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**ANTHROPOCENTRIC AETIOLOGY OF CERTAIN MARRIAGE TYPES: NEED FOR THE REVIEW  
OF SAME SEX MARRIAGE PROHIBITION LAW IN NIGERIA\***

**Abstract**

*The concept and practice of same sex marriage have been of grave concern to opinion leaders, politicians, legal luminaries and all forms of custodians of conscience. Marriage is a sacred institution understood from time immemorial to be generally between people of the opposite sex. Any attempt to determine otherwise has often been met with revulsion and repulsion. This is because same sex marriage has often been mistaken to necessarily indicate and/or include same sex sexual relationship. The author in this work has attempted to elucidate the fact that same sex marriages particularly same sex woman-to-woman marriages do not necessarily tantamount to same sex sexual relationship. Examples of societies where same sex woman-to-woman marriages are practiced, devoid of any mutual sexual, insinuations were given and reasons for such marriages explained. Origins of such marriages and their unequivocal acceptance and adoption by the communities concerned were proffered.*

**Keywords:** Anthropocentric aetiology, Certain marriage types, Need for review, same sex marriage prohibition law, Nigeria

**1. Introduction**

Marriage is the legal union of a couple as spouses.<sup>1</sup> The essentials of a valid marriage are that parties are legally capable of contracting a marriage; that there is mutual consent or agreement; and that there is an actual contracting in the form prescribed by law. Marriage has important consequences in many areas of the law, such as torts, criminal law, evidence, debtor-creditor relations, property and contracts.<sup>2</sup> 'It has frequently been said by courts and even by legislatures that marriage is a 'civil contract'. But to conclude from these statements that marriage... has all, or even many, of the incidents of an ordinary private contract, would be a grave error. In fact these statements to the effect that marriage is a 'civil contract' will be found, upon examination, to have been used only for the purpose of expressing the idea that marriage, in American States, is a civil, and not a religious institution, or that ... in some states, mutual consent alone without formal celebration is sufficient to constitute a valid marriage known as common law marriage, or that, as is true in all states, the mutual consent of the parties is essential even in the case of ceremonial marriage'.<sup>3</sup>

Etymologically speaking, the word marriage derives from Middle English 'mariage', which first appears in 1250-1300CE. This in turn is derived from old French 'marier' (to marry) and ultimately Latin 'maritare', meaning to provide with a husband or wife, and 'maritari' meaning to get married. The adjective 'mari-us-a-um' meaning matrimonial or nuptial could also be used in the masculine form as a noun for husband and in the feminine form wife.<sup>4</sup> The related word matrimony derives from old French word 'matremoine', which appears around 1300CE and ultimately derives from Latin 'matrimonium', which combines the two concepts: 'mater' meaning mother, and the suffix, 'monium' signifying action, state or condition.<sup>5</sup>

Anthropologists have proposed several competing definitions for marriage in an attempt to encompass the wide variety of marital practices observed across cultures.<sup>6</sup> Even within western cultures, definitions of marriage have careened from one extreme to another and everywhere in between. Generally speaking, marriage, also called matrimony or wedlock, is a socially or ritually recognized union or legal contract between spouses, that establishes rights and obligations between them, between them and their children and between them and their in-laws,<sup>7</sup> as well as society in general.

The definition of marriage varies according to different cultures, but it is principally an institution in which interpersonal relationships, usually sexual, are acknowledged. In some cultures, marriage is recommended or

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<sup>1</sup>B A. Garner (ed), *Black's Law Dictionary*, Ninth Edition. 2009.

<sup>2</sup> Ibid

<sup>3</sup>W J Madden, *Handbook of the law of persons and Domestic Relations*. S 1-3 at 2-3 (1931)

<sup>4</sup> Oxford English Dictionary 11<sup>th</sup> Edition

<sup>5</sup>online Etymology Dictionary' Etymonline.com

<sup>6</sup>Bell Duran 'Defining marriage and legitimacy' PDF.

Current Anthropology 38(2): 237-54. 1997.

<sup>7</sup>WA Haviland et al, 'A nonethocentric definition of marriage is a culturally sanctioned union between two or more people that establishes certain rights and obligations between the people, between them and their children and between them and their in-laws' *Cultural Anthropology: the Human challenge* (13<sup>th</sup>ed.) ISBN 978-0-459=81178-7.

considered to be compulsory before pursuing any sexual activity. People may marry for many reasons. These include legal reasons, social reasons, libidinal reasons, emotional reasons, financial reasons, spiritual reasons, and for religious purposes. Circles of marriage may be influenced by society determined rules of incest, prescriptive marriage rules, parental choice and individual desire. Recognition of a marriage varies from place to place, from culture to culture. Thus a marriage can be recognized by a state, an organization, a religious authority, a tribal group, a local community, or peers. Some authors have defined marriage as a relationship established between a woman and one or more other persons, which provides a child born to the woman under circumstances not prohibited by the rules of relationship, is accorded full birthing status rights common to normal members of his society or social stratum.<sup>8</sup> It has been argued by many anthropologists and legal scientists that no one definition of marriage applied to all cultures. Thus such authors as Leach in attempt to arrive at a definition that would be all encompassing, offered a list of ten rights associated with marriage including sexual monopoly and rights with respect to children, with specific rights differing across culture.<sup>9</sup> These rights included:

1. To establish a legal father of a woman's children
2. To establish a legal mother of a man's children
3. To give the husband monopoly in the wife's sexuality.
4. To give the wife a monopoly in the husband's sexuality.
5. To give the husband partial or monopolistic rights to the wife's domestic and other labour services.
6. To give the wife partial or monopolistic rights to the husband's domestic and other labour services.
7. To give the husband partial or total control over property belonging or potentially accruing to the wife.
8. To give the wife partial or total control over property belonging or potentially accruing to the husband.
9. To establish a joint fund of property-a partnership-for the benefit of the children of the marriage.
10. To establish a socially significant relationship of affinity between the husband and his wife's brothers.<sup>10</sup>

## **2. History of Marriage**

Legends about the origin of the concept of marriage are as many and different as there are cultures. Some cultural legends about the origin of marriage are similar, while others have almost nothing in common.

According to early Hebrew tradition, a wife was seen as being a property of high value, and was therefore, usually, carefully looked after. Early nomadic communities in the Middle East practiced a form of marriage known as 'beena' in which a wife would own a tent of her own, within which she retains complete independence from her husband.<sup>11</sup> This principle appears to survive in parts of early Israelite society, as passage of the Bible appears to portray certain wives as each owning a tent as a personal possession<sup>12</sup>. The husband too is indirectly implied to have some responsibilities to his wife. The Covenant code orders 'if he take him another, her food, her clothing and her duty of marriage, shall he not diminish or lessen.'<sup>13</sup> If the husband does not provide the first wife with these things, she is to be divorced, without cost to her.<sup>14</sup> The Talmud interprets this as a requirement for a man to provide food and clothing to and have sex with, each of his wives.<sup>15</sup> In Ancient Greece, no specific ceremony was required for the creation of a marriage – only mutual agreement and the fact that the couple must regard each other as husband and wife accordingly. Men usually married when they were in their 20s and women in the teens. This made sense for the Greeks because men were generally done with military service or financially settled or established by their late 20s, and marrying a teenage girl ensured ample time for her to bear children, as life expectancies were significantly lower. Time was an important factor in Greek marriage. Inheritance was more important than feelings, and a woman whose father dies without male heirs could be forced to marry her nearest male relative-even if she had to divorce her husband first.<sup>16</sup>

The Ancient Roman Society had several types of marriages. The traditional (conventional) form called 'conventio in manum' required a ceremony with witnesses and was also dissolved with a ceremony.<sup>17</sup> In this type of marriage, a woman lost her family rights of inheritance of her old family and gained them with her new one. She now was

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<sup>8</sup>Gerstmann, Evan. Same-sex marriage and the constitution PP.22 (Cambridge University press 2004)

<sup>9</sup>E Leach, 'Polyandry, inheritance and the definition of marriage'. *Man* 55(12):183 Dec. 1955

<sup>10</sup>Ibid

<sup>11</sup>The Holy Bible. Book of Judges 4:7

<sup>12</sup>Ibid

<sup>13</sup>Holy Bible. Book of Exodus 21:11

<sup>14</sup>SIsidore et al, Husband and wife' Jewish Encyclopedia, New York: funk and Wagnall's Company. 1901-1906

<sup>15</sup>'Jealousy, ordeal of' Encyclopedia Biblica 1903

<sup>16</sup>'Magnus Hirschfield Archive of Sexology' hu-berlin.de.

<sup>17</sup>www.Romanempire.net-roman-empire.net

subject to the authority of her husband. There was the free marriage known as ‘sine manum’. In this arrangement, the wife remained a member of her original family; she stayed under the authority of her father, kept her family rights of inheritance with her family, and did not gain any with her new family<sup>18</sup>. The minimum age of marriage for girls was 12years<sup>19</sup>. In ancient Germanic tribes, the bride and groom were roughly the same age and generally older than their Roman counterparts. The youths partake late of the pleasures of love, and hence pass the age of puberty unexhausted, nor are virgins hurried into marriage. The same maturity, the same full growth is required, the sexes write equally matched and robust, and the children inherit the vigour of their parents.<sup>20</sup>

From early Christian era, (30-325CE) marriage was thought of as primarily a private matter, with no uniform religious or other ceremony required.<sup>21</sup> However, Bishop Ignatius of Antioch writing around 110 to Bishop Polycarp of Smyrna exhorts ‘it becomes both men and women who marry, to form their union with the approval of the bishop that their marriage may be according to God, and not after their own lust.’<sup>22</sup>

The mythological origin of Chinese marriage is a story about Nuwa and Fu Xi, who invented proper marriage procedures after becoming married. In ancient Chinese society, people of the same surname were supposed to consult with their family trees prior to marriage, to reduce the potential risk of unintentional incest. Marrying one’s maternal relatives was generally not thought of as incest. Families sometimes intermarried from one generation to another. Over time, Chinese people become more geographically mobile. Individuals remained members of their biological families. When a couple died, the husband and wife were buried separately in their respective clans’ graveyard. In a maternal marriage a male would become a son-in-law, who lived in the wife’s home. The new marriage law of 1950 changed Chinese marriage traditions, enforcing monopoly, equality of men and women, and choice in marriage, arranged marriages were the most common type of marriage in China until then.<sup>23</sup> Starting October 2003, it became legal to divorce or marry without authorization from the couple’s work units.<sup>24</sup>

### 3. Types of Marriages

Generally speaking, marriages are classified according to the number of legal spouses an individual has. The suffix ‘-gamy’, refers specifically to the number of spouses, as in bi-gamy (two spouses-generally illegal in most nations) and poly-gamy (more than one spouse, or multiple spouses). The acceptability or otherwise of polygamy as a form of marriage varies from society to society, and from country to country. In some countries, both monogamy and polygamy are legally acceptable, depending on which part of the country is being considered. On the whole, economic realities influence the practice of polygamy. Thus, the social tolerance of polygamy may be different from the practice, since it more often than not, requires wealth to establish multiple households for multiple wives.

#### Monogamy

Monogamy is a form of marriage in which an individual has only one spouse at any given point in time (i.e during their life time or at any one time). Anthropologist Jack Goody’s comparative study of marriage around the world, utilizing the Ethnographic Atlas found a strong correlation between intensive plough agriculture, dowry and monogamy. This pattern was found in a broad swath of Eurasian societies from Japan to Ireland. The majority of sub-Saharan African societies that practice extensive hoe agriculture, in contrast, show a correlation between ‘bride Price’ and polygamy.<sup>25</sup> A further study drawing on the Ethnographic Atlas showed a statistical correlation between increasing size of the society, the belief in ‘high gods’ to support human morality, and monogamy.<sup>26</sup>

#### Serial Monogamy

The novel, emergent, Social culture of serial monogamy, has been responsible for the evolution of a hitherto in known type of extended family system, and novel family relations. Societies or governments that support

<sup>18</sup>Treggiari, Susan. Roman marriage: Isusti Coniuges from the Time of Cicero to the Time of Ulpian. Clarendon press P.39. (1993).

<sup>19</sup>Tacitus (By Commentator Edward Brooks).The Germany and the Agricola of Tacitus. Project Gutenberg.(2013) footnotes 121-122.

<sup>20</sup>D Herlihy, Medieval Households. Harvard

<sup>21</sup>‘St Ignatius of Antioch to Polycarp (Roberts-Donaldson translation)’. Earlychristianwritings.com. 2 February 2006

<sup>22</sup>Personal Regime. Those terrible Middle Ages: debunking the myths. San Francisco: Ignatius press 2000. P.102. ISBN 978-0-89870-78106.

<sup>23</sup>R Spencer, ‘China relaxes laws on love and marriage’ the daily Telegraph (London) 21 August 2003.

<sup>24</sup> Spencer (21 August 2003) ‘China relaxes laws on love and marriage’ The daily Telegraph (London)

<sup>25</sup>J Goody, (1976). Production and Reproduction: A Comparative study of the Domestic Domain. Cambridge: Cambridge University press P.17

<sup>26</sup>FL Roes, (1992) ‘The size of societies, Monogamy, and belief in High Gods supporting Human Morality’. *Tydschriftvoorsocialewetenschappen* 37(1):53-8

monogamy do not support them on a basis of permanency, ie monogamous marriage is not a once-in-a-life-time affair. Such governments and societies also allow easy divorce. In a number of western countries, divorce cases approach 50%. Those who remarry do so on average three times. Divorce and remarriage can thus result in 'serial monogamy' ie multiple marriages but only one legal spouse at a time. This can be interpreted as a form of plural mating, as are those societies dominated by female-headed families, where there is a frequent rotation of unmarried partners.<sup>27</sup> Serial monogamy creates a new kind of relatives, the 'ex-'. The ex-wife for example remains an active part of her 'ex-husbands' life, as they may be tied together by transfers of resources, (alimony, child support) or shared child custody. Serial monogamy creates a unique type of 'extended family' – a number of households tied together in this way, including mobile children (possible exs may include an ex-wife, an ex-brother-in-law, ex-sister-in-law, ex-mother-in-law, but not an ex child. According to Simpson, these 'unclear families' do not fit the mould of the monogamous nuclear family. As a series of connected households, they come to resemble the polygamous model of separate households, maintained by mothers with children, tied by a male to whom they are married or divorced.<sup>28</sup>

### **Polygamy**

Polygamy is a marriage which includes more than two partners.<sup>29</sup> When a man is married to more than one wife, at a time, the relationship is called polygyny, and there is no marriage bond between the wives. On the other hand, when a woman is married to more than one husband at a time, it is called polyandry, and there is no marriage bond between the husbands. If a marriage includes multiple husbands and wives, it can be called group marriage.<sup>30</sup> A molecular genetic study of global human genetic diversity indicates that sexual polygyny was typical of human reproductive patterns until the shift to sedentary farming communities approximately 10,000 to 5000 years ago in Europe and Asia and more recently in Africa and the Americas.<sup>31</sup> A recent research revealed that absence of the plough was the only predictor of polygamy, though other factors such as high male mortality in warfare (in non state societies) and pathogen stress (in state societies) had some impact.<sup>32</sup> Societies show variable acceptance of polygamy as a cultural ideal and practice. According to the Ethnographic Atlas, out of 1,231 societies noted, 186 were monogamous, 453 had occasional polygyny, 588 had more frequent polygyny, and 4 had polyandry.<sup>33</sup> It is noteworthy that in the research by Miriam Zeiten, social tolerance for polygamy is different from the practice of polygamy, since it requires wealth to establish multiple households for multiple wives. The actual practice of polygamy in a tolerant society may actually be low, with majority of aspirant polygamists practising monogamous marriage (purely due to economic reasons)<sup>34</sup>. Zeiten further declares that western perceptions of African society and marriage patterns are biased by contradictory concerns of nostalgia for traditional African culture, versus critique of polygamy as oppressive to women or detrimental to development.<sup>35</sup>

### **4. Types of Marriages in Certain African Societies**

Right from the dawn of creation, the family has remained the foundation of human life, and the cradle of human development. It has therefore continued to provide the environment for the attainment of lasting life experiences.<sup>36</sup> As human organisms, we spend our total life in the family. Indeed one wonders whether human species could have survived without the continuing legacies of the family. This explains why the family remains the most significant and enduring human group, providing enduring social and emotional relationship and security supports to its members. What is done in life is to build on what the family taught one in years past. In contemporary times, various stakeholders (parents, teachers, social scientists and policy makers) focus on the family as an important institution for the development of the individual, society and nation at large. In all respects, the role of the

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<sup>27</sup>R Fox, (1997) *Reproduction and Succession: Studies in Anthropology, Law and Society*. New Brunswick, N.J. Transaction Publishers P.34.

<sup>28</sup>B Simpson, (1998) *changing families: An ethnographic Approach to Divorce and Separation*. Oxford: Berg.

<sup>29</sup>MK Zeiten, (2008). *Polygamy: a Cross-cultural analysis*, berg P.3 ISBN 1-84520-220-1.

<sup>30</sup> Ibid

<sup>31</sup>I Dupanloup, I Pereira, G Bertorellet *al*, (2003) 'A recent shift from polygyny to monogamy in humans is suggested by the analysis of worldwide y-chromosome diversity'. *J. MolEvol.* 57(1): 85-97.

<sup>32</sup>C Ember, (2011) 'what we know and what we don't know about variation in school organization: Melvin Ember's approach to the study of kinship' *cross-cultural research* 45 (1) 27-30.

<sup>33</sup> See attached.

<sup>34</sup>Zeiten(2008) *Polygamy: A cross-cultural Analysis*. Oxford: Berg. P.5 ISBN 1547886175

<sup>35</sup> Ibid

<sup>36</sup>A Nweze, *The Nigerian Family in health and illness: Issues of National development*. Inaugural lecture delivered at the University of Jos. 2004.

family cannot be equated or substituted with that of any other human institution in advancing the course of humanity.<sup>37</sup> All types of marriages in the Africa society are mainly geared towards the creation of solid, cohesive, economically viable, and indissoluble family.

**Polygamous Marriage:** The polygamous family type. In this type, the system allows for as many wives and as many children as possible that a man can afford. Most of the time, if the first wife and/or the second wife cannot produce ‘the fruits of the womb’; the man is allowed to marry more wives in order to have children. This is without prejudice to, or divorcing his, other non child-producing wife or wives. Under subsistence, and agrarian traditional African settings though, wealth, social and economic affluence are measured by the number of wives and therefore logically the number of children a man has. Polygamous practice family system in Nigeria includes the typical Muslim family set-up, whereby a Muslim man is allowed to marry up to four wives at any given point in time, and raise as many children as possible, with all living together in one homestead.<sup>38</sup>

**Monogamous Marriage:** Here, a man is married to one wife at any given point in time.

**Levirate Marriage:** This is a situation where a man marries the widow of his late brother and raises children in the name of the late brother.

**Inheritance Marriage:** Under inheritance marriage, a male kinsman such as the son of the deceased, an immediate brother or relative marries his fathers or brothers widow, and becomes her legal husband, and the children from the marriage belong, to him. As the name indicates, this practice aims at protecting the family blood as well as not all the wealth of the family to pass to unwanted hands.<sup>39</sup>

**Ghost marriage:** This is a situation where the young brother of a dead bachelor is expected to marry and raise children in the name of the deceased brother. In effect, the woman is socially married to a dead person whom she probably never met, and the children belong to a person they never knew, and would never know.<sup>40</sup>

**Surrogate Marriage:** In this case, a man marries the sister of his late wife. The arrangement is perhaps that the children of the late wife and those of the new one share blood relationship and as such, there would be reduction of rancor and conflict.<sup>41</sup>

## 5. Same Sex Marriage in the African Traditional Setup

In the African context, children are the first and foremost reason why marriages are contracted, and the unacceptability of childlessness drives many African societies into devising all forms of marriages including same sex marriages. In this context, same sex marriages are contracted strictly between women and women and have no connotations of sexual gratification. It unequivocally distinguishes and distances itself from same sex sexual relationship or lesbianism. A childless couple, in the contemporary African setting and particularly in certain Nigerian communities is as good as a condemned and indeed a cursed couple. Children are considered not only a proof of divine blessing on a couple, but also a divine acceptance of the marriage. No wonder a childless couple is often a subject of not only scorn and ridicule, but more often than not, of outright condemnation and rejection.<sup>42</sup> Most importantly, in a society devoid of any articulate and functional social security system, children are the security and source of support for their parents in old age. It is no wonder then, that in many an African society, if the solution to childlessness in a family lies in same sex woman-to-woman marriages, then the option is readily embraced.

Thus, even though one of the contentious issues in the debate over homosexuality and same sex marriage is whether a marriage between persons of the same gender is totally alien to African culture and tradition, it would appear that the phenomenon is not alien. What is alien is the ‘mens rea’ behind the act. Marriage ordinarily in Igbo culture is between a man and a woman, but there are circumstances when a marriage between a woman and a woman is permissible. It is a cultural norm. In a situation where a woman has no son or no child, if her husband dies, it is culturally allowed for her to ‘marry’ a ‘wife’. In this case she becomes the ‘the husband’. Like in every case of marriage, this woman goes out, enquires and gets a wife of her choice. She pays her dowry and fulfils other

<sup>37</sup> Ibid

<sup>38</sup> Ibid

<sup>39</sup> Ibid

<sup>40</sup> Ibid

<sup>41</sup> Ibid

<sup>42</sup> See generally I K.E. Oraegbunam & B.S.Udezo, ‘The Logic and Magic of Life-Affirmation in Africa: Implications for the Cult and Role of Traditional Medicine’. In J.O. Oguejiofor & T. Wendl (Eds.), *Exploring the Occult and Paranormal in West Africa*, LIT VERLAG GmBH & Co. KG Wien, ZWEIGNiederlassung Zurich, Germany, 2012, pp. 140-157.

traditional rites as it is done when a man is marrying a wife. To have children, both women will agree to allow a man of their choice from the same village or neighbouring town to sleep with the wife. The children born by the wife bear the family name of the 'woman-husband', not that of the man responsible for the pregnancy. Culturally speaking, even though it is regarded as immoral, and infact a taboo, for a married man to sleep with or father children from, another woman, in this case, the same culture exonerates the man. There are many such homes, where woman-husbands are living happily with their woman-wives. But it must be borne in mind that, though there are many of such marriages or families such unconventional homes are in the minority, but they exist out of necessity. They are part of local tradition and culture and indeed part of the native law and custom. They are not imports from western culture, and have nothing to do with homosexuality or lesbianism. Their existence has in no way undermined social cohesions, public order, morality or family values. On the contrary it goes to cement, for example, the Igbo culture and philosophy of Amaefule 'Ahmeffule' or 'Ahameffule' (may my lineage never go extinct, may my family name never go extinct). This is of tremendous socio-cultural and indeed legal significance, since custom after all is one of the veritable sources of law. The question of passing the so called repugnancy is arguable. Same sex woman to woman marriage in Igbo land for example, in this case is in tandem with 'volkgeist' in that it is the general or common consciousness or the popular spirit of the people. It must be remembered that Savigny believed that law is the product of the general consciousness of the people, and a manifestation of their spirit.

This author conducted extensive interviews with traditional rulers, spiritual leaders, elders and village heads in various Igbo communities, who helped to elucidate circumstances in course of which women-to-women same sex marriage is acceptable, and legal in the communities, and in no way are synonymous with lesbianism. Such situations include:

1. Where there are only female children in the family, one of the females (women) could marry another woman, who is expected to give birth to a male child or male children for the family in order to continue the family lineage.
2. In certain circumstances, the elderly wife of the elderly man either has no children for the man, or has only female children, the elderly wife often would want to marry a girl for the man, who most probably is already sexually inactive, but the young woman is expected to give birth to a male child or children for the family.
3. An old childless widow who is economically viable could often marry a young woman who would give birth to children for the widow's deceased husband.
4. In a family that once had male children, but the male children are dead, as happened in some parts of Biafra during the Biafran war, the surviving woman would marry a young girl who it is hoped would produce male children, to continue the family's lineage.
5. In a family where there is a lone male child, who gets married, but dies after marriage without a child, and his wife though still young, is found incapable of having children, the mother of the deceased young man could marry a wife for the daughter in law, with the hope that the wife so married to the daughter in law would produce male children for the family in replacement of the lost son.
6. In the circumstances where it has been established that a young wife is incapable of having children, even though the couple are young, it is permitted for the young wife to marry for her husband, with the expectation that 'her' new bride would produce children for the family.
7. Where an old widow loses her only son who was unmarried, the widow is often encouraged to marry a young woman who would be expected to produce children, including sons for the family.
8. In many Igbo communities, female children do not inherit their father's property, and in the absence of a son, not only is the family property lost to another family but the family lineage and the family name are also lost. In order to avert such a 'tragedy', a daughter of such a family often stays back in the family without being given out in marriage, and subsequently marries another woman who will be expected to produce sons and the sons would inherit the family property, and continue the family lineage. As soon as the desired sons are produced, the family daughter would be at liberty to marry if she so desires.

## **6. Conclusion**

An indepth analysis of female-to-female same sex marriage arrangements in such African societies as the Igbo society would elucidate demographic and anthropocentric considerations as the 'raison-detre' for such unusual families. Sexual relationships and/or gratification between such unusual couples are not only nonexistent but a taboo. Female-to-female same sex marriages in such societies, paradoxical as it may sound, are purely for the purpose of procreation. Such marriages are for the perpetuation of, or guaranteeing the continued existence of the family name in consonance with the Igbo philosophy of 'Ahameffule', or 'Ahameffuna' (may my name never be lost

or forgotten). 'Uzo m echina', 'Uzomechina' or 'Amaefuna' (may my lineage never be extinct or defunct) or to ensure that the family property and inheritance do not fall into the wrong or strange hands (Nke m efula/Nkemefuna).<sup>43</sup> Sexual inclination or preferences as obtained in certain western cultures, definitely are not in consideration here. In consonance with the reasoning of such great legal philosophers as Fredrich Karl Von Savigny, the law upholding female-to-female same sex marriages among such a people as the Igbo's, is not the result of an arbitrary act of a legislator, but rather developed as a response to the impersonal powers to be found in the people's national spirit. This 'Volksgeist', a unique, ultimate and often mystical reality was, as Savigny believed, linked to the biological heritage of the people. The implication is that there is a spirit of the people, called Volksgeist, which amounts to a silent but long standing social value and customs that reflect themselves in a nation's laws, such is the case with some Igbo communities.<sup>44</sup>

Without fear of being branded integrationist it must be understood that in circumstances such as these i.e female-to-female same sex marriage in Igbo land, the temptation to unify formal law with the social fabric and context in which it originated, rather than separating the two, as an abstractionist theorist is wont to do, becomes overwhelming. After all, in line with the postulates of the proponents of the Historical School of legal jurisprudence, law has no separate history of its own. Law is not even the determinant force in the search of history and social advancement. On the contrary, it is the society that equips law with its arsenal for its development. Most importantly, legal scientists like Savigny view the custom and spirit of the people as being the valid law, to the extent that laws as contained in the statute books, more often than not, do not reflect the custom of the people. This situation applies to a very good number of laws handed over to many parts of Nigeria by the colonial masters. Consequently even though such laws exist in the statute book, they are either hugely ignored or observed in the breach, such laws include many of the marriage laws and family laws in Nigeria. According to Savigny, such laws are indeed invalid, since they are not in accord with how the people behave, live and act. A nation and its state are a single organism which are born, mature, decline and die at the same time. Law is a vital part of this organism; she grows with the growth, strengthens with the strength of the people and finally dies away as the nation loses its nationality.<sup>45</sup> The above being the case the Same Sex Marriage (Prohibition) Act 2013 of Nigeria incontrovertibly begs for a review, in order to reflect the anthropocentric etiology of certain marriage peculiarities prevalent in some Nigeria communities. Unless this is done, the enforcement, as far as these communities are concerned, is an exercise in futility.

<sup>43</sup> See I.K.E. Oraegbunam, 'Hermeneutics of Humanism in African Traditional Worldview' in I. Odimegwu, M. F. Asiegbu, & M. O. Izunwa (eds), *Discourses in African Philosophy: Celebrating the Genius of J. Obi Oguejiofor*, FAB Education Books, Awka, Nigeria, 2015, pp.387-402.

<sup>44</sup>I. K.E. Oraegbunam, 'Humanism and the Law: Towards African Renaissance', *Ogirisi: A New Journal of African Studies*, Vol. 9, 2012, pp.245-268. Also available at <http://dx.doi.org/10.4314/og.v9i1.13>. Available also at [www.ajol.info/index.php/og/article/download/84688/74677](http://www.ajol.info/index.php/og/article/download/84688/74677).

<sup>45</sup>I G Igna, *Basic Schools in Jurisprudence (the Africa perspective)* Mono Expression ltd. 1997. ISBN 98-33452-1-x