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When Harmonization Crosses the Red Line: Interrogating the Post-1972 Common Law Ethnocide in Anglophone Cameroon

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ABSTRACT

By dint of their disparate colonial groomings, Anglophone Cameroon had common law as its legal system at the dawn of reunification in 1961 while Francophone Cameroon had civil law. Things would stay that way until 1972 when the government began sanctifying civil Law over common law through an asymmetric and assimilatory harmonization scheme. That was the beginning of the systematic erosion of common law in Anglophone Cameroon and the contemporaneous transposition of civil law to the territory. Anglophone common law practitioners manifested their revulsion to this harmonization travesty through multidimentional protests. One of such protests was their 2016 sit-in that morphed into an armed conflict. Using survey and participant observation as research instruments, Anglophone common law practitioners as the target population and stratified purposive sampling as the sampling technique, this study exemplifies common law ethnocide in Anglophone Cameroon. The key finding of the study is that the Cameroon harmonization scheme is skewed towards the attainment of civic nationalism and not law reform as it ought to be. Accordingly, the Cameroon harmonization scheme is flawed in its conception, defective in its methodology, imperialistic in its application and boundless in its scope. Above all, its assimilatory properties and propensities have occasioned an ethnocidal paradigm-shift in the legal system of Anglophone Cameroon from its pre-1972 common law status quo to its present-day civil law inclination. The major recommendation of this study is for government to give Anglophone Cameroon such autonomy as will allow it set up its own legislative assembly to legislate on private law matters. Without this, the erosion of common law in Anglophone Cameroon will continue.

Key Words: Common Law, Civil Law, Legal System, Legal Culture and Ethnocide

INTRODUCTION

Born of the union between the British trust territory of Southern Cameroons and the Republic of Cameroon in 1961, the Cameroon nation state began its journey of statehood as a bilingual and bijural federation of two states. Based on their respective colonial heritage civil law and French were amongst the identity markers of the East (Francophone) Cameroon state as common law and English were to the state of West (Anglophone) Cameroon. The policy of national integration instituted by government after the 1972 unitary vote saw the government put in place a legal harmonization scheme that ultimately weakened the pilars of common law in Anglophone Cameroon. Common law being an Anglophone identity marker in Cameroon, harmonization became a vector in the unfolding ethnocide against the Anglophone ethnic culture in Cameroon. The primacy of structural violence in this harmonization travesty evoked the wrath of Anglophone common law practitioners whose protestations ignited a common law crisis in the early nineties.

After smoldering for many years, the common law crisis flared up in October 2016 after government extended its harmonization spree to realms bordering on the Anglophone legal culture. One of such was the inundation of French-speaking Francophone magistrates to Anglophone legal jurisdictions. By veering into the uncharted territory of legal culture, Anglophone common law practitionrers perceived harmonization as

having crossed the red line. This was the immediate cause of their sit-it that began in October 2016. In the cause of the sit in the lawyers stayed away from the courts and undertook an ethnic mobilization campaign in which they targeted the Anglophone ethnic community. Apparently opining that the lawyers had a case and their plight was equally their plight, the Anglophone ethnic community joined the lawyers in what became a movement to protect and preserve the Anglophone cultural identity in Cameroon. Disproportionate use of force on Anglophone protesters by government forces would spark off a spiral of violence that ultimately attained the threshold of an armed conflict. The legal framework for Justice Sector reforms put in place by government has since failed to abate or assuage the structural violence built into the Cameroon harmonization scheme. As a result, the structural violence subsists, the lawyers' frustrations persist and the common law crisis lingers.

THEORETICAL FRAMEWORK

The theories that underpin this study are the three theories of ethnic conflict, notably, the Primordial theory, the Social Construction theory and the Instrumentalist theory. The proponents of the Primordialists theory are Johann Gotlieb Fichte and Johann Gottfried Herder. Primordialists hold that ethnicity is an ascribed identity or assigned status. For them, ethnicity is inherited at birth from one's ancestors and difficult to change (Isajiw, 1993; Yang, 2000). This implies that ethnic boundaries are fixed, static and immutable (Isajiw, 1993; Yang, 2000). For primordialists, ethnic conflicts erupt because of ethnic hatreds or inter-ethnic rivalry (Ray, 2012). Accordingly, premordial sentiments explain the attachment of Anglophone common law practitioners to common law. Being Anglophones, they were born into common law. This explains their resistance to any form of harmonization that will strip them of their common law heritage. To this end even young lawyers who never lived the common law boom of the federal era still cling to common law like the older ones. They say that's how they met it and so shall it be. That is the prototype of primordialism.

The second theory of ethnicity for consideration is the Social Construction theory propounded by John Dewey, Jerome Bruner and Jean Piaget. This theory states that ethnicity is socially constructed through various means and political processes such as conquest, colonialism or immigration (Yang, 2000, Winner, 2008, Reuter, 2019). This implies that ethnic boundaries are flexible and ethnic affiliation or identification is determined or constructed by society. For constructivists ethnic conflicts are the product of concrete historical processes that affect relations between ethnic groups causing hostility between them (Weir, 2012). Given that the "Anglophone" and Francophone" ethnicities of Cameroon were bequeathed to *Anglophone Cameroon* and *Francophone Cameroon* respectively by the British and the French during colonial times it can safely be said that those ethnicities were socially constructed through colonisation.

The last theory of ethnicity that guides this research is the Instrumentalist theory propounded by John Dewey. Other proponents of this theory are Glazer and Moynihan, Paul Brass and Abner Cohen. Instrumentalists view ethnicity as an instrument or strategic tool for gaining resources, obtaining a comparative advantage or advancing group interest (Yang, 2000). For Brass, ethnicity is used by the elites of a social group to gain resources that may be political oand economic. For Glazer and Moynihan (1975), ethnicity like nationality can be a tool of political mobilization to advance group interest. Accordingly, intrumentalists hold that ethnic conflicts are driven by political leaders for political or economic gains. Holding that Cameroon's assimilative harmonization scheme is driven by the desire by the Francophone ruling class for civic nationalism is lending credence to the instrumentalist theory.

Despite their deferent conceptualisations of ethnicity, the three theories above can be reconciled. To this end Philip Q Yang (2000) holds that "ethnicity is socially constructed, partly on the basis of ancestry or presumed ancestry (the primordial theory) and more importantly by society (the construction theory). He equally postulates that the interest of ethnic groups partly determine ethnic affiliations (the instrumentalist theory) Yang (2000). In the same light, Esmam (1994) postulates that ethnic identity can be located on a

spectrum between primordial historical continuities and instrumental opportunistic adaptations.

LITERATURE REVIEW

A legal system is an operating set of legal institutions, procedures and rules (Tetley, 2000). In the countries of western civilization the two best-known legal systems are common law and civil law especially as exemplified in England and France respectively. The fundamental difference between the two systems lies in their primary sources of law. In civil law, the main principles and rules are contained in codes and statutes, which are applied by the courts. Hence, codes and statutes prevail (Caslav Pejovic, 2001). In the common law system, the main source of law is judicial decisions. Hence, case law prevails (Caslav Pejovic, 2001). Bijuralism refers to the coexistence within a single state of two legal traditions (Rosemberg, 2000). Cameroon is considered a bijural state because of the supposed coexistence of common law and civil law in the country.

The legal diversity exisiting between and within countries can be the souce problems. A means by which problems arising from diversity of legal systems can be assuaged and the gap between legal systems bridged is harmonization. Harmonization derives from the word harmony. Borrowing from the oxford English Dictonary Martin Boodman defines harmony as the 'combination or adaptation of parts, elements or related things so as to form a consistent and orderly whole. He adds that harmony entails a state of consonance or accord and that it pre-supposes or preserves the diversity of the objects it harmonises. For Boodman harmony requires diversity and eschews uniformity (Boodman, 1991). In the legal context, harmonization is the process by which the laws of different countries or plurijural jurisdictions within a country are synthesised. At the the international level harmonisation is used to facilitate business or trade between nations (Boodman, 1991). In bijural countries, it is a means of law reform. Law Reform has been described as the process that makes laws good and good laws better (Scotland, 2017).

Harmonization like law reform is all about the law. It seeks to improve the law and nothing more. It should not be motivated by political, social or economic considerations**.** The reverse has however been the case with legal harmonization in Cameroon. The outcome has been the obfuscation or erosion of common law in Anglophone Cameroon. Literature on the Cameroon harmonisation scheme is replete with input on the eroding effect of the scheme on common law. Writing under the title, *Managing Legal Diversity: Cameroon Bijuralism at a Critical Crossroads,* Fombad (2016) asserts that the process of legal reform has led to an overwhelming predominance in style, form, content and formulation of civil law over Common law in what can be perceived as only a one-sided invasion and assimilation of the latter by the former. For Mikano (2019) law reform has been problematic as harmonization is at the verge of establishing a unijural system founded on civil law. Blaiming the common law-civil law disequilibrium in Cameroon's harmonised laws on the Francophone-Anglophone imbalance in Cameroon's monolithic house of assembly, Ngassa holds that even if all Anglophones in the house were to vote against a given law for being anti-common law, it will still not pass; giving the overwhelming Francophone majority in the house. Decrying the fact that Cameroon has just one parliament that legislates on both public law and private law matters Lucy Asuagbor finds it awkward that there is no standing order in the Cameroon legislative house that makes it an obligation for all laws passed by parliament to be bijural (Asuagbor, 2009).

A realm of legal harmonisation that has caused much ink to flow, it is the the harmonization of business law under the OHADA treaty. The talking point has been the civil law influence in the various OHADA treaty laws. Martor *et al* (2007) submit that the `OHADA project was conceived by French-speaking African countries and that all the member states of OHADA have a common legal culture (Civil Law) except the English-speaking regions of Cameroon. Concerning the content of OHADA laws, Martor *et al* state as follows: "The overall legal framework of the Uniform Acts is based on civil law and has to a certain extent borrowed from modern French business law". They go ahead to note that the whole concept of Uniform

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Acts is civil law inspired. Holding the same stance as Martor *et al*, Ndongo (2013) argues that the idea of harmonising business law in Africa is a praiseworthy initiative, which unfortunately has acted as a smokescreen for the political agenda for the mainly French – speaking state parties wishing to control the OHADA". He frowns at the predominance of civil law in the Uniform Acts and the pervasive presence of Francophone Lawyers in OHADA institutions.

Supporting the assertion that OHADA is based on civil law Asuagbor (2009) cites the OHADA "Seizure-Awards" procedure which she says was inspired by Articles 42 and 47 of the French Loi N^{O} 91-650 of 9th July and Articles 55-79 of Decret N^{O} 92- 755 of 31 Juillet 1992 and covered by Articles 153-172 of the OHADA Uniform Act. Along the same line, Fonkwe (2009) submits that the OHADA Simplified Recovery Procedure is inspired by a French law, notably Decree N^{O} 51/500 of 12/05/1981 repealing that of 28/8/1972 on Simplified Recovery of Debts.

One of the predicaments of the Cameroon harmonization problematic found in the literature is the poor translation of harmonized laws from French to English. For Ndongo (2013), the translation of the Uniform Acts into English has proved problematic, "for their underlying legal concepts and notions do not reflect the spirit of the common law system". Writing on this issue, Akere Muna states as follows:

The translations of the Uniform Acts are literary and less than adequate. They do not translate known legal notions of the Common Law system and allow most of the Common law judges and legal practitioners to apply this new law by a sheer approximation (Akere Muna, 2000).

The reason for this problematic is that legal translation is different from other translations. Smith (1995) explains that the system bound nature of legal texts means that successful translation into another language requires competency in at least three separate areas – knowledge of the legal systems involved (both in the source language and target language), familiarity with the relevant terminology and competence in the target language's specific writing style. In this light, Dumistrescu (2014) posits that Legal translation stands at the crossroads of legal theory, language theory and translation theory. Accordingly, the legal translator should translate and facilitate communication across linguistic, cultural and legal barriers through the medium of language. For Dumistrescu (2014) a legal translator must be part a linguist, part a legal scholar and part a detective "willing and able to search out legal concepts expressed in the source language of a document that may not have an equivalent in the language or legal system of the target text.

Opining on the effect of poor translation of the OHADA Uniform Acts, Justin Melong (2013) notes that OHADA translations are "too literal and rather nebulous". As a result of this translation problem Dickson (2008) opines that "the current translations of OHADA will have to be reworked with Anglophone legal professionals and they should be prepared to incorporate certain Anglophone legal concepts" (Dickerson, 2008). Ngassa and Asuagbor equally pick holes in the translation of the OHADA laws into the English language. Noting that most of the translations are literal and don't make sense in the Common Law tradition. Ngassa (2003) particularly chides the English version of the CIMA Code whose translation she describes as "a semantic mishap".

THE PRE-1972 LEGAL SYSTEM OF ANGLOPHONE (WEST) CAMEROON

The term legal system has a general meaning and a narrow meaning. In its general sense, a legal system is an operating set of legal institutions, procedures and rules. It refers to the nature and content of the law generally, and the structures and methods whereby, it is legislated upon, adjudicated upon, and administered within a given jurisdiction (Tetley, 2000). Each legal system has three pillars – its rule-based laws, its hierachy of primary sources of law and its legal culture. These are the parameters by which the pre-1972 legal system of Anglophone (West) Cameroon will hereafter be reviewed.

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Rule-based laws

The first pilar of the West Cameroon legal system to be considered is its rule-based laws. Rule-based laws are defined as "… a set of rules that are created and enforceable by social or governmental institutions to regulate behavior" (Robertson (2000 p.90). Rule-based laws are comprised of terms, norms, body of norms and legal concepts. A legal term is the smallest component of any legal norm (Lundmark, 2012). A norm must contain at least two legal terms; one describing a behaviour and the other attaching some legal consequence to it (Lundmark (2012). A legal concept, for its part, is something more than the dictionary denotation of the legal term. Lastly, a legal term is the smallest component of any legal norm (Lundmark, 2012). Under the civil law system, rule-based laws are found in *codes (loi), decrees*, *arretes* and *ordonnance.* In common law, they are in decisions of superior courts, statutes and subsidiary legislation.

Concerning the rule based laws of West Cameroon, Section 46 of the 1961 Federal Constitution and Section 53 (1) of the West Cameroon constitution of 26th October 1961 posited that the existing laws of the federated states would remain in force in so far as they did not conflict with the provisions of those constitutions. Section 53 (4) of the West Cameroon constitution went ahead to hold that "For the purpose of this section, the existing laws" means all ordinances, laws, proclamations, rules, regulations, orders and other instruments having effect as part of the law of the state immediately before the 1st day of October 1961". Going by this, the substantive rule-based laws applicable in Anglophone Cameroon were those provided for by the Southern Camerons High Court law of 1955. These are the common law, doctrines of equity and the laws of general application which were in force in England on the 1st of January 1900 and the law and practice in England governing probate, divorce and matrimonial causes and proceedings. In procedural matters, the rule-based laws comprised the rules of practice and procedure contained in the 1955 twin laws or any other written law and in the absence thereof, the rules of practice and procedure for the time being of Her Majesty's High Court of Justice in England. By virtue of the above constitutional provisions, common law enjoyed ascendancy in West Cameroon during the federal era as did civil law in East Cameroon.

Principal source of law

The next pillar of the West Cameroon legal system to be considered is its hierarchy of primary sources of law. The hierarchy of primary sources of law refers to how the different souces of law are priotized in a given legal system jurisdiction. Under the common law legal system, decisions of superior courts have pride of place in the hierarchy sources of law. This is known as *stare decisis*. It is based on the principle that earlier decisions, usually of higher courts made in similar cases, should be followed in subsequent cases. *Stare decicis* therefore connotes judge made law. For this reason, legal systems falling under the common law tradition have a system of case law reporting whereby important judgments of superior courts are packaged in volumes known as law reports.

Regarding the hierarchy of sources of law in Anglophone Cameroon before the 1972 transition, it suffices to state that from reunification in 1961 to the 1972 transition Anglophone Cameroon lived up to its creed of being a common law jurisdiction. Accordingly judge made law based on the principle of *Stare decisis* had ascendancy over statute law. That's why law reports and standard practice books, being the repository of judgements and legal principles were the companions of West Cameroon legal practitioners. Unlike it is the case with common law, in the civil law system, priority is given to rule-based laws contained in a compilation of rule-based laws known as codes. This has given the term legal system a narrower meaning. In this regard, common law alludes to law derived from the decisions of judges while the civil law legal system refers to law found in codes. This explains why West Cameroon was a common law jurisdiction and the erstwhile East Cameroon a civil law enclave.

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Legal Culture

Legal culture is the third pilar of the West Cameroon legal system. The term legal culture has been defined as a specific way in which values, practices and concepts are integrated into the operation of legal institutions and the interpretation of legal texts (Bell, 1994). It encompasses everything that influences the making, interpretation and application of norms, including those things not necessarily thought of as belonging to the realm of law (Lundmark, 2012). Such things have been held to include judicial organization, the court system, the legal professions, mentalité, legal reasoning, style of argumentation, organization and methodology of law, legal education, judicial process, legal traditions, legal philosophies, legal systems, juristic styles, legal organizations as well as the laws and their sources. (Friedman, 1997; Lundmark, 2012).

In keeping with the legal culture in common law national jurisdictions, West Cameroon had a bar association, a system of law reporting, a court system with an apex court and a corps of magistrates and judges. All the magistrates, judges, legal officers and lawyers of Cameroonian nationality in West Cameroon were ethnic Anglophones who had undergone their education in the english language and had been called to a common law bar. The dressing code of members of the public and private Bar and courtroom decorum were highly respected. The court registry was staffed by a pool of English-speaking clerks who held standard English qualifications. The language of courts was English and all documents, releases, writs, laws and Judgments were in English. In keeping with common law tradition, registry processes had standard forms. Samples of the forms were exhibited as appendixes to the various rules of practice publications. There was certainty of laws as all laws were available in bound volumes of the Laws of the Federation of Nigeria, the West Cameroon Gazette or bound volumes of relevant chapters of the Laws of the Federation of Nigeria.

Courts and court officers in West Cameroon were known by standard common law nomenclature. Magistrate courts were presided over by magistrates, High courts by Judges and the Court of appeal by justices. In keeping with common law tradition, magistrates were "worshiped" while judges were "lorded". Police officers were auxiliaries of justice. They acted as investigators and interrogated suspects and witnesses in English. They also prosecuted simple offences. In addition to all these, the police acted as sheriffs, distributing court processes and serving summonses. Lawyers spiced their submitions with case law citations. Judgments were equally laden with case law. Judges were generally strick and would not allow lawyers to waste their time. Court time was 9:00 am. Interlucotory applications were by way of motions and motions were nomally heard in chambers while trials were in open court. Adjournments were generally hard to come by.

METHODOLOGY

The problem that underpins this study is the harmonization-induced common law ethnocide in Anglophone Cameroon. The objectives of the study are to exemplify the this ethnocide and structural violence in the Cameroon harmonization scheme and to factor the causes of that ethnocide. The research design used for this study is the qualitative case study design. Qualitative research seeks to describe and analyse the culture of humans, their behaviour and their groups from the point of view of those being studied (Amin, 2005). The target population of the study is Anglophone common law practitioners. This comprises common law-trained lawyers having their law practice in the North West and South West Regions of Anglophone Cameroon. The sampled population is 113 Anglophone common law practitioners drawn from the three administrative Divisions of the Southwest Region with resident lawyers. This is Fako, Meme and Manyu divisions. The stratified purposive sampling technique was employed for the study. Going by this technique, the population of lawyers in the study location was stratified into seven sub-groups based on their

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undergraduate legal education and form of admission into the bar. After this stratification, the population sample was purposely chosen from the different sub-groups. The choice of who to select was guided by the researcher's desire to have a sample of persons knowledgeable in the subject of the study, a sample that is diversified in terms of various ranges of seniority at the Bar and representative of the three constituent associations of Anglophone common law practitioners in Southwest region. Survey and participant observation were the preferable research instruments used for the study. The secondary data collected comprised books, academic journals, law reports, laws, magazines, newspapers, research articles, decrees, the Cameroon constitution and online sources. The method of thermatic (data) analysis proposed by Braun and Clarke (2012) was used to analyse the survey transcripts and field notes from participant observation.

MAJOR FINDINGS

Exemplificatios of common law ethnocide in Anglophone Cameroon

Ethnocide is the intentional and systematic destruction of an ethnic culture. It concerns policies designed to destroy the separate identity of a group, with or without the physical destruction of its members (Stavenhagen, 1996). The victims of ethnocide are generally ethnic groups and their members while the target is their culture or aspects of it. The quest for civic nationalism by the Francophone government in Yaounde has occasioned a systematic ethnocide of the Anglophone ethnic culture in Cameroon. The generic term used by government to justify this ethnocide is national integration. Amongst the targets of the Anglophone ethnocide is common law and the instrument used for its realization is harmonization. It all began in the advent of the centralized unitary state structure in 1972, when government a policy it termed national integration.

The Cameroon government policy of national integration has since turned out to be an assimilation scheme targeting the colonial ethnic inheritance of Anglophone Cameroon. The outcome has been an assault on the English socio-cultural heritage in Anglophone Cameroon. Finding law a soft target for this assault, common law has become a pawn in government's assimilation chessboard. This is exemplied by a flawed harmonization scheme. By that scheme, a series of local and treaty laws laden with civil law norms, concepts and terminologies have been imposed on the common law jurisdictions of Cameroon as standardized laws.

Cameroon's flawed harmonization scheme has subjugated common law to civil law in Anglophone Cameroon. Anglophone Common Law practitioners call this flawed harmonization process and subordination of common law to civil law "the erosion of common law" in Cameroon. Eroding common law in Anglophone Cameroon implies undermining the three pillars of common law in the two Anglophone regions of Cameroon. Exemplifying the erosion of common law or common law ethnocide in Anglophone Cameroon therefore entails showing how the Cameroon harmonization scheme has occasioned a paradigm-shift in the common law system applicable in Anglophone Cameroon during the West Cameroon era.

Erosion of rule-based laws

Law reform in Cameroon has been in the form of harmonization. This means that the plethora of laws promulgated or ratified by Cameroon in the post 1972 era are harmonized, applying to both Anglophone and Fracophone Cameroon alike. This harmonization spree has led to the systematic paradigm-shift in the rule-based laws of pre-1972 Anglophone Cameroon. This is because the respective standard or harmonized rule-bassed laws that have come to replace the status quo of rule-based laws in Anglophone Cameroon are largely devoid of common law norms, concepts and terminologies. On the other hand, they are laden with civil law norms, concepts and terminologies. This is problematic. Normatively, the rule-based laws of any legal jurisdiction are conceived and drafted to suit the legal culture of that jurisdiction and vice versa. The rule-based laws applying in Anglophone between 1961 and 1972 were suited for the legal culture of West

Cameroon and vice versa. Applying laws conceived and drafted within the context of civil law in a common law jurisdiction like Anglophone Cameroon is accordingly bound to be problematic. This means that standard or harmonized laws should be drafted to suit the legal culture of the jurisdictions where they are meant to apply. It is in this regard that Dainow (1966) states:

Legal culture is also relevant for the creation of Uniform law. Even if the law of different states is formally unified, each state will likely adapt the unified law according to its respective legal culture.

That is however not the case in Cameroon as no efforts are being made to adapt the civil law-laden harmonized laws to the legal culture of Anglophone Cameroon. Actually, because of the differences that exist between legal cultures, it is quite difficult to blend differing legal systems and traditions. As a result, Van de Walt (2019) admonishes that:

When reforming any area of any legal system, it is not sufficient to look at the optimal structural and rule-based solutions without also taking into account the local legal culture into which such supposed solutions are to be transplanted as well as the cultural context of the donor jurisdiction.

Although all harmonized realms of law in Anglophone Cameroon have withessed a paradigm-shift in their common law orientation, only the realms of land law, family law, insurance law, commercial law and stay of execution will be highlighted in this study.

Land Law

Ordinance N°74/1 of 6th July 1974 on title to land repealed the Land and Native Rights Ordinance Cap 105 and Land Registration ordinance Cap 108 of the Laws of the Federation of Nigeria, 1948 respectively. In so doing, it brought significant changes to land law as known and practiced in Anglophone Cameroon. Infamously, the 1974 law ousted the jurisdiction of the law courts in issues relating to title to land and handed over to administrative officers. Opining on this, Justice Vera Ngassa writes:

In 1974, the Cameroonian legislature, in what generally is the subject of much controversy, ousted the jurisdiction of the courts from entertaining issues relating to the title to land and handed same over to the Administrative officers. The above legislation is a negation of the right of the law courts as obtainable in all common law Jurisdictions to hear and determine matters relating to title to land (Ngassa, 2002)

The above provision of the 1974 Ordinance is reinforced by Section 5(3) (iii) of Law N° 1983/19 of 29th November 1993 law by which the ordinary courts have been divests of their competence to adjudicate on matters touching on title or ownership over unregistered land. That is now the preserve of a nebulous body called the Land Consultative Board. That was the ratio in *Suit No CANWS: Fai Amedou vs The People and 2 ors.* This is not the common law position.

Family Law

Ordinance No 81-2 of 29th June 1981 to organize civil status registration repealed law No 68/LF/2 of 11th June 1968 organizing civil status registration. Whereas Law N° 68/LF/2 of 11th June 1968 organizing civil status registration dealt exclusively with marriage formalities, Ordinance No 81-2 of 29 June 1981 was a sort of family code. It repealed the Marriage Ordinance, Cap 115 Vol. IV of the 1958 Revised Laws of the Federation of Nigeria that was applicable in West Cameroon. For Anglophone common law practitioners, Ordinance N°81-2 of 29th June 1981 did not take into consideration common law traditional values and usages. It blurred the common law distinction between a statutory and a customary law marriage. Per its Article 49, polygamy was made a statutory marriage while per Article 81 customary marriages could be registered at the civil status registry. Pondering over the ambivalence of the 1981 Ordinance, Justice Ngassa

has raised the following worry:

One would have thought that the 1981 Ordinance from its title contained only directives to the mayors or civil status registrars, but what this law did was that it came out with a haphazard family code (Ngassa, 2002).

She goes on to pick holes in certain provisions of the ordinance in the following words:

The 1981 ordinance is a hybrid law of uncertain pedigree…it is difficult to discern the origin of the presumption under Article 77 of the ordinance that every widow should mourn for 180 days and the sweeping remark that the widow is thereafter entitled to her share of the deceased's property (Ngassa, 2002).

The pegging of the marriage age as low as 15 and ordaining the celebration of a marriage with a dead person are not customary to common law.

Insurance Law

The Fatal Accidents Act of 1864 regulated accident claims in Anglophone Cameroon until Ordinance N^{O} 89-005 of 13/12/1989 came along. By this ordinance, accident claims no longer rested on negligence. This was a direct import of the civil law no fault system as borne out in Articles 1382 and 1383 of the French Code Civil otherwise known as the Napoleonic code. After trending for three years, Ordinance No 89-005 of 13/12/1989 was replaced by the CIMA Insurance Code in 1992. CIMA is the French acronym for "Inter African Conference of Insurance Market". Cameroon signed the treaty setting up CIMA in 1993. A harmonized code of Insurance adopted as an annex to the CIMA treaty was ratified by Cameroon in 1993. Not surprisingly, the CIMA code transposed French civil law principles of insurance law to Anglophone Cameroon. Corroborating this assertion, Justice Vera Ngassa equally writes:

The CIMA Code is a piece of codified French inspired legislation… Not only was the CIMA code conceived with a civil law bias but no interest was paid to the common law tradition in respect to accidents and compensation (Ngassa, 2002).

Like the repealed 1989 ordinance, the CIMA code created a no fault liability regime. It equally placed a ceiling on awards in Insurance claims like funeral expenses.

Commercial law

On the 17th of October 1993 Cameroon, alongside 16 other African countries signed a treaty setting up the Organization of Business Law in Africa commonly known by its French acronym OHADA. Amongst the stated objectives of OHADA is to harmonise business law in state parties through the adoption of uniform Business Laws to promote regional integration and ensure the legal certainty of investment in Africa. Article 2 of the OHADA treaty defines business law to include company law, the status of traders, the recovery of claims, liquidation, arbitration, labour law, accounting law, the law of sale and transport. OHADA was ratified by Cameroon per decree N^{O} 96/177 of 5th September 1996 in accordance with law N^{O} 94/04 of 04/08/96. In furtherance of its stated objective, OHADA has since adopted a number of Uniform Acts in sundry areas of business\commercial law for application in member countries. The Uniform Acts have had a repealing effect on some common law principles and statutes hitherto applying in Anglophone Cameroon like the Companies Ordinance (Cap 37), The Recovery of Premises Ordinance (Cap 176), The Sheriff and Civil Process Ordinance, the Sale of Good Act, 1893 and the partnership Act, 1890.

Overall, the Uniform Acts have been worrisome to Anglophone common law practitioners. While they maintain the flavor of the laws they came to replace in Francophone Cameroon, they were radically different from the Anglophone status quo. As a result, the OHADA laws were received with much reticence in

Anglophone Cameroon (Nkuo, 2002). In an article titled *OHADA; An Unruly Horse* Justice Nko Irene states:

It is with great reserve and suspicion that the common law jurisdictions have accepted the OHADA treaty and the Uniform Acts. The tyrannical way in which the text was imposed on them, the fact that French is the only working language of the OHADA, and the fact that Cameroon participated in the preparatory work for the adoption of the text of the OHADA as a French-speaking nation, are all reasons justifying this reluctance (Nkuo, 2002).

Describing OHADA as the "unwanted baby that has been thrust into the lap of the common law" Ngassa (2002) notes that "nowhere else has the encroachment of the civil law into the common law terrain been more poignantly exhibited than in the OHADA". Because of their civil law inspiration, the OHADA Acts have introduced profound changes in the realm of private law applicable in common law Cameroon. For this reason, the OHADA Uniform Arts have never been popular amongst common lawyers. As a result, OHADA crossed a turbulent zone in the Anglophone (English-speaking) regions of Cameroon (Asuagbor, 2003).

Stay of Execution

Law N^{O} 92/008 of 14/1992 on Stay of Execution harmonizes the law on Stay of execution in Cameroon. Before the coming of this law the position under the common law in Anglophone Cameroon was that all judgments are enforceable upon being delivered unless there is an order for a Stay of Execution. To obtain an order for Stay of Execution, the judgment debtor being the applicant for stay had to satisfy the court that special circumstance warranted the stay. What amounts to special circumstances had been laid down through case law. The coming of the above law turned the erstwhile common law stance on its head. By the above law, an appeal stays execution except for specific heads of claim stated in the law. The law requires that the presiding judge or magistrate state in his judgment that execution of those heads of claim may go on irrespective of an appeal. This is quite different from what obtained in Anglophone Cameroon before the coming of this law.

The above law however allows the Court of Appeal, upon an application by the judgment debtor to stay the lower court's order for provisional execution if in its opinion the order was wrongly made. This is where the proble lies. Per section 4(2) of the above law, the request for stay of provisional execution is made to the president of the Court of Appeal. This provision of that law has been very problematic for Anglophone common law practitioners. Firstly common law does not use the nomenclature "President" for any court officer. Secondly, under common law, applications are made to the court and not to an officer of the court. Thirdly, applications under the Common Law system are made by way of a motion supported by an affidavit. Such motions could be ex-parte or on notice. So common law knows of *Motion on Notice* and *Motion Ex-Parte* and not a simple application.

Concerning the application being made to the president of the Court of Appeal, it has been held that "President" means the appointed judicial and administrative head of the Court of Appeal which in common law parlance would be the "Chief Justice". The practice whereby one can seize the head of a court rather than the court itself is a typical civil law construct. So, under the civil law there is a difference between the presidential jurisdiction and the court's jurisdiction. In common law, there is nothing as presidential jurisdiction. Section 2(1) of Part I of the Southern Cameroon High Court Law 1955 provides that "a court" includes the High Court and the judges of the High Court sitting together or separately. By distinguishing between the president's jurisdiction and the court's jurisdiction, the above law has exported a civil law concept into common law Cameroon.

Their Lordships of the Southwest and Northwest Courts of Appeal have also held that since the Application for Stay of Execution seizes the presidential jurisdiction of the president it cannot be by way of a Motion.

Rather it should be through a "Simple Application". Again, the term "Simple Application" is unknown to common law. This has left common lawyers at crossroads as they wonder how a motion has suddenly ceased to be an application. Actually the Courts of Appeal in South West and North West regions have dismissed applications for Stay of Provisional Execution that were brought by way of a Motion. In the case of *Total Cameroon SA v Societe Immobiliere Autore and 1 ors (2016) 6 S.L.P.102* the applicant applied for Stay of Execution under the above law by way of a Motion of Notice supported by an affidavit. The application was held to be inadmissible by the Southwest Court of Appeal and accordingly dismissed.

Similarly in the case of *Credit Foncier du Cameroon v Namolongo Peter Okpo (2017) 7 S.L.R.94,* the application was by way of a Motion on Notice. Upon being served with the application as the law requires, the state counsel raised a preliminary objection on grounds that the application was by way of a motion supported by an affidavit. In reply the applicant through counsel submitted that the mode of commencement was correct as a motion was still an application. He quoted from Black's law dictionary to drive his point home. Not impressed by the lawyer's arguments, the South West Court of Appeal discountenanced his submissions and upheld the objection of the state counsel. The application was accordingly dismissed. In dismissing the application the court said;

Since the applicant commenced his present action for stay by way of a Motion on Notice supported by an affidavit, it is a wrong and improper way of commencement"

Many Anglophone common law practitioners consider the stand of their Lordships in the North West and South West Courts of Appeal a legal sacrilege. How can a Motion be held not to be an application? They keep asking.

Expunging Stare decicis from Anglophone courts

From the researcher's findings, the Cameroon harmonization scheme has led to *stare decisis* losing its prime position in the hierarchy of sources of law in Anglophone Cameroon. This is the outcome of the wanton codification of realms of law hitherto regulated by common law under the 1955 Southern Cameroons High Court Law and the repeal of statutes hitherto applying to the territory under the same law. The eroded common law norms and repealed statutes are replaced with codified law laden with civil law norms, concepts and terminologies. This has led to the diminished importance of and reliance on case law in court room advocacy in Anglophone Cameroon. Wanton codification has also caused the importance of practice books to wane. As a result of all these, the tradition whereby lawyers carried many and voluminous legal books and law reports to court has virtually died out. In this era of codified laws it suffieces for a lawyer having a matter in court to take along to court just a copy of a coded law pertaining to the realm of law under which his matter falls..

Adulterating the legal culture of West Cameroon

Sater decisis is not the only pilar of common law that has been eroded by harmonization has not been limited to rule-based laws. The legal culture of Anglophone Cameroon has also been a victim of the Cameroon harmonization scheme. As legal culture has a wide spectrum, the realms of legal culture in Anglophone Cameroon that have been encroached and adulterated through the Cameroon Harmonization scheme are legion. In this study, the researcher limits himself to the adulteration of the West Cameroon legal culture pertaining to the court system and the training and ethnic background of legal personnel.

Changing the West Cameroon court system

In the advent of the unitary system of governance in 1972 transition, the Cameroon government put in place Ordinance N^{O} 72/4 of 26th August 1972, otherwise known as the law on judicial organization. That law set

the tone for the alteration of the court system of Anglophone Cameroon. The magistrate courts of West Cameroon became courts of first instance – a direct translation of the civil law *Tribunal de Premiere Instance.* Per that same law, the West Cameroon Court of Appeal in Buea ceased to be the apex court of Anglophone Cameroon. Rather, courts of appeal were established in the two regions that made up Anglophone Cameroon under the new geopolitical setting. The decisions of these courts were appealable to the Yaoundé-based Supreme Court, which became the apex court for the entire country. Pursuant to Article 13 (2) of law N°75/16 of 8th December 1975 Supreme Court in Yaoundé was what is known under the civil law system as *Cour de Cassation*. Regarding the French origin of the *Cour de Cassation,* Justice Vera Ngassa notes:

The Supreme Court of Cameroon ends up being first cousin of the French *Cour de Cassation* and a far cry from the awesome House of Lords. This is so not only in origin and jurisdiction on appeal but in its language. The language of the judgements of the Supreme Court is an enigma. Most of the judgements of the Supreme Court seem to conform to a laconic format and indeed so do most civil law judgments. They often begin with: "The Court" which is a direct translation of "La Cour" Then the judgment would continue with a few terse paragraphs of "Mindful" "whereas (attend que) "that it follows" and end with: "Upon these grounds quash and annul or uphold the appeal (Ngassa, 2002).

In addition to being a *Cour de Cassasion*, the Supreme Court in Yaoundé had no common Law bench. This means that appeals from the two Anglophone legal jurisdictions were at the mercy of non-English-speaking Francophone judges untrained in common law.

Inundating Anglophone Cameroon with civil law magistrates

Asigning Francophone monolingual civil law-trained magistrates and judges to Anglophone Cameroon is another way of polluting and diluting the common law culture in Anglophone Cameroon. This was a policy put in place by government after the first decade of the new millenium. The apotheosis of this Francophonisation policy was when the government, per Decree N° 2014/565 of 18/12/2014 appointed Francophones judges *Procureur Generals* of the Southwest and Northwest Regions respectively. Going by the differences between common law and civil law in terms of legal philosophy, *mentalité*, legal styles, legal culture and courtroom decorum, such Francophone appointees were square pegs in round holes. Anglophone common law practitioners found this absurd. Not only did it change a long standing tradition by which only common law trained English-speaking judges have headed the legal departments of West Cameroon, South West and North West provinces/regions since reunification in 1961.

Changing the bar-enrolment procedure

Following the abrogation of the Federal structure in 1972, the West Cameroon Bar Association was abolished. Law N° 72-LF-5 of 23rd May 1972 set up a national bar association with headquarters in Yaoundé. With the dissolution of the West Cameroon Bar Association, West Cameroon lost a cornerstone of its legal culture. The putting in place of a new bar law by the government after the 1972 transition introduced a new procedure in the training of lawyers in West Cameroon. Under the above law, aspiring lawyers in the territory were subjected to the East Cameroon call-to-bar process by which aspiring lawyers are made to undergo a two years pupilage in a law chambers and then wait for a presidential decree to endorse their admission into the bar.

Installing civil law legal offices and institutions in Anglophone Cameroon

The exportation of civil law legal offices and institutions to Anglophone Cameroon is yet another means by which the legal culture of Anglophone Cameroon is being adulterated. An example is the office of *Procureur General.* Common law jurisdictions know of *Attorney General* and *Director of Public Prosecution*

(DPP) and not *Procureur General*. The office of Attorney General for West Cameroon was abolished by Federal Ordinance N°66-LF-3 of 10th June 1966. The principal functions of the Attorney General were transferred to the *Procurator General* of the Supreme Court of West Cameroon- a newly created federal position. Per Law N°67-LF-3 of 12th June 1967, the title of *Procurator General* was changed to *Procureur General* (PG), an office that exists unto this day. The institution of Gendarmerie, Hussier de Justice and Administrative Courts are other institutions under the French legal culture that have been transposed to Anglophone Cameroon. Unlike in civil law jurisdictions, common law does not have an autonomous administrative court or specialized.

The causes of Common law ethnocide in Cameroon

On the reasons why the Cameroon harmonization scheme is imbued with ethnocide the findings of this study put it down to the following factors:

- Government’s quest for civic nationhood.
- Absence of a union treaty under which common law is protected in Cameroon.
- Anglophone Cameroon has no legislative body for its private law.
- Absence of harmonization policy or text laying down its *raison d’etre*.
- Absence of technical bodies to ensure bijuralism in harmonized laws.
- Absence of legislative bijuralism.
- The harmonization methodology in Cameroon is flawed.
- The dearth of comparative law scholarship amongst judges and magistrates.
- There is an absence of Interpretation Act and harmonization manual.
- Crushing Francophone majority in parliament.

Structural violence in the Cameroon Harmonization Scheme

The paradigm shift in the pre-1972 legal system of Anglophone Cameroon as a result of flawed harmonization has imputed structural violence on Anglophone common law practitioners. Foremost in this structural violence is the obsolescence of accumulated common law legal knowledge earlier acquired in each realm of law harmonized. Years of forensic experience in that realm of law under the common law system becomes useless. A corollary of this is that because of the civil law content of harmonized laws, Anglophone common law practitioners become legal neophytes in a realm of law once it is harmonized. Again, each time a realm of law is harmonized existing secondary sources on the repealed rule-based laws on that realm become obsolete. To compound matters, there is a dearth of secondary sources on harmonized laws in English because of their civil law foundations. Matters are compounded by the fact that there are no rules of statutory interpretation to aid Anglophone common law practitioners in the construction and interpretation of civil law concepts in harmonized laws. The location of OHADA and CEMAC apex courts in Francophone countries has equally been problematic for the Anglophone lawyer. Structural violence has also been in the form of pecuniary and cultural costs incurred by Anglophone common law practitioners as a result of Cameroon’s flawed harmonization scheme.

CONCLUSION

At reubification, Anglophone and francophone Cameroon differed in their rule-based laws, legal system and legal culture. The rule-based laws or legal norms of West Cameroon were largely found in decisions handed by superior courts and to a lesser extent in statute law. This means that its legal institions in place and other attributes of legal culture were different between the two states. In the wake of 1972 transition, the government of Cameroon embarked on a harmonization spree that would eventually blur this legal divide. The harmonization spree began as a trickle in 1972 and by the end of the 1980 it had become a flood. Such was the flood that by the turn of the century it had almost submerged common law. By so doing, the

Cameroon law identity of the Anglophone Cameroon was greatly diminished. Harmonization crossed the red line when it was taken to the sacred realm of legal culture. This saw the introduction of civil law trained French-speaking judges and magistrates to the hitherto common lwa bastion of Anglophone Cameroon.

This paper concludes that lawyers of the English-speaking regions wrath towards harmonization is occasioned by structural violence imposed. The structured violence led to a crisis that morphed into a conflict. Also, the persistent assimilation and imperialistic propensities of the Cameroon harmonization scheme have left in their trial structural violence which government's legal framework for justice sector reforms cannot assuage because of it limitations. The paper further concludes that bijuralism and legal harmonization in Cameroon are imbued with ethnocide as a result of two factors. The first is the absence of a legal framework on bijuralism in Cameroon and the second is government's quest for civic nationhood.

Common law is primordial to Anglophones as an ethnic identity marker. Identity markers are the building blocks or character-making elements of ethnic groups. Undermining a cultural identity-marker of an ethnic community is undermining the general culture of that ethnic community and is assimilation. Resistance to assimilation by such ethnic communities has often led to violent armed conflict. Such conflicts fall under the typology of ethnic conflicts. That is the prototype of the Anglophone armed conflict.

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