Pursuing Justice in Africa

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Introduction

Re-centering Justice in African Studies

JESSICA JOHNSON AND
GEORGE HAMANDISHE KAREKWAIVANANE

IN RECENT DECADES, JUSTICE HAS BEEN OVERSHADOWED AS A subject of concern for scholars of Africa by vast literatures centering on rights, crime, punishment, policing, and social order. Given the increasing presence of international justice institutions, such as the International Criminal Court, on the African continent and the remarkable diversity of legal structures of justice, this neglect is striking. Indeed, across Africa complex pluralities of "customary," religious, state, and transnational justice regimes interact on what is often contested terrain.

This volume builds on recent work in sociolegal studies that foregrounds justice over and above concepts such as human rights, legal pluralism, or vigilantism. We do so in an empirical as well as a theoretical sense, asking both what it is that people mean when they invoke "justice" on the ground, and what we might gain as analysts by framing our studies through the lens of justice. We see justice as promising in its expansiveness, its ability to hold together disparate topics, time periods, and locations, and its broad appeal to scholars, policy makers, and ordinary citizens across Africa and beyond. There is an instinctive sense in which justice is greater than human rights and more capacious than law. And yet they are related in practice as they are in (legal) imaginaries. It is in their interstices that the chapters of this volume are located, and the authors work to delineate the specific relevance of justice to their particular concerns. Here, we ask more generally, why justice? What

might we gain and lose by focusing on justice in our efforts to understand the hopes and aspirations of men and women in Africa as they intersect with legal realms?

While the theme of justice has been accorded a somewhat marginal place in African sociolegal studies, it has been central to the field of moral and political philosophy. From Aristotle's musings about what it means to be a just person, through to John Rawls's and other latter-day philosophers' reflections on what a just society might look like, numerous theories of justice have been advanced.[1] "The positions," Robert Solomon notes, "have been qualified, the objections answered and answered again with more objections, and the ramifications further ramified and embellished. But the hope for a single, neutral, rational position has been thwarted every time."[2] It is, however, possible to discern an approach to thinking about justice that has proved to be increasingly dominant in the work of a number of contemporary philosophers such as John Rawls, Ronald Dworkin, and Robert Nozick. This approach seeks to define what a perfectly just society would look like in the abstract and to prescribe the institutional arrangements that are necessary in order to achieve it.[3] This "transcendental institutionalism" can be traced back to the work of Enlightenment thinkers such as Thomas Hobbes, John Locke, and Jean-Jacques Rousseau. However, as Amartya Sen points out, there are two main problems with these theories of justice. First, they are, for the most part, not feasible as it is unlikely that a consensus about the perfectly just society could ever be reached. Second, a theory about the perfectly just society is of no real use when one is more likely to be confronted with a decision between imperfect but realizable options. Sen thus proposes an alternative theory of justice that focuses on the use of reason in deciding the more just of two or more realizable options.

Notwithstanding the insights offered by Sen and his interlocutors, in this volume we take a different approach. Our aim is not to propose an overarching and abstract theory of justice in Africa. The divergent understandings and experiences of justice from across the continent that are captured in this volume cast doubt on the usefulness of such a theory. Instead, we start from the proposition that "justice is inextricably contextual."[4] As Kamari Clarke and Mark Goodale have pointed out, individual and collective decisions about what justice means and how to pursue it are rarely, if ever, made from behind a Rawlsian "veil of ignorance."[5] Considerations about what makes a specific act an injustice, what a just arrangement would be, and how to go about restoring the

balance are all substantially influenced by specific sociocultural, economic, and political contexts. As such, at the center of this volume are real people in concrete circumstances and their quests for justice. The chapters therefore focus on particular actors pursuing specific visions of justice in Africa, and the authors attend to their aspirations, divergent practices, and articulations of international and vernacular idioms of justice. It is for this reason that we refer to the pursuit of justice in the volume title. Pursuing justice claims in Africa, as elsewhere, is necessarily a dynamic and historically situated process. We conceive of justice as something that is striven for rather than a state of being that could ever be taken for granted. Precisely what it is that people strive for when they seek justice cannot be assumed: as the chapters that follow show, aspirations for justice are many and varied, and there is much to be gained from treating justice as the subject of inquiry rather than proceeding as if the contours of justice were everywhere the same. As a result, we do not offer a pithy definition of "justice." One of the key things that connects the various chapters of this volume is a commitment to approaching justice from a position of openness. The authors ask questions such as What is being claimed in the name of justice, and How do people recognize justice or injustice when they encounter them? Within this shared orientation, disciplinary differences remain, and we see the multidisciplinarity of the volume as a further strength.

While our intellectual project differs from Sen's in an important respect, there is one objective we share. Like Sen, the contributors to this volume look beyond the canon of Western moral and political philosophy, seeking to uncover local understandings and practices of justice and to tease out the insights that emerge. As such, the chapters deal with such themes as Baganda debates about the administration of justice (Earle), the influence of *maslaha* (an Islamic concept connoting public weal) among Somali refugees (Ikanda), and Acholi ideas and practices of justice in the wake of a long and bitter civil war (Porter, Macdonald).

Nevertheless, it is not our intention to dismiss more abstract approaches to thinking about justice. The fundamental questions that have driven moral and political philosophers' inquiries into justice are similar to those that have exercised individuals and communities in Africa. These include questions such as, what does it mean to be a just man or woman? What constitutes a just society, and how might we achieve one? How can we come to terms with violent acts and the perpetrators of such acts? The chapters in this volume examine contextually grounded

responses to these fundamental questions about justice. The Muslim sermons Felicitas Becker examines, for example, wrestle with the question of what it means to be a just woman. At the same time, the *maslaha* talks Fred Ikanda investigates are concerned with restoring order after violence, while Olaf Zenker's chapter focuses on South Africa's struggle to create a more just society through the distribution of resources. At times, the writings of Enlightenment thinkers have informed African understandings of justice. It was not uncommon for educated elites to invoke Enlightenment philosophers in their critiques of colonial and postcolonial governments. As Jonathon Earle's chapter shows, classical liberal philosophers, such as Rousseau, shaped the thinking of the Ugandan politician Benedicto Kiwanuka. What all of the chapters in this volume share is a concern to understand what justice means to particular African actors in particular times and places.

Law, Rights, and Justice in Africa

Over the last three decades the field of African sociolegal studies has grown in breadth and depth as scholars have brought the theoretical insights and methodological approaches of their respective disciplines to bear on a range of themes. A central concern of many studies has been to understand the multiple ways in which law has been employed in past and present projects of state construction in Africa. Historical and anthropological studies of the colonial period, for example, demonstrate that law was central both to the constitution of the state and to the assertion of its power. Law, we have learned, was a key symbolic "language of stateness,"[6] while the courts instantiated the state and served as sites where its power was ritualized and performed.[7] Evidence from settler states such as South Africa and Southern Rhodesia (Zimbabwe) demonstrates that the adherence to legalism was actually about expanding, as opposed to constraining, state power.[8] Law was the means by which colonial officials commanded and demanded, empowering them to conscript forced labor, expropriate land, and extract tax. At the same time, they sought to use it to construct a new moral and social world in their African colonies.[9] The manipulation of the law by colonial states extended to efforts to "invent" customary law and co-opt African male elders in order to stabilize colonial governance through "Indirect Rule."[10] In much of this state-focused literature, however, the notion of justice was not subjected to critical reflection. When it did feature, it was used descriptively to refer to the legal system, or metaphorically as a way of talking about the administration of law.

Studies of the (ab)uses of the law by colonial states provoked two key responses. The first was an effort to counterbalance the narrative by showing how law could be appropriated by the ruled. Echoing E. P. Thompson,[11] scholars maintained that despite, and often because of, law's complicity with the colonial project, it was available for appropriation by colonial subjects.[12] The sites where it was administered could be usurped, albeit temporarily, and elaborate performances of state power could be subverted by nationalists who transformed courtrooms into theatres of resistance. However, optimism about the emancipatory possibilities of the legal arena was tempered by studies that showed its limits as a site of agency or resistance. Law, as Richard Abel cautions, is more effective as a shield than a sword.[13] In addition, courtroom victories against repressive authorities often served to expose legal loopholes that were swiftly closed and resulted in even more repressive legislation. The second response issued a caution against adopting a default cynicism toward legal struggles. In her examination of the Botswana Manual Workers Union strikes and litigation between 1991 and 2011, Pnina Werbner shows that the law is not simply an expression of the interests of the powerful. "Notions of fairness and unfairness," she notes, "permeate [workers'] relations with employers, and hence also litigation and negotiation in labor disputes."[14] Similarly, the presiding judges did not simply focus on the facts of the matter and the relevant law. Rather, they considered what was "morally and ethically at stake" in the cases before them, appealing to ideas such as "fairness," "reasonableness," and "legitimate expectations" in their rulings.[15] Taken together, such studies encourage a more nuanced view of the law and its effects in African contexts.

Approaching sociolegal studies from a different perspective, a wave of research on penality published in the 1990s and early 2000s evinced a preoccupation with power, owing, in part, to the influence of Michel Foucault.[16] Drawing on Foucault's work, many of these studies sought to investigate the ways in which power found expression through different penal practices. While some scholars, including Florence Bernault, found Foucault's ideas useful in thinking about the history of penal practices in Africa, several others cast doubt on the relevance of his work.[17] Among other things, they demonstrated that neither the concept of the "carceral archipelago" nor the shift from premodern to modern techniques of punishment, which Foucault distils from European history, map onto the experience of African countries particularly well. As Foucault's hold on the research agenda has waned, alternative

avenues of inquiry have emerged. Taylor Sherman, for instance, calls for new studies of punishment in colonial and postcolonial contexts that are not focused on single institutions or penal practices but instead explore "the interlocking nature of different practices and institutions" and the way they combine to constitute a coercive network.[18] In addition, recent social and political histories of prisons show that they were not necessarily only sites of suffering and death but were often also spaces where productive politics could, and did, emerge.[19]

It is in the research on crime, however, that the multiple ways in which legal language can be mobilized discursively have been brought to the fore most forcefully. Labels like "criminal," "deviant," and "delinquent" have often been deployed by powerful groups to serve their sectional interests. In colonial Mombasa, Justin Willis shows how the criminalization of palm wine was linked to concerns about labor supplies,[20] while Linda Chisholm demonstrates that the deployment of ideas about deviance in relation to white girls in early twentieth-century Natal signified a desire to control female sexuality and channel it in directions that were deemed respectable.[21] Similarly, Nakanyike Musisi notes that the application of the label "bad women" in colonial Uganda partly reflected the anxieties of male elders in the context of rapid social change and the erosion of patriarchal control.[22] As we shall see, the importance of paying attention to the languages of law is a key theme of this volume.

Scholars working in the field of African sociolegal studies have not been able to avoid dealing with the ever-present reality of violence in the legal arena. They have grappled with a range of questions, such as What is the relationship between law and violence? What forms of violence are utilized in the legal arena, and how are they legitimated? Who is targeted by specific acts of violence, and what intended or unintended meanings does such violence carry? Studies of flogging, in particular, reveal how law was used to authorize colonial violence. In colonial Natal, for example, flogging was legally sanctioned and brutally applied, and it served both as a deterrent and a performance of racial power.[23] Nevertheless, it is clear from the research on carceral, corporal, and capital punishment that investing legally sanctioned violence with meaning has never been easy.[24] For one thing, there were often disagreements within the colonial state about appropriate or legitimate levels of violence. This was further complicated by the inevitable discrepancies between the intended and received messages of violence, as well as possibilities for its subversion. Richard Wilson has highlighted the ongoing complexities of violence in

postapartheid South Africa, where the sanctioning of violent retribution continues to invite debate amid ambivalent local claims to legitimacy.[25]

Recognition of the complex uses and meanings of violence has also been central to studies of vigilantism. The fragmented sovereignty of many postcolonial African states, and their inability to command a monopoly of legitimate force, have given rise to the active privatization of violence. However, as Lars Buur and Steffen Jensen point out, the relationship between states and vigilantes need not always be viewed as antagonistic. Vigilantes regularly appropriate state symbols and practices, and they often operate with the tacit approval of state officials.[26] Studies of vigilantism have also paid attention to the "semiotic potential of vigilante violence."[27] As Atreyee Sen and David Pratten make clear, public acts of vigilante violence signify efforts to define the boundaries of the moral community by marking out who or what is deemed to be outside of it.[28] Of particular significance, however, is the more critical way in which the literature on vigilantism has engaged with the concept of justice. It is clear that vigilantism cannot simply be reduced to mob violence, and thus scholars have had to do more work to uncover the moral economies and notions of justice that animate vigilante groups.

It is in studies of transitional justice, however, that the concept of justice has received its most comprehensive treatment in recent years. The many experiments with transitional justice in Africa since the establishment of the South African Truth and Reconciliation Commission (TRC) and the International Criminal Tribunal for Rwanda in the mid-1990s have given rise to a vast literature that examines diverse efforts, at both local and national levels, to deal with the social, political, and economic legacies of large scale atrocities.[29] These studies have examined the retributive, deterrent, and restorative approaches to justice that have informed different transitional justice agendas. In addition, they have paid close attention to the institutions and processes behind them, from innovative Truth and Reconciliation Commissions to self-consciously "traditional" court procedures. More recently, scholars have begun to move beyond the usual sites where "ideas about justice, reconciliation and political participation are . . . instantiated and contested."[30] This shift has seen less conventional spaces, such as refugee camps, prisons, and reeducation camps for demobilized combatants, emerge as important sites of study.[31]

The transitional justice literature has persuasively challenged some of the normative assumptions about justice that have often shaped the

work of aid agencies. One such assumption is that "justice," by which is often meant instituting criminal proceedings against alleged perpetrators of war crimes in domestic or international legal forums, is an unambiguously "good" thing. The decision to forgo the prosecution of apartheid leaders, and to make reconciliation a central objective of the South African TRC, signaled the early questioning of this assumption. The prosecutions initiated by the International Criminal Court (ICC) in Uganda, the Democratic Republic of Congo, and Darfur revealed further tensions between justice and peace in contexts where arms have yet to be laid down or peace is still fragile.[32] In theory, the prosecution of alleged perpetrators of war crimes bears the promise of ensuring peace by acting as a deterrent to others who might be inclined to commit similar crimes. In reality, however, the threat of prosecution has often proved to be an obstacle to achieving peace, as alleged perpetrators have refused to lay down their arms until they are assured of amnesty. Clearly, an analytical framing that posits an opposition between justice and peace relies on a much narrower, not to mention externally determined, conception of justice than we propose in this volume.

The second and related assumption that has been challenged is the view that a liberal notion of justice is universally acceptable and can, therefore, be pursued in any context. The challenges of implementing externally imposed transitional justice mechanisms in areas like Northern Uganda laid bare the fallacy of such universalizing assumptions. This in turn led to a substantial investment by donor agencies, NGOs, and scholars in searching for "locally grounded and socially acceptable" means of dealing with people who have committed violent acts or crimes against the community.[33] It was hoped that these could be incorporated into broader national transitional justice agendas. The most significant effort to employ local idioms as a means of achieving transitional justice was the *gacaca* court system in Rwanda, which was based on a traditional Kinyarwanda practice of "conducting hearings in open spaces in full view of the community."[34] All told, between 2002 and 2012, over 250,000 lay judges tried approximately 120,000 alleged genocidaires in about 11,000 jurisdictions.[35] On the face of it, this concern with uncovering local practices and idioms of justice, such as *gacaca* in Rwanda, as well as *mato oput* in Northern Uganda, seems laudable. However, donor-driven searches for local practices that could be instrumentalized have resulted in rituals being taken out of their original contexts and "reinvented" for new purposes.[36] Building on Paulin Hountondji's work on

ethnophilosophy, Adam Branch has shown that donor-driven efforts in Northern Uganda have given rise to an essentialized view of Acholi traditional justice.[37] This "ethnojustice," he argues, poses the risk of helping uphold the power of a specific social group and legitimizing "a disciplinary social project . . . which imposes the same forms of domination and inequality that gave rise to conflict in the first place."[38] In an evocative phrase, Branch characterizes this as "the violence of ethnojustice."

When talking about justice in Africa, it is impossible to proceed without engaging with human rights. Human rights talk is loud in Africa, and it is often intimately intertwined with aspirations for justice and the expectation that where rights lead, justice will follow. Just as human rights have animated conversations, policy documents, media reports, and NGO programs in Africa, they have also been the subject of a great deal of Africanist scholarship, particularly in the field of legal anthropology. Importantly, the anthropological study of human rights has highlighted the broad reach of this global discourse, as well as illustrating some of the ways in which it has been subjected to transformation as it has come up against particular demands.

Across Africa, from large cities to remote villages, from conflict and postconflict zones to areas with no living memory of mass violence, human rights are discussed, debated, claimed, and rejected on a daily basis. Rights are engaged with in European and local languages, and by women, men, youths, politicians, civil society organizations, and donor representatives. Human rights are understood in myriad ways: embraced at the same time that they are held to account for their neocolonial intent,[39] their disruptive potential, and the sense that they have been pushed too far, undermining the fabric of society and respect for older generations and traditional ways of life.[40] For many "ordinary" African citizens, then, as for some of their leaders, the equation between rights and justice is not unambiguous.

Human rights came to prominence in the legal anthropological literature in the form of seemingly interminable debates weighing the merits of a universalizing schema against the broadly relativist sensibilities of the discipline.[41] Ultimately, the framework of universalism versus relativism proved limiting, and discussions of human rights began to focus on the effects of human rights discourse and practice on the ground, looking at how rights were being claimed, invoked, and put to use in particular settings.[42] This move made plain that human rights could be much more malleable than the earlier approach had allowed; they could be "vernacularized," in Sally Merry's terms, made to bear the imprint of

local understandings and concerns, albeit in a circumscribed manner.[43] This volume maintains an empirical focus on the ways in which African citizens, and other actors operating within Africa, engage with rights, both practically and rhetorically, in their efforts to address particular kinds of injustice.

More recent scholarship in legal anthropology has sought to tease out differences between human rights and justice. Goodale and Clarke thus argue that justice functions discursively "as an ever-receding and ever-shrouded social ideal, rather than as an alternative normative orientation characterized by a set of concrete expectations and practices."[44] They highlight what is perhaps justice's most captivating characteristic: its ability to unite people with disparate concerns and interests in its pursuit; in other words, its motivating force. Parties to disputes can usually agree that they are each seeking justice, that a just resolution to their differences is their shared goal. Of course, what constitutes justice in each situation is a more complicated (and contested) question. Human rights, on the other hand, vernacularized or not, are prescriptive; they exist in relation to a body of documents that has been ratified by governments around the world. Specified in this way they can be politicized, critiqued, and rejected. Perhaps most importantly, human rights are formally defined in advance of the claims that people make, the things that they worry about and aim for. Justice, on the other hand, is not.

Aspirations for justice play out on a number of different scales: as a matter of structural change, or in the realm of interpersonal relationships; as a question of personal ethics, religious beliefs, or individual conduct; as well as a concern for governments, militaries, and national and international criminal courts. The very notion of aspirations for justice indicates that justice exists on a plane with hope. There is a prospective quality to justice talk, just as there is to hope;[45] both contain within them a vision of the future, and both provide motivation for action that seeks to shape that future. Indeed, this could be said to be where justice's political potential lies.

The chapters in this volume investigate these varied aspirations for justice across Africa and the ways they have been articulated and enacted both in the recent and the more distant past. In part I of the volume, the chapters attend to the ways in which ideas about religion and morality shape individual and collective quests for justice. In so doing they also illuminate local languages of justice, which open the door to achieving a nuanced understanding of how individuals conceive of justice in Africa.

Part 2 of the volume is devoted to the theme of gender justice in Africa. The chapters in this section explore some of the ways in which women, girls, and sexual minorities seek recourse in the face of grave injustices. In addition, they cast light on the multiple tensions that the search for gender justice can provoke. In Part 3, the focus turns to the question of resource injustice in Africa and efforts to resolve it. These chapters tease out the complex nexus between justice and conflict. In what follows we lay out the key themes of the volume in more detail and introduce the individual chapters.

Morality, Religion, and the Languages of Justice

In large part, justice is of interest to scholars in the field of sociolegal studies because it combines legalism and morality, and research focusing on the relationship between morality and justice in Africa has a distinguished history, particularly in the work of Max Gluckman.[46] Gluckman's ethnographic engagement with Barotse law in Northern Rhodesia (Zambia) led him to write explicitly about the proximity of morality and justice, and about the ways in which those charged with administering the law strove to navigate a complex moral and legal landscape. Famously, he introduced the figure of the "reasonable man" to gain purchase on exactly how they did this, arguing that judges employed the concept of the reasonable man in order to weigh the cases before them against standards for the reasonable behavior of people occupying particular social positions: as reasonable brothers, sisters (reasonable men were not always male), uncles, aunts, parents, headmen, and so on. Crucially for Gluckman, "the upright man is implicit in the reasonable man,"[47] and thus considerations of moral judgment and comportment entered into judges' decisions. Indeed, as Pnina Werbner has recently pointed out, the concept of the reasonable man is misunderstood if it is "taken as a substantive description of a type of person rather than as a principle of practical ethical judgment."[48] It is also key to grasping how Barotse judges dealt with changing circumstances under colonial rule, which were reflected in shifting expectations for reasonable behavior.

For Gluckman, it was highly significant that concepts like "reasonable," "right," and "duty" were flexible in a way that provided leeway to interpret legal rules in the light of historically shifting moral and ethical considerations. He argued that the flexibility of linguistic terms like these, which blend the legal and the moral, allowed logical arguments to be built that served to "import justice into judgement."[49] Gluckman

insisted on the need to pay careful attention to vernacular terms while at the same time seeking to grasp their specificities through comparative efforts that necessitated the use of English-language legal categories and analytical terms. In the context of a volume that brings together studies from across the African continent in an effort to advance understandings of justice that transcend particular settings, it goes without saying that we require a language of justice that can travel. Nevertheless, African languages of justice are a fertile source of conceptual inspiration for our contributors.

The words employed to refer to concepts of rights and justice in African languages cover different semantic fields, and paying attention to these can be instructive, not least in bolstering Gluckman's claims as to the proximity of justice and morality. In the Chichewa/Chinyanja language, widely spoken in Malawi as well as in parts of Zambia and Mozambique, "justice" finds a ready and somewhat uncontroversial translation in the word *chilungamo,* which is derived from the verb *kulungama,* to be righteous, honest, and fair, as well as to be straight or upright. Human rights, on the other hand, have taken hold by way of the less straightforward coinage, *ufulu wachibadwidwe,* "birth freedom" or the "freedom one is born with," since the transition to multiparty politics in the mid-1990s. The individualizing use of "freedom" (*ufulu*) for "right" has had a narrowing effect on the kinds of claims that can be convincingly made in the Chichewa/Chinyanja language of human rights, particularly when combined with an emphasis on political and civil rights, however understandable the latter may have been at the dawn of the multiparty era. As Harri Englund has argued, when rights are individual freedoms, "obscured is the fact that people generally pursue freedoms from unequal positions."[50] Englund's discussion can be read alongside Kathleen Rice's recent examination of Xhosa terms for human rights, which include *irhayti,* a "Xhosaization of the English '[human] right.'"[51] This new coinage is apparently necessary in order to capture the values of "autonomous action and equality as parity" (35),[52] which, while seemingly central to the English language concept of human rights, are not contained within the vernacular term *amalungelo,* "a socially embedded and relational form of rights" (29).[53] By contrast with Chichewa/Chinyanja, in certain other African languages, rights have found more ready cognates, while translations for justice have proved difficult to pin down. This is the case in Kiswahili (see Becker's chapter in this volume and below).

Mark Hunter has offered similar analysis of the isiZulu term for "rights," also *amalungelo,* which invites comparison with the Chichewa/Chinyanja rendering of "justice." *Amalungelo* is derived from the verb *ukulunga,* meaning "to be right" or "to be in order." Hunter cites a dictionary definition of *lunga:* "Get or be in order, fit correct, be as it should be . . . Be morally good, be righteous."[54] He goes on to suggest that isiZulu invocations of rights thus speak to "historically embedded moral claims that do not rest on inalienable bodily traits";[55] in the realm of gender rights, he argues that these thus "always come together with gendered expectations of 'rights and wrongs.'"[56] While the Setswana term *tshiamo* combines reference to both "fairness" and "justice,"[57] the Shona word for "justice," *ruenzaniso,* refers to the act of balancing or weighing two sides of a story. Shona folktales dealing with the theme of justice thus praise the abilities of shrewd adjudicators whose ability to balance cases frustrates the unscrupulous. These very languages of rights and justice, infused as they are with moral considerations, almost render Gluckman's perceptive arguments about the proximity of law and morality redundant: more so than English, these African languages, in different ways, make the shared terrain of morality and justice explicit.

African languages of rights and justice draw our attention to the complex conceptual terrain that we are entering into, where neat distinctions between what is legal and what is morally right have to be created rather than assumed. Rights and justice share a semantic field with notions of righteousness, fairness, truth, equality, reason, and upright behavior; they jostle for space with invocations of obligation, respect, and entitlement. We are reminded that this is also the case in the English language, where "right" is only the clearest example of such slippage. When it comes to justice, this implies that more is at stake than legal procedure, or the application of legal rules and norms. Justice incorporates subjective assessments of behavior, intention, and appropriateness; it bridges the gap between particular happenings and abstract certainties.

Jonathon Earle's examination of the intellectual history of the concept of justice in the kingdom of Buganda, located in present-day Uganda, uncovers the different languages of justice that were invoked within Ganda society. He finds that justice has been the subject of vigorous and longstanding debate between different religiopolitical factions among the Ganda. While Baganda Protestants in the early 1900s emphasized *sala (o) musango,* a top-down approach to administering

justice, Catholics advocated for a more deliberative approach, which was captured in the word *bwenkanya.* Earle shows that advocates for these contending approaches to thinking about justice drew on diverse sources of elaboration and legitimation. In addition, they used these "to reinforce and reconstitute different types of political authority." Through his analysis, Earle makes a compelling case for the need for efforts to make sense of contemporary political processes in Uganda to be founded on an understanding of older vernacular historiographies and processes of knowledge production.

The promise, and indeed the challenge, of studying local languages of justice in Africa is made clear in Felicitas Becker's chapter. Becker notes the fecundity of the Swahili term *haki,* which can be used to refer to both "rights" and "justice." *Haki* is most commonly employed as a relatively straightforward translation of "right(s)," while "justice" seems to span the terrain of several Swahili concepts, including *usawa* or equality. In searching for vernacular equivalents for the term "justice," Becker finds a crowded linguistic field, demanding both linguistic and historical analysis. As she points out, part of the difficulty in identifying accurate translations for these English terms lies in the complexity of the English words themselves, which bear the marks of their various histories. Becker's analysis of Muslim sermons, for instance, reveals a conception of justice that it is at once connected to personal virtue, to the following of divine instruction, and to living harmoniously with others. The sermons, she argues, "portray the pursuit of justice as a question of forbearance, compassion, generosity, and patience, as well as obedience toward God and his law." In her analysis, morality is never far from view.

Morality is also central to Benson Mulemi's discussion of efforts to treat cancer patients in Kenya. At the core of his chapter is the argument that access to cancer care for the poor in Kenya is a question of social justice and thus that the government has a moral duty to fulfill this need. Mulemi observes that because of severe resource constraints, a two-tier system of cancer care has emerged in which wealthy patients receive preferential treatment and privileged access to cancer care facilities by virtue of their status. By contrast, the poor are left to suffer from both the debilitating effects of cancer and its destabilizing impact on their livelihoods. The response of medical personnel working in such dire circumstances has been to resort to improvisation in cancer care in order to make the limited resources reach as many people as possible, even if such improvisation does not translate into effectively treating

cancer. This, Mulemi argues, reflects "the convergence of a general sense of human and professional moral obligation to mediate desolate care circumstances." Overall, his chapter makes a strong case for a cancer care regime in Kenya that balances market justice with social justice.

Morality in Africa, as Kwame Gyekye points out, is not necessarily connected to religion. However, religion has often had an important influence on moral imaginaries.[58] Moreover, different religions and sacred beliefs have generally had something to say about justice. Judaism, Islam and Christianity all deal with distributive justice and enjoin their followers to engage in good deeds, to give alms, and to welcome strangers.[59] A similar concern with distributive justice, reinforced by religious belief, is evident within Diola communities in Senegal, Gambia, and Guinea Bissau. Among the Diola, those with wealth have an obligation to share it, and it is commonly held that failure to do so will result in a reversal of fortunes. In addition, Robert Baum notes that witchcraft accusations serve "as a powerful check against violation of a Diola ideal of universal access to arable land."[60] Religious movements often also contain within them a vision of social justice, which has, at times, been used to justify the waging of war. Early anticolonial uprisings, such as the Maji Maji rebellion and the Chimurenga uprisings in what are now Tanzania and Zimbabwe, respectively, as well as the millenarian Watchtower revivals that rocked central Africa during the first half of the twentieth century, are but a few examples of religious movements that aimed to bring about particular visions of justice by violent means.[61]

Nevertheless, it is not always obvious how religion shapes ideas and practices of justice in specific contexts. Fernanda Pirie's study of the notions of justice espoused by two Buddhist communities living at different ends of the Tibetan plateau reveals a striking contrast.[62] Among Nomadic pastoralists on the Amdo grasslands, conflicts often resulted in revenge attacks or the payment of compensation. These and other acts, she suggests, indicated that a form of retributive justice was in operation. By contrast, villagers of Ladakh sought to resolve conflict through community meetings in which the principles of public morality were invoked in order to restore harmony. During these processes of arbitration, there was no attempt at invoking the law or "adjudicating between the rights and interests of the individuals and households involved."[63] What this case so clearly illustrates is that while religion shapes ideas about justice, it does so in combination with a range of economic, sociocultural, and political factors, and the interplay between these factors

changes over time. This understanding informs the chapters in this section and their investigation of the role of religion in shaping notions of justice in Africa.

Duncan Scott's chapter asks what Christian relational ethics might contribute to efforts to lessen the injustice and inequality that has characterized postapartheid South Africa. Scott examines the work of a Christian nongovernmental organization, The Warehouse, which aims to tackle inequality, poverty, and racial division in the country. He is specifically interested in how the organization translates relational ideas about justice into social action in a context in which there is dire need for social and economic transformation. For Scott, The Warehouse's focus on transforming relationships does not necessarily divert attention from the structural roots of injustice in South Africa. Rather, it adopts an alternative transformation agenda that starts at the individual level. In countering criticisms leveled at other relational justice approaches, such as *ubuntu* and reconciliation projects, he maintains that, if transformed into practice, relational ethics provide a means of pursuing justice in South Africa from the bottom up.

Gender Justice

The notion of gender justice promises to take the study of justice into the realm of gender and marital relationships, of mundane domesticity, intimacy, and care. It asks what might constitute justice in the context of interpersonal relationships and suggests that answers to that question will be multiple and particular.

The clamor of external agents with something to say about appropriate gender relations and the treatment of women and LGBTQ+ communities in Africa can at times be overwhelming. Terms like "violation," "forced marriage," "harmful cultural practices," and "genital mutilation" ramp up the rhetoric and squeeze out dissenting voices, even when those voices are those of the people concerned. A focus on justice, and on what gender justice might mean to particular African men and women, opens up the possibility of bringing their voices to the fore, of asking rather than telling.

Thus we might recall the Maasai women activists whom Dorothy Hodgson has described proclaiming in frustration that "challenging polygyny and female cutting are not our priorities" when, for the umpteenth time, they came up against the realization that the international development apparatus, and indeed, local Tanzanian feminist

organizations, were moved more by their genitals than by their concerns with economic and political rights.[64] Their own priorities, on the other hand, included "land rights, livestock, hunger, poverty, and education."[65] While these Maasai women favor alternatives to female genital modification, which is "only one small part of a long series of ceremonies and celebrations that ritually transform a Maasai girl into a Maasai woman,"[66] they are also concerned to confront poverty and marginalization, and in doing so they find it more difficult to garner support from their feminist and development "partners." Literature on women's rights in Africa suggests that activism and rights struggles might look quite different were listening a more consistent starting point on the part of those seeking to "uplift" African women. Failing to do so is not the preserve of foreign actors; elite Africans, such as the participants in the Tanzanian Gender Festival that so irked the Maasai women activists, are often just as likely to proceed without taking on board the views of impoverished African citizens.

We are also reminded of Saba Mahmood's influential study of the women's piety movement in Egypt, in which she argues that the women with whom she worked, who actively embrace principles of women's subordination to male authority, are radically misunderstood by feminist scholars if they are seen as suffering from "false consciousness."[67] Mahmood challenges us to conceive of feminist politics beyond a universalizing assumption that women everywhere share a desire for "freedom" and a will to challenge rather than uphold social norms. She thus highlights the shortcomings of an approach that would foreground feminist concerns with women's resistance at the expense of an understanding of the lives, intentions, and commitments of the Cairene women with whom she worked. Hers is an argument for the importance of paying attention, in every case, to the specificities of people's lives and concerns, even when these do not converge neatly with those of the international development industry and "Western" feminism. The implication is that we must ask, rather than assume, what justice means for Cairene women, as we must for women elsewhere on the African continent.

African scholars of gender have also emphasized the need to reach beyond Western feminist sensibilities and Euro-American academic texts in order to understand gender relations and women's aspirations in Africa. In this vein, Nkiru Nzegwu has argued that a peculiar result of transformations in Africa since the nineteenth century has been the coming together of Western feminist and patriarchal African men's

visions of African societies: "Both are engaged in the enterprise of casting their patriarchal view of families as traditional and culturally rooted. Both share the task of representing African women as voiceless and inferior to men. Both have successfully established as true the myth that African women lack agency."[68] Much of this work contains a distinct nostalgia for precolonial gender relations, which, it is suggested, were less patriarchal prior to European missionary interventions, colonialism, and the subsequent collusion of African male elders.[69] However, while gender relations have been transformed over the past two hundred years or so, they have not converged with the experiences of women in other parts of the world. Ifi Amadiume, for example, has argued that there is a structural and historically significant difference in the way that motherhood is experienced and valued in Western and African settings. While Western feminists have often seen motherhood and marriage as undermining their efforts for recognition in the public sphere, African women's roles as wives and mothers might be better understood as central to their empowerment.[70]

The situations of Africans who identify as LGBTQ+ complicate the oppositional stance that women's advocates can take vis-à-vis Western interventionism and caution against the blanket romanticization of local solutions to matters of gender justice. The question of whether or not LGBTQ+ identities, relationships, and sexual practices can be considered "African" is a live one in many African countries today, even if scholars have long since debunked the idea of Africa as a heterosexual continent.[71] A rich anthropological and historical literature unsettles contemporary political debates by illuminating older conceptions and vernacular understandings of sexuality, as well as explicating more recent dynamics, complicated by religious ideologies and nationalist agendas.[72] It is all too easy to lose sight of justice in the midst of debates over what is foreign and what belongs in Africa.

Awareness of the historically constituted and presently lived texture of gender relations in Africa, and the great diversity of experience, expectations, and aspirations found across the continent, has to be a first step in efforts to think about gender justice. It is also a vital reminder that gender justice is unlikely to be something specifiable in general terms like the items on a list of international standards. Nevertheless, an argument for the multiplicity of forms that gender justice might take must not entail denial or obfuscation of injustice and violence. Several studies in this volume point to times and places where gendered injustices

have prevailed, including gender-based violence and rape. Here we see conflicting senses of what has happened, what ought to have happened, and how best to shape the future in light of the past. Firsthand experiences of gender and sexual injustice, and competing aspirations for gender justice, take center stage in these chapters, illustrating how the search for gender justice is often marked by tensions between local and external actors, as well as state and nonstate processes.

The quest for justice for gender and sexual minorities in Africa is the focus of Alan Msosa's chapter. By examining the heated debates that have erupted in Malawi since 2009 over the rights of LGBTQ+ people, he shows that the challenge facing the Malawian LGBTQ+ community is not limited to overcoming essentialist arguments about African culture and sexuality, but also includes addressing widespread confusion over what is meant by LGBT rights. This confusion is compounded by the multiple and conflicting understandings of the term "human rights" that stem, in part, from the different Chichewa translations of the term. For Msosa, however, all is not lost. He shows that the laws that criminalize same-sex relationships contravene the provisions of Malawi's constitution, and that the existing legal and policy frameworks can be interpreted in ways that advance the quest for justice for LGBTQ+ people. In addition, he sees a need to reframe the debate by employing locally resonant concepts such as *chilungamo,* the Chichewa word for justice. While he concedes that *chilungamo* cannot replace ideas of human rights, Msosa nevertheless argues that it serves a critical purpose in drawing the concept of human rights toward locally legitimate principles.

Patrick Hoenig's chapter directs our focus onto efforts to administer gender justice in the midst of armed conflict. He examines the operations of mobile gender courts in the Democratic Republic of Congo, the objective of which is to increase women's access to justice while fostering greater confidence in the rule of law. Through an examination of the trial of Congolese soldiers for rape in the town of Baraka in 2011, Hoenig finds several problems with these donor-driven efforts to deliver justice. In the first instance, donor pressure for high conviction rates risks jeopardizing due process, by encouraging judges to curtail the rights of the defense, and undermining the principle of the presumption of innocence. More important, however, was the fact that the criminal justice handed down by the courts failed to meet the needs and expectations of the survivors of sexual violence, especially with respect to witness protection and reparations. In some instances, it left them

vulnerable to future victimization. Consequently, women testifying in the Baraka trial dismissed the court as just another "foreign tribunal." In this regard, Hoenig's findings resonate strongly with Adam Branch's arguments about the "violence of justice." Ill-conceived justice interventions are not simply harmless mistakes, they carry the risk of exposing victims to further abuse or reinforcing structural violence.

Ngeyi Kanyongolo and Bernadette Malunga's chapter returns the discussion to Malawi, where they focus on cases of defilement, or sexual intercourse with girls under the age of sixteen. Kanyongolo and Malunga examine discrepancies between the conceptions of justice articulated by ordinary citizens and those that inform formal legal proceedings, and they show that these differences have an adverse effect on efforts to deal with child sexual abuse. The chapter highlights the underreporting of sexual abuse of young girls as a significant impediment to the pursuit of justice and considers a variety of causes of underreporting, from situations in which intercourse is not condemned because it occurs in culturally sanctioned settings, such as initiation camps, to mistrust of the police and the ongoing economic dependence of victims on perpetrators. What is clear is that the achievement of justice for victims of defilement requires coordinated efforts across the divisions between formal and informal authorities and state and "traditional" legal forums.

Holly Porter's contribution to this volume focuses on the experiences of rape victims seeking justice in Acholiland, Uganda. Her chapter reminds us that local approaches to justice are not always equal to the task of providing justice to victims, especially in contexts where long periods of violent conflict have disrupted the sociocultural, economic, and political landscape. Porter shows that most women continue the longstanding practice of seeking assistance from their relatives, who ultimately exert the most important influence on the course of justice after rape. However, in this way, women's access to justice is dependent on their relatives' approach. Customary views about appropriate sexuality in Acholiland tend not to be sympathetic to women who have been raped. In addition, the considerations that relatives prioritize after rape, such as social harmony or the avoidance of cosmological sanction, often work against the interests of women who have been raped. Of particular importance is the way that the war has undermined the ability of relatives to intervene. Central to Porter's chapter is the argument that interventions to assist victims of rape in accessing justice need to take account of the important roles that relatives play.

Resources, Conflict, and Justice

Some of the most contentious debates about (in)justice in Africa have been about the distribution of resources. In particular, precious minerals such as oil and diamonds have been at the center of conflicts that have pitched state and capital against aggrieved communities' demands for a just share of the income derived from minerals taken from their lands. Grievances about resources have, in some cases, led to violent conflicts and insurgencies.[73] However, a series of studies that draw on quantitative methods and rational choice theory have challenged the idea that violent conflicts in Africa have been primarily fueled by grievances. Paul Collier and Anke Hoeffler, for example, contend that economic motives are central to explaining armed conflict.[74] The roots of conflict, they argue, lie not in grievances over specific injustices but in rebels' assessments of the opportunity costs of insurgency. Therefore, the existence of high-value primary commodity exports makes an insurgency more likely. According to this view, it is greed, not grievance, that is important in triggering armed conflict.

However, it has become increasingly clear that this approach to understanding conflict in Africa is both empirically and conceptually flawed. In the first instance, it is reductionist to view the causes of conflict in terms of the greed-grievance binary as the drivers of violent conflicts are often complex and are transformed over time. The rational choice approach also fails to take into account structural factors that constrain individual choices.[75] In addition, the proxies relied on in these studies are often ambiguous. Historical studies of armed conflicts have also demonstrated the empirical shortcomings of materialist interpretations of conflict. Research on the armed insurgency in the Niger Delta, for example, demonstrates how longstanding grievances over resource injustices were an important driver of the conflict. The declining share of oil revenues distributed by the central government to local communities from the 1960s, as well as the destruction of the local environment, led to growing calls for a fairer distribution of oil money. These grievances were at the heart of the Ogoni Bill of Rights of 1990, issued by the Movement for the Survival of the Ogoni People, as well as the Ijaw Youth Council's Kaiama Declaration of 1998.[76] As Ukoha Ukiwo shows, the insurgency initiated by the Movement for the Emancipation of the Niger Delta in 2005–6 was a consequence of earlier failed efforts to elicit a positive response to their grievances from the government and oil companies through peaceful means.[77]

Land is another key resource around which concerns about distributive justice have coalesced in Africa in recent years. This is partly due to the increasing incidence of "land grabbing" across the continent. Global crises related to food, energy, finance, and the environment have led to large-scale purchases of "empty" fertile land in Africa for fuel and food production by local and international capital as a means of hedging against future price spikes. A study by the International Food Policy Research Institute estimates that, between 2005 and 2009, about twenty million hectares of land exchanged hands by way of these land grabs.[78] Much of this has taken place in those African countries where buyers can take advantage of weak or corrupt governments that do not have legislation in place to protect their citizens from land dispossession. As a consequence, the last decade has witnessed increasingly violent protests by local communities over land dispossession in countries such as Uganda, Senegal, Ethiopia, Liberia, and Kenya.

Recent struggles for land justice have also been connected to much older experiences of dispossession. Zimbabwe's Fast Track Land Reform Programme, initiated in 2000, stands out among these, both in terms of scale and in the way it has been deeply implicated in the country's economic and political crisis. Scholars have nevertheless been divided over how to explain the land occupations. On the one hand, Sam Moyo, Paris Yeros, and others take the view that the land occupations were the culmination of mobilization by a "land occupation movement" composed of the rural semiproletariat, the urban poor, and the urban petty bourgeoisie, united under the leadership of war veterans.[79] On the other hand, the land reform process has been seen by other scholars as a calculated political move designed to shore up ZANU (PF)'s waning political fortunes in the face of a challenge from the Movement for Democratic Change.[80] Whether one sees land reform in Zimbabwe as the result of the activities of an organic grassroots social movement or as a consequence of top-down manipulation by politicians, at its heart lies a historic injustice. The unresolved nature of this injustice rendered it available as a basis for mobilization by both political entrepreneurs and disenfranchised individuals.

Thinking about these struggles over resources shifts the focus onto justice's opposite, *injustice.* This, in turn, fixes scholarly attention more firmly onto concrete instances of injustice and efforts to alleviate them, as opposed to the abstract contemplation of justice.[81] It also throws into sharp relief the complex nexus of justice and conflict, a theme with which

the chapters in this section grapple. Whereas research into transitional justice focuses on justice processes that emerge out of conflicts, studies of resource struggles illuminate the process of conflict emerging out of injustice. The chapters in this section also illustrate the ways in which conflict reshapes ideas about justice, as well as the practices around it. In so doing they challenge an implicit assumption that often lurks behind the search for local approaches to transitional justice, namely, that local rituals and practices remain static, even as war disrupts the very social and economic foundations of the communities in question.

Stacey Hynd's chapter speaks to a key silence in the literature on conflict and justice: the voices of children. Their perspectives, she shows, have all too often been silenced in domestic and international law, as well as in transitional justice agendas. What is more, in those instances where their voices have been heard, they have often been appropriated to serve the agendas of ICC prosecutors or the humanitarian goals of international NGOs. Invariably, both groups tend to portray child soldiers as simple victims of conflict. For Hynd, such an approach misses the engaged and complex relationship between children and justice and weakens transitional justice efforts. Drawing on her research with former Lord's Resistance Army abductees in Northern Uganda, Hynd makes the case for a more meaningful incorporation of children's perspectives into domestic and international law in postconflict contexts, one that is more nuanced and moves beyond the standard international position that does not recognize the legal accountability of anyone under eighteen and, above all, one which acknowledges that children can be more than simple victims in conflict. Age, Hynd argues, needs "to be taken more seriously as a vector of, and for, justice."

Fred Ikanda's chapter examines the quest for justice among Somali refugees in the Dagahaley camp in Kenya. He demonstrates the centrality of *maslaha* talks as a means of resolving disputes, while acknowledging the important role played by other dispute resolution fora provided by the Kenyan state and international agencies such as the UNHCR. Chief among the contributions Ikanda's chapter makes to the study of justice is the way it highlights the centrality of sentiment to efforts to achieve justice. Significantly, he shows that it is not just "positive" sentiments, such as the indignation provoked by injustice, that are integral to the pursuit of justice, but also less well-regarded sentiments, such as the desire for "vengeance." However, he makes clear that *maslaha* is not a fixed practice, and nor is it universally adhered to. Efforts to initiate

maslaha proceedings were not always welcomed, and aggrieved parties sometimes resolved to take vengeance instead. At the same time, the presence of alternative avenues of recourse, and the pressure brought to bear by Al Shabaab's strict views about Islamic practices, were also reshaping dispute resolution processes in the camp.

Efforts to resolve historical injustices related to land dispossession are at the center of Olaf Zenker's chapter. He examines the continued efforts of the South African government to implement land justice by reopening the land restitution process in 2014. This effort, he shows, has been complicated by national politics as well global economic processes. On the one hand, the desire to appease traditional leaders has seen a progressive strengthening of their authority over land, a move that goes against an earlier position that emphasized individual rights to land. Zenker argues that neotraditionalist legislation has resulted in the transformation of South Africans "from rights bearing citizens to leaseholding subjects in perpetuity." He also demonstrates that the focus on the productive value of land, which undergirds the government's vision for land justice, is out of step with the desires and expectations of South African citizens, many of whom have elected to receive financial compensation as opposed to land. He thus suggests that the future of land justice in South Africa might lie in focusing more on the "distributive value" of land as opposed to its "production value."

Anna Macdonald's chapter focuses on land disputes in Northern Uganda in the aftermath of conflict and investigates the ways in which they are resolved. Macdonald challenges two false dichotomies that have tended to dominate debates about transitional justice in Northern Uganda, namely, local versus international, and restorative versus retributive approaches to justice. For parties embroiled in disputes over land, Macdonald shows, decisions about whom to turn to were not so much shaped by the desire to adhere to cultural norms as by the need to find adjudicators who possessed the relevant knowledge. Contrary to the position advanced in some of the literature, Acholi were not permanently wedded to "traditional" practices when it came to seeking justice. Rather, their decisions were shaped by pragmatic considerations. As Macdonald points out, "the hybrid nature of the public authorities that people draw on and the highly contingent nature of their justice decisions . . . are not based on the norms espoused in transitional justice debates but rather on the most pragmatic and effective means by which to restore balance and meaning to postconflict social relations."

This volume brings together work that takes justice seriously. Many of the chapters illustrate that this is not only a subject of reflection for scholars and students of Africa. African citizens, from rural villagers to educated elites, also often find themselves confronting questions of justice as they reflect on the past and contemplate the future. In addition, a great deal of applied work is being carried out across the continent by lawyers, humanitarian workers, and international donor representatives, among others. We hope that this volume will provide fresh impetus, as well as food for thought, for such actors. If there is one argument that cuts across a number of the chapters that might be of practical use in the realm of development interventions, it is the importance of paying attention to local social and historical contexts. An appreciation of local realities, concerns, and priorities can only improve efforts to help bring about "justice," whatever that might look like. While emphasis is often placed on the *doing* of development, the chapters of this volume suggest that it may be by *listening* that the greatest difference can be made.

Notes

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