

Marc Dumetz, Le Droit du Mariage en Côte d'Ivoire (Marriage Law in the Ivory Coast). Paris: Librairie Générale de Droit et de Jurisprudence, 1975. 490 pp.

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This is a work of mammoth proportions, given its rather restricted subject. In 1964 the Ivory Coast enacted a series of laws in the area of personal and family law, a first installment of a Civil Code on the French model. The author exhaustively describes the official rationale behind those laws, and their social ramifications as far as can be discerned from the texts themselves. He concludes with a prescription for legal activism in their implementation.

A preface by Jean-Bernard Blaise of the University of Dijon describes Dumetz' study as "the first on this scale devoted to an entire section of the new written law of the francophone African states." The degree of isolation by nationality in African law research is unfortunate: There is no mention, either in the preface or anywhere else in the monograph, of the report on the Ivoirian Civil Code by Alain Levasseur and his associates prepared for the International Legal Center (revised for publication by Michie in 1976).<sup>1</sup>

Nonetheless, the works are not similar in their approaches, and Levasseur's could not compete with the present work as a handbook for the attorney practicing in the Ivory Coast. The legal texts are exhaustively examined for ambiguities, inconsistencies, and lacunae. They are interpreted in light of an exegetic approach to the purposes of the Ivoirian lawmakers as detailed in public pronouncements and official records.

As helpful as Dumetz may be to the attorney, however, his contribution to the scholarship on African law is less clear. The reader is first of all struck by his unabashed enthusiasm for the Code's provisions. It is as though he were himself a skilled defense attorney, raising each objection to the Ivoirian approach to family law, then striking it down with all the argumentative skill at his command. He does occasionally chide the lawmakers for some small error of legal craftsmanship, but the basic approach of the Ivory Coast to the thorny problems of family and marriage is wholeheartedly and consistently endorsed. That approach, which is essentially to impose a single, uniform body of laws as quickly as possible on the various cultures of the country, is certainly controversial in the African context, and scholarly eyebrows are inevitably raised at such uncritical acceptance of official rationales. One would have no idea, from reading his analysis, that the Code was anything other than the product of the leading legislative minds, all bent on how best to ensure the stability of the conjugal family. Did any of the parliamentary maneuvers involve other motives? Might regional politics and the need to include provisions roughly balancing the "inconveniences" imposed by the Code in various regions have played their part in the final legal package? The reader would never suspect such a possibility as the process of creation is described here.

Dumetz presents, as the only choices open to Ivoirian lawmakers, either to draw on customary law, or to adopt a body of legislation foreign to them.

The former option he dismisses as "founded on ethnic divisions"; there are, he continues, no "grand principles" common to all customary legal systems:

*whatever similarities there may be among the customs on family matters, two great systems, patriliney and matriliney, are irresistibly opposed to one another.*

This line of reasoning ignores some rather fundamental principles common to all Ivoirian cultures: the primacy of the extended family, family control over marriage, polygyny, and bridewealth (although there are differences in incidence and value of these), and even, in the case of inheritance, the fact that in both matrilineal and patrilineal societies primary rights of inheritance are adelphic: the deceased's oldest brother stands first in line of succession, then his other brothers. Only after an entire generation has passed away does the line of succession differ in the two systems.

But if one is to rule out restatement on the grounds of ethnic diversity, it would seem appropriate to compare that diversity to the situation in Kenya or Tanzania. A fault in this work, however, is that comparison is made, not with other African experiences, but with French legal practice. One can learn a great deal about the evolution of French family law here; but, since this work is introduced as "on the border of law and sociology," speculation on the effects of specific legal provisions is disappointing when based on experience in the quite different legal culture of France.

Dumetz is categorical in this belief that the Code has had an emancipatory effect on the status of women, freeing them from the tyranny of the extended family, giving them the right to choose their own marriage partners, abolishing polygyny and brideprice, etc. But there is strong evidence that what independence the wife gained from her own elders was at least balanced by the powers over her granted to her husband. The Code's language is forceful:

*The husband is the head of the family (Article 58)*

*The choice of residence is the husband's; the wife is obligated to live with him and he must receive her. (Article 60)*

*...the common and personal goods of the spouses are administered by the husband. One owing salary payments to the wife, in remuneration for her professional activity, is always validly acquitted by payment made to her...if the husband has not signified to him...that he must give them up to him. (Article 74)*

*The husband can, without the participation of his wife, sell, alienate and mortgage his personal belongings and those held in common... (Article 77)*

*The wife cannot, without the participation of the husband, sell, alienate and mortgage her personal possessions, nor dispose of them as gifts. (Article 78)*

*Agreements made by her in the exercise of her profession, have no effect as regards the husband, if third parties contracting with her have knowledge at the time of their transaction of [his opposition]. (Article 79)*

The case for equal treatment of the sexes in the Code is not clear-cut, to say the least. Many educated Ivoirian women, although fully supportive of most of the provisions regarding the conditions for entering into marriage, do not see the statements on the effect of marriage as emancipatory. It is erroneous, furthermore, to assume that women were without financial independence in many "customary" situations: many market women would stand to lose a great part of their independence in the application of these provisions.

Dumetz gives many recommendations to the Ivoirian courts, which he sees as having an important role to play in the legal transition imposed by the adoption of the Code. For the most part, however, he treats the 1964 enactments as though they are new and untried, even though his research was evidently conducted in 1972. He cites only appellate court decisions; the wealth of judgments based on this body of law in the tribunaux de première instance apparently was not examined. The author's inattention to the lowest courts may be related to his failure to consider how the paucity of original jurisdiction courts creates a serious problem in relying on them to bring behavior into accord with the law. In principle, there should be a trial court in each of the more than 120 subprefectures of the country; to staff--according to the French principle of collegiality--a supreme court, an appeals court for each prefecture, and a court of original jurisdiction for each subprefecture would require upwards of 500 judges. There were only forty-eight magistrates in place in 1965, and seventy-eight in 1970. In 1971 there were only three fully-staffed courts of original jurisdiction in the country, with twenty-five detached sections. This is hardly the kind of saturation that will bring rural society into contact with the new body of law. Besides, notwithstanding the content of the provisions, most Ivoirians remain more comfortable with customary legal procedures.

There is much to be admired in the thorough treatment accorded each legal point in this work. There are also some attempts to relate the legal situation to social realities in the Ivory Coast, most notably in the author's recognition that the widespread elite practice of cohabitation without benefit of marriage threatens to nullify the Code's focus on the stable conjugal family. But for the most part, Dumetz' study is too much in the tradition of legal formalism to give great insight into the impact of legal change in modern African societies.

1. Alain A. Levasseur et al., "The Civil Code of The Ivory Coast: 'From Infancy to Childhood'" (1971); Alain A. Levasseur, The Civil Code of The Ivory Coast, Charlottesville: Michie, 1976.