

Looking at Gender and Justice in an African Community: On Griffiths's *In the Shadow of Marriage*

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Anne M. O. Griffiths, *In the Shadow of Marriage: Gender and Justice in an African Community*. Chicago: University of Chicago Press, 1997. Pp. ix + 310. \$50.00 cloth; \$18.95 paper.

Anne Griffiths's fascinating and meticulous book, *In the Shadow of Marriage*, brings the reader into Bakwena society in Botswana for an examination of "the relations between justice, as represented by law, and women's experiences of the gendered world" they inhabit (p. 1). Her extensive field research opens onto several scholarly areas of interest to the law and society community, most particularly legal pluralism, postcolonial law, and gender, at the same time that it draws a delicately detailed picture of justice in the village of Molepole. Although all three topics are carefully interwoven in Griffiths's analysis, this review focuses on gender rather than pluralism or postcolonial law.

Griffiths presents life histories and case studies, as one might expect given her deep involvement in the sites of her research over a number of years (1982–89). Her finely detailed recountings of "cases" brought for resolution to the *kgotla*¹ are contextualized within the larger social, economic, and political environments in which they arose and were played out. Although we do not get to "know" the participants intimately, as we do, for example, Dirk Hartog's Abigail Bailey, we listen to the voices of the women and men who are parties to the disputes, and we are

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¹ A *kgotla* is the "assembly center (both the physical location and the body of members) of a group of households presided over by a male headman or wardhead; in the past, but no longer, all household heads were related through the female line. It forms part of the organization of Tswana society that revolves around the construction of a morafe (usually glosses as 'tribe' . . .). Kgotlas are structured through a tightly organized hierarchy of progressively more inclusive administrative groupings, beginning with households and extending through wards, which are the major units of political and legal organization, to the morafe as a whole" (p. 271). The *kgotla* is a "men's talking place," which some of the older men think has diminished in importance in contemporary society (p. 117).

moved by their conflicts. We care about the processes and outcomes in ways that we do not in less sensitive, less respectful, less nuanced research.

Turning away from legal centralism, this book makes a strong argument for a pluralist approach to postcolonial law/legal systems and processes. Griffiths's analysis of the cases and the circumstances surrounding them vividly demonstrates various meshings of common, customary, and living law (p. 33). The *kgotla*, for example, abides by no one kind of law; common law and decisions of the High Court may or may not be invoked. Griffiths contributes to an unsettling process of understanding how decentered law and legal processes are in a postcolonial society and, by implication, may also be in First and Second World systems as well. Her research affirms the need to be flexible and open to the intersections, overlapping, and separations of many different kinds of law and legal practices.

Alongside the theme of pluralism is that of gender, which I found myself most drawn to think about in part because of my own interests in feminism but also because the harsh gendering of this society and its legal processes is riveting. Griffiths's descriptions of the *kgotla* as male space are compelling (p. 117). Women are present during the "talkings" there but rarely participate unless specifically addressed by a man. Women are often excluded from the more formal legal domain as well (p. 229); they must rely on male family members to have their claims to property or compensation fully heard. Women do not thoroughly press their claims (e.g., to cattle accumulated during a marriage) for fear they will receive nothing if they do. Women cannot "blame" male partners for their affairs with other women—that would not be womanly. The "good wife" accepts her husband's infidelities so long as he provides for her and their children. Gender cuts across race and class (p. 234)—the woman, regardless of other factors, is always, or almost always, found to be at fault (p. 168). There is a consensus in society that women consistently get less than the man in legal disputes (p. 170).

Griffiths argues that the gender hegemony is not as seamless as it might appear; there is resistance among women to male dominance. Women share, to some degree, in the "power of individuals to construct a discourse that will effectively represent their claims" (p. 181). One unusual instance of a woman's claim to property is the dispute between Goitseman and her brother, David, over the control of their natal household (p. 48). As a member of the *salariat* (rather than *peasantariat*), she has built the natal household through her earnings. Her challenge to him is definitive, and she prevails.

While Griffiths states that women "actively seek to overcome the restraints placed on them by adopting their own legal strate-

gies differing from those of men and, where possible, by challenging the terms of the discourse with which they are presented" (p. 212), these instances are few and far between. Some women do express discontent over the outcomes of cases, and the magistrate's court offers a better chance for women who can maneuver in hearings conducted in English.² Still, women offer little overt resistance during the cases, and they have little ability to resist male legal domination in day-to-day life, where most property and community forums, especially the *kgotla*, are controlled by men. Resistances exist, but they do not appear to have much impact on social and economic relations or legal processes and outcomes at the village level. The gendered power structure in law and society may not be seamless, but it is pretty overwhelming.

The institution at the center of much of the disempowerment of women is marriage, which, as Griffiths describes it, is remarkably flexible, even ambiguous. Marriage is crucial to ordering social and economic relationships, like property ownership and inheritance. Married women are higher in the social and political hierarchy than unmarried women. Not a stable state or fixed relationship, however, "Marriage is a process which may take place over many years, involving reciprocal relations between families" (p. 53).

In a society where women's having children defines a female's status as an adult and where childbearing and either customary or common law marriages are less and less connected, marriage is more mutable than it once was. One sort of marriage is based on the expectation of a formal union in the future, which is in turn built on a discussion among parents, a relationship of some years, and children from that relationship (p. 123). A customary marriage may—or may not—involve the transfer of *bogadi* (marriage payment). A marriage with *bogadi* does not necessarily have the same status in law as a civil or religious marriage, but it may (pp. 53–54).

Griffiths's depiction of marriage shows how tenuous some of our most solid concepts and categories can be and poses an intellectual challenge. In a postmodern environment, how do we establish, even momentarily, our understandings if there are no reasonably fixed categories or concepts within which to engage in interpretation? Not only is there is no end point for analysis, there may be few stopping spots along the way. In this instance

² Griffiths writes: "Women . . . can and do go straight to the magistrate's court for a number of reasons. Some do so because they consider that they will not receive a fair hearing in the *kgotla* due to the man's status and local connections . . . On the other hand a desire to circumvent nepotism is not the only reason why women go to the court. There may be pragmatic reasons such as avoiding the kind of delay that ensues in the *kgotla* because proceedings cannot take place until all the relevant family members are present . . . Or women may simply wish to deal with the matter themselves, free from intervention of family or kin" (pp. 113–114).

the reader has a hard time wrapping her mind around marriage in Tswana society. At one moment the meaning of marriage may be clear, but then it slips disconcertingly away. It is difficult—and fascinating—trying to get one's bearings because marriage is such a multilayered, shifting, yet highly gendered phenomenon.

Marriages continue, experience a variety of discontinuities, or end; women may at any moment make a public claim to economic support by the men for their children and themselves. In this process a gendered ideology, where men's and women's roles are fairly rigidly set, defines the terms of such claims. A man is assumed to be the father of a child in most circumstances.³ The man has to disprove his paternity. For the most part, however, the ideology affirms the image and requirements of the "good wife." She must be reasonable and not make demands on her man. He may address his wife's infidelity, but she may not address his (it is acceptable for him to be unfaithful so long as he supports his family). She tolerates beatings; she unwaveringly tends to his needs (p. 135); she does not gossip about him. The cause of divorce is most often her fault. There is considerable blaming especially of the unreasonable woman who claims "too much" (p. 207).

But how pervasive is this "good wife" ideology and its attendant images away from the *kgotla*, formal courts, and other male spaces? Clearly in the *kgotla* this ideology is controlling. If women offer resistance there, they will routinely find themselves with nothing, an exorbitant price in a society where women have very few economic resources. But do women, when away from the male spaces, discuss their husbands' infidelities? Is there more or less resistance to the "good wife" within households, most of which are headed by women? Griffiths provides no answers to these questions. The context she provides leads the reader to want to know still more about that context.

Clearly in Tswana society a fairly rigid gendered power structure exists alongside legal pluralism and flexible institutions like marriage. As much as the reader may be challenged to think anew about the complexity, continuity, and mutability of legal concepts and institutions, she is also struck by the male dominance that yields little to women in legal processes. Griffiths's life histories and cases powerfully affirm the relative silence and powerlessness of women, the lack of narratives to counter the gendered ideology and images that severely delimit women's resistances in legal arenas. In the *kgotla* women appear placid and attentive to their partners' needs and wishes; their voices are muted or silent. The legal pluralism here provides women minimal space for resistance.

³ If the woman has several children, it is difficult for her to make any legal claims on a man.

This remarkably culturally attuned research on legal pluralism and gender in Tswana society raises political issues for the reader (much more than for the researcher, who amply demonstrates her respect for the society she studies). It is politically and analytically easier to come to terms with the legal pluralism than with gender. Griffiths's arguments about legal pluralism, about the multiplicities and intersections of legal institutions and processes, are intellectually exciting and persuasive. Her analysis of gender, however, poses thorny questions of political judgment. How does the reader, one from a dominant nation that has experienced its own particular women's movement, assess gender here without imposing culturally arrogant baggage onto that assessment? Certainly Griffiths brings us deeply into the society so that we may appreciate and value Tswana women's perspectives and move beyond the cultural confines of Anglo-American societies. But harsh male domination incessantly jumps out from Griffiths's vivid pages. For this reader the real power—and political conundrum—of the book lies there.