

Transformative Education for the 21st Century: Gender, equity and inclusion in Kenya

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ABSTRACT

The Kenyan Government, is a key stakeholder in the education sector, and has the obligation to engage different actors in ensuring that the gender parity discourse in education translates into praxis. Any gender related programme, which fails to address a girl child right to education as priority problem area, cannot drive the transformative education agenda for women. This right is not only a gender issue, but also an equality, equity and inclusive issue. In order for education in Kenya to be progressively transformative and able to face 21st century, theory and research methodology are critical. This paper argues that: i) though every child has the right to education, the most left behind has been the girl child, due to a failed African philosophic educational discourse, owing to a number of factors; ii) transformative educational discourse must deconstruct the ontology of the girl - child beyond theoretical and methodological limitations; iii) the philosophical and anthropological grounding of law, rights(equality) and justice(equity) can be demonstrated from a Thomistic perspective; iv) Girl-child right to education and the 21st century transformative discourse: equality, equity and inclusion.

KEYWORDS: African philosophic discourse, feminism, essentialist, liberationist, objectivist, collectivist, subjectivist, individualism, transformative, education, gender, equality, equity, inclusion, Afro-Apologetist, Afro-cultural critics, Afro-complimentarism, Thomistic law, justice and right

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I. BACKGROUND

The idea of gender parity has been the most persistent issue dominating postmodernist-constructivist discourse in feminist literature on one hand and in philosophy of education on the other. The frameworks as well as levels of analysis of the discourse itself, have generated more fundamental questions than answers and propelled by what critics perceive as a feminist essentialist agenda, whose content continue eliciting contradictory propositions. Critics of this debate have disproportionately held that, lack of proper sound theoretical, philosophical and methodological conversation around this issue, has not only complicated it, but rather weakened what would have otherwise been a compelling and convincing feminist liberationist debate on the relevance of education for women generally, and the girl child in particular, in recent times. In other words, it is not enough to profoundly propound the content of the agenda of gender in philosophy of education, inspired by feminist liberationist ideologies, but that also the method of presenting the content determines outcomes at two major problematic levels: First, the subjectivist individualism dominating feminist liberationist discourse appears compellingly suspicious in the whole agenda of the gender project, apparently determining the hypotheses that proponents want to test by defending and proving, in view of achieving, within the critics' perspective, certain suspicious strategic objectives. These very strategic objectives the critics conclude that they target a clique of elitist feminist minority group in affluent urban settings and have continued to work against the disadvantaged peripheral woman and girl child in the countryside. Problematically weak legal frameworks make it easier for disenfranchised neo-feminist essentialist proponents to prevail over established systems and sneak through agendas that have persistently suffered parliamentary rejection at legislative level, because they appeared too suspicious to be altruistic.

Second, the objectivist collectivist policy approach to educational content and methods in most African countries, presupposes, by necessity, an inclusivist Stakeholders Participatory Model (SPM). Critics, on one hand, argue that this approach suffers continued setbacks due to a collectivist agenda that seems to ignore the concordance between quantity and quality in terms of content and methods in the planning and implementation processes; while the proponents on the other hand, view the model as an attempted response to fundamental pedagogical questions that have dominated education discourse in post-colonial Africa as far as relevance of education needed for 21st century Afro-cultural context is concerned. The extent to which the girl child's rights to education becomes a yardstick to ethical-moral criteria for evaluating outcomes of stakeholders' performance remain controversial.

1. The girl child rights to education and the failed African philosophic educational discourse: the determining factors.

In the feminist liberationist logic, the emancipation of the global woman must be driven by a universal agenda of gender based on the broader philosophic-anthropological definition of person as rational, spiritual and ontological, a position Edith Stein strongly defends, proves and achieves. Her view of a woman in the society must be taken within the context that 'the woman shares a basic human nature with the man and all that has been said about the human being as well as the human person. The study of a woman rightfully belongs to the study of who the human being is (Makumba, 2002:120). Stein's objectification of the woman person and her struggles towards empowerment socially, politically as well as economically lies, in her view, in the intellectual liberation of a woman. This however can only be achieved by deconstructing historical and cultural biases so embedded in societal systems and structures, which obsessively push a woman to the periphery. This view is shared by Katherine N. Fulfer's (2008:1) position on feminist essentialism, as she writes:

Historically, women were thought to be intellectually inferior to men and thus were denied many educational opportunities. Another example *has to do with* a description of women as being "closer" to nature because they physically give birth to children. This characterization may be used to argue that as a result of their necessarily closer to nature than men, women ought to be the primary caregivers for children.

In addition to the question of essentialist oversimplification of the woman plight, Katherine further argues that:

The aforementioned examples are not the sort that the essentialist critics find problematic. Rather, their focus is on essentialist problem within feminism. *That even though* patriarchal essentialist concepts are disturbing, those within feminism are even more worrisome. Since women typically have been (mis) defined by essentialist accounts, one might assume that feminists would be among the least likely group to make the mistake of asserting that some features or experience is constitutive of or characteristic of women. But, in fact many feminists have made this mistake when attempting to depict women's oppression or describe women's interests. Specifically, some feminists have treated the situation and interests of white middle-class women as representative of all women. Such feminists have overlooked the interests of other women and made problematic authoritative claim about what a "woman" is and what issues should concern her (Fulfer, 2008:1).

Katherine's analysis presents yet another perspective to the problematic debate about the gender-based education discourse. Her position demonstrates clearly that the issue of a woman as person is broader than what appears at the face value. The fact that feminist schools of thought are also divided on the real ontological definition of woman as a person, presents divergent views which weaken this position in a very fundamental way. But her concern about universalization of the course of women is equally of interest given the diversity of women's interests and experiences. She writes:

The diversity of women's interests and experiences has led some feminists to question whether a non-essentialist description of women's interests can be given. The essentialist critique in feminist theory represents an intentional inward focusing on the content, purpose, and direction of feminism. Essentialist critics challenge feminists to theorize in a way that does not make any feature or experience constitutive of all women when the said feature (or experience) only applies to a particular group of women. However, the danger of the essentialist critique is that task of identifying a feature or experience that all women share may be impossible (Fulfer, 2008:2), *given diverse socio-cultural reality each woman finds herself in.*

This relativist view of feminist theories leaves essentialists with no option, but to rethink theory beyond a reductionist framework of analysis, from particularistic to systemic. In other words, the objectivist collectivist approach to gender issues reduces the interests of women to a mere intellectualist issue whose applicability is universal. From Stein and Fulfer's perspectives, gender issues are many and must be understood within a systemic framework. The two scholars have, in a broader way, shade light on the difficulties arising from the discourse on the ontological woman person and even more interesting, how, in Fulfer's view, the debate may be far from finish due to different feminist essentialist theorization on the woman's ontological being. This ontology is about a woman's dignity, equality, equity, inclusivity and freedom, achievable if and only if, feminist liberationist agenda saw as priority problematic area, the girl child right to education. Divergent views propounded stand to achieve no results in the long run, if the gender discourse is left at the mercy of elite feminist political class, whose agenda on the girl child only arises for purposes of political expediency. The question is: why?

To answer the above question, one must understand the dynamics of African philosophic thought in general, and the Kenyan educational discourse in particular. On this issue, two competing philosophical discourses emerge: First, the Afro-Apologetists see the substance of this debate predicated on what Molefi Kete Asante (1988, 1990, and 1998) terms as Afrocentricity by writing that:

Afrocentricity is the substance of regeneration because it is in line with what contemporary philosophers such as Maulana Karenga (1982, 1993), among others, have articulated as in the best image and interest of African people. Afrocentric method considers phenomena to be diverse, dynamic, and in motion and

therefore it is necessary for a person to accurately note and record the location of phenomena even in the midst of fluctuations. The Afrocentric method locates the imaginative structure of a system of economics, bureau of politics, policy of government, expression of cultural form in the attitude, direction, and language of the phenomenon, be it text, institution, personality, interaction, or event.

In his epistemic consideration, Asante argues further by seeking to demonstrate clarity on the question of analysis and method. He writes:

Analytic Afrocentricity is the application of the principles of the Afrocentric method to textual analysis. An Afrocentrist seeks to understand the principles of the Afrocentric method in order to use them as a guide in analysis and discourse. The two aspects of analysis are central to any proper understanding of society, history, or personality.

The education discourse in the Afro-Apologetist view, is fundamentally Afrocentric in content and method and seeks to answer cultural, economic, political, and social questions related to African people from a centered position. Meaning that any discourse to be relevant and appealing to the African consciousness, it must by necessity, see the African course as priority. The type of educational policies formulated for education sector on the continent ought to consider the fact that Africa is on the move, and therefore transformative agenda is not an option, but a necessity. At the same time, a shift in discourse requires pragmatic adjustment to the Afro-Apologetist position which remains fundamentally Afrocentric, and culturally dogmatic. To reclaim relevance it must open up to the practicality of the changing dynamics of postmodernist globalizing society; a position central to the Afro-cultural critics' school of thought.

Second, the Afro-cultural critics have advanced a diametrically opposed interpretation of the African education discourse, by proposing a much more liberalist approach to education policy dialogue and reforms on the African continent. Reforms that would make education more transformative and relevant to Africa's competitiveness in the 21st Century. Afro-cultural critics propose, as it were, a holistic approach based on an inclusivist stakeholders' participatory model (SPM) which is gender focused. They have argued that an education agenda therefore bereft of gender priority considerations, fails to reach the moral threshold necessary for scaling up society to desired heights of transformation. Criticizing Afro-apologetist glorification of Afrocentric education systems and knowledge foundations, Afro-cultural critics see Afro-complimentarism as a way out of the vicious education discourse which continues to instrumentalize gender disparity in Africa. In their view, Afro-complimentarist approach is more eclectic as it draws its content and method from both Afrocentric and Eurocentric philosophical-anthropological foundations. This position is alluded to by Jerome Alvin Hammersmith (2007), who, in his Doctoral Dissertation *Converging Indigenous and Western Knowledge Systems: Implications for Tertiary Education*, sees his study as offering 'a potential contribution to the struggle for indigenous reclamation, revitalization and renewal of knowledge systems, cultures, land and resources' (Hammersmith, 2007:iii). He writes:

It acknowledges that Canadian Indigenous history does not begin with the arrival of the Europeans. Neither does their future depend exclusively on Western worldviews. Rather, the study argues, the future depends on the convergence of Indigenous worldviews, encapsulated through orality in their languages and knowledge, with imported Western worldviews and knowledge encapsulated through literacy (ibid: iii).

To reinforce the argument even further, Hammersmith (2007) raises fundamental questions as directive to his study. He asks:

Firstly, can locating the discourse between Indigenous and Western knowledge systems in an abstract, neutral and voluntary 'ethical space' between them contribute to identification of their complementary diversities? Secondly, can the convergence of these knowledge systems in creative interconnections in research, development and teaching enable each system to preserve its own integrity? (ibid: iii).

The findings of Hammersmith's study are beyond the scope of this paper, and therefore the author limits himself to the questions posed. Mistakes have been made in the past, when some African researchers and scholars dismissed western based education as fundamentally irrelevant to the African reality, because, in their view, it was too subjectivist individualistic focused, and therefore misplaced in Africa. But yet, they were able to draw such conclusions inspired by the same Western education system they went through, which constitutes the form and matter of their intellectualism. With this kind of intellectual misdemeanor, the plight of the girl child in Africa can only be seen in the light of a forgotten tale, which unfortunately again has not been prioritized as problematic area by neo-feminist liberationist agenda. In their quest for gender parity and empowerment, liberationists have side tracked the real issues bedeviling the African girl child, who has now been essentially objectified.

Part of the blame has been the failure by African philosophic educational discourse to develop sound theoretical and methodological frameworks of analysis. This shows the extent to which arguments about the position of the girl child in Africa continue to ignore her context, by viewing her gender specific needs only by Western development paradigm. For this debate to make sense from a postmodernist interpretation of girl child right to education, it must consider the point of convergence and divergence between Afro-Apologetist and

Afro-cultural critics on the question of complementary diversities and interconnections between Africa and the West regarding the girl child's ontological existential being in society. The context of the girl child is not only philosophical, but also anthropologically defined by language, values, knowledge and worldviews (Hammersmith, 2007). These views are shared by Philip Higgs (2008) in his article "Towards an Indigenous African Educational Discourse: A Philosophical Reflection," as he writes:

The liberation of Africa and its peoples from centuries of racially discriminatory colonial rule and domination has far reaching implications for educational thought and practice. The transformation of educational discourse in Africa requires a philosophical framework that respects diversity, acknowledges lived experience and challenges the hegemony of Western forms of universal knowledge. *He argues that* indigenous knowledge, as a system of African knowledge, can provide a useful philosophical framework for the construction of empowering knowledge that will enable communities in Africa to participate in their own educational development.

Higgs seems to hypothesize that overreliance on Western oriented educational discourse and its discontents, has retrogressively impacted the formation of a relevant and pragmatic educational agenda, which is outcome based for Africa. This has hypothetically been antithetical to moves towards altruistically honest feminist liberationist agenda for the girl child rights in Africa. Instead, feminist agenda in most of global South countries of sub-Saharan Africa, such as Kenya, has been limited to the methods that could empower elite women in urban Kenya politically and economically at the expense of a poor peripheral girl child in the countryside. This has not only damaged the agenda, but also thwarted its visibility at the legislative level, due to the fact that the philosophical and anthropological definition and interpretation of the woman and purposes of clarity, the girl child in Africa, has been overshadowed by a faulty feminist agenda. This agenda must be reconstructed theoretically and methodologically.

2. Transformative educational discourse and the ontology of the girl child: theoretical and methodological limitations.

Scholarly views remain at variance with regard to what constitutes proper theory and methodology as far as moves towards objective transformative educational discourse in Africa generally and Kenya in particular, is concerned. One of the ongoing discussions today has been whether or not a single theoretical framework of analysis, would be appropriate to initiate debates about deconstructing false ontological characterization of the girl child, as presented by feminist essentialist theories. There those who have argued for a multi-theoretical approach to the debate because, in their view, the ontological question of the girl-child, like any other human being, is complex. This complexity can be ground for arguing that, gender-related challenges confronting the girl child in many African societies today as before remain multi-causal in nature, hence multidimensional. Addressing this situation would therefore require a multidisciplinary approach, which calls for multi-theoretical frameworks of analysis. As tools of analysis of phenomena, theories are always born out of certain historical, political, cultural, sociological contexts defined by languages, values, knowledge and worldviews with a possibility of generalizability.

On the basis of this conceptualization, the question of gender equality, equity and inclusion faced by the Kenyan girl-child cannot be adequately analyzed outside multi-theoretical framework. It is a question broader in scope due to the many issues mention above and which remain fundamental to the process of deconstructing the ontology of the girl-child and assigning it a new and objective interpretation. And as Alabi T., (2014) and others argue in an article "The Girl-Child: A Sociological view on the Problems of Girl-Child Education in Nigeria", the girl-children have always been subjected and objectified by essentialist theories to their disadvantage. She writes:

...girl –children have not been so lucky to be cherished, protected and loved in our society due to certain traditional practices, stereotyping, cultural and religious beliefs which put them at the risk of abuse and neglect. A lot has been done in the area of documentation and assessment of the situation of the girl-child vis-à-vis the male-child. Available data have shown the detailed situation reports of the girl-child birth. Some researchers have documented the general inferior economic, social and political status of the girl-child while recent studies also show the state of her existence from the formative-infancy stage through youth to the adult stage (Igube 2004; Asare 2009; Offorma 2009).

In addition, Alabi holds a similar position as the feminist liberationist proponents who assign the plights of women to a society that is primordialist, and which continues to push the woman and the girl-child further to the periphery. In her view:

The girl-child problem around the world has many dimensions but the root of all kinds of discriminations and bias against the girl-child lies in the customs, traditions and typical mindset of the society which considers the girl child and women as inferior beings. Women and the girl child have been treated in the most inhuman ways from the inception of human civilization. The legacy of injustice against the girl child has continued in some parts of the world especially in African and Asian countries (Alabi et.al, 2014:394).

Critics of this position sees an analysis that is both theoretically and methodologically problematic given some of the conclusions made appearing skewed an based on an objectivist collectivist view of society. But the importance of the debate is not so much about the conclusions made, but rather the questions emerging from the discourse about the girl-child and her position in society as an ontological being. The questions generated can form the basis for significant shift towards relevant theorization and proper methodological research designs that can lead to collection of reliable data on the socio-cultural, economic and political reality within which the girl-child struggles not only to liberate herself intellectually but rather holistically. Alabi et.al (2014:395) agrees with this analysis, as she writes:

For a girl child to become a proper and useful adult, she needs both informal and qualitative formal educations. These will enable her to develop her mind, intellects and skills to be able to contribute meaningfully to her society. Education prepares a person, especially a girl child, to fit properly into the web of social interaction and equally enhance better performance in social roles in the society.

To find the right theory to explain why the girl-child context in Africa today remains hostile to her proper growth, requires theorizing beyond the radical feminist theory. Critics see radical feminist liberationists missing the point in their assumed quest for the emancipation of a woman. 'At the heart of this theory is the belief that men are responsible for the benefit from exploitation of women as well as girl-children. The analysis of patriarchy is a central concern' (Alabi, 2014:396). This analytical discourse views patriarchy as a universal phenomenon predominantly existent across time and cultures. Radical feminists negate family structures qualifying them as primary sources of the women's oppression in society (Igube, 2004), because those structures are primordially patriarchal. Some of the radical feminist liberationist have continued to argue for radical overthrow of what they contend as essentially oppressive male- dominated socio-political, cultural and economic systems and structures. These views are shared by Walby (1990); Rese (2005) and Igube (2010). They contend that:

There are some patriarchal structures which restrict girl-children as well as women's education opportunities and help maintain male domination. These are: paid employment, patriarchal relations within the household, patriarchal culture, sexuality, violence toward female, and the state. Each of these structures has some independence from the others, but they can affect one another, reinforcing or weakening in different structures. That paid employment has been and remains a key structure in creating disadvantages for women and girl-children in particular (Alabi 2014:396).

On the issue of the forms patriarchal structures, Alabi makes a distinction between what she terms as private and public patriarchy. She writes:

Private patriarchy is domination of women and girls which occurred within the household at the hand of an individual patriarchy. Girls are socialized to the belief that they cannot take independent decisions on their own but by male around them. Public patriarchy is more inclusive. Girls as well as women may involve in public life such as education, employment and politics but the quality and levels of involvement are generally lower and quite marginal compared to male counterpart (Alabi 2014:396-397).

The difficulty with African philosophical scholarship on a wide range of fundamental issues underlying societal decay today, has to do with the failure by African educationists and researchers to generate new knowledge or improve their marginal contribution to the scientific body of knowledge. In other words, generation of new knowledge presupposes by necessity critical and broad thinking beyond the scope of traditional classist or prolegomena theorizing. For a transformative philosophical educational discourse in Africa generally and, Kenya in particular, to become progressivist, African scholars need to demonstrate ability to theorize theory and adopt methodological research designs that would enable them compete compellingly at the academic and intellectual world stage. Their victory at the world stage will be the victory and liberation of the girl-child in Africa. This victory of the African girl-child depends largely on the rule of law, respect and promotion of human rights and dispensation of social justice, founded on sound theorizing and research methodology.

3. A philosophical and anthropological nexus between law, rights and justice: a Thomistic perspective.

In the preceding section, the idea that to insulate the girl child against the consequences of radical feminist essentialism can only succeed adopting best theories and methods. The theories and methods adopted should assist in deconstructing traditional characterization woman ontology as a weak and inferior being. However, the hypothesis that male-dominated patriarchal societal systems and structures are to blame for the plight of the woman and girl –child has surfaced more theoretical and methodological difficulties today more than ever before. As tools of analyses, theories are meant to explain, describe, analyze the behavior of phenomena and then predict the likely outcomes. The multidimensionality of phenomena supposes the justification and rationale for multi-theoretical analysis. This supposition is concretized through debates about philosophical and anthropological grounding for law, rights and justice; demonstrating how, from a Thomistic

perspective, the nexus between these variables is inevitably fundamental to the process of deconstructing the girl-child ontological condition in the society.

Thomas Aquinas' *Summa Theologica* serves as a foundational text for the study of law, justice and rights in the Western tradition. It could also be applicable to other civilizations or traditions such as African. In the thinking of Aquinas, the whole idea of the linkage between law, justice and rights revolves around human action. For him, human action flows from principles of good action which are either internal or external. And as Patrick Cullen (2012:2) writes:

The internal describes human actions where man is moved by the self, the actions are the dominion of man. The external refers to the man being moved by something other than himself, such as an act of nature. However, the principal of the will which is inherent and governs human actions is that which is naturally desired. Therefore, Aquinas' virtue ethic requires rectitude of the will by means of virtue in order to achieve happiness. Aquinas relates the extrinsic principle of law to the intrinsic principle of virtue. Hence by studying Thomistic natural law and human law relative to the virtue of justice, significant insights are gleaned in the understanding of law conflicting with justice in the orderly society.

In order to understand how Aquinas correlates law to justice and rights, it is important to demonstrate the relationship between them within his metaphysical-transcendental, and philosophical-anthropological frameworks of analysis by discussing each one of them independently. This then will enable one discover the rationale behind Aquinas' justification of a rejection of certain human laws that contradict natural law. Broadly understood from a Thomistic perspective, 'law serves as a principle extrinsic to the agent and involves reason. The concept of law is objective in nature. This differentiates the reasoning related to law from the related intrinsic principles of good actions, or virtues, which are subjective. Therefore, the reasoning involved in law is not prudence, the intrinsic good action, and the first principle' (Cullen 2012:3).

Aquinas broadly defines law as "an ordinance of reason for the common good, made by him who has care of the community, and promulgated" (*Summa Theologica II-I.q. 90.a.4*). In the schema of the first principal as its origin, law is reasoned. In this case therefore, the end of reasoning is happiness for the common good. Law then is ordained for the common good, not the individual (*Summa Theologica II-q.90.a.2*). The law is relative to the universal happiness in the body politic. It is promulgated by the community or one entrusted with the care of the community. This promulgation affects those subject to the law by leading them to proper virtue (*justice*) as the law is corrective (*Summa Theologica II-I.q.93.a.2*). This promulgation is necessary for the law to obtain its force (*Summa Theologica II-I.q.90.a.4*). In the logic of Aquinas therefore, if the law is not promulgated, then it not a law. Similarly, if the law is not for the common good, it is not a law (Cullen 2012:4). In the same vein, a law bereft off its moral content, lacks the legitimacy to elicit public compliance. He divides law into four types: Eternal Law, Divine Law, Natural Law, and Human Law. (*Summa Theologica II-I.q.91. a.2*). For purposes of this analysis, the scope is limited to natural law and human law.

Natural Law in Aquinas

The distinction Aquinas makes between natural law and human law is fundamental to his analysis of the relationship between the individual human being (anthropology), society (sociology & political science) and the higher being (metaphysics or theology). The belief that natural law is inherent within the person, underscores the fact that, the source and purpose of such a law is essential. The rationality of man makes him providential within the cosmos and hence a participant in eternal law, given by the creator and which is the basis of both natural and human law. On this question Cullen (2012:4) argues that:

Natural law is based on a larger understanding of law; incorporated within the highest law, the eternal law which is God himself. This natural law, like all law, relates to reason. This is the natural light within the rational creature to discern right and wrong. This natural light relates to that which is ruled or measured by the human being and relates to the will. However, it is not intrinsic human good or virtue to be cultivated by habit into disposition. This natural law exists within the person and may not be diminished but may be grow through divine law or human law.

In "Divine Natural Law Theory" Nigel Lo (2013:1), discusses 3 different areas relating to the concept of morality and argues that this universal approach to the law characteristically determined by human nature, must exist with the presence of a God traced to its origins. He writes:

It is vitally important for any champion of natural law theory to trace and understand its origins. Natural law is a system of law that is purportedly determined by nature, and thus universal (Strauss 1968). Classically, natural law refers to the use of reason to analyze human nature-both social and personal-and deduce binding rules of moral behavior from it. In legal theory, on the other hand, the interpretation of positive law requires some reference to natural law. On this understanding of natural law, natural law can be invoked to criticize judicial decisions about what the law says not to criticize the best interpretation of the law itself. Some scholars use natural law synonymously with natural justice or natural law (*ius naturale*), while others distinguish between natural law and natural right.

Natural law therefore, fundamentally critical to the understanding and interpretation of human positive law and all common law systems and traditions.

Human Law

However, if natural law, understood generally as inherently within the person, human law, from a Thomistic perspective, is not given to all men. Human law is considered to be determined by the rational nature of a *creative mind of a human being*. On this basis and in the logic of Aquinas' thought, human law, unlike natural law, divine law, and eternal law, is fallible *and therefore susceptible to error* since it can be derived by nature by way of conclusion or by determination (Cullen 2012:4). Human law exists to allow for the orderly society, and must therefore be formed *proportionate* to desired end (*Summa Theologica II-I.q.95.a.3*). The measure of human law in determining proportionality is divine law and natural law; and its end is to be useful to man through the common good, and should therefore be proportionate to the common good (*Summa Theologica II-I.q.96.a.3 & 1*). This position is also shared by George Duke (2013) who, in the article "Finis on the Authority of Law and the Common good" writes: 'Finis argues that the subjects of a legal system have a generic and presumptive obligation to obey the law and that this claim can be justified by appeal to the common good. In other words, the common good plays *an instrumental role with regard to the individual's* presumptive moral obligation to obey the law' (Duke 2013:1).

According to Cullen's analysis, Thomists identify three conditions for the existence of human law. He writes:

First, human law "is called virtuous because it fosters religion". Thus, law must be just in light of a country's customs, time, place, and helpful to discipline. This requires proper application of the first principle-reason. Second, human law "depends on the ability of the agent" as different disciplines are deserved by different agents and some burdens may cause injustice. Third, human law is "ordained to the common good" and requires "clearness of expression" through promulgation. Moreover, human law is to be derived from the law of nature, ordained to the common good, framed by those who govern the community, and directs human action (ibid:6).

However, despite all the qualifications of human law as understood by Thomas Aquinas, this same law is limited. In other words, 'human law is not constructed to forbid all vices but only those grievous vices from which the majority abstains. *That* particular attention is required of vices which hurt others and hinder the simple maintenance of human society, such as murder and theft' (ibid: 6). *Meaning that* 'human law is an attempt of the lawgiver to promulgate law *that* fosters collective justice for the common good. Aquinas sees justice as an intrinsic virtue' *ingrained in human nature* (ibid: 7). Then, what is justice?

Justice

In the thinking of Aquinas, human law is directed to civil community, which is a matter of people relating to one another. But people are related to one another by the external acts in which they communicate and deal with each other. But this sort of communicating or dealing with each other, is a matter of justice, which is properly directive in and of human community externalized by customs, traditions, cultural values and practices, taboos and dogmas. So human law does not put forward precepts about anything other than acts of justice. If it prescribes acts of other virtues, this is only insofar as they take on the character of justice. And as John Finnis and Robert George (1998) observe in "Public Good: The Specifically Political Common Good in Aquinas", human law is for the common good. They write:

Human law does not make prescriptions about all the acts of all the virtues, but only about those acts which are relatable to the common good, whether immediately or mediately, by the legislator as being relevant to good education, and by which citizens are brought up to preserve the common good of justice and peace

One infers from the above discussion that like all virtues, justice is an intrinsic principle. A principle intrinsic to good action and, thereby, subjective. Justice, as a principle of good action, is then related to the will of the rational creature. The quality of justice adheres to the subject which is the will. At the same time, it is important for one to understand Thomistic view on law as an extrinsic principle that relates to the intrinsic principle of justice. Justice, as it were, directs man in his relations with others in the community, where equality is the point of reference in such dealings (*Summa Theologica II-I.q.57.a.1*). Justice as an intrinsic principle correlates directly with rights in the process of pursuing the common good for the community constituted by members who are fundamentally just.

Aquinas delineates two forms of justice. Commutative and distributive. While commutative justice is concerned with dealings between two persons, distributive justice relates to the order of the whole community in relation to each single person on the other. In distributive justice, the common goods are to be distributed by proportion. Ultimately, "the proper act of justice is nothing else than to render to each one his own" (*Summa Theologica II-I.q.58.a.11*). In developing discussions about the inevitable possibility of conflict between human law and justice, it can be concluded that human law may conflict with justice in the orderly society as man has

previously failed to satisfy natural law in development of human law and customs. Aquinas believes that human law may conflict with justice since justice is the most excellent virtue, not attainable by all, and therefore legal justice is a specific virtue with a contrary, namely illegal injustice.

On the question of ethical-moral and legal responsibilities of lawgivers or legislators and rulers or political leaders in general, the administration of law can only be effective for the common good if and only if, those charged with such responsibilities used law by reason to govern, since 'law is nothing else than a dictate of reason in the ruler by whom his subjects are governed' (*Summa Theologica II-I.q.92.a.1*). Considering the role *legislators or leaders* play in the actualization of the common good, the fact that human law could conflict with justice must be taken as a possible possibility. In Cullen' (2102:12) view, 'the intention of *such legislators* is paramount to the virtue of the citizenry.' In *Summa Theologica II-I, q.92, a.1* one reads that:

For if the intention of the lawgiver is fixed on true good, which is the common good regulated according to Divine justice, it follows that the effect of the law is to make men good simply. If, however, the intention of the lawgiver is fixed on that which is not simply good, but useful or pleasurable to himself, or in opposition to Divine justice; then the law does not make men good simply, but in respect to that particular government. In this way good found even in things that are bad of themselves: thus, a man is called a good robber, because he works in a way that is adapted to his end.

Legislators must therefore possess the virtues of wisdom and prudence to be able to understand the relationship between human law with eternal and divine law in executing this relationship. However, legislators need other citizens in developing human law for the universal destination of the good that is common to all in the community. In other words, both the legislator and citizens must then have the necessary virtue and understanding of divine law and eternal law to develop human law (Cullen 2012:12). In Aquinas view, human laws enacted by *parliament* through *public participation*, are either just or unjust. Hence, 'if the laws are just, they have the power of binding in conscience, from eternal law whence they are derived. It is only laws which allocate proportional burdens which are just and binding in conscience, and are legal laws' (*Summa Theologica II-I, q.92.a.4*). Of importance to this discussion is the fact that in the process of legislating, lawmakers may enact unjust laws in two ways. First, by enacting law contrary to human good in respect to the end of the law or the scope of the law. Aquinas considers these acts of violence rather than laws as a law that is not just, seems to be no law at all (*Summa Theologica II-I, q.92.a.4*). Second, laws opposed to Divine law and Divine good are unjust and cannot be observed (ibid).

But as they create human law, legislators must note the fact that higher law derives from higher authority. This explains the reason why leaders have high moral responsibility when promulgating law for the common good in the community. In the logic of Aquinas, if human law contradicts or conflicts with the higher law, such as eternal law, divine law, or natural law in a very fundamental way, then human law is not binding. And therefore, should law enforcement systems require virtuous citizens to abide by human law contradictory to higher law, then citizens are coerced. Coercion is contrary to the will (*Summa Theologica II-I, q.92.a.5*). The will of good citizens must always be in harmony with the law for it to be binding. However, the law is not binding if coercive to the virtuous citizens, subjecting them to hypocrisy and pretense. Citizens may become hypocritical and pretentious, if they conclude that the law directing their will is not only inconsistent with the common good, but it also derogates their fundamental human rights such as right to life, education and freedoms. At this point Aquinas advocates for changes in human law. In his view, since the human law is not unalterable or infallible, just changes of it is a possibility. Cullen (2012:14) affirms this fact as he writes:

Aquinas' recognizes law as a dictate of reason. Reason, like philosophy and speculative sciences, may be advanced. Therefore, this advancement in reason allows for changes and advancement in the human law from imperfect to perfect (*Summa Theologica II-I.q.97.a.1*).By such changes, *legislators and political leaders* improve institutions and the common good. Interestingly, Aquinas recognizes change in human law for another, less ideal, instance. In communities where citizens are virtuous, exhibiting moderation and responsibility for the common good, it is best for *the citizens to be allowed to choose their leaders*. However, if these same people become corrupt and entrust scoundrels and criminals, then the right to self-representation is "*rightly forfeited to such people, and the choice devolves to a few good men*" (*Summa Theologica II-I, q.97.a.1*)

The final analysis Aquinas warns of change for the sake of change, recognizing the practical impact of abolishing customs or certain laws for the benefit of individual good or personal interests. And as he opines in *Summa Theologica*, human law is then never to be changed unless the common good is at stake or is benefited to the extent of the harm done in changing custom, which is evident when the existing law is patently unjust or observance is harmful(*Summa Theologica II-I,q.97.a.2*).It becomes imperative therefore, that based on the imperfect nature of the interaction between leaders and citizens, the need and ability to change human laws, and the practical reality of law potentially benefiting a majority and unjustly affecting a minority, it can be reasoned that human law can conflict with justice in any given orderly or disorderly society. Which is why today more than ever before, the conflict between justice, human rights and African traditions remains intractable. While

idea of law and justice is clear and elaborate in Aquinas thought, his discourse on right or human rights for that matter silhouette and overshadow by both natural and human law traditions.

Right

The question of rights is not obviously clear in the philosophy and anthropology of Thomas Aquinas. In the book *Thomas Aquinas in 50 Pages: A Quick Layman's Guide to Thomism*, Taylor R. Marshall (2013:38) develops a discourse on Aquinas' conception of justice that depicts him as a scholar who broadly expounded on justice than any other virtues, stating that 'the virtue of justice derives its name from the Latin word *ius* meaning "right." For Aquinas justice and rights is one and the same thing. This complicates the discourse on human rights. But law, in his view, is not the same as right, but only an expression of right (Cullen, 2012:7). As multifaceted as it is, justice is the same as right. The understanding of right must be situated within a wider context of divine natural law tradition, which provides frameworks of analysis of rights in so far as its genesis is traceable to the first or primary cause. This ambiguity makes the nexus between law, justice and rights more problematic, such that if there was any linkage existing between these variables, then its understanding could not be possibly demonstrated adequately within the scope of Thomistic discourse on law. This then raises difficulties in trying to use Aquinas concept of rights to correct some of the negative values and practices in cultures such Africa generally and Kenya in particular.

This then affords this paper the benefit of doubt on the possibility of finding a basis upon which transformative philosophical educational discourse in Africa generally, and Kenya in particular, could be superimposed. This lacuna, which is practical in epistemology and methodology makes any contemporary or postmodernist conversation on the issue of women and girl child more weakened. Anyone hoping to push a discourse on the girl-right to education using Aquinas understanding of rights, will have to do so from the perspective of Thomistic concept of the correlation between law and justice.

4. Girl-child right to education and the 21st century transformative discourse: equality, equity and inclusion.

Understood within the framework of Aquinas conception of law and justice, skewed provision of girl-child right to education, would not only be an issue of justice, but also an illegality and antithetical to the common good. Kenya like any other African country, claims to value her citizens equally, because in Aquinas' view, failure to meet such an obligation, would amount to an affront to justice, but also contradictory and conflictual with eternal law, divine law and natural law, from which human law is derived. On this basis therefore, the girl-child, like any other virtuous citizen, must be allowed all possibilities to actualize her potential in the service to the common good, her community. These views are shared by Izhak Berkovich (2016) in "School leaders and transformational leadership theory: time to party ways?" He argues that after decades of in which transformational leadership theory has prevailed as the dominant paradigm in leadership scholarship, critical voices, especially those emerging from radical feminist liberationist groups, have started raising serious concerns about its falsifiability, suggesting that transformational leadership theory should be abandoned, due to its segregationist, exclusionist policy approaches to gender education. This theoretical weakness, in their view, contradicts the African Union's Agenda 2063, which is not only concerned with transformative education on the continent, but has also been touted by the Union as a change in the ways the continent has approached the issues of development.

The vision was to be that of "an integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic of force in the global arena". Several priority areas were identified and set, among them, access to education by all its citizens. Critical is the issue of the right to access to the right type of education. Issues related to education such as equality, equity and inclusion in Africa generally and Kenya in particular, must be analyzed against the background of Human Rights, Constitutionalism and philosophy of education as major challenges on the continent. But also education that is contemplative of African values and peculiarities is desirable. However, this desire seems persistently pursued by an African leadership that has perfected the art and appetite of gender disparity. It is a leadership whose main agenda has been dominated by corruption, disrespect to the rule of law, gross violation of human rights, dictatorship, autocracy and appetite for external debts. In this kind of situation, rights that would defend and insulate citizens from oppression and denial of freedom of expression and association are derogated in violation of law. In Aquinas view, this should not be allowed to happen at any cost, since those mandated to promulgate the law in the interest of the community and the common good have failed in their responsibility. It therefore the onus of the virtuous citizens to use the same law to remove bad leadership.

At the level of the girl-child, it becomes complicated, because of the radical feminist liberationist proponents who have constantly hijacked the gender agenda to pursue their own elitist interests. However, whether or not the issue of the girl-child finds solution soon than later, the paradox still remains at theoretical and methodological levels. Because in the absence of appropriate theory and proper research methodological

designs in place, especially in Kenya, gender specific issues bedeviling the girl-child such lack of proper and equal opportunity for education and assured leadership, will remain existential and real for years to come, continually dashing the dream of ever moving closer to having a transformative philosophical educational discourse in the 21st century Kenya.

II. CONCLUSION

This paper has discussed the complexity emerging from the discourse on gender parity, analyzed from a subjectivist as well as objectivist views of the woman and the girl child in Africa and the implications thereof. The failure of African philosophical discourse on the issue of education is doing more harm than good to the continent, as African scholars remain divided on the compelling issue of theoretical and methodological limitations, emerging from overreliance of Western model, which have largely affected African originality. This failure could also be analyzed from Afro-Apologetist as well as Afro-cultural critics' perspectives, especially on the question of Afrocentricism vis-à-vis Eurocentric influencing the discourse on African educational philosophy. Thomism remains relevant to African life discourse today than ever before. However, using Aquinas conceptualization of rights would not correct the anomalies in the African concept of human rights, because if there is any issue that is not clear and obvious in Thomism, has to do with the concept of rights. But law and justice are scholarly and plausibly presented and discussed by Aquinas, especially in *Summa Theologica*. It is therefore frustrating to rely on Thomas Aquinas to chart the best way forward towards a liberative and transformative education discourse for the girl-child right to education in the 21st century Africa. However, Aquinas remains relevant on matters law and justice in Africa as in Western civilization. The extent to which, Agenda 2063 of the African Union can be actualized based on its advocacy for equal right and opportunity for education for all, remains to be seen, given the uncertainty surrounding educational discourse on the continent.

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