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## **Colonialism and the Legal Status of Women in Francophonic Africa\***

The effects of European colonialism upon peoples of the world have been multifold, but little can compare with the zeal and fervor with which the French attempted to legislate dignity and status to African women. In her mission to civilize West and Equatorial Africa, France attempted to graft a system of jurisprudence onto societies whose social and juridical systems differed markedly from that of the metropolitan government.

This paper is a brief analysis of French colonial legislation in West and Equatorial Africa and its effect upon the status of women under French control until the early 1960's. The expressed purpose of this legislation was to alter the traditional rôle of women in French Africa to meet the standards of French society. Far too often, however, the French lacked knowledge of indigenous customs and ignored traditional patterns of behavior. They promulgated legislation which resulted in conflict, upheaval and disorientation in many of those same societies who were to benefit from these laws.

The focus of this study will be limited primarily to the rural patrilineal societies of francophonic Africa. Substantive data culled from the literature will be drawn upon to point up the conflicts that arose from the inadequate understanding by the French of traditional values and norms. Moreover, such important factors as economic changes, urbanization and industrialization, very much a part of the French colonial heritage, will be neglected in a concern with legislation. In effect, disparate value systems as represented in the legislative

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manipulation of African society by the French will receive the full attention of this study and as such will reveal only part of the total situation.

African women were a source of dismay to French administrators who had their own conception of 'natural law', *e.g.*, a universal morality and truth which seemed lacking to African women, at least in comparison with their own society's norms.<sup>1</sup> An early statement in 1920 by Lieutenant Governor Hesling of the Upper Volta is illustrative:

"From the standpoint of the present situation, the condition of indigenous women is entirely abnormal and contrary to the fundamental principles of human rights [. . .] which necessitates the enactment of profound reforms [on our part]. [. . .] the condition of indigenous women appears [. . .] outrageously contrary to the essential principle of human rights and civilization."<sup>2</sup>

Hesling, among others, believed that few if any of the traditional indigenous customs concerning women were worth saving. African women were seen to be objects or chattels—creatures who could be inherited by men in the same way that land might pass from a man to his brother.<sup>3</sup> What appeared to be the abject status and lack of individuation of the indigenous female—lacking a juridical personality and unable to protect herself from what was viewed as cruel, endless toils and inhuman indecencies fostered upon her by her society—horrified French administrators. The Mandel Decree of 1939 and the Jacquinet Decree of 1951 were promulgated to intercede in those areas believed to be of gravest concern: the right of consent to marriage, regulation of bridewealth, and minimal age at marriage.<sup>4</sup> The validity of African customs in these areas as the natural outgrowth of the felt needs of a society, what Rheinstein has called "the formalized outward expression of [. . .] a society's life and values"<sup>5</sup> was not recognized by the French who attempted rather to adapt African traditional systems of law to Western industrial society. Western conceptions of contract as the mechanism regulating the life of an individual contrasted markedly to African conceptions of social relations predominantly based on ascribed status. As the Kupers point out, a meeting

1. See D. PAULME's excellent discussion of European condemnation of African marriage customs in *Women of Tropical Africa*, Berkeley, 1963, p. 4. R. MAUNIER's article, "La femme noire en Afrique française", *Le Monde Colonial Illustré*, 1939, gives a good presentation of the so-called abject status of African women to the French public.

2. Quoted in Sister MARIE-ANDRÉ DU SACRÉ-CŒUR, *La femme noire en Afrique Occidentale*, Paris, 1939, Appendix I, p. 259.

3. Abbé J. SASTRE, "La mission de la femme africaine", in M. DU ROSTU, *Femmes africaines*, Paris, 1959, p. 13 ff.

4. See Appendices I and II.

5. M. RHEINSTEIN, "Problems of Law in the New Nations of Africa", in C. GEERTZ, *Old Societies and New States*, Glencoe, 1963, p. 221.

of two such philosophies hardly resulted in a harmonious blend.<sup>1</sup>

The French, as the heirs of the great Roman tradition, extended their institutions and laws wherever they established themselves. Certainly West and Equatorial Africa were to be no exception. An inherent ethnocentricity—a belief that their own laws which worked well enough for them were superior to those of any pagan society—blinded them to the realities of the African situation.

#### WOMEN IN TRADITIONAL AFRICAN SOCIETY

Just what aspects of women's traditional behavior violated the norms of French culture? In the traditional patrilineal societies of West and Equatorial Africa<sup>2</sup> the direct well-being of the society rather than that of the individual was of utmost importance. The institution of marriage, essential to the continuity of the society, pointed to woman's real worth—namely her presumed fertility. Marriage was not a contract between two individuals, but as in many non-European parts of the world, an alliance between two sets of kin groups in which the potential source of fecundity was transmitted.<sup>3</sup> As Lucy Mair points out in a general discussion of African marriage, freedom of choice for a woman in such circumstances is limited.<sup>4</sup>

A woman who may have lacked certain European 'rights' such as consent to marriage, did have safeguards in that she could not be treated like a slave, she could not be beaten without reason and her spouse could not refuse to support her. A marriage contract primarily concerned with the fecundity of a woman provided redress in case of the woman's sterility or for the unbearable personality of one of the partners.<sup>5</sup> The payment of bridewealth upon marriage in fact served to equalize the loss of this 'procreative potential' from one social group, who in effect were losing their right to filiate the children born to this woman. To quote Mair again, "the marriage payment [. . .] legalizes a marriage, determines the legal paternity of children and creates the relationship of affinity between the kin of the spouses."<sup>6</sup>

If a man died, his wife and children were considered attached to

1. H. and L. KUPER, *African Law: Adaptation and Development*, Berkeley, 1965, p. 6.

2. Such societies as the Ndiki, F'ang, Mossi and Betammadibe, to be discussed below.

3. J. BERTHO, "Le problème du mariage chrétien en Afrique Occidentale Française", *Africa*, 17 (4), 1947: 252. C. LÉVI-STRAUSS' model of marriage (*Structural Anthropology*, New York, 1964) viewed as sociologically part of a series of reciprocal transactions between groups, would be relevant here.

4. L. MAIR, *New Nations*, Chicago, 1963, p. 74.

5. BERTHO, p. 254.

6. MAIR, p. 75.

the husband's collectivity for the duration of their lives. In a patrilineal society, the custom of the levirate permitted the individual to inherit the wife of his brother. The potentiality of procreation which had been validated by the husband's kin group through the payment of bridewealth to the woman's kin at marriage did not have to be returned, often years later, if the woman remained within the group. These customs, which were shocking to the European mentality, were perfectly logical, cohesive and justifiable in those societies where they were practiced. Consent of the individual to either marriage or the levirate in these circumstances seemed to be an unacceptable luxury. The French, however, preferred to view this as a deprivation of the woman's legal rights. A particular value, what Balandier calls that of a 'capital creator' did exist, with sexual freedom often permitted the unmarried young woman even if betrothed at an early age. Legal rather than sexual possession at marriage changed a woman's status from girlhood to maturity.<sup>1</sup>

The unique status of women as it exists in contemporary Western industrial society has few parallels elsewhere in the world. What shocked the French seems to strike one investigator, Henri Labouret, as inconsistent with the history of Western civilization. His historical analogies, focusing on the status of women in ancient Greece and Rome indicated to this writer that the consent of a woman at marriage was of secondary importance within the history of European society where the personal convenience of the spouse was not considered in the over-all concern for an advantageous alliance. Nineteenth century marriages in France also reveal many instances of women being forced to marry against their will.<sup>2</sup> This lack of introspection did not hinder the French from believing that African women were subject to forced marriages, that they appeared to lack freedom of choice of their mate and that they could not dispose of their own person. Despite this convenient fiction, African marriages did provide an escape mechanism in the form of elopement which served to mitigate conflict, not at all a valid way-out in nineteenth century European society.

Labouret stressed the fact that gifts and payments so characteristic of marriage in West and Equatorial Africa were not paid 'to buy a woman' but to assure the father and his family of the legal sanctity and profit of the offspring of marriage.<sup>3</sup> In contrast to European societies in which marriage is the starting point for a new family

1. G. BALANDIER, *Sociologie actuelle de l'Afrique noire*, Paris, 2nd. ed., 1963 p. 12.

2. H. LABOURET, "Situation matérielle, morale et coutumière de la femme dans l'Ouest-Africain", *Africa*, 13 (2), 1940: 97 (especially p. 105).

3. *Ibid.*

replete with its own autonomy and patrimony, African marriages can often be viewed as extensions of the patrilineal family. In this context, marriage "does not give birth to a new social organism [. . .], it is merely the necessary means to assure the continuity of the family group."<sup>1</sup> Marriage is basically the acquisition of rights *in uxorem* (sexual, domestic and economic rights on a woman) as well as rights *in genetricem* (rights to filiate a woman's children). The use of the term status with regard to women in francophonic Africa does not imply high or low ranking vis-à-vis men, but a status rather that conferred reciprocal obligations and benefits between men and women.<sup>2</sup> Missionaries as well as administrators could not focus upon the collective rather than the individual importance of the African woman under their tutelage. The individual, according to Christian conceptions, does not exist for the society—rather, society is organized for him. The French, influenced by European concepts of democracy and Church doctrine, sought to valorize the individual. Although writers like Delavignette strongly protested that one could not administer justice by transplanting European regulations to African soil,<sup>3</sup> the desire to end the uncivilized status of African women through legislation was a strong one, ultimately sanctioned in law.

### *The Legislation.*

Despite the intermittent periods of toleration of the traditional laws and customs of subject peoples,<sup>4</sup> colonial policies of assimilation gained impetus. It was thought that indigenous people, as the result of French guidance, were to evolve to a point over the course of time where they would act in a French manner and renounce their traditional way of life, achieving the status of *gens de couleurs*.<sup>5</sup> Certainly, from 1848 onward, the French constitutions clearly showed that all peoples within the boundaries of French territory were to be envisaged as future Frenchmen. Betts, who has made an excellent summary of French colonial policy between 1890 and the First World War, has characterized three periods of colonial expansion as follows:

1. At first, the Europeans in their civilizing mission had to spread the Christian faith during the period of overseas expansion.
2. The belief in reason, which characterized much of the 18th century,

1. Sister MARIE-ANDRÉ DU SACRÉ-CŒUR, p. 48.

2. T. O. ELIAS, *The Nature of African Customary Law*, Manchester, 1956, p. 95.

3. R. DELAVIGNETTE, *Freedom and Authority in French West Africa*, London, 1950, p. 90.

4. This was generally known as the policy of association, which was prevalent during the early years after French control was established.

5. J. D. FAGE, *Introduction to the History of West Africa*, London, 1955, p. 167.

replaced the proselytism of Christianity and gave the Europeans a feeling of moral superiority.

3. Social Darwinism led to a belief in racial superiority of the colonial power and ethnocentrism.<sup>1</sup>

However, much of colonial policy was in fact haphazard and poorly formulated, without a precise program in advance. The mode of enacting laws indicated some of the problems of the high degree of French centralization:

"According to the senatus consult of May 3, 1854, legislation for the French colonies [. . .] takes the form of a 'simple decree'. No imposition was made on the control of such decrees by Parliament of France or the Council of State. These decrees relating to the colonies are promulgated in the *Journal Officiel de la République Française* or in the *Bulletin des Lois* and do not become a force in the colonies until they are published in the official journal."<sup>2</sup>

Native courts were modified before the new laws were passed, and matters concerning marriage and divorce were deemed too important to be handled by native tribunals. In their place, courts presided over by an administrative official (most often European) assisted by interpreters and assessors whose function it was to help explain customary law<sup>3</sup> were set up. These courts lacked a clearly formulated course of sanction. While one administrator might have punished adultery with a fine of 100 Congolese francs, another might impose a prison sentence of one year.<sup>4</sup> In the absence of a native penal code, arbitrary judgments were the rule and not the exception.

Turning to the first of the French Decrees, the Mandel Decree promulgated in 1939, its provisions dealt with aspects of marriage and related custom considered unacceptable as follows:

1. Actual age of the parties to be married;
2. Child betrothal;
3. Consent of the parties to be married;
4. The problem of the widow;
5. The establishment of an age of maturity at which time an individual could freely marry.

The Mandel Decree defined the minimum age for contracting marriage in the A.O.F. and the A.E.F. as 14 years for women and 16 years

1. R. F. BETTS, *Assimilation and Association in French Colonial Theory: 1890-1914*, New York, 1961, p. 70.

2. R. L. BUELL, *The Native Problem in Africa*, New York, 1928, II, p. 923.

3. J. VANDERLINDEN, "The Recording of Customary Law in France during the 15th and 16th Centuries and the Recording of African Customary Law", *Journal of African Law*, 3 (3), 1959. The author points out that although as early as 1453 there was a desire to collect the customary law in written form, the actual implementation and resultant codification was insignificant.

4. BUELL, pp. 1011-1012.

for men. It declared that the consent of the spouses was *indispensable*<sup>1</sup> for the validity of a marriage. It nullified the custom of the levirate if the woman involved refused to be party to such a custom. The Jacquinot Decree, passed in 1951, upheld the earlier Mandel Decree. It also affirmed that in countries where the institution of bridewealth was customary, a girl who reached the age of 21 years, or who had been legally divorced could freely marry without interference by anyone who might gain material advantage from her engagement period or marriage. Bridewealth was to be determined in a given area by the Chief of the Territory, and Tribunals of the First Degree were empowered to judge excessive demands on the part of the parents concerning these payments. These courts also functioned to permit the official registration of marriage on civil records without the consent of the parents of the spouses. In effect, women were freed from the control of their guardian or father. The French penal code was used to enforce both the Mandel and Jacquinot Decrees, with the severest penalty for impeding their provisions calling for imprisonment up to 5 years.

The French took the institution of marriage which had been regulated by tradition and made a statutory institution of it, hoping to endow the African woman in some way with a new status—to relieve her of the disabilities and obligations that were incompatible with the standards of ‘civilized society’.

Despite Martin Lewis’ conclusion in his analysis of the French colonial policy of assimilation that no serious effort to carry out this policy occurred,<sup>2</sup> an examination of the attempts of the French to modify African customary life through legislation is a refutation of this position. Conflict situations arose from the implementation of such legislation, which spread through all the reaches of the overseas African territories. Let us look now at the extent of the failure of the laws.

#### *The Failure of the Laws.*

Contrary to French expectations, the end result of the legislative acts was disequilibrium. With few exceptions, all the efforts made by French administrators and officials did not work in either raising the status of the African woman or in emancipating her.<sup>3</sup> This new social differentiation aroused strong reactions in many cases, and in

1. Emphasis mine.

2. M. D. LEWIS, “One Hundred Million Frenchmen: The Assimilation Theory in French Colonial Policy”, *Comparative Studies in Society and History*, 4 (2), 1962: 153.

3. V. THOMPSON and R. ADLOFF, *The Emerging States of French Equatorial Africa*, Stanford, 1960, p. 328.

Gabon, Balandier reported the development of antifeminism, attributed to the fact that women had become 'wrongheaded'.<sup>1</sup> Many of the same writers who were influential in bringing about the passage of these laws were appalled and bewildered at their devastating effects. The institution of marriage was removed from the nexus of social relations in which it had previously functioned, and was isolated by judicial tampering. In this acculturative situation, the impact of disparate value systems, reflected in systems of jurisprudence, could only lead to unpleasant ends. The very nature of social groups changed as a result of the clash, with the individual losing his psychological support in the extended family and more and more dependent upon himself.<sup>2</sup> Writers like Abbé Zoa spoke of the search for a new 'soul' and a means of identification.

One of the major concerns of the legislation was the question of consent as indispensable to the validity of marriage. Sister Marie-André du Sacré-Cœur, one of the law's staunchest proponents, in 1959 could not fathom the many conflicts that arose from its implantation. To cite one case:

"In June 1958, in the Sudan and Upper Volta, several girls refused outright the husband proposed by their family. Everyone was against them and said they had to accept, because their family said so. 'If you don't marry this man, you will be chased out of the house.'"<sup>3</sup>

Although at first blush it would appear that the law could grant the woman protection in her choice of marriage partner, one must keep in mind as Sister Marie-André du Sacré-Cœur has, that the parents in the above case may in fact have already spent the bridewealth and gifts well in advance of the finalization of the marriage.

The Mandel Decree caused many disturbances among the considerable Moslem portions of societies under French control. The idea that consent of a betrothed couple was necessary for the validity of a marriage and the idea that young people were able to marry without anyone's consent but their own wrecked havoc upon basic Islamic customs.<sup>4</sup> The issue of consent also was prominent in Dugast's study of the Ndiki of the Cameroun. Consent which was previously unknown in this society as the French viewed it, underwent drastic reinterpretation. As a result of the legislation, women quickly decided that conjugal life was a heavy strain, husbands were not always

1. G. BALANDIER, "Social Changes and Problems in Negro Africa", in C. STILLMAN, ed., *Africa in the Modern World*, Chicago, 1955, p. 66.

2. Abbé J. ZOA, "Le problème de la dot", in DU ROSTU, p. 63.

3. Sister MARIE-ANDRÉ DU SACRÉ-CŒUR, "La jeune fille rurale", in DU ROSTU, p. 31.

4. V. THOMPSON and R. ADLOFF, *French West Africa*, Stanford, 1958, p. 577.

supportable, maternities were one's own concern and the society be damned. Marriage and the procreation of children, formerly the bulwark of the society changed dramatically. The custom of women spending 3 to 4 years, first with one husband and then another, arose. Children seemed to suffer the most as they got left behind according to traditional custom as the woman moved on. Sudden emancipation of women without any adequate preparation resulted in new social mobility for women who could travel about easily leaving their small compounds for the excitement of Yaoundé, Douala, or other urban centers where they lived with little restraint or surveillance. They often returned home with some savings amassed from prostitution in the towns. Despite the introduction of free consent to marriage, stabilization of such unions was not what the French had foreseen. Men tended to remain faithful to the old system, but young girls found the responsibilities of marriage often a heavy burden to endure and protested against the familial organization.<sup>1</sup>

Mercier, in working with the Betammadibe of Dahomey,<sup>2</sup> reported that European contact not only modified the traditional forms of marriage but contributed to the weakening of family and parental authority. Three types of marriage were traditionally practiced in this society: the first arranged by families of the young people, replete with negotiations and rituals, was finalized when the bride cohabitated with her husband. Up to this point, she was not only permitted to take a lover, but expected to do so. The second type of marriage was similar to an elopement, with the consent of the parents usually obtained after the fact. The third type was regularized abduction outside the local community itself.

As a result of the French decree requiring consent of the spouses, there was an increasing reluctance on the part of the women to cohabit with the legal husband. In the place of this traditional pattern, an extension of the third type of marriage, abduction, not following the exogamous restrictions spread within the tribe itself. It became an acceptable idea that the abductor had to pay compensation, influenced by the cash value of labor brought to the Betammadibe from contact with the French economic system. Recourse to the courts severely affected the old order and a delicate equilibrium was thrown off balance. Sexual liberty before marriage had acquainted the girl with personal freedom and with the arrival of European legislation, elements of tension and instability of marriage due to the sudden curtailment of sexual freedom was further reinforced by the

I. I. DUGAST, *Monographie de la tribu des N'Diki (Banen du Cameroun)*.  
II: *Vie sociale et familiale*, Paris, 1960, p. 256 ff.

2. P. MERCIER, "Le consentement au mariage et son évolution chez les Betammadibe", *Africa*, 20 (3), 1950: 219.

relatively new concept of individual consent to the marriage. The third form of marriage, that of an escape valve, became the normative mode. If the traditional forms of marriage were followed, the individual consent of the woman, far from a negligible factor, would have permitted her a way out through elopement. Mercier has described unpleasant situations resulting from the change in marriage patterns. Men who were engaged no longer wanted to render traditional services and gifts to their prospective father-in-law. The French idea of remuneration of labor gave the male population a monetary sense of their own worth. The fiancé less and less often allowed sexual liberty to his fiancée and tended to take the place of the official lover. The gifts he formerly gave to his mistress were now given to his intended bride, since her freedom of choice had suddenly loomed before him. As soon as a man's wife moved in with him, the husband often suspended the traditional gifts and services that he still owed to her family.<sup>1</sup>

The law did not envisage that elopement would also undergo a change. Its scope had been extended from a mere institutionalized escape valve to a more and more necessary means of resolving tensions and conflicts. Compensation for elopement which were formerly unknown emerged, with the Indigenous Tribunals bearing the brunt of the new notion of compensation. Originally set up to carry out the precepts of customary law, these bodies were now faced with a new phenomenon arising from the indirect influence of the French. The idea of remuneration for 'lost' women arose, with an almost cynical cosmopolitan agreement developing between the husband and the beloved to determine the exact worth of a particular woman. Compensation tended to become a game among families.<sup>2</sup>

The custom of the levirate also received special treatment in French legislation. This practice becomes meaningful only when viewed in terms of the traditional safeguards for women. Unable to inherit property from a deceased husband, a woman could become destitute upon being widowed. The bridewealth paid upon her marriage had long since been 'eaten up' and her return to her kinsmen would be rendered doubly difficult without recompense. Inheritance by a brother of her dead husband, however, would allow the woman to retain her place in the collectivity in which she had made her home over the years, as well as protect the future of her children. If, however, the woman followed the implications of the Mandel Decree and accepted the implicit assumption that there was something morally wrong in being 'inherited', she would be out in the cold, lacking traditional safeguards with no customary law to protect her.<sup>3</sup> Before

1. *Ibid.*, pp. 224-225.

2. *Ibid.*, p. 226.

3. J. OBOA, "Le rôle de l'épouse", in DU ROSTU, pp. 75-76.

French control, a woman could be integrated relatively easily into the lineage of her spouse despite the lack of consanguineal tie. The ideas of emancipation enforced by the Mandel Decree permitted women to believe that they were their own masters. A woman traditionally could avoid the levirate if she wanted, if repayment of the bride price were made. If she were young, she might contract another marriage, in which case her new husband was obliged to make repayment. If, however, a widow did not remarry, choosing not to follow traditional patterns, she had the task of raising her children without any anchor. The independence foisted upon her by the colonial administration was out of place in traditional society, since the woman belonged neither to the social grouping of her deceased husband nor did she fit very comfortably into the bosom of her family of orientation.<sup>1</sup>

Looking now at the provisions of the law which permitted any woman over 21 years of age or whose marriage had been previously dissolved to contract marriage, one can note Labouret's dismay at the transformation that occurred to the indigenous societies of the A.O.F. Marriage had become a very fragile thing, with young people able to overturn matrimonial compensation without recourse to the advice of their parents. Elopements or divorce prevailed, preventing the maintenance of familial solidarity. Women learned European principles of the disposition of their own person from the Indigenous Tribunals and scorned the advice given them by their families concerning their proposed marriages. They refused some marriages that were suitable and accepted others that were not. As they realized their errors, they divorced to contract other unions that were just as ephemeral as their previous ones.<sup>2</sup> Phillips saw the old edifice of the community tottering, with the societies of the A.O.F. breaking up into more and more independent *ménages*. Phillips' comment that "colonial statutory law is sometimes ill-adjusted to African customary law in relation to marriage and kindred matters [. . .] with great divergence in rules made by native authorities and the practice of native courts in respect to matrimonial issues"<sup>3</sup> is an apt one.

Another major area meriting attention is that of divorce. Kimble, in his study of Tropical Africa, points out that while in former time divorces were not as easy to obtain, the relative freeing of women from the control of their families brought about serious problems in this realm. Under the indigenous system, adultery was viewed only to a limited extent as grounds for divorce. With the new concept of

1. M<sup>me</sup> HOUECHENOU, "La femme seule", in DU ROSTU, p. 84.
2. H. LABOURET, *Paysans d'Afrique Occidentale*, Paris, 1941, p. 286.
3. A. PHILLIPS, *Survey of African Marriage and Family Life*, London, 1953, p. iii.

'worth' brought to the woman, she began to exact Western conceptions of fidelity upon her spouse.

"The husband's relations with a woman other than his wife cannot ordinarily be challenged by the wife. In legal proceedings, the wife's adultery is commonly regarded as a ground for divorce. However, if there is persistence or else if it involves desertion, this is most often seen as the real grounds of divorce. In the case of customary marriage, it has not usually been thought that this state of law calls for any interference by way of legislation. However, nowadays [1960] with increasing formalization of the grounds of divorce, there are signs of a tendency for adultery to be recognized as a ground on which the wife will be entitled to divorce."<sup>1</sup>

Bridewealth also came within the scope of the new laws. A girl whose parents might try to prevent her marriage was no longer in a dependent position. Inflation and a money economy also introduced by the French had their influence on the marriage payment which reached fantastic proportions. As a woman became detached from her family group as a result of her new ability to choose her mate, inflation in bridewealth jumped completely out of bounds. It was not at all unusual for parents to prolong courtship in order to extort more gifts. Often a young man would be rejected for a wealthier suitor even after many of his gifts had been accepted. Robin, in his study of Moslems in Senegal, believed that the control of bridewealth by administrators was almost impossible to achieve and suggested rather that the French administrators be better served in investigating and codifying native marriage practice rather than changing marriage practices in the rural areas.<sup>2</sup> Excessive bridewealth demands were often the cause of appearances before the Tribunal. The following case quoted in Sister Marie-André du Sacré-Cœur is interesting to examine:

"A young Cameroonian Christian [. . .] was promised in marriage to a man of 55, who had three wives. The father of Bernadette had already spent an installment payment of 85,000 CFA francs against the total bridewealth and several gifts. The young girl reached the age of 15 and the husband-to-be claimed her. She refused to go live with him. He waited some months demanding that her father make her obey, but Bernadette obstinately refused this husband. The potential husband asked for reimbursement of what he had already paid out and Bernadette's father tried forcibly to carry her to the prospective bridegroom. The girl succeeded in running away and taking refuge at the Mission. Then she went to the Tribunal to demand her liberty. Thanks to the Mandel and Jacquinet Decrees, she was able to marry a wooer of her choice."<sup>3</sup>

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1. G. KIMBLE, *Tropical Africa*, New York, 1960, II, p. 225.

2. J. ROBIN, "L'évolution du mariage coutumier chez les musulmans du Sénégal", *Africa*, 17 (3), 1947: 192 (especially p. 200).

3. Sister MARIE-ANDRÉ DU SACRÉ-CŒUR, *La femme noire...*

Once again, Sister Marie-André du Sacré-Cœur is not concerned with the traditional nature of the involvement of the girl's family in accepting payment toward the bridewealth before the marriage was consummated, fully anticipating that their child would be duty-bound to obey. As a result of the law, many families refused to send their daughters to mission schools for fear they would not accept the husband chosen for them. Marriages had become a well-paying business as a result of the economic changes wrought by the French. In fact, a sort of legend of the young girl 'worth a million' emerged, indicating the extremes to which these abuses reached. Figures quoted by Dugast show that bridewealth in the Cameroon underwent a change from about 900 CFA francs in 1936 to 40,000 CFA francs in 1953, to 110,000 CFA francs in 1956.<sup>1</sup>

Balandier in his study of the Fang of Gabon<sup>2</sup> views the moral looseness of women linked inextricably to the concept of commodity introduced by the French. The movement of women is a logical outcome of the cycle of economic exchange the French introduced in the acculturative situation, with family disorganization second in importance to the needs of market demands. Abbé Zoa has also pointed up the commercial aspects of the bridewealth and in its wake, an increase in the amount of bachelors and spinsters because of the high cost of marriage. Prostitution, abortion, and sterility multiplied as a result of the 'Plan Individuel', which Abbé Zoa saw to be hardly efficacious in maintaining a stable, functioning social order.<sup>3</sup>

The last provision of the Mandel Decree dealt with the official sanctioning of monogamy. Closely associated with the high cost of the bridewealth clandestine polygamy developed. Men who were outwardly monogamous had permanent liaisons with women. The children of these unions were recognized but no bridewealth had been paid. Since according to the Mandel Decree, mutual consent was all that mattered, these women were able to leave their homes and lineages to take up residence as they pleased. As far as the legislators were concerned, these were legal unions. Nominal Christians living with these women escaped the reproaches of the Clergy, which they undoubtedly would have received had they installed two or three women in their household. As Tardits points out, there was no law to prevent an initially monogamous man from becoming polygamous as long as he did not make an official declaration on this subject at the time that his marriage was solemnized. These so-called monogamous marriages were brief in duration and often followed by others. Tardits sees this to be the brutal results of the devious efforts of the legislators to

1. DUGAST, p. 257.

2. BALANDIER, *Sociologie actuelle...*, p. 189.

3. ZOA, p. 66.

enforce their conceptions of morality upon people whose customs in fact differ.<sup>1</sup>

Balandier also speaks of the high proportion of divorce in Gabon which can be tied in with inflation and the increase in bridewealth. In the canton of N'Dou-Libi, for example, during the course of one year 206 marriages out of 521 (approximately 39%) ended in divorce. The author has used the term 'restrained polygamy' to sum up quite aptly this situation due to the high cost of women.<sup>2</sup>

### CONCLUSION

Although one could argue that the French in their civilizing mission in West and Equatorial Africa attempted to bring the benefit of their experience as a technological, industrialized nation to their colonies, the evidence seems to point rather markedly to their failure especially in the sphere of women's rights. As Atangana clearly points out, African societies to which the French legislated were judged by European values and not in terms of historical or social context.<sup>3</sup> Ultimate political control resting in the hands of the French determined the outcome of the clash between the two distinctive systems.

Certainly one can view rules and regulations with roots within one or another segment of a society in terms of their organic emergence to meet the requirements of maintaining social control. These sanctions and controls, whether or not they maintain equilibrium and whether or not they are dysfunctional to some degree, at least have the virtue of being an outgrowth of the inner conflicts of the particular culture. Having an inner evolutionary tendency, these rules attempt to cope with political, economic and social arrangements within the society. Rheinstein's comment that "law is not a body of rules that can be unified or modified at will by government fiat, it is part of a society's set of norms of behavior"<sup>4</sup> is pertinent here.

The colonial experience, in attempting to graft European-based legislation to African soil, produced monstrosities of misunderstanding and dislocation of fundamental institutions which had their *raison d'être* in the history and growth of a particular culture. The problem in francophonic Africa was that its rulers attempted to replace African legal norms with their own at too rapid a pace, and were unaware of those elements of customary law that had significance in regulating

1. C. TARDITS, *Porto-Novo: Les nouvelles générations africaines entre leurs traditions et l'Occident*, Paris, 1958, p. 65 ff.

2. BALANDIER, *Sociologie actuelle...*, p. 192.

3. N. ATANGANA, "La femme africaine dans la société", *Présence Africaine*, 17, 1957: 133.

4. RHEINSTEIN, p. 224.

social relations within the community. Delavignette believed that the educated elite should have been permitted a share in the administration of customary law and would have served admirably as innovators of social change, influencing local customs in the direction of European customs toward which many had identified.<sup>1</sup> Writers like Delavignette and Labouret saw all too clearly the weaknesses of the French system but were unable to do much to stem the tide of French legislation. It is clear that there was an inherent contradiction to the spectacle of one culture attempting to impose its philosophy of freedom on another. The head-on collision that occurred was inevitable.

#### APPENDIX I

##### *Mandel Decree (15 June 1939)*

ARTICLE PREMIER. — En Afrique Occidentale française et en Afrique Équatoriale française, la femme avant quatorze ans révolus, l'homme avant l'âge de seize ans, ne peuvent contracter mariage.

ARTICLE 2. — Le consentement des futurs époux est indispensable à la validité du mariage.

Seront nulles de plein droit, sans que la partie qui se dirait lésée par la prononciation de la nullité puisse, de ce fait, réclamer aucune indemnité :

1° Toute convention matrimoniale concernant la fillette impubère, qu'elle soit ou non accompagnée du consentement de la fille ;

2° Toute convention matrimoniale concernant la fille pubère, lorsque celle-ci refuse son consentement ;

3° Toute revendication de veuve ou de toute autre personne faisant partie d'une succession coutumière, lorsque cette personne refuse de se rendre chez l'héritier auquel elle est attribuée.

#### APPENDIX II

##### *Jacquinot Decree (14 September 1951)*

ARTICLE PREMIER. — En Afrique occidentale française, en Afrique équatoriale française, au Cameroun et au Togo, les citoyens ayant conservé leur statut personnel contractent mariage suivant la coutume qui leur est propre, sous réserve des dispositions du décret du 15 juin 1939 et de celles qui font l'objet des articles ci-après.

ARTICLE 2. — Même dans les pays où la dot est une institution coutumière, la fille majeure de vingt et un ans, et la femme dont le précédent mariage a été

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1. DELAVIGNETTE, p. 90.

légalement dissous, peuvent librement se marier sans que quiconque puisse prétendre en retirer un avantage matériel, soit à l'occasion des fiançailles, soit pendant le mariage.

ARTICLE 3. — Dans ces mêmes pays, le défaut de consentement des parents, s'il est provoqué par des exigences excessives de leur part, ne peut avoir pour effet de faire obstacle au mariage d'une fille mineure de vingt et un ans.

Il y a exigence excessive chaque fois que le taux de la dot réclamée dépasse le chiffre déterminé, suivant les régions, par le chef de territoire.

ARTICLE 4. — Les tribunaux du premier degré sont habilités à juger des différends résultant de l'application de l'article 3, ils sont tenus, chaque fois qu'ils constatent qu'il y a eu exigence excessive de la part des parents, d'en donner acte gratuitement au requérant. Ce document lui permet de faire enregistrer son mariage par l'officier d'état civil sans le consentement des parents de la fiancée.

ARTICLE 5. — Tout citoyen ayant conservé son statut personnel peut, au moment de contracter mariage, faire inscrire par l'officier d'état civil, sur l'acte de mariage, sa déclaration expresse de ne pas prendre une autre épouse aussi longtemps que le mariage qu'il contracte ne sera pas régulièrement dissous.

Cette déclaration constitue l'acte spécial dont il est fait mention à l'article 339, alinéa 2, du Code pénal applicable en Afrique occidentale française, en Afrique équatoriale française, au Cameroun et au Togo.