



**UNIVERSITY OF
BIRMINGHAM**

Cadbury Workshop 2019: Law, Custom, and Urban Property in Africa

Department of African Studies and Anthropology, University of Birmingham

Danford Room, 2nd floor, Arts Building

3-4 June 2019

The Cadbury Workshop 2019 focuses on law, custom, and urban land and property in Africa. It addresses intractable practical as well as conceptual issues. Popular norms are marginalised by official legislation; conversely, state law intended to protect vulnerable people is neglected in the name of culture. The law may protect people from the predations of state officials, or be seen to stand in the way of historical redress. Conflicts over land and property may extend beyond struggles over rights in themselves, to struggles over who has the capacity to codify and enforce competing conceptions of entitlement, and arbitrate disputes. The customary, the state, the vernacular, and still broader established practice constitute competing registers.

The tension between official law and popular norms is an enduring issue for African states. Many African legal systems bear the complex legacy of custom: its continuing protection as authentic, on the one hand; its codification and co-optation in colonial rule, on the other. Often, the divergence between state law and 'local' norms is conveniently restricted by concentrating the recognition of the latter in family law; yet the rules of kinship and custom in reality have broad reach in economic life. Meanwhile, either law or custom may be used by the powerful to defend emerging forms of capitalist accumulation, or conversely by the marginalised to resist expropriation. All of these eventualities inflect norms and practices surrounding land and property, and the social arrangements through which these are held in urban settings.

This year's workshop moves away from the conventional model of an academic event, and gives legal and civil-society practitioners a leading role. In the first half of the two-day programme, academics and practitioners are paired in panels to analyse dynamics of law, property, and custom in specific African settings. On the second day, individuals who regularly cross the academic/practitioner divide will draw from their experience on particular projects to highlight how 'cross-over' can best be done.

The workshop's keynote will be delivered by Ambreena Manji, Professor of Land Law and Development at the University of Cardiff, President of the African Studies Association of the UK, and former Director of the British Institute in East Africa. Her lecture is provisionally entitled: "'I Built this House on my Back": A Historical Perspective on Care and Property in East Africa'.



Programme

3 June 2019

9.30 Registration and coffee

10.15 Welcome

10.30 PANEL 1: GENDER EQUALITY, URBAN PROPERTY AND THE LAW IN GHANA
MODERATOR: DR MAUREEN MAPP, BIRMINGHAM LAW SCHOOL

Sheila Minkah-Premo, activist lawyer and legal researcher

Nana-Anna Abaka-Cann, University of Cape Coast, and legal practitioner

Dr Kate Skinner, University of Birmingham

11.30 PANEL 2: FAMILY CLAIMS, URBAN PROPERTY AND THE LAW IN SOUTH AFRICA
MODERATOR: JOE TAN, ADVOCATES FOR INTERNATIONAL DEVELOPMENT

Tshenolo Masha, Head of Housing, legal NGO ProBono.Org

Dr Maxim Bolt, University of Birmingham

12.15 LUNCH

13.15 Welcome by the Head of the College of Arts and Law, Professor Michael Whitby

13.30 PANEL 3: GENDER, URBAN PROPERTY AND ACCESS TO JUSTICE IN SIERRA LEONE
MODERATOR: NOMPUMELELE SEME, WITS LAW SCHOOL

Simeon Koroma, Executive Director of Timap for Justice

Dr Laura Martin, University of Birmingham

14.15 PANEL 4: URBAN PLANNING, THE LAW AND ACCESS TO JUSTICE
MODERATOR: DR LINDSAY SAWYER, UNIVERSITY OF SHEFFIELD

Professor Taibat Lawanson, University of Lagos

Dr Marco Di Nunzio, University of Birmingham

15.00 COFFEE

15.15 PANEL 5: LAW, PERSONHOOD AND PROPERTY BEYOND THE URBAN IN NIGER
MODERATOR: DR BENEDETTA ROSSI, UNIVERSITY OF BIRMINGHAM

Hamissou Rhissa Achaffert, Institut de Recherche en Sciences Humaines, Niamey

Aichatou Boubacar Mounkaila, activist lawyer



16.00

COFFEE

16.30

KEYNOTE LECTURE

CHAIR: DR MAXIM BOLT, UNIVERSITY OF BIRMINGHAM

'I BUILT THIS HOUSE ON MY BACK': HISTORICAL PERSPECTIVES ON CARE LABOUR
AND URBAN PROPERTY IN EAST AFRICA

Professor Ambreena Manji, Cardiff University

In this lecture, I revisit Luise White's path-breaking book on prostitution in colonial Nairobi and read it for care. Drawing on Rai, Hoskyns and Thomas' definition of 'the unaccounted work' of biological reproduction as 'the provision of the sexual, emotional and affective services that are required to maintain family and intimate relationships', I explore the 'labour forms' of prostitution in colonial Nairobi uncovered by White and reread them as forms of care labour, focusing on the provision of care and its receipt. I study White's account of Malaya women as 'an intimate-labour class'. I explore how the care labour of women who worked in prostitution facilitated their independent property accumulation. I describe how a care:property nexus emerged from this. I show that the adoption by these women of independent kin ('pseudo-kin' in Janet Bujra's formulation) - often younger women who provided them with reproductive labour by cooking, cleaning and living in their homes - was a reproductive bargain that gave rise to strategic bequests. I ask: how was property transmitted in these 'women to women marriages'? This paper seeks to understand care and especially care claims to property in its historical specificity. Focusing on labour forms and the colonial state, its methodology follows Shula Marks' observation that 'as new questions break the surface' it might be possible to 'suggest new ways of hearing and seeing old stories.' To end I explore how in the present day, courts have dealt with property claims based on care labour (by asking: was the claimant a wife, or an employee?)

Ambreena Manji has been Professor of Land Law and Development at Cardiff since 2014. Before that, she was seconded to Nairobi as the Director of the British Academy's British Institute in Eastern Africa (2010-2014). As the first African, the first woman and the first lawyer to direct the Institute, she was responsible for a broadening of its subject reach beyond its traditional associations with archaeology, anthropology, history and political science. Under her leadership, the Institute became known as a centre of excellence for work on constitutional change in Eastern Africa. Professor Manji's research is focused on Law and Society in Africa, and is strongly interdisciplinary and collaborative. She has published on the history of African legal education, on law in African literature and on women and the law. She has written widely on land law reform and her book *The Struggle for Land and Justice in Modern Kenya* will be published by James Currey/Boydell & Brewer in 2020. Professor Manji is President of the African Studies Association UK 2018-2020 and in this capacity she has worked on issues of unequal knowledge production and dissemination.

17.45

DRINKS IN THE DANFORD ROOM



4 June 2019

9.00 COFFEE

9.30 RESEARCH AND PRACTICE: BRIDGING GAPS AND GETTING THE RELATIONSHIPS
RIGHT

MODERATOR: DR REGINALD CLINE-COLE, UNIVERSITY OF BIRMINGHAM

*Professor Fasil Giorghis, architect, heritage activist, CEO of FG Consult, and
Professor of Architecture, Addis Ababa University*

*Professor Adamu Idris Tanko, Deputy Vice-Chancellor, Bayero University
Kano*

Nompumelelo Seme, Lecturer in Law, University of Witswatersrand

Maureen Mapp, Lecturer in Law, University of Birmingham

11.30 COFFEE

12.00 CO-PRODUCING AND COMMUNICATING KNOWLEDGE: ACADEMICS,
PRACTITIONERS, AND THE WEB

With College of Arts and Law Marketing, University of Birmingham

13.00 LUNCH

14.00 CLOSING ROUNDTABLE: COLLABORATION WITH AND FROM UNIVERSITIES

15.30 COFFEE

16.00 BOOK CELEBRATION AND DRINKS
INTRODUCTION FROM DR INSA NOLTE, HEAD OF THE DEPARTMENT OF AFRICAN
STUDIES AND ANTHROPOLOGY

*Dr Jessica Johnson, In Search of Gender Justice: Rights and Relationships in
Matrilineal Malawi (Cambridge, 2018)*

*Dr Marco Di Nunzio, The Act of Living: Street Life, Marginality, and
Development in Urban Ethiopia (Cornell, 2019)*



Cadbury Workshop 2019: some guiding perspectives and questions

In some African countries, customary authorities, courts, or procedures are formally recognized in the national legislation; elsewhere, they are marginalised or even excluded, along with the principles for which they stand (Zenker and Hoehne 2018). Generic references to custom in state law led some researchers to qualify African legal systems as ‘hybrid’ (Cooper 2010), yet that itself often mobilised a restrictive notion of ‘official’ custom. The diverse sources of African state law today produce multi-layered legal apparatuses that can be contradictory when superficial acknowledgement of ‘custom’ conceals the potential endorsement of principles that are incompatible with state law, such as those that sanction traditional hierarchies at odds with the notion that all citizens should be equal before the law (see Lund 2012). On the other hand, state law risks facing irrelevance when it fails to acknowledge ideas and institutions that inform people’s lived experience. Custom and the law may take on different roles in battles over private or state expropriation of land: each may prove useful to elites defending their own interests, or to the less powerful resisting these processes. Several organising concepts provide useful starting points. ‘Legal pluralism’ offers a way to make sense of the multiplicity, disjuncture and complementarity (see Benda Beckmann 2002). ‘Legal culture’, proposed as an alternative, invites closer attention to the practice and understanding of the law (Engle Merry 2010; Engle Merry 2012). Meanwhile, it is important to understand the relationships between the stated principles of explicit codes and the practical norms through which state officials and others get things done (Bierschenk and Olivier de Sardan 2014).

- What expectations do practitioners and activists place upon statutes as a means of bridging gaps and differences between international human rights conventions and customary norms/practices?
- In what ways do forums for dispute resolution, arbitration and justice seek to accommodate a plurality of legal and social norms?
- In what ways can academic researchers assist legal practitioners and law-makers by highlighting the ways in which ideas of land and urban property have changed over time?
- How do custom and the law play into politics, whether as a means to defend ‘business as usual’ or large-scale state projects, or conversely to contest the status quo or new forms of dislocation?

References and indicative reading

Benda-Beckmann, F. 2002. ‘Who’s afraid of legal pluralism’, *Journal of Legal Pluralism and Unofficial Law* 47: 37-82.

Benton, L. 2001. *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900*. Cambridge University Press.



Bierschenk, T. and J.-P. Olivier de Sardan. 2014. *States at Work: Dynamics of African Bureaucracies*. Leiden: Brill.

Comaroff, J.L. and J. Comaroff (eds). 2018. *The Politics of Custom: Chiefship, Capital, and the State in Contemporary Africa*. Chicago: University of Chicago Press.

Cooper, B.M. 2010. 'Secular states, Muslim law and Islamic religious culture: gender implications of legal struggles in hybrid legal systems in contemporary West Africa', *Droit et Cultures* 59: 97-120.

Halley, J. and K. Rittich. 2010. 'Critical directions in comparative family law: genealogies and contemporary studies of family law exceptionalism', *American Journal of Comparative Law* 58: 753-775.

Merry, S.E. 2010. 'What is Legal Culture?' *Journal of Comparative Law* 5.

_____ 2012 'Legal pluralism and legal culture: mapping the terrain', in B.Z. Tamanaha, C.M. Sage & M.J.V. Woolcock (eds.), *Legal Pluralism and Development: Scholars and Practitioners in Dialogue*. Cambridge University Press.

Lund, C. 2012. 'Access to property and citizenship: marginalization in a context of legal pluralism', in B.Z. Tamanaha, C.M. Sage & M.J.V. Woolcock (eds.), *Legal Pluralism and Development: Scholars and Practitioners in Dialogue*. Cambridge University Press.

Zenker, O. and M.V. Hoehne. 2018. 'Processing the paradox: when the state has to deal with customary law', in O. Zenker and M.V. Hoehne (eds.), *The State and the Paradox of Customary Law in Africa*. London: Routledge.