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REVIEW ARTICLE

THE LEGAL ANTHROPOLOGY OF MARRIAGE IN GHANA: PRESENTING POWER DYNAMICS THROUGH LEGAL ARENAS

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ABSTRACT

This paper delves into the legal anthropology of marriage in Ghana. The socio-legal aspect of this topic is less explored in Ghana although law seems quite often instrumentalized in marriage politics. The paper discusses how ‘power’ is acquired, shared, transferred, and wielded in marriage – all in terms of rights, duties and obligations. This paper draws on empirical literature, local experiences and indigenous knowledge. We argue that one of the pillars through which men legitimize ‘power’ is through the payment of bride price -which comes in the form of a legal framing. However, this power can be transferred or shared depending on the economic power of the spouses involved. Our analysis showed that though there are rules and regulations that guide marriages in Ghana members are not absolutely bound by tradition to follow such norms since at times members deviate from such traditional norms. The paper further shows that the marriage arena where at times rules are negotiated also provides an indispensable frame of reference for local identity and the display of cultural variables. In effect, families mobilize law in order to frame the marriage process which intend becomes another standard for local legal measurement.

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INTRODUCTION

Marriage as a term is translated into almost every known language yielding different definitions by dissimilar ethnic groups. These definitions, however, are all linked to the same basic idea of the combination of minimum of two partners with a set of rules, obligations, and understandings. In this 21st century marriage comes in different forms e.g. dog marriages, humans and animals as well as with various objects and the most common between two or more humans. Many definitions of marriage are long studied and found through various disciplines such as law, anthropology, and sociology. This denotes the concept as an evolving term that changes with societal norms and ideologies. For example, the evolution of interracial marriage, same-sex marriage and age requirements for marriages can be cited. The social resemblance and divergence of marriage can be experienced in various ways with some similar results. One initiation can be through bride prices and engagements that include families or legal documents securing recognition by the State. These different definitions and understanding of marriage show a discrepancy across cultures as diverse cultures have dissimilar meanings to marriage. This means that what may be considered as marriage depends on the beliefs and practices of a particular group of people who share a common culture. Notwithstanding, it is

indispensable to admonish that there is not only difference between people’s beliefs of what constitutes marriage but also what the law says it is. For countries like Ghana, this can mean tension and large differences between customary law and state law definitions and requirements, making marriage a complex institution. Regardless of the complexity, a number of scholars have attempted to define it with marriage. In this paper we will present definitions in literature for deliberations so that we will have a baseline to put forward our arguments and analysis. This paper aims to present a critical analysis of marriage in Ghana. We will explore marriage through the lens of Ghana while taking into consideration the customary processes of marriage and the social context in which the marriage takes place. We will also examine how ‘power’ is transferred as we attempt to navigate and re-evaluate the relationship between the wife, the husband, the children and the extended family all in terms of rights, duties, and obligations. This paper draws on empirical literature, local experiences and indigenous knowledge of some local residents in Ghana. The socio-legal aspect of this topic is clearly under researched although law seems quite often influential as a driving force in marriage politics. This paper has provided fresh insight into the debate by introducing the perspective on legal arenas.

Understanding marriage in legal anthropology

According to Haviland *et al.* (2011) marriage is a “socially or ritually recognized union or legal contract between spouses that

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establishes rights and obligations between them, their children, and their in-laws". Interestingly, this definition sees marriage beyond the wife and husband as it identifies the relationship between families. With the relationship established, each family owes the other some kind of responsibilities, which usually commences at the beginning of the marriage process to other activities that may affect any of the families involved in the marriage. This is evident in the case of Ghana, for example, in some cultures daughters' in-law (a wife) and family may have a role to play when a husband loses a parent and vice versa. This means that marriage is not only between spouses but a family affair; hence it makes the descendants of the marriage a kin of the two families. This definition however lacks clarity in terms of what it means by 'spouses' since it could mean a man-to-woman and a man-to-man as argued in other jurisdictions. Nevertheless, this definition recognizes and bring into sharp focus the rights and obligations of spouses and families.

Bell (1997) described marriage as "a relationship between one or more men (male or female) in severalty to one or more women that provides those men with a demand-right of sexual access within a domestic group and identifies women who bear the obligation of yielding to the demands of those specific men". With reference to "men in severalty", Bell (1997) is referring to corporate kin groups such as lineages which, in having paid bride price, retain a right in a woman's offspring even if her husband deceases. In Ghana, this is more common among some northern tribes especially the Talensi's in the Upper east region as we will endeavor to demonstrate later. Though Bell (1997) makes reference to retaining the right in a woman's offspring even if the husband is alive or deceased, the suggestion of marriage as an instance where only men have the right of sexual access; with the women yielding to the demand of men at all times is problematic. This undermines the rights of women as well as depicts women as sexual objects. These sample definitions of marriage suggest the complexity of marital union; however, Bohannan (2007) points out that even with variations in definitions of marriage it is still cross culturally recognizable.

For the sake of the geographical and the cultural context in which this paper is written, and to establish a baseline for our theoretical analysis we will consider marriage as the legal, spiritual and physical union between a man and a woman who have agreed to come together as husband and wife with a commitment to rights and obligations, and who have gone through all the customary processes and procedures recognized by both parties and/or families. By implication, we do not consider child marriage or forced marriage or any other union that falls outside this definition as marriage. A limitation to our definition is that it only gives recognition to woman-to-man relationship while ignoring same-sex marriage. The reason for excluding same-sex marriage is that it is still considered as a criminal offence in Ghana (Ghana Criminal Act 1960). This means that our definition may not be applicable in other jurisdictions, but may also be widely accepted in many jurisdictions.

The case of Ghana in brief

It is worthwhile to state that the act of marriage may usually create either legal or normative obligations between those

involved in the marriage, and the descendants that may be produced in the marriage. This establishes a social web or network of duties, obligations and rights between the husband, wife, child(ren), and the extended family. These rights and obligations may include social, legal, financial, spiritual, emotional, and religious, etc. In Ghana, the rights and obligations may include but are not limited to receiving legal guardianship and parental recognition of a woman's or man's child(ren). In spite of this, a man giving birth with a woman does not necessarily imply legal custody of the child to the man. For example among the Talensi's of Northern Ghana, if a man is not customarily engaged to a woman and the man and the woman give birth to a child that child is not considered as belonging to the man but to the woman's family. The woman's family claims responsibility and authority over the child until the man performs the customary rights of the woman or for the child before he can claim equal authority or power over that child.

Marriage in Ghana may also give a husband/wife or their family control over a spouse's sexual services, labour, and property. As regards property, this is clear under the Interstate Succession Law, 1985 (PNDC Law 111) of Ghana. For example, if a husband or a wife becomes deceased the surviving partner and children inherits the property unlike some cultural practices where the deceased man's family may go to claim ownership of the man's property and even at times ask the woman to go to her family home. In terms of sexual rights, immediately all customs are performed, spouses have legitimate rights of sexual intimacy. This portrays on the basis of 'morality' the illegitimacy of having sexual intercourse outside wedlock. This also depicts the religious nature of the Ghanaian society, as most of the debates against access to sex before or outside marriage are religious or traditional claims. This is not only unique to Ghana, as Bohannan (2007) argued that control of sexual rights in a woman is felt to be held by parents and legitimately exercised by no one until marriage. This may not be the case in some jurisdictions as the acquisition of sexual rights in a woman depends on definitions and marital practices among people.

Drawing from local experience and knowledge, if a man becomes deceased in a Talensi community the family of the man decides who inherits the woman for sexual and other marital responsibilities. This is, however, done in consultation with the woman. In other instances the woman solely decides whom she wants to be with on the basis of self-interest. If she chooses a man within the deceased husband's social group then there will be no need for new bride price to be paid, but if she 're-marries' someone outside the husband's social group then the woman's family would have to take new bride price which is later given to the deceased husband's family. This shows that there are local rules and laws regulating traditional marriages which members of the society are abided by to ensure peaceful coexistence. It may seem that local people, like the Talensi's, are bounded by their traditions; but observations and other social manifestations show that being bounded by tradition to engage in an act is not absolute. In that, at times people's personal interests may be at heart, hence make them deviate from the requirements of their traditions. This coincides with how Malinowski deviates totally from the "absolutely bound

by tradition”, as he discussed how people can still break away and not fully follow the rules. He argues that it is not only customs and traditions that keep societies functioning but a combination of binding obligations of rules and norms, self-interest and a mechanism of reciprocity. The mechanism of reciprocity is based on Malinowski’s definition of law being based on obligations of rules and norms (Malinowski, 1926). This mechanism of reciprocity creates punishment for failure (i.e. if no fish are caught - failure, then there is no food to eat-punishment). This works when two parties exchange services and functions and basically look over each other’s shoulders to make sure things are done correctly and fairly. The Talensi’s case of marriage shows that indeed the motive to follow legal rules in ‘savage’ societies is a combination of self-interest and customs. In fact, we share that this is the case in many societies, not just ‘savage’ ones.

Among the Talensi, usually, responsibilities of taking care of a deceased person’s children fall on the heir apparent of the deceased. Here, the woman is treated and considered as the property of the deceased man’s family. Though in the context of human rights this act may be viewed as a violation, at times women accept this move by the husband’s family as normal, as that represents and dictates their local customs and practices. It is noteworthy to reflect on the sexual relationship mentioned above; in spite of the fact that a man or woman may have legitimate access to sex, the act of engaging in sex within the confines of marriage should be a consent between the spouses concerned. This is however not the case in all circumstances since there are issues of spousal rape in Ghana which is a criminal offence under the Domestic Violence Act, 2007 (732). Despite our lack of evidence, we are of the conviction that most of the issues associated with spousal rape go unreported for fear of divorce or societal sanction. This shows that though marriage can be viewed as one of the institutions that perform some eufunctions, it could likewise be seen as a platform that people use to commit crime and show power. All these rights, duties, and obligations show a composed image of how ‘power’ is interwoven in the institution of marriage which in most cases is tacit or unidentified especially in the local context of Ghana and in relevant literature.

Theoretical dispositions

The concept of power

In recent times much of the anthropological or sociological debate on power gyrates around the issue of the enabling nature of power. Power has been viewed as pervasive and diffusive by Foucault (1998). The use of power may not engross force or threat of force. It may be considered to mean the aptitude to influence the behaviour and decisions of people although some scholars have attempted to distinguish influence from power. This means that the ability of a man or woman to convince each other of their inherent love could be identified as a form of power. This is reminiscent that the ‘power’ which this paper may attempt to identify and thoroughly discuss does not only occur in the context of marriage or when the customary rites are performed but rather when the relationship is initiated. This confirms Foucault’s (1998: 63) assertion that “power is everywhere” and “comes from everywhere” which means that

power is neither an agency nor a structure. Instead it is a kind of ‘meta power’ or ‘regime of truth’ that pervades society, and which is in constant flux and negotiation. Foucault used the term ‘power’ to signify that power is constituted through accepted forms of knowledge, scientific understanding and ‘truth’.

French and Raven (1959) identified five bases of power consisting of legitimate power, referent power, expert power, reward power, and coercive power. We will see how these bases of power affect marriage relationships in the latter part of this paper. In respect of legitimate power, this power may be seen when the man performs all the rites due him. When this happens the man and woman now have legitimate power towards each other, which is usually determined by customs and traditions of the society concerned. Hypothetically, in some typical traditional societies women are considered as part of the properties of the men. This gives the man sole legitimate power over the woman. In the case of referent power, this happens when a wife is admired because of her traits. These traits of admiration create an opportunity for interpersonal influence. Here, the husband under power desires to be identified with the personal qualities of the wife. The wife may now capitalize on her personal qualities as instruments of power either for positive or negative gains so far as the man gains some level of satisfaction from being an accepted follower.

For expert power, the partner who seems to have knowledge of how to handle the other partner may derive this power. That is, knowing the needs of a partner through an accumulated knowledge of the other may be used to their advantage. This however may not work out in all cases due to personality differences. With respect to reward power, anytime one partner gives the other a reward in the form of material or comparative goods, that partner may gain power in the marriage by leveraging the reward in a coercive manner. Finally, coercive power may also be identified at instances where spouses want to use threats such as divorce to get their partner to adhere to their demands. This kind of power may not be effective if the coerced husband or wife develops some resistance. In abusive marriages, violence is posited to arise out of the need for power and control of one partner over the other. So far, it can be deduced that all the parties in the marriage being it the wife, husband, children or the extended family may have some form of power depending on how it is viewed. This power may be equal or unequal, stable or subject to periodic change (McCornack, 2012). This power may also not necessarily be negative but a productive and a positive force in the society as espoused by Foucault (cited in Gaventa, 2003: 2).

Power and gender roles

The patriarchal system, which views marriage as man-to-woman promotes male preeminence and power over the woman. This political, cultural, economic and legal supremacy is considered as traditional (Barnett, 1998), and religious in the context of Ghana. The power dynamic already discussed by other scholars conceptualizes men as "the provider operating in the public sphere" and women as "the caregivers operating within the private sphere" (Briana, 2004). This gives a

reflection of the shared economic and social responsibilities in the domestic sphere as well as shows how traditional marriages seem to impose obligations on the wife to be sexually available for her husband and vice versa. The performance of the dominant gender roles by men and the acquiescent gender roles by women influence the power dynamics of a marriage (Tichenor, 2010). This apparent internalization of social roles and expectations has been shown in terms of attitudes as social order in respect of domestic solid waste management in Ghana (see Tukwariba, 2013; Yin and Mariwah, 2013). It is also evident in some American households as women internalize gender role stereotypes and often assimilate into the role of "wife", "mother", and "caretaker" in conformity to societal norms and their male partner (Hooks, 2000). The gender roles perpetuated and internalized within traditional marriages and in domestic residences found within Ghana and the United States, among other places embrace the patriarchal system resulting in more power to men. This supports men to be more likely to make independent decisions compared to women supporting Foucault's argument (1998) that whoever has the 'power' or knowledge determines what must be.

The patriarchy system is contrasted with a conception of egalitarian or Peer Marriage in which power and labour are divided equally, and not according to gender roles. In the US, studies have shown that, despite egalitarian ideals being common, less than half of respondents viewed their opposite-sex relationships as equal in power, with unequal relationships being more commonly dominated by the male partner. The same studies further showed that married couples find the highest level of gratification in egalitarian relationships (Sprecher and Felmler, 1997). Though an egalitarian marriage will be an interesting experience in Ghana (that is, if not already in practice by some spouses), it will not come easy as the respective views of the society are traditionally and religiously dominated. It might bring conflict between the local people and their customs, of which the resulting penalty will either be pleasant or unpleasant divorces and its associated consequences.

Customary marriage procedures in Ghana: the commencement of power relation

In Ghana, marriage is constructed according to the customs of a particular ethnic group of which the couples belong. This includes a traditional or religious ceremony and a civil registration ceremony commonly known as 'wedding' [note: local traditional marriage is distinguished from the western type of 'wedding' on basis of legal obligations and requirements]. The wedding, though a foreign culture, it is usually climaxed by signing a marriage certificate and legally binding marriage document at the court of law. This brings to bear the legal regimes and arenas associated with marriages in Ghana as spouses usually perform the traditional/ customary marriage, followed by a church wedding or religious marriage if they are Christians, and later to the court or for civil registration. Notwithstanding this, before the customary processes take off and the marriage becomes recognized and accepted, first, the families of the man and woman perform some preliminary obligations which have been discussed thoroughly in our subsequent paragraphs. Though these

obligations may seem to be disappearing gradually due to modernization, some families still adhere to this traditional way of doing things. We want to discuss these processes since it will inform some aspects of this paper and bring to light how power is transferred in marriage relationships.

In the past, most parents betrothed their daughters before they were old enough to legally marry. Nowadays, parents who choose partners for their children seek the child's consent first. In some cases too which is highly prevalence, the young people make their own choice and inform their parents. Here, the first step of a man is to initiate a relationship i.e. choose a partner [woman]. This partner could either come from the man's own social group or outside the social group. We refer to a man as choosing a partner because in most cases in Ghana the man makes a choice of a woman he would want to be with. It is highly uncommon to see a woman making that proposal. This is because of the cultural belief that it is the man's responsibility to do that, therefore if a woman makes such attempts she may be regarded as not culturally nurtured, and as such the act may be considered as culturally misfit. Before the relationship starts the chosen woman has the right to either agree or disagree to the man's proposal. This process usually involves some form of influence from the man. That is, his ability to convince the woman that he is the right man and capable of taking care of her. This initial process indicates a shared gendered allocation of rights and obligations, in terms of who makes the proposal and who accepts the proposal. Here, a man's ability to influence a woman to accept his proposal in itself is a form of power. That is, viewing power as the ability to influence a person's decision or behaviour. Usually, after the relationship is initiated the man and woman in the said relationship study each other for some time. The essence of this is to ensure that they are compatible as to-be couples. After some level of satisfaction and confidence in the relationship, the man introduces the woman to his family and then proceeds with the consent of the woman to introduce himself formally to the woman's family.

After this step, burdens of responsibilities fall on both families (Nukunya, 2003). That is, before the marriage, the families try to investigate each other's family background. They do this to find out if there is anything that will prevent a successful marriage. They investigate to find out answers to questions such as these: Are there any hereditary diseases like tuberculosis (T.B.), leprosy, insanity, or epilepsy in the family? Has there been any criminal record, e.g., murder or stealing? Is the family troublesome or quarrelsome? These questions show that both families are concerned about the social and economic well-being of their members who want to enter into marriage relationships. It is only after both families are satisfied with their investigations that the marriage can be allowed. This shows that a marriage can be successful if both families give their consent. Instances where one family disapproves, the marriage processes are put on hold until all doubts are cleared. This is one of the reasons why marriage is considered as a family affair (Nukunya, Ibid), and also shows the power families possess. At times, the man and woman go ahead with the marriage with or without the consent of the families. When this happens it suggests that the couples have breached customary rules and obligations as they legitimately need the

approval and 'blessings' of both families. This situation usually brings about or creates anxiety and problems between and within the two families, and the couples. This brings into evidence that marriage is indeed a social, ritual and an emotional process. This also shows how power permeates the whole marriage process. That is, even in terms of whether families will accept or reject the marriage proposal. This power coincides with Foucault's (1978) idea that power is pervasive and multi-faceted, working within everything and not moving with a single direction or plan.

Whilst we have shown how the power process is initiated, it is important to also show how the power is built up through the performance of the customary rites of the woman. Here, we will broadly focus on two ethnic groups, that is, some Ewe tribes from the Volta region of Ghana, and some northern tribes from the northern regions after which we will discuss rights and obligation, and identify the power route.

Customary rites among the Ewes

When a man is ready to marry, either a local drink like a pot of *palm wine* or Gin is sent to the woman's father. This presentation of drink is usually described as knocking ceremony. This is common among most ethnic groups in Ghana. The man's paternal and maternal aunts inform the woman's parents of their intentions to this. After the woman's parents have been informed in this way, they ask the messengers to come after a week or two for the answer. The period gives the woman's family time to consider the request before them and to make enquiries about the man and his family as already discussed. When the woman's parents are satisfied with the man's conduct and background, they allow them to perform the necessary marriage rites. These rites differ from one tribe to the other.

Among some Ewe communities, when the woman's parents give their consent, the man's parents send a gift which could come in the form of a local drink or *Palm Wine* to the family head of the woman to thank them. In the past, after thanking the woman's family the man helped his in-laws on their farms, mended their roofs, and cut firewood for them. This practice is also known as *Sagolabla* (service to your in-laws). This practice might still be present but in a different way because of the advent of modernity. Presently, some men send gifts in the form of money or clothes to their to-be in-laws. This in part is to show that the man is responsible and capable of taking care of their daughter. After all this and the families agree, a list of items to be provided is given to the man and his family. A date is fixed for the traditional marriage to take place. On the appointed day, they all assemble in the woman's family head's house. The man gives them a big pot of *Palm Wine*, two bottles of schnapps or local gin and a bundle of tobacco. In addition he provides a large trunk which contains items of clothing and other things for the wife. When the woman's family inspects and accepts the items, *Sronu Tabianu*, the bride-wealth is paid to end the ceremony. According to Nukunya (2003) the *Tabianu* is given after the groom's proposal of marriage has been accepted by the bride and her people while the *sronu* is paid around the time of the ceremony, usually before it. Before the bride joins the husband, a short prayer is said to the

ancestors asking for their blessings for the couple. After the prayer, she is taken away by the husband's aunts accompanied by her own aunts. On her arrival, she is warmly received by the groom's father. Here, the couples are advised again to live peacefully. After this, the family head pours libation asking for a successful marriage.

Customary rites among some Northern tribes

When a man wants a woman to be his wife, he starts by giving the woman gifts. The gifts could be in the form of money, handkerchiefs, towels, etc. If she accepts the gifts, then they become lovers. This is usually common among most ethnic groups in the Northern and Upper Regions of Ghana. These gifts are used to influence the woman of the man's unflinching love for her. These gifts may also be seen as a coercive force or instruments the men use to get their partners since the woman might not highly disagree to the proposal after she has received numerous gifts from the man.

When the man is ready to perform the marriage rites, he informs the woman's parents. When the families agree to the marriage, a day is fixed for the ceremony. On that day, the man's father sends the bride price. In some communities, kola nuts and money would be sent to the woman's parents. She is then called and asked three times whether she likes to marry the man. This is to show that the woman is not forced into the marriage. If she agrees, then, the kola nuts are distributed among those present. Each of them takes a bite to show their approval. Money from the groom is shared among members of the woman's family. The sharing of the money indicates that they are all witnesses to the marriage ceremony and also have a responsibility towards the couples in times of trouble.

Among some communities such as the Frafra, Mamprusi, and Kusasi, the groom pays a bride price with cows. The community concerned determines the number of cows that are acceptable for a bride price. The man has to give that number of cows before the woman becomes the "proper" wife. Among the Talensi's it is usually four cows. Presently, because of economic hardship the woman's family may accept one or two cows from the initial stage. The rest is later paid after the man gets the resources and the cows to do so. At times the monetary values of the cows are paid to the woman's family. In the case of partial performance of the marriage rites such marriages may not be recognized as giving rise to a legal union under the laws of Ghana.

This notwithstanding, a day is fixed for the bride to go to her husband's house. In some communities like the Sisala, the bride is accompanied by a sister who stays with her for a few months. The Gonja make such fun of the taking away of the woman because on this day, a group of youth pretends to seize the woman. The woman is expected to struggle and weep to show that she does not want to leave her people. When she is taken to the husband's house, she is given to an elderly woman who takes care of her for seven days. She is, however, visited by her husband and his friends. During this period, she is shown the husband's farm and all the things he owns. She is not given her own place such as a kitchen, until the husband's parents are sure she can stay with them. The marriage

procedures show that indeed marriage provides the platform where rules are negotiated and re-evaluated, as well as a point of reference for cultural identity and display. The families involved operate on the basis of their own local legal order and standard but is at the same time forced to refer frequently to other relevant legal portfolios.

The power routes of marriages in Ghana

As argued above, for one to be considered as a legitimate wife in Ghana it means that the bride price and all the customary rites must have been paid or performed by the accepted husband. The payment of the bride price subjects women to the will of men. It imposes some duties and obligations on the women. This gives the men legitimate power or control over the women. The men, at times, may treat the women as part of their properties. In instances like this, the women do not have control over themselves and their properties since all their properties are considered as part of the properties of the men. This kind of power the men acquire through the payment of the bride price may also subject some women to domestic violence, as they do not have any right to challenge their husbands. This presupposes that in some typical and non-typical traditional societies women lose their basic rights to men. The women to some extent may even lack the power to control their own sexuality. Which also bring up the lack of recognition of spousal rape and domestic abuse in Ghana.

In patrilineal societies like the Ewe's of Volta region and the Northerners (Talensi, Frafra, Gonja, etc.) of Northern Ghana, the children are considered as the legitimate properties of the men. Unlike the patrilineal societies, in the matrilineal societies (e.g. the Akans of Ghana) the children are considered as the legitimate properties of the woman since they inherit through the matrilineal line. This shows that despite men have legitimate rights to a woman's offspring as argued by Bell (1997), the case of the Akans proves otherwise. This means that whether a man may have power over a woman and consider his children as his properties depend on the type of society and the kind of traditional system in practice at a time. The men may lack all these rights and privileges if they do not pay the bride price or perform the customary rites of their wives. This means that the power derived by men are derived through the payment of bride price, and this power may either be maintained or lost through the man's economic ability, social, and cultural conditions. This depicts that power and labour are divided unequally, and according to gender roles established by the society. This kind of picture is in direct contrast to the views and practices of egalitarian or peer marriages. We have to note that some of these practices are common in the hinterlands compared to the major cities. Nonetheless, a number of these practices e.g. the treatment of women as properties have come under attack as they can no longer stand the test of constitutional inspection.

In economic terms, whether the men will be able to pay the bride price or not depends on their financial position. In certain cases, the men are able to afford the bride price but may end up losing the power derived from the payment of the bride price to the women when they are unable to provide for the family. This kind of disposition fall in line with McCornack's (2012)

analysis that the power wielded in a relationship may be stable or subject to periodic change. If women find themselves in a good economic situation it propels them to assume economic power, which may either be used to their personal advantage or to the advantage of all. This means that the economic situation of a partner also determines who has the power and also in control of the marriage affairs. This form of power may be in accord with reward power as espoused in the theoretical framework. In that the reward power comes along with the economic power hence the reward power may be used to induce or coerce others to follow either laid down rules and regulations or personal beliefs and convictions of the person having that power. It may seem that men possess the power in marriage relationships, but at times women use some things at their disposal as weapons to gain some form of power. For example, some women may deny their husbands sex in order for their husbands to kowtow to their demands. Others may also use their beauty and influence as referent power to gain control and respect in their marriages. It is important to note that whether a woman will gain such powers or not depends on the kind of man involved in the marriage, as some men would rather prefer extra-marital sex than to yield to the demands of their wives. This means that in order to overcome this type of power held by women, men need other women to break through the power.

Buttressing the argument on power, some men may be extremely vulnerable in the presence of women, but may fail to see the invisible power that makes this possible. This is because the notion of satisfaction of women being a measure of a man's social manhood places immense power in the hands of women. Men depend powerlessly on women to be called a man, for their position in the race for manhood, dignity and honour. Men may at times acquire this power, but what makes this power held by women more potent is that it is imperceptible. It is acknowledged by society and facts are so neatly hidden by society that men and women think that it is the natural way of things. With this invisible power, men are sexually bound exclusively to women, though not in all societies. In the occurrence of this, women now define what constitute a man based on social norms and images to grant social manhood. The foregoing analyses are evidences of power struggle in marriage relationships as our analysis reveals that power struggle does not only occur between the rich and the poor in economic circles but also between marriage partners in social circles.

Rights and obligations in marriage

In respect of the Ewe tribes and some of the northern tribes discussed, and some of the rights, duties and obligations already enumerated above, in this context we will attempt to focus on economic and social rights. Usually, after the marriage processes are completed, a man acquires the rights in a wife, which form the basis of the domestic unit. Such rights include his right to live with her and to form with her a basic unit or household defined by the division of labour between the sexes (Bohannon, 2007). Here, the man provides finance for the up-keep of the households whilst the woman performs domestic chores which includes but not limited to cooking, sweeping, and washing. This is not different from how

domestic waste is managed by households as argued by Tukwariba (2013). In some households where there seem to be economic balance between the spouses, domestic chores may be shared or a housekeeper is engaged to perform such responsibilities.

To Bohannan (2007), by and large, the domestic rights are transferred, and that in almost no African society are a woman's earnings from extra-domestic labour to be touched by her husband. The woman retains rights to her earnings outside the domestic circle; her husband has no jural lien on them. Though we are mindful of Bohannan's (2007) reservation, we disagree with him on the basis that a husband's inability to retain a right in the extra-domestic earnings of the wife is not absolute, in that, whether a man will or will not retain a right to a woman's extra-domestic earnings depends on the kind of partners (i.e. their educational background etc.) who form the union; and the social, economic and the cultural space in which the spouses may find themselves. Therefore, the attempted claim to generality by Bohannan's argument should be accepted with careful thought. This is because in some areas of rural Ghana where the woman sees the man as the family head, and also considers herself as part of the property of the man, the man may retain some rights to the woman's extra-domestic earnings. This is usually done at times with or without the permission of the wife. This position may be totally different from what happens among some households in urban Ghana. This shows the pervasive power of ideology, values and beliefs in reproducing class relations and concealing contradictions (Heywood, 1994). These ideas and values held by the local people may lead to false consciousness which prevent women from recognizing and rejecting their oppression. All this points to the invisible nature of power and the idea that knowledge of beliefs and values are socially constructed that serves to legitimate social structures.

Legal regimes

Marriage in Ghana presents a unique case of legal regimes though analogous regimes might be common in other African countries like Nigeria, Liberia, and Cameroon. In Ghana, although religious marriages and civil marriages are theoretically distinct, a civil marriage may take place as part of the religious marriage ceremony. It is possible for two people to be married customarily or by a religious institution, but for the recognition of such marriages under the marriage ordinance such marriages must first comply with the requirements of the law. This however means that if such marriages are in disparity with the Marriage Ordinance they may at best be recognized under customary law or only remain as a church marriage that may be unrecognized by the state under the Marriage Ordinance as evident in the case of *Appomasu v. Bremawuo and Another* [1980] GLR 278, published in the Mirror Newspaper (2013) in Ghana.

In the case of *Appomasu v. Bremawuo and Another* [1980] GLR 278 W. H., previously married under the customary law, decided to go through a marriage ceremony at the Roman Catholic Church Cathedral, Kumasi, in order to have their marriage by the church, and also to be able to receive Holy Communion administered by the church. There was no

evidence that the ceremony complied with the mandatory provisions of the Marriage Ordinance, Cap. 127 (1951 Rev.), s. 31. Besides, the only recorded evidence concerning the marriage was an entry in the official register of the church. On the death intestate of H., W. applied for letters of administration, asserting that the ceremony which took place between her and H. had converted the customary marriage into an ordinance marriage. This was, however, disputed by the customary successor of H., who in turn alleged that the marriage was merely a nuptial blessing of the customary marriage.

The Court of Appeal held that from the evidence, W and H intended to celebrate a marriage which conformed to the rites of the Catholic Church and which would also enable them to qualify for admission to the Holy Communion administered by the church. The Court again held that the legal effect of the church ceremony did not constitute a marriage under the Marriage Ordinance but a marriage blessed by the church. The court further found that on W.'s own showing they did not deliver to the reverend father either a registrar's certificate or two marriage officer's certificates as required by section 31 of the marriage ordinance, Cap. 127; neither were they asked to sign a marriage certificate nor was a certificate given to them as required by section 34 and 35 of Cap. 127. Therefore the ceremony performed at St. Peter's Cathedral between W. and H. was not a marriage under the ordinance. This shows that any festivity of marriage by a clergyman in a church, which does not comply with the requirements of the marriage decree, will at best remain a church blessing and will disable the parties from taking advantage of the rights and benefits accruing to couples married under the Marriage Ordinance.

Under customary marriage a man may have as many customary wives as he can, and there is no limit to the number of such marriages that can be legally registered under the Customary Marriage and Divorce Registration Law, 1985 (PNDCL 112). This law emanates from customary practices and establishes a basis for discrimination since it consents to only men to marry as many wives as they want, but deny women of such privileges. We are aware some scholars would like to argue that polyandry might not be a customary practice therefore the practice of polygyny cannot be considered to amount to any form of discrimination. Whether the practice is polygyny or polyandry, it is a social creation which to some extent marginalize one group to the advantage of another group. This law directly or indirectly gives men power over women in terms of choices. However, under the Marriage Ordinance, 1884-1985 (Cap 27), marriage is strictly monogamous which means that a man or a woman who marries under ordinance cannot take another wife or husband by any means so long as the marriage is not dissolved. In any case if this happens the man or woman may have committed bigamy, a crime punishable by law in Ghana. This shows a contradiction in the two legal orders though they may intend to promote a common goal.

Marriage relationships and its associated customs and norms in Ghana have come under scrutiny because they contradict international standards of human rights; with the prevalence of institutionalized violence against women, child marriage and

forced marriage. A number of activities that cause the violation of human rights include the seeking of the permission of a husband for his wife to sign a legal document, file criminal charges against someone, sue in civil court, and the use of violence by husbands to 'discipline' their wives, as well as discrimination against women in divorce (Amnesty International Universal Periodic Review, 2011). Most women in Ghana suffer the consequences of divorce compared to men since the men usually take greater share of the properties, or even at times deny the women the right to any of the properties acquired by both parties.

In economic terms as argued by Arendell (1983: cited in Cherlin, 1998; 1999) women suffer a sharp slide in resources since husbands tend to earn more than their wives, and after divorce many ex-husbands pay little or no child support to their ex-wives. This sharp slide may also be attributed to the fact that some wives may have done little or no work for pay while raising the couple's children. So after the breakup of their marriages, women frequently find that their standard of living plummets. This situation is gradually changing in Ghana as most women are found engaged in some economic activities in the informal sector, whilst at the same time the number of women at the formal sector increases by day. In spite of this, concerns have been raised by civil society organizations about the unfair treatment some men subject some women to after divorce. This calls for the formulation of legal frameworks to ensure 'equal' sharing of properties between spouses who dissolves their marriages. In Ghana, each marriage partner has the choice of keeping his or her property combined or separate. In the combined case, when the marriage ends by divorce each owns half as per legal requirement. In a case of a will or trust, if a partner dies the properties are owned by the surviving spouse and children, unless otherwise there are family related issues that require how the properties should be shared. All this shows that marriage is indeed not only a social contract where only family members of spouses are involved, but also a legal contract that involves different legal regimes and arenas ranging from power, customs, law, rights, and property regimes where the state has an integral role to play.

Legal arenas and conclusion

The analysis shows that power can be acquired, shared, and transferred in marriage. It has also shown how the power acquired is wielded in marriage. That is, either for positive or negative advances. The customary procedures have brought to the forefront that payment of bride price is one of the legitimate pillars through which power is acquired in marriage. It has also been established that the marriage arena, where at times rules are negotiated, provides an indispensable frame of reference for local identity interacting with and sometimes integrating or absorbing external compulsions. We have also shown how economic resources contribute to the gain or loss of power in relationships, and how different legal orders contradict, interact with, and accommodate each other in a local environment.

This paper further shows how families attempt to implement their respective legal standards in a plural legal constellation during marriages in Ghana. We have seen how marriage

conveys plural religious and moral messages, claiming at least some degree of collective validity as a propagator of salutary concepts of family sustainability. The marriage procedures or rules are laid down in the form of legal models though globalization seems to have led to artificial dominance over some local legal arenas. One major characteristics of the marriage process is the legal framing that comes in terms of bride price. This means that families mobilize law in order to frame the marriage process which intend becomes another standard for local legal measurement.

As shown in the two local marriage procedures discussed earlier the families involved operate on the basis of their own legal order but is at the same time forced to refer frequently to other relevant legal repertoires – state law – which acts as umbrella law and at times questioned by local customs. This brings about the validity and contestation between both state law and customary law. This referencing has implications for the whole design of normative ordering of marriage in Ghana as well as the plural legal-social formation. This boosts the legal agency of local players of marriage though at times it leads to competition between different legal orders as evident in the case of *Appomasu v. Bremawuo and Another* [1980]. With reference to the roles played by the state and other local agencies of marriage it is of specific importance that the domain of state-local legal interaction, as well as the state's contribution to the local legal arena of marriage, are both directly and indirectly affected by the processes that result in gains for local action. Compared to Turner's (2006) analysis in *Competing Global players in rural Morocco*, one cannot be far-flung from arguing that the legal arenas of local marriages within local legal environments contains various legal regimes (ranging from power, rights, economics, and law) and constitutive elements of widely differing provenance and sources of legitimation that are not necessarily regarded as hierarchically ordered legal regimes but a competing set of legal orders.

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