

Law's Happiness: A decolonial approach to well-being and human rights

submitted in partial fulfilment of the requirements of the master's degree

Human Rights and Democratisation in Africa

by

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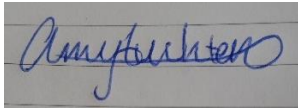
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Acknowledgements

I would like to express my gratitude to the European Union through the Global Campus of Human Rights and the Royal Norwegian Embassy in Pretoria, South Africa, for funding the Master's in Human Rights and Democratisation in Africa. I have met the most interesting, kind, innovative people through the HRDA, and have become a better person for it.

Thank you to my supervisors, Professors Atangcho and Magnus- who have been patient and critical- two valued qualities to have in one's role models. After living and writing this dissertation over the past three months in Yaoundé, Cameroon, I am grateful to Mme Nadine Yango- the first person I met here- and who has been a friend, a caregiver, and an organising force in my life over this period. Thank you to Liesl Muller and Christian Parfait Atangana for being my Cameroon friends and cheerleaders, and each a source of happiness for me.

Thank you to my precious loved ones, to the seemingly floating heads that speak to me from the screen of my phone. Finally, thank you, more than anything, to each writer who taught me something in this dissertation. Every footnote and quote are an inimitable measure of my gratitude. To those I haven't read yet, I only hope I will get to.

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Chapter 1: Introduction

1.1 Background and context

Law and happiness are difficult concepts to define, and the relationship between the two more so. Law's happiness asks whether the law, and its many subsets and impacts, has a bearing on happiness. The current global order, rooted in 'hetero-patriarchal capitalism', functions upon the strength of a set of 'western assumptions'- which must be interrogated if we are to understand why and how this global order contributes to human suffering.¹

Ensuring the happiness of its resident population is viewed as a responsibility of national governments, and is necessarily dependent on ensuring a person's well-being.² In a 'new economics', economists are shifting their focus away from the goals of governments as simply to increase national economic outputs, to looking at the determinants which can maximise well-being, nationally.³ A vital consideration for governments looking to formulate policies to increase the well-being of the people it purports to take responsibility for, is being able to actually measure well-being.⁴

In 1972, the King of Bhutan proposed to measure the country's prosperity using a 'Gross National Happiness' (GNH) index as an alternative to gross domestic product (GDP), based on the understanding that the processes of globalisation and industrialisation had led to an increase in Bhutan's economic output, but not the sense of peace and happiness among its people.⁵ This, thus, necessitated an alternative metric for the measurement of prosperity, prompting economists to explore the nature and value of a 'happiness economics.'⁶

Human rights, according to Moyn, are the 'highest moral precepts and political ideas', that 'evoke hope and promote action' for the betterment of human life.⁷ The human rights legal project aims to establish a global consensus understanding that 'the well-being of the mass of humanity depends on legal and moral codes agreed upon internationally.'⁸ However, the Universal Declaration

¹ S Tamale *Decolonization and Afro-feminism* (2020) 207.

² T Greyling and others 'The good, the bad, and the ugly of lockdowns during Covid-19' (2021) *Plos One* 1 at 4.

³ H Norberg-Hodge and others 'The economics of happiness: discussion guide and companion to the film' (2013) *International Society for Ecology and Culture* 39.

⁴ Greyling and others (n 2) 4-5.

⁵ Centre for Bhutan Studies and GNH Research 'A compass toward a just and harmonious society: 2015 GNH survey report' (2016) *Centre for Bhutan Studies and GNH Research* 1 at 32.

⁶ Norberg-Hodge and others (n 3).

⁷ S Moyn *The Last Utopia* (2010) 1.

⁸ A Curle 'Happiness as a right' (1998) 2 *The International Journal of Human Rights* 77 at 78.

of Human Rights, as the point of departure in formulating the content of international human rights law, has been regarded by some critics as a Eurocentric imposition and thus, unfit for the purpose of enabling the prosperity of any other groups falling outside of the Eurocentric mould.⁹ While human rights are positioned as the ideal for a utopian society, conceived of and deriving from the intrinsic, foundational right of all persons to be happy, with the pursuit of a collective happiness underpinning all human rights thereafter, international human rights law inevitably falls behind.¹⁰

An issue for consideration prompted by the previous paragraph is whether international human rights law can adequately consider these valid points of critique and better enable the system to respond to the nuances of inequality, domination, and power. An Afro-feminist, decolonial analysis seeks to articulate ‘the ways that systems of oppression interrelate and how patterns and logics interact to reinforce various forms of domination.’¹¹ Where ‘every modern nation is a product of colonisation,’ and where international human rights law aims to constrain and guide the conduct of nations that affect their resident populations to an agreed moral high-ground, it is necessary to examine the ways in which these systems work to reinforce the patterns of domination hindering the enjoyment of the lives of marginalised peoples.¹²

Happiness economists have created indices which seek to measure happiness, deriving from Bhutan’s original GNH calculations, and its differentiations and trends between nation states, such as the World Happiness Report¹³ and the Happy Planet Index.¹⁴ This research seeks to explore the meaning of happiness in the context of the global, legal orders overarching human societies, and its manifestations under the colonial nation state form, ultimately seeking to discern whether human rights can and do make people happy, and whether this can truly be measured.

1.2 Problem statement

National governments have historically focused too much on increasing economic growth, at the expense of the happiness of its people.¹⁵ Newer indices and evidence have illustrated an alternative guide to national policies that seeks to measure and enhance the collective well-being of the people

⁹ Curle (n 8). Tamale (n 1) 195.

¹⁰ Curle (n 8) 80.

¹¹ Tamale (n 1) 68.

¹² E Balibar, ‘The Nation Form: History and Ideology’ (1990) 13 *Review (Fernand Braudel Centre)* 329 at 341.

¹³ JF Helliwell and others ‘World Happiness Report’ (2021) 3.

¹⁴ Happy Planet Index ‘The Happy Planet Index 2016’ (2016)

<https://static1.squarespace.com/static/5735c421e321402778ee0ce9/t/57e0052d440243730fdf03f3/1474299185121/Briefing+paper+-+HPI+2016.pdf> (Accessed 18 October 2021) 1.

¹⁵ Centre for Bhutan Studies and GNH Research (n 5) 33.

in a country.¹⁶ The human rights project purports to look towards ensuring the happiness and well-being of all human beings, but is couched in a complicated history, and will inevitably maintain underlying systems of oppression if not subjected to rigorous scrutiny.¹⁷ This is pertinent when considering that global levels of happiness and well-being are decreasing steadily, as according to the World Happiness Report 2021.¹⁸ The happiness indices have an opportunity to make an impactful contribution to the realm of policy design, but will not be efficacious unless called to account for distorted and biased statistical outcomes.

1.3 Research questions

The main question of this research asks: What does a decolonial approach to well-being and human rights have to offer the current happiness indices? This has prompted the following sub-questions:

- a. Does human rights law work to make people happier in the context of unresolved human rights violations?
- b. What is being overlooked in the way happiness is measured?
- c. What does African philosophy have to offer in solidifying the connection between human rights, human rights law, and happiness' measurement?
- d. Can human rights law and happiness measurement be decolonised?

1.4 Significance of research

This research is borne from a desire to understand the philosophical underpinnings of the human rights project with a hope to infuse the existing realm of happiness economics with a decolonial understanding of human rights implementation, premised upon a strong philosophical foundation with a particular regard for African philosophies that have been overlooked at the global level. This has the potential to be a contribution to the development of a potential framework through which legal systems can be analysed and improved, with the goal of collective happiness in mind, and which can be used to advise future policymakers on what a good national policy for human rights and well-being protection may require.

1.5 Literature review

The available literature on happiness and human rights, separately, is immense and multi-disciplinary.¹⁹ However, there is a gap in research on the connection between happiness and human

¹⁶ Norberg-Hodge and others (n 3) 39.

¹⁷ Tamale (n 1) 68.

¹⁸ Helliwell and others (n 13) 7.

¹⁹ C Mafini 'Socio-economic drivers of life satisfaction: A comparative study of low-income groups in Southern Gauteng' PhD thesis, North-West University, 2015 17.

rights, particularly those taking a comprehensive approach to concerns of happiness through the lens of a decolonial analysis, which this research addresses.

Curle argues that the connection between happiness and human rights is trite, moreover that the 'right to happiness' is the foundational right underpinning all human rights conceived of thereafter.²⁰ This article usefully and directly alleges the fundamental connection between human rights and the pursuit of happiness but is lacking due to its nebulousness and because it does not link back to other fields and data sets concerned with understanding happiness. Moyn, alternatively, argues that human rights are merely the form of utopianism that has most recently captured the societal imagination- arguing that their conception and use in mainstream discourse truly began in the early 1970s- decades after the promulgation of the Universal Declaration of Human Rights (UDHR).²¹ While Moyn provides a thorough and well-researched point of view, he has little regard for the African context, and any conceptions of human rights derived from African thought- a gap this research looks into.

Greyling and others consider the negative effect that the government-ordered total economic shutdown- as a measure to curb the spread of Covid-19 infections in South Africa- had on the well-being of the people of South Africa.²² The overall aim of this article is to inform policymakers on how to make choices that increase a country's level of happiness, specifically pertaining to the South African context. Greyling and others use big data, a newer form of monitoring a subject group's internet behaviour and drawing inferences therefrom.²³ These studies are useful in looking at happiness indicators and data specifically at a national level as well as within the African context, but the authors thereof do not articulate on the relationship between this data and the state of human rights in the country in question, which this research explores. Furthermore, this data is not compared with the global happiness indices and their alternative subjective measures of well-being.

Norberg and others argue that the current global order is unsustainable, and that the genuine happiness of human beings are directly dependent on the living of a sustainable life.²⁴ The proposed solution lies in the localisation of economies.²⁵ This point is demonstrated by, first, looking at the negative impact of globalisation on local economies and then advocating for the localisation of these

²⁰ Curle (n 8) 80.

²¹ Moyn (n 7) 20.

²² Greyling and others (n 2) 2.

²³ Greyling and others (n 2) 4-5.

²⁴ Norberg-Hodge and others (n 3) 2.

²⁵ As above.

economies as a solution.²⁶ This research is a useful point of departure in formulating possible solutions and recommended practices. However, it is presented in a documentary form with an accompanying written guide and has not yet been considered in the academic arena. The work of this research will assess whether the solutions proposed by Norberg and others are tenable under closer academic scrutiny.

1.6 Methodology

This is a qualitative, desktop research. The primary legal sources relied upon include the UDHR and subsequent covenants, and the African regional instruments at the international level. Secondary sources include books, journal articles, the World Happiness Report, and the Happy Planet Index. The analytical framework will take a non-doctrinal, or socio-legal, approach to content analysis with reference to sociolegal writings throughout.

1.7 Scope and limitations

The scope of this research will be the available academic writing on happiness and well-being and the way these realms of thought match up with human rights, with an emphasis on multidisciplinary perspectives. The scope is ambitiously broad, however trends of understanding will present a sameness pertaining to its relevant discipline, as was already apparent at the preliminary stages of the research. What will result is a condensation of historical and current perspectives on this area. Pertaining to the law, due regard will be had to international, particularly international human rights law and its encompassing context.

Limitations encountered in conducting this research were the constraints of time, essentially having three months to complete this dissertation. This meant that the breadth of literature scrutinised and incorporated in this research had to be reduced. This limitation's impact was mitigated by a selectiveness in choosing reading material. This limitation, although it leaves the opportunity for this research to be expanded on, does not affect the veracity of the scrutiny of the sources considered.

1.8 Definition of key terms

a. Happiness

According to Zamfir, obtaining a conclusive definition of happiness is a difficult, multi-disciplinary pursuit.²⁷ This is because happiness is 'a dynamic process' and cannot be boiled down to a 'structured,

²⁶ Norberg-Hodge and others (n 3) 7.

²⁷ E Zamfir 'Revisiting happiness and quality of life: new and old solutions' in Maggino & Zamfir (eds) *The European Culture for Human Rights: The Right to Happiness* (2013) 2.

finite state', with both cognition and emotion being difficult to capture.²⁸ 'Ancient philosophies' view happiness as a 'permanent pursuit of authenticity and responsible actions leading to one's improvement and development, and to self-actualisation.'²⁹ While these ancient philosophers ruminated on happiness as a 'theme of philosophical meditation' that sought constant definition, newer disciplines see happiness as the goal of a practical life strategy- something that is infinitely pursued.³⁰ Nonetheless, all of these disciplinary definitions take root in the idea of happiness as 'the main meaning of life.'³¹

b. Well-being

According to Greyling and others, well-being can be understood as 'those aspects of life that society collectively agrees are important for a person's quality of life, happiness and welfare.'³² Happiness is, thus, seen as a component of well-being, with well-being being occupied with the determination of socio-economic factors to analyse.

c. Quality of life

Zamfir posits quality of life as another tool to measure happiness and traces its history back to an oil spill in France in 1967.³³ In her mind, this oil spill was a 'symbolic event which prompted people to question how feasible it is to build an entire civilisation on industrial miracles with no concern for human lives or for the environment.'³⁴ That same year, Western Press published work on the concept of quality of life for the first time.³⁵ Zamfir merely speculates on the relationship between these two events, and offers no proof of the oil spill prompting the need for research into the quality of life. Nonetheless, the coincidence is useful in demonstrating the negative and concomitant impact environmental degradation will have on human quality of life. It is this understanding which positions quality of life as being more than a mere 'practical happiness' or human well-being, but as a consideration of a 'modern uneasiness in a world characterised by increased risks, and the individual's

²⁸ As above.

²⁹ Zamfir 'Revisiting happiness and quality of life: new and old solutions' (n 28) 3.

³⁰ As above.

³¹ As above.

³² Greyling and others (n 2) 4.

³³ Zamfir 'Revisiting happiness and quality of life: new and old solutions' (n 28) 6.

³⁴ As above.

³⁵ As above.

new search for balance at the intersection between social, economic, political and environmental factors.³⁶

d. A people

Appiah and Grossman define 'a people' as such:³⁷

If we call any group of human beings of common descent living together in some sort of association, however loosely structured, a "people," we can say that every human culture that was aware of other peoples seems to have had views about what accounted for the differences—in appearance, in customs, in language—between them.

This is a key term to keep in mind when grappling with the happiness of groups of people in a manner that is more specific than their assigned nation states, and in contextualising each person's unique and specific needs and views.

e. A decolonial approach

Tamale defines decoloniality and decolonisation.³⁸

Decoloniality: A specific type of decolonization which advocates for the disruption of legacies of racial, gender and geopolitical inequalities and domination. Walter Mignolo defines it simply as "delinking from the colonial matrix of power."

Decolonization: A multi-pronged process of liberation from political, economic and cultural colonization. Removing the anchors of colonialism from the physical, ecological and mental processes of a nation and its people.

A decolonial approach is, thus, one which seeks to contribute to the process of decolonisation by analysing the impacts of inequality and domination, aiming to disrupt them being seen as a given.

Appiah and Grossman clarify the purpose of such an endeavour.³⁹

Ideologies succeed to the extent that they are invisible, in the moment that their network of assumptions passes beneath consciousness; genuine victories are won without a shot being fired.

³⁶ As above.

³⁷ KA Appiah & AR Grossman *In my father's house: Africa in the culture of philosophy* (1992) 11.

³⁸ Tamale (n 1) xiv.

³⁹ Appiah & Grossman (n 38) 60.

1.9 Structure

Chapter 1: Introduction

Chapter 2: The link between human rights law and happiness

Chapter 3: Critiquing to strengthen existing happiness indices: A decolonial analysis of the World Happiness Report and Happy Planet Index

Chapter 4: African philosophical contributions to understandings of happiness

Chapter 5: Conclusion

Chapter 2: The link between human rights law and happiness

2.1 Introduction

This chapter assesses the relationship between human rights law and happiness with a focus on the African context. This assessment takes the form of first, looking at the human rights legal project as a contested terrain- and locating its point of departure. Thereafter happiness in the African context against the backdrop of the continent's history as it pertains to international human rights law will be explored.

2.2 The contested beginning of the human rights legal project

As a necessary preliminary clarification, Viljoen argues, a 'pragmatic' approach to human rights sees such rights as a 'manifestation of these claims (human rights claims) in positive law,' it is nonetheless necessary to distinguish between human rights and human rights law for the purpose of this section.⁴⁰

While the origin of "human rights" lies in the nature of the human being itself, as articulated in all the world's major religions and moral philosophy, "human rights law" is a more recent phenomenon that is closely associated with the rise of the liberal democratic State.

Note also, human rights activism as targeted at closing the 'gap' between human rights and law:⁴¹

Human rights activism can be described as a struggle to ensure that the gap between human rights and human rights law is narrowed down in order to ensure the full legal recognition and actual realization of human rights.

Recent research adds weight to the idea of human rights as being inherent to human beings, arguing that 'universal human rights and dignity are grounded in brain science,' with specific regions of the brain being used when processing matters pertaining to dignity or privacy, for example, thus going beyond being merely a social construct, but a default human condition.⁴² While this argument is formulated according to the structures and functions of the human brain, it is also posited as an argument of necessity that the notion of human rights needs to be universal and regarded as ingrained into the human consciousness to be adequately and practically affirmed.⁴³ The concern described pertains to human rights, as they exist in law, comprised in mutable written documents that are

⁴⁰ F Viljoen 'International human rights law: a short history' (2019) <https://www.un.org/en/chronicle/article/international-human-rights-law-short-history> (Accessed 28 September 2021).

⁴¹ Viljoen (n 41).

⁴² TL White & MA Gonsalves 'Dignity neuroscience: universal rights are rooted in brain science' (2021) *Annals of the New York Academy of Sciences Special Issue: Annals Reports* 2.

⁴³ White & Gonsalves (n 43) 2.

vulnerable to disagreement, as an obstacle hindering the global uptake of human rights standards and practices.⁴⁴ This is a persisting debate in jurisprudential schools of thought, and is often boiled down to the historical debate between Hart and Fuller.⁴⁵

The Hart-Fuller debate is considered as the springboard regarding jurisprudence on legal positivism and natural law theory, essentially asking whether there is a divide between ‘what the law is and what it ought to be.’⁴⁶ Hart insisted that there must be a separation between law and morals, whereas Fuller argued for the inherent inner morality of law as premised upon the intrinsic dignity of all persons, thus arguing that law exceeds what is codified and precedented.⁴⁷

In opposition to the naturalistic dignity-based neuroscience argument depicted above, Moyn argues that the modern iteration of international human rights law, as it is understood now, only found its feet in the 1970s, despite the adoption of the Universal Declaration of Human Rights in 1948.⁴⁸ For Moyn, human rights are merely the surviving conception of utopian thinking, where others, like communism, failed to gain lasting popularity in the modern western world.⁴⁹ He differentiates human rights today from those conceived of prior to the 1970s by arguing that human rights today seek to transcend the borders of state authority, whereas human rights, pre-1970s, were subject to a state’s government’s discretion.⁵⁰ Human rights law is, although originally linked to the conception of the modern state, now also tasked with transcending the constraints of statehood for a universal betterment of human life. Arendt calls this phenomenon ‘the decline of the nation state and the end of the rights of man’, with the rights of man having previously been the sole mandate of the State and now open to international scrutiny.⁵¹

Arendt’s conception of the nation state as a fallible construct is articulated through another lens by Balibar.⁵²

Every social community reproduced by the functioning of institutions is imaginary, that is, it is based on the projection of individual existence into the weft of a collective narrative, on

44 As above.

45 JV Gomez ‘The Hart-Fuller Debate Re-Revisited’ (2011) 2 *Jurisprudence* 261 at 263.

46 As above.

47 As above.

48 Moyn (n 7) 1.

49 Moyn (n 7) 5.

50 Moyn (n 7) 7.

51 H Arendt *The Origins of Totalitarianism* (1951) 267.

52 Balibar (n 12) 346.

the recognition of a common name and on traditions lived as the trace of an immemorial past (even when they have been created and inculcated in the recent past).

If one thus perceives of the nation state as an imagined, socially constructed thing; it becomes clear that it is not an impenetrable concept and can be thought of as an invention imbued with flaws and, by implication, open for critique.

Arendt's description of the upheaval of the nation state in Europe following World War One examines the failure of the nation state as a social construct that does not adequately capture reality.⁵³ She refers to unemployment having seized entire nations, the civil wars that followed the First World War, and the subsequent mass migration of human beings to new and unwelcoming places.⁵⁴ It is these displaced persons whose existence revealed the inevitable failure of entitlements to governmental care as constrained to the imagined nation state, and the failure of citizenship as a vehicle through which one attains rights for those who the notion could not cater for. For these displaced persons this occurred in a three-stage succession. First, when forced to leave your home, you are made homeless. When given no alternative but to leave your country and take up residence in a new nation state, you are made stateless. Finally, as a stateless person in a reality where you do not have the opportunity to legally assimilate into a new country of residence, one is rendered 'rightless.'⁵⁵ Balibar expands on this below.⁵⁶

Finally, it was the fact that such a precise divisioning [sic] was historically impossible - because of the interweaving of linguistic frontiers, migrations, dynastic claims, conflicts over colonies, revolutions, wars of religion, and so on - that the general form of the history of national states has been the instability of frontiers and their constant "redefinition," with its direct impact on the external and internal perception of "national identity." In the cities of Antiquity, frontiers were unchangeable. "Colonization" was carried out by creating a new city. And in the ancient empires which, quite the opposite, extended their hegemony over heterogeneous territories and populations, the idea of a frontier remained fundamentally imprecise, linked to a continuum of degrees of allegiance and tribute, repeatedly un-done and reconstituted along totally new lines, sometimes in a day.

Arendt's assertion- that the implosion of the nation state form was brought to the surface by the problem of refugees losing all rights that flowed out of their national determination- is solidified when having regard to the United Nations' Convention relating to the Status of Refugees that was adopted

⁵³ Arendt (n 52) 267.

⁵⁴ As above.

⁵⁵ As above.

⁵⁶ Balibar (n 12) 338.

the same year that Arendt wrote the book in which she expands on this idea.⁵⁷ The preamble of the Convention reiterates this concern.⁵⁸

Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States.

The result of the above phenomenon is an international human rights system that exists through state party action while also purporting to be hierarchically above those same state parties.⁵⁹ Sibanda explores this centrality of the nation state in human rights discourse and asserts the ‘development of the nation state as the most dominant form of political organisation’ as ‘one of the defining geopolitical features of the late 19th and 20th centuries;’ and raises the question of whether a degree of subsidiarity for these nation states is, thus, implicit in the international human rights system.⁶⁰

What follows is a timeline and discussion of the notion of human rights law as emerging from this concept of the nation state, and the events prompting the divergence towards a universalistic conceptualisation of human rights. This timelining exercise is a necessary interlude when discussing the nexus between human rights law and happiness because it is important to locate the origin of that duty of care for persons by the institutions overarching them. As Tamale wrote, ‘All scientists know that you cannot solve any problems without tackling its root causes.’⁶¹ Exploring the roots of the human rights system today is an important consideration for ultimately considering whether human rights as tools for enabling happiness are fit for purpose.

⁵⁷ Office of the United Nations High Commissioner for Refugees, ‘Introductory Note’ in UNCHR *Convention and Protocol relating to the Status of Refugees* (1951) 2-3.

⁵⁸ Preamble of the Convention relating to the Status of Refugees (22 April 1954).

⁵⁹ S Sibanda ‘Beneath it all lies the principle of subsidiarity: the principle of subsidiarity in the African and European regional human rights systems’ (2007) 40 *The Comparative and International Law Journal of Southern Africa* 430.

⁶⁰ Sibanda (n 60) 425 at 429-430; 440.

⁶¹ Tamale (n 1) 3.

2.3 Eurocentric notions of state sovereignty and human rights in Africa: From Westphalia to now

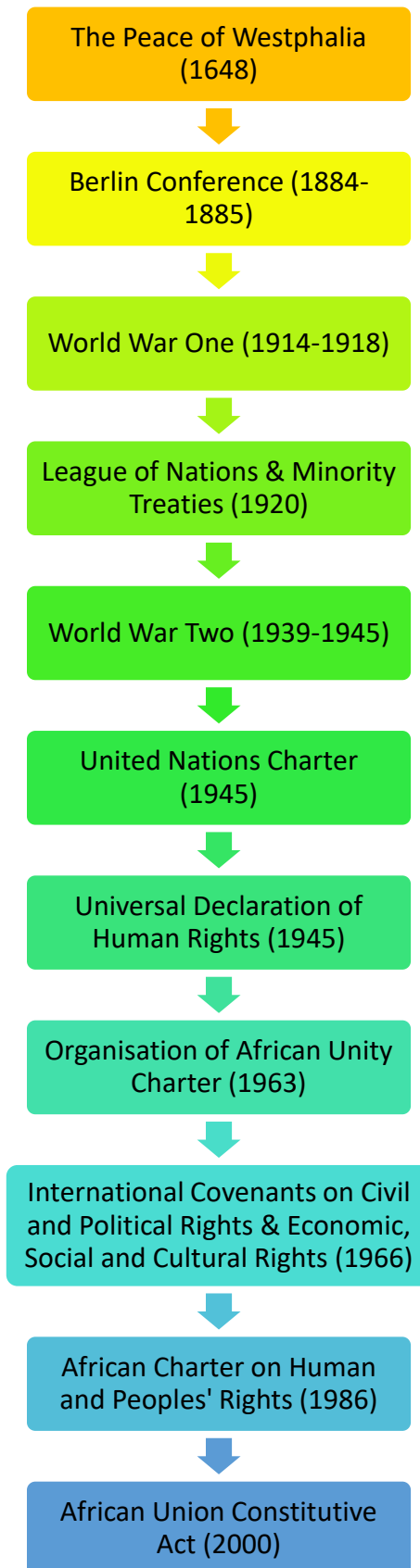


Figure 1: Compiled by the author

The timeline on the previous page charts the trajectory of the modern conception of the nation state and the human rights legal project as it pertains to Africa. Nimako summarises this understanding.⁶²

The colonisation of the Americas, Asia and Africa gave rise to a world order under European leadership. The world order is a political construct that emerged after the Peace of Westphalia (1648), signed between states that now form Germany, Spain, France, Sweden, and the Netherlands. The Peace of Westphalia in turn gave rise to religious states, namely, Protestant-led monarchs and states and Catholic-led monarchs and states.

At the bureaucratic level, the Peace of Westphalia set the contours and parameters for competition and cooperation within European statecraft. These in turn formed the basis of European sovereign states and the related inter-state systems. This process went hand in hand with the institutionalisation of the Atlantic “slave” trade and chattel slavery in the Americas.

The Peace of Westphalia is, thus, arguably the creative force in the construction of the Eurocentric nation state, thus leading to Africa’s being ‘forced into the Eurocentric Westphalian world order ill-fitted to the diverse political realities and interests of the continent.’⁶³ Signatory states to the Treaties of Westphalia mutually recognised each other’s existences.⁶⁴ The reciprocal recognition which the Treaty of Westphalia had made a source of law for a few elite European states, meant that all other states, including African states, were unable to assert their existence on this platform, subsequently becoming a guiding force for a manner of justification for the forcible occupation of Africa by European states.⁶⁵ Consequently, this treaty changed the way nation states assert themselves under international law, and was then vulnerable to manipulation by colonial forces in justifying their forcible entry into Africa.⁶⁶ Appiah explains why this imposition was doomed to fall apart, asserting that ‘the colonial state established a legal system whose patent lack of correspondence with the values of the colonized threatened not those values but the colonial legal system.’⁶⁷

Nimako argues that ‘the height of the Westphalia consensus’ can be characterised by the Partition of Africa at the Berlin Conference in 1884/1885.⁶⁸ The colonialization of Africa by these

⁶² K Nimako ‘Reorienting the world: with or without Africa’ (2011) Working Paper *International Centre for Muslim and non-Muslim Understanding* 5.

⁶³ Tamale (n 1) 4.

⁶⁴ Nimako (n 63) 6.

⁶⁵ As above.

⁶⁶ As above.

⁶⁷ Appiah & Grossman (n 38) 8.

⁶⁸ As above.

European states, as recognised through principles borne from the Westphalian conception of sovereignty, was the mechanism through which Africa was incorporated into the 'European world order.'⁶⁹ In developing this point, Uzoigwe explains that the question of recognising the sovereignty of African states was explicitly remarked upon in Bismarck's opening statement to the Berlin Conference, where he stated that this question was not to be discussed at the conference, despite its obvious pertinence.⁷⁰ When the forbidden question was raised by an American representative, the issue was shot down for fear that the question of recognising the legitimacy of African states would nullify the object of the conference in its entirety, which was the forcible occupation of Africa by European nations, with the Westphalian notion of sovereignty being withheld from African states as a key component in the legal justification of this occupation.⁷¹

The outcomes of the conference worth noting here are the agreement by signatory parties to the Berlin Act to abolish the slave trade in favour of the total occupation of African states.⁷² An 1891 Lagos newspaper described the effect of this decision where 'the forcible possession of our land has taken the place of a forcible possession of our person.'⁷³ Before the Berlin Conference, European states were known for the 'grabbing of African territory when either the other powers were not looking or were in no position to participate in the theft', but the post-conference objective was rather to regulate the occupation of African land by European countries.⁷⁴ This was enforced through Article 35 of the Berlin Act which mandated the colonising state exercise an 'effective occupation' over the African territory in question, which resulted in military occupation being viewed as a legal necessity to prove such 'effective occupation' had been achieved.⁷⁵ The pervading notion of rights in this period has been likened to the views of Plato, who saw justice as 'serving the interests of the stronger' and rights deriving therefrom as a manifestation of military power.⁷⁶

⁶⁹ As above.

⁷⁰ SE Crowe *The Berlin West Africa Conference* (1942) 3.

⁷¹ GN Uzoigwe 'Reflections on the Berlin West Africa Conference, 1884-1885' (1984) 12 *Journal of the Historical Society of Nigeria* 9 at 16.

⁷² Uzoigwe (n 72) 17.

⁷³ Uzoigwe (n 72) 17.

⁷⁴ Uzoigwe (n 72) 15.

⁷⁵ Article 35 of the General Act of the Berlin Conference on West Africa (26 February 1885). Uzoigwe (n 72 above) 19.

⁷⁶ GF Hourani 'Thrasymachus' definition of justice in Plato's Republic' (1962) 7 *Phronesis* 110 at 110.

According to Flowers, the World Wars (1914-1918 and 1939-1945) were the catalysts that served to 'propel human rights onto the global stage and into the global conscience.'⁷⁷ Viljoen considers this phenomenon.⁷⁸

After the First World War, tentative attempts were made to establish a human rights system under the League of Nations. For example, a Minority Committee was established to hear complaints from minorities, and a Mandates Commission was put in place to deal with individual petitions of persons living in mandate territories. However, these attempts had not been very successful and came to an abrupt end when the Second World War erupted. It took the trauma of that war, and in particular Hitler's crude racially motivated atrocities in the name of national socialism, to cement international consensus in the form of the United Nations as a bulwark against war and for the preservation of peace.

This was 'the implosion of the Westphalian world order.'⁷⁹ The end of World War Two prompted public commitments by nations 'from across the globe for human rights standards to protect citizens from abuses by their governments, standards against which nations could be held accountable for the treatment of those living within their borders.'⁸⁰

In the African context, the Organisation of African Unity (OAU) was formed in 1963 in an effort to disentangle Africa from the grip of the European powers, and to assert the African human rights system as a unique institution, tailored to the African context.⁸¹ Sibanda describes this as African states tending to replicate European models while also fostering a distinctiveness away from these same European models as an attempt to 'jealously guard their hard-won independence.'⁸² Even though the OAU has been characterised as a 'loose affiliation of states', it was, nonetheless, an affiliation prioritising 'sovereignty, territorial integrity, independence of member states, and non-interference in the affairs of member states.'⁸³ The OAU Charter was, thus, the foundational legal instrument in the African human rights system, advocating both for the 'inalienable right of all people to control their own destiny' as well as the 'responsibility to harness the natural and human resources of our continent for the total advancement of our peoples in all spheres of human endeavour.'⁸⁴

⁷⁷ N Flowers 'A short history of human rights' (1998) *University of Minnesota* 1.

⁷⁸ Viljoen (n 41).

⁷⁹ Nimako (n 63) 6.

⁸⁰ Flowers (n 78) 1.

⁸¹ Nimako (n 63) 8.

⁸² Sibanda (n 60) 438.

⁸³ Sibanda (n 60) 439.

⁸⁴ Preamble of the Organisation of African Unity Charter (25 May 1963).

Linking this chapter back to happiness, the central theme of this research, it is necessary to chart the path of the human rights legal project in Africa to see more clearly the effect of international human rights law on happiness in the African context. It is important to note the centrality and necessity of the nation state in the formation of the universalistic human rights system. This is the cause of the problem of people who are not 'nationally determined' culminating in their being essentially 'rightless.'⁸⁵ The trajectory of the manipulation of the Westphalian nation state form as a part of the colonial imposition in Africa is undeniably intertwined with the development of the African human rights system as it exists today. With this historical foundation in mind, the work of conceptualising this history's impact on happiness on a continental scale is rendered more possible.

2.4 Conclusion

This chapter sought to trace the trajectory of the human rights legal project in Africa and explore its inherent link with the colonial imposition. This articulated the world order as it stands today, generally, and more specifically how it has affected Africa. This is necessary to explain Africa's positioning in the happiness indices in the third chapter, as well as the detrimental disregard for African philosophies on the international stage- a problem that needs to and will be addressed in the fourth chapter. The final chapter will offer a strategy towards incorporating African philosophies into the measurement of happiness and the legal design it informs to ensure the implementation of law's happiness.

Chapter 3: Critiquing to strengthen existing happiness indices: The World Happiness Report and Happy Planet Index

3.1 Introduction

This chapter looks at two existing happiness indices, with the aim of identifying areas for improvement to then be unpacked from an African philosophical perspective in the following chapter. This will entail exploring how happiness is measured generally and summarising existing critiques of happiness as a metric and the overreliance on subjective well-being for happiness measurement generally. Specific critiques proffered against the World Happiness Report and Happy Planet Index will be discussed and considered in the context of this research before concluding the section and laying the foundation for the following chapter.

3.2 The origin of happiness as an economic indicator

Before critiquing the two chosen existing indices, it is necessary to contextualise these indices against the broader backdrop of happiness economics and the subsequent origin of happiness as an economic indicator. The origin of happiness as an economic indicator will be, herewith, considered and thereafter the manner of measuring happiness will be discussed.

Stewart divides the initial academic contributors to the field of happiness economics into the categories of ‘classical utilitarians’ and ‘neo-utilitarians.’⁸⁶ The classical utilitarians are said to base their thinking on Aristotle as the field’s foundational thinker.⁸⁷ Bentham is said to have developed his theory of utilitarianism by drawing inspiration from Aristotle’s works, in the context of a broader philosophical uptake of the notion of utilitarianism in England at that time.⁸⁸ Bentham also drew inspiration from previous utilitarian works such as Richard Cumberland’s writings of 1672, understood to argue, fundamentally, that ‘it is the greatest happiness of the greatest number that is the measure of right and wrong.’⁸⁹ Bentham’s most widely regarded contribution ‘was his effort to introduce exact method into all discussions of utility’ through what he termed a ‘Felicific Calculus.’⁹⁰ The Felicific Calculus sought to measure ‘varying lots of pleasure and pain,’ by balancing individual interests against the interests of their broader community.⁹¹

⁸⁶ F Stewart ‘Against Happiness: A critical appraisal of the use of measures of happiness for evaluating progress in development’ (2014) 15 *Journal of Human Development and Capabilities* 295 at 295.

⁸⁷ Stewart (n 87).

⁸⁸ WC Mitchell ‘Bentham’s Felicific Calculus’ (1918) 33 *Political Science Quarterly* 161 at 162.

⁸⁹ As above. J Bentham (originally published anonymously) *A fragment on government* (1776) vi.

⁹⁰ Mitchell (n 89) 163.

⁹¹ J Bentham *Introduction to the Principles of Morals and Legislation* (1789) 16.

Thereafter, Bentham's works inspired the subsequent formation of welfare economics.⁹²

Adopted (with some qualifications) by John Stuart Mill and Edgeworth, Sidgwick and others, the approach (of Bentham) provided the foundations for welfare economics. For each individual, it was assumed that welfare maximisation would be achieved by individual consumer choice, in which the 'rational' individual would equate her marginal utility from the purchase of any good with that obtained by buying any other good. Hence prices were equated with the marginal utility every consumer got from every good, so prices times quantities consumed could be assumed to be a measure of welfare. Adding up all purchases in the economy one arrives at national income, and thus the initial utilitarian ethics provides the foundation for regarding national income as a measure of national well-being.

However, according to Stewart, this was a distortion of Bentham's calculus, because it failed to account for the impact of the unequal distribution of that national income, and its consumption and production, on the targeted population.⁹³ Rather, the objective of happiness economics is to measure country prosperity using a broader range of factors than just gross domestic product because it is inadequate, on its own, as a measure for societal progress.⁹⁴ Essentially, gross domestic product is simply a 'measure of market activity' that does not account for the possibly detrimental impact any of that activity may have.⁹⁵ With national income, or gross domestic product, holding the monopoly on the measurement of country success up until the present day, the neo-utilitarians sought to introduce happiness as an alternative metric.⁹⁶

In strong contrast to the classical utilitarians, the new advocates of happiness as a measure of progress are intending not to justify the use of income but to provide a replacement or supplement to it.

Bhutan became the first country to propose a Gross National Happiness metric as an alternative to gross domestic product in 1972.⁹⁷ This new wave of economic thinkers moved into the frame of Western economic discourse, through Richard Easterlin's development of the 'Easterlin Paradox' in 1974.⁹⁸

⁹² Stewart (n 87) 3.

⁹³ Stewart (n 87) 4.

⁹⁴ DF Rojas-Gualdrón, 'Inter-regional metric disadvantages when comparing country happiness on a global scale. A Rasch-based consequential validity analysis' (2017) 10 *International Journal of Psychological Research* 26 at 27.

⁹⁵ Norberg-Hodge and others (n 3) 38.

⁹⁶ As above.

⁹⁷ Centre for Bhutan Studies and GNH Research (n 5) 32.

⁹⁸ R Easterlin and others 'The Easterlin Paradox' (2020) *Institute of Labour Economics* 2.

The Easterlin Paradox states that at a point in time happiness varies directly with income, both among and within nations, but over time happiness does not trend upward in correspondence with income growth.

When asked why happiness should be viewed as the best measure of progress, happiness economists revert to the logic of Mill, who argued:⁹⁹

No reason can be given why the general happiness is desirable, except that each person, so far as he believes it to be attainable, desires his own happiness... we have not only all the proof which the case admits of, but all which it is possible to require, that happiness is a good: that each person's happiness is a good to that person, and the general happiness, therefore, a good to the aggregate of all persons.

Furthermore, locating happiness and well-being in the context of economic growth positions happiness as a determinant for positive economic outcomes.¹⁰⁰ The implication is that where happiness is low, social unrest and disharmony is more likely, and that this will hinder the economic activity of the country under consideration.¹⁰¹ In the realm of health care, for example, it is asserted that happier people are healthier- and vice versa- and thus tend to remain economically productive for longer periods.¹⁰²

The relevance of human emotion in the realm of policy creation and academia is, thus, mandated by arguing that policymakers who intend to benefit from the well-being of its workforce and broader population must consider subjective measures of well-being to ensure this population remains happy.¹⁰³

The notion which, therefore, informs the approach taken by happiness economists is that happiness is in the interests of the common good, thus leading to economic prosperity as a positive side-effect. This is the historical basis on which happiness economics stands in Western discourse. Within the field, however, much contention surrounds the correct manner to employ in measuring happiness which is, the subject of the next section.

3.3 How happiness is measured

Looking at the current debates regarding how happiness is measured is necessary to locate the two indices to be critiqued within the ever-growing field of happiness economics. Before the altruistic

⁹⁹ JS Mill and others *Utilitarianism* (1863) 81.

¹⁰⁰ Greyling and others (n 2) 4.

¹⁰¹ As above.

¹⁰² As above.

¹⁰³ Greyling and others (n 2) 3-4.

objective of increasing well-being could begin, the need for tools to measure well-being prompted the creation of the happiness indices.¹⁰⁴

The measurement of happiness is, however, riddled with debate. The main debates pertaining to the measurement of happiness are mapped out in the remainder of this section. The first debate regards the common understanding that seeking a consensus on the definition and structure of happiness-particularly at a national level- is a necessary precondition to its measurement but has proven difficult for happiness economists to agree upon.¹⁰⁵ Cummins expresses concern on this issue of happiness economists agreeing to disagree on so foundational an issue.¹⁰⁶

Perhaps the most vexing issue in the happiness literature is the failure of authors to define their terms. This omission is far from trivial. The various meanings that authors ascribe to 'happiness' differ so much from one another that effective communication is threatened.

Happiness, secondly, is characterised by a culmination of positive emotions cannot be ascribed a 'one-size-fits-all' formula, because the components which form positive emotions converge and cannot be easily isolated and ascertained.¹⁰⁷ Furthermore, identifying when and why certain components of happiness tend to be triggered or converge is highly individualised and context specific.¹⁰⁸ At a societal level, happiness as a social phenomenon is not universal in how it appears and, thus, how it can be measured.¹⁰⁹

Differences between world regions in terms of cultural, social, and economic characteristics may influence the performance of country happiness indicators within world regions, leading to measurement confounding in the estimation of both absolute measures of country happiness and the magnitude of global inequalities.

Necessarily entailing the second point is the persisting task of identifying distinct positive emotions to subsequently measure.¹¹⁰ In the field of epidemiology, the failure to account for pertinent factors is called a 'confounding bias', where a variable, if not considered, will lead to a distortion in the

¹⁰⁴ Greyling and others (n 2) 4-5.

¹⁰⁵ Rojas-Gualdrón (n 95) 27.

¹⁰⁶ RA Cummins 'Happiness is the Right Metric to Measure Good Societal Functioning' (2016) 53 *Society* 273 at 273.

¹⁰⁷ Zamfir 'Revisiting happiness and quality of life: new and old solutions' (n 28) 11.

¹⁰⁸ As above.

¹⁰⁹ Rojas-Gualdrón (n 95).

¹¹⁰ As above.

interpretation of the resulting data.¹¹¹ This distortion occurs in the way exposures and outcomes are measured- with the ‘extraneous third variable’ being termed the ‘confounder.’¹¹² ‘Exposure’ is the term used to characterise ‘any factor that may be associated with an outcome of interest.’¹¹³ The ‘outcome of interest’ is the variable then used to interpret the resulting evidence.¹¹⁴ Through this lens, the positive emotions sought to be measure would be characterised as exposures, which must be considered carefully to avoid a confounding bias causing then a subsequent distortion of the interpretation of the outcomes of interest.¹¹⁵

Finally, and more nebulously, there is speculation around the effect these debates may have on the experience of positive emotions thereafter, with the concern being that the act of defining and predicting positive emotions will detract from the novelty of feeling these emotions.¹¹⁶

With these main debates briefly considered above, this research can proceed to scrutinising the World Happiness Report and Happy Planet Index more specifically. The World Happiness Report and Happy Planet Index are determined using empirical surveys.¹¹⁷

Empirical work on happiness uses surveys of people’s perceptions of their lives, but the questions vary – some relate closely to feelings and others to a considered evaluation of more objective conditions. Questions include: ‘Did you smile or laugh a lot yesterday?’ and ‘generally speaking how happy are you with your life?’. These two are both primarily directed at the affective component. Other questions are more cognitive: for example, ‘generally speaking how satisfied are you with your life?’ and ‘imagine a ladder from 0-10 with 10 the best possible life: on which step do you stand?’ These last two questions may not be answered with reference to feelings at all, but may represent a considered judgement of a person’s objective condition in relation (especially for the last question) to what a person knows about other possible lives. The interpretation of any measure of societal (or personal) happiness then depends on the precise question which forms the basis for the measure.

Both the World Happiness Report and the Happy Planet Index rely on the results of the Gallup World Poll for measuring well-being.¹¹⁸ This empirical survey produces three numerical scores: an overall life

¹¹¹ P Velentgas and others *Developing a protocol for observational comparative effectiveness research: a user’s guide* (2013) 100.

¹¹² Alexander and others ‘Confounding Bias Part 1’ in *Eric Notebook* (2015) 2 1 at 1.

¹¹³ Velentgas and others (n 112) 45.

¹¹⁴ Velentgas and others (n 112) 71.

¹¹⁵ Zamfir ‘Revisiting happiness and quality of life: new and old solutions’ (n 28) 11.

¹¹⁶ As above.

¹¹⁷ Stewart (n 87) 5-6.

¹¹⁸ Helliwell and others (n 13 above) 3. Happy Planet Index (n 13) 1. Gallup ‘Gallup Global Emotions 2021’ (2021) 3.

evaluation, a positive experience index and a negative experience index.¹¹⁹ The overall life evaluation is measured on a scale of one to ten.¹²⁰

The Gallup World Poll... asks respondents to evaluate their current life as a whole using the image of a ladder, with the best possible life for them as a 10 and worst possible as a 0. Each respondent provides a numerical response on this scale, referred to as the Cantril ladder.

The positive experience index questions are drafted around the subject's experiences of the previous day.¹²¹

- Did you feel well-rested yesterday?
- Were you treated with respect all day yesterday?
- Did you smile or laugh a lot yesterday?
- Did you learn or do something interesting yesterday?
- Did you experience the following feelings during a lot of the day yesterday? How about enjoyment?

The negative experience index is determined in terms of the previous day's experiences, too.¹²²

Did you experience the following feelings during a lot of the day yesterday?

How about physical pain?

How about worry?

How about sadness?

How about stress?

How about anger?

The survey participant is then required to reply using simple 'yes' or 'no' to the questions listed above, with the percentage of yes and no answers given by the subject group being the published statistical outcome.¹²³ The positive experience index for 2020 on a global scale came to 71%, and this score has

¹¹⁹ As above.

¹²⁰ Helliwell and others (n 13) 16.

¹²¹ As above.

¹²² As above.

¹²³ Gallup 'What is the world's emotional temperature?' (2021) <https://news.gallup.com/interactives/248240/global-emotions.aspx> (Accessed 24 October 2021).

remained relatively stable over the fifteen years the survey has been conducted, with the lowest ever positive experience index being the first recorded outcome of 68% in 2006.¹²⁴ The negative experience index, however, has been steadily increasing, meaning the subjective prevalence of negative experiences are rising, since the poll's first publication at 24% in 2006, to a reported 32% in 2020.¹²⁵

The World Poll's dataset varies from country to country, but interviews are generally conducted with approximately 1000 people, with multiple outliers in each year.¹²⁶ For example, the 2020 dataset's interviewees per country were close to the stipulated 1000 people for the most part, but ranged from Iceland's 501 recorded interviews to India's 6350 recorded interviews, with this variance existing among the 118 countries surveyed that year.¹²⁷ Furthermore, the manner in which interviews are conducted vary from face to face interactions to the use of landline and mobile telephones.¹²⁸ There is no mention of what determines the number and manner of interviews from country to country, as data samples are not necessarily proportional to population numbers.¹²⁹ The geographic spread of interviews is also subject to variation with a particular avoidance of areas deemed insecure, such as was the case in Gallup's 2021 dataset for Cameroon:¹³⁰

Some arrondissements in the Extreme North region, the Northwest region, and the South West region were excluded due to insecurity. Neighborhoods with less than 50 household were also excluded from the sampling. The exclusion represents 20% of the total population.

The information above points to there being multiple confounding biases in the Gallup World Poll, which forms the basis of the well-being data in the indices that follow. What differentiates these indices is their combination of Gallup's data with other considered components. Index-specific critiques will be, herewith, explored.

3.4 The World Happiness Report

On top of the data provided by the Gallup World Poll, the World Happiness Report team conducts its own additional research in the same survey style pertaining to 'income, health, having someone to count on, having a sense of freedom to make key life decisions, generosity, and the absence of

¹²⁴ Gallup (n 119) 4.

¹²⁵ Gallup (n 119) 10.

¹²⁶ Gallup Worldwide Research Methodology 'Country Data Set Details: Gallup Worldwide Research Data Collected 2005/2006 – 2021' 2021 130.

¹²⁷ Gallup Worldwide Research Methodology (n 127) 131-132.

¹²⁸ As above.

¹²⁹ As above.

¹³⁰ Gallup Worldwide Research Methodology (n 127) 136.

corruption' as further measures for life satisfaction, with 2021 being the first year of evaluating 'institutional trust' on top of these variables.¹³¹ Income is measured with reference to each country's gross domestic product, which is a subject of much debate for its argued inadequacy as a measure for societal progress in the field of happiness economics.¹³² Kinmonth argues that, pertaining to Japan, the World Happiness Report has no 'real analytical merit.'¹³³ Because of the highly subjective nature of the Report's findings, he argues that the practice of ranking countries produces a biased understanding of the data, by forcibly comparing results in a manner of 'confirmation bias' that Kinmonth argues needs to be regarded in the context of each country considered by the Report.¹³⁴ He argues further that the translation of questions renders an unavoidable change in meaning depending on the language used to interview the target groups.¹³⁵ He adds that the year of publishing does not accurately represent the year of data collection.¹³⁶ The small sample groups used in conducting the Gallup World Poll is cited as an additional issue.¹³⁷ Finally, he argues that the data does not consider human rights and public health issues as reported on by each country concerned, such as gender inequalities and suicide rates.¹³⁸ In another article, Kinmonth criticises the Report's use of 'Western thinking' to measure the prosperity Japan, an analytical framework that he believes is not suitable for this purpose.¹³⁹

This view is elaborated upon by citing the overwhelming presence of white men on the Report's editorial team.¹⁴⁰ Four white men out of six editors in the 2021 Report is the most diverse the World Happiness Report's editorial team has ever been.¹⁴¹ This, according to Kinmonth, explains the imposition of Western-Christian values by the Report onto other ways of living, citing, for example, the section on measuring country generosity through its volume of donations to charity in the field of

¹³¹ Helliwell and others (n 13) 35.

¹³² As above.

¹³³ E Kinmonth 'The Happiness Report that makes me very unhappy' (2019) <https://japan-forward.com/mythbusters-the-happiness-report-that-makes-me-very-unhappy/> (Accessed 24 October 2021).

¹³⁴ As above.

¹³⁵ As above.

¹³⁶ As above.

¹³⁷ As above.

¹³⁸ As above.

¹³⁹ E Kinmonth "'Happiness Report' Uses Western Thinking to Measure Japan" (2018) <https://japan-forward.com/mythbusters-happiness-report-uses-western-thinking-to-measure-japan/> (Accessed 24 October 2021).

¹⁴⁰ As above.

¹⁴¹ Helliwell and others (n 13) 1.

generosity, being a reference to tithing in the Christian Church context.¹⁴² He argues that Japan places more value on a culture of volunteerism, which the scope of the Report is unable to consider.¹⁴³

Regarding Africa, the Report names Mauritius as the happiest country on the continent at 50th place, with the next African country being Libya at 80th out of 149 countries.¹⁴⁴ Libya's purported high ranking is surprising considering it has been experiencing an armed conflict since April 2019 until the call for ceasefire in October 2020.¹⁴⁵

The conflict hampered the provision of basic services including health and electricity. Armed groups on all sides continued to kill unlawfully and shell indiscriminately, killing civilians and destroying vital infrastructure.

When referring back to the Gallup World Poll dataset, it becomes apparent why such an arbitrary rating is given to Libya, as the Gallup World Poll has not conducted any surveys in Libya since 2019, thus revealing that the data in use by the World Happiness Report is out of date.¹⁴⁶

Sixteen out of 20 of the World Happiness Report's lowest ranked countries are in Africa.¹⁴⁷ Regarding the 2020 data cycle, the editors of the Report have declared that they had experienced unprecedented difficulty collecting responses in countries that were not 'industrial' due to a necessary change in interview mode, from face-to-face computer-assisted interviews to interviews conducted over a telephone.¹⁴⁸

The Gallup World Poll, which has been our principal source of data for assessing lives around the globe, has not been able to conduct the face-to-face interviews that were previously used for more than three-quarters of the countries surveyed. Conversion from computer-assisted personal interviews (CAPI) to computer-assisted telephone interviews (CATI) has been difficult and time-consuming. The number of 2020 surveys available in time for our analysis is about two thirds as large as usual. The change of mode does not affect the industrial countries, most of which were already being surveyed by telephone in previous years were analysed using the data collected from them in the previous two years.

¹⁴² Kinmonth (n 140).

¹⁴³ As above.

¹⁴⁴ Helliwell and others (n 13) 20-21.

¹⁴⁵ Human Rights Watch 'Libya' (2020) <https://www.hrw.org/world-report/2021/country-chapters/libya> (Accessed 28 October 2021).

¹⁴⁶ Gallup Worldwide Research Methodology (n 127) 125-138.

¹⁴⁷ Helliwell and others (n 13) 22.

¹⁴⁸ Helliwell and others (n 13) 17.

But the overall rankings for 2020, especially among the top countries, are unlikely to have been altered by pure mode effects, since most of the top countries were already being reached by telephone surveys prior to 2020, while the countries that shifted to telephone mode in 2020 (marked by an asterisk beside their country names in Table 2.1) are grouped further down in the rankings.

There is arguably an overreliance on data provided by Gallup in compiling the World Happiness Report, even more so when finding that the Lloyd's Register Foundation World Risk Poll, an additional poll used in the compilation of the World Happiness Report, is also powered by Gallup, albeit under a different name.¹⁴⁹ The World Risk Poll seeks to measure 'risk incidents, risk experience and risk perception' which is considered in addition to the World Risk Poll's Worry Index.¹⁵⁰

The World Risk Poll's Worry Index uses the poll's findings to summarize a person's overall level of worry over seven everyday hazards: food, water, violent crime, severe weather, electrical power lines, household appliances and mental health. The Experience Index summarizes the combined harm they, or someone they know, experienced in the two years before polling in these areas. The hazards and experiences are given different weight in the indices to take account of the degrees of seriousness.

This weighting of risks makes it possible to come up with a combined figure using the same formula for each country and group, which then means they can be compared. This is not the same as saying that risks are the same in different places. For example, drinking water may be a low-level risk for people in developed countries, who are used to clean drinking water. For people in other parts of the world, however, drinking water may be life-threatening.

These polls were first compiled in 2019, and the 2021 poll is set to be the second poll and is currently under way.¹⁵¹ This means that the information used from the World Risk Poll in the 2021 World Happiness Report was collected before the Covid-19 pandemic, which Lloyd's Register Foundation predicts to have had a noteworthy impact on global perceptions of risk and worry.¹⁵² The World Happiness Report relied on the World Risk Poll for measuring the connection between trust and well-

¹⁴⁹ Helliwell and others (n 13) 13.

¹⁵⁰ Lloyd's Register Foundation 'Understanding the poll' (2020) <https://wrp.lrfoundation.org.uk/explore-the-poll/understanding-the-poll/> (Accessed 24 October 2021).

¹⁵¹ As above.

¹⁵² As above.

being, particularly important for the Report's consideration of 'institutional trust.'¹⁵³ The method of measuring institutional trust takes the form of a 'wallet question.'¹⁵⁴

This new evidence comes from the World Risk Poll sponsored by Lloyd's Register Foundation and administered during the 2019 round of the Gallup World Poll. Lloyd's Register Foundation agreed to include, among their more usual risk measures relating to the prevalence and perceived likelihood of bad events, a measure of positive risk. The measure chosen is usually called the 'wallet question' because its original form asked respondents to assess the likelihood of their hypothetically lost wallet containing \$200 being returned if found, alternatively, by a neighbour, a police officer, or a stranger. With the likelihood of wallet return being assessed on the same basis as a range of negative risks faced by survey respondents all over the world, it is now possible for us to test the well-being importance of expected benevolence relative to that posed by mental illness, violent crime, and other risks of negative outcomes.

The answers to the wallet question are used to measure the climate of trust in several dimensions, as measured by the expected return of wallets found by neighbours, police officers and strangers. They are more than a conventional measure of trust. To return a wallet requires a level of benevolence extending far beyond basic trustworthiness, since the finder has to go out of their way, often at considerable effort, to do a good turn for someone else. It is no surprise that people are happier if they live in a community where others stand ready to help.

This is an arguable oversimplification of institutional trust that makes no attempt to capture the institutional context as will inevitably differ in each country. The data provided by Gallup is the Report's primary source of information but is used without scrutiny of the efficacy of the Gallup data, and where that lacking efficacy is scrutinised, the resulting statistical distortion is not mitigated against. The Gallup data presents problems in its structure of questioning and the inevitable change of meaning that comes with translation, as well as its inconsistent sample sizes from country to country. As considered by Kinmonth, there is an inherent cultural bias towards Western values in the questions. Furthermore, it is problematic to measure countries in competition with one another, when happiness is not a 'one-size-fits-all.'¹⁵⁵

¹⁵³ Helliwell and others (n 13) 38.

¹⁵⁴ As above.

¹⁵⁵ Zamfir 'Revisiting happiness and quality of life: new and old solutions' (n 28) 11.

3.5 The Happy Planet Index

The Happy Planet Index combines the results of the Gallup World Poll with information on life expectancy produced by the United Nations, as well as the ecological footprint of the country in question as recorded by the Global Footprint Network.¹⁵⁶ Inequalities within countries are also considered with the following clarification.¹⁵⁷

The inequalities between people within a country in terms of how long they live, and how happy they feel, based on the distribution in each country's life expectancy and well-being data.

The results of the Happy Planet Index differ immensely from that of the World Happiness Report, which is explained by the consideration of ecological footprint, which the World Happiness Report does not consider.¹⁵⁸

Wealthy Western countries, often seen globally as representing success, do not rank highly on the Happy Planet Index. Instead, several countries in Latin America and the Asia Pacific region lead the way by achieving relatively high and fairly distributed life expectancy and well-being with much smaller Ecological Footprints.

Although the results of the Happy Planet Index differ from those of the World Happiness Report, the results pertaining to Africa are quite similar. The Happy Planet Index, in its ranking of 140 countries in the world, ranked Algeria as the happiest country in Africa in 30th place, with Morocco coming in next at 33rd, thereafter Mauritius and Ethiopia represent 63rd and 66th place respectively.¹⁵⁹ Rather than wealthy nations occupying the top positions in the ranking, the Happy Planet Index opts for a more nuanced approach.¹⁶⁰

Wealthy, western nations tend to score highly on life expectancy and well-being, but do not score highly on the Happy Planet Index overall, because of the environmental costs of how their economy is run. The USA achieves a fairly high Happy Life Years score, but with an Ecological Footprint that is one of the largest in the world, and therefore a low Happy Planet Index score overall. Many other countries achieve a higher Happy Life Years score, with a smaller Ecological Footprint. Top-ranking country, Costa Rica, manages to achieve a slightly higher Happy Life Years score than the USA, with a significantly smaller Ecological Footprint.

¹⁵⁶ Happy Planet Index (n 14) 1.

¹⁵⁷ As above.

¹⁵⁸ As above.

¹⁵⁹ As above.

¹⁶⁰ Happy Planet Index (n 14) 3.

A graphical representation, nonetheless, shows Africa being positioned as the lowest scoring region from the Index's premiere publication in 2006, until overtaking North America and Oceania in 2017.

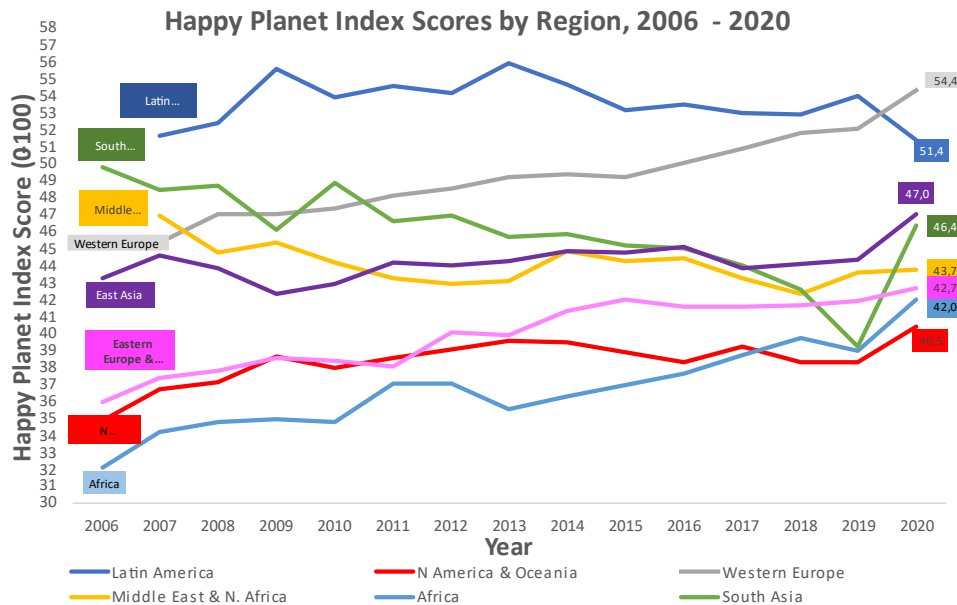


Figure 2: Happy Planet Index, 'Happy Planet Index 2006-2020 public data set' 2020 4.

Furthermore, the Happy Planet Index purports to opt out of the full consideration of human rights violations in the formulation of the Index, publishing 'a note on human rights' accompanying each country report.¹⁶¹

Human rights abuses are a problem in most of the world, including in some of the high-ranking countries in the Happy Planet Index results. While the Happy Planet Index may reflect some of the negative impacts of these abuses, it does not seek to directly measure this. For more information about human rights in this country, visit Amnesty International.

It, thus, appears that where subjective well-being is not an adequate representation of country happiness on its own, additional factors can be considered, but not to the extent to create a clear projection of the state of happiness at a country level. Where there are inconsistencies in the Gallup data, it, nonetheless, remains a popular tool. Furthermore, the disparity between two indices purporting to measure happiness yield completely different results, thus proving the acknowledged lack of consensus regarding what happiness is. A brief scan of alternative databases and criticisms is rendered necessary to consider whether there are any comprehensive and reliable methods in existence for the measurement of country success.

¹⁶¹ Happy Planet Index *South Africa* (2020) <https://happyplanetindex.org/countries/?c=ZAF> (Accessed 25 October 2021).

3.6 Suggested alternatives

Etzioni argues that ‘happiness is the wrong metric’ for measuring human prosperity in his book entitled as such in which he posits a ‘communitarian response to liberal populism.’¹⁶² He argues that the measurement of human progress through tools such as the gross domestic product and the happiness indices in their current iteration view people as ‘homo economicus’ rather than ‘homo sapiens.’¹⁶³ He explains the concept of homo economicus as having roots in utilitarian theory, where morality is considered an ‘enlightened self-interest’ in constant pursuit of pleasure, with the utility of one’s decisions couched in the language of economic consumption.¹⁶⁴

In contrast, many other scholars see people as homo sapiens, as human beings subject to continuous conflict between the pursuit of pleasure and their moral commitments. The simple line, “I would like to go to a movie, but I ought to visit my friend in the hospital,” captures this tension.

Etzioni, through the lens of Western communitarianism – a realm of thought that will be differentiated from African communitarianism in the following chapter- seeks to explain how nations make new shared moral understandings, with the law being a key component of how new shared moral understandings are formed.¹⁶⁵ He argues that human nature is inherently altruistic, and that there is a constant tension between self-interest and moral commitment, but not to the extent that it can reduce the importance of moral commitment as a factor of human behaviour.¹⁶⁶ Etzioni posits that happiness economists tend to see happiness through an individualistic lens, and proposes that communitarianism is better suit to understanding humanity as connected, comprised of a moral infrastructure, and necessarily dependent on every right bearing a concomitant responsibility.¹⁶⁷

Stewart, in a similar vein, argues for a ‘Human Right and capabilities approach and the promotion of justice’ as a better-suited alternative to the metric of happiness.¹⁶⁸ The basis of Stewart’s critique of the happiness metric mirrors the concerns mapped out in this chapter.¹⁶⁹

To summarise so far, using happiness as a way of evaluating progress involves many problems arising from disagreements about definitions, differences in how people answer questions

¹⁶² A Etzioni *Happiness is the Wrong Metric* (2018) 3.

¹⁶³ Etzioni (n 163) xiv.

¹⁶⁴ Etzioni (n 163) xv.

¹⁶⁵ Etzioni (n 163) 65.

¹⁶⁶ Etzioni (n 163) 3.

¹⁶⁷ Etzioni (n 163) 10.

¹⁶⁸ Stewart (n 87) 1.

¹⁶⁹ Stewart (n 87) 6.

according to the nature of the question, age and even time of day, as well as culture; problems of adding up answers across people to arrive at a national figure; and the weak basis for distributional judgements.

She proposes for the use of the United Nations Development Programme (UNDP) Human Development Index, which does not consider subjective well-being, and correlates very loosely with the results of the Gallup World Poll.¹⁷⁰ In the UNDP's 2020 Human Development Report, it argues that 'there is no one-size-fits-all tool or metric' as a 'central theme of the report.'¹⁷¹ The report proffers three considerations for the development of metrics to better measure human progress.¹⁷²

Firstly, the need for 'a revolution in metrics, going beyond averages to inequalities both across and within countries' is advocated for, with a focus on 'enhanced capabilities' driving unequal contribution to environmental degradation within and across countries.¹⁷³

The inequalities reflect the unequal consequences of dangerous planetary change and the differences in power that frame choices driving planetary pressures. And they are manifest not only in inequalities in income and wealth but also in enhanced capabilities—today's new necessities in a rapidly changing and increasingly digital world. Particularly important is to emphasize horizontal (intergroup) inequalities, since they often reflect longstanding patterns of exclusion and discrimination. And it is important to go beyond national averages more than ever—for even countries contributing little to total greenhouse gas emissions may have large individual emitters.

The second point builds on the first, arguing that sustainability must consider what is likely to happen in the future to adequately assess the quandary of discerning what needs to be sustained, and how impactful human agency, and shifting its focus, can be.¹⁷⁴

If the metrics are to influence those making choices in the real world, these challenges are consequential and cannot be brushed aside. And there simply is no way of assessing any notion of sustainability based on past or current indicators without making assumptions about the future. Going beyond "sustaining," and consistent with the findings of this Report, measuring human development in the Anthropocene should be guided towards measures of planetary pressures and those that incorporate human agency.

¹⁷⁰ Stewart (n 87) 10.

¹⁷¹ UNDP 'Human Development Report 2020' (2021) 226.

¹⁷² UNDP (n 172) 227-228.

¹⁷³ As above.

¹⁷⁴ As above.

Final regard for the need to develop a culture of using indices in context is proffered, emphasising the necessity of not imposing utilities onto the indices that they cannot rise to, with the danger of a confounding bias being a ubiquitous concern in the measurement of social progress.¹⁷⁵

Third, although composite indices are powerful political signalling devices, relying on them exclusively can be misleading... Sen, Fitoussi and Stiglitz used the analogy of a driver relying on a car's dashboard for information on speed and on how much fuel is in the tank. Both pieces of information are valuable separately, but it is difficult to see how they could be combined in a way that warns the driver of both whether he or she is speeding or running out of fuel.

An alternative and complementary source of data, according to Greyling et al, is 'Big Data' which forms the primary base of information in the analysis of happiness in South Africa under Covid-19 legal restrictions.¹⁷⁶ 'Big Data' is defined below.¹⁷⁷

In layman's terms, Big Data is a phrase used to describe a massive volume of both structured (for example stock information) and unstructured data (for example tweets) generated through information and communication technologies such as the Internet.

Greyling et al consider their own study as being a novel opportunity to monitor the effects of a lockdown on a country in which well-being is already low, such as South Africa, seeking to glean the causal effects of the lockdown in South Africa over the 2020 period.¹⁷⁸ Furthermore, it sought to define the determinants of happiness during this lockdown to make causal inferences on the lockdown's overall effect on happiness.¹⁷⁹

The lockdown in South Africa, thus, has been regarded as a useful tool for the analysis of happiness in the country as it essentially imposed set variables, the impact of which could then be measured.¹⁸⁰ In this way, the lockdown in South Africa 'caused a significant decrease in happiness, and factors related to the lockdown regulations became relevant determinants of happiness.'¹⁸¹ For example, the alcohol and tobacco ban enforced by the South African government was seen as a major infringement on the human rights of South Africa's people, and subsequently had a negative effect on

¹⁷⁵ As above. Velentgas and others (n 112).

¹⁷⁶ Greyling and others (n 2) 5.

¹⁷⁷ As above.

¹⁷⁸ Greyling and others (n 2) 2.

¹⁷⁹ As above.

¹⁸⁰ Greyling and others (n 2) 15.

¹⁸¹ As above.

the happiness of a significant portion of South African residents, while also being implemented- for an arguable greater good- to ease the pressure on hospitals who receive people who become sick or injured through alcohol and tobacco use, when these resources were needed to help those who had contracted the Covid-19 virus.¹⁸² The economic impact of this policy decision had further negative ramifications due to the job-losses it caused at every point in the alcohol and tobacco supply chains, as well as the loss incurred by the government while it did not receive value added tax on alcohol and tobacco purchases, thus indicating the difficult balance comprised of when considering well-being at a national level..¹⁸³

Subjective well-being and its measurement are nonetheless, worth considering, especially with the knowledge of more extensive methods of data collection as remarked upon by Greyling. It is difficult to fathom that these metrics are unable to consider a broadened range of factors, such as environmental degradation and subjective well-being in the context of human rights violations. In the exercise of constant philosophical disagreement, the primary objective of happiness economics- to improve global happiness- gets lost in the debate. The question remains whether there is an analytical framework that can hold all the contributions from happiness economics, multiple manners of measuring happiness, and its suggested alternatives- that rather than seeking to rank countries in a dystopic happiness Olympics allows for a nuanced, context-specific consideration of happiness at a national level to be embarked upon. This is the point of departure for the fourth chapter, which shows the need for the consideration of African philosophies on the global platform, which have the room to hold and consider happiness and progress with the required measure of nuance found lacking in this chapter.

3.7 Conclusion

This chapter has considered two existing happiness indices and their criticisms and suggested alternatives. The World Happiness Report and Happy Planet Index have been considered individually, but also within the context of happiness economics. The overreliance on the Gallup World Poll has been cited as a problem, and the proposition has been made for an analytical framework that can hold the full weight of all critiques and considerations levelled in this chapter.

¹⁸² Greyling and others (n 2) 14.

¹⁸³ As above.

Chapter 4: African philosophical contributions to understandings of happiness

4.1 Introduction

This chapter continues the work of the third chapter by seeking to locate the gaps in Western thinking which African philosophy is ready to fill. These gaps in Western, hegemonic thought will be considered in the context of the world and legal order described by the second chapter, and which has infiltrated modern knowledge systems, rendering an intentional erasure of African contributions in areas that desperately need the nuance these African philosophies are uniquely able to accommodate. This chapter will proceed by, first, problematising the notion of Western philosophy and its conceptions of happiness at an individual and collective level. Thereafter, the African philosophical contributions of ubuntu, ukama and the spiral of time, that are ready to fill these gaps in the understanding of the world order and in the measure of happiness, and of the interconnectedness of human progress more generally. Finally, the issue of incorporating African philosophies into Western thought which seeks to erase and minimise African contributions will be considered so that it can be overcome.

4.2 Conceptualising individual happiness from a Western perspective

It is necessary to further conceptualise happiness from the hegemonic Western perspective to conclusively glean the elements and overarching understandings of happiness therein, even if simply for the purposes of locating the gaps in logic which African philosophies are ready to fill. This also requires a more expansive discussion on notions of collective happiness versus individual happiness than could be developed in the introductory stage of this research. Furthermore, the nexus between happiness and human rights in Africa must be contextualised in line with the history of human rights law on African soil, which necessitates a regard for the colonisation of Africa by European countries and its persisting consequences today, a task which has been given flesh by the second chapter.

One Western understanding of individual happiness has a positive and a negative component.¹⁸⁴ While the positive component pertains to self-actualisation through the process of accomplishments and fulfilling one's needs, the negative component defines happiness by what it is not through outlining 'what one should stay away from' to avoid experiencing a tarnishing of one's psychological or physical sense of equilibrium.¹⁸⁵ The goal of the social sciences in the realm of happiness is, thus, to maintain the positive and overcome the negative.¹⁸⁶

¹⁸⁴ Zamfir 'Revisiting happiness and quality of life: new and old solutions' (n 28) 5.

¹⁸⁵ As above.

¹⁸⁶ As above.

Referring to the school of positive psychology, there are three dimensions of happiness which routinely form the subject of enquiry.¹⁸⁷ The first dimension asks whether happiness is based on external conditions of life, such as financial income, location, and access to services.¹⁸⁸ The second dimension grapples with whether happiness can be understood as being relative or absolute, and whether happiness occurs uniquely in alignment with an individual's hopes and needs or can be boiled down to a one-size-fits-all formula for well-being.¹⁸⁹ The third and final dimension questions the extent to which these notions of happiness are influenced by culture and society, the collectives in which every individual inevitably resides.¹⁹⁰

Happiness is, furthermore, understood as the means between wishes had and wishes granted, as told through the lens of epicurean philosophy, which sees happiness as the result of one's experience of pleasure.¹⁹¹ Wishes, as Zamfir posits, are in a state of constant renewal, with new wishes eternally being granted and gained, thus ensuring that one is never fully satisfied.¹⁹² This, she argues, is 'the crisis of ancient philosophy' regarding happiness as the meditation on a goal that can never be attained; a beautiful mirage, in sight but never in reach.¹⁹³

Cummins, offering an alternative view, warns against overreliance on 'ancient historical ideas derived from philosophy, with little or no relevance to contemporary understanding of happiness', but does so by considering the definitions of happiness proffered by Bentham and Mill in the realm of utilitarianism, and considering no further philosophical perspectives.¹⁹⁴ The positions of Bentham and Mill are considered the 'standard story' in analytic political philosophy, with no account for other contributions, and is a problematic assumption that will be fleshed out in this chapter's section on non-Western conceptions.¹⁹⁵

These definitions of happiness focus on the individual person and their life path. Defining a person requires due regard to the complex interplay of one's bio-psycho-social-cultural

¹⁸⁷ RP Martín 'Positive Psychology in Schools: A change with deep roots' (2017) 38 *Papeles del Psicólogo* 66 at 66.

¹⁸⁸ As above.

¹⁸⁹ As above.

¹⁹⁰ As above.

¹⁹¹ J Annas 'Epicurus on Pleasure and Happiness' (1987) 15 *Philosophical Topics* 5 at 18.

¹⁹² Zamfir 'Revisiting happiness and quality of life: new and old solutions' (n 28) 4.

¹⁹³ Zamfir 'Revisiting happiness and quality of life: new and old solutions' (n 28) 3.

¹⁹⁴ Cummins (n 107) 273.

¹⁹⁵ M Krishnamurthy 'Decolonizing Analytic Political Philosophy' (2016) https://politicalphilosopher.net/2016/06/03/meenakrishnamurthy/#_ftn1 (Accessed 12 October 2021).

environment.¹⁹⁶ Each person's complex and unique development must be acknowledged in formulating these definitions, as well as the nature of personhood as a continuous process of defining and perfecting yourself, and of self-growth, self-development, and self-construction as part of a full lived experience.¹⁹⁷ It is with this point in mind that an individual's happiness can be located within the context of a collective, with due regard to any tensions between the two notions that may arise.

4.3 Happiness for a collective

The interconnectedness of all things is reiterated by Norberg et al throughout their work.¹⁹⁸

When people start connecting the dots between climate change, global economic instability, and their own personal suffering – stress, loneliness, depression – there is the potential for a movement that will truly change the world.

It is in the same breath that it must be queried whether human experiences of happiness are connected, relative, or wholly subjective, or are a unique culmination of all these things.

For Balibar, 'all identity is individual.'¹⁹⁹ However, this does not, and will never negate the historical context overarching an individual identity, resulting in its construction being from 'within a field of social values, norms of behaviour, and collected symbols.'²⁰⁰ The central role of the state in manufacturing the history of this unique collection of social realities in which an individual is positioned cannot go unacknowledged.²⁰¹ This paves the way for understanding a sense of collective happiness at a wider national, even global level, through the common realities of individuals, as well as the role of the nation state construction in determining the lived experiences of those living within it.

Having regard to the connectedness of all things at this global level, capitalism in the global markets have tended towards a similarity across the globe, while perpetuating the exacerbating global inequalities.²⁰² Globalisation is the term used to describe the phenomenon of deregulating trade and finance industries to enable them to operate globally.²⁰³ This is argued as being the creation of a 'single world market' controlled by a handful of transnational companies.²⁰⁴ This results in the existence of

¹⁹⁶ Zamfir 'Revisiting happiness and quality of life: new and old solutions' (n 28) 5.

¹⁹⁷ As above.

¹⁹⁸ Norberg-Hodge and others (n 3) 2.

¹⁹⁹ Balibar (n 12) 347.

²⁰⁰ As above.

²⁰¹ Balibar (n 12) 335.

²⁰² Norberg-Hodge and others (n 3) 7.

²⁰³ As above.

²⁰⁴ As above.

corporations that are more economically powerful than the countries they are operating in.²⁰⁵ This effect is the ‘successor of colonial merchants’, in line with the attempted destruction of other ways of being through the colonial project as explored in the second chapter.²⁰⁶ Essentially, globalisation is said to be a major cause of unhappiness worldwide due to its commodification of the sense of self, and the promotion of an unsustainable culture of consumerism that envelops and, thus, erases existing cultural values.²⁰⁷

Research has shown that strong social ties and direct connection to place and nature are critical to human happiness and well-being, and these connections are precisely what globalization is undermining.

Another aspect of globalisation contributing to unhappiness is the impact of a ‘consumer monoculture’ that has spread across the world.²⁰⁸ This is the commodification of human insecurity articulated by the feeling that you will never be beautiful, thin, intelligent, wealthy, strong, or talented enough against an unattainable ideal, with no accumulation of material goods ever adding up to enough to fill the void this leaves behind.²⁰⁹ Where the place of role models were formerly filled by upstanding community members, individuals now tend to seek out role models in celebrities, who, under the manipulation of photoshop, marketing, and distance, project a flawless and unreal version of themselves for mass consumption.²¹⁰

The unhappiness at a group scale that is begotten by globalisation is, thus, a sign of a form of collective happiness or more accurately, a collective unhappiness. When looking at globalisation as a form of an intentional transcendence of the nation state similarly to international human rights law, one can clearly identify a degree of homogeneity in the collective unhappiness viewed globally, where globalisation is capitalism reorganising as a transnational economy, creating a ‘single homogenous world space.’²¹¹ When working with notions of collective happiness, therefore, one is doing the work of contextualising the individual and their well-being in the context of their social, national, and global

²⁰⁵ As above.

²⁰⁶ Norberg-Hodge and others (n 3) 8.

²⁰⁷ Norberg-Hodge and others (n 3) 11.

²⁰⁸ Norberg-Hodge and others (n 3) 14.

²⁰⁹ As above.

²¹⁰ As above.

²¹¹ Balibar (n 12) 336.

orders, with the reproduction of such aspects of the individual, by implication, occurring on a collective level.²¹²

Guattari, however, sees existence as the sum of three interrelated ecologies, or what he refers to as ‘registers of suffering.’²¹³ These are the self, society, and nature, elaborated upon as the intermingling of human subjectivity, social relations, and the environment.²¹⁴ Guattari draws a link between human suffering and environmental degradation under imperialism, capitalism, and globalisation as one broad system which he terms ‘integrated world capitalism’ (IWC).²¹⁵ The process of ‘de-singularisation’ is described as a further consequence of IWC, which is the destruction of singularity- where the human individual is a ‘collective singularity’ who employs a range of modes of knowledge, each unique to that individual- effected through the homogenisation of the mass media.²¹⁶ This manifests as a limitation of available discourses, with only the most hegemonic modes of knowledge gaining widespread attention because of this phenomenon.²¹⁷

With this broad outline of Western conceptions of happiness in mind, this chapter moves to defining a non-Western conception and locating African philosophy in relation to that definition. From there, African philosophy’s contributions to understandings of happiness- that the Western discourses touch on but never adequately capture- can be introduced into the frame of this research.

1.3 Defining a non-western conception

Tamale writes on her own tendency to position Africa in contradistinction to ‘the West’, preferring to define ‘Western thought’ as ‘the ‘neoliberal, White-centric/supremacist, binary/Cartesian, intellectually-arrogant depoliticizing kind of Western thought’ that she writes to debunk and reject.²¹⁸ Appiah expands on this assertion, arguing that delinking from the Western matrix is a kind of preliminary exercise present throughout the works of African philosophers.²¹⁹

The pose of repudiation actually presupposes the cultural institutions of the West and the ideological matrix in which they, in turn, are imbricated. Railing against the cultural hegemony of the West, the nativists are of its party without knowing it.

²¹² Norberg-Hodge and others (n 3) 14.

²¹³ F Guattari *The Three Ecologies* trans I Pindar & E Sutton (2000) 28.

²¹⁴ As above.

²¹⁵ Guattari (n 214) 31.

²¹⁶ Guattari (n 214) 14.

²¹⁷ As above.

²¹⁸ Tamale (n 1) 13.

²¹⁹ Appiah & Grossman (n 38) 59-62.

Appiah warns against forgetting that Africa, and the racial categorisation of African people as black, are products of Western thought.²²⁰

The very invention of Africa (as something more than a geographical entity) must be understood, ultimately, as an outgrowth of European racialism; the notion of Pan-Africanism was founded on the notion of the African, which was, in turn, founded not on any genuine cultural commonality but, as we have seen, on the very European concept of the Negro... The reality is that the very category of the Negro is at root a European product: for the "whites" invented the Negroes in order to dominate them.

Defining a 'non-Western' conception, thus, requires understanding the 'Western' component of 'non-Western', as understanding what it is before defining what it is not. Allais calls this the 'identity/meta question' in philosophy, or when philosophy is made to ponder its own existence.²²¹ Appiah shows the presence of this meta question in African philosophers' discerning what renders their philosophies uniquely African as necessary for relinquishing the 'intellectual baggage' of colonial ways of thinking.²²² Allais, however, finds a startling absence of the meta question in the works she groups under the category of Western philosophy, with that being the works of European and North American philosophers in positions of privilege- mostly white men- finding, rather, that Western philosophy tends only to engage 'with the question of what makes something philosophy' and hardly ever what makes it Western philosophy.²²³ Non-Western, by implication of Allais' definition, pertains to the philosophies of all other origins.²²⁴

The "Western" philosophical tradition could be taken to be seeing itself as the centre, as not itself positioned, and therefore taking philosophy to be simply what is done in this tradition, so not in need of qualification by the term "Western."

Loaded in this absence of labelling is the connotation of Western philosophy as a manifestation of whiteness, with whiteness regarding itself as both central and neutral.²²⁵ Two manners in which the notion of Western philosophy has spread to occupy a monopoly on academic thought are seen, firstly, through the distortion of the historical origins of philosophy and, secondly, in the persistent exclusion

²²⁰ Appiah & Grossman (n 38) 62.

²²¹ L Allais 'Problematising Western philosophy as one part of Africanising the curriculum' (2016) 35 *South African Journal of Philosophy* 537 at 538.

²²² Appiah & Grossman (n 38) 103.

²²³ Allais (n 222) 539.

²²⁴ As above.

²²⁵ As above.

of the writing of people of colour from what is deemed philosophy. This is not to say that African writers have been stripped of all agencies.²²⁶

On the other—Other?— hand, talk about the production of marginality by the culture of the center (sic) is wholly inadequate by itself. For it ignores the reciprocal nature of power relations; it neglects the multiform varieties of individual and collective agency available to the African subject; and it diminishes both the achievements and the possibilities of African writing.

On the contrary, Park posits that Western philosophy, in line with Allais' definition, intentionally ignores its non-Western roots.²²⁷ He argues that much of this realm of philosophy has roots in Africa and Asia, and the neglect of this fact is an intentional practice borne from Greek philosophy, beginning with Diogenes, who claimed that humanity and philosophy began in Greece and should not be attributed to any other 'barbarian' groups- where barbarians are understood as meaning non-Greek speakers- the Greek Other.²²⁸

Park traces the trajectory of this othering narrative to the work of Meiners, whose work obsessively sought to glorify white supremacy, and the spread of his ideas across Europe in the late eighteenth century.²²⁹

From reading only a portion of Meiners's corpus it becomes clear that innate differences between the races explained for him literally everything about the course of human affairs, beginning with the way in which human groups were dispersed over the earth and the ancestry and kinship between nations. Racial differences explained why the "great law-givers, sages, and heroes" were white and why Mongolian peoples never developed sciences. If some dark-and-ugly nations did exhibit some scientific activity, this could have come about only through their interaction with Whites.

It is these narratives which were used to erase the African and Asian origins from so-called Western philosophical thought, perpetuating an untrue notion of white superiority in the field, and the subsequent erasure of all who were not included in and by this group, thus linking back to Tamale's initial definition of 'Western' and placing it in context.²³⁰

²²⁶ Appiah & Grossman (n 38) 72.

²²⁷ PKJ Park 'The Exclusion of Africa and Asia from the History of Philosophy' in Park *Africa, Asia, and the History of Philosophy: Racism in the Formation of the Philosophical Canon 1790-1830* (2013) 69.

²²⁸ L Diogenes *Lives of Eminent Philosophers: Volume I* trans RD Hicks (1925) 5.

²²⁹ Park 'The Exclusion of Africa and Asia from the History of Philosophy' in Park (n 228) 82.

²³⁰ Tamale (n 1) 13.

Krishnamurthy describes academic behaviour after this spread of white supremacist thought as the maintenance of an attitude of exclusivity regarding what can be deemed 'philosophy.'²³¹ This is what she calls the 'standard story' of philosophy, that sees analytic political philosophy, for example, as being conceived of in the process of John Rawls rejecting John Mill's account of utilitarianism, without deeming anything else as influential between Mill publishing *Utilitarianism* in 1863 and Rawls publishing *A Theory of Justice* in 1971, even though many writers produced pertinent work in this field in the more than a century between these two publications.²³² Other contributions to the field of analytic political philosophy made by writers falling outside of the 'Western' niche described by Tamale and Allais, such as Martin Luther King and Mahatma Gandhi, were then relegated to alternative fields deemed not to have any bearing on the school of analytic political philosophy- such as 'Indian Political Thought' and 'African American Studies'.²³³ The systematic exclusion of these contributions has led to an epistemological distortion of the breadth of analytic political philosophy, thus rendering it unable to meaningfully comprehend the world order as it is today.²³⁴ This is a clear consequence of the unquestioned dominance of white supremacist ideas.

The attempt to define a non-Western conception in the section above began with the assertion that African philosophy is generally defined in contradistinction to Western thought.²³⁵ This process is, however, problematic in that non-Western and African thought is described as homogenous, when this clarification was, in and of itself, a European construction. Appiah grapples with this conundrum.

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By "African philosophy" I mean a set of texts, specifically the set of texts written by Africans themselves and described as philosophical by their authors themselves... The psychology of race has led, that is, not only to a belief in the existence of a peculiar African form of thinking but also to a belief in special African contents of thought. The Beninois philosopher Paulin Hountondji has dubbed this view that Africa is culturally homogeneous—the belief that there is some central body of folk philosophy that is shared by black Africans quite generally—"unanimism." He has had no difficulty in assembling a monstrous collection of African unanimist texts.

231 Krishnamurthy (n 196).

232 As above.

233 As above.

234 As above.

235 Tamale (n 1) 13.

236 Appiah & Grossman (n 38) 24.

Appiah, nonetheless, concludes that Africa's shared history, and common decolonial agenda, is undeniable.²³⁷

Africans share too many problems and projects to be distracted by a bogus basis for solidarity.²³⁸ Indeed, because the intellectual projects of our one world are essentially everywhere interconnected, because the world's cultures are bound together now through institutions, through histories, through writings, he (referring to Alexander Crummel's early writing on Pan-Africanism) has something to teach the one race to which we all belong.

By considering all that Appiah does in the thought process laid out above, he proposes to strike a sensitive balance between those ways of thinking that are autochthonous to Africa, that pre-exist colonisation and should not be homogenised, but also to understand the current world order as hinging upon an undeniable history of conquest, erasure, and homogenised knowledge production.²³⁹

In concluding this preliminary section, the notion of 'non-Western' must be taken as that which promotes a white supremacist narrative, be it subtle or explicit. This is the thread that joins the understandings of Tamale, Appiah, Allais, Krishnamurthy, and Park. A non-Western conception, for the purpose of this dissertation, will be one that seeks to provide a platform for alternatives to the hegemonic narrative in place. African philosophies that are useful to the failings evident in happiness economics are introduced in the next section.

4.5 Happiness home-grown in Africa as connected to broader non-Western philosophies

Ramose posits ubuntu as being opposed to positivist, reductive thinking in its very nature.²⁴⁰

It (ubuntu) is thus opposed to any -ism, including humanism, for this tends to suggest a condition of finality, a closedness or a kind of absolute either incapable of or resistant to any further movement.

Ubuntu connotes an 'intrinsic order to the universe,' where the universe is a 'complex wholeness' and ubuntu is the force ordering the 'multi-layered and incessant interaction of all entities.'²⁴¹ It is within this wholeness that we find the connection between the well-being of humans and nature, introduced by the Happy Planet Index but without the requisite depth.²⁴² Ubuntu understands that everything is connected, and that an individual is incomplete without the collective and that nature, the climate,

²³⁷ Appiah & Grossman (n 38) 27.

²³⁸ Appiah & Grossman (n 38) 26.

²³⁹ Appiah & Grossman (n 38) 86.

²⁴⁰ MB Ramose 'Ecology through Ubuntu' (2015) *Environmental Values* 69 at 69.

²⁴¹ As above.

²⁴² Ramose (n 241) 70.

and one's environment is entangled in and facilitating of individual and collective well-being.²⁴³ Essentially, humans are 'part and parcel of physical nature' and 'caring for one another is the fulfilment of the natural duty to care for physical nature as well.'²⁴⁴

Le Grange expands on ubuntu in that it is 'a concrete expression of ukama'- a broad philosophy of relationality under which ubuntu falls, and the implication of the the connection between the two concepts necessitating that humanness be understood relationally.²⁴⁵ Essentially, ukama is the philosophy of relatedness based on 'an inseparable oneness between past, present and future generations,' as well as the natural world these generations inhabit. It is these philosophies that understand that a duty of care for one another necessarily encompasses a duty of care for the world we live in. A safe and healthy environment is, thus, imperative to there being a safe and healthy people. This is what the Happy Planet Index tries to capture but falls short of because of its limited scope of merely the Gallup World Poll combined with a single measure for ecological footprint.²⁴⁶

Furthermore, the conception of time in African philosophy differs to that of Western thought and is better suited to understanding the impact of an unjust history on collective happiness, something that the World Happiness Report is unable to consider and which the Happy Planet Index explicitly opts out of by choosing not to factor in human rights violations.²⁴⁷ African philosophies see time in a way that resembles other non-Western philosophies, rather, as a spiral.²⁴⁸ The Western understanding of time as a linear progression is, thus, the outlier.²⁴⁹

In Africa, the Americas and the Pacific, Western observers were struck by the contrast in the way time was used (or rather, not used or organized) by indigenous peoples.

This spiral is rooted to the place where time passes, with time and space being fundamentally connected.²⁵⁰

²⁴³ As above.

²⁴⁴ As above.

²⁴⁵ L Le Grange, 'Ubuntu, Ukama and the healing of nature, self and society' (2011) 44 *Educational Philosophy and Theory* 56 at 62.

²⁴⁶ Happy Planet Index (n 14) 1.

²⁴⁷ Happy Planet Index (n 161).

²⁴⁸ L Brooks, 'The Primacy of the Present, the Primacy of Place: Navigating the Spiral of History in the Digital World' (2012) 127 *PMLA* 308 at 309.

²⁴⁹ L Tuhiwai Smith *Decolonising Methodologies: Research and indigenous peoples* (1999) 53.

²⁵⁰ Brooks (n 249) 309.

This spiral is embedded in place(s) but revolves through layers of generations, renewing itself with each new birth. It cannot be fixed but is constantly moving in three-dimensional, multi-layered space. It allows for recurrence and return but also for transformation.

Much like ubuntu and ukama, time in the African philosophical form proceeds from a basis of relationality, rendering all things 'connected and eternal.'²⁵¹ There are two implications that the philosophy of time can have for happiness. Firstly, it is useful when understanding the impacts of harm, such as the harm colonisation did and does to Africa, or the persistent pain of grief and trauma in an individual lived experience, that are often overlooked as things past and that must be moved on from through the linear conception of time. Secondly, the spiral of time offers an alternative to the capitalistic commodification of time, or 'the connection between time and work.'²⁵² This has huge implications for well-being in a global order obsessed with efficiency and productivity. The Western day has been historically ordered around working and preparing for work.²⁵³ Where happiness has been the subject of goals, of constant renewal, and of 'wishes had and wishes granted,' the spiral of time offers the space to breathe.²⁵⁴

Ubuntu, ukama, and the spiral of time have contributions to make to understanding of happiness in how humans can more comfortably navigate the present moment, as well as how humans can be mindful of things deemed past through the linear gaze. A broader understanding of relationality is mindful of the ways Western impositions such as colonialism have led to a world that is connected irrevocably. The unhappiness of African countries, which is trite in the happiness indices, cannot be understood without regard to the role of European institutions in colonial domination in Africa. The duty of care encompassed in ubuntu is, furthermore, useful for bringing the goals of international human rights law, as heightened moral precepts to which countries must comply, as a further duty of care between nation states, and the impact of the conduct of one nation on another. Before these understandings can be conceptualised further and applied to demonstrate their capability to work in practice, regard will be had for how these African, and more broadly, non-Western philosophies can be incorporated into a social order premised on their erasure.

²⁵¹ Tamale (n 1) 24.

²⁵² Tuhiwai Smith (n 250) 54.

²⁵³ As above.

²⁵⁴ Zamfir 'Revisiting happiness and quality of life: new and old solutions' (n 28) 5.

4.6 The quandary of incorporating non-Western conceptions into Eurocentric constructions and how to overcome it

One such example of this conundrum is Western communitarianism, as explicated in the previous chapter with reference to Etzioni's writing.²⁵⁵

Communitarian ideas have a long history, in the West, China, and elsewhere, but modern-day communitarianism began in the upper reaches of Anglo-American academia in the form of a critical reaction to John Rawls' landmark 1971 book *A Theory of Justice*.

Much like analytic political philosophy locating Rawls' response to Bentham as its single point of departure, communitarianism is positioned as a response to Rawls. While acknowledging the non-Western roots of communitarianism, as well as its distinct similarity to African philosophies in the context of this chapter- it is posited that this philosophy 'began' in the Anglo-American academia of the 1970s, with no regard to African sources- which are relegated to an indefinite 'elsewhere.'²⁵⁶

This is part and parcel of the problem of the erasure of African history, where even global modes of communication have taken on the European form. Appiah comments on colonisation's impacts on language.²⁵⁷

In a sense we have used Europe's languages because in the task of nation building, we could not afford politically to use each other's. It should be said that there are other more or less honourable reasons for the extraordinary persistence of the colonial languages. We cannot ignore, for example, on the honourable side, the practical difficulties of developing a modern educational system in a language in which none of the manuals and textbooks have been written; nor should we forget, in the debit column, the less noble possibility that these foreign languages, whose possession had marked the colonial elite, became too precious as marks of status to be given up by the class that inherited the colonial state. Together such disparate forces have conspired to ensure that the most important body of writing in sub-Saharan Africa even after independence continues to be in English, French, and Portuguese. For many of its most important cultural purposes, most African intellectuals, south of the Sahara, are what we can call "europhone."

The role international human rights law can play in acknowledging and subsequently better accommodating African philosophies is immense but must proceed with an initial acknowledgement

²⁵⁵ Stanford Encyclopaedia of Philosophy, 'Communitarianism' (2001) <https://plato.stanford.edu/entries/communitarianism/> (Accessed 25 October 2021).

²⁵⁶ As above.

²⁵⁷ Appiah & Grossman (n 38) 4.

of the fallacies underpinning the world order, as outlined in the second chapter. Western conceptions cannot be taken for granted as the unquestionable norm, and the contributions from non-Western sources need to be considered. A decolonial approach advocates for seeing the world order as a product of history, and imagined institutions and communities perpetuated by institutions that outlive these communities, as a product of that same history. Nation states are not mere things which can be ranked, but a complex interplay of humanity and domination, each with a unique and specific origin story.

4.7 Conclusion

This chapter has only touched the surface of available African sources, the gaps in Western thought, and the answers to important global questions that have been hidden by ignorance. The individual and collective understandings of happiness from the Western perspective could only attempt to describe what African epistemologies could easily do in mere paragraphs.

Chapter 5: Conclusion

5.1 Introduction

This chapter seeks to tie together the lessons learned from the previous chapters of this dissertation. Chapter one sought to introduce the scope of this dissertation as directed at considering the growing practice of measuring happiness and its negative conception of Africa, through the lens of a decolonial analysis which refuses to accept existing institutions and power structures as normalities exempt from scrutiny.²⁵⁸

Chapter two sought to locate Africa within world history in a manner that breaks away from the myths of Africa being a lawfully stolen thing.²⁵⁹ International human rights law was problematised to reveal the often-disregarded trajectory of human rights law as solidifying of legal entitlements where they did not exist to justify the stealing of nations prior to its universalistic makeover in the 20th century. This is integral to understanding how nations have been formed and legitimated- or refused legitimacy- and the complexities of an international human rights law in Africa borne from the same history as colonialism in Africa. Furthermore, this world order, in which a people must be nationally determined, forms the basis of happiness measurement and analysis which was the subject of the third chapter.

With the context of the second chapter in mind, chapter three looked at two existing happiness indices and scrutinised the information upon which these indices have been constructed. The value of ranking countries and positioning happiness as a competition- where there is always a first and a last place- was questioned and found lacking. The blind spots in each index were regarded and deemed inexcusable. This necessarily affirmed the central argument of this dissertation, that an analytical framework must and can have the breadth to understand the expanding and nuanced means for meaningfully examining happiness at a country and global level.

Chapter four identified the gaps in the Western philosophies informing the formulation of these indices and demonstrated how African philosophies are ready to fill these holes in global understanding, with the disregard for African philosophies on the Westernised global platform- nonetheless- being considered as a direct product of the global order deconstructed and analysed by the second chapter. Herewith this final chapter seeks to tie everything together with three broad recommendations:

²⁵⁸ Tamale (n 1) xiv.

²⁵⁹ Uzoigwe (n 72) 16.

1. That the global order must be scrutinised to reveal its failures, and that the context between human rights and happiness is one of a contested history.
2. That happiness indices are useless if considered out of context and without a historical underpinning at country level.
3. That ubuntu, ukama, and the spiral of time have a myriad of offerings that can be implemented for the improvement of the measurement of happiness and societal progress, as well as the total fulfilment of human rights as codified by international human rights law.
4. Localisation, as necessarily dependant on context-specificity, is a solution that can be prioritised immediately.

5.2 The global order must be scrutinised

Appiah said it best.²⁶⁰

Ideologies succeed to the extent that they are invisible, in the moment that their network of assumptions passes beneath consciousness; genuine victories are won without a shot being fired.

Included in this assertion is the need for international human rights law to scrutinise its own place and role in the ordering of the world. While rooted in a journey toward universal good, a closer interrogation of the journey of international human rights law exposes its fraught colonial origins, and the detrimental impact of ignoring this complicated history on the objective of achieving universal good.²⁶¹ Integrated world capitalism must be understood through its homogenising effect, like a bindweed taking over an ecosystem by strangling the other plants within it.²⁶² Happiness must be considered through the lens of justice, and through the global interrelation of nations, and the happiness indices must honestly consider each country's positioning in the global order it seeks to inspire a digression away from.

5.3 Happiness indices must consider the impact of history

Happiness measurement and human rights, as explained in the first chapter, arise from the common goal of articulating human suffering to address and mitigate it.²⁶³ In the same way that the ideologies underpinning international human rights law in Africa must be considered so they are not rendered invisible, the historical context of a nation state has insights to offer for the objective of understanding

²⁶⁰ Appiah & Grossman (n 38) 60.

²⁶¹ Nimako (n 63) 8.

²⁶² Guattari (n 214) 31.

²⁶³ Centre for Bhutan Studies and GNH Research (n 5) 32.

and then measuring happiness at that country level.²⁶⁴ By interrogating the global order, and each nation state's unique journey, more comprehensive accounts of happiness can be articulated.

The happiness data, albeit flawed, shows Africa is not happy.²⁶⁵ However, it also positions Africa as the losing continent, with Africa's happiness at last place under a milieu of happier, better-developed continents, relegated to being the loser of the happiness race. If the existing happiness data is to be taken seriously, it must be seen to show a global order that is flawed and functioning on the benefit of this historical and enduring harm, in which the human rights legal project finds itself necessarily intertwined.

5.4 The need for ubuntu, ukama and the spiral of time

Regarding the interrelatedness of nations, the act of ranking countries by happiness, with no regard to a fuller picture of their context, does not consider the contested history of the nation state and its manifestation on the way humanity has ordered itself thereafter. Ubuntu and ukama offer a lens through which it is possible the impact one nation state's actions may have on another, and the reciprocal duty of care comprised in ensuring happiness at a national level.²⁶⁶ The spiral of time offers a framework for a gentler world, where harm is not something of the past immediately after it happens, but rather a scar on the skin of a collective or individual memory.²⁶⁷ The spiral of time sees life as beyond the mere need to work, but rather as spacious enough to ensure people live well and slowly.²⁶⁸

5.5 Conclusion

This dissertation is an attempt to chip at the iceberg of a grander collective project. The decolonial analysis has so much to offer for understanding existing patterns of injustice and working towards a more just and happier world.²⁶⁹ The happiness indices seek to articulate something fundamental to the trajectory of humanity, as moving towards prosperity rather than a mutually assured doom. This cannot, however, be made a reality unless the ways in which humanity is structured- and the existing institutions that enforce and reproduce this structuring- are not scrutinised over and over.²⁷⁰ Law's

²⁶⁴ Rojas-Gualdrón (n 95).

²⁶⁵ Helliwell and others (n 13) 22.

²⁶⁶ Ramose (n 241) 70.

²⁶⁷ Brooks (n 249) 309.

²⁶⁸ Tuhiwai Smith (n 250) 54.

²⁶⁹ Tamale (n 1) xiv.

²⁷⁰ Balibar (n 12) 346.

happiness argues that societal norms are not fixed; that the human experience is not homogenous; and that context-specificity and nuance are always within reach.

WORD COUNT: 18175 WORDS (including footnotes).

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