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Research Guide: Customary Law in Africa

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Customary laws and traditional institutions in Africa constitute comprehensive legal systems that regulate the entire spectrum of activities from birth to death. Once the sole source of law, customary rules now exist in the context of pluralist legal systems with competing bodies of domestic constitutional law, statutory law, common law and international human rights treaties. This book promotes discussion and understanding of customary law and explores its continued relevance in sub-Saharan Africa. The volume considers the characteristics of customary law and efforts to ascertain and codify customary law, and how this body of law differs in content, form and status from legislation and common law. It also

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addresses a number of substantive areas of customary law including the role and power of traditional authorities; customary criminal law; customary land tenure, property rights and intestate succession; and the relationship between customary law, human rights and gender equality.

Customary law and traditional authorities continue to play highly complex and contested roles in contemporary African states. Reversing the common preoccupation with studying the impact of the post/colonial state on customary regimes, this volume analyses how the interactions between state and non-state normative orders have shaped the everyday practices of the state. It

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argues that, in their daily work, local officials are confronted with a paradox of customary law: operating under politico-legal pluralism and limited state capacity, bureaucrats must often, paradoxically, deal with custom – even though the form and logic of customary rule is not easily compatible and frequently incommensurable with the form and logic of the state – in order to do their work as a state. Given the self-contradictory nature of this endeavour, officials end up processing, rather than solving, this paradox in multiple, inconsistent and piecemeal ways. Assembling inventive case studies on state-driven land reforms in South Africa and Tanzania, the police in Mozambique, witchcraft in southern Sudan, constitutional reform in South Sudan,

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Guinea's long durée of changing state engagements with custom, and hybrid political orders in Somaliland, this volume offers important insights into the divergent strategies used by African officials in handling this paradox of customary law and, somehow, getting their work done.

In analyzing the obstacles to democratization in post-independence Africa, Mahmood Mamdani offers a bold, insightful account of colonialism's legacy--a bifurcated power that mediated racial domination through tribally organized local authorities, reproducing racial identity in citizens and ethnic identity in subjects. Many writers have understood colonial rule

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as either "direct" (French) or "indirect" (British), with a third variant--apartheid--as exceptional.

This benign terminology, Mamdani shows, masks the fact that these were actually variants of a despotism.

While direct rule denied rights to subjects on racial grounds, indirect rule incorporated them into a "customary" mode of rule, with state-appointed Native Authorities defining custom. By tapping authoritarian possibilities in culture, and by giving culture an authoritarian bent, indirect rule (decentralized despotism) set the pace for Africa; the French followed suit by changing from direct to indirect administration, while apartheid emerged relatively later. Apartheid, Mamdani shows, was actually the generic form of the colonial state in Africa. Through case

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studies of rural (Uganda) and urban (South Africa) resistance movements, we learn how these institutional features fragment resistance and how states tend to play off reform in one sector against repression in the other. The result is a groundbreaking reassessment of colonial rule in Africa and its enduring aftereffects. Reforming a power that institutionally enforces tension between town and country, and between ethnicities, is the key challenge for anyone interested in democratic reform in Africa.

Examining the unique cultures of the Islamic Middle East, sub-Saharan Africa, Indianized Asia, and China, Adda Bozeman attacks the supposition that world unity can be achieved through the application of

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Western ideals of international law and organization. Originally published in 1971. The Princeton Legacy Library uses the latest print-on-demand technology to again make available previously out-of-print books from the distinguished backlist of Princeton University Press. These editions preserve the original texts of these important books while presenting them in durable paperback and hardcover editions. The goal of the Princeton Legacy Library is to vastly increase access to the rich scholarly heritage found in the thousands of books published by Princeton University Press since its founding in 1905.

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For nearly forty years, following the collapse of Indonesia's parliamentary system, Indonesia's once independent legal institutions were transformed into dedicated instruments of a powerful elite and allowed to sink into a deep mire of corruption and malfeasance. Legal process was devastated far beyond the capacity of any simple effort at reconstruction by post-Suharto governments. Indonesia's problems in this respect surpass those of other countries in the region compelled by economic crisis to re-examine institutional structures. The works reprinted in this collection constitute

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a case study over time of legal decay and the rise of reform interests in one of the most complex countries in the world. Written during a period of more than thirty years, beginning in the early 1960s, the essays trace several themes in the legal history of modern Indonesia. They make clear, however, that legal history is seldom that alone, but rather, like law itself, is largely derivative, fundamentally imbedded in the interest, ideas, purposes, and contentions of local political, social, and economic power.

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