HUMAN RIGHTS AND THE AFRICAN CULTURAL TRADITION

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Human Rights and Cultural Relativism

Few states in Africa have shown much enthusiasm for the human rights movement. Cynics might ascribe this attitude to the chronically unstable political conditions on the continent (Dlamini, 1991), but African governments tend to regard economic development as their overriding goal; they argue that individual rights and freedoms are a superfluous luxury that could impede national growth (Asante, 1969:96ff; Nhlapo, 1989:3-4). And Africans have every reason to be sceptical about the so-called 'rights culture': it resembles all too closely the ideological hegemony wielded by the western powers over their colonies in the nineteenth century, a time when Europe had arrogated to itself the role of arbiter in moral standards (Nickel, 1980:45; Rwezaura, 1983).

The current South African government and the ANC are in general agreement that South Africa needs a justiciable bill of rights in its future constitution. Considered in the light of the previous paragraph, and given the parties' markedly different political agendas, this consensus is remarkable, and it is almost reassuring to find that the government and the ANC do disagree on what exactly is to be included in the bill.

The question of culture is one area of disagreement. The ANC advocates a unitary state,[1] a principle that is underpinned by equality, non-discrimination[2] and a single national identity. Aside from the freedom to speak a language of one's choice and the freedom to pursue an artistic, sporting or recreational activity,[3] the ANC says nothing about cultural rights. The South African Law Commission[4] is of a completely different view.[5] Its draft bill on human rights guarantees every person's right, individually or collectively, to practise a culture (or religion) and to speak a language of choice.[6]

The inclusion or exclusion of cultural rights in the constitution will directly affect the status of women and children. Patriarchy is an established feature of all the southern African systems of customary law, and to a lesser extent of Islamic and Hindu law. A gender equality clause, such as the one contemplated in the ANC bill of rights, would proscribe the many institutions associated with patriarchy - polygyny and bridewealth to name only two - whereas in the Law Commission's bill they could be defended as elements of a cultural system.

Various parties, although politically at odds with the government, have

responded sympathetically to the Law Commission's draft bill. Most propagandists of the rights culture would, in their more reflective moments, concede that human rights cannot be successfully implemented without some regard being paid to local conditions. After all, despite somewhat extravagant claims of universality, at least first-generation rights were culturally specific (Donnelly, 1982); and it is undeniable that social conditions in Africa do differ markedly from those in Europe and North America, the birthplace of the human rights movement. A rights culture might be simply irrelevant to Africa, whose problems may require its own unique solutions.

This argument draws much of its force from the principle of cultural relativism: neither African nor western culture can be considered inherently superior, both must be accorded equal respect.[7] In the abstract, cultural relativism might have much to commend it, but in the context of South Africa it has acquired a suspect reputation. And it is in light of this reputation that I question the value of cultural relativism in the human rights debate.

The African Cultural Tradition

Talk about African culture and social institutions presupposes a distinctive tradition, one which popular imagination almost always locates in the pre-colonial past. Safely distant from any possibility of empirical verification, this primordial state has taken on a utopian quality. Thus, we learn that in Africa people suffered no systematic discrimination or oppression.

> The notion of due process of law permeated indigenous law; deprivation of personal liberty or property was rare; security of the person was assured, and customary legal process was characterized not by unpredictable and harsh encroachments upon the individual by the sovereign, but by meticulous, if cumbersome, procedures for decision-making. The African conception of human rights was an essential aspect of African humanism sustained by religious doctrine and the principle of accountability to the ancestral shades (Asante, 1969:73-4).

The individual's happy condition was, of course, attributable to Africa's characteristic political and social structures.

Rule by chiefs was the form of government prevalent in southern Africa (Sansom, 1974:262-3; Maylam, 1987:64-7). The chieftaincy was a pre-state polity,[8] in the sense that individual loyalties had not yet been fully transferred from the family to a central administration (Lewellen, 1983:34-5).[9] This ambivalence generated a tension between the centralising forces of the chief's lineage and the centrifugal forces of its rivals. Hence a chiefdom would be continually fragmenting and reforming as new factions gained power, con-

solidated their strength, and then lost control to competitors (Hall, 1987:63-4). The instability implicit in the structure ensured that no ruler could afford to rule autocratically (Prinsloo, 1983:161). The chief's authority was determined by a complex interplay of factors: the rules of succession, personal prestige,[10] control of ritual and the number of followers he might have attracted. A despotic chief would face revolt or secession (Schapera, 1956:211).

All governmental functions - legislative, executive and judicial - were confounded in one office, the chief-in-council. In other words, there was no separation of powers (Hamnett, 1975:65; Hammond-Tooke, 1975:64-5), and a prerequisite for protecting individual interests - an independent judiciary - simply did not exist.[11] But this did not result in oppressive rule. The African chief did not

> enjoy a continuing unquestioned right to command ... his authority had to be continually recreated situationally, in specific contexts. This is expressed in the formula that chiefs could not rule on their own, but only in constant consultation with their councillors and people (Hammond-Tooke, 1975:65).

Thus an old saying has it that 'chiefs ruled by grace of their people' (Schapera, 1955:84). They had to remain in constant touch with popular opinion, which they did through a system of representation by elders of the community, whose advice the chief always had to seek.[12] When chiefs acted in council with the elders, the approved form of decision-making was by consensus. According to another adage, 'in agreement with his councillors the chief was strong; in opposition powerless' (Ashton, 1952:215).

Consideration of the African judicial process reveals that in several respects it contained a better guarantee of procedural fairness than its western counterpart. The ideal sought by African courts was a reconciliation of the disputants approved by the community (Gluckman, 1972:7-11; Holleman, 1974:16-47). And, because reconciliation required a slow but thorough examination of any grievance, the parties had every opportunity to voice their complaints in a relatively sympathetic environment. (By comparison, the highly professionalised, western mode of dispute processing seems designed to alienate and confuse the litigant.)[13]

Without the organising potential of a central state, African societies were still largely dependent for their cohesion on the kinship system (Gluckman, 1972:4-5). The typical African family was extended both vertically (by incorporating ascending and descending generations into lineages or clans) and horizontally (by augmenting the conjugal family through polygynous unions). Thus a household would contain a man, his wives and their children, his unmarried brothers and sisters, possibly his parents, and any kinfolk or other people who

chose to attach themselves to him. This unit provided for all the individual's material, social and emotional needs. Such kin-based societies are characterised by the overriding emphasis placed on loyalty to the family (Fortes, 1970:233-4), and the stress placed on duties rather than rights (Gluckman, 1972, ch 8). In Africa individualism would not be valued as it is in the west. Rather, a person would be expected to compromise his or her interests for the good of the larger unit; to stand on one's rights would be thought anti-social. It follows that whenever rights were in issue they would be the concern of the family as a group (Holleman, 1974:2-6; Gluckman, 1972:4-5).

This point has special relevance for the welfare of children. In the African tradition, children's rights were not a social issue; a child was a welcome addition to any household, where it would be assured of food, shelter and support. There were no formal mechanisms to protect children, but then none would have been necessary. Abundant land, a subsistence economy, and the highly developed sense of generosity due to all family members, underwrote the support obligation (Bennett, 1980). African law had no concern with a *child's* right to a proper upbringing; its interest was in a *family's* right to claim the child as one of its members (Goode, 1964:24).

Similarly, gender discrimination was not an issue. A woman in pre-colonial Africa might lack all formal legal capacities: she was not allowed to sue for divorce; she had no right to the custody or guardianship of her children; she might not be entitled to hold or dispose of property; she could not approach a court unassisted; and she might not have any say in the government of her community.[14] But women were respected members of the family and community, and they too were guaranteed lifelong support within the framework of the extended family.

European colonists believed that Africa's lack of individual legal rights necessarily implied despotic rule at the whim of autocratic leaders (Donnelly, 1984). And it must immediately be conceded that African polities were not *Rechtsstaaten*, in the sense that governmental legitimacy was not determined by the rule of law.[15] And it must also be conceded that although there were norms of good government constraining arbitrary or self-interested action, these norms were an undifferentiated repertoire of moral precepts, customs and adages that had been authenticated by age or tradition (Hamnett, 1975:9-16). *Rules* per se had no particular value (Bohannan, 1967:44-6).[16] Instead it was believed that social harmony could be achieved through others means. Personal interaction, via processes of mediation and conciliation (Bohannan, 1957:208-13; Gulliver, 1963; Roberts, 1979, ch 8), played an important role and so too did the healing force of ritual (Gluckman, 1965, ch 6), belief in which involved the co-operation of watchful ancestral shades.[17]

Functionalist anthropology demonstrated that societies without a concern for law and legality were not necessarily chaotic. Malinowski's classic study of the Trobriand Islands (1926), for example, showed that a society, 'lawless' in the western sense, could nevertheless function peacefully and harmoniously. Techniques of social control were simply different. Moreover, the cardinal values of the western world - change and progress - were peripheral to the African value system. Instead, maintenance of tradition was the prime goal (Morris, 1958).

Finally, we must not neglect the actual substance of Africa's indigenous ethical systems. The group of scholars that has worked on this topic is sadly small,[18] but it has at least shown how these ethical systems served the goal of human dignity quite as effectively as any western code of human rights could. In some instances the African standard of treatment coincided with rights contained in a western code (Hannum, 1979); the African norm might simply have lacked the legal terminology used to conceptualise the western right. In other cases standards of behaviour expected in Africa even exceed what would be regarded as adequate in the West.[19]

Human rights are not an end in themselves; they are merely a means to achieve the goal of human dignity. Once ends and means are separated, it becomes apparent that human dignity may be realised in Africa, although through different social mechanisms.

'Invented Tradition'

It is difficult to know to what extent this stereotype of African culture still holds true. In the first place, the society described above has changed radically, and, in the second place, critical scholarship has revealed that this account was in many respects an invention of its authors.

African societies, like any others, are dymanic, although endogenous processes of change were disrupted (and probably accelerated) by four centuries of colonial rule, and then decolonisation. Radical changes are clearly evident in domestic relationships. Christianity, capitalism, industrialisation and urbanisation have all had a corrosive effect on ties of kinship. The exigencies of labour migration and urban accommodation alone have succeeded in fragmenting the extended household. In consequence, many modern city dwellers are single parents; many households are headed by women, not men (Mayer, 1971:233-5; 244-9); and many rural households contain only women, children and the elderly (Murray, 1981; Lye and Murray, 1980).

Such units obviously cannot provide reliable support networks for the indigent. The cost of educating and raising children, for example, a burden exacerbated by growing poverty, means that a child without parents is no longer automatically welcomed into a family. It might be rejected as a financial burden. And the former

guardians of morals - paternalistic chiefs and vigilant ancestral shades - are no longer there to insist on performance of family obligations.

The chieftaincy too has changed. Admittedly this institution proved to be remarkably resilient to colonialism; but the tribal authorities were deliberately co-opted to colonial government in terms of the policy of indirect rule. And, later, independent African governments found it impossible to dispense with the services of chiefs. However, this does not mean that the institution is the same as its pre-colonial forebear. Throughout Africa colonial administrations intervened in the indigenous forms of government to appoint and depose chiefs, to divide or create new tribes, and to change powers of competence. The 'traditional' authorities were moulded into a cadre of local government officials compliant with the requirements of state (Weinrich, 1971; Holleman, 1969; Hammond-Tooke, 1964). As a result they often lack any traditional basis of legitimacy. Instead of the support of their people, chiefs can now rely on the power of the state, and with state sanction they can now afford to rule autocratically (Motshabi and Volks, 1991).

Further reservations about the stereotypical image of African culture arise from the doubts now cast on the reliability of the historical record. Our knowledge of pre-colonial Africa is derived almost exclusively from reports compiled in the late nineteenth and early twentieth centuries. In this regard revisionist historians have put forward a convincing case to show that the authors of these accounts did as much to create the world they were writing about as to describe it (Snyder, 1981; Roberts, 1984; Chanock, 1985; Gordon, 1989).

Present scepticism is due in large part to our greater awareness of the intellectual preconceptions of previous generations of scholars. Nineteenth-century evolutionary theory saw in Africa a primitive, primordial society, one from which a more complex, sophisticated society of the European type was to grow. On the basis of more careful fieldwork, twentieth century functionalists were to debunk this theory as conjecture, and to condemn its implicit racism. Almost by way of apology for the sins of the past, cultural relativism was elevated to an unquestionable dogma in the social sciences (Kaplan and Manners, 1972:5-8; 37-8).

In the 1960s anthropologists inspired by Marxist theory then undermined much of the theory of functionalism.[20] Central to the neo-Marxist critique of earlier scholarship was rejection of the concept of culture. Culture, the criterion used by functionalists to describe their unit of study, was shown to be too vague and value-laden to account either for the coherence of society or for social change (Sharp, 1985). By emphasising differences between societies, functionalists had obscured important similarities, such as the formation of urban proletariats, a phenomenon common to Whites and Blacks that cut across all cultural boundaries.

How much of what was written in the past can now be trusted? Was the extended family or polygyny a norm? Was the chieftaincy a basic form of government? How conservative and tradition-bound were African societies?

The Politics of Culture

The case of the cultural relativist is now more difficult to argue. Because doubt has been cast on many of the accounts of pre-colonial African society, any claim that human rights have no place in Africa because of conditions unique to the continent can be rebutted simply by pointing to the unreliability of the evidence.

But the relativist's argument cannot be dismissed out of hand. Whatever the state of the historical record, it is undeniable that differences did, and still do, exist between notional western and African cultures. What is more to the point is the significance and value accorded those differences. In other words, culture is a political question that cannot be abstracted from contemporary political debate. In this regard, Marxist theory suggested a simple criterion for examining the value of cultural relativism. Who stood to gain from preserving a cultural tradition? In Africa (indeed in most countries) the answer is conservative senior males and indirectly the state.[21] By implication culture (in the sense of a learned tradition) is not necessarily the spontaneous outgrowth of community behaviour and sentiment. Far from being rooted in some type of popular democracy, culture might well be imposed by those in positions of power.

South Africa is a prime example of a country where culture has been used by the government to achieve its own ends. Because culture presupposes difference, it opens the way for segregation, which in turn may lead to discrimination. And in the case of South Africa cultural difference served as the justification for apartheid. The entire process could be carried through to its conclusion because South Africans were encouraged to think of themselves in terms of a limited and preordained number of cultures. It was only when critics of the apartheid regime showed that these cultural categories had in fact been constructed that people began to question what had previously been accepted as 'natural' phenomena (Harries, 1989).

Experience of apartheid should make any proponent of cultural relativism think again. On the other hand, the arrogance of colonialism can occasion only sympathy for the claim that African culture now deserves greater respect. For the present then, the disagreement between human rights universalists and cultural relativists seems to have reached an impasse.

This stalemate has unfortunate consequences for law reform. While it is acknowledged that several aspects of customary law, such as matrimonial property, succession and the status of women and children, are out of keeping with social practice,[22] legislative change sensitive to the needs of the people

affected requires reliable empirical information. But so far there is little new information to take the place of the 'invented tradition'.[23]

If effective reforms are to be introduced, then concerns about the use of 'culture' during the apartheid era must now be put aside. Culture is continually being co-opted by the state; but at the same time culture has an independent life in the attitudes and behaviour of given communities (Cheater, 1989). What is more, the conviction seems to be growing that the debunking of past knowledge has gone far enough. The revisionist movement has served its purpose: relatively true or relatively false, the African stereotype has been critical in shaping a certain consciousness and thereby a secure identity. After all, myths are the stuff of culture, and it is pointless to test myths as true or false.

In addition, despite the ANC's commitment to a uniform national South African identity for every citizen, there are signs that support for this principle is diminishing, and, with growing political power, Africans are demanding the repatriation of their culture from the province of western scholarship. In summary, culture is in the process of being rehabilitated.

This does not mean that a bill of rights should be abandoned. Culture does not work as a package deal, although the legal concern with logical coherence and system no doubt predisposes lawyers to think in that way. Experience of a multicultural society should teach us that people are remarkably adept at operating within two or more normative systems; they pick and choose to suit the needs of the moment (Gluckman, 1958; Van Doorne, 1981). And this should point the way forward. Specific issues, such as amelioration of the status of women and children, may be addressed in a bill of rights without implying that an entire cultural heritage is to be overthrown. If the failures of past legislative reforms in Africa teach us anything, it is that programmatic and thus gradual change is more likely to succeed.[24]

NOTES

1. Article 1(2) of the ANC Constitutional Committee's *Revised Draft Bill of Rights* (1992) provides that: 'No individual or group shall receive privileges or be subjected to discrimination, domination or abuse on the grounds of race, colour, language, gender, or creed, political or other opinion, birth or other status.' Article 1(3) provides: 'All men and women shall have equal protection under the law.' Gender equality is re-affirmed in art 7(1).
2. The ANC has modified its position on human rights considerably since the Freedom Charter was drafted in 1955. The Charter upholds the right of 'all national groups' to 'use their own language and to develop their own folk culture and customs', although it firmly rejects the idea of apartheid.
3. Article 5(12) and (13).
4. Although the Commission does not speak directly for the government, it is none the less a government appointed body.
5. The Commission also supports the principles of equality and non-discrimination. For instance, Article 2 provides that there shall be no discrimination on the ground of race, colour,

language, sex, religion, ethnic origin, social class, birth, political or other views or any disability or other natural characteristic. The clear contradiction between group rights and individual rights is left to the courts to resolve.

6. Article 21. Article 17, however, gives every person the right to disassociate him or herself from other individuals or groups. Article 29 provides that South African law shall apply to all legal relations in the courts, except that legislation may allow the application of the law of indigenous groups or the religious law of religious groups in civil proceedings.
7. Traces of this thinking occur in para 4 of the Preamble to the 1981 African Charter, which contains a proviso urging states to pay heed to 'the virtues of their historical tradition and the values of African civilization'. The text is cited in full in (1982) 21 International Legal Materials 58. For commentary see Umozurike, 1983:902ff.
8. For the classic dichotomy between state and stateless societies, see Fortes and Evans-Pritchard, 1940, Introduction.
9. In Europe, of course, human rights evolved in the first instance to protect the individual from oppression by the state. In societies of the African type, where the family or lineage was still the basis of the political order, individuals would obviously not have suffered this type of oppression.
10. Measured mainly by his ability to judge disputes wisely and fairly.
11. Anyone with a grievance against a ruler obviously had to take independent action, although prudence would dictate that the backing of other sympathetic leaders in the community first be sought. The complaint could then be prosecuted by argument in a public forum (such as the chief's council or the tribal council), or more drastically by revolt or secession.
12. Senior males of the chief's family and other major lineages were entitled to participate in matters affecting the well-being of the chiefdom. If need be, the chief could convene a broader, more representative gathering to discuss issues pertinent to the entire nation. See Prinsloo, 1983:92-7.
13. Ironically the supposedly more advanced western system of justice, the banner of 'civilisation' in Africa, is now, arguably, working to the disadvantage of the bulk of the population. See Bennett, 1991:106-9, and the sources cited therein.
14. The status of South African women is fully described by Simons (1968).
15. Cf Weber's threefold typology of legal orders: charismatic, traditional and legal/bureaucratic. See Rheinstein, 1954, and Trubek, 1972.
16. The emphasis on rules and the normative order of society is a western value that has pervaded much legal and anthropological research: Abel, 1973:221-32; Roberts, 1979:17ff; Comaroff and Roberts, 1981:5-17.
17. Who kept a constant and generally benign watch over the living to ensure that order was maintained and proper respect paid to tradition.
18. Including, however, no lesser figures than the former Chief Justice of Nigeria and World Court Judge, Elias (1956) and the former presidents Nyerere (1968) and Kaunda (1966).
19. For instance, in Africa the right to life was wider than the corresponding right in Europe: not only was there a general prohibition against killing but also an obligation to assist in providing the means of subsistence to needy members of the community (Nhlapo, 1991:140).
20. Nowhere is the influence of intellectual trends more clearly demonstrated than in gender studies. See Sacks (1974:207-11) and Bozzoli (1983).
21. A case study showing this concurrence of interests is Mbilinyi (1988).
22. The South African Law Commission's project on Marriages and Customary Unions of Black Persons (1985) Working Paper 10 yielded a disappointing result - the Marriage and Matrimonial Property Law Amendment Act 3 of 1988 - which applied only to civil/Christian marriages.
23. A notable exception here is SB Burman's work over the past 15 years on marriage, divorce and the status of children.
24. As Cheater (1989:105) says, social change by way of legislation is useless if the intended beneficiaries 'have no access to independent means of subsistence after acquiring their freedom'. In this regard, see the case study by Mann (1982:151). The oppressed group might in fact be happier with the oppression they know and have learned to cope with.

REFERENCES

Abel, RL (1973) - 'A comparative theory of dispute institutions in society', in *Law & Society Review*, vol8.

Asante, SKB (1969) - 'Nation building and human rights in emergent African nations', in *Cornell Int Law Jnl*, vol2.

Ashton, H (1952) - *The Basuto* (Oxford: OUP).

Bennett, TW (1980) - 'Maintenance of minor children: a problem of adapting customary law to meet social change', in *Acta Juridica*.

Bennett, TW (1991) - *A Sourcebook of African Customary Law for Southern Africa* (Cape Town: Juta & Co).

Bohannan, P (1957) - *Justice and Judgment among the Tiv* (Oxford: OUP).

Bohannan, P (ed) - (1967) *Law and Warfare: studies in the anthropology of conflict* (New York: Natural History Press).

Bozzoli, B (1983) - 'Marxism, feminism and South African studies', in *Jnl of Southern African Studies*, vol9.

Chanock, M (1985) - *Law, Custom and Social Order, the colonial experience in Malawi and Zambia* (Cambridge: CUP).

Cheater, AP (1989) - 'Managing culture en route to socialism: the problem of culture "answering back"', *Zambezia*, vol16.

Comaroff, JL and S Roberts (1981) - *Rules and Processes* (Chicago: Chicago UP).

Dlamini, RM (1991) - 'The violation of human rights in Africa: a lesson for South Africa?', in *SA Jnl on Human Rights*, vol7.

Donnelly, J (1982) - 'Human rights and human dignity: an analytical critique of non-Western conceptions of human rights', in *American Political Science Review*, vol76.

Donnelly, J (1984) - 'Cultural relativism and universal human rights', in *Human Rights Quarterly*, vol6.

Elias, TO (1956) - *The Nature of African Customary Law* (Manchester: Manchester UP).

Fortes, M and EE Evans-Pritchard (1940) - *African Political Systems* (Oxford: OUP).

Fortes, M (1970) - *Kinship and the Social Order* (London: Routledge and Kegan Paul).

Gluckman, M (1958) - *Analysis of a Social Situation in Modern Zululand* (Rhodes-Livingstone Institute Paper No28, Manchester UP).

Gluckman, M (1965) - *Politics, Law and Ritual in Tribal Society* (Blackwell).

Gluckman, M (1972) - *The Ideas in Barotse Jurisprudence* (Manchester: Manchester UP).

Goode, WJ (1964) - *The Family* (Englewood Cliffs, NJ: Prentice Hall).

Gordon, R (1989) - 'The white man's burden: *ersatz* customary law and internal pacification in South Africa', in *Jnl of Historical Sociology*, vol2.

Gulliver, PH (1963) - *Social Control in an African Society: a study of the Arusha* (London: Routledge and Kegan Paul).

Hall, M (1987) - *The Changing Past: farmers, kings and traders in southern Africa 200-1860* (Cape Town: David Philip).

Hammond-Tooke, WD (1964) - 'Chieftainship in Transkeian political development', in *Jnl of Modern African Studies*, vol2.

Hammond-Tooke, WD (1975) - *Command or Consensus: the development of Transkeian local government* (Cape Town: David Philip).

Hamnett, I (1975) - *Chieftainship and Legitimacy, an anthropological study of executive law in Lesotho* (London: Routledge and Kegan Paul).

Hannum, B (1979) - 'The Butare Colloquium on Human Rights and Economic Development in Francophone Africa', in *Universal Human Rights*, vol1.

Harries, P (1989) - 'Exclusion, classification and internal colonialism: the emergence of ethnicity among the Tsonga-speakers of South Africa', in L Vail (ed) - *The Creation of Tribalism in Southern Africa* (London: James Currey).

Holleman, JF (1969) - *Chief, Council and Commissioner: some problems of government in Rhodesia* (Assen: Royal Van Gorcum Ltd).

Holleman, JF (1974) - *Issues in African Law* (The Hague: Mouton).

Kaplan, D and RA Manners (1972) - *Culture Theory* (Englewood Cliffs NJ: Prentice Hall).

Kaunda, KD (1966) - *A Humanist in Africa* (Oxford: OUP).

Lewellen, TC (1983) - *Political Anthropology* (Massachusetts: Bergin and Garvey).

Lye, WF and C Murray (1980) - *Transformations on the Highveld: the Tswana and Southern Sotho* (Cape Town: David Philip).
Malinowski, B (1926) - *Crime and Custom in Savage Society* (London: Kegan Paul Trench and Trubner).
Mann, (1982) - 'Women's rights in law and practice: marriage and dispute settlement in colonial Lagos', in MJ Hay and M Wright (eds) - *African Women and the law: historical perspectives* (Boston: Boston University African Studies Centre, Papers on Africa 7).
Mayer, P (1971) - *Townsmen or Tribesmen* (Oxford: OUP).
Maylam, P (1987) - *A History of the African People of South Africa* (Cape Town: David Philip).
Mbilinyi, MJ (1988) - 'Runaway wives in colonial Tanganyika: forced labour and forced marriage in Rungwe District 1919-1961', in *Int Jnl Sociology of Law*, vol16.
Morris, C (1958) - 'Law, reason and sociology', in *Univ of Pennsylvania Law Review*, 107.
Motshabi, K and S Volks (1991) - 'Towards democratic chieftaincies: principles and procedures', in *Acta Juridica*.
Murray, C (1981) - *Families Divided: the impact of migrant labour in Lesotho* (Cambridge: CUP).
Nhlapo, RT (1989) - 'International protection of human rights and the family: African variations on a common theme', in *Int Jnl of Law and the Family*, vol3.
Nhlapo, RT (1991) - 'The African family and women's rights: friends or foes?', in *Acta Juridica*.
Nickel, JW (1980), in JL Nelson and VM Green (eds) - *International Human Rights: contemporary issues* (Stanfordville: Human Rights Publishing).
Nyerere, JK (1968) - *Freedom and Socialism: Uhuru na Ujamaa, a selection from writings and speeches 1965-1967* (Oxford: OUP).
Prinaloo, MW (1983) - *Inheemse Publiekreg in Lebowa* (Pretoria: Van Schaik).
Rheinstein, M (ed) (1954) - *Max Weber on Law in Economy and Society* (translated by S Shils and M Rheinstein) (Harvard UP).
Roberts, S (1979) - *Order and Dispute: a introduction to legal anthropology* (Harmondsworth: Penguin).
Roberts, S (1984) - 'Some notes on "African Customary Law"', in *Jnl of African Law*.
Rwezaura, BA (1983) - *Traditionalism and Law Reform in Africa* (Europa-Institut der Universitaet des Saarlandes).
Sacks (1974) - 'Engels revisited: the organization of production and private property', in MZ Rosaldo and L Lamphere (eds) - *Women, Culture and Society* (Stanford UP).
Sansom, (1974) - 'Traditional rulers and their realms', in WD Hammond-Tooke (ed) - *The Bantu-speaking Peoples of Southern Africa* (2ed) (London: Routledge and Kegan Paul).
Schapera, I (1955) - *A Handbook of Tswana Law and Custom* (2ed) (Oxford: OUP).
Schapera, I (1956) - *Government and Politics in Tribal Societies* (London: C A Watts and Co).
Sharp, J (1985) - 'Unit of study, context and culture: towards an historical anthropology', in *African Studies*, vol44.
Simons, HJ (1968) - *African Women: their legal status in South Africa* (London: C Hurst).
Snyder, FG (1981) - 'Colonialism and legal form - the creation of "customary law" in Senegal', in *Jnl of Legal Pluralism*, vol19.
Trubek, DM (1972) - 'Max Weber on law and the rise of capitalism', in *Wisconsin Law Review*.
Umozurike, UO (1983) - 'The African Charter on Human and People's Rights', in *American Jnl of Int Law*, vol77.
Van Doorne, JH (1981) - 'Situational analysis: its potential and limitations for anthropological research on social change in Africa', in *Cahiers d'Etudes africaines*, vol21.
Weinrich, AKH (1971) - *Chiefs and Councils in Rhodesia: transition from patriarchal to bureaucratic power* (London: Heinemann).