

Human rights in the traditional legal system of the Nkoya people of Zambia

An exploration in legal anthropology

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Abstract. After a dedication outlining the author's scholarly collaboration with the Dutch Africanist legal scholar Gerti Hesseling (1946-2009) over the years, the argument concentrates on an issue that was particularly central to the latter's work: human rights. Human rights discourse has come to increasingly dominate world politics in our time and age. Such discourse is usually seen as informed, mainly, by the Judaeo-Christian and Graeco-Roman heritage, and more recently by the Enlightenment and the French and American revolutions of the late 18th century CE. From a naïve transcontinental perspective, the challenge of human rights would then amount to mediating, and vindicating, a North Atlantic cultural product in socio-political contexts outside the North Atlantic, – contexts that initially appear to be *alien and inimical* to such human rights thinking, and that have to be *converted* to it (much like many similar contexts have been converted, in the course of the last two millennia and especially the last few centuries, to Christianity, biomedicine, and modern, bureaucratic and democratic statehood). However, intercultural philosophy would explode this naïve view as inherently hegemonic, on the grounds of attributing, to the North Atlantic region, the monopoly of what could, alternatively, and with greater justification, be considered an inalienable achievement of humankind as a whole. The naïve view of human rights moreover suggests that only the submissive copying of North Atlantic socio-political thought could bring respect for the human person, life, freedom etc. – as if such notions were inherently absent from societies outside the North Atlantic. A naïve, hegemonic approach to human rights is not only disqualifying for the people outside the North Atlantic – it would also make it more difficult for the latter to adopt human rights thinking as potentially universal and as resonating with their own local concepts of personhood, integrity, freedom, etc. The present argument therefore challenges the naïve, hegemonic, North-Atlantic-centred view. On the basis of a detailed inspection of the human rights thinking contained in the traditional legal system of the Nkoya people of Western Central Zambia, an endogenous, local historical basis for many standard human rights will be argued. The application of these rights in Nkoya society is shown to be often subtle and liberating, and by no means inferior to what is commonly found in North Atlantic small-scale communities. Moreover, the Nkoya people turn out to boast a number of human rights for which there are not even ready equivalents in standard North Atlantic human rights catalogues. While the argument is thus a contribution to current attempts to de-hegemonise human rights thinking, it rests on a number of (potentially contentious) theoretical and methodological assumptions that are set out in the first few sections.