

DISRUPTING AFRICA

In the digital era, many African countries sit at the crossroads of a potential future that will be shaped by digital-era technologies with existing laws and institutions constructed under conditions of colonial and postcolonial authoritarian rule. In *Disrupting Africa*, Olufunmilayo B. Arewa examines this intersection and shows how it encompasses existing and new zones of contestation that are based on ethnicity, religion, region, age, and other sources of division. Arewa highlights specific collisions between the old and the new, including in the 2020 #EndSARS protests in Nigeria, which involved young people who engaged with varied digital-era technologies, provoking a violent response from rulers threatened by the prospect of political change. In this groundbreaking work, Arewa demonstrates how colonial and postcolonial lawmaking and legal processes continue to frame contexts in which digital technologies are created, implemented, regulated, and used in Africa today.

Olufunmilayo B. Arewa is the Murray H. Shusterman Professor of Transactional and Business Law at the Temple University Beasley School of Law. She writes about music, technology, and Africa, and has worked as a practicing lawyer in emerging growth company space in Silicon Valley, New York, and Boston. This book, which involved extensive archival research, brings together her training as an anthropologist and lawyer.

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Disrupting Africa

TECHNOLOGY, LAW, AND DEVELOPMENT

OLUFUNMILAYO B. AREWA

Temple University, Philadelphia



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*For my father (in memoriam), my mother, and my husband, who helped
make this project possible*

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Preface

I am a daughter of two diasporas from Africa. The first, an involuntary one of enslaved people, brought my mother's ancestors to the New World. The transatlantic slave trade caused disruptions in Africa and in the New World that continue to reverberate today. In Africa during the slave trade, disruption was present in areas in West Africa, the Congo region, and other places that were primary sources of slaves. My father was born in Nigeria in present-day Ondo state in what was at the time the western region of Nigeria, then a British colonial possession. He came to the United States around the time of Nigeria's independence in 1960. His coming to the United States reflected new patterns of migration at the end of the colonial period when large numbers of people from Nigeria and other African countries went abroad to study with the idea that these people would return to their home countries. Migration for my father and others has been driven in some instances by a search for available education, work, or other opportunities. Nigeria is now the largest source of immigrants from Africa to the United States. My father, like many others, did not return permanently to Nigeria.

As a person of Nigerian American heritage, I grew up with a vision of Nigeria as a source of potential future greatness. My late father was proud of his Nigerian heritage. Like many Nigerians in the most recent postcolonial diaspora, he worked hard and was highly educated, eventually becoming a professor. He is not an anomaly. Nigerians are one of the most well-educated immigrant groups in the United States.

My father instilled in us a conception of Nigeria and other African countries as having great, but as yet unrealized, potential. As someone once reflected to me in a conversation about Nigeria: Nigeria is a continuing paradox, a country of enormous capacity and potential that never seems realized. Despite this significant capacity, which is not always the case in sub-Saharan Africa (SSA),¹ the potential that my father hoped to be Nigeria's future path has never been realized and more importantly, is not likely to be realized without significant legal and other reforms that involve disruption of past approaches, policies, and laws.

This book emerged from something that puzzled me about the origins of a single law in Nigeria. Untangling one piece of this puzzle led me on a quest of close to a decade during which I continued to untangle multiple intertwined pieces of an ever larger puzzle. This puzzle came to be closely intertwined with my personal and professional background and experience. My quest has taken me to multiple archives, including Archives and Special Collections, SOAS Library, British Library, the National Archives of the UK, Bodleian Library, and Parliamentary Archives in the United Kingdom, the Library of Congress and National Archives in the United States, and the *Archives nationales d'outre mer* in France. The focus of my work in these archives has been to examine laws, regulations, and law and policymaking processes during colonialism in order to understand the continuing impact of precolonial and colonial policies and processes today. I have reviewed thousands of pages of documents related to law, lawmaking processes, and legal administration, with a primary focus on colonial Nigeria.

This book is also an exploration of potential future paths for African countries, particularly Nigeria, with a focus on implications of digital economy technologies that have now disseminated throughout the world, including in Africa. Many within and outside of Africa see the potential future of such technologies as offering an opportunity to disrupt past disadvantageous patterns that have diminished opportunities for far too many people in Africa. New technologies, however, spread in contexts defined by a collision of the past, the present, and visions of the future that may be preconditioned by what has come before.

This book seeks to illuminate some reasons that legal, business, and other institutions in sub-Saharan African countries have repeatedly failed or proven ineffective for the vast majority of people living within these countries. Consideration of the impact of the external in Africa can illuminate much about the past, the present, and likely future paths. Although media sensationalism may overemphasize negative aspects of the state of affairs in many African countries,² today, more than half a century after the end of colonialism for most countries in Africa, far too many remain poor. High rates of economic growth in the early years of the new millennium have decreased, while African countries could account for more than half of global population growth between 2018 and 2050, with the population of some countries likely to at least double during that time.³ Unemployment and underemployment are pervasive in many African countries today, driven by a lack of demand for labor rather than by worker characteristics.⁴ The current state of affairs many countries in Africa today attests to the gulf between past visions and present, and likely future, realities.

This book focuses on sub-Saharan Africa, which includes countries in Africa south of the Sahara Desert, a dominant geographical feature of the continent. Although North Africa is clearly part of the African continent geographically with longstanding cultural, historical, and other connections to the rest of the continent, it is not a focus of my discussion. The exclusion of North Africa from dominant

scholarly and popular approaches to the rest of the continent is rooted in past assumptions largely based on race that are themselves ripe for disruption.⁵ These past approaches are being increasingly questioned today. In a study of nineteenth-century trans-Saharan trade, historian Ghislaine Lydon notes “[d]espite perceptions to the contrary, the countries bordering the Sahara are united by a common history . . . I treat West and North Africa as one region with the Sahara sealing the continent rather than dividing it.”⁶

This book does not involve extensive consideration of whether colonialism on balance was good or bad. As discussed in the coming chapters, it seems pretty apparent that colonialism was generally a bad thing for the vast majority of people in Africa. That said, however, colonialism had winners and losers, often identified and defined in terms of external needs and decisions, as discussed in this book. Further, many policies and laws that were implemented before, during, and even after colonialism have been poorly conceived, ineffectively implemented, and deleterious to the fabric of laws and institutions, even when undertaken with the best of intentions. Because law is comparable to a blob that accumulates over time, the impact of these laws, even if old, may be significant and continuing. More importantly, governments in many African countries today reflect the institutional structure of colonial governance, which often included unchecked executive power and weak legislatures and judicial institutions. These institutional structures have contributed to declining fortunes after colonialism in many countries. As Leander Heldring and James Robinson note: “we will argue that, in most cases, postindependence economic decline in Africa can be explicitly attributed to colonialism, because the types of mechanisms that led to this decline were creations of colonial society and institutions that persisted.”⁷

The current state of political, economic, and human conditions in countries in SSA has long been a topic of discussion, particularly in the postindependence era when such countries seemingly had the ability to chart their own future paths. This book discusses why future hopes at the time of independence have not been fully realized and also considers why past patterns of external domination and determination have not been sufficiently disrupted.

Notes

1. Capacity was particularly limited in the legal profession. Although Ghana and Nigeria had a small number of African lawyers at independence, many other African countries had few lawyers, which was a significant problem given the legal nature of the colonial state. At independence, Tanganyika had only twenty-five lawyers in the country, only two of whom were African. Belgian and Portuguese colonies had “virtually no trained legal professionals to handle disputes in the national court system.” Joireman, 2001: 580–581.
2. Hunter-Gault, 2007: 107.

3. United Nations Department of Economic and Social Affairs, 2019: 1, 10; Mo Ibrahim Foundation. 2013. *Africa Ahead: The Next 50 Years*, p. 5, accessed October 23, 2020, <https://moibrahim.foundation/sites/default/files/2019-03/2013-facts-%26-figures-an-african-conversation-africa-ahead-the-next-50-years.pdf>.
4. Golub and Hayat, 2015: 137.
5. Countries in North Africa are typically considered together with countries in the Middle East as part of the Middle East and North Africa (MENA) region. Iman Amrani. “Why Don’t We Think of North Africa as Part of Africa?” *Guardian*, September 25, 2015, accessed October 23, 2020, www.theguardian.com/commentisfree/2015/sep/09/north-africa-algeria-black-africa-shared-history.
6. Lydon, 2012: 5.
7. Heldring and Robinson, 2017: 299.

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Abbreviations and Acronyms

AfDB	African Development Bank
AI	Artificial Intelligence
ANOM	Archives nationales d'outre mer
AU	African Union
Bodleian	Bodleian Libraries, University of Oxford, Bodleian Archives & Manuscripts
CBK	Central Bank of Kenya
CBN	Central Bank of Nigeria
DRC	Democratic Republic of the Congo
DSS	Nigerian Department of State Service
ECOWAS	Economic Community of West African States
EDB	World Bank Ease of Doing Business Index
EFCC	Nigerian Economic and Financial Crimes Commission
FAO	Food and Agriculture Organization of the United Nations
fintech	financial technology
GDP	Gross Domestic Product
ICJ	International Court of Justice
IFC	International Finance Corporation
IFFs	illicit financial flows
IMF	International Monetary Fund
IoT	Internet of Things
IPO	Initial Public Offering
NGO	Nongovernmental organization
NJC	Nigerian Judicial Council
R&D	Research and Development
RNC	Royal Niger Company
SAPs	Structural Adjustment Programs
SDGs	Sustainable Development Goals
SOAS Archive	Archives and Special Collections, SOAS Library

List of Abbreviations and Acronyms

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SSA	sub-Saharan Africa
TNA	The National Archives of the UK
TPA	The Parliamentary Archives – UK Parliament
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Program
UNECA	United Nations Economic Commission for Africa
UNICEF	United Nations Children’s Education Fund
USNA	The United States National Archives

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Map

AFRICA



Political Map of Africa¹

Note

1. www.cia.gov/library/publications/the-world-factbook/attachments/docs/original/africa_pol.pdf?1558019469

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