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The Subject of Rights and the Rights of Subjects

The Subject of Rights

The end of the Second World War marked the dawn of a new age of rights. Since the adoption of the United Nations' Universal Declaration of Human Rights (UDHR) soon after the war in 1948, the subject of rights has become a theme of great popular and academic interest. Rights have become the dominant language for public good around the globe[1] as well as the language of choice for making and contesting entitlement claims. The language of rights has attained such importance that today it underlies almost every facet of public and private discourse, from claims within the family unit to national and global political debates. Indeed, the past five decades have spawned a global "rights revolution"—a revolution of norms and values that has redefined our understanding of ethics and justice.[2]

Academic interest in the rights discourse has centered for the most part on contemporary understanding of "human rights" in a way that tends to obscure how the language of rights has historically been deployed to further more complex and contradictory agendas. Within African studies, scholars have explored various aspects of "human rights," "civil rights," and "constitutional rights" mainly within the context of post-UDHR

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developments. However, the tradition of rights discourses in the continent goes much further back. In many parts of Africa, rights discourses underlined several aspects of local history—the workings of traditional social and political systems, European missionary incursion and activities, the antislavery movement, colonial conquest and control, the colonial legal system, contestations over land, press activism, and, most significantly, the nationalist movement. These aspects of the rights discourse, which predate more recent concerns with "universal human rights," have received very little attention. Yet, many would agree that a thorough historical treatment of these pre-UDHR themes is crucial to our understanding of contemporary human rights. Therefore, the primary object of this book is to produce a historically grounded study of rights discourses in an African society in a way that engages, and yet goes beyond, contemporary fixations with universal human rights. This work focuses on late colonial and immediate post-colonial Western Nigeria. This part of Africa provides a window through which I seek to explore discourses of rights in colonial African history. Much of the discussion here bears relevance to other parts of Africa, particularly British colonial Africa.

More specifically, this book aims to draw attention to the historical complexities and nuances underlying rights discourses in colonial Africa. This task is significant because contemporary human rights discourse has, for the most part, produced a rather triumphant vision of the role of rights talk in securing progressive and transformative social change. Philosopher Ronald Dworkin famously argued that rights are "trumps" against the tyranny of the majority.[3] To exercise one's rights has come to be taken as something inherently good, an index of social and political progress. What has not been sufficiently explored or emphasized in the discussion is the way in which rights talk has been deployed to further more complex and sometimes contradictory agendas—progressive and reactionary. I argue the need to move away from the linear progressivism that underlines contemporary human rights scholarship. In the African context that I examine, the rights discourse is not a simple monolithic, progressive narrative. The language of rights has been variously deployed for purposes of legitimiza-

tion, opposition, and even negotiation. Rights discourses have served to insulate and legitimize power just as much they have facilitated transformative processes.

Against this background, this work seeks to explore, from a distinctly historical perspective, the complexities, changes, and continuities that have attended notions and discussions about rights and civil liberties in Nigeria from the introduction of colonial rule at the end of the nineteenth century through the early postcolonial period. It draws attention to the multi-layered discourses about rights and liberties employed by both the colonial state and its African subjects. It focuses on the complex dynamics engendered by the intersection between existing African notions of rights and the more formal regimes of rights introduced within European Christian humanism, colonial customary law, and the imported English common law systems. It seeks to examine how diverse interest groups within this African society—including colonial officials, missionaries, African elites, women's groups, and later, nationalist activists—employed the language of rights and liberty to serve varied social and political ends. Part of the objective is to connect the significance of the evolution of the rights discourse within colonial African contexts to the quest for a viable human rights regime in the continent. This object is addressed in two ways: first, examining longer-standing debates about rights to put the current human rights discourse in historical context, and second, exploring the existence of traditions of rights discourse in African societies that were different from the post-Second World War tradition that is often emphasized in contemporary human rights scholarship.

One obvious reason for undertaking a study of rights and liberties is the renewed significance that these ideas have come to assume in our world. There is the belief, though anecdotal, that a better understanding of rights traditions can ultimately improve the protection of human rights. This is particularly pertinent in Africa where there have been repeated calls for African states to develop regimes of human rights that are rooted in their own societies and relevant to the present challenges of nation building. The hope here is that by focusing on the changes and continuities that attended

discourses of rights and liberties in specific African societies, we can gain new insights into African perceptions of themselves and others, as well as the social transformations engendered by their encounters with others. Discourses about rights provide unique perspectives into such historical encounters and experiences. The way in which individuals and communities defined and articulated their rights reveals a lot about their definition of themselves, their relationships with each other, and their understanding of outsiders.[4]

Discussions about rights occur in almost every facet of human life. Individuals and groups are constantly asserting what they consider to be their rights in the constructions of personhood and possession, and in daily dealings with each other. Individual and collective rights are continuously invoked, both verbally and textually, in discussions about issues as diverse as social status, political authority, and the use of private and public resources. Much of these are issues of "civil liberties," broadly understood as the freedom to think or act without being constrained by force. Others pertain to customary notions of legal and moral entitlements. Given the sheer ubiquity and diversity of the appeal to rights and liberties in daily encounters and in varied settings, any study of these themes is confronted by real problems of scope and context. What aspects of the many discussions about rights and liberties are being examined here? In what discursive contexts are the appeals to rights and liberties being examined? To address these questions, it is necessary to set out the discursive contexts in which this work is located and some of the methodological parameters that guide it.

This study is located within two intellectual traditions and discursive contexts. While one is long-standing and universal, the other is emergent and peculiar to African studies. The first context is the familiar debate about the historical development of universal human rights that has dominated contemporary human rights scholarship. In the past few decades, many scholars of area/regional studies, including Africanists, have become fully engaged in the thriving interdisciplinary discussion about the philosophical and historical antecedents of the contemporary notion of universal human rights. The central concern here can be posed in the form of simple questions:

What is the origin of human rights? Are human rights Western concepts, or are they truly universal? If they are universal, what normative contribution has Africa made (or can Africa make) to the development of the "universal human rights" movement? The engagement of Africanist scholars in these and other aspects of the human rights discourse have spawned a whole new genre of scholarship—an Africanist human rights discourse that I have described elsewhere as convoluted and largely critical of the orthodoxies of human rights scholarship. This discourse provides one framework for this study.[5]

The second discursive context for this study emerges from more recent developments in African studies. Several writers have emphasized the centrality of colonialism to the emergence of the contemporary human rights movement. It has been suggested that international human rights have an inherently colonial dimension since they involve challenges to the practice, and sometimes even sovereignty, of particular regions in the name of universal standards deriving from and largely enforced by the West. In the case of Africa, such asymmetrical moral discourse has its roots in the literal history of colonialism. The questions that need to be pursued, therefore, should involve the double relationship of human rights issues to, on one hand, colonized African societies and their own sense of the "human," and on the other, European colonizers whose agenda included more than the concern for the rights of subjected "Others" in Africa and elsewhere.[6] But there is an even stronger link between European colonialism and human rights. Although not often recognized as such, anticolonial struggles in Africa as elsewhere in the colonized world were not only nationalist movements but also veritable human rights movements. Therefore reconstructing the histories of nationalist and anticolonial movements as rights histories can help us better understand the trajectories of contemporary human rights movements in postcolonial societies.

This work brings a historical approach to human rights scholarship—a subject dominated by social scientists and legal scholars. But it is a historical work that seeks to engage rather than overlook the necessarily interdisciplinary nature of human rights scholarship. Yet, conceptual and methodological differences are bound to arise. For instance, some human rights scholars may

argue that the discourse on legal rights in colonial Africa (or other colonial contexts) is not really a discourse about human rights but rather a discourse about moral and legal rights. Others may argue that it is not even possible to talk of "human rights" before the introduction of the Universal Declaration of Human Rights (UDHR) in 1948 and that such use would be anachronistic. I disagree. While I acknowledge the clear difference between customary legal/moral rights (such as generational or gendered rights) and the UDHR-inspired definition of human rights (rights that pertain to individuals simply by virtue of their humanity), the main thrust of this book is that in the colonial African context I examine, these two were inextricably connected. This study proceeds from the premise that the tendency within human rights scholarship to wall off each sphere of rights discourse from the other stands in the way of a full understanding of the subject. I find it more useful to think in terms of a concatenation of rights discourses rather than a compartmentalization of rights discourses.

Although this book focuses primarily on discourses of rights and liberties in Africa, it seeks to address broader concepts about imperialism and human rights. One of these is the development of the human rights movement and its humanist antecedents within the context of nineteenth-century European imperialism. This book is intended as a contribution toward understanding the place of European imperialism and the initiatives and responses of colonized peoples in shaping the history of the human rights movement. Although imperialism features prominently in contemporary debates about the theory and practice of human rights, it has received little detailed attention within traditional human rights scholarship. For instance, proponents of cultural pluralism have repeatedly criticized the human rights movement for being too Western-oriented and for being reminiscent of a tradition of Western imperialism and paternalism. One scholar has argued that the human rights movement falls into the historical continuum of the Eurocentric missionary-colonial project that seeks to "supplant all other traditions and casts actors into superior and subordinate positions."[7] But, in spite of such references to the history of colonialism, very little attention has been given to actually exploring the historical links between

imperialism and the human rights movement at both national and international levels. This book explores some of these links. It seeks not simply to examine how the exigencies of colonial rule circumscribed rights and liberties but also to investigate how the rhetoric of rights was deployed by colonizers to legitimize empire and by the colonized to oppose it and negotiate their positions within empire.

A related object of this work is to provide a study of human rights based on empirical research of specific social and historical contexts rather than on generalized postulations. In the past two decades, human rights scholarship has produced many engaging theories and conceptual frameworks for understanding, interpreting, and promoting human rights. There have also been several insightful studies of human rights within the context of the UDHR and the post-war human rights movement. This reflects the predominantly presentist approach to human rights scholarship—a preoccupation with the here and now. What has clearly been lacking are thorough and specific historical studies of human rights that go beyond these contemporary contexts. Yet, as many scholars have acknowledged, such detailed contextual and empirical studies, rather than more generalized theoretical postulations, should be the current direction of human rights scholarship. We now need sustained empirical studies that buttress, challenge, or explicate theories of human rights. This is one of the aspirations of this project.

The Rights of Subjects

The sustained interaction between Africans and Europeans in the nineteenth century following the end of the Atlantic slave trade ushered a distinctly new phase in the notions and discussions about rights and liberties in Africa. Nineteenth-century missionary activities and the anti-slavery movement were underlined by discourses about rights within the framework of European liberal traditions and Christian humanism. Discussions about rights were also central to the institution and promotion of British colonial hegemony. Colonial social

and political objectives were couched in the language of rights, freedom, and liberty. British incursion was often justified on the grounds of liberating Africans from despotic chiefs and protecting their rights as British subjects. In this regard, the language of rights, like that of "civilization" and "modernity" was an important part of the discourses deployed to legitimize empire. However, the language of rights was not only a tool for legitimizing the colonial status quo; it was also an instrument of opposition, engagement, and negotiation. Africans appropriated colonial rhetoric of rights and deployed it to challenge imperial policies and negotiate their positions within a changing society. The rhetoric of "native rights" and, later, "universal rights" that underlined colonial propaganda became an important instrument with which Africans expressed dissent and articulated nationalist aspirations. One of the central arguments of this book is that in the African context I examine, later post-war discourses of "universal human rights" were greatly influenced by earlier colonial traditions of rights talk.

In many ways, the human rights discourse only marked a new chapter in an evolving tradition of rights talk with several underlying contradictions and paradoxes. The paradox of colonial rights discourse in Africa manifests at two levels. The primary paradox is that rights talk, which was a crucial factor in the rise of empire, was also a factor in its eventual collapse. But the rights discourse was not only relevant in the tension between colonizers and colonized. African elites also used rights talk to further class, ethnic, generational, and gender interests. Indeed, human rights, or at least the discourses of rights, were "trumps." But they were not always trumps against the tyranny of the majority. They were also trumps deployed to further the dominance of the majority and maintain existing power structures. This is the secondary and more complex paradox of rights talk. Rights discourses facilitated domination at one moment, had a liberating effect at another, and, in between, were used to promote competing agendas. By examining these longstanding traditions of rights talk and the complexities that underlie them, this study seeks to put the contemporary human rights discourse in Africa in some historical context.

This book focuses mainly on discussions about rights and civil liberties rather than the objective conditions of rights and liberties in the study area. It focuses more on how people understood and used the language of rights and liberty in their oral and written discussions than on the actual conditions they encountered in their daily lives. However, I recognize that it is difficult, if not impossible, to examine discourses of rights without drawing links between what people talked and wrote about, on one hand, and the conditions they actually encountered, on the other. Thus, although the primary concern of the study is discourses about rights and civil liberties, it also seeks to examine how these discourses reflected or failed to reflect actual conditions. The approach to discourse here is along the lines of colonial and postcolonial discourse analysis.[8] Its usage goes beyond simple oral and written communication. "Discourse" here is speech or writing seen from the point of view of the beliefs and values that they embody. It constitutes the organization and representation of people's experiences and understanding of their world. Speech and writing are not taken at their face value but analyzed on the basis of the practices and rules that produced these texts and the methodical organization of thought underlying these texts.[9]

This work is based primarily on archival research and oral interviews. Although some of the data for this study comes from courts records, I am not primarily concerned with discussions about rights in strict legal contexts and usage. My focus goes beyond legal rights, although I do not preclude them. Discussions about rights in colonial Africa did not always take place in the law courts. Few people had access to the colonial legal system or even understood how it worked. Rather, most rights claims were made in petitions to colonial officials and local chiefs, in newspaper editorials and letters to editors, and at meetings of town unions, trade unions, and political groups. To retrieve the often-ignored voices of ordinary people and subaltern groups in the society, I have placed particular emphasis on petitions available in the colonial archives. Many of these petitions written by ordinary people in earnest, if sometimes Pidgin English, together with the responses they elicited from colonial officials, provide unique insights into the issues of rights that dominated this period.

Between Customary Rights and Human Rights

A central question in any discussion about rights is defining what rights are and situating that definition within a specific historical context. While many scholars trace the philosophical foundations of human rights to natural law and Western liberal traditions, others argue for a more eclectic understanding of the term, focusing on differing notions of rights within both Western and non-Western societies. Even more contentious is the debate over the meaning of "human rights" and the appropriateness of employing the concept within the context of the history of colonial societies. Some writers have argued for a precise and historically specific definition of human rights that is distinct from general notions of rights that may include customary moral/legal notions of rights. Such advocates of conceptual specificity contend that the notion of human rights is a relatively recent idea founded on post-Second World War developments and, specifically, the adoption of the Universal Declaration of Human Rights (UDHR) by the United Nations in 1948. In contrast, others argue for a more fluid and flexible definition of human rights that focuses not so much on the restricted context of postwar usage as on the continuing ideas that have historically been central to the concept of human rights and social justice in various societies. These differing conceptions are central to defining human rights.

The discourse on the origins and philosophical foundations of rights has focused mainly on natural law theory. Many writers have traced contemporary conceptions of rights and liberties from natural law and ancient Greek stoicism through the medieval period and the Enlightenment. Natural law philosophy as characterized by a belief that laws and rules of conduct are embedded and derivable from the nature of man is fundamental to the inalienable character of human rights. Since the nature of man is the same the world over, the laws derived from that nature are seen as universal and true to all men (and women), at all times and places—they are objective and eternal and are neither changeable nor alterable.[10] Some suggest this philosophy underlies the concept of rights as expressed in the sociopolitical and philosophical developments

in fifteenth- and sixteenth-century Europe. The Renaissance and the decline of feudalism inaugurated a long period of transition to the liberal notions of freedom and equality, particularly in the use and ownership of property. This created an unprecedented commitment to individual expression and world experience that was subsequently reflected in diverse writings—from the teachings of Thomas Aquinas and Hugo Grotius to the Magna Carta, the Petition of Rights of 1628, and the English Bill of Rights of 1689.[11]

The European philosophers of the seventeenth and eighteenth centuries developed their theories of rights and liberties within a tradition of natural rights underscored by the notion that every human being is endowed with certain natural rights essential and fundamental to his rational existence. For these philosophers, natural law traditions and the idea of natural rights translated into political liberalism that was based on the theory of individualism and the notion of the equality of all men before the law. In the writings of Hobbes, Locke, and Rousseau, the autonomous individual in pursuit of his survival and happiness enters into a social contract to escape from his "brutish nature" to establish order (Hobbes), to install a limited government (Locke), or to constitute the general will without divesting himself of his natural rights (Rousseau).[12]

These writings reflected a new intellectual and political tradition in which the individual as a political actor was abstracted from the holistic totality of medieval society. Locke argued that certain rights self-evidently pertained to individuals as human beings and that chief among them were the rights to life, liberty (freedom from arbitrary rule), and property. Upon entering civil society, humankind surrendered to the state, in a "social contract," the right to enforce these natural rights. The state's failure to safeguard the interests of its members gives rise to a right to responsible, popular revolution.[13] Hobbes saw a "right of nature" as the liberty each man has to use his own power, as he will himself, for the preservation of his own life.[14] He defined liberty as "the absence of external impediments to motion," and having rights meant having no impediments on the individual's "natural motions."[15] These ideas of the rights of man played a key role in the late eighteenth- and nineteenth-century struggles against political absolutism in Europe. They

also deeply influenced the Western world from the seventeenth to nineteenth centuries, provoking a wave of revolutionary agitation that swept across America and Europe. They inspired documents such as the English Petition of Rights, the United States Declaration of Independence, and the French Declaration of the Rights of Man and Citizen. All three documents were based on the image of the autonomous man endowed with certain inalienable rights.[16]

The defining character of contemporary notions of human rights has also been significantly shaped by the reformist impulse of the late nineteenth century. The abolition of the slave trade; the development of factory legislation; and the beginnings of mass education, trade unionism, and universal suffrage all served to broaden the dimensions of individual rights and stimulate an increasing international interest in their protection. However, perhaps the rise and fall of Nazi Germany had the most profound impact on the idea of universal human rights in the twentieth century. The world united in horror and condemnation of the state-authorized extermination of Jews and other minorities, the promulgation of laws permitting arbitrary police search and seizure, and the legalization of imprisonment, torture, and execution without public trials. Nazi atrocities, more than any previous event, brought home the realization that law and morality cannot be grounded in any purely utilitarian, idealist, or positivist doctrines.[17] Certain actions are wrong, no matter the social or political context, and certain rights are inalienable no matter the social or political exigencies. The atrocities also led to a growing acknowledgment that all human beings are entitled to a basic level of rights and that states and societies have a duty to protect and promote these rights. Postwar decolonization movements in Africa and elsewhere in the colonized world also had a significant impact on the development of the idea of universal human rights as colonized people drew on the language of rights emerging in the West in their ideological struggles against imperial powers and their demands for national self-government. This process of appropriating and deploying the language of universal rights to serve varied ends, by both Africans and Europeans in colonial Western Nigeria, is one of the primary concerns of this study.

The new postwar international consciousness of the need to protect the basic rights of all peoples by means of some universally acceptable parameters partly influenced the 1945 Charter of the United Nations, which reaffirmed a "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large or small." It also stated the United Nations' commitment to fostering the development of friendly relations among nations, based on respect for the principle of equal rights and self-determination for all peoples and the promotion of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.[18] The commitment to the promotion of human rights expressed in the United Nations charter were followed by the UDHR in 1948 and international human rights conventions that have come to be collectively known as the International Bill of Rights.[19] These conventions, which were subsequently complemented at regional levels in Europe, the Americas, and Africa, today constitute the core indicators of contemporary international human rights standards.[20]

In spite of disagreements over the precise origins of the idea of human rights, what is evident is that the contemporary meaning of human rights has evolved over the years. The naturalist philosophies of the sixteenth century, the bourgeois revolutions of the seventeenth and eighteenth centuries, the socialist and Marxist revolutions of the twentieth century and the anticolonialist revolutions that began after the Second World War have all combined to broadly define the modern concept of human rights. Like all normative traditions, the rights tradition reflects the process of historical continuity and change that is the product of varied cumulative human experiences. The contemporary idea of human rights also stems from a universalization of rights defined through a political process by international agreements. Indeed, most contemporary studies on rights refer specifically to "human rights" and define them as those embodied in the UDHR and its subsequent conventions. However, the approach in this work goes beyond the restricted definition of human rights in the UDHR. The definition of rights here necessarily embraces broad ideas about rights and liberties that predated and shaped the UDHR.

Human Rights: Issues of Change and Continuity

This book focuses broadly on discussions around rights as popular entitlements that individuals and communities hold in relation to the rest of society, rather than on the contemporary concept of "human rights" per se. However, like most studies in "human rights," it confronts some of the methodological questions that have been raised about fitting historical actors into twentieth-century categories or analyzing their experiences with twentieth-century notions and concepts. Pieter Boele van Hensbroek has described this as "the problem of anachronism" in writing intellectual history. Historians sometimes unavoidably infuse individual orientations in the presentation of historical material. Notions about the historical process, such as the idea of modernization or of the continuity of traditions, preclude understanding historical authors and actors within their own frame and within their own historical contexts. The historian, in such cases, enters the field of inquiry with a prior substantial theory of history—having some a priori knowledge about what this period in history is really about. Therefore, Hensbroek cautions that historians must leave open the possibility that the people who are subject to historical studies may have considered themselves to be actors in a different drama. There is a chance that as historians, we may sometimes be burdening the past with the present by projecting our problem definitions upon them. For example, can one speak of "nationalism" when the actors did not have the concept of a nation? Can there be Pan-Africanists when the idea of an all-African identity had not been formulated? Can there be modernists without the notion of modernity, or traditionalists without the idea that African societies were "traditional"?[21] These questions are pertinent to this study. In this case, can we speak of rights, or specifically, "human rights" when the actors may not have employed these notions in the precise sense that we employ them today?

This question has been extensively debated in relation to the study of human rights in African and other non-Western societies. In reaction to arguments for cultural relativism in the definition of human rights, some writers—mainly legal and social science scholars—have argued that although the

humanistic values that underlie the concept of human rights may be universally shared, a distinction must be made between the moral standards of human dignity, which all cultures share to some extent, and contemporary human rights that are enforceable legal or quasi-legal entitlements held by individuals in relation to the state. The concept of human rights, it is argued, is essentially a modern one founded on specific historical developments in the West—enlightenment libertarianism, the *Magna Carta,* the French and American Revolutions and, ultimately, the Universal Declaration of Human Rights of 1948.[22] It is argued, therefore, that reference to "human rights" in contexts before 1948 is anachronistic. For this reason, scholars are divided on the appropriateness of employing the concept of "human rights" within the context of the history of pre-1948 colonial societies in Africa or elsewhere.

In response to arguments for an African concept of human rights, some writers have argued that what has been described as an African concept of human rights is actually a concept of human dignity that defines the inner moral nature and worth of the human person and his or her proper relations with society. Human dignity and human rights are therefore not coterminous as dignity can be protected in a society that is not based on rights.[23] Others make the distinction between the concepts of *distributive justice* and human rights. Distributive justice involves giving a person that which he or she is entitled (his or her rights). Unless these rights are those to which the individual is entitled simply as a human being, the rights in question will not be "human rights." In much of pre-colonial Africa for instance, rights were assigned on the basis of communal membership, family, status, or achievement. These were, therefore, strictly speaking, "privileges" granted by ruling elites, not human rights.[24] The idea of human rights, properly so called, has its roots in the adoption of the UDHR by the United Nations in 1948.

These arguments for a restricted definition of human rights that exclude customary notions of legal and moral rights may be categorized as the "UDHR as epoch" school. Proponents of this school see the UDHR of 1948 as an epoch-making event that "created" the concept of human rights and should, therefore, define our understanding of it. The UDHR, it is argued, articulated for the first time in human history a

regime of basic and inalienable rights to which all human beings are entitled by virtue of their humanity, regardless of race, sex, social status, or orientations.

On the other side of the fence are other scholars who see the developments of 1948 more as an episode or just another phase rather than an epoch-making event in the definition of human rights. This may be termed the "UDHR as episode" school. This school of thought leans toward a more fluid and flexible definition of human rights that focuses not so much on the restricted context of post-World War II usage but on the continuing notions and ideas that have historically underlined the concept of rights in various societies. Although the UDHR was a groundbreaking document, it was built on preexisting traditions of rights around the world. The UDHR was more a rearticulation of an old concept than the creation of an entirely new one.[25]

The problem, it seems, is largely one of ontology—of labels that we choose to designate ideas rather than the ideas that underlie the labels. Although it may be useful to distinguish between the abstract ideals of human dignity or distributive justice and the more precise legal principles of human rights, we must not overlook the close connection between these sets of concepts and the ways they reinforce each other. Indeed, one would argue that the whole debate over distinction between the concept of human rights before and after 1948 arises from a failure to put the evolution of the idea of human rights in historical context. There has been a tendency to conceptualize human rights within the narrow sense of modern legal language, the emphasis being on the strict legal definition of the term rather than the idea that underlies it. This approach is problematic because it tends to emphasize change while ignoring underlying continuities.

Admittedly, the UDHR was a groundbreaking document. The idea that underlined it—that all human beings are entitled to some basic inalienable rights by virtue of their humanity—marked a shift from earlier notions of rights, because, at least in theory, it was applicable to everyone irrespective of gender, race, and social status. However, this idea of universal inalienable rights enshrined in the UDHR did not emerge as a bolt out of the blue or develop in vacuum. Rather, it was an expansion and rearticulation of earlier traditions of rights. The

idea that human beings are born free and equal did not emerge in 1948, and few would suggest it did. Its articulation as a universal principle under the auspices of a body representative of most nations of the world is what is unique about 1948.[26]

Moreover, to many people in the non-Western world who were not represented at the United Nations and still under colonial domination in the 1940s, the adoption of the UDHR did not mean very much. As I argue later in this book, many Africans were ambivalent and even skeptical about a declaration purportedly affirming the rights of all human beings, drawn up by the same imperial powers that were actively denying them of their right to self-determination. It is important, therefore, not to overstate the significance of the UDHR. A more historical approach to the study of the evolution of the contemporary concept of human rights will find no difficulty in drawing the link between earlier notions of human dignity or distributive justice and the modern idea of human rights which are, in fact, merely contextual reinterpretations of the age-long notions of defining human worth and value. The object is to understand and appreciate the distinct historical contexts in which this idea has manifested itself. But in a field long dominated by legal and social science scholars with their predilection for structural analysis, contemporary human rights scholarship tends to be driven by the quest for neat models and precise labels. The messy middle has, for the most part, been left out. While structural analyses may be useful in systematizing our study of rights, a fuller understanding can only come from going beyond these structures to explore the complexities and nuances that underlie them. This is where a historical perspective becomes particularly relevant. Even if we agree, as some have argued, that the UDHR was an epoch-making event, the historian cannot start or stop the story at such break points. It is the historian's task to look for continuities and discontinuities in such supposedly epoch-making events.

Toward a Contextual Definition of Rights

At the most basic level, rights may be defined simply as legally enforceable claims to something, or someone, or some group.[27]

"Rights" occupy the same semantic field as the sometimes nearly synonymous terms "freedom" and "liberties." However, what seems to have confused the definition of rights are the attempts by philosophers, political theorists, and practitioners to theorize, specify, and justify a special category of fundamental or essential rights that pertain to individuals simply by virtue of their humanity. This confusion poses a significant conceptual challenge for this study. Because of the many debates that have been associated with the meaning of rights, we need to clarify the use of the term in this study. The definition of rights adopted here is necessarily broad and inclusive. Rights, like laws, are viewed not as a body of immutable rules, institutions, and procedures but as dynamic historical formations that at once shape and are shaped by economic, political, and social processes.

It is the contention here that rights generally, and human rights in particular, are best defined and understood within the linguistic and social context of popular usage by the historical actors who employed the language. Today, we may all have a fairly common and definite idea of what the legal regime of universal human rights is. But beyond that, rights claims derive their meaning only within specific universes.[28] In this study, I have chosen to refer more to "rights" generally rather than "human rights" per se for two reasons. The first is to avoid the controversy and confusion often associated with the contemporary usage of the concept of human rights. The second reason is because this study focuses on rights defined broadly as popular entitlements that individuals and communities hold in relation to other individuals and groups or in relation to the community as a whole. This goes beyond the conventional definition of human rights as enforceable legal or quasi-legal entitlements that individuals hold against the state.

Since rights are articulated in language and are socially constructed, the emphasis in defining rights in this study is based primarily on how people employed the language of rights or articulated their claims to it, whether orally or in documents. The definition of rights here is guided by the ideas and notions to which people referred when they talked about those entitlements (beyond privileges) that they considered intrinsically theirs. It focuses on the specific contexts in which these rights were asserted, whether individually or collectively. The

definition of rights here is also guided by the relationship of rights claims to power—whether deriving from traditional, colonial, or post-colonial hegemonies. "Power" in this context refers to more than just control over other people and their actions. It also embraces the Foucauldian conception of power as the production of knowledge.[29] The concept of rights and freedom achieves its conceptual coherence through the idea of power since rights claims are often articulated in relation to prevailing orthodoxies that are sustained by ascendant regimes of power. People consider themselves free and at liberty primarily when they are released from the power of another or unrestrained by the power of another to do what they want.[30] In this sense, rights are those entitlement claims that essentially go beyond the entitlements of power and privilege.

In a historically contextual study like this, which seeks to identify specific trends and patterns in discussions about rights, it is important to understand where people's ideas about rights and liberties come from and how they have gone about articulating and legitimizing rights claims. What references are used to legitimize rights? Were they "traditional" or "modern," indigenous or imported? Here, I recognize the need to guard against the tendency to lapse into the binary opposites of tradition and modernity. Multiple and diverse influences shaped the rights discourse in many African societies, and these cannot simply be reduced to choices between tradition and modernity. However, notions of "modernity," "civilization," and, later, "development" did at various times influence notions of rights and liberties. The extent to which individuals and groups could claim certain rights against the colonial state, particularly in the early colonial period, depended largely on the level of "civilization" and "modernity" they were considered to have attained. Another consideration is the role of exclusion in discourses about rights. It is important to understand what people claimed as rights. It is also just as important to understand what they did not. It is necessary to recognize that some rights claims did not apply to everyone and excluded particular individuals and groups. Some would argue that this very fact means that they were not really "human rights" since they did not equally apply to everyone in the same way at every time. Yet, they are important to us because they are customary rights

claims founded on law and social acceptance that have shaped contemporary understandings of human rights.

Equally significant is the need to identify claims that are made and understood as discretionary privileges rather than as rights. Certain entitlements enjoyed by members of particular social groups or classes were clearly understood to be privileges that were discretionarily given and contingent on certain conditions. For instance, in some African societies, foreigners who settled in the community were entitled to a piece of land, granted gratis, to enable them to farm for their livelihood. Such an entitlement was clearly understood by all parties involved as a privilege. With changes in circumstances, this privilege could be lost. In other cases, however, individual entailments to land were understood and claimed as a matter of right rather than privilege. "Legitimate" sons born within wedlock were usually entitled to land as an inalienable right. Again, some may argue that this, in fact, amounts to a privilege rather than a right since it pertains only to "legitimate sons." This may be true when we examine this through the lens of present-day definitions of human rights. But my concern here is not so much with how these customary notions or rights measure against today's standards but with how the people who deployed this language of rights construed it themselves. My concern is with the discourse of rights in a specific context, centered on how the historical actors themselves perceived particular entitlements and the language with which they made claims to such entitlements. In this case of farmlands, local people typically understood a land grant to a legitimate son as a right rather than a privilege. For a historical and contextual study in discourse analysis, this needs to be a primary consideration.

Rights Discourse in the African Context

The discussion about rights in the African context has centered on the distinction between an African concept of human rights founded on communal values, as distinct from Western notions of rights that were subsequently introduced into the continent with European incursion.[31] This debate has, for the