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Book Review

Should Children Work? Dilemmas of Children's Educational Rights in the Global South

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The realisation of Children's Rights and the right to education, in particular, have for quite long left the children of the Global South at a crossroads. The ideal of a childhood free from work has in itself become a barrier to access this social good. As such, due to their country's minimal or non-existent educational funding and family abject poverty, some children in the Global South have realised that adopting a pragmatic strategy of combining school and work is the only feasible solution. This study, therefore, examines the interface between children's work and schooling in the Global South.

1. Introduction

Whether education is necessary for societal amelioration is no longer a subject of debate, although the form of schooling is debatable. Under the façade of human rights and children's rights discourses, in particular, schooling is almost replacing the phenomenon education and slowly childhood is becoming synonymous to schooling and playing. The kind of childhood such discourses advance is a school-play and free-from-labour childhood. In that regard, work is perceived as anti-schooling and a work-free childhood is framed as the only ideal form of childhood. As such, studies on children's work and schooling have mostly been informed or framed within two discourses: the first being the one that considers children's work as detrimental to schooling (Thu-Le & Homel, 2015; Mavrokonstantis, 2011; Bezerra et al., 2009; Beegle et al., 2008; Demir, 2006; Canagarajah & Nielsen, 1999); and the second is that which considers the intersection of schooling and work (Wambiri, 2015a; Wambiri, 2015b; Tafere & Pankhurst, 2015; Bourdillon, 2011 & 2016; Hart, 2008; Punch, 2003). Currently there is a new mode of thought which looks beyond the compatibility of work and schooling and considers work as a learning process. This position is advocated in 'Labour as Learning' by Bourdillon. He advances that:

> While formal schooling – including secondary schooling – is undoubtedly the dominant source of learning and skills for the vast majority of young people in the modern world, this is not the only form of education that children need, nor necessarily the best form for all children in all situations. [And] … while excessive or harmful work can certainly hinder

schooling, work and school are not always – or even generally – incompatible. (Bourdillon, 2016: 2).

This development reinforces the argument advanced during the symposium on 'Child labour in East and Southern Africa' held in Addis Ababa in March 2014. In their introduction to the publication based on this symposium, Pankhurst, Bourdillon & Crivello (2015: 8), observed the growing discontent with schooling as the only source of learning and they advanced the applicability of children's involvement in work as an alternative way for many who cannot benefit from the school system to learn skills that are rarely leant in schools. This is a remarkable line of argument that 'presents a more nuanced approach to children's work than what appears in the dominant discourse of abolishing "child labour"' (Bourdillon, 2016: 1). This challenges the neo-liberal ideology of anti-work childhood by embracing labour as a learning process in itself.

In the children's rights discourse, like in the children's work discourse, this tension has always been present. Central has been the perceived conflict of interests among different groups in society between children's rights to education and their rights to work. On the one hand there are those who would prefer that children's lives be characterised by school and play only (UNCRC, Articles 28 & 31; Qvortrup, 2001; Hindman ed., 2009; Shackel, 2015) while on the other hand there are those who see work as an important characteristic of children's lives, in addition to school and play (Punch, 2003; Abebe & Aase, 2007; Hart, 2008; Bourdillon, 2011). When this tension is translated into policy it depicts Bourdillon's (2016: 2) recent observation that: 'global policy on children's work and education is dominated by two assumptions: that school is the best way to secure a future for all children and that work generally hinders schooling and is therefore to be avoided during childhood.' While there has been little contestation over children's rights to schooling and play, for school and work the contestation has translated into a schooling versus working binary (Alber, 2012) which to a large extent has been detrimental to children's wellbeing.

In this essay, I argue that setting up such a dichotomy between work and education is not healthy for the majority of children in the Global South, because it is by combining work and schooling that the majority of these children earn a living, which is a prerequisite for realising codified rights. I organise my essay into three parts. The first part is an introduction which gives a snapshot of major debates that have informed children's work and rights scholarship. This is followed by the second and main part of the essay, in which dilemmas to realise children's right to education are developed and discussed. It encompasses critical comments on the implication of the progressive implementation of social and economic rights within an international human rights regime on children's educational rights. This is followed by a problematisation of whether children should work and it ends with a sub-part that advocates for the need to combine work and education/schooling. In the third and last part, the conclusion, I will sum up issues raised during the essay.

2. Difficulties to Realise Children's Rights to Education

Like any human rights discourse, children's rights to education have raised critical questions as to what is the appropriate approach to make this social good available to all children. While on the one hand children's rights advocates and institutions are continuously condemning children's involvement in work; on the other hand, many of the children in the Global South have realised that in the state of their country's minimal or non-existent educational funding and their family's abject poverty, if they do not work their right to education be jeopardised or will bypass them (Morrow, 2016). More interesting is that 'recent historical research that studies working children as active participants indicates that work for children could sometimes and somewhere be 'normal'' (Hanson and Vandaele, 2013: 251). These and similar findings have prompted various scholars (Abebe, 2008; Bourdillon, 2016; Klocker, 2014; Bessell, 2011; Hindman ed., 2009; Weston ed., 2005) to take a different position towards child work and child labour. Yet these positions and the acts of the human and children's rights regime have not only complicated the very rights they tend to defend, but in most cases they have left children in a dilemma. How to realise the right to education remains a puzzle and no single position concretely provides or specifies the way to follow to balance between a working and a work-free childhood.

2.1 The International Rights Regime and Children's Right to Education

There is a common saying among many human rights advocates that 'human rights cannot be given on a golden plate but have to be claimed'. Though this seems to refer to political and civil rights, it is also applicable to children's rights. In addition to this, however, in the Global South there are not only challenges in demanding social and economic rights, but also political and civil rights. Thus, demanding all rights is contentious. The demand for economic, social and cultural rights is particularly complex. These bottlenecks for enjoying economic and social rights emanate from the provision of the International Covenant on Economic, Social and Cultural Rights (CESCR). For example, Article 2 of the CESCR implicitly thwarts the rights of people to demand these rights by acceding power to the government to determine the extent to which it will make these social goods available, which are prescribed as being part of universal human rights. This article, in particular, has defined the special circumstances for citizen's access to economic and social rights. Such limitations are expressed in the CESCR Article 2 (3) which underscores that:

> Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization

of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Such suggested progression in the provision of these rights, poses some challenges to the very rights it sets out to enforce. Things get complicated when it comes to children's rights and the right to education, in particular, given their low status in society. That is to say, as one of the social goods under these economic and social rights, education becomes another impossible right to claim. This can be attributed to the indifferent status expressed in CESCR in the realisation or claiming of this right. Article 13 (3) of this convention states that:

> The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

The message expressed in this provision strips children from claiming their rights to education, by making them depend on the intentions and goodwill of parents and guardians, with minimal help from the government. In that respect, one can argue that from the human rights point of view, children's rights to education are not guaranteed but depend on the goodwill of parents, guardians and government. In this way, it contradicts the common image portrayed of the active child with rights. Similarly, constraints to children's enjoyment of the rights to education are also expressed by some Articles of the CRC. For example, Article 28 (1) of the CRC stipulates that 'States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity.' Such a progressive approach reflects the spirit of CESCR Articles 2 (3) and 13 (3). In this manner the right to education is dependent on the goodwill of governments that are charged with providing a better environment for the realisation of social and economic rights.

2.2 Should Children Work?

In the Global South, as might be the case elsewhere, 'the role and value of child work are under scrutiny as never before … where the rapid expansion of formal schooling, as well as broader social, political and economic changes, bring into sharp relief competing definitions of what 'good childhood should look like for this generation of children' (Pankhurst et al., 2015: 41). In this regard whether children should or should not work is one of the most controversial questions, whose 'yes' or 'no' response has far reaching consequences on children's educational right. As some 'scholars have … argued … the issue of child labour is contentious not only because many children work illegally, but also because their work concurrently involves interdependent realities of survival, socialisation, participation, abuse

and exploitation' (Abebe & Bessell, 2011: 765). As such 'children are not perceived as workers … [and] what they do is submerged in the low status realm of [the] domestic' (Nieuwenhuys, 1996: 243). That is to say, although children are actively engaged in work, they are deprived of its economic value or they can only work as long as they do not produce value or contribute to their families' welfare. This and similar entanglements have, for some time, deprived children's rights to produce value. In this way and as Hanson and Vandaele (2013: 262) argued, it becomes a critical challenge to understand or respond to whether children should work or not. Such approaches remain sceptical of the stance adopted in 1973 by the International Labour Organisation (ILO) Convention No. 138 in respect to child labour, which takes the prohibition of child labour as a starting point. The major question then is: given this approach to child labour, is it possible to regulate something that is legally prohibited, but nonetheless occurs in practice?

This approach to the universal prohibition of children to work is however contrary to other international documents. For example, Article 31 of the African Charter on Rights and Welfare of the Child (ACRWC) links children rights to their responsibilities towards their families, their communities and societies. Nevertheless, though ACRWC seems to be contrary to the globalised values of CRC, if critically assessed it is not. Instead it has been drafted to reflect the moral force expressed in the preamble of the CRC, which calls for 'taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child' (Bourdillon, 2011: 108). Nonetheless, children in the Global South do work, mostly not because the international convention forces them to do so, but as Nyerere (1968) argues, it should be part and parcel of their upbringing. In that regard, schooling should not be anti-work. This argument is the subject of the next part.

2.3. Working for Schooling or for Educational Rights Realisation Pragmatics?

The moral force of the disassociation between childhood and economic value creation is one of the many issues emphasised by the CRC and the ILO Convention No. 182. In that way 'dissociation of childhood from the performance of valued work is considered a yardstick of modernity, and a high incidence of child labour is considered a sign of underdevelopment' (Nieuwenhuys, 1996: 237). As a result, countries are conditioned to adopt and implement a set of idealised dichotomies between children and work, though they do not share similar or equal economic status. In that way, a work-free childhood is portrayed as the only universal and best childhood practice that protects and must be followed when raising children and, consequently, treating "school and work as exclusive opposites. In this view, school is appropriate, modern for learning, and investment in the future; work is inappropriate, backward, hinders learning and focuses on immediate exploitation rather than future' (Bourdillon, 2011: 100). In this way, these dichotomies and the projection of an idealised global childhood have, in most cases, been of no immediate help, apart from leaving the

majority of the children in the Global South at a crossroads since for most of 'them, school and work are not 'opposites' although many children find it difficult to juggle multiple and sometimes competing demands on their time' (Pankhurst et al., 2015: 41).

Most of the criticisms advanced have taken a positive stance towards combining schooling and working (Wambiri, 2015a; Wambiri 2015b; Tafere & Pankhurst, 2015; Bourdillon, 2016; Bourdillon et al., 2010; Abebe, 2009). To them work should not be divorced from childhood and schooling should be hand in hand with working. Some of the early criticism of the work-school dichotomy was expressed almost thirty years before the adoption of the CRC in 1989. For example, in his critical analysis of the ills of the inherited colonial educational system in Tanzania, Nyerere (1968: 70) in his *Education for Self-Reliance,* advocated for the mainstreaming of work in the educational curriculum, depending on the immediate economic activity available in the locality. To him 'children who attend school should participate in family work—not as a favour when they feel like it, but as a normal part of their upbringing'.

In a particular way, the post CRC era seems to be dominated by the children themselves. The criticisms and propositions from the Working Children's Association have made significant landmarks in the defence of children's combination of working and schooling. For example, the Kundapur Declaration which was the outcome of the first International Meeting of Working Children held in India, in 1996, is among the first and well elaborated pro-working and schooling documents from children's representatives. Two articles of the ten articles of this Declaration are worth of quoting here. They declared that: 'We want an education system whose methodology and content are adapted to our reality; [and] we are against exploitation at work but we are for work with dignity with hours adapted so that we have time for education and leisure' (Liebel, 2013: 233; Hart, 2008: 415). In addition to that, the most recent important landmark from the working children self-advocacy and their associations have been the current demands for active involvement in the 'discussions on how child labour is to be regulated nationally and internationally [and the demand for] recognition of their living right to work in dignity' (Hanson and Vandaele, 2013: 250). This is how children continuously express their views in which they have nailed down a feasible approach to realise the educational rights which are dependent on work. It is well noted that 'Children do not discover their rights after exposure to metropolitan rights discourse, but become aware of their rights as struggle with their families and communities to give meaning to their daily existence' (Hanson and Nieuwenhuys, 2013: 4).

Judging from these trends among the working children associations, one can appreciate the resistance to universalisation in favour of particularisation of childhood(s) in the implementation of rights expressed in the CRC. While this is genuine, for it to be effective and progressive to children demanding the right to schooling and working, there is a need to view children's contributions in a holistic manner and as a continuum, having multiple advantages and potential risks (Bourdillon et al.: 2010). Peru stands out among those countries that have granted children the right to work. Under the Children and Adolescent

Law promulgated on 28 December 1992, the Peruvian government stipulated and allowed children aged between 12 and 14 and 15 and 17 years four hours a day and twenty-four hours a week and six hours a day and thirty-six hours a week of work respectively (Liebel, 2013: 242-3). Thus, as Abebe (2015: 21) remarked, there is a revelation that 'for these children, growing up is linked to work, household responsibilities, and going to school, rather than just school and play.'

3. Conclusion

In this essay I have given a critical appraisal as to why there should not be dichotomies between school and work, while favouring for the combination of schooling and working beyond the cultural value of work and education (Morrow, 2016) as the best and feasible way forward and not just for meeting the ills of the conditionality of the international capitalist system (Abebe, 2015). Further to that, the essay has hinted towards how active working children can through their associations champion their rights to work in dignified working conditions. I have highlighted some of the tangible initiatives undertaken in order to codify children's work rights in Peru. Here I would like to conclude by reminding other countries who may follow the Peruvian footsteps, that codifying children's rights to work should not mean that governments withdraw from fulfilling their international obligation expressed by ratification of the CRC, but rather, this stance should serve as a stepping stone for contextualisation and implementation of children's rights expressed in such document. Children wishing to combine work and schooling should be given opportunities to do so without compelling all the children not to work. Parents should continue with their responsibilities while children should always know that they are not islands but part and parcel of the family or community.

References

Abebe, T. (2015). "Reframing Children's Contribution to Household Livelihood in Ethiopia through a Political-Economy Perspective." In: A. Pankhurst, M. Bourdillon and G. Crivello (eds.), *Children's Work and Labour in East Africa: Social and Implication for Policy* (Addis Ababa: OSSREA), 19-40.

Abebe, T. (2008). "Trapped Between Desperate Worlds? The livelihood, Socialisation and School Contexts of Rural Children in Ethiopia." *Childhood Today* 2(1): 1-29.

Abebe, T. and S. Bessell. (2011). "Dominant Discourses, Debates and Silences on Child Labour in Africa and Asia." *Third World Quarterly* 32(4): 765-786.

Bazerra, M.E.G., A.L. Kassouf and M. Arends-Kuenning. (2009). "The Impact of Child Labor and School Quality on Academic Achievement in Brazil." Discussion Paper IZA DP No. 4062. Bonn: Institute for the Study of Labour (IZA).

Beegle, K., *et al.* (2008). "The Consequences of Child Labour: Evidence from Longitudinal Data in Rural Tanzania." Policy Research Working Paper No. 4677. Washington D.C.: The World Bank.

Bessell, S. (2011). "Influencing International Child Labour Policy: The Potential and Limits of Children-Centred Research." *Children and Youth Services Review* 33: 564-568.

Bourdillon, M.F.C. (2016). "Labour as Education." In: T. Abebe, J. Waters and T. Skeleton (eds.), *Labouring and Learning: Geographies of Children and Young People* 10 Singapore: Springer Science and Business Media, 1-10.

Bourdillon, M. (2011). "A Challenge for Globalised Thinking: How Does Children's Work Relate to Their Development." *South African Review of Sociology* 42(1): 97-115.

Bourdillon, M., D. Levison, W. Myers and B. White. (2005). *Rights and Wrongs of Children's Work.* New Brunswick: Rutgers University Press.

Canagarajah, S. and H.S. Nielsen. (1999). "Child Labour and Schooling in Africa: A Comparative Study." Social Protection Paper Series No. 9916. Washington D.C.: The World Bank.

Demir, C.E., E. Demir, and S. Uygur. (2006). "The Relationship Between Work, School Performance and School Attendance of Primary School Children in Turkey." A paper Presented at the Annual Conference of European Research Association (ECER), September 2006, Geneva.

Hanson, K. and O. Nieuwenhuys. (2013). "Living Rights, Social Justice, Translation." In: K. Hanson and O. Nieuwenhuys (Eds.) *Reconceptualising Children's Rights in International Development: Living Rights, Social Justice, Translations*. Cambridge: Cambridge University Press, 3-26.

Hanson, K. and A. Vandaele. (2013). "Translating Working Children's Rights into International Labour Law." In: K. Hanson and O. Nieuwenhuys (Eds.) *Reconceptualising Children's Rights in International Development: Living Rights, Social Justice, Translations*. Cambridge: Cambridge University Press, 250-272.

Hart, J. (2008). "Children's Participation in International Development: Attending to the Political." *International Journal of Children's Rights*. 16: 407-418.

Hindman, H.D. (2009). "Editor's Introduction: Children Labour in Global and Historical Perspective." In: H.D. Hindman (Ed.), *The World of Child Labour: An Historical and Regional Survey*. New York: M.E. Sharpe, Inc., xxv-xxvii.

Liebel, M. (2013). "Do Children Have a Right to Work? Working Children's Movements in the Struggle for Social Justice." In: K. Hanson and O. Nieuwenhuys (Eds.) *Reconceptualising Children's Rights in International Development: Living Rights, Social Justice, Translations.* Cambridge: Cambridge University Press, 225-249.

Mavrokonsantis, P. (2011). "The Impact of Child Labour on Educational Achievement: Evidence from Vietnam." Young Lives Student Paper. Oxford: Young Lives.

Morrow, V. (2016). "Intersections of School, Work, and Learning: Children in Ethiopia, India, Peru, and Vietnam." In: T. Abebe, J. Waters and T. Skeleton (Eds.), *Labouring and Learning: Geographies of Children and Young People.* 10 Singapore: Springer Science and Business Media, 1-23.

Nieuwenhuys, O. (1996). "The Paradox of Child Labour and Anthropology." *Annual Review of Anthropology* 25: 237-251.

Nyerere, J. (1968). *Ujamaa: Essays on Socialism*. Dar es Salaam: Oxford University Press.

Pankhurst, A., M. Bourdillon and G. Crivello. (2015). "Introduction: Children's Work and Current Debates." In: A. Pankhurst, M. Bourdillon and G. Crivello (Eds.), *Children's Work and Labour in East Africa: Social and Implication for Policy*. Addis Ababa: OSSREA, 1-17.

Pankhurst, A., G. Crivello and A. Tiumelissan. (2015). "Work in Children's Lives in Ethiopia: Examples from Young Lives Communities." In: A. Pankhurst, M. Bourdillon and G. Crivello (Eds.), *Children's Work and Labour in East Africa: Social and Implication for Policy*. Addis Ababa: OSSREA, 41-74.

Punch, S. (2003). "Childhoods in the Majority World: Miniature Adults or Tribal Children." *Sociology* 37(2): 277-295.

Qvortrup, J. (2001). "School-Work, Paid Work and the Changing Obligations of Childhood." In: P. Mizen, C. Pole and A. Bolton (Eds.), *Hidden Hands: International Perspectives on Children's Work and Labour*. London: Routledge Falmer, 91-107.

Shackel, R. (2015). "The Child's Right to Play: Laying the Building Blocks for Optimal Health and Well-Being." In: A.B. Smith (Ed.), *Enhancing Children's Rights: Connecting Research, Policy and Practice*. Hampshire/New York: Palgrave Macmillan, 48-61.

Tafere, Y. and A. Pankhurst. (2015). "Children Combining School and Work in Ethiopian Communities." In: A. Pankhurst, M. Bourdillon and G. Crivello (Eds.), *Children's Work and Labour in East Africa: Social and Implication for Policy*. Addis Ababa: OSSREA. 111-132.

Thu-Le, H. and R. Homel. (2015). "The Impact of Child Labor on Children's Educational Performance: Evidence from Rural Vietnam." *Journal of Asian Economics* 36: 1-13.

UN. (1989). The United Nations Convention of the Rights of the Child.

Wambiri, G.N. (2015a). "Compatibility of Work and School: Informal Work Arrangement in Central Kenya." In: M. Bourdillon and M. Mutambwa (Eds.), *The Place of Work in African Childhoods*. Oxford: African Books Collective, 165-184.

Wambiri, G. (2015b). "Parents' and Children's Perspectives on Child Work and Schooling." In: A. Pankhurst, M. Bourdillon and G. Crivello (Eds.), *Children's Work and Labour in East Africa: Social and Implication for Policy*. Addis Ababa: OSSREA, 133-142.

Weston, B.H. (Ed.) (2005). *Child Labour and Human Rights: Making Children Matter*. Boulder-Colorado: Lynne Rienner Publishers Inc.

Decolonising Sex: Fifty Shades of Rape

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This article explores how ideas of patriarchy have shaped the nature and effect of rape law. It argues that rape law reinforces patriarchy, and because of the inherent inconsistencies between the male roles of aggressor and protector, it has remained ineffective. Taking Kenya as its springboard, it analyses how ideas of sexual relations within and outside marriage are transplanted through colonialism; and how they morph and merge with analogous indigenous conceptions to entrench and formalise the continued subjugation of the female body. It explores the unintended consequences of the internationalisation of English Monogamy; and rape law reform and its continuity/discontinuity with the Civilising Mission.

1. Introduction

Colonialism, in many ways, was predicated upon Antony Anghie's (2005) dynamic of difference that constructed the world in a dichotomy of the civilised and the savages (Mutua, 2001). Perhaps the starkest of these differences was in the formations around which society organised itself. The concept of marriage in English law, and in many of Britain's colonies, was at complete variance. Thus, the Civilising Mission set out, in part, to reform and discipline the marital relationships of these poor polygamous pagans.

In colonial and pre-colonial Africa, the differences between the English and various African forms of marriage seemed irreconcilable. On these alien forms of marriage, the colonial courts repeatedly pronounced themselves with disdain and judicial disgust.[1] Invariably, they echoed Lord Penzance in *Hyde v Hyde and Woodmansee*[2] in proclaiming the superiority of English monogamy over indigenous marriage systems: 'marriage … defined as the voluntary union for life of one man and one woman, to the exclusion of all others' quickly became the marker of sophistication and civilisation on the family arena (Kang'ara, 2012).

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[1] See for example *Rex v Amkeyo (*1917) 7 EALR where Hamilton J in refusing to extend the protection of privileged communication to a wife of a polygamous man, called African forms of marriage 'concubinage' and wife purchase.
[2] (1886) L.R. 130

2. Pre-Colonial African Forms of Marriage

Certain elements of the African concept of marriage[3] were indefensibly inequitable and thoroughly discriminatory. John S. Mbiti's description exposes their philosophical underpinning:

> Marriage is the meeting-point for the three layers of human life ... *the departed*, *the living* and *those to be born*. The departed ... are the roots on whom the living stand. The living are the link between death and life. Those to be born are the buds in the loins of the living, and marriage makes it possible for them to germinate and sprout (Mbiti, 1991: p. 98).

Marriage was a heavily loaded concept with various stakeholders beyond the contracting couple. The departed or the living-dead were considered a party to the ceremony as they guided everyday life, and could intervene in the affairs of the living.[4] Their invocation had spiritual repercussions and situated marriage in the realm of religious[5] regulation.

The living encapsulated the couple, as well as their extended family, clan(s) and sometimes the tribe. Beyond the contemporary understanding of community, society was a rightful party in marriage with standing, and with justiciable rights and obligations. For example, in many Kenyan communities, it was the bridegroom's family's responsibility to pay dowry to the bride's father, and thus 'marry a wife for their son.' Conversely, fathers had the right to reject their child's choice of spouse, and enforce an agreement to marry.[6] In some communities, brothers of the husband had the right to chastise a 'wayward' wife, while others allowed a man's age-mate to have intercourse with his wife. In a polygamous marriage, the number of stakeholders increased exponentially, as did the rules governing the particularised resulting relations.

Perhaps the most important stakeholder in a marriage were 'those to be born.' Pronatalism underpinned African marriages. Children were considered a marker of wealth, distinction, and free labour. They were inextricably linked to a person's status and guaranteed property rights. A childless woman had no honour, no status and her access to

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[3] I am aware that this characterisation is problematic. African marriages are as varied as the communities in various states in Africa are. However, certain similarities exist. I use this problematic term, however, to mean marriages of indigenous African communities as contrasted with the colonising English forms.

[4] For more on ancestralism, particularly the concept of the living dead and their influence on activities of the living, see generally Mbiti (1991).

[5] Religion is a deeply divided concept in African tradition. I use this word while accepting Talal Asad's (1993) contention that in certain cultures (and certainly in Africa) religion/faith is not a separate anthropological category.

[6] In *Amulan Ogwang v Edward Ojok* (unreported), a father 'repossessed' his daughter from her husband for failure to complete bride price payments.

property was reduced. Further, children were seen as the rebirth of ancestors gone.[7] Thus marriage became an enterprise in the production and reproduction of life, with little regard for the incidental injustice it occasioned on women. This led to two main inequalities.

Firstly, marriage was co-existent with the life of the wife. Upon a husband's death, the wife was still bound to her dead husband, and independent remarriage was not a possibility. To secure the husband's lineage and continue to provide maintenance to the widow, practices like wife/widow inheritance developed. Generally, separation or divorce came at such a high material and reputational cost to a woman, that it constructively was not an option. A woman's only escape from an unkind husband was death – her death.

Secondly, in addition to endemic systemic polygamy, forms of marriage that amplified the utility of procreation evolved. High infant mortality rates that threatened the existence of the clan, the increased productivity that came with a large number of wives and children, the perceived high socio-economic status associated with having many children made polygamy extremely attractive. Further, since women's bodies were ideologically understood as incapable of owning or inheriting property, widows could only exercise such ownership through the agency of a man; an inheriting brother in law, a kinsman redeemer of sorts. Thus, various communities employed ethno-specific marriage forms, but the laundry list included levirate marriages, woman-to-woman marriage, sororate unions and forcible marriages.

Beyond these forms that treated women as inputs in the production of bio-power, other practices tangential to marriage and sexual relationships, such as wife-chastisement and compulsory female circumcision, further subjugated women. Since personal status and property systems were inextricably linked to marriage, the subjugation of women, by marriage, was complete.

The regulation of the female body and sexual conduct happened against this patriarchal background. The tools of this regulation had over time been fashioned for and by men. The African woman's body needed a savior. He arrived, in fairy tale fashion, waving the Union Jack. He offered English monogamy as salvation to the body so encumbered.

3. English Monogamy: A False Messiah

The notion that English forms of marriage were superior to their African counterparts, particularly in terms of protection to wives, was false. Granted, monogamy protects a wife from the vicissitudes of 'sharing' her husband (and therefore potentially diminishing her claim to wealth, entitlement, and status) with her co-wives. Further, embracing English marriage removed a wife from the realm of custom and the vagaries of the wielders of

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[7] This belief was expressed in nomenclature. Many names were either identical to grandparent's names, or spoke of the reincarnation of ancestors. For example, the Meru name Muriuki; Njoki or Kariuki in Kikuyu; Mutunga, Nzioki, Nzioka and Kasyoka in Kamba all mean '(s)he who has come back to life'.

customary law power.[8] However, monogamy did not vest it in the wife. It consolidated societal power and years of customary tradition, sealed it with Anglicanism and bestowed it upon her husband. And that 'Monogamy Power' was ominous and had potentially devastating consequences.

Consider the Doctrine of Coverture on which English monogamy was predicated. Sir William Blackstone's language exposes portentous intentions shrouded in the language of protection:

> By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection and cover she performs everything ... Under this principle of an union of person in husband and wife, depend almost all the legal right, duties and disabilities, that either of them acquire by the marriage.[9]

Coverture imbued a wife with certain disabilities, concerning property, reminiscent of a minor or a person with a mental disability. Specifically, a *femme covert* could not own property, enter into contracts, or obtain an education against her husband's wishes. Any property she owned before her marriage automatically vested on her husband at marriage, as did any property that she came to during her marriage. Marriage was the vehicle that disinherited women, and wherefrom there could be no disembarkation (Mill, 1869).

Coverture transgressed the thin line between property and person. No tort causes could arise between spouses. In certain instances, a wife's mental capacity was considered reduced, *ipso facto*, when she acted in her husband's presence. Specifically, if a woman committed a crime in the presence of her husband, the law automatically considered her his agent – a defence of compulsion existed. That such a defence arose, as a matter of course, is perhaps the strongest indicator of Monogamy Power's denial of a woman's agency.

Coverture also ceded the woman's body to her husband's control. Until 1891, a husband could lawfully chastise his wife and confine her. Coleridge J. in *Re Cochrane*[10] held that 'the husband hath by law power and dominion over his wife and may keep her by force within the bounds of duty, and may beat her, but not in a violent or cruel manner.' He also had the right to consortium[11] and a wife had a corresponding duty to provide it, and this right could be enforced through incarceration.[12] Inherent in this right, was the right to sexual intercourse. Since a husband had unfettered access to and control over his wife, and she was

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[8] In *Cole v Cole* 1898 1 NLR 15 for example, early in the colonial state, a widow was able to secure her inheritance against her husband's relatives by pleading English monogamy therefore enjoying protection against patriarchal customary rules of inheritance.

9 Sir William Blackstone, Commentaries on the Law of England Vol 1 (1765).

[10] (1840) 8 Dow PC 630. The court was finally overruled in 51 years later in *R v Jackson* [1891] 1 QB 671, CA.

[11] Defined as company, affection and society of one's spouse and included the right to sexual intercourse, cohabitation, the right of a wife to use her husband's name and so on.

[12] *supra* note 14

essentially his agent, then the idea that she could deny him sexual intercourse was preposterous. Consent to sex, for life, a core element of Monogamy Power, was presumed/acquired at marriage. She exchanged her agency for his cover – and therefore, there could be no rape in marriage.

The Hale doctrine expressed this subjugation in poetic eloquence:

> But the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract.

English monogamy was a false Messiah. While proclaiming freedom and equality to the captives of African customary marriage law, it exchanged one form of subjugation for another (Nyamu-Musembi, 2000). The African monogamous husband became the fulfillment of custom and law: the wielder of Monogamy Power, and the most eloquent expression of patriarchy.

Coverture was the nail on the coffin that was a woman's agency; and its legacy and other notions of patriarchy continue to impact family and rape law in much of post-colonial Africa.

4. 50 Shades of Rape: Patriarchy, Marriage and the Law

Rape law was undergirded by patriarchy and therefore was at best severely crippled, and at worst, still born (Davis, 1981; Crenshaw, 1989). The narrative of the development of rape law is framed against a somewhat schizophrenic man, who is at once an aggressor and protector.[13] As protector, he seeks to shield his would be bride from being deflowered by a stranger; or his daughters from the stigma of marriage without seal of virginity; or his children from the woes of disputed paternity. Clearly, the shield here really is for his own cover: to protect his right to deflower his own bride, his reputation, and his lineage, respectively. As aggressor, he seeks to escape the clutches of rape law, so he fashions it with crippled hands.

The imperial control of rape law by patriarchy is the strongest expression of Monogamy Power. The legal definition of rape betrays this heritage. S 139 (now repealed) of the Penal Code of Kenya defined rape as the 'unlawful carnal knowledge of a woman or girl without her consent or with her consent if the consent is obtained through force, coercion or false representations or in the case of a married woman, by personating her husband.' Carnal knowledge was further defined in the language of penetrating the vagina with a penis.

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[13] I owe this picture of a man as the aggressor-protector to Sylvia Kang'ara who also read earlier drafts of this work.

This penetration-centred definition does not capture women's experience of sexual activity. It is clinical, and does not speak to the nuances of foreplay, repeated penetration, continued copulation, or non-penetrative sex as part of a continuous sexual transaction. This fixation with a one-way domination and aggression has its origins in marriage law. At Common Law, a marriage was void for non-consummation. So central was the idea of penetration that in *Corbett v Corbett*[14] the court held that the penetration of an artificially (surgically) created vagina in the case of a post-operative male-to-female transsexual person did not rise to the threshold of consummation. Further, since impotence would vitiate consummation, it is conceivable that a man suffering from erectile dysfunction could not use an artificially created aid to penetrate his wife, and thus consummate the marriage. The law seemed married (pardon the pun) to the idea that marriage was anchored around a man's penetrating, conquering role.[15] Even at the wedding night, he was expected to be the (gentle) aggressor.

Under the Penal Code, rape was classified as a crime against morality, alongside living off the proceeds of prostitution and running brothels. It was constructed not as a violation of a woman's rights or body, but as a mere blemish on society's standards of decorum. This definition has changed somewhat, and years of feminist activism have yielded considerable results in rape law reform including the enactment of the Sexual Offences Act (SOA) of 2006. Section 3 (1) of the SOA redefines rape in gender neutral terms *viz.* '[a] person commits the offence termed rape if he or she intentionally and unlawfully commits an act which causes penetration with his or her genital organs; the other person does not consent to the penetration; or the consent is obtained by force or by means of threats or intimidation of any kind.' This definition reframes the aggressor-victim relationship in gender-neutral terms and by so doing begins the journey to subvert patriarchy's hold on sex and rape.

The new law makes a number of important interventions including creating new sexual offences such as gang rape,[16] expanding the definition of rape, imposing minimum mandatory sentences, creating the framework for DNA data banking and a sex offenders' registry, among others (Kamau, Nyaundi and Serwanga, 2013). Indeed, the SOA makes bold steps in expanding the justice spaces for rape victims. While acknowledging the progress that has been made, I wish to highlight inherent defects in the architecture of the law that continue the legacy of patriarchy's imperial hold on rape law.

Firstly, the Act still defines rape in the language of penetration. I have already demonstrated that penetration is a man's experience of sexual intercourse, not a woman's. A theory of sex constructed around penetration denies the agency of the actors once the

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14 [1971] 2 All ER 33

15 There has been some movement in this area. The Marriage Act of 2014 that consolidates all family law regimes now considers unconsummated marriages voidable at the option of the parties, not void *ab initio* as was the Common Law position.

16 Such as sexual assault, sexual harassment, deliberate infection with HIV/AIDS, child trafficking for sexual exploitation and child pornography, among others.

transaction is afoot. It assumes that after penetration there can be no withdrawal of consent. After all, how can you recall a conquering army once you have been overrun?

Recall that the SOA is a child of international feminist movements and is informed by globalisation of the law and of the women's movement. Unfortunately, this law reform agenda, akin to the Civilising Mission and the conversion to monogamy a century before it, suffers from the same blind spots (Halley, 2008a). It attempts to propagate women's rights within a patriarchal superstructure. In so doing, it continues the narrative of subjugation and exclusion. Some national organic movements have had some success, at deconstructing this superstructure. In Maryland,[17] for example, and in much of the USA, rape is defined in language that better describes the sexual experience of women and therefore countenances situations of the withdrawal of consent post penetration. New Zealand holds a similar position.[18] There is need to define rape in non-penetration language without downgrading the offence to sexual or indecent assault.[19]

In the efforts to criminalise and effectively prosecute rape in war through the making of the Rome Statute, the feminist movement was able to reconstruct rape, in domestic spheres and at peacetime, as a continuous war against women (Kapur, 2014; Halley, 2008b). These reconstructions and other feminist ideas travelled and informed national discourses on rape law, and perhaps even became 'sufficiently institutionalised' (Otto, 2010). Perhaps the most helpful turn in international law, in departing from penetration-based definitions of rape is found in *Prosecutor v Jean-Paul Akayesu*[20] where the ICTR Trial Chamber wrote:

> The Chamber considers that rape is a form of aggression and that the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts. The Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment does not catalogue specific acts in its definition of torture, focusing rather on the conceptual frame work of state sanctioned violence.

In this classic twist, the Court refuses to be bound by mechanistic descriptions – such as penetration, vaginas and penises – and focuses instead on the conceptual or perhaps power dialectic within which nonconsensual sex happens. The SOA would have benefitted much from taking this approach.

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[17] See *Baby v State* as discussed in Huff (2009) where the Maryland court held that after a woman's withdrawal of consent post-penetration, where a man continued penetration for five or six seconds more, this amounted to rape. Cf *Paul Ng'ang'a Kamau v. Republic* where the court stated that a woman may withdraw consent at any time *before* the sexual act.

[18] *Kaitamaki v R* [1984] 2 All ER 435 where the court held that sexual intercourse starts on penetration and 'continues' until it stops. If the act continues when consent is withdrawn the offense is complete. This case is still problematic, for purposes of this article, because it construes intercourse as beginning at penetration.

[19] The Rome Statute, for example, uses the language of 'sexual violence' and leaves this undefined. The ambiguity has been instrumental in allowing the court to give varying cultural constructions of 'sexual violence'.

[20] Case No. ICTR-96-4

Secondly, the Act gives a spousal rape exemption that ominously echoes the Hale Doctrine. The import of s.43(5) is to exclude the application of rape provisions from spouses.[21] The law continues to take this hands-off approach to domestic violence and marital rape, relegating it to the 'private sphere' where the law ostensibly cannot reach (Engle, 2005; Kapur, 2002; Charlesworth, 1996). This augments Monogamy Power. Granted, wives can rape husbands too, but by and large, the proclivity has been one of male domination and female subordination, and that is the focus of this article. Spousal rape is thus relegated to the civil sphere through constituting it as grounds for divorce.

Finally, rape law has created its others and established 'new forms of exile' (Otto, 2009). In true structuralist form, the rape victim must fit a certain mould to enjoy protection. She must be a single, young, pious, modestly dressed woman raped in broad daylight by a brutish stranger at gun point, amidst desperate screams. Single; because a married woman cannot be raped by her husband. Further, in many African communities, a person who raped a married woman paid her husband compensation. The woman got no justice. These cultural notions continue to influence how rape is understood and treated by victims, their support structures and the criminal justice system. Young; because an older woman ought to 'know better'. The persecution of rape victims along this line is common. She must be modestly dressed because a provocatively dressed woman was 'asking for it', and thus 'consent' could conveniently be inferred. In both these cases, *res ipsa loquitur* becomes a living doctrine in criminal law. She must be pious because the law does not protect women of loose virtue. Under S 3 of the Evidence Act, a rape victim's credibility can be impeached by showing that she is generally of immoral character. The tacit 'requirement' to fight off her attacker with Herculean strength, even to her dignified death, cannot be understated. If she survives, defence counsel will destroy whatever dignity she has left at trial. Once this mould of the 'protectable victim' crumbles, the law withdraws its protection.

5. Conclusion

The Civilising Mission attempted to, inter alia, liberate and dignify the African female body of the shackles of custom, systemic polygamy, violence and subjugation. It did so by rejecting African forms of marriage, and superimposing 'superior' English forms. Through a blend of large-scale legal transplant and incentives, the colonial state offered English monogamy as the panacea to the African woman's subjugated body. However, monogamy, though well intended, had unfortunate unintended consequences. The notion that it was protective of women's rights was based on a faulty predicate – monogamy was not a union of equals, but an imperial conquest of a man over his wife, and an assimilation of her body, agency and property onto his person. Thus, African monogamy took a menacing turn. Under these

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[21] See Kamau *et al*, *supra* at note 22

conditions, the male privilege inherent in custom and assumed from Common Law as infused by ideas of Coverture fused into ominous Monogamy Power that continued the chain of subjugation.

This legacy of patriarchy has shaped the contours of rape law rendering it impotent for the protection of women. The schizophrenic patriarchal lawmaker, at once the aggressor and the protector, created a law that only protected women at the convenience of men. The rape law reform project, informed by globalisation of thought and law, continues to suffer from potentially catastrophic blind spots. Particularly, it continues to construct rape in masculine terms. Until rape law is infiltrated and reconstructed, reflecting women's and survivors' experience of sexual activity, it will continue to be an ineffective tool against sexual violence.

References

Anghie, A. (2005). *Imperialism, Sovereignty and the Making of International Law.* Cambridge University Press.

Asad, T. (1993). *"*The Construction of Religion as an Anthropological Category." In: *Genealogies of Religion; Discipline and Reasons of Power in Christianity and Islam.* Baltimore, MD: Johns Hopkins University Press [1982], 27-54.

Charlesworth, H. (1996). "Cries and Whispers: Responses to Feminist Scholarship in International Law." *Nordic Journal of International Law* 65.

Crenshaw, K. (1989). "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics." *University of Chicago Legal Forum* 1: 139-167.

Davis, A.Y. (1981). "Rape, Racism and the Capitalist Setting." *The Black Scholar* 12(6): 39-45. Engle, K. (2005). "International Human Rights and Feminisms: When Discourses Keep Meeting." In: D. Buss and A. Manji (Eds.), *International Law: Modern Feminist Approaches.* Hart: 47, 52–4.

Halley, J. (2008a). *Split Decisions: How and Why to Take a Break from Feminism.* Princeton University Press.

Halley, J. (2008b). "Rape at Rome: Feminist Interventions in the Criminalization of Sex-Related Violence in Positive International Criminal Law." *Michigan Journal of International Law* 30(1): 2.

Huff, M. (2009). "The "New" Withdrawal of Consent Standard in Maryland Rape Law: A Year After BABY v. STATE." *The Modern American* Spring: 14-17.

Kamau, W., P. Nyaundi and J. Serwanga. (2013). "The Legal Impunity for Marital Rape in Kenya: A Women's Equality Issue." http://theequalityeffect.org/wp-content/uploads/2013/04/Marital-Rape-Paper-Winnie-Kamau-Final-edited-July-18.pdf Accessed on 28 April 2015.

Kang'ara, S. (2012). "Beyond Bed and Bread: Making the African State Through Marriage Law Reform," *Hastings Race & Poverty L.J.* 9: 353-395.

Kapur, R. (2014). "Gender, Sovereignty and the Rise of a Sexual Security Regime in International Law and Postcolonial India." *Melbourne Journal of International Law* 14(317): 20-22.

Kapur, R. (2002). "The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics." *Harvard Human Rights Journal* 15(1).

Mbiti, J.S. (1991). *Introduction to African Religion.* Heinemann.

Mill, J.S. (1869). *The Subjection of Women.*

Mutua, M. (2001). "Savages, Victims, and Saviors: The Metaphor of Human Rights." *[Harvard International Law Journal](#) 42(1): 201-245.*

Nyamu-Musembi, C. (2000). "How Should Human Rights and Development Respond to Cultural Legitimisation of Gender Hierarchy in Developing Countries?" *Harvard International Law Journal* 41(2): 381.

Otto, D. (2010). "Power and Danger: Feminist Engagement with International Law Through the UN Security Council" *Australian Feminist Law Journal* 32(1): 97-121.

Otto, D. (2009). "The Exile of Inclusion: Reflections on Gender Issues in International Law over the Last Decade." *Melbourne Journal of International Law* 10.*

Book Review

Review of "Give a Man a Fish: Reflections on the New Politics of Distribution", by James Ferguson, Duke University Press, 2015, 264 pp.

Development policy and discourse have long shied away from the idea of giving money directly to the poor. In his latest book, anthropologist James Ferguson argues that this reluctance is slowly giving way. He documents a veritable 'cash transfer revolution' taking place in the Global South, with countries such as South Africa, Brazil and Namibia in the vanguard. Drawing on a rich empirical and ethnographic literature on cash transfers and the livelihoods of the poor, with a focus on southern Africa, Ferguson delivers a thought-provoking analysis of the genesis, limitations and radical potential of these programmes. At its most original, the book is a meditation on dependence, distribution and the future of work and radical politics.

Cash transfer programmes in the South are not a catch-up version of the Northern welfare state, Ferguson emphasises. They are the product of specific regional histories and they constitute a pragmatic response to local conditions of impoverishment and persistent unemployment. Welfare states in the North were historically built on the model of full male employment, with benefits reserved only for those temporarily or permanently unable to participate in wage labour. Benefits were largely tied to contributions a person makes over the course of their working life. In contrast, cash transfer programmes in the Global South are non-contributory and extend benefits to large swaths of the population on the basis of a single selection criterion – age or disability. For instance, over a third of the population of South Africa receives some type of state grant (child grant, old-age pension, disability grant). Amid persistently high and long-lasting unemployment, benefits are allocated on grounds divorced from any reference to wage labour or employment.

Their innovativeness notwithstanding, cash transfers in southern Africa and elsewhere still carry remnants of the productivist rationale underpinning Northern welfare states. Able-bodied young men are excluded from the distribution of benefits on the assumption that they should be able to find paid work. In this respect, cash transfer programmes are as yet not attuned to a reality where there is a permanent scarcity of jobs and little demand for the low-skilled labour of the poor.

A number of more radical initiatives have recognised and proposed to remedy the above limitation by advocating for the introduction of a universal basic income grant (BIG). The most sustained of these have been in Namibia and South Africa, although neither has so far been successful. For Ferguson, BIG projects herald new ways of thinking that could finally decouple our ideas of distribution and social recognition from 'issues of labour and labour supply' (Ferguson, 2015: 29). This would be a promising development, given the ever

growing job deficit worldwide and the ineffectiveness of production- and work-based distribution of resources in meeting people's needs.

Ferguson calls for a politics of distribution, where each person would receive a share of the collective wealth by virtue of being a rightful owner of the common heritage, and not by having participated in production. The idea of the share goes beyond abstract individual rights and is grounded in the common sense understanding and claim-making of impoverished people in southern Africa, as well as in some non-Marxist sources of socialist thought that Ferguson explores. At the moment, cash transfer programmes still do not fully approximate this ideal, but Ferguson seems convinced that important strides have been made. To criticism arguing that cash transfers can only palliate but cannot change the status quo, he counterposes ethnographic evidence of how small amounts of money go a long way in helping people avoid abject poverty and become more, rather than less, self-reliant. He suggests that a small degree of income security could actually empower people to become more politically active and to seek new ways to articulate their demands.

Perhaps the most insightful part of the book is Ferguson's discussion of the question of dependence. A key point he makes at the beginning is that the long-standing reluctance to give money to the poor, and attendant fears of welfare-induced 'dependence', stem from the privileging in Western political imaginary of production as the main source of livelihood for the majority of people in society. Yet, in actuality, most people, even in highly industrialised societies like the US, survive by way of direct or mediated distribution of resources away from those actually engaged in production. To a much larger degree than in the North, distribution is especially key to life in the Global South.

Ferguson demonstrates that in southern Africa, dependence and distribution form part and parcel of the poor's day-to-day experience. The ability to make claims of dependence on others increases one's chances of survival. Seeking relations of dependence is thus a fully rational strategy on the part of the poor. Ultimately though, they might prefer to be equally provided for by a state through some form of guaranteed income rather than subsist on highly uneven networks of distribution, as at present. However, Ferguson points out, for ideas like the basic income grant to take hold, we will need to find other sources of recognition, self-worth and personhood that depart from the glorification of production and 'independence', and do not hinge on the work that we do.

With an ethnographer's attentiveness to empirical realities, Ferguson lends timely treatment to a phenomenon that has been noticed and studied by many in recent years, but never before in such a comprehensive and analytical fashion. Ferguson does not offer guidelines for the practical realisation of the radical possibilities he suggests, and he might well be mistaken about the meaning of the cash transfer revolution. His point, however, is that social scientists need to study actual developments rather than keep recycling well-known critical narratives. When purportedly neoliberal states routinely hand out money to an ever-increasing number of citizens, the time has come for social science to revise its theoretical labels. *Give a Man a Fish* makes a valuable step in that direction.

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