Making Marital Status in South Africa, Past and Present

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As I first approached MaKhumalo's home, I found it hard to place. A spiral of razor-wire crowned the high wall, protecting her dusty yard from the village road. Through the metal teeth of the gate my research assistant called for MaKhumalo's teenaged son, who opened the heavy padlock and guided us across the yard into an unfinished hallway lined by ghostly shells of future rooms. A winter wind blew into the glass pendants of a small chandelier, sprinkling a serenade onto the construction debris below.

The hallway led us into a cold, dark kitchen where we met MaKhumalo emerging from her bedroom behind a mud wall. In pastel shades of rose and blue, the Virgin Mary looked out upon us from a picture near the sink. The kitchen held few hints of the prosperity implied by the home's heavy security, typical of South Africa's largely white, middle-class suburbs but not its overwhelmingly poor, rural Black villages.

My confusion increased when the interview began. Having been told that MaKhumalo's husband had left her, I started obliquely. "I don't know what your family situation is, you're married or not, or...?"

"I'm married," she replied. It wasn't what I had expected to hear, but her words were solid and certain.

She fell in love with her husband in 1988, she continued, and a few months later he began sending bridewealth cattle, known in Nguni languages as *lobola*, to her father. Other gifts and ceremonies followed, until she and her husband were married in a mission church on October 14, 1991. A Zulu ceremony followed in 1993. For fifteen years she lived with her husband and three

children in a nearby village, on their own homestead near her husband's family.

In 2006 her husband began to see a new girlfriend at work. He moved away, leaving MaKhumalo to raise their children. Sadness suffused her voice. "I stayed [even] while he didn't want to give us food or bring us money. In 2007 I went to court...to ask for financial support." She won, and he began sending money. Then, in 2009, a "policeman" arrived with court papers from her husband requesting a divorce. She refused to sign. The routine repeated twice more, but her resolve, she giggled with rising spirits, didn't waver. Eventually she asked her father for a home on their family's property. He agreed, and she moved back to Maqongqo, where we now spoke, in 2011. In February of that year her husband tried a fourth time. She was still reluctant, but her Catholic priest urged her to accept. "To access your rights and keep your children," he said, "sign the paper for your husband."

He said it was right for me to sign because...it was [my husband] who put us in this problem.

Also, this doesn't mean that...your marriage is over. The marriage will stand forever. Her, the woman he'll now marry, that's a thing in the wind, a thing that doesn't exist... You, build your life and rights for yourself.

And so she did. To the land from her father she added money from her husband's pension and began to build the home-in-progress I was now, hearing her speak, starting to place.

MaKhumalo created her marriage the way most Black South Africans hope to: through an extended lobola process capped by two weddings, one "white" and one African. This multi-step combination, developed in response to colonial rule, extends a logic contained in lobola itself. Entailing a large gift of literal or metaphorical cattle from the groom or his family to the bride's, lobola is negotiated and paid over a period of time marked by reciprocal gifts and

celebrations. Its length embodies the idea that, among Africans, marriage is an ambiguous status that grows over time, not a clear category crisply conferred on a ceremony's completion. As anthropologists put it, marriage here is a process, not an event.

But this essay is not about the exotic fascinations of a supposedly far-flung place. Instead I suggest that stories like MaKhumalo's show how marital status is *always* a social process, even where it *appears* as an event. In the Global North as in the Global South, "marital status" is produced through the routine, if often contentious, actions of individuals and institutions in an ongoing process of social classification. State, religious, economic, and community institutions distinguish the married from the not and treat them differently. So do friends, neighbors, and family—and often with more immediate consequence. Sometimes, as for MaKhumalo, slippages emerge between different registers of recognition. More often, they are linked. Whatever the pattern, it reveals how authority is shared across the multiple institutions people navigate as they build their intimate and family lives.

Lobola makes this explicit, centering ongoing family recognition as the essential requirement for a valid marriage. But after centuries of settler colonialism, church and state have also staked their claims. The possible referents for marital status have multiplied, and MaKhumalo's story—divorced in one register, married in others—reveals the complexities that can result.

In this essay I draw on 109 interviews I conducted with Black and/or LGBT South Africans across two and a half total years of fieldwork, to explore how the line between the married and the not is drawn in South Africa today. I trace how the lobola-plus-two-weddings process for marrying became the ideal, and how it reflects the primary role that community recognition plays in creating a valid marriage, even in the face of outside forces. This ideal

process lives on after apartheid, profoundly shaping the impact of world-leading marriage law reforms the country has enacted since. In these ways, South Africa makes visible the intertwined processes—ceremonial, institutional, interpersonal, and historical—that lie beneath the category of marital “status.”

EMPIRE’S LOBOLA, LOBOLA’S EMPIRE

The key historical process that led to the lobola-plus-two-weddings ideal was colonization. As European colonizers spread from the Cape into the southern African interior in the early nineteenth century, they became increasingly preoccupied with African marriage practices. Lobola and polygamy became the “twin pillars of heathenism,” core struts in the entire civilizational hierarchy colonists used to justify their domination of African land and people.

This hostility was most fully expressed in the work of Christian missionaries. Flooding into southern Africa from across western Europe and the United States, organized missions of diverse Protestant and Catholic faiths trained their sights on marriage, hoping to replace the extended-family character of African marriage with a Christian model focused on the couple’s commitment to each other as mutual (but not equal) companions. In the churches’ eyes, only their own weddings could establish a valid marriage, lobola’s ambiguity hopefully banished with the couple’s public vows “until death us do part.” Missions required converts to renounce polygamy and lobola before receiving baptism or communion.

Yet most converts continued performing lobola anyway. Its role in defining Black marital status, and through that the relationships and obligations of a range of kin, was too entrenched to simply set aside. Instead, converts began to validate their marriages in *both* of the communities where they made their lives, celebrating both lobola between the couple’s families and a

wedding in church. By 1910, a century after mission activity began, a witness to the Cape Native Affairs Commission estimated that 95% of marriages among Christian Africans in the Transkei region involved lobola. While this precise number is impossible to verify, it named a clear truth: rather than replace lobola with church weddings, Christian converts had combined the two, introducing a new referent for marital status alongside the old.

Meanwhile, the region's multiple British colonies and Boer settler states had their own problems with lobola. In the separate judicial systems they established for disputes among Africans, lobola-related questions often filled the docket. Colonial magistrates found themselves adjudicating cases of, to them, incomprehensible complexity. Was the cow given to a woman's family, for example, a lobola payment intended to create a marriage, or a "damages" payment atoning for extramarital sex? Repeated commissions attempted to impose consistency, but to little avail.

The most direct legal intervention came from the British colony of Natal, in the region where I would eventually meet MaKhumalo. In a comprehensive code of "Native Law," Natal established a procedure for registering African marriages with the state once lobola was completed and the bride had been ceremonially (and consensually) "delivered" to the groom's family. It also limited lobola to a maximum of ten cows.

Incorporating and regulating lobola within its own procedures, the Natal colony attempted to dispel lobola's ambiguities by standardizing its amount and transforming the customary ceremony for the bride's delivery into a state-recognized wedding. By creating a decisive moment of finality, in other words, Natal tried to turn the process of lobola into an event. And to an extent, it succeeded. Many in my Maqongqo fieldwork, for example, described the code's registration steps to me in precise detail, 150 years after their enactment. And ten

cows (plus one for a virgin bride's mother) is now widely understood as the Zulu cultural standard for complete lobola.

Yet like missionary church regulations, Natal's code triggered adaptive reactions by Africans themselves that evaded the code's restrictions and elaborated the lobola process. To get around the ten-cow limit, for example, brides' fathers in the late nineteenth began to expect an *imvulamlo* ("opening of the mouth") payment before starting lobola negotiations. Even as the completion of an African marriage became more of a defined event, the actual lobola process became longer and more complex.

The discovery of gold and diamonds in the late nineteenth century unleashed waves of disruption into these dynamics. Migrant labor pulled Black men away from their families for up to eleven months each year, while giving them cash they could use to pay their own lobola without their fathers' help. Later, urbanization drew millions of Black men and women into colonial cities where new ways of living, working, and worshiping fostered new marital desires, and where access to housing could depend on a state-recognized marriage. Marriages formed only through lobola were not systematically recognized, but marriages in state courts and mainline churches were. Attempts to enact a nationwide registry of customary marriages repeatedly failed. Meanwhile, apartheid's movement controls and forced removals flung Black families into circuits of perpetual deprivation.

Yet amid this tumult, the lobola-plus-two-weddings ideal solidified. Christianization spread more rapidly, becoming the overwhelming norm. The growth of cities led to the development of media and consumer cultures that promoted "modern" ideas of "the New African." Both of these helped popularize white weddings, which became increasingly elaborate and conspicuous as the twentieth century wore on. "Traditional weddings" became increasingly

conceived as such, the African counterpart to the white. And the lobola processes that led up to them continued their role as the primary referent for Black marital status. Lobola did change—incorporating cash as a replacement for some of the cows, for example, or developing new rituals and celebrations within its repertoire. But its authority endured, folding white weddings into its lengthening processes that continue to define marital status as Black South Africans themselves understand it.

RECONSTITUTING CUSTOM, CUSTOMIZING THE CONSTITUTION

Into this landscape arrived the post-apartheid constitution and its breakthrough guarantees around gender, culture, and—for the first time in the world—sexual orientation. These guarantees led to two new laws extending full state recognition for the first time to marriages under African customary law, and to same-gender couples. My research began as an attempt to explore how these law reforms were shaping everyday understandings of marriage, and I quickly learned that, among Black South Africans, their impact was deeply mediated by the lobola-plus-two-weddings process.

For example, the Recognition of Customary Marriages Act (RCMA) is little used. Only a few thousand marriages are registered under it each year, versus well over a hundred thousand per year under the statute for white weddings. In my own fieldwork, few had heard of the RCMA, nor could many imagine any reason for using it. Most hoped to marry through lobola and two weddings, and the white wedding is already recognized by the state. Only one participant who was the son of a polygamous father and hoped to marry polygamously himself was aware of the RCMA, because it was the law he would have to use.

It's notable that more don't use the RCMA to secure some official protection for their

marriage while lobola is in process. Under most understandings of custom, rights and responsibilities start to shift once lobola has begun, and the RCMA theoretically provides a way to protect those legally. But few ask for this in practice, and research suggests that those who do are often thwarted by state bureaucrats who insist on full lobola before they'll register a marriage. Here, too, the lobola-plus-two-weddings ideal limits the RCMA's relevance.

Meanwhile, the statute for same-sex marriages, the Civil Union Act, is used even less but has had a much more visible impact. The constitutional protection for sexual orientation has produced an explosion of LGBTIQ identification, and with it a growth in demands for family and community to recognize queer relationships. For example, a gay man I call Sakhile Dlamini told me how he “brushed...away” his paternal uncles when they shouted at him, “‘*Uyindoda, wena!* You’re a man!’” to rebuke his same-sex engagement. “I’m my own person,” Sakhile said. “I’m not gonna be willing to let them push me...around like that.”

But here, too, the law's impact is shaped by the lobola-plus-two-weddings process and its emphasis on custom and religion. Both before and since the Civil Union Act's enactment, many queer Black South Africans have turned to custom, including lobola, in search of secure marital recognition from their families and communities. For example, activist lesbian couple Vaivi and Sape Maodi-Swartz talked about their lobola to the press in 2015. “The initiation point for us was saying we want to do this process,” Sape told the *Daily Sun* newspaper. “If we don’t do it that way, most people would not respect our marriage when it comes to African customs and tradition. It wouldn’t gain the same respect that a heterosexual marriage carries with it.”

The lobola-plus-two-weddings ideal has become an organizing feature of Black South African relationships. Developed in response to colonial incursions, it demonstrates how crucial family and community recognition are to the making of “marital status,” even in the face of

colonial institutions, or constitutional ones, who want to draw those lines themselves.

The ironic postscript is that this ideal endures even now, in an era of marriage's collapse. A 2016 government survey recorded 62% of Black South Africans aged 15 and over as "never married"; in 1996, during the constitutional transition, the number was 52.9%. Decades of marital decline starting in the 1940s have continued into the constitutional era, making marriage more the exception than the rule.

This is at least partly because of the largely neoliberal economic policies that accompanied South Africa's pathbreaking equality protections, which have failed to repair the legacy of colonial economic domination. Unemployment is epidemic, and precarity widespread. Trust is hard to muster, and families of origin have become the safest bet—if not always an actually safe one. And so, many Black South Africans today continue to live with those families while maintaining romantic relationships outside the home. A smaller number cohabit without (full) marriage.

These less formally defined relationships dominate Black South African communities today. Lobola is underway in a significant portion, where the couples are spouses-in-the-making. Here the lobola-plus-two-weddings process becomes a kind of extended engagement, sometimes lasting decades, in which the relationship has created some rights and responsibilities but can be exited with relative ease—and indeed often is. In many other relationships there is no lobola, just some implicitly negotiated constellation of affection, intimacy, and support. In many cases there are children, who create enduring obligations between a couple and their families even after romance has died. In all cases, the importance of family and community recognition for defining relationships is foregrounded: Who is obligated to whom, for what, when, and why?

In this neoliberal and constitutional era, the ambiguity of African marital status has

returned in a new form. Marriage has become a process that *can* be completed, but rarely *is*. Many Black South Africans find themselves suspended somewhere en route, organizing their lives around relationships they only partly trust and others only partly recognize.

In this sense MaKhumalo's story stands less as representative than as a historical anomaly, an artifact of an intersection in time between a rising generation who did marry and a political opening that offered married women some legal protection. MaKhumalo made use of that intersection to navigate her marital troubles and work out a workable deal for herself. In ways neither her mother nor her daughter could, MaKhumalo secured from the processes churning around her marital status a little property and a solid certainty that, divorce papers or no, "I'm married."

RECOMMENDED RESOURCES

- Livermon, Xavier. 2015. "Usable Traditions: Creating Sexual Autonomy in Postapartheid South Africa." *Feminist Studies* 41(1): 14-41.
- Matebeni, Zethu, Surya Monro and Vasu Reddy. 2018. *Queer in Africa: LGBTQI Identities, Citizenship, and Activism*. Routledge.
- Mnisi Weeks, Sindiso. 2017. *Access to Justice and Human Security: Cultural Contradictions in Rural South Africa*. Routledge.
- Mupotsa, Danai. 2020. "Conjugality." *GLQ* 26(3): 377-403.
- Tallie, T.J. 2019. *Queering Colonial Natal: Indigeneity and the Violence of Belonging in Southern Africa*. University of Minnesota Press.