Introduction

> My husband was a drinker and he would disappear on his days off. He would go to the market and buy meat for me to cook, and then he would just disappear for hours and hours, even days. When I questioned him, he would become violent and we had huge fights. I didn't know then that that was *nkhanza* [cruelty, gender violence]; we didn't know about *ufulu* [rights, freedom] then.

These were the words of a woman in Chiradzulu District, spoken on the veranda of my rented village home as we relaxed one cool evening in 2009. As Anachisale reflected on her marriage to her late husband, she was struck by how much had changed in Malawi since the coming of 'democracy' (*demokalase*).[1] Growing up during the dictatorship of Dr Hastings Kamuzu Banda (1964–94), she had experienced the violent excesses of earlier decades, both within and beyond the household, and she compared the contemporary period favourably with those years. These days, she said, women have rights, and there are non-governmental organisations (NGOs) and institutions such as police victim support units that have been set up to educate and protect Malawian citizens. On this occasion, Anachisale's urge to stress the degree to which the country had changed meant that she underplayed her personal scepticism towards formal authorities and NGOs, a scepticism that she would reveal in other conversations and muttered remarks. Welcome as the political transition of 1993–4 had been, she and her fellow villagers were by no means uncritical of the new dispensation and the proliferation of human rights talk and projects it had brought in its wake. As I was to learn over the course of my fieldwork, the fact that rights could be both cherished and ridiculed by the same individuals is revealing not only of deep-seated ambivalence about the ability of wealthy politicians and professional rights advocates to live up to their lofty promises, but also of the potential polysemy of rights themselves.

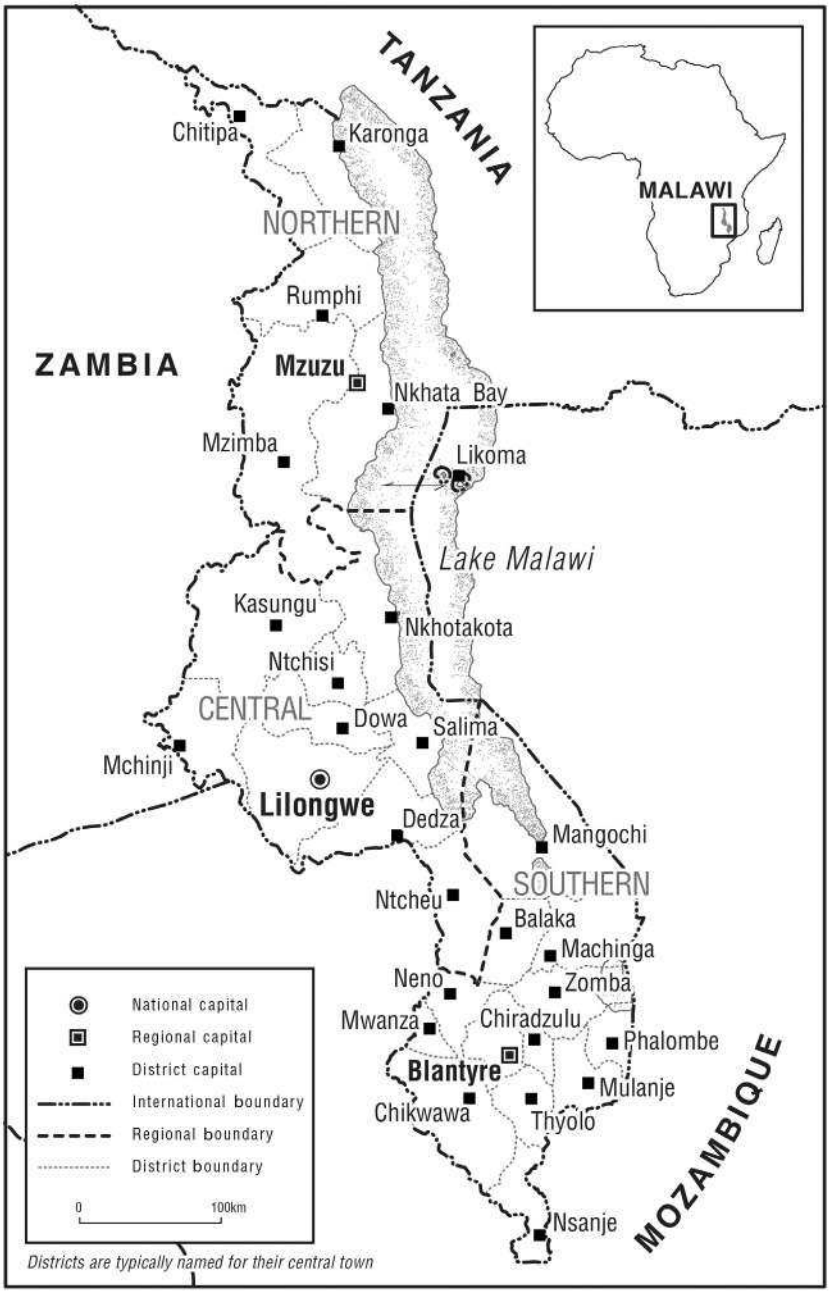
Indeed, ideas about human and women's rights have had a profound impact in Malawi in recent years, as they have in much of the Global

[1] Unless otherwise stated, all informants' names are pseudonyms.

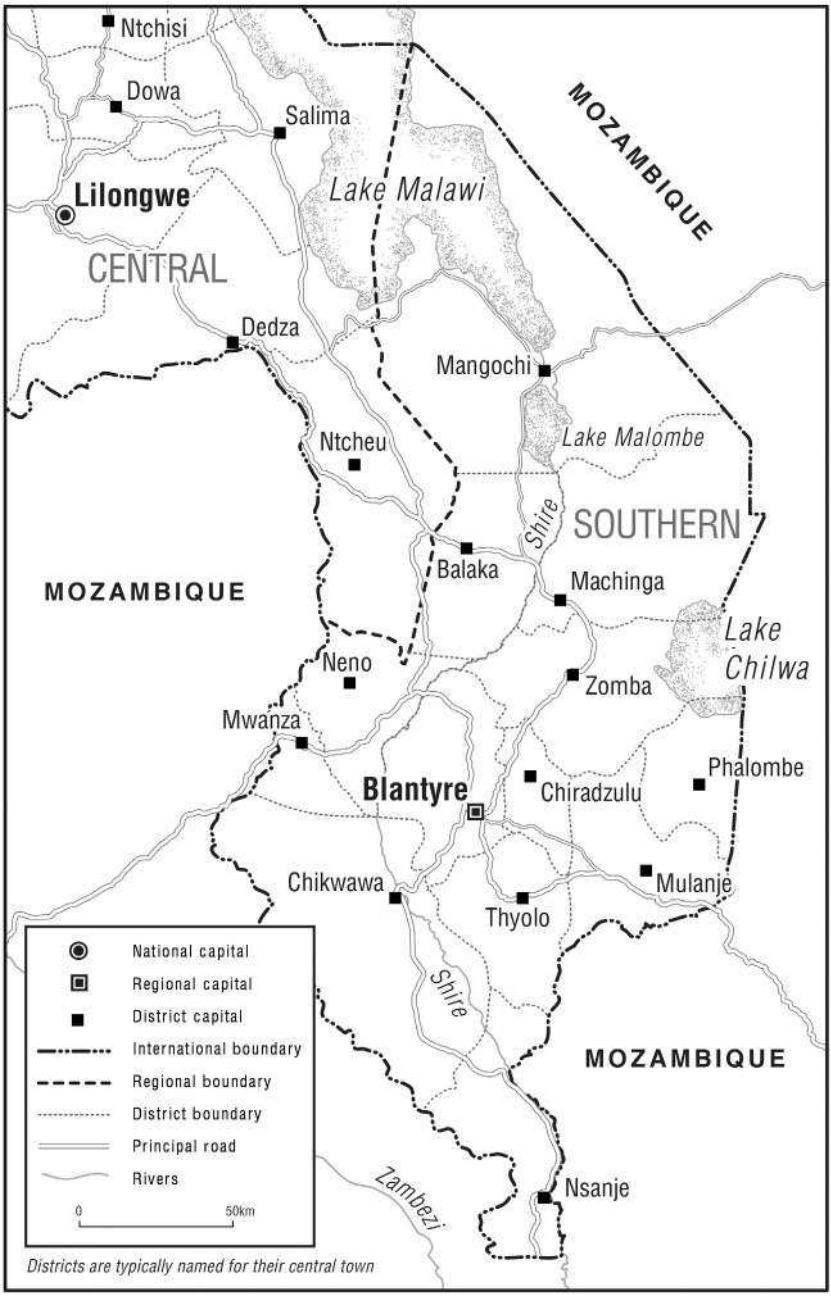
South. Their influence on policymakers and civil society has been considerable, and concerted efforts at civic education have made the discourses and concepts of rights widely accessible, albeit in modified form, to the rural poor. An examination of the effects of these international notions of justice lies at the heart of this book, and my analysis lays bare the tensions between powerful global formulations and alternative understandings of justice that are at once part of a longer historical tradition of justice in Malawi and responsive to new ideas. Drawing on field research conducted between January 2009 and September 2010, as well as subsequent visits in September 2013 and April–October 2015, this book challenges the universality of a model of gender justice that is rooted in the logic of equality as sameness, arguing for greater sensitivity to local concepts and for openness to the possibility that liberal tenets, so deeply naturalised in Euro-American understandings of the world, provide shaky foundations for global comparison.

This is a study of gender justice in postcolonial Africa. But the pages of this book do not recount events in the High Court or the work of professional legal practitioners. Instead, the focus is on the institutions of law that were accessible to ordinary Malawian citizens in Chiradzulu District as they pursued gendered disputes, and the forms of justice administered and aspired to in these settings (see Maps 1 and 2). Much of my research was carried out in two rural magistrates' courts, in a police victim support unit, and at the chiefs' court (*bwalo*) in the village in which I resided. These forums were interconnected, and disputants often consulted them sequentially, carrying referral letters from one to another and sometimes back again (see Chapter 2). I observed case hearings in each of these venues, particularly of marital disputes, and I came to focus on their form and texture in order to understand what 'gender justice' might look like in Malawi. My argument hinges on the importance of the broader matrilineal context for the forms of justice that men and women sought when they turned to family members, traditional authorities, police officers, and magistrates for assistance.

What follows is thus not simply a study of legal arenas and dispute hearings; it is also a study of gender and marital relations more broadly, building on rural ethnography that offers an insight into the ebb and flow of daily life, quotidian obligations, and aspirations for just relationships. The point is not to provide a backdrop of 'healthy' sociality against which 'pathological' disputes might be better understood, but rather to demonstrate the mundanity of gendered contestation. It is by understanding gender relations as they are lived and contested in the course of routine exchanges that a sense of what justice might look like for men and women in matrilineal Malawi can be developed. For this reason, the following sections of this Introduction, and Chapter 1, focus on marriage and



Map 1 Malawi



Map 2 The Southern Region showing district boundaries

matriliny beyond the legal forums on which the subsequent chapters concentrate, while Chapter 6 introduces a dispute between cross-sex siblings in the matrilineal context. I seek to convey the contours of matrilineal norms and practices, their historical contingency, and the ways in which they have been (mis)understood by anthropologists and other observers since the late nineteenth century. While matriliny might have a certain appeal for feminist analysts, my ethnographic argument, which posits that the kind of gender justice sought in the disputes I studied was rooted in a desire for 'complementarity', challenges the liberal feminist emphasis on the fundamental equality (or sameness) of men and women. Later in this Introduction, and again in the Conclusion, I address the tension between liberal feminism, with its emphasis on autonomy and equality, and ethnographic findings that equate justice with interdependence. Crucially, interdependence and complementarity are not a gloss for female subordination or a justification for gender-based violence. They do, however, entail making space in feminist analysis, and feminist politics, for difference.

Southern Malawi: matriliny and gender relations

In contrast with much of northern Malawi and the country's southern tip, Chiradzulu lies within what has been called South-Central Africa's 'matrilineal belt', which extends across northern Zambia, central and southern Malawi, and northern Mozambique. Historically and into the present day, social life in this part of the country has been profoundly shaped by uxorilocal marriage and matrilineal norms of descent and inheritance. The area, like much of the country, is also rural and residents are highly reliant on subsistence agriculture. In this context, conjugal households, consisting of a woman and her husband and children, maintain a significant degree of autonomy, despite their location within clusters of houses (compounds) belonging to groups of categorical sisters and their descendants. Each adult woman has her own granary (*nkhokwe*) in which she stores the maize produced in the fields allocated to her by her mother, and she has exclusive control over its disposal. Men and women (and children) work together in the fields, although women tend to provide the bulk of the labour, with men most involved during planting and harvesting. Megan Vaughan has written about how this seeming independence at the level of the household is often underpinned by a considerable degree of inter-household sharing and exchange among matrilineal kin (1987: 135–6). However, she argues that 'never in the accessible past had villages, let alone households, provided all their needs from their own labour on their own plots of land' (1987: 60), thus signalling the long history behind the current practice of supplementing agricultural production with cash income generated through

male-dominated formal employment, men's and women's agricultural piecework (*ganyu*) and small-scale trading, and women's beer (*mowa*) and liquor (*kachasu*) brewing activities.

My analysis of marriage in rural Malawi suggests a contrast with a dominant strand in the regional literature, which posits a significant decline in the institution in recent decades (see, e.g., Griffiths 1997; Gulbrandsen 1986; Hunter 2010). I argue that marriage remains an important institution in Malawi but that marital strategies shift over the life course and in response to changing personal circumstances (see Chapters 1 and 6). First marriage and associated childbearing are widely desired, but divorced or widowed mothers often seek greater independence from men at the level of the household, while remaining embedded within the networks of matrilineal kin through which they gain access to material and immaterial resources and support.

Marriage in this context is almost always 'customary' marriage, as opposed to marriage under the Marriage Act, but both forms have constitutional recognition.[2] Customary marriage is easily contracted, with little ceremony marking either its commencement or its dissolution. The principal distinguishing feature of a marital relationship (*banja*), as opposed to a 'friendship' (*chibwenzi*), is the designation of *ankhoswe* or marriage guardians (Bruwer 1955). The matrilineal kin of the bride and groom each provide recognised *ankhoswe* who are to be the couple's first port of call in the event of marital difficulties, and whose testimony will be expected if disputes move on to other forums. Uxorilocal marriage is strongly favoured, and a great onus is placed on husbands to build houses in their wives' matrilineal compounds, close to those of their mothers- and sisters-in-law. Divorce rates in matrilineal societies are notoriously high, and although remarriage is common, single life can be relatively attractive to women given that their access to land and their belonging in their mothers' villages are assured, along with that of their children. For men, access to land and the right to be fed from a woman's maize store are usually gained through marriage. In the absence of a regular wage, a comfortable life for unmarried, divorced, or widowed men largely depends on the resources and patience of their mothers and sisters.

Not unlike missionaries and colonial officials, scholars have at times been baffled by the seeming contradictions of social arrangements that deny a man his 'natural' right of control over his wife and children. In the

[2] This contrasts with Griffiths' (1997) finding that marriages under the Marriage Act were relatively common in Botswana. The Malawian Divorce Act does not apply to customary marriages, and couples seeking divorce are thus not required to satisfy its restricted criteria or to seek divorce through the High Court. For the most part, I do not find it necessary to employ the term 'customary' to qualify my discussion of marriage, and neither did my informants.

words of Audrey Richards, 'women court men to give them children, but they do not allow them the full rights of a sociological father or *pater*' (1982 [1956]: 159). Having brought with them the lessons of their upbringing in Euro-American milieus, early observers were accustomed to assume patriarchal authority and nuclear families. In some cases, scholars seemed to accept the ethnocentric analyses of colonialists, repeating as fact, for example, the idea that if men lived uxorilocally, gained access to land through their wives, and could not pass that land on to their own sons, 'energetic male participation in agricultural improvements was unlikely' (Vail 1984: 22). As Paul Kishindo has observed, however, 'neither the government [colonial or postcolonial] nor the scholars who condemned uxorilocal marriages provided evidence directly linking them to lack of investment in agriculture' (2010: 90).[3] The concern with male commitment to agriculture as the primary requirement for agricultural 'development' rests on the androcentric assumption that 'farmers' are male and women are merely 'farmers' wives', which is and was 'completely at odds with the reality' of life in rural Malawi (Peters 2010: 186). Similar unexamined androcentricity can be detected in accounts of the inevitability of men's desire to avoid or reverse uxorilocal marriage, and in the assumed incompatibility between matrilineal kinship organisation and capitalist endeavour (Mair 1951; Mitchell 1956; Peters 1997b; Phiri 1983; Power 1995).

While many predicted matriliny's inevitable demise under conditions of 'modernity' (see, e.g., Douglas 2001 [1969]; Gough 1961; Poewe 1981), others set about explaining its institutions in such a way as to undermine claims of 'difference' in the status of women in matrilineal societies. Against the images of 'matriarchy' that had occupied nineteenth-century writers, contributors to the influential volume *Matrilineal Kinship*, dedicated to Richards (Schneider and Gough 1961), reassured their readers that women in such societies were neither authoritative nor autonomous; they were simply subject to the control of their brothers and uncles, rather than that of their fathers and husbands. As David Schneider explained: '[T]he role of men as men is defined as having authority over women and children ... Positions of highest authority within the matrilineal descent group will, therefore, ordinarily be vested in statuses occupied by men' (1961: 6).

These writers were principally concerned with what had become known as the 'matrilineal puzzle' (Richards 1950): the question of how to reconcile the seeming dislocation, or tension, between men's

[3] Kishindo's research found that uxorilocal residence by itself had no direct bearing on male investment in land, but that the stability of a man's marriage, and hence his perception of his 'security in the village', was a factor in decisions relating to long-term investments (2010: 96–7).

roles as fathers and as maternal uncles within a system of uxorilocal marriage and matrilineal descent.[4] The puzzle resided in a perceived 'fundamental structural difference' between matrilineal and patrilineal kinship: whereas in patrilineal descent groups, 'both authority and group placement are male functions', in matrilineal descent groups, 'on the other hand, although the line of authority also runs through men, group placement runs through the line of women' (Schneider 1961: 7). E. R. Leach (1961) launched an early attack on this kind of 'butterfly collecting' anthropology in which scholars discover what their chosen system of classification allows. More recently, anthropologists have rejected the premises of the puzzle, rightly identifying the patriarchal and Eurocentric assumptions that guide its very definition (Peters 1997b). As stated by Signe Arnfred, 'Schneider's discussion, developed in detail, deals with relations between men' (2011: 228).

Indeed, recent studies question the idea that matriliny has little impact on the authority or status of women, and several anthropologists have argued that, on the contrary, matrilineal practices provide 'greater social and political space to women' (Peters 1997b: 133). Having shed the spectre of nineteenth-century evolutionism and embraced the politics of feminism, Pauline Peters suggests that, from the 1970s onwards, scholars were finally able to attest to 'greater degrees of independence, autonomy, formal authority in local politics and ritual, control of income, decisions concerning child-bearing, family relations and so forth enjoyed by women' in matrilineal settings (ibid.: 134).

A desire to understand what difference being born into matrilineal extended families (*mbumba*) makes to the lives of men and women in Chiradzulu guided my decision to foreground matriliny in this study. My response to this question is somewhat one-sided, however, reflecting a greater theoretical and methodological focus on women, necessitated in part by my own gendered identity. Nevertheless, an important strand of analysis running through this book relates to the difficulties that men face in living up to the material expectations of their wives and in-laws, and the relative precarity of their access to land. The male bias of early research notwithstanding, the situations and perspectives of men in matrilineal societies have been even less well studied than those of women. There is significant scope for future research to take up the challenge of understanding men's roles and aspirations in matrilineal societies, beyond the purview of a 'matrilineal puzzle' that assumes their position to be necessarily 'galling' (Richards 1982 [1956]: 40).

[4] The fact that tensions between natal and marital ties might not be exclusive to matriliny, or to men, was not given much consideration (see, e.g., James 1999a; 1999b). See Apter (2012) for a recent example of the deployment of the concept of the 'matrilineal puzzle' for analytical purposes.

The significance of matriliny as a defining feature of social life in rural southern Malawi does not entirely negate the importance of patrilineal connections. A person's *mfundo* or clan name, for example, the use of which marks respect, is inherited from his or her father. Clan names constitute an enduring connection with paternal kin, allowing people, 'at least under favourable circumstances, to claim relationships' (Englund 2002: 56) beyond the matriline. Nevertheless, Chiradzulu villagers rarely inherit land or property through patrilateral connections, and, with few exceptions, men do not inherit gardens (*minda*). Even within the relatively land-rich chiefly lineage in the area of my fieldwork, my innocent question about the possibility of the resident grandson of the eldest surviving female member of the *mbumba*, the direct descendant of her late son, inheriting land was met with incredulity: 'Why? This is not his home; his place is in Ntcheu.' Valued as a nephew and grandson, carrying the clan name of his father, reliable, industrious, and perhaps the best educated of his generation with the potential to bring home a regular wage, Adzimbiri was welcome to live alongside his father's kin, but his real home (*kwawo*), where he truly belonged, was among his mother's family in a distant district in the Central Region. For the same reason, Adzimbiri would not be considered a potential successor to his paternal uncle as chief (cf. Englund 2002: 57). Conversely, a number of young kin who were considered eligible for succession and inheritance were living with their respective fathers' relatives in neighbouring Thyolo and Zomba Districts at the time of my original fieldwork. These arrangements were convenient for the time being, but in the long term all of the children concerned were expected to return to Chiradzulu.[5]

By contrast, research conducted in matrilineal areas of central Malawi reveals more 'cognatic' kinship practices with less significant distinctions drawn between matrilineal and patrilineal kin, and individuals more likely to inherit land and titles through their fathers than they are in Chiradzulu (see, e.g., Englund 2002). Such differences in kinship norms may be related to the influence of patrilineal Ngoni migrants from Southern Africa, who settled in large numbers in central Malawi in the nineteenth century (Phiri 1983). The Central Region is thus characterised by a different history of migration and ethnic interaction than that of the Shire Highlands, in which Chiradzulu is located and where villagers who recognise matrilineal Yao, Lomwe, Man'ganja, and Nyanja roots far outnumber those claiming Ngoni heritage (see, e.g., Chirwa 1994; Vail 1984; Vail and White 1991).

[5] By 2015 they had indeed returned.

Indeed, contemporary matriliny cannot be understood outside the flow of historical time. It is important to note, for example, that the forces of missionary Christianity and British colonial rule (1891–1964) were unsympathetic to matriliny (Phiri 1983). In the context of increasing cash-crop production, taxation, and estate tenancy, '[i]t was men who, by necessity, forged the stronger links with the new capitalist economy which gave them a powerful bargaining position within the household' (Vaughan 1985: 42). Men as husbands, rather than as matrilineal kinsmen, were the focus of colonial policy and mission teachings, and by placing 'responsibility for a woman firmly on the shoulders of her husband' (ibid.: 43), colonial authorities undermined inter-household linkages and altered patterns of dependence within marriage. Nevertheless, shifts in matrilineal practices have been uneven and fluctuating. It is impossible to provide an overarching and coherent narrative of a decline in women's status alongside a rise in patrilocal marriage and patrilineal inheritance, even if, at certain times and in certain places, predictions of matriliny's submission have proved irresistible (see, e.g., Mandala 1990; Read 1942; White 1987).[6]

Against the expectations of many, the resilience of matriliny in South-Central Africa has been among its most remarked features in recent scholarship (Arnfred 2011; Barber 2001; Brantley 1997; Kishindo 2010; Peters 1997a; Vaughan 1987). Given the multiple ways in which matriliny has interacted with alternative modes of inheritance and patterns of residence, and the various shifts that have occurred in response to historically and geographically contingent pressures, many of which served to favour men as household heads, the persistence of matriliny in the Shire Highlands is indeed remarkable. But changes come and go in ebbs and flows. The period during which I conducted fieldwork coincided with conditions conducive to matrilineal norms. Paltry prospects for villagers in the formal economy, for one thing, ensured the ongoing significance of agricultural production for household reproduction, and a national fertiliser subsidy programme combined with favourable rains enhanced the viability of small-scale agriculture on land allocated to women, while simultaneously decreasing demand for male sources of income. Matriliny may be resilient, but it is not ahistorical.

Peters' point – that it is more constructive to 'consider matriliny as a set of characteristics rather than a totality or "system"' (Peters 1997b: 137; see also Brantley 1997) – is pertinent to this discussion and we ought to remain mindful of the fact that matriliny takes many forms and

[6] See Christine Oppong's (1974) work on urban Ghanaian elites, or Saradamoni (1999) on matriliny in Travancore, south India, for interesting comparative perspectives.