruling class of a whole state but, naturally, tended to rely on its

own relations. At the same time, to strengthen the state and its power-base it had to give a stake in this state to members of other ethnic groups, thus undermining their own privileged positions [34].

For example, the Incas incorporated a number of Quetchua-speaking groups from the regions adjacent to Cuzco. They became Incas-by-privilege, and enjoyed almost the same rights as the Incas-by-blood which facilitated their merging with the latter. At the same time, the Incas pursued a policy aimed at segregating themselves from other ethnic groups [35].

Ronald Cohen emphasizes that early states were organizations that seriously constrained fission, a policy that could succeed only "when technology and/or material resources were sufficient to sustain large populations" [36].

All of this implies that the state itself, once it emerges, provides the means for supra-ethnic belief systems, rules, ideology and even search for cause/effect relations or science. The state, being multi-ethnic but ordered, is dependent upon the development of supra-ethnic or universalistic rules, ideology, religion and even knowledge seeking [37].

Although Cohen is certainly right, the development of such ideologies, was no easy task. According to Donald Kurtz, the government of an early state needed first of all to acquire legitimacy, that is the people's conviction that its activities are in accordance with the existing norms and values [38]. He suggests five strategies a government should develop in order to attain legitimacy. These include the inculcation of an ideology of work, the increasing of the social distance between ruler and subjects, the religious validation of the government's right to rule, the penetration of the local level institutions by government agents, and the socialization of the citizenry with rewards for supporting the government and penalties for resisting it [39]. In an earlier article, Kurtz stressed the importance of a government's fulfillment of its economic obligations as a means to achieve legitimacy [40].

The discussions summarized above suggest that the ruler of an early state initially needed to strive to attain legitimacy in the eyes of his subjects. A paradox presents itself, for this required ruling according to different systems of norms and values so that subjects of different cultural backgrounds could identify withthe ruler. This required a good deal of ingenuity and propaganda [41]. It is here that religious beliefs often play a decisive role. The Frankish conqueror Clovis became legitimate in the eyes of the Gallo-Roman inhabitants of France once he was baptized into Christianity [42]. Charlemagne tried to Christianize the Saxon peoples to better incorporate them in his realm, and Jeanne d'Arc succeeded in making "her" king of France legitimate by having him crowned in the cathedral of Rheims [43]. Hagesteijn describes at length the decisive advantages for Southeast Asian rulers when they succeeded in introducing the legitimizing ideas for kingship, as developed in Hinduism and Buddhism [44].

THE ADMINISTRATION OF JUSTICE

There always were individuals unwilling or unable to fulfill the obligations placed on them by the laws issued by a central government or its representatives, even when these laws were based on prevailing norms and values and accepted by a majority of the population. The maintenance of the law fell to state functionaries at the local, the regional, and eventually the national level. These functionaries had the authority of their office to impose a decision on the

disputants from a third-party standpoint. They also had military or police power to enforce their judgments [45]. This, as Roberts notes, does not necessarily imply that these judges always used force; in many cases disputes were solved by mediatory procedures.

In the majority by far (sixteen of the twenty-one cases) in the early state sample previously referenced, the administration of justice was the responsibility of general kinds of functionaries such as village heads, district chiefs, or rulers. Only in some cases did a professional judge play a role (Angkor, Aztecs, Incas, Kuba, Maurya), while in five cases (Capetian France, Incas, Jimma, Kachari, and Yoruba) general functionaries as well as professional judges operated side by side [46]. The majority of cases was handled by functionaries at the local-level; only some types of misconduct, such as murder, arson, and treason, were reserved for judgment by higher administrators. Usually three different kinds of misconduct were distinguished: crimes against the state (e.g., murder, treason,tax evasion), crimes against religion (violating rules surrounding the sacred king), and 'minor' misconducts (e.g., theft, robbery, adultery). Usually different categories of judges handled these types of cases.

One of the main problems in the administration of justice in early states was the lack of a coherent body of laws. In no less than thirteen out of wenty-one cases no such coherent body existed. This situation inevitably called for differences in judgment. We should not overestimate the value of codified laws. Patrick Wormald, who thoroughly studied the codifications of law in early medieval Europe, concludes:

On the whole, in spite of efforts by Carolingian kings . . ., custom seems to have remained primary. My conclusion for Europe as a whole is thus unsurprising, but nonetheless suggestive. In those areas where the use of lex scripta was not only ordained but made easy, lex scripta was indeed used. In the areas where we find similar ambitions, but more marginal assistance to the judge, there are signs of a move in this direction, but no more. In the parts of Europe where both instructions on, and manuscripts of, the law are rare, there is scarcely a trace of the use of written texts in actual cases [47].

Fortunately, in many cases people could resort to courts of appeal; only in Hawaii and ancient Tahiti were there no indications that such courts existed [48]. The rather loose formulations of the laws, the lack of control over the judges, and the often heavy penalties encouraged many people to attempt to bribe officials. The missionary Roscoe gives the following description of such efforts at a court of appeal in Buganda.

If a man thought that he was loosing his case, he would endeavor to bribe the judge; if he proposed to give him a slave, he would place his hand flat on the top of his head as if rubbing it, when no one but the judge was looking; this signified he would give the latter a man to carry his loads. If he proposed to give him a women or a girl, he would double up his fist and placed it to his breast, to represent a woman's breast; if he proposed to give him a cow, he would place his fist to the side of his head to represent a horn; if it was a load of bark cloth, he would tug at his own cloth. The signs were made secretly; if the judge accepted the bribe, he pronounced a sentence in the man's favor [49].

It is not clear whether the situations described by Roscoe concerned criminal matters, or efforts at reconciliation. When serious crimes were judged, the sentences usually were harsh in Buganda. The missionary Ashe mentions death by burning, cutting the culprit into pieces, the slitting of ears and nose, and so on [50]. A problem with his statement is that it is not clear what

kinds of misconduct were punished. Roscoe writes that there was an extended period of time between the pronouncement of a sentence and its execution. This made it possible for the condemned to try to buy himself free [51]. Such bribes formed a considerable part of the income of king and notables.

The rather loose way in which the administration of justice was carried out in Buganda differs considerably from the rather formal approach of the Incas. There a detailed code of laws existed, and a whole hierarchy of judges carried out the administration of justice. Some cases were handled by the village curaca; others fell under the jurisdiction of the tucricuc cuna, the district chief [52]. Also, Inca punishments were harsh. Death, maiming, and torture were common, and in some cases not only the culprit, but his whole family was punished [53]. Although the majority of cases was handled by general administrative functionaries, a number of professional judges (such as the traveling hucha camayoc) handled crimes such as murder or having sex with an accla [54].

The vast majority of disputes in early states, however, was handled by heads of families, trying to find solutions through negotiation or adjudication. When their efforts were unsuccessful, the village head took over the cases. Only when serious crimes such as murder or treason were committed did higher judges take over.

Conclusion

On the basis of the data presented, it can be concluded that in early states attempts were made to develop and maintain systems of laws that could be and actually were supported by physical force. Laws were binding on the population as a whole, even though differing interpretations were possible when the transgressor held high status. Several groups of people were usually involved in the process of preparing laws, but it was the ruler who formally decreed the laws. The promulgation of laws based on existing norms was not so difficult; the introduction of really new laws was. To be legitimate in the eyes of the population, laws had to be based on the prevalent norms and values. When this was not the case the central government experienced resistance. It needed to indoctrinate the people to achieve voluntary compliance. The requirement of legitimacy became even more difficult to achieve when early states conquered peoples of differing cultural backgrounds. Minor judicial problems were usually solved by family heads through negotiation or adjudication. Village heads also tried to solve judicial problems through these methods. As state functionaries, however, they could apply force. Only more serious crimes came to the attention of higher administrative functionaries. In some early states professional judges played a role. The administration of justice was hampered by a lack of codification of laws and a lack of codified penalties. Arbitrariness and efforts at bribery were common. Yet early states laid the foundations for future constitutional states, however shaky the beginnings may have been!

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The U.N. Criminal Tribunal for Rwanda Concludes its First Case: A Monumental Step Towards Truth

PAUL J. MAGNARELLA

INTRODUCTION

Over the past year, the UN International Criminal Tribunal for Rwanda (ICTR) has made significant progress in apprehending and prosecuting high ranking persons responsible for the 1994 genocide of Tutsi and moderate Hutu in Rwanda[1]. The first case to be concluded at the ICTR, the case against Rwandan ex-premier Jean Kambanda, is extremely important for learning the truth about what happened in Rwanda during those fateful 100 days in 1994. Kambanda's extensive admissions of guilt should dispel forever any doubts about the occurrence of an intentionally orchestrated genocide in Rwanda. Kambanda's confession, and his willingness to offer testimony in other cases, is significant because it will probably influence the pleas of the other thirty Rwandan defendants in ICTR custody.

Kambanda is the first person in history to accept responsibility for genocide before an international court. He did so fifty years after the UN adopted the Convention on the Prevention and Punishment of the Crime of Genocide (1948). His case is of monumental significance not only to Rwandans, but to all those concerned with this most dreadful of crimes.

THE KAMBANDA CASE

On 4 September 1998, the ICTR sentenced Jean Kambanda, Rwanda's former prime minister, to the maximum penalty of life in prison for his role in the 1994 massacre of more than 800,000 Rwandans, most of them ethnic Tutsi. A panel of three judges constituting the trial chamber concluded that the shocking and abominable nature of Kambanda's crimes warranted the maximum sentence the court could impose. "The chamber is of the opinion that genocide represents the crime of crimes, which must be taken into account when delivering the sentence," presiding Judge Laity Kama told Kambanda[2]. Kama went on to say that although Kambanda had cooperated with the prosecution, voluntarily confessing in May 1997 to six genocide-related crimes and crimes against humanity, the gravity of his actions negated any mitigating circumstances.

Kambanda is the highest-ranking former political leader in the tribunal's custody. He was born on 10 October 1955 at Mubumbano in the Prefecture of Butare[3]. He has a wife and two children. He holds a Diploma d'Ingenieur Commercial. From May 1989 to April 1994, he worked in the Union des Banques Populaires du Rwanda, rising to the position of Director of

Paul J. Magnarella is Professor of Anthropology and Legal Studies, University of Florida. He currently serves a Special Counsel to the Association of Third World Studies.

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the network of those banks. He was Vice President of the Butare Section of the MDR (Mouvement Democratique Republicain) and a member of its Political Bureau. He became Prime Minister of the Interim Government on 9 April 1994, two days after the mysterious downing of the plane carrying then-President Juvenal Habyarimana and Burundian President Cyprian Ntayamira. Habyarimana's death signaled the beginning of three months of carnage. Kambanda's predecessor, Agathe Uwilingiyamana, and the dozen Belgian UN troops protecting her were slaughtered by extremist Hutu shortly after Habyarimana's plane crash.

THE ARREST

At the request of the ICTR, Kenyan authorities arrested Kambanda along with six other Rwandan genocide suspects on 18 July 1997. All seven suspects were arrested in Nairobi, where many former Rwandan officials have lived since the genocidal regime was overthrown by the Rwandese Popular Front (RPF) in July 1994. Another former Cabinet minister, Pauline Nyiramasuhuko, the interim family welfare minister, was also arrested with Kambanda, as was her son, Arsene Shalom Ntahobali. The four other suspects seized included two senior military officials, Col. Gratien Kabiligi and Commander Aloys Ntabakuze, Sylvain Nsabimana, prefect of Butare, the site of many anti-Tutsi massacres, and Hassan Ngeze, a prominent media figure accused of distributing materials inciting violence against the Tutsi[4]. The suspects were transferred to the ICTR's detention center in Arusha, Tanzania, where they are being held.

The sudden arrests signaled a change in Kenya's policy toward Rwanda's RPF-led government and the ICTR. Kenyan President Daniel arap Moi had previously done little to transfer any suspected Rwandan war criminals who sought shelter in his country. International pressure and Moi's political problems at home, however, seem to have caused a change. The arrests meant that the ICTR, after a slow start, now has more high ranking suspects in custody than does its sister institution, The UN International Criminal Tribunal for the Former Yugoslavia (ICTY) at the Hague.Genocide, as defined in the Convention for the Prevention and Punishment of the Crime of Genocide and in the Statute of the ICTR, is an "intent crime." It includes intentionally killing or causing serious physical or mental harm to members of a national, racial, or religious group with the intent to destroy that group, in whole or in part. Kambanda admitted that extermination of Tutsi was a policy of his government. A potential defense for many Rwandan genocide suspects is that the 1994 killings were part of an ordinary war or civil upheaval, without any intent to destroy a particular ethnic group, in whole or in part. Kambanda's confession will affect all ICTR suspects as well as the over 100,000 suspects imprisoned in Rwanda. Those who are actually guilty of participating in the genocide will have little choice but to admit their crimes or modify their defenses in the hope of receiving more lenient sentences.

Kambanda is also expected to offer answers to major questions surrounding the mysterious downing of the plane that carried both Rwandan President Juvenal Habyarimana and Burundian President Cyprian Ntayamira to their deaths. Kambanda should be able to offer intricate details of the planning and execution of the genocide.

KAMBANDA'S ADMISSIONS

On 1 May 1998, during his initial appearance before an ICTR Trial Chamber in Arusha, Tanzania, Jean Kambanda pleaded guilty to the six counts contained in his indictment, namely genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, complicity in genocide, crimes against humanity (murder), punishable under Article 3 (a) of the ICTR Statute, and crimes against humanity (extermination), punishable under Article 3 (b) of the ICTR Statute[5].

Together with his guilty plea, on 28 April 1998 Jean Kambanda submitted to the Chamber a document entitled "Plea Agreement between Jean Kambanda and the Office of the Prosecutor," signed by himself and his defense counsel, Oliver Michael Inglis of Cameroon. In his plea, Jean Kambanda admitted all the relevant facts alleged in the indictment.

In particular, (i) he admitted that there was in Rwanda in 1994 a widespread and systematic attack against the civilian population of Tutsi, with the intent to exterminate them. Mass killings of hundreds of thousands of Tutsi occurred in Rwanda, including women and children, old and young. They were pursued and killed at places where they had sought refuge, such as prefectures, commune offices, schools, churches and stadiums.

(ii) Jean Kambanda acknowledged that as Prime Minister of the Interim Government of Rwanda from 8 April 1994 to 17 July 1994, he was head of the twenty member Council of Ministers and exercised de jure authority and control over the members of his government. The government determined and controlled national policy and had the administration and armed forces at its disposal. As Prime Minister, he also exercised de jure and de facto authority over senior civil servants and senior officers in the military.

(iii) Jean Kambanda acknowledged that he participated in meetings of the Council of Ministers, cabinet meetings, and meetings of prefets where the course of massacres were actively followed, but no action was taken to stop them. He was involved in the decision of the government for visits by designated ministers to prefectures as part of the government's security efforts and in order to call on the civilian population to be vigilant in detecting the enemy and its accomplices. Jean Kambanda also acknowledged participation in the dismissal of the prefet of Butare because the latter had opposed the massacres and the appointment of a new prefet to ensure the spread of massacre of Tutsi in Butare.

(iv) Jean Kambanda acknowledged his participation in a high level security meeting at Gitarama in April 1994 between the President, T. Sindikubwabo, Kambanda himself, and the Chief of Staff of the Rwandan Armed Forces (FAR) and others. FAR's support in the fight against the Rwandan Patriotic Front (RPF) and its "accomplices" (understood to be the Tutsi and moderate Hutu) was discussed.

In addition, (v) Jean Kambanda acknowledged that he issued the Directive on Civil Defense addressed to the prefets on 25 May 1994 (Directive No. 024-0273, disseminated on 8 June 1994). He further admitted that this directive encouraged and reinforced the Interahamwe who were committing mass killings of the Tutsi civilian population in the prefectures. Jean

Kambanda further acknowledged that by this directive the Government assumed the responsibility for the actions of the Interahamwe.

(vi) Jean Kambanda acknowledged that before 6 April 1994, political parties in concert with the Rwandan Armed Forces organized and began the military training of the youth wings of the MRND and CDR political parties (Interahamwe and Impuzamugambi, respectively) with the intent to use them in the massacres that ensued. Furthermore, Jean Kambanda acknowledged that the Government headed by him distributed arms and ammunition to these groups. Additionally, Jean Kambanda confirmed that roadblocks manned by mixed patrols of the Rwandan Armed Forces and the Interahamwe were set up in Kigali and elsewhere as soon as the death of President J.B. Habyarimana was announced on the radio. He also acknowledged the use of the media as part of the plan to mobilize and incite the population to commit massacres of the civilian Tutsi population. That apart, Jean Kambanda acknowledged the existence of groups within military, militia, and political structures which had planned the elimination of the Tutsi and Hutu political opponents.

(vii) He acknowledged that, on or about 21 June 1994, in his capacity as Prime Minister, he gave clear support to Radio Television Libre des Mille Collines (RTLM), with the knowledge that it was a radio station whose broadcasts incited killing, the commission of serious bodily or mental harm to, and persecution of Tutsi and moderate Hutu. On this occasion, speaking on this radio station, Jean Kambanda, as Prime Minister, encouraged the RTLM to continue to incite the massacres of the Tutsi civilian population, specifically stating that this radio station was "an indispensable weapon in the fight against the enemy."

(viii) Jean Kambanda acknowledged that following numerous meetings of the Council of Ministers between 8 April 1994 and 17 July 1994, he as Prime Minister, instigated, aided and abetted the Prefets, Bourgmestres, and members of the population to commit massacres and killings of civilians, in particular Tutsi and moderate Hutu.

Furthermore, between 24 April 1994 and 17 July 1994, Jean Kambanda and Ministers of his Government visited several prefectures, such as Butare, Gitarama (Nyabikenke), Gikongoro, Gisenyi, and Kibuye to incite and encourage the population to commit these massacres. He congratulated the people who had committed these killings.

(ix) Jean Kambanda acknowledged that on 3 May 1994, he was personally asked to take steps to protect children who had survived the massacre at a hospital, but he did not respond. On the same day, after the meeting, the children were killed. He acknowledged that he failed in his duty to ensure the safety of the children and the population of Rwanda.

(x) Jean Kambanda admits that in his particular role of making public engagements in the name of the government, he addressed public meetings, and the media, at various places in Rwanda directly and publicly inciting the population to commit acts of violence against Tutsi and moderate Hutu. He acknowledged uttering the incendiary phrase which was subsequently repeatedly broadcast, "you refuse to give your blood to your country and the dogs drink it for

nothing" (Wima igihugu amaraso imbwa zikayanywera ubusa).

(xi) Jean Kambanda acknowledged that he ordered the setting up of roadblocks with the knowledge that these roadblocks were used to identify Tutsi for elimination, and that as Prime Minister he participated in the distribution of arms and ammunition to members of political parties, militias and the population knowing that these weapons would be used in the perpetration of massacres of civilian Tutsi.

(xii) Jean Kambanda acknowledged that he knew or should have known that persons for whom he was responsible were committing crimes of massacre upon Tutsi and that he failed to prevent them or punish the perpetrators. He admitted that he was an eye witness to the massacres of Tutsi and also had knowledge of them from regular reports of prefets, and cabinet discussions.

THE SENTENCE

In order to verify the validity of the guilty plea, the Chamber asked Kambanda: (i) if his guilty plea was entered voluntarily, freely and knowingly, without pressure, threats, or promises; (ii) if he clearly understood the charges against him as well as the consequences of his guilty plea; and (iii) if his guilty plea was unequivocal; in other words, if he was aware that the said plea could not be refuted by any line of defense[6]. Kambanda replied in the affirmative to all these questions. On the strength of these answers, the Chamber found Kambanda guilty on the six counts brought against him and sentenced him to life in prison. In determining the sentence, the Trial Chamber took note of Rwandan law and its own Statute, which proscribes the death sentence. The Trial Chamber issued its Judgment and Sentence on 4 September 1998.

Both Kambanda and his attorney, Michael Inglis, were surprised and disappointed by the court's life sentence. Inglis had sought a sentence of two years for Kambanda and said he thought his client might receive between ten and fifteen years. The defense lawyer argued that the former prime minister had been forced to take office and was merely a puppet who was trapped and acted under duress with diminished responsibility.

Kambanda's defense counsel offered three factors in mitigation: Kambanda's plea of guilty; his remorse, which he claims is evident from the act of pleading guilty; and co-operation with the Prosecutor's office. The Prosecutor confirmed that Kambanda had extended substantial co-operation and invaluable information to the Prosecutor. The Prosecutor had asked the Trial Chamber to regard as a significant mitigating factor not only the substantial co-operation so far extended, but also future co-operation when Jean Kambanda testifies for the prosecution in the trials of other accused. The Plea Agreement signed by the parties contained no promises with respect to sentence. That is solely at the discretion of the Trial Chamber.

According to the Prosecutor, Kambanda had expressed his intention to plead guilty immediately upon his arrest and transfer to the Tribunal, on 18 July 1997. Kambanda declared in the Plea Agreement that he had resolved to plead guilty even before his arrest in Kenya and that his prime motivation for pleading guilty was the profound desire to tell the truth, as the truth was the only way to restore national unity and reconciliation in Rwanda. Kambanda

condemned the massacres that occurred in Rwanda and considers his confession as a contribution toward the restoration of peace in Rwanda.

The Chamber maintained, however, that Jean Kambanda had offered no explanation for his voluntary participation in the genocide; nor had he expressed contrition, regret or sympathy for the victims in Rwanda, even when given the opportunity to do so by the Chamber, during the hearing of 3 September 1998. Both the Prosecution and Defense had urged the Chamber to interpret Kambanda's guilty pleas as a signal of his remorse, repentance and acceptance of responsibility for his actions. They also requested the Chamber to favorably consider that Kambanda's guilty plea had also occasioned judicial economy, saved victims the trauma and emotions of trial, and enhanced the administration of justice.

The Trial Chamber, however,was apparently unmoved by these arguments. It stressed that the principle must always remain that the reduction of the penalty stemming from the application of mitigating circumstances must not in any way diminish the gravity of the offense. It noted that under Rwandan law, Kambanda would have qualified for the death sentence, and Rwandan law would not have permitted any leniency.

On 7 September 1998, Kambanda's defense attorney filed an intent to appeal his sentence to the five judge Appellate Chamber, which the ICTR shares with the ICTY[7]. In late September, Kambanda wrote a letter to the clerk of the ICTR accusing the Tribunal of failing to protect his family as it had promised. He also released his lawyer, Inglis, accusing him of having failed to properly prepare a defense[8].

CONCLUSION

Kambanda's appeal for a review of his sentence will have to be prepared by another attorney and will most probably be reviewed by the Tribunal Appellate Chamber. The review will place the judges in a difficult position. On the one hand, they might like to be able to offer those who confess and cooperate with the Tribunal the incentive of a reduced sentence. On the other hand, the Tribunal's and the UN's relationship with Rwanda's RPF-led government has been strained from the start. Rwandan officials have complained about the Tribunal's slow pace and its inability to sentence to death those most responsible for the genocide. Should the Appellate Chamber decide to reduce former Premier Kambanda's sentence from the Tribunal's maximum of life in prison, the Rwandan government and many Rwandan citizens will become even more resentful.

Regardless of the final determination of sentence, Kambanda's extensive confession concerning his government's intentional policy of genocide constitutes the fundamental fact upon which future ICTR prosecutions will rest. His confession also destroys the creditability, if it existed, of revisionist historians, who claim a genocide never took place.

Notes

1. For background to the ICTR, see Paul J. Magnarella, "Judicial Responses to Genocide: The International Criminal Tribunal for Rwanda and the Rwandan Genocide Courts,"

African Studies Quarterly, Vol. 1, Issue 1, n. pag., (May 1997). Online. Internet. Available http://web.africa.ufl.edu/asq/

2. Ann M. Simmons, "Rwandan Ex-Premier Gets Life Term," Los Angeles Times, 5 September 1998, P. A4, Lexis-Nexis News File.
3. The facts in this section come from: THE PROSECUTOR VERSUS JEAN KAMBANDA, Case no.: ICTR 97-23-S, JUDGMENT and SENTENCE (ICTR, 4 Sept. 1998).
4. "Rwanda: Top Figures of Former regime Arrested," ICTR/INFO-9-2, 18 July 1997, Inter Press Service; "Rwanda-UN: Tribunal Nabs Former Prime Minister, Six Others," 18 July 1997, Lexis-Nexis News File.
5. The information in this section comes from: THE PROSECUTOR VERSUS JEAN KAMBANDA, Case no.: ICTR 97-23-S, JUDGMENT and SENTENCE (ICTR, 4 Sept. 1998).
6. Ibid.
7. ICTR Update No. 12, 10 Sept. 1998, Arusha, TZ.
8. Agence France Presse, "Rwandan Ex-Premier Slams UN War Crimes Tribunal Over Lack Of Protection," 24 Sept. 1998, Lexis-Nexis News File.

Can the US State Department Surrender Rwandan Fugitives to the UN Criminal Tribunal?

PAUL J. MAGNARELLA

INTRODUCTION

In an Order filed on 7 August 1998 in the US District Court for the Southern District of Texas, Laredo Division, Judge John D. Rainey ruled that Rwandan fugitive Elizaphan Ntakirutimana is properly extraditable to the UN International Tribunal for Rwanda (ICTR)[1]. Judge Rainey's Order reversed a 17 December 1997 ruling by Magistrate Marcel Notzon, who had held that the executive agreement supported by congressional legislation "enabling" the US government to surrender or extradite indicted fugitives to the ICTR was unconstitutional and that the evidence in support of the charges against Mtakirutimana did meet the probable cause standard[2].

Allegedly, Ntakirutimana, the elderly former pastor of a Seventh-Day Adventist Church in Rwanda's Kibuye Prefecture, had conspired with and assisted Hutu militias in the murder of hundreds of his own Tutsi parishioners, who had sought refuge in his church during the height of the genocidal rampage in Rwanda on April 16, 1994. Shortly thereafter, Ntakirutimana allegedly led bands of armed Hutu into the countryside of the Bisesero region to hunt down and kill those Tutsi who had survived the earlier attack. He subsequently left Rwanda, eventually coming to the US in December 1994 where he joined one of his sons, an anesthesiologist living in Laredo, Texas.

As a result of its investigations, the ICTR indicted Ntakirutimana on 20 June 1996 and again on 7 September 1996 on charges of genocide, conspiracy to commit genocide, crimes against humanity, and serious violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II thereof.

After the ICTR's indictment of Ntakirutimana and its request for his surrender were properly certified by the US Ambassador in the Netherlands (the location of the ICTR's chief prosecutor) and transmitted to the US Secretary of State, FBI agents arrested the former pastor in Texas on September 26, 1996. He remained in jail from that date until his release on December 17, 1997. Former U.S. Attorney General Ramsey Clark, who serves as defense counsel for Ntakirutimana, claims the ICTR is illegal and that his client is falsely accused.

Ntakirutimana's release embarrassed the U.S. government. While the U.S. was encouraging, even pressuring, African countries to transfer Rwandan suspect over to the ICTR, one of its own courts had freed the only Rwandan indictee in US custody. Determined to correct this situation, the US government refiled its request for surrender on 29 January 1998, seeking

Paul J. Magnarella is Professor of Anthropology and Legal Studies, University of Florida. He currently serves a Special Counsel to the Association of Third World Studies.

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review by an Article Three judge in the Laredo division. The court granted the government's request for review and issued an arrest warrant for Ntakirutimana on 26 February 1998.

In his August 1998 Order, Judge Rainey concluded that the Government's second request for the surrender of Ntakirutimana was properly before the court. He concluded that, given the nature of extradition proceedings, res judicata would be inappropriate; the second request would be considered de nova; and the previous magistrate's opinion would not be dispositive[3].

Contrary to Magistrate Notzon, who maintained that extradition could be executed only under the terms of a valid treaty, Judge Rainey held that the US Constitution does not require a treaty for extradition; the Supreme Court has repeatedly stated that extradition may be effected either by treaty or by statute; allowing surrender pursuant to either treaty or statute is consistent with the Constitution's provision that treaties and statutes are entitled to equal dignity as the supreme law of the land; and the Executive's power is at its highest when his actions are approved by Congress, as they were in this case[4].

With respect to the issue of probable cause, the judge held that the Government's supplemental declaration offering more detailed and corroborating evidence of the alleged crimes, as well as an explicit explanation of the conditions under which the evidence was gathered was sufficient to establish probable cause to sustain the charges in the Tribunal's indictments[5].

Consequently, the Court certified to the US Secretary of State that Ntakirutimana may properly be surrendered to the ICTR, and ordered that Ntakirutimana be arrested and detained. His transfer, however, was delayed for thirty days to provide his counsel an opportunity to file a habeas petition. In September, Ntakirutimana's counsel told this writer that he had filed such a petition. Hence, the final outcome of this case remains to be determined.

Nevertheless, ICTR Registrar Agwu Ukiwe Okali was buoyed by Judge Rainey's decision. He publicly thanked the US Government for its efforts to cooperate and render judicial assistance to the ICTR[6].

Notes

1. In the Matter of Surrender of Elizaphan Ntakirutimana, U.S. Dist. Ct. Southern Dist. of TX, Laredo Div., Civil Act. No. L-98-43. (7 Aug. 1998).
2. In the Matter of Surrender of Elizaphan Ntakirutimana, U.S. Dist. Ct. Southern Dist. of TX, Laredo Div., Misc. No. L-96-5 (17 Dec. 1997). For a discussion of this ruling, see Paul J. Magnarella, "Is US Cooperation with the UN Criminal Tribunal for Rwanda Unconstitutional?" African Studies Quarterly Vol. 1, Issue 4 (1998). Online. Internet. Available http://web.africa.ufl.edu/asq/v1/4/6.htm. For background to the ICTR, see 79. "Judicial Responses to Genocide: The International Criminal Tribunal for Rwanda and the Rwandan Genocide Courts", African Studies Quarterly Vol. 1, Issue 1, (1997). Online. Internet. Available http://web.africa.ufl.edu/asq/v1/1/2.htm
3. In the Matter of Surrender of Elizaphan Ntakirutimana, p. 6.
4. Ibid., p. 17. The Court relied on such cases as: Grin v. Shine 187 US 181 (1902); Valentine v. United States 299 US 5 (1936); United States v. Rauscher 290 US 276 (1933); United

States v. Walczak 783 F. 2D 852 (9th Cir. 1986); Dames & Moore v. Regan 453 US 654 (1981).

5. In the Matter of Surrender of Elizaphan Ntakirutimana, pp. 32-52.
6. "U.S. praised for Surrendering Rwandan Genocide Suspect," Xinhua News Agency (6 Aug. 1998), Lexis-Nexis News File.

BOOK REVIEWS

Women in Africa and the African Diaspora. 1996. Rosalyn Terborg-Penn and Andrea Benton Rushing, eds., Washington, D.C.: Howard University Press. 286 pp. $17.95 paperback.

Women in Africa and the African Diaspora is an eloquently illuminating addition to the thin bibliography on black feminism. In this book, eighteen essays by eminent black female scholars explore important segments of the black woman's life and give a succinct judicious and fair-minded portrait of the trials, tribulations, and accomplishments of women of African ancestry in Africa itself, and in the diaspora. Split into three sections, the story that emerges weaves around themes such as the theory and method for the study of black feminism, the black woman's status and her role in her native African society, the achievements of the African diaspora women in various fields, the sometimes terrifying agonies of black women in various walks of life, and a comparative study of the images of black women in Western literature.

The Western reader, used to judging other peoples not by their own standards but by what Caucasians deem appropriate, would find the essays in Part II of the book particularly intriguing. This section of the book is allocated to Africa, a continent whose history has for so long been distorted, misinterpreted, and misunderstood in Western circles. Whether it is Niara Sudarkasa's piece on "The 'Status of Women' in Indigenous Africa Societies," Andrea Benton Rushing's essay "On Becoming a Feminist: Learning From Africa," or the jointly produced piece by Harriette Pipes McAdoo and Miriam K. Were on "Extended Family Involvement in Urban Kenyan Professional Women," the results are illuminating portrayals of the least-understood, but often-condemned aspects of African culture.

Taking advantage of various research tools in their favor, tools such as Rushing's ability to read the Yoruba language, the time spent among the Yorubas of Western Nigeria, personal contacts with African feminists and an inside understanding of their female culture, the contributors interrogate some common, but erroneous assumptions of Western feminists about the African woman. Rushing's study, in fact, reveals striking similarities in the African, African-American, and Haitian women's "combination of fierce dedication to their children, dawn-to-dark work days, strong religions faith, and mouths that were...weapons" (p.121). She discusses the "matrilineal, matrifocal" culture of the Akan-speaking people of Ghana and reveals the powerful role of the Queen Mother, the economic power of often-unschooled market women and the political leverage it gave them (p.123), and uses those examples to dispel the once-fast-held notion that African women were silent drudges who were subjected to bearing many children, to the practice of female circumcision, and to accepting their husbands polygamous privileges unquestioningly.

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Niara Sudarkasa's analysis of the status of women in indigenous African societies reveals that, except for the Islamized societies of sub-Saharan Africa, women were conspicuous in high places in pre-colonial times. She says women in pre-colonial Africa were queen-mothers, queen-sisters, princesses, chiefs, and holders of other offices in towns and villages (p.73). All of the essays dealing with the role of women in traditional pre-colonial Africa agree that African women played far more important roles in the economies of their societies, where many were involved in farming, trade, and craft production, than previously conceived in Europe and America.

The contributors caution against the presumption that black women worked outside the home solely because of economic necessity rather than due to the choice of tradition, the kind of presumption that seems to say that the black woman, like her white counterpart, would choose the role of housewife and mother over that of a working wife and mother. Everywhere, black female and male roles are shown to compliment each other.

Studies in parts III and IV of the book show that the black woman in Africa and in the diaspora had well established rights long before the era of female liberation movements. The idea of giving these women respected rights was not borrowed from Europe, as some analysts have labored to write. The misconceptions about the black family, that became widespread among Europeans and Euro-Americans in the nineteenth century and are still very much alive today have fooled many into studying the black woman from the perspective of the white woman. They failed to take cognizance of the fact that the place of the black woman was not just in the kitchen. Thus in order to give the academic world a rational understanding of the role of the black woman, these lady-scholars took an Afro-centric view of the black woman.

There is a clear explication of certain vital themes in their writings: the impact of slavery and colonialism on women in Africa and the diaspora, the role of women-singers in African American poetry, images of black women in New World literature, African Diaspora women as black culture bearers, and their patterns of social and political interactions. There is no denial in the book of the disadvantages that black women suffered as a consequence of the social system that was rooted in centuries of contact with the white man as evidenced in the transatlantic slave trade. That trade laid the groundwork for European imperialism and forces of modernization which for so long denied black women equal access to formal education.

The book is a lucid popularization of a dramatic and enlightening story; the story is presented both accurately and honestly, critically as well as understandingly. The book certainly offers informative reading for university undergraduates and the general public. Freshmen with little or no backgrounds in Africana studies as well as lay readers shall be attracted not only by the intrinsic interest of the story, but by the interpretations and conclusion. At the college level, the book can be used not only to augment lectures in introductory courses, but also as a focal point for a more detailed approach to topics in Black Studies.

Fuabeh P. Fonge
Department of History
North Carolina A&T State University

Lethal Aid: The Illusion of Socialism and Self Reliance in Tanzania. 1997.Severine M. Rugumamu. Trenton, NJ: African World Press. 256 pp. $69.95 hardcover.

Lethal Aid is an important contribution to the study of development assistance and, in particular, the resultant failures and pernicious side-effects of this assistance. Using the experience of Tanzania, an East African nation that historically has languished at the bottom of world economic development tables, Severine Rugumamu contends that aid must be understood within the geo-political context. Rugumamu presents four main arguments: first, "foreign aid cannot be understood outside of the global political context"; second, the aid regime began not as long-term aid to the south, but rather as short-term aid to post-war Europe; third, the Cold War created not only security needs and a concomitant competition for allies, but a related competition to assert the supremacy of economic systems; fourth, recipients of aid, hardly innocents, had ambitions of their own in accepting assistance (pp.7-10). The net effect, however, according to Rugumamu, was a culture of dependence that "eroded the self-confidence, creativity and pride of the citizens and the leaders and, in the process, saw donors usurp the role of managing national development policy" (p.10).

This usurpation comprises the first facet of lethality that Rugumamu's title alludes to. *Lethal Aid* draws from structural power theory which asserts that power relations in the international system are based on a hierarchy which is sub-divided into the powerful and rich and the weak and poor, and secondly that the inequalities and asymmetries of power are necessary conditions for control (p.26). In turn, this leads to three observations by Rugumamu: first, aid politics are governed by the differentials in power among actors; second, foreign aid is, and has been, a major tool of statecraft used by actors to advance their (and not necessarily the recipients') interests; and third, aid recipients are not pawns in a game, but retain agency and rationality as they pursue domestic interests (pp. 87-88). It is this conjunction of donor motivations for control, particularly during the Cold War, and the need on the part of domestic elites for resources with which to bolster their positions, that rendered aid "lethal".

The state of Tanzania emerged from independence institutionally and organizationally weak and, in particular, short of skilled manpower (p.96). This shortage meant that the government was unable to independently analyze sectoral needs and oftentimes need assessments were carried out by ill-informed donors. On top of this, past experiences with the conditionalities of bilateral aid laid plain the real costs of accepting assistance (p.121). Realizing the weakness of the state and its relative powerlessness, Tanzania adopted the Arusha Declaration as a statement of Tanzania's national philosophy. The movement it engendered, known as Ujamaa, was based on socialism and self-reliance. Alhough well-meant, subsequent implementation decisions that proved disastrous in tandem with economic crises left Tanzania poorer than before and more dependent on aid. The net result was that Tanzania was less able to resist the more pernicious effects of the aid regime at the same time as it was increasingly dependent upon it. The effect, according to Rugumamu, was an inexorable vitiation of the Tanzanian capacity to shape and direct development within its borders (p.200).

Turning to empirical evidence, Rugumamu uses cases studies to underscore this vitiation and to show how development projects were virtually removed from national oversight and run almost exclusively by donors. Looking at projects sponsored by the Norwegian, Danish,

and Swedish international development organizations, he paints a vivid picture of good intentions gone awry.

The first example, the Mbegani fisheries center, funded by Norway, was a "poorly conceived, ill-planned [and] designed project" (p.227). The project was meant to transfer Norwegian fishing expertise to artisanal fishers of the Tanzanian coast. Unfortunately, the "Norwegian experts lacked both the necessary background information about the fisheries industry in Tanzania and the expertise to determine appropriate solutions" (p.227). The Norwegians brought with them facilities and expertise appropriate for modern refrigeration practices, even though they were working with fishers who relied on smoking and drying fish. In the end, the Mbegani center was "perceived by neighboring artisanal fishers as a foreign high-technology island in their midst with no marked economic impact on their lives" (p.228).

Rugumamu's second example, the Sokoine University of Agriculture, funded by Denmark, was meant to provide training in livestock methods and animal husbandry practices appropriate for Tanzania. Yet from the outset, the Danish experts held sway due to a lack of local participation in planning the college and the related lack of local experts who could translate Tanzanian livestock practices into appropriate curricula (p.232). The result was an ill-fitting adaptation of Danish curriculum to local conditions that never fully worked and took tremendous resources to sustain.

As in Mbegani, Sokoine was dominated by donors until assistance was phased out, at which time the government found itself with a school that had never met its intended role and was too expensive to sustain intact (p.244).

The last of Rugumamu's cases concerns the Tanzanian Central Bureau of Statistics (TAKWIMU) and the assistance it received from Sweden. In this example, most of the project goals were met, and the Bureau did vastly improve its scope and capability, but even in this "success" story, we see the seeds of disaster. For example, although the bureau did increase its vehicle fleet for data collection, this increase was almost entirely funded by the Swedes and little provision was made by TAKWIMU for the replacement of aging vehicles, to say nothing of equipment or retiring staff. Clearly these gains, originally purchased by the Swedes, were going to be hard to maintain. The point is that progress can be had with sustained donor interest, but without significant local participation and investment this progress proves illusory once donor support is withdrawn.

Rugumanu concludes that the only viable way for Tanzania, and other states in similar predicaments, to avoid the slow erosion of national sovereignty is by turning to a strategy of self-reliance (p.277). As Rugumamu demonstrates, aid dependence slowly erodes national capabilities to govern and rule and undermines moral authority. States that wish to avoid this diminution have the option to delink and pursue a self-reliance strategy. He argues that this may already be happening by default.

Sub-Saharan Africa (excluding South Africa) comprises just 1.5 percent of world trade (p.270). Even though the self-reliance strategy was a flop in Tanzania, Rugumamu argues, this should not dissuade us from the intrinsic merits of the strategy (p.269). If dependent states want to avoid or lessen the toxic effects of the international aid regime, Rugumamu's book provides an object lesson on some of the mistakes to avoid. For scholars of East Africa and development

administration, *Lethal Aid* is a noteworthy treatment of the historical, political, and economic aspects of development and how it has so often failed to deliver on its promises.

Christopher Johnson
Department of Political Science
University of Florida

South Africa Limits to Change: The Political Economy of Transformation. 1998. Hein Marais. London and New York: Zed Press. 284 pp. $25.00 paperback.

Many observers of South African politics are dismayed by the economic policies recently adopted by the African National Congress (ANC) government. These analysts fear that the promise of the struggle has been sacrificed to a market-oriented economic policy that is tailored to the demands of national and global capital. In other words, the ANC has been captured by capital.

Arguing in this vein, Hein Marais offers an analysis of the process of transformation in two parts. The first portion of his book outlines South Africa's social and economic structure under apartheid, and discusses the vicissitudes of the popular struggle against that system. The second portion of the book builds on this foundation to argue that the ANC's doomed strategy led the party to dispense with an emphasis on state-led growth and social expenditure that was at the core of the Reconstruction and Development Program (RDP). The promise of the RDP was rejected in favor of the pro-business Growth, Employment and Redistribution (GEAR) program, betraying the ANC's core constituency, the working class poor.

Marais's discussion of South African political economy serves as a fairly standard "radical" analysis of the unholy alliance between South African capital and the apartheid state. Not much is new here, although it does serve as a helpful condensed summary of this approach. In contrast, Marais's interpretation of popular resistance offers a relatively new scholarly trend that might be called the "radical revisionist" history of the struggle. In this view, the ANC has consistently betrayed the black working class, its true constituency. Rather than emphasizing class-based mobilization, the ANC has relied on a nationalist approach that has relegated the labor movement to a secondary role, and encouraged a futile "insurrectionism," or what Robert Fine has called "boycottism."

The ANC certainly deserves some pointed criticism. There is no shortage of histories that "celebrate" the organization, lionize its leadership, and generally rely on sycophancy rather than historical analysis. With the benefit of hindsight, many of the ANC's tactical and strategic blunders become clear. Marais points out, for example, that resistance in the 1950s remained fragmented, and that the ANC failed to capitalize on popular militancy in this period. Marais also criticizes the ANC for its decision to embark on armed struggle in the 1960s. This position makes less sense, resting in part on the very dubious claim that the ANC might instead have moved into a Gramscian "War of Position," which would have entailed an attempt to create a proletarian mass movement. Virtually all discussions of the 1960s suggest that the state's

extraordinary repression in this period squelched even hints of public dissent, so a "War of Position" was not really an option. Marais's brief discussion of the 1970s emphasizes the importance of trade unions early in the decade, and generally downplays the importance of Black Consciousness ideology.

In his account of the 1980s, Marais is most critical of the ANC and the loosely allied United Democratic Front (UDF. He argues that the ANC and the UDF failed to build on the growing strength of the labor movement in this period, relying instead on a rudderless strategy of insurrectionism that had no real hope of transforming South African society. By the late 1980s, Marais argues, the UDF/ANC alliance had achieved only a stalemate in which it was forced to broker a settlement with the National Party and white capital. Overall, this assessment reflects a trend in radical scholarship that has emerged since the 1990s that seeks to imagine an alternative past in order to create an alternative present. This view seems to suggest that if the ANC had been more committed to working class mobilization during the resistance years, it might have been possible to achieve a more sweeping transformation, even socialism, in South Africa.

This analysis sets the stage for the second portion of Marais's book, in which he discusses the formation of a "class compromise" between the ANC and capital. In this view, because the ANC had failed to build a sufficiently strong and disciplined popular movement, it was unable to wrest control of the economy from white capital. Instead, the ANC was forced to focus its efforts on control of the state and to appease capital. This balance of forces led the ANC to reject its initial strategy of "growth through redistribution" as outlined in the early versions of the RDP. Instead, the ANC bent over backwards to accommodate the demands of national and global capital. These interests forced the ANC to reject the ambitious social policies of the RDP in favor of the neo-liberal market based policies of GEAR, even though most analyses suggested that such a program would do little to improve the rampant social inequalities created by apartheid capitalism. Further, Marais argues, the GEAR policy of export-orientation is likely to fail in its own right because of South Africa's weak global economic position.

Having set out the manner in which the ANC has adopted an economic policy that shuts out the working class, Marais spends the final chapters of the book discussing how political forces might be arrayed to compel the ANC government to adopt policies that put the working class in the favored position rather than capital.

There is little doubt that the ANC has moved away from the redistributive orientation of the RDP, and even further away from the social democratic vision of the Freedom Charter. The critical question is why did it make the shift? Marais doesn't offer a complete explanation: "It is difficult to pinpoint the factors that led to the conversion of ANC economic thinking to orthodoxy" (p. 150). Yet this seems to be a critical question. Why would senior ANC leaders, most of whom have spent their entire lives fighting the social, political, and economic injustices of apartheid, turn about-face and abandon this cause? If GEAR serves the interests of capital at the expense of the working class, then why did the ANC adopt it?

Marais offers two major possible explanations, but neither seems satisfactory. In one section he describes an elaborate program of neo-liberal indoctrination mounted by South African corporate conglomerates and international actors led by the International Monetary Fund and the World Bank. Marais explains the shift to orthodoxy as resulting from the

"bewildering assortment of seminars, conferences, workshops, briefings, international 'fact-finding' trips'... financed by business and foreign development agencies" (p. 150). He also offers a related argument that leftists in the ANC could not match the technical savvy of the pro-business elements inside and outside the organization. This meant that the leftists could not defend the RDP against the blizzard of technical data, models, and forecasts offered by the advocates of neo-liberalism. A more compelling argument might simply be that the ANC leadership concluded that South Africa's serious economic problems, precarious international position, and the sometimes shrill fears expressed by domestic capital made it impossible to go ahead with the statist orientation of the RDP without raising the threat of massive capital flight and shrinking trade. Marais dismisses this view as too pat, relying on the claim that there was simply not enough technical expertise in the Department of Economic Policy to back the RDP.

The key problem with Marais's account of popular opposition is that even if the reader accepts his criticisms of the ANC during the struggle, there is no real attempt to suggest viable alternatives. If we accept, for example, the claim that the UDF and the ANC led a more or less pointless insurrectionist movement in the 1980s (and it is far from clear that such a characterization fits), one is left wondering what alternative Marais would have endorsed. A close reading of this portion of the book reveals some hint of the alternative strategy that Marais might have prescribed. He generally heaps praise on the trade union movement for its role in the resistance struggle, at times implying that it offered a model for other organizations, but he never makes it clear if this is in fact his argument, and if so, how exactly the diverse elements of popular resistance (e.g. churches, soccer clubs, student groups) might have used the model of shop-steward based trade unions while also facing the might of the apartheid security apparatus.

Marais is more concrete in his discussion of the ANC's economic policy, offering a suggestion that parts of the RDP can be used as the starting point for a new "progressive" agenda to bring the ANC back to its working-class roots. But Marais's failure to offer a satisfactory explanation of the rejection of the RDP puts this strategy in doubt. If the ANC leadership has already decided that the RDP is economically unfeasible, then it won't do much good to put it at the center of a progressive agenda. Marais does not attempt to establish whether the RDP is in fact a feasible approach for South Africa. More troubling is Marais's hint that some form of "inward-looking industrialization strategy" (p. 131) is the most viable alternative to the ANC's export-oriented policy. He never says exactly what this might look like. Nationalization of key industries? Investment in sectors that produce for a domestic market? The reader is left with only hints, such as "progressive macroeconomic and industrial policies" (p. 193). Ironically, Marais's language suggests that he would propose some variant of import-substituting-industrialization (ISI), the very policy that contributed to the chronic economic crises of the South African economy under apartheid.

Many readers will agree with the book's overall theme that the ANC should have been closer to its working class roots during the resistance years, and that since 1990 it has gone too far to accommodate capital while making only modest social investments. But readers will be frustrated by Marais's general reluctance to explicate alternative paths, either historical or contemporary. It is essential that the ANC face penetrating criticisms such as those offered by Marais, but such criticisms won't build houses, improve schools, or provide better health care in

South Africa. What should South Africa do? What can South Africa do? Those are the key questions today.

Brendan Works
Political Science Department
University of California at Berkeley