

BOOK REVIEW

Anne M.O. Griffiths, *In the Shadow of Marriage: Gender and Justice in an African Community*. Chicago: The University of Chicago Press (1997). (328 pages, including appendices, notes, references, and index. Cloth US \$50.00; UK £39.95; Paper US \$18.00; UK £15.25.)

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Although *Gender and Injustice* might be a more appropriate subtitle for this book than *Gender and Justice*, Anne Griffiths actually seems less interested in exploring the wrongs experienced by women in Botswana than in using gender as an analytical tool for constructing a theoretical argument against the 'formalist' or 'legal centrist' model of law. Drawing on data she collected in the Tswana village of Molepolole, she contests two aspects of the formalist model: the sharp division between 'native customary law' and 'colonial common law', and the privileging of legal rules over social processes. Instead of arguing that these distinctions do not exist, however, she explores the forces that maintain the boundaries between categories as well as those that blur them. The result is a fascinating analysis of legal pluralism in post-colonial Botswana.

It should come as no surprise to anyone that both 'native custom' and 'colonial common law' favor men over women, thus reinforcing each other in preserving male privileges. But Griffiths goes beyond noting this obvious connection between the two legal systems to explore how they work together in the specific context of Molepolole village. She explains why customary and common law courts appear to be separate and autonomous. The laws they administer derive from different cultural traditions - Tswana customs vs. British common law as modified by the post-colonial state of Botswana. Judges are appointed differently - chiefly appointees vs. judges with legal training who are on a civil service career ladder. Customary and common law courts also differ in the language used (Setswana vs. English), fees charged (free vs. a filing fee), and representation required. Customary courts apparently require the presence of everyone with a stake in family disputes but do not allow lawyers, whereas common law courts will proceed with only one party present and permit legal

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representation. Despite these differences, however, the two legal systems are linked in important ways. Both customary and common law courts operate in the same social environment.

Litigants engage in 'forum shopping', seeking remedies from both types of courts, and judges in both court systems draw on each other's decisions (or imagined decisions) to justify their own rulings. Griffiths gives examples of litigants and judges in common law courts urging respect for 'traditional' patriarchal customs, particularly those concerning divisions of marital property on divorce, and of participants in customary courts appealing to the 'modern', egalitarian principles of common law. Griffiths is most interested, however, in contesting the privileging of legal rules over social processes by the legal centrist or formalist model. While being careful to maintain the distinction between 'laws' enforced by courts and ordinary 'social norms' (thus trying to avoid the problem of treating all norms as laws), she explores the power relations that shape people's problems and their options for managing them. She concentrates on two dimensions of power inequalities - gender and class.

After an introductory chapter on theoretical considerations and two chapters explaining historical shifts in the economic and political organization of Tswana households, she compares how women of different classes experience and manage conflicts with men over support for children, family maintenance, and property division on divorce. The book ends with a chapter on the interrelations between customary and common law courts, comparing the ability of women of different classes to minimize damaging outcomes. A final chapter returns to theoretical considerations.

In the two historical chapters, Griffiths does a nice job of describing the economic transformation of Tswana households. During the nineteenth century, men achieved economic and political power primarily through establishing claims in women and children. But since at least the mid-twentieth century, access to cash has replaced family ties as the major requirement for social advancement. The growing importance of cash has created a class division between a 'peasantariat' majority, made up of households whose ability to continue farming depends on cash inputs from migrant wage laborers, and a 'salarariat' minority, made up of relatively well-off, educated individuals who hold salaried jobs primarily in the public sector. Although not given a label by Griffiths, there appears to be a third, lowest class largely made up of households headed by women who lack access to cash and who survive by working for, or sponging off, others. The rapid growth of this underclass of mothers without male support is widely regarded as a social problem. Although the men who run customary courts seem to have little sympathy for immoral 'harlots', the government of Botswana has passed laws requiring men to support the children they father and

the wives they desert. Women, however, seem to have a hard time pursuing these common Law remedies, as the overburdened magistrate's court tends to postpone hearing 'unimportant' cases, and women from the peasantariat, who make up the majority of single mothers, seldom understand the evidence requirements of common law courts. Finally, even women who win in court are unlikely to collect regular support payments, as the magistrate's court has a bad track record as an enforcement agency.

True to the title of her book, *In the Shadow of Marriage*, Griffiths organizes her discussion of women's legal problems in terms of women's marital status. Judges in both customary and common law courts use notions of marriage - albeit different ones - to assess women's rights to child support, family maintenance, and a portion of a household's property upon its dissolution. Griffiths does a nice job of explaining the differences between traditional Tswana marriage, which is better understood as a process than as an event, and common law marriage, which either exists or does not. Despite Griffiths' and the judges' emphasis on marriage, however, I came away from the book with the distinct impression that marriage makes very little difference for women. Griffiths comes close to reaching this conclusion as well. The cases she describes show that marital status is far less important for a woman's well-being than is her ability to persuade a man to spend the money he earns on her and her children rather than on another woman or consumer goods for himself. Marital status may matter to men, as it affects a man's ability to claim rights in children, but a woman who cannot convince a man to support her without going to court is not likely to benefit from suing him. Even if a woman can convince a judge that she is married to the man she is suing, she may still receive little or nothing from him. Common law courts allow no fault divorce, enabling a husband to easily rid himself of an unwanted wife. And customary courts, which are usually reluctant to dissolve marriages, cannot force an unwilling husband to support his family.

The book suggests, in fact, that marriage may be harmful for women. Because husbands are supposed to support their wives and children, it makes sense for most women to try to construe their ongoing relationships with men as marriage in the hope that the men will continue to contribute money to the household. But should a relationship break down - particularly if the man should decide to spend his earnings to support another woman - a wife may be at a disadvantage compared to a concubine, who is at least entitled under customary law to receive some cattle when sent away. Because a wife's children belong to her husband's family, and because family property is set aside for the children on divorce, a divorcing wife can lose both her older children and access to the property they will inherit. Moreover, a wife's obligation to perform unpaid domestic and agricultural labor on her husband's property makes it difficult for a divorcing wife to establish independent ownership of items acquired during the marriage.

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Not surprisingly, Griffiths reports that educated women of the salariat class, who earn cash through their employment as nurses, teachers, or office workers, seem increasingly reluctant to marry. When such women do marry, however, they tend to fare better on divorce than wives of the peasantariat class. Because they are educated, women of the salariat class are more likely to sue in common law courts, where family property is supposed to be more equally divided. And because such women earn cash, they are more likely to have the paperwork needed for establishing which household items were bought with their earnings.

Although focused on one village in Africa, this book should be read by anyone who is interested in comparing factors contributing to what appears to be a worldwide increase in 'female headed households', 'unmarried mothers', or mothers without male support. The Botswana case Griffiths describes may be unique, but it bears many resemblances to what seems to be occurring elsewhere. The 'traditional' political economies that put men into the position of needing wives and children in order to become respected, responsible members of their communities appear to have been quite variable. But the effects of subsistence farmers' becoming dependent on cash incomes seem depressingly similar. The class division that Griffiths describes as developing over this century between a salariat minority and a peasantariat majority has also occurred in the indigenous community I have been studying in Southern Mexico. Among the several effects of this growing class division, two stand out as contributing to the increase in unmarried mothers. First, as subsistence farming comes to require cash inputs and as legal jobs that pay living wages become increasingly scarce, men of the peasantariat majority often find it difficult to support women and children. Fewer men are able to marry, and those who do establish ties with women find it hard to maintain those ties during periods of unemployment. In Southern Africa, men seem to have been particularly hard hit by the loss of jobs in South Africa's mines. In Southern Mexico, the Mexican debt crisis and subsequent cut back in public works has eliminated many legal jobs for unskilled workers. Second, the class division encourages a cultural shift in the perceived 'value' of wives and children. Once cash replaces kinship ties as the primary determinant of social status, wives and children not only become economic liabilities rather than household workers, but also tend to become one more 'consumer item' on which a man with cash may choose to spend his money. As such, wives and children may compare unfavorably with investment opportunities; items of personal consumption, such as bicycles, watches, and televisions; or a younger, more compliant woman.

While women of the peasantariat class seem to suffer a loss of power and income with the transformation of subsistence farming, women of the salariat class seem to benefit from the growing class division. Griffiths thus comes close to suggesting that the best option for Tswana women would be to pursue an

education that would allow them to obtain a salaried position or run a small business. Such a recommendation, however, overlooks the fact that opportunities for entrepreneurship tend to be limited, and that there are only so many positions available for schoolteachers, nurses, and office workers. Salaried positions in the public sector may even be declining as the governments of debtor nations are being forced by international financial institutions to cut back on public services. While education might enable women in general to fare better in court, education for women cannot provide a long term solution for the problems created by the world-wide economic shifts that have put the subsistence of poor women and children at risk.

Griffiths' book is also valuable for comparing differences in women's situations. I was struck, for example, by Griffiths' failure to discuss domestic violence, which is the most frequent allegation considered by courts in the indigenous community I have been studying. Although Griffiths writes that Tswana women often allege wife-battering to explain why they leave their husbands or fail to return to them when ordered to do so, she also shows that the courts have little interest in pursuing such allegations. Griffiths describes one case heard in a customary court in which a wife was held at fault for refusing to return to her husband's house, even though the woman claimed (and some of the judges believed her) that she was afraid her husband would kill her. She had already been hospitalized twice after his beatings. Having dealt with courts that are concerned to minimize injuries to women and children, I was struck by the rapidity with which the Tswana judges dismissed the issue of domestic violence. Griffiths also fails to discuss the population implications of women's loss of power relative to men. Her analysis, however, suggests that poor Tswana women, like poor women in many parts of the world today, bear many children, partly because bearing a man's child is a way to please him and thus encourage him to contribute to the family's maintenance, and partly because mothers, who desperately need the cash that men provide, lack the power to insist on using birth control. One reason why Griffiths did not consider excessive childbearing a problem for Tswana women, however, may be because the Tswana apparently value children and welcome their births.

Because Griffiths' book is so useful for comparative purposes, I wish that she had included a glossary of Setswana terms to help readers like me, who are not familiar with the language, to remember the meaning of foreign terms. I often found that I had to look in the index to locate the first use of an unfamiliar word in order to find its definition.

Griffiths' book would also have been more useful for comparative purposes if she had included a discussion of the other types of cases considered by the courts she studied. I realize that Griffiths focused on family law because that is

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her specialty. But it would have helped a reader to know what percentage of the cases reaching various courts concerned family matters, and what other kinds of cases the judges had to deal with. Without information on case loads, it is difficult for a reader to assess the validity of Griffiths' argument that customary and common law courts are not as independent and autonomous as the legal centrists might argue. While Griffiths effectively shows that the two types of courts do interact in relation to family matters, the reader is left wondering whether the same links would occur for other types of disputes. Around the world, state governments seem more willing to allow 'tradition' to regulate marriage, filiation, and inheritance than to determine economic regulations, penal codes, or constitutions. It may thus be no accident that common law judges in Botswana profess respect for 'traditional' customs when dealing with family matters. It would be interesting to know, however, whether they show a similar respect for 'local custom' when dealing with penal cases, or with cases that concern constitutional rights or business contracts.