

## INTRODUCTION

# Domestic Violence and the Law in Africa

EMILY BURRILL, RICHARD ROBERTS, AND ELIZABETH THORNBERRY

SINCE THE 1990S we have seen an explosion of public attention paid to domestic violence within Africa. New pressure groups have formed, new laws have passed, and new names have been given to old kinds of violence. From People against Women Abuse in South Africa to Raising Voices in Uganda to Women in the Law and Development in Ghana, African men and women have organized—albeit with varied success—to push the issue onto national and international political agendas. Domestic violence itself, however, is not a recent phenomenon in Africa, nor are struggles against it. Given the importance of ideas of family and kinship in many African political systems, it is not surprising that families themselves have often been the site of violent coercion. This volume uncovers the history of domestic violence in Africa and illuminates the challenges faced by contemporary attempts to end domestic violence. By bringing together activists, legal scholars, anthropologists, and historians, this volume puts into conversation disciplinary approaches to the problem of domestic violence and thus provides enhanced perspectives on the complexities of domestic violence and efforts to address it.

The history of domestic violence in Africa comprises two interwoven narratives. The first describes changes in the experience of violence within the family, helping us understand why the form and prevalence of family-based violence changed over time in particular communities. However, we also recognize that the *idea* of domestic violence as a category of analysis is not a universal phenomenon. Rather, as Linda Gordon writes, the “modern history of family violence is not the story of changing responses to a constant problem, but, in large part, of redefinition of the problem itself.”<sup>1</sup> A second narrative thus tracks the changing definitions of the “problem” of domestic violence. The essays in

this volume form an argument for the need to understand the changing definitions of domestic violence in order to understand the persistence of these acts of violence and for the need for legal definitions and solutions.

It is fitting, then, to start with a definition of our own. In recent years, acts once called domestic violence have increasingly been relabeled by both activists and academics. The terms *gender-based violence*, *violence against women*, and *intimate partner violence* are most commonly used to describe violence committed by men against their partners. These terms have the merit of drawing our attention to the gendered nature of such violence, and of challenging characterizations of such violence as a private matter rather than a public concern.<sup>2</sup> Many of the chapters in this volume, however, are concerned with the production and perpetuation of precisely such a conception. In many parts of colonial and postcolonial Africa, legal responses to violence within the family differed from responses to other kinds of violence. Violence that was understood as domestic was often punished less harshly, if at all. By retaining the term *domestic violence* we wish to emphasize the importance of such an understanding to the histories under examination.

We therefore define domestic violence broadly, to include all acts of violence which are seen by those who inflict, endure, or regulate them as being justified by a familial relationship. By using this definition, we also wish to draw attention to the connections between violence committed by men against women and other forms of violence that are justified through the institutions and ideologies of kinship and family. Violence between parents and children, violence between co-wives in polygynous marriages, and even—as Katherine Luongo demonstrates in her chapter—violence against suspected witches were all shaped by such ideologies.

This volume brings together perspectives on the problem of domestic violence in Africa from historians, anthropologists, activists, and legal scholars. The first and second parts of the volume are devoted to analyses of domestic violence under colonialism, and the third part focuses on the contemporary period. Taken together, the contributors to this volume demonstrate how changes in the colonial past set in motion structures of domination that persist into the present. They also draw attention to the ongoing struggles within Africa to change these systems of domination. African states are signatories to all the major international conventions protecting women from discrimination and against violence as basic human rights but often with reservations that deflect and delay the application of these rights. This volume links these reservations to colonial legal regimes that privileged the maintenance of custom over women's desires to escape violent relationships.

All of the chapters in this volume focus on some aspect of the law, a focus that stems from the importance given to legal reform in recent efforts to

combat domestic violence in Africa. Several essays in the second part examine shifts in the law around domestic violence during colonialism, and essays in the third part of this volume evaluate postcolonial efforts at legal reform. Other contributors use court records to find traces of domestic violence; and still others show how some Africans used the courts to challenge violent partners; whereas other contributors demonstrate how the law was changed to prevent women from using the courts to escape domestic violence. Taken together, their research demonstrates that, while law has shaped the history of domestic violence in fundamental ways, domestic violence nonetheless persists. Legal practice both shapes and is shaped by larger public understandings of domestic violence.

Although legal reform remains integral to efforts to reduce violence within households, the history of domestic violence in African legal systems reveals the difficulties facing current reformers. At the same time, several of the essays contained in this volume find in domestic violence a window into the ways that Africans and colonial administrators have given meaning to the major social changes of the nineteenth and twentieth centuries. The intellectual and social history of domestic violence illuminates the challenges faced by those in charge of African legal systems—whether colonial administrators, traditional leaders, or postcolonial African judges—as they struggled to regulate societies in states of change. Attempts to eradicate, or simply to regulate, domestic violence sparked debates about the proper relationship between law, culture, and gender relations as well as the contents of African custom. These debates continue to be central problems in many African legal systems.

This introductory essay locates the essays that follow in several frameworks. In addition to legal history, we discuss the place of domestic violence in the history of the family as well as contemporary debates about the interaction between international human rights theory and local cultures. An understanding of these contexts helps illuminate not only the chapters in this volume but also the predicament of current struggles against domestic violence in Africa.

#### EXPLAINING DOMESTIC VIOLENCE

In 2005, the World Health Organization conducted a global survey of the prevalence of intimate partner violence, one subset of domestic violence. We have drawn the accompanying table of categories of intimate partner violence from the WHO study and an earlier UN report; they are equally useful for thinking about the broader range of domestic violence referred to in this book.

The WHO 2005 study found that between 15 percent and 71 percent of the ever-partnered women respondents had experienced some form of physical or sexual violence in their lifetime. The lowest rate was found in an urban Japanese setting and the highest rate in a rural province of Ethiopia. The

TABLE 1 Categories of Intimate Partner Violence,  
UN 1989 Report and WHO 2005 Study

Physical Violence	slapping and throwing something, pushing or shoving, pinching, pulling a woman's hair, hitting, choking, clubbing, kicking, dragging, burning, throwing acid or boiling water, threatening or actually using a weapon
Sexual Violence	being forced to have sexual intercourse when the female partner did not want to because she was afraid of what her partner might do, was forced to do something sexual that she found degrading or humiliating, specific attacks on the breasts or genitals
Emotional Violence	being insulted or made to feel bad about herself, being belittled or humiliated in front of others, being scared by the male perpetrator by the way the male partner looked at her, by yelling, by smashing things, by having the male partner threaten to hurt someone she cared about, harassment, degrading comments, threatening with divorce or intentions of taking another wife
Controlling Behavior	being kept from seeing friends, being restricted from seeing her family of birth, by the male partner insisting on knowing where she is at all times, by ignoring her or treating her with indifference, by getting angry if she spoke to another man, by being suspicious that she was unfaithful, and by demanding that she ask his permission before seeking health care for herself, isolation, deprivation of physical and economic resources, restricting access to family income, excessive possessiveness

Source: UN, Center for Social Development and Humanitarian Affairs, *Violence against Women in the Family* (New York: Center for Social Development and Humanitarian Affairs, 1989), 13–14; *World Health Organization Multi-country Study on Women's Health and Domestic Violence against Women: Initial Results on Relevance, Health Outcomes and Women's Responses* (2005), 14.

wide variation in these findings suggests that intimate partner violence is not an unchanging human propensity but rather produced by historically contingent factors including colonialism, poverty, cultural beliefs, and barriers to education.

Explanations of this variation move from theories that seek the origin of abuse in individualized causes to those that seek to explain the problem within broader structural and cultural contexts.<sup>3</sup> The earliest theories fell within a medical paradigm, described domestic violence as pathological, and focused on individual household deviance. More recent research has rejected the model of individual deviance but noted the importance of individual-level risk factors

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such as personal history of violence, economic deprivation, and substance abuse. At the level of the family, resource theories posit that decision-making power in the household derives from the “value” of resources that each person brings to the relationship. Family systems theory seeks to understand individuals within their interconnected family roles; the most sophisticated versions of this model see household members constantly jockeying and renegotiating control in the family, with domestic violence as a strategy employed by the household head to enforce his culturally sanctioned control over family members and dependents.<sup>4</sup> Proponents of social learning theory, which finds support in studies of child abuse, have described violence as a social statement learned from role models in the family or community.<sup>5</sup> Also at the community scale, social disorganization theory describes domestic violence as resulting from the weakness of people’s ties to the communities in which they live.<sup>6</sup> On the broadest scale, feminist theories focusing on patriarchy as a form of domination locate the causes of domestic violence at the level of whole societies whose institutions and culture reinforce the power of men over women.<sup>7</sup> Although such theories concentrate on violence between male and female intimate partners, they employ models of power within the family that can be extended to other forms of violence, particularly violence committed by older family members against younger ones. Recent research has begun to integrate these levels of causation into “ecological” models that account for the interplay between them.<sup>8</sup>

#### AFRICAN FAMILY HISTORIES

To understand the changing role played by violence within African families, we must start by looking to the broader history of the family. Historically, in Africa as elsewhere, family structures have shown substantial variability. The normative family structure in contemporary Euro-American culture—a nuclear family made up of a husband, wife, and their children—is actually a relatively recent variant of much more complex configurations of kin and dependents. The pioneering debates in comparative family history centered on changes in family structure as a result of the process of industrialization in Europe and North America.<sup>9</sup> A central question driving this research was the question of when and how the “modern” family emerged.

By contrast, despite a strong interest in social history, family history has not gained much traction among Africanists. There is a paradox here, since Africa was an important site for the development of anthropological theses on kinship. In a world where kinship so deeply shaped social relations, it would seem that evidence about “families” should be readily available. However, very little work resembling what European and American students of the family have achieved has been conducted in Africa. With a few exceptions (white settler

South Africa,<sup>10</sup> Portuguese census and parish records,<sup>11</sup> a handful of Amharic and Arabic family histories or *tarikhs*<sup>12</sup>), historians of Africa do not have the necessary data to trace subtle patterns of change in fertility and mortality over time, as has been done in Europe and North America.

Even where sources are available, however, Africanists must confront the very notion of the family as the unit of analysis. The family form that lies at the heart of the great debates in family history may not be appropriate to the great variety of family systems that characterize Africa's past and present.<sup>13</sup> Indeed, recent research by Naomi Todamor suggests that the "nuclear" (or "proto-nuclear") family as the nominal unit for family history may not be as meaningful as originally thought in Europe.<sup>14</sup> Todamor argues that the eighteenth-century English "family" was a flexible unit, composed of a vast cast of individuals who lived and interacted in a household. Included in this unit might be spouses, children, other relations, servants, apprentices, boarders, and sojourners. Thus, she suggests that the household is the more useful and accurate unit of analysis.<sup>15</sup>

The concept of the household, if used carelessly, can also obscure important dynamics. Jane Guyer has warned social scientists working in Africa against taking the family household as a basic unit of analysis lest this focus elide power struggles within households, whether between older and younger generations or between husbands and wives.<sup>16</sup> Historians of domestic violence must conceptualize the household as a site for negotiations between numerous actors who are tied together by kinship—real or fictive—rather than a cohesive unit.

Some of these dynamics have been highlighted in the work of Jack Goody, whose research in northern Ghana suggested that African families do not fit the European template or even the broader concept of household. Rather, the complexity of African households should be interpreted in terms of the intersecting units of production (those who worked together), of consumption (those who ate together), of reproduction (those who generated descendants together), and of coresidence (those who lived together).<sup>17</sup> Goody's work permits us to conceptualize the diverse spatial and gender dimensions of African polygynous households, which may have included several wives, each with her own unit of reproduction and residence. In this volume, Cati Coe in particular examines the extended nature of the household in the Gold Coast through the lens of rape cases of debt pawns and adopted kin.

Flexible definitions of domestic units and diachronic approaches have led to the examination of the "family as a process" that "translates the impact of large structural changes to its own sphere."<sup>18</sup> The idea of the family as a process within the context of changing societies echoes the ecological model of family violence, which seeks to integrate large- and small-scale causes of



MAP 2. West Africa

family violence. It also recalls a paradigmatic debate on social history.<sup>19</sup> We can, following the lead of Charles Tilly, study the household as an institution that changed as a result of the development of the colonial and postcolonial state and the emergence of industrial and global capitalism. Alternatively, as David Cohen advocates, we can examine the household as it translates wider processes of change through its interior architecture, mediating these pressures and interpreting them through categories and processes of adaptation that have emerged over centuries of experimentation. Both approaches to social history share the assumption that households are not static and that all households interact with other institutions and processes of change.

The forces that shaped household dynamics in Africa include the slave trade, conversion to Islam and Christianity, the redefinition of ideas of “custom” and

“tradition” under colonial rule, new colonial legal systems, the end of slavery, male labor migration and the resulting feminization of poverty in rural areas, the emergence of new forms of property and new means of accumulation in the colonial and postcolonial economies, urbanization, and the HIV/AIDS pandemic. Space does not permit more than a cursory discussion of the impact of these forces, but family history in Africa must be attentive to them and to their persistent legacies.<sup>20</sup> The slave trade deepened the commoditization of rights in persons. The tendency to retain female slaves in Africa while exporting men consolidated ideologies of patriarchy.<sup>21</sup> As Europeans scrambled to claim African territories as colonies in the late nineteenth century, they used antislavery rhetoric as part of their civilizing missions and set in motion conditions that led to the end of slavery within Africa.<sup>22</sup> In areas where slavery was a widespread institution, the end of slavery ushered in profound changes in household organizations whether or not slaves left their masters.<sup>23</sup> Where slaves remained with or close to their former masters, new ideologies and practices of dependency emerged. Masters whose slaves left them turned to their households to make up for this labor shortage. Those slaves who left their masters needed to establish their own households and often struggled to succeed.<sup>24</sup> The end of slavery was exactly the kind of pressure on households that exacerbated struggles over obligations, reciprocity, and power and resulted in incidences of domestic violence, as Marie Rodet and Emily Burrill and Richard Roberts discuss in their chapters.

In the twentieth century, the rise of industrial capitalism and cash-crop farming led to widespread labor migration by men and major transformations in the households that they left behind. The absence of adult men resulted in increased agricultural labor for women and children, leading some women to increase their reliance on sisters and female friends for survival.<sup>25</sup> The face of rural poverty became increasingly female, and migration also increased women’s vulnerability to diseases such as tuberculosis and HIV that were carried by men returning from work.<sup>26</sup> Large-scale migration toward urban centers accelerated after World War II, leading to the formation of new types of households in urban settings. To cope with the struggles of urban life, many city dwellers adopted bilateral descent systems that allowed them to claim assistance from a wider pool of kin.<sup>27</sup>

Meanwhile, successful urban dwellers often sought to “shrink” kinship relations in order to control new forms of accumulation.<sup>28</sup> Such a shrinkage of kinship obligations was linked to cycles of the domestic group, as urban residents nurtured kinship connections in rural areas in anticipation of their eventual burials or as safety nets for retirement or respite from the chaos of urban life.<sup>29</sup> In her chapter, Codou Bop points to these processes in the creation of the “modern Senegalese family” as the site of domestic violence that

occurs in the absence of restraint from wider kinship groups. Data from the WHO 2005 study show that the prevalence of intimate-partner violence is usually higher in rural provinces than in urban centers of the same country. The only African nation in the survey that included both rural and urban sites was Tanzania, where 56 percent of rural women experienced physical or sexual violence by an intimate partner compared to 41.3 percent of urban women.<sup>30</sup> This finding suggests the importance of historical investigation into the processes of urbanization for understanding contemporary patterns of domestic violence.

Set against the backdrop of these broad changes are three nested structural processes that shaped domestic violence during the colonial and postcolonial periods. The first is the insertion of the household into the broader structure of colonial domination. Colonial governments sought to collect revenue from Africans to pay for colonialism. Colonial taxation systems in colonial Africa exhibited a characteristic paradox: as in Europe, the household head was normally responsible for payment, but tax regimes also reflected the desires of colonial administrators to remake individuals and the family.<sup>31</sup> Thus, the characteristic British “hut” tax was intended to discourage polygyny by taxing men on their “extra” wives, while tax policy in the Belgian Congo was designed to bolster the birth rate.<sup>32</sup> In French West Africa, by contrast, the household head owed a simple tax for all adults in his household, reflecting the government’s desire to access labor. All of these taxation systems reified the household as a foundational unit of colonial domination. Taxation added to the financial challenges of the household head, who in turn likely drew on his household labor to help generate the cash or commodities required to pay the tax. In rural South Africa, for example, the burden was borne largely by women who were most vulnerable to the consequence of their male guardian’s failure to pay tax: the loss of land rights.<sup>33</sup> Thus, the effort to make African societies legible at the level of the family encouraged administrators to turn a blind eye to internal family dynamics, including domestic violence. This process is what other scholars of Africa called the colonial project of domestication—that is, the process by which African households were connected to the political economy of colonialism.<sup>34</sup> Domestication was an economic process, but it also contributed to the consolidation of a moral authority and the reordering of household relations within the state and among members of the household itself.

Second, men’s efforts during the colonial period to increase their control over the labor of their wives led to conflicts over the separate wealth and income that women controlled. In many parts of sub-Saharan Africa, property systems permitted wives to accumulate wealth that was separate from the general household wealth. In many cases, marriage brought male and female labor systems together for the benefit of the household, but wives retained some portion

of their time after completing domestic and agricultural chores to devote to their own enterprises.<sup>35</sup> Income derived from these enterprises provided women with some autonomy within marriage and could be used for women's strategies to promote their own or their children's well-being. The financial demands of the colonial period, however, motivated household heads to exert increased control over women's wealth and to prevent women from using their labor independently from the household.<sup>36</sup> Such actions fall under the expanded definitions of domestic violence that scholars have recognized in recent years.

Finally, in much of Africa marriage was and is legitimated through bride-wealth. Bridewealth—the third of these nested processes—was a strategic investment that built and maintained webs of kinship and organized and controlled labor. Bridewealth often involved the transfer over a number of years of goods (grain, livestock, and cash) and services (weaving, herding, and occasional farm-work) from the husband's kin to those of his bride. In return, the husband and his kin group received the rights to the bride's labor power (at least for that portion of the day customarily devoted to household chores and other activities which contributed to the well-being of the household, such as farming, weeding, and spinning.), her reproductive power, and her domestic services.<sup>37</sup>

Colonial administrators' failure to understand the complex flow of goods and obligations involved in bridewealth transfers was reflected in the legal systems they imposed. As the value of bridewealth increased in many places throughout the subcontinent during the colonial period, some husbands also understood the higher value of bridewealth to confer on them fuller control over their wives' labor and sexuality and enhanced patriarchal authority. At the same time, economic pressures often limited the ability of husbands to pay bridewealth and contributed, particularly in the postcolonial period, to a rise in long-term domestic relationships that did not attain the status of marriage. Domestic violence must be understood in relation to the complex ways in which local processes of change shaped household relationships.

In many ways, the analyses of domestic violence in this volume contribute to a greater understanding of a broader history of the family. Martina Salvante's chapter illustrates the creation of new forms of family life during the Italian colonization of Eritrea, while Emily Burrill, Richard Roberts, and Marie Rodet examine the reconfiguration of households in French Soudan (Mali) after the abolition of slavery there. Studying domestic violence forces us to examine the constant renegotiations of power relations within families.

#### DEFINING DOMESTIC VIOLENCE:

#### HUMAN RIGHTS AND THE PROBLEM OF CULTURE

Efforts to combat domestic violence within Africa have been plagued by accusations that it is a Western concept without relevance to African cultures.

There is a certain truth to this charge. The emergence of an international feminist movement, with the resulting campaigns against domestic violence, has shaped much of the work done to combat domestic violence in Africa. However, this work also has local roots. One of the contributions of this volume is to demonstrate the complicated past of the cultural categories that people have used to make sense of domestic violence in Africa.

In the West, the identification of domestic violence as a problem has its origins in the child protection movement in industrializing countries during the middle of the nineteenth century, itself a result of the novel identification of childhood as a distinctive phase of human life.<sup>38</sup> Protection of children from cruelty became, in turn, a means of opening up the household to public scrutiny. This scrutiny also revealed other forms of family violence, including wife battering.

In the United States in the twentieth century, the problem of domestic violence became a medical one. The “battered child syndrome” was first used in the public health literature in the early 1960s.<sup>39</sup> By 1976, every state in the United States mandated reporting of evidence relating to the battered child syndrome. In the 1970s, the “battered wife syndrome” became a central element of the women’s movement and shifted the problem of domestic violence out of the hands of the medical and social services and into the judicial sphere, as courts recognized a history of violent abuse as a defense in cases where women killed their abusive husbands.<sup>40</sup> Along with the medicalization of domestic violence came new legislation. By the early 1990s, major industrial countries had enacted new legislation criminalizing violence against women.<sup>41</sup>

These developments in the industrialized world intersected with the internationalizing human rights movement, giving rise to an international women’s rights movement that played an important role in the mobilization of international actors and states to enact legislation protecting women against discrimination and against violence as basic human rights.<sup>42</sup> The concept of human rights emerged primarily out of Western political theories of the rights of the individual to autonomy and freedom. The concept gained legal status in the international legal system that emerged after World War II. The United Nations Charter (1945) and the Universal Declaration of Human Rights (1948) codified a normative system of rights that adhere to people precisely because they are human.<sup>43</sup> From the beginning, the conception of human rights articulated in this international system included gender equality. Campaigns by gender activists have made this commitment explicit, resulting in the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the Convention on the Rights of the Child followed in 1989.<sup>44</sup> Both conventions explicitly identify violence against women or children as a violation of their rights.

The strategies of the international women's movement have influenced struggles against domestic violence in Africa. However, human rights discourse has not been seamlessly translated into national or local legal arenas. Scholars have identified this as a problem of scale, in which different discourses and practices prevail at different levels.<sup>45</sup> As Sally Engle Merry recently argued, international discourses do not neatly fit into vernacular discourses about justice, dignity, and emancipation. Merry has emphasized the role of the "translator" in bridging this gap. She writes that "translators refashion global rights agendas for local contexts and reframe local grievances in terms of global human rights principles and activities."<sup>46</sup> Indeed, domestic violence programs that merge human rights discourse with local idioms have emerged in numerous African societies. However, states can resist global human rights discourses and regimes by arguing that such ideas are opposed to local culture and values.<sup>47</sup> Benedetta Faedi (in this volume) details the recourse to such cultural arguments in the exceptions that numerous African countries have to their ratification of CEDAW where its provisions conflict with local understandings of religious or customary law. As Faedi describes, states bowed to significant pressure to ratify international human rights conventions but sought ways to avoid implementing them. In place of what may be termed blunt international instruments of human rights, Faedi calls instead for empowering regionally based human rights commissions and courts as a way of resolving the tensions with what states invoke as "local culture" to delay implementation.

Few students of culture today would invoke Edward B. Tyler's classic late nineteenth-century definition of culture as "that complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a member of society."<sup>48</sup> Tyler's description of culture as a bounded entity, shared by all members of the community, supported European understandings of Africa as a patchwork of distinct "tribal societies." Most scholars today would agree that culture is better understood as a composite of practices that are contested, changing, connected to relationships of power, and shaped by historical influences. Within popular discourse, however, culture remains a powerful concept that carries a sense of deep tradition and national essence.<sup>49</sup> In Africa, such references to culture often involve claims about the continuity of cultural structures from the precolonial to the postcolonial eras.

The chapters in this volume contribute to the analysis of the place of culture within both historical and current debates about women's rights and legal protections from violence and discrimination. Unfortunately, none of our contributors deals directly with precolonial Africa. We hope that this volume inspires future research in that vein. However, the work included here highlights the major reconfigurations in family ideology that took place across Africa during the colonial period. Chapters by Burrill and Roberts, Rodet,

Elizabeth Thornberry, and Salvante make clear that ideas about the duties and obligations of different family members changed over time. At stake in these debates was the status of the household head and his rights over his dependents. Far from being stable, during the colonial period these rights were constantly challenged in the face of pressures from women, junior dependents, and from colonial officials whose views of African families also changed, as chapters by Stacey Hynd and Elke Stockreiter describe. These findings do not exclude the possibility of continuities in cultural understandings of the family between the precolonial and postcolonial periods.<sup>50</sup> However, we should be suspicious of appeals to an unchanging culture, in Africa as elsewhere.

In her chapter in this volume, Saida Hodžić analyzes the very different trajectories of efforts to ban female genital cutting and domestic violence in Ghana, both of which emerged out of the international women's movement. Although it might seem likely that efforts to ban FGC would bump up against cultural justifications for the continuation of the practice, Hodžić describes the relatively frictionless process of banning the practice. In contrast, efforts to promote national legislation to prohibit domestic violence failed miserably. Hodžić explores the complex ways in which international human rights discourse was marshaled in Ghana and the place of government–civil society interactions during these two campaigns. Culture was invoked differently in each effort, which lends support to the contention that culture is a malleable element in the debates around women's rights and domestic violence.

Despite being a signatory to all the major international human rights conventions, Senegal is still a site of domestic violence, and reforms instituted by the state actually perpetuate the conditions of such violence. Scott London in this volume explores the ways in which women with complaints of domestic violence are required to attend mandatory reconciliation sessions. London describes how women's complaints go unheeded by male mediators who tend to defer to husbands' explanations of domestic "troubles" and thus reassert the power of patriarchy.

But culture is not invoked randomly in the debates about domestic violence in Africa. Codou Bop, a Senegalese activist, argues in her chapter that culture is repeatedly invoked as the prop for patriarchy and thus lies at the heart of the persistence of domestic violence. The only solution is to change the culture. Bop's conclusion raises questions about the possibility of translating alternative visions of power and authority into local idioms. But how is this to be accomplished?

In a bold argument about efforts to eliminate female genital cutting, Gerry Mackie has proposed mobilizing local pressure groups to change the conventions surrounding marriage so that FGC would no longer be seen as a precondition for proper marriage in sub-Saharan Africa.<sup>51</sup> Mackie makes clear

that the success of such a campaign cannot rest on the actions of individuals or individual families but must be based on communities acting together to change cultural practices. Several African-based NGOs (nongovernmental organizations), such as Engender Health in South Africa and Raising Voices in Uganda, work with men and have pursued a similar strategy in their efforts to combat domestic violence. By using men's associations—especially age-grade associations—efforts are under way to harness cultural institutions to change cultural practices by creating new collective standards that disapprove of domestic violence.<sup>52</sup>

REGULATING DOMESTIC VIOLENCE:  
LEGAL SYSTEMS AND MORAL ECONOMIES

The tension between competing conceptions of domestic violence is not, however, present only in human rights discourse and its collision with notions of culture. It is a fundamental feature of the legal arena. All societies have some form of legal pluralism in which multiple systems of normative beliefs and legal practices coexist. In precolonial Africa, various forms of indigenous law existed side by side with shari'a (Islamic law) and, during the era of the slave trade, with forms of European and canon law.<sup>53</sup> Colonialism, however, generated what John Griffiths has termed juristic legal pluralism, which gave formal structure to the interactions between different legal systems.<sup>54</sup> The classic example of colonial legal pluralism was the dual legal system that recognized and separated preexisting "native" law from the received law of the metropole.<sup>55</sup> Colonial legal pluralism can be understood as an encounter between dynamic, local processes of change in indigenous societies that predated colonial conquest and continued after conquest, and dynamic and changing forms of colonialism.<sup>56</sup>

Colonial systems implemented dual legal systems for reasons of both practicality and international law. The protectorate, which granted indigenous authorities sovereignty over internal affairs while placing them under the guardianship of an imperial power, was the predominant international legal instrument of late nineteenth-century imperial expansion. This structure also allowed imperial powers to delegate much of the work of governance to indigenous rulers. The protectorate sliced off those characteristics of sovereignty that involved capital crimes and other crimes considered to be threats to public order and singled them out for criminal prosecution, usually in courts run by the European colonial officials. Disputes relating to families and personal status were relegated to a residual category of customary or family law, often controlled by existing native authorities. Thornberry (in this volume) examines the impact of this dual classification on sexual assault cases in South Africa, which often fell into the cracks between these two systems.



MAP 3. Southern and Central Africa

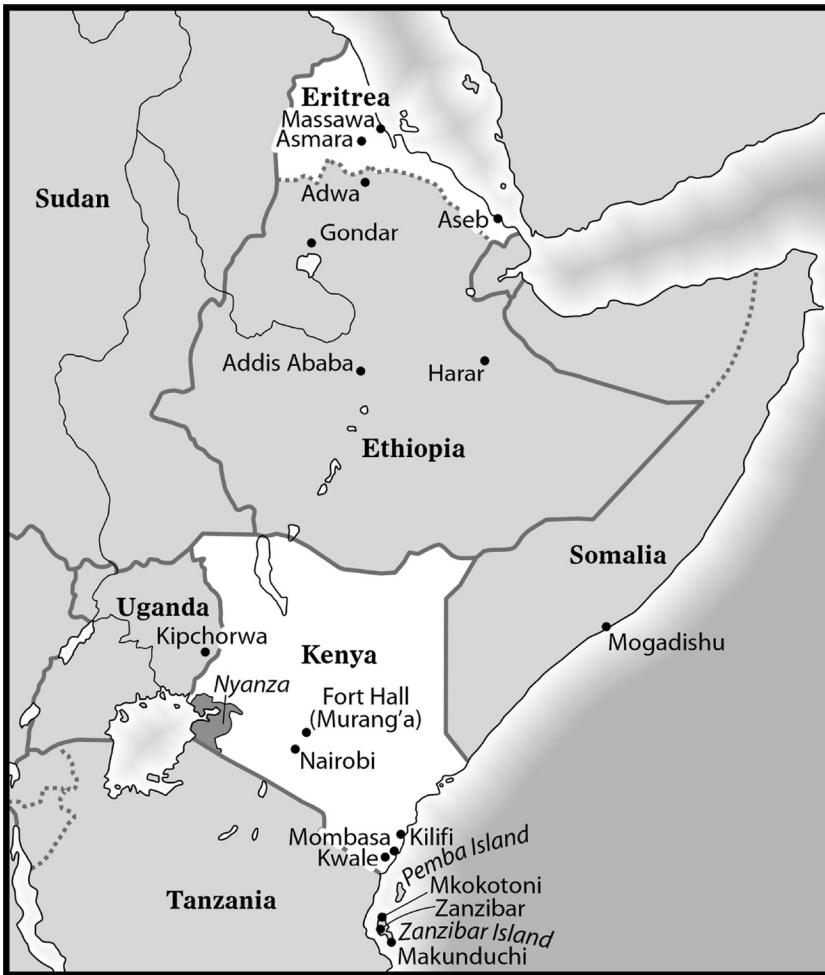
In order to exert some control over the African courts it supervised, the superior imperial power sought to make legible indigenous law. This process has been referred to as the invention of tradition, and it often took the form of collaboration between indigenous authorities (often merely male elders who were thought to be custodians of local knowledge) and colonial officials to generate handbooks of customary law. Indigenous law became customary law through this process and these handbooks served as guides to colonial magistrates in adjudicating cases and appeals brought to their courts.<sup>57</sup> The production of customary law gave significant power to native informants to reshape gender relations and forms of authority. Male household heads used these opportunities

to consolidate their power. Colonial magistrates also shaped customary law according to their perceptions of African societies and African families.<sup>58</sup>

There were, however, limits on what could be invented. In Muslim communities, where the protectorate model recognized the regime of shari'a, and qadis became employees of colonial states when they served as assessors or judges on native courts, the ability to invent tradition was restricted by the circulation of written legal texts.<sup>59</sup> Even in nonliterate communities, however, the precarious hegemony of the colonial regime depended on its ability to manipulate the symbols and institutions of precolonial authority; it could not stray too far from popular consensus on the contents of custom.<sup>60</sup> Rather, the invention of tradition gave rise to what Sara Berry calls "an era of intensified contestations over custom, power, and property" within African courts.<sup>61</sup> One of the central focuses of these debates was the appropriate level of subservience that wives and other dependents owed to household heads.

The delegated sovereignty of the protectorate also generated policy and legal problems for colonial administrations, especially when custom or shari'a came in conflict with metropolitan and colonial rights. In this volume, Stockreiter discusses such a conflict, over the status of child brides in Zanzibar. Although British colonial legal policy granted shari'a wide autonomy in civil disputes in Zanzibar, a crisis was provoked when an activist colonial official decided that the child marriages condoned by shari'a resembled child rape cases in England and were therefore "repugnant" to civilization. Colonial officials were often deeply ambivalent about customary practices and occasionally intervened based on the repugnancy clauses found in most imperial legal codes. Thus, the British outlawed corporal punishments sanctioned by shari'a, and the French sought to mandate women's consent in marriage.<sup>62</sup> These actions contributed to the ongoing debates and struggles over the nature of custom that played out in colonial courts.

Using court cases, Rodet and Salvante (in this volume) describe how the French and Italian colonial states intervened in the domestic sphere if they felt that certain practices were undermining family stability or racial hierarchy. Rodet discusses how colonial policy changed as significant numbers of divorces were granted to women who complained of domestic violence. Worried about the lack of family stability, the colonial administration began to criminalize battered wives who left abusive husbands, sentencing them to prison terms. Salvante discusses how Italian Fascist ideas of racial purity led the colonial state in Italian East Africa to intervene aggressively in long-term domestic relationships between Italian settlers and African women. The police did not concern themselves with short-term sexual encounters across the racial divide but descended aggressively into the homes of Italian settlers if they suspected that stable, affective relationships existed.



MAP 4. East Africa

However, neither the colonial state nor its male interlocutors managed to fully control the claims about domestic violence that were made in court. Several chapters in this volume demonstrate that women's agency in bringing cases of domestic violence to the courts challenged the practices of patriarchy. Stacey Hynd's chapter explores the challenges the colonial legal system faced when confronted with a wife who killed her violent husband. Rodet uses cases of domestic violence to examine women's efforts to end abusive relationships. Battered women may have escaped from abusive households in these individual cases, but they did not fundamentally challenge the bases of patriarchy and the logic of domestic violence. Burrill and Roberts propose in this volume that marriage and household formation should be seen as a form

of “moral economy” in which men and women enter into a complex set of interlocking relationships that were shaped in part by prevailing assumptions regarding the acceptable limits of exploitation.<sup>63</sup> As Susan Amussen writes about domestic violence in early modern England, “No one denied there was an appropriate place for discipline within the household. The difficulty was ensuring that its use stayed within acceptable limits.”<sup>64</sup> When those limits were exceeded, aggrieved individuals brought complaints forward to various forums for dispute resolution, whether informal kinship meetings or formal courts, often invoking this very idea of inappropriate violence. The WHO 2005 study lends support to the “moral economy” concept of the household because it indicates that high percentages of women accept a certain degree of violence in their domestic lives. The term “patriarchal bargain” was coined by Deniz Kandiyoti to challenge monolithic notions of patriarchy prevalent in Western feminist thought. Kandiyoti argued, from localized case studies in the Middle East, Africa, and Southeast Asia, that many Muslim women engaged in a bargain with patriarchy as a survival strategy.<sup>65</sup> Emily Burrill’s study of domestic murders in Sikasso, Mali, demonstrates that wives were actively complicit in the maintenance of patriarchy—including domestic violence—as long as it remained within certain limits.<sup>66</sup> The limits recognized by women in Sikasso and elsewhere were not necessarily the same as those recognized by men, much less colonial administrators; but all of these groups did engage each other in an ongoing debate over the appropriate exercise of violence within the family.

#### AFRICAN VOICES IN THE COURTROOM

The authors in this volume rely heavily on court records as a source of evidence. Using court records to uncover domestic violence raises important epistemological questions. In her chapter, Hynd asks how students of domestic violence can use court records in the colonial past when the very concept of domestic violence was not yet invented and neither courts nor litigants used the term. However, many of the chapters in this volume—including Hynd’s own—demonstrate the crucial importance of conceptions of family to both the practice and adjudication of certain forms of violence. In a variety of times and places, moral economies of violence permitted men to use violence against their wives, parents against their children, or household heads against their many dependents.

In seeking to reconstruct these moral economies, court records provide an invaluable resource. They reveal the importance of ideologies of family to kinds of violence that do not fit easily into definitions of domestic violence derived from international experience. Katherine Luongo peels away the layers of a witchcraft case to discover that sexual violence lay at its source. Luongo

argues that Africans often understood and explained domestic violence through frameworks such as witchcraft. In her chapter, Thornberry describes the importance of ideas about family to the distinction between customary and criminal law in colonial South Africa. The testimony in these cases allows her to reconstruct understandings of sexual violence held by women and their families, which contradicted the understandings of colonial officials.

Court cases provide, as Koni Benson and Joyce Chadya have recently argued in their study of rape in colonial Bulawayo, a “rare opportunity to hear women speaking about their lived experiences.”<sup>67</sup> Sally Engle Merry’s study of law and colonialism in Hawai’i notes that court records provide an opportunity “to glimpse the tensions and conflicts of everyday life, to hear the stories of ordinary people who were not otherwise producing archival texts, and to understand the complex role of legal institutions” in the colonization of the islands.<sup>68</sup> Used carefully, court records can even provide some hints at the prevalence of domestic violence. The 1989 UN report stated that police reports “present only the tip of the iceberg” of the prevalence of domestic violence, and suggested that the level of domestic violence might be better estimated using records of divorce cases, especially in industrialized countries where violence in the family is often presented as ground for divorce.<sup>69</sup>

Court records also reveal the role played by legal processes in disrupting or reinforcing patterns of domestic violence. Susan Hirsch has applied linguistic and discourse analysis to Swahili women’s disputes brought before the qadi’s courts in Mombassa. Hirsch uses both records from the court and her own observations of disputes. By bringing disputes before the qadi’s court, Swahili women both negotiated marital disputes and refashioned gender in the process. In narrating their troubles before the qadi, women confronted and reimagined Swahili gender norms that demand silence and subordination. Qadi’s courts thus became “sites of resistance” not only because women challenged gendered norms but also because the judgments tended to favor women.<sup>70</sup> In Senegal, however, Scott London demonstrates in his chapter in this volume that, far from being empowered by their complaints of domestic violence, women found that court-mandated mediation sessions turned their complaints into criticisms regarding their lack of obedience to their husbands.

Using court records to write about domestic violence is, however, not straightforward. Records of domestic violence are often scattered among the various court systems. Such cases may have appeared before criminal courts in trials for rape, murder, or assault caused by violence in the domestic sphere (see chapters by Coe, Hynd, Luongo, and Thornberry) as well as before courts charged with dealing with civil disputes, such as divorce or child custody, where domestic violence in some form was invoked by the disputants (see chapters by Burrill and Roberts, London, Rodet, and Stockreiter).

Even when relevant cases are located, court records have limitations. They are not necessarily representative of the society that produced them; courts in communities with high levels of domestic violence might hear few cases about it, precisely because domestic violence is not considered a crime worthy of prosecution. The grievances we hear have been altered by the process of transforming the dispute into a legal wrong, by court procedures, by translating the testimony from local languages into colonial ones, and by the act of committing the claims to writing.<sup>71</sup> Students working with court records must also be mindful of the fact that the law changes. Procedures change; appeals exert backward pressure on legal practices; new legal categories and concepts are introduced.

Nor were these changes always intentional; there were always unintended consequences to the impositions of new legal regimes.<sup>72</sup> The French created exactly such conditions when they realized that the 1903 colonial legal system that provided opportunities to African women to seek divorce from their husbands actually created what they called “family instability.” Here was a case where the French drew on recent metropolitan legal changes that permitted women to sue for divorce and imposed their sense of rights into a colonial situation.<sup>73</sup> Rodet in this volume discusses how the colonial administration of French Soudan sought to control the new rights given to wives (to seek divorce and to give consent in marriage) by punishing them for abandoning their conjugal homes. It is this mutual reconfiguring of legal and cultural definitions that makes the colonial period so important for understanding the history of domestic violence in Africa, as well as the challenges faced by those who are grappling with the problem today.



Amina Mama, a Nigerian feminist scholar, argues that activists and scholars concerned with domestic violence in Africa must look to the colonial period to understand the meaning and quality of African domestic violence in the present. She argues that colonial states sought to separate women and men into distinct, Eurocentric gender categories whereby women were relegated to so-called private spaces and restricted from movement and migration, while men were encouraged to work outside the home and engage with state tools in public (albeit highly monitored) ways.<sup>74</sup> Such processes of separation created a new domestic space for intimate violence. The chapters that follow support Mama’s characterization of the colonial period and flesh out the nature of colonial contributions to the perpetuation of domestic violence. Despite occasional gestures toward liberal reform, the legal structures of colonial Africa tended to condone domestic violence, particularly violence perpetrated by husbands against their wives but also violence against children and older

women. The state prioritized stability over the protection of vulnerable groups and relegated questions involving the family to the arena of custom.

Because of the colonial and postcolonial state's role in defining domestic space, Mama argues that the state cannot be the mechanism for change. Rather, grassroots, non-state-based solutions to violence in postcolonial African contexts have the most potential for combating household-based gender violence. However, Mama also notes a handful of promising state-funded projects especially in Uganda and Tanzania. In these cases, vocal elected officials, particularly female elected officials, and successful media and informational programming backed by state funding, provide hopeful models of state participation in anti-domestic violence reform.<sup>75</sup> These successes are linked to the fact that they emerged from localized knowledge production (a version of Merry's vernacularization), but they are also supported by international movements and organizations. The chapters in the third section of this volume, which focus on the contemporary period, analyze the successes and limitations of current approaches to domestic violence in several African countries. They demonstrate the lingering effects of the debates initiated during the colonial era.

It is the importance of these lasting repercussions that makes the conversation among historians, anthropologists, activists, and legal scholars over domestic violence in Africa initiated in this volume necessary. Interdisciplinary dialogue helps us understand the changing patterns of domestic violence over time, fleshing out the models of social scientists and explaining how changes in family structure and in broadly shared understandings of people's duties and obligations within the family have shaped patterns of violence within the family. The contributors to this volume remind us that because acts of domestic violence are ultimately about power and linked to larger sociocultural values, scholars should look more closely at the links between violence in the household, social and economic strife, and challenges to local political authorities and disputes over state power.<sup>76</sup> All of the contributors to this volume provide models for this interconnected research agenda through the use of legal records, court testimony, and debates about legislation, and thus provide inroads to new understandings of African domesticity, the family, and law during the colonial and postcolonial periods.

The history of domestic violence also provides a window onto the ways in which Africans interpreted the major social changes of the nineteenth and twentieth centuries. Members of households who violently subjugated other household members did so within the intimate space of family relationships, but these acts were part of larger sociohistorical connections. Court records and legal documents reveal that quite often, domestic violence took place under conditions of increasing shortages of material, political, and social resources

associated with the shifting terrain of colonial rule and globalization. By contrast, victims of domestic violence sought out courts because they provided new avenues for confronting these shifting patterns of power consolidation. The history of domestic violence reveals the intimate, embodied experiences of power. Those chapters that examine the contemporary situation are also keenly aware of the challenges facing those who wish to implement greater protections for women within households.

The contributions to this volume reveal that, while the prevalence of domestic violence has changed over time, the problem of domestic violence has changed even more. It has been redefined as a problem for states, a problem for communities, a problem for families, and a problem for human rights activists. All of these definitions remain contested, and efforts to end domestic violence are, in no small part, efforts to control the definition of the problem. Regardless of how we define the problem, violence within the domestic sphere continues to take its toll on women, children, men, and society as a whole.

#### NOTES

This introduction grows out of an engagement with our contributors, colleagues, the anonymous readers of our manuscript, and the editors of the *New Histories of Africa* series at Ohio University Press. In particular, we want to thank Babacar Fall, Sarah Roberts, and Helen Stacy.

1. Linda Gordon, *Heroes of Their Own Lives: The Politics and History of Family Violence, Boston 1880–1960* (New York: Viking, 1988), 27–28.

2. By contrast, the term “family violence” is preferred by social science researchers who do not see gender as playing a significant role in domestic violence. See for example D. H. Currie, “Violent Men or Violent Women: Whose Definition Counts?” in *Issues in Intimate Violence*, ed. R. K. Bergen (Thousand Oaks, CA: Sage, 1998).

3. The best overviews of these theories appear in Sana Loue, *Intimate Partner Violence: Societal, Medical, Legal, and Individual Responses* (New York: Kluwer Academic/Plenum, 2001), 21–36; United Nations, *Violence against Women in the Family* (New York: Center for Social Development and Humanitarian Affairs, 1989), 25–33.

4. See especially Michael P. Johnson and Kathleen Ferraro, “Research on Domestic Violence in the 1990s: Making Distinctions,” *Journal of Marriage and the Family* 62, no. 4 (2000): 948–63; Rosemary Ofeibe Ofei-Aboagye, “Altering the Strands of the Fabric: A Preliminary Look at Domestic Violence in Ghana,” *Signs* 19, no. 4 (1994): 924–38.

5. See Albert Bandura, *Aggression: A Social Learning Analysis* (Englewood Cliffs, NJ: Prentice Hall, 1973). For a fascinating study about the cultural reproduction of learned behavior, see Paul Willis, *Learning to Labor: How Working Class Kids Get Working Class Jobs* (New York: Columbia University Press, 1981). A variant of the social learning theory is the “recipe for living,” used by Catherine