Chapter 1
Introduction

Oche Onazi

This book aims to situate, at a general level of abstraction, African legal theory in the context of contemporary problems of war, crimes against humanity, the misery of poverty, hunger, disease and the crises of the environment, among many other pressing problems, which affect African and non-African societies alike. While the global or specific nature of these problems is debatable, given the disparity of experiences between African and non-African societies, what is less arguable is the absence of African approaches or responses to such questions, an issue that extends beyond legal theory.

In response to this shortcoming, this book not only seeks to provide African solutions to contemporary problems, but also provide an *African* contribution to the understanding of legal theory. Under the aegis of African legal theory, therefore, the contributors in this book explore the promise of the African philosophical, cultural and social experience and understanding of law in relation to contemporary problems. Although what is called African legal theory is still up for debate, what the contributors generally explore are the ways in which law, legal concepts and institutions embody or reflect the most salient and common attributes of life in sub-Saharan Africa, attributes which are most often called Afro-communitarian (Metz 2012, pp. 22–23). Indeed, what is significantly articulated in this book is not just what is 'African' in legal theory, but also what is attractive in the African tradition.[1] In doing so, the contributors by no means claim that the Afro-communitarian characteristics of law, legal concepts and institutions are present in all sub-Saharan societies or that everything African is philosophically plausible. Rather, the contributors interpret and draw from the African tradition in a way that leads to philosophically attractive ideas about what law, legal concepts and institutions ought to be in all sub-Saharan societies.

[1] I owe this point to Thaddeus Metz. I thank him for drawing my attention to it.

O. Onazi (✉)
Lecturer in Law, University of Dundee, Dundee, UK
e-mail: o.onazi@dundee.ac.uk

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Notwithstanding, the objective of this book might invite some scepticism, especially because the connection between legal theory and practical contemporary problems is not always obvious, and also, because of the already mentioned issue of the unsettled meaning of African legal theory itself. This scepticism is not by any means misplaced. Indeed, even the contributors do not agree on what African legal theory means, let alone on its relevance to contemporary problems.

For a moment, part of the scepticism about the relationship between legal theory and contemporary problems can, at least, be placated by understanding the intricate relationship between legal theory, legal philosophy and sociology of law. A valuable way to respond to this scepticism is by clarifying the methodological nature, scope or boundaries of the discipline of legal theory. Generally speaking, legal theory is quite narrow or specific in its scope; even though opinions vary on how restrictive or expansive it can or should be (see, for example, Friedmann 1967, p. 3). Nevertheless, it can be argued that, although legal theory typically refers to systematic or scientific inquiries into the nature of law, laws in general and legal institutions; it is not concerned, but does not necessarily exclude, philosophical, moral or sociological enquiries (Cotterrell 2003, p. 3). Although legal theory is ambiguous about questions relating to the nature of justice or the moral justifications of laws and legal institutions, it provides an opportunity to address some of these concerns through theories of natural law (2003).

In another sense, although legal theory does not directly address the problems of concern of this book, it, nevertheless, provides a window of opportunity for the type of investigations in this context through its interaction with legal philosophy and sociology of law. Legal theory, as such, is not far removed from concerns of legal philosophy or sociology of law, a relationship which is made more apparent under the umbrella subject of jurisprudence. The relevance of legal theory to contemporary problems is, therefore, dependent upon grasping the nature of contributions of legal philosophy and sociology of law to legal theory. Legal philosophy and sociology of law impact upon legal theory, and, thereby, on contemporary problems, by grounding normative and empirical inquiries into the nature of concepts of law, justice, responsibility, obligation, rights, duties, property, land, ownership, ethics, person, identity, citizenship, community, state, market, crime, punishment and other important concepts. Very few would disagree that the ability to evaluate and develop legally-based practical solutions to many problems of the world today depend on a proper understanding of these concepts. Legal theory, as such, has a pivotal role to play in relation to contemporary problems around the globe.

Looked at this way, the essays in this book, through the critical lens of African legal theory, collectively seek to rejuvenate the discipline of legal theory in a way that reinforces its concern for contemporary problems. This is achieved, not only by challenging dominant perceptions of legal theory, but also by establishing its foundational concepts on a different (African) theoretical basis. This is more so because – and another common theme among the essays in this book – the contemporary problems of concern have an indelible African mark on them. Wars, famine, hunger, disease, poverty, and other symptoms of injustice, are endemic in Africa, apart from being problems that have failed to attract African approaches or responses. The popular,

very often, negative image of Africa as a continent of enormous catastrophes has, among other reasons, accounted for the lack of interest, appreciation and analysis of different forms of indigenous African thought, especially how these forms of thought may be relevant to addressing contemporary problems. Indeed, a common argument among the essays in this book is particularly that African legal theoretical, philosophical, jurisprudential or other forms of thought have been excluded, under-explored or under-theorised in relation to many contemporary African problems, not least problems outside Africa.

The lack of knowledge, interest or simply the neglect of African legal theory in intellectual circles can, among other things, directly be traced to the central controversy surrounding the subject. This controversy is simply about the existence of African legal theory; in other words, whether anything like African legal theory exists, a question that is related to an earlier scepticism about the existence of African philosophical knowledge. African legal theory invites a similar sort of scepticism, especially when it is exclusively defined or established, as often the case, from African philosophy.

The source of this controversy appears to be epistemological, particularly because of the obvious long-standing methodological question about the disciplinary parameters of African philosophy. The controversy is that, if legal theory, in the general sense of the term, is the scientific analysis of laws, legal concepts and institutions, then positing the existence of African legal theory is also a matter of debate simply because of the unorthodox, unscientific or unsystematic method of analysis it derives from African philosophy. It is not so much, a controversy about the existence of African law, a question which is controversial in its own right; rather it is a question about the existence of African knowledge. More specifically, it is a question of whether African philosophical knowledge, which forms the basis of claims of the existence of African legal theory, allows for scientific reasoning, analysis, deduction or speculation about African law. After all, African philosophy is commonly unwritten and established from customs, culture, tradition, religion, moral values, folklore, stories, proverbs, parables and art, among other things. In spite of this, it must be recognised that African philosophy, in its recent history, continues to benefit from an increasing volume of textual sources, which are relied upon by many contributors in this book.

A first type of response to the scepticism above is to argue that African philosophy offers a different approach to legal theory, and this does not mean it is not legal theory at all. To be specific, African philosophy offers a different method of scientific reasoning or analysis, which yields to a different technique or approach to legal theory. After all, other philosophical traditions do not solely depend on textual forms of reasoning, analysis, deduction or speculation about law, so why should African philosophy be different in this respect? For example, there appears to be some new research interest in understanding law beyond textual forms of analysis (Del Mar and Bankowski 2013). Although African thought is yet to be explored, it provides an appropriate context to investigate such non-textual understandings of law.

A second kind of response can be made, through Boaventura de Sousa Santos (2007), which challenges dominant perceptions of knowledge, especially the

monopoly assumed by modern knowledge and law. According to this view, there are other forms of knowledge and modern knowledge is only a species. In assuming dominance over other forms of knowledge, modern knowledge contributes or concretises the anonymity of other forms of knowledge. Modern knowledge is discernible, while other forms of knowledge are not.

The dominance of modern knowledge is affirmed through the distinction between scientific truth and falsehood. Only modern science, not theology or philosophy, can generate ascertainable and universal truths about the world. The dominance of modern knowledge lies behind the distinction between scientific and non-scientific truth, something that contributes to the unrecognisable nature of indigenous knowledge. Modern knowledge discounts other techniques of establishing universal truth simply because they do not conform to its methods. Indigenous knowledge, on this account, is simply beyond comprehension; it is incapable of establishing either universal truth or falsehood. Indigenous knowledge is nothing short of a belief, myth, opinion or intuition, a basis for further investigation and subjugation by modern scientific knowledge. This is the same, Santos says, with modern law. Legality is determined by state or international law. The legal and illegal are the only ways of thinking of law. The a-legal and non-legal or legal or illegal according to non-state law is beyond comprehension. This thesis conforms to Santos's (2002, pp. 12–14) seminal work on the exhaustive nature or inability of modern knowledge to offer solutions to contemporary problems in ways that can ground some of the inquiries in this book.

There is a further epistemological point that stems from the above, one which may point to the limitations or incompleteness of aligning African legal theory so close to, or establishing it only from African philosophy. The point is that if it was, for whatever reason, ever valid to dismiss the existence of African legal theoretical, philosophical or jurisprudential knowledge, it is no longer tenable to continue to do so today. There has been so much legal experimentation and transformation in postcolonial African societies, which more than anything point in the direction of a nascent legal theory or legal theories. Although the full ramifications of these developments are not exactly clear or conclusive, the important epistemological point is that they require us to study them both philosophically and sociologically, to determine what exactly is unfolding, and also, the ways in which these developments can be understood and described.

The point being made is not only that defining African legal theory on the basis of African philosophy alone discounts the possibility of more descriptive, empirical-driven or sociological accounts of law, but also that it exposes African legal theory to the criticism of being backward-looking, nostalgic or static. African legal theory, from this standpoint, will fail to account for the evolutionary and asymptotic nature of African law and the society to which it is most relevant. While thinking of African legal theory sociologically does have to rely heavily on Western influenced methods, the advantage it offers, however, is that it allows us to study the impact or otherwise of African legal theory and philosophical concepts under the continuous and changing nature of the African environment.

Thinking of African legal theory sociologically can help shed light on how African concepts of law and philosophy have intermingled, transformed or taken up

new forms or how entirely new concepts have emerged or simply how old concepts have lost their significance. More importantly, it may help shed light on how African concepts have interlocked and transformed received or colonial concepts of law into something else. For instance, a reference to modern Africa can be a good way to elaborate on this point. Indeed, modern Africa is not modern in the Western sense of the term. Modern Africa retains something from the past and the present. It is a fusion of both worlds; it is at best a combination of the traditional and modern.

The opportunity for studying legal theory in contemporary settings is provided by sociological and anthropological studies on African urban cities (see, for example, Hetch and Simone 1994; Simone 2001). More recently, such studies have pioneered explorations into new forms of collaboration and co-operation that have emerged as a result of exclusion from formal economic and political systems. Without overstating or failing to acknowledge the endemic nature of poverty across Africa, the studies on urban cities importantly underscore the degree of creativity, solidarity, trust, reciprocity and cooperation among those excluded from the formal institutions, including formal institutions of law. It would be interesting to explore what African legal theory would mean in the light of these emerging organisational forms; in other words, it would be fascinating to explore how these developments impact upon sociologically informed theories of African law, laws in general and legal institutions.

The essays in this book do not claim to definitively settle all the issues highlighted above; rather they introduce readers to some of the key issues, questions, concepts, impulses and problems that underpin the idea of African legal theory. They outline the potential offered by African legal theory and open up its key concepts and impulses for critical scrutiny. This is done in order to develop a better understanding of the extent to which African legal theory can contribute to discourses seeking to address some of the challenges that confront African and non-African societies alike.

Although the essays in this book have a common aim, they, however, vary on the degree of emphasis given to either the question of African legal theory or to its potential or to its degree of application to contemporary problems. Understandably, given the controversy that has surrounded the existence of African legal theory, there is a genuine attempt to strike the difficult balance between expanding on its meaning on the one hand and its application to contemporary problems on the other. Similarly, because of the controversial nature of the subject of the book, the style – even though each essay varies considerably – is polemic. Some essays, however, are more polemic than others, just as some are more critical than others. Differences in terminology are noticeable. African legal theory, African jurisprudence and African legal philosophy are given different level of emphasis and they are used interchangeably in the essays to refer to the same thing.

The book is structured in three main parts, with each covering similar themes. In the first part, the essays consider questions relating to the definition of African legal theory, and to a certain extent, questions of its application. Chikosa Silungwe provides an appropriate point of departure into some of these issues; he touches on the nuances surrounding the definition of African legal theory, a term used

interchangeably with African jurisprudence and African philosophy. For him, it is farfetched to relate African legal theory to contemporary problems without, first of all, clarifying the nature of this theory. He argues against, and points to the flaws, of a purist concept of African legal theory, synonymous with what he describes as sentimentalist and legal pluralist approaches. Similarly, both approaches seek to show the continuity of African norms in contemporary settings, a point that makes them susceptible to criticisms from a third approach – the revisionist perspective on African legal theory. The revisionist approach, unlike the others, is sensitive to the distorting nature of the Enlightenment movement, colonial and capitalist projects on African legal theory. The debate at the heart of all approaches, however, is the question of culture, in particular, whether the African legal culture exists in a pure form. In contrast to these, Silungwe articulates a non-purist form of African legal theory inspired by Homi Bhabha's idea of culture's-in between, an approach that denies the purity of culture thereby recognising the 'convoluted socio–political environment of "law" or the "legal" in Africa (or in the African) which permeates into its theory, jurisprudence or philosophy'. The in-betweenness of cultures is evident from contemporary migrations, where cultures transform but retain something from their ancestral origins. Culture's-in between favours hybridity and infusion, not duality. It is a dialectic phenomenon that transcends, not into a Hegelian synthesis, but rather into a third space, a space of unequal power relations, which articulate, negotiate and contradict each other. Silungwe illustrates how this conception of African legal theory provides a better explanation for Anti-Witchcraft Laws, Anti-Homosexual Laws and the much talked about relationship between the Southern African concept of ubuntu and human rights norms. In all instances, African and Western norms – some more positively than others – intermingle or interlock confusingly, without necessarily becoming 'transmogrified'.

If hybridity and convolution are hallmarks of African legal theory, Mark Toufayan's rich contribution to this book demonstrates how this is achieved in a different way through the seminal writings of the late Nigerian Jurist Taslim Elias. This is part of Toufayan's broader aim of understanding how international law was appropriated by local intellectuals as a bargaining tool for local decolonisation struggles. Elias was one such intellectual. Elias spoke of the hybridity or the interaction between African customary law and English law, something which could only be achieved by properly maintaining the purity of the former in order to interact with the later. For Elias, it is the framework for various laws, not necessarily the African cultural norm, that should be considered as hybrid. In other words, Elias therefore sought to maintain the authenticity of African customary law as a way of interacting with English or other received laws. Toufayan argues that Elias placed African and Western laws on equal footing, that is, 'side by side'. He emphasised hybridity and duality at the same time. African humanism was the hallmark of the authenticity of African customary law. Elias, in Toufayan's words, 'succeeded remarkably in retrieving African humanism as the genus of the hybridity of its Western and indigenous influences'. Elias was well aware of the convoluted African legal environment and his aim was to try and map out or encourage the harmonious

growth and interaction of the various norms in this heavily complex setting. In doing so, as Toufayan argues, Elias presented a form of Negritude, a much wider term for political projects and the production of African consciousness to compensate and respond to the reception of imposed colonial laws. Elias's judicial Negritude was different, but not independent from the more popular use of the term by the inter-war movement in Franco-phone Africa. In the end, Elias gives us a different perspective of '– a law in-between'. For him, it was 'the conditions of a discourse working *between…*' African and English law. Like Silungwe the question of defining Africa is ultimately an enquiry into the nature of African law. Elias, however, had a different view on the question of African law. For him, it was necessary to uncover the purity or authenticity of African law, not by defining it in opposition, but rather by showing it could contribute and benefit from received laws. Indeed, Elias writings, as we learn from Toufayan, provide the foundations for the kind of investigations in this book, given that he strongly argued against 'isolating African ideas about law and government from general problems of political and legal theory'. It follows that this can only be achieved through a proper understanding and articulation of African law.

Dan Kuwali's contribution seeks to distinguish African legal theory from the mainstream legal theory, to make it more accessible to problems affecting contemporary African societies. He attributes the inadequate knowledge or relevance of African legal theory to domestic affairs and problems across the continent to the deleterious effects of colonial rule. Inadvertently, and although not seeking to engage in the debate about authenticity of African legal theory, Kuwali seems to subscribe to purity by seeking to decipher African characteristics in legal theory. The features can be deciphered, he suggests, by philosophical speculation of the visual and oral practices and customs of indigenous societies, and also, by extrapolating African legal theory from the work of the African jurist, among other people. Apart from arguing that international legal theoretical traditions have failed Africans at crucial moments, it is commonplace to argue that the laws of every society must be representative of its fundamental values. African societies cannot be different, if their laws are to have any legitimacy, acceptance or effectiveness. Kuwali puts the African characteristics of legal theory as follows: that it is rooted in culture, something which is derived from proverbs; that it seeks to maintain equilibrium in society; that it provides the foundations for a theory of restorative and reconciliatory justice; that it honours interdependence and collective responsibility, and finally, that it yields to a consensus-based theory of decision-making.

Dominic Burbidge moves the focus of this book beyond questions of the authenticity of African law and legal theory. He argues that African jurisprudence together with deductions from relational contract theory present an African perspective of the person, which not only is universalisable, but can also ground studies of culture, society and trust. The uniqueness of the African concept of person has been overlooked by Africanist political science discourse, which has almost exclusively focused on the lack of, or the degradation of institutions as the primary source of African problems. In doing so, they have excluded 'moral deliberation', including an understanding of the richness of the social and rational person regarding African

problems. Africanist political science discourse is particularistic in another sense; it fails to provide a continent-wide explanatory model for African problems, something which even the much celebrated political theories of pan-Africanism and ujamaa either distorted or failed to do. Burbidge argues that the explanatory model lies in the focus on the person, 'the person with Africa, not in Africa'. Burbidge finds support for this objective from African jurisprudence, especially a definition of the concept espoused by John Murungi. Burbidge's interpretation of Murungi's work is that African jurisprudence is likened to human dialogue, one that seeks to unite African human experiences with those across the world. In Burbidge's view, this notion of jurisprudence excludes theoretical distinctions between African jurisprudence and general jurisprudence. Burbidge's aim, not only is to show the similarity between both jurisprudential accounts, but also to show how African jurisprudence can contribute to general jurisprudence, something which has been overlooked by practitioners of the latter. African jurisprudence achieves this through its focus on the richness of human solidarity and the norms of social cooperation present in Africa. Burbidge goes on to unite the African account of the person with relational contract theory, to provide a better foundation for studies into the nature of society in general. This is because contracts are, in essence, a basis of formalising interpersonal promise-making; thereby (together with African jurisprudence) provide a stable foundation for economic and political life in the societies concerned.

Olúfémi Táíwó's contribution considers the common phenomenon of the violation of individual rights, a problem that can be generalised across legal systems in Africa. Although it is a well-documented issue, it does not feature prominently in scholarship related to African law and African legal theory. Táíwó argues that a proper understanding of why the violation of individual rights continues to persist rests on our grasp of the raison d'être of the modern legal system. And to effectively grasp the workings of the modern legal system is dependent upon an understanding of the metaphysical template of the individual. Indeed, unlike the African worldview of personality, communalism or collectivism, what rarely features in African legal or legal theoretical scholarship is the account of what he calls the 'metaphysics of the self that yields to the legal subject'. The fabric of the modern legal system is built on the primacy of the individual. The individual, amongst other things, is constituted centrally by reason and is guaranteed certain rights, which protects him or her from unnecessary interference from the state or state agents. The ability to reason is not the only feature of the individual, but it is arguably the most important one. Reason is necessary to determine life choices. Reason is an indication of freedom, something which is expressed through the capacity to function in the world. Overall, Táíwó is arguing for a modern African legal system that gives primacy to the liberty of the individual, something which should be built on legal systems in Euro-American legal discourse. He charges scholars of African legal theory to embrace modernity discourse as well as 'overcome their aversion of the self at the base of modernity'. Táíwó is not suggesting that there is nothing to be gained from the rich African philosophical heritage, rather that we must recognise the modern legal system exists almost exclusively as a received one. Unless we get rid of the existing modern legal system, we must become students of it and carefully decipher

how its central philosophical underpinnings can help secure human dignity, no matter how minimal its prospect of achieving this might be.

The essays in the second part of the book consider questions related to the significance of rights, including how they are established from African legal theoretical or philosophical approaches. Thaddeus Metz explores the extent to which human rights have a place in African legal and political philosophy, something which is achieved through the lens of Claude Ake's seminal essay, 'The African Context of Human Rights'. Metz argues against Ake's preference for group rights and economic and social rights by showing that individual rights and civil liberties are consistent with Afro-communitarian values. While accepting that Ake was accurate about the importance of communal relationships in Africa, he was wrong to say that those relationships negated the importance of human rights. In rejecting these claims, Metz responds by constructing a unified philosophy of rights based on important and common values in sub-Saharan African moral philosophy. Metz's philosophy of rights not only provides the foundation for the most central human rights and group rights, but also for the rights contained in the African Charter on Human and Peoples Rights. He achieves this by reconciling two important African values – the value of community and the value of human dignity. Living a dignified life depends on the capacity to commune with others, something which demands respect, especially the respect for the rights of others. The capacity to commune is simply 'the biological capacity to think of *oneself* as bound up with others and to act for their sake, i.e., *to be friendly or to love*, in a broad sense'. From this standpoint, a human right must be protected by the state and respected by others, because it contributes to a person's capacity to commune with others. In the end, Metz's demonstrates the application of this philosophy of rights to a range of rights, including civil liberties, due process rights, rights to political participation and rights to socio-economic goods.

Consistent with the overall objective of the book, my chapter considers what citizenship means today, what this definition overlooks and how this can be remedied by restating it from an African jurisprudential standpoint. My concern is that the basic set of ethical and moral values that are associated with citizenship (those that should encourage individuals to treat each other with dignity and respect) is taken for granted by both rights-based and duty-based definitions of the concept. Regarding rights, I question their capacity for integration, that is, whether they can offer more than just the protections of individuals against the state and other individuals. For instance, do rights encourage community, societal coexistence or social cohesion? Does the emphasis on autonomy, freedoms or liberation synonymous with rights necessary translate into relatedness, connectedness, integration or community? Duties otherwise referred to as responsibilities offer more in this respect, since they imply a sort of virtue and character. Nevertheless, they also crucially fail, at the moment, when individuals need to act morally or responsibly towards each other. This is because responsibilities are defined almost exclusively in vertical terms, in terms of the duties to the state, such as voting, compulsory military service, the payment of taxes and the obligation to obey the law. It is much easier, for lack of a better term, to show allegiance to the state by performing responsibilities while neglecting obligations to each other. Influenced by John

Murungi's seminal definition of African jurisprudence, which gives primacy to human ontology, I argue that it can help remedy these short comings by yielding to an ethical and morally embedded concept of citizenship. I argue that the kind of moral obligations demanded by the African jurisprudential concept of citizenship is first directed to humanity; it precedes and does not depend on rights and responsibilities.

Karen Zivi's chapter focuses on the contemporary problem of access to HIV and other health related treatment rights. She seeks to show the subtleties involved in making treatment rights claims in South Africa, including the role ubuntu, among other sources, play in articulating those claims. In doing so, she interprets and rejects two dominant interpretations of the novel legal discourse in South Africa in favour of her own account. What is missing from both accounts, she argues, is the articulation of the variety of sources of rights claims in a way that reveal the formation of new identities or the political subjectivies implicated in social struggles. Zivi offers a performative perspective on rights as a conceptual medium for a better appreciation and articulation of those nuances. With a focus on the campaign for HIV treatment access rights, she explains how the performative perspective provides a better way of grasping the 'varied roots of rights discourses' involved in the struggle for access to treatment. This is because the performative perspective 'is a complex linguistic practice the outcomes of which often exceed our complete control'. It comes into force 'through speech acts – understood expansively to include utterances as well as actions – that we often bring into existence the very things which we presume or are presumed to reference'. In other words, certain ends are brought into existence by utterances and actions among other things through a non-referential theory of language. The advantage of the performative perspective becomes apparent through a process of sedimentation. Sedimentation, in turn, implies using familiar norms, customs and gestures in novel contexts, or using them in familiar situations anticipating that they will generate new meanings. For instance, and what Zivi is ultimately suggesting in practical terms, is that the codification of a right does not sufficiently explain the effect of having that right. Indeed, what she shows is how the effect of a right claim '…occurs in practices beyond legal argumentation or traditional acts of speaking'. The advantage of the performative approach, then, not only rests on appreciating the intricacies of a rights claim, it also explains the diversity of the sources of those claims. In conclusion, Zivi's chapter demonstrates the diversity of sources of rights claims in South Africa. They include the constitution, international human rights documents, Marxism, liberalism, international feminist discourse, and particularly important, for present purposes, the South African concept of ubuntu. Part of her argument, then, is that a deeper appreciation of the role ubuntu plays, especially how it contributes to the treatment access rights campaigns can be valued by adopting a performative perspective.

Basil Ugochukwu importantly contributes to the understanding of how African literature or the arts more generally can serve as a source of an African philosophy or theory of law. He explores this through Chinua Achebe's *Things Fall Apart*, a novel not famous for its human rights credentials. Ugochukwu's overall aim, then, is, first, to reconstruct this popular, but negative image of *Things Fall Apart* in relation

to human rights. Contingent on the success of the first objective, Ugochukwu's second aim is to use *Things Fall Apart* to decrypt certain practices in pre-colonial African societies that are equivalent of human rights practices. Although they may not have been practiced in the form of human rights today, Ugochukwu argues that this does not mean they were not human rights practices at all. Ugochukwu argues that these pre-colonial practices yield to what can be called an Igbo philosophy of human rights, a philosophy with distinct Afro-communitarian characteristics. It is a similar type of philosophy that grounds the African Charter on Human and Peoples Rights, the novelty of which is the introduction of duties to international human rights law discourse. In exploring these themes, Ugochukwu is mindful of the difficulties of generalising the experiences of a particular ethnic group across the continent, and also, that of ascertaining the validity of a particular account of those practices. These difficulties more generally raise question marks about the plausibility of relying on literary works or the arts more generally as a normative framework for the regulation of any given society. Notwithstanding, Ugochukwu proceeds to carry out a discursive exercise of teasing out the narrative of *Things Fall Apart* in relation to women's rights, the right to life and the right to fair hearing. Regarding women's rights, *Things Fall Apart* was more of a reflection of the practices of many societies at that time than something specific to the Umuofia community. That is, the fact that women lived as second class citizens in the Umuofia community is not conclusive enough to suggest that they had no rights protections at all. Umuofia culture also recognised the right to life, even though this was sometimes 'ambivalent or inadequate'. *Things Fall Apart* also presents evidence of the existence of the right to fair hearing; it showed how parties to disputes had equal procedural rights.

The essays that make up the third part of the book also have a common theme; they address more societal questions, especially the place of law in the context of poverty and development. In the next chapter, I focus on some general themes relating to poverty and development. The chapter offers a critique of a report on Legal Empowerment of the Poor, a poverty eradication initiative of the United Nations Development Programme (UNDP). The chapter responds to the generalisation by the legal empowerment of the poor initiative on the benefits of the formalisation of certain legal rights, especially on the perceived benefits of legal formalisation of rights on poverty alleviation. While problems with the formalisation thesis have been addressed in relation to property, business and labour rights, very little has been said in relation to how the approach deals with the value of political participation. While responding to this oversight by the legal empowerment of the poor initiative, the chapter shows that activities of contemporary poor Africans in the informal sphere have a better grasp of the value of political participation to the extent that they point to how to ground new thinking in this respect. Informal political participation, something which reflects the spirit of Africa, 'covers grounds that even the best-intentioned, planned and supported formal initiative can only aspire'. Informal political participation assumes the following characteristics: it refers to organisational forms and networks of groups attempting to escape the harshness and rigidity of formal systems, especially formal systems of law. Informal political participation is directed at seizing political controls for the allocation of public goods

and services. Informal political participation not only gives the poor autonomy over important decisions that affect their lives, but also the ability to live dignified lives, whether it is through the distribution of public goods or the formation of non-state physical planning settlements. Informal political participation is relational; it cuts across kinship, family, religious and ethnic ties. In conclusion, I suggest that the advantage informal political participation holds over the human right to political participation is that it is not defined by a radical separation between the economic and political sphere. Informal political participation firmly grasps the correlation between economic and political exclusion, thereby opening up the possibility for the much needed democratisation of the economic sphere.

Adebisi Arewa's contribution postulates African humanist egalitarianism, described as the philosophical basis of all socio-economic and political African institutions, as the alternative to received and failed paradigms of capitalist and socialist development instantiated through theories of modernisation and dependency respectively. Both paradigms, according to Arewa, have crucially failed in improving the human condition, as evident from the spiraling levels of poverty, hunger, disease, homelessness, unemployment, inequality, lack of access to healthcare, and also the unequal distribution of resources across the African continent. African egalitarianism is underpinned by a 'metaphysical notion of sociability', that is, the biological interdependency between each human being, something which is important for 'growth, development, security and well-being'. What is fundamental to every African socio-economic and political institution is this notion of sociability. Arewa provides a practical example of African egalitarianism from African customary land law and property rights. African theories of land and property rights provide the foundation for networks of ownership patterns ranging from private to family, kinship to communal holding schemes, which are in turn used to secure the use of land for all the members of a given community and beyond. With the emphasis of the connectedness between the individual and community, African egalitarianism – as reflected by the different property owning relationships – offers a more robust model of development to meet the challenges of poverty and inequality, among other things, across the African continent.

In the final chapter, Babafemi Odunsi makes a case for the relevance of indigenous African criminal law (a pre-colonial system of criminology) in response to contemporary problems of crime detection, resolution and prevention. Starting from colonial rule, he argues that there has been a tendency to dismiss African criminal law, a tendency which still exists in many postcolonial African countries today. Through reform, the introduction of Western education, religious missionary activities, and public policy, African criminal law has been rejected and dismissed as barbaric. This is primarily because the practice of African criminal law depends on the invocation of the supernatural. Although there is a physical and supernatural element to African criminal law, the former and latter are indivisible. Odunsi encourages us to rethink the negative perceptions of African criminal law. After all, he argues that, despite sustained efforts to discourage African criminal law some of its practices still remain popular in many contemporary African societies. At another level, Odunsi draws parallels between certain practices of African criminal law and

'Psychic Witness' – an approach to crime detection in the United States of America that depends on the invocation of the supernatural. Odunsi uses 'Psychic Witness' as a heuristic device to question the wholesale dismissal of African criminal law. Odunsi does more than this; he illustrates the effectiveness of African criminal law system, especially in relation to the inadequacies of the modern criminal law system. African criminal law system offers a different way of understanding the purposes of criminal law system – the goals of rehabilitation, retribution and deterrence. African criminal law is rehabilitative in the sense that it places emphasis on restitution and reconciliation. Indeed, even though capital punishment exists, it is used as a last resort under African criminal law. In terms of retribution, vengeance is not the primary aim of punishment; rather the aim is to collectively denounce individual crime. Deterrence is achieved through supernatural sanctions, such as demonstrated through his detailed discussion of oath-taking. In conclusion, Odunsi outlines other advantages of the African criminal law, especially its participatory nature, as it demands an engagement of individuals at community level. African criminal law, he argues, is also cheaper and faster than modern criminal law systems.

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