KIAMAS: RETHINKING ACCESS TO JUSTICE IN DOMESTIC VIOLENCE CASES IN KENYA

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ABSTRACT

The dissertation explores the interrelationship between the law and culture through a case study of informal justice processes involving domestic violence cases in two communities in Kenya. By describing *kiamas* (informal justice processes), it places social and cultural practices within an institutional context. It goes beyond a focus on formal legal institutions to those which constitute the social engagements between individuals in their everyday lives. The objective is to establish the meaning of *kiamas* for the survivors of domestic abuse by determining (i) the nature and goals of these processes, (ii) the needs and expectations of the women and (iii) the extent to which the goals were met. It is part of the larger goal of exploring the how, where and what effect law is produced in and through the everyday lives of members of communities. By analyzing individual decision making and behavior, it decenters the courts and formalistic law in the study of legal consciousness.

Through qualitative in depth interviews with women who have suffered domestic abuse, I seek to understand the particular and subjective meanings of informal justice processes. This approach exposes the variations in experience and understandings that individuals in similar situations may view the law. This is an important story to tell in the discourse on how the law influences behavior particularly in the feminist legal theory and research. Interpretative processes on women's rights issues have tended to eliminate specificity in their pursuit of a dominant and univocal voice of legitimate meanings. These interpretative frames provide only partial truth; A truth that excludes those differential meanings given by those in different situations. There are a multiplicity of
cultural histories and a plurality of worldviews that offer 'counternarratives' to the 'masternarrative.' Because culture and knowledge are socially constructed, it becomes useful to view individuals as legal actors, as windows through which to gain an insight into the interstices between law and culture, between the private and public, the personal and political, formal and informal, the individual and the state.

I make the argument that how women strategize when making a choice on process and their interaction with the law during dispute processing reveal the extent of legal consciousness in criminal law relating to domestic violence and its implications for social movements that seek to influence legal reforms that address domestic violence. The study shows that law (formally constituted) though important is not the exclusive determinant on how individuals choose to behave. Two theoretical frameworks underpin the analytical process; feminist legal theory and legal pluralism. A feminist praxis is fundamental to understanding the nature of the oppression and subordination of women. It integrates women's lived experience into legal discourse and seeks to deconstruct andocentric concepts that underlie laws and legal systems that appear neutral and objective. In this research I use consciousness-raising, a method that articulates individual experience, making meaning of them in such a way that they relate to other experiences in a way that allows for identification of patterns that reveal the collective oppression of women. The cases that come before the kiamas represent the negotiations and engagement that take place in the social life of the women. These cases are not a unit of analysis in themselves but are perceived as an integral part of society, a means through which people engage and continue to negotiate their relationships with each other whatever form they may take.
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