GENERATION, GENDER AND NEGOTIATING CUSTOM IN SOUTH AFRICA

Edited by Elena Moore
This book investigates how customary practices in South Africa have led to negotiation and contestation over human rights, gender and generational power. Drawing on a range of original empirical studies, this book provides important new insights into the realities of regulating personal relationships in complex social fields in which customary practices are negotiated. This book not only adds to a fuller understanding of how customary practices are experienced in contemporary South Africa but also contributes to a large discussion about the experiences, impact and ongoing negotiations around changing structures of gender and generational power and rights in contemporary South Africa.

It will be of interest to researchers across the fields of sociology, family/customary law, gender, social policy and African Studies.

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Magistrates do not support the men anymore. When the women complain they take their side, and we have to pay a fine.

[Native Affairs Commission Evidence 1881–82, cited in Essop Sheik 2014, p. 82]

Formerly an umzi [homestead] was under the thumb of the father, now it is under the thumb of the son. Things are bad now. Everywhere there is complaint of the growing disobedience of children.

[Gidli, a great-grandfather, cited in Hunter 1936, p. 60]

The children today do not even know their parents. A child lives wherever they want. As I’m talking to you my child is not here. She is sitting in a dirty place, a hostel in KwaMashu … this is not the place for a sixteen-year-old. Children have no respect, they swear at us, the parents.

[Angelina 2010 cited in Dubbeld 2013, p. 211]

Angelina is reported to have held post-apartheid social transformation responsible for the overturning of her social world (Dubbeld 2013, p. 211). But if Angelina spoke to members of previous generations, she may have heard them attribute the same concern to the introduction of the capitalist economy, the missionaries, or the colonial courts. From the colonial era to the present, what is striking about reading literature that spans two centuries is the consistent mantra of the ‘loss of respect, control and power’ that mainly older men (and sometimes older women) report about younger men and women. The view held by a range of politicians, colonial administrators and elders is that these social problems represent some sort of temporal rupture related to a change in values and customs, signalling a crisis. But these problems occur in each successive generation of men and women, and they are the problems of generational and gendered relations.

The current context is no different, as Angelina highlights. These references to tradition and custom, frame particular types of social action as legitimate. The idea that young men and women’s autonomy and assertiveness are ‘new’ also draws on distortions of the political, social and economic power young people have held in the past. Given the gravity of social and legal change in the
post-independent South African context, what is new about the ways in which generational and gendered relations occur at a time of negotiating custom?

**Part I: Negotiating custom in 21st-century South Africa**

This book explores the ways black men and women negotiate customary practices in their daily lives in South Africa. The chapters describe the desires of women and men in their negotiations of lobolo, inlawulo (payments for children born out of wedlock), ukuthwala (a practice encompassing different customary forms of precipitating a marriage, including through abduction), customary marriage including polygyny, female initiation and succession. The collection captures some of the commonalities and differences in people’s desires and challenges in negotiating customs. The authors situate these negotiations of custom within a sociocultural framework by providing a rich context of how daily negotiations take place amongst a wider range of changes in social relations in an era of increasing unemployment, poverty, urbanisation, welfare reform, neoliberal capitalism and changing living arrangements.

The book focuses on generational and gendered tensions as markers of social divisions and transformations as we investigate how such tensions and relationships are reimagined and reborn with new meanings in the post-independent period. We explore the mechanisms that produce change. Whilst we recognise the significant shifts in political and legal periods, we foreground the changes that individuals make on the ground as they decide to marry, leave marriages or become parents. Although in this book we examine generational and gendered relations, it is critical to highlight that for black people in South Africa, these relations have been underpinned by a long history of racialised oppression. Generational and gendered relations for black people in South Africa are intimately affected by the racialised social disruption.

In the last part of this chapter, we provide a historical overview of how the negotiations of customary practices have shifted through time and have been shaped by the exploitation of black people through the colonial and apartheid periods. This book demonstrates how ‘traditions’ of privilege were legislated and engineered at specific precolonial, colonial and postcolonial moments to favour the colonial state, chiefs, male elders and younger men. South African family life and the regulation of customary practices were radically transformed by British colonialism which fundamentally shifted gender and generational relations. We unpack how men and women negotiated customary practices at different historical moments and ascertain what this tells us about social change in the present. The volume is not a history of negotiating custom but acts as a contemporary set of studies that are deeply informed by historical questions.

This volume does not try to reveal the intricacies of customs, nor does it try to ascertain customary law. Instead, it examines power relations in negotiating customary practices in an ever-changing political economy. The book directs people away from focusing on specific customs in isolation and shifts attention to thinking about customs more generally. We recognise that there are
significant local variations in negotiating customary practices, both in the past and in the present. Some of the variations relate to the intricate nature of custom itself, some to the specific local politics of the locality and some to normative values regarding domesticity, traditional leadership, Christianity and so on. For example, Cousins (2013) noted how two neighbouring areas, under different traditional authorities in rural Msinga in KwaZulu-Natal, adopted fundamentally different approaches to the rules about women accessing land, where unmarried women in one area were permitted to access land yet unmarried women in the other were not. No attempt at full representation of regional, ethnic, or thematic coverage is made and given the diversity of subject matter, the chapters are relatively diverse in their content. They are, however, united in attempting to reveal how power oscillates in gendered and generational negotiations of custom. Whilst each chapter discusses the unique features of its local context, the volume’s broader context is the political economy and legal change in South Africa at large.

When we started this book project, we expected the law to feature more prominently in thinking about social transformations, social justice and particularly the impact of the Constitution of South Africa (1996) on people’s everyday life. However, this was not the story we were told in the narratives of people negotiating customs in the post-apartheid period, whose experiences lie at the heart of this book. Here we focus on the ways that customs are contested in ordinary spaces in which people live their lives. Although state law features as a set of resources, materially and discursively, what matters to people are the social relations embedded in the negotiation of custom. We argue that their effects on gender and generational relations are as important as understanding ‘the law’. We, therefore, foreground negotiations and changing kin relations, whilst considering the social significance of the law (and state) on the shaping of domestic relations.

The main argument of the book is that divisions and struggles within families are not new; what is new is the kind of divisions. New state regulations and social protection systems (for example, the democratisation of social grants to reduce poverty) since 1994 and the co-occurring process of deindustrialisation, has created change in the bases of inequality and power and has challenged former hierarchies. Through the evidence in the chapters, we argue that rural black women are reclaiming power whereby women effectively contest and challenge social, legal and cultural constraints. This is occurring at the same time as many black men in society are facing rapidly changing economic opportunities and high levels of unemployment which shifts the basis of patriarchal power once held. We argue that women contest patriarchal power by drawing on customary law with the support of state intervention, through state law and social protection mechanisms, in a context of deindustrialisation. We outline how the power women hold has shifted in different ways over time from precolonial, through colonial and into the present time. As an important part of the argument, we demonstrate how women’s power in negotiating customs employs previous repertoires of strategies to resist others’ power and
Elena Moore

assert their own power. Furthermore, we argue that even when state laws have been reformed to enable gender equality, there are still tensions between genders and generations as the older generations in some areas are losing parental authority and power over the regulation of their intimate lives.

**Black Rural Woman and Tracing Transformations in Power**

The chapters in this volume are wrought with examples of women’s resistance to power. In this part of the chapter, we examine women’s strategies of resisting power when negotiating custom in 21st-century South Africa as well as what this tells us about forms of power and changing power relations. We do this by drawing on Abu-Lughod’s (1990, p. 42) approach, which uses resistance as ‘a diagnostic of power’. As she argued, ‘where there is resistance, there is power’. We focus on the changing situation of women in particular because few studies on power have incorporated gendered and generational power relations with specific attention on woman-to-woman relations. The findings across the chapters come together to reveal a greater sense of the complexity and changing nature of the patriarchal structures, especially in rural areas where black, rurally based women, old and young, are regaining and claiming power when negotiating their intimate relations.

Whilst women must navigate patriarchal norms and gendered expectations rooted in colonial distortions of customary practices, the findings in this volume highlight the different forms of resistance and agency exercised by women and specifically rurally based women. The findings speak to postcolonial feminist scholarship on women’s agency (see Mohanty 2003), which argues that even within the most rigid patriarchal structures in rural areas, women exercise agency even when captured within larger social, cultural and historical processes (as will be discussed later in the chapter). Postcolonial feminism has critiqued how Global North understandings of women’s agency can damage the political struggles and activism of women in the Global South (Mohanty 2003). Indeed, in her chapter, Mnisi Weeks argues for women’s resistance strategies, both new and old, to be considered activism. Criticising universalising depictions of women’s agency as false, Tamale (2008, p. 64) outlined how customary practices ‘can be wielded creatively and resourcefully to enhance women’s access to justice’. Abu-Lughod (2002) and Mahmood (2001) amongst many others argue for a more diverse understanding of what gender justice and equality means, one that takes into account historical and cultural specificities.

Relatedly, it is critical to avoid essentialist understandings of the term ‘gender’. Many African feminist scholars have questioned the utility of gender as a lens for examining African societies (Amadiume 1987; Nnaemeka 2004; Nzegwu 2006; Oyewùmí 1997). Much of the critique lies with how feminist theorising from the West often limits its gender analysis to the nuclear family. From this limited space, the place of other adults as co-wives, elders, or other family members gets overlooked. African feminist scholarship (Amadiume 1987; Nnaemeka 2004; Nzegwu 2006; Oyewùmí 1997) has emphasised how
hierarchies in African families are often based on seniority gained through age rather than on gender, and how relations between women across lineage and seniority are significant in understanding inequalities within and across families. Other scholars (Bakare-Yusuf 2004; Lugones 2008) have cautioned about overlooking any specific variable of power operating in the markedly different contexts across African and other societies and called for the workings of power to be carefully analysed within their localities. Given the under-examination of generational relations amongst women and how this shapes custom and power, the volume goes some way to recentre generation alongside gender as an important site of power specifically within woman-to-woman relations.

In the book, we identify three sets of resistance which highlight the transformations taking place in power relations. The first area of resistance is where women use customs and behind the scenes actions to their advantage while supporting customary practices. The flexibility embedded in the negotiation of customary practices such as lobolo, succession and polygamy, allows women to exercise power in carving out benefits for themselves. In both chapters on lobolo, we see how younger women plan and collaborate with older women to participate in backstage lobolo negotiations. In doing so, they adhere to the normative expectations of their required non-involvement in the formal negotiations between the families but still actively persuade and influence the outcome of the negotiations. Through such involvement, younger women persuade older women of the importance of adjusting their own families’ expectations of, for example, a large lobolo payment when the intended groom cannot afford it. In turn, older women can then persuade male relatives on how to negotiate in the ‘official’ negotiation process. In inheritance matters, we also see how widows adhere to the customary expectations regarding remarriage, refraining from remarrying but enjoying secret trips by lovers who are not seen or known by the children of the house. Other women in the area are aware of these practices and endorse them as long as they are kept out of view of the children. At the same time, many women also choose not to remarry in a context where women no longer need to rely on marriage for security. Widows, for example, have a lot of power and autonomy if they have a family home, and they can have lovers and more children without the demands of a husband. In the chapter on polygyny, we see how women could collaborate with co-wives as a way of obtaining substantially more power both individually and collectively than through hostility.

These forms of resistance indicate the power women yield as bearers of custom through using the flexibility embedded in customary practices to their advantage, particularly in new political-economic contexts where their access to material and educational resources has improved and marriage has declined. The examples demonstrate the power that is obtained in collaborating with other women in their families and communities to achieve their desires. However, women are not always supportive of each other, as hierarchies between women also exist, and younger women may need to use other resources, such as financial or educational resources, to gain more power in
decision-making. In their support for customary practices, women protect the spaces where they can exercise power, specifically in allying with other, senior women, to obtain desired outcomes in their personal relationships.

The second area of resistance evident in the chapters is women’s ongoing resistance to physical violence as seen in cases of ukuthwala or violent marriages. Indeed, one of the major powers that traditional leaders, male family members and older women have had is to regulate physical violence directed at women. In several chapters, we see how a younger generation of women, often with the support of an older generation of women, are actively resisting physical violence against them. Older senior women may successfully support young women in their quest to leave a violent marriage, or they may talk to younger generations about unacceptable violent practices in marriage. For example, in the chapter on ukuthwala, Karimakwenda highlights the narratives of two older women who suffered violent marriages but actively wanted change for their daughters. We do not argue that resistance to physical violence is new, but women’s changing access to material resources outside of marriage together with better access to legal resources positions them better to resist marital violence. Whilst the language of rights in democratic South Africa has opened up avenues to support women in not living with marital violence, women often need the support of other, and older, women to report marital violence or leave a violent marriage. Several chapters highlight how a younger generation expressed a need for such instances of violence to be taken to the courts, although some older women remained reluctant to turn to the state for support. This finding shows that the power to regulate physical and marital violence is in a slow process of change. Whilst the language of rights has given the younger generation of women a resource to use specifically in contexts of violence, some women may reject the impact of ‘human rights’, as it can be perceived as a challenge to their authority over marriage.

State intervention in other areas of personal relationships, such as in the context of female initiation, may also be perceived as an attack on female sociability and solidarity and is rejected by many older women who wish to retain their capacity to induct younger women into specific customary practices. Through these examples, we see that women are actively demonstrating power and control over their bodies by resisting decisions made by elders, traditional leaders or the state concerning their bodies. Women draw variously on family support and newly available resources such as the police and/or domestic violence legislation, but also reject certain state laws that regulate female initiation. The chapters unravel the power dynamics generated by these forces and the findings show how women deploy and negotiate such dynamics.

The third area of resistance, as evident through the chapters, is a more public, familial, engagement with men in relation to the control over women’s sexuality. Throughout the chapters, there are examples of how women, often working together with other women, more publicly engage men in areas of sexual life or intimate partnering. For example, one woman in a polygamous marriage explained how ‘[I] took it upon myself to talk openly about our sexual
relationship [with her co-wives] and the risks of HIV and AIDS because we were all sharing the same man’. Another woman explained how she chose a polygamous marriage with an older man, as she felt that younger men were not committing to an intimate partnership and marriage with her. She drew on her own sexuality to further explain: ‘I had several suitors but they did not seem to be serious about our relationship’. A further example can be seen in Bhana and Salvi’s chapter in relation to the process of inhlawulo and the way in which younger men are expected to approach a woman’s female relatives and family following the news of an unwed pregnancy. As one man recalled: ‘my head was down. I didn’t even have the guts to look them [girlfriend’s family] in the eyes. I was just bent down. They were shouting’. Women in such instances are actively calling men out in public arenas to scorn and draw attention to their actions, particularly in the area of sexual relations. Whilst these strategies have their roots in generations going back, the strategies are employed in the current political-economic context where women are less dependent on marriage and have improved access to material and legal resources. When performed in a new political-economic context, these actions change the power men have had over sexual relations.

The forms of resistance and changing gendered social relations indicate that women are negotiating customary practices from stronger socio-economic positions while continuing to rely on woman-reciprocal relations and the Constitution, which promotes gender equality. At the same time, men’s power over women when negotiating customs has become more constrained, and men are trying to claim space through holding positions as customary authorities, even when the power to do so has shifted. The findings in this book highlight how women working together with other women under changing material and social conditions can transform power (Amadiume 1987). At the same time, a focus on women-to-women relations and negotiations allows us to unpack the coexistence of both generation and gender power struggles in patriarchal settings.

**A long legacy of research on generation, gender and negotiating custom**

This collection builds on a long legacy of research on gender, generation and customary marriage in South Africa, which has produced many influential texts. Several scholars have examined the collaborations between colonial administrators and male elders as they attempted to control women through the assertion of patriarchal authority and the codification of customary law in relation to marriage and divorce from the 1850s to 1900 (Burman 1990; Carton 2000, 2020; Chanock 1985; Jeater 1993; McClendon 2002; Phoofolo 2007; Thornberry 2019).

Some recent, novel contributions on the shaping of patriarchal masculinity in the precolonial period have been influential in developing the argument of this book (Jimenez 2017; Nzegwu 2006; Timbs 2019). The book also draws on the contributions of classic texts on how gender has been fundamental in
shaping the experience of women in South Africa (Walker 1990b). Several influential, comparative volumes of enquiry have focused on the changing nature of marriage and marriage-related customs in the mid-to-late 20th century (Comaroff & Roberts 1981; Simons 1968). An extensive literature, published in the 1980s, documents the centrality of the institution of marriage over time and is used in mapping out the change over different periods (Comaroff & Comaroff 1980; Krige & Comaroff 1981; Kuper 1982).

A further strand of literature has examined the changes to marital relations in the first half of the 20th century, given the extent of economic and social change enacted through the introduction of capitalism and the opening up of mining, resulting in the growth of migrant labour (Murray 1981; Schapera 1947). Within this literature, some scholars have focused on women’s changing roles in an increasingly urbanised context and cash economy (Bozzoli & Nkotsoe 1991; Walker 1990a). Others have explored how the process of urbanisation was changing gendered and generational relations, specifically in relation to premarital fertility and sexuality, as well as the decline of marriage (Mayer & Mayer 1961; Pauw 1964; Wilson & Mafeje 1963).

In more recent years, several special issues in anthropology (Pauli & van Dijk 2017), sociolegal studies (Claassens & Smythe 2013) and African studies (Healy-Clancy 2014) have focused on the significance of the changing incidence of marriage within vastly different socio-economic and legal contexts in post-independent South Africa. These contributions have demonstrated that although marriage is in decline, many people still aspire to achieve it. The contributions recognise the continuous importance of lobolo in the contemporary period. Evidence is emerging of how the transformation of marriage practices is connected to experiences of changing social relations (Niehaus 2017). Moreover, a special issue on marriage, land and custom (Claassens & Smythe 2013) investigated, on one hand, the disjuncture between law and social norms, and the limits of law reform when the law is not in step with social practices and, on the other hand, the effect of the decline in marriage on single women’s land rights under the new constitutional dispensation after 1994. These contributions have been critical to shaping the argument of this book.

Although the historiography of the key contributions is notable and crucial for developing an understanding of the changes over time, there are several shortcomings in the literature that informs the work of this volume. First, the literature on colonial and postcolonial gendered and generational relations, specifically in the negotiation of custom, tends to be located in, and restricted to, specific historical moments or time periods. This framing, albeit rich in detail, fails to interconnect changing gender and generational relations across time periods. Sequencing and linking them would give insight into the convolutions of shifting power as well as indicate how sudden changes in power, through laws, policies, natural disasters or economic shifts, result in temporary or enduring social change. In addition, by interconnecting these historical changes and focusing on the social and ideological convolutions created by the forces before and during colonialism and apartheid, our understanding
of the post-independent realities for gender and generational relations can be sharpened.

Second, the literature tends to focus on either gender or generational relations between male elders and younger men and women, rather than older women and younger women. It fails to consider gender and generational relations as deeply interconnected. This intersectional lens is particularly important given the principle of seniority in social organisation in African contexts. A failure to understand the links between gender and generational tensions may overemphasise gendered power in explaining social change. This has been further exacerbated by the under-examination of woman-to-woman relations in shaping customary negotiations. Therefore, we draw on Bozzoli's (1983, p. 171) argument that ‘if we are to provide a rigorous basis on which to make decisions about how gender relationships interact with generations’, we must develop an argument, ‘with a historical perspective, that considers the place of gender and generation in the larger system’.

And lastly, the rich literature that does exist tends to be produced predominantly by white scholars located outside the region. The chapters in this volume produce fresh evidence and novel analytical approaches by authors seldom represented in the literature on customary marriage, customary law and families. Several of the contributors are young scholars and are black African women. The experiences of black women are a central concern in the study of gender, generation and custom. The contributors, several of whom have been immersed in ethnographic fieldwork for over 10 years, draw on life histories, legal cases, material culture, stories and other sources to produce nuanced studies of local communities that are negotiating custom in the context of broader political economies. The chapters do not all share similar views on certain central issues, and the inclusion of all the chapters is designed to open a dialogue, which we set out to do at our initial workshop to discuss such a book and which is what this book attempts to cover.

This introductory chapter is organised into five parts. The first part has outlined the aims and contributions of the book. The second part will provide conceptual clarity on the terms, concepts and orientation of the book. Following this, the third part of the chapter will provide a brief overview of the current socio-economic and legal context to highlight significant changes that have occurred in the structuring of people’s everyday lives. In the fourth part, individual chapters are linked thematically to the overall concern of the book. The last part of the chapter provides an overview of the transformation of gender and generational politics in relation to negotiating customs over key historical periods in South Africa.

Part II: Conceptual clarity

Families and inequalities

This collection examines black South African families. However, there is no single model of family, and this book deals with different forms of family
relationships, notably, consanguineal, polygynous families and patrilineal families. A consanguineal family construes the family as composed of kin (who have common ancestors). Polygynous families are composed of a husband with multiple wives. A patrilineal family is where members of the family are connected based on their relationship to the father and descent is through the male line. In the patrilineal tradition, a new wife is absorbed into the husband’s family, including his homestead and ancestry.

In considering how relations have been historically shaped, this book critically engages with the ways in which gender inequalities came to be and how they are located in existing social hierarchies. Following from Nzegwu (2006) and other African feminist scholars, this book does not argue that sex differences necessarily result in female oppression. In adopting an African feminist approach, this book importantly examines the essential organising principle of seniority, a critical principle of social organisation in many African contexts (Amadiume 1987; Nzegwu 2006; Oyewúmí 1997). Oyewúmí (1997, p. 42) emphasises that ‘seniority is highly relational and situational in that no one is permanently in a senior or junior position; it all depends on who is present in any given setting or interaction’. The findings in the book will reveal the significance of the situational context when negotiating customary processes and understanding social divisions and inequalities.

**Generation**

In sociological terms, generation has several meanings (Kertzer 1983, p. 126) including generation as related to kinship descent (Bengtson 1975); generation as a cohort (Walker 1996); and generation as a historical period (Mannheim 1952). Scholars who use the ‘kinship as lineage’ definition tend to describe individuals as grandparents (older generation), parents (middle generation), children and grandchildren (younger generations).

Others have drawn on Mannheim’s (1952) concept of ‘historical generation’ referring to a group of people, born in the same period, who therefore share a common location in history. He went on to argue that because of their common historical position and cultural region, individuals in the same generation, whilst not a homogenous group, share experiences and modes of thought, feeling and behaviour. Each generation comes of age in vastly different socio-economic, political and legal moments, whose features influence people’s attempts to negotiate customary practices.

In this collection, the authors draw on two main meanings which relate firstly to kinship descent (such as grandparents, parents, children) and secondly to a social or historical period, such as the ‘post-apartheid period’ (White 2013). These two meanings of generation are purposefully mixed in this collection. First, due to the intimate nature of personal relationships and because customary practices are largely about intergenerational relations, the negotiations around regulating personal relationships and customs involve grandparents, parents and children. Second, generation as a historical period is also used...