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DOMESTIC VIOLENCE AND THE LAW IN COLONIAL AND POSTCOLONIAL AFRICA

Edited by Emily S. Burrill, Richard L. Roberts, and Elizabeth Thornberry

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Domestic Violence and the Law in Colonial and Postcolonial Africa

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Preface

Domestic violence is fraught and complex, as a lived experience and a social and historical unit of analysis. From conference to published volume, this project has been deeply influenced by spirited and engaging discussions with colleagues regarding our use of the term *domestic violence*—that is, why we use the term *domestic violence* and not *sexual violence*, *gender-based violence*, or *household violence*. In their chapters, Codou Bop and Pamela Scully both make impassioned arguments for using *gender-based violence* as the appropriate analytical category.

Here, we use the term *domestic violence* to indicate overwhelmingly controlling and punitive behavior—whether physical, psychological, or emotional—directed by one member of a household toward another as a means of establishing dominance. Such punitive actions very often take the form of gender-based violence, but not always. "Domestic," in this sense, indicates a realm of shared living space oriented around relationships within households. Given the range of complex African residential patterns, living spaces were often gendered, often contained several generations, and consisted of kin as well as dependents of various kinds. We recognize domestic space and household relationships as processual and linked to larger social relationships and movements rather than part of a binary relationship that pits the private against the public. Using the term *domestic* allows us to talk about kin-based violence, marriage-based violence, gender-based violence, as well as violence between patrons and clients who shared the same domestic space.

Domestic violence, as a legal and criminal category and a cause for social activism, is often associated with European and North American contexts that center on the nuclear family. Our use of the term is also tied to a tradition and recent history of legal and political liberalism; however, the chapters that follow reveal the ways in which domestic space and domestic relationships take on different meanings in African contexts that extend the boundaries of family obligation, kinship, and dependency. Therefore, we use the term *domestic violence* recognizing the potential limitations of the term as a unit of analysis but with the expectation that it will provoke further discussion and research.

As the chapters in this volume demonstrate, African histories of domestic violence demand that scholars and activists refine our terms and analyses and that we pay attention to the historical legacies of contemporary problems.

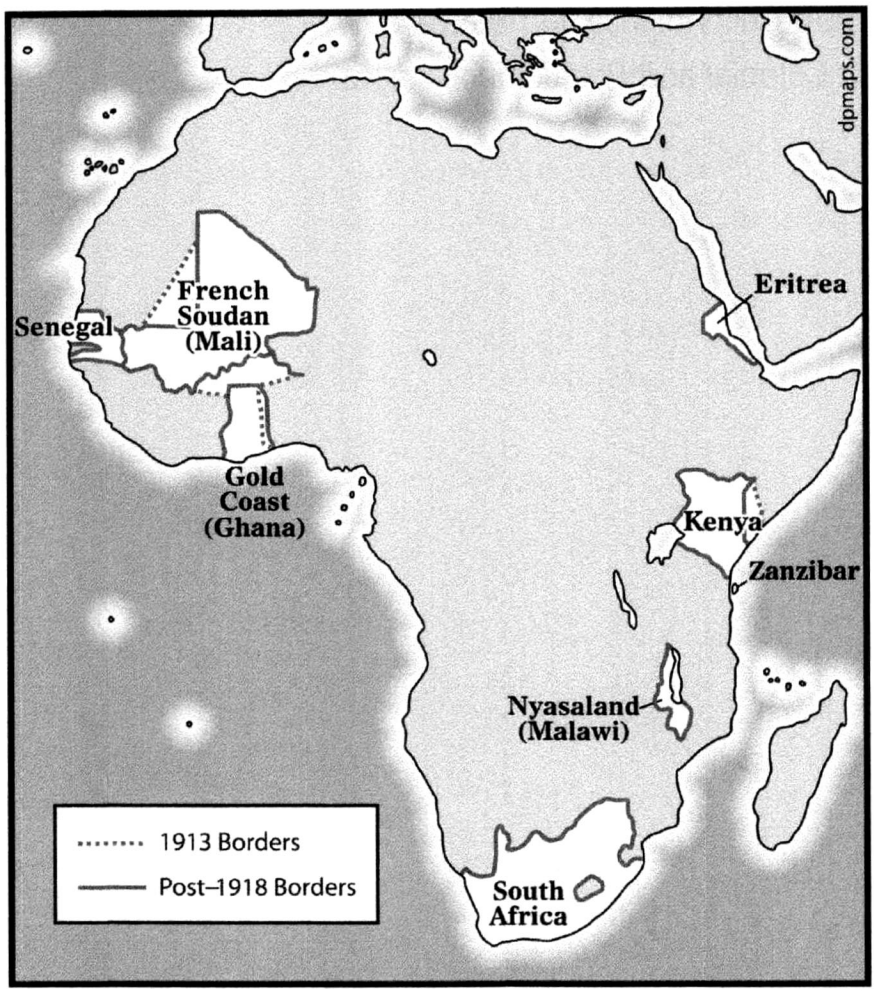
This volume began as the Symposium on Law, Colonialism, and Domestic Violence in Africa and in Comparative Perspective held at the Stanford Humanities Center in April 2007. Each of the three editors had been conducting research on issues relating to marriage, domestic violence, and sexual violence using colonial court records. We felt that the topic was rich enough to bring together a group of scholars working on the general topic of domestic violence to share their findings and to spark further research and debate. The papers presented at the conference exceeded our expectations and congealed around a set of issues relating both to the domestic space as a site of violence in Africa and the mutually reinforcing interests of researchers working on historical and contemporary aspects of domestic violence. For their participation in the original symposium we thank especially Wayne Dooling, history, School of Oriental and African Studies, University of London; Prinisha Badassy, history, University of KwaZulu-Natal; Robert Gordon, anthropology, University of Vermont; Helen Moffett, University of Cape Town; and Leslye Obiora and Zelda Harris, School of Law, University of Arizona. We regret that given the constraints of publication, we were unable to include all of the excellent papers presented at the symposium. We are grateful to Raising Voices, a Kampala-based NGO, for permission to use the image that appears on the cover. Since 1999, Raising Voices has been tirelessly working to prevent domestic violence and to educate both women and men about the harmful effects of domestic violence not only on households but on the wider communities as well. This image was originally used in one of Raising Voices' teaching aids. We also express our thanks to the Center for African Studies, the Department of History, the Stanford Humanities Center Law and History Workshop, and the Division of International and Comparative Areas Studies, all at Stanford University, for their support of this project. Richard Roberts is especially grateful to the Mericos Foundation, which funded his yearlong fellowship at the Stanford Humanities Center as the Donald Andrews Whittier Fellow.

Emily Burrill
University of North Carolina at Chapel Hill

Richard Roberts
Stanford University

Elizabeth Thornberry
Stanford University

Domestic Violence and the Law in Colonial and Postcolonial Africa



MAP 1. Colonial and postcolonial Africa, showing areas covered in this book

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INTRODUCTION

Domestic Violence and the Law in Africa

EMILY BURRILL, RICHARD ROBERTS, AND ELIZABETH THORNBERRY

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

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

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

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

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

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

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

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

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

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

EXPLAINING DOMESTIC VIOLENCE

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

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

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

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

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

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

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

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

AFRICAN FAMILY HISTORIES

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

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

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

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

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

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

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