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THE CANONICAL AND PASTORAL IMPLICATIONS
OF CANON 1148

by
Anthony James MALONE, O.F.M.

A dissertation submitted to the Faculty of Canon
Law, Saint Paul University, Ottawa, Canada, in
partial fulfillment of the requirements for the
degree of Doctor of Canon Law



Anthony James Malone, Ottawa, Canada, 1992



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-TABLE OF CONTENTS-

Table of Contents	ii
Acknowledgements	vii
Abbreviations	viii
INTRODUCTION	i
I ANTHROPOLOGICAL AND BIBLICAL NOTES ON POLYGAMY	9
Introduction	9
Part One: Cultural Anthropology	10
1. Preliminary Remarks	10
2. Role of Kinship	12
3. The Scope of and Conditions Favoring Polygamy	13
4. General Classifications	16
5. Advantages of Polygyny	18
i. Economic	18
ii. Social	18
iii. Sexual	19
iv. Political	21
v. Personal	21
6. Disadvantages of Polygyny	22
i. Jealousy	23
ii. Spousal Responsibilities	23
iii. Marital Fidelity	24
iv. Age at First Marriage	24
v. Polygyny in Matrilineal Societies	25

TABLE OF CONTENTS

iii

7. Reaction to a New Order	25
i. Introduction of a Cash Economy	26
ii. Effects of Colonial Rule	27
iii. School Education	27
iv. Introduction of Christianity	28
v. Individualism	28
8. Summation	29
Part Two: Papua New Guinea	30
1. Background	30
2. Marriage	32
3. Polygyny	33
4. Government Legislation and Polygyny	34
5. The Christian Churches and Polygyny	36
6. The Catholic Church and Polygyny	38
7. Summation	40
Part Three: Polygamy and the Bible	41
1. Preliminary Remarks	41
2. Polygyny in the Old Testament	42
3. Polygyny in the New Testament	48
4. Summation	55
Conclusion	57
II PAST ECCLESIASTICAL LEGISLATION ON POLYGAMY	59
Introduction	59
Part One: The First Four Centuries	60
Part Two: From the Fourth to the Eleventh Centuries	65

TABLE OF CONTENTS

i v

Part Three: The Eleventh to the Sixteenth Centuries	71
1. The Council of Trent	80
2. Three Apostolic Constitutions	85
i. Altitudo	86
ii. Romani Pontificis	88
iii. Populis	89
Conclusion	93
 III CONTEMPORARY ECCLESIASTICAL LEGISLATION ON POLYGAMY	 96
Introduction	96
Part One: The Pre-Code Church and Polygamy	98
Part Two: The Church of the 1917 Code and Polygamy	105
1. Canonical Aspects	105
2. Curial Responses	111
3. Papal Teaching	116
4. Conciliar Teaching	120
Part Three: The Church of the 1983 Code and Polygamy	121
1. Canonical Aspects	121
2. Papal Teaching	134
Conclusion	138
 IV CONTEMPORARY THEOLOGICAL AND PASTORAL CONSIDERATIONS	 140
Introduction	140
Part One: The Traditional Solution	141
Part Two: Grounds for Review?	147
1. From Cultural Anthropology	147

TABLE OF CONTENTS	v
2. From Contemporary Scriptural Exegesis	148
3. From Diversity of Cultures and Theologies	149
4. From An Analysis of Contemporary Church Teachings	152
5. From the Policies of Other Christian Churches	156
6. Summation	159
Part Three: Contemporary Theories	160
1. Natural Law, Natural Marriage and Polygamy	160
2. The Principle of Epikeia	165
3. The Principle of Probabilism	167
4. Summation	171
Part Four: Possible Contributions from Pastoral Theology	172
1. The Nature of Pastoral Theology	172
2. Possible Pastoral Resolutions	173
3. The Question of Canonical Justification	175
4. Summation	180
Part Five: A Proposed Policy for Papua New Guinea	181
1. Preliminary Remarks	181
2. The Proposal	182
3. Theological Reflections	184
4. Pastoral Advantages	187
5. Canonical Justifications	190
Conclusion	193
GENERAL CONCLUSION	196
1. Scientific Information	196
2. The Scriptures	197

TABLE OF CONTENTS	v i
3 The Past Teaching and Practice of the Church	198
4 Theological Developments	202
5 Pastoral Opportuneness	204
6. An Evaluation of Canon 1148	206
APPENDIX	211
BIBLIOGRAPHY	213
Biographical Note	240

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-ABBREVIATIONS-

AAS	Acta Apostolicae Sedis
AFER	African Ecclesiastical Review
CIC 1917	Codex iuris canonici, 1917
CIC 1983	Codex iuris canonici, 1983
Code 1983	The Code of Canon Law 1983
CLD	Canon Law Digest

-INTRODUCTION-

The Second Vatican Council re-affirmed that the Church is not dependent upon the world view or the laws, customs and practices of any particular culture. Rather Council Fathers emphatically stated that.

The Church is faithful to its traditions and is at the same time conscious of its universal mission; it can, then, enter into communion with different forms of culture, thereby enriching both itself and the cultures themselves.¹

However, the Council also recognized that missionary adaptation is always a difficult task.

Thus in its "Pastoral Constitution on the Church in the Modern World", it declared:

Although the Church has contributed largely to the progress of culture, it is the lesson of experience that there have been difficulties in the way of harmonizing culture with Christian thought, arising out of contingent factors.²

The missionary and pastoral problem in Papua New Guinea of responding to polygamists who ask for Baptism is a specific example of this basic problem of cultural adaptation. For centuries church law has required that upon reception of Baptism a polygamist must dismiss all spouses except one. Such a requirement has severe social ramifications in societies where polygamy is a traditional and honorable marital structure. How does the Church harmonize the requirements of the christian faith with an institutional structure, such as polygamy, which enshrines the preferred values characteristic of some of the many diverse cultures present within Papua New Guinea?

¹ Concilium Vaticanum II, "Constitutio pastoralis de ecclesia in mundo huius temporis", *Gaudium et spes*, December 7, 1965, in *AAS*, 58(1966), no. 58, p. 1079; English translation in *Vatican Council II: The Conciliar and Post-Conciliar Documents*, (ed.), A. Flannery, Grand Rapids, Mich., W.B. Eerdmans Publishing Co., 1987, (= *Flannery - Vatican II*), p. 962.

² Ibid., *AAS*, 58(1966), no. 62, *Flannery - Vatican II*, p. 966.

In October of 1975, the publishing company Orbis Books of Maryknoll, New York, produced a work written by Eugene Hillman and entitled: *Polygamy Reconsidered: African Plural Marriage and the Christian Churches*. This study was widely reviewed and generally acknowledged as an important contribution to the on-going discussion of Christianity's evaluation of polygamous and monogamous structures of marriage.³ *Polygamy Reconsidered* was no superficial perusal of a contentious issue. The work, begun in 1965, represented a scholarly analysis of the discussions about the morality of polygamy that had occupied many Christians, particularly within the Christian Churches in Africa, for over a century. The author concluded that:

At the present time, following the reasons given by reputable theologians,[...] it should be possible to adopt at least a new policy of toleration,[...]. Persons who have previously entered polygamous marriages, in good faith and according to the socially accepted practice of their time and place in history, should not be prevented from participating in the sacramental life of the Church. As part of their normal instruction in the faith, however, it should be made clear to them that no additional polygamous marriages are permissible once they have entered the Christian community through baptism.⁴

In 1979 eighty bishops, representing seven countries (Ethiopia, Kenya, Malawi, Sudan, Tanzania, Uganda, and Zambia), within the Association of the Member Episcopal Conferences of Eastern Africa (AMECEA), unanimously decided that an international theological consultation was needed for the purpose of seeking better ways of dealing

³ A. Hastings, review of *Polygamy Reconsidered: African Plural Marriage and the Christian Churches*, by E. Hillman, in *The Tablet*, July 17, 1976, pp. 689-690.

⁴ E. Hillman, *Polygamy Reconsidered: African Plural Marriage and the Christian Churches*, New York, Maryknoll, Orbis Books, 1975, p. 206.

pastorally with the Church's monogamy rule.⁵ It was this rule that was perceived as a major obstacle to the evangelization of peoples for whom polygamy is an integral part of the socio-economic system sustaining their way of life.

With a view to formulating more precisely the questions that would be submitted for the proposed international theological consultation, two theologians were invited to deliver papers at a workshop for the Apostolate to Nomads in Nairobi, Kenya.⁶ One of the invited speakers was Eugene Hillman and the other was Francisco Xavier Urrutia, a canon lawyer from Rome's Gregorian University. This latter speaker has written extensively in defense of the Church's current teaching and practice regarding polygamists who wished to become members of the Catholic Church. The workshop was held in February of 1981. Hillman, writing later about the workshop stated:

We had a fine old style scholastic *disputatio* which clearly brought out, more than anything else, the profound differences in our respective methods of theologizing on the basis of our irreconcilable epistemological presuppositions.⁷

The planning committee of the Apostolate to Nomads decided to use the Hillman-Urrutia

⁵ E. Hillman, "The Polygamy Debate: A Progress report", in *Missiology: An International Review*, 10(1982), pp. 167-169.

⁶ The Apostolate to Nomads is an organization sponsored by the Association of Member Episcopal Conferences of Eastern Africa (AMECEA), which holds regular meetings of missionaries and bishops who work among the nomadic peoples of countries represented by AMECEA. It has its own planning committee of two bishops from AMECEA and three elected priests and is funded through the Pontifical Commission for the Pastoral Care of Migrants and Itinerant Peoples. See E. Hillman, "The Polygamy Debate", p.168.

⁷ Ibid. Both Hillman and Urrutia subsequently published their respective papers. F.X. Urrutia, "Can Polygamy Be Compatible With Christianity?", in *AFER*, 23(1981), pp. 275-291; E. Hillman, "On Polygamy: A Response", in *AFER*, 23(1981), pp. 292-307. Since both papers summarize much of the past and current points debated amongst theologians about the Church's policies regarding polygamists who request Baptism, the articles will be referred to throughout the dissertation.

papers as a basis for the proposed consultation of theologians and canonists. Thus in July of 1981 the bishop of Arusha in Kenya, the Most Reverend D. Durning, on behalf of the committee of the Apostolate to Nomads and in the name of AMECEA, wrote to fifty catholic theologians and canonists and included the two papers. The bishop's covering letter in part read:

Missionaries working among nomadic peoples have repeatedly raised questions and expressed anxiety concerning the contemporary relevance of the Church's insistence upon monogamy as a condition for baptism even where polygamy is an immemorial, normal and valid form of marriage which is fully integrated into the local socio-cultural ethos, world-view and economy. Many of us, especially since the Second Vatican Council's emphasis upon respect for local traditions which are not sinful, are uncomfortable with the discipline that was established hundreds of years ago, without having been revised or even reviewed in the light of the Church's post-colonial attitude toward non-European cultures.⁸

In his letter the bishop asked especially for an opinion on two points:

1. Must the monogamy rule be understood as an irreformable doctrine of faith; hence binding absolutely and universally, while allowing no exceptions?
2. May we use the system of probabilism in the manner suggested in Father Hillman's paper?⁹

While none of the replies to Bishop Durning's letter have been published, according to E. Hillman, forty-seven out of the fifty theologians and canonists contacted did reply. The majority of those who did reply were of the opinion that: a) The monogamy rule was not an irreformable doctrine of faith such that exceptions could not be allowed; b) Invoking the principle of probabilism might provide church authorities with reasons to justify the baptizing of polygamists without also requiring them to change their marital status; and c) A posture of toleration, as envisaged by Hillman, was a reasonable solution to follow. Nevertheless a majority of the Bishops of the Association of Member Episcopal

⁸ Private correspondence from Most Rev. Denis Durning, C.S.Sp., Roman Catholic Bishop of Arusha, Kenya, dated July 3, 1981.

⁹ Ibid.

Conferences of Eastern Africa (AMECEA) rejected these opinions and no further consultation was undertaken.¹⁰ Officially the traditional policy of the Church towards polygamists who requested Baptism was re-affirmed by the Episcopal Conferences of Eastern Africa. As a result, the difficulties associated with the traditional policy and which had occasioned the consultation in the first place, remained.

On January 25, 1983, Pope John Paul II promulgated the revised Code of Canon Law for the latin church of the Roman Catholic Church. Canon 1148 of this revised Code is a practical refinement of canon 1125 of the previous Code of Canon Law, promulgated in 1917. Canon 1148 incorporates into the body of its text some of the discipline contained in three Apostolic Constitutions as they apply to polygamists who wish to receive Baptism as members of the Roman Catholic Church. This dissertation seeks to answer the following set of questions: a) What canonical and pastoral implications can be drawn from canon 1148? b) In view of canon 1148 how can church authorities legally respond when in Papua New Guinea polygamists ask for Baptism? c) Are such responses reasonable? d) Are such responses realistic? e) Above all do the requirements of canon 1148 favor the realization of the supreme law: the salvation of souls (*suprema lex: salus animarum*)?

Chapter one is divided into three parts. The first part describes the marital arrangement called polygamy, examines the reasons for the existence of this marital arrangement, enumerates the advantages and disadvantages of such a form of marriage and relates what effects contemporary social, political, and economic factors are having upon this marital structure. The second part of the chapter focuses on the country of Papua New

¹⁰ Private correspondence from Rev. Dr. Eugene Hillman, dated April 4, 1991. Hillman was in a position to know about the results of the consultation since in 1981 and for some years later he held the elected position of coordinator of research for the Apostolate to Nomads.

Guinea. Included within this section of the chapter are an analysis of the role that the peoples of Papua New Guinea have accorded and now accord polygamous marriages, plus a brief résumé of what policies are now officially followed by the major christian denominations present in the country, when polygamists ask for Baptism. This second part also contains a separate treatment of what has been up to the present, the practice followed by authorities within the Roman Catholic Church of Papua New Guinea, when addressing the issue of polygamists requesting Baptism. The third part of the chapter presents an overview of what christian exegetes claim can be found on the subject of polygamy in the bible. In this final section of the chapter there is a two part analysis. One on polygyny (there being no other form of polygamy mentioned in the scriptures) in the Old Testament, and the other on polygyny in the New Testament. All three parts of this first chapter have as their purpose, the providing of a context. Such a contextualization is meant to give some assistance when certain questions, set out as the aim of this dissertation in the previous paragraph, are addressed.

The second chapter scrutinizes past practices and attitudes of the Roman Catholic Church so as to ascertain whether in any record of ecclesiastical legislation, prior to the seventeenth century, there is evidence to support the idea that the Catholic Church officially permitted polygamists, unable or unwilling to alter their marital situation, to be baptized. The chapter is divided into three parts. The first part investigates church practice and legislation on polygamy in the first four centuries of the christian era. The second part analyzes the writings of theologians and the decisions of Church officials that concerned polygamy from the fourth to the eleventh centuries. The third part investigates some key events that took place in the period from the eleventh century to the sixteenth century and which it is claimed illustrate what was then the Church's attitude towards polygamy as a marital arrangement and what was asked of polygamists who requested Baptism. In this

last part of the chapter, the Council of Trent's teaching on simultaneous plural marriage, and three sixteenth century Apostolic Constitutions, which addressed catholic missionary practice regarding polygamists who sought Baptism, will be especially scrutinized.

The third chapter is entitled: "Contemporary Ecclesiastical Legislation on Polygamy". The aim of this chapter will be to establish whether, since the sixteenth century, the Catholic Church has modified its previous firm rejection as recipients for Baptism, those already polygamously married who are unable or unwilling to alter their marital status. The chapter will be comprised of three parts. In the first part of the chapter all church teaching and legislation on polygamy from the sixteenth century up until the promulgation of the 1917 Code of Canon Law will be examined. In the second part specific canons of the 1917 Code as well as conciliar, papal and curial statements about polygamy made prior to the promulgation of the 1983 Code of Canon Law will be analyzed. Finally, in the third part of the chapter, specific canons of the 1983 Code of Canon Law will be examined along with certain papal and curial statements that have been made about polygamy subsequent to the promulgation of the 1983 Code.

The fourth and final chapter of the thesis is entitled: "Contemporary Theological and Pastoral Considerations". Some contemporary christian theologians argue that in discussing moral questions much more emphasis must be placed upon persons in the complexity, diversity, mutability and ambiguity of their historico-cultural experience. Other equally reputable christian theologians would not deny the above insight. However, they would argue that if moral and legal norms are not to become completely relativistic, then there is a need to recognize the absoluteness of certain moral terms and to enshrine these in law. The arguments offered both for and against admitting polygamists to Baptism without requiring them to change their marital status is just one issue that illustrates this

philosophical and theological debate. In view of these insights chapter four will have two aims. The primary aim of the chapter will be to establish whether, while still within the norms of the universal law of the Church, church authorities are justified in baptizing polygamists without requiring them to dismiss all their marital partners except one. If such a position is impossible to establish, then a secondary aim of this chapter will be to investigate what policy is morally and legally permissible, and pastorally appropriate for local church authorities in Papua New Guinea to follow when working with polygamists who wish to become Catholics.

In a general conclusion to the dissertation there will be six major insights offered. Five of these insights will be directly related to what in the body of the thesis will have been identified as major sources in any analysis of polygamy. The sixth and final insight will consist of an evaluation of canon 1148 of the 1983 Code of Canon Law. From this analysis the reasonableness and appropriateness of canon 1148, in terms of polygamists in Papua New Guinea requesting Baptism, will be evaluated.

- CHAPTER ONE -

ANTHROPOLOGICAL AND BIBLICAL NOTES ON POLYGAMY

Introduction

Ethnocentrism is the belief that one's own patterns of behavior are most natural, good, beautiful or important, and that everyone else, to the extent that he or she lives differently, lives by savage, inhuman or irrational standards.¹ Perhaps the most fundamental reason for ethnocentric thinking lies in our inability to appreciate the extent to which we rely on presuppositions in making ethical and even theological judgments.²

Many who are enculturated into societies where monogamy is considered to be the norm and ideal marital arrangement tend to view all forms of polygamy as exotic, possibly sinful and involving only primitive peoples. Such a simplistic evaluation owes much to an ethnocentric bias.³

The aim of this chapter is to outline the more important insights offered by both cultural anthropologists and scriptural exegetes on the subject of polygamy. This, it is hoped, will provide a context. Thus when later in the dissertation some canonical and pastoral policies of the Catholic Church are analyzed, the fallacy of ethnocentrism will be avoided.

¹ J. Fitzpatrick, "Faith, Freedom and Cultural Difference", in International Review of Mission, 59(1970), p. 336.

² R. Panikkar, "Metatheology or Diacritical Theology as Fundamental Theology", in Concilium, 6(1969), pp. 21-27.

³ R. Clignet, Many Wives, Many Powers: Authority and Power in Polygynous Families, Evanston, Northwestern University Press, 1970, p. 3.

The chapter is divided into three parts. The first part will outline the findings of cultural anthropology on polygamy, its nature and role in a society. The second part will describe the role that the peoples of Papua New Guinea have accorded and now accord polygamous marriages. The third part of the chapter will present an overview of what christian exegetes claim can be found on the subject of polygamy in the bible

Part One: Cultural Anthropology

1. Preliminary Remarks

Human societies⁴ have always provided for some form of marriage as an institution⁵. A specific marital structure becomes established within a society when that structure is perceived as protecting, nurturing, or enhancing one or more of that society's values. Since societies differ in their perception and ranking of values it is not surprising that many different forms of the institution of marriage have been recorded by cultural

⁴The anthropologist G. Murdock has described a human society as: "A group of males and females whose homogeneity as a political unit is based on territoriality and a specific ordering of cultural institutions". It is in this sense that the term "society" is used throughout this chapter. Cfr. G. Murdock, *Ethnographic Atlas*, Second edit., Pittsburgh, University of Pittsburgh Press, 1969, p. ii.

⁵ Among anthropologists the term "institution" is defined as a fundamental anthropological category. Thus language and marriage are classified as institutions. Institutions make it possible for culture to be seen as a universal phenomenon in human societies. "Institutes" are defined as specific historico-cultural realizations of institutions. Thus monogamy is an institute for it is one particular realization of the institution of marriage. Cfr. C. Kluckhohn, art., "Culture", in *Colliers Encyclopedia*, New York, Cromwell & MacMillan, 1967, vol. 5, p. 533.

anthropologists.⁶

In western cultures, monogamous union, the marriage of one male to one female, forms the basis of the family system. There are however, other types of marital arrangements that allow plural spouses and produce a polygamous family system. Thus in some non-western cultures custom sometimes enshrines polyandry as the ideal. In this marital arrangement we find one wife married simultaneously to two or more husbands. However, polyandry is rare and anthropologists have recorded only a small percentage of the world's societies practicing this type of marital arrangement.⁷ Polygyny is another marital arrangement found in many non-western societies, and has been described as, "a culturally determined, socially accepted and legally recognized form of permanent marriage in which a husband has more than one wife at the same time."⁸ Polygamy, strictly speaking, is the generic term referring to both polyandry and polygyny. All the above

⁶ One of cultural anthropology's most difficult tasks is to categorize the natural varieties of domestic organizations and to account for them in terms of universally valid principles. Anthropologists have expended considerable effort in trying to arrive at definitions of "family" and "marriage". As yet there are no definitions of these terms that meet with unanimous approval. For the purposes of discussion in this chapter the term "family" will mean a grouping of people, in which the members are linked by a form of marriage. The term "marriage" will be employed in an ample rather than restrictive sense to mean the behavior, sentiments and rules concerned with heterosexual mating and reproduction in domestic contexts. "Husband", "wife", and "spouse", are additionally valuable terms that shall mean nothing more precise than socially recognized mates who carry out socially controlled sexual, reproductive and nurturing functions in domestic contexts.

⁷ G. Murdock, "World Ethnographic Sample", in *American Anthropologist*, 59(1957), p. 686.

⁸ E. Hillman, *Polygamy Reconsidered: African Plural Marriage and the Christian Churches*, New York, Maryknoll, Orbis Books, 1975, p. 11. Since polyandry as a marital arrangement is so rare, in popular usage, the words polygamy and polygyny tend to be interchangeable. Throughout this study, however, the distinction between polygyny and polyandry will be retained. The term polygamy will denote simultaneous(or contemporaneous) plural marriage.

marital unions are contemporaneous alliances and as genuine marriages involve some degree of residential co-habitation, economic co-operation and sexual association.

2. Role of Kinship

Through the study of kinship systems anthropologists have sought to understand how and why different societies have erected structures to cope with the far reaching implications of birth, mating and death.⁹ In some societies there are ties of kinship that are based on a cognatic descent system, i.e., where a child is identified with the descent groups, of all of his or her ancestors. In such a descent system the nuclear family stands out prominently. There is no prescribed residence for this new unit, a residence can be chosen with the descent group of any of the spouses or with none of them. The choosing of a spouse, the organization of political or religious life of the society; or the determining of an individual's status and role in society, are at best marginally influenced by kinship ties in societies where a cognatic descent system is operative. The main feature of a cognatic descent system is to give due recognition to biological relationships and thus to define the degrees of primary kinship within which marriage is forbidden. Polygamy in either of its forms is least likely to be held in high esteem where a society has a kinship system which is based on cognatic descent. Moreover, it is this kinship pattern that is a feature of almost all western societies.¹⁰

A unilineal descent system is operative where children are identified as members of the descent group of only one of their parents. A child obviously has blood ties with both parents; however, for the purposes of unilineal descent and kinship reckoning only one

⁹ R. Fox, *Kinship and Marriage*, England, Harmondsworth, Penguin Books, 1967, p. 30.

¹⁰ Ibid., p. 73.

line, the matrilineal or the patrilineal, is important. Descent groups which trace their ancestry through the mother's kinship line are known as matrilineal. Normally, inheritance rights in matrilineal societies pass from the mother to her daughters. In a patrilineal descent system, inheritance normally passes from the father to his sons. While polygamy can be the preferred marital structure in both matrilineal and patrilineal societies, it appears from ethnographic evidence that polygyny (the commoner form of polygamy) is the generally preferred marital structure in societies where a patrilineal descent system is operative.

Kinship systems may not be of great practical importance for that part of humankind living now in the western world. However, for the majority of humanity, kinship systems provide significant social services in response to various recognizable pressures within a framework of biological, psychological, ecological and social limitations.¹¹ Any form of marriage can only be understood when it is seen as one element in the broader structure of a specific kinship system that is operative in a specific society.

3. The Scope of and Conditions Favoring Polygamy

In 1969, George Murdock published an analysis of a carefully selected sample of 862 of the world's societies. In this survey 75% of the societies surveyed favored polygyny, 24% preferred monogamy and no more than 1% sanctioned polyandry. Not a single society in this extensive sample was found to practise group marriage.¹² The cross cultural evidence amassed by Murdock clearly showed that in 1969 among many of the

¹¹ Ibid., p. 25.

¹² G. Murdock, *Ethnographic Atlas*, 128p. The so-called "group marriage", mentioned by some of the early anthropologists, really does not exist as an authentic form of marriage in any known society. Cfr. B. Malinowski, "Parenthood, the Basis of Social Structures", in *The Family: Its Structure and Functions*, (ed.), R. Coser, New York, St. Martin's Press, 1964, p. 10.

world's societies, especially those that were pre-literate and dependent on an agricultural based subsistence economy, some form of polygyny was the preferred type of marital arrangement. However, the same evidence also indicated that the majority of marital unions in these polygynous societies were actually monogamous.¹³ To understand this discrepancy it is necessary to distinguish between a society's ideal or normative expectations and its actual practices. In some societies, the privilege of assuming plural wives is reserved to a small segment of persons of high status or to members of ruling families. But even in those instances in which such restrictions are absent the majority of the population remains monogamously married.¹⁴

At least two major reasons have been advanced in order to explain the disparity between the ideal and the real in societies where polygyny is considered the most prestigious marital arrangement. One reason has to do with biology and the other with economics.¹⁵ Under ordinary circumstances the natural sex ratio, technically defined as the number of men per one hundred women, tends to approximate one hundred in most societies.¹⁶ Theoretically, this condition of a nearly balanced sex ratio affords most adult members of a society the possibility of securing a marital partner. However, when a man is allowed to take on a second wife, this means that some other men will be denied the opportunity to secure spouses. Only by creating an unbalanced sex ratio, that is reducing the number of males, would it be possible for the majority of the men in any one society to

¹³ F. M. Berardo, F. Ivan-Nyle, The Family: Its Structure and Interaction, New York, London, Collier-MacMillan, 1973, p. 37.

¹⁴ Ibid.

¹⁵ G. Murdock, Social Structure, New York, London, MacMillan & Co., 1949, p. 28.

¹⁶ F. M. Berardo, F. Ivan-Nyle, The Family, p. 37.

have multiple wives. Because an unbalanced sex ratio is rarely a permanent characteristic of any society, this possibility seldom materializes. The result is that although a substantial proportion of the world's societies value polygyny, most of the members of these societies are obliged to practise monogamy.

In reality there are often a number of factors which facilitate the practice of polygyny. In many developing countries infant mortality rates are extremely high and while proportions of male to female deaths are only imperfectly known the infant male mortality rate appears higher. This in some societies helps explain a slight preponderance of females. Tribal fighting and the hazardous occupations normally the prerogative of males also contribute slightly to the predominance of females as does the increasing drift of young unmarried males to the burgeoning urban centers or industrial sites in newly developing countries.¹⁷ Without doubt the major factor which allows any society to practise polygyny is the chronological age gap between males and females at the time of a first marriage. If the men marry for the first time later in age than the women marry for the first time, and there is an equal ratio of males to females, then the population will always have an excess of marriageable females.¹⁸ One demographer has established that if, for example, the age at first marriage for women is 16, and that for men is 25, then there would be a surplus of 26% of marriageable women.¹⁹

¹⁷ B. Kitembo, L. Magesa and A. Shorter, African Christian Marriage, London, Dublin, G. Chapman, 1977, pp. 67-71.

¹⁸ W. Blum, Forms of Marriage: Monogamy Reconsidered, Kenya, AMECEA, Gaba Publications, 1989, p. 88.

¹⁹ V. Dorjahn, "The Factor of Polygyny in African Demography", in Continuity and Change in African Cultures, (eds.), M. Herskovits and W. Bascom, Chicago, University of Chicago Press, 1959, pp. 87-112.

A second major reason why the majority of persons in societies where polygyny is preferred remain monogamists is an economic one. Most young men simply do not have the economic resources required to support additional wives and children. Even in those societies in which polygyny is most pronounced it is principally the older men, who have lived long enough to acquire capital, who are found to have multiple wives. The younger men must content themselves with a single spouse or none at all. Therefore, in societies where a unilineal descent system of kinship reckoning operates, where wide differences between the sexes regarding the age at which one enters a first marriage prevail and where economic advantage is usually associated with older males, the conditions exist which make possible the adoption by some of polygyny as the ideal form of marriage.

4. General Classifications

When examining the phenomenon of polygyny certain distinctions and generally accepted classifications must be mentioned. The incidence of polygyny is measured by the number of married women per hundred married males.²⁰ Most anthropologists prefer not to classify a culture as polygynous merely on the basis of a numerical criterion. However, polygyny as a marital state cannot be expected to exercise a dominant influence if it occurs only infrequently. Therefore some anthropologists would classify any society where more than 20% of the married males have more than one wife as a polygynous society.²¹ Other anthropologists cite figures of 15% up to 19% as sufficient to justify designating a society as practising general polygyny.²² If less than 15% of the married males in a society have

²⁰ R. Clignet, Many Wives, Many Powers, p. 16.

²¹ G. Murdock, Social Structure, p. 28.

²² M. Strathern, Women in Between: Female Roles in a Male World, Mount Hagen, New Guinea, London, New York, Seminar Press, 1972, p. 51.

more than one wife simultaneously, then the society is considered to be practising limited polygyny.²³ Another characteristic of polygyny, noted by demographers, is the intensity of its practice. "Intensity refers to the number of polygynous males with more than two wives".²⁴ Intensity considered by itself is not very helpful for understanding a society, but when intensity of polygyny is combined with high incidence then the previously mentioned conditions that are said to favor polygyny help to explain the phenomenon. The "sororate" or sororal polygyny is the marital union wherein one man is married to two or more sisters simultaneously. Such a form of polygyny is favored by some societies as sisters, because of their past common upbringing, are often better able to co-exist harmoniously as co-wives than if they came from different families.²⁵ In polygynous societies the first marital union a male contracts is normally referred to as a primary marriage and any subsequent unions are classified as secondary marriages.²⁶ Such a distinction is felt to be necessary for in many cultures, where polygyny is practised, different rules of behavior are prescribed for the wives depending on whether they are the first or second etc., wives a polygynist has married.²⁷ It is also important in every analysis of polygyny to distinguish three different types of societies: one in which polygyny is regarded as the ideal type of marriage; a transitional society in which polygynous tendencies are losing out in face of disruptive factors, as for example urbanization; and a society in which there are occasional

²³ R. Clignet, Many Wives, Many Powers, p. 17.

²⁴ Ibid.

²⁵ G. Murdock, Social Structure, p. 30.

²⁶ Ibid., pp. 28-29.

²⁷ Ibid.

polygynous unions, but the majority of the people do not desire or condone such practices.²⁸

5. Advantages of Polygyny

The point has already been made that a society opts for a specific marital structure because that structure is perceived as embodying that society's values or ideals. In societies where polygyny is the traditionally preferred marital structure, economic, social, sexual, political and personal benefits are associated with this form of marriage. This is important to note because it helps to clarify how broad the influence of the practice of polygyny can be and how deeply polygyny can be integrated into a particular culture.

i. Economic

The acquisition of food is a major concern in every society. Where this basic need is primarily the responsibility of the individual family unit, then, in subsistent and labor intensive economies, the polygynous household enjoys significant advantages over a monogamous household. When food coming from crops is produced mainly by the female members of the society, then additional wives serve as economic assets. Additionally when a wife is absent or ill and where it is strictly the role of women to tend gardens, cook meals and take care of the children, the practice of polygyny contributes substantially to the solidarity and prosperity of all in the family unit.

ii. Social

The social benefits associated with polygyny are numerous. Additional wives make

²⁸ E. Nida, Customs and Cultures: Anthropology for Christian Missions, New York, Evanston, Harper & Row, 1954, p. 287.

possible the production of excess food needed for feasts and for the polygynous household to entertain extensively. This in turn is a means whereby social recognition and status are acquired within a society.

Although a man begets more children in a polygynous marriage, a woman normally bears fewer children than she would in a monogamous union.²⁹ In societies where even the most rudimentary of state supported welfare systems are non-existent, children are regarded as a much needed insurance for the future. Given the often high infant mortality rates in such societies the security and stability of monogamous households appear to be more precarious than that of polygynous households. Thus while a polygynous household is usually guaranteed a sufficient number of offspring to care for the aged and sick, this form of marital structure also helps maintain a moderate rate of birth as well as ensure that the health of mothers and their children is not jeopardized by inadequate spacing of births.³⁰

iii. Sexual

Some societies forbid spouses to have sexual intercourse during menstruation, pregnancy and lactation. Breast feeding in some societies may last as long as two years after the child's birth. The obligation to observe such prolonged periods of sexual abstinence is said to encourage monogamously married males to seek sexual satisfaction with prostitutes or the wives of other men.³¹ Additional wives permit a man to carry on

²⁹ P. Bohannan, Africa and Africans, New York, Garden City, Natural History Press, 1964, p. 161.

³⁰ E. Hillman, Polygamy Reconsidered, p. 123.

³¹ B. Kitembo, L. Magesa and A. Shorter, African Christian Marriage, p. 71.

normal conjugal relations, while his other spouse(s) is/are observing the particular taboos mentioned above.

iv. Political

Every new marriage establishes new relationships between two different kin groups, that of the husband and that of the wife. Where a polygynous system of marriage is operative, the extension of the family through the multiplication of relationships of both affinity and consanguinity contributes in no small measure to the general vitality, security, harmony and prosperity of a whole community.³² Particularly when a political structure is based on membership in the same extended family does a deep sense of solidarity emerge and polygynous marriages facilitate this.

v. Personal

Men, who are polygynists, are required to accept the greater burdens and responsibilities that go with management of polygynous households. Many do so with a certain trepidation.³³ However, the successful polygynist husband not only enjoys the prosperity that normally accompanies this marital structure, he is also looked upon as a potential leader. In societies where consensus needs to be reached before political decisions can be made and implemented, it is frequently the husband of a harmonious polygynous household who is recognized as being able to exercise those leadership qualities that all in the society find acceptable.³⁴

³² W. Blum, Forms of Marriage, p. 84.

³³ B. Kisembo, L. Magesa and A. Shorter, African Christian Marriage, p. 70.

³⁴ W. Blum, Forms of Marriage, p. 104.

A number of social observers have noted that in societies where polygyny is the preferred marital structure a wife will often pressure her husband into seeking additional wives.³⁵ A woman who marries a polygynous husband enables her own descent group to establish alliances with other groups and thereby her own self-worth is enhanced.³⁶ For some young women, the prospect of marrying at an early age and enjoying the social and economic security that a polygynous household offers, is very appealing. In many polygynous societies, residential patterns aimed at minimizing tension amongst co-wives means that each wife may have her own house where she is able to exercise greater control over the raising of her children than her counterpart in a monogamous marriage.³⁷ Lastly a certain economic independence often is exercised by the wives of a polygynist husband, especially in matters of petty trading.³⁸

Infertility, in societies that stress the importance of large families, is one of the most severe psychological traumas that a woman can suffer. In such societies female infertility provides socially sanctioned grounds for divorce. However, for all concerned, polygyny is reckoned to be a more favorable and in fact frequently used solution.³⁹ Divorce for reasons other than the infertility of the wife can and does occur in polygynous households. However, polygyny is generally regarded as a marital system that works in favor of

³⁵ J. Kenyatta, Facing Mount Kenya: The Tribal Life of the Gikuyu, London, Secker & Warburg, 1938, p. 169; G. Leslie, The Family in Social Context, New York, Toronto, Oxford University Press, 1967, p. 27; M. Strathern, Women in Between, p. 50.

³⁶ A. Radcliffe-Brown, D. Forde (eds.), African Systems of Kinship and Marriage, London, New York, Toronto, Oxford University Press, 1950, p. 52.

³⁷ W. Blum, Forms of Marriage, p. 111.

³⁸ R. Clignet, Many Wives, Many Powers, p. 143.

³⁹ E. Hillman, Polygamy Reconsidered, p. 122.

permanence in marriage.⁴⁰

It is not members of polygynous families, but others who are themselves enculturated within societies where monogamy is the only marital structure permitted, who see polygyny as something undignified or even debasing for women.⁴¹ There is no evidence that supports the claim that the psychological development of children of polygynous households is adversely affected, where a society practises general or limited polygyny.⁴² Meaningful inter-personal relationships within polygynous households and the quality of care given to children of families with several mothers are not issues that are neglected in polygynous societies.⁴³

6. Disadvantages of Polygyny

Just as in listing observable advantages so too in enumerating perceived disadvantages associated with polygynous marital structures, anthropological considerations need to avoid any ethnocentric bias. Since understandings of marriage differ amongst societies so too will perceptions and the ranking of values and disvalues associated with various marital structures.

⁴⁰ Ibid.

⁴¹ D. Paulme (ed.), Women in Tropical Africa, (trans.), H. Wright, London, Routledge & Kegan Paul, 1963, p. 4.

⁴² R. Clignet, Many Wives, Many Powers, pp. 154-156.

⁴³ A. Radcliffe-Brown and D. Forde (eds.), African Systems of Kinship and Marriage, p. 46.

i. Jealousy

Past observers of polygynous societies have perhaps too readily assumed that jealousy (especially sexual jealousy) was a common characteristic amongst co-wives in a polygynous household.⁴⁴ Nevertheless the presence of a number of cultural patterns that specifically serve to minimize jealousy amongst co-wives is some indication that tensions can arise that are directly attributable to a polygynous marital structure.⁴⁵ While polygynous societies generally reward spouses for suppressing jealousies and cooperating with one another, it would be naive to assume that cultural structures always ensure harmonious relations between co-wives. Any unequal distribution of land or money or any favors are potential causes for jealousy and fighting.⁴⁶

ii. Spousal Responsibilities

Polygynous societies lay considerable burdens on the husband. Running a polygynous family requires great skills and, as one author notes, the husband, "must discipline himself to an equitable distribution of his love, which is a service to his whole family: not an exclusive affair of personal gratification between two individuals."⁴⁷

Traditionally wives in african and melanesian societies occupy an inferior position socially to that of their husbands and live (even before their marriages) in a state of dependence. This is not to imply that wives in these societies lack rights or live in

⁴⁴ G. Joyce, Christian Marriage: An Historical and Doctrinal Study, London, New York, Sheed & Ward, 1933, p. 10.

⁴⁵ A. Shorter, African Culture and the Christian Church, London, Dublin, G. Chapman, 1973, p. 174.

⁴⁶ W. Blum, Forms of Marriage, p. 112.

⁴⁷ E. Hillman, Polygamy Reconsidered, p. 125.

continual servitude. It does mean that, generally, women are dependent upon men for their overall protection, including that of their rights. Polygyny as a marital arrangement structurally reinforces such a culturally sanctioned inferiority position for women. While full reciprocity and complementarity of spousal responsibilities are possible (but not guaranteed) by monogamous marriage, in any polygynous marriage such reciprocity was (and remains) structurally impossible.⁴⁸

iii. Marital Fidelity

Marital fidelity in polygynous societies demands that a wife be absolutely faithful to her husband, but it allows the husband to court an unlimited number of other women with a view to marriage. Observers suggest that this understanding of marital fidelity encourages a double standard of sexual morality, for a husband's extra-marital sexual interests can always be justified on the grounds of his seeking a new wife.⁴⁹

iv. Age at First Marriage

It has been noted earlier that in societies where general polygyny exists young men often have to wait a long time before getting married. Many observers criticize the biological and economic factors which cause such delays. The tendency of older and wealthier men to dominate and monopolize the nubile women in a polygynous society is

⁴⁸ A. Shorter, African Culture and the Christian Church, p. 175. Shorter's opinion regarding the existence of reciprocity and equality existing in a polygynous marriage would be, that reciprocity cannot exist between a man and his wives in polygyny; that reciprocity does not necessarily exist between a man and his wife in monogamy; that equality can exist among the wives in polygyny; that equality cannot exist between a man and his wives in polygyny.

⁴⁹ W. Blum, Forms of Marriage, p. 112; B. Kitembo, L. Magesa and A. Shorter, African Christian Marriage, p. 77.

said to encourage pre-marital promiscuity and homosexuality among the younger men.⁵⁰

v. Polygyny in Matrilineal Societies

When polygyny is the preferred marital structure in a society with a matrilineal descent system, the difficulties that all male members of such societies experience in the areas of authority over their children, over their property and over the determination of their residence are compounded.⁵¹ Probably for these reasons polygyny is not a common phenomenon in matrilineal societies, yet this marital structure does exist and it necessitates complicated residential arrangements.⁵² The observance or non-observance of these residential arrangements is said to be the cause of much friction.⁵³

7. Reaction to a New Order

As has been noted previously the harmonious functioning of a society depends on the general acceptability by its members of a set form of behavior. A culture has a certain inherent unity, such that "a change in one part of the culture affects all other parts."⁵⁴ What needs to be outlined now is what anthropologists have observed about the phenomenon of polygyny in societies which are undergoing rapid change. Many of the changes in societies

⁵⁰ M. Wilson, Good Company: A Study of Nyakyusa Age-Villages, London, New York, Toronto, Oxford University Press, 1951, p. 161; W. Blum, Forms of Marriage, p. 114; E. Hillman, Polygamy Reconsidered, p. 125.

⁵¹ W. Blum, Forms of Marriage, p. 34.

⁵² Ibid., p. 40.

⁵³ R. Fox, Kinship and Marriage, p. 109.

⁵⁴ I. Brown, Understanding Other Cultures, New Jersey, Englewood Cliffs, 1963, p. 5.

where traditionally polygyny has been the preferred marital structure have involved acceptance of various western values or modes of behavior. Here only the more important changes that have modified traditional values and modes of behavior and which have had a bearing on the traditional marital institute of polygyny will be discussed

i. Introduction of a Cash Economy

Pre-cash economy societies were self sufficient in almost all respects. However, given the near universal proscription of marriage to close kin and that for many societies clan exogamy was the rule, marriage alliances had to be contracted with other groups. Such marital alliances were usually accompanied by the payment of bride-wealth or bride-price.⁵⁵ This payment was normally in the form of domesticated animals, most commonly cattle, goats, or pigs. Traditionally the extended family was involved in both choosing prospective spouses and in raising the necessary bride-wealth or bride-price. Polygyny predominated most where the economic contribution of the female members of a society was the greatest. However, the contributions of females were rarely of a monetary nature. With the introduction of a cash economy, more members of societies are able to express and establish their individuality, sometimes even in opposition to the group of which they are members. Money now represents a way whereby wealth and possessions can be both acquired and manifested in many more ways than in the past. The amount of money available to an individual can now affect every other aspect of his or her family's life.

⁵⁵ W. Blum, *Forms of Marriage*, p. 124. The expressions "bride-wealth", and "bride-price", are used interchangeably by cultural anthropologists. The terms refer to the formal transaction and public act of the giving of valuable gifts by the man's family or clan to the woman's family or clan. This act is normally the "seal" of the marriage contract. However, where marriage is a process, the giving of the bride-wealth or bride-price, may be part of an extended marriage ritual which would include other ceremonies of gift-giving over a prolonged period of time. R. Wagner, "Towards a Theological Perspective of Bride-price", in *Working Papers in Melanesian Marriage and Family Life*, (ed.), E. Mantovani, Goroko, Melanesian Institute Press, 1984, paper no. 11, p. 3.

Whereas, before, a wealthy person was one on whom many other people were dependent, now wealth is often perceived as having control over money or over the things that money can buy. In such an environment the practice of polygyny is perceived as less of an ideal to aspire to. Thus in some formerly polygynous societies, men are now accorded respect not so much for the size of their families, as for the quality of life (housing, clothing, education, inheritable property etc.) they can supply through money for their dependents.⁵⁶

ii. Effects of Colonial Rule

Under the aegis of western colonial administrations and particularly since the beginning of the nineteenth century, many societies (where formerly polygyny was a prominent feature) have experienced rapid change. New forms of governance, the way in which political power is acquired, the introduction of national health-care programs, the establishment of a rule of law that transcends tribal or ethnic boundaries - all these innovations and more have produced nothing less than a revolution in traditional ways of life. New mores and a different ranking of values have emerged patterned on those characteristic of western cultures. Within this ferment the marital arrangement of polygyny is seen less and less as a structure that embodies contemporary values and ideals.⁵⁷

iii. School Education

As opportunities for education become readily available to more women in non-western societies, so too is the status of these educated women advanced. Instead of living in a perpetual state of dependence upon men to defend their rights, now many educated women take part in the political life of their countries, participate in a money oriented

⁵⁶ W. Blum, *Forms of Marriage*, p. 132.

⁵⁷ *Ibid.*, p. 143.

economy and enjoy property and legal rights. Available studies indicate that most educated women today refuse to accept polygyny, or to let or encourage their husbands to take second wives.⁵⁸

iv. Introduction of Christianity

The influence of Christianity must also be reckoned as another significant factor for explaining why changes have occurred in the traditional understanding of marriage in many non-western societies. The coming of Christianity and the opportunities for schooling and for eventual employment usually coincided with the coming of colonial governments. The Christian Churches exercised considerable influence through providing school education. Moreover, the insistence by the Christian Churches that christian marriage is only open to couples, at least one of whom is a Christian, was further enhanced when first colonial administrators and then independent governments that succeeded them established statutory marriage as being monogamous.⁵⁹

v. Individualism

Finally one trait or characteristic that typifies many non-western cultures affected by a new order is the rising trend of individualism in attitudes and behavior.⁶⁰ In contrast to the strong group orientation of the past, a growing number of people in non-western cultures now seek to distance themselves from the influence and authority of their group,

⁵⁸ R. Clignet, Many Wives, Many Powers, p. 33; L. Mair, African Marriage and Social Change, London, F. Cass & Co., 1969, p. 150; P. Marris, Family and Social Change in an African City: A Study of Rehousing in Lagos, Evanston, Northwestern University Press, 1962, p. 49.

⁵⁹ W. Blum, Forms of Marriage, p. 143.

⁶⁰ *Ibid.*, p. 122.

clan or tribe. Not all societies have been affected to the same degree but there is hardly any society that has been able to isolate itself from new and external influences that encourage individualism in thought and action.⁶¹ Such a trend can erode the importance people place on their incorporation into a kinship group. It seems possible, therefore, that in the future the nuclear family may take precedence over the role now played by the extended family in many non-western cultures. If this occurs, then the observations on the role of kinship, recorded at the beginning of this chapter, could indicate that the marital arrangement called monogamy will emerge as both the norm and ideal in those societies where formerly general or limited polygyny existed.

8. Summation

There is plenty of evidence to suggest that in traditionally polygamous societies, polygyny can be liberating rather than oppressive for the majority of women. Nevertheless full reciprocity and equality among husband and wives are structurally impossible in a polygynous marital arrangement. These qualities are at least structurally possible in monogamous marriages. It is a feature of ethnographic experience that among peoples with a polygynous form of marriage, males and females are accorded different ontologies.⁶² Thus while males in a polygynous society can enjoy a socially significant position, women

⁶¹ P. Ricoeur, "Civilisation universelle et cultures nationales", in *Esprit*, 29(1961), pp. 439-453. Idem, "Prévision économique et choix éthique", in *Esprit*, 34(1966), pp. 178-193.

⁶² K. Burridge, "Other Peoples' Religions Are Absurd", in *Explorations in the Anthropology of Religion*, 74(1975), p. 20. Burridge argues that reciprocity and complementarity of one male to one female is obscured by substituting in the case of polygyny one male to an indefinite number of females and inevitably bestows an ontological superiority on the male. He adds that such an imbalance is not necessarily avoided through monogamy but at least monogamy as a structure enables marital reciprocity to be realized while in polygyny this is structurally impossible.

are in general valued not for their own sake but in relation to their husband or because they bear children or because they facilitate the achievement of economic advantage.⁶³ There is a clear correlation between the exposure of women to formal education and modern urban living conditions and the growing reluctance of such women to contract polygynous marriages.⁶⁴ One can only surmise that polygyny as a socially recognized and legally valid form of marriage may become less and less acceptable as the traditional cultural patterns that formerly safeguarded plural marriage are eroded.

Part Two: Papua New Guinea

1. Background

Papua New Guinea is a country that defies most attempts at generalized descriptions. Geographically the country contains a large variety of physical features and landscape that is dramatic in its concentrated contrasts. Climatically Papua New Guinea, which lies on the eastern perimeter of the monsoon area, is uniformly hot and wet. However, geographical variations combine to produce a range of micro-climates.⁶⁵

The geographical and political boundaries of Papua New Guinea have contributed to a social and cultural atomization within the nation that is perhaps unparalleled. There are

⁶³ E. Nida, *Customs and Cultures*, p. 105.

⁶⁴ R. Clignet, *Many Wives, Many Powers*, pp. 33, 59. However, Clignet carefully nuances his opinion by stating: "Of all urbanized females, co-wives of polygynous households should have the most marginal position." (p. 59).

⁶⁵ S. Inder, "Geography and Climate", in *Papua New Guinea Handbook: 1976*, (ed.), S. Inder, Australia, Pacific Publications, 1976, pp. 7-11.

around 800 different languages spoken (many of them of great complexity) and around 1,000 different tribes. All this in a country which has a current population of 3,671,200 and a total land area of 461,693 square kilometers.⁶⁶

In September of 1975, after ninety years of colonial rule, Papua New Guinea became an independent nation. The country now has a governmental infra-structure that is reasonably efficient and enjoys the benefits of a burgeoning economy. By 1980 thirteen per cent of the population was living in sixty three centers which were classified as urban and concern was expressed that there was occurring a massive drift of population away from the rural areas.⁶⁷ Perhaps the most appropriate comment on life in Papua New Guinea today is contained in the preface to a monograph issued by the National Statistical Office of Papua New Guinea in 1986:

It is impossible to make generalities about Papua New Guineans today. While the majority still remain villagers living at subsistence level, there are few citizens who have not been touched in some way by the fast changes that are now occurring in Papua New Guinean life.⁶⁸

⁶⁶ National Statistical Office, Social Indicators of Papua New Guinea: 1980-1985, Port Moresby, Government Printer, 1988, p. 7.

⁶⁷ J. Standley, "Port Moresby Settlers Help Themselves", in Geographical Magazine, 48(1980), pp. 471-475. National Statistical Office, Social Indicators of Papua New Guinea, p. 8.

⁶⁸ National Statistical Office, Fertility in Papua New Guinea: A Study of Levels, Patterns and Changes Based on Census Data, Monograph No. 6, Port Moresby, Government Printer, 1986, p. i.

2. Marriage

There is general agreement amongst cultural anthropologists that there are many close parallels between traditional marital patterns found in sub-Saharan African societies and those observed as common to Papua New Guinean societies. Furthermore while Papua New Guinea does not have a homogenous culture nevertheless there are some features which are common to all Papua New Guinean societies and these provide a general framework for the forms of marriage that exist in the country.⁶⁹

The first is the fragmented pattern of small autonomous groups organized on a basis of kinship (mostly patrilineal) and characterized, with a few exceptions, by the absence of hereditary or self-perpetuating leadership. Moreover, the more fertile areas support fairly heavy populations, and when a considerable number of kin oriented and politically discrete groups share a common territory, it is usual to find that the institution of marriage is an important means of providing social linkages and political alliances.

A second striking characteristic of Papua New Guinea societies is their preoccupation with various forms of economic exchange. Such exchanges are a common way of creating, marking or preserving social relationships and are a distinct feature of all marriage arrangements. Marriage payments or bride-price reach a high degree of ceremonial elaboration in many societies and although in others they are less emphasized, few instances of marriage unaccompanied by some exchange of wealth between contracting sets of affines have so far been reported. To be able to contribute towards the bride-price

⁶⁹ D. Ryan, art., "Marriage", in *Encyclopedia of Papua New Guinea*, (ed.), P. Ryan, Melbourne, Melbourne University Press, 1972, vol. 2, pp. 702-710.

for a clan member ensures one of enhanced status, reinforces kinship bonds and places on the beneficiary a sense of indebtedness.

3. Polygyny

Before the advent of colonial administration and the establishing of christian missions, polygyny was the traditional ideal and it remains the ideal still in the more remote areas of the country.⁷⁰ A man's status was related to the number of wives he could acquire, the number of children they bore him, and the gardens and pigs they could tend for him. The actual practice of polygyny in Papua New Guinea has always been limited by several factors, mainly economic and demographic. Economic, because each wife usually represents a considerable financial outlay so that only a wealthy man can afford several wives. Demographic, because the populations have never had a preponderance of females. In contrast to societies in sub-saharan Africa, the peoples of Papua New Guinea do not as a general rule practise the custom of having the men enter a first marriage at an older age than the women. On the contrary elders usually encourage the young men to marry and settle down at an early age and so as a consequence few young men remain unmarried.⁷¹

In general, the observations recorded in the first part of this chapter about the perceived advantages and disadvantages of polygyny are applicable to the situation in Papua New Guinea. Moreover the gradual demise of polygyny as a socially approved form of marriage appears possible in Papua New Guinea as new western based ideas and structures take root. According to the first general census conducted in 1966, thirteen per

⁷⁰ C. Rowley, *The New Guinea Villager*, Third edit., Australia, Melbourne, Cheshire Publishing Co., 1972, p. 128.

⁷¹ D. Ryan, "Marriage", p. 703.

cent of all married males had simultaneously more than one wife. In 1971, in a second general census around nine per cent of all married males were polygynists. The 1980 census did not enquire about polygamy, thus figures are not available from Papua New Guinea's most recently published census. However, the national statistical office points out in one of its publications that, "It is striking to observe that in the 1980 census at the national level about three quarters of women responded as being married whereas only half of the men reported to be in the same situation."⁷² The statistics office then offers the following explanation, "It may be necessary to take into account customary and de facto unions. For these types of unions often it is the woman who feels the commitment and obligation of a married person and considers herself to be one. Another reason could be that in traditional societies polygamy is quite common."⁷³

4. Government Legislation and Polygyny

The present civil laws pertaining to marriage in Papua New Guinea are contained in the Papua New Guinea Marriage Act of 1976. Under these laws only those marriages conducted by government authorized marriage registrars enjoy the full protection of the law and are called "ordinance" marriages. Such "ordinance" marriages are monogamous only. All "bona fide" ministers of religion can on application to the Minister of Justice obtain authorization to act as civil registrars for marriages entered into by members of their own denomination and may then issue on behalf of the Justice Minister a civil marriage licence. Such marriages are then subject to the marriage laws of a specific religious body and of the

⁷² National Statistical Office, Social Indicators of Papua New Guinea, p. 8.

⁷³ Ibid.

government and are monogamous only.⁷⁴

The past Australian administration and now the present government recognize after proof, "customary marriages". "Customary marriages", are those marriages entered into by Papua New Guinean citizens according to the customs of their tribe, clan or village and recognized by their tribe, clan or village as being true marriages. Such marital unions can be monogamous or polygamous. However, while the government recognizes "customary marriages", its attitude to such marriages and especially those "customary marriages" which are polygamous is at best one of mere toleration.⁷⁵

That the government's attitude towards polygyny is one of mere toleration is seen in many of its rules and regulations. No married government employee is entitled to a government owned house unless he or she can produce a marriage licence and thus establish they are monogamously married. All government and local council housing schemes in the rapidly expanding urban centers build houses on the presumption that the occupants will be monogamously married. The government's Minimum Wages Board in determining weekly wage rates differentiates between single and married workers but does not demand that employers pay extra to a worker who is married polygynously. In 1976 the government established a Law Reform Commission, one of whose aims would be to ensure equal status for married men and women under the law. In 1977, a monogamously married indigenous Christian became the first woman in Papua New Guinea to hold a cabinet portfolio in the national parliament. In 1978 the then Prime Minister of Papua New

⁷⁴ Independent State of Papua New Guinea, Papua New Guinea Marriage Act and Regulation: 1976, Port Moresby, Government Printer, 1976, Part II, Section 4, and 5, pp. 7-9.

⁷⁵ Ibid.

Guinea, in response to pressure exerted by the growing number of educated women in the country's urban centers, created a section for women's affairs within his department. Again the avowed aim of this office is to monitor all pending legislation before the national parliament so as to ensure equal rights for all women under the law.

The above developments, while important, are not a realistic indication of prevailing attitudes and practices throughout the country. Away from the urban centers the vast majority of the people who live in the rural areas are slow to change from traditional ways. It is here particularly that the Christian Churches are confronted with the problem of polygyny and must reflect on what pastoral policies should be followed.

5. The Christian Churches and Polygyny

Various Christian Churches and Missions played a major role in Papua New Guinea's development into nationhood. Their continuing contribution should be significant since according to the 1966 census (the last which included full statistics on religion) ninety three percent of the population then claimed adherence to a Christian Church or Mission. In Papua New Guinea there are some sixty christian denominations, comprising a dozen Churches with over two million adherents and about forty eight Faith Missions with around 230,000 members.⁷⁶

⁷⁶ National Statistical Office, 1980 National Population Census: Papua New Guinea, Port Moresby, Government Printer, 1988, p. 106. Some Christians hold that the Christian Church is in essence an invisible body since the essential fact by which a person is saved and becomes a follower of Christ is an inward act of faith. Thus constituted, the Christian Church is a body whose actual membership is known only to God. Christians who hold this position maintain that the only essential outward unity is that of each local congregation and when such Christians work as missionaries they do not claim allegiance to any particular parent church body and prefer to call their organizations "Faith Missions".

Amongst the most profound social changes advanced by the Christian Churches in Papua New Guinea have been those affecting marriage. Generally speaking the major christian denominations have moved carefully in such a sensitive area of human relations. While theoretically some christian theologians have disagreed that monogamy is an essential prerequisite for a married person wishing to receive Baptism, in Papua New Guinea christian missionaries have almost always assumed this to be the case.⁷⁷ Consequently most Christian Churches and Missions have, until recently, not allowed practising polygynists and their wives to receive Baptism or occupy positions of leadership in local christian congregations.

In 1972, an investigation of the problem of polygyny and Christianity in Papua New Guinea was conducted by the Lutheran Church. As a result of this investigation the Lutheran Church in Papua New Guinea altered its policy and allowed under certain conditions practising polygynists and their wives to be both baptized and confirmed.⁷⁸ In 1974 the Christian Brethren Assembly was reported as not only permitting practising polygynists to be baptized but also that these baptized polygynists could be considered eligible for church offices.⁷⁹ The 1988 Lambeth Conference of the Anglican Churches recommended that, "a polygamist who responds to the Gospel and wishes to join the

⁷⁷ C. Rowley, The New Guinea Villager, pp. 128-159.

⁷⁸ P. Bastenberg, W. Burce and J. Geach, Report on Polygamy, Wabag, Lutheran Press Ltd., 1972, pp. 22-23. The three major conditions were that: a) No baptized polygamist would be eligible for any church office. b) All children born of baptized parents could not marry polygamously and remain as or become members of the Lutheran Church. c) A man married to two or more wives and subsequently baptized could not thereafter acquire more wives.

⁷⁹ O. Fountain, "Polygyny and the Church", in Missiology, 2(1974), pp. 111-119.

Anglican Church may be baptized and confirmed with his believing wives and children."⁸⁰ However, the Anglican Church in Papua New Guinea choose not to incorporate this recommendation into its own law.⁸¹ Moreover, in those parts of the country where the Christian Churches have worked for generations, the requirement of monogamy for those contemplating marriage and who have grown up as baptized Christians or who had no more than one spouse at the time of conversion, remains. Such policies seem to have been comparatively successful.⁸²

6. The Catholic Church and Polygyny

Catholic missionaries began working in Papua New Guinea towards the end of the nineteenth century in 1885. In 1985 there were eighteen dioceses and a total catholic population of 974,501 in the country.⁸³ Church authorities from the beginning encountered pastoral dilemmas associated with the marital institute called polygyny and maintained an uncompromising stand. Practising polygynists and their wives were not to

⁸⁰ The Lambeth Conference, The Truth Shall Make You Free, London, Church House Publishing, 1988, pp. 220-221.

⁸¹ Private correspondence from Rt. Rev. Paul Richardson, Anglican Bishop of Aipo Rongo, Papua New Guinea, dated August 13, 1991. The Bishop writes: "[...] the general feeling is that while there is a case for being sympathetic to traditional polygamists, we do not want to undermine the Church's witness to monogamy [...]. We will try to monitor the African situation to see how things turn out and keep our options open."

⁸² Such policies have only been "comparatively successful", for even in established christian communities there is considerable pressure to take a second wife if the first wife is proved to be infertile. Law Reform Commission of Papua New Guinea, Marriage in Papua New Guinea, Port Moresby, Government Printer, 1986. This monograph contains nineteen case studies of marriage customs and infertility of the wife invariably leads to either divorce or polygyny.

⁸³ Catholic Bishops' Conference of Papua New Guinea and Solomon Islands, Directory of the Catholic Churches in Papua New Guinea and Solomon Islands: 1985, Port Moresby, Catholic Books Centre, 1985, p. 2.

be admitted to Baptism until their previous polygynous marital structure was altered in favor of a monogamous marital arrangement.⁸⁴ On August 25, 1960 the vicar apostolic of Wewak in Papua New Guinea proposed a question to the Holy Office in Rome. He asked what was to be done when a pagan man and his two wives desired to be baptized but not one of the parties was willing to separate. On November 15, 1960, the Holy Office replied that in the circumstances neither the man nor his wives could be baptized.⁸⁵

At the end of 1972 catholic church leaders endorsed and implemented the idea of a self-study of the Catholic Church in Papua New Guinea.⁸⁶ The consequence of this ambitious project was that from 1973 until the end of 1974 there was a mass involvement of indigenous Catholics in extensive dialogue on their church in Papua New Guinea. In 1975 a national assembly was convened to correlate and record the results of the self-study. This national assembly, in which two thirds of the 102 delegates were indigenous, published in May 1975 the results of this extensive discussion on church life and practice. On the subject of plural marriages, the national assembly in view of the remits from the various dioceses and the discussion by the delegates recorded the following:

Marriage with Two Wives:

It is true that in the Old Testament some big men had two or three wives. But in the New Testament we do not have this custom. In our country some big men still follow the customs of the ancestors. They want two or three

⁸⁴ J. Gehberger, "Zur Praktischen Anwendung der Constitutio S. Pii PP. V, 'Romani Pontificis', can. 1125", in *Theologisch-Praktische Quartalschrift*, 30(1955), pp. 231-238. However, in this article the author cites a case in 1938 in Papua New Guinea, where the first wife was baptized and continued to live with her husband and his second wife, neither of whom were admitted to baptism.

⁸⁵ "Decrees and Decisions: Use of the Constitution Romani Pontificis", in *The Jurist*, 21(1961), p. 274.

⁸⁶ "A Church Self-Study in Papua New Guinea", in *Pro mundi vita Dossiers*, Asia-Australasia Dossier, 2(1976), pp.1-16.

wives. But the law of the Catholic Church does not allow this custom.

In the Self-study the people said:

1. We must be strong. We must follow the Law of Jesus.
2. It is wrong for christian men to have two wives. It is wrong for christian women to become second wives.
3. We must forbid christian people to help in giving bride-price for a second wife. If they do not want to obey we should forbid them to receive the sacraments.⁸⁷

While the national assembly did not have legislative power, some implications can be drawn from the above excerpt. Firstly, it appears that pastoral issues associated with polygyny were considered significant enough in 1975 so as to warrant specific comment. Secondly, it appears that indigenous Catholics fully acknowledge the monogamous nature of christian marriage. Thirdly, it does not appear that the hitherto general practice of expatriate missionaries insisting the practising polygynists be ineligible for baptism, was criticized or deemed to be in need of review.

7. Summation

An examination of the traditional and contemporary social structures of the peoples of Papua New Guinea is both necessary and helpful. Necessary, because such an examination helps identify what sort of a selective process is going on within Papua New Guinean societies as new religious, sociological and economic factors impinge on traditional cultures. Helpful because the examination highlights how much a form of marriage arises from within a culture and reflects the values of that culture.

⁸⁷ "Our Major Concerns", in Self-Study of the Catholic Church in Papua New Guinea, Goroka, Self-Study Secretariat, 1975, pp. 22-23.

With regard to the future forms of the institution of marriage in Papua New Guinea it appears likely that monogamy will become the normal and preferred marital arrangement for most citizens. However, the practice of polygyny has had a long and respected tradition throughout Papua New Guinea and continues to remain the preferred marital arrangement for some.

All the Christian Churches in Papua New Guinea are committed to establishing communities where monogamy is both the norm and ideal for all married Christians. Recognition of the delicate nexus that exists between polygyny and all other elements of a unique culture has in recent time led some Christian Churches in Papua New Guinea to adopt a posture of toleration towards practising polygynists who wish to receive Baptism. However, other Christian Churches, including the Catholic Church, continue to follow a more traditional policy.

Part Three: Polygamy and the Bible

1. Preliminary Remarks

Contemporary biblical scholarship makes it clear that scriptural statements regarding marriage cannot be abstracted from their biblical context and simply used as proof texts to validate one particular marital arrangement to the exclusion of others. Nevertheless, Christians have always recognized the paradigmatic value of the scriptures; so a question that needs to be addressed is what has the bible to say about polygamy? Specifically, do the scriptures make any affirmation about polygyny, or do they give an indication of a preferred form of marriage for the Israelites and later for Christians?

The analysis will be in two parts. One on polygyny in the Old Testament and the other on polygyny in the New Testament. Two publications have assembled the arguments and opinions of contemporary scripture scholars. The first is E. Hillman's work, published in 1975 as *Polygamy Reconsidered: African Plural Marriage and the Christian Churches*. The second publication is W. Blum's work, published in 1989 as *Forms of Marriage: Monogamy Reconsidered*. Whenever possible these two publications will be used for source material as the issue of polygyny and the bible is investigated.

2. Polygyny in the Old Testament

Unfortunately from the material presented in the Old Testament little can be deduced by way of statistical data. Added to the scarcity of material about the married lives of ordinary Israelites is the fact that figures like Lamech, Noah, Jacob and Elkanah and the genealogies which refer at times to polygynous marriages, have to be treated with great discretion. Therefore it is impossible in the absence of reliable demographic material to state that, statistically, a tendency towards monogamy is traceable in the Old Testament. However, what of a theological tendency?

Traditionally christian exegetes when examining Genesis 1:27, and Genesis 2:18-25, held that these two creation accounts depicted marriage in the beginning as monogamous and that this constituted a formal teaching on the essential nature and ethical

structure of marriage.⁸⁸ However, opinions among contemporary scripture scholars are divided as to whether the creation accounts in the book of Genesis can be so construed.⁸⁹ While the debate itself continues at least the scholarly opinion that there is no anti-polygamic stance contained in Genesis 2:24, and that the model of monogamy was used simply because it was the commoner marital structure, has forced all biblical commentators to re-examine the more traditional interpretation.⁹⁰

Another traditional view of exegetes was that Lamech, Cain's descendent, instituted polygamy (Gen. 4:19-24) and that this illustrated the degradation of interpersonal relationships following the coming of sin into the world. Polygamy according to this

⁸⁸ E. Maly, "Genesis: A Commentary", in *The Jerome Biblical Commentary*, (eds.), R. Brown, J.A. Fitzmyer and R. E. Murphy, London, Dublin, Melbourne, G. Chapman, 1968, p. 25.

⁸⁹ E. Hillman, *Polygamy Reconsidered*, p. 139-178. Hillman argues that contemporary biblical scholarship suggests that the creation accounts do not address the issue of monogamy or polygyny. In this work, Hillman offers the view that polygamy is not in conflict with the teachings on marriage of either the Old or New Testament. W. Blum, *Forms of Marriage*, p. 172-265. Blum argues that both past and present scripture scholarship suggests that the creation accounts in the book of Genesis present the view of a paradise in which monogamy was the only marital structure approved by God. In this work Blum contends that while the original and divinely willed form of marriage (monogamy) became obscured because of sin - under the inspiration of divine revelation the Israelite nation slowly returned to this marital form. Blum also argues that it is impossible to view marriage, as presented in the New Testament, as being anything else but monogamous.

⁹⁰ F. Bockle and T. Beemer, "Editorial", in *Concilium*, 5(1970), pp. 7-10. This issue of *Concilium* was devoted exclusively to articles on current theological questions about the nature of christian marriage. The editors, in their comments, offered what they believed was the current consensus amongst experts on the various aspects of christian marriage that were treated in the articles. On the subject of polygamy and the creation accounts in the book of Genesis, the editors wrote: "God's salvific actions among men by no means exclude the natural laws of development but rather make use of them. One wonders, therefore, whether one is obliged to consider polygamy a consequence of the fall from an ideal paradisiacal state, as an expression of the emergence of Sin? In any event, one cannot consider polygamy to have developed from a state of original monogamy; hardly either as a sinful sign of a promise not yet fulfilled. Neither may we take the 'one flesh' reference as proof of a divinely established order. The two that become one, though in the singular, applies to all men and to all women."(p. 8.).

traditional exegetical opinion is a tainted marital structure.⁹¹ The weight of modern scholarship does not support this traditional view.⁹²

All biblical exegetes would dismiss the idea that simultaneous polygyny was considered a form of adultery in the Old Testament. In the Mosaic Law polygyny was clearly regarded as a normal and licit practice (Ex. 21:10; Lev. 18:18; Deut. 21:15-17), although among the common people it was probably never very widespread.⁹³ The one and only admonition against the acquisition of many wives (Deut. 17:17) was not an attack upon the institute of polygyny as such, but probably an objection to the king's taking too many foreign wives, because they would turn his heart to their foreign gods (1Kgs. 11:1-8).⁹⁴ However, when Hillman claims that polygyny and divorce were not connected in the Old Testament, such a statement requires careful analysis.⁹⁵

It is clear that some women who lived in polygynous households in the Old Testament suffered certain disadvantages compared with other women who were married monogamously. While it is possible for a man to have the same affection for each of his wives, situations recorded in the Old Testament could suggest that more often the husband

⁹¹ E. Maly, "Genesis: A Commentary", p. 23.

⁹² W. Plautz, "Monogamie und Polygynie im Alten Testament", in *Zeitschrift für die Alttestamentliche Wissenschaft*, 75(1963), p. 14; G. von Rad, *Old Testament Theology*, (trans.), D. M. G. Stalker, New York, Harper & Row, 1967, vol. 1, p. 159.

⁹³ R. de Vaux, *Ancient Israel: Its Life and Institutions*, (trans.), J. McHugh, New York, McGraw-Hill Book Company, 1961, pp. 24-28

⁹⁴ E. Hillman, *Polygamy Reconsidered*, p.145.

⁹⁵ Ibid.

preferred one wife to the others (Gen. 29:31-33; Deut. 21:15-17; ISam. 4-6).⁹⁶ While the possibility of a polygynous husband treating all his wives fairly cannot be discounted, the very semitic name used to denote a second wife, has the root meaning, "to show hostility towards" or "to vex".⁹⁷ This would seem to indicate that hatred and jealousy among co-wives competing for their husband's affection could have been destructive.

The above remarks highlight the fact that in polygynous marriages sources of conflict existed which were not present in monogamous marriages and which ultimately could have become grounds for divorce. In view of this, Hillman's statement that, "by its nature, simultaneous polygyny (in the Old Testament) tended to exclude divorce or at least did not lead to divorce any more than did monogamy", is perhaps a little too facile.⁹⁸ Blum, on the other hand, notes, "our study of the Old Testament history has shown that almost every polygynous household, of which any extended account is given, is shown by the sacred authors to be marked by dire signs of strife."⁹⁹

Blum claims that in the prophetic and wisdom literature of the Old Testament the use made of monogamous marriage when describing the covenant relationship between Yahweh and His people was significant.¹⁰⁰ Blum cautions that there was as yet no explicit theological affirmation of monogamy as the God-willed form of marriage. However, the

⁹⁶ W. Plautz, "Monogamie und Polygynie im Alten Testament", p. 21.

⁹⁷ F. Brown, C.A. Briggs and S.R. Driver, A Hebrew and English Lexicon of the Old Testament, Oxford, Clarendon Press, 1929, p. 865.

⁹⁸ E. Hillman, Polygamy Reconsidered, p. 145.

⁹⁹ W. Blum, Forms of Marriage, p. 193.

¹⁰⁰ Ibid., p. 215.

very juxtaposing of covenant and monogamy showed, writes Blum, a theological tendency that was pointing to monogamy.¹⁰¹

Hillman, for his part, refutes the opinion that because the idea of monogamy was used in describing the covenant relationship, that this indicated that monogamy was the emerging ideal. There were occasions, he points out when the prophets used bigamous images (Jer. 3:6ff; Ezek. 23:24). The metaphor, and it was only a metaphor, argues Hillman, was adapted depending on the message the prophets wanted to communicate. It is simplistic to suppose that the prophets extolled either bigamy or monogamy and, adds Hillman, marriage was not the only image used to illustrate the Covenant and should not be given an exclusivistic emphasis.¹⁰²

Some who argue for a theologically motivated evolution towards monogamy in the Old Testament refer in general to the post-exilic writings in the Old Testament and particularly to the prayer of Tobit and Sarah on their wedding night (Tob. 8:6ff). The reference made in the book of Tobit to the first two chapters of the book of Genesis is seen by these scholars as support for an emerging appreciation of monogamy as the preferred structure for marriage.¹⁰³ They argue that to treat this as an isolated case would be to ignore both the literary form of the book and the mentality of its author. This bride and bridegroom were presented to the Chosen people as an ideal. Hence polygyny, while not

¹⁰¹ Ibid., p. 218.

¹⁰² E. Hillman, *Polygamy Reconsidered*, pp. 147-148.

¹⁰³ P. Grelot, "The Institution of Marriage: Its Evolution in the Old Testament", in *Concilium*, 5(1970), p. 48; J. Kerns, *The Theology of Marriage*, New York, Sheed & Ward, 1964, pp. 97-98; E. Schillebeeckx, *Marriage: Secular Reality and Saving Mystery*, (trans.), N. D. Smith, London, Sheed & Ward, 1965, vol. 1, p. 98.

condemned, was not to be equated theologically with monogamy which now emerged as the normative marital structure for the Jews.¹⁰⁴

While it is agreed among scholars that monogamy appeared to predominate among the Jews after the exile, there is no general agreement as to the reasons for this.¹⁰⁵ In view of the fact that in the later wisdom literature there was no explicit condemnation of polygyny and conscious of the sparse and often historically suspect information regarding marriage forms in the Old Testament, Hillman claims that monogamy came to predominate due to social and economic reasons. There is no evidence, Hillman argues, that leads one to conclude that a religious or ethical development towards monogamy emerged.¹⁰⁶ Blum, however, is equally insistent that a theologically and ethically based preference for monogamy did come to predominate. He argues that it is an accepted view in christian theology that the aims of God may be accomplished through the means of very natural phenomena. Thus, he maintains, the role that economic, political and social factors played in a gradual decline of polygyny in Israel does not thereby exclude the presence of religious attitudes and values.¹⁰⁷

The debate continues. Probably the assessment contained in a *Pro mundi vita* Dossier on family life represents what all scholars would accept about any growing appreciation of monogamy emerging in post-exilic jewish society and can serve as a

¹⁰⁴ W. Blum, *Forms of Marriage*, p. 220-221.

¹⁰⁵ H. Strack and P. Billerbeck, *Kommentar zum Neuen Testament aus Talmud und Midrasch*, Munchen, C. H. Beck, 1926-1928, vol. 3, p. 122.

¹⁰⁶ E. Hillman, *Polygamy Reconsidered*, p. 148.

¹⁰⁷ W. Blum, *Forms of Marriage*, p. 212.

summation of what has been outlined in this entire section:

Polygamy is presented in Scripture as really compatible with a great intimacy with God, and compatible with avowed sanctity. Gradually under the influence of mutations that were demographic, social (particularly the disappearance of the clans), and economic and of personalized thinking, mentalities changed and monogamy appeared as a more adapted form of family life. This monogamous form had become firmly established by the time of Christ, although polygamy was not forbidden. The Greek and Roman worlds, with which the Jews had had continuous political, economic and cultural contacts for almost two centuries before the birth of Christ, regarded monogamy as the only legal matrimonial system, although sexual life in the large cities was fairly free. The monogamous pattern of family life was thus naturally followed by the first christian communities.¹⁰⁸

3. Polygyny in the New Testament

The New Testament's lack of explicit statements or injunctions regarding polygyny and monogamy, presents exegetes and theologians with a problem of interpretation. Moreover, any interpretation of new testament texts cannot be made without recourse to the Old Testament. The position that an exegete takes regarding the issue of polygyny in the Old Testament will have great repercussions on his or her study of polygyny in the New Testament.

Hillman maintains that those who would argue from the supposition that Jesus would have accepted a post-exilic ideal of monogamy to His repudiation of polygyny, forget that in no recorded word does Jesus condemn polygynous marriage. Thus, Hillman writes, "no decisive guidance positive or negative, on the question of polygyny can be

¹⁰⁸ L. Hertsens, "Family Life and Marriage Among Christians in Sub-Saharan Africa", in *Pr mundi vita Dossiers*, Africa Dossier, 2(1976), p. 41.

drawn from the Gospels."¹⁰⁹

After analyzing the accounts of the debate between Jesus and the Pharisees (Mtt. 19:3-9; Mk. 10:2-12), Hillman concludes that Jesus' reply to the Pharisees was limited to the scope of their questions. The Pharisees were seeking to find Jesus' own views on what constituted the proper grounds for divorce. Thus, argues Hillman, we should not expect to find here an answer to a question that was not asked, namely the acceptability or otherwise of the marital institute of polygyny.¹¹⁰

On examining the research of scholars on Jesus' teaching on divorce and on the famous exceptive clause (Mtt. 5:31-32; 19:9; Mk. 10:2-12; Lk. 16:18), Hillman finds great divergences among exegetes as to the exact meaning of these scripture texts. If, writes Hillman, the issue of absolute marital indissolubility is scripturally still debatable, then why do some scholars unhesitatingly affirm Jesus' repudiation of simultaneous polygyny in these same texts?¹¹¹ Successive and simultaneous polygyny are not, writes Hillman, morally the same thing. The former necessarily involves divorce and remarriage, which appears to be explicitly repudiated by Jesus, while the latter does not.¹¹²

Finally Hillman maintains that Jesus in rejecting the legalism of the Pharisees was not laying down a new law. Rather, Hillman argues, what was reprehensible in the sight of Jesus was the attitude or the intention of a husband who would dismiss his wife and

¹⁰⁹ E. Hillman, *Polygamy Reconsidered*, p. 140.

¹¹⁰ *Ibid.*, p. 156.

¹¹¹ *Ibid.*, p.157.

¹¹² *Ibid.*, p. 159.

marry another. Such an attitude or intention was adulterous, for divorce and remarriage were contrary to the marital indissolubility implied in the Jewish notion of "one flesh", but adds Hillman, polygamy was quite compatible with this notion.¹¹³

In a lengthy analysis of the debate between Jesus and the Pharisees on divorce, Blum offers a very different assessment from that of Hillman. Firstly, writes Blum, the silence of the New Testament does not necessarily imply approval or even toleration of polygyny, other explanations are possible.¹¹⁴ Secondly, Blum argues, Jesus' teaching contrasted the new order and the new law with that of the Jewish order and law. The foundation of this new order was the authentic will of God, first manifested at creation and now purified and re-established by Jesus. Blum holds that with the Matthean and Markan texts the inequality between the spouses in the matters of adultery and divorce were presented as being no longer acceptable. Therefore, Blum concludes, a polygynous concept of marriage which structurally sanctioned such inequality was repudiated. In contrast to Hillman, Blum notes that many contemporary exegetes do not find in the Synoptics a total absence of references to monogamy. It is true, Blum writes, that the majority of these exegetes are content to state that the evangelists presumed or implied that monogamy was the form of marriage permitted to Christians. However, as Blum points out, there are contemporary commentators who hold that an explicit reference to monogamy

¹¹³ Ibid., pp. 161-162, 168. Hillman maintains that the meaning in the Old Testament of "one flesh" encompasses more than an exclusive relationship between two persons.

¹¹⁴ W. Blum, *Forms of Marriage*, pp. 224, 225, 227. Blum offers three other possible explanations: 1. Much of what Jesus did and said was not recorded (Jn. 21:25). 2. Polygyny had become such a rare phenomenon and was so disdained that concretely monogamy was both the norm and ideal for nearly all Israelites. 3. The teachings of Jesus and the later proclamation of the Gospel were given in the immediate context of the poorer and lower classes of the society of the time and such people were least likely to be involved in polygynous marriages.

and a rejection of polygyny can be discerned in these gospel passages.¹¹⁵

Hillman makes much of the fact that the practice of leviratic marriage did not become a subject of discussion when Jesus replied to a hypothetical case proposed to him by the Sadducees (Mtt. 22:23-33; Mk. 12:18-25; Lk. 20:27-40).¹¹⁶ Hillman argues that the absence of any reservations about the polygynous implications of the levirate law by Jesus was significant.¹¹⁷ However, there is more to be said. McKenzie maintains that one cannot deduce from the question of the Sadducees that leviratic marriage was practised in new testament times.¹¹⁸ Furthermore, Hillman does not mention other pastoral solutions to the problem of widowhood found in the pages of the New Testament (Acts 6:1-16; 9:39; 1Cor. 7:8-9, 39-40; 1Tim. 5:3-16; Tit. 2:3-5). Therefore, it appears doubtful whether the Jewish custom of levirate marriage (even if it was still practised), which at times was polygynous found any favor in the early Christian community.

As in the Gospels so in the Pauline Epistles, there is no explicit treatment of the question of polygyny. However, Paul's marriage teaching would seem to have presupposed that monogamy was normative (1Cor. 7:4). Hillman mentions that Paul was in contact with mainly Hellenized Jews who were living in the Greco-Roman world in which polygyny was forbidden by civil law. Thus, argues Hillman, even if Paul's teaching presupposed monogamy, this did not necessarily amount to a Christian prohibition

¹¹⁵ Ibid., p. 243.

¹¹⁶ "Levirate marriage, that law which obliged a brother to marry the widow of his deceased brother if the brother died without male issue." J. L. McKenzie, Dictionary of the Bible, London, Dublin, G. Chapman, 1966, p. 506.

¹¹⁷ E. Hillman, Polygamy Reconsidered, pp. 163-165.

¹¹⁸ J. L. McKenzie, Dictionary of the Bible, p. 506

against polygamy.¹¹⁹ Hillman then examines the use of the expression "one flesh" in the first letter to the Corinthians (ICor. 6:16-17). He concludes, against those who hold that the expression "one flesh" always contains a certain revelation of monogamy, a much broader understanding of this phrase.¹²⁰ Hillman maintains that "one flesh", for Paul, meant a carnal and kinship unity which was not confined exclusively to only two persons. Thus, argues Hillman, polygyny, in which a man is married simultaneously to more than one wife, was not necessarily discredited whenever Paul used the phrase "one flesh" when writing about christian marriage.¹²¹ Finally, Hillman offers a hypothesis. Firstly, he suggests that the old testament notion of corporate personality can be applied to the new People of God, the Church. Secondly, he notes that in the fifth chapter of the Epistle to the Ephesians, marriage is presented as an image of the unity of Christ and the Church. Therefore, argues Hillman, since the Church is a plurality of persons, it is possible for the union between Christ and the Church to be used as a symbol for a polygynous marriage as well as for a monogamous marriage. Hillman does not support his hypothesis with any documentation and it runs counter to most, if not all, contemporary exegesis of chapter five of the Epistle to the Ephesians. As Karl Rahner has noted: "The decisive parallel of the text of Ephesians is not that of the husband representing Christ and the wife the Church. It is,

¹¹⁹ E. Hillman, Polygamy Reconsidered, p. 165.

¹²⁰ E. Parrinder, The Bible and Polygamy, London, S.P.C.K., 1958, p. 48.

¹²¹ E. Hillman, Polygamy Reconsidered, p. 168. When examining Hillman's understanding of the phrase "one flesh", one study noted: "Hillman tries to water down the force of the phrase 'one flesh' by making it refer exclusively to the carnal and social realities. 'One flesh' in the carnal sense and 'one kindred' in the social sense do not do justice to the full meaning of the phrase as one living body. Hillman is obliged to admit that in polygamy married love is extensive not intensive, and that the relationship between the co-wives is more important than that between husband and wives. For Christians it is the equality of love, the intensity of the relationship between husband and wife that matters." B. Kitembo, L. Magesa and A. Shorter, African Christian Marriage, p. 84.

rather, the unity in one flesh."¹²²

The absence of specific references in the pauline writings to polygyny is not, for Blum, a valid reason for inferring that this marital structure was a permissible one for Christians. Blum notes that Paul wrote for people living in a Greco-Roman world where polygyny was forbidden by civil law. Thus any injunction by Paul against polygyny would have been superfluous.¹²³

Blum claims that all exegetes agree that Paul in his first letter to the Corinthians rejected the notion that marriage and procreation were absolutes. Furthermore, there is, Blum notes, general agreement amongst exegetes that Paul in this same letter rejected the tradition of a husband's superiority over his wife in matters relating to the couple's conjugal life (ICor. 7:2-4).¹²⁴ Thus, Blum argues, two principles one negating the absoluteness of marriage and the other affirming the equality between spouses are found by all exegetes in Paul's first letter to the Corinthians. These two principles, Blum contends, attack two of the pillars which support a polygynous concept of marriage and thus exclude such a marital arrangement for Christians.¹²⁵ Blum maintains that Paul was not content to lay down the minimum requirements for the conjugal life of christian spouses but also proposed a sublime ideal for conjugal life. In the fifth chapter of the Epistle to the Ephesians, Blum holds that Paul presented marriage as not merely involving a transfer of rights but also the creation of a new being, a unity in one flesh. This unity in one flesh,

¹²² K. Rahner, "Marriage as a Sacrament", in *Theology Digest*, 17(1969), p. 7.

¹²³ W. Blum, *Forms of Marriage*, p. 224

¹²⁴ Ibid. p. 248.

¹²⁵ Ibid.

writes Blum, was for Paul not something simply dependent upon the will of the spouses but involved the intervention of God, even if the spouses were unaware of the divine presence and activity. Furthermore, Blum notes, the specific reference in the fifth chapter of Ephesians to the Yahwist's account of creation (Gen. 2:24) has lead some authors to hold that Paul was not just talking about christian marriage but about every marriage. This, Blum claims, is why some would argue that the only true marriage for all peoples is a monogamous one.¹²⁶ Blum concludes that despite the lack of explicit scriptural statements regarding polygyny or monogamy there is no evidence to suggest that either Jesus or any of the new testament writers supported or accepted polygyny.¹²⁷ In answer to the question whether exceptions could be allowed for polygynists who had been married before their conversion to Christianity, Blum finds no evidence in the New Testament that would be supportive of such an accommodation.¹²⁸

The First Epistle to Timothy, chapter three, verses two and twelve and the Epistle to Titus, chapter one, verse six continue to be used in discussions regarding the new testament attitude towards polygyny.¹²⁹ Some would hold that these texts meant that church leaders were required to be monogamists and that other members of the early christian communities were free to enter polygynous marriages if they wished. The greek texts are ambiguous and allow for other interpretations than the one mentioned above. Another explanation would hold that the texts meant the "bishop" or "deacon" referred to

¹²⁶ Ibid., pp. 249-254.

¹²⁷ Ibid., p. 255.

¹²⁸ Ibid., p. 262.

¹²⁹ Ibid., pp. 254-255. E. Hillman, *Polygamy Reconsidered*, pp. 166-167, 177.

was expected, if married, to have been faithful to his wife throughout his life.¹³⁰ It is this explanation which appears to enjoy the greatest support amongst contemporary exegetes.¹³¹ However, there is no absolute certainty as to the exact meaning of the texts. Only if the probable opinion that a polygynist could not become a church leader is accepted, is there an implication that practising polygynists were baptized members of christian communities in the early Church.

4. Summation

Many biblical exegetes have claimed, and some continue to claim, that the creation accounts in the book of Genesis presented the idea of a paradise in which monogamy was the only marital structure approved by God.¹³² This idea, these scholars argue, became obscured by sin and as a result polygyny became an acceptable marital structure in Jewish society. However, under the inspiration of divine revelation the Jews slowly discarded polygyny in favor of a divinely willed monogamous form of marriage. In fact some of these scholars would hold that monogamy is the only form of marriage since it was presented in Genesis as God's plan for humankind. Again, according to this opinion, Jesus in his teaching and all the writers of the New Testament not only accepted the developments towards monogamy found in the Old Testament but strengthened this

¹³⁰ R. Wild, "The Pastoral Letters", in The New Jerome Biblical Commentary, (eds.), R. Brown, J.A. Fitzmyer and R.E. Murphy, New Jersey, Englewood Cliffs, Prentice Hall, 1990, pp. 894, 897.

¹³¹ W. Blum, Forms of Marriage, p. 255.

¹³² It is instructive to note that in contrast to what was written by a commentator on the book of Genesis in the 1968 publication of the Jerome Biblical Commentary, in 1990 the commentators on the book of Genesis in The New Jerome Biblical Commentary, omit any reference to either monogamy or polygamy. See R. Clifford and R. Murphy, "Genesis", in The New Jerome Biblical Commentary, p. 12.

teaching by emphasizing the reciprocal relations of husband and wife. This appears to be the opinion championed by Blum in his analysis of the biblical writings on issues related to polygyny.

Another slightly more nuanced and recent opinion of some biblical exegetes is that the creation accounts cannot be used to establish a monogamous norm for all marriages. However, according to this opinion, monogamous marriage must be accepted for all who are followers of Christ. This is because monogamy is the term of a whole trend within the communal experience of the Jewish people and the teaching of Christ and Paul, set against the background of this social trend, presuppose a monogamous norm for all followers of Christ who are married or wish to become married. This opinion could allow room for a posture of toleration to be accorded practising polygynists wishing to be baptized but unable or unwilling to alter their marital situation.¹³³

A third opinion is that the creation accounts in the book of Genesis do not address the issue of polygamy or monogamy. This view also contends that no decisive guidance positive or negative on the question of polygyny can be drawn from the New Testament. According to this opinion, any prevalence of monogamy can be attributed to economic and social factors with no reference to revelation. The logical inference from such an opinion would seem to be that on the basis of the scriptures both monogamy and polygyny are acceptable marital structures for Christians depending on their specific cultural settings. This appears to be the opinion championed by Hillman following on his analysis of what the bible has to say about polygamy. However, Hillman uses this opinion merely to argue for a posture of toleration to be accorded practising polygynists who are unable or

¹³³ A. Hastings, *Christian Marriage in Africa*, London, S.P.C.K., 1973, p. 75.

unwilling to change their marital status but wish to be baptized. Hillman's work because it expresses such a radical departure from the traditionally held view has been extensively reviewed. The consensus of the reviewers appears to be that Hillman's interpretation of scripture reflects a minority viewpoint and is weakest when he tries to show that polygamy is not in conflict with the teachings on marriage found in the New Testament.¹³⁴

Conclusion

Polygamy is an expression of human experience. Polygyny has, as a marital arrangement, its own built-in advantages and disadvantages. It has worked reasonably well, within particular social contexts, for untold generations. Few sociologists and anthropologists would be prepared to state categorically that polygyny will eventually be universally discredited as one possible marital arrangement. On the grounds of utility possibly polygyny is less suited than monogamy to a changing social environment where formal education, industrialization and the growing political and economic emancipation of women are seen as goals to be achieved.

In Papua New Guinea what demographic data are available would suggest that the former widespread practice of polygyny is giving way to a general acceptance of monogamy as both the ideal and norm for all citizens who wish to become married. The reasons for this change in attitude are numerous and complex. Undoubtedly the influence

¹³⁴ P. Fransen, a review of E. Hillman, Polygamy Reconsidered: African Plural Marriage and the Christian Churches, in Bijdragen, 37(1976), pp. 338-339; M. Kelleher, a review of E. Hillman, Polygamy Reconsidered: African Plural Marriage and the Christian Churches, in Theological Studies, 37(1976), pp. 168-170; A. Hastings, a review of E. Hillman, Polygamy Reconsidered: African Plural Marriage and the Christian Churches, in The Tablet, (July 17, 1976), pp. 689-690; A. Shorter, The African Contribution to World Church, Uganda, Kampala, Gaba Publications, 1978, pp. 58-60.

and role played by christian missionaries has helped discredit polygyny in the minds of many Papua New Guineans. The Catholic Church in Papua New Guinea continues to maintain that practising polygynists and their wives are not to be admitted to Baptism. Some other Christian Churches in Papua New Guinea, which previously followed the same pastoral policy, have now adopted a more flexible practice.

Any assessment, by Christians, of polygyny on moral grounds will rely heavily on what the bible has to say about marriage. Most exegetes would maintain that over a period of some one thousand years a distinct development with regard to the dignity of the individual both male and female is discernible in the history of the Chosen People. Such a development, while complex in causation, surely contributed to the consensus that existed amongst most Jews at the time of Jesus that monogamy was the preferred marital arrangement. Jesus did not explicitly repudiate polygyny. However, Jesus' emphasis on the reciprocal relations of husband and wife and on the intimacy of their union (Mtt. 19:3-9), at least suggests that no other spouse should be admitted simultaneously to the sphere of their married love. An egalitarian attitude towards women is particularly evident in Jesus' teaching on divorce. Wives were not to be treated as chattel but were to be regarded as partners in marriage (Mk. 10:2ff). In an age where the ancient assumption that women were inferior was common, a specific contribution of the New Testament to a christian understanding of marriage was the stress given to the ideals of equality, reciprocity and mutual service. By implication then a marital arrangement which structurally obscured these values, such as polygyny, was discredited but not condemned. However, no decisive guidance can be found in the bible as to whether practising polygynists unable or unwilling to alter their marital situation, should be baptized.

-CHAPTER TWO-

PAST ECCLESIASTICAL LEGISLATION ON POLYGAMY

Introduction

The original Gospel insight of marital reciprocity and equality would seem to have presumed monogamy to be the only marital institute possible for married Christians. However, throughout the New Testament there is an absence of any specific injunction against polygamy. This raises the question of whether past ecclesiastical law has ever permitted church authorities to admit to Baptism practising polygamists unable or unwilling to alter their marital situation? Part of the legitimacy of such a question rests on two arguments. One argument begins by stating that historians have noted that early church leaders expressed the teachings of Christ in the cultural terms and thought patterns of the people amongst whom they worked. Monogamy was the only form of marriage available to both Christian and Pagan alike in the Roman Empire, since polygyny was legally proscribed for all except Jews. Hypothetically then, this argument goes, it is possible that initially any church practice of absolutely excluding polygamously married Pagans from Baptism was due merely to the monogamous tradition of ancient Greece, Rome and pre-Christian Europe. Then later such a policy, which was not a central tenet of the christian faith, was unquestioningly extended to encompass all peoples with whom christian missionaries came in contact. A second argument builds on the fact that in the history of the Church there has always existed an attitude of initial toleration towards many customs and practices of newly converted peoples. Therefore, this argument goes, it was both possible and logical that church law and practice adopted an attitude of initial toleration towards those married polygamously who sought to be baptized. If this was the case, then such a precedence allows church authorities today to extend the same toleration to

polygamously married people in newly evangelized societies where general or limited polygamy is practised.¹

The aim of this chapter will be to ascertain whether in any record of ecclesiastical legislation or practice prior to the seventeenth century there is evidence to support the idea that the Church officially permitted practising polygamists unable or unwilling to alter their marital situation, to be baptized.

The chapter is divided into three parts. The first part will investigate church practice and legislation on polygamy in the first four centuries of the christian era. The second part will be concerned with analyzing the writings of theologians and the decisions of church officials that concerned polygamy, from the fourth to the eleventh centuries. The third section of the chapter will scrutinize some key events that occurred in the period from the eleventh to the sixteenth centuries that illustrate what was the Church's attitude towards polygamy. In this last section special reference will be made to a recent critical study of the Council of Trent's teaching on simultaneous polygamy and to three Apostolic Constitutions which addressed catholic missionary practice regarding polygamists who sought Baptism.

Part One: The First Four Centuries

Scholars are in general agreed that in the first centuries of the christian era there was

¹ E. Hillman, Polygamy Reconsidered: African Plural Marriage and the Christian Churches, New York, Maryknoll, Orbis Books, 1975, pp. 21-31. In this section of his work Hillman gives an expanded treatment of the two arguments outlined above.

no special way for a Christian to marry.² The customary forms of marriage among the Jews, Romans and every other people, provided the marriage forms for Christians as well. However, from the beginning the Church surrounded the civil and family marriages of Christians with pastoral care. Thus Christians were forbidden to offer sacrifices on the occasion of a wedding, they were admonished to avoid all pagan excess in any wedding celebration, clandestine marriages were forbidden, marriages of christian slaves were regarded as true marriages and most importantly the Church repudiated the common roman practice of divorce and re-marriage simply on the grounds of the discontinuance of consent by one or both parties.³

While divorce, promiscuity and concubinage were common, roman law and roman custom forbade polygyny.⁴ That this was an ancient law can be inferred from the fact that Suetonius recorded that the passing of a special law was contemplated which would have allowed Julius Caesar a plurality of wives.⁵ Such a law would not have been needed if polygyny had been legally recognized. In A.D. 212 the Lex Antoniana de civitate re-affirmed the law of monogamy for roman citizens yet tolerated polygyny among the inhabitants of the empire who were Jews. This toleration was subsequently rescinded in A.D. 258 by the Emperor Valerian and again in A.D. 285 by Diocletian and Maximian. The continuation of the practice of polygyny amongst some Jews was condemned in A.D. 393 by Theodosius but according to some authoritative sources, the practice survived until

² E. Schillebeeckx, Marriage: Secular Reality and Saving Mystery, (trans.), N. D. Smith, London, Sheed & Ward, 1965, vol. 2, p. 18.

³ Ibid., pp 20-21.

⁴ E. Corbett, The Roman Law of Marriage, Oxford, Clarendon Press, 1930, p. 143.

⁵ O. D. Watkins, Holy Matrimony, London, Rivington, Percival & Co., 1895, p. 596.

the eleventh century among the Jews of northern Europe.⁶

The attitude of the early Church to polygamy can only be inferred from its pastoral practice, its teachings on divorce and its attitude to those Christians who contracted a second marriage after the death of their original spouse.

It appears that the Church found new ways of caring for widows, which respected their dignity and freedom, other than through leviratic marriage.⁷ The *Shepherd of Hermas*, which reflected the religious and moral views of the Roman Church in the second century, forbade re-marriage after divorce.⁸ The possibility of a person being simultaneously married to more than one spouse was not alluded to and by implication would appear to have been excluded entirely for Christians. St. Justin the Martyr,⁹ St. Clement of Alexandria,¹⁰ and Tertullian,¹¹ in repudiating re-marriage after divorce also appeared to have excluded polygamy. Later authorities appeared just as consistent, thus Lactantius (c. A.D. 316) wrote:

As the woman is tied by bonds of chastity to desire no-one else, so also the man is bound by the same law since God has firmly bound the husband and

⁶ S.W. Baron *A Social and Religious History of the Jews*, Second edit., New York, Colombia University Press, 1962, vol. 2, pp. 223-229; A. Sachar, *A History of the Jews*, Fourth rev. edit., New York, A. Knopf, 1955, p. 185.

⁷ B. Kitembo, L. Magesa and A. Shorter, *African Christian Marriage*, London, Dublin, G. Chapman, 1977, p. 86.

⁸ *Hermas, Pastor, "Mandatum IV"*, in *Patres apostolici*, Second edit., (ed.), F.X. Funk, Tubingae, H. Laupp, 1875, vol. 1, pp. 474-477.

⁹ Justin, Martyr, *Apologia prima pro Christianis*, c. 14, 15, in *Patrologiae graeca*, (ed.), J.-P. Migne, Paris, J.-P. Migne, 1857-1866, (= P.G.), vol. 6, cols. 349-350.

¹⁰ Clement of Alexandria, *Stromatum*, c. 3, 12, in P.G., vol. 8, tome i, col. 1183.

¹¹ Tertullian, *De monogamia*, c. 4, in *Patrologiae latina*, (ed.), J.-P. Migne, Paris, J.-P. Migne, 1844, (= P.L.), vol. 2, tome ii, col. 934.

wife in the frame of one body.¹²

The early Church's attitude to polygamy can possibly be inferred also from its teaching on the subject of successive marriages. There was a constant tendency in the direction of pronouncing second marriages as sinful. Such a tendency took dogmatic shape in the teachings of the african Montanists and the phrygian Novatians. While the Church reacted against this rigorous attitude, nevertheless church leaders were anxious to avoid any charge of laxity. Thus the Council of Ancyra (A.D. 314), ruled that people who had promised virginity and then put aside their promise were to fulfill the term of penance assigned for digamists.¹³ The Council of Neocaesarea (c. A.D. 315), in its third canon, stated that the period of penance assigned to those who had successively married several times was well known but that because of the deep faith and sincere repentance of some such people, the period of penance could be shortened. In its seventh canon, the Council forbade a priest to take part in the marriage festivities of digamists.¹⁴ The Council of Nicaea (A.D. 325), in formulating regulations to be observed when accepting the phrygian Novatians into the Church required that their clergy, "acknowledge in writing that they would observe and follow the decisions of the Catholic and Apostolic Church; that is to say they will communicate even with digamists".¹⁵ The first canon of the Council of Laodicea (A.D. 341), ruled that second marriages could be condoned after a brief period of prayer

¹² Lactantius, Epitome divinarum institutionum, c. 66(alias c. 8), in P.L., vol. 6, col. 1080: "Sed sicut foemina castitatis vinculis obligata est, ne alium concupiscat: ita vir eadem lege teneatur, quoniam Deus virum et uxorem unius corporis compage solidavit."

¹³ Council of Ancyra, canon XIX, in Sacrorum conciliorum nova et amplissima collectio, (ed.), J.D. Mansi, Parisiis, Welter, 1901-1927, (= Mansi), vol. 2, cols. 519-520.

¹⁴ Council of Neocaesarea, canons III, VII, in Mansi, vol. 2, cols. 539-542.

¹⁵ Council of Nicaea, canon VIII, in Mansi, vol. 2, cols. 671-672.

and fasting.¹⁶ The aforementioned rulings were not concerned with polygamy. However, it can be argued that the regulations were expressed in terms that were incompatible either with any permission for Christians to practise polygamy or with the admission to Baptism of practising polygamists.

What influence the Jewish practice of polygyny had on the early Church is difficult to estimate. St. Cyril of Jerusalem was probably born in Jerusalem about A.D. 315, and was afterwards bishop there. He was a representative of Jewish Christianity where, if anywhere at all, permissible Jewish customs would have been respected, guarded and maintained. In his "Catechetical Lectures" delivered around A.D. 347, while Cyril reluctantly allowed that Christians whose spouses had died could re-marry, there is no mention of polygyny as an acceptable practice for Christians or those seeking Baptism.¹⁷ St. Gregory Nyssen visited Jerusalem some time after the Council of Antioch in A.D. 379. He wrote scathingly of the moral degradation among the Christians of Jerusalem at the time of his visit. It could be argued that if polygynists were among the Christians of Jerusalem, which was a practice alien to the purely Gentile Churches, then an allusion to it would have been entirely apposite. However, St. Gregory, like St. Cyril, never hinted at the existence of polygyny among the Christians in Jerusalem.¹⁸ St. Epiphanius was bishop of Salamis in Cyprus and, like St. Cyril of Jerusalem, would have had many Christians of Jewish descent and traditions in his church community. However, in his work "Against Heresies", probably written around A.D. 374-376, while he tolerated, "by reason of their weakness", those Christians who re-married after the death of their first spouse, he added:

¹⁶ Council of Laodicea, canon I, in *Mansi*, vol. 2, cols. 563-564.

¹⁷ Cyril of Jerusalem, *Catechesis*. IV, "De decem dogmatibus", c. 26, in *P.G.*, vol. 6, cols. 487-490.

¹⁸ Gregory Nyssen, "De iis qui adeunt Jerosolyma", in *P.G.*, vol. 46, col. 1010.

"It is forbidden for a man to have two wives at once, the first yet surviving."¹⁹

Reviewing all the available evidence from early church authorities, A. Hastings in his study on marriage concluded:

In the Apostolic Church there was in fact very little if any polygamy, and in subsequent generations none at all. Monogamy became indeed so firmly the rule that soon some, such as Athenagoras and Tertullian, could deny that a second marriage contracted after the death of a first wife, was other than adultery.²⁰

By way of a tentative conclusion it could be said that the main body of the Church did not encounter problems associated with extensively polygamous societies for many centuries. It has been claimed that the question of accepting polygynists into the Church must have arisen in some eastern countries, particularly Persia.²¹ However there is no extant evidence to suggest that the Church's early monogamous stand was significantly modified. What accommodations were made, if any, are not known.

Part Two: From the Fourth to the Eleventh Centuries

St. Augustine of Hippo (A.D. 354-430), held like other patristic writers that the christian rule of monogamy was rooted in the New Testament. However, was the historico-cultural situation in which the early Church found itself the crucial factor for Augustine? This point of view appears tenable especially when one examines the many references in Augustine's writings to the practice of polygamy. Thus Augustine wrote, "when

¹⁹ Epiphanius, *Adversus haereses*, "Haeres. LIX", in *P.G.*, vol. 41, col. 1024

²⁰ A. Hastings, *Christian Marriage in Africa*, London, S.P.C.K., 1973, p.8.

²¹ Ibid. This is the opinion of Hastings who however offers no documentation to support this view.

polygamy was a common custom, it was no crime, it ranks as a crime now because it is no longer customary."²² Again Augustine held that when polygamy was socially accepted because of the need to populate the earth, it was, in his own words, "not without becoming beauty."²³ Finally we also find the following passage in Augustine's writings:

Now indeed in our time and in keeping with roman custom it is no longer allowed to take another wife, so as to have more than one wife living.²⁴

The law of compulsory monogamy in the Roman Empire did undoubtedly influence the christian conception of marriage.²⁵ However, care must be taken not to ascribe the historico-cultural situation as the sole reason for the early Church's insistence on monogamy. Similar remarks to Augustine's can be found in the writings of Origen,²⁶ Tertullian,²⁷ Jerome,²⁸ and Ambrose.²⁹ In all cases the writers appear to be more concerned with justifying to their contemporaries the polygynous life styles of the Patriarchs of the Old Testament, than acknowledging the normative influence of roman

²² Augustine, "Contra Faustum Manichaeum", lib. XXII, c. 47, in P.L., vol. 42, col. 428: "Quando enim mos erat, crimen non erat: et nunc propterea crimen est, quia mos non erat."

²³ Idem, "De bono conjugali", lib. I, c. 20, in P.L., vol. 40, col. 387: "[...] sed si ratio naturalis vel socialis admittit, etiam plura uni non sine decore subduntur."

²⁴ Ibid., c. 7, col. 378: "[...] non licet nostris quidem iam temporibus ac more Romano, nec superducere ut amplius habeat quam unam vivam."

²⁵ A. Esmein, *Le mariage en droit canonique*, Second edit., Paris, Librairie du Recueil Sirey, 1929-1935, vol. I, p. 297: "Le droit canonique proclama constamment le principe de monogamie. Il se forma principalement au milieu de deux civilisations monogames, la grecque et la latine; et l'esprit des Evangiles donnait, du mariage, une conception encore plus élevée."

²⁶ Origen, "Homilia XVII", in P.G., vol. 13, tome iii, cols. 1846-1847

²⁷ Tertullian, "Adversus Marcionem", lib. IV, c. 34, in P.L., vol. 2, tome ii, cols 441-445.

²⁸ Jerome, "Epistola ad Salvinam", in P.G., vol. 22, tome i, col. 732.

²⁹ Ambrose, "De Abraham", lib. II, c. 10, in P.L., vol. 14, col. 490.

law There are numerous examples that illustrate the refusal by church authorities to acquiesce and simply accept the civil law or prevailing social customs about marriage as the norm for Christians.³⁰

In the fifth century, Pope Gregory the First (St. Gregory the Great), in a letter to Mellitus, advised Augustine of Canterbury to adopt a posture of toleration when confronted with the ancient customs and habits of the anglo-saxon people.³¹ Could it be held that this papal recommendation for toleration allowed for the possibility of accepting practising polygamists for Baptism? The argument is a plausible one yet it is not entirely convincing for while Augustine is advised on such matters as the use of "heathen temples", "the sacrifice of oxen", and marriage between near relatives normally considered unlawful by church authorities, nowhere in the letter is there any reference to baptizing practising polygamists. There are indeed no references to polygynous marriages which at least among the leaders of the Anglo-Saxons was a common practice.³²

A much stronger case for showing that in the past the Church initially tolerated polygynous marriages among newly baptized Christians can be built on a well authenticated letter of Pope Gregory II written in A.D. 726 to St. Boniface.³³ G. Joyce has given a

³⁰ H. Marrou, "The Church and Greek and Roman Civilization", in *Concilium*, 7(1971), pp. 47-54. E. Schillebeeckx, *Marriage: Secular Reality and Saving Mystery*, vol. 2, p. 21.

³¹ Pope Gregory I, "Ad Mellitum abbatem", in *P.L.*, vol. 77, cols. 1215-1217.

³² O.D. Watkins, *Holy Matrimony*, pp. 409-410.

³³ M. Tangl, *Die Briefe des Heiligen Bonifatius und Lullus*, Berlin, Weidmannsche Buchhandlung, 1916, No. 26, pp. 44-47. The relevant section is as follows: "[...] nam quod posuisti, quodsi mulier infirmitate correpta non valuerit viri debitum reddere, quid ejus faciat jugalis; bonum esset, si sic permaneret, ut abstinentiae vacaret. Sed quia hoc magnorum est, ille qui se non poterit continere, nubat magis. Non tamen subsidii opem subtrahat ab illa, cui infirmitas praepedit et non detestabilis culpa excludit."

translation of the text which attempts to convey the ambiguities of the original:

As regards your question what a husband is to do, if his wife has been attacked by illness, so that she is incapable of conjugal intercourse, it were best if he could continue as he is and practise self-restraint. But since this demands exceptional virtue, the man who cannot live in continence had better marry. But let him not fail to furnish her with support, since she is kept from married life by sickness, not debarred from it by some abominable offence.³⁴

This letter, according to some commentators, seems to have allowed for a modified form of simultaneous polygyny among thuringian converts.³⁵ Such a directive would have been consistent with the missionary guidelines articulated in the previous century by Pope Gregory I. However, a number of factors need to be taken into consideration when assessing the importance of this papal letter. Firstly, it has been suggested that the infirmity of the wife (*infirmirate correpta*) was in fact impotence. Thus the dispute concerning the basis for the papal concession was whether the nullity of the marriage was due to impotence that preceded consent or whether nullity of the marriage was because of non-consummation due to impotence that developed after consent.³⁶ In any case it was not according to this view a question of permitting polygyny which would have been at variance with church tradition.³⁷ Secondly, Pope Gregory II himself, in a directive which he gave to ambassadors sent by him into Bavaria around A.D. 716, had already

³⁴ G. Joyce, *Christian Marriage: An Historical and Doctrinal Study*, London, New York, Sheed & Ward, 1933, p. 332.

³⁵ A. Hastings, "An Encyclical of Pope Gregory II", in *The Tablet*, August 3, 1968, p. 764; E. Hillman, "The Development of Christian Marriage Structures", in *Concilium*, 5(1970), p. 33; T.A. Lacey, *Marriage in Church and State*, (rev.), R.C. Mortimer, London, R. Scott & Co., 1947, pp. 12, 110; J. Cairncross, *After Polygamy Was Made a Sin: The Social History of Christian Polygamy*, London, Routledge & Kegan Paul Ltd., 1974, pp. 28, 59.

³⁶ W. Kelly, *Pope Gregory II on Divorce and Remarriage: A Canonical-Historical Investigation of the Letter "Desiderabilem mihi", with Special Reference to the Response "Quod proposuisti"*, Roma, Università Gregoriana editrice, 1976, p. 315.

³⁷ *Ibid.*, p. 312.

pronounced against re-marriage during the life time of the first spouse.³⁸ Thus it is unlikely that the same pontiff would have authorized such a significantly contrary concession ten years later. One which moreover was not given any justification; something that would be reasonably expected if such an extraordinary innovation had been granted. The most recent study of the text concluded that, "as a final judgement about the text all one can say is that it is and will remain a problem one."³⁹ However any problem of interpretation of the text has not been nor is, according to this same study, related to the question of polygyny. The issue has been and remains whether Pope Gregory II ever permitted divorce and re-marriage.⁴⁰

Scholars note that most of the peoples of northern and eastern Europe were monogamous as to their general social structure and thus polygamy never became a widespread pastoral or missionary problem.⁴¹ However, kings and chiefs frequently took second wives. In Ireland polygynous marriages were recognized in ancient celtic laws and according to one historian this practice, while marginal, did not quickly disappear.⁴² However, it is instructive to note the official church attitude to plural marriages in a missionary country where polygyny was a generally accepted custom. In A.D. 866, King Boris of Bulgaria in response to pressure from his own subjects decided to renew his former links with the Western Church and to sever his ties with the Byzantine Church. The

³⁸ Pope Gregory II, "Capitulare Gregorii Papae II", in *Mansi*, vol. 12, p. 259.

³⁹ W. Kelly, *Pope Gregory II on Divorce and Remarriage*, p. 315.

⁴⁰ *Ibid.*

⁴¹ E. Westermarck, *The Future of Marriage in Western Civilization*, New York, MacMillan & Co., 1936, p. 292.

⁴² K. Hughes, "The Early Celtic Idea of History and the Modern Historian", *Inaugural Lecture: University of Cambridge, 5 November, 1976*, London, Cambridge University Press, 1977, pp. 19-20.

Bulgars were polygynists and such a practice had been condemned as unchristian by Photius, who at one stage had lived at King Boris' court and later became Patriarch of Constantinople and head of the Byzantine Church.⁴³ Boris before shifting his allegiance to the Western Church addressed a letter containing 106 questions to Pope Nicholas I (A.D. 858-867). The questions themselves illustrate vividly the strains and tensions produced in Bulgaria's social and political life by the encounter between the old pagan ethos and the teachings of Christianity.⁴⁴ Pope Nicholas' replies indicated a continuation of the missionary policy of Pope Gregory I, namely one of toleration and accommodation. However, as regards polygynous marriages, Nicholas was in agreement with Photius in rejecting the practice as unchristian and insisted that all married people seeking Baptism must be monogamists.⁴⁵

E. Westermarck in his work, *The Future of Marriage in Western Civilization*, mentions that polygyny was frequently practised by the merovingian kings and that emperors such as Charlemagne, Lothair and Pepin had several wives. However Westermarck is careful to add:

This of course does not mean that such a practice was recognized by the Church; nor must the permissions granted to Kings be taken as evidence of her rules, for as the Council of Constantinople decided in 809, "Divine Law

⁴³ Photius, "Epist. VIII", in *P.G.*, vol. 102, cols. 628-696.

⁴⁴ D. Obolensky, *The Byzantine Commonwealth: Eastern Europe 500-1453 A.D.*, London, Sphere Books Ltd., Cardinal edition, 1974, p. 126.

⁴⁵ Pope Nicholas I, "Responsa ad consulta Bulgarorum", in *Mansi*, vol. 15, col. 419: "De polygamia. Si liceat uno tempore habere duas uxores exquiritis, quod si non licet, scire cupitis, apud quem inventum fuerit, quid exinde facere debeatis. Duas tempore uno habere uxores, nec ipsa origo humanae conditionis admittit, nec lex Christianorum ulla permittit. Nam Deus, qui fecit hominem, ab initio masculum unum fecit et unam feminam tantum, cui potuit utique si vellet duas uxores tribuere, sed noluit;[...]."

can do nothing against Kings."⁴⁶

We can conclude that while officially the Church upheld the general rule of monogamy, up until the eleventh century sometimes a tolerant attitude may have been adopted by some ecclesiastical authorities on the question of allowing polygamous marriages among Christians - at least in relation to certain rulers. If this was in fact the case then it was probably due to the fact that marriage among secular rulers represented one method of ensuring stable political alliances and also that in some situations the Church was powerless and unable to enforce monogamy. However, there is evidence that at least one Pope (Pope Nicholas I) had repudiated polygamy as an acceptable marital arrangement for married Christians and had directed that all married people seeking Baptism had to be monogamists. It seems highly unlikely therefore, that the Church *officially* permitted practising polygamists to receive Baptism or condoned the practice of polygamy for Christians.

Part Three: The Eleventh to the Sixteenth Centuries

With the widespread collapse of civil authority during the Dark Ages, the Church found itself responsible for holding together the legislative and judiciary affairs of much of Europe. In regard to marriage P. Delhaye writes:

The Church acquired exclusive control over marriage in the 11th Century. That epoch saw the beginning of the crystallization of canon law teaching on marriage and the idea of marriage as a sacrament in the proper sense of the word and no longer as just something sacred.⁴⁷

⁴⁶ E. Westermarck, The Future of Marriage in Western Civilization, p. 293; cfr. also J. Cairncross, After Polygamy Was Made a Sin, pp. 59, 70.

⁴⁷ P. Delhaye, "Development of the Medieval Church's Teaching on Marriage", in Concilium, 5(1970), p. 83.

In the Middle Ages the question of polygamy was mainly a theoretical topic for theologians. However, occasionally polygamy was a practical missionary problem. In the year 1201, Pope Innocent III, in a letter (*Gaudemus in Domino*) written to the bishop of Tiberias in Palestine, discussed the problem.⁴⁸ The bishop of Tiberias had found that his efforts to convert the local moslem population were frustrated by the marriage practices which were customary among Moslems. In order to reduce the obstacles to conversion which the Church's rules on consanguinity and affinity created, the bishop inquired whether infidels who had contracted marriages in a second or third degree would have to separate from their spouses as a condition for Baptism. What is of interest here is that in addressing the problem of consanguinity and affinity Innocent III explained that the prohibition against such marriages in the second and third degrees existed only in canon law. Such a prohibition could not be applied to infidels who were not members of the Church and therefore not subject to its law.⁴⁹ Then apparently not satisfied with answering the question which the bishop of Tiberias had posed, Innocent III also raised the issue about the polygamous practices of non-Christians. Specifically what was the situation of the polygynous convert who wished to retain all of his wives who did not object to his conversion. If canon law did not bind infidels then presumably all marriages into which an infidel could enter by his own law could be considered valid. Did this mean that practising polygynists could retain their several wives after Baptism?

Pope Innocent III took note of several arguments that had been advanced in the past

⁴⁸ *Decretales* 4.19.8. "*Gaudemus*", in *Corpus iuris canonici*, (ed.), A. Friedberg, Leipzig, B. Tauchnitz, 1879-1881, vol. 2, cols. 723-724.

⁴⁹ *Ibid.*: "[...] et in praemissis gradibus a paganis quoad eos matrimonium licite sit contractum, qui constitutionibus canonicis non arctantur [...]."

in order to justify the admittance to Baptism of those polygamously married. These arguments were the example of the hebrew patriarchs, the absence of any clear contrary command in the Gospels and the recognition accorded polygynous marriages by the civil authorities of some countries. However, Innocent III concluded that the polygynous marriages of the hebrew patriarchs were exceptions to the general prohibition against multiple marriage. Because Christ had said that there should be "two in one flesh", not "three or many", therefore polygamy was now prohibited, "except those to whom it was granted by divine revelation."⁵⁰

In 1274, the Second Council of Lyons made a passing reference to polygamy:

As regards true marriage,(this Holy Council) teaches that no-one man is allowed to have many wives, nor the one woman many husbands. Whenever a true and lawful marriage is dissolved through the death of the other spouse, (this Holy Council) teaches that second and third marriages in succession are permissible, provided that no other canonical impediment, for whatever cause, would prevent its celebration.⁵¹

However, two factors need to be considered when assessing this conciliar text. Firstly, the statement was originally composed outside the Council in 1267 by Pope Clement IV and the eastern Emperor Michael VIII Paleologus. It seems to have been intended and used mainly as an instrument of political, rather than theological and pastoral interest.⁵²

⁵⁰ Ibid.: "[...] verum absonum hoc videtur et inimicum fidei Christianae, quum ab initio una costa in unam feminam sit conversa, et scriptura divina testetur, quod propter hoc relinquet homo patrem et matrem, et adhaerebit uxori suae, et erunt duo in carne una; non dixit: 'tres vel plures', nec dixit: 'adhaerebit uxoris', sed 'uxori'. [...] Nec ulli unquam licuit insimul plures uxores habere, nisi cui fuit divina revelationi concessum."

⁵¹ Second Council of Lyons 1274, in H. Denzinger and C. Bannwart, *Enchiridion symbolorum definitionum et declarationum de rebus fidei et morum*, 15th edit., Fribourg, Herder & Co., 1922, No. 465, pp. 203-204: "De matrimonio vero tenet, quod nec unus vir plures uxores simul, nec una mulier permittitur habere plures viros. Soluta vero legitimo matrimonio per mortem coniugum alterius, secundas et tertias deinde nuptias successive licitas esse dicit: si impedimentum canonicum aliud ex causa aliqua non obsistat."

⁵² N. P. Tanner (ed.), *Decrees of the Ecumenical Councils*, London, Sheed & Ward, Georgetown University Press, 1990, vol. 1, p. 305.

Secondly since one of the intentions of the Second Council of Lyons was the reconciliation of the Eastern and Western Churches, in all likelihood the particular interest was not simultaneous polygamy as such, but the practice and belief of eastern Christians that successive plural marriage was somehow wrong even for widows and widowers.⁵³ However, the fact remains that in a decree of an ecumenical council of the Church, polygamy was excluded as a possible marital structure for Christians.

At this stage of our historical investigation it seems clear that the Church had definitively excluded polygamy as a marital structure for Christians. However, on what grounds was polygamy forbidden to infidels? According to J. Muldoon, the basis for an answer to this question can be found in the writings of the decretist Joannes Teutonicus, the author of the *Glossa ordinaria* (1216). Muldoon has seen as significant the fact that Joannes Teutonicus while agreeing with Innocent III that the practice of polygamy was forbidden and that only God could authorize polygyny, qualified Innocent III's statement that infidels were not directly subject to ecclesiastical law. It was, notes Muldoon, the opinion of this decretist that infidels were indirectly subject to canon law when they lived in christian societies. Thus infidels were, if living under a christian ruler, forbidden to practise polygamy.⁵⁴

In the thirteenth century the relationship of non-Christians to canon law was further expanded. A papally sponsored attempt to convert the Mongols of Central Asia began in

⁵³ E. Hillman, *Polygamy Reconsidered*, pp. 232-233

⁵⁴ J. Muldoon, "Missionaries and the Marriages of Infidels: The Case of the Mongol Missions", in *The Jurist*, 35(1975), p. 133.

the mid-thirteenth century and lasted for around one hundred years.⁵⁵ The Mongols practised polygyny and were obviously not the subjects of christian rulers. Therefore could the pope prohibit Mongols from engaging in polygyny? Were Mongols, who were practising polygynists, required to change their marital status upon receiving Baptism? As Muldoon noted:

The hesitancy of the compiler of the "Glossa ordinaria" to extend Innocent III's assertion of papal power to non-Christians living outside of Europe might have given later canonists an opportunity to develop a theory of papal power which would have limited its exercise to members of the Church and to non-Christians who were subject to christian rulers. In such a case, the polygamous marriages contracted before being baptised could perhaps be accepted as valid, subject to the Pauline Privilege.⁵⁶

The answer to the question of the nature of the power which the Church could claim over the marriages of infidels was resolved, according to Muldoon, by the injection of the principle of natural law into the canonistic discussion of marriage.⁵⁷ According to Innocent

⁵⁵ C. Dawson (ed.), The Mongol Mission: Narratives and Letters of the Franciscan Missionaries in Mongolia and China in the Thirteenth and Fourteenth Centuries, London, Sheed & Ward, 1955, pp. 7, 11, 104, 154.

⁵⁶ J. Muldoon, "Missionaries and the Marriages of Infidels", p. 133.

⁵⁷ Ibid., p. 134. It should be pointed out that "natural law" was, at the time Muldoon refers to, understood by canonists in terms defined by Gratian. In the *Decretum* Gratian twice defined the natural law (*Decretum*, D.1.1 and D.1.7). What has traditionally been identified as his own definition is that which says that the natural law is what is contained in the law and the gospel that it is summarized in the precept (Mtt. 7:12) of doing to others as we would wish others to do to us, together with the corresponding prohibition (Tob. 4:15) of not doing to others what we would not wish to have done to ourselves. This being the case then Muldoon's assertion needs to be more nuanced. Thus while the term "natural law" began to be used it was only much later that a more philosophical definition developed that did not identify natural law with the scriptures. Gratian himself had written: "Cum ergo naturali iure nichil aliud precipiatur, quam quod Deus vult fieri, nichilque vetetur, quam quod Deus prohibet fieri; denique, cum in canonica scriptura nichil aliud, quam in divinis legibus inveniantur, divine vero leges natura consistant; patet quod quaecumque divinae voluntati, seu canonicae scripturae contraria probantur, eadem et naturali iuri inveniuntur adversa. Unde quaecumque divinae voluntati, seu canonice scripture, seu divinis legibus postponenda censentur, eisdem naturale ius preferri oportet." (D.9, c.11).

IV, the pope represented the totality of God's power over all people.⁵⁸ Thus the Pope judged all Christians according to canon law, the Jews were judged according to mosaic law and all infidels were judged according to natural law.⁵⁹ The canonist Hostiensis, a student of Pope Innocent IV, went further and not only linked the marriage practices of infidels to natural law norms for marriage, but also asserted that polygamy was a violation of natural law. Hostiensis claimed that all people knew this to be the case and that therefore polygamists could be punished. Hostiensis recognized the existence of polygamy in the Old Testament and saw this in the case of the patriarchs as a customary practice authorized by God. However, the pope's power as the Vicar of Christ, did not, in Hostiensis' view, extend to authorizing exceptions to the dictates of the natural law. Such exceptions could only be authorized by God.⁶⁰ By the middle of the fourteenth century this had become the canonistic view of the status of marriages between infidels. Joannes Andreae could state in his commentary on "Gaudemus", infidels "are creatures of God, not of the Church" so that they can be judged only by the norms of natural law, not those of canon law.⁶¹ This was the view that prevailed. According to Muldoon, it had the practical effect of denying christian missionaries to the Mongols any opportunity of adopting a posture of toleration towards those practising polygamists who wished to receive Baptism but were unable or unwilling to alter their marital status.⁶²

⁵⁸ J.A. Watt, "The Theory of Papal Monarchy in the Thirteenth Century: The Contribution of the Canonists", in *Traditio*, 20(1964), p. 281.

⁵⁹ J. Muldoon "Missionaries and the Marriages of Infidels", p. 135.

⁶⁰ Hostiensis, *In quinque libros decretalium commentaria*, Venetiis, apud Iuntas, 1581, Reprinted Turin, Bottega D'Erasmus, 1965, ad 4.19.8.

⁶¹ Johannis Andreae, *In quinque decretalium libros novella commentaria*, Venice 1581, Reprinted Turin, Bottega D'Erasmus, 1963, ad 4.19.8: "*Non arctantur*. licet enim sint creatura dei, non sunt creaturae ecclesiae, unde divina constitutio ligat eos, sed non canonica."

⁶² J. Muldoon, "Missionaries and the Marriages of Infidels", pp. 140-141.

Debate at least among theologians continued in spite of the ruling of Pope Innocent III and the reference to polygamy made by the Second Council of Lyons. Partly because of the teaching of Innocent III and partly because of a more developed understanding of the natural law St. Thomas Aquinas' own opinion was somewhat nuanced. Along with most other medieval theologians Thomas regarded prohibitions from secondary precepts of the natural law as relative to the circumstances of historical time and place.⁶³ However with regard to polygamy Thomas maintained that God alone could grant a dispensation for the non-observance of the precept of monogamy. Yet the firm stand taken by Pope Innocent III was modified in Thomas' opinion for he wrote, "a dispensation in this matter could be granted through an internal inspiration."⁶⁴

In 1328 Gerard Odonis, a professor of moral theology at the university of Paris, proposed that simultaneous polygyny might be an acceptable solution for a husband who wished to divorce his adulterous wife and to marry another woman.⁶⁵ Spanish theologians, possibly influenced by their familiarity with moslem polygyny in Spain, held

⁶³ T. Aquinas, *Supplementum*, q. 65, arts. 2 & 3 in *Summa theologiae: pars III et Supplementum*, Taurini, Marietti, 1948, pp. 889-892

⁶⁴ *Ibid.*, q. 65, art. 2: "[...] in hoc a solo Deo dispensatio fieri potuit per inspirationem internam." See also D. O'Callaghan, "Theology and Divorce", in *Irish Theological Quarterly*, 37(1970), p. 216: "The incidence of polygamy and divorce in the Old Testament made this question very real for St. Thomas. Here of course, he had the 'Deus ex machina', of divine dispensation, the plea that God had dispensed the Patriarchs from the laws of monogamy and indissolubility. But he does seem to use dispensation in a wide sense, not just of an explicit inspiration but of a legitimate interpretation of the facts of the case."

⁶⁵ A.M. Mruk, "Singularis opinio Gerardi Odonis O.F.M., circa naturam divortii in casu adulterii", in *Gregorianum*, 41(1960), pp. 237-283.

that polygyny was not contrary to the primary end of the natural law.⁶⁶ Later Cardinal Cajetan (1496-1534) took exception to pope Innocent III's point on the necessity of a "divine revelation", for the practice of polygamy to be acceptable for a Christian. Such reasoning, Cajetan claimed, was neither contrary to natural law nor forbidden in scripture. Cajetan recognized that the law of compulsory monogamy for Christians was well founded in ecclesiastical law. He was only prepared to argue for polygamy as a solution to marital problems in rare and exceptional cases.⁶⁷ Nevertheless Cajetan's views represented a minority opinion which were not followed by church authorities and which were later attacked by other theologians.⁶⁸

While Cajetan's views on polygamy remained a minority opinion among catholic theologians, these same arguments were advanced, with circumspection, by the Reformers. Thus Melanchthon (1497-1560) in a letter of August 31, 1531, to king Henry VIII of England, counseled polygamy, "if the public welfare renders a new marriage advisable for the sake of succession."⁶⁹ The desire of Philip, the Landgrave of Hesse to contract a bigamous marriage with Magaret von der Saal placed the Reformers in an embarrassing

⁶⁶ J. Cairncross, *After Polygamy Was Made a Sin*, p. 54. Cairncross mentions Veracruz, Palacios, Tostatus, Michael of Medina and Abulensis as holding this opinion.

⁶⁷ T. de Vio Cajetan, "In Genesis", c. 16; "In Levitici", c. 18, in *Omnia opera quotquot sacrae scripturae*, Lyons, I. Bogardum, 1639, vol. 1, pp. 71, 313. Idem, *Commentaria in S. Evangelia et Actus Apostolorum*, Paris, Ambrise Givault, 1536, pp. 52, 90. The reply in 1532 by Cardinal Cajetan to a query from fellow Dominicans working in Mexico regarding pagan polygamists seeking Baptism and an analysis of the 1537 Apostolic Constitution, *Altitude* which dealt with the same issue are recorded later in this chapter.

⁶⁸ J. Eckio, *Enchiridion locorum communium aduersus Lutherum et alios hostes Ecclesiae*, London, Apud Theobaldum Paganum, 1561, p. 446.

⁶⁹ P. Melanchthon, in *Corpus reformatorum*, (ed.), C.J. Bretschneider, Halis Saxonum, C.A. Schwetschke et Filium, 1835, London & New York, Johnson Reprint Corporation, 1963 (= C.R.), vol. 2, col. 526: "[...] si vult rex successioni prospicere, quanto satius est, id facere sine infamia prioris coniugii. [...] tutissimum esse regi, si ducat secundam uxorem, quia certum est, polygamia non esse prohibitam iure divino [...]"

quandary.⁷⁰ Bucer (1491-1551) thought Philip's bigamy permissible but inadvisable arguing that "what the Lord permitted to his first born people, that certainly he would not forbid to his own among the Gentiles."⁷¹ On December 10, 1539, Luther, Melanchthon and five other protestant theologians filed their opinion in which they stated that a dispensation from the law of monogamy could be granted. However, aware of the opprobrium such a decision would bring they counseled silence.⁷² When the marriage became public knowledge it caused a national sensation and set in motion extensive correspondence among all intimately concerned to neutralize the effect on the public mind.⁷³

Luther and Melanchthon did not in any sense propose that polygamy should become a generally accepted practice. This much is obvious from the preamble to the 1539 decision,⁷⁴ from other writings of Luther⁷⁵ and from the fact that both Lutherans and Catholics united in a violent suppression of the Anabaptists of Munster who in 1534 had proclaimed polygyny as the ideal form of marriage.⁷⁶

In reacting to the case of Philip of Hesse, a more moderate position on the whole

⁷⁰ H.G. Ganss, art., "Luther", in The Catholic Encyclopedia, New York, R. Appleton Company, 1910, vol. 9, p. 455.

⁷¹ H. Ellis, The Attitude of Martin Bucer Towards the Bigamy of Philip of Hesse, Oxford, University Press, 1924, p. 50.

⁷² M. Luther and P. Melanchthon, in C.R., vol. 3, col. 857.

⁷³ H.G. Ganss, "Luther", p. 456.

⁷⁴ M. Luther and P. Melanchthon, in C.R., vol. 3, col. 857.

⁷⁵ M. Luther, "On Marriage Matters", in Luther's Works, (eds.), R.C. Schultz & H.T. Lehmann, (trans.), F.C. Ahrens, Philadelphia, Fortress Press, 1967, vol. 46, p. 291.

⁷⁶ J. Cairncross, After Polygamy Was Made a Sin, p. 21.

question of polygamy is to be found in the writings of Pietro Vermigli (1500-1562). Perhaps his most interesting contribution to the debate was his reply to a question he himself posed: "If an Infidel were in our day converted to Christ, having two wives, could such polygyny be endured under the christian dispensation?" Pietro Vermigli answered his own query as follows:

Certainly, for the time. For they contracted with each other in good faith. Nor must a wrong be done to the wives, for each of them has a claim upon her husband. That law, however, which Christ gave ought to hold good for the future. But what has been done, and done in good faith, probably in ignorance, cannot be rescinded.⁷⁷

Sometime between 1566 and 1571 a spanish jesuit theologian Liego Ledesma authored a dissertation on the power of the roman pontiff over the marriages of non-baptized persons. The main focus of the work concerned the nature of the marriages of Pagans and whether they were dissoluble. However, on the question of polygamy Ledesma argued that although the Old Testament allowed polygamy, the New Testament required monogamy and thus polygamous marriages of the non-baptized had to be dissoluble by their very nature.⁷⁸

1. The Council of Trent

The Council of Trent(1545-1563) is acknowledged by historians as one of the great

⁷⁷ P. Vermigli, Loci communes sacrarum litterarum, Zurich, 1583, (trans.), A. Marten, The Common Places of Peter Martyr, London, T. Daye, 1583, p. 430. However, as Hastings notes when commenting on this text: "Such views were offered in passing, in the context of the interpretation of the Old Testament and as a reaction to the case of Philip of Hesse. They were not a response to a missionary situation." A. Hastings, Christian Marriage in Africa, p.11.

⁷⁸ J.J. Koury, Three Sixteenth-Century Constitutions on the Dissolution of Marriage: A Study in Lawmaking and the Uses of Law, Canon Law Studies, No. 517, Washington, DC., Catholic University of America, 1985, Michigan, Ann Arbor, UMI, 1988, pp. 122-124. Koury writes: "While it is not known for certain that the dissertation influenced (Pope) Pius V in any way, still the content and date of the work reflect at least some of the theological reflection of the time."

reforming councils of the Church. Besides initiating ecclesiastical reform the council dealt with the problems raised by the doctrines of the sixteenth century Reformers. In its total effect the council was entirely an internal catholic affair. At no place in the decrees of the council was the name of any of the protestant Reformers mentioned. The debates in almost every case were based on articles which had been excerpted from the writings of a protestant Reformer or dissident theologian. Catholic doctrine was then redefined or established in opposition to these articles. According to the mind of Pope Paul III, who convoked the council, the task of the assembled bishops was to unequivocally expound catholic doctrine, that is to state clearly what was heretical, not who was a heretic.⁷⁹

Canon two of the 24th session of the Council of Trent was unanimously agreed and voted upon by the Council Fathers on November 11, 1563. The canon was formulated thus:

If anyone says that it is lawful for Christians to have several wives at the same time (Mtt. 19, 4 sqq. 9) and that this is not prohibited by any divine law; let him be anathema.⁸⁰

This was and remains the clearest and most definitive statement by the Roman Catholic Church as to whether or not polygamy is an acceptable marital state for Christians.

At first glance it would seem that there is nothing more to be said. However, in the words of E. Schillebeeckx:

The answer to questions asked in the thirteenth or sixteenth century - in other words, the literal repetition of unambiguously dogmatic definitions,

⁷⁹ A. Franzen and J.P. Dolan, *A Concise History of the Church*, (trans.), P. Becker, New York, Herder & Herder, 1969, p. 316.

⁸⁰ *Conclusio concilii Tridentini*, sessio xxiv. 11 Nov. 1563, canon 2, in H. Denzinger and C. Bannwart, *Enchiridion symbolorum*. No. 972, p. 320: "Si quis dixerit Christianis plures simul habere uxores (Mtt. 19, 4 sqq. 9) et hoc nulla lege divina esse prohibitum anathema sit."

such as those of Trent - is not an answer to our contemporary problems in which we are trying to come to an understanding of faith.⁸¹

What is called for, according to Y. Congar, is "an entire historical hermeneutic in relation to conciliar documents."⁸² Congar noted:

We have become more aware of the historical conditioning of the documents of the magisterium itself - with regard to language, mental categories, a framework of concerns affecting the whole approach to certain questions [...] We should need a philological, historical and canonical commentary on "Denzinger".⁸³

Official Church recognition of the historical conditioning of texts was exemplified in scripture studies by pope Pius XII in his encyclical *Divino afflante spiritu*.⁸⁴ Similarly, in the Congregation for the Doctrine of the Faith's declaration *Mysterium ecclesiae*, there is official church recognition of the difficulties arising from the historically conditioned character of expressions of revelation and pronouncements of faith. Such expressions and pronouncements, the declaration noted, depend on the expressive power of language which can change the expression and meaning of words over time.⁸⁵

J. Koury, in his research on the Council of Trent, noted that, "the missions had almost no role or influence on the Council since no bishops from overseas mission

⁸¹ E. Schillebeeckx, *God the Future of Man*, London, Sydney, Sheed & Ward, 1969, p. 19.

⁸² Y. Congar, "Church History as a Branch of Theology", in *Church History in Future Perspective*, (ed.), R. Aubert, (trans.), J. Cavanagh, Concilium 57, New York, Herder & Herder, 1970, p. 87.

⁸³ Ibid.

⁸⁴ Pius XII, Encyclical letter, "Divino afflante spiritu", September 30, 1943, in *AAS*, 35(1943) pp. 297-325.

⁸⁵ Congregation for the Doctrine of the Faith, Declaration, "Mysterium ecclesiae", June 24, 1973, in *AAS*, 65(1973), pp. 396-408; see especially article, 5, pp. 402-404.

territories attended."⁸⁶ This same author, while acknowledging that canon two of the Council's 24th session did touch on a major missionary issue (viz. polygamy) added: "There is no clear evidence that any of the canons on marriage was prompted by the missionaries' dilemmas in marriage cases."⁸⁷

E. Hillman in his study of the polygamy ruling of the Council of Trent concluded that the tridentine canon was only intended as a response to the Reformers on the question of polygamy. Hillman applied certain hermeneutical principles, accepted and used by theologians, to the Council of Trent's teaching on polygamy. Thus the historical context which gave rise to the ruling was examined and the meaning of such terms as "divine law", and "anathema", were evaluated. Hillman concluded his study with the following statement:

It would be unreasonable to suppose that the Council Fathers of Trent really intended to answer, once and for all, a question that they had never even considered. A look at the historical evidence tells us that they did not in fact, consider the missionary and pastoral question of simultaneous polygamy as it arises in non-Western societies, where this form of marriage is held to be a traditional, normal, licit and even preferential socio-economic institution. What the Council had in mind, rather, was the unusual and vulnerable position taken by the Reformers in a part of the world where simultaneous polygamy was generally held to be incompatible, not only with Christianity, but also with the traditional (even Pre-Christian) ethico-cultural understanding of marriage. Nor are we compelled because of Trent's use of "anathema sit" and "divine law" to suppose a priori that the canon on polygamy sets forth as divinely revealed a comprehensive and immutable dogma of the Christian faith.⁸⁸

All roman catholic theologians would not agree with Hillman's conclusions. F.

Urrutia has written:

⁸⁶ J.J. Koury, Three Sixteenth-Century Constitutions on the Dissolution of Marriage, p. 127.

⁸⁷ Ibid., p. 133.

⁸⁸ E. Hillman, Polygamy Reconsidered, pp. 231-232.

Three ecumenical councils have proclaimed the Church's stand against polygamy. While Vatican II simply intended to confirm the traditional doctrines, without proposing any new dogmas, Lyons II proclaimed in 1274 the doctrinal position of the church within a profession of faith that the Orientals would have to make theirs if they were to be reunited. Trent, from its part, in direct answer to the Reformers condemned in 1563 whoever would hold "that it is permitted to Christians to have several wives at the same time and that this was forbidden by no Divine Law". Hillman tries to reduce the scope of this text by claiming it is directed against certain Reformers and does not have a missionary dimension. But this does not alter the Council's doctrine.⁸⁹

The debate over polygamy and the decree issued by the Council of Trent continues.⁹⁰ Hillman's analysis of Trent's declaration on polygamy in terms of its historical context does make for a plausible explanation. However, the question needs to be asked whether Hillman has overlooked the weight of historical evidence about the Church's teaching on the monogamous nature of Christian marriage prior to the Council of Trent? Whatever motivated the Council Fathers at Trent to rule against polygamy this of itself does not explain their teaching which was totally consistent with past church practice and legislation.

⁸⁹ F.X. Urrutia, "Can Polygamy be Compatible with Christianity?", in *AFER*, 23(1981), p. 279.

⁹⁰ E. Hillman, "The Polygamy Debate: A Progress Report", in *Missiology: An International Review*, 10(1982), pp. 161-169.

2. Three Apostolic Constitutions⁹¹

The discovery by Europeans of the american continent and the opening of trade routes with India ushered in a new era of missionary activity for the Catholic Church in the fifteenth and sixteenth centuries. As F. Burton has described:

Millions of pagans from every branch of the human race were brought into contact with the Church's teaching. The stages of civilization, the kinds of social economy, and the degree of purity of the morals of the people were as various as the peoples themselves. These circumstances presented many problems to the missionary in the administration of the sacraments. One of the most troublesome and most frequently met was that of the polygamous pagan, when he became a candidate for Baptism.⁹²

There is no doubt that missionaries found that the practice of polygyny was widespread. Burton noted one study of 438 tribes, located in Asia, north and south America, Africa, Australia and Oceania, where compilers found that polygyny was accepted and practised by ninety per cent of these tribes.⁹³ When polygynists from these tribes presented themselves for Baptism many problems arose. The issue of slavery compounded the missionaries' dilemma. Many slaves were transported from the african continent to the american continent. In many cases male slaves had been separated from their wives. There was no possibility of them ever being reunited or even having any

⁹¹ F.G. Morrissey, The Canonical Significance of Papal and Curial Pronouncements, Hartford, C.L.S.A., 1974, p. 4, "Apostolic Constitutions may be considered the most solemn form of document issued by the Pope in his own name. They deal with doctrinal or disciplinary matters, but are issued only in relation to most weighty questions. Published as either a universal or a particular law, they are now generally reserved for acts of the Pope related to important matters regarding the universal Church or a particular Church [...]". Idem, "Papal and Curial Pronouncements: Their Canonical Significance in the Light of the 1983 Code of Canon Law", in The Jurist, 50(1990), p. 107. See also A.G. Cicognani, Canon Law, Second rev. edit., (trans.), J.M. O'Hara, F. Brennan, Philadelphia, Dolphin Press, 1935, pp. 81-82.

⁹² F.J. Burton, A Commentary on Canon 1125: Together with a History of the Legislation Contained in the Canon, Canon Law Studies, No. 121, Washington, DC., Catholic University of America Press, 1940, p. 25.

⁹³ Ibid., p. 28.

knowledge of the whereabouts of their spouses. If such slaves remarried, it was unclear to the missionaries, whether such second marriages were impediments to conversion and Baptism. In the face of such difficulties missionaries appealed to the Holy See for guidance.

Initial response to the missionaries' dilemma regarding pagan polygamists seeking Baptism was, according to J. Noonan, a conventional one. Noonan noted:

In 1532, [...] the Dominicans in Mexico consulted their most distinguished confrère in Rome, Cardinal Cajetan, about the position of the Indians who had been married more than once. Cajetan, a notorious liberal on the dissolubility of marriage, gave the unimaginative response that "it was clear according to *Gaudemus*", that an unbeliever, upon conversion, must treat his first wife in a series of wives as his true wife. Nothing explicitly said in Innocent III's decretal held that it was the first spouse who must be counted as the real spouse, but the apparent simplicity of the common interpretation, which Cajetan repeated, had carried the day. According to standard rules then, an Indian convert would have to leave the spouse with whom he was living and return to whomever had been his first spouse, unless he could show that she now rejected him in hatred of his new faith.⁹⁴

i. *Altitudo*

Five years after Cajetan's reply, Pope Paul III on June 1, 1537, issued the Constitution *Altitudo*.⁹⁵ Issued for "South and West India", that is for all parts of the New World assigned by Pope Alexander VI to Spain, the Constitution gave the polygynous husband the privilege of choosing any woman he had ever been legitimately married to, in

⁹⁴ J.T. Noonan, *Power to Dissolve: Lawyers and Marriages in the Courts of the Roman Curia*, Cambridge, MA, Harvard University Press, 1971, p. 348.

⁹⁵ Paul III, Apostolic Constitution, "*Altitudo*", June 1, 1537, in *Appendix ad bullarium pontificium Sacrae Congregationis de Propaganda Fide*, Romae, Typis Collegii Urbani, 1859, vol. 1, pp. 25-26.

accordance with local customs.⁹⁶ There was no reference as to whether or not the woman was still cohabitating with her spouse at the time of his conversion, nor was there any reference to whether there were children by the other marriages. The one essential condition for the use of the favor was that the convert was not able to recall the identity of his first wife.⁹⁷

In his analysis on the Constitution *Altitudo*, Burton explained about the inability of a convert to recall which wife he had taken first. Sometimes, Burton noted, missionaries had reported that there was a lack of any formality that could be said to indicate a marriage contract, and carnal relations between a man and a woman did not, even if continued over a period of time, signify the parties were married, for both parties often had carnal relations with others during the same period. However, Burton appeared to criticize the Constitution when he noted that the ultimate criterion for determining the status of a consort would have been only the polygynist's own statement. Moreover, added Burton, the convert's choice was not restricted in the Constitution to those wives with whom the convert was living with at the time of his baptism, but the choice could also have included those who had been previously dismissed.⁹⁸ Noonan, in his analysis of the Constitution offered a more forceful and somewhat caustic critique. The Constitution, noted Noonan, lacked internal consistency. In Noonan's view, while the Constitution confined the convert to a choice among the wives he had had - as though he was already married to one of them, yet it made

⁹⁶ T.L. Bouscaren, A.C. Ellis and F. Korth, *Canon Law: A Text and Commentary*, Fourth revised edit., Milwaukee, Bruce Publishing Co., 1966, p. 62: "Privilege in the broad sense means some special provision of the common law which gives special rights to certain persons. [...]. In the strict sense privilege means a special disposition lawfully made by competent authority granting to some person or persons a right which is contrary to or beyond the common law."

⁹⁷ F.J. Burton, *A Commentary on Canon 1125*, p. 143.

⁹⁸ *Ibid.*, pp. 38-39.

him get married again to the one he chose. Moreover, Noonan added, the Constitution appeared to assume that the chosen wife would convert, for no mention was made of the impediment of unbelief. Noonan summed up his assessment of the efficacy of the Constitution by saying: "[...] in the hands of scrupulous missionaries it only helped Indians with a bad memory. *Altitude* was a boy sent to do a man's job, and it did not do it."⁹⁹

ii. *Romani Pontificis*

On August 2, 1571, Pope Pius V issued the Constitution *Romani Pontificis*.¹⁰⁰ This Constitution sanctioned a practice, which seems to have already arisen, but which was causing concern. It appears that some priests and bishops were permitting polygynists to sacramentally marry one of their wives, who wished to receive the sacrament of Baptism along with their husbands. In what Noonan described as a "conservative and more probable" reading of *Romani Pontificis*,¹⁰¹ the Pope appeared to confirm this practice of the missionaries where it was morally impossible to find the convert's first wife and interpellate her.¹⁰² In his analysis of this Constitution, Burton noted that initially many

⁹⁹ J.T. Noonan, *Power to Dissolve*, p. 349.

¹⁰⁰ Pius V, Apostolic Constitution, "Romani Pontificis", August 2, 1571, in *Appendix ad bullarium pontificium Sacrae Congregationis de Propaganda Fide*, vol. 1, p. 45.

¹⁰¹ J.T. Noonan, *Power to Dissolve*, pp. 353-354.

¹⁰² Interpellations are defined as, "Questions put by the converted party to the other, first whether he or she is willing to be converted and receive baptism; second whether he or she is at least willing to cohabit peacefully with the other party, without offense to the Creator." T.L. Bouscaren, A.C. Ellis and F. Korth, *Canon Law: A Text and Commentary*, p. 614. There is a considerable body of canonical literature on the question of whether *Romani Pontificis*, dispensed from the interpellations when the polygynist could remember who his first wife was and could readily find her. The issue is not germane to the topic of this dissertation but is of considerable importance to canonists when attempting to discover when a major expansion of papal authority over the marriages of non-Christians began - viz. the papal power to dissolve a valid natural marriage. Cfr. F.J.

canonists disputed whether the Church had the power to dissolve legitimate marriages of Pagans as he claimed was envisaged by this Constitution. Burton wrote:

A recognition of the fact that at least in some marriages of the polygamous, the Pope was granting a dissolution of the bond of valid infidel marriage had to wait upon the acknowledgment among authors of his power to do this. When it became the common opinion that he had the power, the use of it by St. Pius V was generally recognized, although those canonists who denied such a power still maintained that the Constitution had reference only to milder requirements under the pauline privilege.¹⁰³

iii. *Populis*

On January 25, 1585, Pope Gregory XIII issued the Constitution *Populis*.¹⁰⁴ This Constitution sought to solve a problem caused by slavery. Slave traders and slave owners generally paid scant attention to whether or not a newly acquired slave was married. Later, at the time of conversion of such a slave, it was impossible to know if his absent spouse had been converted in the meantime as well. Moreover, if the other spouse was already a Christian and not remarried, then it was impossible to apply the Pauline Privilege and permit the slave to marry someone else. The Constitution, *Populis* decreed that pagan converts who were unable to serve the interpellations on account of insurmountable difficulties arising from the fact that one or both of the spouses had been carried away into captivity, were dispensed from the obligation of serving the interpellations. The marriages then contracted by these converts with other Christians could never be rescinded even though it might be discovered later that the infidel spouse

Burton, *A Commentary on Canon 1125*, pp. 53-62; J.T. Noonan, *Power to Dissolve*, pp. 354-355; J.J. Koury, *Three Sixteenth-Century Constitutions on the Dissolution of Marriage*, pp. 142-152.

¹⁰³ F.J. Burton, *A Commentary on Canon 1125*, p. 62.

¹⁰⁴ Gregory XIII, Apostolic Constitution, "Populis", January 25, 1585, in *Appendix ad bullarium pontificium Sacrae Congregationis de Propaganda Fide*, vol. 1, pp. 103-104.

may have been prevented for a just reason from manifesting her good dispositions or may even have been a convert at the time the second marriage of her consort took place.

In his analysis of the Constitution Populis, Burton noted:

Only by a distortion of the sense of his words, can the conclusion be avoided: that the Pope was here using a power to dissolve consummated marriage between infidels, who had later become Christians and that this was not an application of the Pauline Privilege.¹⁰⁵

While all three Constitutions are obviously important documents relating to any analysis of the Pauline Privilege, they are also of some interest to anyone concerned with the issue of polygamy. The thing to note, with interest, is the continuation of the age-old policy of the Church to be as understanding as possible, in adapting the good news of the Gospel to the situations, traditions and requirements of local cultures. The custom of polygyny was not condemned as being sinful in any of the three Constitutions, nor were the additional unbaptized spouses of polygynists described in derogatory terms, but rather referred to as wives. However, what is very clear is that the authors of these Constitutions assumed polygyny to be incompatible with the Christian Life. In all three Constitutions there was no hesitation or question about whether or not the polygynist, once baptized, could remain with all of his wives. The question addressed in each of the three Constitutions was: Which wife should the polygynist consider as his legitimate wife, once he became a Christian? In this regard the Popes were obviously trying to be as lenient and as liberal as they could be. F. Urrutia noted this fact when he wrote:

The point to consider with attention is that, while church authorities and theologians maintained such an uncompromising stand on polygamy, the authorities did compromise on the indissolubility of natural marriage. This is precisely the meaning of privileges granted to polygamists in the sixteenth century to keep a different wife from the first. [...]. This can only mean, of

¹⁰⁵ F.J. Burton, A Commentary on Canon 1125, p. 72.

course, that while the competent authorities considered that they had the power to dissolve natural marriages in some extreme cases they were no less convinced that there were no circumstances in which they had the power to permit a polygamous christian marriage or to allow a baptized person to live in polygamy.¹⁰⁶

Two other questions need to be addressed before concluding this analysis of the three Constitutions. The first is: Were the Popes who issued the three Constitutions only concerned about the interests and desires of polygynist husbands? Pope Gregory XIII did note the special difficulty that men would have, if they had to remain in a state of continence, after having been captured as slaves and separated from their wives, probably for life.¹⁰⁷ A somewhat chauvinistic notion, but a number of factors mitigate its apparently derogatory character. Firstly, all three Constitutions were more canonical than pastoral in nature. Secondly, cultures at that time showed a greater concern about the rights and privileges of men than about those of women. Thirdly, the terms "polygyny" or "polygynist" did not appear in the Constitutions. Any disposition of law is considered to be the same wherever the same reason is present. Especially is the rule true in regard to correlatives such as husband and wife. Correlatives are considered equal and equity requires that the same rules apply to both where no disparity of reason can be assigned and there is no provision to the contrary in a contract. By equity of law, therefore, the concessions of the Constitutions applied to women converts who had lived in polyandry as well as to men who had lived in polygyny.¹⁰⁸ The second question is: Were these

¹⁰⁶ F.X. Urrutia, "Can Polygamy be Compatible with Christianity", p. 278.

¹⁰⁷ Gregory XIII, Apostolic Constitution, "Populis": "[...] ne homines, continentiae servandae minime assueti, propterea minus libenter in fide persistent, et alios illorum exemplo ab eius perceptione deterreant."

¹⁰⁸ This notion was later to be explicitly stated by the Sacred Congregation for the Propagation of the Faith. However, another possible reason why the Constitutions seem only to have addressed the question of polygyny and polygynists could have been the anthropological fact that polyandry has always been an extremely rare marital institute.

Constitutions in any way connected to the declaration made by the Council of Trent on polygamy? Chronologically the Constitution *Altitudo*, predated the declaration on polygamy by the Council of Trent by twenty-six years, whereas the Constitutions *Romani Pontificis* and *Populis* came eight and twenty-two years respectively after the tridentine declaration. Noonan has maintained that because of the dispute as to whether the Pope had the power to dissolve the bond of natural marriage, the Constitutions were given a limited circulation and an almost confidential character.¹⁰⁹ For these reasons, he argued that the import of the three Constitutions, outside of mission territories, was largely ignored. Thus aside from a general consensus that existed which held that polygamy was incompatible with Christianity, Noonan maintained that there was no direct linkage or influence between the three Constitutions and canon two of the twenty-fourth session of the Council of Trent.¹¹⁰

An overview from the eleventh to the sixteenth century of ecclesiastical legislation and practice regarding polygamy presents the following picture. In western society, monogamy had been traditional and normative for centuries. Even the rather grudging toleration of polygyny in certain circumstances, accorded by some of the Reformers, and

¹⁰⁹ J.T. Noonan, *Power to Dissolve*, p. 361.

¹¹⁰ Ibid. However Koury is somewhat more nuanced in his assessment, specifically in regard to the Constitution *Populis* for he has written: "Its structure, provisions, and implementation reflect a combination of late sixteenth century factors, which make it different from the two earlier decrees. First, the obvious: *Populis* treats the marriage of captives and slaves. But there are other factors: the requirements of Trent are in place; there is a more uniform liturgy and sacramental practice in the Roman Church; there are increased numbers of missionary Ordinaries, pastors and confessors; finally there is Gregory's own professional training as a canonist. Unlike *Altitudo* and *Romani pontificis* where the popes had directly given the natives a right to enter a subsequent marriage, provided that certain circumstances were determined to exist, and without further ecclesiastical intervention, *Populis* authorized only certain ecclesiastical officers to act on behalf of the Church to grant dispensations, and/or to determine by summary extrajudicial means the actual state of affairs of the slaves and captives who sought to marry again." J.J. Koury, *Three Sixteenth-Century Constitutions on the Dissolution of Marriage*, p. 163.

not without its support among some catholic theologians, met with considerable opposition. The firm rejection of polygamy by the Council of Trent probably was in large measure due to the realization of the vulnerable position of the reformers vis à vis the western marital practice of monogamy. However any claim that from the eleventh to the sixteenth century the Catholic Church's opposition to polygamy was simply due to the mores of society remains unproven. The issuing of three Apostolic Constitutions in which polygamy was considered incompatible with married christian life and directed towards societies where polygyny had long been an honored tradition is yet another indication that Trent's declaration, whatever its motivation, was not something new.

Conclusion

At the beginning of this chapter the question was asked whether in the past church practice and/or law had ever condoned admitting practising polygamists to Baptism. Such a question seemed to rest in part on two arguments. The first argument suggested that since monogamy was the only socially acceptable and legally permitted structure amongst the peoples to whom the Gospel was first preached, then any rejection of practising polygamists for Baptism was due mainly to cultural forces. The implication behind such an argument being that both monogamy and polygamy are acceptable marital structures for Christians depending on the cultural setting. The second argument, while not disputing that monogamy is the ideal marital structure for Christians, suggested that alongside the Church's toleration of many customs of the peoples it has sought to evangelize, an initially tolerant attitude towards practising polygamists seeking Baptism was a logical and possible approach. The implication behind this argument being that such a policy of toleration is also appropriate now whenever the Church seeks to evangelize a culture where general or limited polygamy exists. A careful historical investigation of both ecclesiastical marital

legislation and practice from the first centuries of the Church's existence until the close of the sixteenth century belies both arguments.

It is evident that early church authorities always sought to make explicit to Christians the implications that the teachings of Christ had for their daily lives even when these teachings were contrary to existing social and civil law norms. That the monogamous pattern of marriage amongst the majority of peoples in ancient Greece, Rome and pre-Christian Europe re-inforced the Church's teaching about the monogamous nature of Christian marriage is evident. However, any assertion that this sociological phenomenon was the root cause for the Church's insistence that monogamy was the only marital institute permitted for Christians remains unproven. Furthermore, while sometimes church authorities did adopt a tolerant and accommodating attitude towards many customs of newly converted peoples, there is no clear evidence that such a posture of toleration was ever entertained with regard to accepting practising polygamists for Baptism. Still less is there any evidence to suggest that the Church officially condoned polygamy amongst newly converted Christians. To the contrary, at least two popes (Nicholas I and Innocent III) insisted that monogamy was the only permissible marital structure for Christians, while one ecumenical council (Lyons II) had (at least in passing) rejected polygamy as being a true marital structure for Christians.

The unusual position adopted by some protestant Reformers on the question of polygamy was probably the major reason why the Council Fathers at Trent addressed the issue of polygamy. Moreover, Trent's repudiation of polygamy as an acceptable marital structure for Christians was to have a pervasive effect on all subsequent Roman Catholic legislation relating to polygamy. Nevertheless Trent's declaration was wholly consistent with all previous and contemporaneous ecclesiastical legislation and practice. This included

three Apostolic Constitutions which specifically addressed issues that arose when missionaries encountered societies where polygamy was a general or limited practice. Thus the declaration made by the Council of Trent ought not to be represented as a merely ethnocentric and sectarian reaction by roman catholic authorities of the sixteenth century.

It remains now the task of the next chapter to ascertain what developments have occurred in ecclesiastical legislation and practice on polygamy since the sixteenth century.

-CHAPTER THREE-

CONTEMPORARY ECCLESIASTICAL LEGISLATION ON POLYGAMY

Introduction

When in the seventeenth century the modern missionary movement began, the Catholic Church came up against the problem of polygamy on a massive scale. However particular sixteenth century legislation (recorded in the previous chapter), combined with the tridentine condemnation of polygamy for Christians, provided catholic missionaries with a solid body of norms to which to turn for guidance. Thus traditional or customary marriage was accepted as valid: the presumption was in favor of validity. However, this applied to a first union only, for natural marriage was held to be essentially monogamous and polygamy was firmly rejected. A polygynist was only allowed to be baptized after he had put aside all his wives but one. Additional wives of an unbaptized man were not admitted to Baptism unless and until they had departed from their polygamous spouse. The decision as to which wife a polygynist was to keep was left largely to the husband to decide. The first wife a polygynist married was regarded as the true wife. However, if who the first wife was could not be recalled, or if the first wife was inimical to the faith of the new convert, or if the first wife could not be interpellated - then the husband could choose from among his wives, and preferably one who was also willing to receive Baptism. Then upon renewal of consent this couple was recognized as validly married. Broadly speaking these were the policies followed by church authorities at that time when faced with the question of what to do when practising polygamists requested Baptism in the Catholic Church. The then understanding of scripture and christian marriage, the nature and purpose of the Church, the importance of Baptism and ignorance that polygyny was usually a culturally determined form of marriage and not a matter of sexual depravity, were

all factors which influenced the formulation of church policy. However, from the seventeenth century onwards there occurred dramatic and extensive developments in all branches of knowledge, including scriptural, theological and anthropological studies. In light of this a question that now needs to be addressed is: Has the Catholic Church, since the seventeenth century, ever altered in any way its legislation regarding the eligibility of those polygamously married who wish to be baptized and become members of the Catholic Church?

The aim of this chapter will be to ascertain whether since the sixteenth century the Catholic Church has modified in any way its previous firm rejection as recipients for Baptism, those already polygamously married who are unable or unwilling to alter their marital status. In order to achieve this objective it will be necessary to analyze all church teaching and legislation from the seventeenth century until to-day that are connected to the issue of the admittance of the polygamously married to Baptism.

The chapter is divided into three parts. The first part will investigate church teaching and legislation on polygamy from the seventeenth century up until the promulgation of the 1917 Code of Canon Law. The second part will be concerned with analyzing specific canons of the 1917 Code as well as conciliar, papal and curial statements made subsequent to its promulgation. The third section of the chapter will examine specific canons of the 1983 Code of Canon Law along with relevant papal and curial statements that have been made subsequent to the promulgation of the 1983 Code.

Part One: The Pre-Code Church and Polygamy

From the time of the Council of Trent onwards, the impression given from an overview of historical studies is that in the Roman Catholic Church the question of non-admittance to Baptism of practising polygamists had been settled.¹ What did occupy the attention of church authorities and canonists was the way in which the three Apostolic Constitutions: *Altitudo*, *Romani Pontificis*, and *Populis* were interpreted as being either merely specific applications of the pauline privilege² or a notable evolution in the papal power to dissolve natural marriages.³ On December 5, 1631, the Congregation for the Propagation of the Faith reiterated the by now traditional policy. The Instruction from the Congregation read:

Polygamists of India, who together with all their wives, are converted to the

¹ W. Blum, *Forms of Marriage: Monogamy Reconsidered*, Kenya, AMECEA, Gaba Publications, 1989, pp. 14-17; J. Cairncross, *After Polygamy Was Made a Sin: The Social History of Christian Polygamy*, London, Routledge & Kegan Paul Ltd., 1974, pp. 60-63; A. Hastings, *Christian Marriage in Africa*, London, S.P.C.K., 1973, p. 9; E. Hillman, *Polygamy Reconsidered: African Plural Marriage and the Christian Churches*, New York, Maryknoll, Orbis Books, 1975, pp. 24-25.

² W.H. Woestman, *Special Marriage Cases*, Ottawa, Saint Paul University, 1990, p. 35: "The Church's teaching and practice of recognizing the dissolution of certain marriages contracted by two non-baptized persons, after the conversion of one of the parties, with the right to marry again is called the pauline privilege, since it is based on the words of St. Paul in I Cor. 7: 12-15."

³ F.J. Burton, *A Commentary on Canon 1125: Together with a History of the Legislation Contained in the Canon*, Canon Law Studies, No. 121, Washington, DC., Catholic University of America Press, 1940, pp. 63-90; J.J. Koury, *Three Sixteenth-Century Constitutions on the Dissolution of Marriage: A Study in Lawmaking and the Uses of Law*, Canon Law Studies, No. 517, Washington, DC., Catholic University of America, 1985, Michigan, Ann Arbor, UMI, 1988, pp. 212-241.

Faith and baptized, must dismiss all their wives, except the first, who is the real wife, if in her marriage there was no impediment of the natural law, or of the positive law, laid down by the civil legislator.⁴

The Congregation for the Propagation of the Faith had been instituted in 1622 under Pope Gregory XV (1621-1623). This new curial department had become the central Roman authority for all the missions, and all missionaries were directly dependent on it as far as was possible. This Congregation alone now assigned mission territories to religious orders. In addition it oversaw counter-reformation efforts in the protestant parts of Europe as well as handled relations with the Eastern Churches.⁵ Under such a powerful and centralized curial department the policy of excluding practising polygamists from Baptism was uniformly mandated throughout all mission territories.⁶

From 1633 until 1637, three cardinal members of the Congregation of the Propagation of the Faith and two cardinals from the Holy Office drew up a compendium of faculties for missionaries, which Pope Urban VIII approved.⁷ Included in these lists of faculties were directions for dealing with polygamists who wished to receive Baptism.⁸

⁴ "Instructio", Sacra Congregatio de Propaganda Fide (Congregatio generalis, coram SS.mo, Dec., 5, 1631), in *Collectanea S. Congregationis de Propaganda Fide: seu decreta instructiones rescripta pro apostolicis missionibus*, Second edit., Romae, ex Typographia Polyglotta, 1907(= *Collectanea SCPF*), vol. I, no. 71, p. 18: "Indi polygami qui cum omnibus uxoribus suis convertuntur ad fidem et baptizantur, tenentur dimittere omnes uxores praeter primam, quae sola est vera uxor, si illius in matrimonio nullum intervenit impedimentum iuris naturalis vel positivi conditi ab eorum Principe."

⁵ U. Benigni, art., "Propaganda", in *The Catholic Encyclopedia*, (eds.), C.G. Hebermann, E.A. Pace, T.J. Shahan, & J.J. Wynne, New York, R. Appleton Co., 1907-1912, vol. 12, pp. 456-461.

⁶ F.X. Urrutia, "Praxis non admittendi polygamos ad baptismum: cur non mutatur?", in *Periodica*, 70(1981), pp. 500-502.

⁷ F.J. Burton, *A Commentary on Canon 1125*, p. 99.

⁸ "Commentaria de formulis facultatum quas S. Congr. de Propaganda Fide concedere solet", in *Periodica*, 11(1922), n. 15, p. (48): "Formula I, no. 11, Dispensandi cum gentibus et infidelibus plures uxores habentibus, ut post conversionem et baptismum,

Historically and in relation to polygamy the primary focus of canonists has been to illustrate how various editions of these lists supported one or other theory in the controversy over whether the Pope had the power to dissolve the natural bond of marriage.⁹ However, it is significant that nowhere in any of the various editions of the lists of these faculties, nor in specific "Instructions", were practising polygamists permitted to receive Baptism without first having to change their polygamous marital status.¹⁰ Moreover in 1793 the Congregation for the Propagation of the Faith replied to a query as follows:

If, in the faculty no. 11 of Formula I (On dispensing both gentiles and non-baptized persons having several wives, so that after their conversion and baptism, they may retain any one of the wives they prefer if she also will be baptized, unless the first wishes to convert) what is said of the man who has many wives extends also to the woman who has many husbands.
Response: Affirmative. This opinion of the Sacred Congregation was kindly approved by His Holiness, in audience of 17 January.¹¹

quam ex illis maluerint, si etiam ipsa fidelis fiat, retinere possint, nisi prima voluerit converti." Burton writes: "Formula I listed the faculties for bishops in Africa, Asia and America; Formula II provided for bishops in those parts of Europe subject to infidels and remote from the Roman Curia; Formula III gave the faculties which could be used in certain parts of Europe where heresy was flourishing; Formula IV gave greater or extraordinary faculties for the Prefects of the missions in Asia, Africa and America and for their associates and the Guardian of Jerusalem." F.J. Burton, A Commentary on Canon 1125, p. 99.

⁹ J.J. Koury, Three Sixteenth-Century Constitutions on the Dissolution of Marriage, p. 223.

¹⁰ Examples of the consistency of the directions can be found in the following sources: "Instructio", Sacra Congregatio de Propaganda Fide, February 15, 1756, in Collectanea SCPE, vol. 1, no. 397, p. 255; "Instructio", Sacra Congregatio Sancti Officii, June 8, 1836, in Collectanea SCPE, vol. 1, no. 848, p. 494; "Instructio", Sacra Congregatio Sancti Officii, June 20, 1866, in Collectanea SCPE, vol. 1, no. 1293, pp. 716-717; "Instructio", Sacra Congregatio de Propaganda Fide, October 18, 1883, in Collectanea SCPE, vol. 2, no. 1606, pp. 195-196; "Responsum ad Sioux-Falls", Sacra Congregatio Sancti Officii, May 19, 1892, in Collectanea SCPE, vol. 2, no. 1796, pp. 274-275; "Responsum ad Niger", Sacra Congregatio Sancti Officii, August 17, 1898, in Collectanea SCPE, vol. 2, no. 2017, pp. 374-375. Koury mentions six editions of the lists of faculties, 1756, 1806, 1822, 1837, 1919, 1941. J.J. Koury, Three Sixteenth-Century Constitutions on the Dissolution of Marriage, p. 224.

¹¹ "Responsum", Sacra Congregatio de Propaganda Fide, January 14, 1793, in Collectanea SCPE, vol. 1, no. 611, p. 383: "Se nella facoltà del n. 11, della Form. I. (Dispensandi cum gentilibus et infidelibus plures uxores habentibus, ut post conversionem

Thus what applied to polygynously married males requesting Baptism was also to be applied to polyandrously married females who made the same request.

One of the clearest articulations of the Church's stance on the nature of polygamous marriages can be found in an 1860 Instruction of the Holy Office to the vicar apostolic of Gallas. The Instruction in part stated:

[...] It is altogether certain that simultaneous polygamy is indeed illicit under evangelical law, whence after Jesus Christ (Matth. 19) restored marriage to its original sanctity, unity and indissolubility and for the baptized its sacramental dignity, neither the faithful, nor the Jews, nor any person is allowed to unite with many wives. Consequently monogamy has been so divinely restored that it is beyond doubt a dogma of faith that only one man and one woman may be joined together in a lawful and valid marriage. [...].¹²

This section of the Instruction was significant for it reflected the traditional understanding of the creation accounts in the book of Genesis. Secondly the Instruction alluded to the scholarly opinion that the new order of monogamous marriage instituted by Christ was the purification and re-establishment of the authentic will of God first manifested at creation. Finally, and as a consequence of the first two points, the Instruction declared that only monogamous unions could be considered true marriages for all peoples.

et baptismum, quam ex illis maluerint si etiam ipsa fidelis fiat, retinere possint, nisi prima voluerit converti) ciò che dicesi dell'uomo riguardo a molte mogli s'intenda anche della donna riguardo a molto mariti. R. Affirmative. Et hanc S. Congregationis sententiam SSmus in Aud. 17 Januarii benigne approbavit." The marginal note reads: "Facultas dispensandi cum polygamia comprehendit etiam casum polyandriae." Twice again, in 1850 and 1855, the Holy Office ruled that the faculties applied to polyandrous women: "Instructio", Sacra Congregatio Sancti Officii, June 12, 1850, in *Collectanea SCPE*, vol. I, no. 1044, p. 566; "Instructio", Sacra Congregatio Sancti Officii, September 5, 1855, in *Collectanea SCPE*, vol. I, no. 1117, p. 598.

¹² "Instructio", Sacra Congregatio Sancti Officii, March 28, 1860, in *Collectanea SCPE*, vol. I, no. 1188, pp. 649-650: "[...] Certissimum est polygamiam simultaneam iure evangelico esse omnino illicitam, unde postquam Iesus Christus (Matth. 19) matrimonium ad pristinam reduxit sanctitatem, unitatem et indissolubilitatem addita pro baptizatis Sacramenti dignitate, nec fidelibus, nec iudaeis, nec ulli mortalium licuit plures sibi copulare uxores. Consequenter divinitus sic restituta monogamia, nonnisi unam uni legitimo validoque coniugio devinciri posse inconcussum fidei dogma habetur [...]."

The firm rejection of polygamy as in any way an acceptable marital structure was further emphasized when in 1866 the Holy Office answered queries put to it by the same vicar apostolic of Gallas. One of the queries asked was whether by following possibly ancient ecclesiastical discipline polygamists could be inscribed into the ranks of the catechumens. There the polygamists could wait until they were in danger of death, at which time baptism could be administered.¹³ The Holy Office replied that such a practice would cast infamy on and thwart church discipline. Polygamists could be baptized at the time of their death providing they had the correct disposition. In the context of the reply this meant that the polygamist would have to renounce his polygamous status prior to receiving Baptism.¹⁴ Aside from clarifying the conditions necessary for any polygamist to become a catechumen this instruction revealed how curial officials in Rome regarded polygamy. In marked contrast to the language used in the Apostolic Constitutions *Altitudo* and *Romani Pontificis*, this instruction referred to the other wives of a polygamist as either adulterers or concubines. Furthermore, references to divine law and natural law in support of monogamy were frequent and indeed the whole tone of the instruction was vehemently

¹³ "Instructio", Sacra Congregatio Sancti Officii, June 20, 1866, in *Collectanea* SCPE, vol. I, no. 1293, p. 716: "[...]. An saltem locum habere queat antiqua ecclesiastica disciplina admittendi hos polygamos in numerum catechumenorum, ut tempus habeant ad considerandum, et expectentur in articulo mortis quando omnes cessabunt difficultates [...]."

¹⁴ Ibid.: "Propterea nec in catechumenorum numerum pertinax huiusmodi polygamus recipiendus est; id enim et christiano nomini, baptizatis atque cathecumenis olim communi, dedecus aspergeret, et refragaretur sanctissimae disciplinae Ecclesiae, quae abusum differendi baptismatis usque ad exitum vitae gravissime semper improbavit et detestata est. Non tamen missionarii desistere debent a miseris hisce hominibus in omni patientia et doctrina instruendis, et maiori qua poterunt, efficacia ad perfectam conversionem excitandis: neque vetitum est quominus iidem possint in articulo mortis baptizari, si vere dispositi fuerint."

censorious of polygamy.¹⁵ Interestingly this same approach was adopted initially by other Christian Churches as their missionaries began working in african and asian countries towards the end of the eighteenth century.¹⁶ Such initial unanimity was possibly due to a consensus that existed amongst christian exegetes at that time on the meaning of certain passages of both the Old Testament and New Testament scriptures. Moreover, it needs to be borne in mind that at this stage the science of anthropology was as yet in its infancy. Thus the majority of european church leaders, unaware of much anthropological data,

¹⁵ Ibid.: "Debet igitur polygamus uxorem tempore priorem, quae sola iusta ac legitima uxor est, retinere; ceterasque tamquam adulteras et concubinas dimittere. Atque haec obligatio a lege divina et naturali dimanans, nedum per polygami conversionem relaxetur, magis e contrario magisque urget; ita ut nullo modo liceat baptizare polygamum qui ad praedictam obligationem implendam minime promptum ac paratum se exhibeat." However, it should be pointed out that in this same Instruction of the Holy Office in answer to a separate question there is recorded that: "[...] iuri naturali vel divino non repugnare quod servus vendatur, ematur, commutetur, donetur; [...] Christiani igitur [...] licite possunt servos emere atque in debiti solutionem, vel in donum recipere [...]" ("It is not contrary to divine or natural law for a slave to be sold, bought, exchanged or given; [...] therefore Christians [...] may lawfully buy slaves, and accept them in payment of a debt or as a gift[...]"). Hillman alluding to the two answers given in this same reply of the Holy Office has written: "If such a view of slavery[...] is now seen as historically and culturally conditioned to a blinding degree, may we suspect the same with regard to the general and official European Christian perception of polygamy?" E. Hillman, "On Polygamy: A Response", in *AFER*, 23(1981), pp. 298-299.

¹⁶ A. Hastings, *Christian Marriage in Africa*, pp. 10-17. The chief secretary of the Anglican Missionary Society from 1841 to 1872, Henry Venn, was a most influential English missionary thinker in the nineteenth century. He summarized his own arguments against polygamy as follows: "A state of polygamy is unlawful within the Church of Christ, even though commenced in ignorance. 1. Because it has been declared by God to be contrary to the Divine institution of marriage. 2. Because it has been pronounced adultery by Christ. 3. Because it is written: 'Let every man have his own wife, and let every woman have her own husband.' Therefore a polygamist cannot be lawfully admitted by baptism into the church of Christ.", in W. Knight, *The Missionary Secretariat of Henry Venn B.D.*, London, MacMillan, 1880, p. 353.

were more than likely classicists¹⁷ and would have considered the custom of polygamy to have been an unnatural institute and morally comparable to adultery.¹⁸

By way of a conclusion it can be said that from the seventeenth century up until the promulgation of the 1917 Code of Canon Law an extremely firm position on the question of not baptizing practising polygamists is discernible. At no stage during this period can church practice or legislation be said to have permitted practising polygamists unable or unwilling to alter their marital status to be admitted to Baptism. However, during this same period of history an intense ethnocentrism and colonial exploitation was typical of most European nations. The accompanying cultural presuppositions and conceptual models, would also have been shared by contemporary church authorities. Any evidence of such a limited world view ought to caution scholars against a non-historical and literalistic application of past "Instructions" of any Roman Congregation to contemporary problems. Nevertheless the fact remains that whatever about the quality of their reasoning, church authorities from the seventeenth century until the nineteenth century were in harmony with their predecessors in excluding from Baptism practising polygamists.

¹⁷ Bernard Lonergan has described the classicist mentality: "The classicist is no pluralist. He knows that circumstances alter cases but he is far more deeply convinced that circumstances are somehow accidental and that beyond them, there is some substance or kernel or root that fits in with classical assumptions of stability, fixity, immutability. Things have their specific natures; these natures at least in principle are to be known adequately through the properties they possess and the laws they obey. Over and above the specific nature there is only individuation by matter so that knowledge of one instance of a species is knowledge of any instance. What is true of species in general is true of human species, of the one faith coming to us through Jesus Christ, through the one charity given through the gifts of the Holy Spirit. So it was concluded that diversity of peoples, cultures and social arrangements can involve only a difference in the dress in which doctrines are expressed but cannot involve any diversity in Church doctrine itself." B. Lonergan, *Method in Theology*, London, Darton, Longman & Todd, 1971, p. 302.

¹⁸ E. Hillman, *Polygamy Reconsidered*, p. 207.

Part Two: The Church of the 1917 Code and Polygamy

1. Canonical Aspects

For a long time the Apostolic Constitutions "*Altitudo*", "*Romani Pontificis*", and "*Populis*" provided the legal basis for the faculties and instructions issued to missionaries who sought to convert polygamously married Pagans. However these sixteenth century Constitutions received no general circulation and contained concessions granted only for certain classes of peoples in particular regions of the world.¹⁹ Gradually the documents became more generally known. By 1859 the text of all three Constitutions had been printed by the Congregation for the Propagation of the Faith and were available for inspection by an interested, if still limited, audience.²⁰

Cardinal Pietro Gasparri, commissioned by Pope Pius X to produce a canonical code of church law, was familiar with the three Apostolic Constitutions. The Cardinal judged it opportune that they be incorporated into the new code of canon law for the Church. Thus in what came to be called the *1917 Code of Canon Law*, canon 1125 read:

Those matters which relate to marriage in the Constitutions *Altitudo* of Paul III of June 1, 1537, *Romani Pontificis* of Pius V of August 2, 1571, and *Populis* of Gregory XIII of January 25, 1585, and which were written for particular places, are extended to other regions in the same circumstances.²¹

¹⁹ J.T. Noonan, *Power to Dissolve: Lawyers and Marriages in the Courts of the Roman Curia*, Cambridge, MA, Harvard University Press, 1971, p. 361.

²⁰ *Ibid.*, p. 367.

²¹ *Codex iuris canonici Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus*, Romae, Typis Polyglottis Vaticanis, 1917(= CIC. 1917), c. 1125: "Ea quae matrimonium respiciunt in constitutionibus Pauli III *Altitudo*, 1 Iun. 1537; S. Pii V *Romani Pontificis*, 2 Aug. 1571; Gregorii XIII *Populis*, 25 Ian. 1585, quaecumque pro peculiaribus locis scripta sunt, ad alias quoque regiones in eisdem adiunctis

Canon 1125 was one of the few instances in the 1917 Code where, in the body of a canon, a reference was made to other documents. Moreover while the reader was not directed to any document, excerpts from the three Constitutions were appended to the officially promulgated version of the 1917 Code and remained as appendices in all later editions.²² By incorporation into the 1917 Code, privileges granted by Apostolic Constitutions issued in the sixteenth century became universal law. Originally granted for certain classes of people in certain regions of the world, now the privileges, as universal law, were applicable to certain people but throughout the world. Polygamously married Pagans, slaves and captives comprised the classes of people encompassed by canon 1125. The pastoral problems which had originally given rise to the privileges and which were now the essential conditions for their use were diverse. They comprised the polygamist who could not remember who the first spouse was (*Altitudo*); the polygamist who preferred as a spouse, one who was not the first legitimate partner (*Romani Pontificis*); and the captive or slave who could not fulfill the obligations of the interpellations and/or whose previous spouse, although this was learned only after the second marriage, had also been baptized or prevented for a just reason from manifesting his or her good dispositions (*Populis*).²³

extenduntur."

²² Documenta VI, Ex constitutione Pauli PP. III «Altitudo», 1 Iunii 1537; Documenta VII, Constitutio S. Pii PP. V «Romani Pontificis», 2 Augusti 1571; Documenta VIII, Constitutio Gregorii PP. XIII «Populis», 25 Ianuarii 1585; in *CIC 1917*, pp. 750-754. According to one commentator the three excerpts of the Constitutions were printed as appendices to the 1917 Code of Canon Law because they were not well known. P. Rayanna, "De constitutione S. Pii Papae V 'Romani Pontificis' 3[sic] Augusti 1571", in *Periodica*, 27(1938), p. 303

²³ Cfr., J.J. Koury, *Three Sixteenth-Century Constitutions on the Dissolution of Marriage*, p.243.

Canon 1125 which appeared late in the canons on marriage (Title VII, De matrimonio, canons 1012-1143), was not the only canon in the 1917 Code that concerned polygamy. Thus the second paragraph of canon 1013 of the 1917 Code reads

The essential properties of marriage are unity and indissolubility, which acquire a peculiar firmness in Christian marriage by reason of its sacramental character.²⁴

Commentators have taken the 1917 Code's use of the word "unity" as meaning one bond, that is marriage must be between one man and one woman and excludes simultaneous polygyny and polyandry.²⁵ The canon described all marriages whether of baptized persons or non-baptized persons as having the essential property of unity (and indissolubility). However, the canon further specified: "which acquire a peculiar firmness in Christian marriage by reason of its sacramental character." Therefore, it would seem that in the marriages of non-Christians the property of unity (as well as the property of indissolubility)

²⁴ CIC 1917, c. 1013, §2: "Essentiales matrimonii proprietates sunt unitas ac indissolubilitas, quae in matrimonio christiano peculiarem obtinent firmitatem ratione sacramenti." Transl. in T.L. Bouscaren, A. Ellis, and F. Korth, *Canon Law: A Text and Commentary*, Fourth revised edit., Milwaukee, Bruce Publishing Co., 1966, p. 466. As J. Koury has noted since the actual placement of canons is the first principle of interpretation, then it follows that canon 1013 is of crucial importance in any canonical analysis of polygamy. Cfr. J.J. Koury, *Three Sixteenth-Century Constitutions on the Dissolution of Marriage*, p. 245.

²⁵ T.L. Bouscaren, A.C. Ellis and F. Korth, *Canon Law: A Text and Commentary*, pp. 467-469; S. Woywod, *A Practical Commentary on the Code of Canon Law*, Revised by C. Smith, New York, J.F. Wagner Inc., 1948, vol. I, p. 644: "The essential characteristics of marriage pointed out by the Code are its unity and indissolubility. The unity of marriage is opposed to polygamy, [...]" However, writing in 1985, A. Mendonça further clarified the issue when he wrote: "In the past, there lacked a clear distinction between the unity, unicity, indissolubility and sacramentality of marriage. Unity (*unitas*), as a matter of fact, refers to that quality of marriage which restricts to the marriage partner all the rights which constitute the *consortium totius vitae*. This characteristic requires that the rights and obligations exchanged in the act of matrimonial consent are not given to others. Unicity (*unicitas*) means that *more than one valid simultaneous bond* of marriage is impossible in one's life. It excludes, naturally, a multiplicity of bonds which is present in polygamous marriages." A. Mendonça, "Incapacity to Contract Marriage: Canon 1095", in *Studia canonica*, 19(1985), pp. 301-302.

was not to be regarded as absolute. Such a conclusion appears strange in relation to the Church's teaching on the normative structure of monogamy for all true marriages. The explanation contained in the following paragraph may help clarify the issue.

Embedded in the formulation of paragraph two of canon 1013, according to J. Koury, was possibly an awareness of two histories.²⁶ One was the traditional explanation given for the polygamous marriages of the patriarchs of the Old Testament and the other was the practice of the Church in dissolving sacramental non-consummated marriages which by the time of the 1917 Code was at least four centuries old, and the even older practice of dissolving non-sacramental marriages.²⁷ Could it be said then that the canon did not preclude the possibility that polygamous marriages entered into freely by non-Christians were true marriages? Mackin in commenting upon c. 1013, §2, has written:

The canon saves a place for the radical possibility of polygamous marriage and of dissolution by adding that monogamy and indissolubility gain a unique firmness in the marriage of Christians by reason of their sacramental

²⁶ J.J. Koury, Three Sixteenth-Century Constitutions on the Dissolution of Marriage, pp. 245-246.

²⁷ The canonists Bouscaren, Ellis and Korth in their comments on canon 1013, §2, typified the generality of roman catholic theologians and canon lawyers when they wrote: "Polygyny and polyandry are contrary to the natural law of marriage, but in different degrees. Polyandry is opposed both to the primary and secondary ends, in as much as it not only interferes with the perfect self-surrender which is love, but also, by throwing doubt on paternity, deprives marriage of one of its recourses intended for the education of the child. Polygyny is directly opposed to the secondary end in as much as it hinders domestic peace and reduces each of the wives to a condition of too great inferiority; indirectly, it tends also to prejudice the child's education. Accordingly, polyandry is opposed to a primary precept of the natural law, whereas polygyny is directly opposed only to a secondary precept. It is by this fundamental distinction, based on natural reason, that St. Thomas explains how it was possible that God should have permitted a plurality of wives in the Old Testament. The Creator thus dispensed from His own law, but only from one of its secondary precepts, making up for the harm thus permitted by special dispositions of His providence for higher ends. The same explanation is applicable to the permission of divorce in the Old Law, a permission which involved a similar dispensation from the secondary precept of the natural law concerning the indissolubility of marriage." T.L. Bouscaren, A.C. Ellis and F. Korth, Canon Law: A Text and Commentary, p. 467.

character. In other merely natural marriages the monogamy is exceptionable and the indissolubility is dissoluble.²⁸

However, the authors of one canonical commentary have offered a more restrictive explanation than that of Mackin's. They claim that Christ restored marriage to its original and divinely willed form for all humankind. They write: "for since the coming of Christ there can be no other than monogamous marriage."²⁹ Thus, it would appear that according to this traditional explanation Mackin's "radical possibility of polygamous marriage" is untenable. However, what if Koury's explanation is combined with Mackin's observation? Then it might be argued that Mackin's "radical possibility of polygamous marriage" is retained in the law in order to justify the polygynous marriages of some Old Testament patriarchs. Whatever of these explanations, in the marriages of Christians the essential properties of unity and indissolubility take on a peculiar firmness. Therefore, by definition and according to canon 1013, paragraph 2, polygamous christian marriage is impossible.

Another canon in the 1917 Code which concerned polygamy was canon 1081, § 2, which stated:

Matrimonial consent is an act of the will by which each party gives and accepts a perpetual and exclusive right over the body, for acts which are of themselves suitable for the generation of children.³⁰

This canon taken in conjunction with canon 1013, § 2, meant that the rights and obligations exchanged in the matrimonial consent could not be given simultaneously to others. Therefore, for Christians to enter into marriages which they fully intended to be

²⁸ T. Mackin, What is Marriage?, New York, Ramsey, Paulist Press, 1982, pp. 11-13, 209-210.

²⁹ S. Woywod, A Practical Commentary of the Code of Canon Law, p. 644.

³⁰ CIC 1917, c. 1081, §2: "Consensus matrimonialis est actus voluntatis quo utraque pars tradit et acceptat ius in corpus, perpetuum et exclusivum, in ordine ad actus per se aptos ad prolis generationem."

polygamous nullified the expression of their marital consent. Thus in the 1917 Code a christian polygamous marriage was by definition impossible.

Hillman in his analysis of canons 1013, § 2, and 1125 of the 1917 Code has written:

What all these regulations amount to in modern language is a set of rules governing conditions for divorce and remarriage [...]. What is clearly permitted under a variety of legal conditions is consecutive polygyny and consecutive polyandry - two practices that have always been concomitants of the Western conception of monogamous marriage. What seems never permissible [...] is the peculiarly Non-Western practice of simultaneous polygamy.³¹

Hillman's assessment is that of a theologian and a missionary familiar with and sympathetic to polygamous societies. However, his analysis is definitely not that of a canon lawyer. Canonists, on the other hand, commenting on the 1917 Code have considered polygamy contrary to the natural and the divine positive law.³² They have generally held the view that Christ condemned polygamy and restored marriage for all peoples to its original and divinely willed monogamous structure.³³ In fact, so widely and strongly held was this view that as has been mentioned earlier the Congregation of the Holy Office had stated: "Monogamy has been so divinely restored that it is beyond doubt a dogma of faith that only one man and one woman may be joined together in a lawful and valid marriage."³⁴

³¹ E. Hillman, *Polygamy Reconsidered*, pp. 29-30.

³² T.L. Bouscaren, A.C. Ellis and F. Korth, *Canon Law: A Text and Commentary*, p. 467; F. Woods, *The Constitutions of Canon 1125 and Their Application in the United States*, Milwaukee, Bruce Publishing Co., 1935, p. 41.

³³ This same view is implied in a recently published commentary on christian marriage and canon law. K. Matthews, "Essential Elements and Essential Properties of Marriage", in *Catholic Tribunals: Marriage Annulment and Dissolution*, (ed.), H.F. Doogan, Australia, Sydney, E.J. Dwyer Ltd., 1990, p. 130.

³⁴ "Instructio", Sacra Congregatio Sancti Officii, March 28, 1860, in *Collectanea SCPF*, vol. I, no 1188, p. 650: "[...] divinitus sic restituta monogamia, nonnisi unam uni legitimo validoque coniugio devinciri posse inconcussum fidei dogma habetur [...]."

2. Curial Responses³⁵

The 1917 Code of Canon Law took effect on May 19, 1918. As early as August 1919, the Pontifical Commission for the Authentic Interpretation of the Code of Canon Law had twice replied to inquiries about the meaning of canon 1125.³⁶ In 1924, the Sacred Congregation for the Propagation of the Faith replied to an inquiry from the First Council of China concerning the use of canon 1125.³⁷ Again in 1937 the Congregation of the Holy Office replied to an inquiry from the First Council of Indochina on an issue concerning canon 1125.³⁸ However these curial responses concerned either who had

³⁵ Cicognani writes: "The Dicasteries of the Roman Curia and therefore the Congregations themselves are by their nature the highest bureaus or departments of the Pontifical government [...]. Consequently, they are empowered to decide current cases [...]; to give precepts, instructions and admonitions; to issue new decrees, not only particular but even those of a general nature, for the purpose of safeguarding the observance of laws already established." A.G. Cicognani, *Canon Law*, Second rev. edit., (trans.), J.M. O'Hara, F. Brennan, Philadelphia, Dolphin Press, 1935, pp. 77-81. For completeness it should be noted that Pope Benedict XV issued the *Motu proprio* "Cum iuris canonici codicem" in 1917. This document stipulated, among other things, that from then on Roman Congregations would not issue new general decrees, unless some great need of the Church required it. If any new general decree became necessary then certain procedures were to be followed. See Benedict XV, *Motu proprio* "Cum iuris canonici codicem", September 15, 1917, in *AAS*, 9(1917), pp. 483-484; English translation in *CLD*, vol. 1, pp. 55-56. In 1988 Pope John Paul II issued the Apostolic Constitution "Pastor bonus". In article 18 of this Constitution it was stated that no dicastery may issue laws or general decrees having the force of law nor derogate from the prescriptions of current universal law except in individual cases and with the specific approbation of the Holy Father. See John Paul II, Apostolic Constitution, "Pastor bonus", June 28, 1988, in *AAS*, 80(1988), art. 18, p. 864.

³⁶ *CLD*, vol. 2, pp. 341-342. While both replies from the Cardinal President of the Commission were described as "private", they are included in the *fontes* of canon 1148 of the 1983 Code of Canon Law. The first response dated January 26, 1919, stated only that the language of the Constitutions determined who had faculties to dispense from the interpellations. The second response dated August 3, 1919, extended the grant of the faculties to quasi-pastors.

³⁷ *CLD*, vol. 3, pp. 478-479

³⁸ *Ibid.*, pp. 480-481. While this reply from the Congregation of the Holy Office was described as "private", it is included in the *fontes* of canon 1148 of the 1983 Code of Canon Law.

faculties to dispense from the interpellations under canon 1125 (the 1919 replies); or when interpellations were not required (the 1924 reply); or if a dispensation from disparity of cult was needed and whether the guarantees prescribed by canons 1061 and 1071 had to be given (the 1937 reply). None of the replies, nor indeed any subsequent curial responses, altered the requirement of a change in marital status if a practising polygamist wished to receive Baptism in the Catholic Church.

In 1939, the Sacred Congregation for the Propagation of the Faith replied to questions concerning the cohabitation of a catholic woman with a pagan husband, submitted by the Apostolic Delegate in Southern Africa. These replies allowed that a woman legitimately married in a state of infidelity to a polygamous husband could be admitted to Baptism. Furthermore she was not required to leave the husband if, after she had received Baptism in the Catholic Church, the husband refused to send away the other illegitimate wives or concubines.³⁹ In January of 1950, a request of the First Plenary Council of India was sent first to the Congregation for the Propagation of the Faith and then forwarded to the Congregation of the Holy Office. The request asked whether catechumens, previously separated from their legitimate unbaptized matrimonial partners, could be admitted to Baptism with the partner with whom they were now living, without any interpellation of the first wife and that this marriage could be convalidated by a new consent after Baptism. The reply sent by the Congregation of the Holy Office to the Congregation for the Propagation of the Faith granted the faculty to the Bishops of India. What is of specific interest is that the reply also added: "[...] Ordinaries should in individual cases bear in mind the moral, social, and economic condition of the first wife

³⁹ "Instructio", Sacra Congregatio Sancti Officii, 6 March, 1939, in A.M. Abate, *Il Matrimonio nell'attuale legislazione canonica*, Seconda edizione riveduta e aggiornata, Roma, Paideia Editrice, 1982, p. 322.

and see to it that sufficient provision is made for her needs according to the norms of justice, Christian charity and natural equity."⁴⁰ It was this formulation that would be employed when canon 1125 was rephrased as canon 1148 in the revised Code of Canon Law of 1983.

On three occasions Roman Congregations have addressed the issue of practising polygamists unable or unwilling to alter their marital status, who requested Baptism in the Catholic Church. First, in 1960, the Vicar Apostolic of Wewak in Papua New Guinea submitted a case and questions regarding the possible use of *Romani Pontificis*. The case involved a non-baptized man who had two unbaptized wives. Both wives were mothers of several of the man's children some of whom were already baptized and being raised as Catholics. The man and both wives were catechumens and sought to be baptized. However, neither wife was willing to depart and the husband was not prepared to dismiss either of his wives. The Congregation of the Holy Office replied: "The marriage in question cannot be dissolved and, although all parties are catechumens, nevertheless Baptism cannot be administered."⁴¹ The second case was in 1971 when the Congregation for the Propagation of the Faith sent a reply to a query from the Apostolic Legate in West Africa about how to proceed with tribal chiefs who were polygamously married, who were unable to dismiss their other wives and who wished to receive Baptism.⁴² The reply stated that the Congregation while moved by the plight of the polygamists did not see how it was possible to change such a central doctrine of the Christian Church (monogamy), which

⁴⁰ CLD, vol. 4, pp. 346-347.

⁴¹ CLD, vol. 5, pp. 536-537

⁴² "Responsum", Sacra Congregatio pro Doctrina Fidei, November 18, 1971, in Documenta recentiora circa rem matrimonialem et processualem cum notis bibliographicis et indicibus, (eds.), I. Gordon and Z. Grocholewski, Romae, Pontificia Universitas Gregoriana, 1977-1980, vol. 2, p. 279-280.

tradition had always proposed as a moral demand of the New Law as taught by Christ.

The reply reiterated:

the traditional solution [...] that each polygamous chief retain the first legitimate spouse from among his wives, or, if he no longer knows which is the first, that he choose the one who meets his approval, and that he agree to no longer have marital relations with the others who, normally, should leave his house. For serious reasons only, and if there is no danger of scandal, the others could continue to live under the same roof.⁴³

The letter stated that those who could not, or could not yet, shoulder this difficult solution, which carried with it social consequences, could be accepted into a catechumenate where missionaries would educate them in christian life and morality. The reply then mentioned, "les confréries d'amis chrétiens", organized in various places for polygamous persons of good will.⁴⁴ The third case concerned the bishop of Ngong diocese in Kenya. In 1979 the bishop asked the Congregation for the Propagation of the Faith whether it was necessary to disturb the good faith of a polygamist when he sought to be baptized along with his whole household. The Congregation replied that it was aware of the difficulty of the situation but had to reply according to the constant tradition of the Church when faced with similar circumstances throughout the ages, which tradition was based on the moral teaching of the Lord in the New Testament. The polygamist could not be baptized unless he was prepared to change his marital status.⁴⁵

⁴³ Ibid.: "La solution traditionnelle [...] qui consiste dans ce que chaque chef polygame prenne la première épouse légitime d'entre ses femmes (ou, au cas où il ne saurait plus qui est la première, cell qui lui semble bonne) et s'engage à ne plus avoir des rapports matrimoniaux avec les autres qui, normalement, devront quitter sa maison. Seulement pour des raisons sérieuses, et s'il n'y a pas danger de scandale, elles pourraient continuer à vivre sous le même toit."

⁴⁴ Ibid.

⁴⁵ "Responsum", Sacra Congregatio de Propaganda Fide, October 31, 1979, in F.X. Urrutia, "Praxis non admittendi polygamos ad baptismum; cur non mutatur?", p. 514.

The last curial element that impinged on the subject of polygamy prior to the promulgation of the 1983 Code of Canon Law occurred in 1981. In October of 1981, at a plenary assembly of the Congregation for the Evangelization of Peoples, the question of what to do when practising polygamists, unable or unwilling to alter their marital status, request Baptism was discussed.⁴⁶ The assembly did not advocate a change in the traditional discipline of the Church. However, according to one account, the problem was discussed in an open and sympathetic manner, helped by an African perspective and relevant sociological data.⁴⁷ One member of the plenary assembly, Cardinal Paul Zoungana of Upper Volta, in his address argued that careful distinctions needed to be made before any judgements could be passed on the lives of polygamists. Thus, plural marriage occasioned by levirate custom or conjugal unions for assuring the security of a whole family group should not, the Cardinal stated, be put on the same level as merely prestige polygamy based on pride and the power of wealth. Nevertheless Cardinal Zoungana did not advocate a change in church discipline. He urged that properly disposed polygamists be accepted as catechumens until death. Then one way or another the painful conflict between the monogamy rule and the family commitments of practising polygamists could be resolved.⁴⁸

⁴⁶ Formerly known as "The Sacred Congregation for the Propagation of the Faith", it was renamed by Pope Paul VI, "The Congregation for the Evangelization of Peoples", in 1967. See Paul VI, Apostolic Constitution, "Regimini ecclesiae", August 15, 1967, in *AAS*, 59(1967), pp. 885-928.

⁴⁷ E. Hillman, "The Polygamy Debate: A Progress Report", in *Missiology: An International Review*, 10(1982), p. 166.

⁴⁸ P. Zoungana, "Address to the Plenary Assembly of the Congregation for the Evangelization of Peoples", in *International Fides Service*, no. 3110, (October, 1981), pp. 3-4.

3. Papal Teaching

The Second Vatican Council recognized the wide variety of ways in which a Pope can express church teachings. The Council also spoke of the assent due to such pronouncements. The Dogmatic Constitution on the Church Lumen gentium stated:

[...] religious submission of will and of mind must be shown in a special way to the authentic teaching authority of the Roman Pontiff, even when he is not speaking *ex cathedra*. [...] His mind and will in the matter may be shown chiefly either from the character of the documents, from his frequent repetition of the same doctrine, or from his manner of speaking.⁴⁹

In 1930 Pope Pius XI issued the encyclical letter ⁵⁰ Casti connubii. On the subject of polygamy, the Pope stated in this encyclical:

Hence conjugal fidelity requires in the first place that absolute unity of wedlock of which the Creator furnished us with the first example in the marriage of our first parents, when He decreed that it should subsist between one man and one woman only. And, although later this original law was to some extent relaxed for a time by God the supreme Lawgiver, yet there is no doubt that the primordial and perfect unity of marriage was completely restored, and every dispensation from it abrogated, by the Law of the Gospel. This is abundantly clear from the words of Christ, and from the constant teaching and practice of the Church. Therefore the Council of Trent solemnly defined: "That only two are united and made one by this

⁴⁹ Concilium Vaticanum II, "Constitutio dogmatica de ecclesia", Lumen gentium, November 21, 1964, in AAS, 57(1965), no. 25, p. 30; English translation in Vatican Council II: The Conciliar and Post Conciliar Documents, (ed.), A. Flannery, Grand Rapids, Mich., W.B. Eerdmans Publishing Co., 1987, (= Flannery - Vatican II), p. 379.

⁵⁰ Morrissey writes: "Encyclicals are papal acts in the form of letters, usually distinguished into two categories: encyclical epistles and encyclical letters. [...] Traditionally, encyclicals are formal pastoral letters written by the Pope for the entire Church. They are not used for dogmatic definitions, but rather to give counsel or to shed greater light on points of doctrine which must be made more precise or which must be taught in view of specific circumstances in various countries. The teaching contained in an encyclical is not given as belonging formally to the deposit of Revelation, but pertains rather to the ordinary Magisterium of the Church. It is an expression of the Pope's ordinary teaching authority; the contents of an encyclical are presumed to belong to the ordinary magisterium unless the opposite is clearly manifested. Because of this the teaching of an encyclical is capable of being changed." F.G. Morrissey, The Canonical Significance of Papal and Curial Pronouncements, Hartford, Conn., C.L.S.A., 1974, p. 2. Idem, "Papal and Curial Pronouncements: Their Canonical Significance in the Light of the 1983 Code of Canon law", in The Jurist, 50(1990), p. 105.

bond was clearly taught by Christ our Lord, when He said: 'Therefore now they are not two but one flesh'."

Thus Our Lord condemned every form of polygamy or polyandry, whether simultaneous or successive, as well as every external act of impurity.⁵¹

"*Casti connubii*" reiterated the traditional Christian positions on polygamy: that the creation accounts in the Book of Genesis established that monogamy was the original divinely willed form of marriage for all humankind; that the divine law of monogamy was dispensed with, for a time, by God; that Jesus Christ restored marriage to its original perfection and as a consequence only monogamy can be considered true marriage. Interestingly, Pope Pius XI only cited the Council of Trent's declaration as support for these positions.

Pope Paul VI showed great personal interest in the African continent. This pontiff stimulated much theological research by his 1967 written message, *Africae terrarum*. In this message the pope identified and praised many traditional african values. However as regards polygamy Pope Paul VI wrote:

⁵¹ Pius XI, Encyclical, "*Casti connubii*", December 31, 1930, in AAS, 22(1930), pp. 546-547: "Quapropter haec fides in primis postulat absolutam coniugii unitatem, quam in protoparentum matrimonio Creator ipse praestituit, cum illud noluerit esse nisi inter unum virum et mulierem unam. Et quamquam deinde hanc primaevam legem supremus Legislator Deus ad tempus aliquantum relaxavit, nullum tamen dubium est quin illam pristinam perfectamque unitatem ex intergro restituerit omnemque dispensationem abrogaverit Evangelica Lex, ut Christi verba et constans Ecclesiae sive docendi sive agendi modus palam ostendunt. Iure igitur Sacra Tridentina Synodus sollemniter professsa est: 'Hoc autem vinculo duos tantummodo copulari et coniungi Christus Dominus apertius docuit cum ... dixit: *Itaque iam non sunt duo, sed una caro*'. Nec vero tantum damnatam voluit Christus Dominus quamlibet, sive successivam sive simultaneam, quae dicitur polygamiae et polyandriae formam, externumve aliud quodvis inhonestum opus." In canonical literature successive polygamy has been described as that situation when a person, after separation or divorce, contracts another marriage although a lawful bond of marriage still exists. Simultaneous polygamy is said to exist when a person while still living with his(or her) lawful spouse has other spouses also, or when a person having repudiated his(or her) lawful spouse, has a plurality of spouses. See F. Winslow, *The Pauline Privilege and the Constitutions of Canon 1125*, New York, Field Afar Press, 1948, p. 54. The preferred terminology, at least amongst anthropologists, is "consecutive polygamy", or "serial monogamy" and "simultaneous polygamy" or "contemporaneous polygamy". See E. Hillman, *Polygamy Reconsidered*, p. 10.

In some African nations laws have been passed which give new vitality to the rights of the family. Timely changes have been introduced with regard to ancient customs. [...] Polygamy, which used to be widespread among pre-Christian and non-Christian social groups, is no longer interwoven into the social structure; nor is it any longer in tune with the outlook of many African peoples to-day. In short, the freedom and responsibility of the individual couple is assuming ever greater proportions in African family life to-day.⁵²

Some would dispute the sociological claims made by Pope Paul VI in this section of his message.⁵³ However, the fact remains that here is yet another pontiff whose comments on polygamy would appear to preclude any adopting under church law of a posture of toleration towards practising polygamists who ask for Baptism.

On the third of May 1980, during a mass for christian families in Kinshasha, Zaire, Pope John Paul II in a homily reaffirmed traditional church teaching that monogamous marriage is the design of God. The Pope said:

This pilgrimage to the sources (Gn. 2: 23-24) reveals to us also that the first couple, in the design of God, is monogamous. Here is something to surprise us again, when civilization - at the time when the biblical accounts were written - was generally far from this cultural model. This monogamy, which is not of western, but semitic origin appears as the expression of the interpersonal relation, that in which each of the partners is recognized by the other as of equal value and in the totality of his or her person. This monogamous and personalistic concept of the human person is an absolutely original revelation which bears the mark of God, and which deserves to be explored ever more deeply.⁵⁴

⁵² Paul VI, Message, "Africae terrarum", October 29, 1967, in *AAS*, 59(1967), no. 33, pp. 1092-1093. English translation in *The Pope Speaks*, 13(1968), p. 19.

⁵³ E. Hillman, *Polygamy Reconsidered*, pp. 87-107.

⁵⁴ John Paul II, "Ad christianos sponso, Kinsasae in ecclesia S. Petri Ap. congregatos, habita: de charactere monogamico primi matrimonii divinitus instituti", May 3, 1980, in *AAS*, 72(1980), p. 425: "Ce pèlerinage aux sources nous révèle également que le couple initial, dans le dessein de Dieu, est monogame. Voici de quoi nous surprendre encore, alors que la civilisation - au temps où prennent corps les récits bibliques - est généralement loin de ce modèle. Cette monogamie, qui n'est pas d'origine occidentale mais sémitique, apparaît comme l'expression de la relation interpersonnelle, celle où chacun des partenaires est reconnu par l'autre dans une égale valeur et dans la totalité de sa personne. Cette conception monogame et personnaliste du couple humain est une révélation

Such an unequivocal reaffirmation of traditional church teaching was repeated again by Pope John Paul II when, on November 22, 1981 he issued the Apostolic Exhortation⁵⁵ *Familiaris consortio*. In this document, the Pope combined a strictly traditional interpretation of the man-woman texts of Genesis with a personalist understanding of marriage. In the Exhortation, the Pope argued that polygamy radically contradicts the covenant of married life for:

it directly negates the plan of God which was revealed from the beginning, because it is contrary to the equal personal dignity of men and women, who in matrimony give themselves with a love that is total and therefore unique and exclusive.⁵⁶

There are theologians who would query some of the assumptions that lay behind this and other papal statements.⁵⁷ Nevertheless it is a fact that in all papal pronouncements on polygamy, from the promulgation of the 1917 Code of Canon Law until the promulgation of the 1983 Code of Canon Law, there was a remarkable consistency. There is certainly no

absolument originale, qui porte la marque de Dieu, et qui mérite d'être toujours plus approfondie." Urrutia commenting on this papal statement wrote: "John Paul II, speaking in Zaire [...] while well aware of the voices coming from Africa in favour of a change of attitudes, and equally aware of Church tradition, did not hesitate to reaffirm the doctrinal position of the Church." F.X. Urrutia, "Can Polygamy Be Compatible with Christianity?", in *AFER*, 23(1981), p.278.

⁵⁵ As the name implies an Apostolic exhortation is a papal document which is exhortative in nature and not a legislative text. This form of communication is usually directed to a specific category of the faithful. See F.G. Morrissey, *The Canonical Significance of Papal and Curial Pronouncements*, p. 3. Idem, "Papal and Curial Pronouncements: Their Canonical Significance in Light of the 1983 Code of Canon Law", in *The Jurist*, 50(1990), p. 106.

⁵⁶ John Paul II, Apostolic Exhortation, "Familiaris consortio", November 22, 1981, in *AAS*, 74(1982), no. 19, p. 102: "Huiusmodi communioni funditus polygamia adversatur: haec enim directe recusat Dei propositum, sicut ipsis initiis revelatur, quoniam pari personalique dignitati viri et mulieris repugnat, qui in matrimonio alter alteri se dant amore integro ideoque ex se unico et exclusorio. Haec sunt apud Concilium Vaticanum Secundum: 'Aequali etiam dignitate personali cum mulieris tum viri agnoscenda in mutua atque plena dilectione, unitas matrimonii a Domino confirmata luculenter apparet'."

⁵⁷ J. Grootaers and J.A. Selling, *The 1980 Synod of Bishops "On the Role of the Family": An Exposition of the Event and an Analysis of Its Texts*, Leuven, University Press, 1983, pp. 204-205, 308-309, 312-313.

indication that any pontiff during this period was prepared to allow church authorities to admit practising polygamists to Baptism without first requiring a change in their marital status.

4. Conciliar Teaching

The indices and concordances to the documents of the Second Vatican Council show only one use of the word "polygamy".⁵⁸ This occurs in the Council's Pastoral Constitution on the Church in the Modern World, where it is stated:

However, this happy picture of these [conjugal] partnerships is not reflected everywhere, but is overshadowed by polygamy, the plague of divorce, so-called free love and similar blemishes [...].⁵⁹

This somewhat negative reference to polygamy has been criticised by some and defended by others.⁶⁰ However the fact remains that it certainly did not presage a change in what

⁵⁸ X. Ochoa, Index verborum cum documentis Concilii Vaticani Secundi, Roma, Commentarium pro Religiosis, 1967, p. 380; P. Delhay, M. Gueret, and P. Tombeur, Concilium Vaticanum II: Concordance, index, listes de fréquence, tables comparatives, Louvain, Université Catholique de Louvain, 1974, p. 316.

⁵⁹ Concilium Vaticanum II, "Constitutio pastoralis de ecclesia in mundo huius temporis", Gaudium et spes, December 7, 1965, in AAS, 58(1966), no. 47, p. 1067; English translation in Flannery - Vatican II, p. 949.

⁶⁰ Critics include E. Hillman, Polygamy Reconsidered, pp. 55-56, and J.J. Koury, Three Sixteenth-Century Constitutions on the Dissolution of Marriage, p. 287. One defender is F.X. Urrutia, "Praxis non admittendi polygamos ad baptismum: cur non mutatur?", pp. 509-510, footnote 23: "GS 47,2. De quo textu E. Hillman, Polygamy Reconsidered [...] pgs. 56-57: «Yet none of the Council fathers seems to have noticed that the writers of this document rather obtuse, consigned polygamy (without even bothering to distinguish its very different forms) to the same category as 'the plague of divorce, so-called free love, and other disfigurements that obscure the excellence of marriage'». Notavisse iuvat: 1) Accentus iniuriosus contra *the writers* non potest non tangere Patres qui textum approbaverunt, 2) Quod agatur de textu approbato a circiter 2,000 Episcoporum, inter quos numerosi ex diversis Africae regionibus, maiorem mereri videtur considerationem, 3) praesertim cum agatur de magisterio Concilii Oecumenici, non autem de descriptione phaenomenologica alicuius documenti sociologici, 4) enumerare plures *disfigurements* non necessario significat ponere omnes in *the same category*, 5) nec mihi patet qua logica videatur Hillman accipere quod divortium et amor liber possint dici *disfigurements*, non autem polygamia, cum agatur de deformationibus quoad ipsum vinculum (amor liber), indissolubilitatem (divortium) et *unitatem* (polygamia) quae sunt

had been up until then the policy of the Church regarding practising polygamists requesting Baptism.

By way of an overview it could be said that a more compassionate tone did emerge in many church documents when the issue of the baptizing of pagan polygamists was referred to, subsequent to the promulgation of the 1917 Code of Canon Law. Such a change, which was slow in emerging, owed much to a growing body of accurate scientific data, particularly in the fields of anthropology, sociology and psychology. Thus it became generally more appreciated that customary plural marriage in non-western cultures was not at all what european theologians and canonists of the past had imagined it to be. However, for all that, there is no record of any church document in the period from 1917 to 1983 mitigating the traditional requirements laid down by the Church that had to be followed when practising polygamists requested Baptism in the Catholic Church.

Part Three: The Church of the 1983 Code and Polygamy

1. Canonical Aspects

In 1963 under the pontificate of Pope John XXIII, a Commission for the Revision of the 1917 Code of Canon Law was instituted. This Commission was re-confirmed and expanded by Pope Paul VI. In 1973 the subcommittee on marriage (*coetus de matrimonio*) of the Commission held its first discussion on canon 1125 of the 1917 Code. The subcommittee felt there was a need to:

A) Omit all references to various Apostolic Constitutions;

ipsum matrimonium et duae eiusdem proprietates essentielles."

B) Have the new law correspond to the current practice of the Church;

C) Limit the extent of the canon to simultaneous polygamy;

and

D) Add a norm of law concerning support for wives who would be dismissed especially if one of them was the first wife.⁶¹

As reported in 1973 the proposed re-ordering of canon 1125 read:

Therefore: canon 1125: § 1. Any infidel man who has had simultaneously a number of wives but who, having converted to the catholic faith, finds it to be burdensome to remain with the first of the wives, that man may retain anyone of them he chooses, provided all the others are duly dismissed. However, after the reception of baptism, the matrimonial consent must be renewed and, if need be, a dispensation from the impediment of mixed religion or of disparity of worship be obtained, all other provisions of law having been observed. If these conditions are not verified, recourse must be made to the Apostolic See in each case.

§ 2. After due consideration of the moral, social, economic circumstances of place and person, the Ordinary will ensure that adequate provisions be made to meet the needs of the first wife and of all the others who were dismissed, according to the norms of justice, christian charity and natural equity.⁶²

A number of observations on what was implied in this new formulation can be noted. Firstly, by the very inclusion of the proposed canon, polygamy was recognized as a contemporary challenge that faced the Church. Secondly, it can be presumed that the subcommittee was aware of past rulings by the Holy Office which applied the Constitutions *Altitudo*, and *Romani Pontificis* also to cases of polyandrous women. Nevertheless

⁶¹ See *Communicationes*, 5(1973), p. 85.

⁶² Ibid.: "Itaque: canon 1125: § 1. Infidelis, qui plures uxores simul habuerit, ad fidem catholicam se convertens, si durum ei sit cum earum prima manere, potest quamlibet ex illis, ceteris dimissis, retinere. Recepto autem baptismo, renovandus est consensus matrimonialis, obtenta etiam, si opus sit, dispensatione ab impedimento mixtae religionis vel disparitatis cultus, servatis aliis de iure servandis. Si istae condiciones non verificentur, recurrendum est ad Sedem Apostolicam in singulis casibus.

§ 2. Ordinarius, prae oculis habita conditione morali, sociali, oeconomica locorum et personarum, curet ut primae uxoris aliarumque dimissarum necessitatibus satis provisum sit, iuxta normas iustitiae, christianae caritatis et naturalis aequitatis."

the canon's phrasing appeared to ignore this. Thirdly, the inclusion of the word "simultaneously" (*simul*) appeared to be an explicit and deliberate curtailing of any future move to extend the privileges contained in the Apostolic Constitutions to cases of successive polygamy with frequent divorce. Fourthly, if successive polygamy or indeed any situation not envisaged by the canon occurred why "recourse to the Holy See"? Such an arrangement did not appear to be in keeping with the spirit of subsidiarity, emphasized at the Second Vatican Council and used as guiding principle number five during the revision of the Code.⁶³ Fifthly, the precedence for the provision of the care of the first wife can be found in a 1952 response of the Holy Office to a query sent by the First Plenary Council of India.⁶⁴ Such a provision was expanded by the subcommittee so as to include the needs of all the dismissed wives. This was a decidedly more christian response to many of the obligations the husband had towards the other wives than simply dismissing them. Sixthly, the proposed formulation explicitly recognized the possibility that a marriage could be allowed that involved a baptized convert's choice of a non-catholic or non-baptized wife. This was in direct conflict with the condition as laid down in *Romani Pontificis*. There, it had been specified that if a convert preferred a wife other than the first he had married, then this chosen spouse must also be baptized. According to Koury:

This first proposed version of the canon corresponding to c. 1125 not only reveals this change from the constitution, but conceals the real "object" that is being favored in the latter part of this century: conversion. It is no longer necessarily a case of favoring a marriage involving two baptized persons.⁶⁵

⁶³ "Principia quae codicis iuris canonici recognitionem dirigant", in *Communicationes*, 1(1969), no. 5, pp. 80-82.

⁶⁴ CLD, vol. 4, p. 347: "In view of the peculiar circumstances of India, the faculty which is asked for in the above petition is granted to the Ordinaries of that region; the same Ordinaries should in individual cases bear in mind the moral, social, and economic condition of the first wife, and see to it that sufficient provision is made for her needs according to the norms of justice, Christian charity and natural equity."

⁶⁵ J.J. Koury, *Three Sixteenth-Century Constitutions on the Dissolution of Marriage*, p. 291.

Seventhly in the matter of dispensing from the interpellations, the faculty granted by the law itself and based on the Constitution *Populis*, now appeared not to include pastors and missionaries.⁶⁶ Finally it would appear that lying behind the proposed reformulation of canon 1125 was a view now in possession within the Roman Curia. This position held that the Pope did indeed have the power to dissolve natural marriages and not just declare them null because of an initial intention to enter into a polygamous marriage.⁶⁷

In 1977 there appeared a record of a schema of proposed canons on the sacraments, drawn up in 1975 by the Commission for the Revision of the Code of Canon Law. There the subcommittee on marriage had catalogued its proposed revision of canon 1125 as canon 344. The only changes in the proposed canon from the 1973 version were: "infidel" (*infidelis*) was replaced by "unbaptized" (*non baptizatus*); the latin word *permanere* was substituted for *manere*; and the latin spelling of *condiciones* was changed to *conditiones*. Once again the subcommittee noted that all similar cases (i.e. of simultaneous polygamy) covered by the Apostolic Constitutions of Popes Paul III, Pius V, and Gregory XIII would be reduced to one generic case. Furthermore, a separate canon would incorporate the existing practices of the Holy See concerning the dissolution of natural marriages in favor of the faith.⁶⁸

On January 30, 1978, the subcommittee on marriage (called in the report: "a study committee on marriage law"), met to discuss canon 344 (CIC. 1125) which now read:

§ 1. Any unbaptized man who has had simultaneously a number of wives but who, having converted to the catholic faith, finds it to be burdensome to remain with the first of the wives, that man may retain anyone he chooses,

⁶⁶ Ibid., pp. 292-293.

⁶⁷ Ibid.

⁶⁸ *Communicationes*, 9(1977), p. 192.

provided all the others are duly dismissed. However, after the reception of baptism, the matrimonial consent must be renewed and, if need be, a dispensation from the impediment of mixed religion or of disparity of worship be obtained, all other provisions of law having been observed. If these conditions are not verified, recourse must be made to the Apostolic See in each case.

§ 2. After due consideration of the moral, social, economic circumstances of place and person, the Ordinary will ensure that adequate provisions be made to meet the needs of the first wife and of all the others who were dismissed, according to the norms of justice, christian charity and natural equity.⁶⁹

At the meeting a number of issues were discussed and voted upon:

A) The word "simultaneously" (*simul*) was retained in preference to the phrase "who simultaneously or successively had many wives" (*qui plures uxores simul vel successive habuerunt*).

B) The word "has" (*habeat*) was substituted for "has had" (*habuerit*).

C) Several of the consultors felt that the requirement of the dismissal of all wives except the one chosen by the polygamist would give rise to the disruption of family and tribal life, and impose grave harm on the wives and children. The dismissal of the wives would seem therefore to be against natural justice. However, consultors felt that the Commission for the Revision of the Code did not have competence regarding this question, which pertained rather to the Congregation for the Doctrine of the Faith.

D) One consultor felt that it was possible to omit the words, "all the others are duly dismissed" (*ceteris dimissis*) from the canon without altering the doctrinal significance, but this suggestion failed to receive sufficient votes.

⁶⁹ *Communicationes*, 10(1978), pp. 113-114: "§ 1. Non baptizatus, qui plures uxores simul habuerit, ad fidem catholicam se convertens, si durum sit ei cum earum prima permanere, potest quamlibet ex illis, ceteris dimissis, retinere. Recepto autem baptismo, renovandus est consensus matrimonialis, obtenta etiam, si opus sit, dispensatione ab impedimento mixtae religionis vel disparitatis cultus, servatis aliis de iure servandis. Si istae conditiones non verificentur, recurrendum est ad Sedem Apostolicam in singulis casibus. § 2. Ordinarius, prae oculis habita conditione morali, sociali, oeconomica locorum et personarum, curet ut primae uxoris aliarumque dimissarum necessitatibus satis provisum sit, iuxta normas iustitiae, christianae caritatis et naturalis aequitatis."

E) One consultor argued that the phrase, "if it be a hardship to remain with the first of the wives" (*si durum sit ei cum earum prima permanere*), was too facile and relied upon a merely subjective criterion. It was proposed that the text be amended to read: "if it is a hardship in the estimation of the persons involved and because of the circumstances of place and in the judgement of the local Ordinary" (*si ei nimis durum sit, attentis personarum et locorum adiunctis et iudicio Ordinarii loci*). However, the majority of consultors preferred the original text as it corresponded to the praxis of the Church.

F) Several consultors noted that it was unnecessary to require a formal renewal of consent on the part of the now baptized with his chosen spouse, because of the continuation of their married life. Nor was it necessary for an explicit dispensation either from the impediment of mixed religion or disparity of worship. An implicit dispensation was contained in granting the former polygynist the faculty to choose his partner, whether this partner was a baptized Catholic, or baptized outside the Catholic Church or not baptized. However, the majority of the consultors wished to retain this norm.

G) Several consultors felt that an intolerable burden was being placed on the Ordinary mentioned in section two, if he was required to provide for the needs of the dismissed wives. However, it was decided that the norm simply committed the Ordinary to determine whether the dismissed wives were provided for sufficiently.⁷⁰

By the following day (January 31, 1978), two consultors of the subcommittee had noticed that the previous day's reformulation of canon 1125 of the 1917 Code had omitted any reference to slavery or captivity which was precisely the focus of the Constitution *Populis*. Therefore they proposed that a new paragraph be added to the canon (canon 344) which treated of captivity, persecution or similar situations faced by either unbaptized

⁷⁰ Ibid., pp. 114-115.

spouse and where it was impossible to resume common life.⁷¹ Furthermore the revised formulation now included in the first paragraph the phrase: "The same [norm] holds for the unbaptized woman who simultaneously has any number of unbaptized husbands" (*Idem valet de muliere non baptizata qui plures maritos non baptizatos simul habeat*). While no explanation was offered for this insertion, the effect was to make explicit what both the principle of equity and several curial instructions had already established. Thus the following redaction of canon 344 was proposed:

§ 1. The unbaptized man who has simultaneously many unbaptized wives, after his reception into the Catholic Church, may having dismissed all other wives, retain anyone among them, provided he find it too burdensome to remain with the first wife. The same holds for the unbaptized woman who simultaneously has any number of unbaptized husbands.

§ 2. An unbaptized person who having received baptism in the Catholic Church, cannot re-establish cohabitation with his or her unbaptized spouse by reason of captivity or persecution, can contract another marriage, even if in the meantime, the other party has received baptism.

§ 3. In the cases mentioned in §§ 1 and 2, once the baptism has taken place, the marriage must be contracted according to the canonical form and, if need be, all prescriptions concerning mixed marriages as well as all other provisions of law be met.

§ 4. After due consideration of the moral, social, economic circumstances of place and person, the Ordinary will ensure that adequate provisions be made to meet the needs of the first wife and of all the others who were dismissed, according to the norms of justice, christian charity and natural equity.⁷²

⁷¹ Ibid., p.116: "Vir non baptizatus ad fidem catholicam se convertens, qui cum sua uxore non baptizata ratione captivitatis, persecutionis aliave huiusmodi causa semper disiuncta cohabitationem restaurare nequit, aliud matrimonium contrahere potest. Itemque in iisdem circumstantiis mulier ad fidem catholicam se convertens novas nuptias adire potest." However, the full Subcommittee revised this text to read: "Non baptizatus qui, recepto in Ecclesia catholica baptismo, cum coniuge non baptizato ratione captivitatis vel persecutionis cohabitationem restaurare nequit, aliud matrimonium contrahere potest etiamsi altera pars baptismum interea receperit." It had been a previously agreed upon principle that there be one canon which was addressed solely to simultaneous polygamy. Therefore this reformulation (with one further addition) was to eventually become canon 1149 of the 1983 Code of Canon Law.

⁷² Ibid. : "§ 1. Non baptizatus qui plures uxores non baptizatas simul habeat, recepto in Ecclesia catholica baptismo, si durum ei sit cum earum prima permanere, unam ex illis, ceteris dimissis, retinere potest. Idem valet de muliere non baptizata qui plures

At this time two further modifications were also suggested:

A) To omit in § 1, the phrases, "in the Catholic Church" (*in Ecclesia catholica*) and "provided he find it too burdensome to remain with the first wife" (*si durum ei sit cum eorum prima permanere*).

B) To substitute for § 3, the following: "In the case mentioned in § 1, the renewal of consent is not required provided that the consent of the woman remains" (*In casu de quo in § 1. non requiratur renovatio consensus dummodo de consensu mulieris constet*). However, both proposed modifications did not receive majority votes by the consultors. The text as recorded above was catalogued as canon 344.

In 1980 the Commission for the Revision of the Code of Canon Law published a draft of the complete proposed revised Code of Canon Law. In this draft what had been canon 1125 of the 1917 Code and then reformulated and renumbered canon 344 by the Code Commission, was now numbered canon 1102. However, apart from two minor changes the formulation remained the same.⁷³ Subsequently three more changes were made. The three were:

maritos non baptizatos simul habeat. § 2. Non baptizatus qui, recepto in Ecclesia catholica baptismo, cum coniuge non baptizato ratione captivitatis vel persecutionis cohabitationem restaurare nequit, aliud matrimonium contrahere potest etiamsi altera pars baptismum receperit. § 3. In casibus de quibus in §§ 1 et 2 matrimonium, recepto baptismo, forma legitima contrahendum est, servatis etiam, si opus sit, praescriptis de matrimoniis mixtis et aliis de iure servandis. § 4. Ordinarius, prae oculis habita conditione morali, sociali, oeconomica locorum et personarum, curet ut primae uxoris aliarumque dimissarum necessitatibus satis provisum sit, iuxta normas iustitiae, christianae caritatis et naturalis acuitatis."

⁷³ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Relatio complectens synthesim animadversionum ab Em.iss. atque Exc.iss. Patribus Commissionis ad novissimum schema C.I.C. exhibitarum, cum responsionibus a secretaria et consultoribus datis*, Roma, Typis Polyglottis Vaticanis, 1981, p. 265, c. 1102. The latin word *quae* was substituted for the latin word *qui* in the last sentence of the first paragraph and the phrase, "with due regard for the prescription of canon 1095" (*firmiter praescripto can. 1095*) was added to the second paragraph.

A) § 2, was removed and became a completely new canon.

B) In § 4, the addition of the word "local" (loci) before "Ordinary".

C) In § 4, the substitution of the latin *ceterarumque* ("and of the others/remainder") for *aliarumque* ("and of the others").

These final alterations probably occurred when Pope John Paul II, with the help of certain experts and in consultation with the pro-president of the Pontifical Commission for the Revision of the Code of Canon Law, personally reviewed a latin version of the future Code printed in 1982.⁷⁴ In the revised Code of Canon Law promulgated on January 25, 1983, the canon which dealt with simultaneous polygamy was numbered canon 1148. This canon reads:

§ 1. After he has received baptism in the Catholic Church, a previously non-baptized man who simultaneously has several non-baptized wives can keep one of them as his wife while dismissing the others if it is difficult for him to remain with the first. The same is true for a non-baptized woman who simultaneously has several non-baptized husbands.

§ 2. In the situations mentioned in § 1, marriage is to be contracted according to the legitimate form after the reception of baptism, while observing the prescriptions on mixed marriages if necessary, as well as the other requirements of law.

§ 3. After considering the moral, social and economic situation of the area and of the persons, the local Ordinary is to take care that sufficient provision is made in accord with the norms of justice, Christian charity and natural equity for the needs of the first wife and of the other wives who are dismissed.⁷⁵

⁷⁴ A 1982 version of the complete revised Code was prepared for and studied by Pope John Paul II, the pro-prefect of the Commission for the Revision of the Code and other experts. See the preface to the Latin edition, *Codex iuris canonici auctoritate Joannis Pauli PP. II promulgatus*, Città del Vaticano, Libreria editrice Vaticana, 1983, (= CIC 1983), pp. xxix-xxx. See also *Code of Canon Law*, Latin-English edit., translation prepared under the auspices of the Canon Law Society of America, Washington, DC., Canon Law Society of America, 1983, (= *Code 1983*), p. xxvii.

⁷⁵ CIC 1983, c. 1148. English translation in *Code 1983*, p. 415.

Canon 1148 is a practical refinement of canon 1125 of the 1917 Code. However, a number of important points are worth noting.⁷⁶

Firstly, canon 1148, §1 speaks of Baptism received in the Catholic Church.

Secondly although the phrase "simultaneous polygamy" is not used, the canon specifies cases of simultaneous polygyny and simultaneous polyandry.

Thirdly, the canon mentions in paragraph one only the situation of difficulty for the baptized convert to remain with the first wife (or husband). There is no reference made to the Constitution *Altitude* where the convert could not remember who the first legitimate wife was. Furthermore there is no reference to the Constitution *Romani Pontificis*, where the convert could remember who the first legitimate wife was, but preferred some one other than his first wife.

Fourthly, paragraph one of the canon stipulates that the baptized convert can choose a partner only from amongst the spouses. This is a point that some scholars hold the Constitutions *Altitude* and *Romani Pontificis* had left unclear.

Fifthly, the second paragraph of the canon does not restrict the choice of a wife (or husband) to the one also willing to receive Baptism. This is a significant modification of one of the requirements laid down in the Constitution *Romani Pontificis*, which permitted the polygamist to choose any one of the wives(or husbands) willing to be baptized also and

⁷⁶ Cfr. J.J. Koury, *Three Sixteenth-Century Constitutions on the Dissolution of Marriage*, p. 307.

required that the others be dismissed.⁷⁷ It can be assumed therefore that if among the several wives (or husbands) of a polygamist one is a baptized Christian, this need not be the one chosen.

Sixthly, paragraph three of the canon goes some way towards addressing the needs of the dismissed wives. Still there is no mention in the canon of provisions being made for the needs of the children of the dismissed wives. However, possibly canon 1071, §1, 3°, would apply to such circumstances.⁷⁸

Seventhly, missing from this canon is the sentence: "If these conditions are not verified, recourse must be made to the Apostolic See in each case" (*Si istae condiciones non verificentur, recurrendum est ad Sedem Apostolicam in singulis casibus*). While this sentence had been part of the 1973 draft of the proposed new canon there was no explanation given for its exclusion from subsequent drafts.

Finally, and of the greatest relevance for this chapter, canon 1148 in no way mitigates the traditional requirement that practising polygamists upon reception of Baptism in the Catholic Church, can remain with only one of their former spouses and must dismiss the others.

⁷⁷ It also in retrospect would appear to confirm that the Constitution *Altitude* did not limit the choice by the baptized convert to a wife who would also be baptized. This contradicts one of the points Noonan made in his analysis of *Altitude*. See J.T. Noonan, *Power to Dissolve*, p. 349.

⁷⁸ *CIC 1983*, c. 1071, §1: "Excepto casu necessitatis, sine licentia Ordinarii loci ne quis assistat: [...] 3º matrimonio eius qui obligationibus teneatur naturalibus erga aliam partem filiosve ex praecedenti unione ortis; 4º[...]." The justification for such an application rests with canon 19 of the 1983 Code of Canon law.

As in the 1917 Code, so too in the 1983 revised Code, there are other canons which can be linked with polygamy. In the 1983 Code, canon 1056 is what was formerly canon 1013, §2 of the 1917 Code. Like its counterpart in the 1917 Code, canon 1056 is placed at the beginning of the 1983 Code's treatment on marriage. As one of the "defining canons" it is therefore of crucial importance.

Canon 1056 states:

The essential properties of marriage are unity and indissolubility, which in Christian marriage obtain a special firmness in virtue of the sacrament.⁷⁹

One commentator on canon 1056 has written:

Essential Property: a quality of the "essence" of the marriage, so much part of the essence that without it there is no marriage. The canon is formulated in scholastic categories; it also assumes that marriage has an "essence" and this essence includes in its very nature unity and indissolubility.⁸⁰

One wonders whether "scholastic categories", are entirely appropriate when it comes to characterizing all marital arrangements and more specifically whether an "essential property" of every marriage, regardless of cultural context, is "unity"(or more accurately "unicity"). More analysis on this issue must await treatment in the next chapter. However, what was recorded previously about canon 1013 §2, can without doubt be applied to canon 1056 of the 1983 Code including the possibility that embedded within the canon is an awareness of the history of the polygynous life styles of some of the patriarchs of the Old

⁷⁹ CIC 1983, c. 1056: "Essentiales matrimonii proprietates sunt unitas et indissolubilitas, quae in matrimonio christiano ratione sacramenti peculiarem obtinent firmitatem." English translation in Code 1983, p.387.

⁸⁰ L. Örsy, Marriage in Canon Law: Texts and Comments, Reflections and Questions, Wilmington, Delaware, M. Glazier, 1986, p. 58.

Testament. Still the same commentator quoted above offers a more prosaic reason for the formulation of canon 1056. He writes:

The first clause refers to any marriage, the second one to a specifically Christian marriage, as distinct from a natural marriage. In a Christian marriage the qualities of unity and indissolubility are said to acquire a particular firmness: by implication the same qualities must be less than specifically firm in a natural marriage. A distinction difficult to explain because neither unity nor indissolubility admits of degrees. But the subtle qualification is there to account for the dissolution of certain types of marriages.⁸¹

From the recorded comments of the Subcommittee on Marriage of the Commission for the Revision of the Code, its discussion on canon 1013, §2 appeared to have been focused on indissolubility rather than on unity.⁸² Whether the "subtle qualification" can also be applied to the concept of unity remains a moot point. Moreover, the view that every natural marriage is essentially monogamous needs further investigation. If such a study concluded otherwise, it might be possible to argue that the Church could allow a posture of toleration to non-christian polygamists by granting their request for baptism without requiring them to alter their marital status. Such an approach will be examined in the next chapter. At this point however, it is abundantly clear that as stated by canon 1056 polygamous christian marriage is impossible.

Another canon of the 1983 Code that impinges on the subject of polygamy is canon 1059, which states:

⁸¹ Ibid., p. 77.

⁸² *Communications*, 9(1977), p. 124: "Quod [c. 1013, §2,] examinatur suggestio alicuius conferentiae episcopalis ut potius in hoc canone dicatur omnia matrimonia esse intrinsece indissolubilia, quaedam autem extrinsece dissolubilia per interventionem Ecclesiae. Post aliquam discussionem, consultores concordant hanc suggestionem quaestiones doctrinales tangere, quae non possunt nec debent a nostra commissione resolvi. Aliquis consultor proponit ut dicatur '[...] quae in matrimonio Christiano ratione sacramenti peculiarem obtinent firmitatem.' Consultores omnes concordant."

Even if only one party is baptized, the marriage of Catholics is regulated not only by divine law but also by canon law, with due regard for the competence of civil authority concerning the merely civil effects of such a marriage.⁸³

This canon taken in conjunction with canon 1148 renders it impossible for the polygamist upon receiving Baptism to argue that his (or her) previous multiple marriages are tolerated under church law. In fact and by way of a concluding observation it can be said that the 1983 Code has not modified the traditional church requirement that a practising polygamist dismiss all of his (or her) partners except one, upon reception of Baptism.

2. Papal Teaching

Since the promulgation of the 1983 Code, the clearest and most recent re-affirmation of the Church's teaching on polygamy can be found in the address by Pope John Paul II to the Roman Rota in January of 1991.⁸⁴ Entitled "Culture's Impact on Marriage", the address helps reveal what is the mind of the current supreme legislator in the Catholic Church. In his address the Pope focused on the implications that the relationship between faith and culture have upon marriage. He said that marriage is an institution based on natural law. This view, plus the distinction between the sexes as something willed by God and that the bond created between a man and a woman in the marriage relationship is superior to every other interpersonal bond can be confirmed, "from the very first pages of Scripture." Moreover, the Pope continued, because marriage is deeply rooted in human nature it is affected by the cultural and historical conditions of every people. This interplay

⁸³ CIC 1983, c. 1059: "Matrimonium catholicorum, etsi una tantum pars sit baptizata, regitur iure non solum divino, sed etiam canonico, salva competentia civilis potestatis circa mere civiles eiusdem matrimonii effectus." English translation in *Code* 1983, p. 387.

⁸⁴ John Paul II, Address to the Officials of the Roman Rota, January 28, 1991, in *L'Osservatore romano*, English edition, February 4, 1991, pp. 3 & 12.

of cultures and the journey of history is the way God's plan is fulfilled. However the Pope then went on to say:

If, on the one hand, culture has sometimes had a negative influence on the institution of matrimony, having effects on it which are contrary to God's plan such as polygamy and divorce, on the other hand, in many cases it has been the instrument which God used to prepare the soil for a better and deeper understanding of His original intentions.⁸⁵

The Church, the Pope continued, has continually to confront cultures throughout the centuries. Furthermore every culture must be compared with the Gospel message and imbued with it. Praising contemporary culture, the Pope reminded his listeners that:

Among the influences which culture today has on matrimony we must point out that *some of them have their inspiration in the Christian faith*[sic]. For example, the decline of polygamy and other conditions by which the woman was subject to the man, the affirmation of the equality of man and woman, the growing orientation toward a personalized view of marriage understood as a community of life and love - these are all values which are now part of mankind's moral patrimony.⁸⁶

The Pope then began to enumerate aspects of the influence of contemporary culture on marriage which cause concern. Most of these grounds for concern were, in the words of the Pope, found within, "the affluent and consumeristic western world." However, the Pope then said:

As you know, in the world there are still peoples among whom the practice of polygamy has not disappeared. Indeed, even among Catholics there are people who, in the name of respect for the culture of these peoples, would want to somehow justify or tolerate such a practice in Christian communities. In my apostolic visits I have not failed to point out the Church's teaching on monogamous marriage and the equality of rights of man and woman.⁸⁷

This section of the pope's address frankly acknowledged that the practice of polygamy had not disappeared. Some would argue that such a sociological fact calls for at least a posture of toleration on the part of the Church towards practising polygamists requesting Baptism.

⁸⁵ Ibid., p. 3.

⁸⁶ Ibid.

⁸⁷ Ibid.

However, the Pope was insistent that polygamy as a practice in Christian communities cannot be justified or tolerated in the name of respect for indigenous cultural values. The Pope's homily given on the third of May 1980 in Kinshasha, Zaire, and already referred to in this chapter, is another example of this pontiff's constant and strong views on the subject of the monogamous nature of Christian marriage. The reference in this section of his address to the Rota to "equality of rights of man and woman" is surely an echo of similar sentiments expressed by this Pope in his 1981 Apostolic Exhortation *Familiaris consortio*. Then as now, a question arises: Is this concept of "equality of rights of man and woman" being conceived in the individualistic terms of western cultures? If so, is this a valid concept to teach the universal Church?

The next section of the Pope's address reads:

Indeed, we cannot ignore the fact that such cultures still have a long way to go in the field of the full recognition of the equal dignity of man and woman. Marriage is still, to a large degree, the result of agreements between families which do not take into account the free will of the young people. In the celebration of marriage the social practices sometimes make it difficult to determine the moment of the exchange of consent and the creation of the marriage bond, thus giving rise to interpretations which are not consonant with the contractual and personal nature of the marriage consent.⁸⁸

In this section of his address, the Pope gave strong support to a foundational principle of canonical discipline on the subject of marriage. According to canon 1057 §1, marriage is constituted by the lawfully manifested consent of persons who are legally capable and this consent cannot be supplied by any one else. By his own remarks the Pope re-affirmed Church teaching that as regards marriage the freedom to choose by the individual spouses can never be subordinated to the wishes of their communities.

⁸⁸ Ibid.

Turning to the subject of judicial practice the Pope had these words to offer:

Even in what concerns judicial practice there is no lack of negligence in regard to canon law, in justification of which appeal is made to local custom or particular aspects of the culture of a given people. In this regard, it is well to recall that negligences of this kind do not merely mean omissions in the formal legal process, but risk violating the right to justice which every believer has, with a subsequent decline in respect for the holiness of marriage.⁸⁹

This was meant possibly as an oblique warning to those church authorities who in deference to cultural values have permitted certain practices and chosen to ignore requirements laid down in canon law. One such practice could well be the administration of Baptism to polygamists without requiring them to change their marital status. All such practices said the Pope risk violating the right to justice which every believer has and undermines the sanctity of marriage.

Towards the end of his 1991 Address to the the Roman Rota, Pope John Paul II said:

The Church, therefore, although with all due attention to the culture of every people and to the progress of science, should always be attentive so that the people of today are offered the entirety of the Gospel message about marriage, as it has matured in her consciousness through centuries of reflection carried out under the guidance of the Spirit.⁹⁰

This passage is yet a further illustration of the Pope's firm refusal to countenance any subordination of the Church's teaching on marriage to the current theories of scientists or to value systems operative in specific cultures. Finally it should be noted that the unequivocal and strong repudiation of polygamy as an acceptable marital institute for Christians contained in this rotal address is totally consistent with traditional church teaching and the revised Code of Canon Law.

⁸⁹ Ibid.

⁹⁰ Ibid.

Conclusion

At the beginning of this chapter the question was asked whether since the sixteenth century the Catholic Church has modified in any way its previous firm policy of rejecting as recipients for Baptism those already polygamously married who are unable or unwilling to alter their marital status? The overwhelming weight of evidence shows that church authorities and church law from the sixteenth century until today have never permitted simply accepting practising polygamists for Baptism. The pre-condition for the reception of Baptism had always been and remains the separation of the polygamist from all spouses except one.

Such a firm and unequivocal position owes much to the pervasive influence within the Catholic Church of the condemnation pronounced by the Council of Trent on polygamy as a legitimate form of marriage for Christians. In fact, in the four hundred years following this tridentine declaration, the consensus amongst church authorities was that: a) The creation accounts in the Book of Genesis revealed that all true marriages are monogamous, and b) That Christ re-established this divinely willed order of marriage. Such views, when allied with an often sparse understanding of the languages and cultures of peoples contacted by missionaries and a prevailing mind-set of cultural superiority assumed by agents of colonizing powers, helps explain the vehemence with which many directives from departments of the Roman Curia, from the sixteenth to the mid-twentieth century, condemned polygamy. However, thanks to studies conducted by cultural anthropologists, and the perceptive observations of some missionaries particular institutes within cultures began to be viewed as parts of the totality of a unique culture. In particular the view that polygamy was always a matter of sexual gratification was discarded. These developments,

plus possibly the fact that from the mid-twentieth century onwards a number of Christian Churches began allowing practising polygamists to be baptized without at the same time separating from their spouses, all had their influence. This could explain the more compassionate tone of many curial directives on the subject of practising polygamists issued since the middle of this present century. However, church discipline on the subject did not change.

Canon 1125 of the 1917 Code of Canon Law incorporated into universal law what had been up until then special privileges accorded converts in certain regions of the world, who were former polygamists. However, neither the 1917 Code, nor subsequent papal or curial directives, nor indeed any canons of the revised Code of Canon Law promulgated in 1983, have altered the requirement that upon reception of Baptism a polygamist is required to separate from all spouses except one. Finally the most recent remarks on the subject of polygamy made by the present Pontiff are important. They indicate that what has been the constant and firm policy of the Catholic Church regarding the separation of all wives (or husbands) except one from the former polygamist convert will likely remain unchanged.

From the perspectives of tradition and authority within the Catholic Church it seems unlikely that any cogent arguments can be offered in support of a different policy and discipline regarding practising polygamists who wish to become members of the Catholic Church. However, issues either raised or alluded to in this chapter necessitate yet more analysis. Specifically, from various ideas offered in recent years by reputable catholic theologians and canonists, is it possible and justifiable under the universal law of the Church to argue that sometimes church authorities can allow a practising polygamist and spouses to be baptized as catholics and not require a change in their marital status?

-Chapter Four-

CONTEMPORARY THEOLOGICAL AND PASTORAL CONSIDERATIONS

Introduction

It would appear that the prohibition by the ordinary magisterium of the Church to the conferring of Baptism on practising polygamists has been constant and unequivocal. In turn, this position has been echoed in the universal law of the Church. However, the use of arguments based solely on tradition and authority to justify this policy of the Church has sometimes occasioned calls for a more nuanced understanding and application of church teaching and church law.

Christians generally have always considered monogamy to be a basic form of christian marriage. The equality of man and woman before God, the liberation from attitudes of dominance by one partner over another and the vocation to signify in christian marriage the covenant between Christ and his Church, all point in this direction. Indeed most, if not all, Christian Churches and theologians accept that monogamy is the norm for Christians who wish to marry. Nevertheless, the question remains whether in those societies where polygamy is a socially approved, honored and preferential system of marriage, the universal canon law operative in the Catholic Church should and could allow pastors flexibility in distinguishing between a normative ideal and pastoral realities.

The primary aim of this chapter will be to establish whether, while still within the norms of the universal law of the Church, church authorities in some situations could and should baptize polygamists without requiring them to dismiss all their marital partners except one. If such a position is impossible to establish, then a secondary aim of this

chapter will be to investigate what pastoral policy is possible and appropriate for local church authorities in Papua New Guinea to follow when working with polygamists who wish to become Catholics.

The primary and secondary aims of this chapter will be pursued through a five part analysis. Firstly, the chapter will record the former practices of pastors when confronted by practising polygamists and found acceptable under church law. The justification for these practices and criticisms now made of them will also be examined. Secondly, the chapter will enumerate and briefly expound upon those grounds which appear to some to justify further perusal of the issue of the polygamously married who ask for Baptism. Thirdly, the thesis will investigate the use made of certain principles by some contemporary theologians and canonists when they suggest conferring Baptism on some practising polygamists. Fourthly, the chapter will evaluate whether some possible pastoral resolutions, occasioned by the dilemma of practising polygamists requesting Baptism, can be legitimated by reference to principles of pastoral theology and canon law. Finally, the chapter will analyze one contemporary suggestion both in terms of its compatibility with current church law and its appropriateness for the situations existing in Papua New Guinea.

Part One: The Traditional Solution

Church law has always declared that polygamists should not receive Baptism unless they agreed to live with only one spouse in a monogamous form of marriage and dismissed the rest of the spouses.

In 1868 Cardinal Lavigerie founded a religious congregation whose task would be the work of evangelization throughout the african continent. The Cardinal, more than anyone before him, developed a programme which included specific instructions for handling the problem of polygynists who wished to be baptized. These "Instructions", according to the Cardinal, had been approved by the Congregation for the Propagation of the Faith.¹ In his "Instructions" of 1879, Cardinal Lavigerie directed that three states be set up for non-Christians in Africa who wished to become members of the Catholic Church. The first state was to be called the "Postulate". Here, interested Africans were to be taught only about, "the fundamental truths of the natural order as revealed by Revelation and will be told nothing else."² The second state was to be called the "Catechuminate". This would be open to all people of good will and all who sought admittance, even polygynists, should be admitted. Catechumens were to be instructed in the truths of Christianity but were not to be told about any liturgical function or sacrament, other than Baptism. The third and final state the Cardinal called the "Faithful". This group would have nothing withheld from them, would be baptized and regarded as full members of the Catholic Church. The Cardinal directed that:

Except in case of death the neophytes must pass at least two whole years in the postulant's degree and again in that of the catechumens, and that it must only be after at least these four years that they be given baptism. [...] Lastly, I forbid the baptism, even after four years, of all who have not given serious and sound guarantees of perseverance, especially in regard to a definite break with polygamy. To these you will promise baptism at their death, and they will be taught that, should it prove impossible for them to receive baptism then, the desire for the sacrament will suffice.³

¹ C. Lavigerie, *Instructions aux missionnaires*, Namur, Editions Grands Lacs, 1950, p. 95.

² Ibid., p. 109: "Auxquels on n'enseignera que les vérités fondamentales de l'ordre naturel éclairé par la Révélation, en s'abstenant de leur faire connaître autre chose".

³ Ibid., p. 110: "Sauf le cas de mort, les néophytes passent chacun au moins deux années entières, d'abord dans l'ordre des Postulants, et ensuite dans celui des Catéchumènes, et que ce ne soit qu'au bout de ces quatre années au moins qu'on puisse

These "Instructions" of Cardinal Lavigerie have been credited with providing a solid foundation upon which the future local churches in the african continent were to be built.⁴

Traditionally two possible exceptions to the requirements of dismissal of the other spouses of a polygamist, have been allowed. The first exception concerns danger of death. This is understood as applying when a polygamist, because of age or sickness, is facing imminent death. In such situations polygamists are simply asked whether they repent of every sin and are prepared to accept God's law as revealed by Christ and taught by His Church. An affirmative answer is deemed to be sufficient to indicate that a polygamist has the proper dispositions and Baptism may be conferred. The second possible exception is, if the spouses other than the one chosen by the polygamist to be the marital partner, live in separate quarters. Such spouses also need to be of such an age that it would be expected that the polygamist will no longer be seen by the people as having marital relations with these other spouses. In this situation, however, some grave reason must exist to justify this toleration and this exception can never be permitted if it would lead others to believe that the Catholic Church condoned polygamy as an acceptable marital structure for Christians.⁵

leur conférer le baptême. [...] Enfin, je défends d'administrer le baptême, même après quatre années, à ceux qui ne présenteraient pas des garanties morales sérieuses de persévérance, particulièrement en ce qui regarde l'abandon définitif de la polygamie. On se contenterait alors de leur promettre le baptême à la mort, et on leur enseignerait que, si par impossible, ils ne pouvaient recevoir le baptême avant de mourir, le desir de ce sacrement y suppléerait."

⁴ W. Burridge, *Destiny Africa: Cardinal Lavigerie and the Making of the White Fathers*, London, Dublin, G. Chapman, 1966, p. 132.

⁵ F.X. Urrutia, "Can Polygamy be Compatible With Christianity?", in *AFER*, 23(1981), p. 291, footnote 11. That both these practices have been found acceptable by church authorities can be inferred from the fact that they were recommended in 1866 by the Holy Office and in 1971 by the Congregation for the Propagation of the Faith, cfr., footnotes 14 & 41 of chapter three of this thesis.

The traditional resolution suggested when practising polygamists ask for Baptism is not without its critics. Bernard Häring is fairly representative of some contemporary catholic theologians who would question the present discipline of the Church. Häring writes:

Our traditional theology usually assumed that all the biblical texts against divorce could be used also as proof-texts against any toleration of polygamy. But this way of theologizing produces a moral short-circuit when Western Christians demand, as a condition for baptism, that a polygamist of another culture, although previously married in good faith, should divorce one or more of his wives. Such an insistence on monogamy works against the stability of marriage, against the concept of fidelity, and against the most vital covenants established between families and clans in societies which normally expect their leading and most respected members to be the heads of polygamous households. In such a cultural context, divorce, for no reason other than a man's wish to be baptized, can be as much a social shock as the introduction of an arbitrary divorce law in some Western cultures.⁶

Then through a series of questions Häring articulates what are the major reservations expressed by most critics of present church policy:

What sort of public image of the Christian God is projected by this application of moral principles in societies which traditionally regard polygamy as a preferential form of marriage? Is the proclamation of the gospel supposed to threaten family stability, disrupt social covenants, and even separate mothers from their children? Where, in this approach, is the patient pedagogy of Yahweh, the God of the Old Testament, who is the Father of our Lord Jesus Christ? Is it not possible, at the very least, for the Church to permit the baptism of a holy polygamist and his wives, if the gospel has reached them in this situation?⁷

Apart from questioning the traditional exegesis of certain scriptural texts, most critics of the Church's traditional discipline, like Häring, focus on the issue of injustice towards dismissed wives (and children). Indeed concern for the disruption of family and tribal life and the consequent harm to which wives and children of a polygamist would be exposed

⁶ B. Häring, foreword to Polygamy Reconsidered: African Plural Marriage and the Christian Churches, by E. Hillman, New York, Maryknoll, Orbis books, 1975, p. vi.

⁷ Ibid.

was expressed by several consultants on the Subcommittee on Marriage of the Commission for the Revision of the Code of Canon Law. Moreover, even the traditional allowance for the conferral of Baptism at time of death, after assurances have been given by the polygamist that God's Law is now accepted, has its critics.⁸

Advocates of the current practices followed by the Church when practising polygamists request Baptism are just as adamant in their rebuttal of the concerns of contemporary critics! Firstly, they claim that the more recent interpretations of certain scriptural passages which do not permit the traditional application to the issue of polygamy, are not accepted by many exegetes and remain a minority view point amongst catholic scripture scholars. One advocate, F. Urrutia, has sought to bolster this claim by further suggesting that critics of the Church's current practices have, in the interests of ecumenism, blurred their catholic identity. Such critics, he suggests, tend to read the Scriptures selectively in the interests of "good neighbourly relationships with non-catholic christians, who hold different theological views and consequently have different pastoral approaches."⁹ Secondly, these advocates reject the claim that current church practice forces polygamists, if they wish to receive Baptism, to commit a serious injustice against those with whom they were previously married in good faith. As Urrutia writes:

We can possibly speak of injustice only if the dismissed wives were not only *thought* to be partners in marriage, but *were* actually united to the

⁸ M. LeGrain, "Les africains peuvent-ils espérer une autre législation matrimoniale?", in *L'Année canonique*, 22(1978), p. 142: "Personnellement, la dignité du refus de certains polygames, même face à la mort m'a fortement impressionné: 'Père, tu voudrais que, maintenant, après toute une vie, je les renvoie? Même si je n'ai plus besoin d'elles, que penseraient-elles de cet ultime geste de ma part qui serait une mise à la porte? Et les diverses familles engagées dans mon grand mariage?'."

⁹ F.X. Urrutia, "Can Polygamy be Compatible With Christianity?", p. 284. Urrutia gives as an example of this "blurred catholic identity", the ecumenical study *African Christian Marriage* by B. Kitembo, L. Magesa and A. Shorter, London, Dublin, G. Chapman, 1977, xxv-242p.

husband by a truly conjugal bond. The distinction between subjective and objective justice seems to totally escape the proponents of the objection. Naturally this is because they fail to see that the marriage bond demands a total commitment of the person as such, and totally equal from each of the partners - an equality which cannot have a place in a polygamous marriage. They fail to see that, because of this nature of marriage, polygamous marriage is not a marriage alliance at all, but another type of alliance with a semblance of marriage. As a matter of fact, it is polygamy that structurally implies an objective injustice towards the first wife.¹⁰

Furthermore, defenders of current church practice claim that lying behind the arguments of those who advocate a posture of toleration towards polygamists requesting Baptism are certain assumptions. These are that any analysis of what marriage is must be guided by sociological and phenomenological considerations only. It seems therefore that arguing from within the realm of Revelation or even metaphysics is considered inappropriate by proponents for a posture of toleration. As Urrutia somewhat sarcastically remarks: "That this is not consistent with the traditional teaching on marriage up to the last Council (Vatican II), apparently does not escape the objectors, but will not very much affect them."¹¹

It appears therefore that the unanimity that once existed amongst theologians and canonists on the necessity of a polygamist altering his or her marital status as a precondition for receiving Baptism has disappeared. Such a lack of consensus calls for an investigation into the merits of those arguments which claim that grounds exist which justify a change in current church policy.

¹⁰ Ibid., p. 283. Urrutia uses the classical scholastic method in this argument. He accepts that monogamy has been ordained by God for all humankind, then from that he deduces that the dismissal of the other wives cannot constitute an objective injustice. The method itself does not consider the cultural, social and economic situation of people. Many contemporary moral theologians would hold that a polygamous marriage contracted in good faith by people who have not yet been evangelized may indeed confer rights on those people that cannot be qualified as only imaginary.

¹¹ Ibid.

Part Two: Grounds for Review?

1. From Cultural Anthropology

For: Accurate scientific data, particularly in the field of anthropology has been of inestimable value for christian missionaries. Research into the cultural patterns of various societies has helped expose the fallacy of ethnocentrism. In particular the view that polygyny was always simply a question of male lusts and sexual gratification has been discarded thanks to the sensitive analysis by social scientists of patterns of behavior in polygamous societies. Polyandry has also been verified as a possible yet extremely rare form of plural marriage. Both forms of polygamy are now seen, in the light of contemporary scientific information, as being essentially particular cultural expressions of all peoples need to institutionalize the basic anthropological category of marriage. Therefore, is the teaching and discipline of the Catholic Church reasonable, when polygamists, who live in societies where their form of marriage is considered the ideal, are required to alter their marital status as a pre-condition for the reception of Baptism? Surely the Church's evangelizing mission would be more credible if it was not encumbered by rigid conditions that refused Baptism to polygamists unwilling or unable to alter their marital status?

Against: One argument that shows the present policies of the Catholic Church towards polygamists requesting Baptism are reasonable owes much to the findings of cultural anthropologists! According to some anthropologists full reciprocity and equality among marital spouses are structurally impossible in polygamous marriages. Moreover, in societies where polygyny (by far the commoner form of polygamy) is encouraged, ethnographic evidence shows that a male is always accorded a superior ontology to that of a

female. However, such structural imbalances are far removed from those perspectives on personhood and marriage that are to be found in the teachings of Christ. Thus, the argument goes, it is not unreasonable to ask those who wish to become members of the Church to forsake structures which are at variance with important elements of the Christian Faith.

2. From Contemporary Scriptural Exegesis

For: Proponents of the position that offers a posture of toleration towards polygamists who request Baptism claim support for their view point in the research conducted by contemporary scripture scholars. As has been pointed out in chapter one of this thesis there are today three possible opinions about what the Bible has to say about polygamy. One of these opinions is that the creation accounts in the book of Genesis do not address the issue of polygamy or monogamy. This opinion also contends that no decisive guidance positive or negative on the question of polygyny (the only form of polygamy mentioned in the scriptures), can be drawn from the New Testament. According to this opinion any prevalence of monogamy can be attributed to economic and social factors alone. Therefore on the basis of the scriptures both monogamy and polygyny are acceptable marital structures for Christians depending on their specific cultural settings. Thus, at the very least church policy which requires a polygamist upon receiving Baptism to dismiss all spouses except one ought to be amended.

Against: As has already been mentioned in our first chapter, the above opinion is reckoned to be a minority view point. It is weakest when it tries to establish that polygamy is not in conflict with the teachings on marriage found in the New Testament. Today the majority of catholic scripture scholars continue to hold that the creation accounts of the Old Testament, as well as the teachings on marriage in the New Testament, show that

monogamy is the form of marriage willed by God from the beginning. According to this view, monogamy is an integral part of the reality of marriage and not simply a law which reflects a particular cultural understanding of marriage. What is also of the greatest significance for Catholics is that such a view has been and continues to be upheld by the ordinary magisterial teaching of the Church. An important point, given that at the Second Vatican Council it was stated:

In the supremely wise arrangement of God, sacred Tradition, sacred Scripture and the Magisterium of the Church are so connected and associated that one of them cannot stand without the others. Working together, each in its own way under the action of the one Holy Spirit, they all contribute effectively to the salvation of souls.¹²

Therefore the constant affirmation by the ordinary teaching authority of the Church of one of the opinions that has always been offered by scripture scholars about the place of polygamy in the Old and New Testaments, adds significant weight for Catholics.

3. From Diversity of Cultures and Theologies

For: Participants at the Second Vatican Council when reflecting on the relationship between culture and the Gospel recorded that:

The Church is faithful to its traditions and is at the same time conscious of its universal mission; it can, then, enter into communion with different forms of culture thereby enriching both itself and the cultures themselves.¹³

This principle of cultural catholicity and the problems associated with legislating for

¹² Concilium Vaticanum II, "Constitutio dogmatica de divina revelatione", *Dei verbum*, November 18, 1965, in AAS, 58(1966), no. 10, p. 822; English translation in *Vatican Council II: The Conciliar and Post Conciliar Documents*, (ed.) A. Flannery, Grand Rapids, Mich., W.B. Eerdmans Publishing Co., 1987, (= *Flannery - Vatican II*), p. 756.

¹³ Concilium Vaticanum II, "Constitutio pastoralis de ecclesia in mundo huius temporis", *Gaudium et spes*, December 7, 1965, in AAS, 58(1966), no. 58, p. 1079; English translation in *Flannery - Vatican II*, pp. 962-963.

Catholics all over the world who live in different cultures are not new.¹⁴ J. Huels has noted that: a) the Second Vatican Council restored the theology of local church, b) modern sciences like anthropology and sociology have contributed to a greater respect for cultural differences, and c) contemporary thought has recognized the cultural relativity of much of what, under a former classicist notion of culture, was considered to be universal and permanent. These factors have, in Huels's opinion, heightened peoples' awareness of cultural diversity and as a result he claims:

no general consensus exists in the Catholic Church that a centralized, universal authority can be the best determiner of how the Church is to function in various circumstances and cultural settings.¹⁵

Furthermore, in the last thirty years or so, many theologians have shifted their perspective away from a classicist, universalist approach to theology. Nowadays an important focus for many theologians is the role played by local and cultural circumstances in shaping one's response to the Gospel. This shift in perspective was given official support with the Decree on the Church's Missionary Activity issued by the Second Vatican Council.¹⁶ It is these factors which have led some to suggest that local church authorities could allow practising polygamists and their families to receive Baptism without requiring a change in marital status. Generally the proponents of this view would not support the position that polygamy and monogamy are equally acceptable as marriage structures for Christians. However, they would argue that the practice of baptizing practising polygamists is a

¹⁴ Already in chapter fifteen of the Acts of the Apostles examples of tension between cultures which affected church order are recorded. The requirement that all converts to Christianity had to observe the Jewish laws regarding diet and circumcision resulted in conflict and hardship for Gentiles. A compromise solution was arrived at which was sensitive to the cultures of both Jews and Gentiles. See Acts 15: 19-20.

¹⁵ J. Huels, "Interpreting Canon Law in Diverse Cultures", in *The Jurist*, 47(1987), p. 250.

¹⁶ Concilium Vaticanum II, "Decretum de activitate missionali ecclesiae", *Ad gentes*, December 7, 1965, in *AAS*, 58(1966), pp. 947-990.

temporary albeit legitimate compromise when faced with a people enculturated into a polygamous society.

Against: Through a culture a particular group of people share a common history, regard themselves and are regarded by others as a distinct entity in the family of mankind and aspire to the same destiny. However, not all the components (beliefs, values, and institutions) that go to make up a culture are objectively good from a christian perspective. Sciences like anthropology and sociology need not espouse any universal objective truths in order to function. The Church on the other hand has certain core values, both in dogma and discipline, which are so central to its mission and message that they must be considered incapable of compromise. Cultures, as Pope Paul VI said in one of his Apostolic Exhortations, "have to be regenerated by an encounter with the Gospel."¹⁷ This surely means that all cultures and the values enshrined in them must be judged by Christians according to the dictates of the Gospel. Opponents of a posture of toleration towards polygamists who request Baptism, claim that the Scriptures as explained by the Church uphold monogamy as the divinely willed form of marriage for all peoples. Therefore, admitting practising polygamists to Baptism is not merely a question of relaxing church discipline. At root the question concerns scriptural exegesis, doctrinal interpretation, ethical analysis and above all giving due recognition to a long and constant tradition within the Church. To do otherwise is, it is claimed, to imply that views of reality, beliefs and values are culturally determined and to advocate a completely relativistic ethics.

¹⁷ Paul VI, Apostolic Exhortation, "Evangelii nuntiandi", December 8, 1975, in AAS, 68(1976), no. 20, p. 19: "Renasce eas necesse est ex sua cum Bono Nuntio coniunctione."

4. From An Analysis of Contemporary Church Teachings

For: In recent years there have been a number of occasions when some theologians and canonists through their criticisms of certain church documents appear to offer some grounds which justify a review of church policy towards polygamists. J. Koury recorded these comments about what he saw the Second Vatican Council had in 1965 to say about marriage:

The description of marriage offered by the Second Vatican Council is only a selective, partial description, reflecting as it does only one model of marriage (monogamous, permanent, exclusive marriage) among the many models and concepts of marriage that exist in the diversity of historical and contemporary societies. The description of marriage in *Gaudium et spes*, nos. 47-52, largely reflects a European, Western and Christian model of marriage. Hence, that description of marriage takes on a prescriptive function, since the model of marriage it presented is prescribed for all cultures and all times, whereas today, as yesterday, people marry according to different designs.¹⁸

Not only has Koury explicitly queried the legitimacy in a Council document of shifting from a description of christian marriage to a prescription about all marriages, he also has implied that there are other legitimate forms of marriage besides those which are monogamous, permanent and exclusive. This is a change from the more traditional catholic view point that considers polygamy not to be a marriage alliance at all but having only the semblance of marriage. If polygamy is a true marriage alliance (as Koury's remarks infer), albeit inadequate to carry the full realization of what constitutes christian marriage, then possibly grounds exist for justifying (both theologically and canonically) a posture of toleration towards practising polygamists who request Baptism.

¹⁸ J.J. Koury, Three Sixteenth-Century Constitutions on the Dissolution of Marriage: A Study in Lawmaking and the Uses of Law, Canon Law Studies, No. 517, Washington, DC., Catholic University of America, 1985, Michigan, Ann Arbour, UMI, 1988, p. 283.

On November 22, 1981 Pope John Paul II issued his Apostolic Exhortation "The Community of the Family" (*Familiaris consortio*). In this Apostolic Exhortation, Pope John Paul II had in one section focused on the indivisible unity of conjugal communion. The Pope had written:

The first communion is the one which is established and which develops between husband and wife: By virtue of the covenant of married life, the man and woman "are no longer two but one flesh" and they are called to grow continually in their communion through day-to-day fidelity to their marriage promise of total mutual self-giving. [...] Such a communion is radically contradicted by polygamy: This, in fact directly negates the plan of God which was revealed from the beginning because it is contrary to the equal personal dignity of men and women, who in matrimony give themselves with a love that is total and therefore unique and exclusive.¹⁹

In their commentary of this section of the Apostolic Exhortation, the theologians J. Grootaers and J. Selling noted that:

What we find here is a distinct anthropology. All the elements fit together very neatly and serve a determined purpose. However, one might ask if the philosophical influences are not more dominant than the theological ones. [...] The anthropology present here is abstract. Its only cultural element rests in that it grows out of only one culture. The Western mentality will probably have no difficulty accepting it because the concept of "equal personal dignity" is usually defined in individualistic terms in Western culture. But is this a valid model to teach the universal Church? Even if one accepts the ideal of monogamy, is it valid to infer that a socio-cultural milieu which currently defines human dignity in non-individualistic terms and accepts conjugal union under different institutionalized patterns "radically contradicts" marriage as a communion of love?²⁰

One of the points being made by these commentators is interesting: Can monogamy be held as the only true marital arrangement? The only really cogent reason for requiring a polygamist to dismiss all plural spouses is that the polygamist was not and could not in the

¹⁹ John Paul II, Apostolic Exhortation, "Familiaris consortio", November 22, 1981, in *AAS*, 74(1982), no 19, pp. 101-102; English translation in *The Pope Speaks*, 27(1982), pp. 15-16.

²⁰ J. Grootaers and J.A. Selling, *The 1980 Synod of Bishops "On the Role of the Family": An Exposition of the Event and an Analysis of Its Texts*, Leuven, University Press, 1983, pp. 312-313.

nature of things be married to them. If polygamy is deemed to be a natural form of marriage, then ought a polygamist be able to receive Baptism without dismissing all spouses except one?

Analyzing canon 1148 of the 1983 Code of Canon Law, T. Mackin in 1984 wrote:

The canon is an amalgam of both Paul III's constitution *Altitudo* of June 1, 1537 and of Pius V's *Romani pontificis* of August 1, 1571. Its formulation is curious, first because its wording implies that an unbaptized person can be really married simultaneously to plural spouses, and this in face of the assertion in new Canon 1056 (and in old Canon 1013.2) that one of marriage's essential features is its unicity - that is of one man and one woman. If the subcommission drafted new Canon 1148.1 with this in mind, it stretched the meaning of unicity most elastically to include "one set of spouses."²¹

When speaking of the first multiple relationship canon 1148 says that in it a man has plural wives (uxores) and the woman plural husbands (maritos). This use of words, Mackin wrote, raises the question whether a polygamist legitimately can have several wives or husbands? Another way to phrase the issue would be: Is canon 1148 indirectly acknowledging that natural marriages can be polygamous and still true marriages in this post-resurrection era? An affirmative answer to this question would establish grounds legitimating a review of church policy towards practising polygamists requesting Baptism.

Against: It was Mackin himself who rebutted his own rather novel suggestion about canon 1148! He noted that the second paragraph of canon 1148 requires that marriage be contracted according to the legitimate form after the reception of Baptism. This requirement, Mackin wrote, "would be without purpose and indeed illicit, if [...] the man or woman were already married to several spouses, including the one he or she chooses for

²¹ T. Mackin, *Divorce and Remarriage*, New York, Ramsey, Paulist Press, 1984, p.498.

a monogamous partner following baptism."²² Mackin concluded that all one can infer from the use of the words *maritos* and *uxores* in canon 1148 §1, is that the compilers of this canon used language carelessly.²³

As was noted above, there are some who say that the description of marriage offered by the Second Vatican Council is defective. Such evaluations are arrived at by commentators only if conciliar statements describing marriage are assessed from a purely phenomenological or anthropological point of view. In fact the basis for the supposedly selective and partial descriptions of marriage contained in church documents is the content of Revelation and not sociological factors. The nature of marriage is deduced from an analysis of what scripture and tradition have to offer on the subject. Supporters of present church teaching would readily agree that the description of marriage in *Gaudium et spes* nos. 47-52, reflects a christian model of marriage. They would also deem it appropriate that such a model have a prescriptive function for all cultures and all times, for they argue, the content of revelation transcends all cultures and is meant to transform all cultures.

A similar response can be made to critics of the Apostolic Exhortation *Familiaris consortio*. Certainly there is a distinct anthropology operative in this papal document. However, it is not, supporters would claim, Western so much as Christian, not philosophical so much as theological. Once again the basis for the statements on monogamy and polygamy are deduced from Revelation and not the result of compiling sociological or anthropological data. The fact that in many cultures, operative marital

²² Ibid.

²³ Ibid.

structures are at variance with what the Church teaches are grounds for the conversion of such cultures and peoples not a justification for compromise with christian beliefs.

5. From the Policies of Other Christian Churches

For: According to one historical study, some non-catholic christian Churches began to show themselves open to the Baptism of practising polygamists and sympathetic towards the validity of polygamous marriage by the middle of the nineteenth century.²⁴ To date non-catholic christian Churches differ widely in their policies concerning the treatment of practising polygamists requesting Baptism.²⁵ However, it is claimed, that while many non-catholic solutions are less consistent than the present roman catholic solution, they are more humane.²⁶ With little or no exceptions non-catholic christian Churches who have adopted a posture of toleration towards polygamists requesting Baptism share the view with all other christian Churches that "monogamy is God's plan for marriage and this is the teaching of the New Testament."²⁷ Four major reasons are said to lie behind many of the

²⁴ A. Hastings, Christian Marriage in Africa, London, S.P.C.K., 1973, p. 11.

²⁵ A. Tippet has written: "The Churches have a multitude of attitudes to polygamy. One can recall at least six different attitudes on the different mission fields of the world: 1. Baptize the women and children but not the men. 2. Baptize none at all if they have anything to do with polygamy. 3. Baptize all on a testimony of faith - polygamist or not. 4. Let the husband retain the first wife and divorce the rest. 5. Let him divorce all but the preferred one. 6. For the first generation, baptize on a profession of faith, but demand monogamy thereafter." Cfr. A. Tippet, Introduction to Missiology, Pasadena, CA., W. Carey Library, 1987, pp. 340-341.

²⁶ E. Hillman, Polygamy Reconsidered: African Plural Marriage and the Christian Churches, New York, Maryknoll, Orbis Books, 1975, p.31.

²⁷ This is a quote from the preamble to a Liberian Lutheran Church Policy Statement issued in 1951 which, while affirming monogamy as the ideal for all Christians, decided that upon the approval of the District Church Council, parties to an established polygynous marriage may be baptised and confirmed. The policy guideline also stated: "However in accordance with St. Paul's teaching no [polygamously married] person, man or woman shall be permitted to hold office in the Church or congregation or be engaged as a Christian worker." Cfr. G. Currens, "A Policy of Baptising Polygamists Evaluated", in Africa Theological Journal, 2(1969), pp.71-83.

non-catholic christian Churches' adoption of a posture of toleration towards pagan polygamists.²⁸ Firstly, the influence of the findings of reputable anthropologists concerning non-western marital customs. Much field research on these matters began to be published from the 1920's onwards. As a result of this scholarship, the view prevalent until then that polygamy was a sin comparable to adultery was gradually discarded. The second influence was the changing views amongst some scriptural exegetes about the hitherto generally accepted explanations of certain Old Testament texts. Furthermore these same exegetes while agreeing that monogamy is the ideal structure for christian marriage as it is explained throughout the New Testament also pointed out that no specific condemnation of polygamy can be found in the entire Bible. Thirdly, the repeated calls for a revision of existing legislation or policy concerning the non-acceptance of polygamists began to be made by an increasing number of indigenous church leaders meeting particularly in regular inter-denominational christian conferences. Fourthly, the impact that the extraordinary growth rate of indigenous independent christian Churches, which recognized polygamy as a valid form of non-christian marriage and were prepared to baptize polygamists, was having on already existing christian communities.²⁹ Advocates of a change in the practice of the Catholic Church regarding the baptizing of polygamists argue that relevant pastoral adaptations made by non-catholic christian missionaries, ought to be emulated or at least provide grounds for justifying a review of current policies.

²⁸ A. Hastings, *Christian Marriage in Africa*, pp. 20-23.

²⁹ D. Barrett in his analysis of indigenous independent christian Churches in Africa remarks that while they have been noted for their leniency towards polygamy, generally while polygamists are accepted for Baptism, further polygamous marriages are forbidden and only monogamists can hold spiritual office, although there are exceptions. Barrett does not claim that the issue of polygamy is the major causative factor in the emergence of these separatist bodies. What he does contend is that the past intolerant attitude of missionaries towards polygamists contributed to a resentment of western based church missions and a consequent rise in separatism. D. Barrett, *Schism and Renewal in Africa: An Analysis of Six Thousand Contemporary Religious Movements*, London, Oxford University Press, 1968, pp. 117-118.

Against: Even amongst members of those christian Churches which permit polygamists to be baptized there is a lack of unanimity. For some it is a justifiable pastoral adaptation to current realities.³⁰ For others polygamy (or more specifically polygyny) is an oppressive structure and all or any postures of toleration that are now permitted by christian Churches obstruct the promotion of women's dignity and undermine the true nature of christian marriage.³¹ Others question how effective is such a policy of toleration of polygamy in the long run and label as unrealistic the hope that baptized children of baptized polygamously married parents will themselves reject polygamy as their preferred marital structure.³² Another criticism is the frequent policy of prohibiting baptized polygamists from holding church offices. This it is claimed is unjust, it implies that polygamist converts cannot be full-fledged Christians, yet by Baptism they have become fully incorporated into the christian community.³³ Perhaps the most significant objection by opponents of any posture of toleration who are members of the Roman Catholic Church is the question of relevance itself! The Catholic Church as a distinct entity among many christian denominations has its own theology of marriage, its own understanding of the nature of Church, and its own appreciation of such issues as sacramentality, biblical inspiration and doctrinal orthodoxy. More specifically canons 1055, 1056, and 1057 of the 1983 Code of Canon Law for the latin rite of the Roman Catholic Church mirror relevant

³⁰ A. Nkwoka, "The Church and Polygamy in Africa: The 1988 Lambeth Conference Resolution", in *Africa Theological Journal*, 19(1990), pp. 139-154. However, while generally supportive of the 1988 Lambeth Conference resolution which adopted a posture of toleration towards polygamists, Nkwoka is careful to add that a number of questions about african polygamists have yet to be satisfactorily answered.

³¹ J. Mbula-Bahemuka, "Polygyny, Social Change and Women's Response in East Africa", in *African Christian Studies*, 6(1990), pp. 28-40.

³² G. Currens, "A Policy of Baptizing Polygamists Evaluated", p. 71.

³³ W. Blum, *Forms of Marriage: Monogamy Reconsidered*, Kenya, AMECEA, Gaba Publications, 1989, p. 300.

and current official church teaching.³⁴ According to these laws only monogamous marriages are considered to be true marriages. Therefore, regardless of what adjustments some other christian Churches have made on the subject of admitting to Baptism practising polygamists, such adjustments are excluded from consideration within the Catholic Church.

6. Summation

The above outline of some arguments used both for and against the admittance of new grounds justifying a review of current Catholic Church policy regarding polygamists requesting Baptism is merely illustrative. There are also many more points and counter points made by scholars for and against the wider issue of interpreting and applying the monogamy rule as an absolute and universal prohibition. However, any analysis of arguments used in both the debate over baptizing polygamists and over whether polygamy is a valid marital structure is revealing. The arguments themselves illustrate profound differences existing in doctrinal beliefs and methods of theologizing amongst the protagonists in both debates. Even amongst roman catholic scholars distinctly different theological methodologies are used. These in turn are partly based on different and what would appear to be irreconcilable ecclesiologies and epistemological presuppositions. What past church teachings and practices contain universally valid content irrespective of different cultural situations? What role is played by the Church in the interpretation and application of the Scriptures? Answers to questions like these will indicate not only the presence of a specific theological view point but will also influence that person's position on the question of baptizing polygamists. Then, whether one proceeds deductively from

³⁴ The corresponding canons in the 1990 Code of Canons of the Oriental Churches are: canons 776, 777 and 817. The canon in the oriental code that corresponds to canon 1148 of the 1983 latin rite code is canon 859. Cfr. "Codex canonum ecclesiarum orientalium", in *AAS*, 82(1990), pp. 1217, 1224, 1231.

abstract principles of the natural law or whether an inductive approach that relies on existential data is employed, either method will also have significant bearing on the conclusions reached about the nature of polygamy and how polygamists should be treated. At the moment all that can be said is that currently there are a number of reputable roman catholic theologians who are prepared to admit that grounds do exist which justify a review of the policy now followed by the Church when polygamists request Baptism. Equally there are other roman catholic theologians who would hold that monogamy is not simply a way of getting married to be preferred by Christians to any other given model. Monogamy, these theologians would claim, is the only way permitted by God himself, as Christ taught us and as Saint Paul reiterated. As a consequence, these theologians contend, the Church cannot but demand that as a condition of Baptism polygamists must be prepared to change their marital status.

It now remains to investigate those theories and principles used by theologians who argue that current church law should and could be altered, so that polygamists can receive Baptism.

Part Three: Contemporary Theories

1. Natural Law, Natural Marriage and Polygamy

Theology and canon law have tended to describe marriage as a primary datum established by the Creator and reinforced by Christ, while at the same time insisting that as an institution marriage is based on natural law. On the other hand sociologists and anthropologists have regarded marriage as a social phenomenon which finds its rationale in the realization of the values of partnership, parenthood and community harmony which are central to family and social life. In any marriage as seen from this latter view point these

values are the primary concern, and a marital institute is acceptable in that, and only in that, it incorporates them and so meets the legitimate expectations of family life in a particular community. This idea would justify some variation in the institutional character of marriage from society to society as for instance, in the matter of polygamy. In the Catholic Church tradition, which has seen the institution of marriage as expressly established by God, any such variation was illegitimate except insofar as God authorized it. It was by invoking explicit divine dispensation that theology came to justify the polygyny of the Patriarchs of the Old Testament.³⁵ As was seen in the second chapter of this thesis, this view was reaffirmed by Pope Innocent III, although disputed by some theologians such as Cardinal Cajetan, and modified by the opinion of St. Thomas Aquinas. The Church has inculcated that natural marriage is essentially monogamous and theologians have sought support for this by referring to the natural law. Thus V. Bartocetti has written:

Unity and indissolubility are essential properties of marriage since its origin. By natural law, they are binding on all, even unbelievers. [...] Polyandry is absolutely contrary to natural law, polygyny is assuredly contrary to natural law but not in the same way as polyandry because it is only contrary to the secondary ends of marriage.³⁶

Many contemporary scholars would not concur with the opinion of Bartocetti. In 1975 R. Rodes wrote:

Conventional canonical analysis [...] treats the natural marriage as a juridical relation, existing by virtue of natural law [...]. This analysis rests on an understanding of natural law as a legal system in its own right - an

³⁵ Davis notes that speaking of divine dispensation is "a less accurate way of speaking." Davis writes: "The natural law is sometimes said to be modified when an obligation ceases because the subject-matter of the law has become quite different from what it was. [...] So the legalizing of polygamy among the Hebrews was not legalizing the infraction of any strict precept of the Natural Law, because the ends of marital union, namely propagation of the race and the care of offspring, can be achieved under God's providence in certain states of society by polygamous unions." H. Davis, *Moral and Pastoral Theology*, Seventh edit., (ed.), L.W. Geddes, London, Sheed & Ward, 1958, vol. 1, pp. 128-129.

³⁶ V. Bartocetti, art., "Polygamy", in *Dictionary of Moral Theology*, Maryland, Newman Press, 1962, pp. 920-921.

understanding that is generally discredited today, even among serious proponents of natural law.³⁷

Furthermore, Rodes in the same article argued that for natural law to forbid polygyny then one of two propositions had to be true:

A person with two or more wives will in every case be happier and more fulfilled (as will the wives) if he turns all but one of them out, regardless of what will then happen to them, than if he does not.

A legal system will be more conducive to everyone's happiness and fulfillment if it invariably requires the polygamist to turn out all but one of his wives than if it sometimes lets him keep them all.³⁸

Since these propositions are, argued Rodes, demonstrably not true in the moral and legal experiences of polygamous societies, then one cannot argue that natural law condemns polygamy. Rodes concluded:

[...] there is no reason (unless it be a pastoral reason - as to that I am not in a position to say) why polygamists and plural wives should not be permitted to become Christians and continue the marital obligations they incurred before their conversion, if the secular community takes these obligations seriously and offers no way converts can get out of them without seriously disrupting their own and other people's lives. At least I cannot see that natural law stands in the way. The relation between the polygamist and each of his wives should be regarded, it seems as an inferior but tolerable form of natural marriage.³⁹

Rodes is one contemporary legal scholar who does not recognize natural law as being part of a particular legal system and draws certain conclusions as a result. However, there are other legal theorists who would disagree. They also argue that flowing from the dictates of the natural law is the conclusion that monogamy is the only valid marital structure for all peoples.⁴⁰

³⁷ R. Rodes, "Natural Law and the Marriage of Christians", in *The Jurist*, 35(1975), p. 410.

³⁸ Ibid.

³⁹ Ibid., p. 429.

⁴⁰ H. Jone, *Moral Theology*, (rev. & trans.) U. Adelman, Maryland, Westminster, The Newman Press, 1952, no. 746, pp. 532-533.

Traditionally in the field of ethics, the concept of the natural law has been described as any law which has a binding force flowing from the very nature of things prior to any knowledge or determination by a human legislator.⁴¹ The existence of natural law is derived from the understanding that nature, a principle of operation, is present in every living reality, including human beings. Human nature determines how human beings should act, and therefore is understood as performing the function of a law. From such an understanding of natural law there has emerged a methodology which is primarily deductive. The strength of this methodology lies in its resistance to changes depending on time in general and its a-historical appreciation of human nature in particular. This seems to guarantee a universality and an immutability about judgments made concerning the temporal and spatial in human conduct when based on natural law principles. From this perspective natural law is deemed to be the objective and ontological basis for morals and the only alternatives are complete subjectivity and relativism.⁴² Such a view of natural law and such a methodology have provided much of the theoretical foundation for the Church's opposition to polygamy and the refusal to accept practising polygamists for Baptism.

Many contemporary catholic theologians are rejecting the above notion of the natural law and its accompanying methodology.⁴³ Today there is a pronounced tendency to consider natural law more as thought structure than as normative content. Natural law is seen much more in relation to a human person's "being" in the world, and "being" is

⁴¹ G. Granaris, art., "Natural Law", in *Dictionary of Moral Theology*, p. 697.

⁴² M. Crowe, "The Pursuit of the Natural Law", in *Irish Theological Quarterly*, 44(1977), p. 7.

⁴³ C. Curran, *New Perspectives in Moral Theology*, Indiana, Notre Dame, Fides Publishers Inc., 1974, p. 6; R. Gula, *Reason Informed By Faith: Foundations of Catholic Morality*, New York, Paulist Press, 1989, pp. 231-249.

considered as dynamic, as a project, as historical.⁴⁴ What is emphasized is no longer the possibility of arriving at absolute certitudes through a deductive process, but at the recognition of formal rather than material norms of universally valid principles of natural law. The process is much more teleological, allowing full range to the human person's historical existence, rather than a deductive deontological process. From such an understanding of natural law and from such a methodology has come the theoretical foundation for advocating a posture of toleration towards practising polygamists who wish to become members of the Catholic Church and receive Baptism.

Supporters of the past and present policies of the Catholic Church regarding polygamists point out that it is the traditional understanding and use of the natural law that has been incorporated into Church teaching and law. However, while significant, such a factor does not entirely resolve the dispute.⁴⁵ By way of conclusion it could be said that recent research by moral theologians into the nature and role of natural law promises to provide advocates of a posture of toleration towards polygamists requesting Baptism with their strongest arguments. However, for the moment, the research continues, the debate is unresolved and the traditional church practice remains the law.

⁴⁴ L. Monden, Sin, Liberty and Law, New York, Sheed & Ward, 1965, p. 89; B. Schüller, "Wieweit kann die Moraltheologie da Naturrecht entbehren?", in Lebendiges Zeugnis, 1(1965), pp. 24-25.

⁴⁵ L. Örsy writes: "Whenever a declaration by the magisterium is based on the natural law, further contribution and help [...] can be vitally important. Since the church has never canonized a philosophical system, in the case of a particular instruction based on philosophical principles, the issue cannot be closed since infallibility cannot be invoked. Responsible scholarly work will be more needed than ever, especially when the issue directly touches the lives of people." L. Örsy, The Church: Learning and Teaching, Wilmington, Delaware, M. Glazier Inc., 1987, p. 135, footnote 18.

2. The Principle of Epikeia

In 1974 in a book entitled *Evangelization Today*, B. Häring addressed the issue of whether polygamists should be baptized.⁴⁶ In this work Häring suggested that missionaries should adopt a posture of toleration in the primary stages of the evangelization of a polygamous society or people. Häring justified such a proposal by referring to the principle of epikeia.⁴⁷ In 1981, E. Hillman, became another theologian who suggested that the principle of epikeia justified administering Baptism to polygamists.⁴⁸ Hillman argued that through the application of this principle holistic solutions could be arrived at. These solutions, he wrote, "take full account of all relevant circumstances, factors and values, in an order of priorities which de-absolutises laws and legal interpretations."⁴⁹ It was Hillman's view that the principle of epikeia excused from the law by reason of the weight of either the difficulties incurred in observing the law or the serious violation of someone's rights by the law in concrete cases. Specifically, and like Häring, Hillman argued that when polygamous families living in harmony and with social honor were required to be dissolved before Baptism could be administered to the polygamists - then the resulting difficulties and violation of rights justified the use of the principle of epikeia.

Originally Aristotle had introduced the idea of epikeia in the context of his reflections on the virtue of justice in the *Nicomachean Ethics*. For Aristotle epikeia was a rectification or emendation of the law in instances where obligatory observance would be

⁴⁶ B. Häring, *Evangelization Today*, Indiana, Notre Dame, Fides Publishers, 1974, pp. 145-163.

⁴⁷ *Ibid.*, p. 152.

⁴⁸ E. Hillman, "On Polygamy: A Response", in *AFER*, 23(1981), p. 301.

⁴⁹ *Ibid.*

manifestly in violation of justice or natural equity.⁵⁰ There has been a long church tradition in canonical literature in which this principle is highly respected. Explanations or descriptions of the principle have however varied greatly over the centuries.⁵¹ In this century the German moralist A. Lehmkuhl wrote:

Epikeia is therefore an application of the law according to what is equitable and good in accordance with which it is presumed that the legislator would not wish his law in these extraordinary circumstances, which he did not foresee, to remain in force and that he himself would have made provision for just this exception if such a case had originally arisen in his mind.⁵²

Later in this century L. Riley in his extensive treatment of the principle wrote:

Epikeia is a correction or emendation of a law which in its expression is deficient by reason of its universality, a correction made by a subject who deviates from the clear words of the law, basing his action upon the presumption at least probable that the legislator intended not to include in his law the case at hand.⁵³

The above two descriptions of *epikeia* would appear to preclude it from being used to justify the baptizing of practising polygamists. Specifically canon law has always explicitly stated the polygamists must dismiss all spouses, save one, on receiving Baptism. Moreover, the replies of various Roman Congregations to queries asking for clarification on this matter and statements made by various pontiffs, have also upheld in all cases the requirements of the law. Therefore it cannot be argued that solid grounds exist which establish the probable presumption that the legislator intended that polygamists can receive

⁵⁰ Aristoteles, *The Nicomachean Ethics*, Bk. V, Chap. X, (trans.), J.A.K. Thomson, London, G. Allen, 1953, pp. 145-147.

⁵¹ C. Lefebvre, art., "Épikie", in *Dictionnaire de droit canonique*, Paris, Letouzey et Ané, 1935-1965, vol. 5, pp. 363-375.

⁵² A. Lehmkuhl, *Theologiae moralis*, Tenth edit., Friburgi Brisgoviae, Herder, 1902, vol. 1, p. 106: "Est igitur legis applicatio secundum aequum et bonum, secundum quod praesumitur legislatorem nolle legem suam in circumstantiis extraordinariis, quas non praevidit, urgere, eumque exceptionem facturum fuisse, si talis casus ipsius menti observatus fuisset."

⁵³ L.J. Riley, *The History, Nature and Use of Epikeia in Moral Theology*, Washington, DC, Catholic University of America Press, 1948, p. 137.

Baptism and continue in their previous marital situation. Furthermore canonists have always noted that: a) the general and habitual interpretation of a law contrary to its clear terms is not *epikeia* but an abuse,⁵⁴ and b) when a superior can be easily approached, *epikeia* should not ordinarily be used.⁵⁵ These two additional conditions for the legitimate use of *epikeia* also appear to negate the claims of both Häring and Hillman. Thus *epikeia* cannot be used when the exemption of whole societies from the law is envisaged nor presumably should the principle be invoked when recourse to higher church authorities is possible. Finally, both Häring and Hillman seem in part to have based their arguments for the use of the principle of *epikeia* in this matter on the violation of the rights of the spouses who are to be dismissed. However, the traditional riposte to such arguments remains, namely: "we can possibly speak of injustice only if the dismissed wives [or husbands] were not only *thought* to be partners in marriage, but *were* actually united to the husband [or wife] by a truly conjugal bond."⁵⁶ This brings the debate back once again to the issue of whether polygyny and polyandry are natural marital structures. Only if official church teaching accepted that natural marriage was not essentially monogamous might the principle of *epikeia* be used to justify baptizing some polygamists without requiring them to change their marital status.

3. The Principle of Probabilism

In an article written in 1981 on the subject of polygamy, E. Hillman argued that the

⁵⁴ T.L. Bouscaren, A. Ellis and F. Korth, *Canon Law: A Text and Commentary*, Fourth rev. edit., Milwaukee, Bruce Publishing Co., 1966, p. 34.

⁵⁵ A.G. Cicognani, *Canon Law*, Second rev. edit., (trans.), J.M. O'Hara, F. Brennan, Philadelphia, Dolphin Press, 1935, p. 614.

⁵⁶ F.X. Urrutia, "Can Polygamy be Compatible with Christianity?", p. 283.

principle of Probabilism⁵⁷ allowed church authorities to baptize polygamists who were unable or unwilling to alter their marital status.⁵⁸ Hillman suggested that the probability was intrinsic⁵⁹ and wrote that:

It is enough to show that the opposite opinion in favour of the law, even if it seems more probable, is hedged with unresolved doubts and serious questions; hence is also inconclusive. In the case at hand, therefore, one may either enforce the monogamy rule or ignore it, if one finds the arguments for both sides inconclusive or only probably right.⁶⁰

However, argued Hillman, it is possible to hold that the rule as now understood and canonically mandated, must not be applied. This is inferred, Hillman claimed, from the very rules which moralists generally agree govern the application of Probabilism. Thus moralists recognize that a probably right action (in this case to enforce the law) may not be taken when such an action entails an invasion of certain prior natural or legally contracted rights of other persons. Such natural or legally contracted rights were, in Hillman's mind, the rights of the women who would be dismissed, the rights of their children, the rights of all other participants in a specific kinship system and finally, "the right of any distinctive people to have their immemorial customs and social structures respected when it has not been demonstrated conclusively that these are morally evil."⁶¹

⁵⁷ "The principle of Probabilism is that in cases of doubt as to the lawfulness of any concrete action, if there exists a really probable opinion in favour of liberty, i.e., of disregard of the law, although the opinion in favour of the law is more probable, I may use the former opinion and disregard the latter and in doing so, I am acting with complete moral rectitude." H. Davis, *Moral and Pastoral Theology*, vol. 1, p. 91.

⁵⁸ E. Hillman, "On Polygamy: A Response", p. 301.

⁵⁹ "Probability is said to be intrinsic when the reasons for an opinion are cogent but not conclusive; it is called extrinsic, when the authority, learning, prudence of other people are taken as a proof that the opinion in question is a probably true opinion." H. Davis, *Moral and Pastoral Theology*, vol. 1, p. 95.

⁶⁰ E. Hillman, "On Polygamy: A Response", p. 303.

⁶¹ *Ibid.* A note of caution needs to be added. Hillman's use of language could give the impression (wrongly) that the issue under discussion is not whether practising polygamists ought to be baptized but whether monogamy and polygamy are equally

Not content with arguing for the intrinsic probability of the legitimacy of baptizing practising polygamists, Hillman also argued for its extrinsic probability. Firstly, Hillman claimed that such probability would usually arise if an opinion was supported by theologians who have critically studied a problem, enjoy the professional respect of their peers and whose views have been published by leading theological journals. In fact, Hillman claimed that even the opinion of one reputable theologian would be sufficient to constitute a probable opinion.⁶² Then, Hillman noted the opinion of the German theologian B. Häring who in 1979 had written:

Where polygamy was and unto now is the preferred system, the Church has to fight against new forms of polygamy which are socially disapproved and unacceptable. But I suggest that the Churches admit to baptism and full participation in the life of the Church the polygamous families who find themselves in a socially approved and lawfully contracted marriage of this type when they come to faith. I do not think, however, that the Church should allow her members who are fully evangelised and baptised to enter into polygamous marriage, although she can be temporarily tolerant in exceptional cases such as in the levirate, where the woman and the deceased husband's brother cannot refuse it without grave harm to the persons involved, or in a case similar to Abraham's where a man is urged and forced by his environment to take a second wife when the first is sterile.⁶³

Thirdly, Hillman recorded that he himself had supported such an opinion in his own doctoral dissertation. This dissertation had been accepted by members of a pontifical faculty of theology and subsequently published as a book.⁶⁴ Hillman also mentioned two

acceptable marital structures for Christians.

⁶² Ibid.

⁶³ B. Häring, *Free and Faithful in Christ*, New York, Seabury Press, 1979, vol. 2, p. 538.

⁶⁴ E. Hillman, "On Polygamy: A Response", pp. 303-304. Hillman also claimed that his book entitled, *Polygamy Reconsidered: African Plural Marriage and the Christian Churches*, which was published in 1975, had a "nihil obstat" from the then president of the Canon Law Society of Canada, and an "imprimatur" from the then Archbishop of Ottawa, Canada. No record of such ecclesiastical approbation is contained in the pages of the published work.

other doctoral dissertations equally supportive of Häring's view and both successfully defended at other pontifical faculties of theology, as well as supportive statements made in articles written by internationally distinguished theologians. All these sources, wrote Hillman, "support the probably right course of missionary-pastoral action proposed by Häring", and by implication constitute a solidly probable opinion.⁶⁵

Hillman's advocacy for the use of the principle of Probabilism to support the view that practising polygamists ought to be admitted to Baptism would undoubtedly convince many. However, there are some significant criticisms that can be made about the appropriateness of Hillman's use of the principle. Firstly, many would hold that probabilism can only be applied where there has been no clear and consistent teaching by the Church.⁶⁶ Such a ruling would seem to nullify Hillman's use of probabilism because the Church's teaching and law on the conditions governing the reception of Baptism by polygamists have always been clear and consistent. Secondly, Hillman appealed to the principle of Probabilism to justify non-compliance with present church law on the grounds that otherwise prior natural and legal rights of others would be violated. However, others may well argue that: a) the only natural and legal rights involved are those of true marital spouses, and b) since only monogamy is regarded as the natural marital structure, therefore, c) the principle of Probabilism cannot be invoked to justify non-compliance with church law since that would involve an invasion of the natural rights of the first (or legitimate) spouse of a polygamist. Thirdly, and perhaps most importantly, many may well disagree with Hillman as to what constitutes sufficient grounds for claiming the requisite

⁶⁵ Ibid., p. 304.

⁶⁶ Davis writes: "Probabilism cannot be applied to cases which have speculative probability in their favour but are in practice unlawful, whether on account of some positive enactment, or by reason of an express or virtual contract [...]". H. Davis, *Moral and Pastoral Theology*, vol. 1, p. 98.

extrinsic probability for his (and Häring's) opinion. Hillman appeared to accept the opinion of Häring more on the authority of the person than on the authority of the reasons given. For his part, Häring's statement was given without any critical apparatus that normal theological inquiry demands. Moreover, up until the present not one Episcopal Conference has supported Hillman's opinion. Furthermore, no authoritative theological source has ever claimed that the acceptance of particular dissertations, by universities or their faculties, automatically grounds an argument for the belief of the universal Church, even to the point of "probability". These criticisms of Hillman's use of the principle of Probabilism significantly weaken his argument. Thus any reliance upon the principle for justifying the baptizing of polygamists while not insisting on a change in marital status would appear very suspect.

4. Summation

The above analysis of three theories used by some contemporary theologians who seek to justify a change in church law and practice on the reception of Baptism by polygamists, has revealed little if any general theological consensus. Certainly the investigation has revealed no one striking argument that clarifies all issues and meets with approval from all theologians. Perhaps this is an indication that the problem should be approached differently. If the problem is seen as primarily a doctrinal problem, then any concession or accommodation will also appear to be a doctrinal one. However, if the problem is approached as a pastoral problem, then a generally acceptable solution may be possible. Such an approach would concede nothing by way of doctrine in that it would not necessarily detract from the Church's teaching about the monogamous nature of christian marriage. However, a pastoral solution would accept individuals where they are, but always with the hope that further growth would occur.

It now becomes necessary to investigate what contributions can be drawn from the application of principles that govern the discipline called Pastoral Theology.

Part Four: Possible Contributions from Pastoral Theology

I The Nature of Pastoral Theology

Pastoral theology does not proceed according to the same principles as dogmatic theology or what is often termed objective theology. However, there are no contradictions, for pastoral theology includes dogmatic theology but requires other considerations as well. Pastoral theology, which concerns the principles and axioms of ministerial activity on behalf of people, unfolds within a tension between two poles or sets of data. The first is made up of dogmatic theological reflection concerning transcendental theological principles and ideals. The second concerns the data that defines the concrete or actual situation of the person or people being ministered to. In pastoral theology, in the design of the strategies and activities of ministry, the second pole of the actual situation of the people being ministered to is given the greater emphasis.⁶⁷ According to at least one pastoral theologian this means that christian ministers ought not impose ideals upon those being ministered to which are beyond the capacity of those people; nor should they impose ideals that will actually do them harm. Moreover, the principle is, it is claimed, analogously true in the social-cultural sphere. Christian ideals should always be an appeal to actual freedom, to the

⁶⁷ J.H. Brennan, art., "Pastoral Theology", in New Catholic Encyclopedia, (ed.), W.J. McDonald, New York, McGraw-Hill Book Co., 1967, vol. 10, p. 1084.

actual state of freedom of the person or people being ministered to. Otherwise one risks doing serious harm to the people being ministered to and this in the name of Christ⁶⁸

2. Possible Pastoral Resolutions

From the above views, it is possible to conclude that the Church would be acting according to pastoral principles if without denying or surrendering the ideal of monogamy, it admitted to Baptism polygamists unable or unwilling to alter their marital status. The pastoral action, so the argument goes, would flow from the tension between theological ideals and the concrete situation of the people being ministered to. Thus christian ideals would be presented to peoples' actual freedom, in the condition in which that freedom actually exists. This appears to be the underlying principle in two different studies of the problem of baptizing polygamists. The first study was published in 1973 by A. Hastings and was commissioned by the Anglican Archbishops of Cape Town, Central Africa, Kenya, Tanzania, and Uganda. Hastings based his report on extensive surveys of how the issue was perceived and what policies were followed in anglican dioceses throughout the african continent. Hastings concluded that:

While polygamy as a system clashes with the full ideal of Christian marriage, it is frequently impossible or undesirable in real life to opt out of situations where there is a clash of this kind. To do so will involve still greater evils. The situation needs to be put up with and christianized from within. A non-Christian has accepted lifelong obligations by plural marriage from which he is not entitled to withdraw. To do so is frequently to cause very real injustice and misery both to wives and children. To impose this upon other defenceless people is a strange way of preparing for baptism. It is the women and children, not the men, who mostly suffer in enforced separations of this kind. To end a polygamous marriage in the name of Christ, who said nothing explicitly to condemn it, at the expense of effecting a divorce, which Christ explicitly forbade, is to pay too high a price to achieve theoretical conformity with one part of the Christian marriage pattern. Equally, to say that as a consequence it is impossible for a polygamist to be baptized, if he sincerely believes in Christ, wisens to be a

⁶⁸ Private correspondence from Rev. Prof. Roger Haight, S.J., dated April 17, 1990.

full member of the church and to do all that is right, is to say too much when we have no explicit scriptural foundation for so doing. Hence in view of this report a suitably disposed polygamist can in some circumstances be baptized, together with his wives and children, while fully continuing in his polygamous marriage. If this is done, they should also be admitted to communion.⁶⁹

The second study was published in 1977 and was the result of a four year study of the sociological, theological and pastoral aspects of african christian marriage. This venture was a christian ecumenical work in which representatives of the Catholic Church were full participants. The report offered the following guidelines:

The proposal that follows is based on the assumption that monogamy must be upheld and promoted as the ideal and the normative form of marriage for Christians. It assumes that baptized Christians should not be allowed by the Church to contract polygamous marriages. That being said, the proposal can be outlined as follows:

- a) Persons involved in polygamous marriages and in leviratic unions can be admitted to baptism and the other sacraments.
- b) It is understood that these are "socially approved" cases of simultaneous plural unions.
- c) It is understood that the parties involved remain in these unions freely of their own accord.
- d) It is understood that these are compassionate exceptions in a context where the traditional teaching on monogamy is strictly recognized and applied.
- e) It is understood that these exceptions are made with the explicit consent of the local Christian community as a whole, and with the approval in principle of the local Church (diocese, country) and its leadership.
- f) On the same conditions, cases of Christians who have lapsed into polygamy, or who have entered into leviratic unions, under social or economic pressure or the burden of childlessness, should be treated with equal consideration and sympathy and even readmitted to Communion if these plural unions cannot be dissolved without grave hardship to those concerned.⁷⁰

Such pastoral resolutions have not been endorsed or approved by the Catholic Church and do remain open to criticism. Specifically the resolutions assume that the monogamy rule cannot be understood as an irreformable doctrine of faith; hence binding absolutely and universally, while allowing no exceptions. Secondly, the resolutions suppose that there are

⁶⁹ A. Hastings, Christian Marriage in Africa, p. 77.

⁷⁰ B. Kisenbo, L. Magesa and A. Shorter, African Christian Marriage, pp. 91-92.

today societies where polygamy remains a complete system, totally integrated into all aspects of social and cultural life. This second point is pastorally speaking the more important. It raises the question of whether any toleration ought to be accorded practising polygamists if significant segments of their societies are now naming such a marital structure as oppressive and unchristian. This important point will re-surface when the specific situation at present operative in Papua New Guinea is analyzed.

3. The Question of Canonical Justification

Just as pastoral problems and their solutions are treated as distinct, although not separate, from objective, transcendental and theoretical theological conclusions, so too they are distinct from canonical resolutions. However, legal argumentation concerning any posture of toleration to be accorded polygamists is essential given the social ramifications. Through sound laws a local Church has a way of understanding its being part of the universal Church and the universal Church a way of identifying with a local Church whose practice on a basic cultural issue may be different. An exceptional local Church practice of such magnitude as admitting polygamists to full membership in the Catholic Church would receive great public attention. Thus any such practice must be able to be justified in the public language of church discipline. The question that now needs to be addressed is whether under the current universal law of the Catholic Church a posture of toleration can be accorded?

In July of 1983, the Congregation of the Doctrine of the Faith replied to the Bishop of Honolulu on a number of questions he had raised concerning the pastoral care of divorced and remarried persons. In their replies the Congregation affirmed church practice that barred non-Catholics in irregular marriages from either reception or initiation into the Catholic Church until the irregularity had been remedied through an external forum

procedure. The Congregation further noted that persons in irregular marriages could be accepted into the catechumenate but were unable to receive the sacraments of initiation, "if their first marriage could not, for some reason, be considered invalid."⁷¹ As the canonist J. Huels explained:

The basis for this practice lies in the Church's moral teaching and theology [...]. Those who are in irregular unions are excluded from reception of the sacraments because, according to the traditional way of thinking, they are said to be committing the sin of adultery since one or both partners had entered into a previous union with another spouse.⁷²

Huels also referred to other reasons, mentioned by Pope John Paul II in his Apostolic Exhortation *Familiaris consortio*, as to why the eucharist was denied those in irregular marriages.⁷³ All these reasons, argued Huels, are applicable to catechumens in irregular marriages who desire sacramental initiation, because he wrote:

Through the sacraments of initiation, persons make a public commitment to undertake the obligations of the Christian life. However, if they are in an irregular marriage they are unable to commit themselves to the teaching of Christ and the Church on marital indissolubility. Their marital irregularity is seen as objectively contradicting this teaching.⁷⁴

Obviously both the replies of the Congregation and the opinion expressed by Huels were focused on the issue of marital indissolubility and related to the pastoral care of the divorced and remarried. However, by substituting that other essential element of christian

⁷¹ CLD, vol. 10, pp. 139-140.

⁷² J. Huels, "Reception/Initiation of Non-Catholics in Irregular Marriages", in *Roman Replies and CLSA Advisory Opinions 1990*, (eds.), W. Schumacher & L. Jarrell, Washington, DC, Canon Law Society of America, 1990, pp. 95-96.

⁷³ John Paul II, Apostolic Exhortation, "Familiaris consortio", November 22, 1981, in *AAS*, 74(1982), n. 84, pp. 185-186; English translation in *The Pope Speaks*, 27(1982), n. 84, p. 73: "They are unable to be admitted thereto from the fact that their state and condition of life objectively contradict that union of love between Christ and the Church which is signified and effected by the Eucharist." Huels also mentioned that the Pope in this same document had also alluded to a traditional argument that to allow the irregularly married to the Eucharist would cause scandal to the faithful, confuse them and lead them into error about the Church's teaching. See J. Huels, "Reception/Initiation of Non-Catholics in Irregular Marriages", p. 96.

⁷⁴ J. Huels, "Reception/Initiation of Non-Catholics in Irregular Marriages", p. 96.

marriage viz. unity (or more accurately, unicity), the same reasons can be offered as to why the Church under its present laws cannot normally permit practising polygamists to receive the sacraments of Initiation in the Catholic Church.⁷⁵

What of the possible use of an internal forum solution in cases where a polygamously married person wished to be baptized? A judgment in the external forum is based on the truth as it is perceived by the community, or by those representing the community. However a judgment in the internal forum is based on the truth as it is perceived by an individual person in conscience before God. The two judgments do not always agree. It is, however, the guilt or innocence as established by the internal forum of conscience that fundamentally affects an individual's relationship with God. In certain circumstances this understanding of internal forum has allowed persons who have been divorced and remarried to receive the sacraments of penance and eucharist in places where they will not create scandal. Could not this same internal forum solution be used to allow polygamists to receive the sacraments of initiation?

The internal forum solution is not applicable in the case of polygamists who request Baptism. Again J. Huels succinctly explained why not when he wrote:

The internal forum or good conscience solution is applicable only for the private, spiritual welfare of the individual. A condition for its application is the avoidance of publicity and scandal. [...] it cannot be used by a catechumen in an irregular marriage as a basis for legitimizing the reception of the sacraments of initiation. The sacraments of initiation are public acts, just as marriage is a public act.⁷⁶

⁷⁵ The word "normally" has been used in this sentence for as has been mentioned earlier, there are two exceptions to this policy; namely when those involved in a polygamous marital union are of an advanced age or when polygamists face imminent danger of death.

⁷⁶ J. Huels, "Reception/Initiation of Non-Catholics in Irregular Marriages", p. 96.

The focus for Huels' remarks was not specifically those polygamously married, nevertheless his remarks are apposite. Moreover, any formalized investigative process for approving the use of the internal forum solution with regard to a polygamist's request for Baptism would be unacceptable. To do so would be to externalize the internal forum!

Can a possible canonical justification for allowing polygamists to receive the sacraments of initiation be found in the concept of dispensation? Specifically, can a diocesan Bishop in virtue of the powers granted to him under canon 87 of the 1983 Code, dispense his subjects from the requirements laid down in canon 1148?

As has been seen in chapter three of this thesis, canon 1148 of the 1983 Code of Canon Law requires that a polygamist upon receiving Baptism dismiss all marital companions except one. On the other hand canon 87 §1, of the same Code states:

As often as he judges that a dispensation will contribute to the spiritual good of the faithful, the diocesan bishop can dispense from both universal and particular disciplinary laws established for his territory or for his subjects by the supreme authority of the Church. He cannot dispense, however, from procedural or penal laws or from those laws whose dispensation is especially reserved to the Apostolic See or to another authority.⁷⁷

At first glance it appears that in view of canon 87 §1, if there were occasions when a diocesan Bishop judged that the observance of all the requirements of canon 1148 would not contribute to the spiritual good of the faithful, then he could dispense from those requirements. However, the canonical issues are somewhat more complex. Firstly, canon 86 of the 1983 Code states:

⁷⁷ CIC 1983, c. 87 §1: "Episcopus diocesanus fideles, quoties id ad eorundem spirituale bonum conferre iudicet, dispensare valet in legibus disciplinaribus tam universalibus quam particularibus pro suo territorio vel suis subditis a suprema Ecclesiae auctoritate latis, non tamen in legibus processualibus aut poenalibus, nec in iis quarum dispensatio Apostolicae Sedi aliive auctoritati specialiter reservatur." English translation in Code 1983, c. 87 §1, pp. 25-26.

Laws, to the extent that they define that which essentially constitutes juridical institutes or acts, are not subject to dispensation.⁷⁸

In other words essential elements of both juridic institutes and acts cannot be subject to dispensation because in the absence of one element, the institute or act becomes non-existent. Therefore even though he has the faculty to dispense in other matters, the diocesan Bishop cannot dispense, according to canon 86, from constitutive laws. Secondly, the question needs to be asked as to whether canon 1148 is a constitutive law? The answer it seems is a qualified negative! Qualified because while canon 1148 may not in and of itself be deemed constitutive of marriage it is deduced from canons 1055 and 1056 which certainly are constitutive of marriage. Consequently a diocesan Bishop cannot use his faculties to dispense from the requirements of canon 1148. The very nature of marriage as understood by the Church and incorporated into law in canons 1055 and 1056 is that one of its elements is unity. As has already been mentioned in chapter three of this thesis "unity" includes "unicity", or the exclusion of a multiplicity of simultaneous marital bonds as in polygamous unions. Therefore, according to the law of the Church all polygamous marriages lack an essential element of marriage. This element of unicity is so firm in christian marriage that no diocesan Bishop could dispense any of his subjects from the requirements laid down in canon 1148.

Becoming a Christian entails embracing not only a faith but a way of life. In the Catholic Church Baptism is not only a sacrament but also a juridical act and as such determines an individual's juridical personality in the Church. Were a Catholic to continue living as a polygamist after the reception of the sacraments of initiation, then such a person would be living in a marital situation forbidden by the Church. This prohibition, the

⁷⁸ CIC 1983, c. 86: "Dispensationi obnoxiae non sunt leges quatenus ea definiunt, quae institutorum aut actuum iudiciorum essentialiter sunt constitutiva." English translation in Code 1983, c. 86, p. 25.

Church teaches is based on the Scriptures, upheld by tradition and follows from what has always been understood as pertaining to the essential properties of marriage especially of christian marriage. Such a baptized polygamist could not under the law continue to receive the sacraments, could not be regarded as being sacramentally married and would not be a living witness to what the Church teaches on the nature of marriage and the equality of marital partners. Thus on receiving Baptism the polygamist must dismiss all marital companions except one.

4. Summation

As it appears in the pages of the Old Testament, the God of Israel prepared his people for the coming of the Messiah and the good news brought by him gradually, step by step, over many succeeding generations. The New Testament also discloses a gradual proclamation of the good news by Jesus Christ himself. Such historical processes challenge missionaries to reflect on how new converts, peoples or individuals, should be required to accept the Christian way of life. The problem is real. On the one side, the Old and New Testaments speak of a tactful divine pedagogy; yet on the other side the requirements of the Church can often appear rigid, uncompromising and harsh. Solutions offered by some contemporary pastoral theologians to the question of polygamists requesting Baptism, ought to be seen in the light of this "patient pedagogy of Yahweh, the God of the Old Testament, who is the Father of our Lord Jesus Christ."⁷⁹ However current church law offers no justification for such pastoral accommodations.

Canon Law reflects and incorporates into its legislation the values in Christ's revelation discovered by theology, lived by the People of God and taught in an ecclesial

⁷⁹ B. Häring, foreword to Polygamy Reconsidered, p. vi.

context. The present canonical legislation relating to the reception of the sacraments of initiation by those polygamously married is itself dependent upon a theology of marriage that the Church has long ago incorporated into its official teaching. The assimilation by the Church of any new theological insights can in turn occasion changes in church legislation. However, at present this is not the case with regard to the question of polygamists requesting Baptism. Canon 1148, §1 requires a polygamist to dismiss all of his (or her) partners except one, on reception of Baptism.

Perhaps a solution to what continues to be a perplexing issue for missionaries when evangelizing polygamous societies could come from a better understanding of how a human being meets God. The transforming effect of such a meeting cannot but be slow and painful. God himself wants to give time to human beings to grow into his measure. Placing Baptism at the end of this maturing process and combining this policy with a much better way of handling catechumens may be after all the best pastoral solution.

Part Five: A Proposed Policy for Papua New Guinea

1. Preliminary Remarks

The analysis thus far of historical precedents, theological appraisals and canonical legislation has revealed that under the present universal law of the Church polygamists would normally not be allowed to receive the sacraments of initiation. The examination of the phenomenon of plural marriage in Papua New Guinea, recorded in chapter one of this thesis, is significant. This study revealed that possibly nine per cent of all married males

were polygynists.⁸⁰ While not the main pastoral issue currently confronting church authorities in Papua New Guinea, nevertheless polygamists who wish to become members of the Catholic Church continue to present challenges. If, as is generally the case, church authorities are now not prepared to allow the break up of a harmonious polygamous household, and are at the same time not prepared to ignore church law - then what can be done when polygamists in Papua New Guinea request Baptism?

2. The Proposal

In the search for adequate pastoral policies when evangelizing polygamists, there has been surprisingly little reference by most scholars to a practice initiated in 1957 by church authorities in Senegal.⁸¹ Briefly this solution to the pastoral problem of african polygyny involved the forming of a society called, "Friends of the Christians". This association catered for pagans who wished to become members of the Catholic Church yet were prevented because of their polygamous marriages. These adults upon joining the "Friends of the Christians", were required to express publicly a desire to die in the christian community and hence to promise to ask for Baptism at the point of death. They were also required to give their children, descendants or pupils the immediate possibility of a christian education and to have them baptised after a normal catechumenate. On their part church

⁸⁰ The figure of nine per cent was taken from the last published record made in 1971 by Papua New Guinea's National Statistical Office of the number of polygynists. However, in 1982 the Melanesian Institute for Pastoral and Socio-economic Service, at the request of the Catholic Bishops Conference of Papua New Guinea and the Solomon Islands, began a research project on marriage and family life within Papua New Guinea. In 1990 the Institute published the results of its sociological research and stated that at that time 9.5 per cent of all married men in Papua New Guinea claimed to have simultaneously more than one wife. See J. Conway and E. Mantovani (eds.), *Marriage in Melanesia: A Sociological Perspective*, Point Series No. 15, Melanesian Institute, Papua New Guinea, Goroka, 1990, p. 82.

⁸¹ H. Gravrand, *Visage africain de l'église: une expérience au Sénégal*, Paris, Editions de l'Orante, 1961, pp. 101-117.

authorities a) formally inscribed such people in the association called "Friends of the Christians"; b) offered them the name of a saint as a heavenly protector; c) undertook to administer the sacraments of initiation to the polygamists either in advanced old age or when they were afflicted with a serious and life threatening illness; and d) promised that they would be given a christian burial. Furthermore church authorities initiated a special catechetical program for such people. This catechesis consisted of detailed explanations of the old testament scriptures and stressed the preparatory role of the Old Testament in the history of salvation. Regular prayer meetings near or occasionally in the local church or chapel were scheduled. Gradually the idea was inculcated that inscription into "Friends of the Christians", was a first religious act that affected a person's subsequent behavior and was the beginning of a process that should culminate in full ecclesial membership through Baptism if and when impediments such as previous polygynous marriages were overcome.

It is this policy and program that is proposed for the local churches in Papua New Guinea. Obviously the pastoral opportuneness of such a policy for Papua New Guinea has to be assessed by local church communities and leaders who are best able to evaluate all circumstances and factors peculiar to their local environment. Furthermore in accordance with canon 788, §3 of the 1983 Code of Canon Law, the Papua New Guinea Conference of Bishops would need to incorporate this proposal into their statutes which regulate the catechumenate. This would ensure uniformity of practice in all dioceses of the Conference. It is also interesting to note that what is proposed for Papua New Guinea was greeted enthusiastically in Senegal by both Pagans and Catholics alike. From 1957 until 1959 over 7,000 practising polygynists in that country joined the "Friends of Christians" association. Moreover this same policy and programme were implemented and enthusiastically

supported by church authorities and the indigenous inhabitants of Upper Volta, Zaïre and Nigeria.⁸²

3. Theological Reflections

In an article entitled, "What Belonging to the Church Has Come to Mean", Y Congar commented on the profound changes that had taken place in catholic theology since the Second Vatican Council regarding the notion of membership within the Church.⁸³ Congar rejected what he called the "all or nothing" mentality whereby a strict juridical concept of membership in the Church sufficed to determine who was and who was not a member. This, wrote Congar, invariably excludes the many who, while unable to accept some institutional structures and rules, do profess a sincere belief in Christ as Son of God. On the other hand, Congar recognized the inadequacy of some vague religiosity as being sufficient to constitute a person a member of the Church. The time is opportune, argued Congar, for recognizing the existence of many "threshold groups" whose members are in the process of becoming part of the Church. Such people, and Congar explicitly mentioned those who belonged to the association called "Friends of the Christians", enjoy a real affiliation with the Church of Christ.⁸⁴ The Church, wrote Congar, is first an assembly of catechumens before being an assembly of believers who celebrate the Eucharist. If a person is seen as being on the way and ultimately open to accepting the total heritage of Christ's Gospel then such a person is already in an embryonic sense a member of Christ's Church.

⁸² Ibid., p. 114.

⁸³ Y. Congar, "What Belonging to the Church Has Come to Mean", in *Readings, Cases, Materials in Canon Law: A Textbook for Ministerial Students* (eds.), J.F. Hite, and D.J. Ward, Rev. edit., Collegeville, Liturgical Press, 1990), pp. 168-178. This article first appeared under the title, "Sur la transformation du sens de l'appartenance à l'Église", in *Revue catholique internationale: Communio*, 1(1975-1976), pp. 41-49.

⁸⁴ Ibid., p. 178.

On the other hand there are theologians who are opposed to accepting polygamists into a catechumenate and making this catechumenate last until death or till the cessation of conjugal relations. B. Häring has written:

I do not see how on the one hand one can fully recognize the good-will of those concerned (practising polygynists) and promise them salvation through faith while at the same time refusing them the sacraments of faith. The sacramental life of the Church should communicate a message identical to the message of evangelization, that is, make visible that the Lord brings peace to all men of good will.⁸⁵

However, a policy of enrolling polygamists as catechumens would accomplish two things. Firstly, it would recognize and respect the missionary role of the Church: of being a sign of God's saving love among the nations. This sign is manifested by the presence of a believing community, and not upon the Baptism of all individuals. As E. Hillman once wrote:

The presence of the Church among the nations is a sacramental, and therefore a symbolic sign which tangibly signifies an invisible reality. Precisely because it is a symbolic sign, its validity does not depend on the total conversion to the visible Church of every single individual in one place.⁸⁶

Because they are joined to the Church, catechumens can enhance and enrich the sign-value of the Church's presence, which nevertheless, is not dependent upon any single individual. Secondly, such a policy would strengthen the prophetic function both of the Church and christian marriage.⁸⁷ The Church has an obligation to proclaim the truth. This can mean that sometimes the Church is called upon to bear witness to a particular truth in a given society, depending on the circumstances of that society. While the Church fulfills her prophetic role by her teaching this role is most effectively realised in the lives of her

⁸⁵ B. Häring, Evangelization Today, p.156.

⁸⁶ E. Hillman, The Church as Mission, New York, Herder & Herder, 1965, p. 51.

⁸⁷ J. Downey, "Polygamy: The Wrong Reasons", in AFER, 28(1975), pp.147-153.

members. The witness of the Church can be seriously impaired if church teaching is contradicted by church practice. It follows then that in a polygamous society the Church has a duty not just in her official teaching but especially in her ecclesial practice to bear witness to monogamy as the normative ideal for all married people. Christian marriage is not just a means of grace for individual Christians but also a leaven in society whether that society be Christian or not. Such an argumentation when used to support a policy of admitting polygamists to a catechumenate but not to Baptism is (as will be explained in the next section) of especial significance in present day Papua New Guinea.

Perhaps this is an appropriate place to make a brief reference to both the Church's teaching on the necessity of Baptism for salvation and the way in which the sacrament of Baptism can be received. The Council of Trent solemnly taught that after the promulgation of the Gospel no one could be saved without having received Baptism or at least had the desire to be baptized and condemned anyone denying the necessity of Baptism.⁸⁸ In 1949 the Holy Office again addressed the issue when the proper understanding of the expression "there is no salvation outside the Church" (*extra Ecclesiam nulla salus*) was called for. In part the Holy Office noted that:

In His infinite mercy God has willed that the effects, necessary for one to be saved, of those helps to salvation which are directed towards man's final end, not by intrinsic necessity, but only by divine institution, can also be obtained in certain circumstances when those helps are used only in desire and longing. This we see clearly stated in the Sacred Council of Trent, both

⁸⁸ Concilium Tridentinum, "Decretum de justificatione", sessio vi, Jan. 13, 1547, in H. Denzinger and C. Bannwart, *Enchiridion symbolorum definitionum et declarationum de rebus fidei et morum*, 15 edit., Fribourg, Herder & Co., 1922, no. 796: "Quibus verbis justificationis impiis descriptio insinuat ut sit translatio ab eo statu, in quo homo nascitur filius primi Adae, in statum gratiae et adoptionis filiorum Dei per secundum Adam, Jesum Christum, Salvatorem nostrum. Quae quidem translatio post Evangelium promulgatum sine lavacro regenerationis aut eius voto fieri non potest [...]". Idem, sessio vii, Martii 3, 1547, in H. Denzinger and C. Bannwart, *Enchiridion symbolorum*, no. 861: "Si quis dixerit, baptismum liberum esse, hoc est, non necessarium ad salutem: anathema sit."

in reference to the sacrament of regeneration and in reference to the sacrament of penance.⁸⁹

Thus Baptism is received in fact (*in re*) when the person is washed with water while the necessary words are pronounced (c. 849). However, if a person wants to receive the sacrament but for some reason is impeded, then if that person dies he or she is said to have Baptism of desire (*in voto*) and if he or she is properly disposed, that person is saved.⁹⁰ Thus any claim that since polygamists are excluded from the reception of the sacrament of Baptism in fact (*in re*), they are therefore deprived of the necessary means of salvation is not supported by church teaching. Moreover, from its earliest history, the Church has not manifested a preoccupation about baptizing converts quickly. On the contrary, for many centuries a catechumenate lasting several years was very common and considered necessary.⁹¹ In fact the Church excluded certain categories of people from being baptized because of the profession they engaged in, unless they changed from them altogether.⁹² Therefore there is also some historical precedent for establishing an extended catechumenate, as well as for excluding certain categories of people from Baptism.

4. Pastoral Advantages

When a community does not accept polygamists for Baptism, it is not thereby constrained in its exposition of the meaning of christian marriage, nor required to make distinctions among its baptized members. Thus the Church can teach the full reality of

⁸⁹ Holy Office, Letter of August 8, 1949 to Archbishop R.J. Cushing of Boston, in CLD, vol. 3, pp. 527-528.

⁹⁰ Concilium Vaticanum II, "Constitutio dogmatica de ecclesia", *Lumen gentium*, November 21, 1964, in AAS, 57(1965), no. 16, p. 20.

⁹¹ T. Maertens, *Histoire et pastorale du rituel du catéchuménat et du baptême*, Bruges, Publications de Saint-André, 1962, Paroisse et liturgie; Collection de pastorale liturgique, no. 56, p. 88.

⁹² *Ibid.*, p. 87.

christian marriage including those essential properties of unity and indissolubility. At the same time a place is provided within the christian community for polygamists and they are included in the evangelization mission of the Church.

The purpose of the catechumenate for polygamists is to assist them to live a christian life appropriate to the state in which they find themselves.⁹³ The polygamist's status as a catechumen is neither looked upon as permanent or temporary. One of the purposes of any instruction would be to help a polygamist understand that God knows about and expects him or her to shoulder the obligations of a polygamous marriage which he or she cannot abandon in order to receive Baptism. However, instead of being directed towards the future, the catechesis of a polygamist can also be directed to what the man or woman can do now, in his or her present circumstances.

In Papua New Guinea the adoption of a policy which would enrol some polygamists as catechumens would carry with it at least three obvious advantages. Firstly, it would avoid the problems associated with the mandatory break-up of polygamous households.⁹⁴ Such mandatory dismissal of extra spouses was required by church

⁹³ Concilium Vaticanum II, "Decretum de activitate missionali ecclesiae", *Ad gentes*, December 7, 1965, in *AAS*, 58(1966), no. 14, pp 962-963; English translation in *Flannery - Vatican II*, p. 828.

⁹⁴ In July of 1970 the Congregation for the Doctrine of the Faith issued guidelines for the conferral of Baptism on the children of non-catholic parents. In part this directive read: "Dans le cas d'infantes' de parents non chrétiens ou chrétiens 'irréguliers'; N.B. Par chrétiens 'irréguliers', il faut entendre ici le chrétiens polygames, concubinaires, époux légitimes ayant abandonné toute pratique régulière de leur foi, ou qui demandent le baptême de l'enfant pour de pures raisons de convenance sociale. a) Il importe de leur faire prendre conscience de leurs responsabilités. b) Il importe en outre de juger de la suffisance des garanties concernant l'éducation catholique des enfants - garanties données par quelque membre de la famille, ou par le parrain ou la marraine, ou par l'appui de la communauté des fidèles (Par garanties, nous entendons qu'il y ait espoir fondé d'éducation catholique). c) Si les conditions sont suffisantes au jugement des pasteurs, L'Eglise peut procéder au baptême, car les enfants sont baptisés dans la foi de L'Eglise. d) Si elles ne le sont pas, on

authorities in the past and caused a great many difficulties.⁹⁵ Secondly, such a policy would provide continuity with past church teaching and practice. In many parts of the country people associate the demise of polygamy with a firm rejection of this marital institute by the Church.⁹⁶ At this stage, particularly when the incidence of polygamous marriages appear to be on the wane, allowing polygamists to receive the sacraments of initiation would confuse many. Thirdly, and perhaps most importantly, such a policy would contribute greatly to the way the Christian understanding of marriage can act as a leaven in society. This point was briefly alluded to in the previous section, perhaps here is the appropriate place to elaborate further.

Certain parts of Papua New Guinea, where the incidence of polygynous marriages remains high, were only opened up to the outside world some fifty years ago. The people of these regions have experienced rapid social change. Their cultural assumptions, accepted for centuries, have either been shattered or appear often now to impede the realization of harmonious social relationships. Polygyny, once an honored tradition and one in which all spouses were respected appears to be one such institute that has become

pourra proposer aux parents: l'inscription de l'enfant en vue d'un baptême ultérieur; le maintien de contacts pastoraux avec eux, permettant de préparer l'accueil ultérieur en vue du baptême." Responsum, Sacra Congregatio Doctrinae Fidei, July 13, 1970, in X. Ochoa, *Leges ecclesiae post codicem iuris canonici editae*, Roma, Commentarium pro Religiosis, 1974, vol. 4, no. 3884, cols. 5862-5863.

⁹⁵ This policy was followed by local church authorities in both the Simbu and East Sepik Provinces. This policy and its effects have been recorded by anthropology students from the country's university and were subsequently published in a government monograph. Law Reform Commission of Papua New Guinea, *Marriage in Papua New Guinea*, Port Moresby, Government Printer, 1986, pp. 87, 143.

⁹⁶ Case studies recorded in the provinces of the Southern Highlands, Western Highlands, Eastern Highlands, Madang, West Sepik and New Ireland, illustrate this point. See Law Reform Commission of Papua New Guinea, *Marriage in Papua New Guinea*, pp. 52, 78, 107, 135, 155, 175.

debased.⁹⁷ In fact some observers now claim that polygyny is now only justified by having recourse to what they negatively describe as "cultural fundamentalism."⁹⁸ In light of these facts the adoption of a pastoral policy which would permit polygamists of good faith to enter a catechumenate but not admit them to Baptism would: a) reaffirm married couples in their vocation; b) possibly dissuade some from contemplating a polygamous union; c) contribute to the need throughout the country to uphold the dignity of persons (particularly women); and yet d) allow those polygamists who have entered their marital unions in full accord with their own cultural traditions a close relationship in faith, hope, and love to the Church.

5. Canonical Justification

In 1971 the Congregation for the Doctrine of the Faith replied to a query from the Apostolic Legate in West Africa. The Legate had requested directions on how to proceed

⁹⁷ According to one social worker, attached to the Baisu Corrective Institute in the western highlands province, the number of convictions for homicides relating to marital strife amongst co-wives of polygynists had by 1990 increased five fold from what had been the case in 1987. Cfr. D. Tennent, *The Plight of Women in the Highlands*, unpublished paper delivered at Mt. Hagen, Western Highlands Province, August 8, 1991, 13p(mimeographed). Tennent notes that in 1990 the National Court in Mt. Hagen dealt with 30 of these cases and handed down prison sentences ranging from four to twelve years.

⁹⁸ Writing on the sociological aspects of present-day polygamy in Papua New Guinea, the authors J. Conway and E. Mantovani write: "By cultural fundamentalism we mean the attitude which does not ask 'What is the meaning of this traditional custom?' but looks only at the outside form which is handed down." These same authors also add: "Traditionally, at the level of ideals, polygamy, as any marriage, was entered into to serve the community. [...] the ideal was, and remained, service to the community. [...] Today, one has every reason to doubt the value of service to the community in polygamy. Often it is only an empty cultural shell which is used to cover up personal egoistic purposes and to justify blatant sexual discrimination. The traditional value of polygamy has been eliminated and turned into a negative value. Cultural fundamentalism of this type is used to discriminate and to exploit. [...] Maybe there are still cases where, given the socio-economic situation, polygamy still remains a service. But especially in an urban situation, polygamy as a service to society is a mockery of the traditions of the Ancestors." J. Conway and E. Mantovani (eds.), *Marriage in Melanesia*, pp. 148-149.

when tribal chiefs, who were polygynously married and were unable to leave their extra wives, requested Baptism.⁹⁹ While the Congregation's reply re-iterated the traditional guidelines it also suggested that missionaries enrol polygamists of good faith in the catechumenate and specifically mentioned the association called "Friends of the Christians", as a helpful organization for such people.¹⁰⁰ In 1983 the Congregation for the Doctrine of the Faith in reply to queries raised by the Bishop of Honolulu stated that persons in irregular marriages could be admitted to the catechumenate.¹⁰¹ Both these responses from the Congregation for the Doctrine of the Faith were private. Nevertheless, they do indicate that if polygamists of good faith are admitted to the catechumenate then it is not against the law.

Traditionally catechumens were non-baptized persons who sought admission to the church through Baptism. Texts taken from documents issued by the Second Vatican Council have formed the basis for the renewal of the catechumenate in current liturgical practice and canon law. The conciliar document called "The Dogmatic Constitution on the Church" (*Lumen gentium*) stated:

Catechumens who, moved by the Holy Spirit, desire with an explicit

⁹⁹ Responsum, Sacra Congregatio Doctrinae Fidei, November 18, 1971, in *Documenta recentiora circa rem matrimonialem et processualem cum notis bibliographicis et indicibus*, (eds.), I. Gordon and Z. Grochowski, Romae, Pontificia Universitas Gregoriana, 1977-1980, vol. 2, pp. 279-280

¹⁰⁰ Ibid., p. 280: "Si les personnes en question ne peuvent, ou ne peuvent pas encore, se ranger à cette solution parfois difficile et lourde de conséquences sociales, on peut les accepter dans le catéchuménat, où les missionnaires doivent les éduquer dans la vie et la morale chrétiennes. Dans cette ligne se situent aussi les 'confréries d'amis chrétiens' qu'on a organisées ici et là pour des polygames de bonne volonté".

¹⁰¹ CLD, vol. 10, p. 139.

intention to be incorporated into the Church, are by that very intention joined to her. With love and solicitude mother Church already embraces them as her own.¹⁰²

Then the conciliar decree, "On the Church's Missionary Activity" (*Ad gentes*) stated

Those who have received from God the gift of faith in Christ, through the Church should be admitted with liturgical rites to the catechumenate [] The juridical status of catechumens should be clearly defined in the new Code of Canon Law. Since they are already joined to the Church they are already of the household of Christ and are quite frequently already living a life of faith, hope and charity.¹⁰³

Both these texts when combined with the directive contained in the conciliar document entitled, "The Constitution on the Sacred Liturgy" (*Sacrosanctum concilium*) formed the basis for the specific canon on catechumens in the 1983 Code of Canon Law.¹⁰⁴

Canon 206 of the 1983 Code of Canon Law which incorporates the insights about the catechumenate contained in the documents of the Second Vatican Council states:

§1. Catechumens are in union with the Church in a special manner, that is, under the influence of the Holy Spirit, they ask to be incorporated into the Church by explicit choice and are therefore united with the Church by that choice just as by a life of faith, hope and charity which they lead; the Church already cherishes them as its own.

§2. The Church has special care for catechumens; the Church invites them to lead the evangelical life and introduces them to the celebration of sacred

¹⁰² Concilium Vaticanum II, "Constitutio dogmatica de ecclesia", *Lumen gentium*, November 21, 1964, in *AAS*, 57(1965), no. 14, p. 18; English translation in *Flannery - Vatican II*, p. 366.

¹⁰³ Idem, "Decretum de activitate missionali ecclesiae", *Ad gentes*, December 7, 1965, in *AAS*, 58(1966), no. 14, p. 962; English translation in *Flannery - Vatican II*, pp 828-829.

¹⁰⁴ Idem, "Constitutio de sacra liturgia", *Sacrosanctum concilium*, December 4, 1963, in *AAS*, 56(1964), no. 64, p. 117; English translation reads: "The catechumenate for adults, comprising several distinct steps, is to be restored and brought into use at the discretion of the local ordinary. By this means the time of the catechumenate, which is intended as a period of suitable instruction, may be sanctified by sacred rites to be celebrated at successive intervals of time." in *Flannery - Vatican II*, p. 21.

rites, and grants them various prerogatives which are proper to Christians.¹⁰⁵

This canon grounds the juridical status of the catechumen. Catechumens are not in fact baptized, therefore they are not physical persons in the Church and apt subjects of rights and responsibilities (c. 96). However, the Church confers on them certain prerogatives by way of privilege. These prerogatives include receiving certain blessings and sacramentals (c. 1170) and being regarded as if they were members of the Christian faithful when it is a question of funeral rites (c. 1183, §1). In these ways canon law indicates the special care accorded by the Church to catechumens.

Thus it appears that what has been proposed earlier in this section of the chapter is not in opposition to current church law. Furthermore in a work published in 1988, N.P. Ouédraogo reported that a similar proposal had been implemented within four of the dioceses of the african country called Burkina Faso (formerly known as Upper Volta).¹⁰⁶

Conclusion

Nearly twenty years ago when A. Hastings published his findings on the state of christian marriage in Africa he noted that Christians took one of four basic positions in

¹⁰⁵ CIC 1983, c. 206, §1: "Speciali ratione cum Ecclesia conectuntur catechumeni, qui nempe, Spiritu Sancto movente, explicita voluntate ut eidem incorporentur expetunt, ideoque hoc ipso voto, sicut et vita fidei, spei et caritatis quam agunt, coniunguntur cum Ecclesia, quae eos iam ut suos fovet." §2: "Catechumenorum specialem curam habet Ecclesia quae, dum eos ad vitam ducendam evangelicam invitat eosque ad sacros ritus celebrandos introducit, eisdem varias iam largitur praerogativas, quas christianorum sunt propriae." English translation in *Code 1983*, c. 206, p. 69.

¹⁰⁶ N. P. Ouédraogo, *Polygamie traditionnelle des Moose et communauté ecclesiale. Aspects juridiques et implications pastorales*, Rome, Université Pontificale Urbanienne, 1988, pp. 216-218. The author mentions the dioceses of Ouagadougou, Ouahigouya, Koupèla and Kaya. See Appendix.

regard to polygamous marriage.¹⁰⁷ The first position is that polygamy is simply a sin, comparable to adultery. The second position is that polygamy is an inferior form of marriage, not sinful where it is the custom but always unacceptable for Christians. The third position is that polygamy is a form of marriage less satisfactory than monogamy and one which cannot do justice to the full spirit of christian marriage, but in certain circumstances can still be tolerated. The fourth position is that polygamy is one form of marriage, monogamy another. Each has its advantages and disadvantages. They are appropriate to different types of society and it is not the task of the Church to make any absolute judgment about them.

Persuasive theological, philosophical, scriptural and anthropological arguments can be and have been marshalled to support one or other of the above four positions. The position affirmed today by the Catholic Church is practically speaking the second one. However, not that long ago the much more negative evaluation contained in the first position was the generally held opinion within the Catholic Church. Thus in the only reference made to simultaneous plural marriage by the Second Vatican Council, polygamy was classified along with divorce and free love as being a disfigurement that obscured the excellence of marriage.

A not inconsiderable number of contemporary catholic theologians now argue that the Catholic Church's policy and its canon law can and should be changed so that the third position becomes a possibility under the universal law of the Church. The grounds upon which this argument is based are varied, the manner in which the argument is presented is persuasive, and the foreseeable consequences of adopting such a policy are presented as

¹⁰⁷ A. Hastings, *Christian Marriage in Africa*, p. 73.

being reasonable and eminently realistic. Nevertheless significant criticisms of the third position both on a theoretical and pastoral level can be made.

It is the practical and pastoral criticisms against the third position that would probably elicit the greatest support amongst members of the Catholic Church in Papua New Guinea. Slowly under the influence of the forces of modernity married women in Papua New Guinea are being accorded the same rights and respect as their male counterparts. Indeed as one recent sociological survey has stated: "Often it [polygamy] is now only an empty cultural shell which is used to cover up personal egoistic purposes and to justify blatant sexual discrimination".¹⁰⁸ In view of such an assessment any admittance of practising polygamists to the sacraments of initiation could be counterproductive. The commitment of the Church to the realization of all the values associated with christian marriage and to the respect that ought to be accorded all persons irrespective of gender might well be undermined.

The proposed resolution suggested in this chapter to the problem of what to do when a polygamist requests Baptism is not that new. Surprisingly almost 100 years ago Cardinal Lavigerie directed the Missionaries of Africa to follow much the same policy. Furthermore the proposal as suggested in this chapter is one that was in 1971 recommended in a private reply of the Congregation for the Doctrine of the Faith. A similar resolution, in at least one african country has formed the basis for an inter-diocesan pastoral policy. Thus while canon 1148 of the 1983 Code of Canon Law remains unchanged by such a proposal, a solution that is theologically sound, pastorally prudent and canonically acceptable is suggested for church authorities in Papua New Guinea to consider.

¹⁰⁸ J. Conway and E. Mantovani (eds.), Marriage in Melanesia, p. 149.

- GENERAL CONCLUSION -

Accurate scientific information, the scriptures, the past teaching and practice of the Church, theological reasoning and the all round pastoral opportuneness within the contemporary situation have constituted the major sources of analysis in this thesis. From this systematic analysis the following conclusions may be drawn:

1. Scientific Information

Accurate scientific data, particularly in the fields of anthropology, sociology and psychology, has helped expose the fallacy of ethnocentrism. In particular the view that polygamy was always simply a question of sexual gratification has been discarded. Recognition of the delicate nexus that exists between simultaneous plural marriage and all other elements of a unique and polygamous culture encourages a sensitive and respectful attitude towards polygamists. However, anthropologists are generally agreed that full reciprocity and equality among spouses in polygamous unions are structurally impossible. Moreover, as traditional economic structures are replaced, as women gain readier access to formal education and as political power begins to transcend clan or tribal boundaries, anthropologists cautiously predict that polygyny as a socially recognized and legally valid form of marriage will be discarded by most societies. Much the same observations can be made about the nature, role and present incidence of polygyny (there being no recorded cases of polyandry) among the many different tribes of Papua New Guinea.

While the best available scientific data to date has helped minimize inaccurate assessments of the marital institute called polygamy, this same information has also highlighted the fact that in polygynous societies the female is accorded a different and inferior ontology to that of her male counterpart. Such data helps legitimate the Church's consistent refusal to baptize practising polygamists, unless they are prepared to change their

marital status. It is a specifically christian anthropology, where male and female are considered equal, that underpins church legislation on marriage. What the science of cultural anthropology reveals about polygamy is that such a marital structure can never allow for the full realization of what Christians consider as marriage.

2. The Scriptures

While stopping short of infallibly pronouncing that the monogamy rule is binding absolutely and universally and so stated in the scriptures, Popes and Councils of the Church have seen in the second chapter of Genesis (Gen. 2: 24), and in various texts of the new testament scriptures (Mtt. 19: 5-9; Lk. 16: 18; 1 Cor. 6: 16; 7: 10-13; Eph. 5: 31) a portrayal of monogamy as "an absolutely original revelation which bears the mark of God".¹ Such a view has been supported by the vast majority of scriptural scholars in the past and continues to enjoy support amongst some contemporary scriptural exegetes. Other contemporary scriptural exegetes would maintain that over a period of some one thousand years a distinct development with regard to the dignity of the individual both male and female is discernible in the history of the Chosen People. Such a development while complex in causation contributed, they argue, to the consensus that existed amongst most Jews at the time of Jesus, that monogamy was the only permissible marital arrangement. A norm which was then followed by the followers of Christ. There is also the opinion, advanced by a few contemporary experts, that no decisive guidance positive or negative on the question of polygyny (polyandry is never mentioned in either the Old Testament or the New Testament) can be found in the entire Bible. A possible inference from such an

¹ John Paul II, "Ad christianos sponso, Kinsasae in ecclesia S. Petri Ap. congregatos, habita: de charactere monogamico primi matrimonii divinitus instituti", May 3, 1980, in *AAS*, 72(1980), p. 425: "[...] une révélation absolument originale, qui porte la marque de Dieu." For a more extended quote see footnote 53 of chapter three of the thesis.

opinion is that on the basis of the scriptures both monogamy and polygyny are acceptable marital structures for christians depending on their specific cultural settings.

The three opinions outlined in the previous paragraph represent the opinions of all competent contemporary exegetes. As was pointed out in chapter one of this thesis, the third opinion is deemed to be the least likely explanation. The view expressed in this thesis is that it is irrelevant whether one opts for the first and more traditional explanation or the second and more contemporary suggestion. Irrelevant because, if either the first or second opinion is followed, then from the scriptures alone it becomes impossible to justify polygamy as a suitable marital structure for Christians. However, no decisive guidance can be found in the Bible as to whether practising polygamists unable or unwilling to alter their marital situation, should be baptized. The most that can be said is that the New Testament stresses the ideals of equality, reciprocity and mutual service in a christian understanding of marriage. By implication then marital arrangements which structurally obscure these values, such as polygyny and polyandry, are discredited.

3. The Past Teaching and Practice of the Church

The original gospel insight of marital reciprocity and equality presupposed monogamy as the appropriate structure for Christians who wished to become married. The fact that generally the early Church did not encounter polygamous societies helps explain why monogamy quickly became an absolute presupposition within the Christian Church. Moreover, the early Church was confronted with the extremes of rabid asceticism and antinomian eroticism. In such a climate it was not surprising that while Church authorities resisted attempts to restrict marriage to the purpose of procreation of children and insisted that the values of mutual support, love and assistance were also important elements of a christian marriage, they would have shown little sympathy to any movement which would

have tolerated the practice of polygamy amongst newly converted Christians. Aside from the fact that there was little pressure for such toleration from pagan society any relaxing of the monogamy rule would have damaged the credibility of the Church as it sought to combat the Encratites, Gnostics, Montanists, Novatians and Priscillianists who vied with one another in the pursuit of ascetic extremes. Thus, while the Church may have come into contact with polygamous societies, at least in the East, there is no extant evidence to suggest that its early monogamous stand was significantly modified.

From the fourth to the eleventh centuries social and cultural influences continued to buttress the Church's firm stand on monogamy. Generally the peoples of northern and eastern Europe were monogamous and thus polygamy never became a wide-spread pastoral and missionary problem for the Church. However in A.D. 866 Pope Nicholas I specifically rejected polygyny both as an unchristian practice and as contrary to the original human condition. Interestingly, this pope indicated that the basis for his teaching rested on the fact that "from the beginning God made only one man and one woman".² This allusion to the creation account in the second chapter of the book of Genesis (Gen. 2: 24) was to be repeated by many subsequent popes whenever the questions of admitting polygamists to Baptism or permitting Christians to become polygamists arose. There is some evidence which suggests that in a few instances, particularly with regard to powerful secular rulers, some ecclesiastical authorities took a pragmatic line and accorded a measure of toleration towards some Christians who were polygynists. Nevertheless, the Church during this period of its history never officially permitted practising polygamists to receive Baptism nor condoned the practice of polygamy for Christians.

² Pope Nicholas I, "Responsa ad consulta Bulgarorum", in *Sacrorum conciliorum nova et amplissima collectio*, (ed.), J.D. Mansi, Parisiis, Welter, 1901-1927, vol. 15, col. 419: "[...] ab initio masculinum unum fecit et unam feminam tantum [...]".

From the eleventh to the sixteenth centuries, monogamy which had been the traditional marital arrangement in western societies was further enshrined by the scholastic systematization of theology, the development of a unified church law and the ascendant role of the Church in the political and cultural life of the West. In 1201 Pope Innocent III declared that the polygynous marriages of the hebrew patriarchs were exceptions to the general prohibition against simultaneous multiple marriage. However, expanding on what one of his predecessors, Pope Nicholas I, had taught, Innocent III argued that because Christ had repeated the phrase from the second chapter of the book of Genesis, "two in one flesh" (Mtt. 19: 5-6; Mk. 10: 7-8), polygamy was now prohibited unless an exception was again permitted by a divine revelation. Furthermore in a passing reference to polygamy the Council of Lyons in 1274 declared that both polygyny and polyandry were not true marital arrangements. Arguments advanced by some theologians that the Church could adopt a posture of toleration and accommodation towards polygynists were largely theoretical. Some of the Reformers attracted considerable opprobrium from all quarters when contrary to the mores of society they accorded a grudging toleration to polygynous marriages for some Christians. The Council of Trent's repudiation of polygyny as an acceptable marital arrangement for Christians was in all likelihood motivated by the realization of the vulnerable position of some of the Reformers who had sanctioned the bigamous marriage of Philip, the Landgrave of Hesse with Magaret von der Saal. Nevertheless this conciliar teaching was totally consistent with past church practice and legislation.

The sixteenth to the nineteenth centuries marked an era of intense missionary activity by the Catholic Church. At the beginning of this period the promulgation of three Apostolic Constitutions (*Altitudo* - 1537; *Romani Pontificis* - 1571; *Populis* - 1585), helped facilitate the work of the evangelization of peoples who practised general or limited

polygamy. While all three Constitutions avoided condemning simultaneous multiple marriage as sinful, nevertheless the question addressed was: Which wife should a polygynist consider as his legitimate wife once he became a Christian? The underlying assumption was at least that simultaneous multiple marriage was incompatible with the christian life or even that polygamy was not a true marital structure. The Council of Trent's condemnation of polygyny as an acceptable marital structure for Christians plus the guidelines contained in the aforementioned Constitutions had a pervasive influence throughout the Catholic Church. As a result all polygamists seeking Baptism were required to alter their marital status upon the reception of the sacraments of initiation. It was this policy that eventually became incorporated into the Church's universal law as canon 1125 of the 1917 Code of Canon Law.

Towards the end of the nineteenth century a view emerged among some christian missionaries which tentatively suggested that while monogamy was the normative ideal for married Christians a tolerant attitude towards polygamists was both possible and desirable when the Gospel was preached to people living in a polygamous society. Eventually this view led some Christian Churches to alter their legislation such that some polygamists were permitted to receive Baptism. A latent respect for the many values enshrined in the marital customs of polygamous societies and a growing acceptance of a more existential and personalist approach to understanding christian morality helped justify such a change of policy. In the Catholic Church such a view, which enjoyed support from some catholic missionaries and theologians, did not result in any change of church legislation. In fact, until the present, the Catholic Church has not changed its traditional policy on the subject of the baptizing of polygamists, even though the 1917 Code of canon Law has now been superceded by the 1983 Code of Canon Law. Popes in this century, like their predecessors, have continued to invoke certain scripture texts as indications that monogamy

is the divinely willed form of marriage for all people. Then the Second Vatican Council labelled polygamy as a disfigurement of marriage. Finally various dicasteries of the Roman Curia continue to maintain that monogamy is a moral demand of the New Law as taught by Christ and therefore polygamists unable or unwilling to change their marital status cannot normally be baptized. However, a combination of pastoral accommodations, either suggested or approved by various Congregations of the Roman Curia, have in more recent years helped balance the firm insistence on the traditional policy. Such accommodations are the enrolling of polygamists into a catechumenate, the promise that suitably disposed polygamists will be baptized in danger of death or that in advanced old age and in the absence of scandal polygamists will be allowed to receive the sacraments of initiation. Thus within the Catholic Church a policy that has been operative in its law for centuries has been retained while at the same time suitably disposed polygamists have the possibility to participate to some extent in the Church's life and give witness to Christ's redeeming presence.

4. Theological Developments

With the advent of the twentieth century, prominent theologians began to elaborate in their treatises on marriage a far more comprehensive approach to the personalist values in a christian understanding of sexuality. Such a methodology had considerable influence on those christian authorities who had to preach the Gospel of Christ in polygamous societies. In the past moral theologians placed little emphasis on empirical data, and natural law ethics proceeded deductively from a metaphysical analysis of man's individual and social nature. Normative behavior was arrived at syllogistically and the moral imperative was fundamentally a logical imperative flowing from an "a priori" premise. The actual behavior of people and their moral appreciation of this behavior was considered irrelevant to the determination of moral norms. On the basis of such a methodology many moral

theologians in the past claimed that the natural law enshrined monogamy as the natural form of marriage and this particular form was binding on all, even non-Christians.

In chapter four of this thesis, it was suggested that from a renewed understanding of the natural law there might come the theoretical foundation for justifying a posture of toleration towards polygamists who wish to become baptized. Such an issue goes well beyond the parameters of this thesis and must await further detailed analysis. However, as was pointed out earlier in this conclusion, the Church has sought legitimation for the position that from the Scriptures only a monogamous marriage is a true marriage. Arguments from natural law ethics buttressing this position and based upon a particular understanding of the natural law that arose in the late Middle Ages, even if now judged to be defective, do not necessarily invalidate the Church's understanding about the nature of marriage. As was stated in chapter four the Catholic Church's teaching on marriage is not determined by sociological and phenomenological considerations. Rather the teaching rests upon a theological anthropology crafted from God's revealing Word.

In the teaching of the Catholic Church, marriage is an intimate community of life and conjugal love and between baptized persons has been raised by Christ the Lord to the dignity of a sacrament. In the light of Christ's emphasis on the reciprocal relations of husband and wife and on the intimacy of their union (Mtt. 19: 3-9), ideally, within christian marriage, two individuals, in reciprocal relations with each other but in equal subservience to the Godhead, should so develop their physical, social and spiritual complementarities that each finally comes into the presence of the Godhead in and through the other. This reciprocity and complementarity of one (male) - to one (female) in relation to a third (the Godhead), is obscured by substituting, in the case of polygyny one (male) to x (females), or in the case of polyandry one (female) to x (males). Both forms of polygamy inevitably

bestow a superiority on the one. Such an imbalance is not necessarily avoided through monogamy but at least monogamy as a structure enables the christian ideal of marital reciprocity to be realised while in both forms of polygamy this is structurally impossible. This surely is what has led all Christian Churches to uphold monogamy as the ideal christian marital arrangement and has led the Catholic Church to insist that upon reception of Baptism polygamists must alter their marital status.

5. Pastoral Opportuneness

A specific aim of this thesis has been to focus the analysis of canon 1148 in terms of Papua New Guinea. To some extent practical pastoral decisions relating to the baptizing of polygamists obviously will be taken by church authorities in view of the great variety of local situations which prevail in Papua New Guinea. However, on a more general level certain conclusions can be drawn from the data assembled in this thesis and as a result certain questions can be formulated. The answers to these questions could help indicate whether the content and formulation of canon 1148 are appropriate for the local Catholic Churches in Papua New Guinea.

Reliable statistical data on the present number of polygamists in Papua New Guinea is extremely problematic. However, in chapter one of this thesis, it was noted that the country's statistical office recorded in 1966 that 13 per cent of all married males had simultaneously more than one wife. Then in 1971 this same office recorded that only 9 per cent of married men were polygynists. Subsequent census surveys conducted by the statistics office have not enquired about polygamous marriages. However, a sociological survey published by the Melanesian Institute in 1990 and referred to in chapter four of this thesis mentions a current figure of 9.5 per cent of married men in Papua New Guinea as being polygynists. While such figures give no indication of whereabouts in the country

such plural marital unions are concentrated, they do indicate that nationwide it is a relatively small group of men who nowadays are polygynists. Moreover, the aforementioned survey published by the Melanesian Institute has also noted that simultaneous plural marriage no longer plays a significant role in the overall life of communities, is least likely to exist amongst the growing number of the country's urban dwellers and is usually entered into these days for purely egoistic purposes. A disturbing report on the rapid increase in the number of homicides among polygamously married spouses referred to in chapter four of the thesis and the "wait and see" attitude adopted by the Anglican Church in Papua New Guinea concerning the implementation of a 1988 Lambeth Conference resolution on polygamists who seek Baptism - both these factors when added to the statistical and sociological data already mentioned lead to one conclusion. Given the rapidity of social change now occurring in Papua New Guinea, particularly the change in economic and agricultural practices, it is highly unlikely that polygamy is now seen as a viable (let alone ideal) marital structure by most Papua New Guineans.

In view of the above conclusion, church authorities in Papua New Guinea need to address a series of questions before altering traditional policy. Firstly, what effect would a change in the traditional policy have on local catholic communities in general, catholic married couples in particular, and the overall credibility of the Church in its commitment to ensure the integral human development of all Papua New Guineans? Secondly, what would be the reaction of both non-christian and non-catholic members of the community? Would they understand the distinction that would result? A distinction, which would allow one to enter a polygamous union before one's Baptism but not permit such a marital relationship after one had been baptized. Thirdly would children of polygamous households, although baptized themselves, enter only monogamous unions when they wanted to get married? Their parents (and presumably primary role models) would have

been baptized whilst practising polygamy. Answers to questions like these would help clarify for local church authorities and members the practical consequences of initiating any change in traditional policy. So far these questions have not been asked. However, if the comments made by Papua New Guineans in 1975 at a national assembly (and recorded in chapter one of this thesis) is any indication, a change now in church policy and practice would not be endorsed.

6. An Evaluation of Canon 1148

Following on a review of the major sources, from which any appreciation of the Church's current policy and practice towards polygamists needs to proceed, what evaluation can be made of canon 1148 of the 1983 Code of Canon Law?

The first and most obvious comment is that canon 1148 continues to uphold what has always been a consistent policy and practice of the Catholic Church. History shows that church teaching, as a reflection on the meaning of the dignity and uniqueness of all persons as redeemed brothers and sisters in Christ, has continually come down against the view that polygamy is just as acceptable as monogamy as a christian marital arrangement. In this respect canon 1148 is just the most recent re-affirmation of this teaching in the Church's universal law.

A second comment is that canon 1148, like its predecessor canon 1125 of the 1917 Code of Canon Law, mirrors the ordinary magisterial teaching of the Church on the nature of all marriages. A teaching now contained in canon 1056 of the 1983 Code of Canon Law. While the Church may never have infallibly declared that polygamy is an unnatural marital structure and while opinions may differ amongst exegetes as to whether any denigration of polygamy can be found in the Scriptures - the constant teaching of the

Church over the centuries, - implies that polygamous marriages are never true marriages. Small wonder then that church practice and law have never regarded the dismissal of all spouses except one by a polygamist subsequent to his or her reception of Baptism as an objective violation of natural justice. This point is vigorously contended by some contemporary theologians but it remains an implication contained in canon 1148.

A third comment on canon 1148 flows from the first two comments. Any judgment as to the reasonableness of canon 1148 §1, on the dismissal of other spouses (*ceteris dimissis*), depends in part on the validity or otherwise of a theological presupposition. If, as church teaching implies, a christian anthropology only recognizes monogamy as the normative structure for all marriages, then dismissal of all spouses except one is objectively reasonable. If, as some ethicists claim, a natural law ethic does not preclude polygamy as a genuine marital arrangement, then it is a moot point whether such a legal requirement is reasonable. As was recorded in chapter four, A. Hastings put this issue starkly when he wrote:

A non-Christian has accepted lifelong obligations by plural marriage from which he [or she] is not entitled to withdraw. To do so is frequently to cause real injustice and misery to both wives [husbands] and children. To impose this upon other defenceless people is a strange way of preparing for Baptism.³

However, this issue will have to be reconsidered when commenting on the third part of canon 1148.

Comments on the theoretical reasonableness of canon 1148 §1 inevitably devolve into an investigation as to how pastorally realistic are the requirements laid down in this section of the canon. The fourth comment offered on canon 1148 §1 is that in cases

³ A. Hastings, *Christian Marriage in Africa*, London, S.P.C.K., 1973, p. 77.

involving harmonious polygamous households the requirements are most unrealistic. Such an assertion does not depend for its validity on anecdotal evidence offered by missionaries, it can be inferred from church policy itself. Thus the pastoral policy recommended by Cardinal Lavigerie over a hundred years ago and recorded in chapter four of the thesis, the private reply of the Congregation of the Holy Office in 1960 to the Vicar Apostolic of Wewak in Papua New Guinea and the private reply of the Congregation for the Doctrine of the Faith in 1971 to the Apostolic Legate in West Africa, both of which are recorded in chapter three of the thesis, plus the innumerable requests made over the centuries to various dicasteries of the Roman Curia for clarification on how to deal with polygamists - all these documented cases indicate that the application of the procedures outlined in the three Apostolic Constitutions were frequently considered inappropriate. In fact what appears to have arisen is a policy of pastoral care of polygamists which was parallel but not contrary to the requirements of the law whenever missionaries encountered harmonious polygamous households.

A fifth comment relates to references to polygyny and polyandry contained in canon 1148 §1. It is commendably even handed that the present law specifically mentions both male and female polygamists - something which legal principles and clarifications issued by dicasteries of the Roman Curia had already ensured. Yet polyandry is extremely rare, a fact noted throughout this thesis and apparently implied in canon 1148. Implied because in canon 1148 §3, while provisions are made to ensure for the care of the extra wives of a polygynist, no mention is made of the needs of the extra husbands of a polyandrist!

A sixth comment focuses on the third part of canon 1148. As was noted in the third chapter of the thesis, the actual formulation, slightly adapted, originated from a reply sent by the Congregation for the Propagation of the Faith to members of the First Plenary

Council of India in 1950. Now placed as they are in a canon of the universal law of the Church, these same provisions, applied to the dismissed wives of a polygamist, are important. Firstly, by including these provisions within the Church's universal law and allocating responsibility of seeing they are complied with to the local ordinary, obligations non-Christians incur when entering plural marriage are recognized. Secondly, the areas indicated by the canon that the local ordinary is to consider and the norms by which he is to judge whether sufficient provision has been made are extremely broad. This too is an indication from the law itself that the potential for grave injustices exist and need to be overcome. However, as comprehensive as they are, do such provisions adequately address the disruption of family and tribal life? Can any compensation offered to the dismissed wives of a polygynist ever ensure that they can live with dignity and security in societies where there are no traditionally recognized roles for them? Such questions and other practical considerations require analysis and response which depend upon varied local circumstances and go beyond the parameters of this thesis. Nevertheless the just and compassionate resolution of such issues will ultimately determine the practicality of this third section of canon 1148.

Canon 1148 of the 1983 Code of Canon Law represents the most recent articulation within the Church's universal law of certain privileges granted by three Apostolic Constitutions which were originally promulgated in the early sixteenth century. As such this canon stands within a constant theological and canonical tradition and mirrors what has been the consistent ordinary magisterial teaching of the Church on the question of admitting polygamists to the sacraments of initiation.

Given the theological understanding of the nature of marriage, christian marriage and unicity articulated by both Popes and Councils up until the present as the teaching of

the Church, it must be concluded that canon 1148 is a reasonable response in law to the dilemma faced by church authorities when polygamists request membership within the Catholic Church. To what extent canon 1148 is also a realistic answer to these issues is debatable. Especially is this the case when all members of a harmonious polygamous household seek to be baptized. This is why a proposal was suggested in chapter four of the thesis as a permissible, reasonable and realistic alternative that church authorities in Papua New Guinea ought to consider.

Perhaps any perceived limitations of canon 1148 owe much to the fact that originally its norms formed part of legislation meant only for very specific localities and peoples. Perhaps, too, in the reformulation of canon 1125 of the 1917 Code into canon 1148 of the 1983 Code, too much emphasis was placed upon retaining a continuity with the past and little use was made of insights from the social sciences. However, canon 1148 does not prevent the implementation of the pastoral resolution suggested in chapter four of this thesis; it does reaffirm the Church's constant teaching on the nature of christian marriage and is therefore to be judged as not obstructing "the salvation of souls, which is always the supreme law of the Church" (*salus animarum, quae in Ecclesia suprema semper lex esse debet*". can. 1752).

-APPENDIX-

Extract from N. P. Ouédraogo, Polygamie traditionnelle des Moose et communauté ecclésiale. Aspects juridiques et implications pastorales, Rome, Université Pontificale Urbanienne, 1988, pp. 216-218:

Au terme du Can. 206,2 les catéchumènes doivent être l'objet d'une grande sollicitude pastorale particulière, et introduits par des rites sacrés dans la vie, liturgie et la charité du Peuple de Dieu. A la lumière de l'expérience de quatre diocèses (Ouagadougou, Ouahigouya, Koupèla et Kaya), nous retenons des éléments liturgico-canoniques, capables de constituer des «Fontes» essentielles pour l'élaboration du «statut juridique» souhaité par le Concile Vatican II en faveur des catéchumènes, sans exclusion de ceux qui sont polygames non-baptisables.

En présence des parrains et marraines, et de toute la communauté, les polygames non-baptisables s'engagent officiellement à la suite du Christ, en son Eglise, par:

- 1) La Profession de Foi comme les baptisés.
 - 2) La renonciation à Satan, au péché, à la superstition, aux faux cultes, aux pratiques des coutumes contraires à la foi chrétienne (sorcellerie, divination ...).
 - 3) L'engagement de vie chrétienne vécue dans la foi, l'espérance et la charité, les commandements de Dieu.
 - 4) La promesse d'observer les commandements de l'Eglise: observation du dimanche, participation aux activités et réunions de la communauté chrétienne, le denier du culte ...
 - 5) La résolution de s'engager à refuser une nouvelle épouse et de renoncer au mariage forcé de leurs enfants, notamment les filles, les laissant libres de contracter un mariage chrétien.
 - 6) La résolution de vivre chrétiennement leur vie familiale: évangéliser leur milieu, éduquer chrétiennement les enfants.
 - 7) La volonté de recevoir le baptême d'eau dès que ce sera possible et au moins à l'heure de la mort.
- Après ces engagements à la suite du Christ, le rite d'intégration à la Communauté ecclésiale se poursuit par:
- La bénédiction de l'eau, suivie de la bénédiction individuelle par l'aspersion. Puis suivent les rites complémentaires.
 - Ils revêtent l'habit blanc qui témoignera que, par leur engagement, ils commencent à vivre une nouvelle vie.
 - On leur donnera la lumière comme un signe de leur foi au Christ et une invitation à être «lumière» du monde, dans leur milieu de vie.
 - La remise de la Croix par laquelle nous trouvons le salut en Jésus-Christ.
 - L'imposition de nom: même s'il a été imposé à la première étape baptismale, il est bon de le reprendre à cette occasion. Le nom est le signe de l'appartenance à la grande famille chrétienne; en outre, il assure la protection d'un saint patron au converti.

- On leur donnera enfin un «livret de chrétien», signalant les étapes baptismales qu'ils ont parcourues et servant à enregistrer les éventuels baptêmes ou bénédictions de leurs enfants.

Sans leur conférer le baptême en raison des obstacles indépendants de leur volonté, cette pastorale vise à intégrer cette catégorie de catéchumènes à la Communauté ecclésiale en leur donnant le droit de participer activement à la vie et aux activités de l'Eglise, sauf en ce qui concerne les sacrements.

Il sont *titulaires de droits et de devoirs* qu'il conviendrait de définir et d'harmoniser au niveau de la Conférence épiscopale. Parmi les droits trois méritent une mention spéciale.

- *Le baptême du polygame et de ses épouses* en cas de maladie grave

- *Les funérailles*: en dehors des cas de grand scandale (can. 1184), les catéchumènes peuvent bénéficier des funérailles prévues pour les baptisés (can. 1183). Compte tenu de l'importance que revêtent les funérailles chez le Moose, il est pastoralement opportun de soigner les funérailles des personnes âgées convertis au Christ.

- *Le baptême des enfants* des polygames convertis est étudié et réglé par la S.C. pour la Doctrine de la Foi."

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-BIOGRAPHICAL NOTE-

Rev. Anthony Malone was born on September 22, 1941 in Oamaru, New Zealand. He joined the Australian-New Zealand province of the Franciscan Order (O.F.M.) in 1962. After seminary studies at franciscan houses of study in Australia, he was ordained a priest in 1969. In 1970, he was assigned to the then Franciscan Mission in Papua New Guinea and for the next five years worked as a parish priest in the diocese of Aitape, Papua New Guinea.

In October of 1975, Father Malone commenced post-graduate studies in theology at the Catholic University of Leuven, Belgium and graduated with a doctorate in Moral Theology in 1978. In September of 1978, he was appointed by the Catholic Bishops Conference of Papua New Guinea as a lecturer in Moral Theology at Papua New Guinea's only major seminary and was a lecturer in Ethics at the University of Papua New Guinea.

In 1986 Franciscans living in Papua New Guinea were formed into a separate entity from their confreres in the Australian-New Zealand province. Father Malone became in 1986 a member of the Franciscan vice-province of Papua New Guinea and the Solomon Islands. Towards the end of 1988 Father Malone was asked to undertake canonical studies in Canada. He obtained the Licentiate in Canon Law from Saint Paul University in 1990.

-ABSTRACT-

The Gospel revealed by Christ and preached by His followers challenges all societies, including the marital, political and economic aspects of their respective cultures. Thus sometimes becoming a Christian can involve turning away from accepted structures in one's culture. Specifically, can a person who has come to believe in Christ remain in a marital arrangement which is in accord with his or her customary standards, though these be seemingly much removed from past Christian experience and the apparent witness of the New Testament? Such questions obviously concern more than the issue of compulsory monogamy for married people who wish to become Christians. However, just such a problem confronts people within polygamous societies in many countries throughout Sub-Saharan Africa and within Papua New Guinea.

Few, if any, Catholic theologians have argued that polygamy and monogamy are equally acceptable as marital structures for Christians. However, some have questioned the appropriateness of past and present legislation in relation to polygamists seeking Baptism. On a practical level many pastors have expressed concern at the apparent lack of discretion allowed by canon law for toleration to be accorded to polygamists who wish to receive Baptism. Such pastors have pointed to the need to avoid greater evils such as the violation of natural and legal rights (particularly of women and children), the disruption of family unity and the undermining of kinship bonds within whole societies, as a justification for a policy of initial accommodation and toleration.

Within the Roman Catholic Church, legislation has consistently upheld the rule that married persons wishing to receive Baptism must be married monogamously. Privileges, first granted in the sixteenth century, allowed polygamists on reception of Baptism to retain

a different wife (or husband) from the first. Canon 1125 of the 1917 Code of Canon Law incorporated these privileges into universal church law. Canon 1148 of the 1983 Code of Canon Law was a practical refinement. This canon incorporated into the body of its text the discipline contained in three Apostolic Constitutions as they apply to polygamists who wish to receive Baptism as members of the Roman Catholic Church.

This dissertation seeks to answer the following set of questions: a) What canonical and pastoral implications can be drawn from canon 1148? b) In view of canon 1148 how can church authorities legally respond when in Papua New Guinea polygamists ask for Baptism? c) Are such responses reasonable? d) Are such responses realistic? e) Above all do the requirements of canon 1148 favor the realization of the supreme law: the salvation of souls (suprema lex: salus animarum)?

Chapter one of the thesis is divided into three parts. The first part describes the marital arrangement called polygamy, examines the reasons for the existence of this marital arrangement, enumerates the advantages and disadvantages of such a form of marriage and relates what effects contemporary social, political, and economic factors are having upon this marital structure. The second part of the chapter focuses on the country of Papua New Guinea. Included within this section of the chapter are an analysis of the role that the peoples of Papua New Guinea have accorded and now accord polygamous marriages, plus a brief résumé of what policies are now officially followed by the major christian denominations present in the country, when polygamists ask for Baptism. The third part of the chapter presents an overview of what christian exegetes claim can be found on the subject of polygamy in the Bible. In this final section of the chapter there is a two part analysis. One on polygyny (there being no other form of polygamy mentioned in the scriptures) in the Old Testament, and the other on polygyny in the New Testament. All

three parts of this first chapter have as their purpose, the providing of a context. Such a contextualization is meant to give some assistance when certain questions, set out as the aim of the dissertation in the previous paragraph, are addressed.

The second chapter scrutinizes past practices and attitudes of the Roman Catholic Church so as to ascertain whether in any record of ecclesiastical legislation, prior to the seventeenth century, there is evidence to support the idea that the Catholic Church officially permitted polygamists, unable or unwilling to alter their marital situation, to be baptized. In this chapter, the Council of Trent's teaching on simultaneous plural marriage, and three sixteenth century Apostolic Constitutions, which addressed catholic missionary practice regarding polygamists who sought Baptism, are especially scrutinized.

The third chapter examines whether, since the sixteenth century, the Catholic Church has ever modified its previous firm rejection as recipients for Baptism, those already polygamously married who were unable or unwilling to alter their marital status. In particular canon 1148 and related canons of the 1983 Code of canon Law are analyzed, together with certain papal and curial statements that have been made about polygamy subsequent to the promulgation of the 1983 Code.

The fourth and final chapter of the thesis is entitled: "Contemporary Theological and Pastoral Considerations". Here two major issues are resolved. Firstly, whether church authorities are justified in baptizing polygamists without requiring them to dismiss all their marital partners except one. Secondly, what policy is morally and legally permissible, and pastorally appropriate for local church authorities in Papua New Guinea to follow when working with polygamists who wish to become Catholics.

In a general conclusion to the dissertation there are six major insights offered. Five of these insights are directly related to what in the body of the thesis has been identified as major sources in any analysis of polygamy. The sixth and final insight consists of an evaluation of canon 1148 of the 1983 Code of Canon Law. From this analysis the reasonableness and appropriateness of canon 1148, in terms of polygamists in Papua New Guinea requesting Baptism, is evaluated.

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Saint Paul University, Ottawa, 1992.