

THE CULTURAL ARGUMENT AND THE SAME-SEX MARRIAGE DEBATE: THE PERSPECTIVE OF MODERATE AFRICAN COMMUNITARIANISM

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This essay discusses the right to same-sex marriages in Africa within the purview of African thought systems. The consensus among Africans appears to be that LGBT rights and lifestyles are imported ways of life from the West and are inimical to the communal cultural values of Africa. However, the West has insisted that African countries recognize LGBT rights or face sanctions. We examine this tension within the purview of the African thought system, specifically within the perspective of moderate African communitarian values, and conclude by offering a more comprehensive resolution strategy to ending the impasse.

Keywords: Communitarianism, Cultural argument, LGBT, Same-sex marriage, Right to autonomy

INTRODUCTION

The whole of Africa, except for South Africa,¹ has unanimously rejected rights to same-sex marriage and LGBT lifestyles as "un-African" because the practice is perceived to be inimical to the collective cultural values of Africans. However, the pro-LGBT Western nations continue to impose LGBT rights on Africans stating that the rejection of these rights is a violation of the principle of universal human rights. We submit that this Western approach is misguided because it tends to stall progress in the debate of recognizing LGBT rights on the continent. We suggest that instead of deploying the Western approach, the focus should be directed to investigating the status of same-sex marriage within the purview of the African cultural thought systems regarding the rights to autonomy.

Scholars usually cite two versions of African communitarianism, namely radical communitarianism, spearheaded by most of the African independent leaders such as Nkrumah (1964), Senghor (1964), and Kenyatta (1965) and moderate communitarianism, espoused by African thinkers such as Gyekye (1997), and Metz (2013). Radical communitarianism emphasizes the community's rights over individual rights to autonomy, while moderate communitarianism recognizes individual rights to

autonomy within the confines of a communitarian system. Indeed, there is a rich intellectual resource that can be extracted from this debate to facilitate an inclusive African-led initiative to guide rights to LGBT and same-sex marriage policies on the continent.

There are works, such as Bopp (2014) and Sanders (1997), on gay rights, 'homosexuals,' and 'lesbians' activities in Africa, but none that makes it a central focus to discuss the topic within the purview of traditional African thought systems. Other sets of literature, such as Hoad (1999) and Gevisser (2000), detail the gay activists' reports in South Africa. Others, such as Tamale (2007) and Awondo et al. (2012), tackle the subject of homophobia in Africa. Another set of literature, including Sanders (1997) and Eskridge, Jr. (1993), focuses on the historical antecedent of homosexual activities in pre-colonial and colonial Africa to debunk the claim that the practice is un-African. The aim of this essay, however, diverges from the objectives of the above literature while urging that the Western attitude towards LGBT rights in Africa must be substituted with a congenial intellectual deliberation within the purview of traditional African thought systems.

In order to achieve the above-stated objective, it is envisaged that the arguments raised in this essay might not be fully endorsed by both the pro-LGBT and the anti-LGBT advocates, particularly those who have insisted that LGBT lifestyles and the right to same-sex marriage are un-African. Our primary aim is to suggest that the conflict should be acknowledged and discussed to influence policy on the rights to same-sex marriage and relationships in a way that is generally acceptable.

THE TENSION

Even though, in recent times, LGBT rights are rapidly gaining wide acceptance in some parts of the world, many African nations are simply not enthused by this phenomenon as they claim that LGBT lifestyles are foreign and inimical to African cultural values (Sanders 1997). For instance, former President Robert Mugabe of Zimbabwe attacked the West for imposing gay rights on Africa, stating that "we [Africans] reject attempts to prescribe new rights that are contrary to our values, norms, traditions, and beliefs. We are not gays!" (Fisher 2015). President Muhammadu Buhari of Nigeria rejected President Barrack Obama's call for the recognition of LGBT rights insisting that it is strange to the cultural values of Nigerians. During Obama's visit to Kenya in 2016, the leader of an anti-gay political party in Kenya condemned Obama for promoting LGBT rights in Kenya, stating that 'Obama should know that gay rights is western. When in Africa, he should value our rights' (Winsor 2015). Again, President Daniel Arap Moi once stated in public that 'Kenya has no room or time for homosexuals and lesbians' because 'it is against African norms and traditions...' (Mukwuzi 2008).

In contrast to the foregoing, the pro-gay Western world has been trying to impose LGBT rights in the form of a threat to African nations to endorse the rights of LGBT or get their donor support withdrawn. For instance, when the Ugandan President, Yoweri Museveni, signed the Anti-Homosexuality Act of 2014, the country received heavy-handed sanctions. The World Bank quickly froze a loan to Uganda's health system

worth \$90 million; four European countries withdrew donor support totaling around \$30 million, and the United States threatened to sever its bilateral relationship with Uganda (Downie 2014). Richard Downie, in *Revitalizing the fight against homophobia in Africa* (2014), a report under the auspices of the Centre for Strategic and International Studies (CSIS), it is suggested, as part of its summary of recommendation, that the US should take a tougher stance against African countries that refuse to endorse LGBT rights. The report recommended, among other things, that:

As it reviews its approach towards gay rights in Africa, the United States should adopt a long-term strategy guided by the views of LGBT Africans. It should maintain high-level public and private pressure on homophobic governments and integrate gay rights within broader efforts to advance all human rights in Africa. It should strengthen the capacity of African civil society to battle homophobia and encourage other Africans to speak out against discrimination. In parallel, the United States should creatively deploy bilateral and multilateral tools to apply targeted pressure to discriminatory governments and individuals and systematically strengthen the protections of African LGBT at risk of violent harm (Downie 2014).

The above narrative reveals the tension between the Western and African conceptualizations of LGBT rights. While Africans regard LGBT rights as 'un-African,' the pro-gay West regards the rejection of LGBT rights as a violation of human rights. We shall henceforth refer to the sentiments that the LGBT lifestyle and rights are unAfrican as *the cultural argument* against same-sex marriage and proceed to defend it against other commonly advanced arguments against the right to same-sex marriages in Africa.

EXAMINING ARGUMENTS AGAINST SAME-SEX MARRIAGE²

Several arguments have been offered against same-sex marriage but failed to make a compelling case for why LGBT people should be denied their right to same-sex marriage. We shall rehearse three of these arguments. These arguments are selected based on the assumption that they form the topmost influential sentiments generally mounted against same-sex marriages (Lipp 2013) and are commonly cited in most informal anti-LGBT rights platforms in Africa. They include the definitional argument, the procreation argument, and the religious argument. In what follows, we shall examine these arguments based on two criteria; their *internal logical coherence* and *inductive cogency*.

The definitional argument

The definitional argument is outlined as follows. Marriage is a union between a man and a woman.³ Same-sex marriage is not marriage because it advocates the union

of a man and a man or a woman and a woman. Therefore, same-sex marriage is not marriage. There is another version of the definitional argument frequently advocated by natural law theorists such as Bradley (see Bradley 2004). This argument states that marriage between same-sex couples is 'not natural' because it is a violation of the natural law.

One of the problems with the definitional argument is that it is *circular*. In the same-sex marriage debate, it is the definition of marriage that is being contested. That is to say, pro-same-sex marriage advocates are challenging the basis of what we have traditionally conceived as marriage and agitating that the definition should be expanded to include legitimate homosexual relationships. It is thus logically preposterous to offer the same definition that is being contested in its own defense (Carpenter 2005). Another problem with the definitional argument is that a definition alone cannot be regarded as an argument. An argument is required for the justification of one's belief, while a definition is required to offer meaning to a term. Offering a definition in place of an argument is tantamount to committing the fallacy of *argumentum ad dictionarium*: that is, using a particular definition in defense of a position while claiming that it is the only proper and legitimate meaning of the term. This practice, in serious intellectual debates, is logically abominable.

The procreation argument

The procreation argument holds that same-sex marriage will detach marriage from its procreation purpose. It states that heterosexual marriage is firmly connected to procreation which makes the primary purpose of marriage an exercise for securing a mother and a father for a child. According to Shulman, 'the essence of marriage is to sanction and solemnize that connection of opposite sex which alone creates new life' (Shulman 2005). Any other considerations will result in ominous consequences for the world population. On this showing, advocates of the procreation argument argue that same-sex marriage tends to fuel population decline and undermine the procreation norm associated with marriage. The argument is presented as follows: procreation is needed for human survival; procreation and opposite-sex marriages are intrinsically connected; same-sex couples cannot procreate as married couples; therefore, same-sex marriage should not be legitimized because it can fuel population decline.

The procreation argument appears to have an intuitive appeal than the definitional argument. First, it is a factual truth that procreation is essential to human survival. It is also factually true that procreation is intrinsically linked to the marriage of heterosexual couples since homosexual couples are not *naturally* constituted to procreate as couples. This latter case reinforces the normative status between marriage and procreation and further preserves the sanctity of marriage as a relationship between a man and a woman. However, there are other ways the procreation argument encounters some setbacks.

One of the commonest arguments frequently offered against the procreation argument is that it is an inadequate defense for traditional male and female marriage. According to this argument, procreation has never been required for marriage, and the connection drawn between marriage and procreation is farfetched because sterile

couples, old couples who are incapable of procreation, and couples who do not want to procreate are allowed to marry. Since no one objects to these marriages, then it seems preposterous for one to object to same-sex marriage based on procreation (Carpenter 2005). This argument, when critically scrutinized, appears to sever the link between procreation and marriage and poses a devastating setback to the procreation argument.

Proponents of the procreation argument will protest that while we know for a fact that all same-sex couples are infertile, we cannot say the same of heterosexual couples because we do not generally know from the onset that one or both of the heterosexual couples are infertile until a medical test proves that it is the case. And we cannot subject all heterosexual couples to mandatory fertility testing because it will amount to an egregious invasion of privacy, all in an attempt to check the fertility status of an extremely small minority of couples. Another serious consideration is that in cases where fertility is misdiagnosed, as it occasionally occurs, fertile heterosexual couples may occasionally be denied marriage. However, the same privilege to waive a fertility test cannot be conducted for same-sex couples since we know outright that they cannot reproduce children together.

However, what about cases where elderly couples and couples who simply do not want to procreate are allowed to marry? The opponents of same-sex marriage argue that these marriages still feature the right combination of male and female needed to procreate by themselves naturally. No matter how far we stretch this argument, one thing is clear, namely that the procreation argument employs a standard that is inherently biased against same-sex couples because the same standard could apply against certain heterosexual couples to deny them marriage, but we simply do not.

However, there is another argument against the procreationist account that same-sex marriage will lead to population decline because same-sex couples are incapable of having children. This argument is usually mounted as a terrible consequence of same-sex marriage on the world population. Even though no technology makes it possible for same-sex couples to procreate for themselves, technology abounds for surrogacy and in-vitro fertilization (IVF), which makes it possible for same-sex couples to have children. Same-sex couples could also adopt children and parent them. Moreover, it is not clear how allowing same-sex marriages will prevent heterosexual couples from procreating. So, the claim about population decline is a scare tactic or *argumentum ad terrorem* used by the procreationists to persuade people to accept their perspective.

The religious argument

The religious argument is the commonest of the three arguments usually invoked in Africa by anti-same-sex campaigners.⁴ It relies on an argument akin to the definitional argument by appealing to the creationist story in *Genesis 2: 18-24*. The crux of the religious argument is that marriage is a consecrated union between heterosexual couples and not homosexual couples. Therefore, same-sex couples should not be allowed to marry. There is an alternative account of this argument frequently referred to as the intrinsic good of one flesh union and held to justify a

naturalist rejection of same-sex marriage. Hence, the argument in itself has a naturalist flavor but bears greatly upon the religious argument in *Genesis 2: 18-24*. This argument dovetails both the creationist variation in *Genesis* and the sexual deviance variation of the religious argument to be discussed in a moment.

According to Mary C. Geach, an advocate of this view, the "marriage act has an intrinsic meaning which does not depend upon human convention, but which is part of the fabric and constitution of our nature, so that by damaging our sense of the significance of our sexuality we undermine that fabric and undo that constitution" (Geach 2008, 523). This argument suggests that marriage has an intrinsic value that does not rely on human convention. This intrinsic value makes marriage the only legitimate use of a human reproductive function which in turn makes the husband and wife 'become one flesh' as emphasized in *Genesis 24*. This argument implies that human reproductive sex organs are only supposed to be applied in a consecrated union. Thus, other sexual vices such as sex outside marriage, contraception, divorce, masturbation, sexual fantasies, polygamy, polyandry, polyamorous and homosexual relationship are considered illicit and not permissible under any circumstance.

The forgoing leads to the sexual deviance variation of the religious argument. This variation uses the scriptures as the basis for moral disapproval of same-sex marriage. Aside from other deviant sexual acts, this argument describes same-sex relationships as an abomination to God and a deadly moral transgression (Cochrane 2004). *Leviticus 20:13* is often cited as leverage for rejecting same-sex marriage: "If a man has sexual relations with another man, they have done a disgusting thing, and both shall be put to death. They are responsible for their own death." On this understanding, homosexual relationships, and by extension all other variations of same-sex relationships, are moral wrongdoings that invite deadly sanctions.

In our view, the religious argument is the weakest of the three arguments discussed in the forgone passages. In other words, it is the weakest argument anyone championing the cultural thesis should deploy to condemn same-sex marriage. The reason is that it is preposterous from the onset to begin to argue for the cultural thesis that same-sex relationships are un-African on the basis that they are western imported practices in one breath and in another breath begin to accept the Biblical command on same-sex relationships as an abominable practice. Proponents of this argument usually throw into oblivion the fact that the Bible itself is an imported code of practice and laws that were initially imposed on Africans by the West. So, if the Bible itself is foreign to Africa, then same-sex marriage is foreign to Africa. As Msibi remarks, 'if Africa rejects ideologies brought from the West, then surely religion brought from the West cannot be used to reject something that is being rejected for its foreign roots' (Msibi 2011, 69). This argument reveals a serious logical flaw in the religious argument since it amounts to cherry-picking or the fallacy of suppressed evidence.

Furthermore, there are other issues with the religious argument. Take, for instance, the naturalist version that construes heterosexual relationships as sanctified and legitimized unions that are naturally designed to project sanctity in marriage and avoid sexual vices.⁵ If same-sex marriage is being rejected based on this argument, then it raises crucial concerns as to why African nations still cling to polygamous and polyamorous relationships.

A DEFENSE OF THE CULTURAL ARGUMENT

From the foregoing narrative, it is clear that the three anti-same-sex arguments do not offer valid or cogent proof for opposing same-sex marriage. An alternative route is to begin to explore the cultural argument. Proponents of the cultural argument against same-sex marriage do not usually publish their arguments in journals or any properly documented sources. The cultural argument emerges from snippets of sentiments expressed by prominent African leaders and popular religious personalities who have frequently tagged same-sex relationships as unAfrican.⁶

Their argument, as we could make sense of it, is that those episodes of homosexual and LGBT identities *couched in terms of long-term sexual orientation* are alien to Africa: being alien to Africa implies that homosexual and LGBT identities do not have space in African culture. Therefore, homosexual and LGBT activities are unAfrican and must be rejected. This argument has attracted a barrage of attacks and opposition from the LGBT community worldwide, who have described it as a deep-seated expression of homophobia. The Human Right Watch report of 2008, for instance, categorized this argument as an expression of homophobia and attributed such surging homophobia to the sentiments expressed by some African leaders to perpetuate their grip on power in the wake of a seemingly insurmountable HIV epidemic, perennial economic downturns and economic and social inequalities among their citizens. The report regards the condemnation of homosexuality as providing a haven for African leaders to offer excuses for their ineptitude and escape a myriad of societal problems confronting their nations (The Human Rights Watch 2008). For instance, McKaiser, among others, has described the claim that homosexuality is un-African as 'a historical embarrassment' (Mckaiser 2012). Msibi describes the idea that same-sex attraction is unAfrican, as 'lies' perpetrated in Africa by anti-gay activists (Msibi 2011).

Despite their varied perspectives on the subject, the opponents of the cultural argument almost unanimously agree that what the proponents of the cultural argument mean by same-sex-relationship is 'un-African' is that no incidents of same-sex attraction have ever existed in Africa. They argue further that the anti-gay laws that are being applied to condemn same-sex relationships in Africa are Western panel codes introduced by Westerners in the colonial period,⁷ suggesting that Africans did not have established panel codes for same-sex marriages in the pre-colonial periods. Their strategy for debunking the cultural argument is thus to go down memory lane, collate a lot of historical facts about episodes of same-sex attraction in pre-colonial, colonial, and post-colonial Africa and present them as proof to counteract the assertion that homosexual and lesbian activities never existed in Africa.⁸ It is the expectation of the champions of the anti-cultural argument that once it is established that same-sex attraction occurred in Africa, the cultural argument crumbles, so it seems. On the contrary, we shall argue that the assault on the cultural argument by its opponents is not only misplaced but also riddled with logical flaws. First, the interpretation that "un-African" means "alien" to Africa suffers a semantic flaw, and by extension, any argument mounted on this interpretation suffers a logical flaw and commits a straw man fallacy. Same-sex attractions or desires have never been alien to Africa. For instance, in both colonial and post-colonial periods in Ghana and some parts of Africa, we usually hear of episodes of

same-sex attraction or desires across boarding institutions, missionary houses or homes, prisons, and so on. The issue is that this practice was never legitimized or publicly acknowledged. It was done in secrecy.⁹ Men who show the tendency to engage in same-sex relationships are teasingly called 'Kojjo Besia' in the Twi dialect. 'Kojjo' is the traditional name for a male born on Monday, and "Besia" means a girl, meaning that if you are 'Kojjo Besia,' then you are a man with same-sex desire tendencies. The consensus was that these acts were commonly frowned upon and regarded as temporal oddness by the larger society. So, when it is said that same-sex attractions are un-African, it does not mean same-sex attractions are alien to the African people; it means that it has never been publicly approved or legitimized as a culturally desirable sexual practice in Africa except under certain crucial circumstances as shown in the foregoing. On this understanding, it is obvious the proponents of the anti-cultural argument miss an interesting point. The cultural argument is not hinged on the assumption that same-sex desires or relationship is alien to Africa; rather, it is built on the premise that the idea of same-sex relationship as an inborn, lifelong sexual orientation and identity is alien to Africa.

The terminologies, 'homosexual' and 'gay,' emerge from a Western cultural context. For instance, "homosexual" was a term coined around the 19th century in the West to describe people of certain sexual perversion or aberration (Foucault 1980). Similarly, the term 'gay' evolved within a Western cultural context, usually invoked as a counter-cultural movement to claim the identity of homosexuals and to agitate for the protection of LGBT rights. It was a movement that agitated for the globalization of sexual orientation identities, what Carl F. Stychin (2004) calls 'the universalizing of same-sex sexualities as identities' (Stychin 2004). It was a movement with its flag, festivals, neighborhood, and so on (Gamson 1995). On this understanding, one will notice that, as Msibi argues, 'both the concepts of "homosexuality" and "gay" have no meaning in Africa, as they come from a specific historical and political Western experiences' (Msibi 2011, 57).

This historical account of the origin of the terminologies 'homosexual' and 'gay,' sketched above, resonates very well with the thesis of the proponents of the cultural argument. When it is asserted that homosexual and gay relationships are alien to Africa, it does not by any means indicate that same-sex desires or relationships are alien to Africa. It means same-sex desires or relationships framed as lifelong sexual orientation and identities are alien to Africa.¹⁰ This is the argument of the proponents of the cultural argument, which has often been misunderstood and misrepresented. It is not an argument that is framed to deny the existence of same-sex attraction in pre-colonial, colonial, or post-independent Africa; rather, it is an argument framed to deny the existence of the glorification, elevation, and cultural institutionalization of same-sex marriage in Africa premised on homosexuality as an inborn, lifelong sexual orientation and identities. These are the determiners that were not present in Africa.

Another problem with the objections against the cultural argument is that most of them are *ad hominem*. Instead of engaging in argument, the opponents of the cultural argument frequently resort to name-calling by slamming Africa with the term 'homophobia' whenever it is argued that same-sex relationships are un-African (Tamale 2007, McKaiser 2012). This way of confronting the cultural argument flies in the face

of the crux of the cultural argument. As noted, the cultural argument does not deny those episodes of same-sex sexual activities existed in pre-colonial Africa or that some isolated cultural or public circumstances inspired cases of same-sex marriage. Rather, it asserts that same-sex *sexual activities* were not publicly approved and sanctioned even in pre-colonial periods. It also asserts that same-sex attraction anchored on long-term sexual orientation and identity is what is alien to Africa and not temporal same-sex attraction or situational same-sex activities. The cultural argument is thus valid because it asserts the forgoing facts. The problem is with the opponents of the cultural argument who eschew the substance of the cultural argument and substitute it with the derogatory concept of homophobia.

It is crucial at this moment to examine the cultural argument for its merit. Culture is the set of principles that guide the life of people. It emerges as a result of people's rational decisions and choices. According to Gerard V. Bradley (2004), it 'is the value added by people acting on the basis of reflection and choice to nature.' Culture is a purposeful design of a set of values that influence what we choose to believe and act upon. It is not just a haphazard accumulation of behavioral activities and tendencies but a well-calculated abstraction of the way of life developed and carefully nurtured.

However, culture, once in existence, does not only shape our choices but eliminates some. 'It is the world we make' and 'the world that makes us' (Bradley 2004). When we make culture, we do that under the gird of our capacity of abstraction of choice of what should guide our way of life and what should not. However, when culture makes us, then it grips us on what options we should choose or shirk. This explains why different cultural milieus make different choices and eliminate others. For instance, in most Western societies, polygamy and polyamorous relationships are frowned upon both legally and socially. Westerners do not endorse polygamy because it is a choice that their culture eliminates. In equal fashion, Africans do not sanction homosexuality and same-sex relationships of the type that is exemplified by the West because it is a choice their culture neglect. So, when it is argued that same-sex relationships are unAfrican, it is to suggest that same-sex relationships are options that the African culture eliminates. It is an option that does not have a cultural space within the African social milieu.

It must be noted further that the cultural argument embraces the three other arguments discussed in the foregoing. It is something that could be described as a triple-barreled gun forging together the definitional argument, the procreation argument, and the religious argument to promote opposition to same-sex marriage. The cultural argument appropriates the definitional argument in a remarkably imaginative way. The definitional argument, as sketched above, hinges on what *defines* marriage. However, within the purview of the cultural argument, it is couched in terms of what *determines* marriage. John S. Mbiti notes that this determination manifests itself in the way African societies prepare members psychologically for marriage right from childhood so that when they are older, they will not depart from it (Mbiti 1969). Traces of the procreation argument, in the same vein, is embedded in the cultural argument. For instance, procreation is hinged on heterosexual normativity, which is determined by people's culture. While the procreation argument is considered in its original form as a

phenomenon designed for the reproductive system, within the cultural thesis, it is seen as a way of preserving what culture has bestowed on us for the continuation of humanity (Moler 1982). The effect of a lack of procreation seen within the cultural thesis is not necessarily a population decline but the natural desire to guard against the diminishing of cultural heritage. So, the procreation component of the cultural argument is driven by a commitment imposed by the cultural choice to perpetuate lineage and guarantee its survival. The act of procreation possesses some religious import delineating the fashion in which the cultural argument appropriates the religious argument. In most African societies, the emphasis frequently placed on procreation bears some religious undertone. Lucy P. Mair (1969) argues that in African societies, religious values concerning sex are focused primarily on procreation and not as a mere sexual activity. This way of conceiving sex makes marriage a religious obligation designed to fulfill these religious values and satisfy some ritual fecundity.

Despite the attraction of the cultural argument, the issue of culture is more complex than is made to appear. As pointed out, culture is not just about tangible artifacts such as museums, symbols, and paintings: it is an embodiment of vast social institutions and practices such as marriages, religion, public morality, birth, puberty, and death rituals, all couched as cultural choices. However, a cultural choice construes this way inevitably becomes a community's or society's choice and raises the question of whether individuals belonging to a certain cultural milieu are inevitably gripped by their community's cultural choices in a manner that their own choices diminish in the face of their cultural beliefs. This question raises deep concern for the cultural argument. If we are supposed to go by the tenets of the cultural argument in the manner sketched here, then minority rights and preferences risk being subsumed by a community's cultural choice.

The pressing question worth asking is: are human beings just guided by cultural norms, or they have individual rights to autonomy to go against cultural norms, change the extant prescriptions and create fresh ones? On the one hand, if we accept that human beings are entirely cultural beings, then minority preferences and the right to autonomy collapse, and this raises issues for same-sex rights advocacy. On the other hand, if we accept that human beings are both cultural beings and are at the same time individually capable of the right to autonomy, then we are confronted with the question of how cultural autonomy co-exists with individual autonomy in the same social space. This concern equally has implications for same-sex marriage advocacy. Fortunately, there is a vast literature on African philosophical thought systems that can be invoked to resolve this conflict. We shall, from this moment, draw on this debate, in the way we have presented it so far, to discuss the right to same-sex marriage within the African thought system and then proceed to show why the cultural argument in its current form fails to consider certain inherent complexities, especially when the issue of decriminalization of same-sex attractions arises.

THE RIGHT TO AUTONOMY IN THE AFRICAN THOUGHT SYSTEM

African societies have always cherished communitarian cultural values and derive their identity from the cultural norms that nurture and shape their identity. Thus,

to be a morally upright person is to be accountable to the social norms and moral codes that bind your community. This belief in communitarian values led to the emergence of communalism as a political doctrine spearheaded by African independence leaders and scholars as a counterpoint to supposed Western individualism, liberalism, and capitalism.

Later scholars such as Ifeanyi Menkiti, Thaddeus Metz, Kwesi Wiredu, and Kwame Gyekye promoted the communalistic construct of the African and deployed it to articulate a communitarian thesis regarding personhood, individual and community right to autonomy. Menkiti's and Wiredu's perspectives are strictly communitarian, while Gyekye and, to some extent, Metz promoted what is called 'moderate communitarianism.' According to Menkiti, a person is defined by her 'enviroming community' (Menkiti 1984). In this context, the African person is strictly accountable to the community that inducted and nurtured her. The whole idea is that to become a human person, according to Menkiti, one needs to be socially incorporated into the community through certain social rules aimed at helping an individual achieve personhood. The corollary is that without a community, it is impossible to have a full-blown human person. It is the community that makes a human person, for 'as far as Africans are concerned, the reality of the communal world takes precedence over the reality of individual life histories' (Menkiti 1984). This is a thesis that attempts to subsume individual rights to autonomy under the community's dictates. In this context, the community is presented as an umbrella body that provides and sustains the rights and moral codes that sustain the existence of the community.

In contrast to Menkiti's position, Gyekye offers an ecumenical approach to the debate on community and individual rights to autonomy which he calls 'moderate communitarianism.' His perspective is inclined to accommodate the individual right to autonomy within a typical communitarian perspective. Gyekye jettisons Menkiti's notion that the community exists before the individual, stating that the 'community existentially derives from the individual and the relationships that would exist between them' (Gyekye 1992). The moral of this narrative is that the existence of the community is derivative and not primary. The corollary is that it is the individual that chooses the community she desires to belong to and could leave the community of her own volition. Therefore, according to Gyekye, it is conceptually incorrect to neglect the individual dimension that characterizes personhood. To him, the real problem surrounding personhood is not about morality but autonomy and freedom. He argues that what defines a human person is rationality, morality, and the potentiality to make a judgment based on what the community nurtures. Thus, the person is not a passive agent in the scheme of community practices, activities, and future aspirations. Indeed, the individual can question community practices that she disagrees with or possess and sustain opinions that are in sharp contrast with the community's opinion. Individuals possess autonomy in a way that makes it possible to build their potential within the remit of the community *ethos* without violating their will.

A cursory look at Gyekye's view indicates a crucial point that requires scrutiny. He should not be read as emphasizing individual autonomy to the detriment of the community. Indeed, individuals have autonomy and can exercise their will, but as Gyekye notes, this cannot be operationalized outside the confines of the community.

As noted, Gyekye's account shares a close affinity with Metz's notion of relational autonomy. This idea suggests that the community retains a certain level of autonomy that supervenes the individual in a manner that the individual's will can also be exercised within the community's jurisdiction. The implication is that, with moderate communitarianism, the community still retains a certain considerable force to regulate individual actions in a manner that does not quash her autonomy.

The debate on community and individual rights to autonomy resonates with the debate on same-sex attractions and marriages within the purview of the cultural argument. As things stand, the cultural argument in its original form is consistent with the radical communitarian perspective. However, going by this approach has the potential to quash minority right to autonomy. This means that issues of same-sex marriage will fail to secure space for consideration within a community constrained by radical communitarian ethos. Moderate communitarianism, on the other hand, appears to promote individual rights to autonomy, albeit subtle manner that grants space for the consideration of minority rights in a communitarian system. This analysis seems to imply that if an individual has a right to autonomy within a community, then she can choose to become gay or homosexual openly and ought to be granted the right to same-sex marriage.

However, this approach has far-reaching implications and flies in the face of the cultural argument, the one spiced with moderate communitarianism and the version of the cultural argument in which we intend to position *our* thought as regards the right to same-sex marriages in Africa. As we noted, the cultural argument needs to be conceived from the perspective of moderate communitarianism. However, as we realize, moderate communitarianism is not inclined to grant complete freedom to individuals to exercise their rights without recourse to the ethos of the community that nurtured them. As an individual, you are only allowed to exercise your will so long as it does not violate the community's values. It will be inappropriate to forge a head-on collision course with the community with regard to the right to autonomy because the community retains the power to influence the last verdict in any matters involving an individual and the community in circumstances where there is a clash.

This way of construing the matter makes it conspicuous that same-sex marriages, once they are noted to be at variance with African communal values, cannot be wholly granted in a moderate communitarian culture. However, this does not exhaust the matter holistically: it does not because, when it comes to matters of same-sex attractions and relationships, a moderate communitarian culture lacks the resource to constrain them. The explanation is that in moderate communitarian culture, there is a strand of liberalism that offers individuals the liberty of taste and pursuit to determine their lifestyle insofar as it does not harm others. Going by this argument, what gays and lesbians do behind closed doors does not bring harm to others and needs not to be impeded by a community's ethical practices.

However, the same cannot be said for same-sex marriage because marriage is a social institution created, guided, and sustained by the community. In most African cultures, marriage is not a private initiative or a contract sealed in secrecy; rather, it is regulated by the community as an institution that establishes kingship relations in the family to sustain cultural heritage. This is because in most African cultures, before

marriage is contracted, certain requirements have to be satisfied, and these requirements usually occasion customary performances (Ayisi 1997). In this context, the community has a say in marriages, and its consent seals and legitimizes matrimony. This is why Mbiti notes that members of African communities are psyched to accept marriage even before they attain adulthood (Mbiti 1969).

In Africa, marriage is strictly regarded as a social institution and a sole preserve of the community. It is the community that approves or disapproves of marriage based on its cultural orientation. Hence, on the one hand, it will be preposterous for a culture to approve the same practice it regards as abominable. On the other hand, it is inappropriate for a certain culture to regulate the sexual desires of adults so long as they do not harm the collective good of the community. Sexual attractions and sex are biological tendencies, and the community does not determine how sexual activities need to be practiced behind closed doors.

The approach being advocated here is an ecumenical approach to the 'cultural argument advocacy' and 'LGBT right to same-sex marriage in Africa' advocacy. The reason is that the extreme versions of both cultural advocacy and LGBT rights advocacy fail to provide an appropriate balance to resolving the conflict between community and minority right to autonomy. We shall deploy two anecdotes fashioned from the work of Chai R. Feldblum (2007) to illustrate this seeming impasse.

Alpha

Suppose that I am gay and you are a hotel manager. My gay partner and I decide to spend some quality time at your hotel. You hear us call each other with amorous pet names like "honey," "sweet," and so on. You ask if we are gay and we say, yes we are. You are an African. You hold the African sentiment expressed here towards same-sex relationships as an abominable act against your communitarian ethical values. You were quite candid in your sentiment, so you graciously deny my partner and me accommodation though we are known members of your community. You explain that being gay is un-African because it violates our African communitarian values. Your actions violate my right to autonomy on the basis that I am gay. Put simply, my rights have been violated because of my sexual preference.

Let's consider an alternative scenario.

Beta

After the incident, I feel strongly that my right to autonomy has been curtailed. I could not understand why, as a member of the same community, what I do in private, which does not cause harm to anyone, should be denied me. I take you to court, and the judge rules, among other things, that same-sex relationship is not illegal after all in our country. The law only frowns at "unnatural carnal knowledge or sodomy," and I have not been caught in

the act. Given that the practice of "unnatural" carnal knowledge only occurs in private since the law forbids open or public sex, the hotel manager cannot forbid my partner and me from rightfully patronizing his facility because he cannot say for sure that we will certainly engage in any activity of sodomy. He is ordered by the court to transact business with my partner and me. He agrees with the court's ruling but vehemently states that he disagrees with it because his right to observe his cultural liberty has been curtailed by someone's sexual preference.

The above narratives reveal the tension between LGBT rights advocacy and cultural argument advocacy on the right to autonomy. *Alpha* leans towards the LGBT rights advocacy for same-sex marriage, including all forms of LGBT criminalization, while *Beta* tilts towards the traditional cultural argument analogous to the radical communitarian thesis chiefly advocated by Menkiti and others. *Alpha* is a violation of a minority's right to autonomy, whereas *Beta* is a violation of a community's right to autonomy. Neither of the two approaches is appropriate for resolving this impasse. A more effective approach would be to deploy the ecumenical approach, which will require the adoption of a moderate communitarian perspective and others to resolve this clash. This means that each party to the dispute will not fall within her maximum target range. The LGBT rights advocacy for same-sex marriage and decriminalization of all forms of abuse against LGBT persons will forfeit something to gain something. In equal measure, the advocates of the cultural thesis will lose something to gain something. The objective is to reach a fair middle ground that will benefit both parties to the dispute and improve their respective positions.

First, proponents of the LGBT rights to same-sex marriage would have to abandon the right to marriage advocacy and stick to the decriminalization of all same-sex attraction issues. The reasons are the following. (1) Marriage is a social institution, so it makes sense for the community to have the right to superintend over all matters involving marriages within its cultural orientation. (2) Losing the right to same-sex marriage is a better accomplishment than losing the battle for the decriminalization of same-sex attractions and relationships. The reason is that not all same-sex attractions and relationships will necessarily transform into marriage, even if same-sex marriage is made legitimate. Another reason is that even where same-sex marriages are legalized, LGBT persons are still stigmatized and abused. Awondo et al. have noted that even in South Africa, where gay marriage is legalized, 'gang rape of lesbians' is 'a regular practice' (Awondoh et al. 2012). So, the primary target is to seek decriminalization instead of agitating for same-sex rights to marriage.

An objector might demur that the prohibition of same-sex marriage will violate the right to privacy of LGBT persons. As we have argued elsewhere in this paper, the right to privacy can rather be upheld through decriminalization rather than through the same-sex right to marriage. Where same-sex rights are granted, discrimination, stigmatization, and abuse of the LGBT minority are still rampant. The community must tolerate LGBT relationships and attractions and shouldn't abuse persons with same-sex desires. Same-sex desires are biological expressions of people's sexuality, and the community's social norms should not constrain them. What two adult men or

women do behind closed doors that do not cause harm to anybody should not be a problem to the society. If we observe the above guidelines, it is possible to resolve the impasse between the proponents of the cultural argument and the proponents of LGBT rights in Africa. Such an approach is consistent with a moderate communitarian thesis which tries to adopt a middle path position between individual and community right to autonomy.

CONCLUSION

The agitation to decriminalize laws that criminalizes LGBT activities and legalize same-sex marriage still surges on, but the furor and opposition it is attracting are evident in the nearly unanimous rejection of LGBT rights in Africa. We take these reactions towards the legitimization of same-sex marriage in Africa and the decriminalization of LGBT rights to accrue from our inability to situate the discourse within the purview of the traditional African discourse on the right of the individual versus the right of the community to autonomy. We deployed this debate to validate what we term a moderate cultural argument consistent with a moderate communitarian thesis of the right of the individual in the African thought system. The outcome of this strategy is the agitation for the decriminalization of same-sex attraction tendencies while arguing for the shelving of the agitation for the legitimization of the right to same-sex marriage in Africa. This, to our minds, offers a more comprehensive and all-embracing resolution to the impasse between adherents of the campaign for the legitimization of same-sex marriage and the proponents of the cultural arguments. This, in the long run, will prevent the futility of forcing social change on other groups of people through sanctions and aid conditionality. Social change is an incremental change, and the compromise espoused here is likely to shift the baseline for cultural acceptance in the future since culture is dynamic. The truth is that impositions cannot compel people to change their minds. Dynamics in culture determine a change in attitudes and behavior.

NOTES

1. Though South Africa endorsed same-sex marriage legally, there appear to be widespread attacks and violence against the country's LGBT community. Msibi provides an account of a good number of literatures that details violence and harmful attacks on LGBT people. See T. Msibi (2011). This means that even in South Africa where same-sex marriage receives a constitutional backing and support, LGBT communities still suffer stigmatization and discrimination from the larger public. So, what I mean by "the whole of Africa, except for South Africa" designates only 'constitutional' South Africa and not 'cultural' South Africa.

2. As we noted, these arguments are hardly mounted in journal articles or any formally documented sources by anti-LGBT rights proponents in Africa. Aside from the religious argument, which is sometimes mentioned, the other arguments are

normally used in informal discourses in the street or the church against same-sex marriages and LGBT lifestyles.

3. The original argument captures '*only* one man and a woman.' We have omitted the expression '*only*' to cater to the traditional African system where polygamy and polyamorous relationships are widely acceptable practices. For instance, See Shorter (1974). However, this does not alter the definition in any substantial way since marriage is still conceived in terms of a legitimized heterosexual relationship.

4. In 2015, the Kenyan deputy president, William Ruto, said to congregants at the Jesus Winner Ministry Church, "The Republic of Kenya is a republic that worships God... We have no room for gays and others...we will not allow homosexuality in our society as it violates our religious and cultural beliefs" See K. Ruble Kayla (2015). It needs to be noted that the above comment is made in relation to endorsing LGBT lifestyles. However, this remark is relevant to the present discussion because it reveals a resentment for all LGBT activities, including gay and lesbian marriages.

5. Polygamous and polyamorous relationships were serious marriage issues the White missionaries in Africa had to contend with. See Muthengi (1995).

6. These sentiments are usually found in news link sources on the internet. Several of these news links have been suggested in the opening section of this article. For instance, see Fisher (2015) and Winsor (2015).

7. See Human Right Watch (2008).

8. See Msibi (2011, 62-63); Msibi cites a substantial amount of rich scholarly works that detail the reports on same-sex attractions and desires that occurred in Africa before and during the advent of colonialism.

9. Serena Owusu Dankwa's paper is seminal in this regard. It details reports of same-sex relationships among females in Southern Ghana, a practice popularly referred to as "Supi" or "Suppi". See Dankwa (2009). There are, however, claims that same-sex relationships are publicly acknowledged in some parts of Southern and Northern Ghana. These claims cannot be disputed as available literature suggest, but their validity does not vitiate the strength of the cultural argument. For instance, Italo Signorin and Rose Mary Amenga-Etego have authored works showing that same-sex marriages are sometimes, under certain circumstances, publicly approved among the Nankani of Northern Ghana and the Nzema of Southwestern Ghana, respectively. However, these authors are quick to note that partners in such marriages are not *sexual partners*: they are cultural husband and wife meant to promote the male genealogically descent structure and publicly recognized relationship designed for the exemplification of mutual rights and duties. Aside from these, these same-sex partners are not sexual partners, and each could indulge in an overt or secret heterosexual relationship recognized by either party. See Agonwole (1973, 43) and Amenga-Etego (2012). These types of culturally and mutually inspired same-sex marriages are different from the type that is being advertised by the West.

10. Dankwa notes that same-sex relationships among girls of southern Ghana were seen as "practice and performance and is not discursively named or understood as a social identity" See Dankwa (2009).

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