

**ETHNOJUSTICE:
THE THEORY AND PRACTICE OF “TRADITIONAL JUSTICE”
IN NORTHERN UGANDA**

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Abstract:

Over the last year, transitional justice has become a major growth industry in northern Uganda, as an increasing amount of foreign funding has been made available and an increasing number of foreign agencies and donors have launched transitional justice initiatives. Uganda is by no means an exception; such interventions are found throughout Africa, and as they multiply, it is essential to probe their consequences for peace and justice. This paper focuses upon the international promotion of so-called “traditional” justice, that is, interventions designed to empower “traditional” or “customary” authorities to bring justice and peace to their communities. Based upon eighteen months of field research in northern Uganda, the paper asks what the impact of traditional justice interventions will be on the chances for post-war peace, and how well traditional justice stacks up against the demands of justice. It does so by reconstructing Paulin Hountondji’s critique of “ethnophilosophy” and applying it to what I term “ethnojustice,” as embodied in a key text on traditional justice in northern Uganda.

In his classic work, *African Philosophy: Myth and Reality*, Beninese philosopher Paulin Hountondji coins the phrase “ethnophilosophy,” which he identifies as “a defined thought-pattern and a permanent temptation of Africanist discourse” (vii). In Part I of this article, I engage with Hountondji’s discussion of ethnophilosophy in order to designate and critically analyze an analogous discourse emerging within the academic and policy literature on post-conflict reconstruction and transitional justice in Africa, namely, what I term *ethnojustice*, which focuses on so-called “traditional justice.” In Part II, I begin by arguing that the defining characteristics of ethnophilosophy also characterize ethnojustice, and that the elements of Hountondji’s critique apply to the

latter as well. I then analyze a paradigmatic ethnojustice text that deals with the Acholi of northern Uganda, namely, *Roco Wat i Acholi*. Although my discussion is limited to this single text, I hope that it might prove helpful in critically examining other ethnojustice texts and interventions in northern Uganda and elsewhere, a task that becomes increasingly important as the popularity of and funding for ethnojustice grow.

I will spend considerable space reconstructing Hountondji's critique of ethnophilosophy because I believe it is important that work such as his be taken into account in the current debate over tradition and traditional justice in Africa. Indeed, there is a vast and rigorous literature on the question of African tradition, much of it by African philosophers, social and political theorists, and historians. Unfortunately, this literature is frequently ignored by the current dominant academic dispensation, in which much of the research on Africa, especially on conflict and post-conflict situations, is driven by donors, international agencies, and NGOs that are reluctant to fund theoretical or historical research. As a result, unproblematic invocations of essentially contested concepts such as "tradition" are widespread, and positivist policy recommendations often supplant tentative critical conclusions.

I. Ethnophilosophy

The Elements of Ethnophilosophy

What is ethnophilosophy, which Hountondji identifies as a dominant discourse within the philosophical literature on Africa, and forms his object of analysis and critique?

Hountondji begins with what he considers the seminal text of ethnophilosophy, the 1945 *Bantu Philosophy* by the Belgian missionary Placide Tempels. According to Hountondji, *Bantu Philosophy* is "an ethnological work with philosophical pretensions" (34), which "aimed to reconstruct a particular *Weltanschauung*, a specific world-view commonly attributed to all Africans, abstracted from history and change and, moreover, philosophical, through an interpretation of the customs and traditions, proverbs and institutions—in short, various data—concerning the cultural life of African peoples" (34). Hountondji explains how, at first glance, Tempels' motivation may appear "generous," since it was in part an attempt to debunk the prevalent belief in the African "primitive mentality, which was supposed to be insensitive to contradiction, indifferent to the

elementary laws of logic, proof against the laws of experience and so forth” (34). Tempels argued against this conception, asserting that African thought “rested, in fact, on a systematic conception of the universe which, however different it might be from the Western system of thought, equally deserved the name of ‘philosophy’” (34). In other words, Tempels wanted to redeem African thought against charges of inferiority compared to European thought by eliciting, from ethnographic data, a coherent, singular world-view which he identified as genuine philosophy, of equal complexity and capable of dealing with the same questions as European philosophy. “At first sight, then, Tempels’ object appeared to be to rehabilitate the black man and his culture and to redeem them from the contempt from which they had suffered until then” (34).

However, according to Hountondji, the ethnophilosophical approach did not represent a true redemption of autonomous African thought, for it only imagined a singular world-view in which Africans unconsciously and unanimously believed, but in which individual Africans had no voice. “Africans are, as usual, excluded from the discussion, and Bantu philosophy is a mere pretext for learned disquisitions among Europeans. The black man continues to be the very opposite of an interlocutor; he remains a topic, a voiceless face under private investigation, an object to be defined and not the subject of a possible discourse” (34).

This is because of the way in which the ethnophilosopher constructs African “philosophy.” African philosophy, according to ethnophilosophy, is not the product of discussion and debate among Africans. Instead, when “philosophy” is applied to Africa, Hountondji explains, it is supposed to designate “merely a collective world-view, an implicit, spontaneous, perhaps even unconscious system of beliefs to which all Africans are supposed to adhere” (60). Thus, it can only be reconstructed as a single, coherent system by the professional ethnophilosopher, and it is in this way that “two entirely different discourses come, eventually, to be confused: the ethnographic discourse...and the philosophical discourse” (52). Quoting Tempels:

Let us not expect the first Black-in-the-street (especially if he is young) to give us a systematic account of his ontological system. Nevertheless, this ontology exists; it penetrates and informs all the primitive’s thinking and dominates all his behaviour. Using the methods of analysis and synthesis of our own intellectual disciplines, we can and therefore must do the ‘primitive’ the service of looking

for, classifying and systematizing the elements of his ontological system... in such a way that they will recognize themselves in our words (57).

The outcome is that African ethnophilosophy privileges the Western voice and silences the African voice, which cannot articulate its own beliefs: “The white scholar’s discourse is based here on the black man’s silence, and this, in turn, is the outcome of a long historical process that remains unquestioned. As a result, the ethnographer does not meet any resistance while submitting the Bantu people to all sorts of conceptual manipulation” (xviii). Unsurprisingly, Tempels’ work, and indeed ethnophilosophy in general, “is not addressed to Africans but to Europeans,” and particularly to colonizers and missionaries.

One consequence of the ethnophilosophical approach is the myth of what Hountondji calls *unanimism*, namely, “the illusion that all men and women in such societies speak with one voice and share the same opinion about all fundamental issues. This implies the rejection of pluralism, the sweeping away of all internal contradictions and tensions, the denial of the intense intellectual life, and the extreme cultural richness associated with these societies” (xviii). This “myth of primitive unanimity,” Hountondji further explains, implies “that in ‘primitive’ societies—that is to say, non-Western societies—everybody always agrees with everybody else. It follows that in such societies there can never be individual beliefs or philosophies but only collective systems of belief” (60).

Hountondji extends his critique by addressing *The Bantu-Rwandese Philosophy of Being*, by the Rwandese priest Alexis Kagamé, as an example of ethnophilosophy produced by Africans. This work shares with Tempels “the idea of an immutable, collective philosophy conceived as the ultimate basis of Bantu institutions and culture, recognized more or less consciously by every Bantu” (39). It additionally effects a reduction of Western philosophy, Hountondji points out, as Kagamé’s work displays “the idea that European philosophy itself can be reduced, in spite of its eventful and variegated history, to a lowest common denominator, namely, the Aristotelian-Scholastic philosophy” (39). Therefore, even ethnophilosophy produced by Africans “has been built up essentially *for a European public*. The African ethnophilosopher’s discourse is not intended for Africans. It has not been produced for their benefit, and its authors

understood that it would be challenged, if at all, not by Africans but by Europe alone. Unless, of course, the West expressed itself through Africans, as it knows so well how to do” (45; emphasis in original).

Part and parcel of ethnophilosophy, whether by Europeans or Africans, is a certain image of African society and African “tradition.” As Hountondji explains, because it espouses unanimism, ethnophilosophy posits an “immutable, ahistorical and inert” African “tradition” and social order (77), based upon the “refusal to accept that a non-Western society could contain a plurality of opinions that might conceivably diverge” (78). It employs “the ideological conception that non-Western cultures are dead, petrified, reified, eternally self-replicating and lacking any internal capacity for negation or transcendence” (165). As a result, the ethnophilosopher believes that “in a ‘primitive’ society thought never has any real subversive effect” (80), and that there is universal, consensual, spontaneous conformity to a singular, transparent social order. There are no revolts or resistances from within; this leads to “the same pervasive ideological assumption: in a non-Western culture, change can only come from outside” (164). And to the ethnophilosopher, such change is usually identified with Westernization, and thus a harmful falling away from pure “tradition,” based on “the exclusive valorization of a simplified, superficial and imaginary blueprint of cultural tradition” (162).

Hountondji eloquently dismisses this fiction and the way in which “traditional African civilization” “is used to mean ‘pre-colonial African civilization,’” which implies a disjuncture between pre-colonial, supposedly pure and unchanging African “tradition” and colonial and post-colonial, supposedly Western and non-“traditional” cultural forms and processes:

The pre-colonial history of Africa is condensed into a single synchronic picture.... We ignore, or pretend to ignore, the fact that African traditions are no more homogeneous than those of any other continent, that cultural traditions are always a complex heritage, contradictory and heterogeneous, an open set of options, some of which will be actualized by any given generation, which by adopting one choice sacrifices all the others. We ignore, or pretend to ignore the fact that cultural traditions can remain alive only if they are exploited anew, under one of their aspects at the expense of all the others, and that the choice of this privileged aspect is itself a matter for struggle today, for an endlessly restless debate whose ever uncertain outcome spells the destiny of society. Above all, we

ignore or pretend to ignore the fact that African cultural traditions are not closed, that they did not stop when colonization started but embrace colonial and post-colonial cultural life. So-called modern Africa is just as ‘traditional’ as pre-colonial Africa in the only acceptable sense of the word ‘traditional’—tradition does not exclude but necessarily implies a system of discontinuities (161-162).

Therefore, Hountondji rejects the putative singularity and unconscious character of African thought and African “tradition.” He calls on philosophers to, “instead of ‘African traditional thought,’ consider ‘African traditions of thought’” (xxiv), where those traditions are themselves plural, contrasting, and conflictual, and not identified with a singular world-view based upon a pure, unchanging pre-colonial essence.

In fact, Hountondji argues, in describing such a world-view, the ethnophilosopher is only, if anything, identifying the dominant practical ideology of a given society, which ethnophilosophy then projects as the universal world-view for that society. As he explains, ethnophilosophy

...always assumes that this field of practical ideology must contain a single, coherent system with a clear theoretical logic...What appears to be at first sight to be the clear, practical ideology (in the singular) of a group is never anything more than its *dominant* practical ideology. Careful observers will refuse to accept the dominant ideology at face value or to assume that it can be attributed to all members of the group. Nor will they try to extract from it a philosophical theory that is supposed to command the assent of the community as a whole. They will try to discover what is masked by this apparent unanimity, the whole spectrum of non-dominant ideologies or at least the diverse differential relations to the dominant ideology (178-179).

The Politics of Ethnophilosophy

Hountondji goes beyond his theoretical critique to present a social-political critique of ethnophilosophy as well, asking “why certain Western authors, followed (and this is more serious) by African authors, should from a certain time onwards have felt the need to look for such a collective world-view in the secret recesses of the mysterious African soul” (76). In broad terms, given its orientation towards Europe, he describes ethnophilosophy as a symptom of Africa’s current dependent international situation: “ethnophilosophy appears as a by-product of underdevelopment,” (xxiv) and is a symptom of extroversion (xviii). More specifically, Hountondji argues that Tempels’ text, and ethnophilosophy generally, serve important purposes for Europeans and for Africans. First, they serve the

psychological needs of Europeans who want to believe in a kind of equality of African philosophy: “From the outset, he himself [the European colonizer] had instinctively created a gap between himself and the Other (the colonized), as between the master and his slave, as the paradigmatic subject of absolute difference. But eventually, as a gesture of repentance, or rather, to help allay his own spiritual crisis, he began to celebrate this difference, and so the mysterious primitive ‘mentality’ was metamorphosed into primitive ‘philosophy’ in the hard-pressed master’s mystified and mystifying consciousness. The difference was maintained but reinterpreted, or, if one prefers, inverted” (45). As Hountondji concludes, this has led to a situation where “in present conditions the dialogue with the West can only encourage ‘folklorism,’ a sort of collective cultural exhibitionism which compels the ‘Third World’ intellectual to ‘defend and illustrate’ the peculiarities of his tradition for the benefit of a Western public” (67), satisfying their exoticist desire to hear the subaltern speak in dulcet tones.

Ethnophilosophy also served a more expressly political purpose, entwined with “the profoundly conservative nature of the ethnophilosophical project itself” (57). For Europeans, Hountondji explains, ethnophilosophy is a tool to help discover within African culture opportunities and channels for European penetration for the sake of civilizing Africa. As he says, European missionaries and colonizers wanted to “find a psychological and cultural basis for rooting their Christian message in the African’s mind without betraying either” (59), and so ethnophilosophy provided a way for colonizers to engage with what was construed to be the authentic African mind and character.

Ethnophilosophy also had political support from within Africa because of the changing purposes it served, made possible because ethnophilosophy “could be objectivized and manipulated at will” (78). In his own context, Hountondji explains that “ethnophilosophy has a positive function to fulfill as a powerful opiate:” whereas before, some strands of ethnophilosophy had served to help in the African “restoration of self-confidence” in the face of colonialism (171), now “the function of ethnophilosophy has changed: it is no longer a possible means of demystification but a powerful means of mystification in the hands of all those who have a vested interest in discouraging intellectual initiative because it prompts not living thought in our peoples but simply pious rumination on the past” (171). As a reified ideology, it becomes an instrument in

the hands of rulers, “an ideological placebo,” used to silence intellectual discussion and dissent and to give content to nationalism. Therefore, he argues that destroying the “myth” of Bantu philosophy is “inseparable from political effort—namely, the anti-imperialist struggle” (44).

Accordingly, this should be pursued by promoting debate and discussion among Africans on philosophy, based upon a re-definition of African philosophy that recognizes the plurality of African thought. The minimalist redefinition of African philosophy offered by Hountondji would term that philosophy “African” which is taking place within the continent or is conducted by Africans. Thus, the “traditional” is eviscerated of its essentialism, and “so-called modern African philosophy is also a tradition of its own” (xxiv). He goes on to state that, “African philosophy does not lie where we have long been seeking it, in some mysterious corner of our supposedly immutable soul, a collective and unconscious world-view which it is incumbent upon us to study and revive, but that our philosophy consists essentially in the process of analysis itself, in that very discourse through which we have been doggedly attempting to define ourselves” (33). The result is that African philosophy is the conscious activity of Africans embodying a vast plurality of different traditions and modes of thought: “Admit, then, that our philosophy is yet to come. Take the word ‘philosophy’ in the active, not passive, sense. We do not need a closed system to which all of us can adhere and which we can exhibit to the outside world. No, we want the restless questioning...African philosophy, like any other philosophy, cannot possibly be a collective world-view. It can exist as a philosophy only in the form of a confrontation between individual thoughts, a discussion, a debate” (53). He concludes with a program of action for philosophers: “the first thing to do, then, is to organize such discussions in the midst of the society where the birth of these sciences is desired... instead of being satisfied with a private and somewhat abstract dialogue between themselves and the Western world” (67).

To summarize the central elements of my reading of Hountondji’s critique of ethnophilosophy:

1. Ethnophilosophy takes as its object “genuine African philosophy,” put forth as worthy of equal comparison to Western philosophy, but which in fact is a “world-view” derived from ethnographic data.

2. Africans (except African ethnophilosophers) cannot articulate their philosophy themselves—this is the task of the outsider. As a result, it silences, instead of giving voice to, Africans.
3. It leads to the presumption of unanimism, of a consensus on that world-view among all members of the culture.
4. It posits the world-view as “traditional,” in which African “tradition” is inert, ahistorical, equivalent to a pure pre-colonial essence, and incapable of change from within. It also tends to reduce Western philosophy to a single aspect.
5. It is produced for Europeans, whether by Europeans or Africans.
6. What is being described as a singular, unanimous African tradition is only a dominant practical ideology of a given community.
7. Both African tradition and African philosophy in fact are plural, with internal contradictions and conflicts.
8. Through its reification, ethnophilosophy serves certain ideological purposes and can be manipulated so as to serve certain political purposes.
9. What is needed is a discussion among Africans for Africans, recognizing the internal conflict and plurality of African philosophy and traditions—that discussion itself would constitute genuine “African philosophy.”

In the next section, I will explore how these elements of Hountondji’s analysis can be employed in order to designate and critique another ethnoscience: ethnojustice.

II. Ethnojustice in Theory

These nine points derived from Hountondji’s analysis of ethnophilosophy can be used to sketch out the elements of ethnojustice as a discourse that combines elements from ethnography and from the study of law and morality in describing “traditional” systems of justice of non-Western cultures. First, in describing a “traditional” system of justice, ethnojustice claims to describe a single, coherent, positive system that, although based upon different principles, nevertheless deserves the appellation of “justice” and deserves to be put on equal standing with so-called Western justice. Second, this traditional justice system cannot be described, or perhaps even perceived, in its entirety by members of the culture (except perhaps by the very old, who presumably have privileged access to “tradition”) and so it is the task of the outsider to compile and formalize the system of justice.

Third, ethnojustice presumes that the system of traditional justice is universally, consensually, and spontaneously adhered to by all members of that culture—the myth of unanimism. Fourth, ethnojustice is based upon a conception of “tradition” that is

petrified, inert, and ahistorical, that supposedly existed in pure form in the pre-colonial period, but that remains valid today and into the future, and indeed can and should be “revived” in the face of modern, Western, colonial and post-colonial corruptions. In positing this demarcation, ethnojustice may also put forth a reductive, singular version of “Western” justice, usually derived from state-based criminal law. Fifth, the ethnojustice discourse, whether produced by Westerners or Africans, is generally intended for the Western audience.

Sixth, the ethnojustice discourse, although it claims to describe the universal world-view of a culture, describes, if anything, only a dominant practical ideology of a dominant group within that society. Seventh, *contra* the claims of ethnojustice, this dominant ideology co-exists with a multiplicity of other non-dominant ideologies that entail their own traditions and ideas about justice, but which are denied, de-legitimated, and suppressed by the ethnojustice discourse and its presumption of unanimism. Eighth, the ethnojustice discourse is produced and promoted because it serves certain ideological and political purposes for Africans and Europeans in the context of Africa’s dependence and tendency towards extroversion. Finally, genuine justice can best be promoted through an open dialogue and discussion among Africans for Africans, which recognizes and gives voice to the plurality and internal conflict that exist within any society and to that society’s various traditions of justice.

Roco Wat i Acholi: Acholi Traditional Justice

This paper addresses ethnojustice through an examination of a paradigmatic ethnojustice text concerning the Acholi of northern Uganda, namely the 2005 *Roco Wat i Acholi: Restoring Relationships in Acholi-land: Traditional Approaches to Justice and Reconciliation*, written by the Liu Institute for Global Issues and Gulu District NGO Forum with the assistance of Ker Kwaro Acholi, and funded by the John D. and Catherine T. Macarthur Foundation and by the Royal Embassy of the Netherlands. While I recognize that there are other accounts of so-called traditional justice in northern Uganda, I want to analyze this text as an archetypical example so that aspects of the analysis and critique might help illuminate other ethnojustice texts and interventions in Uganda and beyond. (I also believe that some of the authors of *Roco Wat* have changed

their positions since it was released, so I critically examine it as a text that exemplifies ethnojustice and not necessarily as a representation of its authors' current positions.)

The purpose of *Roco Wat* is “to provide an initial assessment of how traditional rituals and ceremonies could be further adapted to address the crimes committed during the 19-year old conflict in Uganda” (1). To this end, it seeks principally to “identify and describe: a) Justice from the perspective of Acholi traditional culture; b) the processes and mechanisms of traditional justice” (7). In doing so, it is marked by the desire to establish that traditional justice is as genuine a system of justice as Western justice, and the report cites “the equivalences of traditional mechanisms to judicial mechanisms—such as the concept of precedence and ground for appeal—in order to illustrate its potential to act as an alternative justice mechanism” (4-5).

According to the report, the core of Acholi traditional justice is embodied in the title itself, *Roco Wat i Acholi*, that is, “the restoration of relationships,” which “captures the essence of Acholi approaches to justice” (2). Therefore, the Acholi traditional system of justice is particularly apposite now: “after nearly two decades of conflict, social relationships and trust within a traditionally communal culture have been severely degraded. Consequently, so has Acholi culture, and the prominent role cultural leaders (Chiefs, Elders and *Mego*) once held in society. Due to mass displacement, youth have little opportunity to learn about their history or culture” (2). For this reason, the report frames the recently-created body of Acholi “chiefs” and “elders,” Ker Kwaro Acholi (KKA), as key to this process of reviving traditional justice mechanisms in order to help restore relationships in Acholiland: the so-called “re-institutionalization” of KKA “provides a foundation to rejuvenate traditional culture and restore relationships....these developments are worth a serious and lengthy investigation of KKA, in order to assess their impact and generate ways to support them” (2). In short, *Roco Wat* intends to begin the project of the positivization and formalization of so-called Acholi traditional justice by collecting and writing down practices, rituals, and ceremonies, which is to proceed in tandem with the empowerment of KKA as the privileged body to apply this formalized traditional justice system.

As with ethnophilosophy, the ethnojustice of *Roco Wat* does not allow the Acholi themselves to fully articulate their own traditional justice system, for, as the report

admits, the term “traditional justice” “has no direct translation in Luo” (14). Instead, it is up to experts and outsiders, with the assistance of Acholi academics and elders, to compile and formalize the traditional justice system as a coherent whole, subsequent to which it is up to outsiders to help revive those traditions among the Acholi. For, while *Roco Wat* recognizes that some elders have considerable knowledge of the traditional justice system, it also implies that they still need additional instruction, for it notes that outside organizations, funded by foreign donors, are conducting “leadership training on traditional practices” (31). The situation of the youth is even more deplorable from the ethnojustice perspective; indeed, “one Elder remarked that the younger generations do not know how to be Acholi” (22). The strangeness of foreign organizations teaching elders how to be proper Acholi elders is compounded as the elders are to teach recalcitrant youth and women how to be Acholi. In this sense, many women and youth, according to ethnojustice, are not even aware that they need their traditional culture revived, so alienated are they from their essential traditional identity. This is a disciplinary project, one based upon the silence of actual Africans in favor of the “true” traditional Acholi identity elicited and promoted by foreign NGOs and donors, with local “partners.”

The Unanimism of Acholi Tradition

So what are the characteristics of this Acholi traditional justice system, according to *Roco Wat*? First, the very idea of Acholi traditional justice is founded upon the putative absolute break introduced by British colonialism. What existed before colonialism was supposedly a pure Acholi culture, a timeless, unchanging essence of Acholi identity and practice, sanctified by the application of the term “traditional.” The report repeatedly uses phrases such as: “historically, Acholi culture...” (10); “how traditional justice was once practiced in Acholi prior to colonialism” (9); “prior to colonialism the Acholi kingdom...” (20); and “during pre-colonial times...” (16). The report explains that it derives most of its information from Acholi informants, asserting that there are “a wealth of informants—namely Acholi Elders—who can recall traditional justice as practiced within villages when they were young, and how such practices were affected by the introduction of British colonial administration” (4).

Roco Wat displays the ethnojustice tendency to equate a pure, essential cultural identity, termed “traditional,” with the pre-colonial, and to oppose it to the impure colonial and post-colonial society, which had been infected by “Western” ideas and practices. Reductive characterizations of both are present: “Traditional justice in Acholi culture was described by informants as restorative rather than punitive, seeking to repair social harmony of a community, rather than establish individual innocence or guilt” (16). Again, “Historically, compensation and rituals were highly employed to promote restoration of relations. Today, traditional courts have largely been replaced by the state” (10). And the Acholi traditional system, it is asserted, was based upon the “consensual” arrival at decisions that would help the entire community (16), whereas the “Western” system is one based on the rhetorical skill of lawyers, not the truth (18).

This invites historical critique. First, the idea that a pure, self-regulating, harmonious Acholi culture existed in the pre-colonial period, in which a pure Acholi traditional justice system held sway, is not supported by the facts. It ignores what many have described the invention of the Acholi as a tribe by the British, but it also ignores the century of extensive, extremely violent conflict and upheaval that preceded the advent of British colonialism, a period not of primitive harmony and cultural purity, but of destructive foreign incursion, slave raiding, and internecine warfare with modern weaponry.

Second, the assertion that a “wealth” of informants could recall, in detail, the modes of application of justice before the establishment of British colonialism merits further consideration. Because the British colonial administration was regularized in northern Uganda by 1920, individuals in 2005 with first-hand knowledge of pre-colonial institutions and practices would have to be at least 100 years old. Since the presence of a large number of centenarians is somewhat doubtful, perhaps what this assertion in fact reveals is the tendency of ethnojustice to uncritically equate a pure, genuine traditional order with old men as its privileged guardians. And indeed, since anyone younger than 100 years old would probably be recalling the system of native courts and councils established by the British themselves, not the pre-colonial system, what emerges is perhaps an example of the tendency to take British tribal administrative categories and institutions as reflective of pre-colonial tribal reality. These historical inaccuracies serve

the essential role of allowing the report to assert the fundamental ethnojustice distinction between, on the one hand, the traditional, pre-colonial, non-state, communal, consensual, and restorative; and on the other, the Western, colonial/post-colonial, statist, individualist, and punitive, which supposedly disrupted this harmonious traditional justice system.

Thereby this account of traditional justice conforms to the ethnojustice myth of unanimism, as it pertains both to the Acholi belief system and to the presumably petrified “traditional” Acholi social order. The report explains that the Acholi system of traditional justice has a normative dimension when seen from the internal perspective, specifically a “spiritual approach to justice” (3), and has a functional dimension when seen from the external perspective, for “in traditional Acholi culture, justice is done for *ber bedo*, to restore harmonious life” (14). The following passage displays this two-sided account clearly:

Historically, the good health and happiness of the Acholi individual was always situated in the context of the harmony and well-being of the clan. The ancestral and religious spirit worlds provided guidance to the Acholi people, maintaining the unity of the clan. Conversely, conflicts, misfortune and poor health could be ‘sent’ by angry spirits....Historically, Acholi culture produced a hierarchical social order rigorously maintained through social compliance to a central value system. These values were connected to a spirit world, which in turn was intimately connected with the conduct of persons in everyday life. A communal society, the Acholi valued first and foremost the unity of the clan. As a result, each member of the social unit was expected to fulfill different but complementary productive, reproductive, and cultural roles. The religious and spiritual worlds—through spiritual representatives and selected human representatives—actively enforced codes of behaviour....Like *Jogi*, the spirits of ancestors protected and guided a moral and social order, sending misfortune or illness whenever that order was disturbed (10-11).

Thus the report reaffirms that the essence of true Acholi culture and its system of justice is petrified and inert, at its purest in pre-colonial times, and a-historically stretches back for as long as the Acholi have existed, and will remain their true identity for as long as they exist. As such, this essential cultural identity is incapable of change from within, only temporary corruption from without.

In traditional Acholi culture, according to *Roco Wat*, belief in and consent to this justice system and the social order it supports is unanimous, for all Acholi value the unity

of the Acholi, or the clan, before they value themselves. The typical Acholi, then, believes absolutely in the spiritual world and in the punishment that the spiritual world sends down when rules are violated. And through an invisible hand, this adherence to the spiritual/moral order ends up being beneficial for the Acholi community as a whole as well as for each individual Acholi, since that social order is taken to be superior to individual interests. The system forms a closed circuit, in which the judgments made by the spiritual world beneficially support the social order unanimously endorsed by the Acholi.

The report thereby reduces the spiritual domain to being functional to the reproduction of a petrified social order. It does so by rendering the spiritual domain positive, that is, capable of being formalized in writing and codified in a series of specific normative rules and prescriptions. I will address this presumed functionality of a positivized spiritual domain to social order below, for it turns out that it is a very specific social order that this version of the spiritual promoted by the report is functional to. Here, I just want to note the problem with the positivization of the spiritual itself. As critical traditions in anthropology and history have argued, the spiritual is a realm of surplus, a domain from which the potential for social or political rupture can always emerge. The idea that it can be contained in positive, transparent form without remainder, in a form that can make it entirely functional to existing social order, that its surplus and capacity for disruption can be repressed or excised, is a fiction, a fiction that those in power often want to propagate. Indeed, as I will explain below, numerous examples can be found within Acholi society itself of the inherent disruptive dimension of the spiritual and of the way in which those with power try to excise that dimension and render it positive, coherent, and reified for their own purposes, a project with which the ethnojustice discourse is complicit.

III. Ethnojustice in Practice

Acholi Traditional Justice as a Dominant Ideology

Following Hountondji, we can expect that this putatively unanimous adherence to Acholi traditional justice and to the social order it upholds is in fact a mystification of a situation in which this particular version of traditional justice is only part of a dominant ideology,

upholding the power of a dominant group. This begins to emerge as we consider the tension in *Roco Wat* around the figure of the male elder informant. Throughout the report, as noted already, male elders are presented as the privileged repositories and guardians of tradition, and the exclusive mediators with the spiritual world. At one point, the report states that elders are “considered closest to Jok” (11), and it explains that prior to the current war, elders were in charge of carrying out “a series of rituals within village settings and household compounds in order to appease the ancestors and ensure the moral order was upheld” (11). According to *Roco Wat*, elders and *rwodi* had the exclusive role in regulating Acholi society through their access to the spiritual world.

The interesting thing about the role of male elders in *Roco Wat* is that they seem to be the only Acholi capable of seeing the traditional system of justice from the external perspective as well as the internal perspective, that is, as capable of seeing how traditional justice serves to reproduce social order by using the language of the spiritual. That is how we find in *Roco Wat* an Acholi elder bluntly, almost cynically, declaring that “All rituals...are meant to inculcate good behaviour...for good behaviour to be entrenched in Acholi, all acts of misbehaviour are linked to the spiritual world. Anyone who acts contrary to established norms displeases our ancestors and rituals should be performed to appease them” (11). Some of the Acholi male elders quoted seem to be very aware that their administration of spiritual justice is used to maintain social order, a social order in which they have a privileged position. Of course, many of the elders are also prominent university professors, intellectuals, and political leaders (a fact that *Roco Wat* does not reveal), so it is not a surprise that they would frame Acholi “tradition” within the ethnojustice discourse.

Indeed, the uncompromising privileging of male elders in the report, combined with their apparent clear understanding that enforcing that spiritual order is the enforcement of a disciplinary social project, and the almost cynical way in which they express that knowledge, give rise to a different picture of Acholi society: not one of spontaneous, universal, and consensual adherence to spiritual dictates for the good of the Acholi as a whole, but rather one of the enforcement of a certain set of norms, couched in a spiritual language, by male elders who claim exclusive access to that spiritual domain, in order to ensure the reproduction of a dominant social order in which they have a

dominant position. In this way, the myth of primitive unanimism is exploded, and Acholi traditional justice takes on a different visage: a dominant practical ideology serving the interests of a dominant or formerly dominant group. The ethnojustice discourse contradictorily both requires the primacy of male elders at the same time that it asserts the unanimism of the Acholi, and it is the latter that loses out.

Therefore, in addition to the positivization and reduction of the spiritual that the ethnojustice discourse effects, it also effects a reification and reduction of justice and of the social, excising from each its inherent plurality and possibility for rupture. In fact, neither the spiritual, the moral, nor the social are the positive, reified, singular, unanimous, uncontested fields that ethnojustice—and elders—insist they are, and the three cannot exist in the perfect, closed mutually-supporting circuit that ethnojustice claims to identify. Each is a terrain upon which, like in philosophy as described by Hountondji, there is contradiction, conflict, and struggle between dominant and non-dominant opinions, ideas, and projects. It is in this spirit that Hountondji demands “additional investigations into the wide range of non-dominant, marginal, and even adverse ideologies” that co-exist with any dominant practical ideology (xxiv).

The Plurality of the Spiritual and the Social

But given the stakes of the ethnojustice project in northern Uganda and the political and social context in which it takes place, it is perhaps not a surprise that male elders would employ the ethnojustice discourse as their language of power and as a route to external support. Indeed, the traditional justice agenda is explicitly phrased in terms of reviving traditional authority, in particular in the case of *Roco Wat*, the power of the KKA. This is because at present, the lineage- and clan-based structure of patriarchal, generally gerontocratic, male leadership which had held significant internal authority in Acholi society at various times over the last century has been thrown into crisis by the war and displacement. Male Acholi elders and chiefs have largely lost their power of social regulation and political leadership. While men have seen their authority and status within Acholi society wane, women, and to a lesser extent youth, have seen their economic, social, and political authority and status rise precipitously during war and displacement. They have benefited from new business and educational opportunities, women’s and

children's rights interventions, and new associations made possible in the pseudo-urban environment of displacement. So, ethnojustice represents an opportunity for older men to build their power as traditional and to dismiss challenges to that power as non-traditional and non-authentic. In noting this, I do not mean to imply that this authority formerly enjoyed by male elders was the unanimous, consensual authority imagined by ethnojustice; instead, at most it was the dominant ideology. However, at present it is doubtful that it is even a dominant ideology, or that its proponents are the dominant group in society; therefore, ethnojustice is a project of constructing male power justified as "re-constructing a still-legitimate order from the past.

Indeed, the plurality of non-dominant traditions of spiritualism, justice, and projects of social order that has co-existed with the ideology of male elders is a ripe terrain for historical research. Although it is challenging when dealing with the pre-colonial period, in contemporary Acholi society these alternatives can be more clearly ascertained, as can the fact that this vision of Acholi traditional justice promoted by the ethnojustice discourse represents only one ideology of justice and the spiritual supporting one possible social order.

The spiritual domain has been seen to offer a wide scope for alternative and counter-hegemonic ideologies and projects in northern Uganda, most notably in the form of spirit possession and the work of *ajwaka*. Also, the Holy Spirit Movement (HSM) and Lord's Resistance Army (LRA) themselves can be seen as embodying counter-hegemonic spiritual claims in part against the power of male elders. The spiritual is a terrain on which women and youth can assert claims to power and authority beyond that of the male elders, and it is by no means the exclusive preserve of those elders, as ethnojustice—and male elders—want us to believe. *Roco Wat* briefly recognizes these potentially disruptive dimensions of Acholi spirituality, but incorporates them back into the male elder-dominated vision of spirituality it depends upon. As to *ajwaka*, *Roco Wat* explains: "Often, when the source of *cen* is not readily apparent, Elders may consult one another and the affected family or sub-clan to determine the circumstances that must be addressed. If this fails, Elders will often call on diviners, or healers, *ajwaka*.... They are believed to have a strong communication link to the spirit worlds, and ability to heal those afflicted. In Acholi-bur, one Elder described *ajwaka* as a last resort when Elders,

Rwodi, or courts of law fail” (13). *Ajwaka* are reduced to the ancilla of male elders and chiefs and of the dominant social order, their disruptive power dismissed.

As to the spiritual dimension of the LRA, *Roco Wat* recognizes that the LRA conducts spiritual rituals, but dismisses them as only being “similar” to those of the Acholi: “According to several interviewees, *cen* did follow fighters returning to base camps and required rituals *similar to* Acholi to cleanse them. Former LRA Commander Michael Opio described one ritual involving the slaughter of two sheep that *resembles* Yubu Kum rituals in Acholi” (50; emphasis added). Even though the LRA are mostly Acholi themselves, the rituals they carry out, according to *Roco Wat*, are only superficially similar to those rituals of the real Acholi, presumably because the latter must be presided over by male elders. Thus, the spiritual domain, in the hands of women, youth, and dissenting men, has been a source of disruption of and challenge to the social order presided over by male elders, a fact that ethnojustice denies.

The moral domain, the domain of justice, is also a terrain of struggle in northern Uganda at present, as is seen with the contestation over what justice should mean in the wake of the war. *Roco Wat*'s insistence upon the “consensual” nature of all “traditional” Acholi justice should draw our attention to how that consent is enforced and at whose expense. The monopolization of justice and reconciliation by an externally-supported male authority structure dictated by ethnojustice fails to address the fact that different groups within Acholi society might have their own particular demands for justice, in particular women and youth. Furthermore, these demands may have nothing to do with the spiritual at all, but may be oriented towards formal, state-based legal processes, non-spiritual community-based mechanisms, or other alternatives. As a result, “traditional” justice has the potential to silence all those who do not identify with this “revived” male authority and its version of the spiritual it claims to uphold.

Women, for example, could be prevented from deciding for themselves what justice means in response to their own specific experiences during the war. Women have faced particular kinds of violence on a massive scale not experienced by men, and it is unjustifiable to assume that women would agree for male elders to decide what justice means for them, or to assume that women would be satisfied with men deciding that the perpetrators of violence against women should simply be forgiven, as male elders may

very well do under the mantle of “tradition.” Men may be satisfied with a negotiated, ritualized solution among themselves that does not involve punishment, when women may not be willing to accept that as a just solution at all.

In short, community-based justice cannot be reduced to male-dominated “traditional” justice because the community itself, especially now after twenty-two years of war, is in no way reducible to those who would claim traditional authority. Acholi society, like any society, is not a transparent, homogeneous, coherent whole, and “Acholi traditional justice” as identified and celebrated by ethnojustice is only one practical ideology supporting a claim to power by one group, legitimated through an appeal to a singular “tradition,” and promoted at the expense of alternative traditions of spiritualism, justice, and social and political order *within* Acholi society. Ethnojustice could therefore, in the name of promoting justice, undermine the chances for peace within Acholi society by fostering the authoritarian power of a single group and its disciplinary project. Just as it is not the right of the ICC to decide what justice means for the Acholi, and when they try to do so they silence the voices of the Acholi survivors themselves, so is it not the right of men to decide what justice means for women, and when they try to do so they silence the voices of female survivors of violence.

The Politics of Roco Wat

This discussion raises the question of the political effects *Roco Wat* has, intentionally and unintentionally. Indeed, the codification and celebratory ideologization of traditional justice are not performed for their own sake, but in order to provide an argument and basis for the so-called revival of traditional institutions and traditional justice. As *Roco Wat* favorably reports, “participants at the Consultative Workshop agreed that Acholi culture was in decline, and in need of revival, especially for youth. Ker Kwaro Acholi and its supporters should embark upon a cultural revival through the recommendations below, which should be supported by donors and the Government or Uganda” (74). The motivation is clear: to channel donor funding to the promotion of “traditional authorities,” who can lead a cultural revival and “re-”establish the system of Acholi traditional justice, which can restore social order among the Acholi, as an alternative to

Western systems of justice-through-punishment. As with all ethnoscience discourses, this is oriented principally towards a Western audience, in this case, towards donors.

The ethnojustice discourse serves purposes for the Western audience similar to what was described by Hountondji. Ethnojustice is emerging as a cutting edge of a global managerial regime intending to establish social order in places subject to significant upheaval. It describes channels for Western penetration into Africa, and instead of enabling the civilizing mission of missionaries and colonialists, as Tempels' work did, it enables what is imagined as the pacifying mission of NGOs, international agencies, and donors in the unpacified parts of the world. Ethnojustice supports an easily-understood, authoritarian, and supposedly authentic and culturally sensitive form of local order that is supposed to discipline youth and other potentially disruptive forces into becoming part of a pacified socio-political dispensation. In this context, ethnojustice texts promote themselves as tools for improving the penetration of the West into Africa in the name of local peace and justice.

Ethnojustice also appeals to the Western audience because, like ethnophilosophy, it bases its legitimacy upon a claim to represent and work with genuine African identity and difference, to treat Africans with dignity as Africans, and to avoid imposing Western ideas and models upon them: to paraphrase Hountondji, it attempts to find a cultural basis for rooting their message of peace and justice in the African's mind without betraying either. But, since ethnojustice understands Africans as possessing unspoken world-views upon which they agree in ethnic unanimity, of course it cannot but impose a Western model of society and justice upon Africa—but nevertheless, a model that can be given voice to by Africans, as donors fund workshops and conferences where their findings receive the imprimatur of authentic native approval through the medium of “sitting allowances,” per diems, and funding opportunities.

Ethnojustice, when it informs interventions, does more than just facilitate the pacificatory managerial penetration of Africa and appeal to the Western taste for exoticism and authenticity. It also has powerful effects on the local and national levels. On the local level, as mentioned, traditional justice as conceived by *Roco Wat* is seen by male Acholi as the opportunity to build their faltering power through foreign support. At the same time, the external promotion of an ethnojustice agenda in northern Uganda

could, in addition, have serious negative repercussions for post-war peace. Ethnojustice, I argue, has the potential to provoke internal social conflict in post-war Acholiland, as male Acholi, individually and through family and clan structures, attempt to re-establish their authority. They would do so by taking advantage of the material and symbolic support provided them by external donors in the name of reviving traditional authority, to underwrite their own disciplinary project of social reform.

Indeed, elders and many men predict a vast increase in their authority once back in the village in a bid to correct what they see as the distortions and corruption introduced into Acholi society during war and displacement. This revival of “traditional authority,” they explain, would take place through imposing discipline at the family and clan levels through warnings, fines, corporal punishment, and, if all else fails, expulsion from the clan and curses. This could have two dimensions. First, it could represent an attempt by men to re-impose their authority upon those groups—primarily women and youth—who have seen a degree of economic, social, and political empowerment as a result of the upheaval caused by the war, displacement, and humanitarian intervention. Second, it could represent an effort to exclude those Acholi seen as undesirable, or those who are most vulnerable, from the process of return, in particular from access to land. This could extend to all those seen as deviant by male elders in the context of displacement: ex-rebels, petty criminals, traditional healers and witchdoctors, government informers, prostitutes, or anyone seen as a troublemaker.

Although firm adherence to patrilineal and patrilocal norms has been disrupted at present as a result of the war and displacement, this only increases the potential negative impact of their purposeful re-imposition by male authorities, and the possibility that that imposition will be effected through violence. A wide range of those seeking to return to the village could be subject to harsh discipline, or even excluded from clan affiliation and land access. Independent or assertive women or youth, those with unclear ancestry, those with foreign connections or relations, or simply those deemed undesirable or vulnerable could be disciplined or excluded through accusations of contravening “Acholi tradition” or “Acholi laws.” Ex-LRA returnees, in particular those who are the most marginalized or unwilling to conform to the demands of older male authorities, would also face acute difficulties.

Therefore, the externally-funded project of reviving traditional authority for the sake of traditional justice could unintentionally enable a wider project of imposing disciplinary male authority upon an Acholi society where that male authority lost its legitimacy decades ago. This could amount to *another kind* of transitional justice agenda, a more private project carried out by male authorities to redeem what they see as a deeply corrupted Acholi society, an agenda that would ride on the coattails of the more public traditional justice agenda promoted by foreigners and the Ugandan government. As a result, there is the potential for a serious rupture to emerge within Acholi society around this kind of systematic exclusion of certain categories of people from clan membership and land possession. In the *worst case*, this could lead to a new round of internal displacement, as those people who refuse to submit to male authority or who are rejected by it are unable to return to the villages. This newly displaced post-war population, frustrated and desperate, could become a destabilizing force within the region, a fertile recruiting ground for criminal groups, paramilitaries, or future rebels.

On the national level, ethnojustice can have significant appeal for states emerging out of civil war. Uganda exemplifies this, for it seems likely that the Ugandan government is interested in promoting Acholi traditional justice precisely because traditional justice may guarantee state impunity. Indeed, rituals presided over by male lineage-based Acholi authorities are simply inadequate to deal with crimes and human rights violations committed by a modern state. For one thing, such authorities have no jurisdiction over non-Acholi. They also lack the coercive power of national courts, and since traditional justice is premised in large part upon admission of crime, it seems unlikely that the government would be willing to admit what they have done. Therefore, if promoted exclusively, traditional justice could provide the government and army with impunity for the crimes they have committed in the course of the war, which could lead to serious dissent among certain groups of Acholi, especially returning LRA rebels.

Challenges to Ethnojustice

“The process of reviving traditional justice is not an easy task,” *Roco Wat* admits (3), and at one point the report does indeed recognize that the imposition of a gerontocratic, patriarchal order upon contemporary Acholi society might not be an unmitigated good.

This recognition, however, is dealt with in a way that reveals again who the true agent of traditional justice in the ethnojustice discourse is: the “International Community.” *Roco Wat* notes the fact that physical punishment of women and youth through beating is a widely present aspect of the “traditional” culture and justice being promoted by older men—a traditional justice that supposedly rejects “Western” justice-through-punishment. (Indeed, this brings out the very different standards that apply to women and youth and that apply to men in this ethnojustice discourse, and make a mockery of its most basic claims: The former are subject to punishment, physical violence, expulsion, even fatal curses by male elders, whereas when dealing with men, the lofty language of reconciliation and restorative justice is used.) To quote *Roco Wat*:

Concerns over the representation in KKA have been raised. Although the Executive Council has two women and one youth representative, it is an institution of men who hold traditional [a different, less unambiguously positive, use of the word “traditional,” more like “hidebound”] views on appropriate gender and age roles. For example, during a consultative workshop hosted by the researchers in mid August, a few Elders revealed their frustrations with the growing awareness of women and youth rights. At times they argued that the expansion of these rights threatened and prevented them from carrying out their “traditional roles”, such as disciplining a woman through beatings. This does not represent the majority of cultural leaders, but it does raise the concern that not all cultural norms or practices should be revived (32-33).

In this short passage, male elders are not the unquestionable guardians of a unanimous, benevolent tradition, and the report even puts “traditional” inside quotation marks perhaps to distance itself from their more distasteful claims. However, this recognition does not lead to questioning the concept of “tradition” or the project of reviving traditional institutions. Instead, a petrified vision of tradition is retained, of which a few parts will simply not be “revived” because they do not meet with the sensibilities of the “International Community.” It does not lead to a consideration that perhaps the entire project of reviving traditional justice is a gendered project, one oriented towards establishing male power. And finally, it reveals the unspoken mentality behind ethnojustice: it is the right of outsiders, the “International Community,” to decide what parts of traditional justice and practices will be “revived” and which will not. But since ethnojustice is a foreign-funded project, one in which foreign organizations are designating the “anointed” *rwodi* (4) and are teaching the Acholi how to be Acholi,

maybe this should not come as such a surprise. It represents the revival not of Acholi “tradition” but of the British tradition of indirect rule in Africa, in which Africa was to be civilized as tribes.

Following Hountondji, what is needed are not the minor concessions made to women and youth dictated by donors to the KKA, but rather a discussion among all the active political and social forces in Acholi society, a discussion in which the current real balance of power is recognized, and that does not take as its starting point the need to establish the putatively traditional power of male elders. This would require the refusal of the discourse of ethnojustice and its myth of primitive unanimism, and its assertion of a timeless, ahistorical cultural identity. It would also require the admission that internal plurality, conflict, and contestation have always characterized Acholi society, and the recognition of the many traditions found within Acholi society pertaining to the spiritual world and to justice.

In short, there are many African and many Acholi traditions of justice—some may find their origins in the pre-colonial period, others find their origins in the colonial, and others in various times during the post-colonial. Some are tied to the symbolic and embedded in the cultural, others are tied to local and national state-based institutions, and others derive from international norms. These different traditions emerged at different times in response to different circumstances and reflect different configurations of power and authority. But *all* can be drawn upon now, especially the new traditions of justice that are emerging out of the 22-year civil war, in order to deal with its legacy. For this reason, if the word “tradition” is to be retained at all, it is better to speak of *traditions of justice* among the Acholi, where the Acholi are historicized, not essentialized, within pre-colonial, colonial, and post-colonial political and social processes, especially those of state formation. Following Hountondji, “African justice” itself is simply the debate that takes place in Africa and among Africans, drawing upon these different traditions and positing new ones, in the search for what justice means for Africans today in response to the continent’s unique historical experience.

Just as “traditional justice” as described by the ethnojustice discourse is not really traditional, so is it not really justice, for justice, like philosophy, by its nature must always be open, never closed, must always be plural and unfinished, and cannot be

singular, embedded in the past, the preserve of a single group. As philosophy is “yet to come” for Hountondji, so is justice “yet to come,” in the sense that it is open to new voices, new opinions, new formulations and ideas into the indefinite future. There is no single true justice, for justice is a domain of ultimate uncertainty, a fact that ethnojustice rejects. Justice, spirituality, tradition, and society are all realms of internal contradiction and struggle, and only if that is recognized can justice be done to Acholi, and African, justice.

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