

This article is licensed under a [CC BY 4.0 license](https://creativecommons.org/licenses/by/4.0/) and may be reproduced and distributed, in whole or in part as long as appropriate attribution is provided by citing the original article and source. For more information on appropriate attribution please visit the [CCHRR website](https://www.cchrreview.org). Copies should be distributed for free, unless authorised by the Author or Review. For more information on licensing and permissions please email: CCHRR.frt@vu.nl

BOOK REVIEW

Michael Raila Odhiambo *

Dorothy L Hodgson, *Gender, Justice, and the Problem of Culture: from Customary Law to Human Rights in Tanzania* (Indiana University Press, 2017) 187 pp. ISBN 978 0 253 02535 7 (paperback)

Cross-cultural Human Rights Review (2019) Vol.2:1 pp. 75-80

ISSN: 2666-3678 (Online) 2666-366X (Print)

For information on licensing and permissions please email: CCHRR.frt@vu.nl

Dorothy Hodgson's *Gender, Justice, and the Problem of Culture: from Customary Law to Human Rights in Tanzania*, sets out to address complex issues about law as social practice, and the pursuit of justice in the context of gender, culture, power, and social change. Drawing on over 30 years of research and learning among the Maasai of Tanzania, Hodgson employs the method of historical anthropology to explore the "social life" of law and human rights-based approaches. She interrogates the dominance of rights-based approaches in the contemporary language, practice, and pursuit of justice, which she attributes to historical and cultural processes rather than an inherent superiority linked to any universal or natural attributes. For her, "rights" are a product of history and culture, shaping and being shaped by each other. Thus, current ideas about "law", "rights", and "justice" are reflections of historical and cultural processes that derive from dominant assumptions and ideals from a wider pool of competing notions and practices of rights and justice which all influence and are influenced by each other.

* Visiting Lecturer, College of Arts and Social Sciences (CASS), School of Law, University of Rwanda.

Email: michaelrodhiambo@yahoo.com

Hodgson's approach brings into sharp focus the methodological differences between pure law scholars and historical anthropologists studying law. Central to her method is the role of history and complexity in the analysis of gender and justice. Not content with taking existing laws, legal principles, and norms as a point of departure, Hodgson's historical anthropology seeks, in her own words, to "restore erased history and complexity" to the analysis of gender and justice.

Hodgson's stated purpose is threefold (p. 5). Firstly, it is to complicate static ideas of "culture" and "custom" as they have been perpetuated through legal discourses that have tried to codify, demonize, and sometimes criminalize certain cultural practices like marriage and FGM. It is also to challenge enduring paternalistic (and often racist and classist) portrayals of illiterate, rural women as somehow lacking the capacity to understand or act in their situation, a stereotype that has been intensified with the emergence and dominance of rights-based approaches. Finally, the purpose is to explore how certain legal ideas and practices are used as political tools to regulate (and at times forcibly change) some of the most intimate aspects of people's lives in the name of "justice".

Through this case study of Maasai pastoralists in Tanzania, Hodgson traces the continuities and changes in the practices of law and justice from the late precolonial period to the present. By grounding her study in the "lived experiences of everyday people", she seeks to restore relevance and nuanced meaning derived from historical and contested cultural experience into, and to complicate, the often abstract but simplistic debates about "justice".

Using a concept of "legal regimes" to denote the different historical periods in her analysis, Hodgson compares indigenous law, customary law, colonial legal institutions, national law, women's human rights, collective protest and other methods employed in the pursuit of justice. The case study considers four legal regimes upon which the four chapters of the book are thematically based: colonial, national, transnational, and traditional legal regimes.

The first chapter is based on the colonial legal regime. *Creating "Law": Colonial Rule, Native Courts, and the Codification of Customary Law* explores the

relationship between law and culture within the colonial setting. The colonial administration, convinced of the superiority of their ideals of 'natural' justice predicated upon due process and predictable laws, struggled to understand and codify Maasai customary law, whose very existence is itself an assumption constructed upon an iconic image of the Maasai as "exemplars" of African culture. In this effort, the colonial authorities entered into an "unholy alliance" with elderly men on the verge of losing their power at a time of great social change. These old men, rather than restate existing customary code, create a self-serving version of "customary law" that serves to strengthen their position in society *vis-à-vis* young men and women. The chapter exposes an oppressive history hidden behind colonial narratives of racial superiority that deemed the Maasai a backward race in the lower rungs of civilization, as captured succinctly by an official's idea that "*the centuries which lie between ourselves and the native in point of development...cannot be bridged in a generation or two*". It was assumed that education would eventually lead the native to civilisation (p. 30; 37). The resulting laws and legal institutions stripped the Maasai women of what legal agency they might have had to pursue their own gendered ideals of justice.

The history also reveals that the Maasai only got around to embracing the laws represented by the colonial legal institutions rather reluctantly and very gradually, preferring to resolve their issues through their own methods. Here, colonial legal institutions attempting to propagate "customary law" simply provided another space in which to contest their own ideals of social justice.

Moving on to the national legal regime, the second chapter considers the postcolonial Tanzanian Government's efforts to forge a progressive, socialist regime based on the rule of law, in many respects a continuation of the colonial project. *Debating Marriage: National Law and the Culture of Postcolonial Rule* documents, through the lens of the new Tanzanian government's legally plural marriage regime and four case studies, how the Maasai navigated "modern" aspects of marriage with their own ideals and practices.

In the case study of the "disobedient daughter" (p. 80-93), we encounter Aloya, resisting forced marriage instigated by her father, seizing the courts to

assert her rights using the 1971 Tanzanian Law of Marriage Act. The case shows that in the context of social conflict and/or power struggle and changing ideals of marriage, there was vigorous internal contestation within the community. Aloya, armed with a meagre but sufficient level of education and fluency in Swahili, is able to take on her father in court to resolve a perceived injustice. Elder Maasai also flex their power by invoking threats of and actual curses, but also manipulating the system to create a new social institution in an attempt to temper the influence and power of the courts. Aloya, in her court victory, shows that far from being inherently powerless, she is able to appropriate judicial processes, build alliances, and articulate her case in court in order to correct an injustice by her father and Maasai elders.

The focus of the third chapter is the transnational legal regime. *Criminalizing Culture: Human Rights, NGOs, and the Politics of Anti-FGM Campaigns* confronts the larger questions of power, politics, and gender on the transnational plane. It would seem that with the passage of time, only the actors have changed while the exclusion of the powerless in the debates about culture persists. Whether it be the St. Johns Alliance during the colonial regime fighting for the “rights” of oppressed native women at the League of Nations, or liberal minded British MPs pushing the same cause in the House of Commons, or modern human rights activists fighting for the rights of the marginalised at the United Nations, one thread is common: powerlessness, marginalisation, and sidelining of the agency and interests of the African woman continues despite the ‘best intentions’ of the powerful.

The priorities and perspectives of the Maasai have been excluded in international debates that have seen, for example, FGM having its designation changed from a medical issue to a “human rights” issue, or that of polygamous marriage from a cultural preference to a harmful traditional practice. This criminalisation of culture and a focus on “rights” obscures the real oppression of the poor, rural, African woman exemplified by the Maasai by ignoring the structural causes of injustice. These women are conspicuous in their absence from the discursive processes of narrative formation even though subsequent narratives and framings of issues directly affect them.

Economic, legal, and social policies of both the colonial and national regimes provide a more proximate and persistent causal link with the precarious Maasai livelihoods than the blanket condemnation and rhetorical focus on “the problem of culture”. The colonial “back to reserves program”, multinational concessions and President Mwinyi’s economic policy environment documented by Hodgson have contributed to the marginalisation and under-development of the Maasai much more than any “harmful traditional practice” could ever do.

Despite the good intentions and remarkable success in the advance of international human rights norms of the powerful, well-connected and well-resourced transnational human rights network, the omission of the real voices of those they claim to represent runs counter to the universal and egalitarian credentials of the international human rights project.

Finally, the traditional legal regime documented in the fourth chapter narrates the gendered and culturally legitimate ways in which the Maasai woman in Tanzania has sought justice over time. *Demanding Justice: Collective Action, Moral authority, and Female Forms of Power* shows that while collective forms of protest by Maasai women may appear counter-intuitive to the individual, secular, and state-reliant “rights” of the colonial, national, and transnational regimes, they draw upon valid moral and cultural values that empower the Maasai woman in effectively realising her culturally internalised vision of “justice”.

Gender, Justice, and the Problem of Culture: from Customary Law to Human Rights in Tanzania will not, despite a brief historical background of the Maasai of Tanzania, provide the reader with a comprehensive account of the full repertoire of cultural and gendered aspects of Maasai conceptualisation and practice of “justice”. For this, familiarity with Hodgson’s extensive body of work documenting various aspects of the lives and livelihoods of the Maasai in Tanzania is essential and highly recommended.¹ Nevertheless, this particular

¹ For example: Hodgson, Dorothy L: *Being Maasai, Becoming Indigenous : Postcolonial Politics in a Neoliberal World*, Bloomington: Indiana University Press (2011); *The Church of Women : Gendered Encounters Between Maasai and Missionaries*, Bloomington: Indiana University Press

Michael Raila Odhiambo

offering from Hodgson is meticulously and generously referenced to the minutest of detail and nuance, greatly expanding its reach beyond the 187 pages.

(2005), and: *Once Intrepid Warriors : Gender, Ethnicity, and the Cultural Politics of Maasai Development*, Bloomington: Indiana University Press (2011).