


Please cite the Published Version

Odumosu, Taiwo and Opebiyi, Fatimah  (2021) Opo-Sisu (Levirate Marriage): to what extent has the Yoruba culture survived neo-liberalism of the 20th century? *Journal of Commonwealth Law*, 3. pp. 101-125. ISSN 2563-643X

Publisher: Faculté de droit Université de Montréal

Version: Published Version

Downloaded from: <https://e-space.mmu.ac.uk/632617/>

Usage rights:  In Copyright

Additional Information: This article was originally published in *Journal of Commonwealth Law*, by Faculté de droit Université de Montréal and appears here with permission of the publisher.

Enquiries:

If you have questions about this document, contact openresearch@mmu.ac.uk. Please include the URL of the record in e-space. If you believe that your, or a third party's rights have been compromised through this document please see our Take Down policy (available from <https://www.mmu.ac.uk/library/using-the-library/policies-and-guidelines>)

OPO-SISU (LEVIRATE MARRIAGE): TO WHAT EXTENT HAS THE YORUBA CULTURE SURVIVED NEO-LIBERALISM OF THE 20TH CENTURY?

TAIWO ODUMOSU* AND FATIMAH OPEBIYI**

ABSTRACT. Prior to the introduction of English law, the ethnic groups occupying the geographical area known as Nigeria relied on their customary laws to maintain economic and social inclusion in instances of succession. One of these customs, as protected by local laws, is opo-Sisu (levirate marriage) as practised under Yoruba law and custom. Within this culture, levirate marriage involves the inheritance of widows by the relatives of the deceased. In most cases, the inheritors are restricted to the brothers of the deceased. While this practice may be antithetical to concepts of equality and human dignity in some instances, it is not without its benefits. Key amongst the benefits is the preservation of the deceased's estate, raising his offspring, and protecting his widow. While women's liberation movements and Western societies may regard this practice a relic of the dark pre-colonial past, the practice continues in some parts of Nigeria, especially southwestern Nigeria. Relying on functionalist theories, this paper critically analyses the concept and practices of levirate marriage under the Yoruba law and custom. The paper adopts the theory in explaining what we term 'the benefactors' triad' i.e., the

* PhD Law Candidate, University of Nicosia, Nicosia, Cyprus.

** PhD Law Candidate, University of Manchester.

widow, the offspring of the deceased, and the larger society. This explanation presupposes that customary law mechanisms enforce the triad's rights against the inheritor. The purpose of this analysis is to unveil the explanations for the practice notwithstanding the liberation movements targeted at emancipating women perceived to be disadvantaged by the practice. This paper concludes that where consent of the widow is freely given and legal mechanisms are effectively utilised, levirate marriage significantly solves the problems of all the parties involved, including that of the society.

KEYWORDS: *Levirate marriage, Yoruba customary law, succession, neoliberalism, functionalism*

I. INTRODUCTION

Levirate marriage is not entirely new. It is practised across several cultures and the attitude towards its practice is influenced by how it is practised. The perception of those acquainted with the practice range across a spectrum from absolute abhorrence to admiration.¹ Both extremes are understandable because, on the one hand, it is considered to be a relic of a more ancient time and is seen as a vehicle for the subjugation of women. On the other hand, it provides a level of social benefits to women when compared to other alternatives. Thus, the narrative tilts toward that of admiration amongst the Yoruba of southwestern Nigeria. Here, levirate marriage is

¹ The practice is known in Jewish cultures as well. Samson O Olanisebe and Olusegun A Oladosu, "Levirate Marriage Amongst the Hebrews and Widow's Inheritance Amongst the Yoruba: A Comparative Investigation" (2014) 35 *Verbum et Ecclesia* 1.

recommended because of how it solves individual, familial, and communal issues.

Prior to the introduction of English law, ethnic groups within Nigeria relied on their customary laws to maintain economic and social inclusion in instances of succession. The Yoruba custom of *opo-sisu* (levirate marriage) derives from the ideals of family retention of wealth and inclusive growth for disadvantaged classes/gender. At its simplest level, levirate marriage refers to the inheritance of widows by the relatives of the deceased. In most cases, the inheritors are the brothers of the deceased. On a broader level, it represents the concept of communism that the Yoruba culture represents. While this practice, in some instances, may conflict with the notions of equality and human dignity, it is not without its benefits. Key amongst the benefits is the preservation of the deceased's estate, raising his offspring by close relatives, and protecting his widow. While women's liberation movements and Western civilization may consider this practice a relic of the dark ancestral past, the practice continues in some parts of Nigeria, including southwestern Nigeria. However, the paradigmatic shift from its prevalence to an imprecise and reduced occurrence coincides with the liberalist notions of the 21st and individualist drive of the recent centuries. The individualist notions, which are alien to the Yoruba culture, also influence reduced interactions amongst extended families at the turn of the 21st century. This paper concludes that where consent of the widow is freely given and legal mechanisms are effectively utilised, levirate marriage significantly solves the problems of all the parties involved.

This paper is structured as follows: Section Two provides the theoretical and conceptual background to the discussions which follows. Section Three briefly examines the Yoruba inheritance law and culture to reveal the explanations

behind the theories that the paper examines. Key factors examined in this section are culture, the connection between culture and leviratism, and finally, the role of law in connection with these. Section Four explains leviratism as practised under Yoruba law. The section juxtaposes the Yoruba culture and other cultures, like the Jewish culture, that practice leviratism. Section Five subjects the principles of leviratism to the test of the modern concepts of liberal feminism. The section measures levirate marriage against feminist arguments and the perception of women and gender roles within society. The analysis, to the extent that widows' consent and inputs are sought, presents an interesting twist that suggests an overlap between levirate marriage and feminist ideas in that seek to prioritise women's interests. Section Six examines levirate marriage in light of the connected benefactors who are the widow, her offspring, and the larger society. This part considers the role of law courts, both customary and common law, in enforcing the interests of the triad and improving their benefits within the practice. This part draws from interviews with widows, local chiefs, and kings on the practice within their localities. This section also examines other benefits of levirate marriage within the contemporary world. These benefits are drawn from empirical evidence of the practice within Yoruba land. Section Seven offers some thoughts and recommendations for the future, while the final Section concludes the paper by suggesting that although levirate marriage contradicts some arguments made by feminist thinkers, over time, the societal and personal economic challenges that it satisfies justifies its continued use.

Before proceeding further, we offer a brief description of the methodology of this paper and some clarification of the terms to be used.

II. METHODOLOGY

Relying on a functionalist approach, this paper critically analyses the concept and practice of levirate marriage under the Yoruba law and custom. The paper adopts this approach to explain what we term ‘the benefactors’ triad’. The benefactors’ triad refers to those that levirate marriage benefits i.e. the widow, the offspring of the deceased, and society at large. Our explanation presupposes that customary law mechanisms enforce the triad’s rights against the inheritor. The purpose of this analysis is to justify the practice in light of the argument for emancipating women perceived to be at a disadvantage. The paper adopts a mixed methodology. It utilises both quantitative evidence and qualitative analysis. We rely on information from respondents interviewed on how levirate marriage is currently practised. Our respondents include custodians of Yoruba culture who demonstrate an in-depth knowledge of Yoruba customary law. We also interviewed widows and deceased’s family members. Custodians of Yoruba customary law, kings and local chiefs also gave their opinions on why levirate marriage practices should continue.

Conceptual clarifications

Opo-sisu is a word that is strictly applicable to women who have lost their husbands in Yoruba land under the Yoruba customary law. Irrespective of her age, a woman will be subsumed into the *opo* system with the expectation that the new husband within the lineage would take care of her. Most times, it does not turn out as expected and a woman may just become the new husband’s sex-mate simpliciter without any financial care or support. The system of *opo-sisu* is woman-centric in that men are not subject to it when they lose their wives.

As used in this paper, “the benefactors’ triad”, refers to those who benefit under the *opo-sisu* or levirate marriage system. These include the widow, the children of the decedent, and the larger society. Children weaned through the *opo-sisu* system of marriage under the Yoruba customary law exercise the same rights as the children gotten from the original husband of the woman taken into leviracy. They enjoy equal rights and do not suffer any discrimination unlike a child born out of wedlock. They do not suffer any stigmatisation as they are accepted as a member of the family weaned for the purpose of maintaining the family lineage.

III. THE INTERSECTION OF CULTURE AND LAW IN YORUBA LAND

Culture is unique to each society and is encapsulated in various forms of expression through music, stories, folk lore, and the like. It is the expression of what society holds dear and sacred. It is the life, ethics, socialisation, and much more as observed and recognised in each society. Its dynamism is appreciated as it blends with the social development of the society. Culture refers to the cumulative deposit of knowledge, experience, beliefs, values, attitudes, meanings, hierarchies, religion, notions of time, roles, spatial relations, concepts of the universe, and material objects and possessions acquired by a group of people in the course of generations through individual and group striving.² Kim Ann Zimmermann views culture as the characteristics and knowledge of a particular group of people, encompassing language, religion, cuisine, social habits,

² Iftekharuddin Choudhury, “Culture” <<http://people.tamu.edu/~i-choudhury/culture.html>> accessed 11 November 2021.

music and arts.³ This presupposes that culture represents the totality of a people typified by their socialisation. Cristina De Rossi explains culture in terms of its role which “encompasses religion, food, what we wear, how we wear it, our language, marriage, music, what we believe is right or wrong, how we sit at the table, how we greet visitors, how we behave with loved ones, and a million other things.”⁴

The imprecision of cultural definitions throws culture at large, and this brings culture to the threshold of legislative intervention. If culture is an octopus, some of its deleterious fangs must be trimmed for the peace and social cohesion of the society. Comparatively, the Yoruba culture though vast as it is, does not lack precision. Notwithstanding the vastness of its cultural flexibility, culture is subsumed under the law. The most acceptable cultural practices flow into the prism of the existing laws, while those reprehensible cultural practices have been declared null and void as expressed in the case of *Taiwo Aoko v Adeyeye Fagbemi & Anor*.⁵

The precepts of Yoruba customary law move from the home to the larger community where they are strictly applied.⁶ The traditional Yoruba laws and customs were thus derived from the culture, beliefs, norms and values of the people.⁷ Consequently, the levirate system of marriage emanates from

³ Kim Ann Zimmermann, “What is culture?” (Live Science, 12 July 2017) <<https://www.livescience.com/21478-what-is-culture-definition-of-culture.html>> accessed 11 November 2021.

⁴ Ibid.

⁵ (1961) All NLR. 400. <<https://judgements.lawnigeria.com/2018/05/15/3plr-aoko-v-fagbemi/>> accessed 11 November 2021.

⁶ OE Babalola, “Yoruba Traditional Institution and Maintenance of Laws and Orders in the Pre-Colonial Period” (2017) 3 PEOPLE: International Journal of Social Sciences 1.

⁷ Ibid.

the beliefs and culture of the Yoruba people with a view to preserving the legacy of the deceased, especially where procreation has not been attained before the man's death.⁸ This belief stems from the perception that a woman is part of the property of the deceased.⁹ As strong as this system used to be, in the modern era there is no longer any compulsion on the woman if she decides not to be levirated.¹⁰ She maintains some degree of autonomy irrespective of what the family wants. An interview with some widows is revealing. One widow described her decision not to be levirated this way:

My late husband's family contacted me that I should let his junior brother to take me over (marry her) as a wife. I felt insulted by the request for some reasons. First, the boy is very junior to me. Second, I am the one who trained him and even paid part of his school fees. Besides, I am a Christian. I can't imagine him sleeping with me. So, I declined. And since then, there has not been any talk about it...¹¹

Another widow said:

⁸ Chief Amos Idowu, the Baale of Iganran (a community in Ijebu North Local Government, Ogun State, Nigeria) through a telephone interview suggested that the necessity to ensure that the woman does not leave the family where she has good attitude and behaviour will dictate the direction the family decision might go on the matter. If she is a "wicked" woman (meaning a trouble maker) then the younger brother to her late husband may reject the offer or his wife may not wish to take such a woman as her younger wife to avoid trouble at home. Telephone Interview with authors (24 July 2020).

⁹ Oluyemisi Bamgbose, "Customary Law Practices and Violence against Women: The Position Under the Nigerian Legal System." (July 2002). (8th International Interdisciplinary Congress on Women, Kampala, Uganda, July 2002).

¹⁰ An interview with Mrs. Lola Akinsanya revealed that she declined the offer when the family consulted her to be levirated. Her husband died in 2014 and since then she has been the only one who trained and sent her three children to school. Telephone Interview with authors (25 July 2020).

¹¹ Ibid.

When my husband died. the Sunday after the burial, the *Olori-Ebi* called me to a meeting. There were 15 members of the family present. I was intimidated by their presence. They asked what plan I had to take care of my children. I told them I had not thought about that. My husband just died few days then. *Olori-ebi* said: “the family has decided that Kamoru (my husband’s junior brother) should take you to Lagos to take care of you.” I simply told them it was not necessary. With four children, he will want his own kid. I can’t maintain that with my meager teacher’s salary. Kamoru already had two wives. I thank God, my decision paid off. My children have all graduated now...¹²

Under the Yoruba native law and custom, therefore, a woman may not be forced to go into a levirate marriage as demonstrated by these women’s reports.¹³ Thus, while the culture of the people may desire a consequence, it is also clear that the culture will not deny those affected the ability to exercise of their own discretion in the matter. The growing lack of compulsion in *opo-sisu* in Yoruba land may be a source of the decline of the system rather than any other factor such as religion, rivalry etc.¹⁴

¹² Mrs. Grace Asake of Ijebu Ode. Telephone Interview with authors (25 July 2020). Mrs. Asake also stated that she made up her mind to take care of the schooling and other expenses of his four children. All of them are now graduates. While two have started working the other two are on the national youth service of the Federal Government of Nigeria. Ibid.

¹³ I can also recollect that when my bosom friend, Mr. Ganiyu Agbaje, died sometime in 1993, the family wanted his wife to be taken over by his younger brother who was almost 8 years junior to the wife. The wife declined after confiding in me what she intended to do immediately she is delivered of the pregnancy she had before Mr. Agbaje died. (This was a recollection of the authors’ conversation with Mrs. Agbaje on July 27 2020)

¹⁴ Chief Mosudi Ogunbowale related the experience of a senior Christian leader in a town in Ijebu North East Local Government of Ogun State, Nigeria who wanted to put into leviracy the wife of his deceased elder brother who was rich and

IV. OPO-SISU (LEVIRATE MARRIAGE) AS PRACTISED
UNDER YORUBA LAW AND CUSTOM

The role of women under Yoruba law is not entirely different from other medieval concepts. In addition to having a slightly elevated status in comparison to property, ancient Yoruba customary law appears to subjugate women. Women's value is shaped by how submissive and obedient they are to the male population.¹⁵ Women are attached to the closest male figure within their family. When she is a girl, her identity is linked to that of her father; if she does not have a father, then it is her brother. Where no male figure exists within her nuclear family, connections can be made with the nearest uncles.¹⁶ When a girl attains puberty, these responsibilities shift on to her husband and his family. A popular Yoruba adage which goes thus "*eni leru lo leru*" places the status of married women under Yoruba customary law in perspective. This adage roughly translates to "he who owns the slave owns his property." This adage is often alluded to when a married woman lays claim to properties. Within that context, it means that the owner of the

a notable confectionery maker in Ondo State. Unknown to him, another member of the family (though senior to him) was also interested in the woman. He was rich and lived in Lagos while the other man, an agrarian farmer, lived back home in the village with the woman but in separate homes. He used to come home every weekend from Lagos because of the woman. On one of those occasions, the man living back home had laced the woman with a harmful voodoo called "*Magun*" unknown to him. And when he attempted to have sexual intercourse with the woman, he fell and died in the process. This happened because of the rivalry on who would "inherit" the woman. Telephone Interview with authors (10 August 2020).

¹⁵ On how culture subjugates women, see HA Labeodan, "Beyond Critique: A Philosophical Appraisal of some Cultural Practices Infringing on the Rights of Women in Yorubaland" in Dorcas Akintunde and Helen Labeodan (eds), *Women and the Culture of Violence in Traditional Africa* (Sefer Books 2002) 70.

¹⁶ OO Familusi, "African Culture and the Status of Women: The Yoruba Example" (2012) 5 J Pan African Stud 299, 300.

2021]

LEVIRATE MARRIAGE

111

woman, i.e. her husband, owns whatever she claims to be her property. Thus, it is unsurprising that at a man's death, his property does not devolve on his 'other property', i.e. the widow. Rather it passes to individuals with inheritance rights.¹⁷ Women thus occupy a similar but higher rank compared with the deceased's property. The major similarity is that widows are inherited alongside the deceased's properties. A widow's higher rank derives from how much say she has in who inherits her.

The concepts of widowhood and inheritance under Yoruba customary law mirror the ancient status of women within society.¹⁸ At its most basic, custom dictates that women occupy a somewhat lower rank than their male counterparts do. Widows have mandatory lengthy waiting period minimum of one year before they can remarry.¹⁹ Men do not have to wait and inheriting husbands is unknown under Yoruba law and custom.

The Yoruba customary strand on widowhood varies across towns and settlements in certain details. The further from civilization, the less desirable the rules appear. At the mildest, the customary rules on the activities, length of the mourning period, and how the widowhood period should be spent share some ideals with the Islamic Law.

It is worthy of note that levirate marriage is not peculiar to the Yorubas, it is also practised across other cultures, including the Ibos and Hausas. In addition, Yoruba practise shares some similarities with leviratism practiced in Jewish

¹⁷ On the general status of women under African Cultures, see SF Joireman, "The Mystery of Capital Formation in Sub-Saharan Africa: Women, Property Rights and Customary Law" (2008) 36 *World Development* 1233.

¹⁸ *Ibid.*

¹⁹ Familusi (n 16) 304.

cultures, particularly, the devolution of wife on the brother who is closest in age to the deceased.²⁰ However, their purposes differ. While the aim of the Jewish practice is to continue the line of a deceased man, Yorubas consider lineage as being sacrosanct and, as such, must be clearly defined. Thus, while children from levirate marriage in the Jewish tradition belong to the deceased, children born of levirate marriage in the Yoruba culture belong to the levirate.²¹

When does levirate marriage occur?

Notwithstanding that levirate marriage encourages keeping women within the same family, as suggested above, the practice does not permit the mixing of distinct lineages. Widows must experience a waiting period before getting married to a levirate. Ideally, the waiting period extends beyond three months. The purpose of this is to mourn the deceased and to ascertain whether the widow is pregnant before having relations with another man.

After the waiting period, the deceased's family deliberates with the widow on her next course of action.²² In most cases, three options are available. First, the family allows the widow to leave the deceased family with or without her children. This appears to be the least desirable course of action. Families are often reluctant to permit widows to leave the deceased's house except for cases where she has no child from the deceased or the family considers it extremely necessary.

²⁰ Samson O Olanisebe and Olusegun A. Oladosu, "Levirate marriage Amongst the Hebrews and Widow's Inheritance Amongst the Yoruba: A Comparative investigation," (2014) 35 *Verbum et Ecclesia* 1.

²¹ *Ibid.*

²² See (n 12), (n 13).

2021]

LEVIRATE MARRIAGE

113

Secondly, the deceased's family might permit the widow to continue to live in the accommodation that her husband provided for her before his demise. In the alternative, the family may provide her with another accommodation that the family considers adequate. In either case, she does not have special rights. She is a widow who must provide for her children's sustenance. Further, in some cases, the family may not care depending on their economic circumstances. Mrs. Grace Abeke (not real name) said in response to the question of whether the family had taken care of her needs:

My husband sold all our property long before he became sick. I didn't know what he used the money for. We had fishponds and a banana farm. He sold everything. Not long after he died, some people came to say he had sold all the properties to them. They presented legal documents. I had to move to my brother's house. My in-laws did not even bother about my whereabouts. I went all the way to take care of my children and their schooling...²³

Finally, the family could encourage her to remarry within the family. In this case, they provide the widow with the names of men who have indicated an interest in acquiring her as a "widow-wife". This option is only available when the family considers the widow good enough. Factors relevant to this determination include whether she is "well behaved" or loved by the deceased's family. One respondent stated that beautiful children are some of the reasons for asking a widow to remain as a wife within the deceased's family.²⁴ However, the

²³ Telephone Interview with authors (15 October 2020).

²⁴ Mrs. Tosin Lamina, in an interview with the authors said her deceased husband's younger brother told her that because her 3 boys are handsome and intelligent, he would want her to have an issue for him if she agreed to her overtures.

family seeks the widow's consent before levirate marriage occurs. In a significant number of cases, the consent may be forced or subtly influenced. It must be noted that this also leads to unnecessary rivalry amongst the eligible men in the family. Sometimes the rivalry can be fatal as they test *juju* on each other to see who is more powerful.²⁵

To start with, a widow will likely consider several factors when deciding whether she will agree to be leverated; and three distinct situations may emerge. The first is where the widow has no say in who inherits her amongst the deceased's brothers. In that case, she may settle on the choice made by the deceased's family or the closest relative. Where the widow is not satisfied with the options, she is free to remarry outside of the deceased's family. If she does so, however, she loses the privileges otherwise available within the family. In the second case, a pool of chosen suitors may be available. In this situation, widows cannot choose another suitor outside of the named contenders. If a widow is granted the freedom to choose where the deceased has more than one brother, the brothers are given the opportunity to compete for the widow's attention. Here, a widow is free to decide what she considers best for her and her children. The third situation involves a form of helplessness in which the widow considers that she may lose access to the wealth left behind by her deceased husband. In this situation, a widow may request that she be inherited by the beneficiary

But she refused because she was the only one taking care of her children after her husband died (10 August 2020).

²⁵ They often used *juju* called "magun" or "thunderbolt". This is a kind of *juju* that is placed on a woman and if any man attempts an intercourse with her, the man will die if he does not have its antidote on him. Where the woman does not fancy any of the eligible men in the family, if the thunderbolt is not lifted, the woman may die within seven days.

2021]

LEVIRATE MARRIAGE

115

amongst the brothers with the largest share of the deceased's property.

Why do Yorubas practise Levirate Marriage?

The starting point to understanding why Yorubas practise levirate marriage is to note the link between the practice and women's dependence for sustenance on the male figures within their families and the larger society. Widowhood exposes the vulnerability of an economically dependent widow and children. Thus, increased women's participation within the modern-day economic and labour markets could be some of the reasons for the waning desire to continue the practise the culture. In fact, levirate marriage has been associated with women's failure to be liberated from the relics of patriarchy prevalent within the precolonial days. This leads us to the need to consider feminist perceptions and how much impact this has on the culture. We will return to what levirate marriage means under feminist perspectives subsequently.

Moving towards the narrower concept of women's abilities within the family unit, Yorubas place a premium on the significant role of a father figure. They also consider the challenges facing single mothers in raising children of a deceased father. Retaining the widow within the family enables her to maintain the status of a wife. With this, she retains access to the resources she requires for her maintenance and raising her children within their father's family. Ordinarily, their uncle, her current husband, is obligated to raise the children of the deceased. By marrying their uncle, he occupies a dual position of father and uncle. This is assumed to increase his affection for the deceased's children.

V. FUNCTIONALISM, LEVIRATISM, AND THE “BENEFACTOR TRIAD”

It is important to note that the practice of *opo sisu* does not guarantee the favourable treatment of the offspring of the deceased. Rather, it speaks to the ability of the widow to have some input in shaping her future and that of her children. By participating in choosing her next husband within the family, she will consider her own best interest before finalising on her suitor after the demise of her husband.²⁶

It is suggested that the levirate system in Yoruba land could be dying due to modernisation as well as high literacy amongst the people; however, support for the practise persists even amongst well-educated males in Yoruba land today. Religion, however, plays a role. Those who are Christians (born again so to say) may not participate. It is also suggested that amongst Muslims, the levirate system remains largely because of the religious support for plurality of marriage. Nevertheless, *opo-sisu* has its advantages. Where a man has not been able to have an offspring through the wife, upon his death the brother who marries the wife may have a child with her. This is partly because the woman is seen as the property of the family.

Sometimes, not getting married to a family member may have repercussions for which libation or appeasement of the deity may be required to get her out of bondage. Such repercussions may not have any effect on men largely because of the patriarchal nature of the family setting. Levirate marriage also restricts women from having relationships outside the home. It underscores a male-centred or chauvinist interpretation of promiscuity or prostitution. Without a similar

²⁶ Ibid.

requirement for widowers, levirate marriage suggests women's subjugation within the society.²⁷

Some of the widows we interviewed admitted to the relevance of economic considerations on their decision to either engage in leviratism or not. In economic terms, the woman may have a guaranteed means of survival if she agrees to marry into the family again. However, she has the ability to refuse. If she believes that she would be supported by the new husband, in terms of taking care of the children and herself, she may agree to the relationship. However, where the proposed new husband does not have sufficient means to provide for her social and economic needs, she is not likely to agree to go into such a relationship. These needs, of course, include the educational burden and other needs of the children. In some instances, therefore, she may prefer to be independent and seek her economic needs on her own. This way, she does not have to marry within the deceased's family again. She may just want to take care of the children until they attain the educational level she envisioned for them.

From the foregoing, it can be observed that levirate system of marriage may continue to have positive effects under the Yoruba customary law and tradition. The fact that the system is encouraged amongst the literate and not-so-literate gives credence to the continued flourishing of the system. Besides, the fact that children of such relationships are guaranteed their rightful position within the family promotes further the existence of the system. There is a general understanding that the woman, children of the deceased, and the larger society benefits from the practice. The benefit to the society includes reduction of the reasons for promiscuity on the

²⁷ Familusi (n 16) 301.

part of the woman and the contribution of a male figure to raising the children of a deceased man. Yet, the assumption that leviratism reduces promiscuity necessitates an evaluation of how leviratism may collide with feminist ideologies.

VI. THE CONCEPT OF FEMINISM AND LEVIRATE MARRIAGE

Feminists proceed from the modern-day demand for equality between both sexes and the blurring of the sharp contrast between male and female gender. Considering that feminism is a spectrum of ideals that seeks to remove all forms of societal, social, economic, and political subjugation of the feminine sex, it is necessary to articulate the strand of feminism on which this paper draws. On one end of the spectrum is the liberal feminist theory which interprets the concept of equality between both sexes loosely. To liberal feminists, equality proceeds from the basis of individuality, and women as individuals must possess the right to vote and every other human right applicable to men.²⁸ Liberal feminists suggest the need for social, economic, and political equality of men and women to create what Anne Marie Slaughter termed a “happy balance”.²⁹ Similarly, John Stuart Mill considered that denying women the free choice to live as they desire contravenes modern-day equality standards.³⁰ The other end of the feminism spectrum may be described as “radical feminism”,

²⁸ Susanne Marilley, *Woman Suffrage and the Origins of Liberal Feminism in the United States, 1820-1920*, (Harvard 1996); RI Ako-Nai, “Western Feminist Theories: How Applicable to Africa?” in Ronke Iyabowale Ako-Nai (ed) *Gender and Power Relations in Nigeria* (Lexington Books 2013) 9.

²⁹ Susan Hekman, “John Stuart Mill’s *The Subjection of Women*: The Foundations of Liberal Feminism (1992) 15 *Hist European Ideas* 681; Catherine A. Rottenberg, *The Rise of Neoliberal Feminism* (OUP 2018) 40.

³⁰ Hekman (n 29).

zwhich objects to every patriarchal basis for subjugating women. Radical feminists advocate the removal of the basis for oppression rooted in patriarchy to enable equal treatment of both sexes.³¹ Finally, the social feminist theory takes into consideration the social and economic hindrances that limit women's ability to attain their full potential.³² The demands of social feminism are captured by the opinion of Justice David Brewer in *Mueller v. Oregon* where he noted that the "physical structure and a proper discharge of her maternal functions—having in view not merely her own health but the well-being of the race — justify legislation to protect her from the greed as well as the passion of men."³³ Protection from the greed and passion of men are some of the core concerns of leviratism, as practised by the Yorubas. Adherents of levirate marriage consider this as a positive culture which ensures justice in the family and the community at large. Adherents argue that rather than leaving widows to "waste" away and be subject to sexually degrading treatment in the community, they are reintegrated into the lineage by their subsequent remarriage to her late husband's kin.

Some important questions here include who benefits more from levirate marriage and how does the society ensure that widows receive their entitlements under the arrangement. The resolution of these questions largely depends upon whether widows have rights under the arrangements or whether the supposed benefits are mere expectations lacking the force of law. The latter seems to be the case. At best, subtle

³¹ Ronke (n 28).

³² Lola Olufemi, *Feminism Interrupted: Disrupting Power* (Pluto Press 2020).

³³ 208 US 412, 422 (1908). See also J Stanley Lemons, "Social Feminism in the 1920s: Progressive Women and Industrial Legislation" (1973) 14 *Labor History* 83, 86.

means of persuasion are available to widows to ensure that expected benefits are achieved. The basis upon which the benefits emanate is the dual ties between the levirate and the widow's children, firstly, because the levirate and the children of the deceased are connected by blood, and, secondly by the subsequent marriage between the widow-mother and the levirate.

Leviratism does not only diminish the rights of widows, but it also affects other women forced into the arrangement. The extent to which it does this is further seen in how it affects the rights of the current wives of the new husband. Levirate marriage demands toleration from other wives, and this may not be forthcoming. Where she is not accepted, consistent rivalry and agitation may mar the relationship between wives with little negative implications for the husband.

The consequences of refusal to be levirated have included abandonment, deprivation,³⁴ persecution³⁵ and vilification. These factors often drive those women not economically stable to resort to prostitution to be able to care for their children.³⁶ Curiously, the widow who takes another husband loses her right to the inheritance of her late husband notwithstanding the fact that she had children for him or that

³⁴ Research Directorate, Immigration and Refugee Board of Canada. *Nigeria: Levirate Marriage Practices Among the Yoruba, Igbo and Hausa-Fulani; Consequences for a man or woman who refuses to participate in the marriage* (Canada: Immigration and Refugee Board of Canada, 16 March 2006) <<https://www.refworld.org/docid/45f1478811.html>> accessed 11 November 2021.

³⁵ Chinyere E Nwosa. "Social Changes in Widowhood Across Cultures." *Daily Champion*, Lagos 8 Nov. 2005. <<http://allafrica.com/stories/200511080141.html>> accessed on 16 November 2021.

³⁶ See (n 9).

both contributed to obtaining the properties.³⁷ If the properties are enormous, this could force the woman either to marry her husband's relative or abandon it altogether to marry elsewhere.

While women are the primary subjects of undignifying treatments associated with levirate marriage, men are either willing participants or exempted altogether. As willing participants, men have more control over the extent to which they are involved. There is no evidence to show that men who refuse to engage in *opo-sisu* suffer or are subject to any negative consequence or condemnation.³⁸ This goes to show the extent to which *opo-sisu* is discriminatory and disproportionately skewed in favour of men. It also explains and confirms the age-old consideration of women as articles only capable of being owned and administered at the whims of their families, husbands, and their husbands' families.

The above problems exist notwithstanding the fact that the Nigerian Constitution preserves the right to dignity of every woman. In addition, Nigeria is a signatory to most international treaties that protect women and children's rights. These treaties include Convention on the Rights of the Child,³⁹ the International Covenant on Economic, Social and Cultural

³⁷ Babatunde Adetunji Oni, "Discriminatory Property Inheritance Rights Under the Yoruba and Igbo Customary Law in Nigeria: The Need for Reforms" (2014) 19 IOSR J Humanities & Soc Sci 30.

³⁸ According to Mrs. Rosemary Johnson (not real name), one of the people interviewed by the authors, she explained that the consequence for a man that refuses *Opo-sisu* are severe: "In Igbo land that I am familiar with, the man will be castigated. When he visits the age grade meetings, he will be ignored if he contributes to discussions. At the end, such person will be forced to stop attending such age grade meetings..." Telephone Interview with authors (10 August 2020).

³⁹ UN Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS1577 3.

Rights,⁴⁰ the International Covenant on Civil and Political Rights,⁴¹ the International Convention on the Elimination of All Forms of Racial Discrimination,⁴² and the UN Convention on the Elimination of All Forms of Discrimination Against Women.⁴³ At the regional level, there is the African Charter on Human and Peoples' Rights.⁴⁴ In Nigeria, the *Child Rights Act* also protects minors.⁴⁵ Some of these laws got their legal support from the Constitution of Nigeria 1999.⁴⁶ In theory, these laws should be adequate to protect women from being forcibly levirated notwithstanding the customary law, but *if and only if* the woman is not willing to be taken into the levirate system. Where she is willing, the advantages, as stated elsewhere in this paper are mutual to her and the decedent husband's family.

Finally, there are currently no laws in Yoruba states on leviratism. The foregoing analysis points to the need to enact laws that control the practice or prohibit it altogether. As an example, in 2001, the Enugu State government enacted *The Prohibition of Infringement of a Widow's and Widower's Fundamental Rights Law, 2001*.⁴⁷ Section 4(c) of the law protects the rights of widows and widowers, including the right to not

⁴⁰ International Covenant on Economic, Social and Cultural Rights (16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

⁴¹ International Covenant on Civil and Political Rights (16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

⁴² International Convention on the Elimination of All Forms of Racial Discrimination (21 December 1965, entered into force 4 January 1969) 660 UNTS 1.

⁴³ International Convention on the Elimination of All Forms of Discrimination Against Women (18 December 1979, 3 September 1981) 1249 UNTS 13.

⁴⁴ African Charter on Human and Peoples' Rights (27 June 1981, entered into force 21 October 1986) 21 ILM 58.

⁴⁵ *Child's Right Act*, Cap C50 Laws of the Federation of Nigeria (2004).

⁴⁶ *Constitution of Nigeria*, 1999, s 12.

⁴⁷ Enugu State of Nigeria, 2001, Bill no. 3

participate in a levirate marriage. It states that “[n]o person for whatever purpose or reason shall compel a widow/widower . . . to be re-married by a relative of the late husband/wife”.⁴⁸ Violation of this law may result in a fine of 5,000 Naira, a two-year jail term, or both.⁴⁹ Other states in Nigeria are yet to enact similar laws. It is not clear if the failure to enact such law is because of complacency or respect for the customary law.

VII. RECOMMENDATIONS

The need for certainty of law is significant. Rather than leaving it to the whims of an unwritten culture, it is suggested that states in Yorubaland should enact laws that will recognise *opo-sisu* on one hand (because of its advantages to the family) while prohibiting families from forcing women into the levirate system, either actively or through subtle measures. By compulsion, the system tends to infringe on the rights of the woman. Such infringement has been prohibited not just by the Constitution of Nigeria 1999, but also all the international treaties and conventions to which Nigeria is a signatory.

Alternatively, it may be argued that the custom should be abolished in its entirety. This stems from how the culture degrades women and places them just a slight degree above property capable of being inherited. Such notions debase womanhood and effectively regard women like any article of sale. Since men are not subjected to the same treatment, widows should be free to choose who they want to marry outside of the late husband’s family. To a significant extent, adequate protection of widows’ rights to the property left behind by their husbands may solve this concern.

⁴⁸ Ibid.

⁴⁹ Ibid s 6.

In addition, the original marriage is between the widow and the deceased and not the extended family. They are mere witnesses to the contract and not privy to the legal rights emanating from the relationship between the deceased and the widow. Admittedly, the concerns with the culture transcend women's choices or freedoms. The culture is rooted in gender inequalities, subjugation of women, and inadequate women empowerment. Thus, societal solutions to these concerns must prioritise empowering women and enhancing their access to property and wealth.

VIII. CONCLUSION

Our effort has been to explore the effect of liberalism on the practice of *opo-sisu* and its sustainability, notwithstanding the gale of liberation movements which tend to suggest that women are disadvantaged in this system. It is apparent that through the theory of the benefactor triad, *opo-sisu* brings more advantage not just to the woman but also to the children and society. Positive utilisation suggests that the legal mechanism seems to aid and solve the issues that would have hitherto polarised the family or thrown the woman into the cold. *Opo-sisu* gives the woman autonomy to choose whether she wants to be levirated or not, and this is consistent with constitutional provisions and other regional instruments already accepted by Nigeria. Consequently, it can be said that the levirate system as practised in Yoruba land has survived liberalism for economic, social, and economic reasons. It is thought desirable because it gives the woman the opportunity to choose. This autonomous right, with a deep root in constitutional provisions, makes it unique, in comparison to what obtains in other cultures which practise leviratism. Contextually, it has been shown that the need to protect the rights of the deceased's children does not

2021]

LEVIRATE MARRIAGE

125

arise from levirate marriage; rather, it issues from the family to which their father belongs. The culture, to achieve its communal function as regard leviratism or *opo-sisu*, ably relies on the subtle influence of the affinity between the triad to influence how the party with more power and resources helps the disadvantaged groups, the widow and the children of the marriage.