



Identity, culture, human rights and power

Anne Hellum 2015

Overall theme

- Martin Chanock's article – two concepts as a tool of analyzing human rights contestations framed in identity and cultural rights terms
- Orientalizing and occidentalizing rights and culture discourses
- Two case studies on state resistance to human rights in context of economic and political crises
 - Zimbabwe's Fast Track Land Reform - the political construction of racial and ethnic belonging
 - Uganda's Homosexuality Bill – the political construction of sexuality as a marker African identity and culture

Orientalism

- *Orientalism* (1978), by Edward Said, is a foundational text for the academic field of Post-colonial Studies. Addresses the cultural representations that are the basis of Orientalism, a term referring to the West's patronizing perceptions and depictions of Middle Eastern, Asian and African societies—"the East". Contends that Orientalist scholarship was, and remains, inextricably tied to the imperialist societies that produced it. F.ex. Romantic ideas about African custom and culture that overlooks their character of a western colonial product.

Question

- Do you have examples from the texts of human rights critique of African states that can be seen as orientalizing/other African culture seeing it as monolithic and backward in comparison to civilized western states

Occidentalism

- The term **Occidentalism** is used to refer to images of "The West" in one of two main ways: a) stereotyped and sometimes dehumanizing views on the Western world, including Europe and the English-speaking world that stresses negative construction of the West

Question

- Are there examples of occidentalizing discourses in the two texts – constructing western culture in essentializing and negative terms

Background: Human Rights and State Resistance

- Human rights is met with state resistance in all parts of the world – a key criticism is that human rights comes into conflict with national sovereignty and national cultural values
- In Norway, in the UK
- In Zimbabwe and Uganda
 - Ratification in the 1990's
 - Human rights seen as western imperialism and neo-colonialism in the 2000 with reference to the land issue
 - Uganda human rights is resisted with with homosexuality and moral downfall

Law in colonial Africa: Historical backdrop

Western perspective on non-western law

- African's were by the colonizing powers not seen as having law
- Orientalising discourses/othering
- Edvard Said, Martin Chanock

Colonial struggles for self-determination and human rights

- African socialist, nationalist and human rights discourses in formed the struggles
- A mixture of anti racist struggles, class struggles and gender struggles
- African and Asian states in the forefront of promoting UN conventions like the race convention

Law in post-colonial Africa

- Between human rights and African legal identity – the place of customary law
 - Uganda ratification of human rights instruments and a popular process leading to a new constitution coupled with a popular justice system with lay judges at the bottom level
 - Zimbabwe, Lancaster House Constitution– piecemeal unification of customary norms and state law through legislation and judicial route.

From orientalising to occidentalizing discourses

- The ambiguity of human rights in Africa
- In the colonial era: reception through the repugnancy clause
- In the era of liberation struggle a mobilizing device for nationalist movement
- In the post-colonial era human rights a part of development cooperation
- Also mobilizing device of African civil society to make new elites accountable to power abuse and corruption

Post colonial legal discourse: From orientalizing to occidentalizing

The turn from race, gender and class critique of law to a legal and political discourse linking rights and culture (Martin Channock)

National legal discourse emphasising cultural authenticity

- * Internal political context

- Elite resistance to human rights seen as part of economic globalization
- The nationalisation of customary law a shield against international interference

- * External political context

- Political elite resistance to legal globalisation and human rights
- Political elite shielding itself from internal critique coined in human rights terms

Universal rights discourse and cultural difference

- The politics of occidentilisation – othering the west
 - * Human rights a form of legal imperialism
 - * Political economy of legal culturalization
 - * Defense of elite privilege and power
 - A discourse of blaming the west
 - A discourse pitting individual rights against group rights
 - The African Charter of Human Rights Privileges group rights – African family the custodian of tradition

Zimbabwe as a case study from orientalizing to occidentalizing

- The struggle against apartheid for independence in the former Rhodesia, ZANU PF and ZAPU guerillas
 - Opposing orientalist discourse based on the notion of cultural inferiority – customary law for the black population and imported Roman Dutch law for the white settlers
 - Universalist anti apartheid struggle, rejection of legal divisions based on race and ethnicity
 - 1980-1990 universalist era, signing human rights documents etc.

Post colonial tensions between state and civil society

- In the 1990's the Zimbabwean ZANU PF government acceded a wide range of human rights instruments.
- The anti-apartheid struggle was both seen as a socialist struggle and a human right struggle
- As tensions between ruling party, trade unions, students, womens rights org..increased through a number of court cases that were lost by the state –state resistance to human rights gained ground.

Declining economy and political legitimacy of ZANU PF in the 1990

- Economic decline and STP – 1990's
- State giving land to political supporters, chiefs gets more political and legal power and become state employees, war weteran's pensions increased --
- Increasing presidential powers in constitution
- Increased tensions between state and judiciary
 - Chavanduka case

Occidentalizing – race, culture and rights

- The growth of human rights resistance, civil society coalition building National Constitutional Assembly and Movement for Democratic Change
- The Constitutional referendum 2000 – ZANU PF loss
- Political power struggle mediated through occidentalized land reform discourse
- White imperialist threat to Zimbabwe – third chimurenga – third liberation war to take back the land from the whites waged through Fast Track Land Reform

Fast Track Land Reform

- State orchestrated land occupation accompanied by violent removal of white farmer and farmworker
- Occidentalizing discourse : resisting western legal imperialism
 - Minister of Justice: rule of law founded on quicksand
 - Minister of home affairs: white don't have human rights
- A program of acquiring farms without due legal process and compensation
 - Unmaking of independent police and courts

The language in Mugabe's speeches addressing those who defend human rights in relation to Fast Track

”The time has come for the British media mouthpieces and puppets that are being used by the Rhodesian Selous Scouts running the MDC to get in their thick heads that President Mugabe's legitimacy as Head of State is not object to negotiation»

”And how do you work with an opposition who is not itself? An opposition which really is a kind of an agency for a country outside the nation. They must be themselves. They must be Zimbabwean in spirit..”

New paradigms of citizenship through fast track

- ”Land belongs to the indigenous people of Zimbabwe”
- Indigenous/non indigenous – citizens/non citizens, who were included and who were excluded in the process of redistribution:
- Farmworkers:
 - 500 000 people driven off the farms
 - Excluded from distribution. They have a farmworker culture – not indigenous Zimbabweans – according to Government

New paradigms of citizenship in fast track

From citizen to subject (Mamdani)

Patrilineal blood ties and loyalty to the ruler becomes basis for Citizenship and access to resources. An essentialized and highly politicized construction of ethnic and african identity – legitimizing political and economic misrule

- Political belonging
 - Loyal civil servants, chiefs, party member were awarded land
 - members of opposition MDC by and large excluded
- 30% women quota – claim from women and land lobby
 - women from the opposition to a large extent excluded
 - zim women married to farmworkers excluded
 - married women can't hold the land in their own capacity – against culture (Minister of land)

Nationalist African discourse linking rights and culture occidentalizing

- Ban on homosexuality associate homosexuality with western imperialism
 - Mugabe before the 1995 suggeste homosexuality is part of western imperialims
 - Uganda Bhati Bill introduced by Museweni before the elctions and presented as a means to protect African culture and society from social and moral breakdown.
 - The construction of homosexuality as «unafrikan» and as a western construction

Countering the occidentalizing discourse on rights and culture – who and what is African

- Sylvia Tamale, situat the discourse in the historical, political and economic context.
 - Historically – ban on homosexuality introduced by missionaries and victorian ideas informing colonial legislation
 - Ethnographic record- homosexual practices exist among many ethnic groups
 - Existing economic and political links between rights wing religious groups in US and Uganda against homosexuality

Boundaries of African culture in state resistance to human rights in Uganda

- Ugandan contemporary context, high rate of unemployment, increasing cost of living, poverty and growing internal human rights resistance
- Homosexuals as «the red herrings» of the government
- The homosexuality bill (now act) imposing death penalty a form of state-orchestrated «moral panic» where the homosexuals are seen as the main threat of African society -

Avoiding the trap – orientalizing human rights discourse

- Avoid orientalizing human rights discourse, constructing Africans as uneducated and prejudiced reinforcing the perception of the uncivilized African and the civilized westernes..
 - Nncy Zie in Harvard Law Review

Rights based approach

- How to promote human rights in such a context
- Politics of human rights – not only Zimbabwe!!!
- * SADC/AU/UN – silent diplomacy
 - * SADC Court – put on hold
 - * national courts – appointment of loyal judges
 - * regional courts/treaty bodies
 - * International HR system
 - * Civic action and coalition building
 - * national, regional, international
 - * negotiate or oppose government

