Africanizing African Legal Ethics

This book is a philosophical inquiry into indigenous African legal ethics, asking what is African about African legal ethics?

Taking us beyond a geographical understanding of Africa, the author argues for an African legal ethics that is distinct from non-African African legal ethics which are rooted in Euro-Western constructions. De-silencing African voices on African legal ethics this book decolonizes the prevailing wisdom on legal ethics and broadens our understanding of how law in Africa bears on ethics in Africa or, conversely, on how ethics bears on law in Africa.

This book will be of interest to scholars of African philosophy, philosophy of law, and legal ethics.

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Introduction

Wisdom is like a baobab tree; no one individual can embrace it.

African proverb

The study of legal ethics, whether African or non-African, ultimately takes us beyond the normal dos and don’ts in professional legal practice. It leads us to the study of ethics in general – a study of how one lives or ought to live as a human being. In this more basic study of legal ethics, neither lawyers nor their professors are privileged. It is a study that is fundamentally open to all human beings for it is about all of them. It is a study in which the being of every human being is at stake. Accordingly, an authentic African legal ethics, an ethics referred to herein as African African legal ethics, has being African on focus. Africanizing African legal ethics aims at ensuring that this ethics is properly and accurately focused. The legal ethics that prevails in Africa today is Euro-Western. It diverts Africans from themselves; hence, the need for an Africanizing ethics if this diversion is to be halted. Colonialism in Africa exemplified this project of diversion. Anti-colonialism sought to halt it. Today, colonialism has morphed into neocolonialism. Hence the continued relevance of the Africanization of African legal ethics.

At the dawn of postcolonial Africa, there was widespread belief and expectation that Africanization of governments would take place. European colonial legislators and high-level European colonial administrators would be replaced by Africans. Moreover, since Europeans viewed themselves as white and socialized Africans into viewing them as such, and viewed and socialized Africans into viewing themselves as black, it was assumed that white personnel would
be replaced by black personnel. Apparently, Africanization called for a replacement of white legislators and high-level administrators with black legislators and high-level administrators. Clearly, race was a central feature in this process. This book opposes this concept of Africanization. It is pointed out that Africanization is precisely what it is: Africanization. It is not blackening. Africans are not black. They are what they are: Africans. Consequently, what is at stake in the process of Africanizing African legal ethics is, indeed, Africanizing it and not blackening it. If Africanization is needed, it is because African legal ethics is still plagued by racism. It is yet to be what it ought to be. The process of deracialization is yet to come to an end. It is also a process that is preeminently ethical in that it seeks to reassert the human right of Africans to be African. In the reassertion of this right, African African legal ethics has a prominent role to play. It can properly and appropriately play this role by articulating what this right is. This articulation displays the intrinsic human worth that the African shares with fellow human beings. The arena of legal ethics is projected as one of the theaters that ought to display this worth.

Legal ethics whether African or non-African addresses the phenomenon of being human. Addressing the phenomenon of being human is more than a matter of knowledge. Fundamentally, it is a matter of wisdom. To the extent that most of modern legal education shuns wisdom and has reduced legal science to being nothing more than an epistemological concern, little is accomplished in delving into what is essential about legal ethics and about ethics in general. Africanizing African legal ethics involves paying closer attention to the essential role played by wisdom in constituting and disclosing this branch of ethics.

In human history, wisdom has not always been left out in legal education. But today, for the most part, it appears to have no place in it. It is not what attracts teachers or students to law school. It is the knowledge of law and the knowledge of its application that has been the center of attraction. Consequently, it may come across as diversionary when wisdom is broached in a reflection on legal ethics as it is taught in law schools. However farfetched it may appear, attention to wisdom may enrich our understanding of law, our understanding of legal ethics and, hopefully, inform legal practice. It may not be obvious, but a critique of conventional legal education may enrich legal education. Society stands to benefit from such a critique for the welfare of society depends on how legal education
is understood. Taking legal ethics seriously as an integral feature of legal education (not only by requiring students to take a course on legal ethics) may enhance the well-being of society.

There is what is subject to wisdom and there is what is subject to knowledge. Seekers of wisdom are not necessarily seekers of knowledge, and seekers of knowledge are not necessarily seekers of wisdom. One may be a seeker of both but seeking will be blind if one mistakes one for the other. One who mistakes one for the other will miss out on the truth of both. Our age – an age that has increasingly fallen prey to the dictatorship of knowledge – has left little room for wisdom. This is the situation in which we find ourselves as we seek to understand African African legal ethics. There are those who expect nothing more than the knowledge of this ethics and expect to be presented with such knowledge by the author. I want to disabuse them of this expectation. What follows is not exclusively a matter of knowledge. It touches on wisdom. Wisdom cannot be put on a calabash and passed around for consumption by the hungry. This kind of passage is a matter of knowledge and not a matter of wisdom. In African cultures, if wisdom is ever transmitted, transmission takes the form of a proverb. In the presence of a proverb, there is no teacher and there is no student. One is left to oneself to make sense of the proverb. The African baobab proverb that opens this work permeates the entire work and seeks to preserve it in it. A proverb loses its sense if it ceases to be what it is. What is truly proverbial remains proverbial. What is essential about African African legal ethics is proverbial and must be understood accordingly. It appeals to the proverbial in those who seek to understand it. Elemental understanding is and remains proverbial. The proverbial has its own lucidity – proverbial lucidity.

A baobab tree is one of the oldest and among the most resilient of African trees. This tree is suggestive of what one can learn about African African legal ethics. To think about it is to think about Africa just as to think of African African legal ethics is to think about Africa. To think about it is to think of it as rooted in and as nourished by the African soil. Each of the branches of the baobab tree is a branch of the baobab trunk and the trunk itself is a trunk of the roots of the baobab tree. The roots of the baobab tree are rooted in and are nourished by African soil. Africans too are rooted and nourished in and by African soil and so is the African African law and African African ethics. This is the context in which one is to think about African African legal ethics.
By African soil, one is to understand African society and culture, both of which are to be understood in their multiplicity. Just as a baobab tree has branches, so does the African community. African African legal ethics is a branch of the African community. It is this community that nourishes it. The longevity and the resilience of the African baobab tree are analogous to the longevity and resilience of African African legal ethics. Respect for longevity in Africa is legendary. It is demonstrated by the respect that Africans have for their ancestors. Ancestors play a major role in the formation of the African sense of who they are. They are crucial for the existence of African African law and for the existence of African African ethics.

But it should not be forgotten that there is a colonialist lie that was once perpetrated by Euro-Westerners that Africans worship their ancestors and that they are resistant to change. Africans as is the case with other human beings have a complex relation with their ancestors. They keep what is worth preserving and leave behind or discard what is useless or what is an impediment to the present. What blocks the future is set aside. African culture is not a mummy or a fossil. It is a living culture. As Frantz Fanon reminds us, “Each generation must discover its mission, fulfil it or betray it, in relative opacity.” Each generation faces an inescapable ethical choice. African ancestrology is tapped to interpret the present, to critique the present, and to pave the way forward. If this is understood, one can grasp the trauma to which Africans were subjected during the slave and colonial eras – eras in which Africans were violently uprooted from their ancestral tradition and from their homeland. By being uprooted from their ancestral homeland, they became uprooted from themselves. There was an intrinsic connection between what they were and what their ancestral homeland was. The intimate link between them and their land was severed during the colonial regime. This severance was legitimized by the values of the Euro-Western colonizers. In his classical work on colonialism, Frantz Fanon has noted that,

... every time the issue of Western values crops up, the colonized grow tense and their muscles seize up ... Now it so happens that when the colonized hear a speech on Western values they draw their machete or at least check to make sure they are close to hand. The supremacy of white values is stated with such a violence, the victorious confrontation of these values with the lifestyle and beliefs of the colonized is so impregnated
with aggressiveness, that as a counter measure the colonized rightly, make a mockery of them whenever they are mentioned.\(^2\)

The above words were uttered during the heyday of the anti-colonial struggle in Africa. In postcolonial Africa, the horizon is relatively clear. It makes sense now to ask what values have replaced the hated Euro-Western values. We are asking about African African values. What has happened to the machetes that were close at hand when Euro-Western values were mentioned? Are they close at hand or have they been put away, sold, or been taken up by *Jua Kali\(^3\)* industry and forged into different instruments and placed in local economy? Are the African African values that fueled anti-colonial struggle fueling postcolonial social existence or have the western colonial values resurfaced in new clothing? Concern with values is an ethical concern. Accordingly, to ask about the African African values that have replaced the hated Euro-Western values is to ask about African African ethics. I focus attention on legal ethics, and more particularly, on African African legal ethics to make the question and answer more manageable.

In writing about African African legal ethics, one should not only be mindful of the plurality of legal ethics in general. One should also be mindful of the plurality of African legal ethics. It is precisely for this reason that we speak of African African legal ethics. We do so to distinguish African African legal ethics from non-African African legal ethics. The distinction is not easy to make because different genres of legal ethics overlap. Otherwise, all would not fall into the category of legal ethics. Differently stated, no genre of legal ethics is closed off entirely from other genres of ethics. African African legal ethics is not an exception. Students of one genre of legal ethics can learn from students of another genre of legal ethics. What is true of legal ethics is equally true of law and of ethics. There is an overlap in conceptions of genres of law and an overlap in the genres of ethics.

The world in which we live today has reached a point where no regime of law is isolated from other regimes of law. Consequently, internationalizing of the understanding of law has increasingly become a necessity. With internationalization of understanding of law, there has emerged internalization of the understanding of legal ethics unless, of course, one accepts the separation of law from ethics. The separation may be societal or culture-specific. The jury is still out on what law is and what ethics is, and there appears to be no
end in sight for jury deliberation in either case. Accordingly, the link between law and ethics remains problematic. To be sure, this process has not done way with the particularization of law or the particularization of ethics. Felix Frankfurter, a United States Supreme Court Justice once noted that,

The law is what the lawyers are. And the law and the lawyers are what the law schools make them.

What he says is half of the truth. The other half of the truth is to be found in the answer to what makes law schools law schools. One possible answer is that it is the law and the lawyers that make law schools law schools. However, this answer is unsatisfactory. It is circular. And as such, it is an evasion of the answer. Law schools do not exist in a societal vacuum. Societies in which they exist make them what they are. If this is conceded, it would follow that it is society that makes law and lawyers what they are. In turn, law, lawyers, and law schools make societies what they are. They also give legitimacy to societies. Given the fact that human societies are not fungible, it would follow that different societies give rise to different law schools, different laws, and different lawyers. This scenario provides a basis for the grounding of the conception of legal ethics. Ultimately, legal ethics has a societal foundation. Given the diversity of human societies, an understanding of legal ethics must rest on its respective societal foundation. Hence, it is reasonable to speak of an African African conception of legal ethics – a conception that has its foundation in African society. It is pure obfuscation or nonsense to speak of legal ethics in itself – a legal ethics that is beyond the parameters of society. This obfuscation or nonsense is not without societal consequences. It opens the door for the possibility of societal imperialism – a situation in which a society imposes its will on another society. Legal ethics, in other words, improperly understood, can be of service to societal imperialism. In part, it is to alert one and to ward off the danger of societal imperialism that a case for African African legal ethics is being made. Law schools, law, and lawyers are not neutral. They serve specific societies. It is politically harmful to African law schools, lawyers, and African African legal ethics to buy into neutralism.

African African legal ethics: what is one to understand by this? Association of Africa with law and with ethics? Isn’t Africa the
home of tribes or the home of ethnic groups? Should one have in mind tribal or ethnic legal ethics? Is there law or ethics in African tribes or in African ethnic groups? Aren’t African tribes or ethnic groups without law and without ethics? Aren’t law or ethics primarily features of European modernity that have been introduced to Africa by the European missionaries of law and by the missionaries of ethics? Do Africans have a say in answering these questions or should they look up to non-Africans, especially to Euro-Westerners for answers? What or who determines the location of legal ethics? If Euro-Westerners stand out as the sources of the answers to these questions, it should not be a surprise because they have projected themselves as the global masters of the discourse on law and on the discourse on ethics. They have projected themselves as the missionaries of law and its rule and, if ethics is to have a place in this rule, it is reasonable to assume that they will also pose as missionaries of legal ethics. In modern history, Africans have borne the brunt of this missionary activity. Where missionary activity thrives, truth does not thrive. Missionaries profess to have a monopoly of truth and resist entering in an open dialogue on truth with those they perceive as their opponents. They are dogmatists. In speaking about African African legal ethics, one must be on guard against dogmatism.

In Euro-Western modernity, Africa has been projected as a lawless continent, as a continent without ethics which would make the concept of African African legal ethics empty and, hence, meaningless. Clearly, there have been and, perhaps, there still exist a European Africa and European Africans. Such an Africa has not been and is not an African Africa, and the European Africans have not been and are not African Africans. It is important to bear this distinction in mind and, precisely, it is for this reason that I qualify African legal ethics with the word “African” to set it apart from non-African African legal ethics.

Contrary to conventional belief, it is important to bear in mind that, from an African standpoint, there are no tribes in Africa. African tribes are inventions of Europeans. Without tribes there is no African tribal law and there is no African tribal legal ethics. Thus, tribal legal ethics exists only in Euro-Western imagination. Unfortunately, in modern African politics of self-reference, one finds millions of Africans who have embraced the absurd and preposterous tribal identity as their identity. Equally preposterous are Africans who seek to avoid tribal identity by adopting a modern or a
cosmopolitan identity oblivious of the fact that these identities are essentially constructions of Euro-Westerners and are negations of indigenous African identities.

In the period of history when Euro-Westerners constructed African tribal identities, they did not construct their own tribal identities. The implication was that they were a people without tribal identities and, given their evolutionary view of history, the implication is that they had evolved and transcended tribal identity. Tribal identity, apparently, is an identity reserved for backward and uncivilized people, which Euro-Westerners are not. Another failure to come to terms with indigenous African identity is to refer to African identity as “tribal customary” identity which would make it possible to speak about the existence of “customary” law and, consequently, the existence of “customary” legal ethics. Here, the notion of “customariness” is contrasted with modern Euro-Western identity which allegedly has transcended customariness. One rarely if ever hears of Euro-Western “customary” identity which would imply the existence of Euro-Western “customary” law or Euro-Western “customary” ethics. Moreover, the term “customary” as understood in international law or as is understood in modern Euro-Western law, does not convey the negative implications when Euro-Westerners use it to refer to Africa to describe African “customary” law or African “customary” ethics. It refers to common or to usual practice within or among groups or entities. However, as generally understood by Euro-Westerners, African “customary” law refers to a law that is yet to count as fully “developed.” African African conception of law and its attendant ethics is not a law in the Euro-Western evolutionary context. In part, it may be said that it comes into being as different from and in opposition to what Euro-Westerners have made of the African law and of its attendant ethics. African Africa law and its attendant ethics lead us to an indigenous African African identity on which African African legal ethics is to be grounded.

For the most part, today, what goes by the name of legal ethics is a Euro-Western construct. When Euro-Westerners write or speak about it, they have themselves as the audience. When they write or speak about legal ethics, there is no need to qualify it as European. It is taken for granted that it is. One who writes or speaks about African African legal ethics as if it were other than Euro-Western legal ethics faces a formidable task. One is pressured to prove that
there is such an ethics. But for a Euro-Western writer or speaker who writes about legal ethics, such pressure does not exist. The existence of Euro-Western legal ethics is taken for granted. The Euro-Western writer or speaker does not even have to call it European since European legal ethics is *the* legal ethics. This legal ethics preempts writing or speaking about any other legal ethics simply by denying that there is any other legal ethics that one can write or speak about. Enormous pressure is exerted on the African to think and write specifically about the uniqueness of African legal ethics (African African legal ethics) and to stay away from gross generalization. Such pressure has grave consequences. It may lead to the silencing of the African since referential generalization is unavoidable. There is nothing inherently wrong with generalization if it is borne in mind that a generalization is what it is: a generalization. Generalization is inherent language. It is unjust to pressure Africans to bear the burden of being specific while shielding Euro-Westerners from bearing such a pressure. Specificity has limits. It could obscure what human beings have in common.

One of the missions of Euro-Westerners in colonial Africa was to silence the African African voice on legal ethics. To be sure, in their eyes, there was nothing to silence since indigenous African legal ethics did not exist. This silencing has continued in postcolonial Africa. To write or speak about African African legal ethics is to de-silence this silence and to bring into relief a renaissance of indigenous African African voice. To do so is to decolonize the prevailing voice of legal ethics. For Africans, at stake is the liberation of African African legal ethics, which calls for both the liberation of the law and for the liberation of ethics. This activity is not only foreign to Euro-Western legal ethicists; it is generally unrecognized and is dismissed by them as trivial or as inconsequential. African African legal ethicists are yet to break away from the spell of Euro-Western inspired legal ethics. They are yet to fully embrace the need for a liberationist legal ethics – an ethics that would have an African African footing. Most of them are parasitic to Euro-Western legal ethicists and are likely to regard liberationist legal ethics as an unwelcome distraction from legal education and from legal practice.

Scholars who have written or spoken about legal ethics have had in mind fellow legal ethics scholars, legal ethics professors, law students, or practicing lawyers. They are at home in a cage populated primarily by this audience. Euro-Western conversation on legal
ethics is held hostage in this cage. The conversation is privatized or monopolized by the population in this cage. In what follows, what is said about African African legal ethics is intended to contribute to the freeing of the conversation on legal ethics from this cage and to releasing it into the public arena where it essentially belongs. It should be anticipated that some inhabitants of this cage will put up a stiff resistance to this undertaking and will seek assistance from lawyers, administrators in law schools, and from the advocates of professional ethicists in non-legal professions. Although it is not explicitly obvious, ultimately, it is to the advantage of legal scholars, lawyers, and to those involved in legal education to contribute to the dismantling of the cage in which conversation on legal ethics is currently held hostage. Law school is no longer to be taken as the only home for conversation on legal ethics and neither are law journals, law reviews, nor other conventional sites for legal research and scholarship. Law school and these other sites are not to be construed as primarily the sites for the conversation on legal ethics. This conversation should take place primarily where it ought to take place: in society. Law and the ethics are essentially and ultimately societal matters. For Africans, it is the African African society that is to be the primary site for legal ethics, and those who seek to understand this ethics must do so in the context of African African society.

Lawyers and their clients do not live in a world isolated from everyone else. Neither lawyers nor their clients exist in a societal vacuum. They do not exist in a world that is separate from the world in which everyone else exists. Ultimately, knowledge of legal ethics is embedded in this larger world. Moreover, this larger world *essentially* legitimizes lawyering. Legal ethics exists and is intelligible in the context of general ethics – the ethics of this larger world. In what follows, what is said about African African legal ethics is intended to foster and nourish this awareness. It is a critique of in-house legal ethics theorizing (caged theorizing) that one finds in the bulk of existing legal ethics literature. At its peril, this in-house legal ethics theorizing ignores public legal ethics theorizing. A writer or speaker on African African legal ethics must do so in a way that does not legitimize caged theorizing and, to not do so, he or she must be guided by that from which legal ethics ultimately springs: African African society and culture.

In his book, *African Philosophy: Myth and Reality*, Paulin Hountondji asks a question that I believe is relevant to a reflection
on African African legal ethics. The question he asks is whether the word “philosophy” when qualified by the word “African,” must retain its habitual meaning, or whether the simple addition of an adjective necessarily changes the meaning of the substantive. The same question can be asked of the expression “African African legal ethics.” That is, must the expression “legal ethics” when qualified by the words “African African” retain its habitual meaning or must the simple addition of the double adjectives necessarily change the meaning of the substantive? The two questions are not mutually exclusive for, generally, ethics is viewed as a branch of philosophy. Hountondji’s answer to the first question is “no.” The substantive aspect of philosophy does not change and to the extent that ethics falls under philosophy the more the addition of the double adjectives “African African” does not change the substance of ethics. The adjective “African African” is nothing more than a geographical designation. Likewise, when applied to ethics, the adjective “legal” does not substantively change ethics.

One need not necessarily be bound to Hontoundji’s position or to what he regards as the habitual way of speaking. It is not to be assumed that the “habitual” is necessarily correct. It may have to be rejected and replaced by a more accurate way of thinking. As a philosophical position, what he says requires philosophical scrutiny. It is the nature of philosophy not to embrace any position blindly. Every position is subject to scrutiny, and this includes what is presented as a philosophical position. Blindness and philosophy are like oil and water. Even if it is conceded that the adjectives “African African” in the expression “African African legal ethics” merely point to a geographical location of legal ethics, it is not to be assumed that the meaning of “geography” is self-evident. Geography is charged with human significance. How legal ethics bears on geography and, in our case, how it bears on African geography calls for decipherment. Adjectives are not outer coatings of nouns. Nouns are not their substances. Nouns do not lie under them or beneath them. Behind adjectives or beneath them there is nothing. Adjectives are locations for the manifestations of nouns. They bear the meanings of nouns.

When the expression “Africa African legal ethics” is taken up by philosophy, inevitably it is subject to philosophical hermeneutics and so is every word in this expression. It is subject to hermeneutics because what is expressed is not self-evident. The expression is made up of the three words: “African,” “legal,” and “ethics,” and
what each of these three words expresses calls for elucidation. When they are brought together in the expression “African African legal ethics” what being together means is likewise not self-evident. At the outset, to preempt a misunderstanding, I want to state that, ultimately, it is not my intention to finally make what is not self-evident self-evident. I intend to deepen and broaden the power of imagination in the domain of African African legal ethics and, hopefully, in other domains of legal ethics, and in ethics in general. In matters that are elemental, as is the case with our theme, what is not self-evident perennially remains as such.

It is unlikely that someone who is not a practicing lawyer or a law professor will be taken seriously when he or she speaks about legal ethics. Apparently, speaking about legal ethics is reserved for those who practice law, for those who teach law, and for law students. They are the ones who are directly involved in the world of legal practice and in legal education. They are the ones who have first-hand knowledge of the ethical problems that arise in legal practice. At times, professors of legal ethics in law schools focus attention on cases that have been decided to extract the gems of legal ethics – gems that they subject to critical analysis. They assume that they have the first and the last word in matters that pertain to legal ethics.

For the most part, they consider those who are not members of the legal domain as intruders or as invaders who should be kept at bay. To do so effectively, they have professionalized legal education and legal practice. They have circumscribed legal practice. They have set up a perimeter around the legal profession and around legal education to ensure that no intruder breaches it to threaten the legal order within. They demand obedience from within and are ready to expel any insider who is doing or may be doing sabotage work from within. This is achieved through the establishment of codes and professional rules; and, of course, by helping determine who becomes a member of the legal profession. They call these codes and rules ethical (etiquette may be a more appropriate term of reference). Every lawyer is expected to be a sentry guarding the legal professional enclave.

Lawyers are strong supporters of the independence of the judiciary, for the judiciary itself is largely made up of lawyers and is supportive of the legal professional ethics and insist on autonomy or independence. Members of the judiciary rarely include non-lawyers. Apparently, the protection of this enclave is intended to preserve and enhance the integrity of law and it is assumed that
lawyers are more qualified than other members of society to perform this duty. It is noteworthy that the independence of the judiciary is taken to be essential for the administration of justice. It is assumed by lawyers that, as lawyers, they are in a better position to do this than other members of society. But this is mostly another way for lawyers to protect themselves and to protect their profession. It is a way to secure and promote their personal and professional interests. Only lawyers are expected to be officers of the court, and hence are expected to render support to the judiciary. Members of the judiciary have established judicial ethics to regulate judicial service. As lawyers, they are subject to legal ethics. Judicial ethics is a part of legal ethics and, like the latter it is severed from general societal ethics.

It is remarkable that, like other lawyers, in their academic training, members of the judiciary do not distinguish themselves in the study of justice. They are trained in law, not in justice. The question of how those who are not students of justice are expected to be exclusive servants of justice or to distinguish themselves in the promotion of justice ought to be troublesome. It is not self-evident how they can protect what has not been an integral aspect of their education. The practice of law is the practice of law; it not the practice of justice, and the administration of law is not synonymous with the administration of justice. One ought to have knowledge of what one practices and one ought to have knowledge of what one administers. If lawyers are expected to be servants of justice, this should be reflected in their education. Moreover, professionalization of legal practice leads the professionalization of legal ethics which implies that only lawyers have exclusive authority over such ethics. This is the heritage of legal ethics that Africans have inherited from the Euro-West, and they have been making concerted effort to indigenize it. African legal ethicists have been taken on as junior partners by their Euro-Western counterparts. They are parasitic to their Euro-Western counterparts. Their legal ethics is essentially neocolonial. They are yet to embark on the process of decolonizing African legal ethics. This decolonizing process has no currency in Euro-Western legal ethics theorizing. Euro-Western scholars of legal ethics do not distinguish themselves in the process of decolonizing legal ethics. They are largely conservative legal ethicists – conservative in that they are mostly guardians of the status quo in their respective societies and, in Africa, most legal ethicists preserve the vestiges of colonialist legal thinking and colonialist
practice. Were the decolonizing legal ethics process to take root in the Euro-West, Euro-Western legal ethicists would be challenging the colonizing legal ethics of Euro-Western societies. It would expose the complicity of Euro-Western legal ethicists in the colonization and in neo-colonization of Africans.

Generally, what is overlooked in the conventional lawyer’s legal ethics, and perhaps what is unconsciously repressed or suppressed is a look into the ground upon which legal ethics rests. It is often forgotten that legal ethics is a branch of ethics and, as such, it cannot be fully understood unless ethics, of which it is a branch, is understood. After all, legal ethics is one of the branches of ethics and, to make sense of it, it must be understood in the light of the common mother from which all branches of legal emerge. Ethics is the mother of all branches of ethics. It is the baobab tree to which every branch of ethics is intrinsically connected. As understood today, legal ethics suffers from motherlessness. Administrators of law schools and professors of law should be charged with desertion for the neglect of the care of a parent. To be sure, one of the problems with the charge is that the prosecutor and the prosecuted are going to be one and the same: lawyers. Most likely, the charge will be summarily dismissed as frivolous and as a waste of taxpayer’s money. Clearly, it is not in the interest of lawyers to indict and try themselves. Besides, the court is their private domain, and they will only let in those they want to let in, and it would appear masochistic for them to do what is apparently contrary to their interest.

It is not to be taken for granted that because lawyers are lawyers, they know what is best for themselves. Like the rest of us, they too are human, and ultimately, like the rest of us, they cannot fully grasp what constitutes their good without understanding what constitutes the human good. Ethics concerns what constitutes human good and it is this good that must be inescapably investigated by any and every properly understood legal ethics or, for that matter, by any other properly understood professional ethics.

What is said about African African legal ethics in what follows is primarily intended for those who have or ought to have an interest in law in Africa and how law in Africa bears on ethics in Africa or, conversely, on how ethics bears on law in Africa. Obviously, those involved in the legal profession in Africa and those who are involved in legal education in Africa are intended to be a part of the audience. However, it is not to be forgotten that law in Africa implicates all Africans and so does African ethics. Accordingly, every African has
a stake in the connection between law and ethics. Today, this connection is not always recognized. At this age of professionalism – an age in which each profession pursues its own trajectory and in which professions have increasingly been disconnected from everyday life, disconcertion between professions and between professional life and everyday life are rarely noticed. Academic ethics and academic law have been construed in a way that institutionalizes the disconnect between the two academic areas. To this extent, in part what is said herein is a critique of the academy, at least in its modern European sense. It is argued that the disconnect is a construct produced by modern European concept-industry and then exported to Africa. It has had and continues to have a destructive effect on African concept-industry and on African life.

It must not be assumed that what is understood as law or as ethics in modern Euro-Western society and culture is identical with what is understood as law or as ethics in African society and culture. This Euro-Western assumption guided and still guides Europeans in their one-sided relationship with Africans. It was violently insti-
tuted during the colonial and apartheid eras. What is said hereby is intended to sensitize the audience to this imposition and to devise means of getting rid of it. To write or to think about African African legal ethics today is to undertake a project of accomplishing this task. The life of Africans is at stake. For an African, the study of African African legal ethics is a homecoming process. It is self-study. It is guided and results in an African theory of self. Ultimately, it is an anthropology that is centered on being African. This center does not exclude non-Africans. Both Africans and non-Africans have a common ontological bond that makes them all human beings. Whether African or non-African each truthful branch of legal ethics has an intrinsic link to this bond.

It is evident that human community is socially and culturally diverse. This diversity gives rise to diversity in the conception of law, in the conception of ethics, and in the conception of legal ethics. However, in spite of diversity, the human community remains unified as a human community. Accordingly, in spite of diversity in the conception of law, in the conception of ethics, and in the conception of legal ethics, there is an underlying unity which must be recognized if the concept of human community is to make sense. The recognition contributes to the regulation of the conception of law, conception of ethics, and conception of legal ethics. The regulation constitutes and sustains harmony in the human community


and makes this community what it is. It would be absurd to expect a genuine African African legal ethics to be essentially different from any other genuine legal ethics. To be genuine, all legal ethics must have an essential link with all other legal ethics. It is such a link that allows for a meaningful critique of one’s version of legal ethics and that allows a meaningful critique of legal ethics versions held by others.

There is an African saying in which it is stated that “a hand, however big, will never cover the sky.” I am this hand and so is everyone else. It is a human hand. What I say about African African legal ethics is not intended to cover all that can be said about it. I do not profess to speak on behalf of every African African legal ethicist. No one can do so. Moreover, even if all African African legal ethicists were to try to cover the whole of African African legal ethics, much would remain uncovered. Similarly, if all human beings were to attempt to cover the whole sky, much of it would remain uncovered. As the African proverb says, “Wisdom is like a baobab tree; no one individual can embrace it.” To believe otherwise would betray obtuseness. Knowing our limits evinces a degree of wisdom – a degree of wisdom that prevents us from uttering nonsense when we speak about African African legal ethics or when we speak about anything else. Recognizing personal or individual limitation to our knowledge and to our understanding provides room for others to contribute to knowledge and to understanding. The unknown and the un-understood haunts what is known and what is understood as a reminder that what is known is not fully known and that what is understood is not fully understood. This is the background from which we are to navigate the course of African African legal ethics. It is a navigation that at the same time constitutes this course.

An inquiry into what is African about African legal ethics forms the substance of this work. Although, for the most part, the inquiry is intended to be philosophical, it is of benefit not only to philosophers but also to non-philosophers. Because a philosopher is not necessarily a geographer, a philosophical inquiry into what is African about African legal ethics takes us beyond a geographical understanding of Africa. To this extent, Africa is subject not only to multiple interpretations, but also to multiple constructions. Current interpretations or constructions are not exhaustive. A horizon is open to more. Africa is horizontal. When it qualifies African legal ethics, it calls attention to unfinished projection or projections of
this branch of ethics. Mogobe Ramose, a South African philosopher, has drawn attention to the Roman and Hellenic sources of the name “Africa” and maintains that Africans are to provide content and meaning to this name.\(^5\) This book is intended to provide the content and the meaning he is calling for. However, it is important to bear in mind that the name “Africa” is not a canvas on which content and meaning are to be inscribed. The canvas is the content and meaning that is inscribed. It does not preexist the content or the meaning. It is not the \textit{tabula rasa} of the classical empiricists such as David Hume on which sense impressions are registered and form the foundation of knowledge. The boundaries of Africa are the boundaries of its content and meaning. These boundaries are horizontal. They are open and must remain as such to do justice to Africa. What the Romans and the Greeks meant by Africa was Roman and Greek. What Africans mean by Africa is African. This book is a contribution to the African meaning of Africa and to the African meaning of being African. It is also a contribution to human self-understanding.

Notes

2 Ibid., p. 8.
3 \textit{Jua Kali} industry is an industry where old or discarded metal objects are forged or fabricated to make new inexpensive objects such as axes, pangas, hammer auto parts, metal gates, windows, doors, etc. Jua is a Kiswahili that means sun. Kali is also a Kiswahili word that has several meanings and as used here it refers to the sun which is very hot. The objects are made on streets or in inexpensive sheds.
a distinction between a lawyer’s jurisprudence and a philosopher’s jurisprudence. The two are not necessarily mutually exclusive. And how they are linked to each other remains to be explored. Even if the distinction is observed, there is still the problem of distinguishing an African philosopher’s jurisprudence from a non-African philosopher’s jurisprudence just as there is a problem in distinguishing an African lawyer’s jurisprudence from a non-African lawyer’s jurisprudence. To render these distinctions meaningful, it is important to elucidate what is meant by the word “African.” As this is done, it is important to retain the awareness of the protean nature of this meaning – the open-ended meaning of this word.

Notes
3 See René Descartes, Meditations on First Philosophy. Indianapolis, IN: Hacket, 1993.
ethics of today is not the African African legal ethics of tomorrow. On the other hand, if African African legal ethics is ahistorical; that is, if it does not change in the course of history, to ignore its ahistoricity does not appear reasonable. Clearly, at stake here is the philosophy of the history of legal ethics. One must make a case for the philosophy of history that is implied by either opinion should the term ethics be retained. African African legal ethics is sensitive to history. That is, it is not ahistorical. What the African African legal ethics reveals about the African is that the African is protean and as a human being, he or she embodies what is protean about being human. Being protean is not a monopoly of Africans. It is that to which every human being is subject. Again, what must not be forgotten is that indigenous African African legal ethics is not cast in stone. Changing belongs to it essentially. It is provisionally categorized. It is what it is contextually. The African in the African African legal ethics is an African who is in the process of endless constitution of what it is to be African. He or she is not to be found in genetic constitution or physical geography. African African legal ethics is one of the ways in which the identity of being African is constituted.

The existence or non-existence of African philosophy bears directly on the being of an African. Consequently, when African African legal ethics is taken up philosophically, the “African” in this ethics has the being of the African at stake. It is more than what a lawyer should or should not do ethically. Essentially, it is a matter of African anthropology – a matter of bringing into relief what it is to be an African.

Notes
5 Ibid., p. 9.
*Ubuntu*. This mode of being is not a result of a social contract. It pre-dates a social contract. Though not identical, it is closely related to the Greek word ‘polis’. To the African, outside *Ubuntu*, law and its rule of law is unintelligible. Consequently, as one can imagine there exists potential misunderstanding between Euro-Westerners and Africans when it comes to the understanding of law and its rule. What appears incontrovertible is that Euro-Westerners have attempted to impose their sense of law and its rule on Africans in the crusade to bring modernity to Africans. Ultimately, the attempt is to transform Africans into westerners. Such transformation is a violation of human dignity. It is a violation of the right to be human. It is contrary to humanism – at least to the type of humanism that emerges in *Ubuntuism*.23

When linked to ethics, an abstract conception of law (jurisprudence) generates a legal ethics that is abstract. Similarly, when law is linked to an abstract conception of ethics, it generates a conception of legal ethics that is abstract. In each case, abstractness rules. A legal ethicist has a choice to make either to be a servant of this regime or to be a servant of an opposing regime – a regime that recognizes that legal ethics is concretely situated, and to be concretely situated is to be situated historically, socially, and culturally. For the African African ethicist, it is a matter of coming to terms with his or her historical, social, and cultural situation – a situation that is not historically, socially, and culturally frozen. An African African legal ethicist cannot dispense with these contexts. For it is only by being contextual that he or she can appropriate and be appropriated by African African legal ethics. An African African legal ethicist must choose what he or she chooses to serve. He or she cannot avoid making a legal-ethical choice: abstract or concrete legal ethics. The choice that one makes guides one’s legal practice if one chooses to practice law. Equally, it must be understood that non-African legal ethicists do not function without making a choice. Decontextualized legal ethics is a fraud. It obscures the substance of legal ethics and its attendant jurisprudence.

**Notes**


3 Ibid., p. 184.
15 Ibid.,
17 Ibid., p. 116.
18 Ibid., p. 114.
20 Ibid., 126.
23 Ubuntuism is a way of thinking that has gained traction in South Africa although it is not exclusively restricted to South Africa. It is an expression of the view that one is a human being in a community with other human beings. It is a world related to Ujamaa as understood by Julius Nyerere and by John Mbiti who are credited with coining the expression “We are therefore I am.”
by this separation is not exclusively traceable to Euro-Westerners. Africans have played a role in bringing it about. It is a matter of historical record that after gaining their independence, some African nations gradually turned to authoritarianism and dictatorship causing much death and suffering on fellow Africans. We have witnessed Rwanda genocide, Darfur genocide, Liberia and Sierra Leone’s genocides, and other instances of crimes against humanity and deprivation of human rights in other African regimes. The way that law and its rule have been defined has contributed to these horrors. Exclusion of ethics from the definition of law and its rule has provided an environment for the emergence and perpetuation of these horrors. To be sure, much depends on how ethics is defined. Ethics can be defined in a way that provides an environment for the emergence and perpetuation of these horrors.

African African legal ethicists are the architects of tomorrow’s African cultural landscape, tomorrow’s Africa, and tomorrow’s cultured Africans. They are African culture workers. In carrying out this work, they are inevitably joined by other African ethicists, such as medical ethicists, political ethicists, and science and technology ethicists. It is the total conception and creation of the African that is at stake. They are agents of the re-Africanization of Africans and also agents of opening new dimensions of African social and cultural existence. The conception and the practice of law in Africa today must incorporate this agency and must be perceived as such by Africans. African African legal ethics must be understood dialectically. It is an ethics that must expose the ills of the current social and cultural existence and pave the way for an African social and cultural existence that is free of these ills. It must call attention to foreign contributors to these ills and, at the same time, be supportive of global efforts that seek to make the world a place where human dignity concretely pervades social and cultural existence.

Notes

3 Ibid, p. 211.


prepare them if they themselves are not prepared for it. The need for their re-education is yet to be recognized.

Notes

2 Ibid., p. 75.
human village. It is a cradle of humanity. A human being is always a human being. He or she does not mutate into a stone.

Legal ethics whether African or non-African, is a mirror of the present life, but it is a present life that is pregnant with a future life. It is actual as well as ideal. It must be constantly birthed. The world of African African legal ethics remains to be created. In creating it, Africans are joined and must be joined by fellow human beings. It is a creative human pro-ject, – a pro-ject in which human beings create who or what they are. Uniting law and ethics or recognizing the unity of law and ethics energizes and vitalizes this creative pro-ject. Legal ethics is an invitation extended to all of us by all of us under-take this human pro-ject.

*A hand, however big, can never cover the sky*

An African proverb

Notes

1 Strauss shares a deeply ingrained error about Greek thought – the error in believing that Greek thought is sui generis. The historical fact is that Greek thought was in part influenced by non-Greek thought, more par-ticularly, by African-Egyptian thought. See Professor Christos C. Evangeliiou’s book, *The Genesis of Philosophy When Greece Met Africa*. Sioux City, IA: Parnassos Press, 2015.


4 Frantz Fanon, *The Wretched of the Earth*, p. xlviii.