

Sociological Analysis of the Changing Patterns of Inheritance and Succession in Traditional African Society

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Abstract

This paper examines the changing patterns of inheritance and succession in traditional African societies. The paper shows that patrilineal and matrilineal principles were vital issues in the discussion of inheritance and succession in Africa prior to colonialism. It further argued that colonial laws and doctrines obfuscate inheritance and succession rights in Africa because of its often contradictory provisions and this have implication for poverty, gender inequality and intra-familial conflicts. The paper also shows how this colonial contradiction is further compounded by rapid urbanisation and population growth. Conclusively, the paper shows how these patterns of changes are likely to lead to an erosion of the inheritable base of land assets in Africa and also put specific groups particularly in vulnerable positions.

Keywords: Inheritance, succession, change, tradition, society.

1. Introduction

This paper examines the changing patterns of inheritance and succession in traditional African societies. The paper begins with the position that in African societies, who passes what and to whom communicates message about relative worth not just of property, but of people and of the bonds between them (Shipton, 2007). The premium placed on inheritance and succession in traditional African societies was long pointed out by Marcel Mauss in his classic work *"The Gift"*, in which he showed the linkages between the giving of things from one person to another and how such communicates an act of both personal and socio-political nature. Though, the material contents of the gifts however have often been subsumed in most theoretical discussions in favour of interpreting the meaning of the action of giving. Thus, discussions on succession and inheritance practices among African societies have until somewhat recently fallen within this analytical rubric.

Anthropologists and sociologists of the early twentieth century who had attempted an account of the social organization and kinship systems in Africa also drew some attention to the traditional African inheritance and succession systems (for example, studies by Radcliffe-Brown and Forde in 1953; Fortes in 1949; Evans-Pritchard in 1940 and Kirchhoff in 1932). Ethnographic studies following this tradition have shown how property ownership and transfers have been significantly correlated with systems and structures of kinship among different African societies (Hakansson, 1989; Shipton, 1984; Lloyd 1966; Gray and Gulliver, 1964). The bulk of these works were primarily descriptive of the norms meant to govern, and the emergent patterns, of how households; properties were distributed among family members at moments of marriages, death and births. Although not specifically focused on succession and inheritance systems, but on the entire social organization and kinship systems in detail contain much data about inheritance and succession rules, norms and practices. This paper therefore focuses on the traditional inheritance and succession systems in African societies; the changing patterns of inheritance and succession and some of the factors accounting for these changes.

2. Traditional Inheritance and Succession Systems in African Societies

Patrilineal and matrilineal principles are vital issues in the discussion of inheritance and succession particularly as it affect traditional African societies. This is so as inheritance and succession in African societies have corresponded with patrilineal and matrilineal descent ideologies. For example in patrilineal societies, children are primarily considered members of their father's kin group and inherit the father's property at his death, whereas in matrilineal cultures kin membership is traced through the uterine line, so that children belong to their mother's kinship (matrikin) and not to their father's, thus, a man's heirs are his sister's and not his.

Marriage and residence rules also figure prominently in determining kinship claims, including succession and inheritance rights. Matrilineal societies for example are characterized by uxorilocal residence in which a husband moves to the wife's village. Children in matrilineal societies remain in their mother's village even when their mother dies, because they belong to the mother's matrilineal kin. Whereas, rules of residence in patrilineal societies are virilocal - meaning that upon marriage a woman moves to live in her husband's village. A legitimate marriage in many African patrilineal societies requires payment of bride wealth from a husband and his family to the wife's family (Shipton, 2007; Hakansson, 1994), if bridewealth has been paid, it was traditionally expected that if the husband dies his wife remain in her late husband's village and in a number of

such societies she is 'inherited' or 'remarried' to one of her husband's brothers and she is expected to raise her children among the deceased man's kin. In some societies, if the deceased widow does not want to be inherited, she is expected to return the bridewealth that was paid for her hand in marriage to the family of her late husband – it upon this that she is given a free hand to leave the family and to also remarry. If no bride wealth was paid upon marriage, a widowed woman was often expected to return back to her parents but leave the children with the late husband's kin.

Of course, many expectations to these general rules or patterns have been recorded. For example, while the northern Yoruba of Nigeria have experienced agnatic descent groups, it was also recorded that a son might also inherit farmland from his mother's descent group. However, in doing so, this son would be expected to take up residence and membership to his father's descent group. Among the southern Yoruba of Nigeria, however, it was noted that men might farm different plots of land acquired through different descent groups. In this way, a man could exploit claims to membership both his father's and mother's kin groups as an economic strategy. The only means to claiming simultaneous membership of many descent groups is for the individuals to fulfil membership obligations to the various groups he/she intends to lay claims (e.g. time and money). This kind of system is significantly influenced by the availability or scarcity of resources mainly land. For example, Shipton (1984) showed the importance associated with the scarcity and availability of land in the study of environments and land inheritance systems among the Sukuma-Nyamwezi of Northern and western Tanzania with that of the Luo of Western Kenya. In this study, Shipton (1984) found that the Sukuma-Nyamwezi lived in an environment abundant in cultivatable land and rights to cultivate this land were permissive allowing a person to move to a new area to take up cultivation of land according to his own needs and his family's relative needs. This permissive land tenure system was credited in Shipton's analysis for allowing for the primogeniture (single-male heir) inheritance system since other sons/ brothers could easily move to take up other lands for cultivation. In contrast, the Kenyan Luo experienced increasing scarcity of land and inheritance rights and this became strictly linked to claims of ancestry. The author subsequently concluded that it was this competing claim for limited land among growing numbers of the descent groups that resulted in increasing rates of disputed litigious action among members.

Other significant observation from early ethnographic and sociological studies on succession and inheritance system in Africa is the link between family developmental cycle and intergenerational transfer of property which was commonly inter-vivos. These transfers were often instigated at the time of marriages and mostly cattle were used for bride wealth. Through this means parents strategically keep cattle from a son so that he could not marry and start his own household (Cheater, 1983; Hakansson, 1989). In this way, the parent retained the labour of their sons even into adulthood and hence the parents' household benefited through further capital accumulation. Further complicating decisions on father-to-son transfers of cattle was often the father's recognition that a married resident son has increased traditional claims on the use of the land for all forms of subsistence. As Cheater showed in her study among rural farmers in Zimbabwe, fathers may not transfer cattle to sons for their bridewealth until the father's own physical capacity is perceived as diminishing and he is ready to concede larger portions of the farmland to others (e.g. his sons and their households). Of recent however, prominent changes seem evident with succession and inheritance systems in Africa, but the defining features of kinship systems, including principles of descent and rules of marriage and residence, as well as the availability of resources and economic livelihood strategies are key insights still applicable to contemporary issues of succession and inheritance rules and practices to which we now turn.

3. Changing Patterns of Inheritance and Succession Systems in African Societies

The 'traditional' or de jure rules and norms of succession and inheritance systems in African societies have certainly not always been realised in practice. Not only have the rules that are officially meant to govern succession and inheritance practices changed overtime, but in many African societies legal pluralism and political ascendancy has also influenced succession and inheritance outcomes that are specific to individual and group cases or circumstances. As such, it is important to recognize the dynamic nature of inheritance systems, as well as the conditionality of inheritance determinations on broader political, economic and socio-cultural (including religious) tendency.

The significance of political history, including the interventions of colonial administrations, is demonstrated in studies that focus on the laws that are meant to govern succession and inheritance systems in African societies. Many African countries today are legally pluralist with different laws applying to different populations or appealed to at different stages of dispute resolution. State or common laws and customary laws, as well as in many cases religious (Sharia laws in Nigeria, for example, or Hindu laws in Kenya), are simultaneously active in many African societies and often in contradictory ways-thereby leaving many opportunities for innovation in outcomes of inheritance and succession disputes.

Several legal historians and analysts have provided accounts of how inheritance and succession laws have developed from colonialism to the present and how resultant inheritance systems theoretically and practically operate in different African societies (Emery, 2005; Mutangadura 2004; Kameri-Mbote, 2002). Kameri-Mbote's (2002) historical analysis of inheritance laws in East Africa, for instance, outlines how different laws were developed for different populations in the same country as well as how different laws meant to govern property ownership, marriage, succession and inheritance often conflicted thereby leaving much interpretive and negotiating space for determining inheritance and succession outcomes. For example, in Kenya, the British colonial government asserted in the Native Courts Regulations of 1898 that an African who had converted to Christianity was deemed to have technically abandoned African customary law and was therefore not subject to it and was instead subject to English laws of inheritance. Yet in 1904, the colonial government introduced the Native Christian Marriage Ordinance which stated that all Africans were to be governed by African succession law.

Therefore, the different customary laws of different ethnic communities were meant to govern inheritance among African Kenyans. Muslims in Kenya, however, including Africans who converted to Islam, were recognized as having succession laws based on the Quran. Several different laws were introduced overtime in Kenya to provide separate laws to govern marriages and inheritance for Hindus in the country. This legally pluralistic and diffuse model created confusion in settling succession and inheritance cases since it often was not clear which law should apply (Kameri-Mbote, 2002). This lack of clarity and inconsistency continued into the present day Kenya and this is the case with many other African societies.

Furthermore, pre-colonial customary practices were often dominated by male elders and property was transferred among male family members. These systems did seem to guarantee women land use rights but not the rights to own land in introducing private property rights, colonial administrations implemented a land titling system that recognized only men's title deeds. All this weakened women's economic capacity as compare to their men counterparts and even when they are economically productive, men control their resources (Gedzi, 2009). In many African societies, men assumed the maintenance and provides for the wives and children economically. This may explain why many patriarchal societies saw the investment of inheritance rights on men than women and further give men greater access and control over land and relegated women to dependency. Hence when a man is not physically and economically strong, he is described as being a woman. These socio-cultural practices couple with the contradiction introduced by colonial laws compounded the problems faced by women in laying claims to their husband's property. Hence, women's ability to lay claim to properties in African societies is limited or in most cases non-existent (Rünger, 2006).

Accordingly, women's rights to own land received no legal recognition as a result of colonial contradictory laws in Africa and the fact that women were seen as not economically productive. Moreover, with the commercialization of land, women's security of land tenure was further put at risk as individual men could sell land without clan or family approval. Additionally, men as land title holders had sole rights to agricultural surplus, despite the fact that in many cases this surplus would be due to women's labour. Consequent to this is the belief that women are also the property of men. Furthermore, the unequal status of women in marriage further puts them at a disadvantaged position because it limits their ability and rights to inherit property, especially upon separation, divorce or husband's death.

Customary and statutory property ownership, marriage and inheritance laws co-exist in many African countries today, including Kenya, Tanzania, Uganda, Burkina Faso, Nigeria, Lesotho, Zambia and South Africa. Most analysts agree that this coexistence tends to obfuscate succession and inheritance rights because they often contain contradictory provisions. For example, in some countries, the provisions of customary laws indicate that a deceased man's wife, children, and property should be inherited by one of his brothers, while the provisions of statutory laws on the other hand indicate that a deceased man's wife and children should inherit his property: "though the provisions of statutory law are supposed to prevail when the provisions of customary law and statutory law are contradictory, the reality is that statutory law in most circumstances are poorly implemented and possibly completely ignored (Rose, 2006:8)

It is now firmly established among scholars that customary law cannot be regarded as an unchanging timeless entity (Tsikata, 2004). Decades of revisionist analysis of African history have made evidence that customary laws were "the joint creation of colonial officials and African leaders... a reflection of the (then) contemporary situation" (Peters, 2007:3). In the present analysis of customary laws is often rooted in social and political relationships.

It has been observed by various researchers that inheritance decisions are commonly based less on specific customs (or statutory laws) than on people's perceptions of what is right (Rose, 2006; Strickland, 2004). While it is quite widely acknowledged that local customary law adjudication is often male dominated in contemporary African societies, in some cases women may prefer to take their inheritance claims to this local adjudication of uncodified, customary law because it is more flexible and takes extra-legal matters into consideration whereas

codified laws can be too restrictive (Kameri-Mbote, 2002). For example a recent study in both patrilineal and matrilineal societies in Malawi found that a variety of land transfer and inheritance practices occurred but they did not adhere to the 'ideal constructs' of matrilineal or patrilineal societal traditions (Takane, 2007). Consequently, the study showed that several widows and or divorced women who were household heads in patrilineal societies gained access to land through transfers from women's father, mother, maternal uncle, paternal uncle or brother. In yet another study in Burkina Faso, Cavin (1998) found that there are often disputes and conflicts between different laws pertaining inheritance claims and new procedures that combine tradition and modern ideas are developed.

Beyond the influence of legal systems in determining inheritance and succession *de jure* and *de facto* rules and norms have also changed in response to conditions of urbanisation, new economic and educational opportunities, religious transformations, privatisation of land tenure, population pressure and the increasing prevalence of the nuclear family (Fafchamps and Quisumbing, 2008; LaFerrara, 2007; Platteau and Baland, 2000). These are theorised as reflecting changes in the social, political and economic roles of different categories of people in their societies. For example, Moritz (2012) theorises that the process of Islamic renewal experienced among Fulbe populations in Northern Cameroon has played a critical role in the individualization of livestock ownership with implications for inheritance and other transfers of property (e.g. dowry). Furthermore, Islamic legal traditions, including inheritance laws, more clearly define individual rights rather than Fulbe traditions which prioritised the continuity and integrity of the family herds. Some of this change is attributed to the increased costs of livestock production which has resulted in increasing individualization and concentration of livestock ownership with fewer transfers of property rights. This analysis reflects the many different social, cultural, religious and economic factors that contribute to the changes in succession and inheritance in African societies.

Gender inequalities in rights to assets in different African societies, and the links between women's lack of equal property rights and women's (and in some cases, women's children's) poverty is another important issue to consider. This is so even though inheritance and succession practices are not directly addressed in much of this gendered analysis of property and poverty, there are clear linkages between property rights and questions of inclusions in, and exclusion from, property distribution through inheritance and succession systems. Moreover, these analyses of the poverty consequences of lack of assets give more support to the case for focusing poverty alleviation research and interventions on inheritance rules and practices. Some contributions also highlight the causal links between discriminatory property and inheritance rights and poverty trajectories among African women and their children. While this paper does not intend to present a synopsis of gender inequality but to show how this changes in inheritance and succession in Africa have relegated women to the position of dependency.

4. Factors Associated with the Changing Pattern of Inheritance and Succession Practices in Africa

Different factors account for the changing patterns of inheritance and succession in Africa but prominent amongst them as evident in anthropological and sociological literature are colonialism, individualism, urbanisation and increased interest in non-agricultural economic opportunities. The majority of this anthropological and sociological literature basically pointed to the changes in land and livestock inheritance, though their analyses were vital to changes in succession and inheritance in general. For example, LaFerrara's (2007) study of the Akans in Ghana found that property transfer was on *inter-vivos* basis. Using Ghana's living standard survey of 1987-1989, LaFerrara's (2007) showed how in matrilineal descent systems a man's heir is not his own child but rather his sister's son. As such, it is expected that land remain in the matrikin as a result of men bequeathing to their sister's sons. However, while the default allocation is for the entire land endowment to be bequeathed to a man's nephew at the time of the man's death, a father can make donations to his own children during his lifetime and can also establish with a written will that part of his property should be inherited by his own children (both provisions are subject to approval on behalf of the matrikin). LaFerrara further indicated that the right to transfer land to one's own children maybe an adaptation to encourage the investment of the labour of a man's wife and children in his land holdings.

This model predicts that children will send transfers to their parents to induce the latter to donate the maximum socially acceptable amount of land to them. For this reason, the Akans are more likely to receive transfers from their children compared to patrilineal ethnic groups in Ghana and this is reinforced by the extent to which customary matrilineal norms are observed (i.e. a nephew resides in the man's household). As such, the findings indicate that Akan children take strategic action in making monetary transfer to their parents in response to the threat of disinheritance as governed by rules governing a kinship system of matrilineal descent. On the basis of this, it can be concluded that the matrilineal form of social organization among the Akans have important consequences for the claims that family members can make on each other's time and property, and hence affects individual choices regarding who to send transfers to in a strategic manner.

Moritz (2012) on the other hand described traditional and current practices in livestock ownership and inheritance within and between households of the Fulbe pastoralists in Northern Cameroon. Based on an ethnographic account of three Fulbe villages, in Northern Cameroon, Moritz found that individual livestock ownership and rights were undergoing changes from the traditional norm of households' livestock rights. Moritz noted that in the past, family herds of the Fulbe reflected social relationships between family members but today it is a different ball-game as a result of increasing individualization of livestock ownership and fewer transfers of property rights, resulting in the concentration of livestock ownership and control with the household head. Moritz attributed this concentration of livestock property ownership with the household head to two main causes: the rising costs in the peri-urban area of livestock production cost and the effect of Islamic renewal.

Consequently, in Moritz (2012) analysis, the important role of the Islamic renewal in the individualization of livestock ownership and its implication for inheritance seem crucial. For instance, Islamic inheritance codes prescribe that property must be directly divided among the direct survivors, children, spouse(s), and parents, and that sons inherit twice as much as daughters, while spouses inherit one fourth or one eighth (depending on the number and type of heirs). Peri-urban Fulbe pastoralists in Northern Cameroon according to Moritz (2012) followed Islamic codes strictly even when this meant breaking up the family herd into non-viable parts. Analysis of how these inter vivos transfers occur or don't occur today provides insights into the status of individual's property rights and wealth. For example, in the past, the household head of the Fulbe in Northern Cameroon retained the right of disposal over all the animals in the family, including the *Sukkilaaye* (gift of heifer to children) of his children. Of recent however, children protest the sale of their *Sukkilaaye* and its offspring. In response, many peri-urban household heads no longer give their children *Sukkilaaye*. Similarly, *sadaaki*, the indirect dowry from the groom's family to the bride, which was traditionally given in form of granting ownership of cattle from the family herd to the bride (which a woman could take with her when her husband died) is also less practiced among peri-urban Fulbe. As a result, fathers-in-law prefer to give cash instead of cattle to the bride which means that the household head remain in full control over all the animals in the family herd. This practice have persisted even when women complained that the monetization of the *sadaaki* means that they have less (re)productive capital and are thus more dependent on their husbands. Moreover, women find this cash disappearing more readily than cattle.

In a related vein, Platteau and Baland (2000) in their review of the changes in inheritance and succession in sub-Saharan Africa indicated that in most part, economists have neglected nonmarket mechanisms of land allocation and have tended to conclude that the major mode of land acquisition in most African countries is inheritance. This assumption has implication for the distribution of wealth and poverty. Similarly, Platteau and Baland (2000) further argued that present day sub-Saharan Africa have experienced trends of individualization of land tenure, multiplication of non-agricultural activities, and increasing land scarcity. These authors posited that these processes were experienced by preindustrial and proto-industrial Western European countries, but with 'striking differences between the patterns of evolution in these two regions, because Africans seem to have a more systematic and deeper attachment to the equal sharing rule and strong intra-family solidarity ties continue to prevail in the lineage-based societies of Africa' (Platteau and Baland, 2000).

Furthermore, Platteau and Baland (2000), showed how the land tenure system in sub-Saharan Africa has undergone profound transformations during the last century and particularly during the last decades. For example, the authors showed how the combined pressures of population growth and increased market integration, and landholders have increasingly asserted individualized use rights to given plots including the right to resume cultivation of a specific plot after a period of fallow; the right to assign the plot to a heir or to a tenant; the right to prevent holders of group or secondary claims (e.g. the right of pastoral herders to graze their animals on crop stubble) from exercising their traditional prerogatives; and the right to dispose more freely of the land. These simultaneous processes of increasing land pressure and more intensive agricultural practices have reduced community controls over land use and allocation and corporate ownership of the lineage land has gradually given way to more individualized forms of land tenure.

Nevertheless, the fundamental principle guiding the distribution of family land in Africa is that all male children are entitled to receive more or less equal shares when the property is definitely partitioned (daughters are expected to obtain use rights over their husband's lands). While in some African countries the eldest son is customarily entitled to an additional share on account of his special duties, and in the past youngest son may have also been granted additional shares due to customs that require his caretaking of elderly parents, the authors note how equality among brothers' shares is on the rise.

5. Conclusion

Conclusively, with the rapid population growth, contradictory colonial laws which have remain unchallenged have activated the land market, and hence the more likelihood for increased unequal land distribution and for the emergence of a landless class in the countryside. This position was also held by Platteau and Baland (2000).

Consequently, these patterns of change are also likely to lead to an erosion of the inheritable base of land assets and further give rise to serious intra-family conflicts. This applies not only to land but also to other productive assets (e.g. cattle). Specific groups are increasingly vulnerable under such conditions, including women, and most notably widows, separated or divorced women, and wives in polygamous marriages, as well as return migrants, handicapped children, orphaned children, illegitimate children, children of broken marriages and children whose fathers remarry. On the basis of the foregoing, we conclude that these processes of change in the succession and inheritance practices in Africa have implications for inequality and discrimination, often practiced in more concealed or indirect manner, which put specific categories at particular risks of poverty and familial conflicts.

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