

Widow Inheritance among the Luo of Kenya: Virtue or Vice?

Geoffrey Anjejo Owiti

*Department of Philosophy, History and Religious Studies,
Egerton University*

E-mail: ganjejoowiti@gmail.com

Abstract

Culture which defines communities and gives them identity is a feature that is common to societies the world over. The Luo Community that inhabits the lake region of Kenya, Sudan, Tanzania and other parts of East and Central Africa have as one of their cultural pillars the practice of widow inheritance. This involves the union of a widow with a relative of the deceased husband preferably a cousin who becomes in almost all respects a new husband. This paper examines the foundations of this practice and tries to find its justification. In the process an analysis of its possible grounds, its current status and factors that have affected its continuation as a valued aspect of this society is undertaken. An application of various philosophical theories on this practice is attempted to assess the moral value of this phenomenon. Underlying this assessment is the theoretical assumption that there must have existed certain grounds for this practice that were based on the community's socio-economic and political underpinnings that made it a cherished tradition. At the end, an attempt is made to support the position that widow inheritance could have been a noble practice that has simply been challenged by the changing socio-economic and political milieu that the Luo society currently finds itself in. It is hoped that the paper, having shed some light on this practice, shall assist in its re-evaluation and possible refinement because some of its foundations seem to remain relevant even in the current civilisation.

Introduction

This paper intends to analyse the traditional practice of inheritance of widows amongst the Luo of Kenya. The Luo is a Nilotic community in the Western part of Kenya largely inhabiting the area around Lake Victoria. Amongst their

cultural practices is the inheritance of widows (*ter* or *tero* in *Dholuo*) upon the death of their husbands. This is a practice from antiquity in the community based on some philosophy that we wish to examine using contemporary philosophical ethical theories or approaches. In this society, due to reasons that shall be outlined below, upon the death of her husband, a widow was free and even obliged to enter a new union with another man. This union would culminate in the production of offspring where there were none or adoption of the existing ones. According to Luo tradition, children sired by an inheritor are considered those of the dead man and not the inheritor's (Oluoch, 2013). This paper analyses the grounds for this practice and its current status while examining the factors affecting its perception and perpetration in the contemporary society. Finally, an attempt is made to propose new interpretations of these practices that seem to have had a noble basis which have since been corrupted.

Some ethical theories try to assess behaviour and states of affairs basing value judgement on their consequences. Secondly, the concept of duty, implied in motive theories, contend that actions or states of affairs derive their value from the principle under which they are carried out or from which they obtain. Finally, those who rely on circumstances argue that since our actions are affected or determined by the situations in which we find ourselves, moral goodness or badness should be judged on the basis of specific circumstances.

The first position, consequentialism, seems to support the philosophy that ends justify means; that whatever we do and however we do it, we stand to be praised or blamed depending on the outcome of that action. The consequentialists, notably John Stuart Mill, believe that any action or state of affairs is good, praiseworthy and can be rewarded if its consequences produce the greatest happiness for the greatest number of people concerned. Mill (1990) argued that although the progress of moral philosophy has been limited by its endless disputes over the reality and nature of the highest good, it is agreeable that the consequences of human actions contribute importantly to their moral value. In this context, whenever we contemplate action we must focus on its good or desirable consequence. The goodness of truth telling for example, derives from what it produces which can be summarised as happiness, development of trust, maintenance of order and so on. The Utilitarian philosophers argue that nature has put man under two forces; pain and pleasure. Consequently only those actions that produce pleasure or reduce pain can be classified as good.

The second position, duty or obligation, contends that one should do good simply because it is good and not from the point of view of consequences. This implies the application of the principle of Good Will. According to Kant (in Gregor, 1998) having a good will is compatible with having feelings and emotions of various kinds with an intention of cultivating some of them so as to counteract desires and inclinations that lead to immorality. The deontologists argument is supported by the observation that certain actions produce un-intended consequences which could be good or bad. Since we should only praise people or condemn them solely based upon the motives of their actions or the principles upon which they acted, a person who tries to save a drowning child and they both drown is not blamed but praised on account of his motive. In this case the consequence is clearly bad (two deaths instead of one) yet the action is not blamed.

The third position, situationism, contends that the moral worth of an action is to be determined by the circumstances in question. These circumstances could be social, economic or even political. Thus a widow who finds herself in a certain society is bound by the culture of that society whereas a widow who is economically challenged may opt for such an arrangement. Political structures that do not recognise single women in leadership roles would encourage the practice. According to Gunga (2009), widowhood is a process characterised by rituals, remarriages, harassment, rejection, loneliness, poverty, loss of status, fear of the future and depression. This calls for an analysis of the possible advantages of widow inheritance as perceived in the Luo tradition.

What then would be the possible negative and positive consequences of widow inheritance? In the Luo community, positives include that *tero* ensures provision of material and moral support to the widow. In a way, the practice confirms a father figure in the homestead and guarantees provision of a sense of belonging to children. It also gives assurance of affection and satisfaction of sexual urge to the widow while discouraging sexual promiscuity on the widow's part. It is also assumed that *tero* ensures respect for the family of the late husband and the widow and confirms the worldview that wives belong to the community.

Let us examine these positive attributes of widow inheritance in this society. In the traditional set-up material wellbeing or generally ownership of property which included tilling of land, grazing of animals, hunting and gathering and so on, were the prerogative of the husband. These and other roles therefore

demanded that a woman required a man in her life. This also goes with the question of father figure. It would appear that a home without such a figure was lacking in direction or leadership since no one would for example represent it at a council of elders.

In this society, children were brought up with the conception that there was always a father with whom to identify. In fact one was always expected to introduce himself or herself as the son or daughter of so and so. In the absence of this, there existed a sense of non-belonging which led to offspring being labelled bastards. It does not matter that the children in this arrangement maintained their deceased father's identity but that there was his representative within the set up-to accomplish certain obligations.

Some philosophers and psychologists have argued that sexual urges and the fulfilment or lack of, have effects on the mental and physical wellbeing of the individual. Russell (1977) argues that sex is a basic need just like food and drink. It must be fulfilled to avoid undesirable conduct like rape or incest. Oruka (1991) places sex as the third human basic need after food and shelter because of its primary function of procreation for the human race.

Sigmund Freud and Erich Fromm, both psychoanalysts, have analysed the question of sex and concluded that it has a vital role in human conduct and social organisation. Freud (1923) uses his Oedipus complex theory to explain human psychological development. Freud believed that children are born with a libido – a sexual (pleasure) urge. There are a number of stages of childhood, during which the child seeks pleasure from a different 'object'. To be psychologically healthy, we must successfully complete each stage. Mental disorder can occur if a stage is not completed successfully and the person becomes 'fixated' in a particular stage. This theory shows how adult personality is determined by childhood experiences. This points to the centrality of sex in human relations and wellbeing as has been averred to by Oruka.

Sex is a very sensitive topic which is avoided in many social discussions yet when examined critically it plays an important role in social life. Freud, Oruka, Russell and others may be right in their analyses which underscore the importance of sex. However, the issue becomes complicated for the widow especially with the existence of children. How to go about its satisfaction without the underlying feeling of betrayal of their father that may arise in the

children is an issue. Lurking behind this is the question of sexual promiscuity especially if the widow decides not to identify with one particular man but rather satisfy that need only when the occasion arises.

Fromm (1950) argued that freedom from the traditional bonds of medieval society, on the one hand gave the individual a feeling of independence, which was new and empowering, but on the other hand, made him feel alone and isolated, filled him with doubt and anxiety, and thus drove him into new forms of submission and into compulsive and irrational behaviour. This alienation from place and community, and the insecurities and fears entailed, helps to explain how people seek the security and rewards of authoritarian social orders which may be found in customs and rites. With his theory of behaviourism, Fromm explains the role of sex in social organisation. It would seem therefore that widow inheritance, though not likely to have been conceptualised this way in the traditional set up, had a role in fulfilling these aspects of human nature.

In line with this, it was argued within this community that widow inheritance would in a way curtail sexual promiscuity since there would be one partner recognised by society as occupying the position of the deceased husband. This way, even the children would be saved the agony of having to witness different characters associating with their mother occasionally. In a way this would also promote respect for the widow and the family of the deceased.

The Luo society had the worldview that a wife was communal in the sense that she was literally owned by the society. This was based on the rites and practices surrounding the whole concept of marriage. For instance negotiations for marriage and payment of dowry were in many cases a joint effort of members of the bridegroom's family. Hence in the event of the demise of the husband, a widow was seen as having lost a base and therefore members of the family had to come in to fill this vacuum. Death of a spouse did not dissolve marriage; therefore woman should not remarry but have an inheritor (Oluoch, 2013). However, this paper does not envision a difference between remarrying and having an inheritor apart from the fact that certain rites involved in marriage (for example dowry payment) are not performed in the case of inheritance. According to Oluoch (2013) the arrangement is the cohabitation of a widow with her brother-in-law in which the brother-in-law relates to the widow as a substitute of her deceased husband. 'Brother' in this context would be wider in meaning implying either brother of the deceased or a paternal first cousin or a clan cousin. To understand this practice there is need to appreciate

the Luo conception of marriage and death. In the Luo culture, marriage is intended to be an everlasting contract whose purpose and function extends beyond the physical death of a spouse. It was a contract between the spouses and their extended families. In the event of death, therefore, the family of the deceased had a responsibility to provide a replacement.

However, these seemingly noble concerns have been challenged by social, economic and political dynamics. It is no longer the case that women, and by extension widows require a man for their material support. Economic emancipation has seen women capable of having their own income and supporting themselves plus their children. In fact, widows who are better off financially also support other members of the deceased's family. Therefore one of the central pillars of widow inheritance has been removed.

Christianity and its concept of salvation has handed a big blow to this practise in the Luo community. In this society there exists a wide range of Christian denominations that have embarked on a serious campaign against this practice. They argue that when one believes in Jesus, issues of the father figure, protection and so on are taken care of and to participate in inheritance is not the way of salvation. Ironically, widow inheritance was encouraged in early Christianity. The story in Genesis Chapter 38 paints the picture of widow inheritance as a duty of the deceased brother for which one could be blamed or even punished if neglected. The same is witnessed in Deuteronomy Chapter 25 as a law that was given to the Israelites by Moses.

Russell (1975) argues that there are a great many ways in which the Church, by its insistence upon what it chooses to call morality, inflicts upon all sorts of people undeserved and unnecessary suffering. According to him, it is a major opponent of progress and of improvement in all the ways that diminish suffering in the world. This is because it has chosen to label as morality a certain narrow set of rules of conduct which have nothing to do with human happiness. Russell was alluding to certain aspects of Christianity like the Catholic opposition to divorce even when it appears the only way to happiness. Perhaps this may also be true concerning widow inheritance (or if we choose to call it re-marriage) if indeed it leads to happiness for those who accept it.

The contemporary society is characterised by intermarriages between different cultures which has brought to fore the problem of identity. Given that one can

marry from other ethnic communities other than the Luo, there arises an identity crisis for the woman and her children. A case in point is the S. M. Otieno – Wambui saga which exposed the complications of intermarriage. Wambui, a Kikuyu, having lost her husband, a Luo, was faced with the challenge of where to bury her husband. The duo had settled in Ngong, a part of Kenya, as their residence which the *Umira Kager* clan of Otieno did not recognise as a home befitting the burial of their son. According to Ojwang and Mugambi (1989) this was a test case and exemplar of the debate between indigenous, ethnic or traditional law against the written law that had been imposed in Africa during the colonial period and partially retained after independence. The Court of Appeal ruled that when there was conflict between common law and customary law, the later is given precedent. Even though the court ruled in favour of the clan, this particular case has been seen as an example of injustice to widows. This exposes the identity crisis that faces widows and their offspring. It is important to note that had the customary law been strictly applied, which would have included widow inheritance, this dispute could have been avoided.

The reality and adversity of HIV and AIDS in the Luo society has greatly undermined this tradition. Whereas it was initially ignored or denied as a non-issue, AIDS has greatly reduced the issue of inheritance especially the one that involves sexual contact. According to a recent study conducted by the Elizabeth Glaser Paediatric AIDs Foundation (EGPAF), 19,000 children in the Homa Bay County in Kenya are infected with HIV, with only 8,000 having been identified and introduced to treatment. The county has been ranked as having the highest rate of HIV/AIDS in Kenya, with the prevalence rate of over 25%, that's 1 in 4 children. HIV is a major problem in Ndhwa, a constituency of Homa Bay, with adolescent girls often most at risk due to a lack of sexual health and hygiene education and widespread sexual abuse and exploitation of girls and women (Team Kenya, 2016). This reality has greatly reduced the cultural practice of widow inheritance.

The number of men who have died of HIV-related complications is relatively high as a result of their refusal to stop widow inheritance. As a result, they leave behind young widows a fact that perpetuates the practice and the spread of the disease. The widows were usually not in a position to negotiate whether or not to use protection. Besides, the rate of new of HIV/AIDS infections has remained stubbornly high, despite efforts by the government and private sector to curb the menace. These professional inheritors are actually abusing the

whole process of inheritance. In the traditional set-up, there existed regulation as to who would inherit who and how it was to be performed. These professional inheritors have hidden intentions especially the desire to benefit from the property of the deceased or a general apathy to work and prefer ready-made wealth. A 2009 study found that the sexual rituals surrounding death have also undergone changes to the point whereby most men are no longer interested in getting married to the spouses of their kin. These professionals are men seeking to exploit women whose spouses have died. They pretend to remarry the woman but their aim is to have access to the resources in the hands of the woman left by her husband, and at the same time have sex with her. The professional *Jater*, is characterised by his lack of material support for the woman cohabit with, yet in the traditional practice of the Luo, *ter* was meant to ensure the woman got material support and her sexual needs were also met (Source Watch, 2012).

As a response to these and other challenges, organisations such as the National AIDS Control Council (NACC) have come in to intervene. Since its inception, the NACC has had some notable achievements which include the coordinating, development and implementation of the Kenya AIDS Strategic Framework (KASF) and National HIV and AIDS Strategic Plans (KNASP I, KNASP II, KNASP III), the development of policies in key areas including orphans and vulnerable children, mainstreaming gender into the Kenya AIDS Strategic Framework (KASF) and engaging with key sectorial ministries to mainstream HIV and AIDS in the context of the Medium Term Expenditure Framework (MTEF) budget process (NACC, 1999). These efforts have taken away some of the traditional responsibilities of the *jater* and made life a bit more tolerable for the widows and their children.

The traditional concept of communal ownership of a woman has also been eroded. In the current civilisation, marital arrangements have become private affairs of individuals. Other members of the families and the general society are only asked to witness the union in the form of weddings or the office of the registrar as the case maybe. In fact, many cases have been witnessed where the man and the woman jointly contribute to the cost of their wedding and if need be, the dowry itself. Therefore, it is no longer tenable to argue that the community 'owns' the woman and can therefore dictate her operations.

Conclusion

The issue of widow inheritance seems to have had reasonable grounds supporting it in the Luo tradition. Analysed using the theory of consequences, it seems to have satisfied the utilitarian principle of happiness for the people concerned. If we invoke the Kantian Imperative whereby the concept of duty or motive is concerned, we can conclude that the intent of widow inheritance was based on Good Will. Kant's philosophy is based on the assumption that no action can be good in itself except that which is done out of good will. Hence, consequences of an action should be ignored and emphasis placed on its motive to assess its moral worth. The circumstances surrounding the widow may also determine the goodness or badness of inheritance even in the current civilisation. Not all widows have so far overcome the challenges that necessitated inheritance in the first place. Many are still illiterate, poor and tied to custom and tradition which undermines their ability to challenge inheritance. As a point to ponder, maybe the whole issue of widow inheritance needs to be re-addressed and its proper place found in society. Presently, there are many widows who somehow satisfy the various needs that have been mentioned in this paper. Another issue that has escaped focus is the number of widowers who remarry after the death of their partners. In fact in the Luo society, a sister or relative of the deceased woman was recommended to take her place in the belief that the children would be safer or well taken care of. Maybe the whole issue of widow inheritance should be re-focused and even renamed re-marriage to give it a more positive outlook.

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