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Introduction

Colonialism and Africa's Future Paths

The European ways were considered modern, the African old-fashioned. Lagos culture was such an unfortunate conglomeration of both that you ended up not knowing to which you belonged.

Buchi Emecheta, *The Bride Price* (1976)

This book examines past, present, and likely future paths for Nigeria and other countries in Africa through a lens of disruption. The *Oxford English Dictionary* defines *disrupt* as meaning “to break apart, burst, shatter, separate forcibly, interrupt the normal continuity of (an activity, etc.) or to throw into disorder.” This book combines this commonplace understanding of disruption with conceptions of disruption that have become prominent in digital economy discussions, significantly influenced by the work of Clayton Christensen. In his seminal 1997 book, *The Innovator's Dilemma* and in later work, Christensen characterized disruptive innovation as a process “by which a product or service initially takes root in simple applications at the bottom of a market – typically by being less expensive and more accessible – and then relentlessly moves upmarket, eventually displacing established competitors.”¹

Disruptive innovation has become an influential concept in technology, finance, and other arenas, with much discussion about what constitutes a disruptive innovation. Disruption is celebrated in Silicon Valley, a global epicenter of technology disruption. This book is not an intervention into the extensive discourse about digital economy disruption. Rather, this book discusses how varied forms of disruption have had an impact in countries in sub-Saharan Africa (SSA) in the past, the impact of such past disruptions today, and potential future paths, given disruptive digital economy technologies and innovations.

This book uses contemporary and historical events, particularly as they relate to law, to both highlight the impact of disruptive technologies in SSA today and the pressing need to disrupt past patterns of external relationships, external networks, and uses of external models within African countries that reflect significant colonial era overhang. This book focuses on Nigeria, but also discusses commonalities in

experiences related to law in British and other colonial contexts. Pervasive patterns of legal borrowing link Britain with its former colonies inside and outside of Africa, which are typically categorized as having common law legal systems. Examining laws and lawmaking processes can also reveal much about the shifting interface between the internal and external in SSA. Nigeria, which is thought to contain some 20 percent of the population of SSA,² reflects important aspects of colonial lawmaking and other policies.

As a background to understanding these patterns, a brief summary of the interface with the external, including during colonialism, is advisable, particularly for readers who may not be as familiar with African history. The experiences of African countries are diverse in important aspects, particularly as they relate to experiences of the colonized.³ At the same time, however, significant commonalities exist among British colonies in relation to law and the design of legal institutions, and as a result of persistently unequal and exploitative relations between external powers and African countries. The external relationships that are the focus of this book have unfolded at times in contexts of significant internal change within Africa. This book focuses on the internal implications of external contacts and relationships, which is just one perspective from which to view disruption in Africa.

Relationships between African countries and European powers that have shaped current conditions throughout the continent have involved a series of disruptions that have continuing impact today. As a result, understanding outcomes in Africa today requires examination of the internal, the external, including assumptions and theories guiding external actors, and hybrid systems and other institutions developed under conditions of external domination. As Achille Mbembe notes:

From a narrow methodological standpoint, this means that, from the fifteenth century, there is no longer a ‘distinctive historicity’ of these [African] societies, one not embedded in times and rhythms heavily conditioned by European domination. Therefore, dealing with African societies’ ‘historicity’ requires more than simply giving an account of what occurs on the continent itself at the interface between the working of internal forces and the working of international actors. It also presupposes a critical delving into Western history and the theories that claim to interpret it.⁴

We tend to speak of African countries in terms of historical time periods defined by reference to actions of external powers. Consequently, like many others, I refer to eras such as precolonial and colonial, which refer to time periods before and during formal colonialism in Africa. I also refer to a postcolonial era of independence, which began in SSA in 1957 with the independence of Ghana. However, these demarcations contain significant illusory aspects because essential patterns of relationships, particularly external ones, did not necessarily change as countries in Africa became independent, for example. Furthermore, from a legal perspective,

we have seen significant continuity of law and legal and policymaking processes, even after countries in Africa became formally independent.

People in Africa have had contacts with varied external actors for a long time. Long before widespread contacts with European powers, Africans developed varied trading networks, including across the Sahara Desert via the trans-Saharan trade and across the Indian Ocean. From the ninth through the fifteenth centuries, a series of kingdoms, many with names that remain familiar today, such as Ghana, Mali, and Songhai, arose in West Africa between the Niger River and the Atlantic Ocean.⁵ East Africa has had a long association with South Asia and China with trade links developing between the seventh and tenth centuries.⁶ Coastal merchant towns in East Africa that traded across the Indian Ocean developed in the context of these trading relationships.⁷ These examples of early external contacts illustrate ways in which trading networks and various forms of interchange have played an important role in various times and places in Africa. By the thirteenth and fourteenth centuries, West African gold constituted two-thirds of the gold in the world. Caravans of up to 10,000 camels passed through the legendary Timbuktu, which became part of the Mali Empire in the fourteenth century.⁸ Interchanges and networks across the Sahara Desert became prominent in the middle of the fourteenth century when Mansa Musa, the emperor of the Mali, made a famous pilgrimage to Mecca in 1324–1325, accompanied by thousands of slaves, state officials, and guards, as well as immense amounts of pure gold. Mansa Musa spent so much gold on his journey that the price of gold dropped, leading to price inflation.⁹

In addition to ongoing contacts with external actors, significant internal population movements have occurred in Africa, including the migration of Bantu-speaking peoples. Early Portuguese explorers had noted close similarities between languages in the southern half of Africa as early as 1498.¹⁰ Bantu language speakers are the largest language group in Africa, with 300 million people (of some 1.2 billion in Africa) speaking some 500 Bantu languages. Bantu language speakers began their migration from somewhere in the area of Cameroon around 4,000 to 5,000 years ago, reaching the southernmost area of Africa approximately 1,200 to 1,500 years ago.¹¹ Internal and external population movements, contacts, and other activities are a key background for external engagement in Africa by Europeans and others.

European activities on the ground in Africa began long before formal colonialism in the late nineteenth century. The Portuguese were early in expanding outside of Europe in Africa and elsewhere. Early Portuguese activities in Africa began during the early fifteenth century with the capture of the Moroccan coastal town of Ceuta. From the sixteenth to nineteenth centuries, prior to the advent of formal colonialism, commercial relationships initially centered in coastal areas often around the slave trade, particularly in West Africa and parts of Central Africa. Britain, then a global naval power, began to enforce its 1807 abolition of the slave trade,¹² which did not mean that Britain did not continue to benefit from forms of involvement in the slave trade.¹³ During the nineteenth century, however, other avenues of trading developed,

including so-called legitimate trade in products such as palm oil, although the slave trade did not peak until 1820; the slave trade and palm oil trade were both present at the same time in areas such as the Bight of Biafra in present-day Nigeria.¹⁴

Formal colonialism, through which European countries established ownership-like relationships over territories in Africa, came in the late nineteenth century and lasted for just two or three generations. The countries that emerged at the end of the colonial period reflected arbitrary divisions by external powers based on incomplete maps. The United States did not formally take a piece of Africa when it was arbitrarily divided by European and other powers. However, the United States and other powers who did not take colonies in Africa, including Austria-Hungary, Sweden-Norway, Russia, and the Ottoman Empire, participated in the Berlin Conference of 1884–1885, which formalized the division of Africa into colonies. The papers and maps for the Berlin Conference, available at the United States National Archives, reflect a strong sense of ownership by external powers, coupled with a lack of knowledge about what they were dividing. The Berlin Conference did not include participation by African peoples or governments or representatives that adequately considered local interests or concerns. The outcome of processes with such a starting point have been largely negative for people in the territories so divided.

As Heldring and Robinson have noted, despite its short duration, colonialism impeded economic outcomes throughout Africa:

Colonialism blocked further political development, and indirect rule made local elites less accountable to their citizens. After independence, even if these [centralized] states had a coherence that others lacked, they had far more predatory rulers. It is true that the colonial powers brought technology and institutions that Africans did not have, but Africans in these types of polities were busy adopting these developments in the nineteenth century, as they were the most capable of doing so.¹⁵

As Heldring and Robinson note, some colonies, including South Africa, Zimbabwe (called Southern Rhodesia during colonialism), and Kenya, were settler colonies where European settlers came in significant numbers. Other colonies incorporated centralized states that existed at the time of the Scramble for Africa, including Botswana, Benin, Ethiopia, and Rwanda. A third category of colonies had little or no centralized state formation or a mixture of societies with centralized forms of governance and those without such centralized forms. Examples of this third category would include Nigeria and Sierra Leone. Heldring and Robinson's empirical study also suggests that unlike the rest of the world, where the impact of colonialism was more heterogenous, the impact of colonialism in Africa, though diverse, was negative:

There is no success story in Africa similar to Australia or the United States, from which economically dynamic settler economies emerged All in all, we find it

difficult to bring the available evidence together with plausible counterfactuals to argue that there is any country today in sub-Saharan Africa that is more developed because it was colonized by Europeans. Quite the contrary.¹⁶

Colonialism was also part of broader networks of relationships between Africa and external forces, which, by the nineteenth century, had become dominated by European governments and other European actors. Many have noted the three C's of European colonialism: Christianity, Commerce, and Civilization. Although the assumption that Europeans could impart civilization in Africa was often at odds with their actual practices in Africa and elsewhere, the civilizing mission was a major part of how Europeans conceptualized and justified their actions in their African colonial possessions.

A wide range of commercial actors were present in Africa before, during, and after the colonial era. Commercial actors in British colonies included companies that had received British royal charters, such as the Royal African Company, which played a significant role in the slave trade and whose investors and beneficiaries included the British royal family and composer Georg Friedrich Handel,¹⁷ and the Royal Niger Company. In addition to companies with royal charters, smaller enterprises that included merchants from Liverpool, participated in the slave trade and palm oil trade. Participants in commerce in Africa also included involuntary and voluntary African laborers, migrants to West Africa from Lebanon,¹⁸ and Indian laborers and businesspeople, primarily present in East Africa and southern Africa. Indian laborers came voluntarily at times, long before colonialism, but were brought as involuntary indentured servants during colonialism to replace freed slaves.¹⁹ Migrants in West Africa also included thousands of ex-slaves from Brazil (referred to in Nigeria as Amaro) and ex-slaves from Sierra Leone (referred to in Nigeria as Saro).²⁰ Patterns of migration have shaped the local and the global before, during, and after colonialism.²¹

The Christianity part of the three C's underscores the impact of world religions in Africa. World religions have spread throughout Africa, with Christianity being adopted in Ethiopia as early as the fourth century. Islam spread in West Africa in the eighth century and is present in many parts of the continent. Catholic Jesuit missionaries were present in the Kingdom of Kongo in central Africa as early as the late fifteenth century.²² Christianity became more widespread with the Christian mission movement, which had become prominent by the early nineteenth century. Christian missionaries, who included Europeans, Americans, including African Americans, and former African slaves, were a key factor in the spread of Christianity in Africa. Missionary education became an important force within many African countries because missionary schools provided education, which became a gateway for access to opportunities, including for those who might have lacked such access prior to the coming of Europeans. Through these and other activities, missionaries have had a continuing impact in many African countries.

I have organized this book around key themes that highlight interactions of the past, the present, and potential future paths. These themes include consideration of intertwined strands of connectivity between the external and the internal as they relate to governance in Africa. Consideration of governance includes examination of the governed and those who govern. Related themes explored in this book include relationships between the global and the local in ever-shifting local and global contexts, types of competition, migration and diaspora, as well as power, authority, and accountability.

Wherever possible, this book also notes how cultural activities interact with these key themes. In African contexts, varied forms of artistic activity have been present and relevant to activities in other spheres. These artistic forms include music, metal work, sculpture, architecture, painting, oral and written literature, fiber art, and dance, to name a few. As was the case elsewhere in the broader African diaspora, forms of cultural expression such as music have become zones of contestation in varied contexts. Given this, artistic expression can shed light on questions of governance and control in both colonial and postcolonial contexts. For example, contestation in music illustrates that governance and control were about more than formal institutions. Colonial governance extended to the cultural realm and attempted to regulate and control ways of being and ways of doing.

This introductory chapter serves as an introduction to key themes discussed in the book, and contextualizes current circumstances in Nigeria and elsewhere in Africa in light of past experiences of interactions with external actors.

Chapter 2 examines questions of governance in colonial contexts, with consideration given to how conceptions about governance of corporations bear similarities to approaches to colonial governance by colonial powers. The thin European staffing that was typical during colonialism, emphasis on reducing costs and covering colonial costs with local taxes, and focus on extraction draw attention to ways in which colonial corporate governance reflected decision-making and investment choices that were more appropriate for short-term corporate decision-making than for long-term decisions about entire societies that might impact millions of people. Chapter 2 also looks at the internal construction of colonial governance and the often problematic bifurcation between English law and customary law in British colonial contexts.

Chapter 3 focuses on relationships and accountability and looks at the role of colonial rule in contributing to continuing state fragility in Africa today. This chapter also considers colonialism from the perspective of internal and external relationships. Chapter 3 ends with discussion of the implications of colonial governance and legal structures for accountability and recourse in instances of harm.

Chapter 4 analyzes the operation of colonial legal structures and examines implications of parallel customary and English law frameworks in the context of legal imperialism in British colonies. This chapter also considers structures of government, separation of powers, and the construction of legislative, judicial, and

executive branches during colonialism. The colonial executive power was largely unconstrained, which has contributed to structural problems in the organization and operation of postcolonial governmental structures that carried over to a significant degree from colonialism.

Chapter 5 considers issues related to colonialism, language, and law. Colonial policies have had a sustained impact in the language arena. Language policies also play a critical role in law. Language choices initially made during colonialism continue to shape questions of access, justice, and fairness in legal and other contexts in African countries.

Chapter 6 begins discussion of how past paths play a role in present-day questions related to the digital economy. This chapter examines how past legal and other institutions have influenced the diffusion of digital economy technologies and the tension between such technologies and existing institutions. This is an issue of global concern, not just in Africa. African countries, however, have significant issues related to colonial legal and institutional overhang that casts a shadow over digital economy laws and policies.

Chapter 7 examines digital technology issues in Nigerian contexts where today we see competing narratives about Nigerian start-ups that exist side by side with older narratives about scams involving Nigerian Princes, which are probably perceived by many to be the most well-known Nigerian digital economy export. This chapter also discusses how conceptions about technology uplift exist side by side with profound sources of insecurity from a range of sources for many people in countries in Africa.

Chapter 8 considers implications of digital economy trends for issues related to insecurity and precarity. It discusses rural and urban spaces in the context of digital economy trends. It ends with a consideration of implications of protest movements such as #EndSARS in Nigeria that illustrate ways in which digital technologies are creating digital communities and having an impact in contested spaces that exist around societal fissures, including intergenerational and other forms of conflict.

Chapter 9 takes note of the important role of elite formation during colonialism in defining elite spaces, particularly in Nigeria. These elite spaces are important for understanding patterns of governance and the persistence of poverty. Although this is of critical importance because so many are poor in Africa, discussions about poverty may not take sufficient note of elite attitudes that shape policies that may contribute to or alleviate poverty. Elite formation during colonialism has been important in shaping attitudes about governance and conceptions of internal responsibility of those who govern to those over whom they rule.

Chapter 10 returns to issues related to colonialism and commerce by examining how activities of colonizers have shaped opportunities, business institutions, and competitiveness throughout Africa. This chapter also discusses the implications of colonial portfolio approaches for law and commerce and the ways in which attitudes about governance have shaped the construction of the public and private in former colonies in Africa.

Chapter 11, the Conclusion, begins with consideration of a viral video of a young boy dancing ballet in the mud in Lagos that was viewed by tens of millions of people in the summer of 2020. This video highlights potential dreams and hopes of future paths, the potential of which may not be realized because of the paucity of available opportunities. Chapter 11 then discusses potential future paths in the digital economy era given past and present paths.

Notes

1. Disruptive Innovations, Christensen Institute, www.christenseninstitute.org/disruptive-innovations/
2. According to World Bank figures, the total estimated SSA population in SSA in 2019 was 1,106,957,900, with an estimated population in Nigeria 200,963,599, which would make Nigeria's population 18.15 percent of the total population of SSA. The World Bank, Population, Total – Sub-Saharan Africa, <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=ZG>.
3. Vansina, 2010.
4. Mbembe, 2001: 6.
5. McIntosh, 2012.
6. Pollard and Kinder, 2017.
7. Kusimba, 2018.
8. Levtzion, 1980: 132; Eaton, 2011: 3.
9. Levtzion, 1980: 211, 213; Eaton, 2011: 3.
10. Maret, 2018.
11. Barbieri et al., 2014.
12. Slave Trade Act 1807, An Act for the Abolition of the Slave Trade, 47 Geo III Sess. 1 c. 36.
13. Sherwood, 2007.
14. Northrup, 1976: 354.
15. Heldring and Robinson, 2017: 299–300.
16. Ibid. at 297, 300.
17. Hunter, 2019: 27.
18. Arsan, 2014.
19. Modi and Taylor, 2017.
20. Animashaun, 2018; Castillo, 2016; Dixon-Fyle, 1989; Ralston, 1969.
21. Modi and Taylor, 2017: 917.
22. Thornton, 1984: 148.

2

Colonialism, Governance, and Law

The white man's court has decided that it should belong to Nnama's family '...' He has put a knife on the things that held us together and we have fallen apart.

Chinua Achebe, *Things Fall Apart* (1958)

COLONIALISM AND THE ART OF GOVERNMENT

Chinua Achebe's groundbreaking novel *Things Fall Apart*, a literary masterpiece by an author whom many consider to be the father of modern African literature, attests to the disruption that came with colonialism. Hierarchies of authority that elevated the external over the internal were pervasive in colonialism. However, varieties of models of colonialism,¹ involving overlapping, interactive, hierarchical, and at times, competing spheres of governance, are essential for understanding the impact of colonialism. Varied actors oversaw these spheres of governance, including colonial administrators, missionaries, settlers (in settler colonies such as Kenya and South Africa), varied commercial interests, and *traditional* local rulers.

The legal and regulatory fabric of British colonial possessions, including Nigeria, illustrate key features of colonial governance. British colonial rule involved large-scale experiments that have proven to a significant degree to be problematic and prone to dysfunction and failure long after the formal end of colonialism. Although Africans have often been blamed for governance failures in Africa, systems and institutions put in place in Africa during colonialism were in many instances neither suitable nor robust. Failures within Africa have undoubtedly played a role in continuing postcolonial governance failures. Recent events outside of Africa draw attention to potential points of failure in external models of governance that have been primary sources for borrowing in many African contexts.²

Discussions of reform in Africa typically incorporate recommendations about desired forms of governance. As the World Bank noted in a 1989 report: “[u]nderlying the litany of Africa's development problems is a crisis of governance. By governance is meant the exercise of political power to manage a nation's affairs.”³ Promoters of good

governance often do not directly connect current perceived governance failures to colonial policy design and legal structures. However, structures and processes that became commonplace during the colonial era have played a significant and continuing role in shaping institutions all over Africa. Further, those charged internally within African countries with rectifying governance failures have been, in at least some instances, questionable stewards for implementation of good governance practices.

Questions about governance and the power of states are not limited to African contexts. Michel Foucault notes that government “as a general problem seems to me to explode in the sixteenth century.”⁴ Governmentality or the “art of government” as conceptualized by Foucault centers on the nation-state and involves questions about “[h]ow to govern oneself, how to be governed, how to govern others, by whom the people will accept being governed, how to become the best possible governor.”⁵ Discourse about governance has exploded in discussions about and within Africa, particularly in the last twenty years. Interrogating contexts of good governance discourse about Africa is critical for understanding the impact of conceptions about governance on potential future paths for African countries.

Good governance proposals in Africa arose in the post-Cold War and post-debt crisis era.⁶ These proposals were initially the product of external actors, who sought to connect conceptions of economic development and political freedom: “amidst the backdrop of a general climate in favor of free markets and liberal democracy.”⁷ By the beginning of the 1990s, varied external actors, including Western governments that provide development assistance to African countries and international financial institutions, such as the World Bank and International Monetary Fund (IMF), were focusing on governance and indicia of democracy as a condition for receiving development aid and other assistance.⁸

Prevailing opinions that may change according to the notions of external actors have long shaped external prescriptions for future paths for African countries. Prior to the 1990s, academics, donors, and international financial institutions were not as concerned about democracy. In fact, they “expressed few misgivings about funneling billions of dollars in development aid through repressive regimes as long as the latter accepted the appropriate policy advice Western governments, with one eye on Cold War geopolitics and the other on safeguarding their own economic and political interests in Africa, openly supported a succession of friendly ‘strongmen’.”⁹

Internal prodemocracy social movements had also become active by the late 1980s and early 1990s, influenced by the release of Nelson Mandela, the liberation movement in South Africa, and upheavals in Eastern Europe.¹⁰ These internal social movements agitated for improved conditions and highlight the complexity of internal terrains and presence of zones of internal contestation that exist within African countries. The presence of internal and external pressures to embrace democracy also raise questions about what democracy means in African contexts: “[t]he existence of electoral systems, a multiplicity of political parties, and