



**The interplay of structure and agency: The negotiation process of
bridewealth payment in South-East Nigeria**

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Declaration

I declare that ‘The interplay of structure and agency: The negotiation process of bridewealth payment in South-East Nigeria’ has not been previously submitted in whole or in part and will not be submitted by me for a degree at any other university.

I further declare that this is my own work in design and execution, and that all the materials relied on have been properly acknowledged.

Abstract

The payment of bridewealth is a near-universal cultural practice among the Igbos of South-East Nigeria. Bridewealth used to be a symbolic legitimator of marriage. However, its symbolism has been distorted by expensive items on marriage lists. In this context, bridewealth payment provides an excellent analytical tool for the structure-agency debate, which has, in varying degrees, engaged academic interest for centuries. Underlying this debate is the extent to which institutions determine human behaviour and its attendant power relations. While structure refers to the self-replicating, complex elements that sustain institutions, agency refers to the volitional, purpose-driven nature of human activities. In this debate, the structural-functionalist-Marxist view, symbolic interactionism, and complementarity view are prominent. From these views, this dissertation develops a needs-based approach to structure-agency interaction, arguing that a focus on the primacy of structure or agency obscures their underlying motivations. It posits that the structure-agency interaction is both the process and product of logical assessments and dialogue, which are driven by socio-economic needs. In the context of this framework, it explored one central question: In what ways do power relations play out in the negotiation process of bridewealth payment in South-East Nigeria? Using literature review, non-participant observation of bridewealth negotiations, and in-depth interviews of 47 key informants, it reveals an interdependent, complex web linking the custodians of culture with agentic tools such as wealth, religion, and education. Despite cultural inhibitions in spousal selection and bridewealth negotiation, prospective spouses have a range of creative tools for reducing exorbitant items on marriage lists, thereby deconstructing high bridewealth. These agentic tools are driven by socio-economic elements such as desire to marry, economic coercion, cohabitation, threat of extramarital pregnancy, and religious values. The study concludes that bridewealth negotiation reflects socio-economic dynamics within hybrid cultural spaces in which potential couples and their parents may navigate the powerful constraints of tradition or sustain tradition through their inaction. These socio-economic dynamics are so powerful that they produce widespread disregard for legislation limiting bridewealth amounts. The study's findings demonstrate the ineffectiveness of a top-down approach to law, the value of policy sensitivity to people's lived realities, and the importance of in-depth consultation in the formulation of legislation.

Keywords: *Structure, agency, bridewealth negotiation, needs assessment, power relations, Nigeria*

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Dedication

This thesis is heartfully dedicated to my angel baby who departed to heaven in the course of conducting this research.

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Cases

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Emeakuana vs Umeojiako (1979) ENLR 151.

Igbokwe vs. U.CH Board of management (1961) WNLR 173, 175.

Mrs Lois Chituru Ukeje and Another vs Mrs Gladys Ada Ukeje (2014) 11 NWLR (Pt. 1418) 384-414.

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Okeke vs Okoye Suit No. 0/26A/1965 (Unreported) High Court Onitsha, March 26, 1966.

Okpanum vs Okpanum (1973) 2 ECSLR 561.

Onyibor Anekwe and Another vs Mrs Maria Nweke (2014) All FWLR (Pt. 739) 1154.

Shokunbi vs. Shokunbi CCHCJ/7/76, 1913.

Udensi vs Moghoh (1976) 7 SC 1, 15-17.

Yesufu vs Okhia (1976) 6 ECSLR 276.

Abbreviations

ANLR	All Nigerian Law Report
ANOR	Another
CAP	Chapter
CCHCJ	Certified Judgments of the High Court of Lagos State
ECCLR	East Central State Law Report
ENLR	Eastern Nigerian Law Report
FWLR	All Federal Weekly Law Reports
LFN	Laws of the Federation of Nigeria
NLR	Nigerian Law Report
NO.	Number
NRF	National Research Foundation of South Africa
NWLR	Nigerian Weekly Law Report
SA	South African Law Reports
ALL SA	All South African Law Reports
SC	Judgements of the Supreme Court
WNLR	Western Nigeria Law Reports

Chapter One: Laying the groundwork

1.1 Problem background

In what ways do power relations play out in the negotiation process of bridewealth payment in South-East Nigeria? This question emerges from a longstanding academic interest in the interaction of institutions and their influence on human behaviour.¹ In a general sense, unequal power relations raise challenges for state policy makers in two ways. First, they put a strain on people's obligation to respect the rule of law, as provided in constitutional clauses on equality and other laws that purport to regulate behaviour.² Second, they reflect the interaction of normative orders and their effects on programme implementation and outcomes. For example, disdain for legislation against high bridewealth may be caused by people's preference for customary laws, or people's belief that traditional leaders are the legitimate authorities in decision-making concerning customary law. Disdain for bridewealth legislation may also be based on people's belief that it is not attuned to their customary law, cultural relations, or economic realities. Such belief reflects a need-based approach to bridewealth payment, which occurs in contexts of emotional, cultural, religious, economic, and normative interaction. Accordingly, the manner power relations play out in the context of bridewealth negotiation and payment is significant for the structure-agency interaction. In this study, the manifestation of power relations sheds light on the pervasive influence of cultural institutions on individuals' agency, especially women, girls, and even young men.

Traditional marriage laws and practices are often based on cultural institutions that affect the exercise of individuals' agency, depending on the extent to which individuals resist through factors such as gender, age, religion, and sometimes, wealth. The dynamics of unequal power relations are sustained, invoked, and sometimes resisted by actors purporting to protect tradition on the one hand, and actors attempting to change tradition, on the other hand. This protection-versus-alteration dynamic creates tension between custodians of traditions, such as

¹ D Elder-Vass *The Causal Power of Social Structures: Emergence, Structure and Agency* (2010) 1-6; S Hays 'Structure and Agency and the Sticky Problem of Culture' (1994) 12(1) *Sociological Theory* 57-72 at 57-59.

² See, for example, s. 42(1) of the 1999 Constitution of the Republic of Nigeria, which provides for the right to equality. See also Limitation of Dowry Law, Eastern Region Law No. 23 of 1956, now Cap 76 Laws of Eastern Nigeria 1963, which regulates bridewealth.

elders and traditional rulers, and change-seekers, such as couples and parents, who resist the powerful cultural constraints of traditional marriage in their desire for more convenient marriage procedures. In South-East Nigeria, this tension is very visible in the negotiation process of bridewealth payment, a process that occurs in complex cultural spaces that demand elucidation.

The payment of bridewealth is a near-universal practice among the Igbos of South-East Nigeria, largely because of the cultural value placed on it.³ Bridewealth is a material or non-material value given by the groom's family to the bride's family as a legitimating symbol of a customary law marriage.⁴ Its payment is accompanied by an elaborate ceremony involving activities that constitute and symbolise the formal commitment of a potential groom and his family to initiate a marriage tie and cement a lasting relationship with the family of the potential bride.⁵ In the past, the ceremonies and materials that accompanied or marked this commitment were suited to the needs of an agrarian society. Accordingly, bridewealth payment sometimes took the form of labour or service from the groom to the bride's family for a stipulated period, which was termed bride service.⁶ This service was often accompanied by a small cash payment and drinks. As I show below, the requirement for bridewealth is a key aspect of the structure-versus-agency interplay in Igbo traditional marriage.

In Igboland, marriage requires some steps or procedures, which a man and woman must undergo before living as husband and wife. These procedures and their accompanying customs

³ CO Odimegwu & A Zerai 'Understanding the Proximate Determinants of Fertility of a Nigerian Ethnic Group' (1996) 52(3/4) *Genus* 67-87 at 71.

⁴ G Ferraro & S Andreatta *Cultural Anthropology: An Applied Perspective* (2011) 222-225. Other requirements for the validity of traditional marriage include consent, spousal capacity, and celebration of the marriage. On the requirements of a customary marriage, see generally, *Beckley vs Abiodun* (1943) 17 NLR 59 where the court held that Ibo marriage was not contracted until the formal handover of the bride had taken place. See also *Edet vs Essien* (1932) 1 NLR 47; *Adeyana vs Bamidele* (1968) 1 ALL NLR 31,34; *Agwasim & anor vs Ejivumerwerhaye & others* (2001) 9 NWLR Pt 718 at 395; *Igbokwe vs U.CH Board of management* (1961) WNLR 173, 175; E Nwogugu *Family Law in Nigeria* (2014) 73; TO Elias *Groundwork of Nigerian Law* (1954) 283, 285.

⁵ DJ Smith 'Romance, Parenthood, and Gender in a Modern African Society' (2001) 40(2) *Ethnology* 129-151 at 135, 139. It must be noted that the concept of marriage has different meaning in different contexts. See LD Wardle 'What is marriage?' (2006) 6(1) *Whittier Journal of Child and Family Advocacy* 53-103 at 53-55. In the context of South-East Nigeria and this study, marriage may be defined as a union of a man and a woman, or a man and more than one woman, which usually entails obligations owed by one person to the other. On the definition of marriage, see generally S Girgis, RP George, & RT Anderson 'What is marriage?' (2011) 34 (1) *Harvard Journal of Law and Public Policy* 245- 287 at 246-253.

⁶ G Ferraro & S Andreatta op cit note 4 at 224.

reveal the dynamics of unequal power relations within the interplay of structure and agency. After the couple have indicated an intention to marry, the first step preceding bridewealth payment is *iku aka n'uzo* (which literally means knocking at the door). Here, the groom-to-be and his family introduce themselves to the bride's family and convey their intention. This is followed by a second visit, which is scheduled after both families (headed by the fathers of the couple) have undergone a background check of the other family to ascertain whether they have hereditary diseases such as epilepsy and mental problems, and whether they are *osu* (outcast) or *diala* (freeborn).⁷ *Osu* people are believed to be an untouchable caste in South-East Nigeria, and are viewed as persons dedicated to a god as its servants.⁸ They are not allowed to intermarry with other members of the community, who are referred to as the *diala* (freeborn).⁹ As a reflection of unequal power relations within the structure-versus-agency interplay, intermarriage among the *Osu* and *diala* is still widely forbidden. The reason is to avoid contamination of the *diala* or incurring the wrath of the gods, which could allegedly bring epidemic to a community.¹⁰ Even though the *Osu* and *diala* dichotomy does not reflect in bridewealth negotiation because it occurs prior to a marriage agreement, it demonstrates the constraining influence of structure on prospective spouses' freedom to choose marriage partners.

The second step in the marriage process, which reveals the interplay of structure and agency, is the *inara* list. It literally means 'asking for the list of customary requirements,' and usually follows when the marriage investigation is positive for both families. When the

⁷ LN Anameze *Marriage Among Igbos: An Analytical Study of Past and Present Practices* (1996) 54.

⁸ SC Agunyai & J Etembo 'Women August Meeting and the Quest against Discrimination of OSU in South-East, Nigeria' (2017) 25(1) *Ife Social Sciences Review* 13-24 at 21; CT Nwaoga 'Socio - Religious Implications of Child Adoption in Igboland South Eastern Nigeria' (2013) 4(13) *Mediterranean Journal of Social Sciences* 705-710 at 708; TA Osinubi 'Abolition, Law, and the Osu Marriage Novel' (2015) 2(1) *Cambridge Journal of Postcolonial Literary Inquiry* 53-71 at 58; E Nwaosuji 'An Appraisal of Osu and Oru Caste Systems in Nnokwa Community Anambra State' (2015) 9 *Global Journal of Applied, Management and Social Sciences* 103-110 at 103; EC Onyeozili & ONI Ebbe 'Social Control in Precolonial Igboland of Nigeria' (2012) 6(1/2) *African Journal of Criminology and Justice Studies* 29-43 at 34; F Onwubuariri 'Appraising the Osu Caste System in Igbo Land Within the Context of Complementary Reflection' (2016) 2(4) *Igwebuike: An African Journal of Arts and Humanities* 58-100 at 61.

⁹ See also DA Offiong 'The Status of Slaves in Igbo and Ibibio of Nigeria' (1985) 46(1) *Phylon (1960-)* 49-57 at 51; AW Igwe & GO Akolokwu 'The Scar that Has Resisted Erasal: The Discrimination of Osu of Igboland, Nigeria: Assessing the Human Rights Implications' (2014) 4(1) *American International Journal of Contemporary Research* 277-285 at 276-280.

¹⁰ SN Ezeanya 'The Osu (Cult-Slave) System in Igbo Land' (1967) 1(1) *Journal of Religion in Africa* 35-45 at 38-39.

investigation is negative for either or both families, the marriage may not take place despite the desires of the intending couple.¹¹ Families who call off the marriage do so on the basis of pressure from custodians of culture, while families who persist with the marriage do so on the basis of agency, of which Christianity, education, and acculturation are chief factors.¹² Some parents who discover that their potential in-laws are *Osu* could resist pressure from elders, traditional leaders, and oracles to cancel the marriage, while others may succumb to calling off the marriage.¹³ Parents who resist pressure from tradition make a needs assessment, which is informed amongst others by their desire to ensure their children's happiness, or their desire for the material benefits of the marriage union.¹⁴ Potential couples themselves may attempt to navigate cultural constraints through agentic tools such as education, religion, and economic coercion.¹⁵ In this case also, a needs-based approach is evident.

The last step involving the interplay of structure and agency in the marriage process is the negotiation and payment of bridewealth. This final step is often accompanied by the celebration of the traditional marriage (*igba nkwu*). The final quantum of bridewealth is mostly influenced by customs and traditions, as well as the negotiating skills of both families.¹⁶ It is also influenced by the financial ability of the groom, as well as the depth of his emotions for the bride, all of which reflect needs-based choices. The groom and his family are given a list of customary requirements, which include livestock, bridewealth (*aku nwanji*), foodstuff, and other material things.¹⁷ These items must be provided before a marriage can be said to have

¹¹ DA Offiong op cit note 9 at 56.

¹² A detailed explanation is provided in Chapter five. See generally GI Nwaka 'The Civil Rights Movement in Colonial Igboland' (1985) 18(3) *The International Journal of African Historical Studies* 473-485 at 484; AA Mere 'Contemporary Changes in Igbo Family System' (1976) 6(2) *International Journal of Sociology of the Family* 155-161 at 160.

¹³ E Obinna 'Contesting identity: The *Osu* caste system among Igbo of Nigeria' (2012) 10(1) *African Identities* 111-121 at 112-115.

¹⁴ E Uchendu 'Woman-Woman Marriage in Igboland' in AU Azodo & MN Eke (eds.) *Gender and Sexuality in African Literature and Film* (2010) 149.

¹⁵ See also AC Diala 'Successful Marginalised Group Inclusion in Customary Governance Structures and Processes: Case Study of The *Osu* People in Owerri South-East Nigeria' in J Hedström & J Smith (eds.) *Overcoming Political Exclusion: Strategies for Marginalized Groups to Successfully Engage in Political Decision-Making* (2013) 35.

¹⁶ DD Nsereko 'The Nature and Function of Marriage Gifts in Customary African Marriages' (1975) 23(4) *The American Journal of Comparative Law* 682-704 at 686.

¹⁷ These material things range from hand bags, travelling bags, shoes, clothing (wrappers and head scarfs).

taken place. The consequences of not providing all or some of these items could be a boycott of the marriage ceremony or even non-recognition of the marriage by the community. These consequences sometimes depend on the extent to which the marriage requirements are complied with.

After the materials have been presented and accepted by the groups mentioned above, the bridewealth is negotiated and paid for in cash, non-living material items, or livestock such as cows, goats, and sheep. The negotiation starts, orally in most cases, with a bundle of broom sticks, cowries or shells, which was used in the past to indicate how much is to be paid.¹⁸ According to Waya and Okanume, the bundle of broom sticks has both ‘metaphoric and symbolic’ meaning.¹⁹ The broom sticks represent what the bride’s family believe her virtues and accomplishments are worth. Sometimes, the family assessment of a bride’s worth was informed by their own financial needs or their status in society. Nowadays, most communities use ropes and stones to signify the amount to be paid. The groom and his kinsmen receive the tied bundle, count it, remove a certain number of sticks from the bundle, and return it to the bride’s family. The returned quantity signifies how much they desire to pay. The needs assessment evident in the returned items is influenced by the amount of money a stick, stone, cowrie or rope represents for the families. With both families taking turns to add and subtract sticks, the negotiation continues until an agreed sum is reached and paid.²⁰ Chapter five analyses the dynamics of unequal power relations and the agentic forces involved in this negotiation. For now, I turn to the literature on structure and agency to show their relevance to unequal power relations in bridewealth negotiations in South-East Nigeria.

1.2 Theoretical framework

This thesis stands at the intersection of law, sociology, and economics. Accordingly, it draws from these sister disciplines to explain its conceptual framework on bridewealth negotiation within the structure-versus-agency interplay.

¹⁸ DT Waya & AC Okanume ‘Evaluation of the Tiv and Igbo Marriage Systems’ (2017) 29 *Journal of Culture, Society and Development* 16-25 at 22-23. What is being used differs from community to community, but they signify and pass the same message.

¹⁹ DT Waya & AC Okanume op cit note 18 at 23.

²⁰ As the thesis progresses, a detailed negotiation process of bridewealth payment in South-East Nigeria will be provided.

The interaction of institutions has, in varying degrees, engaged academic interest for centuries.²¹ At the heart of this interest is the extent to which social structures and human agency determine behaviour and its attendant power relations.²² Here, the terms ‘institution’ and ‘structure’ denote formal and informal rules and processes, which constrain and/or shape agency – that is the way people act or live their lives.²³ While structure refers to the self-replicating, complex social forms that give stability to institutions such as government, communities, universities, and marriage, agency refers to the volitional and purpose-driven nature of human activities such as thoughts, action, monitoring, and reflexivity.²⁴ The structure-versus-agency debate centres on the constraining effect that social structure is believed to exert on human activities, and the associated ability of individuals to act independently of this constraint.²⁵ Three broad views dominate this debate in the social sciences. They are the structural-functionalist-Marxist view, the symbolic interactionism view, and the complementarity view.

The structural-functionalist-Marxist view of sociology regards social life as the product of a system of relationships. These relationships create embedded structures, which determine, in a sort of top-down approach, how individuals function in society.²⁶ Here, the key word is

²¹ D Elder-Vass op cit note 1 at 1-6; S Hays op cit note 1 at 57-59.

²² K Dowding ‘Agency and Structure: Interpreting Power Relationships’ (2008) 1(1) *Journal of Power* 21-36 at 21; C Hayward & S Lukes ‘Nobody to Shoot? Power, Structure, and Agency: A Dialogue’ (2008) 1(1) *Journal of Power* 5-20 at 5; C Hay ‘Structure and Agency’ in D Marsh & G Stoker (eds.) *Theory and Methods in Political Science* (1995) 189-206; PM Pursey & MW Lander ‘Structure! Agency! (And other quarrels): A Meta-Analysis of Institutional Theories of Organisation’ (2002) 27(2) *The Academy of Management Journal* 61-85 at 61-62.

²³ A Giddens *The Constitution of Society: Outline of the Theory of Structuration* (1984) 24; G Helmeke & S Levitsky ‘Informal Institutions and Comparative Politics: A Research Agenda’ (2007) 2(7) *Perspectives on Politics* 725-740 at 727; GM Hodgson ‘What are Institutions?’ (2006) 40(1) *Journal of Economic Issues* 1-25 at 1; J Knight *Institutions and Social Conflicts* (1992) 1; JR Searle ‘What is an institution?’ (2005) 1(1) *Journal of Institutional Economics* 1-22 at 3, 18-20; DC North *Institutions, Institutional Change and Economic Performance* (1990) 3.

²⁴ A Giddens *Modernity and Self-Identity: Self and Society in the Late Modern Age* (1991) 20, 63, 76; A Giddens op cit note 23 at 24; M Emirbayer & A Mische ‘What Is Agency?’ (1998) 103(4) *American Journal of Sociology* 962-1023 at 970; DV Porpora ‘Four Concepts of Social Structure’ in M Archer, R Bhaskar, A Collier, T Lawson & A Norrie (eds.) *Critical Realism: Essential Readings* (1998) 339-347; WH Sewell ‘A Theory of Structure: Duality, Agency, and Transformation’ (1992) 98(1) *American Journal of Sociology* 1-29 at 1; A Wendt *Social Theory of International Politics* (1999) 139; GC Homans, ‘What Do We Mean by Social “Structure?”’ in PM Blau (ed.) *Approaches to the Study of Social Structure* (1975) 53; A Giddens *A Contemporary Critique of Historical Materialism: Power, Property and the State* (1981) 26.

²⁵ C Barker *Cultural Studies: Theory and Practice* (2005) 448.

²⁶ RK Merton *Social Theory and Social Structure* (1957) 250; WE Moore ‘Functionalism’ in T Bottomore & R Nisbet (eds.) *A History of Sociological Analysis* (1978) 321-357; GC Homans op cit note 24 at 53.

‘function’ – i.e., the operation of social structure is responsible for the manner individuals function or behave. In other words, this school of thought privileges structure as the prime determinant of behaviour, thereby confining humans to passive responders and mere ‘occupants’ of social places.²⁷ For example, prospective spouses would have little or no choice than to comply with all traditional requirements for bridewealth payment and marriage ceremony, irrespective of their opinions and even financial means. The structural-functionalist-Marxist view thus downplays the agency of humans, both as creative agents and as determinants of social organisation. As evident in chapters five and six, this view is not supported by my field findings, which show that bridewealth negotiation displays considerable agency driven by people’s needs and informed choices. In this sense, the structural-functionalist-Marxist resonates with legal positivism, which sees the state as unquestionably powerful, and sees state law as an effective tool for moulding behaviour irrespective of people’s preferences for other normative orderings.²⁸

Although the extremity of the positivist theory has been whittled down by Hart’s conception of law as the union of primary and secondary rules, legal positivism still neglects the influence of human beliefs, attitudes, religion, and socio-economic activities in shaping structure and the law.²⁹ As shown in chapter five, legal positivism and the structural-functionalist view of sociology derive scant support from field evidence on bridewealth payment in South-East Nigeria. However, their theoretical principles are significant for people’s disobedience or adherence to the obligation to provide all items in the marriage list, which is the customary list containing the formal requirements for a traditional marriage, including the bridewealth payment itself.³⁰ These theoretical principles also manifest in cultural

²⁷ WH Sewell op cit note 24 at 1 and 21. See also DE Durkheim (trans. WD Halls) *The Rules of Sociological Method: And Selected Texts on Sociology and its Method* (2013) xv, 47, 63; T Parsons *The Structure of Social Action* (1968) 39-49; A Wendt op cit note 24 at 139.

²⁸ J Austin & S Austin *The Province of Jurisprudence Determined* (1861) lecture xxviii at 525-530; J Gardner ‘Legal Positivism: 5 ½ Myths’ (2001) 46 *American Journal of Jurisprudence* 199-227 at 199; JC Gray *The Nature and Sources of Law* (1909) 276.

²⁹ HL Hart *The Concept of Law* (1961) 77-96; HL Hart ‘Positivism and the Separation of Law and Morals’ (1958) 71(4) *Harvard Law Review* 593-629 at 620; LL Fuller ‘Positivism and Fidelity to Law: A Reply to Professor Hart’ (1958) 71(4) *Harvard Law Review* 630-672 at 632-635.

³⁰ VC Oforika *Afro-Igbo Mmadu and Thomas Aquinas’s Imago Dei: An Intercultural Dialogue on Human Dignity* (2016) chapter three; For explanation of the marriage list and distinction between bridewealth and marriage gifts, see Chapter three of this thesis.

constraints on couples' presence during their bridewealth negotiation. In this sense, legal positivism and structural-functionalism help to explain the persistence of high bridewealth, which as evident in chapter five, is encouraged by frivolous items on the marriage list. Accordingly, the influence of legal positivism and structural-functionalism is doubtful because changes are occurring in the practice of bridewealth payment, which are not traceable to the influence of structure.

Conversely, the symbolic interactionism or interpretive view of sociology believes in the ability of individuals to construct and reconstruct their world (social structure) in a manner that gives meaning to their existence.³¹ Accordingly, this view emphasises the need to account for human behaviour through the lens of individuals' ongoing activities and opinions.³² In other words, social structure is formed through the ideas individuals hold about phenomena, their interpretations of the situations they encounter, and their interactive responses to these situations. However, symbolic interactionism fails to account sufficiently for the immense pressure that structure exerts on agency. In bridewealth payment, for example, it cannot explain the formidable resistance that prospective spouses encounter when they attempt to challenge marriage customs and traditions. Put differently, symbolic interactionism would present an unrealistic view of the dynamics of power relations in the bridewealth payment process, as well as the coercion, dialogue, and compromises that emerge from the interaction of structure with agency. As Archer explained, the restraining and enabling power of structure can only be exerted on logical human beings capable of responding in reasonable ways.³³ Accordingly, the interaction of structure with agency involves not only structural influence on agency, but also agency's reception, resistance, and compromises on structural demands. As I shall explain, this reception, resistance, and compromises follow a needs-based approach similar to the complementarity view of structure-agency interaction.

³¹ H Blumer *Symbolic Interactionism: Perspective and Method* (1986) 1-10; MS Archer 'Human Agency and Social Structure: A Critique of Giddens' in J Clark & C Modgil (eds.) *Anthony Giddens: Consensus and Controversy* (1990) 73-84; C Wight 'They Shoot Dead Horses Don't They? Locating Agency in the Agent-Structure Problematique' (1999) 5(1) *European Journal of International Relations* 109-142 at 113-124.

³² J Battailana & T D'Aunno 'Institutional Work and the Paradox of Embedded Agency' in TB Lawrence, R Suddaby & B Leca (eds.) *Institutional Work: Actors and Agency in Institutional Studies of Organisations* (2009) 31; J Burns & K Nielsen 'How do Embedded Agents Engage in Institutional Change' (2006) 40(2) *Journal of Economic Issues* 449-456 at 450-452.

³³ MS Archer *Structure, Agency and the Internal Conversation* (2003) 1-2, 19-22; MS Archer 'Morphogenesis versus Structuration: On Combining Structure and Action' (1982) 33(4) *The British Journal of Sociology* 455-483 at 455.

The complementarity view of sociology seeks a balance between the symbolic interactionism view and the structural-functionalist view of sociology, since it perceives structure and agency as products of mutual and interdependent interaction.³⁴ The complementary theory resembles a recent academic view of the structure-versus-agency debate known as new or normative institutionalism. As the more widely used phrase, new institutionalism is gaining ground among scholars, especially economists and sociologists.³⁵ Championed by John Meyer, Paul DiMaggio and Walter Powell, it focuses on the ‘production and maintenance of norms, the interplay between formal and informal systems of constraints, and the effect of belief systems on economic action and institutional change.’³⁶ New institutionalism is prompted by Granovetter’s proposition that economic action revolves around social relationships and informal norms. It is thus concerned with the social structures that surround individuals’ interests, influence norm development, and determine the role of norms in bringing about institutional change.³⁷ In this sense, new institutionalism is akin to Hoggett’s reflexive behaviour, in which social actors continually modify their actions due to their interactions with formal norms.³⁸ Other than Hoggett, several variations have been developed to justify and advance the complementarity theory of social behaviour. In what follows, I examine these variations in a manner that culminates in the model that suits my theoretical approach.

³⁴ SR Barley & PS Tolbert ‘Institutionalization and Structuration: Studying the Links between Action and Institution’ (1997) 18(1) *Organization Studies* 93-117 at 93.

³⁵ JG March & JP Olsen ‘Elaborating the “New Institutionalism”’ in RAW Rhodes, SA Binder & BA Rockman (eds.) *The Oxford handbook of Political Institutions* (2006) 3-20; JG March & JP Olsen ‘The New Institutionalism: Organizational Factors in Political Life’ (1984) 78(3) *The American Political Science Review* 734-749 at 734; P Alasuutari ‘The Discursive Side of New Institutionalism’ (2015) 9(2) *Cultural Sociology* 162-184 at 162-164.

³⁶ MC Brinton & V Nee *The New Institutionalism in Sociology* (1998) xvi. See generally J Meyer & B Rowan ‘Institutionalized Organizations: Formal Structure as Myth and Ceremony’ in W Powell & P DiMaggio (eds.) *The New Institutionalism in Organizational Analysis* (1991) 43.

³⁷ M Granovetter ‘Economic Action and Social Structure: The Problem of Embeddedness’ (1985) 91(3) *American Journal of Sociology* 481-510 at 481.

³⁸ P Hoggett ‘Agency, Rationality and Social Policy’ (2001) 30(1) *Journal of Social Policy* 37-56 at 47-54; see also S Hays op cit note 1 at 61.

The first variation of the complementarity theory is the dialectical model. It was initiated by Benson and developed by Seo and Creed.³⁹ In the simplest sense, a dialectic relationship between two things means mutual influence of one on the other. To perceive the relationship between structure and agency as a dialectical one is to assert that although social structure shapes individuals' behaviour, individuals and groups also shape social structure. As Cole put it:

After all, society is a social creation – the creation and maintenance of social order requires the cooperation of individuals connected through social relationships. So, while the lives of individuals are shaped by the existing social structure, they none the less [sic] have the ability– *the agency*– to make decisions and express them in behaviour.⁴⁰

In essence, the dialectical model holds that institutional change is 'an outcome of the dynamic interactions between two institutional by-products: institutional contradictions and human praxis.'⁴¹

In relation to power, Collinson demonstrated how the dialectical model can provide new and innovative ways of understanding shifting dynamics of leadership and control.⁴² He did this by acknowledging the inherent dynamics of unequal power relations. Collinson recognised that even though leaders and structures have significant control over individuals, their power may produce opposite outcomes. These outcomes may be intended or unintended through the activities of their followers, such as resistance and acquiescence. Thus, he viewed control and resistance as interdependent variables. Lesorogol's study in Sambura, Kenya, also sheds light on the dialectical model.⁴³ She acknowledged the dynamic nature of institutional change processes and the exogenous and endogenous factors that create conditions conducive

³⁹ JK Benson 'Organizations: A Dialectic View' (1977) 22(1) *Administrative Science Quarterly* 1-21 at 3; MG Seo & WED Creed 'Institutional Contradictions, Praxis, and Institutional Change: A Dialectical Perspective' (2002) 27(2) *The Academy of Management Review* 222-247 at 222.

⁴⁰ NL Cole 'Agency: A Sociological Definition' <<https://www.thoughtco.com/agency-definition-3026036>> (last accessed online on 17 October 2017).

⁴¹ MG Seo & WED Creed op cit note 39 at 222. MG Seo & WED Creed at 226 proposed four sources of contradictions that ultimately arise as by-products of institutionalisation. These are legitimacy, which undermines functional inefficiency, adaptation, which undermines adaptability, intra-institutional conformity, which creates inter-institutional incompatibilities, and isomorphism, which conflicts with divergent interests.

⁴² D Collinson 'Dialectics of leadership' (2005) 5 (11) *Human Relations* 1419-1442 at 1422, 1435.

⁴³ C Lesorogol 'Transforming Institutions among Pastoralists: Inequality and Land Privatization' (2003) 105(3) *American Anthropologist* 531-541 at 531.

to change. She found that inequalities and conflicting interests among different social groups provide impetus for change, as well as ammunition to attack or defend common property.

The second variation of the complementarity theory of social behaviour is the morphogenetic model. It was initiated by Buckley and advanced by Archer.⁴⁴ The morphogenesis model was first used in a biological evolution context. Over time, there has been considerable effort to extend its application to the study of social behaviour and institutional change.⁴⁵ The morphogenetic model suggests that structure – that is society and/or its institutions – can be transformed or altered by both the intended and unintended activities of human agency. It also suggests that structure has neither pre-set form nor operational features capable of resisting human agency.⁴⁶ What this means is that although structural practices such as bridewealth payment may appear impregnable, human agency can erode their operation, alter their format, and in time, even abolish them.⁴⁷

By stressing the power of agency, therefore, the morphogenic approach highlights the importance of consultation in policy implementation. Local populations are unlikely to be impressed with policies that purport to regulate their lives without adequate sensitivity to the lived realities that inform and influence their social choices.⁴⁸ As Moore's semi-autonomous social field theory indicates, individuals will not hesitate to tailor their behaviour along the

⁴⁴ W Buckley *Sociology and Modern Systems Theory* (1967) 58; MS Archer (1990) op cit note 31 at 2; MS Archer (1982) op cit note 33 at 455.

⁴⁵ N Morozova & M Shubin 'The Geometry of Morphogenesis and the Morphogenetic Field Concept' in V Capasso, et al (eds.) *Pattern Formation in Morphogenesis: Problems and Mathematical Issues* (2013) 255-258.

⁴⁶ See also M Chanock 'Human Rights and Cultural Branding: Who Speaks and How' in AA An-Na'im (ed.) *Cultural transformation and Human rights in Africa* (2002) 38-62; M Chanock 'Making Customary Law: Men, Women and Courts in Colonial Northern Rhodesia' in MJ Hay & M Wright (eds.) *African Women and the Law: Historical perspectives* (1982) 57-60.

⁴⁷ For how education, for example, shapes institutional change see AK Omideyi & AK Omidey 'Age at Marriage and Marital Fertility in Eastern Nigeria' (1983) 39(1/4) *Genus* 141-154 at 143; see also A Bandura 'Human Agency in Social Cognitive Theory' (1989) 44(9) *American Psychologist* 1175-1184 at 1175; for how religion influences institutional change see J Goody 'Futures of the Family in Rural Africa' (1989) 15 *Population and Development Review* 119-144 at 120; see also JL Campbell *Institutional Change and Globalization* (2004) 2; S Pejovich 'The Effects of the Interaction of Formal and Informal Institutions on Social Stability and Economic Development' (1999) 2(2) *Journal of Markets and Morality* 164-181 at 169-170.

⁴⁸ TR Tyler & JM Darley 'Building a Law-Abiding Society: Taking Public Views about Morality and the Legitimacy of Legal Authorities into Account when Formulating Substantive Law' (2000) 28 *Hofstra Law Review* 707-739 at 708.

lines of whatever works best for them, regardless of the demands of state law.⁴⁹ For example, brides can reflect on the state of bridewealth payment in their community or tribe and (re)orient their approach. This reorientation, which could result in autonomous decisions, is usually based on a needs-assessment. In turn, the behavioural products of these assessments have power to reshape customs and tradition regarding the quantum, beneficiaries, and legitimacy of bridewealth.⁵⁰ Porpora utilised examples such as cotton, gin, computers, mobile phones, and the internet to explain the application of morphogenesis and its effects on social behaviour.⁵¹ Moore's study in Tanzania shows how small-scale individual actions can cumulatively erode strong institutions.⁵² Ensminger and Knight's study of the attitude of young men regarding the quantum of bridewealth payment in Galole Orma of northeastern Kenya shows the transformations that have occurred in the modus and recipients of bridewealth payment.⁵³ In the past, bridewealth used to be paid to the bride's father, and by extension, the extended family. However, due to Islamic influences, economic motives, and changes in bargaining power, families are increasingly turning to indirect dowry – that is payment of bridewealth to the bride herself. This is a logical, needs-based approach, which seeks to maximise the benefits of the bridewealth payment to prevent its misuse by the bride's family members. Such an approach involves bargaining or persuasion to convince traditional actors to make a shift from established practice. As Knight and Ensminger explained it, indirect dowry is enticing, 'as it funnels resources to the conjugal couple and their descendants rather than to the father of the bride and his lateral kin.'⁵⁴ Even though the indirect dowry is still provided by the groom, Knight and Ensminger depart from the new institutionalism and symbolic interactionism

⁴⁹ SF Moore 'Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study' (1973) 7(4) *Law and Society Review* 719-746 at 742-744.

⁵⁰ J Ensminger & J Knight 'Changing Social Norms: Common Property, Bridewealth, and Clan Exogamy' (1997) 38(1) *Current Anthropology* 1-24 at 1; See also NM Abdulraheem 'Women's Marital Rights: Perspectives from Nigerian Legal System' (2004) 1 *The University of Ilorin Law Journal* 118-134.

⁵¹ DV Porpora 'Morphogenesis and Social Change' in MS Archer (ed.) *Social Morphogenesis* (2013) 29-30; see also D Pratt 'The Internet as Social System: Applying Margaret Archer's Theory of Morphogenesis to Hypermedia Communication' (2014) 12(1) *Systemics, Cybernetics and Informatics* 5-9 at 6.

⁵² SF Moore 'Changing African Land Tenure: Reflections on the Incapacities of the State' (1998) 10(2) *European Journal of Development Research* 33-49 at 33.

⁵³ J Ensminger & J Knight op cit note 50 at 9-12.

⁵⁴ Ibid at 11.

theories through their emphasis on bargaining as the key vehicle for shifts from established traditional practices.

The third advancement of the complementarity theory is the bargaining model, which is grounded in the rational choice theory.⁵⁵ This theory offers a nuanced understanding of the structure-versus-agency debate by recognising social behaviour as the product of informed decisions based on cost-benefit analyses. Thus, it acknowledges the benefits or satisfaction people derive from making logical decisions based on the choices available to them.⁵⁶ By stressing how people calculate the potential gains and losses of their decision-making, the bargaining model reveals asymmetries and conflicts in power relations.⁵⁷ Here, agents are recognised decision makers who offer solutions to problems through bargaining. People usually arrive at bargaining decisions after carefully assessing their needs. Although some decisions may be taken in a moment of passion, people usually weigh the pros and cons of the choices available to them and could change impromptu decisions taken without proper needs assessment. For example, Ensminger and Knight's study in Galole Orma, Kenya, reveals the choices that inform shifts in power relations and customary practices. They explained how conflicts over norms governing marriage were resolved through bargaining between prospective spouses and custodians of customs.⁵⁸ Arguably, these bargaining processes followed a needs-based approach, and the logic of these needs played influential roles in inducing institutional change. By explaining these bargaining processes, Ensminger and Knight created an approach for explaining norm emergence and change and the mechanisms that cause normative change. They explained the three mechanisms responsible for the dynamic process of normative change as: coordination on focal points; competitive selection among contracts; and bargaining. Of these three mechanisms, asymmetries in bargaining power is the most

⁵⁵ Ibid at 4-8; J Knight & I Sened *Explaining Social Institutions* (1998) 110; J Knight 'Explaining the Rise of Neoliberalism: The Mechanisms of Institutional Change' in JL Campbell & OK Pederson (eds.) *The Rise of Neoliberalism and Institutional Analysis* (2001) 38-47.

⁵⁶ G Homans *Social Behavior: Its Elementary Forms* (1961) 82, 385; J Scott 'Rational Choice Theory' in G Browning, et al (eds.) *Understanding Contemporary Society: Theories of the Present* (2000) 126 -129.

⁵⁷ Schutz however prefers to call it purposeful action rather than rational choice; here actors base their choices on flexible and shifting fields of possibilities rather than utility maximisation. See A Schutz 'Choosing Among Projects of Action' (1951) 12(2) *Philosophy and Phenomenological Research* 161-184 at 169-170 and 176-178.

⁵⁸ J Ensminger & J Knight op cit note 50 at 11-13; J Knight & J Ensminger 'Conflict over Changing Social Norms: Bargaining, Ideology, and Enforcement' in MC Brinton & V Nee (eds.) *The New Institutionalism in Sociology* (2001) 106-123.

important source of normative change.⁵⁹ Given that bridewealth has distributional effects, bargaining power is an instrument in its formation and transformation, since bridewealth payment serves the interest of those with the most bargaining power in society.⁶⁰ In turn, the bargaining power of actors involved in bridewealth payment is influenced by their ideology, the rate of compliance to traditional norms, and the mode of enforcing these norms.

The rational choice theory has been critiqued for arguing that people act based on cost-benefit analysis, which seemingly ignores the emotional elements that influence behaviour. Nonetheless, I endorse it because it resonates with my field findings. However, in adopting it and rejecting its criticisms, I recognise that people do not only make decisions based on material gains; they are also influenced by factors such as ideological, spiritual, and traditional values. However, their ideological beliefs are influenced by their assessment of which choices work best for them and their community.⁶¹ The bargaining model of rational choice, in combination with morphogenesis, informs my needs-based approach to the structure-agency interplay. A needs-based approach regards the interaction of structure and agency as both the process and product of choices reached after logical assessments and dialogue, which are driven by socio-economic needs. By socio-economic needs, I mean the material, emotional, spiritual, and even legal needs of individuals. As I explain in chapter six, a needs-based approach reveals interdependence between structure and agency, which is evident in the complex web linking the custodians of culture with agentic tools such as wealth, religion, and education. It is suited to the interplay of structure and agency, wherein the negotiation process of bridewealth payment yielded rich information.

The fourth advancement of the complementarity theory is Giddens' structuration model, which sees structure as both the medium and outcome of individuals' activities.⁶² Here, medium and outcome entail rules, resources, procedures, and sanctioning of modes of conduct,

⁵⁹ J Ensminger & J Knight op cit note 50 at 5.

⁶⁰ See also K O'Neill, et al 'Actors, Norms, and Impact: Recent International Cooperation Theory and the Influence of the Agent-Structure Debate' (2004) *7 Annual Review of Political Science* 149-175 at 151; J Mahoney & K Thelen 'A Theory of Gradual Institutional Change' in J Mahoney & K Thelen (eds.) *Explaining Institutional Change: Ambiguity, Agency, and Power* (2010) 27, 182.

⁶¹ J Ensminger & J Knight op cit note 50 at 1-15.

⁶² A Giddens *Central Problems of Social Theory: Action, Structure, and Contradiction in Social Analysis* (1979) 5; DC North op cit note 23 at 1-9; DC North 'Institutional Change: A Framework of Analysis' in SE Sjostrand (ed.) *Institutional Change: Theory and Empirical Findings* (1993) 36-45; A Giddens op cit note 24 at 25.

which allow people to act in beneficial ways within appropriate contexts. I argue that these beneficial ways are outcomes of needs-based assessments. By perceiving structure and agency as a duality, Giddens argues that structure not only constrains but also enables. He sees agency as the ability to make and remake rules, bearing in mind the intended and unintended consequences.⁶³ In other words, people construct and reconstruct structure through their change-inducing activities.⁶⁴ His theory holds that irrespective of the extent of asymmetric power relations, structure and agency have a mutual, interdependent relationship.⁶⁵ In this sense, it resembles the strategic-relational view of sociology,⁶⁶ which perceives structure as the ‘metals in the alloy from which the coin is forged.’⁶⁷ Thus, the structure-versus-agency debate is about the product of their interaction rather than their individual components.⁶⁸ Just like some of the other views discussed above, Giddens’s theory has received criticism for its focus on the duality of structure and agency, which could mask the power of social structures to influence human behaviour. Contrariwise, I believe the duality inherent in the structuration theory does not obscure power relations if the structure-agency interaction is viewed from a needs-based approach. Socio-economic needs are the drivers and determinants of the structure-agency interaction. These needs compel individuals to make choices, defy tradition, or persuade/bargain with the custodians of tradition to usher in normative changes. Accordingly, a needs-based approach offers a convincing explanation for human behaviour, thereby making the structure-versus-agency debate unnecessary.

⁶³ See generally, S Best *A Beginner's Guide to Social Theory* (2003) 184-190.

⁶⁴ M van Rooyen ‘Structure and Agency in News Translation: An application of Anthony Giddens’ Structuration Theory’ (2013) 31(4) *Southern African Linguistics and Applied Language Studies* 495-506 at 499-504.

⁶⁵ A Giddens *New Rules of Sociological Methods: A Positive Critique of Interpretative Sociologies* (1976) 60; A Giddens op cit note 23 at 24 and 199; A Giddens op cit note 62 at 93.

⁶⁶ B Jessop ‘Critical Realism and the Strategic-Relational Approach’ (2005) 56 *New Formations: A Journal of Culture, Theory and Politics* 40-53 at 48; B Jessop *State Theory: Putting the Capitalist State in its Place* (1990) 191, 260-264, 275-290; C Hay *Re-Stating Social and Political Change* (1996) 147-155; B Jessop ‘Interpretive Sociology and the Dialectic of Structure and Agency’ (1996) 13(1) *Theory, Culture and Society* 119-128 at 124; B Jessop ‘Institutional Re (turns) and the Strategic-Relational Approach’ (2001) 33(7) *Environment and Planning* 1213-1236 at 1226.

⁶⁷ C Hay *Political Analysis: A Critical Introduction* (2002) 127; see also D Valler & A Wood, ‘Devolution and the Politics of Business Representation in Britain: A Strategic - Relational Approach’ (2004) 36 *Environment and Planning* 1835-854 at 1835-1836.

⁶⁸ A Gamble, et al ‘Editorial: New political economy’ (1996) 1(1) *New Political Economy* 5-11 at 5; A Chettiparamb ‘Steering Across Scales: Applying a Strategic-Relational Approach to a Study of Land Mobilisation for Road Widening in Kochi’ (2007) 19 *Journal of International Development* 413-427 at 415.

Given that social roles are the major determinants of power dynamics in society,⁶⁹ feminist perspectives on unequal power relations is relevant to the negotiation process of bridewealth payment in South-East Nigeria.

1.2.1 *What feminists say*

The literature on gender sheds light on how the dynamics of unequal power relations in bridewealth negotiation reflect the influence of structure and agency.⁷⁰ Feminists seek to broaden understandings of the ways institutions confer and distribute power between women and men in social groups.⁷¹ They argue that gendered structures construct gendered interests, ideas, and identities.⁷² In other words, whether individuals are acting structurally (for example as law makers, rulers, or enforcers) or as agents, there is an element of gender bias in play, in that individuals manifest varying shades of maleness and femaleness. These gender manifestations affect the outcome of behaviour, rules, and power, irrespective of whether individuals are interpreting, breaking, or complying with norms.⁷³ For example, Asimwe argues that even though the payment of bridewealth has overwhelming support among the members of the community, its motivations, processes and outcomes are gendered and bent towards reinforcing masculinities and femininities that do not only create, but also reinforce

⁶⁹ LL Lindsey *Gender Roles: A Sociological Perspective* (2016) 226-227; JA Simpson 'Power and Social Influence in Relationships' in M Mikulincer, et al (eds.) *APA Handbook of Personality and Social Psychology: Interpersonal Relations* (2015) 395; RW Connell *Gender and Power: Society, the Person and Sexual Politics* (1987) Preface.

⁷⁰ NU Nzegwu *Family Matters: Feminist Concepts in African Philosophy of Culture* (2006) 157 and 199; J Lovenduski 'Gendering Research in Political Science' (1998) 1(1) *Annual Review of Political Science* 333-356 at 348; L Chappell, et al 'Moving to a Comparative Politics of Gender' (2006) 2(2) *Politics and Gender* 221-263 at 226; C Pateman *Sexual contract* (2014) 12, 16 and 82; L Kathlene 'Position Power Versus Gender Power: Who Holds the Floor?' in G Duerst-Lahti & RM Kelly (eds.) *Gender Power, Leadership, and Governance* (1995) 167-170; M Kanter *Men and women of the Corporation* (1977) 250, 291-292.

⁷¹ PA Hall & RC Taylor 'Political Science and the Three New Institutionalisms' (1996) 44(5) *Political Studies* 936-957 at 941; B Thorne 'Feminism and the Family: Two Decades of Thought' in B Thorne & M Yakom (eds.) *Rethinking the Family: Some Feminist Questions* (1992) 14.

⁷² F Mackay, M Kenny & L Chappell 'New Institutionalism Through a Gender Lens: Towards a Feminist Institutionalism?' (2010) 31(5) *International Political Science Review* 573-588 at 583; J Acker 'Hierarchies, Jobs, Bodies: A Theory of Gendered Organizations' (1990) 4(2) *Gender and Society* 139-158 at 139, 145-146.

⁷³ V Lowndes & M Roberts *Why Institutions Matter: The New Institutionalism in Political Science* (2013) 62; L Chappell & G Waylen 'Gender and the Hidden Life of Institutions' (2013) 91(3) *Public Administration* 599-615 at 605-610; J Charmes & S Wieringa 'Measuring Women's Empowerment: An Assessment of the Gender-Related Development Index and the Gender Empowerment Measure' (2003) 4(3) *Journal of Human Development* 419-435 at 419-420.

male dominance and female subordination.⁷⁴ In this study, the fact that, unlike the bride, the groom is sometimes allowed to be present during the negotiation process of bridewealth payment is an expression of unequal power relations. Similarly, the fact that the bride is usually represented by her father, uncle, or brother, is an expression of unequal power relations.⁷⁵ This cultural constraint reflects the influence of structure and agency on each other. This is because research participants informed me that in the past, grooms were not allowed to be present during bridewealth negotiation.⁷⁶ Like brides, they were represented by their fathers or uncles if their father was unavailable. Nowadays, however, grooms can be present, even though usually passive. It is unclear the extent to which their presence is traceable to their own agency, given that some brides pressure the groom to observe the bridewealth negotiation and attempt to exert influence through their fathers. While the groom's presence may be passive, he is often consulted by his family on the way forward since he usually funds the marriage expenses, unlike in the agrarian past when it was funded by the extended family. Thus, during the negotiations, grooms whisper in their fathers' ears regarding decisions to add more money to demands or hold their ground on an offer. This consultation of grooms demonstrates the economic needs assessment involved in bridewealth negotiation. It also demonstrates grooms' increasing voice in bridewealth negotiation, thereby showing how agency can bring about institutional change. Conversely, women's non-participation in their bridewealth negotiation indicates unequal gender relations, which undermines their agency and underpins their feelings of weakness and subordination. In short, it proclaims the superiority of men over women, thereby reinforcing patriarchy.

In *Key concepts in feminist theory*, Walby critically analyses the influence of patriarchy on women's empowerment and victimisation.⁷⁷ Amongst other questions, her work appears to seek an answer to this question: to what extent can women's actions be seen to be constrained

⁷⁴ H Asiimwe 'The Changing Dynamics, Trends and Perceptions in the Bride Price Custom in Uganda and the Implications- A Feminist Perspective: A Case of Banyakitra Ethnic Group in Western Uganda' (Research paper presented to the International Institute for Social Studies, 2013) 1.

⁷⁵ AC Izekwe *The Future of Christian Marriage among the Igbo vis-à-vis Childlessness: A Canonical cum Pastoral Study of Canon 1055* (2015) 20.

⁷⁶ See Chapter 2.

⁷⁷ S Walby 'Key Concepts in Feminist Theory' Paper from FREIA - Feminist Research Centre in Aalborg Department of Development and Planning Aalborg University (1996) 2. In a similar study, Hughes analyses the influence of patriarchy on women's agency through the lens of equality, difference, choice, care, time, and experience; see C Hughes *Key Concepts in Feminist Theory and Research* (2002) 62, 72, 120.

by patriarchal structures?⁷⁸ In the context of this study, her work is relevant for examining the extent to which the bride's absence may be perceived as a constraint on her agency by patriarchal structures. Walby provides insights to this question in two parts.

First, if women have agency, then they must be choosing their oppression, and if they do not choose it, then they are merely passive victims. While the latter denies and underestimates the agency of women, the former suggests that women create their oppression.⁷⁹ My understanding is that, often, women create and reinforce their oppression in the negotiation process of bridewealth payment when they unquestioningly accept norms, practices, or values that render them invisible, powerless or passive. By so doing, they reinforce their subservience, which in turn hinders them from fighting unfavourable social structures. In mitigation, one could argue that many of the conditions that influence women's agency are too institutionalised for them to change them.⁸⁰ These conditions need to be interrogated, hence the need for a review of women's agency in the precolonial, colonial and post-colonial South-East Nigeria to understand the changes that have occurred, the reason for the changes, and causes of persistence.⁸¹

In offering solutions to unequal power relations, feminists suggest the need to account for the problem through participation and interaction, which implies the interdependence of structure and agency.⁸² For example, Bystydzienski chooses the term empowerment, which denotes a process by which oppressed persons take control of their lives by participating with others in discussions of issues that affect them directly.⁸³ This kind of participation contributes to social change and distribution of social power.

⁷⁸ Walby op cit note 77 at 2.

⁷⁹ Ibid.

⁸⁰ Ibid at 16.

⁸¹ See chapter three of this thesis.

⁸² See, for example, A Bookman & S Morgen *Women and the Politics of Empowerment* (1988) 1-20; N Hartsock 'Political Change: Two Perspectives on Power' in C Bunch (ed.) *Building Feminist Theory: Essays from Quest* (1981) 6-16; C Kitzinger 'Feminism, Psychology and the Paradox of Power' (1991) 1(1) *Feminism and Psychology* 111-129 at 114; PH Collins *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (2000) 222; N Yuval-Davis 'Women, Ethnicity and Empowerment' (1994) 4(1) *Feminism and Psychology* 179-197 at 180.

⁸³ JM Bystydzienski *Women Transforming Politics Worldwide Strategies for Empowerment* (1992) 3.

The literature on bridewealth payment reveals some form of continuity in people's perceptions of masculinity and femininity. As stated earlier, in the past, bridewealth was an important symbol of marriage, a pledge that the bride will be treated well, and a recognition of her productiveness and worth to her community.⁸⁴ It was paid in societies characterised by closely-knit family units.⁸⁵ Sociologists have referred to these societies as 'multiplex' and 'kin-dominated.'⁸⁶ Their close-knit nature was a product of their agricultural settings. In these settings, families worked as united entities to produce family property such as livestock, economic crops, and farming tools.⁸⁷ The head of the family was the primary 'breadwinner,' and the one in charge of work parties and the overall income of the family.⁸⁸ He oversaw wealth production and distribution for the general welfare of members of the family. The result is that bridewealth payment was strongly influenced by the joint production of family income.⁸⁹ Given that bridewealth was often raised by the family, it was usually negotiated by the family head. This custom is no longer compatible with the individual nature of income production in contemporary Igbo society.

In *The land has changed*,⁹⁰ Korieh described the revolutionary changes that colonial rule brought to the agrarian settings of South-East Nigeria. He explained how extended families became mostly replaced with nuclear families characterised by individual production of wealth.⁹¹ Today, many prospective spouses are the breadwinners of their families, especially

⁸⁴ Though bridewealth still remains a legitimising symbol of traditional marriage system in South-East Nigeria, it is fast losing its significance due to the conditions listed above. These conditions have contributed to its change in form. UC Isiugo-Abanihe 'Consequences of Bridewealth Changes on Nuptiality Patterns among the Ibo of Nigeria' in C Bledsoe & P Gilles (eds.) *Nuptiality in Sub-Saharan Africa: Contemporary Anthropological and Demographic Perspectives* (1994) 74-93; MB Mulder 'Bridewealth and its Correlates: Quantifying Changes Over Time' (1995) 36(4) *Current Anthropology* 573-603 at 573-577.

⁸⁵ MM Green *Land Tenure in an Ibo Village: In South- Eastern Nigeria* (1941) 6; CN Okemgbo, et al 'Prevalence, Patterns and Correlates of Domestic Violence in Selected Igbo Communities of Imo State, Nigeria' (2002) 6(2) *African Journal of Reproductive Health* 101-114 at 103.

⁸⁶ See JH Barton, et al *Law in Radically Different Cultures* (1983) 41-42.

⁸⁷ WMJ van Binsbergen & PL Geschier *Old Modes of Production and Capitalist Encroachment: Anthropological Explorations in Africa* (1985) 12.

⁸⁸ SNC Obi *The Ibo Law of Property* (1963) 51.

⁸⁹ JC Caldwell, et al 'The Construction of Adolescence in a Changing World: Implications for Sexuality, Reproduction and Marriage' (1998) 29(2) *Studies in Family Planning* 137-153 at 138.

⁹⁰ CJ Korieh *The Land has Changed: Society and Gender in Colonial Eastern Nigeria* (2010) xii-xiii, 1-10.

⁹¹ Ibid at 206. For similar changes in Kenya, see J Ensminger *Making a Market: The Institutional Transformation of an African Society* (1996) 116.

the groom. Accordingly, they provide the resources for bridewealth payment with little or no help from their extended family.⁹² Scholars have suggested that the shift of bridewealth payment from the family to the groom reinforced masculinity. This is because the bride's family believes that high bridewealth demonstrates the groom's ability to take care of their daughter.⁹³ The Igbo adage *nwata kwo aka o soro ndi okenye rie nri* (a child that washes his hands deserves to eat with the elders) demonstrates this perception. However, although individualised payment of bridewealth signals commitment to care for the bride, it does not really suggest that the commitment will continue after marriage.

As stated above, this study utilises a needs-based view of the structure-agency debate as its theoretical framework for examining the dynamics of unequal power relations in bridewealth negotiation in South-East Nigeria.

1.3 Why the study area?

This study focuses on South-East Nigeria, a geo-political region comprised of Enugu, Anambra, Imo, Abia, and Ebonyi states.⁹⁴ I selected it for two reasons.

One, it has generally homogenous socio-cultural features such as dialects, religion, and customs, which help in generalising some of my research findings.

Two, as most scholars have noted, the highest amount of bridewealth is paid in South-East Nigeria, unlike other ethnic groups where the payment is almost negligible.⁹⁵ The reasons for the persistence and demand of high payment ranges from the high value placed on women, to the value placed on bridewealth payment as an age long tradition that needs to be maintained and sustained – that is, a culture to be proud of.⁹⁶ Exorbitant rates of bridewealth payment led

⁹² CO Odimegwu & A Zerai op cit note 3 at 83; DJ Smith 'Modern Marriage, Masculinity, and Intimate Partner Violence in Nigeria' in K Yllö & MG Torres (eds.) *Marital Rape: Consent, Marriage, and Social Change in Global Context* (2016) 46.

⁹³ DJ Smith *To Be a Man Is Not a One-Day Job: Masculinity, Money, and Intimacy in Nigeria* (2017) 18, 57, 60.

⁹⁴ Chapter two describes the demographic choices of the study.

⁹⁵ See JC Caldwell 'The Demographic Implications of West African Family Systems' (1996) 27(2) *Journal of Comparative Family Studies* 331-352 at 337; UC Isiugo-Abanihe 'Bridewealth, Marriage and Fertility in the East-central states of Nigeria' (1995) 51(3/4) *Genus* 151-178 at 154, 156-157.

⁹⁶ UC Isiugo-Abanihe 'High Bridewealth and Age at Marriage in Igboland' in E Van de Walle & JA Ebigbola (eds.) *The Cultural Roots of African Fertility Regimes* (proceedings of Ife conference) (1987) 1-15; MB Nwoke 'Bride Price and Implications for Women's Rights in Nigeria: Psychological Perspective' (2009) 7(1) *Gender and*

to the adoption of the Limitation of Dowry Law by the then Eastern Nigerian government in 1956.⁹⁷

In 1954, the then Eastern regional government of Nigeria set up a four-person committee to investigate the social effects of the payment of bridewealth and to make appropriate recommendations. After investigating, the committee concluded that bridewealth was unnecessarily high and recommended for the payment to be statutorily limited to £30.⁹⁸ The committee also recommended penalties for exceeding the stipulated amount. They further recommended that incidental expenses should be defined as expenses related to marriage gifts and should be limited to £5.⁹⁹

Following the committee's report, the former eastern Nigerian government introduced the Limitation of Dowry Law. The law made it an offence punishable on conviction with six months' imprisonment for anyone to receive or pay more than is stipulated by the legislation.¹⁰⁰ Section 5 (b) of the Limitation of Dowry Law further states that 'no court shall make any decree or order if the claim involved in such suit or proceeding or if the passing of the decree or order or if such execution would be in any way contrary to any provision of this Law'. This provision in other words empowers the court to reject any claim of bridewealth that exceeds the sum stipulated in the Limitation of Dowry Law. However, the legislation is wisely silent on the validity of marriage where the bridewealth breaches the law.¹⁰¹

Following complaints about the Dowry Law and consultations in 1979 to address these complaints, a bill titled 'the Limitation of Bride Price Law' was introduced to repeal the

Behavior 2078-2086 at 2080-2082; VC Uchendu 'Concubinage among Ngwa Igbo of Southern Nigeria (1965) 35(2) *Africa* 187-197; F Ekejiuba 'Currency Instability and Social Payments among the Igbo of Eastern Nigeria 1890-1990' in J Guyer (ed.) *Money Matters, Instability, Values and Social Payments in the Modern History of West African Communities* (1995) 133-161; KT Kollehlon 'Ethnicity and Fertility in Nigeria' (2003) 50(3/4) *Biodemography and Social Biology* 201-221 at 205.

⁹⁷ Limitation of Dowry Law, Eastern Region Law No. 23 of 1956, now Cap 76 Laws of Eastern Nigeria 1963, [Appendix I](#). Dowry differs from bridewealth as it is the property or money that is brought by the bride from her father's house to the husband. The use of the term 'dowry' in the legislation could be said to be a misnomer and the ignorance of the legislators. See A Schlegel & R Eloul 'Marriage Transactions: Labor, Property, Status' (1988) 90(2) *American Anthropologist* 291- 309 at 299-301.

⁹⁸ Following Nigeria's independence and law review in 1963 the payment became 60 Naira.

⁹⁹ See generally MO Balonwu, et al *Report of the Committee on Bride Price: The Eastern Region of Nigeria* (1955) 46.

¹⁰⁰ Section 3 (a) of the Dowry Law.

¹⁰¹ *Emeakuana vs Umeojiako* (1979) ENLR 151.

Limitation of Dowry Law, but was never passed.¹⁰² The law stated that the maximum amount to be paid as bridewealth, excluding marriage gifts, is 500 Naira (\$1.37 or £1.17) whilst the inclusion of marriage gifts reduces the payment to 200 Naira plus 300 Naira as incidental.¹⁰³ Even though this law was not passed, one notable change to it lay in its title: from ‘Dowry’ to ‘Bride Price’.

However, the Dowry law is a glaring failure, given that people flagrantly flout it by continuing to charge high sums as bridewealth.¹⁰⁴

Its failure demonstrates the limitations of state law, as well as conflict between state law and culture.¹⁰⁵ In most of these conflicts, culture prevails. This may be illustrated with an anecdote reported by Ogbu:¹⁰⁶

[A] man who insisted on paying no more than the official bridewealth of thirty pounds was asked by the relatives of his bride-to-be whether he came to marry according to government regulation or according to local customs. Before he could answer, he was told that if he wanted to marry according to government regulation, he should go to Enugu and marry a daughter of one of the cabinet ministers. Having no real choice in the matter, the man had to pay more than twice the official bridewealth. He was then given his bride and a receipt, but the latter bore only the amount of the official bridewealth. When the marriage later failed, the man could only recover the official bridewealth as he could present no written evidence to the native court judges that he paid a higher bridewealth. In any case, it would have been against the law to do so.

Regarding the efficacy of legislating against high bridewealth, Nwaka has observed that ‘legislation, however well-intentioned, is often ineffective against attitudes and prejudices which cannot be easily reduced to specific grievances amenable to legal or administrative remedy.’¹⁰⁷ His observation illustrates dissonance¹⁰⁷ between the idea of the human as a subject

¹⁰² Bill No. 70 of 1981 published in Imo state of Nigeria gazette No. 22 June 18, 1981.

¹⁰³ See generally EI Nwogugu *Family Law in Nigeria* (2014) 70.

¹⁰⁴ MO Izunwa ‘A Critique of Certain Aspects of the Grounds, Procedure and Reliefs Attaching to Customary Divorce Law in Southern Nigeria’ (2015) 7(5) *Journal of Law and Conflict Resolution* 31-38 at 35; OO Elechi *Doing Justice Without the State: The Afikpo (Ehugbo) Nigeria Model* (2006) 164.

¹⁰⁵ See, for example, J Webber ‘Legal Pluralism and Human Agency’ (2006) 44(1) *Osgoode Hall Law Journal* 167- 198 at 167-170, 177, 183.

¹⁰⁶ JU Ogbu ‘African Bridewealth and Women’s Status’ (1978) 5(2) *American Ethnologist* 241-262 at 259.

¹⁰⁷ GI Nwaka op cit note 12 at 475.

of structure typified by legal norms and people's ability to defy legal norms that do not conform to their customs and traditions.¹⁰⁸

1.4 Why study bridewealth negotiation process?

Bridewealth is an undeniably important cultural institution. Its negotiation process reflects power dynamics, their distributive consequences, and the needs assessment that precede and accompany people's exercise of agency. By revealing how women and men bargain for privileges and power,¹⁰⁹ bridewealth negotiation shows unique needs dynamics capable of enriching understandings of the structure-agency interplay. As Pettigrew rightly noted, investigating processes is the best way to 'capture the dynamic quality of human conduct in organisational settings'.¹¹⁰ The organisational setting of South-East Nigeria is strongly patriarchal. Here, individuals' choices of marriage partners – when to marry, where to marry, and who to marry, are heavily constrained by cultural factors. These factors include the clan, tribe, and the social status of the prospective parties – that is whether they are descendants of slaves or freeborn.¹¹¹ As I pointed out in the literature review, there is dissonance between the origins of many customs surrounding bridewealth payment and the contemporary funding of bridewealth payment. The power of agency over structure is questioned in decisions regarding the quantum of bridewealth payment, who benefits from bridewealth payment, and the rationale for its distribution.¹¹² Just like structural constraints on choice of marriage partners,

¹⁰⁸ FA Ajayi 'The Interaction of English Law with Customary Law in Western Nigeria' (1960) 4 *Journal African Law* 98-114 at 37, 39, 62- 63; ES Nwauche 'The Constitutional Challenge of the Integration and Interaction of Customary and the Received English Common Law in Nigeria and Ghana' (2010) 25 *Tulane European and Civil Law Forum* 37-63 at 37; See also SE Merry 'Legal pluralism' (1988) 22(5) *Law and society review* 869-896 at 869; J Griffiths 'What is Legal Pluralism?' (1986) 18(24) *Journal of Legal Pluralism and Unofficial Law* 1-55 at 2.

¹⁰⁹ JM Gerson & K Peiss 'Boundaries, Negotiation, Consciousness: Reconceptualizing Gender Relations' (1985) 32(4) *Social Problems* 317-331 at 318.

¹¹⁰ AM Pettigrew 'What is a Processual Analysis?' (1997) 13(4) *Scandinavian Journal of Management* 337-348 at 337. See also AH van de Ven 'Suggestions for Studying Strategy Process: A Research Note' (1992) 13 *Special Issue, Strategic Management Journal* 169-191 at 169-170.

¹¹¹ For other reasons showing why parents choose partners for their children see A Okonjo 'Aspects of Continuity and Change in Mate-Selection Among the Igbo West of the River Niger' (1992) 23(3) *Journal of Comparative Family Studies* 339-360 at 344-348. DJ Smith op cit note 5 at 134, 147; DJ Smith 'Fatherhood, Companionate Marriage, and the Contradictions of Masculinity in Nigeria' in MC Inhorn, et al (eds.) *Globalized Fatherhood* (2014) 318; see also PE Okeke-Ihejirika *Negotiating Power and Privilege: Igbo Career Women in Contemporary Nigeria* (2004) 80; EE Nwokocha 'Male-Child Syndrome and the Agony of Motherhood among the Igbo of Nigeria' (2007) 33(1) *International Journal of Sociology of the Family* 219-234 at 219, 229.

¹¹² JL Comaroff *The Meaning of Marriage Payments* (1980) 70-72.

decisions over bridewealth distribution are determined by culture, even though the quantum of bridewealth is influenced by socio-economic factors such as education, high standard of living, and urbanisation.¹¹³

Furthermore, during bridewealth negotiation, individuals who often did not make any substantial financial contribution to the upbringing of the bride, emerge to determine the manner of the distribution of bridewealth. It is during this period that the engaged couple discover that, although they bring the money needed to celebrate their marriage, they may not have much input in how the money is spent. They may not be able to determine who will benefit from the spending, and why those persons should benefit from it. In this sense, the cultural institutions that determine and maintain the quantum of bridewealth payment often conflict with individuals' desire to influence the payment of bridewealth. The confluence of culture and the socio-economic elements of needs-based agency create an intriguing research puzzle. In this confluence of, or hybrid social relationship, potential couples are constrained in their ability to actively participate in bridewealth determination, quantum, and distribution on the one hand. This is problematic, since they fund the bridewealth. It is especially problematic for the bride, whose passive role in bridewealth negotiation seriously questions her agency as an adult capable of rational, independent actions.¹¹⁴ As the Igbo saying goes, *nwanyi amaghi mgbe erere ya* (a woman does not know when she is sold). On the other hand, couples' compliance with the cultural restrictions surrounding bridewealth payment sustains it as a social structure. Couples' cultural restraints, coupled with the involuntary absence of the bride, demonstrates unequal power relations and reinforces patriarchal continuities.

This research is significant for policy implementation in Nigeria, especially in the context of law's complex role in development.¹¹⁵ As disdain for the Dowry Law shows, people

¹¹³ LA Obiora 'Reconsidering African Customary Law' (1993) 17(3) *Legal Studies Forum* 217-252 at 230; J Goody 'Bride wealth and Dowry in Africa and Eurasia' in J Goody & SJ Tambiah (eds.) *Bride wealth and Dowry* (1973) 7; HF Morris 'Review of Development in African Marriage Laws since 1950' in A Philips & HF Morris (eds.) *Marriage Laws in Africa* (1971) 50.

¹¹⁴ C Undie & CO Izugbara 'Unpacking rights in indigenous African Societies: Indigenous Culture and the Question of Sexual and Reproductive Rights in Africa' (2011) 11(3) *BioMedCentral International Health and Human Rights* 1-11 at 6 -7.

¹¹⁵ J Brohman 'Popular Development' in S Corbridge (ed.) *Development: Critical Concepts in Social Sciences* (2000) 259-260; P Oakley *Projects with People: The Practice of Participation in Rural Development* (1991) 1-3; DM Trubek & M Galanter 'Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development in the United States' (1974) 4 *Wisconsin Law Review* 1062-1101 at 1062-1065.

are unlikely to be impressed with policies that seek to regulate their lives without adequate sensitivity to the socio-economic needs that influence their social choices.¹¹⁶ The failure of the Dowry Law reflects policy insensitivity to the importance of bridewealth payment, especially the beliefs and conditions that sustain it. It also calls for a rethinking of the socio-economic needs that inform behaviour on bridewealth payment. As Ian Greener put it, ‘the underlying assumptions that policy makers hold about agency are crucial for the effectiveness of policy.’¹¹⁷ Therefore, by investigating the structure-versus-agency interplay in bridewealth negotiation, this study promises to broaden policy understandings of women’s subordination, gender roles, patriarchal continuities, and conflict of laws. It will reveal how individuals such as potential couples and women are negotiating cultural spaces, privileges, and rights, using different strategies and tools.¹¹⁸ In sum, an empirical examination of the interplay of structure and agency in the context of bridewealth payment is significant to policy and scholarly understandings of unequal power relations.

1.5 Objectives

In the light of the research puzzle, I seek to use a needs-based view of the structure-agency interaction to broaden understandings of how power relations play out in the negotiation process of bridewealth payment in South-East Nigeria. Furthermore, I aim to shed light on the ways individuals manipulate or control the cultural institution of bridewealth payment. In so doing, I will uncover cultural constructions of structure within socio-economic needs and embedded notions of acceptable social conduct and restraints.

1.6 Research question

My investigation was conducted with the question I posed at the beginning of this dissertation:

In what ways do power relations play out in the negotiation process of bridewealth payment in South-East Nigeria?

¹¹⁶ TR Tyler & JM Darley op cit note 48 at 708.

¹¹⁷ I Greener ‘Agency, Social Theory and Social Policy’ (2002) 22(4) *Critical Social Policy* 688-705 at 703.

¹¹⁸ GP Murdock ‘How Culture Changes’ in HL Shapiro (ed.) *Man, Culture, and Society* (1956) 247-255.

To answer this question comprehensively, and in line with the above objectives, I utilised the following probes:

- (a) Which factors are responsible for the persistence of high bridewealth payment?
- (b) What role does informal law play in the negotiation process of bridewealth payment?
- (c) In what ways do individuals use agency to manipulate bridewealth negotiation?
- (d) What significance does the structure-agency interaction hold for policy formulation and implementation in Nigeria?

Given that social norms are the foundation of social life,¹¹⁹ the answers that emerge from these questions will benefit policy making and implementation in Nigeria.¹²⁰ What follows outlines the methodology of study, which is described in detail in chapter two.

1.7 Methodological outline

I used a qualitative method to understand the dynamics of unequal power relations and how these dynamics play out in the negotiation process of bridewealth payment in South-East Nigeria.¹²¹ I triangulated literature review, direct, non-participant observation of bridewealth negotiations, and in-depth interviews of 47 key informants between March and May 2016.¹²²

¹¹⁹ RI McDonald & CS Crandall 'Social Norms and Social Influence' (2015) 3 *Current Opinion in Behavioral Sciences* 147-151 at 147-148; J Knight & J Ensminger op cit note 58 at 3-34, 148.

¹²⁰ N Luhmann *A Sociological Theory of Law* (2014) 103; D Beetham *The Legitimation of Power* (2013) 3-21; HL Hart & L Green *The Concept of Law* (2012) xv; CR Sunstein 'On the Expressive Function of Law' (1996) 144(5) *University of Pennsylvania Law Review* 2021-2053 at 2025-2026; B Mayer 'The Dynamics of Power in Mediation and Negotiation' (1987) 16 *Conflict Resolution Quarterly* 75-86 at 75; F Von Benda-Beckmann 'Scape-Goat and Magic Charm: Law in Development Theory and Practice' (1989) 21(28) *Journal of Legal Pluralism and Unofficial Law* 129-148 at 129.

¹²¹ DN Schiff 'Socio-Legal Theory: Social Structure and Law' (1976) 39(3) *The Modern Law Review* 287-310 at 287.

¹²² On triangulation, see NK Denzin *The Research Act: A Theoretical Introduction to Sociological Methods* (1973) 27-29; C Marshall & G Rossman *Designing Qualitative Research* (1989) 102-105; MQ Patton *Qualitative Research and Evaluation Methods* (2002) 187-188.

1.8 Chapter organisation

This thesis is divided into seven chapters, as follows:

Chapter Two: *Methodological approach and interpretation*

This chapter shows how the research method employed in this thesis worked to provide understanding of the research objectives and question. It specifically examines the research design, sample size, and limitations of the research method.

Chapter Three: *The Concept of bridewealth payment in South-East Nigeria*

This chapter proffers an understanding of the concept of bridewealth, paying careful attention to its meaning and significance. It places emphasise on the distortion of bridewealth payment and reasons for this distortion.

Chapter Four: *Structure, agency, and women's voices in the Nigerian legal system*

This chapter offers a feminist account of structure and agency in Nigeria's precolonial, colonial and post-colonial legal system. Specifically, it looks at the history of the Nigerian legal system in order to show how the reception of English law affected women's agency in the context of bridewealth payment.

Chapter Five: *Negotiation process of bridewealth payment in South-East Nigeria*

This chapter reveals the complex web of social relationships within which individuals manipulate or influence the cultural institutions of bridewealth payment. Using data from key informant interviews and personal observations, it reveals the active actors in the negotiation process of bridewealth payment, their roles, and the influence of agency on these roles.

Chapter Six: *Significance of structure and agency interplay*

This chapter reviews the data obtained from interviews. It evaluates this data and shows how the understanding of the interplay of structure and agency debate in the context of negotiation process of bridewealth in Nigeria enhances policy implementation in Nigeria.

Chapter Seven: *Conclusion*

This chapter concludes the thesis by providing a synthesis of each chapter, situating the theories with data, and points the way for future research.

Chapter Two: Methodology

2.1 Introduction

The methods discussed in this chapter seek to understand the ways in which the dynamics of unequal power relations play out in the negotiation process of bridewealth payment in South-East Nigeria. These dynamics offer a useful lens for comprehending the interaction of structure and agency, as well as the significance of this interaction for policy makers, potential couples, their parents, and traditional leaders.

The first significance is the strain that unequal power relations place on people's obligation to respect state law, as it is articulated in constitutional clauses on equality and laws that purport to regulate behaviour.¹

The second significance is the strain that unequal power relations places on the interaction of normative orders, and the effects of this interaction on programme effectiveness.

From the literature surveyed in the introductory chapter, no major work has investigated the dynamics of unequal power relations using the negotiation process of bridewealth payment and needs-based view of the structure-agency interaction. In filling this gap in the literature, this chapter starts by explaining the research design, method of data collection, and the choices made to ensure data reliability and validation. It then explains the area of study, types of research participants, questions used to elicit data from participants, and limitations encountered in the investigation.

2.2 Research sites

The study area is the south-eastern region of Nigeria, a geopolitical zone with an estimated population of twenty million. It comprises of five states – Imo, Abia, Anambra, Enugu, and Ebonyi states.² I visited all of them except Ebonyi State, which is the farthest and would have been too financially demanding for me to visit. However, I interviewed research participants resident in other states who are indigenes of Ebonyi or married to indigenes of Ebonyi.

¹ See, for example, s. 42(1) of the 1999 Constitution of the Republic of Nigeria, which provides for the right to equality. See also Limitation of Dowry Law Eastern Region Law No. 23 of 1956, now Cap 76 Laws of Eastern Nigeria 1963, which purports to regulate bridewealth.

² See the first schedule in the 1999 Constitution of the Republic of Nigeria. All South-East states were carved out of Imo State.

I chose South-East Nigeria because the highest levels of bridewealth payments in Nigeria are made in this area. Also, the states that make up this region share similar language dialects and demographic features, which make it easy to generalise some of the research findings in the area.³ The states most notorious for high bridewealth are Imo and Abia.⁴ Most of the research participants were selected from these two states, which are fiercely resistant to changes in bridewealth payment.⁵

Research participants were purposively selected. The purposive sample selection method involves identification of research participants who can provide sufficient information on the phenomena sought by the research.⁶ In this study, it involved the selection of research participants based on the aims of the research question.⁷ It also involved the selection of participants in a manner that sought a balance between their locations, education, age, occupation, and social status. As mentioned earlier, most of the highest levels of bridewealth payments occurs in Imo and Abia states. Consequently, I selected most of the research participants from these areas.

In addition, the research participants were drawn from urban, peri-urban and rural areas: 55 per cent from urban areas (n=24), 32 per cent from rural areas (n=15), and 13 per cent from semi-urban areas (n=8). The reason for the urban bias is because most people have migrated, and are migrating to urban areas for education, jobs, and better livelihoods.⁸ The requirements

³ See HC Ogbu 'The Homogeneity of Igbo Culture' (2013) 4(6) *Mediterranean Journal of Social Sciences* 393-400 at 393.

⁴ UC Isiugo-Abanihe 'Bridewealth, Marriage and Fertility in the East-Central States of Nigeria' (1995) 51(3/4) *Genus* 151-178 at 154.

⁵ DJ Smith 'Romance, Parenthood, and Gender in a Modern African Society' (2001) 40(2) *Ethnology* 129-151 at 135; CO Odimegwu & A Zerai 'Understanding the Proximate Determinants of Fertility of a Nigerian Ethnic Group' (1996) 52(3/4) *Genus* 67-87 at 71; P Iroegbu 'Marrying Wealth, Marrying Money: Repositioning Igbo Women and Men' in B Saunders & MC Foblets (eds.) *Changing Genders in Intercultural Perspectives* (2002) 103; LA Obiora 'Reconsidering African Customary Law' (1993) 17(3) *Legal Studies Forum* 217-252 at 230.

⁶ MQ Patton *Qualitative Research and Evaluation Methods* (2015) 230-238; SB Merriam *Qualitative Research in Practice: Examples for Discussion and Analysis* (2002) 12.

⁷ A Bryman *Social Research Methods* (2016) 408-410; LA Palinkas, et al 'Purposeful Sampling for Qualitative Data Collection and Analysis in Mixed Method Implementation Research' (2015) 42(5) *Administration and Policy in Mental Health and Mental Health Services Research* 533-544 at 533; SJ Gentles, et al 'Sampling in Qualitative Research: Insights from an Overview of the Methods Literature' (2015) 20(11) *The Qualitative Report* 1772-1789 at 1778.

⁸ See also B Chukwuezi 'Through Thick and Thin: Igbo Rural-Urban Circularity, Identity and Investment' (2001) 19(1) *Journal of Contemporary African Studies* 55-66 at 58.

for determining what qualifies as urban, peri-urban, and rural areas are mostly based on the level of infrastructural growth (built environment and facilities), population density, and official classification.⁹ Nineteen of the research participants are from Imo State, eleven are from Abia State, seven are from Enugu State, five are from Ebonyi State, and six are from Anambra State. One participant is from Oyo State in South-West Nigeria, although he resides in Imo State, and married a woman from there. He provided an insider-outsider perspective.

2.3 Research design

To shed further light on the research question and problem, the methods I employed in this study aimed to investigate three key issues. The first is how individuals such as the potential couples and their parents are navigating the constraints of cultural institutions. The second is the role of formal and informal law in bridewealth payment. The third is the factors responsible for high bridewealth payment in South-East Nigeria. Accordingly, I employed a qualitative research method.

I chose a qualitative research method because it is the most practical method for obtaining a nuanced understanding of complex phenomena such as the dynamics of power relations in the negotiation process of bridewealth payment and decision-making based on lived realities. Qualitative methods provided me with in-depth accounts of peoples' experience of bridewealth payment, especially their interpretation of events in their own voice and within their own cultural setting.¹⁰ Though complex phenomena can be quantified in some cases, the description of the complexity of cultural interaction, bargaining, and decision-making is best extracted using a qualitative research method. Creswell argues that qualitative research methods are best suited for exploring and understanding social problems.¹¹

The qualitative research methodology I used here involves face-to-face key informant interviewing, literature review, unobtrusive observation of traditional marriage ceremonies, and thematic data analysis. These methods revealed the challenges faced by individuals during

⁹ An example is the classification in the Imo State Ministry of Lands, Survey and Urban Planning; Enugu State Ministry of Lands, Survey and Town Planning. See generally, A Onibokun & A Faniran *Urban Research in Nigeria* (1995) 5-17.

¹⁰ SH Matthews 'Crafting Qualitative Research Articles on Marriages and Families' (2005) 67(4) *Journal of Marriage and Family* 799-808 at 800; E Babbie *The Practice of Social Research* (2010) 296-7.

¹¹ JW Creswell *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (2009) 4.

the negotiation process of bridewealth payment through research participants' personal views and experiences.¹² As I proceed to explain, a combination of interviews, literature review, and un-obstructive observation ensured that their individual limitations were remedied by their collective strengths.¹³

2.3.1 *Review of materials*

A literature review provided an understanding of the concepts of structure and agency, unequal power relations and bridewealth payment. It exposed gaps in the literature on bridewealth and helped me to identify suitable research methods. Given the gaps I identified in the literature, I used materials on bridewealth from elsewhere where necessary. These materials include Kitamura and Ohta's study of the Turkana tribe of northern Kenya, Yarbrough's study of the puzzling persistence of bridewealth in Kwazulu Natal, Yan's study in north China, Burman and Van der Werff's study on contemporary bridewealth practices in South Africa.¹⁴

In-depth interviews were the primary data-gathering method for this study. I conducted pilot studies with four participants to aid in the development and refinement of my research questionnaire.¹⁵ I used face-to-face interactions and semi-structured, open-ended questions for my interviews. This system comprised of lists of questions and probes with the same thematic areas to be explored with all participants. A semi-structured interview is useful for exploratory research.¹⁶ It allowed me to work easily and flexibly with my research objectives, probe

¹² Ibid at 4; see also M Hennink, et al *Qualitative Research Methods* (2011) 9 and 205; A Giorgi *Phenomenology and Psychological Research* (1985) 72.

¹³ TD Jick 'Mixing Qualitative and Quantitative Methods: Triangulation in Action' (1979) 24(4) *Administrative Science Quarterly* 602-661 at 608-610.

¹⁴ K Kitamura 'Communication for "Negotiation" among the Turkana' (1997) 18(3/4) *African Study Monographs* (1997) 241-256 at 243; I Ohta 'Marriage and Bridewealth Negotiations among the Turkana in Northwestern Kenya' (2007) 37 *African Study Monographs* 3-26; S Burman & N Van der Werff 'Rethinking Customary Law on Bridewealth' (1993) 19(2) *Social Dynamics* 111-127; Y Yan 'The Individual and Transformation of Bridewealth in Rural North China' (2005) 11(4) *Journal of the Royal Anthropological Institute* 637-658; M Yarbrough 'Very Long Engagements: Legal Consciousness and the Persistent Authority of Bridewealth in a South African Community' (2014) *New York Law School Review* 1-69.

¹⁵ S Kvale *Interviews: An Introduction to Qualitative Research Interviewing* (1996) 148-150.

¹⁶ E van Teijlingen & K Forrest 'The Range of Qualitative Research Methods in Family Planning and Reproductive Health Care' (2004) 30(3) *Journal of Family Planning and Reproductive Health Care* 171-173 at 171; See TE Jayaratne & AJ Stewart 'Quantitative and Qualitative Methods in the Social Sciences' in MM Fonow & JA Cook (eds.) *Beyond Methodology: Feminist Scholarship as Lived Research* (1991) 85-87; S Brinkmann 'Interview' in T Teo (ed.) *Encyclopaedia of Critical Psychology* (2014) 1008.

research participants' responses, ask spontaneous questions, and obtain spontaneous and uninhibited answers from the research participants. These methods are well suited for getting individual perceptions of cultural issues and suggestions for policy reform. It further helped me to unpack informed choices made by people based on their socio-economic needs. Data from interviews offered a contrast to data from literature review by revealing current attitudes towards bridewealth payment. It also helped me to obtain materials not available in the literature. I conducted the fieldwork during school holidays and festive periods. As such, the disposition and accessibility of research participants favoured face-to-face interviews. They were relaxed, with informal and conversational style of questioning. They were also more amenable to grant interviews in their business locations (n=18) and in their houses (n=29) than in other locations. My flexible approach in interview locations took into consideration the fact that some women may have feelings of uneasiness in discussing their experiences and perceptions of bridewealth in the presence of their husbands. Hence, I interviewed married couples separately. Interviews provided me with nuanced understanding of the origins of bridewealth payment, people's cultural beliefs, perceptions, and attitudes towards the institution of marriage within which bridewealth payment occurs. It further shed light on the role of law and the perceptions of non-state policy makers such as village chiefs, and leaders of men and women associations. It also illumined people's adaptation of cultural norms to socio-economic changes such as education, individual income, and religion, which I found to be significant bargaining tools in bridewealth negotiation. The findings I obtained from interviews are therefore contextual findings rather than sweeping generalisations.¹⁷

2.3.2 *Personal observations*

One of the goals of qualitative research is to discover patterns of behaviour that emerge after close observation and to 'discover what can be learned about some phenomenon of interest, particularly social phenomena where people are the participants (or as traditionally referred to as subjects)'.¹⁸ As a research method, observation entails watching research participants in their

¹⁷ EW Eisner & MD Day *Handbook of Research and Policy in Art Education* (2008) 461.

¹⁸ PS Maykut & R Morehouse *Beginning Qualitative Research: A Philosophic and Practical Guide* (1994) 21, 43-44.

natural environment to see if their behaviour matches the things they say about phenomena.¹⁹ Un-obstructive observations helped me to witness bridewealth negotiations as they unfolded, check nonverbal expressions of negotiators, and monitor the silent communication narratives of some research participants. To understand the world, in this case the negotiation process of bridewealth payment, I needed to ‘become part of it.’²⁰ Observations also entail watching how individuals are influenced by their environment. As Mulhall noted, ‘interviews with individuals provide the pieces of the jigsaw and these pieces are then fitted into the “picture on the box” which is gained through observation.’²¹ Observation is well suited for understanding how the dynamics of unequal power relations play out in bridewealth negotiations. It gave me better understanding of the customs and traditions surrounding bridewealth payment, the active and non-active players in bridewealth negotiation, and the behaviour of potential spouses, their parents, and other members of the family during the negotiation process.²² It further helped me to complement and contrast the data I obtained from interviews.

I observed negotiations of bridewealth leading up to marriage ceremonies in two communities in Imo State in April 2016. Since my observation was not obstructive, I gathered data with an audio device and manually recorded my observations as field notes. The three main limitations I encountered relate to my role as an observer. The first is the effect of my presence on research participants. The second is cultural limitations on my presence in bridewealth negotiations conducted by men. The third is my limited ability to record my observations while absorbed in the marriage proceedings. However, I was able to make up for these limitations through interviews of participants, whose perceptions helped me to corroborate my personal observations of bridewealth negotiation.

¹⁹ A Tashakkori & C Teddlie *Handbook of Mixed Methods in Social and Behavioral Research* (2003) 312-314; J Burke & LA Turner ‘Data Collection Strategies in Mixed Methods Research’ in A Tashakkori & C Teddlie (eds.) *Handbook on Mixed Methods in the Behavioural and Social Sciences* (2003) 312.

²⁰ MQ Patton op cit note 6 at 259.

²¹ A Mulhall ‘In the Field: Notes on Observation in Qualitative Research’ (2003) 41(3) *Journal of Advanced Nursing* 306–313 at 308.

²² See generally chapter five for more details of the members present during the negotiation process.

2.4 Sample selection and description of research participants

I need to point out that one or more individuals in my research participants belonged to more than one of the groups I explain below. Accordingly, it is difficult to give a total number of research participants in each individual group. For example, the traditional leaders were asked questions based on their capacity as parents and traditional leaders, as married couples and parents, and as parents and elders. Research participants were selected from the five mentioned states based on their age, occupation, state of origin, marital status, educational qualifications, and gender.²³ I did not choose religion as a criterion because an overwhelming majority of South-East Nigerians are Christians.²⁴ I chose research participants based on their key roles and influence in the community with regards to the negotiation process of bridewealth, their potential knowledge of the negotiation process of bridewealth, and their willingness to offer information. The key research participants in this regard are traditional/village rulers, elders, and chiefs, married couples, parents of potential spouses, potential spouses themselves, and leaders of men and women associations. As such they are all knowledgeable and possessed the capacity to answer questions on bridewealth negotiation and payment. What follows is a description of the research participants and the questions I posed to them. This description is presented in no order, beginning with leaders of groups and associations.

2.4.1 Leaders of men and women's associations

The women's association referred to here is called *otu umunwanyị alulu*, which literally means an association of married women.²⁵ This association has its equivalent men's association. Just like that of the women, the men's association is composed of married men in a lineage or community, titled men, and age grade groups.²⁶ I interviewed four of these associations because they determine the items for their group on the marriage list and exercise disciplinary powers when there is failure to adhere to, or provide all the items on the list. They explained the criteria

²³ See table 1 appendix J for an overview and participants' demography.

²⁴ All my research participants are Christians.

²⁵ This association is different from other women's associations in Igboland, as explained in chapter three of this thesis. DC Ohadike 'Igbo Culture and Tradition' in C Achebe, *Things fall apart* (1958) xxviii.

²⁶ See GI Jones 'Ecology and Social Structure among the North- Eastern Ibo' (1961) 31(2) *Africa: Journal of the International African Institute* 117-134 at 128-133; B Umeogu 'Igbo African Legal and Justice System: A Philosophical Analysis' (2012) 2(2) *Open Journal of Philosophy* 116-122 at 117 and 121.

for determining the items on the list, which helped me to account for factors responsible for high bridewealth payment. The ages of these leaders ranged from 43-55 years. Most of them are low income earners and have been educated up to high school. They were selected from both urban and rural areas. Sometimes, the ability of leaders of associations to regulate cultural norms is determined by traditional rulers, who are explained next.

2.4.2 *Traditional leaders*

Traditional leaders are widely regarded as the custodians of customs and traditions in Igboland.²⁷ I interviewed two of them and their wives also. One of the traditional leaders is a graduate with a Nigerian Certificate in Education (NCE) and a principal of a high school at the time of interview. His wife is also a graduate and a teacher. The other traditional leader is a businessman, but also a university graduate. Along with their wives, they are all within the ages of 65-79 years. Among other things, they provided me with an overview of the origin and significance of bridewealth payment in their community, the factors responsible for high bridewealth payment, and their role in enforcing the Limitation of Dowry Law.

2.4.3 *Elders and chiefs*

This group is slightly different from traditional rulers. While a traditional ruler oversees an entire community, chiefs and elders have power within their families and kinship groups. However, some of them are members of the traditional rulers' cabinet.²⁸ Elders and chiefs (n=6) are mostly elderly, titled individuals in the community who are also members of the *Umunna*. They wield considerable power in the negotiation process of bridewealth, especially over the contents of the marriage list.²⁹ Their ages range from 62-70 years. They are low to high income earners, most of whom have a minimum of high school education. Their occupation ranges from farmers to businessmen. They enabled me to understand the significance of bridewealth payment, changes in its meaning, reasons for these changes, the criteria for fixing the items on

²⁷ B Umeogu op cit note 25 at 119; CO Akakuru, et al 'A Critical Appraisal of the Traditional Leadership Styles in Igboland, South-Eastern Nigeria' (2014) 19(3) *Journal of Humanities and Social Science* 48-52 at 50.

²⁸ CO Akakuru, et al op cit note 27 at 48.

²⁹ The chiefs are Chief Okenwa Ejeagui from Anambra state; Chief Innocent Eziaghala from Imo state; Chief Anselm Anyaoha from Imo state; Chief Linus Uhuo from Ebonyi state; Chief IO Joshua from Abia state and Chief Olakuso from Oyo state, Western Nigeria who is married to a woman from Imo state.

the marriage list, and the beneficiaries of these items. Above all, they explained the cultural consequences for not complying with the marriage list. These consequences are for the intending spouses on the one hand, and their parents, on the other hand.

2.4.4 Potential and married couples

Potential spouses (n=9) and married spouses (n=14) gave an account of their experiences during the negotiation process of their bridewealth. They also offered their opinions on best bridewealth practices. I interviewed couples separately to obtain their individual views and to avoid leaving out vital information due to pressure from the presence of their partner. For potential spouses still undergoing the negotiation process of bridewealth payment, or who had just concluded the process, I asked questions such as their opinion about their lack of representation in the distribution of marriage gifts and key role players in shaping attitudes about bridewealth payment. Their ages range from 25-45 years; their educational qualifications range from standard six to master's degree holders, and their income and occupation range from low to high income earners, and from unemployed to public servants and entrepreneurs.

2.4.5 Parents of couples

Parents of couples (n=13) usually collect the marriage list from the groups mentioned above and give it to the groom and his family. They benefit from the items on the list, as determined by men and women associations. Here, parents of couples include both receivers and givers of bridewealth. Since the payment of bridewealth is given by the groom's family, I asked majority of them questions in their capacity as receivers. In their capacity as givers, I asked them questions related to their children's exercise of agency. They further answered questions relating to the ways individuals are navigating the cultural constraints surrounding bridewealth payment.

2.5 Access to participants

I contacted research participants through family, religious, and professional links. My parents and father-in-law are religious leaders and respected individuals in three of the five South-East states. As such, they helped me in identifying some key participants, such as traditional leaders and leaders of associations. However, they played no further role beyond persuading a few research participants to meet me and decide whether to grant me interviews.

I employed the snowball technique to gain access to some research participants such as newly-wedded couples. Snowballing consisted of interviewed participants recommending other participants such as friends, acquaintances, and group leaders to offer information.³⁰

2.6 Data analysis

To assist with data collection, I used an audio recording device. It enabled me to preserve confidentiality and reproduce participants' views faithfully. It also assisted me in reflecting on the emotions that accompanied the provision of information by participants.³¹

Thematic data analysis helped me to identify, report, and analyse patterns of similarities and contrasts in the data collected from interviews and materials in the literature.³² This was achieved through thematic coding involving detailed description and interpretation of data.³³ The themes derived from interviews will be highlighted later in this chapter. Thematic data analysis helped me to answer questions, such as the tools used by people to navigate the influence of cultural institutions, the role of law in the negotiation process of bridewealth payment, and active role players in the distorted significance of bridewealth payment.

I personally transcribed all the audios of interviews. Many of the interviews (42) were in Igbo language. After the transcription of interviews, I coded and analysed data with the aid of NVIVO 11 software.³⁴ As part of data analysis, I compared field notes I made from my observations of marriage ceremonies with data in interview transcripts.

2.6.1 Coding process

³⁰ MS Lewis-Beck, et al *The SAGE Encyclopedia of Social Science Research Methods* (2004) 1044; C Noy 'Sampling Knowledge: The Hermeneutics of Snowball Sampling in Qualitative Research' (2008) 11(4) *International Journal of Social Research Methodology* 327-344 at 330.

³¹ For more detail on audio tape recording see KA May 'Interview Techniques in Qualitative Research: Concerns and Challenges' in JM Morse (ed.) *Qualitative Nursing Research: A Contemporary Dialogue* (1989) 198.

³² M Vaismoradi, et al 'Content Analysis and Thematic Analysis: Implications for Conducting A Qualitative Descriptive Study' (2013) 15(3) *Nursing and Health Sciences* 398-405 at 400; J Aronson 'A Pragmatic View of Thematic Analysis' (1995) 2(1) *The Qualitative Report* 1-3 at 2-3.

³³ M Vaismoradi et al op cit note 32 at 399

³⁴ NVivo 11 is a qualitative data analysis software package produced by QSR International. It is useful for in-depth analysis of data through its thematic, graphical, and cross-referencing tools.

In the coding, similar patterns of answers and behaviour were stored in nodes and thematically analysed. Thematic coding assists in efficient compilation of similarities and differences in the information gathered. The themes that emerged in the coding process are discussed in chapter five.³⁵ An example of my coding is shown in Table 2 below.

Table 2

Interview Transcript	Coding
<p>Interviewer: <i>What is the effect of not providing all the items on the marriage list?</i></p> <p>Remy: <i>It will be seen in the eyes of the community that the marriage rites were not completed, and it will deprive the bride's father the opportunity to participate in the sharing of anything that pertains to traditional marriage in another family.</i></p>	<p>Social recognition of marriage</p> <p>Deprivation from communal benefit</p>
<p>Interviewer: <i>Do you know about the Limitation of Dowry Law of 1956 and its effectiveness?</i></p> <p>Joseph: <i>No, even if there is a law like that it is not effective in my place. The successes and challenges of traditional marriage rites rest on the prospective spouses, parents of the couples, families of both couples etc. Their work is to make the law but it is still the families that will implement it. The government did not train the daughter for them and should not stop them from benefiting from whatever comes out of it by reason of marriage. They stay up there to make their laws but can't come down to implement them. It is</i></p>	<p>Ignorance of the law</p> <p>Lack of enforcement</p> <p>Conflict of laws</p> <p>Top down policy approach</p>

³⁵ For the themes developed for the interviews of traditional rulers and reasons see CO Akakuru et al op cit note 27 at 50; EO Awa *The Transformation of Rural Society: A Study of Rural Development in the Eastern States of Nigeria 1970-76* (1992) 47.

<i>implementation that is the problem and it rests on the parents, families to obey or not.</i>	
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2.7 Ethical considerations

Ethical clearance for this research was obtained from the Research Ethics Office of the Faculty of Law at the University of Cape Town in 2016.³⁶ I did not require any formal permission from the area of study, since the nature of my research does not demand it. To ensure the confidentiality of research participants, I used measures such as pseudonyms and redaction of information, which I adjudged as sensitive to participants' needs. I also conducted some interviews anonymously – that is without requiring the interviewer to provide his or her name. Where necessary, I removed from the thesis personal identifiers of research participants such as names, age, addresses, and where requested, occupations. Most often, this required a judgment call in consultation with my supervisors. For participants who are not literate, I used oral explanations to ensure that they entered the research on fairly even levels of understanding with literate participants. I stored a control list of research participants in Dropbox, a password-protected cloud storage facility. Before concluding this chapter, I will explain some challenges I encountered in my field work, which may constitute limitations of the study.

2.8 Speed bumps and lessons learnt

Other than resource constraints, the challenges I encountered in the research relate to my research design and cultural constraints. As shown in 2.7.3 below, some of these challenges demonstrate the interplay of structure and agency in social life. They also demonstrate people's ability to make informed decisions based on their needs.

2.8.1 Too big or too small?

My first challenge was the sample size of my research. Although I would have loved to interview a larger number, I interviewed only 47 key individuals. Sample size is usually a limitation in qualitative research because of the cost and difficulty of interviewing all the

³⁶ Ref: L34-2015. See appendix A.

research participants needed for the research.³⁷ For an ethnographic study, Morse suggests approximately 30 - 50 participants; for a grounded theory research, he suggested 30 - 50 interviews, while Creswell recommended 20-30.³⁸ According to Patton, sample size can be determined by the resources available, as well as the time allocation for the research and the aims of the research.³⁹ Sample size may be determined by data saturation – that is when participants seem to have no new information to offer.⁴⁰ For this study, answers to the questions I asked were continuously repeated in a way that indicated I was not likely to obtain new perceptions or divergences from the views expressed about bridewealth negotiation. In short, the number of participants I interviewed were enough to provide detailed explanations of bridewealth negotiation in South-East Nigeria. After I had interviewed about 40 individuals, the information I obtained began to appear repetitive. To obtain certainty, I interviewed a few more, and obtained the same results. Accordingly, it is doubtful if interviewing more participants would have added new perspectives to my findings.⁴¹

2.8.2 *One good turn deserves another*

Most of the research participants were willing to relate their experiences of bridewealth payment and offer their opinions on it. However, a few individuals refused to grant me interviews because I did not offer them any monetary compensation. Two of them argued that since I was going to benefit from their views and their knowledge, I needed to pay them for their time. They did not seem to be interested in my explanations that informed consent also

³⁷ SH Oppong 'The Problem of Sampling in Qualitative Research' (2013) 2(2) *Asian Journal of Management Sciences and Education* 202-210 at 203-205; M Sandelowski 'Sample Size in Qualitative Research' (1995) 18(2) *Research in Nursing and Health* 179-183 at 179-181.

³⁸ JM Morse 'Designing Funded Qualitative Research' in NK Denzin & YS Lincoln (eds.) *Handbook of Qualitative Research* (1994) 225; JW Creswell & CN Poth *Qualitative Inquiry and Research design: Choosing Among Five Approaches* (2017) 159.

³⁹ MQ Patton op cit note 6 at 242-244.

⁴⁰ RT Trotter 'Qualitative Research Sample Design and Sample Size: Resolving and Unresolved Issues and Inferential Imperatives' (2012) 55(5) *Preventive Medicine* 398-400 at 399; HR Bernard *Research Methods in Anthropology: Qualitative and Quantitative Approaches* (2011) 7, 436.

⁴¹ G Guest, et al 'How Many Interviews Are Enough? An Experiment with Data Saturation and Variability' (2006) 18(1) *Field Methods* 59-82 and 65-78; PI Fusch & LR Ness 'Are We There Yet? Data Saturation in Qualitative Research' (2015) 20(9) *The Qualitative Report* 1408-1416 at 1409-1412; M O'Reilly & N Parker 'Unsatisfactory Saturation': A Critical Exploration of the Notion of Saturated Sample Sizes in Qualitative Research' (2012) 13(2) *Qualitative Research* 190-197 at 192.

means consent free from any influences and inducements. As Shenton noted, each participant approached should be given an opportunity to refuse to participate and give reasons for non-participation to 'ensure that the data collection sessions involve only those who are genuinely willing to take part and prepared to offer data freely.'⁴² I did not interview these monetary-minded individuals, nor did I pressure them to be interviewed.

2.8.3 *The timid ones*

The third challenge I encountered was the unwillingness of some research participants to participate for fear of social rebuke or fear of having their views misquoted. In sum, they did not want anything that could cause problems in their marriages. Ordinarily, a subject like the negotiation process of bridewealth payment should not present confidentiality issues. The fact that a few women expressed concerns for confidentiality is evidence of the strong influence of cultural institutions over women's agency. They requested protection and removal of identifiers that could link them to the research. In some cases, I went to considerable lengths to assure them that information they provide would be used responsibly, while their identity would be protected with pseudonyms, redactions, and removal of personal identifiers from my dissertation. I usually interviewed spouses in this category separately and assured them that I would send them my research for their approval if needed. A few of them settled for anonymity.

2.8.4 *Generalisability of findings*

My fourth challenge is related to sample size because it concerns the generalisability of my findings, which is a major criticism of qualitative research method.⁴³ The results of a qualitative research method are not as generalisable as the results of a quantitative research.⁴⁴ The reason is that data from qualitative research mainly speaks to the experience of participants in the context of their environment.⁴⁵ On the other hand, generalisability is the main yardstick for

⁴² AK Shenton 'Strategies for Ensuring Trustworthiness in Qualitative Research Projects' (2004) 22 *Education for Information* 63-75 at 66.

⁴³ WA Firestone 'Alternative Arguments for Generalizing from Data as Applied to Qualitative Research' (1993) 22(4) *Educational researcher* 16-23 at 16; YS Lincoln & EG Guba *Naturalistic Inquiry* (1985)112-119.

⁴⁴ Scholars have argued that encountering research participants is enough generalisation for qualitative research methods; see JR Fraenkel & NE Wallen *How to Design and Evaluate Research in Education* (2006) 440; EW Eisner *The Enlightened Eye: Qualitative Inquiry and the Enhancement of Educational Practice* (1991) 197-212.

⁴⁵ DE Polkinghorne 'Language and Meaning: Data Collection in Qualitative Research' (2005) 52(2) *Journal of Counselling Psychology* 137-145 at 139-140.

estimating the validity of quantitative research study.⁴⁶ Eisner specifically states that data that can be generalised is data derived from ideas, skills and images.⁴⁷ My sample selection, although smaller than I desired, was carefully selected, and the information I obtained is detailed enough to solve my research puzzle. Most of the experiences related in this study challenged the present format of bridewealth payment as a cultural institution.

2.8.5 *Language barrier*

The last challenge I encountered concerns language. This challenge is surprising, given that I considered myself very conversant with the Igbo language. A central dialect of Igbo is widely spoken and understood in the study area.⁴⁸ Since I am from the study area and speak English and Igbo language fluently, I did not anticipate language problems. However, there are different dialects in the study area.⁴⁹ Many of my research participants desired to speak to me in Igbo language, with some insisting that, since my research is a cultural issue, it should be conducted in the local language. They also noted that they feel more comfortable answering their questions in their local language. In some cases, I asked questions in English, only for the participants to demand that I translate them into Igbo. I was surprised by the challenging nature of cross-language interviewing!⁵⁰ Moreover, the interview guide was drafted in English, thereby raising the tendency of inconsistent translations.

However, my pilot studies helped me to prepare for conceptual and literal translation challenges involved in cross-language questioning in English and Igbo. Also, I used back-to-

⁴⁶ DF Polit & CT Beck 'Generalization in Quantitative and Qualitative Research: Myths and Strategies' (2010) 47(11) *International Journal of Nursing Studies* 1451-1458 at 1452; G Winter 'A Comparative Discussion of the Notion of "Validity" in Qualitative and Quantitative Research' (2000) 4(3) *The Qualitative Report* 1-14 at 6.

⁴⁷ EW Eisner op cit note 44 at 199.

⁴⁸ I Duruoha 'The Igbo Novel and the Literary Communication of Igbo Culture' (1991) 12(4) *African Study Monographs* 185-200 at 189; OM Oyelami 'Development of Igbo Language E-Learning System' (2008) 9(2) *Turkish Online Journal of Distance Education* 39-52 at 41.

⁴⁹ CI Ikekeonwu 'Aspects of Igbo Dialectology: A Comparative Phonological Study of Onitsha and Central Igbo Dialects' (1985) 15(2) *Journal of West African Languages* 93-109 at 94.

⁵⁰ R Marschan-Piekkari & C Reis 'Language and Languages in Cross-Cultural Interviewing' in R Marschan-Piekkari & C Welch (eds.) *Handbook of Qualitative Research Methods for International Business* (2004) 224-225, 229.

back translations.⁵¹ This method requires at least two bilingual individuals from South-East Nigeria to translate the transcripts from English to Igbo language and then from Igbo to English.⁵² Back-to-back translations improved the reliability and validity of the data.

The above challenges illustrate the context surrounding my data and findings on how unequal power relations play out in the bridewealth negotiation process. The next chapter will shed light on the origin and significance of bridewealth in past and contemporary Igbo society. This will set the stage for the dynamics of power relations in bridewealth negotiation within the interplay of cultural institutions and forces of agency.

⁵¹ A Squires 'Methodological Challenges in Cross-Language Qualitative Research: A Research Review' (2009) 46 *International Journal of Nursing Studies* 277-287 at 278-279; R Marschan-Piekkari & C Reis op cit note 50 at 224-225, 229.

⁵² C Hsiao-Yu & JRP Boore 'Translation and Back-Translation in Qualitative Nursing Research: Methodological Review' (2010) 19(1/2) *Journal of Clinical Nursing* 234-239 at 235; EG Nasif, et al 'Methodological Problems in Cross-Cultural Research: An Updated Review' (1991) 31(1) *Management International Review* 79-91 at 858.

Chapter Three: The concept of bridewealth payment in South-East Nigeria

3.1 Introduction

Bridewealth, a cultural phenomenon that attaches privileges, rights, and legitimacy to a customary law marriage, raises issues over individuals' agency with respect to customs and traditions. To provide a context for these issues, this chapter explores the literature on the concept of bridewealth in South-East Nigeria. This exploration pays careful attention to the origin, meaning and significance of bridewealth payment. In so doing, I argue that changes in the significance of bridewealth reflect both cultural and economic motives. These motives are shared by custodians of culture such as chiefs, elders, and age grade leaders on the one hand, and families who see bridewealth as an economic relief, on the other hand. The interplay of these motives creates complex power relations that blur the extent to which individuals use their agency to force through changes in bridewealth payment.

The chapter begins with a historical overview of the study population and proceeds to the academic literature on the concept of bridewealth. As mentioned earlier, it is believed that high amounts of bridewealth are paid in South-East Nigeria. Drawing from scholarly opinions, it analyses bridewealth as a cultural practice and as legitimator of a customary marriage. It emphasises the distortion of bridewealth payment, maps the stages of its distortion, and identifies the factors responsible for its distortion.

3.2 About South-East Nigeria

Nigeria is the most populous country in Africa and one of the most populous in the world. It is made up of over 300 ethnic groups that speak hundreds of languages.¹ For administrative purposes, there are 36 states, which fall under six geopolitical zones. These zones are created based on states with homogenous cultures, ethnic groups and common history, and to an extent, location. The zones are: North Eastern Zone (NE), North-Central Zone (NC), the Middle-Belt Zone (MB), South-East Zone (SE), South-West Zone (SW), and South-South Zone (SS). The South-East zone comprises of five states – Abia, Anambra, Enugu, Ebonyi and Imo state. The people that make up the South-East zone are the Igbos. They speak the Igbo language, which

¹ The number of ethnic groups is disputed. See O Otite *Ethnic Pluralism and Ethnicity in Nigeria* (1990) 35-36.

is one of the major languages in Nigeria. However, there are trivial differences in tongues and dialects amongst the states that make up this zone.²

To understand the resilience of Igbo cultural institutions, the suitability of bridewealth payment to the needs of the Igbos, and the impact of state law on bridewealth payment, it is important to explain the background of contemporary Igbo society. Before colonisation, the Igbos practiced a decentralised system of government, which is made up of families grouped into villages (*obodo*), family heads or clan leaders (*umunna*), and lineages.³ The village groups included, but were not limited to the *umuada* (association of first daughters in the village), different age grades (*otu ogbo*), chiefs (*Nze n'ozo*), and *Ezeala* (priestly chiefs). A detailed description of the contemporary structure of these groups and their roles in bridewealth negotiation will be discussed in chapter four. Igbo village groups were semi-independent political entities, likewise the villages, which exercised autonomy over matters that concerned them.⁴ This independence explains the popular saying '*Igbo enwe eze*,' which means in its simplest form (Igbos have no king). The Igbo people use the aphorism to display their autonomy; it doesn't necessarily mean that they had no kings, as it is not general in all parts of Igboland.⁵ However, in most commercial cities with coastlines such as Onitsha and Nri, monarchies existed before the British arrived in Nigeria.⁶ Other parts of Igboland such as Oru-Igbo, Oguta and Arochukwu had kings, chiefs or advanced chieftaincy institutions before the colonial encounter.⁷ The issue of chieftaincy only arose during colonisation through the

² OC Akakuru, et al 'Means and Forms of Traditional Communication in Igbo Land in Contemporary Socio-Cultural Interactions' (2015) 20(6) *Journal of Humanities and Social Science* 17-20 at 17; OF Anasi 'Language as an Agent of Societal Transformation: Preference of the English Language to the Indigenous Languages in Nigeria' (2015) 8 *Global Journal of Applied, Management and Social Sciences* 1-6 at 3.

³ VC Uchendu *The Igbo of Southeast Nigeria* (1965) 39-44; CN Ubah 'Changing Patterns of Leadership Among the Igbo, 1900-1960' (1987) 37(1) *Civilisations* 127-157 at 128.

⁴ DJ Smith 'Igbo' in CR Ember & M Ember (eds.) *Encyclopedia of Sex and Gender: Men and Women in the World's Cultures Topics and Cultures* (2003) 508.

⁵ AE Afigbo *Igbo Enwe Eze: Beyond Onwumehili and Onwuejeogwu* (2001) 4; A Harneit-Sievers, 'Igbo "Traditional Rulers": Chieftaincy and the State in Southeastern Nigeria' (1998) 33(1) *Africa Spectrum* 57-79 at 58.

⁶ OU Kalu 'Ethical Values in Igbo Tradition of Politics' in UD Anyanwu & JCU Aguwa (eds.) *The Igbo and the Tradition of Politics* (1993) 9-19; C Ukpokolo 'Gender, Space and Power in the Indigenous Igbo Socio-political Organization' (2010) 7(2) *Pakistan Journal of Social Sciences* 177-186 at 177-178; E Isichei *A History of the Igbo People* (1976) 49-63.

⁷ UP Onumonu 'The Development of Kingship Institution in Oru-Igbo up to 1991' (2016) 12 *Ogirisi: A New Journal of African Studies* 68-96 at 68; GN Uzoigwe 'Evolution and Relevance of Autonomous Communities in

introduction of warrant chiefs by the British.⁸ The British saw Igboland as a ‘stateless society’ and unsuccessfully administered them through warrant chiefs under the indirect rule system of governance. Due to the manner warrant chiefs were imposed in Igboland, the indirect rule system bred a culture of administrative impunity, which created a disconnection between the state and people subject to customary law.⁹ This disconnection still manifests in disdain for state interventions in cultural issues like bridewealth payment, and helps to explain why the state has not attempted to regulate customary marriages since the failure of the Dowry Law.

The Igbo people are patrilocal,¹⁰ patrilineal,¹¹ and patriarchal – that is a social system of male dominance. The exception is a few towns such as Ohafia, Abam, and Bende, which are matrilineal.¹² Until recently, marriage was mostly endogamous – that is within the lineage, ethnic or social group.¹³ Endogamy occurs within an extended family system, which comprises of grandparents, grandchildren, nephews, nieces, cousins and aunts. The expansive nature of the family explains the numerous individuals who benefit from the marriage list.¹⁴ It also sheds

Pre-Colonial Igboland’ (2004) 21(1) *Journal of Third World Studies* 139-150 at 140; AE Afigbo *Ropes of Sand: Studies in Igbo History and Culture* (1981) 31-68.

⁸ AE Afigbo op cit note 5 at 20-23; E Nwaubani ‘Chieftaincy among the Igbo: A Guest on the Center-Stage’ (1994) 27(2) *The International Journal of African Historical Studies* 347-371 at 350.

⁹ AE Afigbo ‘The Warrant Chief System in Eastern Nigeria: Direct or Indirect Rule?’ (1967) 3(4) *Journal of the Historical Society of Nigeria* 683-700 at 683-684; OC Eze, et al ‘The Igbo: A Stateless Society’ (2014) 5(27) *Mediterranean Journal of Social Sciences* 1315-1321 at 1315. For more insight on how the warrant chiefs exercised their powers see, AE Afigbo *The Warrant Chiefs: Indirect Rule in Southeastern Nigeria, 1891-1929* (1972) 37-68.

¹⁰ Pattern of marriage in which the couple settles in the husband's home or community; JT Agbasiere *Women in Igbo Life and Thought* (2000) 93.

¹¹ Descent through the male line.

¹² PO Nsugbe *Ohaffia: A Matrilineal Ibo People* (1974) 84; EE Nwokocha ‘Male-Child Syndrome and the Agony of Motherhood among the Igbo of Nigeria’ (2007) 33(1) *International Journal of Sociology of the Family* 219-234 at 228-229.

¹³ DJ Smith ‘Promiscuous Girls, Good Wives, and Cheating Husbands: Gender Inequality, Transitions to Marriage, and Infidelity in Southeastern Nigeria’ (2010) 83(1) *Anthropological Quarterly* 123-152 at 143. The reason amongst other things is the increasing notions of romantic love and emotional intimacy as the criterion for selecting marital partner. See DJ Smith ‘Romance, Parenthood, and Gender in a Modern African Society’ (2001) 40(2) *Ethnology* 129-151 at 129.

¹⁴ See chapter one. See also FU Ohaegbulam *Towards an Understanding of the African Experience from Historical and Contemporary Perspectives* (1990) 90; see also AA Mere ‘Contemporary Changes in Igbo Family System’ (1976) 6(2) *International Journal of Sociology of the Family* 155-161 at 156; B Hoggett, et al *The Family, Law and Society* (1996) 1; N Lowe & G Douglas Bromley’s *Family Law* (1998) 1; O Ipaye ‘The Changing Pattern of Family Structure in Nigeria: Issues, Problems and Strategies for Family Support’ in J Eekelaar & T Nhlapo (eds.) *The Changing Family: International Perspectives on the Family and Family Law* (1998) 34.

light on the cultural limitations on agency regarding bridewealth. Before explaining the concept of bridewealth, it is necessary to explain the nature of marriage and the family in traditional Igbo society.

3.3 Communal nature of marriage

Kinship ties are important in traditional life.¹⁵ In them lie the cradle of family tenets, continuity, and development.¹⁶ The family is the first platform where the cultural heritage of society is transferred and imparted to younger members.¹⁷ In South-East Nigeria, families create bonds between each other through marriage, which may be monogamous or polygamous.¹⁸ As the foundation of social life,¹⁹ marriage is considered an obligation for everyone, except priests of the Roman Catholic Church. As Iroegbu puts it, ‘failure to marry was failure to be Igbo’.²⁰ In fact, marriage portrays a person as a responsible, reliable, and matured individual.²¹ The social pressure to marry reflects on individuals’ ability to negate some of the requirements of marriage. Also, it enables families to exert influence on marriage negotiations. Indeed, since ancient times, traditional marriage has been regarded as ‘an alliance between two families, rather than a contract between two individuals’.²² The two families coming together in marriage hold each other in high esteem.²³ The reason could be seen from the popular saying that ‘*ogo*

¹⁵ S Awoniyi ‘African Cultural Values: The Past, Present and Future’ (2015) 17(1) *Journal of Sustainable Development in Africa* 1-13 at 9.

¹⁶ Article 16(3) of the Universal Declaration of Human Rights (1948); ABC Ocholla-Ayayo ‘The African Family in Development Crisis in the Second Millennium’ (2000) 7(1) *Journal of African Anthropologist* 84-114 at 84.

¹⁷ SMI Cooper ‘Historical Analysis of the Family’ in SK Steinmetz & MB Sussman (eds.) *Handbook of Marriage and the Family* (1999) 13; DU Omenukor ‘Humanizing Globalisation: Imperatives for Family Ethics in Igboland’ (2014) 1(1) *US Open Gender Studies Journal* 1-8 at 2.

¹⁸ F Ugboaja Ohaegbulam op cit note 14 at 49; JT Agbasiere op cit note 10 at 93.

¹⁹ IC Isidienu ‘The Family as the Bedrock of Igbo Traditional Society’ (2015) 4 *Journal of Modern European Languages and Literatures* 119-128 at 119-120.

²⁰ P Iroegbu ‘Marrying Wealth, Marrying Money: Repositioning Igbo Women and Men’ in B Saunders & MC Foblets (eds.) *Changing Genders in Intercultural Perspectives* (2002) 106. For the importance of marriage in Igboland see MO Orji *The History and Culture of the Igbo People before the Advent of the White Man* (1999) 86, 94-95. See also VC Uchendu op cit note 3 at 86; JE Olawoye, et al ‘Social Construction of Manhood in Nigeria: Implications for Male Responsibility in Reproductive Health’ (2004)19(2) *African Population Studies* 1-20 at 6.

²¹ JE Olawoye et al op cit note 20 at 15-16 ; GT Basden *Niger Ibos* (1966) 213.

²² VC Uchendu op cit note 3 at 50; see also DJ Smith ‘Legacies of Biafra: Marriage, “Home People” and Reproduction among the Igbo of Nigeria’ (2005) 75(1) *Africa* 30 – 45 at 32.

²³ VC Uchendu op cit note 3 at 51.

bu chi onye’ (your in-law is your god) and the saying that a person has three homes: with his paternal relatives (*umunna*), with his maternal relatives (*ikwunne*) and with his in-laws (*ndi ogo*). Unsurprisingly, any breakdown of marriage in Igboland affects not only the couple and their children but also the family and even community at large.²⁴ Thus, in a quest to enforce cultural values, the family wields a strong influence in marriages.²⁵ This influence explains why virtually the entire community is involved in the customary marriage processes.²⁶ The importance attached to marriage reflects on the cultural legitimacy attached to bridewealth payment.²⁷ This is the context for the below conceptual explanation of bridewealth as the legitimator of customary marriage in South-East Nigeria.²⁸

3.4 Bridewealth as a conceptual nightmare

As defined in chapter one, bridewealth, called *aku nwanyi* or *ego isi nwanyi* in many Igbo dialects, is payment or gifts made by the groom to the family of the bride in contemplation of, or as a requirement of a traditional marriage. However, this definition fails to settle disagreements over its true meaning. As I show in 3.4.1 below, the distortion of bridewealth owes much to the terms used to describe it. For example, legislation uses the term ‘dowry,’ which shows the terminological confusion or ignorance of lawmakers regarding bridewealth. The Limitation of Dowry Law defines it as ‘...any gift or payment in money, natural produce, brass rods, cowries or in any other kind of property whatsoever, to a parent or guardian of a female person on account of marriage of that person which is intended or has taken place.’²⁹

²⁴ MO Izunwa ‘A Critique of Certain Aspects of the Grounds, Procedure and Reliefs Attaching to Customary Divorce Law in Southern Nigeria’ (2015) 7(5) *Journal of Law and Conflict Resolution* 31-38 at 31.

²⁵ TA Ojua, et al ‘Exploring the Neglect of African Family Value Systems and its Effects on Sustainable Development’ (2014) 3(3) *American Journal of Human Ecology* 43-50 at 44.

²⁶ DJ Smith op cit note 13 at 138; C Levi-Strauss (trans. JH Bell, et al) *The Elementary Structures of Kinship* (1969) 43; M Gallagher ‘What is Marriage For - The Public Purposes of Marriage Law’ (2002) 62(3) *Louisiana Law Review* 773-792 at 774.

²⁷ BN Onyima ‘Marriage Ceremony: The Clash Between Traditional Marriage Rites and Western Marriage’ (2015) 1(6) *Journal of Religion and Human Relations* 171-180 at 172.

²⁸ O Otiote ‘Marriage and Family Systems in Nigeria’ (1991) 21(2) *International Journal of Sociology of the Family* 15-54 at 23; *Edet vs Essien* (1972) 2 NLR 47; the other requirements for the validity of customary law marriage include parental consent, bride’s consent and handing over of the bride to the groom’s family. See also EI Nwogugu *Family Law in Nigeria* (2014) 34, 60.

²⁹ Section 2 Limitation of Dowry Law, Eastern Region Law No. 23 of 1956, now Cap 76 Laws of Eastern Nigeria 1963. [See Appendix I.](#)

Even though this law purportedly regulates dowry, it is worth noting that dowry differs from bridewealth. Whereas bridewealth is given to the bride's family by the groom's family in view of marriage, in Igboland, dowry is, arguably, given to the bride by her family as marriage gifts. It is called 'the *aji du nwanyi uno*,' which means properties brought by the woman to her husband's family as she begins a new phase of life in a new home.³⁰ Recently, it mostly includes properties given to the bride by her distant relatives and friends. In most cases, parents see it as their daughter's inheritance, and go out of their way to provide her with the household items she needs to start her new home.³¹

As the most important element of a customary marriage in South-East Nigeria, bridewealth payment is almost universal. However, its mode, form, and quantum vary from community to community.³² There is no fixed amount, and every community determines its modalities. Studies have shown that even the amount fixed by communities sometimes vary from clan to clan, according to the level of education of the bride and the status of the parties' families.³³ In what follows, I will examine the controversies and debates surrounding bridewealth payment. The views of scholars on this subject will be discussed under several headings in accordance with their schools of thought.

3.4.1 *Bridewealth as commercial transaction*

Some scholars argue that bridewealth payment has a transactional feature; as such it should be given a commercial terminology.³⁴ They argued for it to be termed 'bride-price'. When literally

³⁰ F Ekejiuba 'Currency Instability and Social Payments among the Igbo of Eastern Nigeria 1890-1990' in JI Guyer (ed.) *Money Matters: Instability, Values and Social Payments in the Modern History of West African Communities* (1995) 151.

³¹ JA Conteh 'Dowry and Bride-Price' in NA Naples, RC Hoogland, M Wickramasinghe & WCA Wong (eds.) *The Wiley Blackwell Encyclopaedia of Gender and Sexuality Studies* (2016) 1.

³² JU Ogbu 'African Bridewealth and Women's Status' (1978) 5(2) *American Ethnologist* 241-262 at 246; S Burman & N van der Werff 'Rethinking Customary Law on Bridewealth' (1993) 19(2) *Social Dynamics* 111-127 at 112. As the thesis progresses, the reason and factors for these variances will be revealed.

³³ See, for example, MO Balonwu, et al *Report of the Committee on Bride Price: The Eastern Region of Nigeria* (1955) 10-45.

³⁴ Section 2 Limitation of Dowry Law, Eastern Region Law No. 23 of 1956, now Cap 76 Laws of Eastern Nigeria 1963; L Raglan, 'Bride-price' (1931) 31 *Man* 75; RF Gray 'Sonjo Bride-Price and the Question of African "Wife Purchase"' (1960) 62 (1) *American Anthropologist* 34-57 at 34-36; CK Meek 'Marriage by Exchange in Nigeria. A Disappearing Institution' (1936) 9(1) *Africa: Journal of the International African Institute* 64-74 at 64.

translated into Igbo language, bride price means *ego-isi nwanyi* (*ego* = money, *isi* = head, *nwanyi* = woman). Taken literally, *ego isi nwanyi* means money paid on a woman's head. Although bridewealth is called *ego isi nwanyi* in most communities, the meaning attached to it does not signify a commercial transaction. Arguably, however, demand of high bridewealth justifies accusations of its labelling as bride price.

3.4.2 *Bridewealth as contract*

Some scholars view bridewealth payment as a form of legal contract for marriage.³⁵ In other words, they believe it has features of a contract, such as offer, acceptance, consideration, and mutuality of obligation. Some features of mutual obligations include indemnity, which may be interpreted as compensation to the family or clan for losing the bride and guarantee that she will be treated well by her husband's family. If interpreted as a specific performance of contract, the woman's movement to her husband's house implies that her legal status is inferior to the man.³⁶ This contractual view of bridewealth obscures women's agency as rational beings capable of independent behaviour. It also fails to highlight the complementary nature of the marriage relationship. As Radcliff-Brown summarised it, a customary 'marriage involves some modification or partial rupture of the relations between the bride and her immediate kin ...' and gives the husband and his kin certain rights in relation to his wife and the children she bears.³⁷

However, many writers recognise that bridewealth is so unique that it should not be fitted into Western legal parameters. For example, Dalton suggests that the primitive means of exchange used by pre-colonial Africans during marriage has moral and other implications different from the commercial connotation of Western currency.³⁸ He therefore suggested the use of the term bridewealth rather than bride price. Similarly, Uchendu, an ethnographer from South-East Nigeria, prefers the term bridewealth because Igbo women are not chattels

³⁵ AA Mere op cit note 14 at 157; E Torday 'Bride-price, Dower, or Settlement' (1929) 29 *Man* 5-8 at 5-7; AR Radcliffe Brown 'Bride-price, Earnest or Indemnity' (1929) *Man* 131-132.

³⁶ OJ Para-Mallam 'No Woman Wrapper in a Husband's House: The Cultural Production of Hegemonic Masculinity in Nigeria' in O Obafemi & A Yerima (eds.) *Cultural Studies: Concepts, Theories and Practice* (2011) 1-27.

³⁷ AR Radcliffe-Brown & D Forde *African Systems of Kinship and Marriage* (1950) 49.

³⁸ G Dalton 'Primitive Money' (1965) 67(1) *American Anthropologist* 44-65 at 44; G Dalton 'Bridewealth vs. Brideprice' (1966) 68(3) *American Anthropologist* 732-738 at 737.

purchased by their husbands.³⁹ Onokah suggests the term ‘marriage symbol,’ arguing that bride price depicts an untrue reality of women’s agency as rational, independent adults.⁴⁰ In his wide ranging study of the functions of bridewealth, Ogbu concluded that bridewealth is the legitimising symbol of marriage rather than a commercial transaction.⁴¹ To avoid being caught in the middle of the controversy of whether bride price or bridewealth is the appropriate term, Singer prefers the term ‘marriage payments’.⁴² As seen below, Singer’s suggestion approximates communal usage of *aku nwanji*, which literally means bridewealth.

3.4.3 *Indigenous meaning*

Some scholars have suggested that bridewealth should be given its functional meaning only, since its definition cannot be divorced from the cultural meaning attached to it in the communities in which it is practiced.⁴³ In other words, bridewealth should be interpreted strictly in line with whatever roles it performs. As Evans-Pritchard rightly stated:

There are very good reasons for cutting the term [bride price] out of ethnological literature since at best it emphasizes only one of the functions of this wealth, an economic one, to the exclusion of other important social functions ... Hence, we find people believing that wives are bought and sold in Africa in much the same manner as commodities are bought and sold in European markets... [I] propose instead the term...bride-wealth. Wealth is a comprehensive term which neither in economic literature nor in every-day speech has any close association with the ideas of “price” or “purchase”.⁴⁴

In my view, bridewealth is preferable to bride price, since the latter term gives the impression that women are bought. Such impression reinforces misconceptions of patriarchy and subordination of women, which are not supported by my field findings. Moreover, bridewealth

³⁹ VC Uchendu op cit note 3 at 87.

⁴⁰ MC Onokah *Family Law* (2003) 90.

⁴¹ JU Ogbu op cit note 32 at 241.

⁴² A Singer ‘Marriage Payments and the Exchange of People’ (1973) 8(1) *Man, New Series* 80-92 at 81-83.

⁴³ J Urry ‘Notes and Queries on Anthropology and the Development of Field Methods in British Anthropology, 1870-1920’ (1972) *Proceedings of the Royal Anthropological Institute of Great Britain and Ireland* 45-57; CM Arensberg ‘Anthropology as History’ in K Polanyi & HW Pearson (eds.) *Trade and Market in the Early Empires* (1957) 97-98. In agreement with this notion also see SJ Tambiah et al ‘Bridewealth and Dowry Revisited: The Position of Women in Sub-Saharan Africa and North India [and Comments and Reply]’ (1989) 30(4) *Current Anthropology* 413-435 at 414.

⁴⁴ EE Evans-Pritchard ‘An Alternative Term for "bride-price”’ (1931) 31 *Man* 36-39 at 38.

is merely an aspect of multiple payments and gifts exchanged in a ceremony aimed at celebrating the worth and value of women. In what follows, I will provide reasons why bridewealth is the most appropriate term for this cultural celebration.

3.5 Cultural significance of bridewealth payment

There are cultural meanings attached to the payments and gifts exchanged between the groom and the bride's families during a traditional marriage. To understand the interplay of structure and agency in this exchange, a recap of the nature of Igbo precolonial society is needed.

Precolonial Igbos lived in close-knit families.⁴⁵ They were mostly farmers, craftsmen, and traders who depended on the produce from the land for their survival.⁴⁶ Accordingly, land was, and still is a major asset in Igbo land; it was communally owned.⁴⁷ The key means of acquiring it was by pledge (usually as a security for a loan), lease (usually for the farming season), inheritance and kola tenancy.⁴⁸ Kola tenancy entails a situation where a person (grantee) who needs land for farming goes to another (grantor) with forms of gift such as palm wine, and kola nuts.⁴⁹ In other words, he paid with kola nut and palm wine, but the grantor still has a reversionary interest in the land. Igbos practiced mainly subsistence and commercial agriculture.⁵⁰ Every member of the family participated in the input and benefitted from the output both in cash and in property.⁵¹ The family contributed to the wellbeing of its members in all aspects of life, especially marriage.⁵² In this context of mutual care and dependence, it

⁴⁵ DA Ihenacho *African Christianity Rises: A Case Study of the Catholicism of the Igbo* (2004) 26.

⁴⁶ CJ Korieh "We Have Always Been Farmers": Society and Economy at the Close of the Nineteenth Century' in CJ Korieh (ed.) *The Land has Changed* (2010) 27-29; VC Uchendu op cit note 3 at 22; CJ Korieh 'Yam is King! But Cassava is the Mother of all Crops: Farming, Culture, and Identity in Igbo Agrarian Economy (2007) 31 *Dialectical Anthropology* 221-232 at 221-222.

⁴⁷ EE Obioha 'Change in Tenure Pattern and Customary Land Practices among Igbo Community in Southeastern Nigeria' (2008) 10(1) *Anthropologist* 45-53 at 45; VC Uchendu op cited note 3 at 22.

⁴⁸ GI Jones 'Ibo Land Tenure' (1949) 19(4) *Africa: Journal of the International African Institute* 309-323 at 321-322.

⁴⁹ *Udensi vs Moghoh* (1976) 7 SC 1, 15-17.

⁵⁰ They produced food crops rather than cash crops.

⁵¹ FU Ohaegbulam op cit note 14 at 91.

⁵² They serve as a social security for each other.

was difficult for bridewealth to have a commercial meaning. It is even more difficult for its negotiation to be anything other than complementary. Several reasons affirm this argument.

First, it was the duty of the father, as the head of the family, to choose marriage partners for his children.⁵³ One reason, amongst others, is to ensure that daughters married into families with wealth and reputable character, and sons obeyed the rules governing marriage in certain social groups. Second, the groom's family were required to check the health background of the bride's family and vice versa.⁵⁴ Third, bridewealth was raised, negotiated, and paid by the father and other kinsmen on behalf of the groom. Indeed, traditional Igbo society regards a father as the one procuring a wife for his son, and she is usually welcomed as an addition to the family with rights and privileges akin to a child born in the family. These realities make it difficult for the original meaning of bridewealth to have a commercial connotation.

Furthermore, the items that constituted bridewealth payment in agrarian society ranged from clothing, drinks, and farm produce to livestock. These items suited basic needs of sustenance. Cash, which used to be cowries, was rarely used.⁵⁵ Among other reasons, the use of labour or services, and livestock such as cattle, cows and cocks as means of payment signified the worth of the bride, especially recognition of her fecundity.⁵⁶ The intending groom was required to perform some services such as fetching or splitting firewood, repairing the house, and cultivating the farm of the prospective in-laws.⁵⁷ From my field findings and literature on the subject, the nature and significance of bridewealth may be categorised under the following:

⁵³ DJ Smith op cit note 13 at 134.

⁵⁴ P Kyalo 'A Reflection on the African Traditional Values of Marriage and Sexuality' (2012) 1(2) *International Journal of Academic Research in Progressive Education and Development* 211-219 at 213; AA Mere op cit note 14 at 157; K Okonjo 'Aspects of Continuity and Change in Mate-Selection among the Igbo West of the River Niger' (1992) 23(3) *Journal of Comparative Family Studies* 339-360 at 346-350.

⁵⁵ WI Ofonagoro 'From Traditional to British Currency in Southern Nigeria: Analysis of a Currency Revolution, 1880-1948' (1979) 39(3) *The Journal of Economic History* 623-654 at 635; DD Nsereko 'The Nature and Function of Marriage Gifts in Customary African Marriages' (1975) 23(4) *The American Journal of Comparative Law* 682-704 at 685.

⁵⁶ CO Odimegwu & A Zerai 'Understanding the Proximate Determinants of Fertility of a Nigerian Ethnic Group' (1996) 52(3/4) *Genus* 67-87 at 82.

⁵⁷ CO Odimegwu & A Zerai op cit note 56 at 82; SNC Obi *Modern Family Law of Southern Nigeria* (1966) 176; L Bossen 'Toward a Theory of Marriage: The Economic Anthropology of Marriage Transactions' (1988) 27(2) *Ethnology* 127-144 at 127, 135.

3.5.1 *Legitimation of marriage*

Bridewealth is the most essential part of customary law marriage. Without it, a marriage is not recognised by the community.⁵⁸ This is because once paid partially or in full, bridewealth confers customary legal rights and obligations on the couple.⁵⁹ The payment is so important that it is required to be completed unless it is waived by the bride's family.⁶⁰ In other words, if the husband dies without completing his own part of the agreement, his children are bound to pay the remnant to be socially recognised and fully accepted as his offspring. However, statutory marriages have come to the rescue of couples, as they no longer require the payment of bridewealth for the validity of their marriage.⁶¹ The non-requirement of bridewealth for the validity of a statutory marriage is intriguing for the influence of state law on the agency of couples married under both customary law and statutory law.⁶² This intrigue manifests in two ways. In the context of the structure-versus-agency interplay, couples who first contract a statutory marriage can use it as a bargaining tool to negotiate a favourable bridewealth payment. On the other hand, they could face discrimination for not complying with traditional requirements for marriage, of which bridewealth is integral. This discrimination notwithstanding the constitutional provisions on non-discrimination on grounds that include

⁵⁸ C Undie & CO Izugbara 'Unpacking Rights in Indigenous African Societies: Indigenous Culture and the Question of Sexual and Reproductive Rights in Africa' (2011) 11(3) *BioMedCentral International Health and Human Rights* 1-11 at 6 -7; A Armstrong, et al 'Uncovering Reality: Excavating Women's Rights in African Family Law' (1993) 7(3) *International Journal of Law, Policy and the Family* 314-369 at 340-343; See E Goody 'Separation and Divorce' in M Fortes (ed.) *Marriage in Tribal Societies* (1962) 20.

⁵⁹ See JU Ogbu op cit note 32 at 246-247; UC Isiugo-Abanihe 'Bridewealth, Marriage and Fertility in the East-Central States of Nigeria' (1995) 51(3/4) *Genus* 151-178 at 155; D Meekers 'The Process of Marriage in African Societies: A Multiple Indicator Approach' (1992) 18(1) *Population and Development Review* 61-78 at 61; VC Uchendu 'Concubinage among the Ngwa Igbo of Southern Nigeria' (1965) 35(2) *Africa: Journal of International African Institute* 187-197 at 189. Whether bridewealth payment is full or partial is based on negotiation.

⁶⁰ B Emecheta *Bride Price* (1976) 168; the main point is the agreement between the two families. See also C Horne, et al 'The Shadow of Indebtedness: Bridewealth and Norms Constraining Female Reproductive Autonomy' (2013) 78 (3) *American Sociological Review* 503-520 at 506.

⁶¹ See also AC Izekwe *The Future of Christian Marriage among the Igbo vis-a-vis Childlessness: A Canonical cum Pastoral study of Canon 1055 par 1* (2015) 1.

⁶² SM Olokooba 'Analysis of Legal Issues Involved in the Termination of "Double-Decker" Marriage under Nigeria Law' (2007-2010) *Nigerian Current Law Review* 194-207.

culture.⁶³ Thus, the social legitimacy conferred by bridewealth counterbalances the ability of couples to negotiate with custodians of culture such as elders and traditional leaders.

3.5.2 *Compensation or symbolism?*

As stated earlier, precolonial Igbos thrived on communality; everybody was involved in family businesses, which were almost exclusively agricultural activities. Women were actively involved in these activities.⁶⁴ In this context, the importance and significance of women's services was recognised in the quantum of their bridewealth. Bridewealth thus served as compensation to a bride's family for the loss of her services.⁶⁵ Studies have shown that bridewealth enabled the bride's family to marry a wife for a son in the family, who will replace the void left by the bride.⁶⁶ However, there is no scholarly unanimity on whether bridewealth really serves a compensatory function, given that money and gifts cannot compensate for the loss of labour or service.⁶⁷ Although bridewealth may serve a compensatory function, it has more cultural values than mere monetary compensation. In line with this reasoning, Teboh argued that the 'amount of bridewealth is inconsequential. What matters is its symbolic significance. Generally, the expenditure of the bride's family surpasses the amount of the bridewealth'.⁶⁸ My interactions with research participants leave no doubt that bridewealth has a symbolic significance. However, this symbolism is being threatened by the high amounts demanded as bridewealth.

⁶³ Section 42 of the 1999 Constitution of the Nigeria (as variously amended).

⁶⁴ E Boserup *Women's Role in Economic Development* (2007) 4-7.

⁶⁵ ML Bastian 'Fires, Tricksters, and Poisoned Medicines: Popular Cultures of Rumour in Onitsha, Nigeria and Its Markets' (1998) 11(2) *Etnofoor* 111-132 at 122; L Bossen op cit note 57 at 133; CO Odimegwu & A Zerai op cit note 56 at 82; A Schlegel and R Eloul 'Marriage Transactions: Labor, Property, Status' (1988) 90(2) *American Anthropologist* 291-309 at 291-293.

⁶⁶ A Onyekwe *Marriage and Life after Death: A Model of Regenerative Inculturation* (2015); RM Jansen 'Customary Family Law' in C Rautenbach & JC Bekker (eds.) *Introduction to Legal Pluralism in South Africa* (2014) 5.3.3.4.

⁶⁷ See an earlier work by GP Murdock *Social Structure* (1949) 19-21.

⁶⁸ B Teboh 'West African Women: Some Considerations' (1994) 22(3) *Ufahamu: A Journal of African Studies* 50-62 at 60.

3.5.3 *A unifying tool*

When all the requirements for the recognition of a customary marriage have been fulfilled, the prospective spouse acquires the right to resort to their kinsmen or in-laws in time of need.⁶⁹ This right confirms the argument that bridewealth is not wife purchase. Similarly, it is more than a compensation for the loss of a bride's services. If bridewealth means wife purchase or compensation for lost services, a wife might not be able to seek financial or emotional help from her family. It is more likely the case that bridewealth serves as a unifying symbol for the joining of two families. It strengthens kinship ties, mandates the marrying families to take responsibility for the children of the marriage, and work to ensure the success of the marriage relationship. As Uchendu noted, marriage is 'an alliance between two families, rather than a contract between two individuals'.⁷⁰ Indeed, this alliance is deemed to continue even after the death of one of the spouses.⁷¹

3.6 **Forms of bridewealth**

As explained in chapter one, bridewealth involves cash and material gifts given in contemplation of marriage. Its format and functions are dependent on the customs prevalent in the concerned community. Oftentimes, bridewealth forms part of the items in the marriage list, which are exchanged by the families of the groom and bride. These items constitute marriage gifts. The phrase 'marriage gifts' is a misnomer because 'gift' connotes willingness or voluntariness. Since the items in the marriage list are mandatory, it seems odd to use 'marriage gifts' to describe them. However, I prefer to use the phrase 'marriage gifts' because it captures the distortion and role reversal that occurred between bridewealth and marriage gifts. In the agrarian past when bridewealth consisted of labour service or livestock, marriage gifts were gifts in the true sense of voluntariness.⁷² In this sense, only bridewealth was compulsory, while marriage gifts were left to the discretion of the groom's family, who brought them in

⁶⁹ L Bossen op cit note 57 at 137; CK Meek *Law and Authority in a Nigerian Tribe: A Study in Indirect Rule* (1957) 267; CO Odimegwu & A Zerai op cit note 56 at 71; TA Ojua et al op cit note 25 at 47; see also F Banda *Women, Law and Human Rights: An African Perspective* (2005) 108-112.

⁷⁰ VC Uchendu op cit note 3 at 50.

⁷¹ *Yesufu vs Okhia* (1976) 6 ECSLR 276.

⁷² FO Asadu 'English-French Translation of Igbo Traditional Marriage Items: A Semiotic Approach' (2016) 7(1) *Mediterranean Journal of Social Sciences* 311-316 at 316; AR Radcliffe-Brown & D Forde *African Systems of Kinship and Marriage* (1950) 54.

accordance with their wealth and appreciation of the bride. Today, the reverse is the case. Marriage gifts have become compulsory, while bridewealth has taken a backseat. This role reversal has created controversy over the ambit of marriage gifts.

While some scholars believe that marriage gifts do not form part of bridewealth, others insist that the two are inseparable. I refer to the former view as the duality school, and refer to the latter view as the unified school. The scholars in the unified school believe bridewealth payment encompasses every payment in cash or material which the groom or his family gives to the bride's family.⁷³

The scholars in the duality school posit that marriage gifts are not part of bridewealth payment.⁷⁴ The dualists base their argument on the premise that during divorce, only bridewealth (*ego isi nwanyi*) is refunded. Since marriage gifts are not returnable, it means that they do not form part of bridewealth.⁷⁵ Moreover, as stated earlier, it is not only the groom that presents marriage gifts, the bride's family also gives gifts to the groom's family. They further argue that while failure to pay bridewealth invalidates the marriage, failure to provide all items on the marriage list merely withdraws social recognition of the marriage in the eyes of members of the community.⁷⁶

In my view, the dualist argument is watered down by the fact that bridewealth is listed on the marriage list, thereby making it part and parcel of marriage gifts. Furthermore, the mere fact that community members may withdraw social recognition if the marriage list is not complied with makes bridewealth an integral part of the marriage gifts. Thus, as a convenient term for describing the negotiation process of bridewealth in this dissertation, I adopt the unified view, which holds that marriage gifts and bridewealth are the same. Where I wish to draw a distinction between bridewealth and marriage gifts, I use the term *ego isi nwanyi* to denote bridewealth. I should point out that high bridewealth in Igboland, especially in Abia and Imo states, usually arises in the context of expensive marriage gifts demanded by brides'

⁷³ JA Conteh op cit note 31 at 1; see also the response of one of the research participants interviewed in NU Nzegwu *Family matters: Feminist Concepts in African Philosophy of Culture* (2006) 169; see also BN Onyima op cit note 27 at 172.

⁷⁴ MO Balonwu et al op cit note 33 at 3.

⁷⁵ Only the portion of the bridewealth that tied the marriage is refundable or returnable. See the response of one of the research participants interviewed in NU Nzegwu op cit note 73 at 169.

⁷⁶ See also A Armstrong et al op cit note 58 at 340-341.

families. However, expensive marriage gifts are of recent origin. In what follows, I chart how expensive marriage gifts distorted the significance of bridewealth payment. I argue that bridewealth distortion is a significant component of unequal power relations, within which the structural versus agency interplay is revealed.

3.7 Fall of bridewealth symbolism

As I have shown, bridewealth symbolises the joining of two families in marriage. In the past, its symbolic role was reflected in labour service for the bride's family by the groom and in exchange of livestock. Eventually, bridewealth began to be represented with monetary payments, thereby reflecting changes in its significance and function. These changes were informed by both cultural and economic motives, which are shared by custodians of culture such as chiefs, elders, and age grade leaders on the one hand, and families who see bridewealth as an economic relief, on the other hand. The dynamic nature of bridewealth's continuity and change blur the interplay between structure and agency.

As Ejidike noted, bridewealth payment demonstrates the continuities and changes that have accompanied the development of social life in Igboland.⁷⁷ While the continuity of bridewealth relates to its historical adherence, its changes reflects its encounter with external forces. The distortion of bridewealth's symbolic nature in Igboland has a direct connection to changes in the agrarian basis of social life.⁷⁸ These changes affected every aspect of Igbo traditional life, ranging from religion to the land tenure system, family patterns, marriage requirements, and cultural worldviews. Most of these changes are traceable to encounters with colonists and Christian missionaries, which transformed both the belief system and cultural practices of the Igbo people.⁷⁹ Scholars have explained the impact of the colonial encounter on the cultural life of Africans. For example, Chanock argued that the manner in which chiefs and elders asserted 'control over women and over family property' was agreeable to the colonists'

⁷⁷ OM Ejidike 'Human Rights in the Cultural Traditions and Social Practice of the Igbo of South-Eastern Nigeria' (1999) 43(1) *Journal of African Law* 71-98 at 72-73.

⁷⁸ DJ Smith 'Igbo' in CR Ember & M Ember (eds.) *Encyclopaedia of Sex and Gender: Men and Women in the World's Cultures* (2003) 508.

⁷⁹ LA Obiora 'New Skin, Old Wine: (En) Gaging Nationalism, Traditionalism, And Gender Relations' (1994) 28 *Indiana Law Review* 575-599 at 594.

own coercive ‘prescriptions for African societies.’⁸⁰ To demonstrate how colonial rule contributed to the creation of new power relations and distortion of bridewealth’s significance, I shall chart the stages of socio-economic transformation in Igboland. This transformation helps to shed light on the factors that constrain or compel individuals to use their agency in bridewealth payment.

3.7.1 *It’s all about the economy*

Following the inception of colonial rule in Nigeria, the political, legal and socio-economic system of the Igbos changed. These changes brought inflation, unemployment, and fiscal restructuring.⁸¹ Of note is the introduction of industrialisation, cash economy and influence of globalisation.⁸² These changes affected the agrarian basis of society in a radical manner. Ester Boserup and other scholars provide keen insight into the economic effects of these changes.⁸³

Precolonial Igbo society thrived on subsistence agriculture, in which women were at the forefront.⁸⁴ The divisions of labour with regards to farming reveal the complementary nature of power relations. While men were responsible for the clearing and felling of trees, women were responsible for cultivating crops, processing, selling, preserving, and cooking food. The surplus of crops was sold by women, and the incomes generated from the sale were

⁸⁰ M Chanock ‘Neither Customary nor Legal: African Customary Law in an Era of Family Law Reform’ (1989) 3(1) *International Journal of Law, Policy and the Family* 72-88 at 76. For how warrant chiefs helped in distorting Igbo culture, see JC Diala ‘The Distortion of the Meaning of Bride Wealth: Significance for the Evolution of Living Customary Law in Southeast Nigeria’ LLM Thesis, University of Cape Town (2014) 15-16. See generally, M Mamdani ‘Decentralized Despotism’ in SB Ortner, NB Dirks & G Eley (eds.) *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (1996) 37-61 at 52-61.

⁸¹ EN Nwagbara ‘The Story of Structural Adjustment Programme in Nigeria from the Perspective of the Organized Labour’ (2011) 1(7) *Australian Journal of Business and Management Research* 30-41 at 30-33.

⁸² CA Tisdell & RK Sen *Economic Globalisation: Social Conflicts, Labour and Environmental Issues* (2004) 148; RA Isaak *The Globalization Gap: How the Rich Get Richer and the Poor Get Left Further* (2004) Introduction.

⁸³ E Boserup op cit note 64 at 6-10; S Berry ‘Hegemony on a Shoestring: Indirect Rule and Access to Agricultural Land’ (1992) 62(3) *Africa* 327-355 at 327; K Meagher ‘The Tangled Web of Associational Life: Urban Governance and the Politics of Popular Livelihoods in Nigeria’ (2010) 21 *Urban Forum* 299-313 at 304-305; K Meagher ‘The Informalization of Belonging: Igbo Informal Enterprise and National Cohesion from Below’ (2009) 34(1) *African Development* 31-46 at 34-36.

⁸⁴ E Boserup op cit note 64 at 4; Human Resources Development Division, African Training and Research Center for Women, United Nations Economic Commission for Africa ‘Women and National Development in African Countries: Some Profound Contradictions’ (1975) 18(3) *African Studies Review* 47-70 at 47-49.

used for the welfare of the family.⁸⁵ As Friedl rightly observed, women, through their economic activities, exerted political control that guaranteed them a conspicuous position in resource distribution.⁸⁶ However, the profit-motivated policies of colonial rule eroded women's economic power. This occurred in three key ways.

The first is the encouragement of large-scale agriculture involving the production of cash crops such as cocoa, palm oil, palm kernel and rubber.⁸⁷ The second is the indoctrination that accompanied the introduction of improved farming techniques. Men were taught how to use modern equipment, thereby shifting economic power and widening the skills gap.⁸⁸ The previously agrarian economy became industrialised. The fact that only men learned how to operate modern equipment gave them privileged status over women. It also enabled them to cultivate cash crops and generate higher income. These changes discouraged some people from participating in agriculture, displaced them from their economic power base, and tilted the economic bargaining scale.⁸⁹ For example, bridewealth began to be the responsibility of the groom, rather than his family. Also, some families began to compensate for their diminishing earnings by demanding high bridewealth. In all these changes, land played an important role.

In order to meet the demands of the new economic system, more land was needed for agricultural growth.⁹⁰ Colonial authorities built factories and modernised many cities in order to achieve their aim of exploiting the natural resources of Africans.⁹¹ These new projects led

⁸⁵ J van Allen 'Aba Riots or the Igbo Women's War? - Ideology, Stratification and the Invisibility of Women' (1975) 6(1) *Ufahamu: A Journal of African Studies* 11-39 at 18.

⁸⁶ E Friedl *Women and Men: An Anthropologist's View* (1975) 3-10; see also D Hammond & A Jablow *Women: Their Economic Role in Traditional Societies* (1973) 17-27.

⁸⁷ P Iroegbu op cit note 20 at 110-112; A Phillips *The Enigma of Colonialism: British Policy in West Africa* (1989) 3.

⁸⁸ E Boserup op cit note 64 at 43.

⁸⁹ PK Nwanesi 'Development, Micro-Credit and Women's Empowerment: A Case Study of Market and Rural Women in Southern Nigeria' (2006) 8-10.

⁹⁰ WB Morgan 'The Influence of European Contacts on the Landscape of Southern Nigeria' (1959) 125(1) *Geographical Journal* 48-64 at 52; CJ Korieh 'Voices from Within and Without: Sources, Methods, and Problematics in the Recovery of the Agrarian History of the Igbo (Southeastern Nigeria)' (2006) 33 *History in Africa* 231-253 at 232-233.

⁹¹ A Phillips *The Enigma of Colonialism: British Policy in West Africa* (1989) 60; M Ocran 'Clash of Legal Cultures: The Treatment of Indigenous Law in Colonial and Post-Colonial Africa' (2006) 39 *Akron Law Review* 465-482 at 465-466.

to most people selling their land to private individuals, leading to shifts in economic power.⁹² Individual ownership of land, which was almost absent in the traditional land laws of the Igbo in the precolonial era, also emerged.⁹³ This created intriguing power relations on two levels.

Firstly, land ownership was concentrated in the hands of few individuals who possessed the financial wealth to buy land.⁹⁴ Thus, the poor were compelled to sell to meet socio-economic demands, such as urbanisation and educating their children.⁹⁵ Secondly, women, who in the past were denied the right to own land, began to acquire wealth through independent income. They were able to invest in landed property, which enhanced their social status and their agency.⁹⁶ This improvement in women's agency is significant for bridewealth payment, since in the past, women only had access to land in their capacity as wives, daughters and sisters.⁹⁷ In other words, before contact with colonial administration, there was an unequal placing of male and female children with regards to inheritance.⁹⁸ As people's socio-economic situation began to change, so did their expenses on training children change. Accordingly, their bargaining instincts in bridewealth negotiation also changed.⁹⁹ The changes in socio-economic conditions included rural-urban migration, which also contributed to bridewealth distortion.

⁹² A Phillips op cit note 91 at 59; S Berry 'Debating the Land Question in Africa' (2002) 44(4) *Comparative Studies in Society and History* 638-668 at 651; S Berry op cit note 83 at 327.

⁹³ I Onwuzuruigbo "'Even if we Meet in Heaven We Will Fight'": British Colonial Policies and Aguleri/Umuleri Conflicts in Southeastern Nigeria' (2013) 48(2) *Journal of Asian and African Studies* 129-144 at 133-134; TC Mbagwu 'Land Concentration Around a Few Individuals in Igbo-land of Eastern Nigeria: Its Processes, Scope and Future' (1978) 48(2) *Africa* 101-115 at 101-106.

⁹⁴ TC Mbagwu op cit note 93 at 103-105.

⁹⁵ CJ Korieh 'On the Brink: Agricultural Crisis and Rural Survival' in CJ Korieh (ed.) *The Land has Changed* (2010) 244. DF Bryceson 'The Scramble in Africa: Reorienting Rural Livelihoods' (2002) 30(5) *World Development* 725-739 at 727-728.

⁹⁶ G Chuku 'Women in the Economy of Igboland, 1900 to 1970: A Survey' (1995) 23 *African Economic History* 37-50 at 39; AA Dike 'Land Tenure System in Igboland' (1989) 78(5/6) *Anthropos* 853-871 at 865.

⁹⁷ UB Emeasoba 'Land Ownership among the Igbos of South East Nigeria: A Case for Women Land Inheritance' (2012) 3(1) *Journal of Environmental Management and Safety* 97-117 at 98-99.

⁹⁸ M Ekenta & A Keyode 'Gender Analysis of Land Ownership Structures and Agricultural Production in Imo State Nigeria' (2012) 3(9) *Journal of Economics and Sustainable Development* 67-73 at 69.

⁹⁹ CJ Korieh 'The Invisible Farmer? Women, Gender, and Colonial Agricultural Policy in the Igbo Region of Nigeria' (2001) 29 *African Economic History* 117-162 at 118; B Naanen 'Economy within an Economy: The Manilla Currency, Exchange Rate Instability and Social Conditions in South-Eastern Nigeria, 1900-48' (1993) 34(3) *The Journal of African History* 425-446 at 425 and 429.

3.7.2 Enter urban migration

Igbo people are known to be hard workers and entrepreneurs.¹⁰⁰ They migrate to wherever there is promise of benefit and success. With the shift in the economy, there was a need to shift resource bases from villages to towns and cities. Moreover, labourers were needed during the building of roads, railways, and factories, which prompted increased migration.¹⁰¹ Places such as Aba, Lagos, Calabar, and Onitsha, which is close to the River Niger, developed as industrial centres. They attracted migrants with the presence of markets, administrative officials, industries, and the influx of foreign traders.¹⁰² Furthermore, coal mining, the discovery of oil, and the decline of agriculture led people to seek employment in cities in order to feed themselves and their families.¹⁰³ This movement of people contributed to the distortion of family structures.¹⁰⁴ The extended family pattern and communal way of life disappeared, leading to individualistic ways of life.¹⁰⁵ Many individuals and their families established permanent homes in urban areas, often far away from their traditional homes. As Isiugo-Abanihe rightly affirmed, the ‘social change that accompanies economic development brings with it a re-formulation of family organisation’.¹⁰⁶ The impact of migration is such that, whilst people held tenaciously to cultural practices, they became exposed to Western lifestyles, and thus adapted their cultural practices to adjust them to complex modern realities and economic exigencies. The result is the commercialisation of bridewealth payment.¹⁰⁷ In this commercialisation, education played an unwitting role.

¹⁰⁰ B Chukwuezi ‘Through Thick and Thin: Igbo Rural-Urban Circularity, Identity and Investment’ (2001) 19(1) *Journal of Contemporary African Studies* 55-66 at 56-58; KCA Casmir, E Ome & A Nwankwo ‘Re-Examination of Igbo Values System, and the Igbo Personality: A Kantian and African Comparative Perspective’ (2014) 4(3) *Open Journal of Philosophy* 1-7 at 2-3.

¹⁰¹ P Iroegbu op cit note 20 at 109-112.

¹⁰² AU Igwe & N Obiakor ‘The Effects of “Permanent Migration” on the Economy of Owerri Province, Eastern Nigeria, 1950-1967’ (2015) 4(1) *Asian Journal of Social Sciences and Humanities* 177-185 at 177-179.

¹⁰³ CJ Korieh op cit note 99 at 145.

¹⁰⁴ DF McCall ‘Dynamics of Urbanization in Africa’ (1955) 298 *The Annals* 151-160.

¹⁰⁵ FU Ohaegbulam op cit note 14 at 91; L Wirth ‘Urbanism as a Way of Life’ in J Lin & C Mele (eds.) *The Urban Sociology Reader* (2013) 37-39.

¹⁰⁶ UC Isiugo-Abanihe *Nuptiality Patterns, Sexual Activity and Fertility in Nigeria* (1994) 3-4.

¹⁰⁷ Ibid; DJ Smith op cit note 22 at 30, 32-33.

3.7.3 Education as paradox

The introduction of education in Igboland was revolutionary.¹⁰⁸ As transformation and development soared in society, education became of immense significance for communication, knowledge, ascension to political and leadership roles, sustenance, and survival. It is worthy to note that at the onset of colonial rule, Western education was dispensed alongside Christianity, which struggled for supremacy with indigenous religion. In this sense, acquiring western education was considered a waste of time for most people in Igboland.¹⁰⁹ This was because of its exorbitant cost and people's distrust of its effects on the traditional system. The traditional education practiced in the precolonial era by the Igbo people solved the needs of the society in that it dealt with individual responsibility to the society, work orientation, and other societal values.¹¹⁰ People's distrust of Western education was heightened by their fear that its values were not attuned to their traditional values.¹¹¹ According to Ubah, a 'day well spent is a day spent on the farm, in the grazing field'.¹¹² However, converts to Christianity were eager to accept Western education, since it made them stand out amongst their neighbours.¹¹³ When eventually the need for Western education gained momentum, only boys were initially sent to

¹⁰⁸ NE Mba 'The Effects of Colonialism in Southern Nigeria' in NE Mba (ed.) *Nigerian Women Mobilized: Women's Political Activity in Southern Nigeria, 1900-1965* (1982) 118. For more details on how education came into Nigeria and by whom see SR Folasade 'Internationalization in Education: The British Colonial Policies on Education in Nigeria 1882 – 1926' (2012) 3(2) *Journal of Sociological Research* 84-101 at 89-90.

¹⁰⁹ CN Ubah 'Western Education in Africa: The Igbo Experience, 1900-1960' (1980) 24(3) *Comparative Education Review* 371-388 at 377; WI Ofonagoro *Trade and Imperialism in Southern Nigeria: 1881-1929* (1979) 274 and 277; E Obiechina *An African Popular Literature: A study of Onitsha Market* (1973) 32, 51-52; B Emecheta *The Bride price* (1976) 168; B Siegel 'Family and Kinship' in AA Gordon & DL Gordon (eds.) *Understanding Contemporary Africa* (1996) 230-231. See also BL Shadle 'Bridewealth and Female Consent: Marriage Disputes in African Courts, Gusiiland, Kenya' (2003) 44(2) *The Journal of African History* 241-262 at 246.

¹¹⁰ D Mosweunyane 'The African Educational Evolution: From Traditional Training to Formal Education' (2013) 3(4) *Higher Education Studies* 50-59 at 50-52; B Egbo *Gender, Literacy, and Life Chances in Sub-Saharan Africa* (2001) 61; AB Fafunwa *History of Education in Nigeria* (1991) 15-20.

¹¹¹ J Abidogun 'Western Education's Impact on Northern Igbo Gender Roles in Nsukka, Nigeria' (2007) 54(1) *Africa Today* 29-51 at 29-32. OU Kalu 'Missionaries, Colonial Government and Secret Societies in South-Eastern Igboland, 1920-1950' (1977) 9(1) *Journal of the Historical Society of Nigeria* 75-90 at 76-78; JFA Ajayi, et al *The African Experience with Higher Education* (1996) 16-20.

¹¹² CN Ubah op cit note 109 at 377.

¹¹³ Igbo society was initially educationally disadvantaged; see J Coleman *Nigeria: Background to Nationalism* (1958) 36; S Crowther & JC Taylor *The Gospel on the Banks of the Niger, Journals and Notices of the Native Missionaries Accompanying the Niger Expedition of 1857-1859* (1859 reprinted 1968) 432; S Ottenberg 'Ibo Receptivity to Change' in WR Bascom & MJ Herskovits (eds.) *Continuity and Change in African Cultures* (1959) 130.

school because of the patriarchal nature of Igbo society.¹¹⁴ Thus, male children acquired new understandings of privilege and social power.¹¹⁵ Significantly, they cemented their perceptions of women's inferior role in society, and acquired distorted views of bridewealth from European teachers and their local successors.¹¹⁶ When eventually girls were allowed to attend school, the curriculum had to be structured to fit their new social status. The pressure to accommodate girls in schools arose from Christian influences. Specifically, missionaries pressured parents to allow their children to be educated irrespective of their sex.¹¹⁷ Girls were taught how to be good Christian house wives and mothers. The structuring of education in Igboland had mixed results.

As Uchendu noted, it increased economic and gender inequality, created social stratification, distorted customs, and disrupted social harmony.¹¹⁸ The positive effect for female children is that they became more aware of their rights.¹¹⁹ The negative effect is that it became economically unfavourable for many people to send their female children to school. Accordingly, those able to do so attempt to recoup their expenses from high bridewealth.¹²⁰ Isiugo-Abanihe notes that education has overtaken the emphasis laid on social background, personal qualities, beauty, and accomplishments as the qualities required of a bride during the negotiation of bridewealth.¹²¹ This mixed result shows the duality of structure as both an enabler and a constrainer. On the one hand, education enabled females to be mentally better equipped, gain meaningful employment, and exercise agency in their cultural setting. On the

¹¹⁴ The male child syndrome; BO Egbo 'Variability in the Quality of Life of Literate and Non- Literate Rural Women: A Nigerian Account' (1997) 44; S Leith- Ross *African women: A Study of the Ibo of Nigeria* (1939) 133, 196-197 and 316; IV Ogo Modo 'Nigerian Families' in BN Adams & J Trost (eds.) *Handbook of World Families* (1935) 33.

¹¹⁵ PK Uchendu *Education and the Changing Role of Nigeria Women* (1995) 10-14.

¹¹⁶ DC Woolman 'Educational Reconstruction and Post-Colonial Curriculum Development: A Comparative Study of Four African Countries' (2001) 2(5) *International Education Journal* 26-46 at 29; PC Onwuachi *African Identity and Black Liberation* (1972) 10; J Abidogun op cit note 111 at 29-32.

¹¹⁷ NE Mba op cit note 108 at 61.

¹¹⁸ VC Uchendu *Education and Politics in Tropical Africa* (1979) 1- 3.

¹¹⁹ UC Isiugo-Abanihe op cit note 59 at 151-155; TA Ojua et al op cit note 25 at 45.

¹²⁰ UC Isiugo-Abanihe 'Consequences of Bridewealth Changes on Nuptiality Patterns Among the Ibo of Nigeria' in CH Bledsoe & G Pison (eds.) *Nuptiality in Sub-Saharan Africa: Contemporary Anthropological and Demographic Perspectives* (1994) 78; UC Isiugo-Abanihe op cit note 59 at 155, 158, 161.

¹²¹ UC Isiugo-Abanihe op cit note 120 at 79.

other hand, it constrained them in terms of their parents' demand for high bridewealth. This constraint was especially strong on many educated females who hold strongly to cultural practices. Where they wish to marry early, their parents' demand for high bridewealth puts immense pressure on suitors.¹²² High bridewealth also objectifies such women when suitors haggle for affordable bridewealth.¹²³ In sum, the educational qualification of the bride primarily determines the quantum of her bridewealth. There are classifications for her subject of study, with certain professions such as medicine, nursing, engineering, and law attracting higher bridewealth because they are valued over other professions.¹²⁴

3.7.4 *Bridewealth and gender relations*

Today, bridewealth is so distorted that it has become almost entirely monetised.¹²⁵ It has also become an extortionary venture rather than the unifying symbol it used to be. This extortionary character affects the intending spouses' agency, even in their matrimonial home.¹²⁶ Here, I am concerned with how changes in the significance of bridewealth affect agency in the context of cultural and economic motives. The same traditional structures, which proclaim the self-esteem and dignity of women, also undermine their agency and decision-making power over the beneficiaries of their bridewealth.¹²⁷ Affirming this argument, Isiugo-Abanihe stated thus: 'among the Igbos, for whom bride wealth payments are high, a woman comes under the authority of her husband and takes instructions from him as the head of the family by virtue of this payment'.¹²⁸ In the context of bridewealth negotiation, the question is whether the interplay

¹²² P Iroegbu op cit note 20 at 114-115; B Emecheta op cit note 109 at 168; E Obiechina op cit note 109 at 34; B Siegel op cit note 109 at 230-231.

¹²³ MB Nwoke 'Bride Price and Implications for Women's Rights in Nigeria: Psychological Perspectives' (2009) 7(1) *Gender and Behaviour* 2078-2087 at 2081-2082; F Ekejiuba op cit note 30 at 151; FU Ohaegbulam op cit note 14 at 111. However, studies have shown that bridewealth in most part of Igboland especially the matrilineal descent is low compared to the patrilineal societies. See UC Isiugo-Abanihe op cit note 59 at 156.

¹²⁴ UC Isiugo-Abanihe op cit note 59 at 158.

¹²⁵ F Ekejiuba op cit note 30 at 151; UC Isiugo-Abanihe op cit note 59 at 152.

¹²⁶ R Asen 'A Feminist Analysis of the Themes of Bride Price Practice in Sutherland's Marriage of Anasewa and Sofola's Wedlock of the Gods' (2017) 5(1) *International Journal of Art and Art History* 32-44 at 39- 41.

¹²⁷ It also affects women's reproductive rights after marriage; see AK Blanc 'The Effect of Power in Sexual Relationships on Sexual and Reproductive Health: An Examination of the Evidence' (2001) 32(3) *Studies in Family Planning* 189-213 at 189-191.

¹²⁸ UC Isiugo-Abanihe 'Reproductive Size Motivation and Family Size Preferences among Nigerian Men' (1994) 25(3) *Studies in Family Planning* 149-161 at 150.

of cultural and economic motives support Isiugo-Abanihe's assertion. From my field findings, women's economic status influences their agency during bridewealth negotiation. As I demonstrate in chapters five and six, women wield this agency through their parents and prospective spouses. Since Igbo people value enterprise, women enjoy a respectable social status because of their significant financial contributions to their families.

3.8 Conclusion

This chapter establishes bridewealth payment as the keystone of customary law marriages in South-East Nigeria. It identified two schools of thought regarding the components of bridewealth payment. While the unified view holds that bridewealth payment encompasses every payment in cash or material that the groom or his family gives to the bride's family, the dualist view posits that marriage gifts are not part of bridewealth because they are not refunded during divorce. This chapter adopted the unified view because it plays a major role in the distortion of bridewealth's original significance. This is because over time, excessive requirements in marriage lists influenced people's perceptions of the meaning of bridewealth. These perceptions became so distorted that families demand high sums of money despite legislation that prohibits it. This open flouting of legislation has significance for the interaction of cultural institutions with the formal legal system.

The chapter described women's appreciable social spaces in the precolonial agricultural settings in which bridewealth emerged. These social spaces thrived in a village republican system in which the extended family and age groups played key supportive roles in the institution of marriage. In this setting, bridewealth had a symbolic value and served as a legitimization of marriage, appreciation of the bride's fecundity, and compensation for the loss of her services to her family and lineage. However, Nigeria's colonial encounter contributed significantly to the distortion of bridewealth in Igbo society. Some of the main factors that account for bridewealth's distortion include education, acculturation, urbanisation, monetisation of bridewealth, and economic wants. Two aspects of this encounter are noteworthy for power relations within the structure- versus-agency interplay.

The first is the radical alteration of the agrarian basis of society. This alteration resulted in the near eradication of the communal basis of wealth production. Individuals began to

acquire wealth independently, as they no longer farmed together under the extended family system of pre-colonial social organisation. Individual wealth acquisition changed the practice in which the groom's family raised his bridewealth. It became the sole responsibility of the groom, who, depending on his wealth, could offer even more than the amount required by his in-laws.

The second set of consequences is urbanisation, the cost of acquiring a Western education, and the loss of livelihoods that resulted from disruptions to the land tenure system. Families saw bridewealth as an avenue to recoup expenses on the education of their daughters and compensate for their own poor economic situation. Perceptions of the distorted version of bridewealth payment now include: a financial incentive for raising a girl-child,¹²⁹ a wife purchase,¹³⁰ and a form of future financial security.¹³¹ There is a belief by some parents that their son-in law might resent the idea of his wife shouldering her family's financial responsibilities after marriage. Accordingly, they demand high bridewealth to compensate for limitations to her financial responsibilities.

In conclusion, the interplay of structure and agency in contemporary manifestations of bridewealth reflect both cultural and economic motives. These motives demonstrate the duality of structure, since they are shared by both custodians of culture and families who see bridewealth as economic relief. The interplay of cultural and economic motives creates complex power relations that blur the structure-agency divide. Given the unclear nature of the structure-versus-agency interplay in bridewealth payment, the next chapter investigates the political and legal structure of Nigeria's legal system to uncover how the interaction of cultural and legal institutions impact on women's agency.

¹²⁹ J Liddell & Y Belinda Kemp *Arms akimbo: Africana Women in Contemporary Literature* (1999) 151; UC Isiugo-Abanihe op cit note 59 at 159; MO Balonwu et al op cit note 33 at 5 -10.

¹³⁰ B Emecheta op cit note 109 at 92.

¹³¹ UC Isiugo-Abanihe op cit note 120 at 79.

Chapter Four: Structure, agency, and women's voices in the Nigerian legal system

4.1 Introduction

In the preceding chapter, I examined the concept of bridewealth payment, its significance, and the factors responsible for its distortion. I found that socio-economic changes, notably education, acculturation, and urbanisation, which contributed to the commercialisation of bridewealth, significantly influence current perceptions of bridewealth's function. These socio-economic changes, which were brought about by colonial rule in Nigeria, affected people's religious, philosophical, and legal world view.

In this chapter, I offer an account of precolonial power relations in Nigeria, with emphasis on South-East Nigeria. This account is significant because bridewealth negotiation is inseparable from the wider society within which the marriage process occurs. In turn, the social settings in which agency is exercised are sometimes determined by socio-economic conditions beyond the control of the concerned persons. Accordingly, this chapter reveals how socio-economic changes affected bridewealth payment and altered the socio-cultural power relations that constitute structure in South-East Nigeria. Since bridewealth profoundly affects women's agency, the chapter will place emphasis on women. It will shed light on how the legal framework instituted by colonial rule shapes women's ability to manipulate the cultural institutions surrounding bridewealth payment. It will draw from literature on pre-colonial and colonial social relations to show how these social relations have evolved over time from their agrarian foundations. To better highlight the relationship between structure and agency in chapter five, it will also identify state attempts to use law to regulate bridewealth payment. Here, law is regarded as structure – ie, a tool of social control – rather than a facilitator of human interaction or agency.

The analysis in this chapter encompasses people's interactions in rural and urban settlements. The reason is that urbanisation is a significant feature of the colonial encounter, which greatly influences individuals' exercise of agency.¹ The chapter begins with a historical overview of Nigeria.

¹ For further detail on rural and urban women see G Chuku 'Women in the Economy of Igboland, 1900 to 1970: A Survey' (1995) 23 *African Economic History* 37-50 at 37.

4.2 Brief historical overview of Nigeria

This section provides an overview of Nigeria's history and legal development before and after colonialism, with emphasis on marriage relations within the socio-political structure of South-East Nigeria.

Nigeria is the most populous country in Africa. Even though its present political structure was established by British colonisers in the early twentieth century, the political organisation of its people dates back several centuries.² To the south, Nigeria is bounded by the Gulf of Benin and the Gulf of Biafra, which are on the bights of Guinea in the Atlantic Ocean. To the north, it is bounded by Niger, east by Cameroon, and to the west by Benin.³ The main channel of trade and communication in pre-colonial times was the river, Niger.

Nigeria has a wealth of mineral resources such as coal, iron, and petroleum reserves, which are the current mainstay of its economy. However, agriculture was the core basis of the economy before the discovery of petroleum. Indeed, Nigeria still prides itself in the variety of its agricultural produce. Its food crops range from yam, plantains, cocoyam, and cassava, to cocoa, palm oil, palm kernel, and groundnuts. These goods were produced for local consumption, as well as for export, with each geographical area specialising in specific foods. For example, the Igbos of South-East Nigeria were known for producing palm oil; the Yoruba in the South-West are known for production of cocoa, and the Hausas of northern Nigeria are known for the production of groundnuts. These three ethnic groups – Igbo, Hausa and Yoruba – are the largest and most well-known ethnic groups out of an estimated 350 others.⁴

Prior to the consolidation of the Northern and Southern territories of Nigeria in 1914, the diverse communities of Nigeria were autonomous.⁵ Areas such as Oyo, Benin, and Sokoto

² T Falola & MM Heaton *A History of Nigeria* (2008) 16; BA Ojo *Problems and Prospects of Sustaining Democracy in Nigeria* (2001) 191, 199.

³ T Falola & MM Heaton op cit note 2 at 2.

⁴ The Kanuri Tiv, and Ijaw are also relatively large. See generally, O Otite *Ethnic Pluralism and Ethnicity in Nigeria* (1990) 35-36.

⁵ AE Ojie & C Ewhrudjakpor 'Ethnic Diversity and Public Policies in Nigeria' (2009) 11(1) *Anthropologist* 7-14 at 8; LD King 'State and Ethnicity in Precolonial Northern Nigeria' (2001) 36(4) *Journal of Asian and African Studies* 339-360 at 342-346.

had fairly centralised systems of governance and held strong regional powers for an extended period of time.⁶ Smaller communities had fragmented systems of governance within structures such as councils, chiefs, and age groups.⁷ This is the case with the study area.

4.3 Political structure of South-East Nigeria

Just as many other tribes in Nigeria, the Igbo people have a rich history.⁸ Scholars have argued that before the inception of colonialism, the Igbos lacked homogeneity.⁹ In the words of Karl Deutsch, to qualify as a homogenous people, a group must be ‘linked by complementarity of habits and facilities of communication’.¹⁰ The Igbo people have similar customs and similar languages.¹¹ However, they lack centralised political organisation and a genuine sense of unity amongst their different village groups.¹² These village groups were named with reference to their acknowledged ancestral founders or after a momentous event, or in commemoration of a significant feature of their locality.¹³ Each village group had its own political unit, which consisted of age grades, title holders or elders, *Umuada* (married, divorced or single first daughters of the lineage), women associations, oracles, and diviners. These units, some of

⁶ M Ochonu ‘Colonialism within Colonialism: The Hausa-Caliphate Imaginary and the British Colonial Administration of the Nigerian Middle Belt’ (2008) 2(3) *African Studies Quarterly* 95-127 at 95. For more detail on the Oyo empire see R Law *The Oyo Empire, c. 1600-c. 1836: A West African Imperialism in the Era of the Atlantic Slave Trade* (1977) 4-17.

⁷ AE Afigbo ‘The Warrant Chief System in Eastern Nigeria: Direct or Indirect Rule?’ (1967) 3(4) *Journal of the Historical Society of Nigeria* 683-700 at 683-685.

⁸ SJS Cooley ‘An Ethnohistorical Reconstruction of Traditional Igbo society’ in BK Swartz & RE Dumett (eds.) *West African Culture Dynamics: Archaeological and Historical Perspectives* (1980) 327-330.

⁹ AC Smock *Ibo Politics: The Role of Ethnic Unions in Eastern Nigeria* (1971) 7; IE Umerah-Udezulu ‘The State and the Integration of women in Ibo: Patriarchy and Gender Advancement’ in V Udoh James & J Etim (eds.) *The Feminization of Development Processes in Africa: Current and Future perspectives* (1999) 131.

¹⁰ KW Deutsch *Nationalism and Social Communication: An Inquiry into the Foundations of Nationality* (1966) 70.

¹¹ DC Ohadike *Igbo History and Culture* (1996) xix. For a rough estimate of the population of people in the villages see CD Forde & GI Jones *The Ibo and Ibibio-Speaking Peoples of South-Eastern Nigeria* (1950) 10. The lack of centralised government owed to the popular believe that Ibos do not owe allegiance to any authority; see also RN Henderson *The King in Everyman: Evolutionary Trends in Onitsha Ibo Society and Culture* (1972) xiii, 1-26, 439-502.

¹² S Ottenberg ‘Ibo Oracles and Intergroup Relations’ (1958) 14(3) *Southwestern Journal of Anthropology* 295-317 at 296.

¹³ See CD Forde & GI Jones op cit note 11 at 9; GT Basden *Niger Ibos* (1966) 150.

which still exist, were arranged in patrilineages – that is descent from father to son or descent through blood ties.¹⁴ All of them played significant roles in bridewealth negotiation process. In what follows, I provide a description of Igbo political structures to highlight the dynamics of power, with careful attention on how the functions of each group enables or constrains agency.

4.3.1 *The Umunna*

This is a kindred group, which consists of males and females linked by the same ancestral descent. As a group involved in determining items on the marriage list, it consisted of adult members of the lineage, who were dominantly male and aged. As recorded by some scholars, there were limited numbers of women in this group in the past, making male power very significant.¹⁵ This group is different from traditional rulers. While a traditional ruler oversees the entire community, elders have power within their families and kinship groups.¹⁶ However, some elders are also members of the traditional rulers' cabinet.¹⁷ They discuss issues and find solutions to matters affecting their lineage.¹⁸ The oldest amongst them was the leader called the *Okpara*, who acted on behalf of, and with the consent of other members of the group. In the context of bridewealth negotiation, they wielded the most influence by making sure that all traditional rites that accrue to them is met.¹⁹ As explained by Uchendu, the patriarchal nature of the society, which places ownership of a child on the father, accounts for this influence.²⁰

¹⁴ NE Mba *Nigerian Women Mobilized: Women's Political Activity in Southern Nigeria, 1900-1965* (1982) 26; MM Green *Igbo village Affairs: Chiefly with Reference to the Village of Umueke Agbaja* (1947) 5, 16-22. For the matrilineal group, see PO Nsugbe *Ohaffia: A Matrilineal Ibo People* (1974) 84.

¹⁵ Scholars have argued the extent of women's participation in this meeting. For example, MM Green op cit note 14 at 107, 112-113, 116-129, 169, and 199 argued that women had little contribution to make in this gathering. Iroegbu argued that most women in this group bought their position by virtue of being wealthy, see P Iroegbu 'Marrying Wealth, Marrying Money: Repositioning Igbo Women and Men' in B Saunders & MC Foblets (eds.) *Changing Genders in Intercultural Perspectives* (2002) 105; See also JT Agbasiere *Women in Igbo life and Thought* (2000) 38 -39; P Uchendu *Education and the Changing Economic Role of Nigerian Women* (1995) 58.

¹⁶ IE Umerah-Udezulu op cit note 9 at 133.

¹⁷ CO Akakuru, et al 'A Critical Appraisal of the Traditional Leadership Styles in Igboland, South-Eastern Nigeria' (2014) 19(3) *Journal of Humanities and Social Science* 48-52 at 48.

¹⁸ VC Uchendu *The Igbo of Southeast Nigeria* (1965) 34, 42-43; JS Harris 'The Position of Women in a Nigerian Society' (1940) 2(5) *Transactions of the New York Academy of Sciences* 141-148 at 142-143.

¹⁹ IE Umerah-op cit note 9 at 134-137.

²⁰ VC Uchendu 'Ezi Na Ulo: The Extended Family in Igbo civilization' (2007) 31(1/3) *Dialectical Anthropology* 167-214 at 204.

4.3.2 Age grade associations

This group, literally called *otu ogbo* in Igbo language, denotes men and women who are within the same age bracket.²¹ Their main function is to implement the decisions of *Umunna* or the assembly of elders. Such functions include collecting fines, clearing paths or bushes, fostering peace and stability, crime prevention, law enforcement, and welfare development.²² Membership and participation in this group gives women an opportunity to assert their view and make complaints. In the context of marriage and bridewealth payment, age grades act in accordance with the complaint they receive on an issue. The extent of their power is subject to the decision of the elders, since many unsatisfied complainants resort to the elders.²³

4.3.3 The oracle

Oracle means deities and spirits. They discharge judicial and divinatory functions, even today. They were feared and respected because of the divine powers they were believed to have exerted. For example, the Aro oracle was believed to have strengthened its people, protected them, allowed them to prosper, and killed whoever opposed them.²⁴ Oracles are considered as impartial umpires, and their names portray the needs of the community.²⁵ Villages and individuals consulted oracles in important matters such as settling disputes, health matters, and investigation of marriage partners.²⁶ However, with the spread of Christianity, people no longer widely seek from oracles the suitability of their children's marriage partners. Notably, oracles were both females and males. Indeed, the Earth goddess, (known as Ala, Ani, Ana, Ale, and

²¹ N Iheanacho 'Religio-Cultural Foundation and Resources of Human Relations in Africa' (2016) 6 *Sociology Mind* 65-74 at 70; CI Atuonwu 'The Role of Age Grade System in Peace Building in Ohafia' (2016) 4(1) *The International Journal of Business and Management* 345-355 at 346.

²² C Ifemesia *Traditional Humane Living Among the Igbo: An Historical Perspective* (1979) 81.

²³ OO Elechi *Doing Justice Without the State: The Afikpo (Ehugbo) Nigeria Model of Conflict Resolution* (2006) 69-70.

²⁴ S Ottenberg op cit note 12 at 299-330; see also JS Harris 'Some Aspects of Slavery in Southeastern Nigeria' (1942) 27(1) *The Journal of Negro History* 37-54 at 40; S Leith-Ross 'Notes on the Osu System among the Ibo of Owerri Province Nigeria' (1937) 10(2) *Africa: Journal of the International African* 206-220 at 210 -211.

²⁵ CU Agbedo 'Deities and Spirits in Igboland: The Elugwu Ezike Cultural Perspective' (2007) 7(2) *Journal of Religion and Culture* 1-17 at 1.

²⁶ D Oluwagbemi-Jacob & CE Uduma 'Gender Equality, Gender Inequality, and Gender Complementarity: Insights from Igbo Traditional Culture' (2015) 5(5) *Philosophy Study* 223-232 at 228.

Ali in varying Igbo dialects) is the foremost deity in Igboland, since it connoted morality, fertility, and creativity.²⁷ There were many female priestesses, which is an indication of women's prominent role in precolonial society.

4.3.4 Women's associations

Other than female age grades, women's associations consist of the *Umuada* and the *nwunyedi*, meaning wives of the lineage.²⁸ Although not as powerful as the *Umuada*, the *nwunyedi* – that is associations of married women in the kindred – are active in issues 'involving lineage wives and their unmarried daughters, and matters regarding adultery and other breaches of marriage...'²⁹ They have the power to settle cases that affect them as wives and mothers of the kindred.³⁰ Where they fail to administer justice, the issue is referred to the *Umuada*.³¹

The *Umuada* play a very active and influential role in social life, especially in marriage affairs.³² Their power is summarised by Akachi in this way:

²⁷ PA Egejuru 'The Paradox of Womanbeing and the Female Principle in Igbo Cosmology' in PA Egejuru & KH Katrak (eds.) *Nwanyibu: Womanbeing and African Literature* (1997) 14; N Achebe 'Balancing Male and Female Principles: Teaching About Gender in Chinua Achebe's Things Fall Apart' (2002) 29(1) *Ufahamu: A Journal of African Studies* 121-143 at 122; MC Onukawa 'The Chi Concept in Igbo Gender Naming' (2000) 70(1) *Africa* 107-117 at 116; OU Kalu 'Gender Ideology in Igbo Religion. The Changing Religious Role of Women in Igboland' (1997) 46(2) *Africa: Rivista trimestrale di studi e documentazione dell'Istituto italiano per l'Africa e l'Oriente* 184-202 at 187.

²⁸ JOJ Nwachukwu-Agbada 'Daughteronomy': Akachi Adimora-Ezeigbo, Domestic Amazons and Patriarchal Assumptions in Children of the Eagle' (2011) 48(1) *Tydskrif vir letterkunde* 86-97 at 88-90; T Sodi, et al 'Marriage and Counselling in African Communities: Challenges and Counselling Approaches' (2010) 20(2) *Journal of Psychology in Africa* 335-340 at 336.

²⁹ G Chuku 'Igbo Women and Political Participation in Nigeria, 1800s-2005' (2009) 42(1) *International Journal of African Historical Studies* 81-103 at 86.

³⁰ For more on the roles of the women association see J van Allen 'Aba Riots or Igbo Women's War'? Ideology, Stratification, and the Invisibility of Women' in NJ Hafkin & EG Bay (eds.) *Women in Africa: Studies in Social and Economic Change* (1976) at 86; C Onyeji 'Igbo Rural Women in Africa As Creative Personalities: Musical Processing of Socio-Economic Solidarity' (2004) 1(1) *Journal of the Musical Arts in Africa* 84-101 at 86.

³¹ G Chuku op cit note 29 at 86; for more roles of the *umuada* see OC Obasi & RG Nnamani 'The Role of Umuada Igbo in Conflict Management and Development in Nigeria' (2015) 5(4) *Open Journal of Political Science* 256-263 at 258; C Onyeji op cit note 30 at 86; A Ezeigbo 'Gender Sensitivity and the Role of Umuada in Conflict Resolution' in AO Nwauwa & CJ Korieh (eds.) *Against All Odds: The Igbo Experience in Postcolonial Nigeria* (2011) 169-188.

³² O Anya 'Women and Politics in Nigeria's Fourth Republic the Constitution' (2003) 3(4) *The Constitution* 59-88 at 50; OU Kalu op cit note 27 at 193; S Jell-Bahlsen 'Female Power: Water Priestesses of the Oru-Igbo' in O Nnaemeka (ed.) *Sisterhood, Feminism and Power: From Africa to the Diaspora* (1998) 107; See also O Nnaemeka 'Development, Cultural Forces, and Women's Achievements in Africa' (2008) 18 (2/3) *Law and Policy* 251 -279 at 263.

In practically all Igbo communities, women in their natal villages – addressed as “Umuada” or “umumboto” – wielded legal, decisional rights comparable to those of a modern supreme court. The “Umuada” were last arbiters; they equally had right to intervene, even uninvited, when they believed that there had been a miscarriage of justice.³³

Similarly, Chuku stated:

The Otu Umuada was a vital force in their natal lineage. They not only served as a police force over lineage wives, but also were peace mediators within their natal lineages and between their natal and marital lineages. They served as the supreme court of appeal on female matters as well as the watchdog of the men's political arm of government.³⁴

The *Umuada* play a complementary role to that of the *Umunna*, showing a duality in the political power relations of the Igbo people.³⁵ While recognising that the roles of the *Umuada* is complementary, Njaka observed that they are ‘potentially the most powerful organ in the state.’³⁶ He added that ‘despite this power, however, the Umuada (patrilineal daughters) are said to be like mothers – always lenient and not as fierce as it sounds.’³⁷ Scholars in the 1970s, 80s and now have shown how fierce this group can be, thus contradicting Njaka’s earlier statement.³⁸ I would have agreed with his statement if he hadn’t put the word ‘always’.

Another prominent female unit in Igbo social life is the *omu*. An *omu* is a female monarch charged with the responsibility of caring for the women in her community.³⁹ This position was more pronounced in areas that practiced a ‘constitutional village monarchy’

³³ JOJ Nwachukwu-Agbada ‘Behind the Irony Curtain: Chinua Achebe and Femality Revisited’ in I Diala (ed.) *The Responsible Critic: Essays on African Literature in Honor of Professor Ben Obumelu* (2006) 82.

³⁴ G Chuku op cit note 29 at 86.

³⁵ J van Allen ‘Sitting on a Man: Colonialism and the Lost Political Institutions of Igbo Women’ (1972) 6(2) *Canadian Journal of African Studies* 165-181 at 176.

³⁶ See also EN Njaka *Igbo Political Institutions and Transition* (1970) 260.

³⁷ EN Njaka *Igbo Political Culture* (1974) 124; See generally also I Okpewho *Chinua Achebe's Things Fall Apart: A Casebook* (2003) 179.

³⁸ Ilika did a very good job of revealing the *Umuada*'s fierceness; see AL Ilika & UR Ilika ‘Eliminating Gender-Based Violence: Learning from the Widowhood Practices Elimination Initiative of a Women Organisation in Ozubulu, Anambra State of Nigeria’ (2005) 9(2) *African Journal of Reproductive Health* 65-75 at 70.

³⁹ She is a mother to the community as explained in K Okonjo ‘Dual- Sex Political System in operation: Igbo women and community politics in Midwestern Nigeria’ in NJ Hafkin & EG Bay (eds.) *Women in Africa: Studies in Social and Economic Change* (1976) 48, 50.

system such as the riverine Ibo, coastal Ibibio, and the Ijo.⁴⁰ The *omu* oversaw the affairs of women and was their spokesperson in important meetings.⁴¹

Given the above political structures, were women in precolonial Igbo society voiceless? The below exploration of social relations in the context of marriage shed light on women's ability to manipulate cultural institutions using their agency.

4.4 Social relations and women's agency in precolonial Nigeria

There is scant literature on the life of Igbo women in precolonial times, a situation traceable to the inadequate representation of women in historical studies.⁴² The little information that can be gathered are mainly from oral accounts, which is the main feature of African history.⁴³ However, oral accounts are tainted by the problem of individual biases and group prejudices. In any case, ethnographic accounts of Igbo women during the colonial period offer clues to the social status and agency of women in precolonial Igbo societies. These accounts, which have been debated by several scholars, arose from the subordinate position of women in contemporary society. Three schools of thought prevail.

Some scholars believe that women had a subordinate position in precolonial Igbo society, while others argue otherwise.⁴⁴ Yet others argue that even if women had power or influence, they only functioned within the private space rather than in the public domain. Those who argue that women had a subordinate position have portrayed women as inferior to men and with little or no influence in society. This category of scholars is mainly Westerners with little or no experience or acquaintance with the lived experiences of the subjects of their study. For example, Basden and Talbot each painted a negative picture of gender relations in precolonial society.⁴⁵ They portrayed women as not just inferior to men but also slaves to their

⁴⁰ AE Afigbo op cit note 7 at 16.

⁴¹ For more functions of the *omu* see K Okonjo op cit note 39 at 50 – 52.

⁴² C Obbo *African Women: Their Struggle for Economic Independence* (1980) 1.

⁴³ For the problems associated with oral history see E Isichei *A History of the Igbo People* (1976) 39 and 111; AE Afigbo 'Oral Tradition and the History of Segmentary Societies' (1985) 12 *History in Africa* 1-10 at 1.

⁴⁴ JF O'Barr 'Making the Invisible Visible: African Women in Politics and Policy' (1965) 18(3) *African Studies Review* 19-27 at 22; JF Collier 'Women in Politics' in MZ Rosaldo & L Lamphere (eds.) *Women, Culture and Society* (1974) 90.

⁴⁵ GT Basden *Among the Ibos of Nigeria: An Account of the Curious & Interesting Habits, Customs, & Beliefs of a Little Known African People by One Who Has for Many Years Lived Amongst Them on Close & Intimate Terms*

husbands. For instance, Basden stated that women's lives consist of a 'continual round of marketing and preparation of food.'⁴⁶ It was not until the 1929 Women's War, also referred to as the Aba Women's Riot, that scholarly opinion and perceptions of women began to change.⁴⁷ The incident occurred because of women's disgust at the systematic erosion of their precolonial economic and political power by British officials.⁴⁸

Scholars who argue in favour of women's significant social status emphasised the lost identity and position of women in precolonial Igbo.⁴⁹ For example, Leith-Ross argues that Igbo women were not the 'chattel type and correspond little to the widely-held idea of a downtrodden slave'.⁵⁰ Their argument corresponds to the views of Nnaemeka, Chuku and Ezeigbo on the ability of women to exercise their agency in both the public and private spheres.⁵¹ These works laid the foundation for the autonomy notion, which rejects the idea that women occupied inferior social positions in precolonial Igbo society.⁵²

For example, Chuku argued that Igbo women were independent and ambitious, and played a leading role in development.⁵³ In the socio-economic sphere, the works of Ester Boserup are significant.⁵⁴ Boserup gave an insight into the significant role of women in

(1966) 65, 80, 89, 96; GT Basden op cit note 13 at 164; PA Talbot *The Peoples of Southern Nigeria: A Sketch of Their History, Ethnology and Languages, With an Abstract of the 1921 Census* (1926) 396-411.

⁴⁶ GT Basden op cit note 45 at 48.

⁴⁷ PA Egejuru op cit note 27 at 16 -17.

⁴⁸ J Van Allen 'Aba Riots or the Igbo Women's War? - Ideology, Stratification and the Invisibility of Women' (1975) 6(1) *Ufahamu: A Journal of African Studies* 11-39 at 12.

⁴⁹ C Ukpokolo 'Gender, Space and Power in the Indigenous Igbo Socio-political Organization' (2010) 7(2) *Pakistan Journal of Social Sciences* 177-186 at 177-179; S Leith-Ross *African Women: A study of the Ibo of Nigeria* (1939) 19.

⁵⁰ S Leith-Ross op cit note 49 at 19.

⁵¹ TA Ezeigbo 'Traditional Women's Institutions in Igbo Society: Implications for the Igbo Female Writer' (1990) 3(2) *African Languages and Cultures* 149-165 at 152; O Nnaemeka 'Introduction: Reading the Rainbow' in O Nnaemeka (ed.) *Sisterhood, Feminism and Power: From Africa to the Diaspora* (1998) 5; O Nnaemeka 'This Women's Studies Business: Beyond Politics and History (thoughts on the first Women in Africa and African Diaspora conference) in O Nnaemeka (ed.) *Sisterhood, Feminism and Power: From Africa to the Diaspora* (1998) 351; G Chuku op cit note 1 at 39.

⁵² S Afonja 'Changing Patterns of Gender Stratification in West Africa' in I Tinker (ed.) *Persistent Inequalities: Women and World Development* (1990) 198-209 at 198; G Lerner *The Creation of Patriarchy* (1986) 921.

⁵³ G Chuku op cit note 1 at 39.

⁵⁴ E Boserup *Woman's Role in Economic Development* (2007) 4.

economic development, with emphasis on agriculture/farming. Similarly, Agbasiere argued that on the economic level, ‘the woman, not the man, is the main producer and main provider of foodstuffs for the household’.⁵⁵ In her work, *Dual sex political system in operation*, Okonjo argued that women enjoyed a non-hierarchical status in the political system of precolonial Igboland. In a similar way, Egejuru rightly asserted that family roles were not classified as major and minor, or as superior and inferior.⁵⁶ Every member of the family both young and old had a role to play in the development of the family.⁵⁷ Other scholars have also rebutted some of the misleading information regarding women’s status in the precolonial Igbo political system.⁵⁸ Their studies show that the social relationship between men and women in marriage and in the political, social and economic aspects of life in precolonial society were interdependent and complementary.⁵⁹ In sum, these scholars reveal that precolonial Igbo society placed great value on the role women play in social life.⁶⁰

Despite the above literature on the precolonial status of Igbo women, some scholars still argue that the structural power that women wielded was only functional in the private domain and not the public domain.⁶¹ Others have argued that their role transcended the private domain.⁶² The term private or domestic domain, as elaborated by Sanday, entails roles

⁵⁵ JT Agbasiere op cit note 15 at 6.

⁵⁶ PA Egejuru op cit note 27 at 17. The only classification that existed in pre-colonial Igbo was mainly that of *Nwadiala* (Freeborn) and *Osu* (Outcast). See also PE Okeke-Ihejirika *Negotiating power and privilege: Igbo career women in contemporary Nigeria* (2004) 14.

⁵⁷ E Anyaoku ‘Changing attitudes: A cooperative effort’ (1985) 30(2) *Africa Report* 21-25 at 21; E Leacock & M Etienne (eds.) *Women and Colonisation: Anthropological Perspectives* (1980) 140.

⁵⁸ I Amadiume *Male Daughters, Female Husbands: Gender and Sex in an African Society* (1987) 51-55; JU Ogbu ‘African Bridewealth and Women's Status’ (1978) 5(2) *American Ethnologist* 241-262 at 242-247; N Achebe *Farmers, Traders, Warriors, and Kings: Female Power and Authority in Northern Igboland, 1900-1960* (2005) 36-40; J van Allen op cit note 35 at 165-181; AMD Lebeuf ‘The Role of Women in the Political Organisation of African Societies’ in D Paulme (ed.) *Women of Tropical Africa* (1963) 93-119; TA Ezeigbo op cit note 51 at 152-156; O Nnaemeka ‘If Female Circumcision Did Not Exist, Western Feminism Would Invent It’ in S Perry & CM Schenck (eds.) *Eye to Eye: Women Practising Development Across Culture* (2001) 171.

⁵⁹ M Matera, et al *The Women’s War of 1929: Gender and Violence in Colonial Nigeria* (2012) 25.

⁶⁰ Spheres here include domestic, politics, religious, and importantly, marriage. See MM Green op cit note 14 at 161; I Amadiume op cit note 58 at 175; VC Uchendu op cit note 18 at 66.

⁶¹ P Manning *Navigating World History: Historians create a global past* (2003) 208 -210; IE Umerah-Udezulu op cit note 9 at 136 -143.

⁶² A Drew ‘Female consciousness and feminism in Africa’ (1995) 24(1) *Theory and Society* 1-33 at 12-13; MZ Rosaldo & L Lamphere (eds.) *Woman, Culture, and Society* (1974) 17, 23.

performed within the family unit, whereas the public domain relates to control beyond the localised family unit, i.e. economic and political authority.⁶³ The debate here relates to the extent to which women exercised authority in the two spheres, as well as the extent to which their agency was respected.⁶⁴

From the literature, it is obvious that women exercised considerable agency in precolonial society.⁶⁵ They used their status as mothers, sisters, daughters and wives in the groups mentioned above to manipulate socio-cultural structures and also partake in decision-making in matters that affected them, such as marriage rites and marital abuse.⁶⁶ Commenting on the status of women and how they exercise their agency, Uchendu wrote that the ‘African woman regarded as a chattel of her husband, who has made a bridewealth payment on her account, is not an Igbo woman, who enjoys a high socio-economic and legal status. She can leave her husband at will ... and summon to him to a tribunal where she will get a fair hearing.’⁶⁷ It is notable that Uchendu’s ethnographic surveys occurred after colonial rule had become firmly established in Nigeria. His observation lends credence to how the socio-economic changes brought by colonial rule distorted bridewealth payment. What follows reveals the impact of colonial rule on Igbo women’s agency in Nigeria.

4.5 Colonial impact on women’s agency

As mentioned earlier, the Igbo people lacked a common identity before the inception of colonial rule.⁶⁸ Along with the Nigerian civil war of 1967 to 1970, colonial rule created a new

⁶³ PR Sanday ‘Female Status in the Public Domain’ in MZ Rosaldo, et al (eds.) *Women, Society and Culture* (1974) 190.

⁶⁴ K Gough ‘The Origin of the Family’ (1971) 33(4) *Journal of Marriage and the Family* 760-771 at 761; L Mullings ‘Women and Economic Change in Africa’ in NJ Hafkin & EG Bay (eds.) *Women in Africa: Studies in Social and Economic Change* (1976) 240.

⁶⁵ MM Green op cit note 14 at 7 and 212; AN Duru ‘Speaking of African Women’s Agency, Activism and Complementary Gender Roles: A Look at African Feminism’ in C Onwumechili & SI Ndolo (eds.) *Re-Imagining Development Communication in Africa* (2013) 53; G Chukukere ‘An Appraisal of Feminism in the Socio-Political Development of Nigeria’ in O Nnaemeka (ed.) *Sisterhood, Feminism and Power: From Africa to the Diaspora* (1998) 140-141.

⁶⁶ C Ifeka-Moller ‘Female militancy and colonial revolt: The Women’s War of 1929, Eastern Nigeria’ in Shirley Ardener (ed.) *Perceiving Women* (1975) 133, 134; K Sacks & KB Sacks, *Sisters and Wives: The Past and Future of Sexual Equality* (1982) 77-9; TA Ezeigbo op cit note 51 at 152.

⁶⁷ VC Uchendu op cit note 18 at 87.

⁶⁸ DC Ohadike op cit note 11 at xix.

society in Igboland by forcefully lumping disparate Igbo communities into the single political unit known as southern Nigeria.⁶⁹ Indeed, the coming of European colonialists had a revolutionary impact on the legal, economic, cultural, political and social aspects of life in Nigeria. As Mba rightly asserted, ‘colonialism is not just a system of administration but a whole (*new*) way of living, thinking, and believing.’⁷⁰ Much has been written on the colonial history of Igboland.⁷¹ Accordingly, this section will only focus on its impact on agency relating to women’s power to influence and make decisions, especially in marriage. This impact will be explored at the intersections of politics, religion, and law.

4.5.1 *Impact of legal and political changes on women’s agency*

The role, place, and significance of law as a tool of authority and power cannot be over emphasised.⁷² As Mamdani rightly observed, colonial administrators were faced with the puzzle of how a ‘foreign minority’ can rule an ‘indigenous majority’.⁷³ There were two alternatives: to rule directly or indirectly. The former could function effectively in societies where there were centralised forms of authority, while the later was only feasible in societies such as South-East Nigeria where power was decentralised. Indirect rule offered the advantage of allowing the indigenous laws of the colonised peoples to function alongside the law of the colonisers. This is the origin of the Nigerian legal system and the phenomenon of co-existing state and non-state law, also known as legal pluralism.⁷⁴

⁶⁹ DJ Smith ‘Legacies of Biafra: Marriage, “Home People” and Reproduction Among the Igbo of Nigeria’ (2005) 75(1) *Africa* 30-45 at 30.

⁷⁰ NE Mba op cit note 14 at 38; emphasis mine

⁷¹ For more details on colonialism in South East Nigeria see RA Njoku *African Cultural Values: Igbo Political Leadership in Colonial Nigeria, 1900 -1966* (2006) 17-26; AE Afigbo op cit note 14 at 82-83; T Falola & MM Heaton op cit note 2 at 111 -115; A Harneit-Sievers ‘Igbo Traditional rulers: Chieftaincy and the state in Southeastern Nigeria’ (1998) 33 (1) *Africa Spectrum* 57-79 at 60-62; JEE Njoku *The Igbos of Nigeria: Ancient rites, changes, and survival* (1990) 20.

⁷² For discussion of law and colonialism, see M Chanock *Law, Custom, and Social Order: The Colonial Experience in Malawi and Zambia* (1985) 4; G Prashad & G Prasad ‘Law and Colonialism’ (1964) 25 (3/4) *The Indian Journal of Political Science* 76-84 at 76.

⁷³ M Mamdani ‘Indirect Rule, Civil Society, and Ethnicity: The African Dilemma’ (1996) 23(1/2) *Social Justice* 145-150 at 145.

⁷⁴ J Griffith ‘What is Legal Pluralism’ (1986) 18 (24) *Journal of Legal Pluralism and Unofficial Law* 1-55 at 1; M Galanter ‘Justice in Many Rooms: Courts, Private Ordering and Indigenous Law’ (1981) 13(19) *Journal of Legal Pluralism and Unofficial Law* 1- 47 at 28.

In the precolonial era, leaders in Igboland were chosen based on their leadership skills, age, philanthropic nature, and charisma.⁷⁵ However, the coming of colonial rule changed everything. Indirect rule became the mode of administration in South-East Nigeria. Here, English law, which is the law of the British colonisers, was imposed on Igboland. The British felt that they were bringing in the rule of law, a civilised way of life, and justice to a primitive people.⁷⁶ Nigerian indigenous laws were applied only to the extent that they were not repugnant to natural justice, equity, and good conscience, and consistent with written law.⁷⁷ Although bridewealth was not proscribed as repugnant, the colonial government eventually sought to limit its payment in 1956. Colonial rule created courts where its laws were administered, with the judicial authority resting almost exclusively on British officials.⁷⁸ The understaffing of these courts and their false impression of the governance structure in Igboland contributed to the appointment of ‘assessors’, ‘native rulers’, ‘court clerks’ and ‘warrant chiefs’ as mentioned in Chapter three.⁷⁹ These individuals were chosen based on their perceived authority in the society and their willingness to implement the colonial agenda.⁸⁰ The warrant chiefs were given certificates of recognition to rule their respective areas, while the assessors appeared during trials for the purpose of advising British judges on applicable customs.⁸¹ This era of rapid social changes saw the appointment of warrant chiefs and formation of native courts to deal with disputes arising from alterations in the agrarian social settings of Igboland.⁸² Many of the

⁷⁵ VC Uchendu op cit note 18 at 41.

⁷⁶ T Ranger ‘The Invention of Tradition in Colonial Africa’ in E Hobsbawm & T Ranger (eds.) *The Invention of Tradition* (1983) 451-452, 454; M Chanock op cit note 72 at 5. These practices range from witchcraft to practices like the killing of twins and widowhood practices.

⁷⁷ SE Merry ‘Legal Pluralism’ (1988) 22(5) *Law and Society Review* 869-896 at 870; OC Obidimma & AE Obidimma ‘Mitigating the Injustice of the Customary Law Relating to Inheritance of Landed Property by Women amongst the Igbo People of Nigeria’ (2015) 4(11) *International Journal of Innovative Research and Development* 71 -76 at 73; N Okereafoezeke *Law and Justice in Post-British Nigeria: Conflicts and Interactions Between Native and Foreign Systems of Social Control in Igbo* (2002) 97.

⁷⁸ D Killingray ‘The Maintenance of Law and Order in British Colonial Africa’ (1986) 85(340) *African Affairs* 411-437 at 427.

⁷⁹ See also M Mamdani *Citizen and subject: Contemporary Africa and the legacy of late colonialism* (1996) 112.

⁸⁰ AE Afigbo ‘Revolution and Reaction in Eastern Nigeria 1900-1929: (The Background to the Women's Riot of 1929) (1966) 3(3) *Journal of the Historical Society of Nigeria* 539-557 at 540-541.

⁸¹ AE Afigbo ‘The Spell of Oral History: A Case Study from Northern Igboland’ (2006) *History in Africa* 33 (2006) 39-52 at 44.

⁸² A Harneit-Sievers, ‘Igbo “Traditional Rulers”’: Chieftaincy and the State in Southeastern Nigeria’ (1998) 33(1) *Africa Spectrum* 57-79 at 58.

warrant chiefs were appointed by colonial officials based on their wealth, ability to understand English, and influence with colonial officials.⁸³ Although these chiefs were males, the colonial officials did appoint one woman, Chief Ahebi Ugbabe, in recognition of her prominent social status.⁸⁴ Her appointment validates scholarly claims that precolonial Igbo women wielded considerable agency through their economic, religious, and political power, which they lost to the colonial experience.⁸⁵

For example, colonial officials failed to recognise the agency of women in social life. Women were not part of native courts officials (only one woman was reported to be part of the native court). Since colonial officials came from a 'Victorian society' in which the social place of the woman was within the family unit only, they encouraged patriarchy in Igbo society.⁸⁶ Consequently, women experienced colonial rule as an instrument of social control, oppression and marginalisation.⁸⁷ The precolonial social system that allowed them considerable agency turned into an arena for suppressing their voices.⁸⁸ Despite not recognising women's prominent social status, colonial officials imposed tax on women, which led to women-led violent conflicts in many parts of Igboland.⁸⁹ The Aba war of 1929 demonstrates how women felt about their invisibility and marginalisation from the public sphere, a marginalisation which was accentuated by the corrupt behaviour of warrant chiefs.⁹⁰ An excellent example is Korieh's

⁸³ CN Ubah 'Changing Patterns of Leadership Among the Igbo, 1900-1960 (1987) 37(1) *Civilisations* 127-157 at 138-139.

⁸⁴ N Achebe 'And She Became a Man': King Ahebi Ugbabe in the History of Enugu-Ezike, Northern Igboland, 1880-1948' in SF Miescher & LA Lindsay (eds.) *Men and Masculinities in Modern Africa* (2003) 52-68. This reveals much about the shifting bases of gendered power under British indirect rule and the ways in which Igbo women and men negotiated and shaped the colonial environment.

⁸⁵ J van Allen op cit note 35 at 168-169; I Amadiume op cit note 58 at 27, 42, 61; NE Mba 'The Position of Women in Southern Nigeria before 1900' in NE Mba (ed.) *Nigerian Women Mobilized: Women's Political Activity in Southern Nigeria, 1900-1965* (1982) 1-37.

⁸⁶ J Van Allen op cit note 35 at 166 and 180. J van Allen had stated that 'not all ...colonialist societies are sexist but the Victorian society from which the conquerors of Igboland came was sexist. See also I Amadiume op cit note 58 at 14-16, 136; OU Kalu op cit note 27 at 195.

⁸⁷ See M Chanock 'Paradigms, Policies and Property: A Review of the Customary Law of Land Tenure' in K Mann & R Roberts (eds.) *Law in Colonial Africa* (1991) 64-67.

⁸⁸ See PA Egejuru & KH Katrak op cit note 27 at 18 on how the traditional system protected and valued women; see also M Matera et al op cit note 59 at 31-32.

⁸⁹ CK Meek *Law and Authority in a Nigerian Tribe: A Study in Indirect Rule* (1957) 158-159; J van Allen op cit note 35 at 178, 180 -181.

⁹⁰ J van Allen op cit note 48 at 11; MM Green op cit note 14 at 4; AE Afigbo op cit note 80 at 541-542.

description of a woman's complaint to the Commission of Inquiry that investigated the Women's War in 1930: 'Our grievances are that the land has changed and we are all dying. It is a long time since the chiefs and the people who know book [Western-educated people] have been oppressing us.'⁹¹ In sum, the distortion of the political setting of the Igbos degraded the status of women. Legally, they were regarded as minors who could operate only under the rights of their fathers, brothers, and husbands.⁹² The indirect system of governance was alien to the Igbo people because they were not used to being ruled by a central authority.⁹³ Importantly, the cases handled in the native courts were administered with English legal procedures.⁹⁴ Literature shows that most of the interpretation of customs given by the assessors was a distorted version of the practice of the people.⁹⁵ The new legal ordering contributed to a number of changes that impacted on women's agency and relegated them to the lower rung of the social ladder.⁹⁶

These changes are evident in the laws and policies relating to marriage (such as inheritance, succession, and bridewealth payment laws), institutions of authority, and women's socio-economic autonomy.⁹⁷ The first of these laws is the Matrimonial Causes Act of 1857, which was in force in Britain before the colonial cessation of Lagos. This Act allowed a man to divorce his wife on the ground of adultery. However, a woman had to prove other elements such as desertion, extreme cruelty, and incest to secure divorce, given that a husband's adultery

⁹¹ C Korieh *The Land has Changed: History, Society and Gender in Colonial Eastern Nigeria* (2010) 1.

⁹² NN Chinweuba 'Ending Inequality in Nigeria: A Refreshing Approach from the Nation's Judiciary' (2015) 29(3) *International Journal of Law, Policy and the Family* 341-350 at 343; JF Hollema *Issues in African Law* (1974) 113-114; E Durojaye & Y Owoeye 'Equally Unequal or Unequally Equal' Adopting a Substantive Equality Approach to Gender Discrimination in Nigeria' (2017) 17(2) *International Journal of Discrimination and the Law* 70-85 at 80-81.

⁹³ RN Henderson *The King in Every Man: Evolutionary Trends in Onitsha Ibo Society and Culture* (2004); J van Allen op cit note 48 at 20.

⁹⁴ This procedure of administration of justice is also foreign to the Igbo people; see JCA Agbakoba & ES Nwauche 'African Conceptions of Justice, Responsibility and Punishment' (2006) 37 *Cambrian Law Review* 73-83 at 74, 76, 77; EC Onyeozili & NI Ebbe 'Social Control in Precolonial Igboland of Nigeria' (2012) 6(1/2) *African Journal of Criminology and Justice Studies* 29-44 at 36.

⁹⁵ AE Afigbo op cit note 80 at 541-543; CK Meek *Law and Authority in a Nigerian Tribe* (1957) 328-330; GT Basden op cit note 13 at xiii; AU Iwobi 'No Cause for Merriment: The Position of Widows Under Nigerian Law' (2008) 20(1) *Canadian Journal of Women and the Law* 37-86 at 40.

⁹⁶ E Boserup op cit note 54 at 87.

⁹⁷ PE Okeke-Ihejirika op cit note 56 at 35.

was insufficient to prove divorce. The second is the Matrimonial Causes Act of 1990, which stipulates that marriage can only be dissolved if the petitioner can prove that the marriage has broken down irretrievably.⁹⁸ The word ‘irretrievable’ was left undefined. The Supreme Court in the case of *Shokunbi v Shokunbi* stated: ‘It is the actual state of the marriage that the court has to inquire into, as to know, whether or not, it is still viable, rather than concern itself with the question of guilt or innocence or either party which point is irrelevant’.⁹⁹ While it is easy to get a divorce in customary law, with just a meeting of the two families and refund of the bridewealth, it is not the same with civil marriages.¹⁰⁰

Igbo women’s restricted ability to obtain divorce, coupled with the negative consequences of divorce, significantly undermines women’s cultural agency.¹⁰¹ This restriction is reinforced by the Christian missionaries, who through their teachings, introduced the idea of a lifelong marriage in which the wife will be the helpmate of the husband.¹⁰² Thus, for most Christian denomination, adultery is the only ground for divorce, thereby influencing laws that regulated marriage relations. Many Igbo converts contracted marriages in the Western churches. These marriages were undertaken based on doctrines that emphasised the submissive roles of women in marriages. Arguably, these doctrines reduced women’s agency in bridewealth negotiation, labelled brides as property to be possessed, and rendered them voiceless partakers in the marriage negotiation process.¹⁰³

⁹⁸ Section 15 (1) of the Matrimonial Causes Act 1990. Other grounds for divorce are in s. 15 (2) (a-h). See also s. 16 (1) of the same Act.

⁹⁹ *Shokunbi vs Shokunbi* CCHCJ/7/76 at 1913.

¹⁰⁰ SNC Obi *Modem Family Law in Southern Nigeria* (1966) 364, 366-367; EI Nwogugu *Family Law in Nigeria* (1974) 178,181; A Rahmatian ‘Termination of Marriage in Nigerian Family Laws: The Need for Reform and the Relevance of the Tanzanian Experience’ (1996) 10 *International Journal of Law, Policy and the Family* 281-316 at 285.

¹⁰¹ EE Enwereji ‘Indigenous Marriage Institutions and Divorce in Nigeria: The Case of Abia State of Nigeria’ (2008) 5(3) *European Journal of General Medicine* 165-169 at 165; CN Okemgbo, et al ‘Prevalence, Patterns and Correlates of Domestic Violence in Selected Igbo Communities of Imo State, Nigeria’ (2002) 6(2) *African Journal of Reproductive Health / La Revue Africaine de la Santé Reproductive* 101-114.

¹⁰² RN Uchem *Overcoming Women's Subordination in the Igbo African Culture and in the Catholic Church: Envisioning an Inclusive Theology with Reference to Women* (2001) 117, 244; PE Okeke-Ihejirika op cit note 56 at 65, 68; The Bible Ephesians 5:22-33; The Bible 1 Corinthians 11:3.

¹⁰³ EO Ezenweke ‘Our Grandmothers, Excluded from History, Preservers and Transmitters of Indigenous Values: Ecomaternalistic Approach’ (2015) 7(1) *Journal of Religion and Human Relations* 143-153 at 144.

It may be argued that marriage laws and Christian teachings enhanced women's legal status in marriage. However, women's agency in marriage issues, which includes bridewealth negotiation and the ability to leave an abusive marriage, was whittled down.¹⁰⁴ The submissive doctrines of Christianity, the complexity of statutory marriage procedures, and the stigma of divorce combined to constrain women's agency in the marriage process. As Okeke noted, these combined factors weakened women's bargaining power in the marriage process, in that they reinforced patriarchal structures, Christian doctrines, and championed complex new laws, thereby muffling women's voices in marriage matters.¹⁰⁵ What follows is an examination of the various attempts by the post-colonial government to close the gender inequality gap and regulate high bridewealth and how this affected women's cultural agency.

4.6 Cultural agency and the colonial legal legacy

Women's visibility and recognition became relatively pronounced during and after the Women's War of 1929.¹⁰⁶ As pointed out, the incident was sparked by women's attempt to resist colonial policies in Igboland. The war was outstanding because women pioneered and orchestrated it. Nonetheless, the aftermath did not end the alienation of women from positions of power. Even though the colonial administration changed their assumptions on the status of women, they took few remedial measures.¹⁰⁷ However, the war demonstrated the extent to which women could wield their agency.¹⁰⁸

While, on the one hand, colonial rule gave women freedom of choice in marriage and options for divorce, on the other hand, it suppressed women's voices and set the tone for a male

¹⁰⁴ The Bible Malachi 2:16 as well as Deuteronomy 22:19; 1 Corinthians 7:39; Matthew 5:31-32.

¹⁰⁵ PE Okeke 'Reconfiguring Tradition: Women's Rights and Social Status in Contemporary Nigeria' (2000) 47 (1) *Africa Today* 48-63 at 56. The explanations here are not attempts to condemn the Western system but only to point out its causes and effects on women and the indigenous system.

¹⁰⁶ J van Allen op cit note 35 at 172. For more details on the Aba women's riot see J van Allen op cit note 48 at 11-12; VC Onwuteka 'The Aba Riot of 1929 and its relation to the system of Indirect Rule' (1965) 7(3) *The Nigerian Journal of Economic and Social Studies* 273-282 at 273-280; HA Gailey *The Road to Aba: A Study of British Administrative Policy in Eastern* (1970) 209-212.

¹⁰⁷ J van Allen op cit note 35 at 176.

¹⁰⁸ For more on how women enforced their agency see C Johnson-Odim & M Strobel 'Conceptualising the History of Women in Africa, Asia, Latin America and the Caribbean and the Middle East' (1989) 1(1) *Journal of Women's History* 31-62 at 42-48, 57; M Perham *Native administration in Nigeria* (1937) 246; MM Green op cit note 14 at 169.

dominated post-colonial Nigeria.¹⁰⁹ However, the increased scholarly attention to women contributed to the rise and recognition of the role of women in Nigeria.¹¹⁰ It also highlighted how the interaction of customary law, English law, religious law (Islamic law), and statutory law affects women. The application of customary law in colonial courts and the codification of customs distorted perceptions of women's agency.¹¹¹ As such, what became the acceptable customary law is what Merry described as 'a bricolage of traditions which had continuities with the past as well as changes in form' that had nothing to do with women's precolonial agency.¹¹² Although the status of women has improved since independence, the problem of gender and economic inequality has persisted.¹¹³ Nigeria continued with the common law legal system inherited from Britain, while allowing other sources of law as mentioned above. The Constitution, which is the *grundnorm*, strives to uphold the advancement of the human rights of all citizens, whereas the customary law, which usually regulates the personal lives of individuals, continues to restrict women's agency.¹¹⁴ These restrictions manifest in widowhood practices, discriminatory disinheritance of women, and women's insignificant input in bridewealth negotiation. These restrictions give women inferior social status, despite their crucial roles as mothers and wives.¹¹⁵ So, what is the role of the legal framework in the enhancement of women's agency?

¹⁰⁹ Civilisation here means 'Rule of law' as defined by Mamdani. See M Mamdani op cit note 79 at 109; see also DMF Perham & M Perham *Native Administration in Nigeria* (1937) 196-210.

¹¹⁰ See L Denzer 'Yoruba Women: A Historiographical Study' (1994) 27(1) *The International Journal of African Historical Studies* 1-39 at 1-2; B Awe 'Writing Women into History: The Nigerian Experience' in K Offen, et al (eds.) *Writing Women's History: International Perspectives* (1991) 211-213.

¹¹¹ See SE Merry 'Law and Colonialism' (1941) 25(4) *Law and Society Review* 889-922 at 897; Chanock revealed how the chiefs distorted the real version of the original tradition to suit their interest; see M Chanock op cit note 72 at 145.

¹¹² SE Merry op cit note 111 at 901; SF Moore *Social Facts and Fabrications "Customary" Law on Kilimanjaro, 1880-1980* (1986) 6-10.

¹¹³ Human Resources Development Division, African Training and Research Center for Women, United Nations Economic Commission for Africa 'Women and National Development in African Countries: Some Profound Contradictions' (1975) 18(3) *African Studies Review* 47-70 at 62-63.

¹¹⁴ Section 42 of the Constitution of the Federal Republic of Nigeria; E Durojaye 'Woman, but not Human: Widowhood Practices and Human Rights Violations in Nigeria' (2013) 27(2) *International Journal of Law, Policy and the Family* 176-196 at 176-180; NN Chinwuba 'Ending Inequality in Nigeria: A Refreshing Approach from the Nation's Judiciary' (2015) 29(3) *International Journal of Law, Policy and The Family* 341-350 at 341-342.

¹¹⁵ S Williams 'Nigeria, Its Women and International Law: Beyond Rhetoric' (2004) 4 *Human Rights Law Review* 229-255 at 230.

Regrettably, Nigeria's ratification of many international human rights instruments has not solved the problem of gender inequality. This problem persists because the interaction of law and culture in a plural legal setting and its implications for women's agency are often poorly understood and considered during the adoption of gender laws. The politics of culture, its legitimisation of gender ordering, and its unclear interaction with state laws, have rendered it almost impossible for human rights laws and policies to work effectively in the balancing of the goals of gender equality and cultural identity.¹¹⁶ The interaction of law and culture presents a paradox for enhancing women's agency. On the side of the law, the African Charter on Human and Peoples' Rights, which Nigeria signed on 31 August 1982 and ratified on 22 June 1983, provides that an individual has the duty of preserving and strengthening positive African cultural values in his relations with others,¹¹⁷ that the satisfaction of cultural rights is a guarantee for the enjoyment of civil and political rights,¹¹⁸ and the freedom of cultural development is ensured.¹¹⁹ Article 18 of the African Charter also provides for the protection of the rights of women. However, even though the Constitution advances the idea of non-discrimination, it lacks specific provisions for ensuring gender parity, thereby creating a vacuum for the restriction of women's agency.¹²⁰ For example, in 2016, the Nigerian Senate dismissed 'a gender and equality law that pledged to eliminate discrimination in politics, education and employment, protect women's land rights and tackle violence against women.'¹²¹ As representatives of the electorate, this rejection reflects the gendered nature of Nigerian society, a situation that negates the influence of state laws and policies.¹²² In this

¹¹⁶ Law here includes state laws, and international instruments. CI Nyamu 'How Should Human Rights and Development Respond to Cultural Legitimization of Gender Hierarchy in Developing Countries?' (2000) 41(2) *Harvard International Law Journal* 381- 418 at 381.

¹¹⁷ Article 29 of the African Charter on Human and Peoples' Rights (27 June 1981) CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) later referred to as 'the Charter'.

¹¹⁸ Preamble to the Charter.

¹¹⁹ Article 17 and 22 of the Charter.

¹²⁰ S Williams op cit note 115 at 236.

¹²¹ Kieran Guilbert 'Failure to pass equality bill betrays Nigerian women, activists say' *Reuters* 17 March 2016 <<https://www.reuters.com/article/us-nigeria-women-lawmaking/failure-to-pass-equality-bill-betrays-nigerian-women-activists-say-idUSKCN0WJ2L4>> (last accessed on 30 March 2018).

¹²² BBC News 'Nigeria's Sultan of Sokoto rejects gender equality bill' 28 December 2016 <<http://www.bbc.com/news/world-africa-38449822>> (last accessed 30 March 2018). See also DM Chirwa 'In Search of Philosophical Justifications and Suitable Models for the Horizontal Application of Human Rights (2008) 8(2) *African Human Rights Law Journal* 294-311 at 295.

context, challenging human rights violations by cultural actors has raised controversies. Some scholars have argued that violations of human rights amount to abuse rather than violation.¹²³ The reason is that the term violation should only be attributed to misconduct by state actors, to avoid giving recognition to non-state actors.¹²⁴ In terms of marriage, the Marriage Act provides that where any of the parties to a marriage is below the age of 21 years, consent must be obtained from the father rather than the mother, except if the father is dead or of unsound mind.¹²⁵ The intersection between law and culture in this pluralistic setting is thus blurred and dysfunctional in practice. As shown below, this is evident in state efforts to ensure that bridewealth payment is not excessive.

4.6.1 *State interventions in women's agency*

In considering the efforts of the Nigerian state to enhance individuals' agency with legislation, attention will be paid particularly to women's agency with regards to marriage (inheritance and succession) and bridewealth payment. Here, I consider law as structure – that is an instrument of social control rather than an expression of human interaction. Viewing law as structure exposes its (in)effectiveness and legitimacy based on the levels of its acceptance and disregard. Law exists to punish offenders, to prohibit conduct, and thereby compel compliance from agency.¹²⁶ When it succeeds in these aims, structure is sustained. However, when it fails, questions must be raised over its ability to control agency. An example is the Limitation of Dowry Law of 1956, which seeks to regulate excessive sums demanded by parents as their daughter's bridewealth.¹²⁷ This legislation restricted the amounts individuals could pay as

¹²³ D Weissbrodt 'Non-State Entities and Human Rights within the Context of the Nation State in the 21st Century' in M Castermans, F van Hoof & J Smith (eds.) *The Role of the Nation-State in the 21st Century: Human Rights, International Organisations, and Foreign Policy: Essays in Honour of Peter Baehr* (1998) 194.

¹²⁴ D Weissbrodt op cit note 123 at 195; A Clapman *Human Rights Obligations of Non-State Actors* (2006) 33.

¹²⁵ Section 118 of the Marriage Act.

¹²⁶ C Mackinnon *Are women Human?* (2006) 27.

¹²⁷ No. 23 of 1956 Laws of Eastern Nigeria. Other laws and policies include the The Universal Basic Education (UBE) of 2004 which provided for equal educational opportunities for all citizens irrespective of gender but failed because of inadequate funding and scarcity of qualified teachers; see US Anaduaka & CF Okafor 'The Universal Basic Education (UBE) Programme in Nigeria: Problems and Prospects' (2013) 2(3) *Basic Research Journal of Education Research and Review* 42-48 at 46; ROA Ahiede 'Universal Basic Education in Nigeria: Matters Arising' (2006) 20(2) *Journal of Human Ecology* 97-101 at 98-99; Section 18 of the Constitution. This provision of the Constitution is however non-justiciable. See also S Ibe 'Beyond Justiciability: Realising the Promise of Socio-Economic Rights in Nigeria' (2007) 7(1) *African Human Rights Law Journal* 225-248 at 241-244; BO

bridewealth or for items that accompany bridewealth.¹²⁸ The implementation and effectiveness of this legislation is so poor that it calls into question the legitimacy of the law.

While examining why people obey state law, scholars have noted that laws cannot be complied with based on threat of sanction or punishment alone.¹²⁹ This is especially the case for laws competing with norms such as bridewealth payment, which gives people cultural relevance and legitimacy. The legitimacy of laws depends on its obedience and its influence on the behaviour of people for whom it was/is enacted.¹³⁰ The obligation to obey law therefore increases when people are allowed to express their views and participate in shaping decisions around an issue.¹³¹ It also depends on people's ideological belief, economic conditions, and interpretation of the role of law in their social relations.¹³² Accordingly, laws aimed at enhancing women's agency must recognise and take into consideration the historical factors that robbed them of their status.¹³³ An example is the landmark April 2014 Supreme Court decision, which abolished the custom that denied women the right of inheritance.¹³⁴ While this judgement was a relief for women in the sphere of gender equality, its ability to influence agency is questionable, especially regarding the unwillingness of most women to resort to

Okere 'Fundamental Objectives and Directive Principles of State Policy under the Nigerian Constitution' (1983) 32(1) *The International and Comparative Law Quarterly* 214-228 at 217-219.

¹²⁸ H Boparai 'The Customary and Statutory Law of Marriage in Nigeria' (1982) 46(3) *Journal of Comparative and International Private Law* 530-557 at 537; C Ogwurike 'The Source and Authority of African Customary Law' (1966) 3(1) *University of Ghana Law Journal* 11-20 at 18-19.

¹²⁹ TR Tyler 'Procedural Fairness and Compliance With the Law' (1997) 133(2/2) *Revue Suisse D Economie Politique Et De Statistique* 219-240 at 219-223; TR Tyler *Why People Obey the Law* (2006) 19, 42; CA Sanderson & JM Darley 'I Am Moral, But You Are Deterred: Differential Attributions About Why People Obey the Law' (2002) 32(2) *Journal of Applied Social Psychology* 375-405 at 375; JR Tyran & LP Feld 'Achieving Compliance when Legal Sanctions are Non-deterrent' (2006) 108 (1) *The Scandinavian Journal of Economics* 135-156 at 135.

¹³⁰ TR Tyler (2006) op cit note 129 at 19.

¹³¹ TR Tyler (1997) op cit note 129 at 233; TL Meares 'Norms, Legitimacy and Law Enforcement' (2000) 79 *Oregon Law Review* 391- 416 at 397.

¹³² TR Tyler & J Jackson 'Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation, and Engagement' (2014) 20(1) *Psychology, Public Policy, and Law* 78-104 at 78-81; P Bourdieu 'The Force of Law: Toward a Sociology of the Juridical Field' (1987) 38(5) *Hastings Law Journal* 814-854 at 816; PC Yeager 'Review: The Limits of Law: On Chambliss & Seidman's "Law, Order and Power"' (1983) 8(4) *American Bar Foundation Research Journal* 974-984 at 976; TL Meares 'Norms, Legitimacy and Law Enforcement' (2000) 79 *Oregon Law Review* 391- 416 at 399; JR Tyran & LP Feld op cit note 129 at 135.

¹³³ PE Okeke op cit note 105 at 50.

¹³⁴ *Mrs Lois Chituru Ukeje & Another vs Mrs Gladys Ada Ukeje* (2014) 11 NWLR (Pt. 1418) 384-414; *Onyibor Anekwe & Another vs Mrs Maria Nweke* (2014) All FWLR (Pt. 739) 1154.

court.¹³⁵ This unwillingness may be because of the fear of losing family relations and the stigma attached to making such a complaint.¹³⁶ Thus, the 2014 Supreme Court decision shows the dynamics and the disconnection between the provisions of the law and what is obtainable in practice. Another such example is the rejection of the Gender Parity and Prohibition of Violence against Women Bill, a bill which sought to integrate and implement certain provisions of the United Nations Convention on the elimination of all forms of discrimination against women, the Protocol of the African Charter on Human and People's Rights on the rights of women in Africa. The rejection of this Bill reflects the patriarchal nature of Nigerian society. Observers have linked this rejection to the low number of women in the Nigerian Parliament, as well as entrenched cultural and religious beliefs, despite the gender equality principle in the 1999 Constitution. Thus, compliance with law requires a dynamic rather than formalistic approach, and requires the involvement of all stakeholders in the drafting process of legislation.

4.7 Conclusion

Although there is insufficient literature on the subject, this chapter has shown that women exercised considerable agency with respect to marriage in the precolonial and early colonial era. There are several reasons for this finding. The first is because marriage is the foundation of social life in Igboland. Women's agency in marriage affairs was well-respected and cherished because of their crucial role in the art of creation.¹³⁷

The second is because of the close-knit nature of precolonial Igbo society.¹³⁸ A notable feature of this society is its dual sex political system,¹³⁹ in which gender relations were more

¹³⁵ PO Azuakor 'The Women's Place in Family Inheritance in Igboland: A Rational and Legal Critique' (2017) 1(1) *Nnadiabube: Journal of Social Science* 52-69 at 65. See also PE Okeke-Ihejirika *Negotiating Power and Privilege: Igbo Career Women in Contemporary Nigeria* (2004) 179.

¹³⁶ JC Diala 'Implications of the Disconnection between Law and Practice in the Context of Gender Inequality in South-East Nigeria' (2015) 12 *Journal of Culture, Society and Development* 65-76 at 69.

¹³⁷ C Onyeji op cit note 30 at 91; CR Ezeifeke & IJ Ogbazi 'Feminist Undercurrents in Selected Traditional Igbo Songs: Contemporary Igbo Women's Voice' (2016) 12(5) *Studies in Literature and Language* 1-15 at 7-8.

¹³⁸ N Nzegwu 'Gender Equality in a Dual-Sex System: The Case of Onitsha' (1996) 7(1) *The Canadian Journal of Law and Jurisprudence* 73-95 at 94; FC Steady 'An Investigative Framework for Gender Research in Africa in the New Millennium' in O Oyewumi (ed.) *African Gender Studies: A Reader* (2005) 318-319.

¹³⁹ G Chuku *Igbo Women and Economic Transformation in Southeastern Nigeria, 1900-1960* (2005) 19.

complementary than hierarchical.¹⁴⁰ Positions, power, respect, and authority were earned on the basis of individuals' service to the community, moral integrity, wealth, age, eloquence, and charisma.¹⁴¹ Colonial rule changed all these by making women nearly invisible in public life. Although women now have increased access to education and employment, this has not translated into radical changes in their exercise of agency. Their ability to manipulate the cultural institutions surrounding bridewealth payment remains limited by the radical socio-economic changes brought by colonial rule. In the next chapter, I reveal how power relations play out in the negotiation of bridewealth payment in South-East Nigeria and the extent to which socio-economic needs drive these power relations.

¹⁴⁰ N Sudarkasa 'The Status of Women in Indigenous African Societies' (1986) 12(1) *Feminist Studies* 91-103 at 91; D Oluwagbemi-Jacob & CE Uduma 'Gender Equality, Gender Inequality, and Gender Complementarity: Insights from Igbo Traditional Culture' (2015) 5(5) *Philosophy Study* 223-232 at 230-231.

¹⁴¹ G Chuku op cit note 139 at 7-8, 18-19; S Leith-Ross op cit note 49 at 34; CK Meek op cit note 89 at 203.

Chapter Five: Negotiation process of bridewealth payment in South-East Nigeria

5.1 Introduction

This chapter examines the ways power relations play out in the negotiation process of bridewealth payment in South-East Nigeria. As an important cultural tradition, bridewealth offers a nuanced understanding of power relations within the structure and agency interplay. The cultural institutions that surround the negotiation process of bridewealth may be regarded as structure, which sometimes conflict with agency – that is individuals’ ability to influence bridewealth payment. On the one hand, cultural institutions are primarily customs, the custodians of which are elders, headmen, and traditional rulers. On the other hand, the individuals who use agency to influence the quantum of bridewealth are both subjects and custodians of culture. They are primarily the intending couple, their parents, and their relatives. As shown in the two preceding chapters, the socio-economic changes brought by colonial rule transformed bridewealth payment. Significantly, these changes brought increased access to education and individual employment. However, despite these developments, the ability of prospective spouses to manipulate or influence the cultural institutions surrounding bridewealth payment is unclear. This chapter reveals the complex web of social relationships within which this manipulation and influence plays out. Using data from key informant interviews and personal observations, it reveals the active actors in the negotiation process of bridewealth payment, their roles, and the influence of agency on these roles. It further reveals the bargaining tools employed by these actors, the constraints on these tools, and the most influential elements in these constraints. It concludes by identifying power brokers in the negotiation and payment of bridewealth in South-East Nigeria.

The data in this chapter are presented mostly through the voice of research participants. I do this with extensive quotations from key participants. Theoretically, two assumptions guided the fieldwork from which these data are obtained. The first is the assumption that structure dominates agency because of the importance attached to the cultural institution of bridewealth. This assumption was based mostly on the scholarly works, which are reviewed in Chapter one. These works show the strong attachment Igbos have for their cultural heritage.¹

¹ PE Okeke-Ihejirika *Negotiating Power and Privilege: Igbo Career Women in Contemporary Nigeria* (2004) 34; UC Isiugo-Abanihe ‘Bridewealth, Marriage and Fertility in the East-Central States of Nigeria’ (1995) 51(3/4)

It was also based on my experiences of bridewealth practice as an Igbo woman. The second is the assumption that economic coercion plays a powerful role in people's abilities to influence cultural institutions. This assumption arose because of socio-economic changes and factors that are believed to affect most cultural practices. As shown later, these assumptions were not validated fully by the data. To better understand the negotiation process of bridewealth, it is important to expand on the distinction between bridewealth and marriage gifts outlined in chapters one and three.

5.2 Bridewealth versus marriage gifts: A view from the field

As I explained in Chapter three, marriage gifts are items exchanged between families intending to contract a marriage.² These gifts are outlined in a list of marriage requirements, which may be written or unwritten. As I also explained, controversy surrounds the relationship of these gifts with bridewealth payment (*ego isi nwanyi*). While the duality theory school of thought believes that marriage gifts do not form part of bridewealth payment, the unified theory insist that the two are inseparable.³ The data from the field supports the latter view. Almost all my research participants expressed a unified view of bridewealth and marriage gifts.⁴ For example, when asked to describe the negotiation process of bridewealth in his community, a research participant stated thus:⁵

During their second visit, they [the groom and his family] will come for the traditional list of items for the bride wealth payment. He will go with the list and study it to know if he can perform all the requirements. This list has different categories for the kinsmen, the married women, the father and the mother. All the items on the list for the father must all be completed nothing will be removed, it includes a big goat. When all these items have been provided, the man can now go with his wife. There is also bride wealth payment in the list; this is decided by the father. ... This bride wealth is important because if he doesn't pay them, all the items he brought are just a waste.

Genus 151-178 at 152, 156; DJ Smith 'Legacies of Biafra: Marriage, "Home People" and Reproduction Among the Igbo of Nigeria' (2005) 75(1) *Africa* 30-45 at 31.

² See chapter 3 at 3.5.

³ Ibid.

⁴ See also appendix B, C, D, E.

⁵ Interview with Mr John Eze, a 65-year-old business man on 15th April 2016.

Affirming this statement, another informant stated:⁶

Each kindred have its own list of items required for the bride wealth payment. In the past, a man is not required to provide all the marriage items at once; this is because the girl is assumed not to be sold. Nowadays, with civilization things have changed and you may be required to provide all of them at once. The amount to be paid as bridewealth (*isi ego*) as laid down by our king for a lady that acquired her first school leaving certificate to university level is 1500 naira plus some drinks and other items in the marriage list.

Furthermore, they also noted that the changes in bridewealth payment are associated with commercialisation of bridewealth, as well as people's demand of expensive items in marriage lists. These changes did not affect marriage gifts in isolation because they also affected the bridewealth payment itself.⁷ The below cartoon illustrates the unified theory and people's impression of it:



<<https://gistmarket.com/pictures/imo-bride-price/>>

⁶ Interview with Mr John Okorie, a 48-year-old businessman on 4th April 2016.

⁷ It must be noted that the problem people have with bridewealth payment relates to its excessive demand rather than the custom.

In the above cartoon, a prospective father-in-law asks the prospective groom why he has not responded to the marriage list given to him as part of the bridewealth requirements for his daughter, Ngozi. The groom, bemused by the excessive demands on the list, humorously asks if the list is just for marriage alone or comes with other benefits such as a traditional title. This joke illustrates how bridewealth has become submerged within marriage lists. Indeed, most of my research participants consider bridewealth as part of the marriage list, instead of the other way around. In four of the lists of marriage requirements I saw, bridewealth (*aku nwanyi*) is listed.⁸ However, it is usually left blank, since it is regarded as a private matter between the groom and his prospective father-in-law. However, due to the astronomical increase in the list of marriage requirements, most fathers-in law waive bridewealth or accept a token sum as bridewealth. This trend is partly to lessen the financial burden on their sons-in law, and partly to avoid the impression that they are selling their daughters. A research informant explained it this way:⁹

In the past, the father in- law takes the whole money but now with Christianity and other civilisation, they don't take all the money. They take a little and return the remaining to their in-law and urge them to take care of their daughter. The reason why we don't take the whole money is because the woman is not a property to be bought and sold. In the past, when people take the whole money it is very difficult for the girl to return to her family and for the father of the bride to repay the money if he is not buoyant enough. This leads to intimate abuse as the husband always brags about how much he paid. Now with the little money the father takes out, he can always pay back.

However, my findings reveal that excessive demands in the marriage list is the main reason why parents accept token sums as bridewealth. As I showed in Chapters one and three, bridewealth was not paid in cash in the agrarian past. With the exorbitant nature of items on the marriage list, parents feel the groom's financial burden would be worsened if they insist on high bridewealth. Also, parents know that only the bridewealth must be returned in the event of divorce. Accordingly, they accept a token bridewealth to make it easy to return in the event of divorce. A research participant explained it this way:¹⁰

The man [groom] is instructed [when he collects the list] to make sure that 50, 20 and 10-naira denominations are in the money he will bring [during the negotiation and payment of bridewealth]. The parents of the bride will take only 10, 50, and 20 naira out

⁸ See Appendix C, D, E, F.

⁹ Interview with Chief IO Joshua, a 62-year-old businessman on 12th April 2016.

¹⁰ Interview with Favour Ogbuke, a 26-year-old student on 22nd April 2016.

of the money and give the rest to the man. The reason is to instil fear in you [the groom] not to maltreat their daughter because they can always return the money they took.

Furthermore, the acceptance of token bridewealth is arguably a reinvention of bridewealth's symbolism. An informant affirmed this assertion:¹¹ 'The bridewealth depends on the agreement of the two families. People use broom sticks to show how much is to be paid. These days' people don't even take all the money being paid. They take a little and return some to show that the girl is not for sale.' From the data therefore, bridewealth is now submerged in marriage gifts. In what follows, I present a detailed account of the bridewealth negotiation process.

5.3 The negotiation process of bridewealth payment

The negotiation process of bridewealth payment involves an intricate bargaining interaction between the groom and bride's families over several days or even months. This bargaining culminates in bridewealth payment.¹² In rare cases, this process may be completed on the same day. Noticeably, the process is distinctively similar in the five states in which I collated data. Accordingly, I will categorise the process into two phases. These are the spousal search and introduction phase, and the negotiation and payment of bridewealth phase.

5.3.1 Spousal search and introduction

Before colonial rule introduced radical socio-economic changes into South-East Nigeria, parents usually chose wives for their sons.¹³ However, Western education, statutory marriage laws, and Christianity, all of which emphasise individual rather than group interests, have lessened the influence of families in spousal choices. Women and men now choose their partners based on love, an increasingly important criterion for marriage,¹⁴ as well as financial

¹¹ Interview with Mr Akwarandu Chukwudike, a 35-year old businessman on 28th April 2016.

¹² The negotiation process here involves negotiation for marriage gifts or incidental expenses and negotiation for bridewealth payment.

¹³ DJ Smith 'These Girls Today Na War-O: Premarital Sexuality and Modern Identity in Southeastern Nigeria' (2000) 47(3/4) *Africa Today* 99-120 at 101; TA Ojua, et al 'Exploring the Neglect of African Family Value Systems and its Effects on Sustainable Development' (2014) 3(3) *American Journal of Human Ecology* 43-50 at 47.

¹⁴ DJ Smith 'Romance, Parenthood, and Gender in a Modern African Society' (2001) 40(2) *Ethnology* 129-151 at 129-130.

ability, a muted, yet powerful motivation for marital choices. When couples agree to marry, the next step is *iku aka n'uzo* (literally meaning to knock on the door). This step requires the groom to register his interest in the bride with her father. The groom may come with his friends or brother(s) in this first stage with bottle(s) of wine for this first stage.¹⁵ In some cases, this visit is repeated by the groom and his relatives (father and other kinsmen) or the groom and an intermediary usually called *onye aka ebe* (literarily meaning eyewitness). This intermediary, who is usually a man, is chosen by the groom or his family because of his close relationship or association with the family of the bride and the groom. This second, and, if necessary, third visit, is often accompanied with bottle(s) of wine or kegs of palm wine and kola nut. When the visitors leave, the father of the bride would ask her to confirm her acceptance of the marriage proposal. If she confirms her acceptance, the second stage, called *iju ese* or *igba nju* (investigation), as it is termed in Akabo, Obiofia Nnewichi - a town in Anambra state - follows.

This stage entails both families embarking on a process of investigation. The investigation is aimed at revealing the respective health and social standing of both families, such as caste (example *osu*, *ume* or *diala*), and consanguinity or affinal links (ie, connection by marriage, blood or common ancestor). This investigation is important because of the rule of exogamy and the need to verify the health backgrounds of the intending couple to prevent deadly or hereditary diseases such as epilepsy and mental problems.¹⁶ The father of both the bride-to-be and the groom go to the different villages of the other. They ask neighbours questions about the family - this is usually done without prior notice or indication to the other. They also do not directly expose their intention to the neighbours; it starts as an informal discussion. The reason is to elicit correct and genuine information. In some instances, they identify a prominent person, such as the king, elder or chief who knows much about the family. This is to filter through the pool of information that they have gathered. If the investigation provides a positive result, the process proceeds to the next stage. A negative result may be because of status, such as *osu*. In this case the marriage may be halted or terminated by the families. As mentioned in Chapter one, most parents ignore the *osu* or *ume* status, while others don't. The couple may decide to cohabit or even marry without the permission of their parents,

¹⁵ Some communities have items that the groom must provide at this stage. See Appendix C and D.

¹⁶ See also DJ Smith 'Promiscuous Girls, Good Wives, and Cheating Husbands: Gender Inequality, Transitions to Marriage, and Infidelity in Southeastern Nigeria' (2010) 83(1) *Anthropological Quarterly* 123-152 at 143; JE Olawoye, et al 'Social Construction of Manhood in Nigeria: Implications for Male Responsibility in Reproductive Health' (2004) 19(2) *African Population Studies* 1-20 at 1, 8.

especially with the widespread foundation for marriage such as romantic love, Christianity and other traits. These Western traits differ from marriage criteria in the past, which were primarily social status such as being an *osu*. Now, these Western traits determine what is expected in and from a marital partner.¹⁷ This disobedience demonstrates the influence of agency on marriage negotiation. However, couples rarely disobey family instructions not to marry because they are sometimes coerced into conformity by their cultural and religious upbringing, which requires them to respect their parents and, by implication, tradition.¹⁸ Thus, there is dynamic tension at play, in which couples hold onto traditional practices even though they have imbibed Western values. In fact, Smith explained it more clearly when he said, ‘Africans are not simply abandoning traditional practices in favour of modern ones, but are creating their own systems of marriage and family organization that use resources of the past and the present, negotiating the tensions that emerge, and drawing on both traditional and modern moralities as they see fit’.¹⁹ This means there has been an aspect of continuity and change in Igbo traditional marriage system.

The third stage is called the *inara* list, which literally means asking for the (marriage) list. This stage could be the last of the introductions by both families to the marriage. It entails a visit to the bride’s family by the groom and his kinsmen. Prior to the visit, the father of the bride would have made his daughter’s marriage proposal known to his kinsmen and they are expected to be present. The father of the bride or sometimes the eldest male in her family introduces other members of the family and their respective family positions. At this stage, both families would have accepted the marriage proposal in principle. The groom and his kinsmen will then demand a list of what they are to provide to complete the marriage and make the bride their wife. In some villages in Mbano and Mbaise, the groom’s family also produce a list of what they require from the bride’s family.²⁰ The list contains items like cooked food and livestock, such as goats and chicken. However, the contents of this list are less than the

¹⁷ D Togunde & J Rinkinen ‘Homogeneous Faith, Ethnic Diversity: Desirable and Undesirable Traits in a Marital Partner in Nigeria’ (2010) 10(1) *International Journal of Diversity in Organisations, Communities and Nations* 219-237 at 219-230; DJ Smith op cit note 13 at 100-101.

¹⁸ MC Onyejekwe ‘Christian Consecrated Life in Sub-Saharan Africa: Past and Present Challenges’ (2001) 48(4) *Social Compass* 573-591 at 586.

¹⁹ DJ Smith op cit note 14 at 131.

²⁰ See chapter one for the content of the groom’s family marriage list.

contents of the groom's list. This is because the bride's family will lose her labour, while the groom's family will gain it. The list is compiled by the men and women groups of both communities. The women and men groups entail all married men and women within the kinship group.

The items on the marriage list given to the groom are sometimes influenced by the educational qualifications of the bride, whether she is pregnant, and the financial and cultural backgrounds of the couple. During my marriage for example, the list given to my husband's family was influenced by the fact that I studied a professional course. During the negotiation of bridewealth, the groom and his kinsmen present all the items on their list, while the kinsmen of the bride do the same.

The use of the possessive word 'their' in the foregoing discussion is deliberate. This is because, despite socio-economic changes, Igbo society still believes that marriage is not a contract between the couple alone, but an alliance between two families and their clans.²¹ This explains why the father of the bride hands his daughter over to the eldest man from the groom's family, then the latter hands her over to the father of the groom, and then the father of the groom hands her over to the groom himself. This handover from the male figure in the bride's family to the male figures in the family of the groom reveals the patriarchal system of Igbo society. Even if the father of either party is dead, their mothers cannot do the hand over, and must allow the next brother of her/their deceased husband(s) to do the honours. This deference to men does not advance the agency of women; rather it renders them invisible.

The items on the marriage list are not fixed by the parents of the couples; rather, they are fixed by the *Umunna*, which in this sense means the kindred or lineage.²² Research participants were unanimous that the *Umunna* determine the marriage list. As one of them responded when asked to narrate the negotiation process of bridewealth in his town 'the kinsmen determine all the items and later share it to the respective beneficiaries.'²³ When asked whether parents can determine the items in the marriage list in his village, an informant

²¹ See VC Uchendu *The Igbo of Southeast Nigeria* (1965) 50.

²² See chapter four at 4.3.1. It is important to note that the items on the list differ from place to place, kindred to kindred.

²³ Interview with Mr Remmy Nwachukwu, a 60-year old married businessman on 12th April 2016. These beneficiaries are the mother, father, women group, *Umuada*, the youth, etc.

shrugged and responded: ‘No; it is the kindred. They fix the items and price for everybody.’²⁴ Although the kindred comprise of different groups such as the youth, associations of married women like the *Umuada*, and the *Umunna*, the latter group wields the most influence in bridewealth requirements. Participants were divided over the propriety of the *Umunna* to determine the marriage list when they do not partake in the training of the bride. While some believe it is unfair for the *Umunna* to be involved, others uncritically accept it as tradition. In any case, several reasons account for the *Umunna*’s involvement. A key informant summarised it this way:²⁵

The kinsmen must be involved unless you [bride’s family] are an outcast, or banished. Marriage is a thing of joy, and should be extended to people. These kinsmen will stand as a witness that he [groom’s father] has given out his daughter in marriage ... Anybody that is in the [marriage] list will partake in it. When marriage is happening in another family, you will benefit also. It gives the bride’s family the right to partake in the celebration and sharing of other families’ bridewealth. The kindred are brothers and sisters [and their involvement in bridewealth] show that people witnessed the marriage of your daughter.

The *Umunna*’s power to determine items on the marriage list reflects the agrarian origins of bridewealth payment. Given the communal production of wealth in those days, it made sense for the *Umunna* to determine the list. Today, it is unfair for the *Umunna* to continue determining the list when the individualistic nature of income and family life makes it impractical for them to contribute to the training of the bride. This unfairness is especially because the contents of the list are increasingly exorbitant. The contents of these lists, most of which go to the *Umunna*, range from items of adornment such as jewellery, clothes, shoes, bags, tobacco, and detergents, to food items such as tubers of yam, rice, stock fish, goats, fowls, and cows.²⁶ These items must be provided before the marriage is recognised by the community. In most villages, the groom pays a sum ranging from ₦500 – ₦10 000 to obtain the list.²⁷ While responding to a question on his experience with bridewealth payment, an informant stated: ‘In Mbaise [where I married from], my father-in-law was already dead. So, after the introduction before I was given the list,

²⁴ Interview with Chief Anyaoha, a 75-year old married businessman on 13th April 2016.

²⁵ Interview with Pastor Samuel, a 58-year old Pastor on 22nd April 2016.

²⁶ These gifts when received are shared between the kinsmen of the bride and the groom. As the chapter progresses, the sharing and the groups that receive the gifts will be explained. See Appendix B however, for an example of what the different lists contains.

²⁷ At the time of the study, 1 US Dollar = 360 Naira.

I paid 10 000 naira; 5000 naira each for both the women and men's list before it was given to me.'²⁸ Affirming this statement, a parent stated: 'He [groom] must pay also to get the list. The last time I checked it was 2000 naira for both the list of the *Umunna* and *Umunwanyi* (women group).'²⁹ As seen in the first and second pages of appendix B, this payment is termed *imepe akwukwo*, which literally means opening the book. Unfortunately, I was unable to obtain a satisfactory answer regarding the obligation on a groom to pay before he could obtain the marriage list, considering he must still provide the items on the list. Most research participants struggled to explain the rationale for marriage list payment; some gave responses, while others justified it purely on culture, which they claimed is 'since time immemorial' and 'not likely to be changed overnight.'

However, it is more likely the case that the practice of payment for the marriage list is a constructed custom that arose from the commercialisation of bridewealth payment. This practice reflects the influence of socio-economic changes on people's ability to exercise agency over cultural constraints. It is instructive that many research participants did not question the origins of this practice. Only two of them speculated that it could have originated due to opportunism. The acceptance of payment for obtaining the marriage list thus reflects the complex dynamics of cultural construction and change. The handing over of this list initiates the negotiation process of bridewealth payment.

5.3.2 *Negotiation of bridewealth*

Bridewealth negotiation is often a long process that takes several hours to conclude. Its format differs from one locality to another. Accordingly, what I present in this thesis are general principles. The negotiation process is seen as a game to showcase the bargaining skills of the families, which entails agreement, disagreement, and final resolution.³⁰ Indeed, it is a battle of will, wealth, and perseverance, which is not exclusive to South-East Nigeria.³¹ For example,

²⁸ Interview with Mr Chris Uzochukwu, a 30-year old architectural practitioner on 25th April 2016.

²⁹ Interview with Mrs Priscillia Onuoha, a 50-year old married businesswoman on 24th April 2016.

³⁰ AU Umeodinka & CL Okoye 'Ethnography of Communication: The Igbo Traditional Marriage Perspective' (2016) 5 *Journal of Modern European Languages and Literature* 191-207 at 191.

³¹ DD Nsereko 'The Nature and Function of Marriage Gifts in Customary African Marriages' (1975) 23(4) *The American Journal of Comparative Law* 682-704 at 686; UC Isiugo-Abanihe 'Consequences of Bridewealth Changes on Nuptiality Patterns among the Ibo of Nigeria' in C Bledsoe & P Gilles (eds.) *Nuptiality in Sub-Saharan Africa: Contemporary Anthropological and Demographic Perspectives* (1994) 79.

Koji affirmed in his study of the Turkana tribe of Northern Kenya that ‘the demander doesn’t merely state the demand in an ambivalent manner, abandoning it upon refusal, but rather becomes more persistent unless the demanded can skilfully evade the demand.’³²

Owing to traditional perceptions of bridewealth as a symbolic representation of the woman’s worth, families feel the need to bargain and arrive at an amount that seems respectable. However, many people have linked this bargaining, alongside its accompanying quarrels, as an indication of the potential of a marriage to be stable. As a key informant summarised it, ‘a marriage where there is no struggle or negotiation over what is to be paid usually does not last.’³³ This belief that bridewealth bargaining promotes marriage stability has become customary in traditional marriage ceremonies. Its validity is yet to be proved and lies outside the scope of this thesis.

On the day scheduled for the bridewealth to be negotiated, the two families assemble at the bride’s house. The marriage gifts as mentioned earlier are contained in the marriage list given to the groom’s family. There are different marriage gifts for the mother, *umunwanyi* (married women in the kindred or lineage), *Umunna* (represented by male heads of the clan or extended family), youths, first daughters of the clan or *Umuada*, and the bride’s father (whether dead or alive).³⁴ The inclusion of dead people in the list of requirements is intriguing. The practice persists even though Christianity, which is the dominant religion in South-East Nigeria, forbids treating dead people as if they are alive. The practice is also intriguing because it inflates the items on the marriage list.³⁵ As an informant stated: ‘I spent almost ₦35000 for another process called *ime ife ekpere*... a traditional rite for the dead father. It must be done before any other thing.’³⁶ Another informant affirmed that he spent a huge sum of money buying a staff and a traditional piece of apparel called *isiagu* (lion head) for his deceased father-

³² K Kitamura ‘Communication for “Negotiation” among the Turkana’ (1997) 18(3/4) *African Study Monographs* 241-256 at 243; See also DJ Smith op cit note 14 at 136; AU Umeodinka & CL Okoye op cit note 30 at 203.

³³ Interview with Mrs Priscilla Onuoha, a 50-year old married businesswoman on 24th April 2016.

³⁴ This tradition is not universal as it happens in few communities. See appendix B, C, D and E.

³⁵ The Bible Deuteronomy 18:9-14; also, Leviticus 19:31 and Isaiah 8:19.

³⁶ Interview with Mr Chris Uzochukwu, a 30-year old architectural practitioner on 25th April 2016.

in-law. His in-laws believe buying these outfits cement the relationship between the dead and the living.³⁷ Interestingly, the items bought for the dead are enjoyed by the living.

The inclusion of dead people in marriage lists shows the strong influence of culture on agency despite the influence of socio-economic changes such as Christianity and education. On the interaction of socio-economic factors with culture, Bell argues that these factors affect culture by changing and replacing it with more contemporary values. However, Max Weber and DiMaggio argue that cultural values have an enduring and persistent feature.³⁸

As I observed, during bridewealth negotiation, male and female groups sit separately. The men sit on one side to deliberate on the contents of their list and the women do the same, along with other groups such as the youth. For a cultural region that claims to be enlightened by education and Christianity, this separate seating is intriguing, irrespective of whether it is an age-old tradition. Some research participants explained it as division of labour, one in which different groups work in different spheres for the upliftment of the community or family and then receive their reward from the marriage list. The representatives of the men's side from the two families during the negotiation process are fathers of the potential couple, brothers of the couple, the *Umunna*, uncles of the couple and other selected members of the family. On the women's side, participants are the mother of the groom (and bride), leaders of women's associations, secretary/treasurer of associations, and women married in the village or clan. The bride more than the groom is rarely allowed to be present during the negotiation of bridewealth payment. She is represented on the women's side of negotiations by her mother, if she is still alive. the bride's involuntary absence on an issue of such significance demonstrates the constraining influence of culture on women's exercise of agency.³⁹ This influence is anchored in pervasive power relations and gendered social values, expectations, and roles.

Interestingly, women are reluctant to use tools such as wealth, education, and religion to escape their culturally scripted roles. When I asked whether any woman attempted to

³⁷ Interview with Mr Martins, a 35-year old lecturer on 25th May 2016.

³⁸ M Weber (trans. T Parsons) *The Protestant Ethic and the Spirit of Capitalism* (1958) 13-27, 312; D Bell 'The Cultural Contradictions of Capitalism' (1972) 6(1/2) *The Journal of Aesthetic Education* 11-38 at 11-13; P DiMaggio 'Culture and Economy' in NJ Smelser & R Swedberg (eds.) *The Handbook of Economic Sociology* (1994) 27-57.

³⁹ L Bossen 'Toward a Theory of Marriage: The Economic Anthropology of Marriage Transactions' (1988) 27(2) *Ethnology* 127-144 at 127; M Strathern 'Kinship and Economy: Constitutive Orders of a Provisional Kind' (1985) 12(2) *American Ethnologist* 191-209 at 196.

participate in her bridewealth negotiation, I was usually told that culture must be respected. The unwillingness of most women to question systems or norms that make or mar them affirms my argument that women often sustain or reinforce unfavourable customs.⁴⁰ Women's non-exercise of agency in this regard may be contrasted with the position of men, who are now allowed to observe bridewealth negotiation in some communities.

Grooms are increasingly present during their bridewealth negotiation. Where a groom is present, however, he rarely participates in bridewealth bargaining, despite funding the bridewealth payment and the items on the marriage list. He merely entrusts his interests to his father, kinsmen and the bridewealth mediator, known as *onye aka ebe*. Since he observes the negotiation, his kinsmen could easily consult him and obtain his permission when the demands from the bride's side exceed his financial abilities or exceed the expectations of the groom. This consultation of the groom signals two things. First, it acknowledges that he funds the bridewealth. As noted in Chapter one of this thesis, this acknowledgement is primarily attributable to changes in family income settings. Whereas the agrarian, close-knit social setting of the past was communitarian, today's mostly nuclear family setting is individualistic.⁴¹ Unlike in the past when families engaged in joint production of income, which enabled them to strongly influence spousal choices and bridewealth negotiations, individual income earning requires that grooms should be consulted.⁴² The increasing consultation of grooms reveals the influence of socio-economic factors in the emergence of structural change. On the one hand, tradition acts as a constraint on behaviour by making grooms mere observers of bridewealth negotiation; on the other hand, grooms' position as breadwinners' act as an enabling tool by making grooms indirect partakers in bridewealth negotiation.⁴³ The constraining and enabling role of wealth or income shows the interconnected relationship between structure and agency in bridewealth negotiation.

⁴⁰ S Walby 'Key concepts in feminist theory Paper from FREIA - Feminist Research Centre in Aalborg Department of Development and Planning Aalborg University (1996) 2. See also Chapter 1.2.1.

⁴¹ DJ Smith op cit note 13 at 131.

⁴² This changed social reality is not exclusive to Igboland. See, for example, C Robertson 'Developing Economic Awareness: Changing Perspectives in Studies of African Women, 1976-1985' (1987) 13(1) *Feminist Studies* 97-135 at 103.

⁴³ As Giddens noted, structure is more enabling than constraining. See A Giddens *New Rules of Sociological Method: A Positive Critique of Interpretive Sociologies* (1976) 161; WH Sewell Jr 'A Theory of Structure: Duality, Agency, and Transformation' (1992) 98(1) *American Journal of Sociology* 1-29 at 4; K Marx 'The Eighteenth Brumaire of Louis Bonaparte' in RC Tucker (ed.) *The Marx-Engels Reader* (1978/1852) 595.

Once the marriage gifts have been negotiated, fully provided, or agreement reached for their full provision, some close relatives of the couple (fathers, brothers of the couple, and uncles) proceed to negotiate the bridewealth itself – that is *ego isi nwanyi*. The quantum differs from village to village and from family to family. Unlike in the past when it was paid to the eldest male of the bride’s family, *ego isi nwanyi* is now given to the father of the bride.⁴⁴ Its quantum is usually fixed by the father of the bride without influence from anyone.⁴⁵ However, in some communities such as the Ikwo local government area of Enugu State and the Isu Onicha local government of Ebonyi State, the quantum is fixed by the community through their king or the *Umunna*, usually with the consent of the community.⁴⁶ In rare cases, it is negotiated. Oftentimes, the father of the bride might ask the groom what he can afford to pay as *ego isi nwanyi*. Sometimes, also, he might accept a token sum from the groom, or return part of the sum paid by the groom.

After the payment of bridewealth, the formal traditional marriage ceremony commences. At this stage, the bride is culturally recognised as the wife of the groom. It is worthy to note that bridewealth – in the sense of all the items on the marriage list – must not be paid at once or on the same day. In some instances, and depending on the agreement between the two families, some of the items on the list may be paid later. The most important thing is to have a marriage agreement. Failure to comply with an agreement renders the marriage void, irrespective of the value of the materials the groom offers as marriage gifts. As some research participants emphasised, if the man dies before paying the full bridewealth as agreed, his children will complete the payment when they reach maturity. This insistence on completing bridewealth payment shows its significance in Igbo traditional marriage. After the payment completion or agreement stage, the marriage gifts are shared amongst the kinsmen and other relatives of the bride on the spot or at some venue and time agreed on by the family. Before examining the sharing of marriage gifts and who its beneficiaries are, it is important to identify the key actors in the negotiation of bridewealth, their main roles, and the influence of patriarchy on individuals’ agency.

⁴⁴ Where he is absent by reason of death, the right devolves on the male head of his immediate family, usually the brother of the bride or her uncle.

⁴⁵ Ninety-eight per cent of participants affirmed that the quantum of bridewealth is fixed by the father of the woman, while the *Umunna* determine the marriage gifts.

⁴⁶ Two participants from Ebonyi and Enugu state noted that the quantum of bridewealth in their communities was fixed by their former king. His successor discarded the practice though.

5.4 Actors in bridewealth negotiation and their roles

Customary/traditional marriage is not a solitary affair. It involves many people in the negotiation and sharing of marriage gifts. As the preceding discussion shows, these individuals participate at different stages of bridewealth negotiation. To ascertain their roles, I discuss them under three categories, namely: invisible major actors, major actors, and minor actors. This division aims to provide a foundation for the reason why they partake in the sharing of the marriage gifts.

5.4.1 Invisible major actors

The two key actors in this group are mainly the bride and the groom. On the one hand, the groom provides the money and materials that are presented on the day of the negotiation. As earlier mentioned, he may be present during this process, but his views are presented by his father, elder brother, uncles or *onye aka ebe* – that is a marriage mediator or negotiator. Although he apparently plays a passive role in the negotiation, he exerts influence on the bargaining through his family and/or friends.

On the other hand, the bride who, in local parlance, is the *isi ahuru kwawa okpu* (the focus of the ceremony), is totally passive and is rarely visible during the negotiation of marriage gifts and the bridewealth payment itself. As an informant explained her passivity, ‘it is no big deal, since my father is there.’⁴⁷ This informant’s desire to participate in her bridewealth negotiation is held down by the structural force of tradition, which manifests in the form of respect for parents, respect for culture, and self-consciousness borne from socialisation. These patriarchal reasons may continue to limit the cultural autonomy and social agency of women, thereby rendering them incapable of challenging cultural barriers.

5.4.2 Visible major actors

Other than the intending couple, there are other major actors in bridewealth negotiation. They are the fathers of the bride and the groom, their respective mothers, uncles, brothers, leaders of the men and women’s associations, secretaries/treasurers of these associations, and the *onye aka ebe*.

⁴⁷ Interview with Cynthia (pseudonym), a potential bride, 29 year old legal practitioner on 2nd May 2016.

The couple's parents are actively involved if they are still alive. Sometimes they act as the chief negotiators at the men and women's groups. While the groom's parents present the gifts and money, the bride's parents accept or refuse them.

The leaders of associations ensure that the items on the list are complete or their cash equivalent paid. In fact, they could be said to be the main negotiators, since they often conduct the bargaining with the prospective in-laws in order not to make the parents of the bride appear opportunistic. They are required to ensure compliance with the rules of the community regarding the items on the list. Likewise, the secretaries and treasurers of associations keep notes of what was provided as marriage gifts and the monetary equivalent of these items.

The marriage mediator, who is usually a man, intercedes between the two families to ensure that the negotiation runs smoothly. He is supposed to be a neutral person during the negotiation. The uncles and brothers of the couple only become major players when the father of the bride or groom is not present. Nevertheless, they are present during the negotiation even where the fathers of the couple are alive. In this case, their presence confirms their vested interest in the marriage gifts, as well as their role as consultants to the couple's parents.

5.4.3 Minor actors

This group involves other members of the above-mentioned associations, and relatives of the couple invited by the couple's parents to attend as mere witnesses. They are not entirely passive because some of them do participate in varying degrees in the negotiation of the bridewealth. Since the marriage list for women groups might contain food items, this group is responsible for cooking food for the guests.

Apart from the bride and the groom, all the above actors benefit from the marriage gifts. As explained above, it can be deduced that the negotiation process of bridewealth fuels the continuation of patriarchy, since it favours the groom more than the bride.

5.5 The influence of patriarchy on bridewealth payment

The absence of the bride and, sometimes, even her mother during the negotiation and payment of bridewealth indicates that bridewealth negotiations operate in a patriarchal social environment. Generally, men are favoured in decision-making that affects both males and females in Igbo family life. Even when the father of the bride is dead, her mother cannot receive

her bridewealth; rather a male relative receives it on behalf of the family.⁴⁸ This practice might be changing in some countries,⁴⁹; but this is not yet the case in the research area despite the Supreme Court's ruling, which empowers women to inherit under customary law.⁵⁰ Virtually all the research participants stated that the reason is because the child belongs to the father. When asked whether she was present during her bridewealth negotiation and payment, Cynthia replied as follows:⁵¹

Interviewee: No.

Interviewer: Why?

Interviewee: According to our custom and tradition, I am not supposed to be there.

Interviewer: Was your mother present?

Interviewee: No.

Interviewer: You didn't feel you should be there since this is an issue that concerns you?

Interviewee: My father and younger brother were there, so they represented me. It is no big deal. Besides, according to our custom, I am not supposed to be there even if I wanted to.

Another bride responded as follows regarding her absence from her bridewealth negotiation:⁵²

Interviewer: I observed you were nowhere around the negotiation area. Why?

Interviewee: Yes, I am not allowed to be there. Even my husband-to-be was not there.

Interviewer: Yes, I noticed that also; but on some occasions, he was consulted. I saw him giving out money. When I asked him, he said they (his brothers) needed more money to add to what they have because your people demanded more than they prepared for. However, I didn't see anyone consulting you despite this ceremony being more about you. Why is this so?

⁴⁸ A Enemali *The Formal Requirements of the Celebration of Marriage: A Comparative Study of Canon Law, Nigerian Statutory Law and Nigerian Customary Law* (2009) 42.

⁴⁹ *Mthembu vs Letsela and Another* 1998 (2) SA 675, upheld in *Mthembu vs Letsela* 2000 (3) All SA 219.

⁵⁰ *Mrs Lois Chituru Ukeje & Another vs Mrs Gladys Ada Ukeje* (2014) 11 NWLR (Pt. 1418) 384-414; *Onyibor Anekwe & Another vs Mrs Maria Nweke* (2014) All FWLR (Pt. 739) 1154.

⁵¹ Interview with Cynthia (pseudonym), a 29-year old legal practitioner on 2nd May 2016.

⁵² Interview with Chinasa, a 32-year old entrepreneur on 22nd April 2016.

Interviewee: Erm, well as a woman, I am not allowed to be there.

Interviewer: But why?

Interviewee: It is our culture besides my mum was there.

Interviewer: Yes, your mother was around during the negotiation of marriage gift at the women's side but not during the payment of bridewealth.

Interviewee: That's why I said women are not allowed.

Interviewer: You didn't feel the desire to go there and know how much is being paid as your bridewealth? don't you think your presence and opinion could have made a difference on the quantum of your bridewealth?

Interviewee: It would have been good to be there since I know the financial capability of my husband-to-be; but culturally I am not allowed to be there.

However, the information from a bride's father⁵³ and mother,⁵⁴ while quite intriguing, confirmed the responses of the above brides regarding their uncritical acceptance of cultural passivity in bridewealth negotiation:

Interviewer: Thank you sir. I observed your daughter was not present during the negotiation of both the marriage gifts and bridewealth. Why it so sir?

Interviewee: Well my daughter, this has been our custom ever since I was born.

Interviewer: I understand it is a cultural thing, but don't you think her presence would have made a difference especially in the excessive demands in the marriage list and the *Umunna's* insistence on providing all the items on the list?

Interviewee: My daughter, there is no need for her to be present. We don't ask for too much in our family. In any case, *nwanyi galara onu* (a woman is expensive) both to train and to maintain. Why will an in-law think we will give him our daughter for free or for a lesser price? Some in-laws can be wicked at times. Will they give their daughters away like that? We don't even ask for too much here.

Regarding women's ability to exert influence with their presence in bridewealth negotiation, a bride's mother responded as follows:⁵⁵

Interviewer: Thank you ma. I will also like to know if the man is expected to provide all that is in the list for example, the women's requirements. What happens if he doesn't?

⁵³ Interview with Mr Sylvester, a 60+year old married businessman on 22nd April 2016.

⁵⁴ Interview with Mrs Victoria, a 50-year old married businesswoman on 22nd April 2016.

⁵⁵ Ibid.

Interviewee: ... Mind you, we are not selling our daughters, as mothers we want our right. You should give it to us. If you can't because of the size of your pocket, then we can reduce the money. Like in my daughter's case, I begged my fellow women to take whatever my in-law brings. I mean she is my 3rd daughter and the first to get married. I thought my family was cursed. I can't stop her from getting married by asking for too much. I will not also stand and watch them do that to me. It means the supposed curse has been lifted. My fellow women dragged it but later, because my sister whom my daughter has been staying with was also there, she made sure that they didn't extort money from the man by asking more than he can provide.

Interviewer: Yes, I noticed your active role, but you were not at the negotiation of the bridewealth payment. Why?

Interviewee: Yes, that is the role of the father. He fixes and collects the bridewealth. I am not supposed to be there.

The dialogues with Cynthia and Chinasa show the constraining effect of structure on women's use of agency to influence bridewealth negotiation. Specifically, it shows their unwillingness to exert agency due to cultural restraints. Their responses further show women's passive attitude to the patriarchal gender dynamics of marriage under customary law in Igboland. However, Priscilla, a bride's mother, had an intriguing perspective on women's absence from bridewealth negotiation. According to her, since it is the responsibility of the bride's father to determine the quantum of the *ego isi nwanyi* in her town, she discussed with her husband how much to accept from their son-in-law. In her view, her presence was not necessary because she already knew what would happen. To her, it was immaterial whether her husband reneged on this agreement. The noteworthy thing is that her opinion was sought and obtained. Although I did not ask married research participants to confirm prior agreements on *ego isi nwanyi*, it is logical for this consultation and prior agreement to be happening in many other families. Mrs Priscilla's account shows that, although seemingly passive, women may be influential actors in bridewealth negotiation. Her account brings to the frontline feminist perspectives on the complementarity of gender roles.

In this respect, Benya's ethnographic study of women's role in the Lonmin strike in South Africa is of great significance.⁵⁶ Benya not only identified the legislative and cultural

⁵⁶ A Benya 'Absent from the Frontline but Not Absent from the Struggle: Women in Mining' (2013) 22(1) *Femina Politica* 144-147 at 145; see also A Benya 'The Invisible Hands: Women in Marikana' (2015) 42(146) *Review of African Political Economy* 545-560 at 546-551.

restraints on women working underground as miners, she also highlighted their ‘traditional supportive roles; cooking for those at the mountain top and holding vigils, offering emotional and spiritual support to families’ which she said should not be left unnoticed.⁵⁷ Furthermore, Peck affirmed this role by stating that what happens at work affects what happens in the household and vice-versa and that these two spaces cannot be viewed as separate. Their separation is artificial and porous and is as far as ‘they have their own structures of dominance along with their own distinctive rhythms and tendencies, but they are also related in the sense that each conditions and interacts with the other.’⁵⁸ Thus, even though patriarchy influences bridewealth, women’s supportive roles in the family are capable of renegotiating cultural spaces, establishing new authority, and promoting women’s independence in one way or the other.

The completion of the negotiation and payment of bridewealth initiates the sharing of the marriage gifts, which though not strictly part of bridewealth negotiation, offers insights to the interaction of structure and agency.

5.6 Sharing of marriage gifts

The distribution of the marriage gifts brought by the groom’s family is communitarian. It clearly explains the Igbo adage that *otu onye adighi azu nwa*, meaning the nurturing of children is a collective responsibility and that *nwa bu nwa oha*, meaning a child belongs to everybody.⁵⁹ The beneficiaries include all the extended family members of the bride in their separate groups. Paradoxically, many of these beneficiaries do not contribute to the upbringing of the bride, thus begging the question why they should benefit from the sharing of marriage gifts. Also of importance is the fact that both the intending couple and their parents do not have a say in who should benefit from marriage gifts, despite the groom providing the funds for these marriage gifts.⁶⁰ As mentioned earlier, recently the payment of bridewealth has become more

⁵⁷ A Benya (2013) op cit note 56 at 145.

⁵⁸ J Peck *Work-place: The Social Regulation of Labour Markets* (1996) 39; see also G Brown, et al ‘Careless Talk: Social Reproduction and Fault Lines of the Crisis in the United Kingdom’ (2013) 39(1) *Social Justice* 78–98 at 92; S Federici *Revolution at Point Zero: Housework, Reproduction, and the Feminist Struggle* (2012) 15-54.

⁵⁹ CA Ekeopara ‘The Impact of the Extended Family System on Socio-Ethical Order in Igboland’ (2012) 2(4) *American Journal of Social Issues and Humanities* 262-267 at 264.

⁶⁰ In fact, research participants affirmed that they were not even present during the sharing of these gifts.

individualised, as the groom provides all the items on the marriage list or their cash equivalent. On other hand, neither the bride, for whom these items are provided, nor her parents who raised her, can determine bridewealth beneficiaries. While responding to the question of which group's marriage list is the most expensive in his locality, a research informant narrated the situation in his village, which he said had recently undergone review. He stated:⁶¹

In my place, the parents of the bride do not benefit from the items; rather it is the *Umunna* and the women's list that is bigger. Presently we have changed the list such that the parents of the bride benefit more than the kinsmen. The reason is that in the former list, the parents who suffered to raise the child do not benefit more as expected.

In support of this assertion, another informant stated: 'in my place, the list for the women is the biggest ... [because] they are the beneficiaries. They are mothers. It is their right as co-wives.'⁶² The below explanation demonstrates the strong influence that structure exerts on agency in the sharing of marriage gifts, as well as couples' and their parents' impressions and attitudes towards it.

5.6.1 *Why do they benefit?*

The question of why some people benefit in the sharing of the marriage gifts was often greeted with the response 'it is our tradition.' Traditionally, it is expected that the marriage gifts for the *Umunna*, *Umuada*, *Umunwanyi* and other general gifts should be given to these groups. None of the participants were able to give a satisfactory reason why some of these groups should benefit. Satisfactory reason here is measured on participants' attitudes and impression about it. They were also unable to clearly justify the reason why all of the items on the list must be provided. However, the majority of my research participants (n=32) believe that the excessive demand of high bridewealth is caused by these groups benefitting from marriage gifts.⁶³ Of this majority, some research participants (n=12) believe that this practice should be stopped. They acknowledged that it is a long-standing tradition, and voiced their desire to change this custom. For example, Priscilla in her suggestion about some groups of people benefitting from the marriage gifts, said:

⁶¹ Interview with Mr Chuks Ubani, a 62-year old married businessman on 12th April 2016.

⁶² Interview with Mr Remmy Nwachukwu, a 60-year old married businessman on 12th April 2016.

⁶³ See DJ Smith op cit note 14 at 138-139.

Interviewee: No [they should not benefit]. In my opinion, when a girl wants to get married, the parents can call on the kinsmen and community to come and celebrate with them. The parents can cook for them and they should accept it. Those items on the list are not necessary. Those items create financial difficulty for the groom most times.

Another informant⁶⁴ responded to whether the extended family should benefit thus:

Yes and no. Yes, because it is the tradition, you can't stop because it is your daughter or son [who is celebrating their marriage]. No because they are the reason why it is high. We have list for father, mother, *Umuada*, *Umunna*, youth, step this and that. Marriage is a thing of joy and I would not stop people from celebrating with me, but they should take what I give them. People say it is gift, tell me if it is a gift why won't they accept whatever is given to them wholeheartedly?

Other research participants (n=20) believe it is a long-standing tradition that should be allowed to continue. For example, one informant responded to this question thus:

They [extended family] are supposed to benefit from it. The thing is that during their daughter's marriage, they [intending couple/parents] benefitted from it; they [couples' parents] can't become wise all of a sudden because it is their turn. It started from the past and can't be stopped now.⁶⁵

Another informant stated:⁶⁶

Anybody that is in the list will partake in the sharing. When it is happening in another family, you will benefit also. It gives the person (parents of the bride) right to partake in another's marriage celebration. They are brothers and sisters. It will also show that people are witness to the marriage of your daughter.

This statement affirms the earlier argument that the Igbo traditional family structure is communitarian. However, it has the implication of holding unto communitarian beliefs, while evolving or adapting to an increasingly individualised social system.

Furthermore, the minority views opposed to communal beneficiation from marriage gifts base their opposition on the need to protect women's dignity. As Samuel, an informant summarised it:

⁶⁴ Interview with Mrs Ada Azuka (pseudonym), a 35-year old married housewife on 25th April 2016.

⁶⁵ Interview with Mrs Chioma Nwonu, a 36-year old housewife on 23rd April 2016.

⁶⁶ Interview with Mr Samuel Onuoha, a 58-year old Pastor on 24th April 2016.

They are not supposed to benefit from it. This is because women are not for sale. In my place, it is regarded and seen as *igbankwu* or *inu mmanya nwanyi* (literally means drinking the marriage wine of a woman), in other places it is seen as *ikere ihe* (sharing of marriage gifts). It is a thing of joy to give out the hand of your daughter in marriage in Igbo land, but then it should be left for the parents of the girl to invite their kinsmen to come and celebrate with them. It shouldn't be done to overburden or extort money from the groom. They should eat whatever is given to them, [and] not make demands.

The sharing of marriage gifts is significant for the interplay of structure with agency. The first significance is people's reluctance to challenge culture, which is primarily caused by pressure by the custodians of customs to comply with tradition. Where the parents of the bride fail to provide the items on the marriage list or refuse to involve the kinsmen of the bride in the sharing of the marriage gifts, they could be sanctioned in various ways. One, they may be fined or banned from benefitting in the sharing of other families' marriage gifts.⁶⁷ The quantum of the fine differs from community to community. It could be in the form of cash or livestock. Two, their relatives could refuse to accompany them to mediate if a problem arises in their daughter's marriage. As incredible as this may sound, no parent wants to be the first to disobey this tradition. Rather than fail to comply with marriage list requirements, they [parents] would provide the items themselves. The groom on the other hand will try his best to complete all marriage requirements.

From the above responses, it is obvious that the persistence of communal sharing in marriage gifts relates to the social recognition that accompanies marriage. This recognition can be denied when the couple fail to comply with marriage requirements, specifically the sharing of the items on the marriage list. The pertinent question is why do couples not exercise their agency to determine the sharing of the marriage gifts they provide.

5.6.2 *And you have no say?*

Couples' inability to determine who should benefit from the marriage gifts they provide lies at the heart of complaints regarding change in the meaning and significance of bridewealth. Although most of the prospective spouses interviewed for this study expressed displeasure over the excessive demands on marriage lists, they were unwilling to seriously challenge it, as

⁶⁷ OO Elechi *Doing Justice Without the State: The Afikpo (Ehugbo) Nigeria Model* (2006) 71; B Chukwuezi 'Through Thick and Thin: Igbo Rural-Urban Circularity, Identity and Investment' (2001) 19(1) *Journal of Contemporary African Studies* 55-66 at 62.

shown above in the responses of the participants. While some felt that it is against the custom and tradition of their place to insist on attending their bridewealth negotiation and determining the beneficiaries of marriage gifts, a clear majority were not really bothered about challenging it. As observed, it seems grooms are keener on challenging it than women. Despite their displeasure about excessive demands on marriage lists and their absence during bridewealth negotiation, some brides were more desirous of getting married and maintaining their self-worth in the community. Their inability and unwillingness to challenge cultural demands contributes to the persistence of high bridewealth payment.

5.7 Persistence of high bridewealth payment

My fieldwork revealed that not all communities in South-East Nigeria demand high bridewealth. There are few areas, such as Isu in the Onicha local government of Ebonyi State and Idemili in Anambra State, where bridewealth demand is relatively low.⁶⁸ Research participants disclosed that, amongst other reasons, low bridewealth demand in their communities can be ascribed to regulations laid down by their traditional rulers and agreed upon by the community.

Findings from interviews show that there are other factors responsible for the demand of high bridewealth in South-East Nigeria, other than socio-economic changes such as unemployment, inflation, and urbanisation. These factors are also beginning to influence some of the areas that demand low bridewealth. One such factor is the issue of revenge. More than 80 per cent of the research participants claimed that the attitude or the way in which the groom's community treated the bride's community during bridewealth negotiation and payment is a factor to be considered during negotiations. Accordingly, the bride's relatives often insist on retaliating by insisting that all the items on the list be provided or increasing the items on the marriage list where it doesn't compare to what was asked from them. For example, an informant said 'I have noticed that the issue of high bridewealth is as a result of the way in which our kindred is treated for example when they go to marry from another village, that is how they will treat the other when they come to ours. This is irrespective of the family, so far, the knowledge of that treatment is known to everyone.'⁶⁹ Affirming this, one research

⁶⁸ Compare Appendices B, C, D and E.

⁶⁹ Interview with Mr Chuks Ubani, a 62-year old businessman on 12th April 2016.

informant said, 'People now know that it is the way you treated others when they came to marry from your house, that is the way they will treat you when you come to their own house.'⁷⁰ As already stated, marriage involves the family and the community. A lot of people accompany one family to marry a wife, there they get knowledge of the items on the marriage lists, how high or low it is and then they report back. As shocking as this may sound, most of the research participants support this idea.

Another factor is inter-ethnic, inter-village and inter-state marriage. Some of my research participants claimed that the above factor influences the quantum of bridewealth payment during the negotiation process. The kinsmen of the bride demand and insist that all the items on the list be provided and even add more items to the list. My observations in the field showed that this is usually done during the negotiation process and bridewealth payment as a means to stop the man and his relatives from marrying their daughter.⁷¹ One of my participants responded to the question of the reason for demand of high bridewealth payment thus: '...But I discovered that if you were from their place they will remove some things for you, but for an outsider they add.'⁷² Another informant also responded in a similar way 'There is list for an outsider and that of an insider.'⁷³ Yet another said 'Our list is not a blanket list, it depends on the family. We have different list for outsiders coming to marry from us and insiders (from our village). However, all these depend on the family you are marrying from.'⁷⁴ More elaborate was the response of one elder, who stated:⁷⁵

Well, we have list for outsiders coming to marry from us and a list for insider [that is a groom from their place]. We usually ask them what they demanded from us when we came to marry from their place [Conscious of what was demanded from them]. We keep record of all the things they demanded from us. We inform them that we will charge them exactly what they charged us so that when they come we don't need to argue about it. Marriage is a continuous process [with young men and women meeting and insisting on marry whom they love, inter-ethnic, inter-state or inter-village will continue]. They must know that.

⁷⁰ Interview with Mrs Eucharia John, a 40-year old businesswoman on 4th April 2016.

⁷¹ See also DJ Smith op cit note 14 at 136.

⁷² Interview with Mr Chris Uzochukwu, a 30-year old architectural practitioner on 25th April 2016.

⁷³ Interview with Mr Christian Udechukwu, a 36-year old businessman on 22nd April 2016.

⁷⁴ Interview with Mr Joseph Ochum, a 43-year old businessman on 20th April 2016.

⁷⁵ Interview with Chief Okenwa, a 67-year old businessman on 12th April 2016.

This factor is more pronounced when the bride is the first daughter to her parents and they don't want her to marry far away from her tribe.⁷⁶ Parents sometimes play a big role in this. One of the women leaders interviewed confirmed this when she said '...parents of the prospective spouses can beg the women or the men association as the case may be to reduce the items on the list.'⁷⁷ They try to manipulate the marriage from low to high or beyond the reach of the man and insist that it be paid. Their expected reaction is for the man to abandon the marriage negotiation. A brother to a potential groom confirmed this expected reaction when he said 'when they gave us the list, I studied it and said no. I called my brother (who was getting married) and told him to withdraw his intention and rather come back home to marry...the items on the list were too much for us. Am I starting a business for them (bride's family).'⁷⁸ He went further to narrate that the marriage continued only because the foster parents of the bride were able to plead with the parents (bride's) to accept whatever was offered. Though there are incidents of migration and love marriage, I observed that inter-ethnic marriage is still rare but not absent in South-East Nigeria. But there are more inter-state and inter-village marriages. None of my research participants married a non-Igbo wife. However, a male informant from Western Nigeria who is married to an Igbo woman, confirmed the difficulties and challenges he encountered during bridewealth negotiation as a stranger marrying an Igbo wife. He likened marrying from his wife's community to buying a new car. According to him, you must be prepared before you get married from Mbano where my wife is, '... you must price the latest car and know the worth. If you can't pay for the car, then forget about marrying from that place. ... I had to do that comparison before going.'⁷⁹

Sometimes it is the kinsmen or relatives who activate this factor and the parents sometimes succumb to this influence. When one of the leaders of the women's group was asked why they have such excessive and expensive things on their list and why they insist on it being provided, she replied thus: 'Asa⁸⁰ is the first to marry in this family, and she is being married

⁷⁶ DJ Smith op cit note 14 at 135-136. AA Oludele & O Onodje 'Migration and Cultural Identity Retention of Igbo Migrants in Ibadan, Nigeria' (2016) 9(2) *Journal of Sustainable Development* 137-144 at 139; P Iroegbu 'Marrying Wealth, Marrying Money: Repositioning Igbo women' in B Saunders & MC Foblets (eds.) *Changing Genders in Intercultural Perspectives* (2002) 110.

⁷⁷ Interview with Mrs Lolo Charity, a 50 year old businesswoman on 22nd April 2016.

⁷⁸ Interview with Mr Gwam n'ihu (pseudonym), a 40-year-old businessman on 25th April 2016.

⁷⁹ Interview with Chief Olakuso, a 58-year old businessman on 3rd May 2016.

⁸⁰ Pseudonym. Asa was a potential bride.

to a far place. She might never visit us for a very long time or her husband may never allow her to visit'.⁸¹ From her attitude during the negotiation of marriage gifts it could be implied that they want to get everything at once and not worry about their daughter's willingness and ability to care for them in future or they want to frustrate the man so that he will abandon the marriage negotiation. This attitude could also be because of the next factor.

Greed, which is hereafter referred to as opportunism, is another factor that contributes to the persistent demand of high bridewealth during negotiation process. I use the term opportunism because most items on marriage lists are non-essential materials or materials originally un contemplated by tradition. Examples of items generally regarded as non-essential include luxury clothes, jewellery, and cigarettes. As a factor, opportunism comes into play usually when the father of the woman is dead and the fate of the woman with regards to negotiation and bridewealth payment is left in the hands of her uncles. One of my research participants stated: 'greed is the cause [one of the factors of high bridewealth payment]. People also forget the future and look on the present. ... If you [bride's relatives] take all the things from them what happens then?'⁸² Another said: 'Socio-economic changes have also spiked up things. Poverty is also part of the reason so is greed.'⁸³ Yet another said: 'The death of the father of the girl is one reason. When the father is dead the uncles may demand high bridewealth either to scare the man away or so that she doesn't get married. Either way greed or wickedness is the reason.'⁸⁴ Furthermore, Remy said: 'Sometimes, the reason is greed on the part of the father. Sometimes, the kinsmen insist on the provision of all the items just to cause commotion.'⁸⁵ This factor has some implication for marital stability, which most relatives do not think about. In one interview, one of my research participants,⁸⁶ pointing out opportunism as one of the reasons for the demand of high bridewealth, narrated the experience of one of his friends, whose in-laws drained his pocket.

⁸¹ Interview with Mrs Lolo Charity, a 50-year-old businesswoman on 22nd April 2016.

⁸² Interview with Chief Innocent Eziaghala, a 62-year old businessman on 26th April 2016.

⁸³ Interview with Mr Joseph Ochum, a 43-year old businessman on 20th April 2016.

⁸⁴ Interview with Mpa Onyi (pseudonym), a 45-year-old businessman on 17th April 2016.

⁸⁵ Interview with Mr Remmy Nwachukwu, a 60-year old businessman on 12th April 2016.

⁸⁶ Interview with Mr Chris Uzochukwu, a 30-year old architectural practitioner on 25th April 2016.

Do you know what he did? He vowed that none of his in-laws will visit him again. There is nothing the in-laws can do about it after all he has paid for her bridewealth. How can you say it is not too much when you place your entire burden/problem on one person and expect him to be happy? If you treat him well, he can do more than you asked of him in future.

Another factor is the educational qualification of the bride.⁸⁷ As I discovered in my surveys, the level of education of the woman plays a two-way role. One role is as structure and the other is as a bargaining tool. In the role of structure, educated brides command high bridewealth. Some of my key participants (n=10) said they have a different marriage list for different levels of academic qualification attained by the bride. They pointed to the fact that raising a girl-child is very expensive, especially since they will marry and leave the family. This factor plays a great role in the negotiation process, in that the parents, through the kinsmen, insist that they be compensated, and their effort appreciated by making sure that all that is on the list is provided in full. Here, one can argue that whatever is on the marriage list equates to the value and the worth of the bride from the perspectives of her relatives. One of the participants remarked:⁸⁸ ‘... bridewealth for a PhD holder is higher than that of masters, bachelors, secondary school, and primary school certificates in that order.’ As an informant explained with an adage,⁸⁹ ‘*obere azu na akpata obere nku, nnukwu azu na akpata nnukwu nku*’, which means that a valuable item (the bride) should be handled in a valuable manner (by the groom). For example, Joseph boldly listed all the things he spends and is still spending on his daughter.⁹⁰ He concluded: ‘You can’t compare the money used to train a lady in university to that of an apprentice. I will not allow my daughter to marry an uneducated or poor man. The money spent is too much. I also know that they are all women, but they are not the same raising an educated woman is very expensive because you must bear the loss of their service in the home such as cooking and washing.’

Many women I interviewed were inclined to using their educational status to determine their bridewealth. Cynthia and Chioma confirmed that, although their husbands were unhappy

⁸⁷ UC Isiugo-Abanihe op cit note 1 at 159.

⁸⁸ Interview with Mr Joseph Ochum, a 43-year old businessman on 20th April 2016.

⁸⁹ Interview with Mr Remy Nwachukwu, a 60-year old businessman on 12th April 2016.

⁹⁰ Interview with Mr Joseph Ochum, a 43-year old businessman on 20th April 2016.

with the items on their marriage list because they were numerous and expensive, they were not sympathetic to any reduction because ‘it is not up to what was expended’ on raising them.⁹¹

Another factor is the financial and social status of the man. Some of my key participants (n=7) believe that the financial status of the groom influences how much his in-laws demand from him as bridewealth. His financial status also affects the way the bridewealth is negotiated. Thus, knowing the financial status of the groom, the bride’s kinsmen could present their demands during bridewealth negotiation in an unequivocal or persistent manner. A traditional ruler expressed disappointment over his experience during his son’s traditional marriage with the daughter of another traditional ruler in the same study area. According to him, his would-be in-laws took advantage of his family’s position to manipulate the marriage lists.⁹² His wife was however, more disappointed than he was. She stated that the items on the list were hiked because of their status and vowed never to advise someone to marry from that town.⁹³ Another informant said, ‘relatives of the bride demand high sum especially when the groom is wealthy.’⁹⁴ Yet another said ‘You find out that some people especially the parents influence the kinsmen to add some items to the list and that is why it is more expensive. This they do when their in-law is wealthy. That is not good.’⁹⁵ Yet another informant, Priscilla, stated: ‘They [parents] may request for more things and it will be added for them in the list. Most especially if the in-law is rich.’ Despite the claim of almost all research participants that their lists are fixed and that their daughters are not for sale, these factors contradict it since it can affect the marriage lists.

5.8 Bargaining/agency tools

According to Ensminger and Knight’s bargaining model, the payment of bridewealth has distributional effects, which favours the interests of those with strong negotiating power in

⁹¹ Interview with Mrs Chioma Nwonu, a 36-year old housewife on 23rd April 2016. See also interview with Cynthia (pseudonym), a 29-year old legal practitioner on 2nd May 2016.

⁹² Interview with HRH Ogamba, a 75+year old Principal on 23rd April 2016.

⁹³ Interview with HRH Ugoeze, a 73-year old teacher on 23rd April 2016.

⁹⁴ Interview with Mr Akwarandu Chukwudike, a 35-year old businessman on 28th April 2016.

⁹⁵ Interview with Mrs Lolo Charity, a 50 years old businesswoman on 22nd April 2016.

society.⁹⁶ My fieldwork revealed that some prospective spouses and their parents use different forms of bargaining tools to influence and reinvent the cultural institution of bridewealth. I classify these tools as agency. These tools align with the symbolic interaction view, which emphasises that people are not passive beings or puppets, but could construct, produce and reconstruct their world (social structures) in a manner that gives meaning to their existence. Bargaining here is a mechanism, instrument, tool or leverage used in negotiations to swing an agreement in ones' favour. In what follows, I present the bargaining tools that individuals employ in the negotiation and payment of bridewealth.

5.8.1 *Couples' agency tools*

Here, 'couples' denote women and men who were preparing for their traditional marriage or had completed the traditional rites of marriage at the time they were interviewed. These couples are often faced with two choices. The first is to adhere to a common cultural script, which includes, but is not limited to providing, without objection, the items stipulated on the marriage list. This choice also implies being passive during the negotiation and sharing of the marriage gifts. The second choice is to (re)negotiate their role, while adhering to the accepted cultural script. After weighing the above two choices and its consequences, couples usually employ certain strategic tools to maximise their preferred outcome, which is usually to pay as little bridewealth as possible, gain social respectability, and marry a person of their choice. These tools are presented below in no specific order.

a) Cohabitation and pregnancy

To understand cohabitation as a bargaining tool, it should be borne in mind that Igbo society is so patriarchal that men's sexual conduct is not condemned in the same way as the conduct of women.⁹⁷ High value is placed on women's moral and sexual conduct. Despite this, many couples who are frustrated by high bridewealth demands resort to cohabitation. Most often, one of the consequences of cohabitation is pregnancy. With this tool, they elicited support from

⁹⁶ J Ensminger & J Knight 'Changing social norms: Common Property, Bridewealth, and Clan Exogamy' (1997) 38(1) *Current Anthropology* 1-24 at 4-6. J Knight & J Ensminger 'Conflict over Changing Social Norms: Bargaining, Ideology, and Enforcement' in MC Brinton & V Nee (eds.) *The New Institutionalism in Sociology* (1998) 123.

⁹⁷ DJ Smith op cit note 14 at 145; CMA Nwoye 'Igbo Cultural and Religious Worldview: An Insiders' Perspective' (2011) 3(9) *International Journal of Sociology and Anthropology* 304-317 at 300.

their parents, who wanted to cover up the shame of premarital pregnancy. Only one of the couples I interviewed admitted that they cohabited before bridewealth payment was paid. The male cohabitant, later husband, said:⁹⁸

The items on their [bride's family] list too much. This is why people run away from marrying girls from that area or even live together with the girl without paying or completing all those rites. Actually, I was leaving with my wife and eventually got pregnant for me before I even went to pay her bridewealth. Her people didn't know about it because she wasn't that heavy. You know the shame of getting pregnant before marriage. That is the by the way. They gave me the list and it took me long to gather all that they requested. When they noticed that she was pregnant they said I should come with whatever I have and do something on her head. You know people can't stand the shame of having a daughter who got pregnant out of wedlock, so anything to cover that disgrace, they will do it.

His wife confirmed his statement: 'I got pregnant for my husband before everything was done. This somehow made them to reduce everything for my husband.'⁹⁹ However, at least some participants (n= 20) consistently stated that cohabitation and pregnancy are increasing due to the demand of high bridewealth payment. For example, an informant Mpa Onyi stated: 'in fact, the trend is to cohabit or elope with the man and get pregnant for him. That way the elders or parents will now beg them to come with whatever they have ... Whatever they [couples] say goes, so far as the shame of not paying bridewealth is removed from the family.'¹⁰⁰ Yet another informant, Eucharia said, 'couples ... cohabit or live together without paying the bridewealth. Parents of the bride may require the prospective in-law to come and pay whatever they have if they discover that their daughter is pregnant. This is to cover the shame.' And yet another said: 'These days young men and women who think that the demand of high bridewealth will hinder them from marrying each other, start cohabiting together without doing the traditional rites. The man may even impregnate the girl and you see the parents begging the man to bring whatever he has.'¹⁰¹

This tool seems to succeed because it forces parents to actualise their children's desire to complete bridewealth requirements and be recognised as husband and wife. This yielding by

⁹⁸ Interview with Obi Okeke (Pseudonym), a 35 year old business man on 20th April 2016.

⁹⁹ Interview with Oluchi, a 26-year old businesswoman on 20th April 2016.

¹⁰⁰ Interview with Mpa Onyi (pseudonym), a 45+year old businessman on 17th April 2016.

¹⁰¹ Interview with Mr Akwarandu Chukwudike, a 35-year old businessman on 28th April 2016.

parents performs two functions. The first is to avoid the shame that accompanies a marriage without bridewealth payment.¹⁰² The importance of chastity is evident in this statement by an informant: ‘However, if you have been living with the girl before making your intention known to her parents, you will provide a goat called *ewu afia utali*. This signifies the punishment to you sort of, for living with her before telling her family.’¹⁰³ Although this is a punishment according to him, the emphasis is on the increasing recognition by his community that some people now cohabit before paying bridewealth. The second factor that informs parents’ shift in position is high fertility. Most scholarly works have linked the essence of marriage and family in Igboland to procreation in the pre-colonial and colonial era.¹⁰⁴ It seems that procreation is still cherished in the post-colonial era. The shame of pre-marital pregnancy is ameliorated by the birth of the child, who is believed to play a vital role in replicating the kinship.¹⁰⁵

b) Religion

Religion has become a tool of change with respect to some cultural practices in Igboland.¹⁰⁶ Pentecostalism, more especially, has reconstructed many Christian experiences, thereby influencing people’s attitude to marriage. For example, Christians belonging to the Deeper Life Bible Church, Assemblies of God Church, and the Lord’s Chosen churches shun alcohol and an ostentatious lifestyle. Their beliefs influence some of the items on marriage lists. Some participants noted how their religious beliefs have helped them to curtail demand for high bridewealth. One of them stated that his community has two marriage lists: one for ‘believers,’ and the other for ‘traditionalists.’ Materials on the marriage list such as tobacco, cigarettes, and

¹⁰² See also DJ Smith op cit note 14 at 145.

¹⁰³ Interview with Mr Linus Uhuo, a 42-year old businessman on 15th April 2016.

¹⁰⁴ UJ Okide ‘Same-Sex (Gay/Lesbian) Marriage and Inter-Female Hostility in Igbo Society’ (2016) 3(2) *International Journal of Humanities and Cultural Studies* 1379-1389 at 1381; E Uchendu ‘Woman-Woman Marriage in Igboland’ in AU Azodo & MN Eke (eds.) *Gender and Sexuality in African Literature and Film* (2007) 141; C Onyeji ‘Igbo Rural Women in Africa As Creative Personalities: Musical Processing of Socio-Economic Solidarity’ (2004) 1(1) *Journal of the Musical Arts in Africa* 84-101 at 91.

¹⁰⁵ J Onuche ‘Marriage and Changing Moral Values in Contemporary Nigeria’ (2014) 2(1) *Journal of Sociology and Social Work* 145-155 at 152.

¹⁰⁶ DJ Smith ‘The Igbo’ in CR Ember & M Ember (eds.) *Encyclopaedia of Sex and Gender: Men and Women in the World's Cultures* (2003) 508-509.

alcoholic drinks have been removed from the believers' lists.¹⁰⁷ In some instances, the *Umunna* demand that the cash equivalent of the above listed items be given to them.¹⁰⁸ However, 'believers' may still use their faith to resist such demands. For example, Mpa Onyi disclosed that he refused to use his money to buy things he abhors. His wife affirmed that 'believers' do insist that cigarettes and alcoholic drinks should not be included on marriage lists. They also insist that they won't spend their money on what they abhor.¹⁰⁹ An informant stated: 'the fact that some things on the list, we [Christians] don't agree with it like alcohol, cigarette that can reduce it [bridewealth].' Further to her question, I asked: what if kinsmen request that the cash equivalent of the items be given to them to purchase the items themselves? She responded: 'I can't spend my money on what I abhor, so no cash equivalent for them.'¹¹⁰ Other participants too raised religion as a bargaining tool. For example, Priscilla said, 'He [groom] is expected to come with drinks depending on his religion though. These days Christianity has entered and changed some things on the marriage lists.'¹¹¹ Nevertheless, as a bargaining tool, religion is sometimes limited by couples' desire for social recognition, which compliance with bridewealth requirements confers. In the next section, I examine the bargaining tools used by parents to manipulate the structural constraint of cultural legitimacy.

5.8.2 *Bargaining tools used by parents*

The preceding sections have shown the difficulties experienced by couples and parents during bridewealth negotiation, payment, and sharing of marriage gifts. It also revealed that most parents are part of these constraints. Against this backdrop, it is important to point out that all the bargaining tools discussed above involve parents, because bridewealth payment occurs at the family level. After religion, education is the most prominent bargaining tools used by parents. The influence of western education on marriage and bridewealth payment is significant

¹⁰⁷ Interview with Mpa Onyi (pseudonym), a 45+ year old businessman on 17th April 2016. 'Believers' here means the born-again Christians as they are addressed in Nigeria.

¹⁰⁸ See Appendix B.

¹⁰⁹ Interview with Mpa Onyi (pseudonym), a 43-year old businesswoman on 17th April 2016.

¹¹⁰ Interview with Chinasa a 32-year old entrepreneur on 22nd April 2016.

¹¹¹ Interview with Mrs Priscillia Onuoha, a 50-year old married businesswoman on 24th April 2016.

because of the values, beliefs, and habits that accompany it.¹¹² As a bargaining tool, education has a liberalising effect on people because the ideas imparted in schools sometimes contradict some traditional values. Some parents (n=10) now exhibit flexible attitudes towards bridewealth, which often support the original significance of bridewealth as a symbolic legitimator of marriage. This flexible attitude of parents is evident in their statements. While some said their daughters are not commodities for sale, others stated that high bridewealth is unnecessary because no amount of money can make up for what they spent on their daughters' upbringing, especially university expenses. Interestingly, however, this flexible attitude is also exhibited by affluent parents. It is arguable therefore that the distortion of bridewealth significance could be because of ignorance, economic wants, and opportunism, rather than cultural demands. In other words, in its present format in Igboland, bridewealth is culturally constructed. Since it is constructed, it can also be deconstructed with agency.

In this regard, the most strategic agentic tool used by parents is reserved payment of bridewealth. Reserved payment may also assume the form of token bridewealth. Other than reserved payments, some parents (n=10) ask the groom to provide items on the marriage list for the *Umunna*, leaving their own items to be provided whenever the groom can afford it. On the day of bridewealth negotiation, parents could tell their kinsmen of their agreement with the groom and plead with them to respect it. The percentage of items on the marriage list that goes to parents differs from family to family. Including *ego isi nwanyi* itself, which is paid directly to the father, the percentage ranges from 20 to 35 in most communities.

Generally, educated parents try to protect the interest of their children during bridewealth negotiations, since their children are not always present.¹¹³ Being familiar with the financial, religious, and educational worldviews of their children, they try to inculcate these views in their discussions with their kinsmen. Even though men are more successful in this endeavour than women, a female informant's elaborate description of how her lawyer sister helped to reduce the items requested for her daughter's traditional marriage rites shows that women could be more successful if they wish.¹¹⁴

¹¹² EE Okafor, et al 'Feminization of Underdevelopment in Nigeria: Some Theoretical Issues' (2007) 9(3) *Anthropologist* 237-245 at 244.

¹¹³ See MB Mulder 'Bridewealth and Its Correlates: Quantifying Changes Over Time' (1995) 36(4) *Current Anthropology* 573-603 at 576.

¹¹⁴ Interview with Mrs Victoria Ekeka, a 50-year old businesswoman on 22nd April 2016.

It goes without saying that parents face difficulties in exercising agency against the demand for high bridewealth payment. These difficulties present themselves in the form of the kinsmen insisting on the groom's provision of every item on the marriage list. It also presents itself in parents being denied their share of marriage gifts until all items on the list are provided. Nevertheless, acceptance of token bridewealth and waiver of items on marriage lists could eventually shift power relations away from the custodians of custom such as the *Umunna* and the *Umuada* to the parents. Notably, the primary reason for taking token bridewealth is to fulfil the cultural obligation for a traditional marriage ceremony. To parents who accept token bridewealth, their primary concern is for their daughter to be well cared for. For example, one parent stated that high bridewealth achieves nothing other than satisfying the financial needs of the recipients, since the stability of marriage and wellbeing of the bride cannot be determined by the quantum of bridewealth payment. This is because violence against women and divorce still occur with or without the payment of high bridewealth.¹¹⁵ The correlation of high bridewealth to marriage stability is not peculiar to Igbo society, as studies in Malawi, Ghana and South Africa have confirmed.¹¹⁶

In the light of distortions in bridewealth's meaning and significance, state and non-state laws were enacted to reduce demands for high bridewealth in South-East Nigeria. The question is whether these laws play influential roles in the bridewealth negotiation process. In what follows, I examine the role of law as an instrument of social control and a facilitator of human agency in bridewealth negotiation.

5.9 Law as a negotiating tool?

The negotiation and payment of bridewealth occurs at family level, which implies it lies outside the domain of the state. Despite this, law have been enacted to regulate this practice. As I have shown earlier, the most prominent of these laws is the Limitation of Dowry Law. I therefore

¹¹⁵ AC Izekwe *The Future of Christian Marriage among the Igbo vis-a-vis Childlessness: A Canonical cum Pastoral Study of Canon 1055* (2015) 1; DJ op cit note 14 at 129 and 131. Isiugo-Abanihe argued otherwise; see UC Isiugo-Abanihe 'Stability of marital Unions and Fertility in Nigeria' (1998) 30(1) *Journal of Biosocial Science* 33-41 at 33-35.

¹¹⁶ G Reniers 'Divorce and Remarriage in Rural Malawi' (2003) 1(6) *Demographic Research Special Collections* 175-206 at 176; BK Takyi 'Marital Instability in an African Society: Exploring the Factors that Influence Divorce Processes in Ghana' (2001) 34(1) *Sociological Focus* 77-96 at 77-82; V van der Vliet 'Traditional Husbands, Modern Wives? Constructing Marriages in a South African Township' (1991) 50(1) *African Studies* 219-241 at 219-222.

asked my research participants about their knowledge and attitude to state regulation of bridewealth and the general role of the state in reducing demands for high bridewealth. From their responses, I gained insights on the concept of law, especially in the context of marriage.

As far as bridewealth is concerned, law exists on three levels: formal (state law), semi-state (customary or traditional) law and non-state laws. A positivist idea of law as an organised set of rules for the structuring of human behaviour in society, which is enforced by state power, does not apply to certain cultural practices.¹¹⁷ When I asked research participants about state regulation of bridewealth through the Limitation of Dowry Law, they responded with disdain, derision, indignation, or ignorance. Some parents were especially irritated by the idea of state regulation of bridewealth. One parent summarised it this way: ‘I don’t see their business with it. ... The government did not train our daughters for us and should not stop us from benefiting from whatever comes out of our training by reason of marriage. They stay up there to make their laws but can’t come down to implement it.’¹¹⁸ There is a disturbing feeling of alienation from state law in many of the responses from parents. One parent stated:¹¹⁹

No, there should be no law for marriage. So, if I give out the hand of my daughter in marriage, you take me to court because I violated the law? The government is very far from us. There was once a law regulating the price of bridewealth, but nothing happened because it has become the custom of the people. You can’t tell people to change their culture overnight.

Feelings of anger at state interventions in marriage are justified by statements like the below:¹²⁰

Government did not conceive or train a child. Why should they make such laws? Marriage is not a combat, whatever happens during bridewealth negotiation is relative to the Igbo adage that *ogo mmadu wu nwanne ya* (your in-law is your relative) ... High bridewealth is not a case for the government. ... Government did not give free education, so they shouldn’t dictate how much is to be paid as bridewealth after I spend my money in this harsh economic condition raising my daughter.

¹¹⁷ AN Allott ‘The People as Law-Makers: Custom, Practice, and Public Opinion as Sources of Law in Africa and England’ (1977) 21(1) *Journal of African Law* 1-23 at 2.

¹¹⁸ Interview with Mr Joseph Ochum, a 43-year old businessman on 20th April 2016.

¹¹⁹ Interview with Chief Anselm Anyaoha, a 75-year old businessman on 13th April 2016.

¹²⁰ Interview with Mr Remmy Nwachukwu, a 60-year old businessman on 12th April 2016.

These responses resonate with the attitude of elders narrated by Ogbu,¹²¹ as well as Malinowski's proposal that law should be defined in terms of the functions it performs.¹²² Bridewealth payment in Igboland demonstrates the resiliency of customary law, its ability to resist state law, and the fact that many societies, which seemingly lack a centralised body for the enforceability of law, nevertheless observe law. Similarly, John Griffiths criticised the notion of perceiving law from a legal positivist viewpoint.¹²³ He argues that law is synonymous with social control, and social control is not the exclusive preserve of the state.¹²⁴

Kantorowicz's argument that law should not be limited to 'binding rules' because not all laws are enforceable is helpful for understanding the role of formal law in bridewealth payment.¹²⁵ As far as bridewealth payment is concerned, law should be defined as the norms that people regard as socially acceptable and beneficial to their daily needs. In this sense, bridewealth fits with Moore's theory of 'semi-autonomous social fields,' whose boundaries are recognised 'by a processual characteristic, the fact that [they] can generate rules and coerce or induce compliance to them.'¹²⁶ The institution of bridewealth payment has shown itself to be autonomous and isolated from the regulation of the state. This is evident from the laws made to regulate it, and people's defiant attitude to these laws. The custom of bridewealth payment has been able to generate rules such as marriage lists and its associated sharing formulas. It also induces compliance through its denial of social recognition for couples who fail to pay bridewealth. This denial of social recognition puts strong pressure on couples to comply, even when they have alternative choices, such as statutory law marriage or church marriage.

¹²¹ JU Ogbu 'African Bridewealth and Women's Status' (1978) 5(2) *American Ethnologist* 241–262 at 259 on foot note 4.

¹²² B Malinowski 'Introduction' in HI Hogbin (ed.) *Law and Order in Polynesia: A Study of Primitive Legal Institutions* (1934) xiii; see also F von Benda-Beckmann & K von Benda-Beckmann 'The Dynamics of Change and Continuity in Plural Legal Orders' (2006) 38(53/54) *The Journal of Legal Pluralism and Unofficial Law* 1-44 at 3.

¹²³ J Griffiths 'What is Legal Pluralism?' (1986) 18(24) *Journal of Legal Pluralism* 1-55 at 4-5.

¹²⁴ *Ibid* at 38.

¹²⁵ H Kantorowicz, et al *The Definition of Law* (1958) 16; see also E Ehrlich, *Fundamental Principles of the Sociology of Law* (1936 reprinted 1962) 24; BZ Tamanaha *Realistic Socio-Legal Theory* (1997) 68.

¹²⁶ SF Moore *Law as Process: An Anthropological Approach* (1978) 57; SF Moore 'Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study' (1973) 7(4) *Law and Society Review* 719-746 at 720.

Given my observation on the compelling nature of culture, I will discuss the role of law in bridewealth negotiation under three contexts. These are: formal (state laws), semi-state and non-state laws.

5.9.1 *Formal or state law as a negotiating tool*

To what extent can the state intervene legislatively in the private lives of its citizens? Formal laws denote the laws recognised and enforced as state law. As I have stated repeatedly, the Limitation of Dowry Law is generally disregarded. Only 20 per cent of research participants displayed awareness of this law. This 20 per cent is between the ages of 45-65 years. This is significant because it indicates that many young people are ignorant of the Dowry Law. Most of the young couples who complained about the distortion of bridewealth are unaware that the Dowry Law can work in their favour. Disregard for the Dowry Law also shows the dominant influence of customary law in personal matters. Furthermore, both participants who know of the Dowry Law and participants who are unaware of it questioned its effectiveness, especially since no one has been punished for contravening it. Here, the ineffectiveness of the Dowry Law relates, amongst other things, to the degree of emphasis placed on the courts to reject cases in which the bridewealth paid is higher than the amount prescribed in the legislation.¹²⁷ The failure of the legislation also relates to its failure to recognise the unequal power relations in bridewealth payment, since its effect is to punish both the giver (groom and his relatives) and the receiver (bride's family). The groom, and by extension the bride, violate this law – irrespective of whether they are aware of it – because of their desire for social recognition and because of their fear of destroying the family's cultural status in the community.¹²⁸

Some participants have indicated that their willingness or otherwise to abide by the rules of the custom are constrained by the need not to lose respect in the face of the community. This was raised when participants were asked if they would consider giving out their daughters in marriage without the knowledge of the *Umunna*, whom they had admitted contribute to the demand of high bridewealth. One participant said: 'Yes, he can [give out his daughter in

¹²⁷ See *Okpanum vs Okpanum* (1973) 2 ECSLR 561; *Okeke vs Okoye* Suit No. 0/26A/1965 (Unreported) High Court Onitsha, March 26, 1966; See also MO Izunwa 'A Critique of Certain Aspects of the Grounds, Procedure and Reliefs Attaching to Customary Divorce Law in Southern Nigeria' (2015) 7(5) *Journal of Law and Conflict Resolution* 31-38 at 35.

¹²⁸ B Rwezaura, et al 'Parting the Long Grass: Revealing and Reconceptualising the African Family' (1995) 35 *Journal of Legal Pluralism and Unofficial Law* 25- 74 at 43.

marriage without the *Umunna*] but it is not proper. In case of any problem the man will run to his kinsmen, so he is supposed to involve them. In fact, if he [father of the bride] has enough money, he can provide the items on the list for kinsmen whilst the in-laws refund later.’¹²⁹ Another said, ‘No, but if it was left to me I would say let them do that without the kinsmen. The items on the list of *Umunna* are the reason for the demand of high bridewealth.’¹³⁰ Yet another said, ‘No unless you are an outcast, or have been banished. Marriage is a thing of joy and should be extended to people. These kinsmen will stand as a witness that he has given out his daughter in marriage to this family. It shows he is alone [if he gives her out without them].’¹³¹ The self-inherent flaws of the Dowry Law thus work against its effectiveness. Research participants’ reaction to it suggests that people will not hesitate to disregard state law whenever it affects their economic well-being, and so long as compliance is not enforced.

Howard’s ‘full-belly’ thesis states that ‘a man’s belly must be full before he can indulge in the luxury of worrying about his political freedom.’¹³² What this means is that the efficacy of law is lost if basic needs, regarded also as human rights, are not met. The full-belly thesis has implication for the interaction of multiple legal systems. Since payment of bridewealth and its negotiation process is a traditional affair, almost all participants stated that it should be regulated traditionally. Thus, the call for internal regulation by participants signifies the need for a bottom-up approach to law involving local authorities such as the traditional leaders. The next two categories of law will enable us to view law in its pluralistic form.

5.9.2 *Semi-state law as a negotiating tool*

The role of state law in the regulation of bridewealth payment in South-East Nigeria is clearly questioned by my research participants. However, the role of semi-state law is not so clear. Semi-state laws are mainly regulations by traditional rulers, whose legitimacy is recognised by

¹²⁹ Interview with Mr Remmy Nwachukwu, a 60-year old businessman on 12th April 2016.

¹³⁰ Interview with Mr Akwarandu Chukwudike, a 35-year old businessman on 28th April 2016.

¹³¹ Interview with Pastor Samuel Onuoha a 58-year old married man on 22nd April 2016.

¹³² R Howard ‘The Full-Belly Thesis: Should Economic Rights Take Priority over Civil and Political Rights - Evidence from Sub-Saharan Africa (1983) 5(4) *Human Rights Quarterly* 467-490 at 469; see also F Stewart ‘Basic Needs Strategies, Human Rights, and the Right to Development’ (1989) 11(3) *Human Rights Quarterly* 347-374 at 347-350; J Donnelly ‘Recent Trends in UN Human Rights Activity: Description and Polemic’ (1981) 35(4) *International Organization* 633-655 at 634; P Streeten ‘Basic Needs and Human Rights’ (1980) 8(2) *World Development* 107-111 at 107-109.

both the state and the concerned communities.¹³³ As one research participants disclosed, in some communities in Ebonyi State, some traditional rulers made laws regulating the quantum of bridewealth. However, in Isu community, obedience to this regulation lasted only up to the traditional ruler's death, after which people reverted to practices that pleased them. His successor did not bother to enforce the regulation. A traditional ruler revealed that they make laws only if there are complaints from the people.¹³⁴ He admitted the difficulty of limiting bridewealth, given that it is not uniform and varies from family to family. Accordingly, its reduction can only be achieved by the *Umunna*. However, his wife added that 'it is not about making the law; it is about obeying it. People do what they want since it is their children and they have the right to request any amount that pleases them. Families and elders of the community should look into [the issue].'¹³⁵ In contra distinction with formal and semi-state laws, non-state laws or customs are clearly effective in bridewealth regulation, as I show in the next section.

5.9.3 *Non-state law as a negotiating tool*

To what extent are non-state laws valid? The answer to this question obviously depends on the person making the evaluation, since people subject to such laws have little doubt about its validity. As a normative category, non-state law is still contested by scholars.¹³⁶ Ehrlich has termed the non-state norms that regulate people's daily lives as 'living law'.¹³⁷ As he put it, living law is 'the law which dominates life itself even though it has not been posited in legal propositions.'¹³⁸ He went further to list the sources of this law as custom and usages, 'all associations ... both the one recognised, overlooked and disapproved by state law.'¹³⁹

¹³³ Traditional rulers receive staff of office from the state government and are therefore somehow part of the state legal system. See also RO Igwebuike *The Chieftaincy Institution and Government Recognised Traditional Rulers in Anambra State* (1994); E Nwaubani 'Chieftaincy among the Igbo: A Guest on the Center-Stage' (1994) 27(2) *The International Journal of African Historical Studies* 347-371 at 354-370.

¹³⁴ Interview with HRH Ogamba, a 75-year-old Principal on 23rd April 2016.

¹³⁵ Interview with HRH Ugoeze, a 73-year old Teacher on 23rd April 2016.

¹³⁶ D Sturm 'Three Contexts of Law' (1967) 47(2) *The Journal of Religion* 127-145 at 127-130.

¹³⁷ E Ehrlich (trans. Walter L. Moll) *The Fundamental Principles of the Sociology of Law* (1962) xvii.

¹³⁸ *Ibid* at 493.

¹³⁹ *Ibid*.

Advancing this further, Moore, in her semi-autonomous field theory, has noted principles, rules and procedures that proceed not from state or state-recognised authorities, but from semi-autonomous fields such as kinship groups. In the context of bridewealth, prominent kinship groups would be the *Umunna* and the family, which regulate patterns of behaviour in a manner that induces compliance. Furthermore, neo-institutionalists such as O'Donnell and North have argued that non-state laws have the power to shape behaviour.¹⁴⁰ In the context of bridewealth payment, the power of non-state laws is evident in the ability of the *Umunna* to determine the marriage list in accordance with customs or traditions. It is also evident in the right of the bride's father to determine the quantum of the *ego ishi nwanyi*.¹⁴¹ There is little doubt that customs or non-state laws are obeyed widely in communities.¹⁴² Although disobedience to these laws may not really lead to state-like sanctions, other forms of punishment, such as denial of rights and privileges in the community are just as effective as state sanctions.¹⁴³ The activities of parents using bargaining tools are certainly more effective than state laws in reducing high bridewealth. Similarly, the power of the *Umunna* to regulate traditional marriage activities and maintain high bridewealth is more effective than state law. In all the categories of laws described above, the dynamics of power relations is evident in the denial of social recognition and exclusion of couples from participating in decision-making that affects them.

5.10 Chapter findings

My examination of the key actors in bridewealth negotiation, their roles, influences, and constraints, produced the following findings on how socioeconomic needs inform agency.

Firstly, research participants, especially intending spouses, are generally unhappy about demands for high bridewealth payment. They complain that high bridewealth prevents couples

¹⁴⁰ DC North *Institutions, Institutional Change and Economic Performance* (1990) 3-4; G O'Donnell, 'Illusions about Consolidation' (1996) 7(2) *Journal of Democracy* 32-51 at 34; see also M Bratton 'Formal versus Informal Institutions in Africa' (2007) 18(3) *Journal of Democracy* 96-110 at 96-98; H Gretchen & S Levitsky 'Informal Institutions and Comparative Politics: A Research Agenda' (2004) 2(4) *Perspectives on Politics* 725-740 at 727.

¹⁴¹ AN Allot 'The People as Law-Makers: Custom, Practice and Public Opinion as Sources of Law in Africa and England' (1977) 21(1) *Journal of African Law* 1-23 at 8.

¹⁴² *Ibid* at 8.

¹⁴³ L Hans-Joachim 'Informal Institutions and Democracy' (2000) 7(4) *Democratization* 21-50 at 24-26; CR Williamson 'Informal Institutions Rule: Institutional Arrangements and Economic Performance' (2009) 139 *Public Choice* 371-387 at 383.

from marrying early, since they must work long and hard to raise the funds for bridewealth payment. They also complain that high bridewealth is forcing couples to cohabit, contrary to cultural values. However, despite their unhappiness over high bridewealth, couples and parents are constrained in their ability to enforce changes in its quantum. Although couples are inclined to challenge cultural institutions through financial coercion, cohabitation, education, and premarital pregnancies, they are mindful of the social legitimacy conferred by bridewealth payment. Since their agency in this regard is limited by their need for social legitimacy, they are compelled to challenge high bridewealth payment through their parents and prospective in-laws. Indeed, research participants disclosed that some parents prevail on the *Umunna* to reduce the items on the marriage list to ensure their children's marriage is not derailed.

Secondly, people's exercise of agency is leading to clear shifts in attitudes towards bridewealth negotiation and payment. The most effective tool of agency in this regard is cohabitation and premarital pregnancy. Since Igbo society cherishes chastity, families rarely demand high bridewealth for pregnant brides. Accordingly, brides could use the threat of elopement, cohabitation and pregnancy to reduce high bridewealth, depending on the extent to which they are willing to endure the social ridicule resulting from their actions. Furthermore, some parents who belong to Christian denominations, such as the Lord's Chosen and Deeper Life, exert influence on the marriage list by insisting on the removal of items such as alcohol, tobacco, and cigarettes. In some cases, they even object to the monetisation of these items, arguing that these contravene their religious values. Also, some parents resort to accepting a token sum as bridewealth from prospective sons-in-law as a means of limiting high bridewealth. Furthermore, they often waive from the marriage list some items which are due to them to reduce the financial burden on their in-laws. The acceptance of token sums, which is becoming widespread, is informed by common sense. It enables fathers to build a harmonious relationship with their sons-in laws, bearing in mind the overall emotional and economic benefits of such a relationship. The acceptance of token sums as bridewealth demonstrates the ability of structure and agency to reach a compromise or complement each other. Above all, it demonstrates how needs-driven agency deconstructs structure. Over time, the pruning of marriage lists and acceptance of token sums as bridewealth could reconstruct the meaning and significance of bridewealth payment in South-East Nigeria.

Thirdly, the very limited role of state law in reducing demand for high bridewealth is significant. While most research participants believe that the state does not have a role to play in reducing high bridewealth because of its failure to provide socio-economic amenities, they

emphasised the need for parents, elders, the *Umunna*, and traditional leaders to curb high bridewealth demands. Their opinions demonstrate people's preference for a bottom-up approach to cultural issues. They also demonstrate that structure is constructed and sustained by the manner people employ their agency. In turn, the exercise of agency is informed by needs and interests, for example, the desire for the emotional satisfaction of marriage. Accordingly, legislation, an important aspect of structure, should be responsive to the ways people exercise agency. In other words, structure should follow agency because widespread practice accounts for shifts in attitudes and behaviours, which may then be recognised by legislation. As people's disdain for the Limitation of Dowry Law demonstrated, ignoring the intricate link between structure and agency is unhealthy for the efficacy of the law.

The remaining two chapters of this dissertation will highlight the significance of bridewealth negotiation for policy implementation and scholarly understandings of power relations within the structure and agency interplay.

Chapter Six: Significance of the structure-agency interplay

6.1 Introduction

The central question of how social order is created may never receive a definitive answer due to the diverse means of interpreting social phenomena. Nevertheless, structure presents itself in many forms, which give clues to the creation of social order. It manifests in law, culture, education, and religion. However, scholars dispute the extent to which structure may be regarded as the determinant of social behaviour. On the one hand, structure has been claimed to possess a constraining influence on behaviour.¹ On the other hand, it has been argued to be shaped by agency, which manifests as human capabilities, reasoning, and behavioural choices. I argue that the structure-agency interplay should be seen from a needs-based perspective. A needs-based approach sees the interplay of agency and bridewealth practices primarily from the perspective of their cultural and economic motivations. Generally, it sees the interaction of structure and agency as a process of logical assessments, which are driven by socio-economic needs. Needs-based assessments often lead to dialogue, resistance, or acquiescence to structural demands by individuals. In this sense, a needs-based approach shares some features of the morphogenesis and bargaining model of rational choice theories. In the context of this study, it reveals interdependence between structure and agency, which is evident in the complex web linking the custodians of culture with agentic tools such as wealth, religion, and education.

In examining the motivations and manifestations of agency in structural construction, the preceding chapter showed how individuals find ways to navigate cultural constraints and exploit gaps in state law through the bargaining tools at their disposal. In this chapter, I utilise a needs-based approach as an analytical tool for examining the structure-agency interaction in the negotiation process of bridewealth payment. The usefulness of this approach lies in the complementary or interdependent nature of the socioeconomic motives that drive bridewealth negotiation. Specifically, it views the interplay of culture and bridewealth practices from the perspective of their cultural, economic, religious, and legal motivations. Given that these socio-economic motives are expressed by varying individuals acting within their social status and bargaining power, a needs-based approach to power relations is significant for policy

¹ D Layder 'Power, Structure and Agency' (1985) 15(2) *Journal for the Theory of Social Behaviour* 131-149 at 131.

formulation and implementation. In the words of Allot, '[i]t is the law-givers ... who make the law; it is the law-keepers ... who sustain it; and it is the law breakers ... who change the law and make new law.'² As evident in the failure of the Dowry Law, Allot's statement reveals how people's normative attitude to formal and informal laws helps in constructing and deconstructing structure. This chapter therefore argues that a needs-based approach to bridewealth negotiation is best suited to the structure-agency interaction. In what follows, I distil my theoretical framework from mainstream theories and situate it within the bridewealth negotiation process in South-East Nigeria.

6.2 Structure and agency: diametric or complementary?

The needs-based theoretical framework, which I use in this thesis, implies that structure and agency cannot be examined in isolation. In this sense, it resembles the complementarity view of structure-agency interaction.³ Emphasising only the influence of structure disregards the influence of agency on structural development. On the other hand, highlighting the importance of agency alone limits the influence of structural forces in shaping behaviour. For example, people's need for the social legitimacy conferred by bridewealth payment is a strong influence on their behaviour. This influence breeds conformity to culture, thereby undermining the ability of couples to manipulate the structural institutions that regulate bridewealth payment. However, since marriage creates alliances between families, couples may still find ways to manipulate cultural constraints using tools such as economic coercion, co-habitation, and religion. These tools are products of needs assessments by prospective spouses and their families, which weigh the benefits and harms of particular courses of action. Couples' ability to navigate cultural institutions show that the relationship between structure and agency is not diametric. I will illustrate the merit of a needs-based approach in the non-diametric relationship between structure and agency.

² AN Allot 'The People as Law-Makers: Custom, Practice and Public Opinion as Sources of Law in Africa and England' (1977) 21(1) *Journal of African Law* 1-23 at 12.

³ A Giddens *The Consequences of Modernity* (1990) 174-175; U Beck, A Giddens & L Scott *Reflexive Modernization. Politics, Tradition and Aesthetics in the Modern Social Order* (1994) 1-3; P Hoggett 'Agency, Rationality and Social Policy' (2001) 30(1) *Journal of Social Policy* 37-56 at 40; MS Archer *Realist Social Theory: The Morphogenetic Approach* (1995) 14; A Herepath 'In the Loop: A Realist Approach to Structure and Agency in the Practice of Strategy' (2014) 35(6) *Organization Studies* 857-879 at 859-861; A Giddens *Modernity and Self-Identity: Self and Society in the Late Modern Age* (1991) 20-21.

6.3 Needs-based approach and complementarity

In explaining the structuration theory of social practices, Giddens presents structure as inseparable from agency.⁴ He argues that structure is a process that is both constraining and enabling. Structure's processual characteristics entail an interaction of norms, interests, and power.⁵ In other words, behaviour is not determined by structural forces alone, since individuals' actions are driven by their rational needs and interests.⁶ In the context of bridewealth payment, structure is 'both the medium and outcome of practices' that sustain the culture of bridewealth.⁷ As a medium and outcome, structure is influenced by needs assessments conducted by varying actors, who proceed to adopt the best course of action on a particular issue. In practice, the freedom to choose the best course of action is constrained or enabled by varying motives, some of which are not altruistic. Irrespective of motives, a needs assessment brings together structural forces and human willpower, thus demonstrating the duality of the structure-agency interaction. This duality is evident in bridewealth negotiation.

When families demand high bridewealth payment using the banner of tradition, prospective spouses and their parents have the choice to resist or comply. By complying, they fail to exercise their agency, thereby contributing to the sustenance of structure. By resisting, they exercise their agency and defy tradition. In either of these scenarios, needs assessments are involved. This means that individuals, as knowledgeable agents, are not pawns of cultural forces, for they presumably possess the ability to negotiate and renegotiate practices suitable to their interests.⁸ For example, grooms used to be excluded from bridewealth negotiation. Their increasing participation in these negotiations demonstrates their vested interest in the negotiations as both providers of the bridewealth and subjects of the marriage discussion. Once

⁴ A Giddens *New Rules of Sociological Method: A Positive Critique of Interpretative Sociologies* (1993) 122-123 and 169; SR Barley & PS Tolbert 'Institutionalization and Structuration: Studying the Links between Action and Institution' (1997) 18(1) *Organization Studies* 93-117 at 94, 97.

⁵ A Giddens op cit note 4 at 169.

⁶ A Giddens *The Constitution of Society. Outline of the Theory of Structuration* (1984) 25; A Giddens *Central Problems in Social Theory: Action, Structure and Contradiction in Social Analysis* (1979) 3.

⁷ A Giddens (1979) op cit note 6 at 5.

⁸ J Yates 'Using Giddens' Structuration Theory to Inform Business History' (1997) 26(1) *Business and Economic History* 159-183 at 161; SR Barley & PS Tolbert op cit note 4 at 93-94; A Giddens op cit note 4 at 122-123; see also J Einspahr 'Structural Domination and Structural Freedom: A Feminist Perspective' (2010) 94(1) *Feminist Review* 1-19 at 5.

again, needs assessment is involved in grooms' increasing participation in bridewealth negotiation. Similarly, prospective spouses are increasing their voices in the contents of marriage lists by seeking justifications for some marriage requirements. They even succeed in pruning the list, in some cases using persuasion, coercion, and threats of co-habitation, which has an attendant risk of pre-marital pregnancy. As a participant explained: 'If we want each other but have no money to provide the items [on the marriage list], and we have begged the kinsmen to take what we have, what do you think we will do? We will leave them and their tradition; they will be the ones to beg us to come back.'⁹ This affirmation of agency shows that structure is not inflexible, since it can be questioned and manipulated by individuals with sufficient willpower and socio-economic abilities. Above all, it demonstrates the importance of approaching the structure-agency interaction from a needs-based perspective.

The usefulness of a needs-based approach finds support in Giddens' ontological framework for social behaviour.¹⁰ In sociology, ontology denotes the conceptual investigation of the nature of human action, social institutions, and interrelations between actions and institutions.¹¹ Institutions and laws do not work 'behind the backs of social actors' because social actors not only have knowledge of their operations, they are also involved in their successes and failures.¹² For example, research participants disclosed that some wealthy parents assist their prospective sons-in-law to satisfy the requirements in the marriage list. This assistance is usually by waiving items on the list, which are customarily due to the bride's parents. But sometimes, this assistance also includes providing some of the items demanded by her *Umunna*. In this regard, an informant stated: 'The parents ... can even pay for some of the things [on the marriage list]. They can request that their in-law provide the things for the *Umunna* and not theirs. For example, my mother-in law did that to reduce the items [on the marriage list].'¹³ Parents' contribution to the bridewealth of their daughters flows from their

⁹ Interview with Mrs Ada Azuka, a 35-year-old housewife on 2nd April 2016.

¹⁰ See also C Wight 'They Shoot Dead Horses Don't They? Locating Agency in the Agent-Structure Problematique' (1999) 5(1) *European Journal of International Relations* 109-142 at 125.

¹¹ C Bryant & D Jary *Giddens' Theory of Structuration: A Critical Appreciation* (1991) 1-2; P Furlong & D Marsh, 'A Skin Not a Sweater: Ontology and Epistemology in Political Science' in D Marsh & G Stoker (eds.) *Theory and Methods in Political Science* (3rd edition) (2010) 185; T Honderic *The Oxford Companion to Philosophy* (2005) 670.

¹² A Giddens op cit note 6 at 71, 255.

¹³ Interview with Mr Chukwuma, a 37-year-old lecturer on 22nd April 2016.

desire for their daughters to marry, a desire that is obviously linked to a needs assessment of the social legitimacy conferred by marriage in South-East Nigeria.

Having shown how structure is inseparable from agency in the bridewealth negotiation process, I proceed to demonstrate how a needs-based approach to the structure-agency interaction resonates with theories on structure-agency interaction and my field findings.

6.4 Needs-based approach and temporality

Since the inseparability of structure and agency fails to accommodate the primacy of time in social analysis, Archer proposed the notion of ‘analytical dualism’.¹⁴ She demonstrated how social change incorporates structured human relations, actions, and ideas over time.¹⁵ She argued that because structure precedes agency in the construction and reproduction of institutions, the two should be analysed separately to account for temporality in institutional construction.¹⁶ A needs-based approach avoids the need to account for time. Both structure and agency are shaped, informed, and altered by socio-economic needs, which transcend time. Indeed, social structures may come and go, but needs remain. The structure-agency interaction therefore requires a needs-based theoretical framework, since it easily accommodates temporality. In this sense of accommodating time, needs-based approach shares similarities with Buckley’s morphogenetic approach.¹⁷

Borrowed from biology, and literally meaning change in form, morphogenesis seeks to account for the changes and developments that occur in structure over time. The time element is important to needs assessment, since structure has neither pre-set form nor resilient features capable of resisting sustained pressure from human agency. An example of how a needs-based approach accommodates temporality is the history of bridewealth distortion. Research participants revealed how socio-economic changes induced mass penury and opportunism, which are the major influences on bridewealth distortion, as well as the drivers of needs assessments.

¹⁴ M Archer op cit note 3 at 165-172.

¹⁵ MS Archer *Social Morphogenesis* (2013) 4 -5.

¹⁶ Ibid.

¹⁷ W Buckley *Sociology and Modern Systems Theory* (1967) 58.

A needs-based approach is also useful for deconstructing social structures over time. For example, couples are increasingly using the cultural coercion of premarital pregnancy to combat high bridewealth demands. In the words of an informant: ‘Things are really changing now with urbanisation and movement of people. Women live with whoever has agreed to marry them. Some men go for introduction, take the [marriage] list and disappear. They continue to cohabit together ... and [thereby] force the hand of culture.’¹⁸

In sum, a needs-based approach shows how the behavioural changes produced by socio-economic needs over time contribute to the emergence of new structures. This approach fits well with the dualist view of structure and agency interaction.¹⁹ In the context of bridewealth, dualism is useful for understanding how socio-economic needs drive the agency of prospective spouses to erode the traditions governing the marriage list. It also sheds light on the role of temporality in the construction and deconstruction of structure. For example, cultural enlightenment gained from education is helping couples to question the relevance of some marriage requirements to contemporary social conditions.²⁰ These couples argue that some marriage practices hide under the banner of tradition, whereas the practices are really motivated by economic or psychological motives. Commenting on extravagant items on marriage lists, an informant, Mrs Azuka stated: ‘Sometimes the [marriage] list is used to punish the family or when they don’t like the man [groom] and want to frustrate him.’²¹

In recognition of the importance of temporality, Archer argues that morphogenesis is characterised by a cycle comprising of three phases: cultural conditioning, socio-cultural interaction, and social elaboration.²² While I concede that these three phases are responsible for the emergence of social change, I argue that needs assessment is their common denominator.

¹⁸ Interview with Chief IO Joshua on 12th April 2016 at Ogbaru Main market.

¹⁹ MS Archer ‘Morphogenesis versus Structuration: On Combining Structure and Action’ (1982) 33(4) *The British Journal of Sociology* 455-483 at 462.

²⁰ AK Omideyi & AK Omidey ‘Age at Marriage and Marital Fertility in Eastern Nigeria’ (1983) 39(1/4) *Genus* 141-154 at 143. See also A Bandura ‘Human Agency in Social Cognitive Theory’ (1989) 44(9) *American psychologist* 1175 –1184 at 1175.

²¹ Interview with Mrs Ada Azuka, a 35-year-old housewife on 2nd April 2016.

²² MS Archer op cit note 3 at 44, 101.

6.4.1 Needs assessment and the three cycles of temporality

In the negotiation process of bridewealth payment, socio-economic needs reveal the ways cultural factors succeed in constraining agency, eventually creating cultural conditioning. These cultural constraints consist primarily of the desire of prospective spouses to respect their elders and receive the social legitimacy conferred by bridewealth payment. In turn, the desire for social legitimacy is fuelled by acculturation, or what structuration theorists call memory traces.²³ Memory traces are individuals' knowledge of society, which they draw on for their performance of daily tasks. However, this 'knowledgeability' does not form in isolation of socio-economic needs. In the context of bridewealth payment, individuals' knowledgeability refers to their beliefs about traditions, their motivations for obeying it,²⁴ and above all, the socio-economic needs that drive their motivations. Knowledgeability helps to explain people's flagrant disregard for the Dowry Law. People's attitude to this law arguably demonstrates that a neglect of agents' socio-economic needs results in disdain for state law.²⁵ In a similar finding, Yarbrough's detailed ethnographic study of rural Kwazulu-Natal reveals the socio-economic factors that underline the persistence of bridewealth payment.²⁶ In describing why 'ilobolo remains the primary legitimating' mark of marriage and people's disdain for state recognition, he hinted at a needs-based approach: 'Without social action, there is no law. It follows from this that not only law's existence but also its authority is produced through social action.'²⁷ In the context of Yarbrough's study, social action is impossible without needs assessment, which is driven by cultural, emotional, economic, legal, and even religious elements.

Socio-cultural interaction, which is the second element in the cycles of temporality, also reflects needs assessment. Here, bridewealth payment reveals structure as both the medium of habitual action and the outcome of behavioural changes. The mutually dependent structure-

²³ A Giddens (1979) op cit note 6 at 5.

²⁴ Ibid.

²⁵ MS Archer *Making Our Way Through the World: Human Reflexivity and Social Mobility* (2007) 81, 201 and 232; MS Archer *Being Human: The Problem of Agency* (2000) 195-206; E Goffman 'The Interaction Order: American Sociological Association, 1982 Presidential Address' (1983) 48(1) *American Sociological Review* 1-17 at 3.

²⁶ M Yarbrough 'Very Long Engagements: Legal Consciousness and the Persistent Authority of Bridewealth in a South African Community' (2014) *New York Law School Review* <<http://www.nylslawreview.com/wp-content/uploads/sites/16/2014/10/Yarbrough.pdf>> (last accessed online on 12 December 2017).

²⁷ Ibid at 18-19.

agency interaction involved here cannot be isolated from socio-economic needs. As argued by Frohlich et al: 'Structure is not possible without action because action reproduces structure. Action is not possible without structure because action begins with a given structure that was the result of prior actions.'²⁸ This description of structure's close link with agency reflects the informed, needs-driven actions of individuals involved in the negotiation process of bridewealth payment in South-East Nigeria. In this sense, the divide presented by dualist scholars does not fit a needs-based approach, since it conflicts with the dynamism of bridewealth payment. Dualism implies that prospective spouses and their parents have little or no influence in shaping the contents of the marriage list. However, the needs-driven forms of agency employed by prospective spouses and their parents contradict dualism. Despite the insistence of elders, factors such as religious pressure (of both parents and prospective spouses), education pressure (of both parents and prospective spouses), and wealth pressure, play significant roles in bridewealth negotiation. As explained in preceding chapters, there is a generational shift in the onus to pay bridewealth from the family to the groom. This needs-informed shift recognises that bridewealth payment has become more individualised than the joint effort it used to be in the agrarian past.²⁹ Also, there is increased autonomy among women and men in their choice of marriage partners. By promoting the influence of structure in the construction of individuals' marriage motivations, therefore, dualism downplays the role of socio-economic needs in shaping the ability of agency to (re)construct social institutions.³⁰ The next section demonstrates how socio-economic needs compel individuals to construct the tradition of high bridewealth.

²⁸ KL Frohlich, et al 'A Theoretical Proposal for the Relationship Between Context and Disease' (2001) 23(6) *Sociology of Health & Illness* 776-797 at 788; see also G Veenstra & PJ Burnett 'A Relational Approach to Health Practices: Towards Transcending the Agency-Structure Divide' (2014) 36(2) *Sociology of Health & Illness* 187-198 at 191.

²⁹ See also J Knight & J Ensminger 'Conflict Over Changing Social Norms: Bargaining, Ideology, and Enforcement' in MC Brinton & V Nee (eds.) *The New Institutionalism in Sociology* (1998) 106; J Ensminger & J Knight 'Changing Social Norms Common Property, Bridewealth, and Clan Exogamy' (1997) 38(1) *Current Anthropology* 1-24 at 4-5.

³⁰ M Gorton 'Overcoming the Structure-Agency Divide in Small Business Research' (2000) 6(5) *International Journal of Entrepreneurial Behavior and Research* 276-292 at 276.

6.5 Bridewealth and structural construction

The interplay of structure and agency in the negotiation process of bridewealth payment reveals the role of the clan in the emergence of structural change, notably high bridewealth. While this emergence may be constructive or deconstructive, it is driven by socio-economic needs. For example, parents are using the agency tools identified in chapter five to reinvent bridewealth's symbolism. This reinvention, which is unconscious in many cases, consists of brides' fathers accepting a token sum from their prospective sons-in-law as bridewealth. Token bridewealth acceptances reflect the desire of parents for their daughters to marry and acquire social legitimacy. It constitutes reinvention of culture, since most of the practices surrounding the marriage list are constructed. As I showed in chapter three, bridewealth used to be symbolic, while the items in the marriage list were not as commercialised as they are today. My research informants provide clear evidence that the contents of the marriage list are constructed by the kindred. This construction is driven by motivations such as opportunism, economic wants, dislike for the potential groom's place of origin, and revenge against communities and families deemed to be unfriendly because of their high demand for bridewealth. Interestingly, these motivations owe more to the socio-economic needs of individuals (brides' fathers) and the kindred (extended family) than to traditional demands. Thus, needs-driven human agency results in the structural construction of high bridewealth, thereby questioning the constraining influence structure is supposed to wield over agency. This peculiar role of agency in structural construction demonstrates the usefulness of a needs-based approach to the structure-agency interaction, since it accounts for variations in structural manifestation. In the words of an informant, 'the [marriage] list depends on the kindred and not the village entirely. The village does not have a fixed amount as bridewealth.'³¹ Obviously, this statement implies that structure, in the context of bridewealth, does not manifest uniformly. Rather, structure should be treated on a case-by-case basis, for which a needs-based approach is best suited. For example, many research participants denied that high bridewealth is prevalent in South-East Nigeria. Rather, they stressed that the exorbitant demands of some communities in Mbano and Mbaise, Imo State, and Bende and Ngwa in Abia State, are responsible for the notorious reputation of South-East Nigeria for high bridewealth.

³¹ Interview with Mr Remmy Nwachukwu, a 60-year-old businessman on 12th April 2016.

In a deconstructive sense, therefore, parents of prospective couples reshape the constructed tradition of high bridewealth by pruning or eliminating some requirements on the marriage list. They conduct this pruning based on their desire to ensure that their daughters marry, or to cement good relationships with their in-laws, or because of their religious beliefs. Whatever the motivation, needs assessment is involved, which is driven by socio-economic factors. For example, a faith-based deconstruction is emerging. It consists of refusing to provide cigarettes and alcohol on the marriage list because these items contradict the moral values of the groom. This trend illustrates Adam Smith's famous remark about the symbiotic, and arguably, needs-based nature of structural construction: 'Give me that which I want, and you shall have what you want'.³²

Furthermore, the influence of socio-economic needs in structural construction is evident in couples' choice of marriage partners, parents' religious influence on marriage lists, and the influence of the groom on the bridewealth negotiation due. Grooms' influence on bridewealth negotiation is a logical product of the now individualised nature of bridewealth capital. Given the needs-driven manner agency (re)constructs structure in bridewealth payment, there should be a rethinking of the influence of agency on cultural institutions. This is because changes in the significance of bridewealth from symbolic to commercial reflect the socio-economic needs of individuals and families who added excessive items on the marriage list. This needs significance is manifest in the deconstructionist or re-inventive actions of individuals dissatisfied with rising rates of late marriage and cohabitation due to high bridewealth. As affirmed by some studies of the structure-agency interaction, there are hardly altered social standards that are not driven by behavioural needs.³³

Having shown the value of a needs-based approach to structural construction, I turn to the significance of this approach for state laws and policies on marriage in South-East Nigeria.

6.6 Needs-based approach and legal pluralism

A needs-based view of the structure-agency interaction sheds light on the interaction of laws, also referred to as legal pluralism. The dualist model of structure and agency interaction pays

³² A Smith *The Wealth of Nations* (2007) 20.

³³ F Stewart *Capabilities and Human Development: Beyond the Individual—The Critical Role of Social Institutions and Social Competencies* (2013) 6 -11 and 15. See also LA Obiora 'Reconsidering African Customary Law' (1993) 17 *Legal studies forum* 217- 252 at 221-227.

insufficient attention to the reality of normative co-existence.³⁴ Legal pluralism thrives on structure, which may be represented by the state. As Webber noted, legal pluralism insists that ‘law is not simply what the state decrees, but is subject to, indeed is often constituted by normative claims that take shape within specific contexts of social interaction.’³⁵ Here, state law may be regarded as structure, while agency may be regarded as an aspect of non-state law. The activities of individuals do not always conform to structural demands, since there is a multiplicity of laws from local to state levels, and people have understandings of law that are different from state law. Moreover, socio-economic needs strongly influence people’s application of, or adherence to law. For example, the Dowry Law, which sought to regulate bridewealth, is widely disregarded because of the economic benefits of high bridewealth payments. Indeed, some communities have bridewealth laws or regulations enacted by their traditional rulers; others have regulations for bridewealth payment made by age group leaders, while individuals and families sometimes produce their own regulations. These regulations make competing claims of authority on behaviour and often impose demands that conflict with the Dowry Law. Agents in the named social groups protect and wield power and influence over their bridewealth practices because of their varying socio-economic needs, obligations, and beliefs. The mere existence of varying bridewealth regulations, which are enforced in a peaceful manner, demonstrates the co-operative relationship between agency and cultural institutions. Although this co-operation is traceable to the legitimacy and control of the enforcing bodies over marriage and other cultural issues, socio-economic needs also play a role. Specifically, this role, as well as the actors who exercise agency, act in accordance with needs-based economic, religious, and cultural motives. However, a needs-based approach to structure-agency interaction in bridewealth payment is a complex matrix.

6.6.1 Complexity of needs-based approach

Despite the Dowry Law, regulations by traditional rulers, and proclamations by age groups, many families insist on determining the modus and quantum of bridewealth payment. Almost all the participants disclosed that regulation of bridewealth payment is not within the confines

³⁴ BZ Tamanaha ‘Understanding Legal Pluralism: Past to Present, Local to Global’ (2008) 30 *Sydney Law Review* 375-411 at 400.

³⁵ J Webber ‘Legal Pluralism and Human Agency’ (2006) 44(1) *Osgoode Hall Law Journal* 167-198 at 168.

of the government because it is a family issue. However, the socio-economic motivations for flouting the Dowry Law differ. The groom, for example, should be disposed to obeying the Dowry Law because it favours him financially. However, he is obliged to abide by the traditional requirements of his in-laws to marry their daughter.³⁶ Moreover, he is heavily influenced by his affection for the bride – that is his desire to marry her. In making these needs assessments, he is also influenced by his personal laws and philosophy.³⁷ These assessments thus present a complex web that make it difficult to predict the course of human agency in its interaction with structure. In the end, state law (structure) and community regulations (partly structure and agency) might succumb to the groom's emotional and financial abilities.³⁸ The word 'might' is deliberate because laws, customs, and rules are subject to needs assessment, negotiation, and change.³⁹ While customary laws are known to adapt to socio-economic changes, state laws can also change in response to customary or religious laws.⁴⁰ This needs-driven mutual influence demonstrates that structure and agency are two sides of a coin with complex effects on each other.⁴¹ Etzioni affirmed the complexity of this interdependent relationship as follows: 'a basic observation of sociology and psychology is that the individual and the community 'penetrate' one another and require one another, and that individuals are not able to function without deep links to others'.⁴² Having shown the significance of a needs-based approach for legal pluralism, I turn to its manifestation in gender relations.

6.7 Needs-based approach and gender relations

The dualist perception of structure and agency paints structure as the author and moulder of behaviour, while agency is at its receiving end. In the context of bridewealth payment, dualism highlights the prominence of men as the determinants and benefactors of bridewealth

³⁶ JU Ogbu 'African Bridewealth and Women's Status' (1978) 5(2) *American Ethnologist* 241-262 at 246.

³⁷ See also J Ensminger & J Knight (1998) op cit note 29 at 107-120.

³⁸ This argument is not exclusive to Nigeria. See for example, E Shils *Tradition* (1981) 14-15.

³⁹ MG McFadden 'Resistance to Schooling and Educational Outcomes: Questions of Structure and Agency' (1995) 16(3) *British Journal of Sociology of Education* 293-308 at 299.

⁴⁰ H Gottfried 'Beyond Patriarchy? Theorising Gender and Class' (1998) 32(3) *Sociology* 451-468 at 456.

⁴¹ LA Obiora, op cit note 33 at 218-210; HG Gadamer *Truth and Method* (1975) 258.

⁴² A Etzioni 'Contemporary Liberals, Communitarians and Individual Choices' in A Etzioni & PR Lawrence (eds.) *Socio-economics: Towards a New synthesis* (1991) 65.

dividends. However, this prominence is superficial when viewed from a needs perspective. In other words, a needs-based approach highlights the complementary nature of marriage relations in South-East Nigeria.⁴³ This complementarity is evident in women's influence on bridewealth negotiations, contrary to traditional perceptions of their non-participation. There are several socio-economic needs behind this influence. Many research participants demonstrated how this influence is exerted directly and indirectly.

In direct influence, women finish their bridewealth negotiations earlier and demand for the men to conclude theirs. This pressure, the result of traditional desire to induct the bride into the marriage hall of fame, is usually exerted through ululations, songs, and dances. In cases where men's negotiations are proving difficult, the wordings of these songs are adapted to reflect the fact that the bride is not being sold. Here, we see the desire for cultural legitimacy trumping the pecuniary benefits of high bridewealth. Women may also send delegates, usually the bride's mother or an influential woman leader to 'whisper' in the ears of the negotiating men. Where culture permits them to observe the men's proceedings, they radiate their displeasure with prolonged negotiations through intent, disapproving stares.

In indirect influence, some brides secretly provide the money for their bridewealth or pressure their parents to provide it. This assistance is not readily acknowledged due to fears of cultural ridicule. However, many research participants acknowledged that cohabitation and premarital pregnancies are on the rise because of late marriages caused by high bridewealth. Providing or assisting in the provision of bridewealth is therefore aimed at avoiding the cultural disapproval of being a single woman. Also, some brides are breadwinners in their families. If the movies emerging from Nollywood are to be believed, then brides' provision of bridewealth is more common than acknowledged. Already, the practice of waiving the items due to the bride's parents from the marriage list is widespread. These waivers are usually due to the indirect influence of brides on their parents, which stems from their need to marry.

My argument of needs-based complementary gender relations in bridewealth payment has a correlation with the nature of marriage in Igboland. Notably, traditional marriage is a joyous event. As a research participant put it: 'The joy of parents is to have their daughters out (married) when they are of age and not have them in the house because of high bride wealth.'⁴⁴

⁴³ Nzegwu argues that Igbo gender relations are evenly balanced. See NU Nzegwu *Family Matters: Feminist Concepts in African Philosophy of Culture* (2006) 1-21.

⁴⁴ Interview with Mr Chuku Ubani on 12th April 2016 at Ogbaru main market.

This statement affirms the need for women and men to work harmoniously to ensure the success of marriage. In the context of bridewealth, needs-based complementary gender relations reveal the motivations behind patriarchal customs. In other words, what outsiders may perceive as patriarchal customs may actually be acceptable to women at the receiving end of the customs due to the socio-economic needs behind the customs. A needs-based approach therefore invites a reassessment of perceptions of gender relations and assumptions of women's subordination. Such perceptions could contradict the empirical reality of interdependent gender relations in South-East Nigeria,⁴⁵ including in bridewealth negotiation. As I proceed to show, the nature of gender relations, especially in a customary law setting, makes needs-based complementarity logical in bridewealth negotiation.⁴⁶

6.7.1 *Nature of gender relations*

Gender relations possess processual and structural connotations.⁴⁷ The roles attached to women and men are the consequences of social needs, including processes that affirm and further these needs.⁴⁸ The needs-motivation of social roles arguably cut across gender. Socio-economic needs help to explain why a groom is required to satisfy both women and men's items on the marriage list. If only men's voices dominate bridewealth negotiation, there would be no need to satisfy the requirements of women.

⁴⁵ For literature on gender relations in South-East Nigeria, see N Achebe *Farmers, Traders, Warriors, and Kings: Female Power and Authority in Northern Igboland, 1900-1960* (2005) 164-171; K Okonjo 'The Dual Sex Political System in Operation: Igbo Women and Community Politics in Midwestern Nigeria' in N Hafkin & E Bay (eds.) *Women in Africa: Studies in Economic and Social Change* (1976) 46-56; I Amadiume *Male Daughters, Female Husbands: Gender and Sex in an African society* (1987) 119-123; S Leith-Ross *African Women: A Study of the Ibo of Nigeria* (1938) 19-21; E Egbah 'The Place of Women in the Ibo society of South-Eastern Nigeria, From the Earliest Times to the Present' (1973/1974) 23/24(3/4) *Civilisations* 305-316.

⁴⁶ J Lorber 'Constructing Gender: The Dancer and the Dance' in JA Holstein & JF Gubrium (eds.) *Handbook of Constructionist Research* (2008) 531-544 at 538.

⁴⁷ S Haslanger 'Ontology and Social Construction' (1995) 23 *Philosophical Topics* 95-125 at 98; C Harders 'Gender Relations, Violence and Conflict Transformation' in B Austin, M Fischer & HJ Giessmann (eds.) *Advancing Conflict Transformation: The Berghof Handbook II* (2011) 137.

⁴⁸ S Haslanger op cit note 47 at 98-106; see also K Millett *Sexual Politics* (1971) 28-31; BJ Risman 'Gender as a Social Structure Theory Wrestling with Activism' (2004) 18(4) *Gender & Society* 429-450 at 431-432.

Furthermore, individuals change the structural systems they live in when they are faced with socio-economic challenges.⁴⁹ In the agrarian past, bridewealth was negotiated almost exclusively by men. In many communities today, not only are women increasing their voices in bridewealth negotiation, they are also advocating for limitations in amounts payable as bridewealth. In southern Nigeria, women's annual 'August Meeting' is a popular platform through which they engage in this advocacy.⁵⁰ Their advocacy demonstrates that gender relations are needs-based, are socially constructed, and could also be reconstructed by the ability of individuals to act in response to socio-economic needs.⁵¹ Construction and deconstruction of social practices show the interdependency of agency and structure, and also highlights the socio-economic needs that drive their relationship.

Finally, ignoring the influence of socio-economic needs in the assumed power of structure to shape agency may hamper development policies relating to culture and customary norms.⁵² To shed light on this argument, I need to explore the implication of the structure-agency interplay for policy formulation and implementation.

6.8 Needs-based approach and policy implementation

The previous chapter's discussion of the negotiation process of bridewealth payment exposed the limited participation of the bride, for whom the bridewealth is paid. It also reveals the less limited participation of the groom, who largely provides the bridewealth capital. Moreover, the discussion reveals interesting mechanisms used by couples to make their voices heard. These

⁴⁹ C West & DH Zimmerman 'Doing Gender' (1987) 1(2) *Gender & Society* 125-151 at 126; see also BJ Risman op cit note 48 at 434 - 435.

⁵⁰ A Odoemena 'The Evolution of "August Meeting" among the Igbo Women of Southeastern Nigeria' (2010) 7(1) *Journal of History and Diplomatic Studies* 1-30.

⁵¹ A Bandura 'Social Cognitive Theory: An Agentic Perspective' (1999) 2(1) *Asian Journal of Social Psychology* 21-41 at 24.

⁵² S Billett 'Relational Interdependence Between Social and Individual Agency in Work and Working Life' (2006) 13(1) *Mind, Culture, and Activity* 53-69 at 58; J Dewey *Democracy and Education* (2004) 1; M Glassman 'Dewey and Vygotsky: Society, Experience, and Inquiry in Educational Practice' (2001) 30(4) *Educational Researcher* 3-14 at 5; B Rogoff *Apprenticeship in Thinking: Cognitive Development in Social Context* (1990) 11-15.

needs-based mechanisms shed light on the importance of considering agency-motivations in policy formulation and implementation.⁵³

The motivations behind couples' mechanisms to participate in bridewealth negotiation are significant for overcoming challenges in law-related policy formulation. My research participants were quick to dismiss the idea of government regulating the quantum of bridewealth payment. The reasons for this dismissal are interesting. For example, Chief Okenwa stated: 'Government did not give free education, so they (state officials) shouldn't dictate how much is to be paid as bridewealth.'⁵⁴ Other participants' attitude to government's involvement in bridewealth regulation are even more revealing.

First, people's desire to protect bridewealth payment as a source of additional income is very strong. Second, there is considerable annoyance and/or disdain for government interference in a matter people consider private, especially since government is perceived to be generally indifferent to people's welfare. Embedded in these reasons is a mistrust of government motives for meddling in cultural issues without adequate and periodic consultation with cultural actors. My informants believe that proper consultation on the part of government would give them opportunities to state their needs and preferences. For example, Mr Akwarandu stated that government might worsen bridewealth regulation by introducing cumbersome requirements such as registration and levies.⁵⁵ Whether this statement is true or false will not be argued. The important thing is that a policy's technical soundness is not an important criterion for it to be recognised and accepted by communities, especially rural communities.⁵⁶ The key criterion is the policy's reflection of people's needs and aspirations. Notably, policies, projects, and laws that affect local communities are mostly made at the state

⁵³ S Hickey & G Mohan 'Towards Participation as Transformation: Critical Themes and Challenges' in S Hickey & G Mohan (eds.) *Participation- From Tyranny to Transformation: Exploring New Approaches to Participation in Development* (2004) 50-14.

⁵⁴ Interview with Chief Okenwa, a 67-year-old businessman on 12th April 2016.

⁵⁵ Interview with Mr Akwarandu Chukwudike, a 35-year-old businessman on 28th April 2016.

⁵⁶ F Cleaver 'Paradoxes of Participation: Questioning Participatory Approaches to Development' (1999) 11(4) *Journal of International Development* 597-612 at 599; K von Benda-Beckmann 'Globalisation and Legal Pluralism' (2002) 4(1) *International Law Forum* 19-25 at 19-20; F von Benda-Beckmann 'Scape-Goat and Magic Charm: Law in Development Theory and Practice' (1989) 21(28) *The Journal of Legal Pluralism and Unofficial Law* 129-148 at 134.

level (top-down) rather than grassroots level (bottom-up).⁵⁷ Oftentimes, the communication and implementation processes of government projects are distorted. Writing about Indonesia, von Benda Beckman observed that the version of state regulations presented to local communities sometimes has little or nothing to do with the original policy.⁵⁸ Indeed, state law, regarded as a ‘powerful magic charm’ to change the socio-economic conditions of people, sometimes fails to fit the lived realities of the people it seeks to help because it is made without their proper consultation and involvement.⁵⁹

Furthermore, power, economic, health, social, and political interest dynamics are usually affected whenever a policy is endorsed.⁶⁰ Before endorsing a policy, communities weigh its potential benefits against its anticipated costs. Hence, it is vital to not only understand the motivations that underlie a policy’s endorsement, but also to involve the community in all aspects of its formulation and implementation.⁶¹ This understanding is particularly important for the efficacy and sustainability of policy implementation. A close look at the report of the Committee on Bridewealth in Nigeria’s then Eastern Region illustrates the importance of a needs-based approach in policy formulation. As shown in the preceding chapter, the Committee investigated the social effects of bridewealth payment to make recommendations for the removal of its hardships.⁶² The Committee found that:

- a) The term ‘bride price’ is derogatory and objectionable to many people.
- b) The socio-economic changes of colonial rule played a huge role in the transformation of traditional life.

⁵⁷ R Dale ‘Globalization and Education: Demonstrating a “Common World Educational Culture” or Locating a “Globally Structured Educational Agenda”?’ (2000) 50(4) *Educational Theory* 427-448 at 428-438.

⁵⁸ F von Benda-Beckmann (1989) op cit note 56 at 134.

⁵⁹ Ibid at 141; J Tribe & CM Hall *Tourism and Public Policy* (1995) 5.

⁶⁰ M Woolcock ‘Social Capital and Economic Development: Toward a Theoretical Synthesis and Policy Framework’ (1998) 27(2) *Theory and Society* 151-208 at 152-153; M Woolcock & D Narayan ‘Social Capital: Implications for Development Theory, Research, and Policy’ (2000) 15(2) *World Bank Research Observer* 225-249 at 15-18; N Long *Encounters at the Interface: A Perspective on Structural Discontinuity in Rural Development* (1989) 2.

⁶¹ F von Benda Beckmann & K von Benda-Beckmann ‘The Dynamics of Change and Continuity in Plural Legal Orders’ (2006) 38(53/54) *Journal of Legal Pluralism and Unofficial Law* 1- 44 at 3; A Liasidou ‘Unequal Power Relations and Inclusive Education Policy Making: A Discursive Analytic Approach’ (2011) 25(6) *Educational Policy* 887-907 at 888.

⁶² MO Balonwu., et al *Report of the Committee on Bride Price: Eastern Region of Nigeria* (1995) 1.

- c) Ex-service men returning from fighting for the British during the Second World War influenced the quantum of bridewealth because of their wealth and status.
- d) The educational qualification of a girl influences bridewealth payment.
- e) Inflated cost of living plays a role in increasing bridewealth.

Although the Committee interviewed men and women to arrive to these findings, it failed to:

1. Investigate the negotiation process of bridewealth payment.
2. Address the link between this negotiation, culture, and inflated cost of living.
3. Address the link between bridewealth, class divisions, and social cohesion.

Ultimately, the Committee recommended a dowry law, which though adopted for the benefit of the people, failed to integrate their needs, preferences, and lived experiences. Its failure demonstrates that the human mind has an infinite capacity to resist the introduction of new phenomenon, especially laws and policy.⁶³ A key aspect of this resistance is an unconscious rebellion against any policy that neglects the needs of the people it governs. A needs-based approach to development is therefore necessary for better understanding of the interaction of structure and agency.⁶⁴

6.9 Concluding remarks

Structure is believed to exert a constraining influence on behaviour. However, little scholarly effort is evident in how socio-economic needs compel structure itself to be constructed in cultural settings. Specifically, there is a void in how individuals, who are motivated by their economic, religious, educational, and normative needs, use agency to construct structure in traditional marriage relations. In this chapter therefore, I brought theory and practice together by advocating a needs-based approach to structure-agency interplay in the negotiation process of bridewealth payment in South-East Nigeria. I argued that socio-economic needs drive and determine structure-agency interaction. I further argued that a needs-based approach reveals the complementary nature of the structure-agency interaction. In so doing, I reject a dualist view of structure and agency in bridewealth negotiation. Importantly, I show the suitability of

⁶³ Thomas Raynesford Lounsbury quoted in D Macarov *Work and Welfare: The Unholy Alliance* (1980) 203.

⁶⁴ Long preferred the term, 'actor-based.' See N Long *Development Sociology: Actor Perspectives* (2001) 14-15.

a needs-based view of structure-agency interaction to complex customs such as bridewealth negotiation and payment.

Although bridewealth has been a feature of traditional marriage from time immemorial, its persistence does not mean it is operating in the way it functioned in the past. Rather, its operation has adapted to fit the socio-economic needs of its adherents. These socio-economic needs also drive the construction and reconstruction of bridewealth payment. Although some young couples are willing to abandon the practice because it does not serve them well, the majority are desirous of continuing it because of the social legitimacy it confers. On their part, elders who include parents, pressurise their children to abide by it because of its cultural and financial benefits. This situation is not peculiar to South-East Nigeria.⁶⁵ For example, Yarbrough explains the pressure to comply with bridewealth requirements as reflective of traditional ‘understanding of marriage as a union of two extended kinship lines’.⁶⁶ Although many of my participants have numerous reasons why they think the nature of bridewealth payment has changed, only few of them were willing to endorse its abolition. Their unwillingness flows from the cultural-legitimacy stamp on marriage, which their decades of acculturation compel them to attach to bridewealth payment. Bridewealth negotiation thus demonstrates a complex interplay of structure-agency that demands a needs-based theoretical framework. Such a framework illumines understandings of cultural construction, gender relations, legal pluralism, and policy effectiveness. A needs-based approach has four significances for the structure-agency interplay in traditional cultural settings.

Firstly, the process of structural deconstruction is long, difficult, and complex. Bridewealth payment is an ancient cultural practice, which draws its resilience from the legitimacy it confers on marriage.⁶⁷ Any marriage without payment of bridewealth is rarely recognised as a legitimate marriage in South-East Nigeria.⁶⁸ Paradoxically, the trend of high bridewealth payment was constructed by individuals, who were influenced by opportunism and

⁶⁵ M Yarbrough ‘Very Long Engagements: Legal Consciousness and the Persistent Authority of Bridewealth in a South African Community’ (2014) *New York Law School Review* 19.

⁶⁶ *Ibid* at 6.

⁶⁷ OM Ejidike ‘Human Rights in the Cultural Traditions and Social Practice of the Igbo of South-Eastern Nigeria’ (1999) 43(1) *Journal of African Law* 71-98 at 72

⁶⁸ This situation is not peculiar to South-East Nigeria. For example, Jeater hinted at the persistence of bridewealth payment in southern Africa; see D Jeater ‘Changes in the Bridewealth Relationships in Gweru District (Southern Rhodesia) 1894-1925’ (1990) 38 *Institute of Commonwealth Studies* 51-59 at 51.

economic wants, among other reasons. This trend is now being deconstructed by token acceptance of bridewealth, pruning of exorbitant items on the marriage list, and restriction of items like alcohol and cigarettes, which offend religious beliefs. Despite playing a role in reducing the quantum of bridewealth, almost all Christian denominations encourage their members to pay bridewealth before coming for a church blessing. The influence of Christianity also manifests in the pruning of marriage lists. These constructions and deconstructions demonstrate the complexity of the structure-agency interplay. I have argued that a needs-based approach is best suited for understanding this complexity.

Secondly, bridewealth payment and negotiation demonstrate a needs-driven complementary gender relation in South-East Nigeria. Women and men partake equally, although separately, in bridewealth negotiation. Both groups have their own requirements on the marriage list, which carry the same weight of fulfilment. By showing how women's roles complement men's roles, as well as how women influence bridewealth negotiation directly and indirectly, a needs-based approach questions assumption about patriarchal gender relations.

Thirdly, widespread disdain for the Dowry Law, which seeks to limit bridewealth, demonstrates the usefulness of a needs-based approach for understanding the interaction of state law and customary law. The Nigerian Constitution provides for the right of people to develop and promote their cultures.⁶⁹ In fact, the state has a responsibility to promote and protect culture, hence the adoption of the Dowry Law to regulate the quantum of bridewealth.⁷⁰ However, this law has practically no influence on normative behaviour, thus demonstrating the need for state policies to be sensitive to the dynamic of legal pluralism. I have argued that socio-economic needs underlie this sensitivity and is important for policy effectiveness, since policies are likely to fail if policy makers disregard the lived realities of people. Given that people's lived realities inform the manner they use agency to alter structural institutions, top-down approaches to policies could result in failure like the Dowry Law.⁷¹

Lastly, the structure-agency interaction in bridewealth negotiations reflects continuities and discontinuities in social practices, which are best understood in the context of a needs-

⁶⁹ Section 21 (a-b) and s. 38 of 1999 Constitution of the Republic of Nigerian (the 1999 Constitution).

⁷⁰ Section 21 (a-b) of the 1999 Constitution.

⁷¹ F von Benda-Beckmann, 'Scape-Goat and Magic Charm: Law in Development Theory and Practice' (1989) 21(28) *The Journal of Legal Pluralism and Unofficial Law* 129-148 at 141.

based approach. This is because these continuities and discontinuities are driven by the powerful influence of culture, on one hand, and socio-economic forces like unemployment, globalisation, religion, and education, on the other. Opponents of high bridewealth in South-East Nigeria, which include most of my research participants, argue that it causes late marriage, cohabitation, and even objectification of women. These opinions reflect the influences of Western education, including the notion of human rights, Christianity, and acculturation. Many research informants pointed to bridewealth practices in other parts of Nigeria as evidence of best practices. However, most informants are generally unwilling to advocate the abolition of bridewealth payment. I have argued that their unwillingness to relinquish the cultural legitimacy conferred by bridewealth payment is a complex continuity that is best understood from a needs perspective. North hinted at the needs-driven nature of cultural continuities when he remarked that socio-economic constraints and interaction end up sustaining structure.⁷² These constraints, he further noted, could manifest as societal sanction for social deviations, as well as its accompanying shame and stigma.⁷³

In conclusion, I argue that although cultural forces apparently undermine the ability of individuals to challenge bridewealth payment, socio-economic needs drive and sustain their cultural forces. Indeed, these needs enable individuals to influence bridewealth negotiation and payment. My argument is consistent with the perspectives of Archer, Giddens, and Buckley on structuration, complementarity, and morphogenesis. While Giddens argues that the activities of agents create structural conditions that make their lives easier or more difficult, Archer's morphogenesis theory argues that agents can reinforce and resist the influence of structure. I argue that as far as bridewealth negotiation and payment is concerned, this structuration process is best understood from a needs-based perspective. A needs-based approach clearly uncovers the complex and interdependent relationship between structure and agency. This complexity is evident in the influence of couples in bridewealth negotiation, the ability of parents and in-laws to reduce items on the marriage list, the pruning of exorbitant items from marriage lists, and the exclusion of items that contravene religious beliefs.

⁷² DC North 'Institutions' (1991) 5(1) *Journal of Economic Perspectives* 97-112 at 97; DC North *Institutions, Institutional Change and Economic Performance* (1990) 4.

⁷³ DC North (1991) op cit note 72 at 97; See also DC North 'Institutions, Ideology, and Economic Performance' (1991) 11 *Cato Journal* 477 – 488 at 477.

Chapter Seven: Conclusion

7.1 Introduction

Over the past several decades, varying social problems have compelled scholars to debate the interaction of institutions with human behaviour – that is whether socialisation, especially cultural upbringing, determines the extent to which individuals act freely.¹ Sociologists in the structural-functionalist-Marxist school of thought exalted structure as the main determinant of human behaviour because it possesses complex, self-maintaining attributes that limit the influence of agency.² They further stress that individuals are the product of social influences around them, since they are socialised by various institutions such as the family, schools, media, and religious houses. Weber and other scholars in the symbolic interactionism/interpretive view of sociology reject the exaltation of structure over agency, arguing that customs and norms are not coercive enough to shape the behaviour of individuals in society.³ Their argument is founded on the freedom of individuals to resist social norms, influence norms, and thereby determine structure in a bottom-up manner. This debate has become a central issue in social theory and cuts across all spheres of life, such as class, politics, modes of production, employment opportunities, gender roles, succession, inheritance, and of course marriage.

Recently, rather than partitioning the main determinant of structure and agency, the debate has shifted to understanding the relationship between the two. For example, Bourdieu used the principle of *habitus* to explain how the interplay of structure and agency shapes society

¹ GM Hodgson ‘Institutions and Individuals: Interaction and Evolution’ (2007) 28(1) *Organization Studies* 95–116 at 95; GM Hodgson ‘Reconstitutive Downward Causation: Social Structure and the Development of Individual Agency’ in E Fullbrook (ed.) *Intersubjectivity in Economics: Agents and Structures* (2002) 159; HD Gould ‘What is at Stake in the Agent-Structure Debate?’ in V Kubalkova, et al (eds.) *International Relations in a Constructed World* (1998) 79.

² LM Gerber & JJ Macionis *Sociology* (2010) 14, 19; E Durkheim *The Rules of Sociological Method* (1985) 14; T Parsons *The Social System* (1951) 15-45; T Parsons *Theories of Society: Foundations of Modern Sociological Theory* (1961) 36-45; T Parsons ‘The School Class as a Social System’ in JH Ballantine & JZ Spade (eds.) *Schools and Society: A Sociological Approach to Education* (2015) 35-39.

³ M Weber *Economy and Society: An Outline of Interpretive Sociology* (1978) LXVIII; M Weber ‘Some Categories of Interpretive Sociology’ (1981) 22(2) *The Sociological Quarterly* 151-180 at 151; HG Blumer *Symbolic Interactionism: Perspective and Method* (1969) 1–6; TL Reynolds & NJ Herman-Kinney *Handbook of Symbolic Interactionism* (2003) 17, 42, 43, 98; KJ Arrow ‘Methodological Individualism and Social Knowledge’ (1994) 84(2) *The American Economic Review* 1-9 at 3.

by producing self-sustaining behavioural habits.⁴ Accordingly, some scholars prefer a middle ground between structure and agency. Based on a complementarity theory, they argue that structure and agency influence and balance each other.⁵ I take a slightly different path by proposing a needs-based approach for understanding the structure-agency interaction in complex cultural settings. A needs-based approach posits that economic, cultural, religious, philosophical, legal, and other socioeconomic factors drive and determine structure-agency interplay, since they reveal better the motivations behind social behaviour. A needs-based approach is especially suited to bridewealth negotiation because it accounts for the complexities and paradoxes of power relations. For the reasons below, I sometimes interchanged the structure-agency interplay with power relations in the first five chapters of this dissertation.

7.2 A complex social setting

The social setting of bridewealth payment in South-East Nigeria is very complex. Aside from the dearth of literature on bridewealth payment, bridewealth negotiation exemplifies a form of conflict between marriage customs and individuals' ability to resist, shape, and recreate customs. Thus, prospective spouses' choices of marriage partners and freedom to determine the quantum of bridewealth payment interplay with powerful cultural institutions. On the one hand, these cultural institutions are primarily customs and traditions, whose custodians and enforcers are elders, headmen, and traditional rulers. On the other hand, the agency of these same individuals influences the quantum of bridewealth payment negotiated through the agency of prospective spouses and their parents. This intricate relationship between structure and agency presents a complex analytical situation, which I deemed fit to represent with power relations. In turn, this power relations analytical tool is best understood from a needs perspective, since the individuals involved in bridewealth negotiation are all influenced by socio-economic elements. A needs-based framework is further justified by dissonance between contemporary cultural values and the social settings in which bridewealth customs developed.

⁴ P Bourdieu *Outline of a Theory of Practice* (1977) 72-95, 159-197.

⁵ K Hurrelmann *Social Structure and Personality Development: The Individual as a Productive Processor of Reality* (1988) 42-45.

7.2.1 *Old socio-economic needs*

In the agrarian social settings in which bridewealth emerged, extended families practiced mostly subsistence agriculture in close-knit social units. They produced wealth jointly, raised bridewealth funds for their sons, and negotiated its quantum and disbursement through family heads, who were mostly elders. Notably, these societies practiced patrilocal residence, in which women moved to their husband's family after the conclusion of marriage ceremonies. Significantly, patrilocal residence required children to be affiliated to their father's lineage and clan. Bridewealth payment was rendered in recognition of the bride's fecundity, and as pledge that her future children belong to her husband's lineage. As a group-based initiative, bridewealth was also paid to compensate for the loss of the bride's service to her clan, and to raise funds for her brothers to pay bridewealth for a bride to replace her agricultural and domestic services.⁶ It goes without saying that marriages were often arranged, with couples sometimes having no agency whatsoever in their spousal selection. In sum, bridewealth symbolised 'an alliance between two families, rather than a contract between two individuals'.⁷ This complex agrarian setting of bridewealth payment was obviously driven by group or communal needs. It explains why 'marriage in traditional societies is not a personal affair between two individuals, but instead involves (a value-laden cultural bond between) two kin groups.'⁸ However, although the traditions of patrilocal residence and patrilineal lineage remain, two foundational elements of marriage and social life in South-East Nigeria have changed, thereby reinforcing the usefulness of a needs-based framework for analysing the agency of actors involved in bridewealth negotiation.

7.2.2 *New socio-economic needs*

The first element is the diminishing concept of the extended family, while the second is the disappearance of joint production of family wealth, from which bridewealth funds used to be raised. These two elements are being steadily eroded by urbanisation, unemployment,

⁶ RM Jansen, 'Customary Family Law' in C Rautenbach & JC Bekker (eds.) *Introduction to Legal Pluralism in South Africa* (2014) 5.3.3.4.

⁷ V Uchendu *The Igbo of Southeast Nigeria* (1965) 50.

⁸ Y Yan 'The Individual and Transformation of Bridewealth in Rural North China' (2005) 11(4) *Journal of the Royal Anthropological Institute* 637-658 at 637.

acculturation, and individual income production, thereby creating a new system of socio-economic needs. Despite their erosion, many bridewealth practices retain their ancient agrarian formats, thereby presenting three complex challenges for structure-agency interaction in contemporary Igbo society. In explaining these challenges below, I justify why I represent the complex relationship between structure and agency with needs-based power relations.

First, bridewealth negotiation is still determined by clan members, especially elders. In many cases, neither the prospective spouses nor their parents can determine the quantum of bridewealth, who benefits from the items on the marriage list, and why the items should be distributed among certain clan members. This limited agency of prospective spouses in bridewealth quantum and distribution is retained irrespective of whether the concerned clan members helped in training the bride. Faced with this puzzle of applying agrarian marriage standards in an increasingly individualistic-minded society, prospective spouses and their parents have the option of resisting culture or sustaining it by compliance. The choices they eventually make are reached after needs assessment of potential gains and losses of particular courses of action.

Second, high bridewealth, caused largely by the clan's exorbitant demands on the marriage list, contributes to family interference in spousal choices.⁹ Sometimes, families prefer their daughters to marry men from wealthy families who can afford expensive bridewealth. Given socio-economic changes such as Western education, religion, and acculturation, young women and men possess the tools to exercise their agency on spousal choice.¹⁰ However, these tools are determined or at least influenced by socio-economic needs, of which cultural legitimacy and emotional affection are prominent.

Third, prospective spouses are often excluded from the negotiation of their own bridewealth. They are restricted to indirect participation through their parents, aunts and uncles. This exclusion and passive participation is a carryover from ancient times when families negotiated marriage on behalf of couples. However, grooms have managed to become at least passive participants in bridewealth negotiation because they provide the bridewealth funds. They have the option of sustaining structure with their passivity or exercising their agency to

⁹ DJ Smith 'Romance, Parenthood, and Gender in a Modern African Society' (2001) 40(2) *Ethnology* 129 -151 at 129 -132.

¹⁰ J Abidogun 'Western Education's Impact on Northern Igbo Gender Roles in Nsukka, Nigeria' (2007) 54(1) *Africa Today* 29 -51 at 29-40.

obtain an increased voice in bridewealth negotiations. Similarly, instead of acting through their parents, brides could exercise agency by demanding participation in their bridewealth negotiation and distribution. In making these participation choices, needs assessment influences the extent to which prospective spouses may exercise agency.

Against this complex cultural backdrop, therefore, I utilised one central question to express my needs-based, power relations framework of structure-agency interaction: ‘In what ways do power relations play out in the negotiation process of bridewealth payment in South-East Nigeria?’ I used four probes to answer this question comprehensively.

The first probe investigated factors responsible for high bridewealth payment. The second examined the role of formal and informal law in the negotiation process of bridewealth payment. The third explored the ways individuals use agency to manipulate bridewealth negotiation. The fourth probed the significance of the structure-versus-agency interplay for development in Nigeria.

7.3 Summary of the study

The first chapter laid the groundwork of my study. It also identified the theories from which I develop my argument of a needs-based approach to structure-agency interaction. It explained how the struggle over the primacy of structure and agency obscures the benefits of the dialogue their relationship could produce. Most scholars argue that the relationship is diametric, while others argue that it is complementary. In contributing to this debate, I employed a needs-based approach, which draws from the bargaining model of rational choice theory and morphogenesis. With this framework, I justified my investigation of the relationship between structure and agency in bridewealth negotiation in South-East Nigeria, set out my objectives, and outlined my methodology.

In chapter two, I unpacked the methods I used to investigate the relationship between structure and agency. By describing the sources and nature of my study’s data, I explained how I elicited answers to my research questions on the negotiation process of bridewealth payment. Using observation, semi-structured, and open-ended interviews, I sought data from potential spouses, traditional leaders, parents, elders, all of whom are key players in the bridewealth negotiation process. My questions centred on the origin and significance of bridewealth payment, the criteria for determining the items on the marriage list, and the consequences for the parents of prospective couples and the couples themselves of not providing all items on the list. Other questions include noticeable change(s) in the form of bridewealth, rationale and

motivation for bridewealth payment, knowledge of the Limitation of Dowry Law, and the role of law in reducing high bridewealth payment.

Chapter three provided a historical account of the concept, origin, and significance of bridewealth payment. This account aimed to set the stage for chapters four and six, which explore the role of law in bridewealth negotiation and the policy implications of the interplay of structure and agency. My analysis in this chapter established bridewealth payment as the keystone of a customary law marriage in South-East Nigeria. It showed how the agricultural settings of the precolonial era fitted bridewealth payment. These settings afforded women social spaces in which their human dignity was well appreciated. These spaces thrived in a village republican system, in which social groups played key supportive roles in the institution of marriage. In this setting, bridewealth had a symbolic value and signified the legitimization of marriage, appreciation of the bride's fecundity, and compensation for the loss of her services to her family and lineage. In other words, the socio-economic needs that prompted bridewealth payment were perfectly suited to an agricultural setting. I found that by altering the agrarian basis of society, Nigeria's colonial encounter played a huge role in the distortion of the meaning and significance of bridewealth in Igbo society. Some of the main factors that feature in bridewealth's distortion include education, acculturation, economic wants, and monetisation of bridewealth, most of which could be attributed to economic policies.¹¹ These factors created new socio-economic needs, thereby shifting the motivations for bridewealth payment. Over time, these factors also significantly influenced perceptions of the meaning and function of bridewealth payment. These perceptions became so distorted that people demand high sums of money as bridewealth despite legislation that prohibits it.

Chapter four offers a historical overview of the Nigerian legal system in order to provide a context for women's agency within the cultural institution of marriage. Since bridewealth is paid on behalf of women, I emphasised women's voices within my argument of a needs-based approach to the interplay of structure and agency. I reveal how the socio-economic changes brought by colonial rule affected people's attitudes to bridewealth payment, thereby creating new needs-driven bridewealth practices. I also emphasise the relationship between the traditional legal framework of marriage and the legal regime imported by colonial

¹¹ DE Sahn, PA Dorosh & SD Younger *Structural Adjustment Reconsidered: Economic Policy and Poverty in Africa* (1999) 6.

rule. My emphasis on how women exercised considerable agency in marriage relations rests on several reasons.

Firstly, marriage is the foundation of social life in Igboland and is a well-respected and honoured institution. In this institution, women's status is prominent because of their crucial role in procreation. Secondly, the close-knit nature of precolonial Igbo society determined the extent to which socio-economic needs could determine women's agency. A notable feature of this society is its dual sex political system, in which gender relations were more complementary than hierarchical. Positions, power, respect, and authority were earned based on individuals' service to the community, as well as their moral integrity, wealth, age, and charisma. Colonial rule changed all these by making women nearly invisible in public life. Although women now have increased access to education and employment, this access has not translated to radical changes in their exercise of agency because it is balanced against women's need for the cultural legitimacy conferred by bridewealth payment.

Chapter five sheds light on the negotiation process of bridewealth payment. Here, I situate the interplay of structure and agency within a needs-based approach to power relations. The chapter makes two explorations. The first is how structure dominates agency because of the importance attached to the cultural institution of marriage. The second is how socio-economic needs, especially economic coercion, plays a powerful role in people's abilities to influence cultural institutions. I found that structure truly dominates agency, while economic coercion merely plays a limited role in people's abilities to reconstruct or defy cultural institutions. Informed by other socio-economic factors such as education and religion, economic coercion is changing the ability of elders and associations to determine the distributional pattern of bridewealth payment. However, the constraints imposed on behaviour by people's need for cultural legitimacy remain strong. These constraints are, notably, continuance of bridewealth tradition, prospective spouses' inability to determine the quantum of bridewealth, and their involuntary absence during the negotiation process of bridewealth.

Furthermore, I revealed the active actors in bridewealth negotiation, the needs that motivate their roles, and the influence of agency on these roles. I found that grooms' parents and prospective spouses are, generally, unhappy about payment of high bridewealth. However, their need for cultural legitimacy, which is accompanied by communal pressure to conform to tradition, constrains their ability to take remedial action. But they are not entirely option-less. Driven by their children's need to marry, for example, some parents' resort to taking a token sum as bridewealth from their prospective sons-in-law. This strategy, which is becoming

popular, is informed by common sense, for it enables fathers to build good relationships with their sons-in laws, bearing in mind the overall emotional and economic benefits of such good relationships. However, it has an insignificant effect on the items in the marriage list, which remain expensive and inflexible in many communities due to the greed and economic needs of the kindred. Again, although prospective spouses are inclined to challenge cultural institutions through cohabitation, education, and pre-marital pregnancies, they are mindful of the social legitimacy conferred by bridewealth payment.

Thirdly, the inconsequential role of state law in reducing high bridewealth payments is significant for development programming. While research informants insisted that the state has no role to play in reducing high bridewealth due to its failure to provide affordable education and other socio-economic amenities, they emphasised the need for parents, elders, the *Umunna*, and traditional leaders to decide this matter themselves. This insistence demonstrates people's preference for a needs-driven, bottom-up approach to cultural issues. It also demonstrates that structure is sustained by the ways people employ their agency. Accordingly, legislation, an important aspect of structure, should be sensitive to the socio-economic needs of people, because socio-economic needs are responsible for shifts in attitudes and behaviours, which construct or deconstruct structure. As people's disdain for the Dowry Law demonstrates, ignoring the influence of socio-economic needs in the structure-agency interaction is unhealthy for adherence to law and supremacy of the law, which are key components of the rule of law.

In chapter six, I distil my theoretical framework from mainstream theories and situate it within the bridewealth negotiation process in South-East Nigeria. In reconciling theories on structure and agency with my field findings on bridewealth negotiation, I argue that a needs-based approach to the structure-agency interaction is best suited to bridewealth negotiation. I further argue that a needs-based approach to power relations in bridewealth negotiation reveal interdependency in structure and agency, which questions dualist theories on their relationship. On the one hand, a needs-based approach reveals that high bridewealth is constructed by the economic and personal motives of families and clans. On the other hand, it reveals an interdependence between structure and agency, which it locates in the complex web linking the custodians of culture with agentic tools such as wealth, religion, and education. An aspect of this complex web is the dissonance between bridewealth's contemporary operation and its operation in the agrarian past. Although some prospective spouses indicate willingness to abandon bridewealth payment, they are mindful of the social legitimacy it confers. This social legitimacy is founded on the alliance which bridewealth creates between the spouses' families,

and which elders, including the spouses' parents, exert pressure to maintain. This pressure demonstrates what Yarbrough calls 'affinal understanding of marriage as a union of two extended kinship lines'.¹² As agents, prospective spouses attempt to deconstruct high bridewealth using means such as elopement, co-habitation, and pre-marital pregnancy. They also influence bridewealth negotiation through their parents and in-laws' abilities to reduce items on the marriage list and exclude items that contravene their moral beliefs. I conclude this chapter by explaining the value of a needs-based approach for understandings of legal pluralism, including its significance for development policies in Nigeria.

7.4 Answers from the research question

The first probe in my research question investigated the factors responsible for high bridewealth payment in South-East Nigeria. Given the symbolic nature of bridewealth in precolonial times, contemporary bridewealth practices are constructed. The factors responsible for this construction are socio-economic needs. They are, primarily, opportunism, economic wants, and bias against prospective grooms and their families. These factors manifest in prospective in-laws' desire to exploit the wealth of grooms and/or recoup expenses they incurred in training their daughters. Some parents and clans demand high bridewealth for brides trained in specialist professions such as medicine, geology, engineering, and law. Indeed, in several communities, there are separate marriage lists for professionally educated brides, which contain more expensive items than for less-educated brides. The factors that induce high bridewealth also manifest in clan reciprocity or bias against a groom from an unfriendly clan. An unfriendly clan is a historically enemy clan, or a clan that demanded high bridewealth from a member of the retaliating clan. High bridewealth also results from inter-racial marriages, since the prospective groom is assumed to be ignorant of bridewealth practices in the bride's region. In turn, the factors responsible for high bridewealth payment are fuelled by the disruptive manner colonial rule displaced the socio-economic settings in which bridewealth payment originated.¹³ This displacement resulted in, among others, the monetisation and

¹² See M Yarbrough 'Very Long Engagements: Legal Consciousness and the Persistent Authority of Bridewealth in a South African Community' (2014) *New York Law School Review* 1- 69 at 6.

¹³ For accounts of this disruption, see E Boserup *Woman's Role in Economic Development* (2007) 7-10; AC Diala 'The Concept of Living Customary Law: A Critique' (2017) 49(2) *The Journal of Legal Pluralism and Unofficial Law* 143-165 at 153.

commercialisation of bridewealth payment. Accordingly, a needs-based approach is useful for understanding the persistence of high bridewealth payment in South-East Nigeria.

The second probe examined the role of law in the negotiation process of bridewealth payment. Data from research participants reveal that formal/state law plays little or no role in bridewealth negotiation. The Limitation of Dowry Law might as well be non-existent, since it has no deterrent effect whatsoever on the quantum of bridewealth. Many participants believe the Nigerian government has no right to regulate bridewealth when it fails to provide employment and socio-economic amenities such as education and healthcare. Similarly, there is a perception that the state does not involve communities in legislative decision-making. However, other forms of non-state law are prominent in bridewealth practices. These consist of customary norms and regulations observed by traditional rulers, parents, elders, and groups such as the *Umuada* and *Umunna*. There are also norms that emerged from general proclamations from traditional rulers and age grade leaders regarding the contents of marriage lists.¹⁴ The general observance of these norms supports the literature showing how structure is sustained by agency through widespread practice. Above all, their observance illustrates the influence of needs assessment in normative co-existence.

The third probe explored the ways in which individuals use agency to manipulate the negotiation of bridewealth payment. The manipulation of bridewealth occurs in two ways. The first is the construction of bridewealth from symbolic legitimator of marriage to instrument of wealth accumulation by poor or opportunistic parents and clan members. The second is the deconstruction of bridewealth by prospective spouses and their parents. I found that many prospective spouses use economic coercion, cohabitation, and threat of pregnancy as bargaining tools to negotiate lower bridewealth payments. Economic coercion is most effective where the groom or bride is the major breadwinner of the family. In such cases, parents and clansmen try to retain a positive relationship with the prospective spouse by ensuring that the bridewealth negotiation runs smoothly. Sixty percent of research participants disclosed that cohabitation and its attendant risk of pregnancy are effective in reducing high bridewealth and forcing the clan to relax some stringent requirements on marriage lists. As an informant stated, ‘the girls of these days don’t care [for cultural legitimacy] so far as the man loves them.’¹⁵ For

¹⁴ See Appendix C, D, E, F.

¹⁵ Interview with Mr Akwarandu Chukwudike, a 35-year old businessman on 28th April 2016.

their part, parents use religion as leverage to remove items like alcohol and cigarettes from the marriage list. Some strong-willed, educated parents who have embraced Western values also influence bridewealth negotiation by excising some exorbitant items on the marriage list.

The fourth probe of my research question investigated the significance of the structure-agency interaction for policy implementation in Nigeria. The widespread disdain for the Dowry Law demonstrates the ineffectiveness of a top-down approach to law. Conversely, it shows the need for needs-led, bottom-up change, as well as the need to consider socio-economic needs when formulating legislation. As von Benda Beckmann argued, development policies are geared towards change of behaviour.¹⁶ The success of a development policy is thus dependent not just on its technical soundness, but also on the processes leading up to its adoption, especially consultation between law makers and the people who the law seeks to regulate.

From my research questions, therefore, the negotiation process of bridewealth payment demonstrates the value of approaching the relationship between structure and agency from a needs-based perspective.

7.5 Closing remarks and recommendations

The debate over the interaction of structure and agency will likely not abate in the foreseeable future. My research adds to the growing body of literature by showing how a needs-based approach avoids some conceptual difficulties such as temporality, structuration, and deconstruction. A needs-based view of bridewealth negotiation negates diametric perceptions of the structure-agency relationship in a manner that clarifies the interdependency of this relationship. In this sense, it resonates with Archer's morphogenetic theory, which stresses the mutual relationship of structure and agency.

Furthermore, although structure wields considerable influence over agency, this influence is not immutable because human behaviour can negate it. The behaviour of some actors in bridewealth negotiation demonstrate that structure is constructed and deconstructed through human behaviour. The mere fact that bridewealth payment became commercialised is evidence of how parents and clansmen constructed it into a cultural institution. Since bridewealth is constructed, it can also be deconstructed over time. For example, the acceptance of token sums as bridewealth could eventually reinvent its symbolic significance in South-East

¹⁶ F Von Benda-Beckmann 'Scape-Goat and Magic Charm: Law in Development Theory and Practice' (1989) 21(28) *Journal of Legal Pluralism and Unofficial Law* 129-148 at 133.

Nigeria. The motivations behind this acceptance demonstrate the usefulness of a needs-based approach to the relationship between structure and agency. What are the implications of this complementarity for policy makers?

The needs-based ways clansmen and parents constructed high bridewealth is significant for policy formulation and implementation. Both the distortions of bridewealth's significance and attempts to reinvent its significance flow from socio-economic elements such as opportunism and desire for social legitimacy. In turn, these needs are actualised in agency – in other words in actions by community members. Where policies fail to take these needs into consideration through adequate consultation, such policies could fail. In this sense, the widespread disdain shown for the Dowry Law demonstrates the ineffectiveness of a top-down approach to policymaking.

Finally, I reiterate that bridewealth payment does not occur in isolation of socio-economic elements such as urbanisation, education, religion, and loss of livelihoods. Already, these elements are playing influential roles in how individuals exercise their agency in bridewealth payment. They demonstrate the usefulness of a needs-based approach in understanding how agency produces institutional change. This finding is not peculiar to South-East Nigeria. Studies from Kenya and China reveal movement in the recipients of bridewealth from the bride's parents and kinsmen to the bride herself, 'effectively turning bridewealth into the wealth of the bride.'¹⁷ There seems no reason why such a movement cannot occur in South-East Nigeria. To facilitate it, government could embark on research, consultations, and awareness campaigns, which could culminate in legislation empowering brides to receive their own bridewealth. From the opinions expressed by my research participants, such legislation will fare better than the Dowry Law, and could eventually help in reducing high bridewealth. My findings show that exorbitant items demanded by the *Umunna*, the *Umuada*, and other social groups, are primarily responsible for high bridewealth. However, the communal agrarian settings that necessitated clan members to benefit from bridewealth have been replaced by nuclear families living individualistic lifestyles. Many of my interviewees expressed displeasure over the distribution of their bridewealth materials among clan members who did not contribute anything to the training of brides. Accordingly, paying bridewealth to brides would give meaning to the term, 'bridewealth.' Such a needs-based shift in bridewealth

¹⁷ Y Yan op cit note 8 at 654.

recipients will not affect the validity of a traditional marriage. In the words of an informant, ‘the kinsmen can still attend the [marriage] ceremony.’ The socio-economic state of many Igbo communities indicates that prospective spouses possess the agency to produce a shift in bridewealth beneficiaries. Already, many brides are exerting agency against high bridewealth by threats of, and actual cohabitation.

7.6 Going forward

The interplay of structure and agency is significant for the roles of state law and customary law in post-colonial societies. This significance is due to the manner state law emerged. In Nigeria, for example, state law is an amalgam of transplanted English laws and local laws, which were themselves inspired by English law. During colonial rule, English law was considered superior to ‘native laws’ and ‘customs.’¹⁸ Some of these native laws were abrogated, some were termed barbaric, while others were subjected to validity tests and stringent proof in courts before they could be recognised.¹⁹ Realising the need for members of the community to regulate their own affairs, colonial authorities appointed traditional rulers to act as liaisons between them and indigenous communities. Long after independence, Nigeria continues to use the colonial legal structure as its legal system. Regrettably, this legal system follows a top-down approach due to the manner colonial authorities imposed English law on indigenous communities. In this sense, a top-down approach neglects the manner customs with agrarian origins struggle to cope in modern conditions, thereby creating a dissonance between state law and people’s socio-economic needs. Once again, this finding resonates with the legal situation in post-colonies.

In their studies of the interaction of state law and non-state norms in Asia and Africa, scholars such as Woodman, Allot, Moore, Chanock, and von Benda-Beckmann,²⁰ have

¹⁸ JO Asein *Introduction to Nigerian Legal System* (1998) 109.

¹⁹ Y Aboki ‘Are Some Nigerian Customary Laws Really Repugnant?’ (1991/1992) 9 (10) Ahmadu Bello University *Law Journal* 1-15 at 1-5; See also AA Oba ‘The Administration of Customary Law in a Post-Colonial Nigerian State’ (2006) 37 *Cambrian Law Review* 95-112 at 98; AA Oba ‘Religious and customary laws in Nigeria’ (2011) 25 *Emory International Law Review* 881 – 896 at 888; JND Anderson ‘Conflict of Laws in Northern Nigeria: A New Start’ (1959) 8(3) *The International and Comparative Law Quarterly* 442-456 at 442, 443.

²⁰ AN Allot ‘What is to be Done with African Customary Law: The Experience of Problems and Reforms in Anglophone Africa from 1950’ (1984) 28 *Journal of African Law* 56-71 at 67; M Chanock *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia* (1998) 48-65; K von Benda-Beckmann *The Broken Stairways to Consensus: Village Justice and State Courts in Minangkabau* (1984) 21-92; GR Woodman ‘How State Courts Create Customary Law in Ghana and Nigeria’ in BW Morse & GR Woodman (eds.) *Indigenous Law and the State* (1988) 8; F von Benda-Beckmann ‘Law Out of Context: A Comment on the Creation of Traditional Law Discussion’ (1984) 28 *Journal of African Law* 28-33; P Fitzpatrick ‘Traditionalism and Traditional Law’ (1984) 28 *Journal of African Law* 20-27.

highlighted the differences between the law observed by indigenous communities and the perceptions of judges, legislators, and policy makers. These findings are of great significance for the structure-versus-agency discourse.²¹ Specifically, they illustrate the need for a needs-based approach to the structure-agency interaction. As evident in the Dowry Law, state law is not as powerful as government officials would like to believe because of people's socio-economic needs. Future research on structure-agency relationship therefore needs to employ a needs-based approach to interrogate how state law interacts with the agency of individuals subject to non-state normative orders. Areas where such research could yield rich results for the structure-agency discourse include bridewealth refund, registration of customary law marriage, divorce, child custody, and even inheritance.

²¹ See also B Malinowski 'Introduction' in HI Hogbin (ed.) *Law and Order in Polynesia: A Study of Primitive Legal Institutions* (1934) xiii; B Malinowski *Crime and Custom in Savage Society* (1926) 55; D Baudouin 'Legal Pluralism, Plurality of Laws, and Legal Practices: Theories, Critiques, and Praxiological Re-specification' (2007) 1(1) *European Journal of Legal Studies* 1-26 at 4, citing BZ Tamanaha *Realistic Socio-Legal Theory* (1997) 68.

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Religious Material

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Interview guide

A. Introduction/Consent/demographic information

What is your language preference? Do you mind if this interview is audio-recorded? Recording your interview will help me not to miss your opinions and not to misquote you ... If you agree, do you mind if I use your details in my PhD thesis? If you do not wish them to be included, I shall assign a pseudonym to you, and will thereafter call you by that name ...

B. Background of bridewealth negotiation process

- Meaning and significance of bridewealth
- Bridewealth and spousal choices
- Steps preceding bridewealth payment

C. Changes in bridewealth practice and its effects

- Nature of changes
- Factors that influence changes
- Resistance to changes
- Negotiation process of changes
- Role and influence of law

D. Negotiation process of bridewealth payment

- Description of bridewealth negotiation
- Role players during negotiation
- Parents, potential spouses, kinsmen
- Custodians of culture and tradition

E. Marriage gifts and power dynamics

- Sharing of marriage gifts
- Beneficiaries of bridewealth
- Rationale for beneficiaries
- Modes of sharing and changes
- Deviations from sharing formula

F. Structure versus agency

- Agentic tools in marriage lists
- Reasons for agentic tools
- Strategies for negotiating marriage lists

G. Law and society

- Knowledge of bridewealth legislation
- Compliance/resistance to legislation
- Reasons for compliance/resistance
- Anything to add?

Appendix A – Ethics clearance



Faculty of Law

Research Ethics Committee

Private Bag X3 Rondebosch, 7701 South Africa
Room 6.28 Kramer Building, Middle Campus
Tel: +27 021 650 3080 Fax: +27 021 650 5660
E-mail: jamize.viljoen@uct.ac.za
Internet: www.law.uct.ac.za

18 January 2016

Ms Jane Chinonyerem Diala (DLXJAN001)

c/o Level 6, Department of Public Law
Kramer Law Building
Faculty of Law, University of Cape Town

Mobile: 061 661 0032 Email: jane.diala@alumni.uct.ac.za

Dear Ms Diala

Re: Clearance Process for L34-2015: "The Interplay of Structure and Agency: The Negotiation Process of Bridewealth in South-East Nigeria"

Thank you for the revised documentation. The Research Ethics Committee of the Law Faculty very much appreciates the considerable effort put into the application.

This study has been carefully considered and all ethical issues have been adequately addressed.

Ethics clearance is granted with effect from **14 January 2016 for a period of 12 months** subject to renewal for another 12 months. Please note that any material changes to the proposal will need to be cleared as an amendment.

With best wishes,

A handwritten signature in black ink, appearing to read 'Julie Berg'.

pp
DR JULIE BERG
REC: CHAIR

cc: Dr K Moulit and Prof D Smythe (Public Law Dept, UCT)

Appendix B-G - Marriage lists

A

UMUNNEATO FAMILY, UMUOKPARAOBI, ISIAMA
MARRIAGE LIST

(A) IHE MBUZU MAI:

1. Opening of book N500 with two jars of wine ✓
2. Two jars of palm wine 5 Creates minimal
3. Two cartons of Star beer 2 " malt
4. One carton of small stout 1 " malt
5. One crate of maltina 1 " "
6. Half bottle of grinded snuff ✗
7. Money for the Town = N10,000 ✓

NB: If an in-law wants to do in cash, we shall check the items according to the cost of that day

Signed:


.....
(Secretary)

Date. 13-02-61


B

**UMUNNEATO FAMILY, UMUOKPARAOBI, ISIAMA
MARRIAGE LIST**

(B) NNA NURU MAI

- 1. Opening of book - N1,000 with two jars of wine ✓
- 2. One cock, one hen ✗
- 3. Eight Igbo kola nuts ✗
- 4. Money for prayers - N1,000 ✓
- 5. Half bottle of grinded snuff ✗
- 6. Two packets of cigarettes – 1 Benson, 1 St. Moritz ✓
- 7. Money for Elders tobacco - ✗ N1,000
- 8. 65 big tubers of yam
- 9. Four jars wine (Two will be up wine) 10 crates mineral
- 10. Four (4) cartons of Star beer 4 " malt
- 11. Two cartons of small stout 2 " "
- 12. One crate of maltina 1 " "
- 13. Two bottles of original Seaman's schnapps 26ts wine
- 14. Money for the town - N12,000 ✓

NB: If an in-law wants to do in cash, we shall check the items according to the cost of that day

Signed: 
.....
(Secretary)
Date: 13-02-0

2

A

IHE IJEDI ABALI ANO
UDU MMAI ABUO ₦500,000 (2 JARS OF WINE)

Nkpuhie akwukwo ₦1000 ✓

1. Ofu akpa Nnu (one bag of salt)
2. 20 tubers of yam
3. Two piece of wrapper
4. One stock fish or one leg of Goat ~~or~~ ₦1000
5. 6 Bar soap
6. Two crate of mineral and two grate of malt ₦20,000
7. One thousand Naira cash
8. One big basin with cover
9. To brings the married daughter out ₦3000 cash X
10. Two crates of Maltina and one bag of salt (compulsory). If you ^{and two crate of mineral} don't want to, buy this things, you give us ^{SIXTY} ~~Twenty~~ thousand naira cash
(~~₦20,000~~ ₦60,000).

IHE IJEDI ABALI ASATO

1. 40 tubers of yam
2. Two bags of salt and Two pieces of wrapper and one hollandaise/wax
3. One tin of kerosene
4. One tin of palm oil
5. One crate of mineral and two crate of Maltina
6. Two legs of Goat meat/Two big stock fish (3)
7. One carton of bar soap

- A
8. One dozen of Lux soap
 9. Four bottles Stella pomade x
 10. Two tins of powder x
 11. Two packet of carbine biscuits
 12. One big basin with cover
 13. One bag of rice
 14. Twelve cups of Gusher fish
 15. 20 seeds of Onions
 16. 12 cups of tomatoes

If you don't want to by this thins, you give us ~~(N50,000)~~

#48,500

(N120,000)

IHE NDAA (Compulsory)

1. To bring the mother of the girl out N5,000 10000
2. 4 pieces of wrappers.
3. One tin of powdered milk, Sugar and Bornvita ✓
4. Two blouses ✓
5. Five tubers of yam ✓
6. One big stock fish ✓
7. One lamp 275 ✓
8. A pair of shoe ✓
9. Hand watch, Earrings, Necklace, hand bag, Hair tire and umbrella ✓
10. One big basin ✓
11. N1000 is for bringing the married daughter out x


H

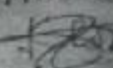
MARRIAGE LIST OF UMUNAMA UKWU
VILLAGE IKKEREFI FOR (WOMAN)

- ① Six Pies Kola Nuts ₦500.00
- ② One Tin Tobacco Set ₦500.00
- ③ Afuta and Ose ose ₦1000.00
- ④ Two Gallons Palm ₦1000.00
- ⑤ Ten crates Ameti Maats ₦2000.00
- ⑥ One Bag Foreign Rice ₦1200.00
- ⑦ One Big Goat ₦2000.00
- ⑧ Four Packet Cabin Bisuit ₦640.00
- ⑨ Testing Wine ₦500.00
- ⑩ Tobacco For Elders ₦500.00
- ⑪ Rice Condiments ₦1000.00
- ⑫ Akianwa ₦40.00
- ⑬ Two Gallon Groundnut Oil ₦3000.00
- ⑭ Two Tined Tomatoes ₦2400.00
- ⑮ Half Basket Fresh Tomatoes ₦400.00
- ⑯ Twenty pies Onions Big ₦1000.00
- ⑰ Two Bottles Eva (Wine) ₦2000.00
- ⑱ One Paiter Groundnut (Fresh Pilled) ₦1200.00

79,300

SIGNED


Secretary


Chair Lady

MARRIAGE LIST FOR (WOMEN'S Family) Only

- ① Afu-fa and ose Oil - ₦1000.00
- ② One Bottle Ova (wine) - ₦1200.00
- ③ One Set Tobacco - ₦500.00
- ④ One Filter Groundnut - ₦1200.00
- ⑤ One Big tin tomatoes - ₦1300.00
- ⑥ Half Big Foreign Rice - ₦6000.00
- ⑦ Meat - ₦5000
- ⑧ Five Cakes Amishi Mit - ₦12000.00
- ⑨ Two Packet Cabine Bisuit ₦340
- ⑩ Three Bottles Groundnut Oil - ₦1700
- ⑪ Ewu-so - Biaku -
- ⑫ 100 Pies big Onions - ₦500

SIGNED

61,940

Secretary
Date 7/12/2017

Chair Lady
Date 7/12/2017

UMUNAMA UFUACHI GENERAL ASSEMBLY NKEREPI
MARRIAGE LIST (FOR MEN ONLY)

INTRODUCTORY WINE: (MMAI ILUAKA)

1 carton of star, 1 carton of Guider, 1 carton of stout 2x3
Gallon of palm wine, 1 carton of Amstel malt, Ose Orji and snuff
jet 8 kolanut

1st Wine Mmai Ndoha

3 Cartons of star, 3 cartons of Guider, 2 cartons of small stout,
2 cartons of Guinness Malt, 2x4 gallons of palm wine, 8 kolanut and
ose orji, 1 tin of snuff jet.

Mmai Ngidi

2x6 gallons of palm wine and N3000 naira cash, 2 cartons of star, 2
cartons of Guider, 2 cartons of small stouts, 8 kolanuts, garden egg
and Ose Orji, N1000 for Orji Umama

General Wine (Mmai Osulzeta)

4 cartons of star, 4 cartons of Guider, 2 cartons of small stout,
2 cartons of Guinness malt, N8000 cash and 2x6 gallons of palm
wine. Garden egg and Ose Orji, one tin of jet snuff, 4 packets of
cigarette and N5000 for boys and N5000 for girls, N1000 or 2x2
gallons of palm wine for eldest village man who will pray. N500 or
2x1 gallon of palm wine for his assistant.

Note: one thousand eight hundred naira is used to collect
the list (1,800)

Signed P. 2/12/2017
Secretary (Marriage committee)

Appendix D

OSILI OHOZARA EBONYI STATE

Marriage List for Umunna

1) KNOCKING ON THE DOOR

- 4 kola nuts
- 4 gallons of pam wine
- 4 bottles of hit drink
- 4 alligator pepper
- 4 bottles of wine
- 1 white chalk for peace

2 Stage

- 1) Opening of book list - ₦3, 000
- 2) Prayer money by Umunna ₦ 2, 000
- 3) 1 big she goat
- 4) 1 big hen
- 5) 1 big stock fish
- 6) 10 round dried fish
- 7) 8 kola nuts
- 8) 8 cartons of beer
- 9) 8 gallons of palm wine
- 10) 25 tubers of yam
- 11) 8 cartons of malt

Elders tobacco – 1 big ground bottle

Dowry - ₦ 500

Secretary

MARRIAGE LIST FOR WOMEN

- 1) Opening of book - ₦ 500
- 2) 2 big white powder
- 3) 1 carton of bar soap
- 4) 3 cartons of malt
- 5) 2 wrappers
- 6) 1 blouse
- 7) 1 pair of shoe
- 8) 1 hair tie
- 9) 1 bag of rice
- 10) 1 carton small tin tomatoes
- 11) Money for bringing pot down - ₦ 500

Secretary

Appendix E

ABAM BENDE ABIA STATE MARRIAGE LIST

IHE NDI NNA LIST

COMING FOR THE FIRST DAY

- 1) 4 white chalk for 4 market days
- 2) 4 alligator pepper
- 3) 4 edo coloured
- 4) 1 gallon of palm wine
- 5) 1 bottle of hot

This is to appease the land and show that you come for peace

LIST FOR NDI NNA

- 1) Opening of book → 2000
- 2) 3 gallons of palm wine – 25 litres each
- 3) 3 bottles Lord's dry gin
- 4) 2 rubbers of red oil – 25 litres each
- 5) 1 she goat
- 6) 1 hen
- 7) 1 bundle chewing stick
- 8) Dowry as agreed

Secretary

Appendix F

UZOAKWA OZUBULU ANAMBRA STATE MARRIAGE LIST

KNOCKING AT THE DOOR

- 4 yams
- 1 stock fish
- 1 fowl
- 1 hen
- 8 kola nuts
- 1 hot drink
- 4 gallons of palm wine

MAIN LIST

- 1) Ima ogado Ozubulu – 100 tubers of yam
- 2) 1 George wrapper
- 3) 2 goats
- 4) 6 cartons of malt
- 5) 6 cartons of beer
- 6) 6 crates of minerals
- 7) 3 cartons of small stout
- 8) 16 kolanuts
- 9) 4 tobacco leaf

Dowry for father ₦ 7000

Dowry for mother ₦ 4000

Secretary

Appendix G

NDIAMADI VILLAGE EZEAGU ENUGU STATE

NDIAMADI VILLAGE LIST FOR MARRIAGE – MEN’S LIST

- 1) 1 big basin peeled cassava abacha
- 2) 1 gallon of red oil
- 3) 1 painter crayfish
- 4) 10 gallons palm wine
- 5) 24 kola nuts
- 6) 10 tubers of yam
- 7) 1 small basin fish

Dowry – 1 she-ram

Secretary

Appendix H

UMUKABIA MBAISE IMO STATE LIST FOR MARRIAGE

Welcoming money - ₦ 2000

Sitting down money - ₦ 3500

Opening of book - ₦ 1000

- 1) 7 kola nuts for 7 days in a week
- 2) 7 gallons of palm wine for 7 days in a week
- 3) 7 bottles of hot drink for 7 days in a week
- 4) 7 tubers of yam
- 5) 7 hens
- 6) 7 packets of cigarette for youth
- 7) 7 leaves of tobacco for elder
- 8) 4 powder for women

Akwa isi agu for the father whether dead or alive

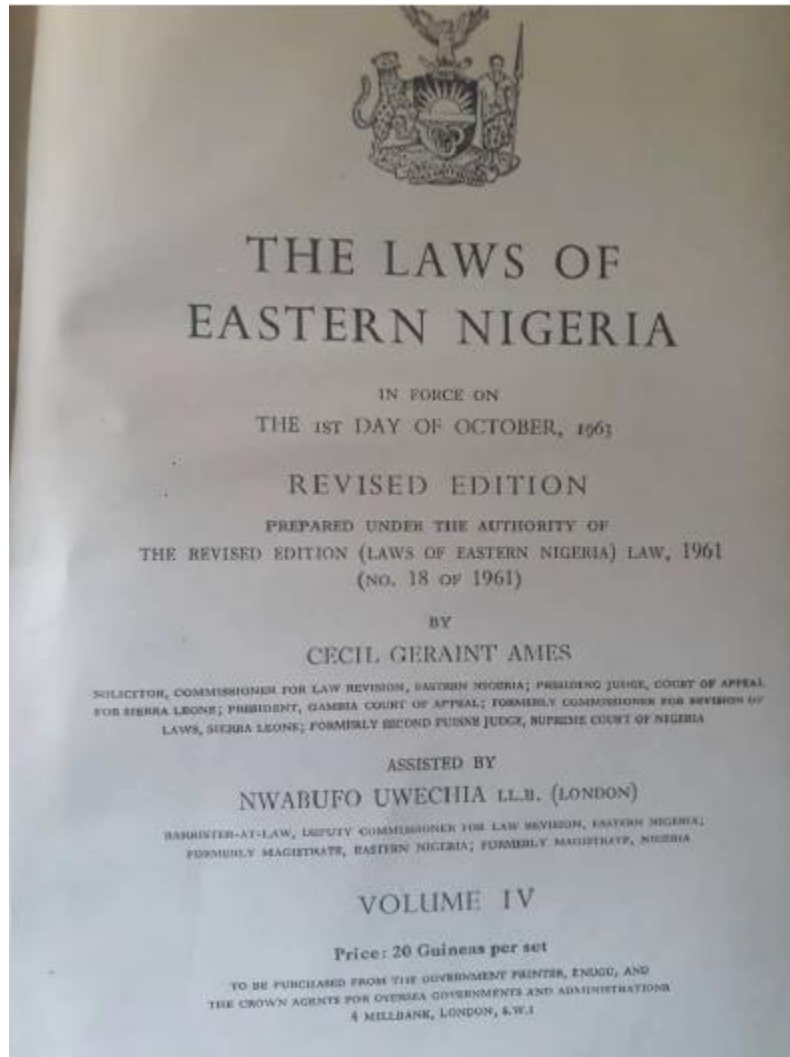
1 staff

1 red cap

Dowry ₦ 10

Secretary.....

Appendix I



CHAPTER 76

LIMITATION OF DOWRY LAW

Arrangement of Sections

Section

1. Short title.
2. Interpretation.
3. Dowry and incidental expenses limited to £30.
4. Offences in connexion with excess dowry and incidental expenses.
5. Limitation on jurisdiction of courts.
6. Penalty.

CHAPTER 76

A Law to limit Gifts and Payments on account of Marriage and for purposes connected therewith.

[1st July, 1956]*

1. This Law may be cited as the Limitation of Dowry Law.

2. In this Law—

"court" means the High Court, a Magistrate's Court and a Customary Court;

"dowry" means any gift or payment, in money, natural produce, brass rods, cowries or in any other kind of property whatsoever, to a parent or guardian of a female person on account of a marriage of that person which is intended or has taken place;

"incidental expenses of a marriage" means customary gifts or payments, other than dowry, made or incurred, on account of a marriage, before, at the time of, or after that marriage;

"marriage" means any marriage other than a marriage contracted under the Marriage Act;

"value" means the market value in the locality in which the marriage is intended to take place or has taken place;

*E.R. Notice 667 of 1956.

Dowry and incidental expenses limited to £30.

3. Notwithstanding any custom or practice—

- (a) where no incidental expenses of a marriage are paid by the husband or intended husband or on his behalf dowry shall not exceed in amount or value the sum of thirty pounds;
- (b) where incidental expenses of a marriage are paid by the husband or intended husband or on his behalf dowry shall not exceed in amount or value the sum of twenty-five pounds and the incidental expenses aforesaid shall not exceed in amount or value the sum of five pounds.

Offences in connection with excess dowry and incidental expenses.

4. Any person who—

- (a) asks, receives, or obtains, or agrees or attempts to receive or obtain, for himself or any other person, any dowry in excess of the maximum prescribed in section 3; or
 - (b) gives, or pays, or promises or offers to give or pay to any person any dowry in excess of the maximum prescribed in section 3; or
 - (c) incurs, or promises or offers to incur or attempts to incur any incidental expenses of a marriage in excess of the maximum prescribed in section 3;
- shall be guilty of an offence.

Limitation on jurisdiction of courts.

5. No court shall—

- (a) entertain or continue any suit or proceeding; or
- (b) make any decree or order; or
- (c) execute wholly or partially any decree or order, if the claim involved in such suit or proceeding or if the passing of the decree or order or if such execution would be in any way contrary to any provision of this Law.

Penalty.

6. Any person who is guilty of an offence under the provisions of section 4 shall be liable upon conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding six months.

Appendix J

Table 1

S/N	Name (N) Pseudonym (P)	Age	Gender F/M	Occupation	Highest level of educational	Participants' research group	Research Area
1	Ada Azuka (P)	35	F	Businesswoman	Graduate	Married couple	Imo
2	Akwarandu Chukwudike	35	M	Businessman	Matric	Married couple	Imo
3	Asa (P)	32	F	Businesswoman	Matric	Engaged couple	Imo
4	Nwunye Senator (P)	31	F	Pharmacist	Graduate	Engaged couple	Enugu
5	Chief Anyaocha (p)	75	M	Businessman	Matric	Titled man/ Parent of a couple	Imo
6	Chief Okenwa (p)	67	M	Businessman	Matric	Titled man/ parent of a couple	Anambra
7	Chief Olakuso (p)	58	M	Businessman	Grade 6	Titled man/ parent of a couple	Osun
8	Chioma Nwonu	36	F	Businesswoman	Grade 10	Married couple	Imo
9	Chioma Okoroike	44	F	Businesswoman	Matric	Married couple	Imo
10	Christian (P)	34	M	Dietician	Graduate	Engaged couple	Imo
11	Chris Uzochukwu	30	M	Architect	Graduate	Married couple	Anambra
12	Christian Udechukwu	36	M	Businessman	Matric	Engaged couple	Anambra
13	Chuks Ubani	62	M	Businessman	Grade 6	Parent of a couple	Abia
14	Chukwuma (p)	37	M	Teacher	Postgraduate	Married couple	Imo
15	Cynthia (P)	29	F	Lawyer	Graduate	Engaged couple	Abia
16	Obi Okeke (P)	35	M	Businessman	Matric	Married couple	Enugu
17	Eucharia John	40	F	Businesswoman	Matric	Married couple	Ebonyi
18	Gwam n'Ihu (P)	40	M	Businessman	Grade 6	Married couple	Anambra
19	HRH Ogamba	75	M	Teacher	Graduate	Traditional leader/ parent of a couple	Imo
20	HRH Ugoeze lolo	73	F	Teacher	Graduate	Traditional leader/ parent of a couple	Imo
21	Ifeanyi Eziaghala	38	M	Businessman	Grade 6	Married couple	Imo

22	Innocent Eziaghala	62	M	Businessman	Matric	Titled man/ parent of a couple	Imo
23	IO Joshua (p)	62	M	Businessman	-	Titled man / parent of a couple	Abia
24	John Eze	65	M	Businessman	Grade 6	parent of a couple	Abia
25	John Okorie	48	M	Businessman	Matric	Married couple	Ebonyi
26	Joseph Ochum	43	M	Businessman	Matric	Married couple	Enugu
27	Kenneth Okoroike	55	M	Businessman	Matric	Married couple	Imo
28	Linus Uhuo	42	M	Businessman	Matric	Titled man/ Married couple	Ebonyi
29	Lolo Charity (p)	50	F	Businesswoman	Grade 6	Leader of women's association	Imo
30	Lolo Iyi (P)	55-60	F	Businesswoman	Matric	Parent of a couple	Imo
31	Martins(p)	35	M	Teacher	Graduate	Engaged couple	Imo
32	Chinedu (p)	37	M	Engineer	Graduate	Engaged couple	Abia
33	Mma Onyi (P)	31	F	Businesswoman	Matric	Married couple	Enugu
34	Mpa Onyi (P)	45	M	Businessman	Grade 6	Married couple	Enugu
35	Ogbuke Favour	26	F	Student	Matric	Married couple	Enugu
36	Mma junior (P)	26	F	Businesswoman	Grade 6	Married couple	Imo
37	Onyebuchi Ugbala	34	M	Businesswoman	Matric	Engaged couple	Enugu
38	Pastor Samuel	58	M	Clergy	Graduate	Parent of a couple	Imo
39	Priscillia Onuoha	50	F	Businesswoman	Graduate	Parent of a couple	Imo
40	Remmy Nwachukwu	60	M	Businessman	Matric	Parent of a couple	Imo
41	Rosaline Eze	56	F	Businesswoman	Grade 6	Parent of a couple	Abia
42	Samuel Nwonu	48	M	Businessman	Grade 9	Married couple	Enugu
43	Samuel Okafor	58	M	Businessman	Matric	Married couple	Anambra
44	Sylvester Ekeka	60	M	Farmer	-	parent of a couple	Imo
45	Uzoma Okoye	32	F	Businesswoman	Matric	Unmarried	Anambra
46	Victoria Ekeka	50	F	Businesswoman	Grade 6	parent of couple	Imo
47	Odinaka (p)	30	F	Lawyer	Graduate	Engaged couple	Abia