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INTRODUCTION TO THE 50TH VOLUME

The evolution of the *Journal of African Law* can be likened to the construction of a house. Its foundations were laid by Professor Anthony Allott in 1957. When first built, the house was a huge open plan structure with just one very big room called "African Law". Since then, the house has expanded beyond all recognition. It has been subdivided reflecting the expansion of the subject within domestic jurisdictions. "African law", often commonly understood to mean customary law, now has "state customary law", "lawyers' customary law", "sociologists' customary law" and something called the "living law". These co-exist with statute laws and other systems of law, not least Sharia and Hindu law. Over the years, the house has taken on a new shape with new rooms being added. In recognition of the contribution made by Professor Allott in the setting up of an "African law" section in the Law Department of the School of Oriental and African Studies (SOAS), and coincidentally, in the year that the 50th volume of the *Journal of African Law* was to be published, the School (SOAS) inaugurated a biennial Anthony Allott memorial lecture. At the first lecture, given by Professor Manfred Hinz, Professor of Law in the Faculties of Law of the University of Namibia and the University of Bremen, Germany, Hinz reminded us of Professor Allott's vision in founding the *Journal of African Law*, the first issue of which carried a foreword by Lord Denning in which he noted:

> In naming this Journal, the promoters imply that there is a body of law properly described as African law. I have heard of Roman law. I know something of English law. But what is this African law? It is at the moment a jumble of pieces much like a jig-saw. One group of pieces is founded on the customs of the African peoples, which vary from territory to territory and from tribe to tribe. Another group of pieces is founded on the law of Islam, with all its many schools and texts. Yet another group is founded on the English common law. Another on the Roman-Dutch law. Another on Indian Statutes. And so forth.[1]

Within this matrix of pluralism and diversity of laws, the *Journal of African Law* has for 50 years focused on African institutions – laws, enforcement mechanisms and organizations – so that these institutions and their histories are better understood with the ultimate goal of contributing to the development of the African continent. In the early years of the journal, the discussion was about legal dualism, but soon pluralism in all its manifestations became all the rage. The journal, particularly in the 1970s and 1980s, played a major role in challenging the construction of "indigenous legal ordering" as being inferior to "Western" law. If anything, there is now a greater acceptance in Western societies of internal pluralism within Western legal systems.

In the last 50 years, national laws in Africa have transformed beyond recognition and international legal developments on the African continent have been no less substantial. At the time of the journal's birth in 1957, the vast majority of African nations were under colonial rule. Accordingly, they were said to enjoy rights under the Trusteeship scheme but could not bind themselves by ratifying international instruments. Half a century later, so much has changed. During the lifetime of the journal we have seen the adoption of the OAU Charter in 1963, which set up the Organization of African Unity, under whose aegis were drafted the OAU Convention on Refugees, 1968 (the only regional refugee Convention), the African Charter on Human and Peoples' Rights, 1981, the African Charter on the Rights and Welfare of the Child, 1990, and more

[1] A. T. Denning, "Foreword", (1957) 1 *J.A.L.* 1

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recently the Protocol to the African Charter on Human and Peoples' Rights on the Rights of African Women, 2003. The year 2000 marked a seismic reorganization of the African governance system with the OAU making way for the African Union brought into being by the Constitutive Act, 2000.[2] Then there are the sub-regional groupings including the Southern African Development Community (SADC), the Economic Community of West Africa States (ECOWAS), the East African Community (EAC),[3] and The Union Economique et Monetaire Ouest Africaine (L'UEMOA).

Membership of the Journal has also evolved. It was not until the dawn of the 21st century that the first African editors were appointed to its board. Likewise is the case with female editors. These changes have led to a less anthropological and more contemporary focus.

So where do we see the journal going? The Shona have a saying, which loosely translated goes, "Know where you have come from, for tomorrow there is darkness" (the English version of which equates to not burning one's bridges). We are, however, also alive to the fact that all things must change. In evolving the journal, we wish to focus on the intersections of policy and law in Africa. In this way, we hope to be more than reactive. We also hope to see a breakdown in the old colonial Anglophone/Francophone bias with more pieces coming from "French speaking" parts of Africa. Moreover, it sometimes seems as if Africa only exists south of the Sahara, but clearly that is not the case. The cultural/religious diversity and legal pluralism of Africa need to be flaunted – and for this we will need more pieces on the developments north of the Sahara. Recalling Kahn Freund's seminal article on the "Uses and misuses of comparative law",[4] we will need more pieces challenging the uses and misuses of Sharia law. We hope that scholars and policy-makers (not to suggest that the two are mutually exclusive) will use the journal to try out new ideas, to challenge and to stimulate our readers and, indeed, African leaders.

The current issue of this volume has articles which seek to meet some of these aspirations. The article by Coel Kirkby provides detailed information about the Gacaca courts in Rwanda. While conceding that the courts have their failings, Kirkby, by carefully going through both the composition and work methods of the courts, makes clear that they have a role to play and also challenges our notions of what constitutes (procedural) justice. In his article on provision of health care services to prisoners in South Africa, Marius Pieterse challenges the view that prisoners are "unworthy" of treatment because of their wrongdoing. Both articles are united in advancing the idea of protecting rights in uncomfortable circumstances. Kwame Akuffo's article deals with the effect of the imposition of English equity on customary law in colonial West Africa, principally, in Ghana and Nigeria. Challenging the fundamental claim of equity to a moral justice or conscience function within the colonial regime, Akuffo argues that equity was, objectively, an instrument for fragmenting and dislocating indigenous property systems in order to install capitalist property forms. His article provides us with powerful new insights into the role of equity as a necessary part of the facilitative colonial legal order, whilst not denying the more benign roles of equity. John Hatchard's piece focuses on the subject of transnational crime. His article identifies three challenges African states face when seeking to tackle transnational crime effectively: (i) how to deal with crimes that emanate from outside their jurisdiction; (ii) the investigation of crimes with

[2] R. Murray, *Human Rights In Africa*, Cambridge, 2004.
[3] C. Heyns (ed.), *Human Rights Law in Africa*, The Hague, 2004.
[4] O. Kahn Freund, "Uses and misuses of comparative law", (1974) 31(1) *Modern Law Review* 1.

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a transnational element; and (iii) tracing and recovering the proceeds of transnational crime. Hatchard's piece identifies this subject as one that contributors to the Journal will need to address in the future. The piece by Tunde Ogowewo and Chibuike Uche show the authors' concern about inflation and the legal response to the problem. As economic development is dependent on macro-economic stability, they draw attention to, what they term, public monetary law as a way of ensuring macro-economic stability. Their aim is to provoke major policy change in Nigeria about the appropriate role of the Central Bank. Lastly, Chaloka Beyani's piece draws on contemporary developments relating to the elaboration of a legal framework for the treatment of internally displaced persons in Africa, an issue of grave concern to the African Union considering that considerably more than half the world's estimated population of internally displaced persons are in Africa.

These contributions share one thing in common: within a context of pluralism and diversity, they are a study of African institutions so that they are better understood and improved with the ultimate objective of using the institution of law as an instrument for the development of Africa. The journal thus remains true to its raison d'être 50 years after the first issue was published. Yet, it has been careful to build on the legacy of its founder while recognizing that he, a radical of his time, would wish to see the journal remain innovative rather than become an historical shell – a museum of ideas.

All that remains to be said is "*E seun*"[5] to Anthony Allott for starting this journal, to the runners who carried the baton with him and after him, and to the publisher, Cambridge University Press. We are acutely aware of, and deeply grateful for, the legacy that has been given us – a journal that exists, without apology, solely for the purpose of focusing on the laws of Africa.

[5] This is the Yoruba word for "thank you" in a honorific sense. Other forms of "thank you" in Yoruba include: E se é, A dupe, O seun (non-honorific), O se (to a peer).

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