

JOHN LOCKE ON FAMILY AND PROPERTY VIS-À-VIS THE SECURITY OF THE WIDOWS IN IGBO

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Abstract

The “Two Treatises of Government” (1690), has been recognized as Locke’s major political analysis. In the Second Treatise, he discussed rights at different levels, with family rights as one of such. Within the family rights, Locke discussed conjugal rights and property rights, among others. For Locke, the end of familial society is to raise children to a state of reason so that they could be competent in the management of their own property. Children have a right to the property since to be a person entitles one to own property. The father’s property does not belong to him alone; rather it belongs to the whole family. Since marriage is a contract, the property rights of both partners, both corporeal and spiritual, could not be arbitrarily infringed. In Locke, “property” is individual, with free alienation and bequest having priority. This is one of the areas that have received little attention in our society, as regards the women folk. The insecurity surrounding women (widows) after the death of their husbands is alarming in different parts of Igbo, even when they are legitimately married. This paper therefore used the method of textual analysis and evaluation for a better application of Locke’s principles in order to improve the situation of widows in Nigeria.

Keywords: Security, Widows, Igbo, John Locke, Property

Introduction

Security may be defined as being safe or a state of being free from danger, such as war, attack, robbery, etc. It may also mean measures to be taken to be protected from harm. One of the important areas that should not be overlooked when dealing with security issues is the violations of the rights of women and girls in the society. Women’s security is strongly linked to the integrity of their rights as humans. “Women’s rights to education, to health, to land and productive assets, and rights of participation, decision-making and leadership in the village or community matters are strongly linked to women’s security”.¹ Others are

¹ Unwomen, (2015). “Protecting the Rights of and Girls in Humanitarian Settings”. <https://wps.unwomen.org/protecting/>

issues concerning domestic violence and the well-being of family units. When there is no peace between husband and wife or within the family, there is no security in such families. This is why cases of husbands battering their wives have occurred severally or the other way. When a woman that lost her husband is stripped of all that she acquired with her husband, for example, land, car and other properties, it means that she will suffer from financial insecurity, which makes her vulnerable.

This paper examined specifically, the insecurity surrounding a woman (widow) after the death of her husband in Igbo culture. The plight of widowhood is not peculiar to a particular culture in Nigeria, but it is prevalent in most cultures like the Igbo culture. It is good to know too that, the terrible experiences of widows in different parts of Igbo land is not applicable to every family or rather, not every woman whose husband dies goes through those horrific experiences. For some families, such wickedness of discriminating and dehumanizing the widow is not practiced nor does she feel insecure because of the death of her husband, rather the diseased brothers and sisters do everything possible to protect her and her children. But these are exceptional cases. Greater number of widows are made to go through tortures in the name of culture and greediness. Another fact is that the woman can also die and live the man a widower. Experience has shown that the challenges and difficulties which accompany the death of a husband are greater than those which accompany the death of a wife.

This is why it is still important that we should not be tired of creating awareness of this kind of evil practices being carried out on human beings, who have their rights to be respected just like every other person in the society. It becomes a serious concern that these practices are going on in our present-day society despite the overwhelming presence of different religions among the Igbos, especially Christianity. Some traditional customs, such as wife inheritance and widowhood rites have continued to exist, significantly associated with violence against which women are not well-protected. For example, a woman was harassed by her brother-in-law who asked for the documents of the house before her husband's body even left for the funeral home and who also insisted, she had to leave the house. Another woman's husband was critically ill in a hospital, when her sister-in-law demanded a huge amount of money from their bank account. When the wife refused, her in-law swore she would regret it. Three days later, her husband died, his family descended on her, took her husband's cars away and emptied the house and she was left alone with an empty house

to start life afresh together with her five children (girls). One of the statements the family members made was that she gave birth to no child for their brother because girls are not children and have no right of inheritance of their father's property. The children could not understand why they were treated as such. There are many of such stories in our society. Ordinarily, part of what gives a widow security after her husband's death is their property, and the love and care from the rest of the family members. When she is denied these, she becomes vulnerable to abuse and sickness. This paper looked at Locke's theory of family and property and used it as a paradigm for enhancing the wellbeing of widows in Igbo culture.

Locke's Concept of Family

Locke sees the family as a private entity, a non-political form of association. In this way, he discredited arguments for a patriarchal kingship.² He also countered the "reigning patriarchist's position enunciated most forcefully by Sir Robert Filmer, who supported the absolute power of the monarch on patriarchal grounds, which identified political power and familial power. According to the patriarchal world view, all social relations could be explained in terms of a model of the household in which the father was the absolute master."³ The family is described by Locke as a conjugal society.

Conjugal Society is made by a voluntary Compact between Man and Woman; and tho' it consists chiefly in such a Communion and Right in one another's Bodies, as is necessary to its chief End, Procreation; yet it draws with it mutual Support, and Assistance and a Communion of Interest too as necessary not only to unite their care and affection but also necessary for their common offspring, who have a right to be nourished, and maintained by them until they are able to provide for themselves.⁴

Conjugal Rights

According to Locke, conjugal society "is made by a voluntary compact

² Jacqueline L. Pfeffer, "The Family in John Locke's Political Thought" *Polity*, Vol. 33, No. 4 The University of Chicago Press (Summer, 2001), P.597.

³ Kristin A. Kelly, "Private Family, Private Individual: John Locke's Distinction between Paternal and Political Power" in *Social Theory and Practice* 1 July 2002, Vol.28 (3), p 363.

⁴ John Locke, *Two Treatises of Government*, ed. by Peter Laslett Cambridge: Cambridge University Press, 1960, §78

between man and woman.”⁵ This implies that the right of husband and wife is “founded on contract.”⁶ This contract must be consistent with the ends of conjugal society, “else it cannot count as a marriage contract.”⁷ Locke maintains that marriage is a moral not merely a legal relationship “and one whose terms are thus not to be thought of as constrained by any particular legal (or other) rules or conventions”.⁸ He further maintained that “Husband and wife may promise to love, honor, cherish and obey one another, or they may bind themselves by different and more specific agreements. The contract must be consistent with the ends of conjugal society, or else, it cannot count as marriage contract”.⁹

Conjugal society is a voluntary exchange involving mutual affection and need. “The proof of this characterization can be found in the fact that the ends of conjugal society (procreation and the rearing of children) can be accomplished without either party retaining the right to determine life and death.”¹⁰ “For Locke, the end of conjugal society is procreation and the care of common offspring¹¹, “yet it draws with it mutual support, and assistance, and a communion of interest too, as necessary not only to unite their care and affection, but also necessary to their common offspring who have a right to be nourished and maintained by them, till they are able to provide for themselves.”¹² Because of this the bond of husband and wife must be a lasting one, which means that even after procreation they must be together, since they have the responsibility of taking care of their children until they reach the age of maturity. This responsibility says John Locke comes from the “Law of Nature” because “they had begotten, not as their own Workmanship, but the Workmanship of their own Maker, the Almighty, to whom they were to be accountable for them”.¹³

Governance Of The Family

Despite the fact that the conjugal society is based on a contract, Locke argued that even the man or husband has no absolute power over the

⁵John Locke, *Two Treatises of Government*, §78.

⁶A. John Simmons, *The Lockean Theory of Rights* (New Jersey: Princeton University Press, 1992), 170

⁷John Simmons, 170.

⁸ John Locke, *Two Treatises of Government*, §83

⁹ John Locke, *Two Treatises of Government*, §83

¹⁰Kristin A. Kelly, “Private Family, Private Individual: John Locke's Distinction between Paternal and Political”; “Power”, in *Social Theory and Practice*, 28, (2002), p. 361.

¹¹John Simmons, *The Lockean Theory of Rights*, 170 -171

¹²John Locke, *Two Treatises of Government*, §78.

¹³ John Locke, *Two Treatises of Government*, §56.

woman or wife, but he does have a certain priority: "Though they have but one common concern, yet having different understandings will unavoidably sometimes have different wills too; it therefore being necessary, that the last determination, that is, the rule, should be placed somewhere, it naturally falls to the man's share, as the abler and the stronger."¹⁴ In that case, the woman owes the man subjection. But this right which the man has "can be only a conjugal power, not political, (it is) the power that every husband hath to order the things of private concernment in his family as proprietor of the goods and land there, and to have his will take place before that of his wife in all things of their common concernment."¹⁵ This situation which Locke described here arises when there is a disagreement between husband and wife, with the man having the right to the final decision.

The Family And Property In Locke

Locke's doctrine of property is almost the central part of his political work. Property in the Second Treatise was summarized by Locke as "lives, liberties and estates"¹⁶. It refers more narrowly to material goods.¹⁷ Furthermore, Locke says that every man has a "property" in his own person and in his own labor, that is the work of his hand. "Hence the term property admits of many interpretations in Locke's Second Treatise. "The basic meaning of property for Locke, which gives substance to all the others, is that of *proprium*, a Latin word meaning one's own, from which the English word property is derived. Hence under the notion of property as being what is one's own, Locke includes all the natural rights of man"¹⁸.

The end of familial society as Locke stressed is to raise children to a state of reason so that they could be competent in the management of their own property.¹⁹ Children have a right to property,²⁰ since to be a person

¹⁴John Locke, *Two Treatises of Government*, §82.

¹⁵John Locke, *First Treatise of Government*, §48.

¹⁶ John Locke, *Two Treatises of Government*, §123

¹⁷ Mary Winifred G. Eche, *An Ethical Evaluation of John Locke's Theory of Rights*. Makurdi, Nigeria, Aboki Publishers, 2019, p.67.

¹⁸ Bracken, Joseph Andrew, "A Theory of Property According to John Locke" (1960). Master's Theses. 1547. https://ecommons.luc.edu/luc_theses/1547

¹⁹ According to Jacqueline, John Locke expresses that to attain this end, nature gives parents authority over their children (2T? 173). This power is "not so much as the shadow" of the power of the civil magistrate, because the "Power of the Father doth not reach at all to the Property of the Child," since power over a child's property is

entitles one to own property. Children are also their own property, that is, in their individuality they are something that no one else can take as simply his own, and they have the right to develop their natural talents, God's different gifts.

In Locke, "property is individual, with free alienation and bequest having priority."²¹ For him, children have the natural right to inherit their father's possessions and fathers also "have power to bestow their estates on those who please them most."²² This means that fathers have their rights to dispose of their property as it pleases them. Locke in his defense of free alienation and the priority of inheritance, gave two main reasons.

First, provided that the property that may be freely alienated is conceived as joint property, held by all the family members together, paternal alienation or bequest will have no priority . . . Second, even if property is individual, free alienation is compatible with having committed or partially alienated one's property to those with whom one enters into a special relationship such as those relationship created by marriage or procreation.²³

In view of this argument, the father's property does not belong to him alone; rather it belongs to the whole family. But if the father has no right to dispose of his property as he pleases, it would appear that Locke, perhaps unknowing, undermined the very foundation of individual rights. A father is said not to be only the proprietor of what he has for himself, his children also have rights to a part of his property. In the *First Treatise*, Locke clearly states that "men are not proprietors of what they have merely for themselves, their children have a title to part of it, and have their kind of right joined with their parents, in the possession which comes to be wholly theirs, when death having put an end to their parents

unnecessary to the attainment of the end of the society of parents and children (2T??65, 170). Indeed, a parent's power over his child's property is not only unnecessary to raising children to be competent managers of property, but would be a prohibitive obstacle to the attainment of this end, because a child who does not have the disposal of his property at his command cannot be taught how to manage it. Children, Locke argued, acquire competence in an activity only by practice and experience that settles in them habits (STCE??64-6); they cannot simply be given rules about the management of property, but must practice its management. The familial society of parents and children is closely related....

²⁰Jacqueline L. Pfeffer, "The Family in John Locke's Political Thought, 598.

²¹John Simmons, *The Lockean Theory of Rights*, 204.

²²John Locke, *Two Treatises of Government*, §72.

²³John Simmons, 205.

use of it, hath taken them for their possessions and this we call inheritance."²⁴ Locke further argued that children should learn to acquire and use their property not only for their own benefit, but also to dispose of their property for the benefit of others. He urged parents to foster a liberal, giving disposition in children, so that they can "part with what they have easily and freely to their friends."²⁵

What did Locke say concerning the woman's right? Has the woman any right of inheritance in the property right of John Locke? In different parts of Nigeria, for example, even when the customary law has allowed the female to be part of the inheritance of her father's property, it is not being practiced. What is the position of Locke on this?

For Locke then, the same restrictions and freedoms applied to the marriage contract as applied to any other covenant. Most importantly, the property rights of both partners, both corporeal and spiritual, could not be arbitrarily infringed. Consequently, just as a people could not grant the state absolute power over their property, a wife could not grant her husband the right to absolute authority over her life even if she so wished. To do so would alienate a property she has not the power to give away. Nor may a man confiscate for his own use the goods a woman brings to the marriage merely because the couple have chosen to marry. This was her property and hence part of her being and as such could not be expropriated against her will. For Locke the marriage relationship created no theoretical difficulties with these forms of property. There was, however, a theoretical problem with property which a husband and wife, by common endeavour, might accumulate during the period of the marriage. As this wealth was the product of their common labours the husband could have no right to arbitrarily utilise it as he wished. For as to the wife's share, whether her own labour or compact gave her a title to it, it is plain her husband could not forfeit what was hers.²⁶

This means therefore, since both of them labored together, if the husband dies, the wife becomes responsible for the property owned by both of them. Hence, no husband's relation has the right to interfere in the

²⁴John Locke, *First Treatises of Government*, §88.

²⁵Jacqueline L. Pfeffer, "The Family in John Locke's Political Thought, 604

²⁶Nyland, Chris, John Locke and the social position of women, Department of Economics, University of Wollongong, Working Paper 90-6, 1990, 32. <http://ro.uow.edu.au/commwkpapers/321>

ownership of the property belonging to the man and his wife, after the man's death. This is because, there was a contract between both. And since she applied her labour to it, she has a natural right of inheritance over the property.

The Widow's Plight

Despite the changing times, women are still found victims of injustice as a result of the enforcement of old traditions in different parts of Igbo land. For example, the oppressive customs and traditions pertaining to widows are sustained by those who benefit from them, especially in the villages where many women are ignorant of their rights. One of the peculiar experiences that widows go through is that of the male dominance at the level of inheritance, outside other horrible rituals that are being performed.

I witnessed a serious quarrel between a widow and her brother-in-law, from a village not too far from mine, over the management of what the widow's husband left behind. The widow was a young lady in her early thirties. She had a boutique. Unfortunately, her husband died suddenly in a ghastly motor accident. After the burial of the man, his younger brother came to the woman claiming all the assets belonging to his brother. He claimed that being the eldest male in the family, after her mourning period, he would inherit her as the custom demanded since she was still young and take over all the properties belonging to his brother. This meant that she had no right over any of them. It is presumed that the rituals and deprivations that most of these widows go through occur mostly within marriages under customary law. As in the case of customary law,

all meaningful property is owned and controlled by the husband. Women are often, if not always, reduced to the status of property-less dependents who have to submit to the will of their husbands in order to survive. The customary law on matrimonial property perceives a married woman as an unpaid servant of her husband.²⁷

²⁷ Austin O. Ezejiolor, (2011). "Patriarchy, Marriage and the Rights of Widows in Nigeria" *Unizik Journal of Arts and Humanities* Vol. 12, No. 1. Pg. 146. <http://dx.doi.org/10.4314/ujah.v12i1.9>

It is pertinent to note that this situation is not peculiar to marriages under customary law. Rather, it is a problem of an erroneous mentality and a tradition wherein a woman is seen as an acquired property. This mentality also exists among some Christian couples, thereby leading to the maltreatment of widows after their husbands' death. Ideally, after the death of her husband, a widow deserves sympathy and care. This will enable her to overcome the psychological trauma of losing her beloved one. However, most often that is not the case. Rather, "she is stigmatized as the killer of her husband, oppressed, suppressed, afflicted, neglected, accused, openly insulted and consequently made to succumb to widowhood rites on account of customs and traditions."²⁸ In fact, she is eventually made more miserable and is stripped of her self-esteem and all the property she had acquired with her husband.

These amount to infringements on her human rights. A woman is a human being in exactly the same way that a man is, so maintaining the practice of denying inheritance to widows, after the death of their spouses and even worse, letting widows be inherited as property, is inhuman and counter to treaties to which Nigeria is a signatory. For example, The United Nations Charter and Universal Declaration of Human Rights (UDHR). Moreover, it is contrary to the Nigerian constitution, which stipulates in chapter IV§34 that (1) Every individual is entitled to respect for the dignity of his person, and accordingly - (a) no person shall be subject to torture or to inhuman or degrading treatment, etc. While in §43 it states, subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria. It did not say any man but any person and this includes women.

Since the unfair treatment meted to widows violates their fundamental human rights, this work encourages us, those who know the law and are educated to fight for justice, defend the helpless, moreso to fight against the maltreatment of widows, because it is still very much alive in our society today. Most of those who go through these have no one to speak for them. Many are uneducated and because they are ignorant of their rights, they are more vulnerable than the educated widows.

²⁸ George, Tayo, (2017). "Widowhood and Property Inheritance among the Awori of Ogun State, Nigeria". http://www.researchgate.net/publication/322103084_widow

Application Of Locke's Principles To The State Of Widows In Igbo Culture

Locke in the "*First Treatise*" §61, recognized the equality of the father and the mother and affirmed that whatever was given to them was given to them in common. In the *Second Treatise of Government* §52, he emphasized that the father not only has absolute rights over his own offspring but *shares* equally parental power and the duty to care for them with the mother. For example, as quoted above, Locke said that, men are not proprietors of what they have merely for themselves, their children have a title to part of it, and have their kind of right joined with their parents, in the possession which comes to be wholly theirs, when death having put an end to their parents use of it, hath taken them for their possessions and this we call inheritance. This clearly portrayed, that he made no distinction between both parents.

He also argued in support of individual property rights as natural rights. Furthermore, he maintained that the fruits of one's labor are one's own because one worked for them. As established in the work above, Locke is of the opinion that the property rights of both partners (that is husband and wife) both corporeal and spiritual, could not be arbitrarily infringed.

Consequently, just as a people could not grant the state absolute power over their property, a wife could not grant her husband the right to absolute authority over her life even if she so wished. To do so would alienate a property she has not the power to give away. Neither can a man confiscate for his own use the goods a woman brought to the marriage merely because the couple have chosen to marry. This was her property and hence part of her being and as such could not be expropriated against her will. As regards the wealth acquired by the family, Locke has this to say: "this wealth was the product of their common labours, the husband could have no right to arbitrarily utilise it as he wished. For as to the wife's share, whether her own labour or compact gave her a title to it, it is plain her husband could not forfeit what was hers".²⁹ The lessons we can learn from Locke are as follows:

First, the woman owns herself and therefore, cannot whatsoever be someone's property because she accepted to marry. In that case, she is not a property to any man. So, for those who argue that a widow is their

²⁹ Nyland, Chris, John Locke and the social position of women, Department of Economics, University of Wollongong, Working Paper 90-6, 1990, 32. <http://ro.uow.edu.au/commwkpapers/321>

inheritance as their tradition demands, it is wrong and such tradition and persons infringe on the widow's right of existence. And statements such as 'immediately after wedding, you have become my property' are abusive and the woman has every right to reject such. This therefore implies that after the death of her husband, the widow has the right to decide if she will re-marry or not.

Second, since marriage is a contract between two persons, in this case, between husband and wife, no one has the right to interfere in what the wife owns in common with her husband. Sometimes, some of these properties are acquired by the woman either before or within the marriage. And sometimes both acquired them. What it means is that, it is not always the case that the man is the sole acquisition of family property. But the agreement to enter a contract joins all these together. Since they labored together without a third party, it will be unjust for a third party to come in to claim the family's property after the man's death while the wife and children are alive.

Third, the children according to Locke have the right of inheritance. Locke mentioned in his work, two main primary rights of the children. The first is the right to be nourished and maintained by their parents; the second is about the child's right of inheritance to parental property. Therefore, no relation of their father has the right to confiscate their father's property after his death. Locke clearly indicated that no one should interfere with the man's property because, the children have a natural right over their father's property.

Conclusion

The inhuman treatment meted out to widows has continued in different parts in Igbo cultures. Efforts should be made to change this situation. Leaders in various spheres of society – traditional, religious and political should be proactive in enlightening their followers and making the necessary changes that would improve the lot of widows in the Nigerian society. Moreover, the government should make legislations that stipulate the rights of widows and protect them from such negative treatment. This would safeguard the security of widows and of their children, especially the younger ones.

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